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8/8/2018



THE SENATE

Hon. speaker
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for tabling
07/8/18

TWELFTH PARLIAMENT (SECOND SESSION)

THE SESSIONAL COMMITTEE ON COUNTY PUBLIC ACCOUNTS AND
INVESTMENTS

REPORT ON THE INQUIRY INTO POSSIBLE LOSS OF FUNDS THROUGH
THE ACQUISITION OF LAND LR. NO. 7879/4 (PART) BY THE NATIONAL
LAND COMMISSION FOR USE BY TWO PUBLIC SCHOOLS (RUARAKA
HIGH SCHOOL AND DRIVE-IN PRIMARY SCHOOL), NAIROBI CITY
COUNTY

PAPERS LAID	
DATE	8/8/2018
TABLED BY	Sen. Kajwang
COMMITTEE	CPAIC
CLERK AT THE TABLE	A. Macharia

Clerks Chambers'
Parliament Buildings
NAIROBI

August, 2018

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ABBREVIATIONS AND ACRONYMS

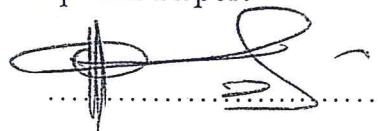
AG	Attorney General
CALC	County Assets and Liabilities Committee
CS	Cabinet Secretary
DCI	Directorate of Criminal Investigation
DPP	Director of Public Prosecution
EACC	Ethics and Anti-Corruption Commission
PS	Principal Secretary/ Permanent Secretary
GSU	General Service Unit
IGRTC	Intergovernmental Relations Technical Committee
KRA	Kenya Revenue Authority
KPTC	Kenya Posts and Telecommunications Corporation
KURA	Kenya Urban Roads Authority
MP	Member of Parliament
NLC	National Land Commission
Sen	Senator
TA	Transitional Authority

ADOPTION LIST OF THE REPORT

We, the undersigned Members of the Senate Sessional Committee on County Public Accounts and Investments do hereby append our signatures to adopt this Report-

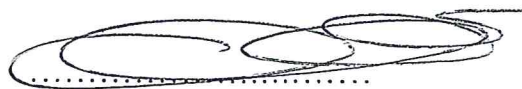
Sen. Moses Kajwang, MP

Chairperson



Sen. Mithika Linturi, MP

Vice Chairperson



Sen. Fatuma Adan Dullo, CBS, MP

Member

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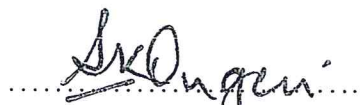
Sen. Paul Kimani Wamatangi, MP

Member

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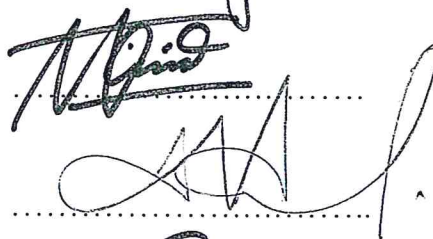
Sen. (Prof.) Sam Onger, EGH, MP

Member



Sen. Charles Kiburu Reubenson, M.P.

Member



Sen. Mohamed Faki, M.P.

Member

.....

Sen. Ledama Olekina, MP

Member



Sen. Millicent Omanga, MP

Member

.....

PREFACE

Mandate of the Committee

Mr. Speaker Sir,

Committees are a creation of the Constitution. Article 124(1) of the Constitution empowers each House of Parliament to establish Committees and make Standing Orders (SO) for the orderly conduct of its proceedings, including the proceedings of its Committees.

The Senate Sessional Committee on County Public Accounts and Investments is established pursuant to Standing Order 214 of the Senate Standing Orders and is mandated:-

- a) Pursuant to Article 96(3) of the Constitution, to exercise oversight over national revenue allocated to the county governments,
- b) Pursuant to Article 229(7) and (8) of the Constitution, to examine the reports of the Auditor-General on the annual accounts of the county governments,
- c) To examine special reports, if any, of the Auditor-General on county government funds,
- d) To examine the reports, if any, of the Auditor-General on the county public investments, and
- e) To exercise oversight over county public accounts and investments

Mr. Speaker Sir,

Honourable Senators, you will recall that the matter of transfer of assets and liabilities from the defunct Local Authorities to County Governments has been a pending issue for a very long time as a result of an incomplete transition process by the defunct Transition Authority (TA).

The Committee deliberated on a draft fiduciary risk report of County Governments and observed that one of the major audit queries raised by the Auditor General across the financial years 2013/14, 2014/15 and 2015/16 for all the forty seven (47) counties was the matter of assets and liabilities.

The Committee expressed concern that most schools owned by defunct local authorities, did not have title deeds and noted the risk of loss of public funds through the process of reacquiring land for use by these schools.

On 20th March, 2018, the attention of the Committee was drawn to the possibility of loss of public funds through acquisition of Land Parcel L.R. No. 7879/4 (part) for two public schools (Ruaraka High School and Drive-In Primary School) owned and managed by the Ministry of Education and the defunct Nairobi City Council respectively.

The Committee deliberated on its role in oversight of public funds and resolved to proactively undertake an inquiry to establish material facts on the matter rather than undertake an ex-post audit when funds have been lost.

The Committee having set out the objectives of the inquiry sought the leave of the Speaker of the Senate to conduct an inquiry into Ruaraka land acquisition matter with a view to secure public interest and the interest of Nairobi City County Government.

Procedure of the Inquiry

Mr. Speaker Sir,

The Committee began its work by scheduling meetings where the following were invited to submit documents and present oral evidence-

1. The Chairman, National Land Commission,
2. The Cabinet Secretary and Principal Secretary Ministry of Education, Science and Technology,
3. The Directors Hue Lands Ltd,
4. The Directors, Afrison Export Import Ltd,
5. The Directors, Whispering Palms Ltd,
6. The Directors, Drive-In Estate Ltd,
7. The Directors, Equator Brent Ltd,
8. The Cabinet Secretary, Ministry of Lands,
9. The Director General, Business Registration Service, Office of the Attorney General
10. The Chairman, Intergovernmental Relations Technical Committee (ITGRC),

11. The Director General, Kenya Revenue Authority (KRA)
12. The Principal and Board of Management Ruaraka High School,
13. The Principal and Board of Management Drive-In Primary School and,
14. The Governor, Nairobi City County Government.

The Committee also undertook a fact finding visit to the schools on 14th June, 2018 where several observations were made based on the findings on the ground.

Thereafter, the Committee proceeded for a working retreat which provided the opportunity to consider the submissions from various stakeholders. The Committee relied on the evidence adduced during the hearings and the submissions received.

The Committee considered and concluded its inquiry into the acquisition of land LR.No. 7879/4 by the National Land Commisison and adopted its report detailing its findings and recommendations on Monday, 6th August, 2018.

EXECUTIVE SUMMARY

The preface details the place of Committees in the Constitution, Committee establishment and mandate, Committee membership and formation, the niche of the Committee in the Senate, key observations and recommendations and acknowledgement.

Chapter one contains a background to the report of and the matter under consideration.

Chapter two is a record of meetings held with various stakeholders and the information received in the inquiry.

Chapter three highlights a comparative analysis of the evidence and submissions received by the various stakeholders.

Chapter four captures the Committee's findings and observations. Some of the key observations made are-

- The Commissioner of Lands approved the sub division plan on 22nd November, 1983;
- NLC acquired 5.5727 ha. (13.7701 acres) of land for Drive-In Primary School and Ruaraka High School against the Ministry of Education's request to acquire 13.5364 acres;
- Due diligence was not followed in the process of acquisition of the parcel of Land Parcel L.R. No. 7879/4 (part) for Ruaraka High School and Drive-In Primary School; and
- The land on which the schools are built on is public utility land having been surrendered by Drive-In Estate Developers Ltd. as a condition of approval of subdivision for parcel of land.

Chapter five details recommendations that the Committee made after consideration of submissions received by various stakeholders and the evidence adduced during the inquiry. Among the key recommendations made are-

- DCI, DPP and EACC to recover from Whispering Palms Ltd., Afrison Export Import Ltd. and Huelands Ltd. and their directors the amount of Ksh. 1,500,000,000.00 that was fraudulently paid by the NLC.

- NLC to compel the person having possession of title to Land Parcel L.R. No. 7879/4 to surrender it to the Registrar of Government Land.
-
- The Ministry of Lands and NLC to secure the interest of Government on all the public utility plots on L.R. No. 7879/4 that were surrendered by Drive-In Estate Developers Ltd. as per the conditions set out for approval of subdivision plan of 1983 within six (6) months.
 - The DCI and DPP to investigate and prosecute the directors of Whispering Palms Estate Ltd., Afrison Export Import Ltd. and Huelands Ltd. for-
 - ✓ Making fraudulent claim on ownership of the land the schools occupy knowing very well that it had surrendered the land for public utility and thereby causing the tax payer a loss of Ksh. 1,500,000,000.00.
 - ✓ Causing payment to Whispering Palms Estate Ltd. to be paid without a duly executed deed of indemnity.
 - The then CS, Dr. Fred Matiang'i and the Principal Secretary, State Department of Basic Education, Dr. Belio Kipsang should be held responsible for causing loss of Ksh. 1,500,000,000.00 for ignoring the recommendations of a report of Quality Assurance and Standards Assessment which established that the land on which Ruaraka High School was built on was public land, but went ahead with the acquisition of the land for the schools.
 - The DCI, DPP and EACC should investigate and prosecute the Chairperson and Commissioners of NLC for causing loss of public funds amounting to Ksh. 1,500,000,000.00 being part payment for acquiring 13.7701 acres for Drive-In Primary School and Ruaraka High School, contrary to the principles of public finance under Article 201 (d).

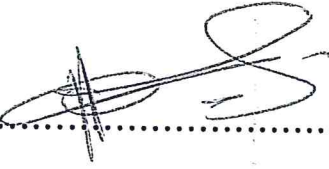
ACKNOWLEDGMENT

The Senate Sessional Committee on County Public Accounts and Investment thanks the Offices of the Speaker and the Clerk of the Senate for their support during the inquiry into the acquisition of Land Parcel LR. No. 7879/4 by the National Land Commission and preparation of this report.

The Committee also extends its appreciation to the various stakeholders who appeared before the Committee and submitted evidence. The Committee also acknowledges with gratitude the members of the public who have keenly followed the deliberations of the Committee on this important matter of public interest and the media who ensured that the citizenry was informed on the proceedings.

Mr. Speaker Sir,

It is now my pleasant duty, pursuant to Standing Order 207, to present the Report of the Senate Sessional Committee on County Public Accounts and Investment on the inquiry into possible loss of funds through the acquisition of Land L.R. No. 7879/4 (part) by the National Land Commission for use by two public schools (Ruaraka Secondary School and Drive-In Primary School, Nairobi City County).

Signed.....  Date..... 07 AUGUST 2018

SEN. MOSES KAJWANG' MP

CHAIRPERSON

CHAPTER ONE: INTRODUCTION

Background

Ruaraka High School and Drive-In Primary School are public schools located in Ruaraka Constituency, Nairobi City County. The two schools are located on Land Parcel L.R. No. 7879/4 (part). The two schools have been in existence on the parcel of land for 34 and 31 years respectively.

On 20th March, 2018, the attention of the Committee was drawn to the possibility of loss of public funds through acquisition by the National Land Commission of parcel of Land Parcel L.R. No. 7879/4 (part) for two public schools (Ruaraka High School and Drive-In Primary School) owned and managed by the Ministry of Education and the defunct Nairobi City Council respectively.

The National Land Commission (NLC) received a claim of ownership and request for compensation of Land Parcel L.R. No. 7879/4 (part) occupied by the two schools from Afrison Export Import Ltd. and Huelands Ltd. and initiated the compensation process.

The Committee established that the NLC had acquired Land Parcel L.R. No. 7879/4 (part) at a cost of Ksh. 3.2 Billion Shillings and that a partial payment of Ksh. 1.5 Billion had been made to Whispering Palms Ltd. at the request of Afrison Export Import Ltd and Huelands Ltd.

Drive-In Primary School is built on Land Parcel L.R.No. 7879/4 (part) and listed as an asset of Nairobi County Government in the Assets and Liabilities Committee (CALC) report submitted to the Intergovernmental Relations Technical Committee (IGRTC).

1.2 Brief History of Land - LR. No. 7879/4

The Committee established that the Original land L/R. No. 7879 was first conveyed by the Crown and allocated in 1905. On 21st February 1906, Mr. Arthur Edward Atkinson transferred the land to Mr. Allan Thompson and Mr. Harris Temple who consequently transferred the same to Ms. Gertrude Grogan on 25th March, 1909.

The land was transferred to various owners until 19th August, 1925, when the land ownership passed onto Gladys Thomson who later sold it to Joreth Limited on 4th of December, 1958. In 1966, Joreth Limited subdivided the 168 acres of land into four separate parcels namely L/R. No. 7879/2, L/R. No. 7879/3, L/R. No. 7879/4 and a road.

Afrison Export Import Ltd. and Huelands Ltd. bought Land Parcel L.R No. 7878/4 measuring ninety six acres (96 acres) in 1981 from Joreth Ltd.

In 1982, Drive-In Estate Developers Ltd. applied to Nairobi City Commission for approval to subdivide Land Parcel L.R. No. 7879/4 on behalf of their clients, Afrison Export Import Ltd. and Huelands Ltd.

Nairobi City Commission considered the application and recommended approval of the Subdivision Plan with seventeen conditions. The approval was consequently given by the Commissioner of Lands on 22nd November, 1983. Among the seventeen, Condition No. 10, recommended that Nursery, Primary and Secondary school sites, social centres, special purpose plot and shopping centres be surrendered to the Government free of cost.

Drive-In Estate Developers Ltd. wrote to the Commissioner of Lands on 4th July, 1984 accepting the seventeen conditions of surrender. On 12th July, 1984, The Commissioner of Lands issued a *letter of reservation* reserving the site planned for a secondary school to the PS Ministry of Education. In the same year, Ruaraka High School was established and later in 1987, Drive-In Primary School. In 1999, the Commissioner of Lands issued a Letter of Allotment to the PS Ministry of Education for Ruaraka High School.

On 17th August, 2016, a claim for ownership and compensation of the land on which the schools occupy was lodged by Afrison Export Import Ltd. and Huelands Ltd. to the NLC who subsequently conveyed the claim to the Ministry of Education.

The process of acquisition of the land began in 2016 and part payment for the land done in January, 2018.

1.3 Objectives of the Inquiry

The Committee resolved to inquire into the matter and set the following objectives-

- i. To establish whether there was loss of public funds in the acquisition of Land Parcel L.R. No. 7879/4(part) for Ruaraka High School and Drive-In Primary School.
- ii. To establish whether due diligence was done in the process of acquisition of Land Parcel L.R. No. 7879/4 (part) as per the applicable laws.
- iii. To establish the ownership of Land Parcel L.R. No. 7879/4 and in particular-
 - a) To establish the previous and current ownership of the land;
 - b) To establish whether there has been any claim to the land on which the two schools occupy;
 - c) To establish whether there is any encumbrance on parcel of Land Parcel L.R. No. 7879/4; and
 - d) To find out whether Government interest on Land Parcel L.R. No. 7879/4 (part) where the two schools occupy had been secured.
- iv. To understand the circumstance under which the two schools were established on the parcel of Land Parcel L.R. No. 7879/4.

1.4 Scope of the Inquiry

The Committee sought to inquire into the process of acquisition of Land Parcel L.R. No. 7879/4 (part) occupied by Ruaraka High School and Drive-In Primary School. Specifically, the Committee sought to establish the ownership of the land the schools occupy, the claim over the land, the process of acquisition of the land by various government entities, the amount compensated and the part payment of the compensation.

The Committee was not able to get adequate information from the Directors of Afrison Export Import Ltd, Huelands Ltd and Whispering Palms Ltd after they sought a court injunction to stop the Committee from inviting them to appear and adduce evidence on the ownership of Land Parcel L.R. No. 7879/4 (part).

1.5 Process of Compulsory acquisition of land in Kenya

Compulsory acquisition of land in Kenya is governed by Article 40 (3) (b) of the Constitution and Part VIII (sections 107-133) of the Land Act, 2012. Article 40 (3) (b) of the Constitution states as follows:

- (3) The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation—*
- (b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that—*
- (i) requires prompt payment in full, of just compensation to the person; and*
 - (ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.*

Section 107 (1) of the Land Act provides that the process ought to be initiated by a Cabinet Secretary or a County Executive Committee Member submitting a request for acquisition of the land to the National Land Commission.

The Commission is however empowered, under Article 67 (2) (e) of the Constitution, *to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.*

The National Land Commission has the power to decline an application for compulsory acquisition and will have to communicate the rejection with reasons to the relevant CS or CECM. Otherwise, the Commission may approve the compulsory acquisition but only after it certifies in writing that the land is required for public purposes or in the public interest as provided under section 110 (1) of the Land Act.

Upon approval, section 107 (5) of the Land Act requires the Commission to publish a notice of intention to acquire in the Gazette and deliver a copy of the notice to the Registrar of Lands and every person who appears to the Commission to be interested in the land. The Registrar, on receipt of the notice, is required under section 107 (6) of the Land Act to the registrar shall make an entry in the register of the intended acquisition. Section 107 (8) of the Land Act thereafter stipulates that the land being compulsorily acquired has to be geo- referenced and authenticated by the departments of survey in both the national and county governments.

Section 107 (7) provides that interested persons under compulsory acquisition include any person whose interests appear in the land registry or any person actually occupying the land and their spouse(s).

After at least 30 days have lapsed after the issuance of the notice of intention to acquire land, section 112 of the Land Act requires the Commission to publish a notice appointing a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land in the Gazette and deliver a copy of the notice to every person who appears to the Commission to be interested in the land. At the inquiry, the Commission is required to make full inquiry into and determine who are the persons interested in the land and receive their written claims of compensation. The relevant CS or CEC member and every person interested in the land is entitled to be heard, to produce evidence and to call and to question witnesses at the inquiry.

After the inquiry, the Commission is required under section 113 of the Land Act to prepare and serve all interested person(s) a written award which would be the final and conclusive evidence of—

- (a) the size of the land to be acquired;
- (b) the value of the land; and
- (c) the amount of the compensation payable.

Section 113 (3) of the Land Act provides that where interest in land is held by more than one person as co-tenants, the award should state the amount of compensation awarded in respect of the interest and the shares in which it is payable to those persons.

Upon issuing and serving the award, the Commission is required to promptly pay compensation to all persons in accordance with the award unless a person objects to the award. After payment of compensation, the Commission is required to take possession of the land by serving on every person interested in the land a notice that on a specified day possession of the land and the title to the land will vest in the national or county governments as the case may be.

The Commission is mandated, under section 118 of the Land Act, to promptly conduct a final survey where only part of the land comprised in title documents has been acquired.

Section 119 of the Land Act stipulates that payment of compensation can only be made after the exercise of due diligence which includes final survey and the determination of acreage, boundaries, ownership and value.

The Commission is required, under section 121 of the Land Act to, in writing, require the person having possession of title documents to deliver them to the Registrar of Lands and upon delivery the Registrar is required to—

- (a) cancel the title documents (where the entire land comprised in the title has been acquired); or
- (b) register the resultant parcels and cause to be issued, to the parties, title documents in respect of the resultant parcels (where only part of the land comprised in the title has been acquired).

Section 121 (3) of the Land Act mandates the Registrar of Lands to make an entry in the lands register recording the acquisition of the land where title documents have not been provided.

CHAPTER TWO: SUBMISSIONS FROM STAKEHOLDERS

2.1 Introduction

The Committee held meetings and received evidence from various stakeholders in relation to the inquiry.

2.2 Meeting with the Chairman, National Land Commission

The Chairman, National Land Commission Prof. Muhammad A. Swazuri, appeared on 3rd and 17th April, 2018 and informed the Committee as follows-

1. The parcel of land under inquiry was L. R. NO. 7879/4 (part) which was private land acquired for Ruaraka High School and Drive-In Primary School and measured 5.597 ha. (13.7701 acres);
2. The land acquired for the two public schools was part of a larger parcel of Land Parcel L.R. No. 7879/4 that measured 96 acres along Thika Super Highway;
3. Ruaraka High School and Drive-In Primary Schools were built on the parcel of land in 1984 and 1987 respectively;
4. There were other public utilities that had been built on Land Parcel L. R. No. 7879/4 that measured 96 acres;
5. The Government had previously acquired part of Land Parcel L. R. No. 7879/4 for expansion of Outer Ring Road and for the G.S.U;
6. The Government had as at 29th January, 2018, paid Ksh. 1.5 Billion as part payment for acquisition of Land Parcel L /R NO. 7879/4 (part);
7. NLC had entered into an agreement with Ms. Afrison Export Import Ltd. and Ms. Huelands Ltd. who were the owners of the parcel of land but had instructed the NLC to pay a company by the name of Ms. Whispering Palms Estate Ltd.;
8. The acquiring Government entity, Ministry of Education, was the one that made budgetary provision and release of funds made to NLC for payment to the owner of the land to be acquired after ensuring that due diligence had been done;
9. The Government of the Republic of Kenya was the buyer of the parcel of Land Parcel L.R. No. 7879/4 (part) for the two schools;
10. The acreage of the original title Land Parcel L. R. No. 7879 measured 168 acres;

11. The process of acquisition of the land commenced after the Cabinet Secretary for Education made a request to the National Land Commission for purchase of land for the two schools namely; Drive-In Primary School and Ruaraka High School;
12. The registered owners of the parcel of Land Parcel L.R. No. 7879/4 were Afrison Export Import Ltd. and Huelands Ltd. as per judgement made by the High Court in Civil Case No. 617 of 2012 and an official search done at the Land Registry in Nairobi on 19th January, 2018;
13. When the request for purchase of the land from the Cabinet Secretary was received, the National Land Commission wrote to the Chief Registrar of Lands to register a caveat on the land for the Government's intention to acquire the parcel of land;
14. There was no sale agreement between the two schools (Drive- In Primary School and Ruaraka High School) and the owners of the land for the sale of the parcel of land;
15. A Gazette Notice for intention of Government to acquire the land was published on 30th June, 2017;
16. Possession of the land had not been secured by the Government since that could only be done when full payment for the land had been done; and
17. Ruaraka High School had been issued with a Letter of Allotment for the land it occupies but the NLC had verified that the Letter of Allotment was invalid.

The National Land Commission submitted documents with the following information-

- 18 An Indenture dated 19th December, 1981 (*annex 1*) indicates that Joreth Ltd. sold Land Parcel L.R. No. 7879/4 measuring 168.5 acres to Afrison Export Import Ltd. and Hueland Ltd.
- 19 A Letter Reference No. CPD/0644/7879/4 dated 28th March, 1984, (*annex 2*) shows that the Director, City Planning, Nairobi City Commission wrote to Drive- In Estate Developers Ltd. informing the company that the sub-division plan for L.R. No. 7879/4, submitted for approval had been approved subject to conditions of surrender of the specified areas of the land for public utilities.
- 20 Drive- In Estate Developers replied through a letter dated 5th April, 1984 (*annex 3*) stating that the conditions given for approval of the sub- division plan were not acceptable to their clients and sought cancellation of the Sub-division Plan.

- 21 On 3rd August, 1984, the PS, Ministry of Education wrote to the Commissioner of lands through Letter Ref. M.E.S.T./143/84 (*annex 4*) relinquishing the interest of the Ministry of Education on the site reserved for construction of a public secondary school on parcel of Land Parcel L.R. No. 7879/4 and further supported the proposal by Drive-In Estate Developers Ltd. to establish a private secondary school.
- 22 On 18th December, 1984, the Commissioner of Lands vide Letter Ref. No. 108096/46 (*annex 5*) wrote to Drive-In Estate Developers Ltd. advising that the open spaces indicated in the Sub division Plan were more than adequate and that the developer could make alterations. The letter further approved the construction of maisonettes on the site reserved for a secondary school.
- 23 On 17th August, 2016, Afrison Export Import Ltd. and Huelands Ltd. wrote (*annex 6*) to the chairperson, NLC claiming ownership and compensation of Land Parcel L.R. No. 7879/4 (part) where Ruaraka High School and Drive-In Primary School were established, but the letter was received by the NLC on 29th August, 2016.
- 24 On 29th August, 2016, the Chairperson, NLC wrote via Letter ref. No. VAL. 1446 (*annex 7*) to the Ministry of Education relaying the complaint and claim of compensation by Afrison Export Import Ltd. and Huelands Ltd. for illegal occupation by the two public schools on the land. The letter stated that a ground inspection to verify the complaint had been done and the claim for compensation was for four (4.0) acres.
- 25 On 7th February, 2017, Afrison Export Import Ltd. wrote to the Director, City Planning, Nairobi City County (*annex 8*) enquiring whether the status of the conditions set for approval of the sub-division plan of 1983 were still in force.
- 26 On 7th February, 2017 vide Letter Ref. No. MOE/CONF/G5 (*annex 9*) the PS, Ministry of Education wrote to the Chairperson of NLC acknowledging receipt of a letter dated 13th September, 2016 (*annex 10*) addressed to the CS, Ministry of Lands. The letter also acknowledged that Ruaraka High School and Drive-In Primary School were public schools and instructed the NLC to acquire the land the schools occupied in the public interest.
- 27 On 16th February, 2017, the Chairperson, NLC by Letter Ref. VAL. 1446

- (*annex 11*) wrote to the PS, Ministry of Education advising that under Section 107 (1) of the Land Act, 2012, it was the CS who was mandated to request the NLC to acquire land for Schools.
- 28 On 17th February, 2017, Vide Letter Reference No. UP&H/ ADMIN /00326/BNG/ jwk (*annex 12*) the Director, City Planning, Nairobi City County vide wrote to Afrison Export Import Ltd. clarifying that the Sub-Division plan of 1983 was approved with conditions set out but halted and no further processing was done since the land remained intact.
- 29 On 17th March, 2017, by Letter Ref. No. MOE. CONF/G5 VOL. II the CS, (*annex 13*) Ministry of Education responded to the advice of the Chairperson, NLC requesting the NLC to commence the process of acquisition of the land for the two public schools.
- 30 Report and Valuation upon Land Parcel L.R. No. 7879/4 (part) for Ruaraka High School and Drive-In Primary School conducted by the NLC on 14th June, 2017 (*annex 14*) indicates that the acreage of land to be acquired was 5.5727 ha. (13.7701 acres). The valuation gave the value of the land to be Ksh. 206 million per acre and also factored a 15% statutory disturbance allowance which computed the total compensation to be Ksh. 3,269,040,600.00
- 31 A comparable Report and Valuation upon Land Parcel L.R. No. 7879/4 (part) done by Camp Valuers gave a compensation sum of Ksh. 5,900,000,000.00 (*annex 15*).
- 32 Gazette Notice No. 6322 dated 30th June, 2017 (*annex 16*) gave notice of the Government's intention to acquire 5.5727 ha. of Land Parcel L.R. No. 7879/4 for Drive- In Primary School and Ruaraka High School.
- 33 On 18th July, 2017 the Chairperson, NLC was copied Letter Ref. No. MOEST/ CON/2/31TY/39 (*annex 17*) by the PS Ministry of Education addressed to the PS, National Treasury. The letter instructed the National Treasury to process the compensation funds and release directly to the NLC.
- 34 On 25th January, 2018, a meeting of the Land Acquisition and Compensation Committee of the NLC recommended under Min. 1/3/25/01/2018 payment of Ksh. 1,500,000,000.00 to Afrison Export Import Ltd. And Huelands Ltd. The Committee further recommended that a deed of indemnity be executed by the owners of the

land confirming that all facts and documents of ownership provided were authentic and that a survey of the land be done by the Deputy Director of Survey (*annex 18*).

- 35 On 26th January, 2018, Afrison Export Import Ltd. and Huelands Ltd. wrote to NLC instructing that payment of the compensation for Land Parcel L.R. No. 7879/4 (part) for the two public schools be paid to Whispering Palms Estate Ltd. through Barclays Bank Account No. 061-1033613 (*annex 19*).
- 36 On 26th January, 2018, the Director, Valuation and Taxation, Dr. Salome L. Munubi sought approval from the Secretary/CEO, NLC for disbursement of Ksh. 1,500,000,000.00 for compensation of Land Parcel L.R. No. 7879/4 (part) stating that due diligence had be undertaken and provision of the Land Act, 2012 on compulsory acquisition had been adhered to (*annex 20*).
- 37 On 29th January, 2018, NLC wrote to National Bank of Kenya instructing that Ksh. 1,500,000,000.00 be transferred from the NLC account to Whispering Palms Estate Ltd.'s Barclays Bank Account No. 061-1033613 being payment for parcel of land L.R. No. 209/7879/4 (*annex 21*).

2.3 Meeting with the Principal Secretary, Ministry of Education

The Principal Secretary, Dr. Belio Kipsang appeared on 14th May, 2018 and informed the Committee that-

- 38 Ruaraka High School and Drive-In Primary are both public schools located in Kasarani Sub-County and established in the years 1984 and 1987 respectively.
- 39 For a school to be registered the following documents are required-
- a) Duly filed application form for registration;
 - b) Recent report of the institution by the Sub-county Quality Assurance & standards officer and Sanitary Assessment by the Public health recommending registration of the school;
 - c) Approved site and building plans by public works;
 - d) Land ownership documents i.e. title deed, letter of allotment, consent to transfer through sale or as a gift between the owner of the land and the institution; and
 - e) Environment assessment certificate.
- 40 Drive- In Primary School was established in 1987 on part of Land Parcel L. R. No. 7879/4. The school has a TSC pay code No. 934001040.

- 41 Ruaraka High School on the other hand was established in 1984 and registered on 5th March, 1987 and issued with a provisional registration certificate number NA/819/87. It was fully registered on 9th June, 1997 and issued with registration number GP/729/97. The school was re-registered on 23rd March, 2009 and issued with registration number GP/A/5879/09;
- 42 The Nairobi City Council as it then was, invested heavily in Drive-In Primary School. The Ministry of Education engaged with Drive-In Primary School by posting teachers to the school;
- 43 Ruaraka High School has so far received a sum of Kshs.9, 740,132 for the financial year 2017/2018 for Free Day Secondary Education and in the Financial Year 2016/2017 it received Kshs.6, 000,000 for infrastructure development. The enrolment in the school is 630 students;
- 44 The Ministry of Education has so far invested approximately Ksh. 20 million in the form of infrastructure development and capitation for Ruaraka High School and there were plans to invest Ksh 15 million to increase the number of classrooms;
- 45 Drive-In Primary School was not in possession of any document to prove the ownership of the land. However, Ruaraka High school is in possession of an Letter of Allotment dated 28th June, 1999 but has not been able to acquire a title to the land since land ownership has been in dispute;
- 46 The Government had released a sum of Kshs.1.5 Billion as partial payment for acquisition of the land for the schools as advised by the National Land Commission whose mandate amongst others is to secure or acquire land for public use;
- 47 Drive-In Primary School and Ruaraka High School have been on the land for 32 and 34 years respectively. The acreage of the land in which the two schools sit on is 13.5364 acres;
- 48 Nairobi was one of the seven Municipalities that operated and managed primary schools within their respective jurisdictions and the Ministry of Education did not have documents relating to such schools;
- 49 The National Land Commission (NLC) wrote to the Ministry of Education informing it that the land on which the two schools occupied was private land and that the owner of the land had requested compensation for the same;

- 50 The notice to the National Treasury for payment for the land was done by the Ministry of Education with a rider that the Attorney- General's legal opinion on the matter would be shared before processing of payment;
- 51 An assessment team from the Ministry of Education carried out an investigation on the ownership of the land in which the two schools occupied in 2017;
- 52 NLC had not responded to a letter from the Ministry of Education asking whether the interest of the Ministry of Education in the land had been secured; and
- 53 The Ministry had requested for purchase of 13.5364 acres of land but the NLC purchased 13.7701 acres;

2.3. Meeting with Cabinet Secretary, Ministry of Education

The Cabinet Secretary, Amb. Amina C. Mohamed appeared on 23rd July, 2018 and informed the Committee that-

- 54 The National Land Commission initiated the process of acquisition of land for Ruaraka High School and Drive-In Primary School by officially writing to the Cabinet Secretary, Ministry of Education vide letter dated 13th September, 2016;
- 55 The acquisition of the land for the schools was prompted by a claim for compensation of the land by Afrison Export Import Ltd. through the National Land Commission and therefore the Ministry of Education was obligated to secure the interest of the schools and the general public;
- 56 The requirements for registration of public schools are as follows-
- a) Duly filled application form for the registration of the public institution (form is available for free at the County Education Office);
 - b) A signed assessment report of the institution not exceeding six (6) months by the quality Assurance & Standards Officers;
 - c) A signed sanitary assessment report not exceeding six (6) months by a Public Health Officer to establish if Health and Safety Standards are met;
 - d) Approved site and building plans;
 - e) Environmental assessment certificate (for new sites only);
 - f) A copy of the title deed or Letter of Allotment, and in some cases consent to transfer through sale or as a gift (where land is purchased or the land is donated by the community or individual);

- g) Land search certificate not exceeding six (6) months; and
- h) Certified copies of receipts issued as proof of payment of all statutory fees or licences or taxes.

57 Funds Received by Drive-In Primary School from the Ministry of Education.

(a) Free Primary Education funds

Year	Simba Account (Ksh)	General Purpose Account (Ksh)	Total (ksh)
2013	719,500.00	616,709.00	1,336,209.00
2014	760,062.00	724,170.00	1,484,232.00
2015	926,170.00	871,957.70	1,798,127.70
2016	957,610.00	766,088.00	1,723,698.00
2017	957,610.00	1,039,092.00	1,996,702.00
Total	4,320,952	4,018,016.70	8,338,968.70

(b) Infrastructure Funds (CDF)

Purpose	Amount
Class repair	700,000.00
Lockers	600,000.00
Multi-purpose hall	9,000,000.00
Total	10,300,000.00

(c) Funds received by Ruaraka High school from GOK (MOE) and Parents

Year	Tuition Account (Ksh)	Operation Account (Ksh)	PTA/ Lunch (Ksh)	Total (Ksh)
2013	2,322,180.00	4,153,590.00	7,426,253.00	13,902,023.00
2014	2,268,000.00	4,190,130.00	9,320,212.00	15,778,342.00
2015	2,443,710.00	4,351,410.00	8,120,550.00	14,915,670.00
2016	3,044,790.00	5,189,310.00	12,352,983.00	20,587,083.00

2017	2,901,150.00	5,080,950.00	5,915,481.00	13,897,581.00
2018	1,290,240.00	3,780,000.00	4,429,287.00	9,499,527.00
Total	14,270,070.00	26,745,390.00	47,564,766.00	88,580,226.00

- 58 The process of acquisition of land for the schools should have been initiated by the Ministry of Education or a Court of Law;
- 59 There was no urgency in the acquisition of the land for the schools because they were already in existence on the same parcel of land for many years;
- 60 The recommendations of the team established by the Ministry of Education to investigate the ownership of the land on which Ruaraka High School was built were not taken into consideration when the decision to acquire the land for Ruaraka High School and Drive- In Primary School was made;
- 61 There was no budgetary allocation to purchase the land for the schools. The Ksh. 1.5 Billion paid out as part payment came from a vote on legal dues within the Ministry of Education's budget item that was later to be regularized in a supplementary budget;
- 62 The Ministry was waiting for completion of investigations being carried out by various government agencies before taking administrative action on any officers found culpable;

The Ministry of Education submitted documents with the following information-

- 63 A letter from the National Land Commission dated 13th September, 2016 addressed to the Cabinet Secretary indicating that they had received a complaint from Afrison Export Import Ltd and Huelands Ltd. the registered land owner of LR. No. 7879/4. The complaint was that two public schools have been occupying their parcel of land measuring 13.5364 acres for 30 years without compensation. The NLC in their letter indicated that it was mandated as the legal entity to determine and advice on the compensation and that the Ministry of Education should make arrangements to compensate the land owner. The NLC had undertaken an inspection to verify the complaint.
- 64 The Nairobi Regional Coordinator for Education, Mr. John L. Ololtuaa vide a letter reference No. CQAS/KAS/8/16 (1) dated 3rd February, 2017, (*annex 22*) wrote to the

Principal Secretary, Ministry of Education, Dr. Belio Kipsang, forwarding a copy of an assessment report on quality assurance and standards for Ruaraka High School. One of the recommendations made in the report was that the land on which the school was situated, was a surrendered portion of land for public utility, the claimant had no basis for compensation.

- 65 On 7th February, 2017 the Ministry acknowledged that the schools were within the said LR. No. 7879/4 and sought guidance from the NLC on the way forward (*annex 23*).
- 66 On 16th February, 2017 the NLC wrote to the Ministry of Education (*annex 24*) and advised that as per the provisions of Section 107(1) of the Land Act, whenever the National Government is satisfied that it may be necessary to acquire some particular parcel of land, the respective Cabinet Secretary shall submit a formal request for acquisition of public land to the NLC. In this regard, the Cabinet Secretary made the request as advised by the NLC on 17th March, 2017.
- 67 On 24th April, 2017, vide Letter Ref. No. NLC/VAL. 1446 (*annex 25*) the NLC wrote back to the Ministry advising that according to the provisions of the Land Act 2012, Part VII on compulsory acquisition, prompt compensation should be paid. The NLC indicated that the two schools occupy 13.5364 acres valued at Kshs. 3,269,040,600 inclusive of 15% statutory disturbance allowance.
- 68 On 29th June, 2017, through a letter reference No. MOE.GEN/4L/12/(17) (*annex 26*) the PS, Dr. Belio Kipsang wrote to the Attorney- General seeking a legal opinion on how to proceed with the matter of acquisition of land parcel L/R. No. 7879/4 for the schools attaching all documents in possession of the Ministry.
- 69 On 30th June 2017, by Letter Ref. No. MOE.GEN/31L/8 VOL. X (*annex 27*) the Ministry of Education through the PS wrote to the Principal Secretary, National Treasury forwarding a letter dated 24th April, 2017 from the NLC indicating the value of the land at Kshs. 3,269,040,600. In the letter, the PS, Education informed the PS, stated that he had sought a legal opinion of the Attorney- General on the compensation which would be shared once received. The purpose of the letter was to bring to the attention of the National Treasury the budgetary implication of the same.
- 70 On 7th July, 2017, the Attorney- General gave a legal opinion (*annex 28*) to the PS, Ministry of Education underlining the legal basis and efficacy of the process of

compulsory acquisition. The legal opinion was forwarded to the National Treasury on 18th July, 2017.

- 71 On 13th November, 2017, vide Letter Ref. No. DV/ES 1063/17/01 'A' (24) (*annex 29*) the PS National Treasury wrote to the PS Ministry of Education giving authority to the Ministry to spend Kshs. 1,500,000,000 in the compulsory acquisition of part of L.R. No. 7879/4 pending regularization of the expenditure in the 2017/2018 Supplementary Estimates.
- 72 On 11th December, 2017, vide Letter Ref. No. MOE/ACCT/1/03/Vol.11 (52) (*annex 30*) the Ministry of Education initiated the process of transferring the funds to NLC by requesting for exchequer from the National Treasury. The exchequer reflected in the Ministry of Education's account on 11th January, 2017.
- 73 A letter Reference No. MOE/ACCT/1/19 (62) dated 15th January, 2018 (*annex 31*) by the Principal Secretary, Ministry of Education seeking NLC to avail the valuation report and formal request for the funds. NLC responded on 16th January, 2018 vide Letter Ref. No. NLC/VAL. 1446 (*annex 32*) with the said documents.
- 74 The process of transferring the funds commenced on 19th January, 2018 with the Senior Accountant General seeking authority to transfer the funds indicating that the following documents were available-
- a) Valuation Report;
 - b) Formal Request letter from NLC;
 - c) Letter of the Cabinet Secretary instructing NLC to acquire the land;
 - d) Certificate of search;
 - e) Copy of Indenture; and
 - f) All relevant documents
- 75 On 19th January, 2018 the Ministry of Education informed NLC through Letter Ref. No. MOE/ACCT/1/19 (63) (*annex 33*) on the release of funds which reflected in NLC National Bank Account on 22nd January, 2018. NLC was advised to ensure that-
- a) They were in possession of instruments of ownership for the land; and
 - b) Due diligence was exercised in the process of compulsory acquisition.
- 76 On 15th February, 2018 the NLC confirmed disbursement of the funds to the land owners.

77 On 21st February, 2018 vide Letter Ref. No. MOE.GEN/31L/8 VOL. X (*annex 34*) the Ministry of Education requested NLC to ensure that the interest of the schools was secured.

2.4. Meeting with the Ag. Director General, Business Registration Services, Office of the Attorney-General

The Ag. Director-General, Mr. Kenneth Gathuma, appeared on 3rd April, 2018 and informed the Committee that-

77. Details of Whispering Palms Estate Ltd. were reconstructed because the files from the office of the Registrar of Companies could not be traced;

78. Whispering Palms Estate Ltd. had not filed annual returns to the Registrar's office as required by law;

79. The returns that should be filed by private companies should have the following information-

- a) the structure of the company;
- b) address of the company;
- c) names of directors; and
- d) any changes in the directorship that may have taken place in the course of the year.

80. Returns for public companies are similar to those filed by private companies and in addition include financial statements;

81. All companies that had not complied by filing their annual returns to the Registrar of Companies had been given until September 2018 to comply or be deregistered.

The Business Registration Service submitted documents with the following information-

82. A report from the office of the Director of Registration of Business Service in the Office of the Attorney-General confirmed that Mr. Francis Mburu was a director of Drive- Inn Estate Ltd., Afrison Export Import Ltd., Huelands Ltd., Whispering Palms Ltd. and Equator Brent Ltd.

83. The Directorship of the various companies was provided as follows (*annex 35*)-

(a) Drive-In Estate Developers Limited

The Company was registered on 3rd April, 1985 under registration number C. 29352 with the following as directors at incorporation-

Francis Mburu - 1 Share

Jane Mburu - 1 Share

Maria Wanjiru - Nil Shares

However, when the Company filed its returns on 9th October, 2017, Maria Wanjiru was omitted as a director.

(b) Afrison Export Import Limited

The Company was registered on 1st December 1981 under registration number C. 23387 with the following as directors at incorporation-

Francis Mburu - 1 Share

John Williams - 1 Share (Non-Director Shareholder)

On 2nd December, 2011, John Williams transferred his One Share by transfer of stock to Francis Mburu and the following was the directorship and shareholding-

Francis Mburu - 50 Shares

Mark Mungai Mburu - 25 Shares

Justin Mungai Mburu - 25 Shares

On 31st January, 2015 Mark Mungai Mburu and Justin Mungai Mburu transferred all their shares to Equator Brent Limited and Francis Mburu transferred 49 Shares to Equator Brent Limited. This resulted in the following change to the shareholding-

Francis Mburu - 1 Share

Mark Mungai Mburu - Nil Shares

Justin Mungai Mburu - Nil Shares

Equator Brent Limited - 99 Shares (Non-Director Shareholder)

(c) Equator Brent Limited

The Company was registered on 22nd December 2009 under registration number CPR/2009/15903 with the following as directors at incorporation-

Francis Mburu - 50 Shares

Mark Mungai Mburu - 25 Shares

Justin Mungai Mburu - 25 Shares

(d) Huelands Limited

The Company was registered on 6th November, 1981 under registration number C. 23261 with the following as directors at incorporation-

Stephen Gachuki Kimani	- Nil Shares
John Wambicho Maina	- 1 Share
Philip Wahome	- 1 Share

The Company's annual returns filed on 4th August, 2011 omit Stephen Gachuki Kimani as a director.

On 30th July, 2011 John Wambicho Maina and Philip Wahome resigned as directors and transferred their shares to Francis Mburu and Geoffrey Mutisya.

On 4th August, 2011 Drive-In Estate Developers was allotted 998 Shares by the Company. However, on 31st August, 2014, Drive-In transferred all its shares to Equator Brent Limited.

As at 30th August, 2017, the following was the directorship and shareholding of the Company-

Francis Mburu	- 1 Share
Geoffrey Mutisya	- 1 Share
Equator Brent Limited	- 998 Shares (Non-director shareholder)

(e) Whispering Palms Estate Limited

The Company was registered on 29th August, 2006 under registration number C. 127827 with the following as directors at incorporation-

Francis Mburu	- 50 Shares
Mark Mungai Mburu	- 25 Shares
Justin Mungai Mburu	- 25 Shares

2.5. Meeting with the Cabinet Secretary, Ministry of Lands and Physical Planning

The Cabinet Secretary, Ms. Farida Karoney, appeared on 14th May, 2018 and informed the Committee that-

84. The Registrar of Government Lands had registered an encumbrance on parcel of Land Parcel L.R. No. 7879/4 in March, 2018 as a way of securing Government interest to the land;
-
85. The Cabinet Secretary informed the Committee that according to the records held by the Ministry, Afrison Export Import Limited and Huelands Ltd were the registered owners of the L.R. No. 7879/4 having acquired it in 1981.
86. There was however, a charge to the same parcel of land by Continental Credit Finance Ltd. Bank (now under receivership);
87. There was no change of user on land parcel L/R. No. 7879/4 and since the land was not sub-divided as per the approved subdivision plan of 1983, the conditions of the subdivision plan would not apply;
88. Ruaraka High School had been issued with a Letter of Allotment for the parcel the school occupies. This was issued without due process since it was issued on private land.
89. The Government could not use the right to adverse possession on private land because the Government cannot be a squatter and the only recourse that the Government could use was compulsory acquisition by fair compensation;
90. There were legislative and policy gaps in the process of acquisition of land by the Government namely; when gazettelement of intention of Government to acquire land is done, encumbrance should be registered within a specific timeline that should be set out in law so that the land in question should not be transferred to another party;
91. The National Land Policy was due for review and some of the identified gaps would be sealed during the review; and
92. The process of acquisition of the parcel of land for the schools was not followed to the letter and the transaction could have been handled better.
93. Sessional Paper No.3 on National Land Policy does not explicitly address itself to the question of adverse possession and Compulsory Acquisition. However, the principle of adverse possession is invoked by an individual or institution through a suit to a competent court of law claiming such a right to land.
94. It was the responsibility of the registered owner of the land to execute deeds of surrender in respect of the public utilities together with the corresponding deed plans and submit the documents for purposes of registration in favour of the Government.

95. According to the law, land may be converted from one category to another. In instances of conversion from private to public, land may be converted through compulsory acquisition, reversion of leasehold interest to Government after expiry of a lease, transfer and surrender of a portion or the whole land.
96. The process of conversion of land from one category to another is completed by issuance of title to the relevant Government/ State body in respect of the acquired or surrendered land.
97. There was no communication from Nairobi City Council and Drive-In Estate Limited regarding the cancellation of the plan.

The Ministry of Lands submitted documents with the following information-

98. L.R. No. 7879 falls under the now repealed Government Land Act of 1902. By an instrument of conveyance dated 1905 the Crown first allocated a total of 100 acres to Arthur Edward Atkinson as land No. 216 registered as No. 333/All/1905.
99. The land is delineated and described in Plan Number 47389 as fee simple and subject to the provision of the Government Lands Act of 1902 (now repealed and replaced by the Land Act, 2012).
100. The parcel of land changed hands by an indenture dated the 4th of December, 1958 (registered in the Government Lands Registry in Nairobi Volume N43 folio 30211 between Gladys Thomson and Joreth Limited for a consideration. It was then transferred to Joreth Limited.
101. Having bought the entire parcel of land measuring 168.5 acres from Gladys Thomson, Joreth Limited sub-divided the land into four separate parcels.
102. The original land parcel L/R. No. 7879 measuring 67.99ha (168 Acres) was subdivided in 1966 into four parcels namely-
- a) LR. No. 7879/2;
 - b) L.R No. 7879/3 ;
 - c) L.R/No. 7879/4; and
 - d) Road.
103. Afrison Export Import Limited and Huelands Limited bought the parcel of land Reference No. 7879/4 at the price of Ksh. 14,000,000/= measuring ninety six acres (96 acres) (*annex 36*).

104. A proposal to subdivide LR. 7879/4 was submitted to the City Council of Nairobi through Drive - In Estate Developers. This application was considered by the Town Planning Committee at its meeting held on 6th September, 1982 where the Committee recommended that the Subdivision Scheme be approved by the Commissioner of Lands subject to a number of conditions amongst which were-

- i. Condition No. 9 recommending that the road network be surrendered to the Council (City Council of Nairobi) free of cost; and
- ii. Condition No. 10 recommending that the areas earmarked for: Nursery, Primary and Secondary School sites, Social centres, special purpose plot and shopping centres be surrendered to the City Council free of cost.

105. To facilitate approval of the Subdivision Scheme the Commissioner of Lands wrote to Drive - In Estate Developers Company requesting the company to remit to the Commissioner of Lands a sum of Kshs.21, 500/- being subdivision approval fee.

106. In response to the letter, Drive - In Estate Developers made the requisite payments amounting to Kshs.21, 500/-. Official receipt no. A758827 dated 18th November, 1983 was issued.

107. On 22nd November, 1983, the Commissioner of Lands approved the Subdivision Scheme as recommended by the City Council of Nairobi with slight amendments namely:-

Condition No. 10 recommended that the Nursery, Primary and Secondary School sites, social centres, special purpose plot and shopping centres be surrendered to the Government free of cost.

108. Vide letter dated 4th July, 1984 addressed to the Commissioner of Lands, Drive - Inn Estate Developers confirmed their acceptance of the Surrender to the Government all the public utility plots mentioned in Condition No. 10 of the approval letter dated 22nd November, 1983.

109. On 12th July, 1984, the Commissioner of Lands issued a "letter of reservation" reserving the site planned for Secondary School to the Permanent Secretary, Ministry of Education (*annex 37*).

110. Later, vide a letter dated 28th June, 1999 the Commissioner of Lands formally issued a Letter of Allotment to the Permanent Secretary, Ministry of Education (*annex 38*).

111. The Land Parcel L.R/ No. 7879/4 measuring 96 Acres was further sub-divided in June 2012 into two parts as follows-
- a) L.R/No. 7879/24 -37.40 Acres (15.137 ha.) and the Deed Plan No. 398228 was issued in March, 2016; and
 - b) L.R/No. 7879/25 -58.01 Acres (23.475ha.) and the Deed Plan No. 398229 was issued in March, 2016.
112. A caveat exists on the file by the Registrar of Government Lands dated March 1st 2018 claiming an interest under Section 76 of the Land Registration Act No.3 of 2012 (*annex 39*).
113. A Letter Ref. No. NLC/VAL. 1528 dated 14th May, 2018 (*annex 40*) was written by the chairman National Land Commission to the Chief Land Registrar, Ministry of Lands & Physical Planning informing the Registrar as follows-
- a) The NLC made payments for the acquisition of land for the public utilities upon L.R. No. 7879/4;
 - b) The Land Registrar to place restrictions on parcels of land as indicated in the following respective gazette notices-
 - i. Gazette Notice No. 6055 of 29th August, 2014 indicating the land parcel number, registered owner and area acquired for construction of Outering Road ;
 - ii. Gazette Notice No. 5885 of 29th July, 2016 for access roads and Outering Road; and
 - iii. Gazette Notice No. 6322 of 30th June, 2017 for Drive- In Primary School and Ruaraka High School.
114. On 21st May, 2018 the Official Receiver and Provisional Liquidator of Continental Credit Finance Ltd. wrote to the Cabinet Secretary, Ministry of Lands, confirmed that the title deed for land parcel L/R. No. 7879/4 was in the custody of Harit Sheth Advocates under a professional undertaking to pay Continental Credit Finance Ltd. (in liquidation) the outstanding loan (*annex 41*).

2.6. Meeting with the Chairman, Intergovernmental Relations Technical Committee (ITGRC)

The Chairperson, Prof. Karega Mutahi appeared on 14th May, 2018 and informed the Committee that-

115. A Gazette Notice No. 701 dated 24th March, 2017 established the institutional structures for the verification, validation and transfer of assets and liabilities of the defunct local authorities. As per the requirements of the Gazette Notice, Nairobi City County established the County Assets and Liabilities Committee (CALC) which undertook the exercise on identification, verification and validation of assets and liabilities of the defunct Nairobi City Council.

116. Nairobi City County Assets and Liabilities Committee submitted its final report to IGTRC in January 2018.

117. The parcel of land L/R No. 7879/4 was captured as an asset in the form of buildings in the unaudited inventory prepared by the defunct Transition Authority.

The Intergovernmental Relations Technical Committee submitted documents with the following information-

118. IGRTC confirmed that Nairobi City County had listed in the CALC report that the parcel of land L/R. No. 7879/4, on which Ruaraka High School and Drive- Inn Primary schools are situated, as an asset of the County Government as follows (*annex 42*) -

L/RNo.	Exact physical location	Planned	Surveyed	Current use/name	Size (Ha)	Fair Value	County	Local Authority
7879/4	Not indicated	Yes	Yes	Mathare North Primary School	Not indicated	Not Indicated	Nairobi City County	Nairobi City Council

119. The assets verification team included officers from NLC and the Ministry of Education.

2.7. Meeting with the Principal and Board of Management Ruaraka High School

The Committee met with the Board of Management, Ruaraka High School on 14th June, 2018 where the Chairperson of Board, Prof. Elizabeth Nafula, the Principal, Ms. Agnes Chege and Board Member, Mr. John Thuo explained that-

120. The School was established in 1981 by a Mr. Dsouza, a European referred to by the locals as 'Baba Dogo'. By then, the school was located where Valley Bridge Primary School is today;
121. The school was later shifted to its current location in 1984 when the foundation stone was laid and in 1985 the school was opened;
122. The Community contributed in cash, kind and labour to construct the school. The Community was also assisted to build the school by the former Mayor of Nairobi City Council, Mr Andrew Ngumba;
123. The School was built on land that was set aside for public utility purposes;
124. The approval for establishment of the school was given through the then District Development Committee structures;
125. The School was managed by the defunct City Council of Nairobi;
126. The School was re-registered in 1997 and 2009 as a requirement by the Ministry of Education whenever there is an increase in the streams of classes;
127. The school land was surveyed by M/s. Kamwere & Associates with the understanding that the school would acquire a title deed to the land.
128. Mr. Thuo supervised the erection of a perimeter wall around the school compound because he knew where the beacons were.
129. The school management was not aware of anybody laying claim to the land the school occupies, until March, 2018;
130. The National Land Commission visited the school to undertake an assessment but did not engage the school management on their mission;
131. The school received Ksh. 7 million in FY 2017/2018 from the Ministry of Education for capitation and development;
132. The school has the following population-
 - a) Students -685(285 girls and 400 boys)
 - b) Teaching staff (TSC) -30 (9 men and 21 women)

- c) Teaching staff (BOM) - 4
- d) Non-teaching staff -15 (8 men and 7 women)

133. The School occupies an area of 3.05 ha. as indicated on the Letter of Allotment issued to the school;

2.8. Meeting with the Head Teacher and Board of Management Drive- In Primary School on Thursday, 14th June, 2018

The Committee met with the Board of Management, Drive- In Primary School on Thursday, 14th June, 2018 where the Head Teacher, Mr. Benjamin Ouma Oloo and Chairman, Board of Management, Mr. James Kanga explained that-

- 134. The school was founded, built and managed by the former Nairobi Municipality.
- 135. The attempt to establish details of ownership of the school's land had been impossible as there had been no positive response from City Hall.
- 136. The Board was not aware of any claim to the school land for all the years it existed and the matter was drawn to their attention vide a letter dated 13th February, 2018 from the Ethics and Anti-Corruption Commission requesting the head teacher to record a statement on the history of the school.
- 137. The Area Member of Parliament had through CDF sponsored the construction of a social hall in the school that was complete and in use. The construction was done with the knowledge that Drive- In Primary School is a public school and a property of the defunct Nairobi City Council.
- 138. Officers from the National Land Commission surveyed the school and the reasons of the survey was not disclosed to the school Board.
- 139. The School had no title deed or Letter of Allotment. The Board could not confirm the land acreage under the occupation of the school.

2.9. Meeting with the Directors of Afrison Export and Import Ltd, Huelands Ltd., Whispering Palms Estate Ltd. and Drive -Inn Estate Ltd., Mr. Francis Mburu

Mr. Francis Mburu, Director of Afrison Export and Import Ltd, Huelands Ltd., Whispering Palms Estate Ltd. and Drive-In Estate Ltd., appeared on 30th April, 2018 and informed the Committee that-

140. He was the Managing Director of Afrison Export Import Limited, Huelands Limited, Whispering Palms Estate Limited and Drive-In Estate Limited;
- 142 He managed the said companies on a day to day basis and his two sons (Mr. Mark Mungai Mburu and Justin Mungai Mburu) and Mr. Geoffrey Mutisya Mbili were silent directors of the companies.
- 143 Mr. Geoffrey Mutisya Mbili had resigned as a director a week prior to the meeting of the Committee and the directors.
- 144 Since the other directors (his sons) were not involved in the daily operations of the companies, he felt there was no need of them being present during the meeting and furthermore, they were out of the country.
- 145 Mr. Philip Wahome, Mr. John Wambicho and Mr. Stephen Gichuki Kimani were directors of Huelands Ltd. with equal shares.
- 146 When Mr. Philip Wahome passed on, his spouse, Ms. Esther Wahome replaced him as a director in the company.
- 147 The three directors of Huelands Ltd. sold the company to him after a law was enacted prohibiting directors of banks from owning companies that had secured loans with the same banks where they were directors.
- 148 He bought shares worth Ksh. 40 million from Ms. Esther Wahome but since he had delayed in payment for the shares, the value had increased to Ksh. 100 million though the dispute was before Court of Law.

2.10. Meeting with the Governor, Nairobi City County, Hon. Mike Mbuvi Sonko

The Governor, Hon. Mike Mbuvi Sonko, appeared on Wednesday, 18th July, 2018 and informed the Committee that-

- 149 Drive- In Primary School was registered/ opened in 1986 by the Nairobi City Commission.
- 150 The County Government did not have information on when Ruaraka High School was registered because such information was with the Ministry of Education.
- 151 The Ruaraka High School and Drive- In Primary School were built on land that resulted from the surrender of land from sub-division of LR. 7879/4 approved on 6th September 1982.

152 The County Government did not have any correspondence between the defunct Nairobi City Council and the relevant stakeholders on the ownership of Land Parcel LR. 7879/4. However, various officers were under investigation for possible collusion resulting in the disappearance of documents.

153 The land on which the two schools were built was Public land and the acreage is as Follows-

- i. Drive- In Primary School 2.741 Ha (About 6.8. Acres)
- ii. Ruaraka High School 2.737 Ha (About 6.7. Acres)

154 The main building of Drive- In Primary School was funded by the then Nairobi City Commission. However the school has also been funded by donors and well-wishers on several occasions as follows:

- i. Perimeter Wall - Thomas Gayle
- ii. Renovation of Six (6) classrooms - Bayer East Africa
- iii. Renovation of ablution block- Johnson and Johnson
- iv. roofing walkways - Johnson and Johnson
- v. Rehabilitation of Computer (Tablet) room - G4S
- vi. Furniture -Dela rue
- vii. Energy Saving Jikos – World Food Programme

155 The County Government did not have information on the construction of Ruaraka High School since it did not manage the school;

156 The County Government did not have a copy of the letter of allotment issued to Ruaraka High School by the Commissioner of Lands;

157 The Governor submitted an extract of the Assets and Liabilities Register of the Nairobi County Government listing the land occupied by the schools as an asset of the County Government;

158 The County Government charges rates on the basis of a percentage of un-improved site value. Initially it was 17 % then increased to 34% and thereafter reduced currently to 25 % of the unimproved site value;

159 Land rates are billed to the registered owner of the property and in this case it was Afrison Export Import Ltd. and Huelands Ltd.;

160 According to records available only one payment on land rates was made on 22nd April, 2015 for kshs. 3,502,000 in regard to land parcel LR.7879/4; and

161 There was a tax waiver given in December, 2015 in regard to L.R. 7879/4 where the adjustment was done pursuant to a court order in 2015 from Ksh.1,049,206,814 in March, 2015 to Kshs. 87,530,000.

Nairobi City County Government submitted documents with the following information-

162 The approved Subdivision Scheme plan for Land Parcel L.R. No. 7879/4 was missing in the correspondence file at City Hall.

163 Survey Plan (*annex 43*) for plots currently accommodating Ruaraka High School and Drive-In Primary School.

164 Letter dated 28th March, 1984 Ref. No. CPD/0644/7879/4 by Director city Planning addressed to M/S Drive-In Estate Developers Ltd. stating the position of Nairobi City Commission on the Subdivision.

165 Letter from Drive-In Estate Developers Ltd. dated 5th April, 1984 to the Director City Planning. The County Government doubted the authenticity of the letter despite it being in their correspondence file.

166 Letter dated 7th February, 2017 from Afrison Export Import Ltd. addressed to the Director of City Planning. The County Government expressed concern that the objective of the letter was not clear since it was written over 30 years from the date the Subdivision Plan was approved.

167 There was a general adjustment for rates of all properties in the Nairobi City arising from a Court Order in 2015. However, after the Order was vacated, the adjustment lapsed. Therefore, Land Parcel L.R. No. 7879/4 does not enjoy any waiver on land rates.

168 The Subdivision Plan of L.R. No. 7879/4 was never cancelled because if it had, the same would have been minuted and the decision of the Nairobi City Commission communicated to the Commissioner of Lands, Director of Surveys of Kenya and the Land Registrar. There is no evidence of such communication.

169 The position of the County Government is that Land Parcel L. R. No. 7879/4 remains Subdivided as per the resolutions of the Town Planning Committee meeting of 6th September, 1982 (*annex 44*).

170 Minutes dated 6th September, 1982 of the Town Planning Committee of the Nairobi City Commission (*annex 45*) that recommended approval of the Subdivision Plan of land parcel L.R. 7879/4 with the following conditions-

- i. 230mm. diameter foul sewer to be extended to serve all sub-plots. Plans and specifications to be approved by Council;
- ii. All sub-plots to be connected to sewer;
- iii. Each sub-plot to be provided with an-adequate supply of wholesome water to the satisfaction of the Medical Officer of Health;
- iv. A comprehensive surface water drainage scheme to be submitted and implemented to the satisfaction of the City-Engineer;
- v. The proposed, roads serving the scheme including the 20m. road, along the southern boundary to be constructed to an adoptive standard including surface water drainage and street lighting. Plans and specifications to be approved by Council;
- vi. Permanent vehicular access to 18m. and 25m, road reserves will not be permitted;
- vii. A 5 metre wide strip of land along southern boundary surrendered to Council free of cost for road widening;
- viii. A 15 X 15 metre truncations to be provided at the junction with Outer Ring Road.
- ix. Area of land coloured blue on the deposited plan to be surrendered to Council free of cost;
- x. Nursery, primary and secondary school sites, social centres, special purpose plot and shopping centres to be surrendered to City Council free of cost;
- xi. The scheme to be developed comprehensively and the proposal to conform to plot density for the area. Development to commence when the infrastructural services are available;
- xii. Previous change of use and sub-division scheme to be cancelled;
- xiii. All developments fronting the power wayleave to be cleared by East African Power and Lighting Company;
- xiv. The power wayleave to be maintained as shown on deposited plan;
- xv. A building line of 9m. to be maintained along the Outer Ring Road and the 25m. road reserve and 6m. building line for all other internal estate roads;

- xvi. Type plans for buildings to be submitted to Council for approval and construction to be completed before final approval is accorded; and
- xvii. A tree planting landscaping scheme to be submitted to Council for approval and to be implemented by the developer to the satisfaction of the Director of City Planning.

160. Most of the documents submitted by the Governor were returned by the Committee for authentication.

2.11. Submission from Kenya Revenue Authority

162. Afrison Export Import Ltd., Huelands Ltd., Whispering Palms Ltd. and Equator Brent Ltd., the companies involved in the ownership and sale of Land Parcel L/R. No. 7879/4 were not registered with KRA and were not tax compliant as indicated (annex 46) -

	PIN	NAME	COMPLIANCE STATUS	DIRECTORSHIP
1	P000615146T	Afrison Export Import Ltd.	Not Compliant	Director: A004504205G
2	A004504205G	Justin Sam Mburu	Not Compliant	-
3	P000615186D	Huelands Ltd.	Not Compliant	Company is not registered in our current system (iTax) and does not have details of directors under the previous system (legacy)
4	P051233668F	Whispering Palms Ltd.	Not Compliant	Company is not registered in our current system (iTax) and does not have details of directors under the previous system (legacy)
5	P051348672Q	Equator Brent Ltd.	Not Compliant	Company is not registered in our current system (iTax) and does not have details of directors under the previous system (legacy)

CHAPTER THREE: COMPARATIVE ANALYSIS OF SUBMISSIONS

3.1 Introduction

The Committee while undertaking the inquiry made the following comparison in terms of various issues that arose during the meetings-

3.2. Ownership of Land Parcel LR No. 7879/4(Part) Occupied by Ruaraka High School and Drive-In Primary School

163. The Ministry of Lands and Physical Planning, the Team appointed by the Ministry of Education to investigate ownership of Land Parcel LR No. 7879/4(Part) and the Governor, Nairobi City County Government, the Inter-Governmental Relations Technical Committee, the Principal and Board of Management, Ruaraka High School were in concurrence that part of Land Parcel LR No. 7879/4 occupied by Ruaraka High School and Drive-In Primary School is public land having been surrendered as a condition for sub-division of Land Parcel LR No. 7879/4.
164. On the other hand, NLC, the then CS, Ministry of Education, Dr. Fred Matiang'i and the PS, Ministry of Education, Dr. Belio Kipsang' stated that part of Land Parcel LR No. 7879/4 occupied by Ruaraka High School and Drive-In Primary School was private land.

3.3. Sub-division and surrender of Land Parcel L.R. No. 7879/4 (part)

165. The Director, City Planning, Nairobi City Commission, the Commissioner of Lands and the Governor, Nairobi City County Government are in agreement that approval for subdivision of Land Parcel L.R No. 7879/4 was issued On 22nd November, 1983.
166. Conditions of surrender of public utility plots were accepted by Drive-Inn Estate Developers Ltd. on 4th July, 1984.
167. On the other hand, Drive-In Estate Developers Limited contend that Land Parcel LR No. 7879/4 was not sub-divided as it had rejected the conditions for sub-division.
168. The CS, Ministry of Lands and Physical Planning and NLC concurred that the Letter of Allotment issued to Ruaraka High School was invalid because it was issued on freehold land that was private land. However, subsequent submissions by the CS, Ministry of lands indicated that the surrender of a site for secondary school was done.

169. A report of a team constituted by the Ministry of Education to investigate the ownership of the land Ruaraka High School occupies established that the land was public land having been surrendered as condition of subdivision of Land Parcel L.R. No. 7879/4.
170. The CS, Ministry of Education submitted that a Letter of Allotment for Ruaraka High School was issued to the PS, Ministry of Education.

3.4. Acreage of land to be acquired

171. The National Land Commission informed the Committee that Ruaraka High School and Drive-In Primary School occupied a total of 13.7701 acres.
172. On the other hand, Afrison Export Import and Huelands were laying claim for compensation of a total of 13.5364 acres which was part of Land Parcel L.R No. 7879/4 where the two schools occupied.
173. The Governor, Nairobi County Government informed the Committee that the land occupied by the two schools measured approximately 13.5 acres.

3.4. Process of Compulsory Acquisition

174. The Ministry of Education informed the Committee that NLC had initiated the process of compulsory acquisition of the land parcel for Ruaraka High School and Drive-In Primary School, via a letter dated 13th September, 2016.
175. The National Land Commission informed the Committee that pursuant to provisions of the Land Act, 2012, the Cabinet Secretary, Ministry of Education had made the request for purchase of land on which the two schools occupied vide Letter Ref. No. MOE. CONF/G5 VOL. II dated 17th March, 2017.
176. The process of compulsory acquisition of land is clearly outlined under Part VIII of the Land Act, 2012.
177. On 30th June, 2017, the National Land Commission published in the Kenya gazette, a notice of intention to acquire land for Ruaraka High School and Drive-In Primary School pursuant to Section 112 of the Land Act, 2012.
178. Pursuant to section 113 of the Land Act, 2012 an award of compensation is to be made for every person who NLC has determined to have an interest in the land,

upon conclusion of the inquiry. The award includes the size of land to be acquired, the value of the land and the amount of compensation payable.

179. The Committee had not been furnished with evidence that notice of Inquiry had been served upon Ruaraka High School and Drive-In Primary School or the Ministry of Education.

180. The Committee made enquiries to NLC and the Government Printer as to whether Gazette Notice to undertake an Inquiry on the acquisition of Land Parcel L. R. No. 7879/4 (part) for Ruaraka High School and Drive-In Primary School was done. However, the Committee had not received a response by the time it wrote its report.

181. NLC submitted to the Committee an Award of Compensation dated 26th January, 2018 which was a week after the Ministry of Education had already released the funds to NLC.

3.5. Instruments of Ownership

182. The Ministry of Lands and Physical Planning submitted a letter dated 21st May, 2018 from the Attorney- General's Office (Official Receiver) stating that the title documents in respect of LR No. 7879/4 were in custody of M/S Harit Sheth Advocates who act for Afrison Import-Export and Huelands Limited.

183. Section 121 of the Land Act, 2012 provides that surrender of title documents for Land Parcel L.R. No. 7879/4 should have preceded payment. NLC did not acquire the instrument of ownership of the land.

3.6. Chronology of events and activities in the acquisition process

Date of activity	Correspondences by the institution	Comment
6 th September, 1982	A proposal to subdivide LR. 7879/4 was considered by the Town Planning Committee at its meeting. The proposal was submitted to the City Council of Nairobi through a company called Drive -In Estate Developers Limited. The Committee recommended that the Subdivision Scheme be approved by the Commissioner of Lands subject to a number of conditions including:-	Nairobi City County Government provided authenticated copies of minutes.

Date of activity	Correspondences by the institution	Comment
	i. Condition No. 9 recommended that the road network be surrendered to the Council (City Council of Nairobi) free of cost. ii. Condition No. 10 recommended that the areas earmarked for: Nursery, Primary and Secondary School sites, Social centres, special purpose plot and shopping centres be surrendered to the City Council free of cost.	
18 th November, 1983	Official receipt no. A758827 issued to Drive - In Estate Developers Limited being the requisite payments for subdivision amounting to Kshs.21, 500/-.	C.S. Ministry of Lands indicated that the original document was with EACC. The Committee requested for the documents but had not received them at the time of writing the report.
22 nd November, 1983	The letter by Commissioner of Lands approving the sub division plan with slight amendments to the conditions being that surrender be made to the Government of all public utility plots free of cost.	
28 th March, 1984	A Letter by the Director, City Planning, Nairobi City Commission to Drive-In Estate Developers Ltd. informing the company that the subdivision plan for L.R. No. 7879/4, it had submitted for approval had been approved subject to conditions of surrender of part of the land for public utilities.	
5 th April, 1984	Letter by Drive-In Estate Developers stating that the conditions given for approval of the sub division plan were not acceptable and therefore sought cancellation of the subdivision plan.	Nairobi City County Government cast doubt on the authenticity of this letter.
4 th July, 1984	A letter by Drive-In Estate Developers Ltd. confirming	Ruaraka High

Date of activity	Correspondences by the institution	Comment
	acceptance of the surrender to the Government of all public utility plots as set out in Condition No. 10 of the approval letter from the Commissioner of Lands dated 22 nd November, 1983.	School was established in the same year 1984 as a public School.
12 th July, 1984	The Commissioner of Lands issued a <i>letter of reservation</i> setting aside the site planned for a secondary school to the PS, Ministry of Education, Science and Technology.	Nairobi City County Government states that had the Subdivision plan been cancelled, the same would have been minuted and the decision communicated to the Commissioner of Lands, Director of Surveys and the Land Registrar; which did not happen.
3 rd August, 1984	A letter from the Ministry of Education to the Commissioner of Lands supporting a proposal by Drive-In Estate Ltd. to erect a private school on the said land.	
18 th December, 1984	Letter by Commissioner of lands to Drive-In Estate Developers stating that there is no condition compelling Drive-In Developers to build a secondary school. The office approved the construction of maisonettes on the site originally reserved for a secondary school.	
31 st March, 1998	A valuation report by Panaroma Valuers mentioned that Ruaraka High School and Ruaraka Primary School (now Drive-In Primary School) were located on part of the land that was surrendered as a condition for approval of the subdivision plan.	
28 th June, 1999	The Commissioner of Lands issued a Letter of Allotment for Ruaraka High School to the Permanent Secretary, Ministry of Education.	(Annex 38)
11 th August, 1999	A letter by the Principal, Ruaraka High to the Official Receiver & Liquidator of Continental Credit Finance Ltd. requesting for the release of the title deed for L.R. No. 7879/4 which was charged for a loan by the bank so as to facilitate school to process its title deed.	(Annex 48)

Date of activity	Correspondences by the institution	Comment
8 th November, 1999	Letter from Director of Surveys to the Provincial Surveyor to arrange and undertake survey of the land for the schools, and a representative of the school was to sign a beacon certificate.	(Annex 49)
18 th January, 2000	The follow- up letter by the Principal Ruaraka High School seeking urgent resolution on the request of 11 th August, 1999 so that the school could receive donor assistance for development of school infrastructure.	(Annex 50)
21 st February, 2000	A Letter Reference No. ORW/30/86, the Official Receiver & Liquidator of Continental Credit Finance Ltd. replied to the Principal, Ruaraka High School, in which he committed to give the title deed of L.R. No. 7879/4 once he had completed the process of registering deed plans for the separate title deeds with his surveyor.	(Annex 51)
10 th July, 2001	Letter by the Principal Ruaraka High School to the Nairobi Provincial Commissioner expressing frustration in attempts to have the school's Title deed processed. The letter requests the commissioner to intervene and assist on the issue.	(Annex 52)
25 th July, 2001	Letter by Provincial Commissioner to the Official Receiver inquiring on the progress made on getting title deed for the schools.	(Annex 53)
26 th May, 2005	The letter from the Ministry of Lands and Housing to the Principal Ruaraka High school asking the school management to seek assistance from Ministry of Education on processing title deed for the school.	(Annex 54)
17 th August, 2016	Letter from Afrison Export Import Ltd to NLC requesting for compensation for the land occupied by the two schools and a chief's Camp.	The letter was acknowledged as having been received by NLC on 29 th August, 2016.
29 th August, 2016	The Chairperson NLC wrote a letter to the CS, Ministry of Education stating that it had conducted an inspection and requested the Ministry to confirm the status and make arrangements to compensate Afrison Export Import and	

Date of activity	Correspondences by the institution	Comment
	Huelands Ltd.	
13 th September, 2016	The letter by the National Land Commission to the Cabinet Secretary, Ministry of Education, initiating the process of acquisition of land for Ruaraka High School and Drive-In Primary School.	
3 rd February, 2017	A letter by Nairobi Regional Coordinator for Education, Mr. John L. Ololuaa to the Principal Secretary, Ministry of Education, Dr. Belio Kipsang, forwarding a copy of an assessment report on quality assurance and standards for Ruaraka High School. The report observed that the land on which the school was situated, was a surrendered portion of land for public utility and the claimant had no basis for compensation.	The Ministry of Education ignored the recommendation contained in the Assessment Report on Quality Assurance and Standards
7 th February, 2017	Letter by PS, Ministry of Education to NLC. The Ministry acknowledged that the schools were within the said LR. No. 7879/4 and sought guidance from NLC on the way forward for compulsory acquisition.	
	Letter by Afrison Export Import Ltd. to the Director City Planning enquiring whether the status of the conditions set for approval of subdivision plan of 1983 were still in force.	Nairobi City County Government stated that the objective of this letter is not clear since it was written over 30 years from the date of approval of the subdivision plan.
16 th February, 2017	The NLC wrote to the Ministry of Education and advised that the respective Cabinet Secretary should submit a formal request for acquisition of public land to the NLC in accordance with Section 107 (1) of Land Act, 2012.	
17 th March, 2017	The Cabinet Secretary Ministry of Education made a request to the Chairperson of NLC to begin the process of acquisition of	

Date of activity	Correspondences by the institution	Comment
	land parcel No. 7879/4(part) for Ruaraka High School and Drive-In Primary School.	
24 th April, 2017	The NLC wrote back to the Ministry advising that according to the provisions of the Land Act 2012, Part VII on compulsory acquisition, prompt compensation should be paid. The NLC indicated that the two schools occupy 13.5364 acres valued at Kshs. 3,269,040,600 inclusive of 15% statutory disturbance allowance and that the Commission had duly undertaken the legal process and the Ministry was expected to deposit the funds in the Commission's account.	15% statutory disturbance allowance was not provided in law as at this date as it was repealed by the Land Act, 2012 and re-instated on 21 st November, 2017 by the Land (Assessment of Just Compensation) Rules, 2017 NLC provided bank details for money to be deposited in the bank account.
14 th June, 2017	NLC undertakes a Report and Valuation on land parcel L/R. No. 7879/4 for the schools and determines Kshs. 3,269,040,600 to be paid as fair compensation.	NLC had communicated the figure to be compensated on 24 th April, 2017 before undertaking a valuation on the land. However, the figure remained the same but the acreage of the land to be acquired changed.
29 th June, 2017	The PS, Dr. Belio Kipsang wrote to the Attorney-General	

Date of activity	Correspondences by the institution	Comment
	seeking a legal opinion on how to proceed with the matter of	
	acquisition of part of land parcel L/R. No. 7879/4 for the schools.	
30 th June, 2017	The Principal Secretary Ministry of Education wrote to the Principal Secretary National Treasury to bring to the Treasury's attention the budgetary implication of the same. In the letter the PS, Education informed the PS, National Treasury that they had sought the legal opinion of the Attorney-General which would be shared once received.	Election campaign period
	Publication of a Gazette Notice for intention of Government to acquire 5.5727 ha of parcel, L.R. No. 7879/4.	The Gazette Notice states that a notice of inquiry would be published.
7 th July, 2017	Legal advisory from the Attorney-General addressed the legal provisions necessary to be undertaken before compulsory acquisition of land by a government entity and not whether the land on which the schools were built was public or private land.	
18 th July, 2017	The opinion from the Attorney-General on the land occupied by the two schools is sent to the National Treasury by the Ministry of Education.	
13 th November, 2017	The PS, National Treasury gave authority to the Ministry of Education to spend Kshs. 1,500,000,000 in the compulsory acquisition of part of L.R. No. 7879/4 pending regularization of the expenditure in the 2017/2018 Supplementary II Estimates indicating the balance will be reviewed in the context of the 2018/19 budget.	
21 st November 2017	Land (Assessment of Just Compensation) Rules, 2017 which make provision for the 15% additional compensation, come into force.	(annex 55) This is six months after NLC had included it in the compensation amount.

Date of activity	Correspondences by the institution	Comment
29 th November, 2017	Letter from Ministry of Education to National Treasury seeking concurrence to introduce a budget line item under Administrative Services for settlement of compensation of land occupied by Ruaraka High and Drive-In Primary Schools.	
11 th December, 2017	Ministry of Education initiated the process of transferring the funds to the National Land Commission by requesting the exchequer from the National Treasury.	
11 th January, 2018	The Exchequer reflected in Ministry of Education accounts	
15 th January, 2018	The PS Ministry of Education writes to NLC seeking necessary documents to commence transfer process of the funds (valuation report and formal request for the funds).	
16 th January, 2018	The NLC responded with the requested documents (valuation report and formal request for the funds).	
19 th January, 2018	The Ministry of Education writes to NLC indicating the release of the funds.	
25 th January, 2018	A meeting of the Land Acquisition and Compensation Committee of the NLC recommended under Min. 1/3/25/01/2018 payment of Ksh. 1, 500,000,000.00 to Afrison Export Import Ltd. and Huelands Ltd. The Committee further recommended that a deed of indemnity be executed by the owners of the land confirming that all facts and documents of ownership provided were authentic and that a survey of the land be done by the Deputy Director of Survey.	
26 th January, 2018	Afrison Export Import Ltd. and Huelands Ltd. wrote to NLC instructing that payment of the compensation for Land Parcel L.R. No. 7879/4 (part) for the two public schools be paid to Whispering Palms Estate Ltd. through Barclays Bank Account No. 061-1033613.	
	Afrison Export Import Ltd. and Huelands Ltd. executed a deed of indemnity absolving the NLC against any liability or claim arising from payment of the Ksh. 1, 500,000,000.00.	The deed was not properly executed as Afrison Export

Date of activity	Correspondences by the institution	Comment
		Import Limited and Huellands purported to indemnify NLC for paying them instead of indicating that they would indemnify NLC for paying Whispering Palms Ltd.
	the Director, Valuation and Taxation, Dr. Salome L. Munubi sought approval from the Secretary/CEO, NLC for disbursement of Ksh. 1,500,000,000.00 for compensation of Land Parcel L.R. No. 7879/4 (part) stating that due diligence had been undertaken and provision of the Land Act, 2012 on compulsory acquisition had been adhered to.	Due diligence was not followed in the process of acquisition.
	An Award was made to Afrison Export Import Ltd and Huellands Ltd by NLC	The Award was made at the tail end of the transaction instead of at the beginning, contrary to the law
On 29 th January, 2018	NLC wrote to National Bank of Kenya instructing that Ksh. 1, 500,000,000.00 be transferred from the NLC account to Whispering Palms Estate Ltd.'s Barclays Bank Account No. 061-1033613 being payment for parcel of land L.R. No. 209/7879/4.	
15 th February,	The National Land Commission confirmed disbursement of the	

Date of activity	Correspondences by the institution	Comment
2018	funds to the land owners.	
21 st February, 2018	The Ministry of Education wrote back to NLC asking them to secure the interest of the schools having made the partial payment of the land.	
1 st March, 2018	A caveat is placed on title for land Parcel L.R. No. 7879/4 by the Registrar of Government Lands claiming an interest under Section 76 of the Land Registration Act No. 3 of 2012.	
20 th March, 2018	Senate Sessional Committee on Public Accounts and Investments commences an inquiry in the process of acquisition of L.R. No. 7879/4 (part) for Ruaraka High School and Drive-In Primary School.	
21 st May, 2018	The CS, Ministry of Lands reports to the Committee that the Official Receiver and Provisional Liquidator of Continental Credit Finance Ltd. (in liquidation) that the title deed for Land Parcel L.R. No. 7879/4 was in the custody of Harit Sheth Advocates under a professional undertaking to pay Continental Credit Finance Ltd. (in liquidation) the outstanding loan balance due.	

CHAPTER FOUR: COMMITTEE OBSERVATIONS AND FINDINGS

The Committee made observations and findings based on the ground visit, deliberations and submissions made by stakeholders during the inquiry as follows-

174. Due diligence was not followed in the process of acquisition of the parcel of Land Parcel L.R. No. 7879/4 (part) for Ruaraka High School and Drive-In Primary School.
175. The land on which the schools are built on is public utility land having been surrendered by Drive-In Estate Developers Ltd. as a condition of approval of subdivision for Land Parcel L.R. No. 7879/4, a condition that was not subject to negotiation upon approval.
176. Drive-In Estate Developers Ltd. applied to the City Council of Nairobi for approval of subdivision of Land Parcel L.R. No. 7879/4 which was considered by the Town Planning Committee and recommendation for approval given on 6th September, 1982. The Commissioner of Lands wrote to Drive - In Estate Developers Limited requesting the company to remit a sum of Kshs.21, 500/- being subdivision approval fee. On 18th November, 1983, the Commissioner of Lands issued Drive-In Estate Developers an official receipt no. A758827 being requisite payment for subdivision fees amounting to Ksh. 21, 500.
177. Vide letter dated 4th July, 1984, Drive-In Estate Developers Ltd. confirmed acceptance of the surrender to the Government all public utility plots as set out in Condition No. 10 of the approval letter from the Commissioner of Lands dated 22nd November, 1983. Therefore, the letter dated 5th April, 1984 from Drive-In Developers to the Director, City Planning, Nairobi City Commission purporting to cancel the approved subdivision is invalid.
178. Nairobi City County Government stated that had the Subdivision Plan been cancelled, the same would have been minuted and the decision communicated to the Commissioner of Lands, Director of Surveys and the Land Registrar; which did not happen. Therefore, letter Reference No. 108096/46 dated 18th December, 1984 from the Commissioner of Lands to Drive-In Estate Developers purporting to change the conditions for the subdivision is not tenable.
179. On 12th July, 1984, the Commissioner of Lands issued a *letter of reservation* setting aside the site planned for a secondary school to the PS, Ministry of

Education, Science and Technology. Ruaraka High School was established in 1984 as a public school. This confirms that the surrender of public utility plots had taken effect. Consequently, a Letter of Allotment was issued to the PS, Ministry of Education, vide letter dated 28th June, 1999. Therefore, letter Reference No. M.E.S.T./143/84 dated 3rd August, 1984 written by the Permanent Secretary, Ministry of Education to the Commissioner of Lands relinquishing the Ministry's interest on the land cannot be valid.

180. A portion of the Land Parcel L.R. No. 7879/4 was acquired by the National Government through the Office of the President for GSU officers' houses; and KURA for expansion of Outer Ring Road. Notwithstanding the acquisition of the said parcels of land, NLC alleged that the entire parcel of land was owned by Afrison Export Import Ltd. and Huelands Ltd.
181. NLC received a complaint letter from Afrison Export Import Ltd. and Huelands Ltd. on 29th August, 2016 seeking compensation for land. Curiously, the Chairperson NLC on the same date, promptly wrote a letter to the Cabinet Secretary, Ministry of Education, Science and Technology, informing him that NLC had conducted an inspection to verify the claim and requested the Ministry to confirm the status and make arrangements to compensate Afrison Export Import Ltd. and Huelands Ltd. The Committee doubts whether a comprehensive due diligence exercise was undertaken by NLC before communicating to the Ministry of Education.
182. The Committee finds it curious that Afrison Export Import Ltd. and Huelands Ltd. wrote to the Director City Planning, Nairobi City County on 7th February, 2017 enquiring whether the status of the conditions set for approval of subdivision plan of 1983 were still in force. On the same day the PS, Ministry of Education wrote to NLC acknowledging that Ruaraka High and Drive-In Primary Schools were public schools and instructed NLC to acquire the land on which the schools occupy.
183. The Ministry of Education constituted a team to investigate the claim after receiving a letter of claim of compensation from NLC. The terms of reference of the team were to-

- i. Verify the existence of National Government institutions namely-
 - Ruaraka Primary and Secondary School

- Drive-In Primary School
- Ruaraka Secondary School

-
- Any other school by the name of Ruaraka

- ii. The existence of a government learning institution (s) on L.R. No. 7879/4 (part) measuring 13.5364 acres
- iii. The circumstances under which these institutions may have been established
- iv. The proof of ownership of the land on which these institutions were built.

184. The report of the investigative team was forwarded to the PS, State Department of Basic Education, Ministry of Education, on 3rd February, 2017 with the following recommendations-

- i. The Official Receiver and Liquidator, Mr. Paul Omondi Mbago should release the school land documents;
- ii. The CS, Ministry of Education in liaison with the Chairman, NLC to facilitate the processing of the title deeds of Ruaraka High School and Drive-In Primary School;
- iii. The CS, Ministry of Education and the Chairman, NLC should hasten the processing of the ownership documents of the schools land to protect it from grabbing or encroachment; and
- iv. Having been a surrendered portion of land for the public utility, the view of the team/panel was that the claimant of the schools land had no basis for compensation.

These Recommendations were ignored by the CS and PS, Ministry of Education in making the decision to acquire the land.

185. On 7th February, 2017, the PS, State Department of Basic Education responded to NLC admitting that both Ruaraka High and Drive-In Primary Schools occupy the 'private' land and advising NLC to commence the process of compulsory acquisition of the land occupied by the two schools. The PS instructed NLC to acquire the land occupied by the two schools notwithstanding the recommendations contained in the Quality Assurance and Standards Assessment Report submitted to him on 3rd February, 2017.

186. On 17th March, 2017, the CS, Ministry of Education wrote to NLC to commence the process of compulsory acquisition notwithstanding the recommendations contained in the Quality Assurance and Standards Assessment Report.
187. The formal request for initiation of the process of compulsory acquisition of the land occupied by Drive-In Primary School and Ruaraka High School, was done by the CS, Ministry of Education but the trigger was by Afrison Export Import Ltd. and Huelands Ltd. who claimed ownership of the land and sought compensation from NLC.
188. The legal opinion given by the Attorney General vide letter Reference No. AG/CONF/21/72 VOL. 1 dated 7th July, 2017, in response to the request made by the PS, Education, Dr. Belio Kipsang highlighted the legal provisions necessary to be undertaken before compulsory acquisition of land by a government entity and not whether the land on which the schools were built was public or private land.
189. The Chairperson NLC in his letter to the CS, Ministry of Education dated 24th April, 2017, requested the CS to *set aside compensation amounting to Ksh. 3,269,040,600 inclusive 15% statutory disturbance allowance provided under the Land Act, 2012*. This request was a misrepresentation of the law, as-
- (i) the Land Act, 2012 does not make any provision on payment of 15% statutory disturbance allowance; and
 - (ii) the Land (Assessment of Just Compensation) Rules, 2017 (*annex 55*) which make provision for the 15% additional compensation, came into force on 21st November, 2017, six months after NLC had included it in the compensation amount thereby computing a loss of Ksh. 425,496,090.00
190. No evidence was submitted before the Committee to the effect that the notice was served upon Ruaraka High School and Drive-In Primary School who occupy the land and are therefore interested persons as defined under section 107(7) of the Land Act. In addition NLC did not submit copies of the notice as published in the county Gazette. NLC were therefore in breach of section 107(5) and 107(7) of the Land Act which state-
- (5) *Upon approval of a request under subsection (1), the Commission shall publish a notice to that effect in the Gazette and the county Gazette, and shall*

deliver a copy of the notice to the Registrar and every person who appears to the Commission to be interested in the land.

(7) For the purposes of sections 107 to 133, interested persons shall include any person whose interests appear in the land registry and the spouse or spouses of any such person, as well as any person actually occupying the land and the spouse or spouses of such person.

191. After issuing a notice of intention to acquire land, the NLC should have published a notice of inquiry to hear issues of claims for compensation by persons interested in the land pursuant to section 112(1) of the Land Act, 2012 which states-

(1) At least thirty days after publishing the notice of intention to acquire land, the Commission shall appoint a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land, and shall—

(a) cause notice of the inquiry to be published in the Gazette or county Gazette at least fifteen days before the inquiry; and

(b) serve a copy of the notice on every person who appears to the Commission to be interested or who claims to be interested in the land.

No evidence was submitted to the Committee to indicate that the notice of inquiry was published.

192. The letter of award of compensation was issued before an inquiry was done which was clearly contrary to the law since the award should have been informed by the Inquiry.
193. The compensation amount of Ksh. 3,269,040,600 as communicated to the Ministry of Education by NLC on 24th April, 2017 had no basis. It is curious how the amount to be compensated came to same figure but there was difference in the acreage of the land to be acquired since the valuation of the land by NLC was done on 14th June, 2017, almost two months later.
194. NLC acquired 5.5727 ha. (13.7701 acres) of land for Drive-In Primary School and Ruaraka High School against the Ministry of Education's request to acquire 13.5364 acres. This occasioned a loss of Ksh. 51,363,530.00.
195. The National Land Commission did not respond to a letter from the principal Secretary, Ministry of Education, Dr. Belio Kipsang, Ref. No. MOE/ACCT/1/19 (63) dated 19th January, 2018 requesting NLC to possess the instruments of

ownership of the parcel of land as per the law and to ensure that due diligence was exercised in the acquisition process. NLC did not acquire the instrument of ownership of the land.

196. Whereas the NLC stated that the Letter of Allotment issued to PS, Ministry of Education for Ruaraka High School was not valid because it was purportedly issued on private land, it did not enquire into the circumstances that led to the issuance of the Letter of Allotment and more so did not engage the school to verify the claim made by Afrison Export Import Ltd. on the land on which the schools are built.
197. The NLC failed to carry out due diligence in the process of compulsory acquisition in accordance with the law because of the following-
 - i. Failed to secure government interest on the parcel of land under acquisition.
 - ii. No evidence was submitted to the Committee to indicate that the notice of inquiry was published.
 - iii. No evidence was submitted before the Committee to the effect that the notice was served upon Ruaraka High School and Drive-In Primary School who occupy the land.
 - iv. The letter of award of compensation was issued before an inquiry was done which.
 - v. 15% statutory disturbance allowance was added to the compensation amount without any legal backing.
 - vi. Instruments of ownership of the land were not possessed before payment.
 - vii. The deed of indemnity was not properly executed as Afrison Export Import Ltd. and Huelands Ltd. purported to indemnify NLC for paying them instead of indicating that they would indemnify NLC for paying Whispering Palms Ltd.
 - viii. Mr. Justin Sam Mburu signed the deed of indemnity for Huelands Ltd. when he was not a director of the company.
198. Section 15 (10) of the Land Act, 2012 gives the acquiring entity up to three years for compensation. The two public schools have been in existence for more than thirty years, therefore, the rush to make payments for compulsory acquisition in 2018 and the lack of budgeting for the amount expended by the Ministry of

Education was contrary to Article 201(d) of the Constitution of Kenya, on the principle of public finance with regard to the prudent use of public money. The Ministry of Education failed to justify the urgency requiring the acquisition of the land for the schools. The compensation was therefore not an emergency and as such, there was no urgency necessitating payment.

199. The NLC failed to secure government interest on Land Parcel L.R. No. 7879/4 (part) for Ruaraka High School and Drive- In Primary School all through the process of acquisition until it requested the Land Registrar to put restriction on the land on 14th May, 2018.
200. IGRTC confirmed that Nairobi City County CALC had captured that the land Parcel L/R. No. 7879/4 (part) on which Ruaraka High School and Drive- In Primary School are situated as an asset of the Nairobi County Government.
201. During a visit to the two schools, the Committee was apprised that land on which primary schools that were managed by the defunct Municipal Councils occupy faced the risk of encroachment.
202. KRA stated that neither the directors nor Drive-In Estate Developers Ltd., Whispering Palms Ltd., Afrison Export Import Ltd. and Huelands Ltd. were captured in their legacy or itax system and therefore were not tax compliant.
203. According to the CS, Ministry of Lands, the EACC is also undertaking investigations on the same matter and is in possession of deed plans and correspondence files on the acquisition and ownership of L.R. No. 7879/4 and therefore the Committee could not access some of the files for perusal.

CHAPTER FIVE: COMMITTEE RECOMMENDATIONS

The Committee made recommendations based on the observations and findings of the evidence adduced and analysis of submissions made by various stakeholders. The Committee established that the land in question was public land and therefore recommends as follows-

	RECOMMENDATION	ACTOR	TIMELINE	SENATE OVERSIGHT COMMITTEE
1	To recover from Whispering Palms Ltd., Afrison Export Import Ltd. and Huelands Ltd. and their directors the amount of Ksh. 1,500,000,000.00 that they fraudulently claimed and were paid by the NLC.	DCI, DPP and EACC	Within 3 months	Committee on Justice, Legal Affairs and Human Rights
2	To compel the person having possession of title to Land Parcel L.R. No. 7879/4 to surrender it to the Registrar of Government Land as per Section 121 of the Land Act, 2012.	NLC	Within 1 month	Committee on Land, Environment and Natural Resources
3	No further payment should be done in respect of Land Parcel L.R. No. 7879/4 (part) that was surrendered for public utilities.	National Treasury and any Government Agency	Immediate	Senate
4	Students, pupils and teachers of Ruaraka High School and Drive-In Primary School be protected from harassment as a result of the existence of the schools on Land Parcel L.R. No. 7879/4 (part).	Ministry of Education	Immediate	Committee on Education
5	Government to secure its interest on all the public utility plots on L.R. No. 7879/4 that were surrendered by Drive-In Estate Developers Ltd. as per the conditions set out for approval of subdivision plan of 1983	The Ministry of Lands and NLC	Within 3 months	Committee on Land, Environment and Natural Resources
6	Carry out Investigation and prosecute if found culpable the	DCI and DPP	Within 3 months	Committee on Justice, Legal

	RECOMMENDATION	ACTOR	TIMELINE	SENATE OVERSIGHT COMMITTEE
	directors of Whispering Palms Estate Ltd., Afrison Export Import Ltd. and Huelands Ltd. for- i. Making fraudulent claim on ownership of the land thereby occasioning the tax payer a loss of Ksh. 1,500,000,000.00. ii. Causing payment to Whispering Palms Estate Ltd. to be paid without a duly executed deed of indemnity.			Affairs and Human Rights
7	Carry out investigations and prosecute if found culpable the following people- i. Chairperson, Prof Mohamed Swazuri, ii. Vice Chairperson, Ms. Abigael Mukolwe, iii. Commissioner Dr. Tom Konyimbih, iv. CEO, Mr. Tom Chavangi, and v. Director, Valuation and Taxation, Dr. Salome L. Munubi, vi. Any other person that investigations may find culpable for causing loss of public funds amounting to Ksh. 1,500,000,000.00 being part payment for acquiring 13.7701 acres for Drive-In Primary School and Ruaraka High School, contrary to the principles of public finance under Article 201 (d).	DCI, DPP and EACC	Within 3 months	Committee on Justice, Legal Affairs and Human Rights
8	Carry out investigations and prosecute if found culpable Dr.	DCI, DPP and EACC	Within 3 months	Committee on Justice, Legal

	RECOMMENDATION	ACTOR	TIMELINE	SENATE OVERSIGHT COMMITTEE
	Salome L. Munubi, Director, Valuation and Taxation, for misleading the NLC on the amount of compensation to be paid for land for the schools of Ksh. 425, 496, 090.00 (15% statutory disturbance allowance) which was not applicable at the time of valuation as per the repealed Land Acquisition Act, Cap 295.			Affairs and Human Rights
9	The then CS, Dr. Fred Matiang'i and the Principal Secretary, State Department of Basic Education, Dr. Belio Kipsang be held responsible and further be investigated and if found culpable be prosecuted for occasioning loss of Ksh. 1,500,000,000.00 in line with Article 226 (5) of the Constitution for ignoring the recommendations of a report of Quality Assurance and Standards Assessment which established that the land on which Ruaraka High School was built on was public land, but went ahead with the acquisition of the land for the schools.	DPP and EACC	Within 3 months	Committee on Justice, Legal Affairs and Human Rights
10	Carry out investigations on the circumstances that caused the then CS, Dr. Fred Matiang'i and the Principal Secretary, State Department of Basic Education, Dr. Belio Kipsang to ignore the recommendations of the Quality Assurance and Standards Assessment Report.	DCI and EACC	Within 3 months	Committee on Justice, Legal Affairs and Human Rights
11	Carry out investigations as to why the Ministry of Lands failed to-	DCI and EACC	Within 3 months	Committee on Justice, Legal Affairs and

	RECOMMENDATION	ACTOR	TIMELINE	SENATE OVERSIGHT COMMITTEE
	i. Conclude the issuance of title deed to Ruaraka High School; and ii. Register government interest on the land prior to 2012.			Human Rights
12	Assess relevant tax obligations by Drive-In Estate Developers Ltd., Whispering Palms Ltd., Afrison Export Import Ltd. and Huelands Ltd. since 1981 and ensure recovery of the tax due with attendant penalties thereon.	KRA	Within 3 months	Committee on Finance and Budget
13	Forensic analysis be done on the authenticity of the following documents submitted by the NLC- i. Letter dated 5 th April, 1984 (<i>annex 3</i>) written by Drive-In Estate Developers to the Director City Planning; ii. Letter Reference No. M.E.S.T./143/84 dated 3 rd August, 1984 (<i>annex 4</i>) written by the Permanent Secretary, Ministry of Education to the Commissioner of Lands; and iii. Letter Reference No. 108096/46 dated 18 th December, 1984 (<i>annex 5</i>) written by the Commissioner of Lands to Drive-In Estate Developers.	DCI and EACC	Within 3 months	Committee on Justice, Legal Affairs and Human Rights
14	Fast track the process of gazettement of Assets and Liabilities of County Governments.	IGRTC	Within 3 months.	Committee on Devolution and Intergovernmental Relations
15	Carry out investigation and prosecute if found culpable Mr.	DCI and DPP	Within 3 months.	Committee on Justice, Legal

	RECOMMENDATION	ACTOR	TIMELINE	SENATE OVERSIGHT COMMITTEE
	J.W. Gitau, an officer of Nairobi City County for giving false information on the cancellation of the Subdivision Plan on Land Parcel L.R. No. 7879/4 and possible collusion to defraud the tax payer of Ksh. 1,500,000,000.00			Affairs and Human Rights
16	Review computation of rates on Land Parcel L.R. No. 7879/4 to exclude rates of the portions that were surrendered to government for public utility.	Nairobi City County	Within 3 months	Committee on Devolution and Intergovernmental Relations

Annex 1

PROVISIONAL 10 DEC 1982 J 21.6 D 4 MB

THIS INDENTURE is made the *Twenty-ninth* day of *December* 1982, between JORETH LIMITED a limited liability company incorporated in the Republic of Kenya having its registered office at Nairobi and of Post Office Box Number 47122 Nairobi aforesaid (hereinafter called "the Vendor" which expression shall where the context so admits include its successors and assigns) of the one part and AFRISON EXPORT IMPORT LIMITED a limited liability company incorporated in the Republic aforesaid and of Post Office Box Number 40469 Nairobi and HUELANDS LIMITED a limited liability company incorporated in the Republic aforesaid and of Post Office Box Number 57192 Nairobi (both of which are hereinafter called "the Purchasers" which expression shall where the context so admits include their respective successors and assigns) of the other part:

WHEREAS by virtue of an Indenture dated the Fourth day of December One thousand nine hundred and Fifty-eight (registered in the Government Lands Registry at Nairobi in Volume N 43 Folio 302/1) and made between Gladys Thomson (therein described) of the one part and the Vendor of the other part for the consideration therein mentioned ALL THAT piece or parcel of land situate in the City of Nairobi in the Nairobi Area of the Republic of Kenya containing by measurement One hundred and Sixty-eight decimal five ~~168.5~~ ^{168.5} acres or thereabouts known as Land Reference Number 7879 (Original Number 216/2 & 4922/4) and which said piece of land is more particularly delineated and described on Plan Number 47389 annexed to the Indenture in recital and thereon bordered red was conveyed unto the Purchaser for an estate in fee simple Subject to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder and WHEREAS the Vendor has caused the said piece of land to be divided into

12/18/74

12/18/74

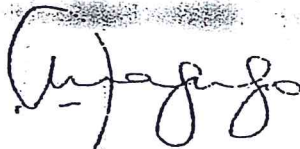
12/18/74

12/18/74

INDENTURE WITNESSETH that in consideration of the sum of Shillings Fourteen Million (Shs.14,000,000/-) paid by the Purchasers to the Vendor on or before the execution hereof (the receipt whereof is hereby acknowledged by the Vendor) the Vendor being beneficial owner HEREBY CONVEYS unto the Purchasers ALL THAT piece or parcel of land situate in the City of Nairobi in the Nairobi Area of the Republic of Kenya containing by measurement Ninety six acres (96 acres) (approximately) known as Land Reference Number 7879/4 being a remainder portion of the premises comprised in and conveyed by the Indenture dated the Fourth day of December One thousand nine hundred and Fifty-eight (registered as aforesaid in Volume N 43 Folio 302/1) and is more particularly delineated and described on Land Survey Plan Number 85744 annexed hereto and thereon bordered red TO HOLD the same unto the Purchasers as tenants in common in equal shares for an estate in fee simple SUBJECT to the provisions of the Government Lands Act 1902 and to the Rules for the time being in force thereunder.

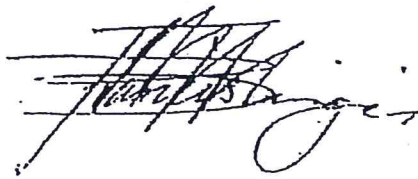
IN WITNESS WHEREOF the Vendor and the Purchasers have caused their respective Common Seals to be hereunto affixed the day and year hereinbefore written.

SEALED with the Common Seal
of JORETH LIMITED
in the presence of :

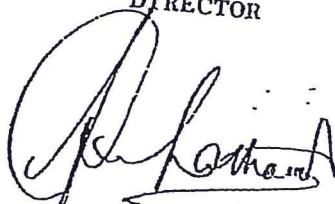

DIRECTOR


SECRETARY

SEALED with the Common Seal
of AFRISON EXPORT IMPORT LIMITED
in the presence of :-

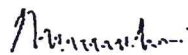


DIRECTOR



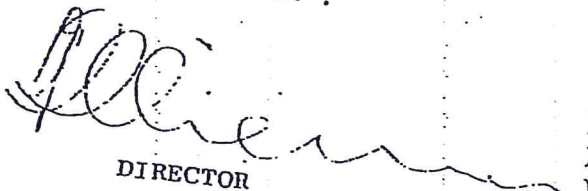
DIRECTOR/SECRETARY

And



G. K. WARUHIU — ADVOCATE
P.O. Box 47122
NAIROBI

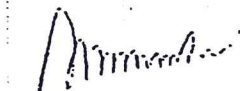
SEALED with the Common Seal
of HUELANDS LIMITED
in the presence of :



DIRECTOR



DIRECTOR/SECRETARY



G. K. WARUHIU — ADVOCATE
P.O. Box 47122
NAIROBI

11-55, 30-12-81

1300 N52 42/ 16178
/1

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16178
Transferred from Volume NSU folio #27 1/27
Conveyance dated 29th day of December 1981
Tooth Limited ----- The Vendor
To African Export Import Limited and Huilands Limited
as tenants in common in equal shares 56 acres Land Reference
Number 7879/4 City of Nairobi
For Kenya shillings 14,000,000/-
No 1300 dt 30-12-1981
REGISTRAR OF GOVERNMENT LANDS

2. Mortgage dated 29th day of December 1981
To Continental Credit Finance Limited
For Kenya shillings 21,000,000/-
No 1301 dt 30-12-1981
495-1/8
REGISTRAR OF GOVERNMENT LANDS

3. Second Mortgage dated 11th July 1986
To Kenya Posts and Telecommunications Corporation
For KSh 155,000,000
27,650,000/-
No 498 dt 11-7-86
REGISTRAR OF GOVERNMENT LANDS

4. Caveat dated 31st July 1986
By Live-In Estate Developers Limited claiming
legitimate interest by virtue of agreement in writing
between the parties absolutely
No 1320 dt 31-7-1986
REGISTRAR OF GOVERNMENT LANDS

5. Caveat dated 1st September 1986
By Country Building Society claiming mortgage interest
by virtue of Agreement dated 24th March 1982 absolute
No 35 dt 1-9-1986
REGISTRAR OF GOVERNMENT LANDS

6. Withdrawal of Caveat dated 9th February 1987
of No. 5 above
No. 1067 dt 23-12-87

7. Prohibitory order dated 11th August 1994
Civil Suit No. 1239 of 1993 in the 1st civil
Magistrates Court at Nairobi
No. 1249 dt 11-8-1994
REGISTRAR OF GOVERNMENT LANDS
67

of No. 9 above
No. 2950

dt. 24-4-2014

16. No. 7879/1
Area: 96 acres

REGISTRAR OF GOVT. LANDS

Owner: Afrison Export Import Limited
and
Huvelands Limited
as Tenants in Common in equal shares

13 Cancellation of charge dated 19th July 2013
of No. 9 above.
No. 392

dt. 19-5-2014

REGISTRAR OF GOVT. LANDS

2085
16/4

Court order

Raising Order dated 12th August 2004
issuing release No. 29 of 1986 in the High
Court of Kenya at Nairobi of No. 10 above
No. 2085
dt. 17-6-2014

REGISTRAR OF GOVT. LANDS
C.N. Kinyi 245

15 Court order dated 27th August 2004 in the Magistrate Court at Nairobi
(City Court) Civil Case No. 14 of 1991 granting prohibitory order dated 16th
February 2014 registered at City No. 8 above.
No. 1568

dt. 12-08-2014

REGISTRAR OF GOVT. LANDS
P. R. Mwangi 245

14 ~~Caveat~~

Caveat by Registrar of Govt. Lands dated 13th March 2018
claiming an interest under Sec 116(1)(A) of GLA (Cap 280)
repealed under Sec 76 of GLA (Cap 280)

16 Caveat by Registrar of Govt. Lands dated 1st March 2018
claiming an interest under Sec 116(1)(A) of GLA (Cap 280)
repealed under Sec 76 of GLA (Cap 280)
No. 3 of 2018

dt. 1-3-2018

REGISTRAR OF GOVT. LANDS

C 160
AC 160
16/4

1535

1. Conveyance dated 5th October 1905From to Arthur Edward McKinnon
Of 1000 ac. Karara & Karaka River
Consideration Rs 2000/-

LD No 216

Regd. No 323/II/1905

2. Conveyance dated 21st February 1906

A.E. McKinnon to Alan Hamilton Thompson & Horner Temple

Of all the premises conveyed by the Indenture dated 5th October 1905

Consideration £ 1000/-

Regd. No 32/II/1906

3. Mortgage dated 25th March 1909

M. H. Thompson to Mr. Edmund Edill Croghan

Of all his undivided interest in the premises conveyed by the Indenture dated 5th October 1905 (with other lands)

Regd. No 165/IV/1909

4. Equitable Mortgage dated 20th February 1911

R. D. I. Hancock to Thomas George Eustland Menzies

Of all his undivided interest in the premises conveyed by the Indenture dated 5th October 1905 (with other lands) for the sum of Rs 15,000/-

Regd. No 27/IV/1911

5. Reconveyance of Mortgage dated 19th February 1913

Mr. G. E. Croghan to R. D. I. Hancock

Cancelling Mortgage dated 25th March 1909

Regd. No 74/IV/1913

6. Cancellation of Equitable Mortgage dated 25th February 1913

T. G. E. Menzies to R. D. I. Hancock

Cancelling Equitable Mortgage dated 20th February 1911

Regd. No 77/IV/1913

7. Memo of Deposit of Title Deeds Nos. 323/II/1905 & 32/II/1906

By way of Equitable Mortgage dated 29th October

In favour of National Bank of India Ltd

DBN 515/1915

8. Discharge of Equitable Mortgage dt 28th September 1917

By National Bank of India Ltd Cancelling Equitable Mortgage

Regd. in Vol. IV folio 300/7

DBN 721/1917

P 3 HAN 2017

9. Letter of administration dated 30th November 1921

Granted by Supreme Court Nairobi to Alfred Charles Auer

Randolph Nicholson in the estate of R. D. I. Hancock (decd.)

DBN 691/25

dt 5.9.25

70

N/O: 506

27-3-45

10/10/67

92.5
L.A. 7870 / 1986
M.V. 916 / 1986
M.V. 916 / 1986

No. 2503

Δε 25.4.52

Will the Exec. Admin. Power & dissolving Company limited?

No: 6587

2/21/10 5:27

W.S. Acres L.R. No. 1869 Cont. No. 216/2 6-980000 W.L. No. 4922/4 - 171

115:7

7100

C T C O

April 29th

NAIROBI CITY COMMISSION

Annex 2



CITY HALL
P.O. BOX 30075
NAIROBI
KENYA

CITY PLANNING DEPARTMENT

TELEGRAMS: "MUNICIPALITY" NAIROBI
TELEPHONE 24281

EXT. 105/Mr. Wang'ondu

CPD/0644/7879/4
Ref. No.

M/s Drive In Estate Developers Ltd.,
P.O. Box 46817,
NAIROBI.

28th March 1984.

(ATT: MR. FRANCIS MBURU)

Certified True Copy of the Original
Chief Officer - Urban Planning
Date: 1/5/18. Sign: [Signature]

Dear Sir,

RE: SUBDIVISION OF L.R. NO. 7879/4, OUTER RING ROAD, NAIROBI.

Your unreferenced letter of 14th March, 1984 in respect of the above mentioned property refers.

This is to advise you that, your proposed development was given conditional subdivision approval and it's up to you to either accept them in total or cancel the said subdivision scheme.

Please be informed that, this Commission will not entertain any negotiations on the conditions of approval under reference, and is not, in any way whatsoever, interested in your Valuation Report, copies of which are returned herewith for your safe keeping.

Yours faithfully,

[Signature of Mwangi H.C. Wang'ondu]

MWANGI H.C. WANG'ONDU
DIRECTOR OF CITY PLANNING

C.C. Commissioner of Lands,
P.O. Box 30089, NAIROBI.

Director of Surveys,
Survey of Kenya,
P.O. Box 30046, NAIROBI.

B.S. Dogra Associate,
Project Architect,
P.O. Box 42784, NAIROBI.

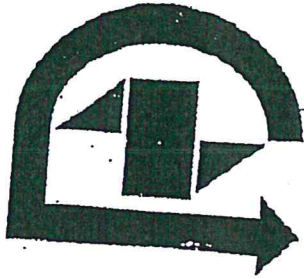
MHCW/rk

Encls.

71

2 x 1000A

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drive in estate

Developers Ltd.

Offices: Development House 1st Floor
P.O. Box 46817 Nairobi Tel: 340300/1 Telex: 23275 FRANDEVE

5TH April, 1984

The Director of City Planning
Nairobi City Commission
City Hall,
P.O. BOX 30075
NAIROBI.

Certified True Copy of the Original
Chief Officer - Urban Planning
Date: 1/5/84 Sign: [Signature]

(Att: Mr. Mwangih H. C. Wang'ondur)

Dear Sir,

RE: SUBDIVISION OF LR 7879/4 OUTERING ROAD, NAIROBI

Reference is made to your letter Ref. CPD/0644/7879/4 dated 28th March 1984 on the above matter which should have been addressed to the owners of the property as we are just mere contractors of the project.

The subdivision conditions given for the development of the project are not acceptable to the registered land owners of LR No. 7879/4.

We have been instructed by the registered land owners that they are not interested with your conditional approval, as a result of your above referenced letter paragraph 2 the owners have accepted and cancelled the entire application of subdivision of the land, they are no longer interested with your conditional approval and you can adopt the cancellation. They have been informed by officers of your Council that your intention is to sell and allocate open spaces to individual after the surrender, as a result your condition are NOT acceptable.

NCIS MBURU
DRIVE IN ESTATE DEVELOPERS LTD

CC. Commissioner of Lands
P.O. Box 30089, NAIROBI.

Director of Surveys,
Survey of Kenya,
P.O. Box 30046, NAIROBI.

B.S. Dogra Associates,
Project Architect
P.O. Box 42784, NAIROBI.

Ε. ΧΟΝΤΑ

Ε. ΧΟΝΤΑ
Ε. ΧΟΝΤΑ
Ε. ΧΟΝΤΑ



Annex 4

Commissioner of Lands,
P.O. Box 30089,
NAIROBI.

NAIROBI SECONDARY SCHOOL SITE OFF THIKA ROAD ON
A PORTION OF LR. NO. 7879/4

Reference is made to your letter Ref. 108096/43 dated 14/7/84 on the above subject.

The Director of Drive In Estate Developers Ltd. has contacted this Office with the proposal of erecting a Private Secondary School on the above site. As you could be aware, this Ministry is highly trying to encourage developers of Private Secondary Schools since the existing schools are unable to cater for the many students leaving the Primary Schools. Also the Ministry is quite overburdened with the maintenance of existing secondary schools and therefore there is no finance for new secondary schools at present.

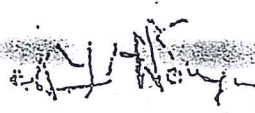
We are convinced beyond any doubt that Drive In Estate Developers Ltd. is financially capable of developing the school site and to provide education facilities essentially needed to cater for the population.

The Director of the Firm submitted to this office some impressive building plans for the site. These plans must have costed the Company great amount of money.

In consideration of the fact that the school site came as a result of sub-division scheme mounted by this Firm on its own land, it would rather be unfair to deter it from undertaking the development on which some money has already been spent.

This Ministry has therefore relinquished any interest on the plot and would appreciate if Drive In Estate Developers Ltd. would go ahead with the proposed development.

Yours faithfully,


D. M. NDUNGU

for: PERMANENT SECRETARY

c.c. Drive In Estate Developers Ltd.,
P.O. Box 46817,
NAIROBI.

The Provincial Commissioner,
NAIROBI.

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Annex 5

MINISTRY OF LANDS AND SETTLEMENT



DEPARTMENT OF LANDS

P.O. Box 30089, NAIROBI

18th December 1984

grams: "LANDS", Nairobi

Phone: Nairobi 27471 Ext.

in replying please quote

No. 108096/46
and date

Managing Director,
Drive-In-Estate Developers Ltd.,
P.O. Box 46317,
NAIROBI.

RE: PROPOSED SUB-DIVISION FOR LR.NO.
7879/4 OUTER RING ROAD NAIROBI

Reference is made to your letter dated 11-12-84 on
the above issue.

After a careful study on the Sub-division plans you
submitted to this office, it was noted that the open spaces
are more than adequate and also there is enough land left for
other public purposes such as primary school and nursery
school. There is no condition that compels you to have a
secondary school site included in the sub-division scheme and you
should therefore be free to make any revision or amendment
you may like to incorporate in your scheme. You may even
reduce the size of shopping centre if you so wish.

This office has therefore approved in principle the
construction of maisonettes on the site you had originally
reserved for a secondary school site.

Yours faithfully,

A. F. MWANGI

for: COMMISSIONER OF LANDS

c.c. The Town Clerk,
Nairobi City Commission,
NAIROBI.

Director of Physical Planning,
NAIROBI.

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Annex

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Annex 6

Afrison Export Import Limited

17th August 2016

Chairman,
National Land commission
Ardhi House,
1st Ngong Avenue, Off Ngong Road,
P.O. Box 44417 - 00100,
NAIROBI



Dear Sir,

RE: HISTORICAL INJUSTICE; PARTIAL OCCUPATION OF PRIVATE PROPERTY L.R. NO. 7879/4 BY THE MINISTRIES OF EDUCATION AND INTERIOR (CHIEF'S CAMP)

The above matter refers.

We, Afrison Export Limited and Huelands Ltd are the registered owners of the above property (LR No. 7879/4) having acquired the same in 1981. The title of the land is a colonial government title with a freehold ownership of over 900 years lease (Copy attached for ease of reference).

Over time, persons unknown to me invaded the above property and have settled on it. Be as it may, Schools, Government administrative offices, Roads and other support services have been constructed on the land to support the population in the area without my consent.

Currently we have a School and Chief's camp on my property for which I have received no compensation.

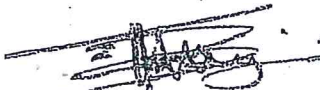
The matter has been going on for over 30 Years

The purpose of this letter is to request you to compensate our companies for the taken land and illegal occupation for public utilities namely:

- i. Ruaraka Secondary School - 13.5364 acres
- ii. Chief's Camp - 4.0 acres

Attached please find copies of my valuation reports for both land value and occupation value from the time of illegal occupation took place for your information and further action

Yours faithfully


FRANCIS MBURU
DIRECTOR

AFRISON EXPORT IMPORT LIMITED & HUELANDS LIMITED

Riverside Drive, Riverside Court, Suite B3
P.O. Box 44817, Nairobi, Kenya

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CC.

Cabinet Secretary,
The Ministry of Ministry Of Interior and Coordination of National Government,
Harambee House, Harambee Avenue,
P.O. Box 30510 – 00100,
NAIROBI.

Cabinet Secretary,
The Ministry of Education, Science and Technology
Jogoo House B, Harambee Avenue
P.O Box 30040-00100
NAIROBI, Kenya

Annex 7



OFFICE OF THE CHAIRMAN

Telegrams: "MINILANDS", Nairobi
Telephone: Nairobi 2718050
When replying please quote

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

VAL.1446

29th August, 2016

Dr. Fred Matiang'i
Cabinet Secretary
Ministry of Education, Science & Technology
P. O. Box 30040-00100
NAIROBI.

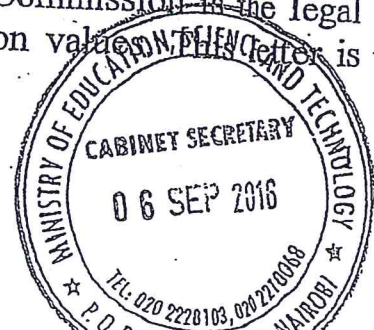
Dear Dr. Matiang'i,

ACQUISITION OF PART OF L.R. NO. 7879/4 - RUARAKA PRIMARY AND
SECONDARY SCHOOLS

The Commission has received a letter complaining from Afrison Export & Import Limited who are the registered owner of L.R. No. 7879/4 cited along Outering Road. The land owner has placed a complaint to the Commission that the Government has been occupying his land for the last 30 years at no compensation. These are some of the issues the Commission is mandated to look at in reference to Article 40(3) and 67(g) of the Constitution and the Land Act Part VIII on prompt payment in full of just compensation upon depriving a person of his property.

The Commission has undertaken a ground inspection to verify the complaint and confirmed the existence of Ruaraka Primary and Secondary School on the above quoted land. The complainant has indicated that the National Government institutions occupy an area of 4.0 acres. He has also submitted an independent valuation report as a compensation claim, however, the Commission is the legal entity mandated to determine and advise on compensation value. The letter is

76



therefore to request the Ministry of Education, Science and Technology to confirm the status and make arrangements to compensate the land owner in order to close this long outstanding matter.

Copy of title and the complaint letter are hereby attached for ease of reference.

Yours sincerely,

MR MUHAMMAD

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics

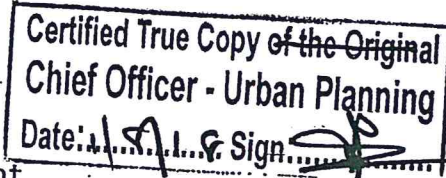
Encl.

2017

Afrison Export Import Limited

Annex 8

7th February 2017



The Director
City Planning Department
P. O. Box 30075-00100
NAIROBI

Chief Officer -
Urban Planning & Housing
Nairobi City County Government

Received 9:40am Date 17/02/2017

Dear Sir,

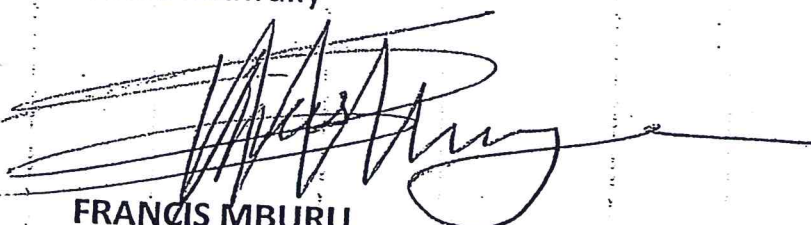
RE: SUBDIVISION OF LR. NO. 7879/4 ALONG OUTERING ROAD

Following your letter Ref. No. CPD/0644/7879/4 dated 28th March 1984 addressed to Drive-in-Estate Ltd the contactors of the project then, and their subsequent reply letter dated 5th April 1984 requesting for the cancellation of the proposed subdivision scheme, kindly inform us on the position of the development application and indicate whether the conditions you had appended on the now cancelled subdivision scheme ~~subsidy~~ subsidy.

Attached herewith find the mentioned letters for your ease of reference.

Your early response will be highly appreciated.

Yours faithfully,



FRANCIS MBURU

MANAGING DIRECTOR

AFRISON EXPORT IMPORT LIMITED & HUELANDS LIMITED

CC.

Drive-in-Estate Limited
NAIROBI.

8. 2000

the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.1 billion to 1.5 billion. The number of people aged 65 and over is expected to increase from 200 million to 400 million. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion.

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Annex 9 (12)



MINISTRY OF EDUCATION

Office of the Principal Secretary, State Department of Basic Education

Telegrams: "EDUCATION", Nairobi
Telephone: Nairobi 3318581
Fax No.: 254-2-214287
E-mail: ps@education.go.ke
When replying please quote

PRINCIPAL SECRETARY
JOGOO HOUSE "B"
HARAMBEE AVENUE
P. O. BOX 30040
NAIROBI

Ref. No.

MOE/CONF/G5

7th February, 2017

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman,
National Land Commission,
Ardhi House
NAIROBI.

Dear

RE: LR NO 7879/4 RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

This is to acknowledge receipt of your letter ref. Val 1446 dated 13th September, 2016 addressed to the Cabinet Secretary in regard to the above subject matter.

The Ministry acknowledges that both Ruaraka High and Drive Inn Primary Schools occupy part of the above LR No which is private land. In the interest of securing public investments in the two schools, it is necessary to have the land on which the schools are developed, acquired through the principle of eminent domain i.e. acquisition in the public interest. As per your constitutional and legal mandate, the National Land Commission is requested to guide us in this process, including the gazetting of the said parcel, for purposes of compulsory acquisition and after gazetting, provide us with acquisition plans.

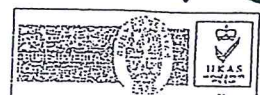
The Ministry therefore awaits your advisory note to determine the total acreage of the land on which the two schools occupy and the estimated value for the Ministry's further action.

Yours

Dr. Belio R. Kipsang, CBS
PRINCIPAL SECRETARY

Copy to: Cabinet Secretary
Ministry of Education

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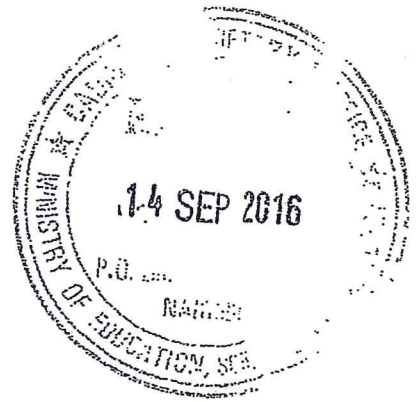
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Annex 10



OFFICE OF THE CHAIRMAN

Telegrams: "MINILANDS", Nairobi
Telephone: Nairobi 2718050
When replying please quote

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

VAL.1446

13th September, 2016

Dr. Fred Matiang'i
Cabinet Secretary
Ministry of Education, Science & Technology
P. O. Box 30040-00100
NAIROBI.

Dear *Dr. Matiang'i*

ACQUISITION OF PART OF L.R. NO. 7879/4 – RUARAKA PRIMARY AND SECONDARY SCHOOLS

Further to our letter Ref. VAL.1446 dated 29th August 2016 we draw your attention to the acreage that Afrison Export Import Limited is laying claim for compensation on L.R. No. 7879/4 (part) to be 13.5364 acres.

It is further to receipt by the Commission a complaint from Afrison Export & Import Limited who are the registered owner of L.R. No. 7879/4 cited along Outering Road. The land owner has placed a complaint to the Commission that the Government has been occupying his land for the last 30 years at no compensation. These are some of the issues the Commission is mandated to look at in reference to Article 40(3) and 67(g) of the Constitution and the Land Act Part VIII on prompt payment in full of just compensation upon depriving a person of his property.

The Commission has undertaken a ground inspection to verify the complaint and confirmed the existence of Ruaraka Primary and Secondary School on the above

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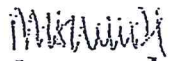
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quoted land. The complainant has indicated that the National Government institutions occupy an area of 13.5364 acres. He has also submitted an independent valuation report as a compensation claim, however, the Commission is the legal entity mandated to determine and advise on compensation values. This letter is therefore to request the Ministry of Education, Science and Technology to confirm the status and make arrangements to compensate the land owner in order to close this long outstanding matter.

Copy of title and the complaint letter are hereby attached for ease of reference.

Yours sincerely,


Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics

Encl.



Annex II

OFFICE OF THE CHAIRMAN

Telegrams: "MINILANDS", Nairobi
Telephone: Nairobi 2718050
When replying please quote.

ARDHI HOUSE
NGONG ROAD
P.O. Box 44417
NAIROBI

Ref: VAL.1446

16th February 2017

Dr. Belio R. Kipsang, CBS
Principal Secretary
Ministry of Education
Ngong House "B"
NAIROBI

Dear *Dr. Kipsang,*

L.R. NO. 7879/4 RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

We are in receipt of your letter Ref. MOE/CONF/G5 dated 7th February 2017.

The Commission shall undertake the proposed works under the law. Please note that Section 107(1) of the Land Act prescribes that whenever the National Government is satisfied that it may be necessary to acquire some particular land, the respective Cabinet Secretary shall submit a request for acquisition of public land to the Commission to acquire the land on its behalf.

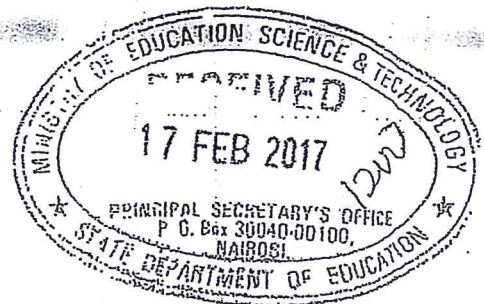
Kindly make your Cabinet Secretary aware of this requirement so that we proceed with the intended acquisition.

Yours *Sincerely,*

Muhammad

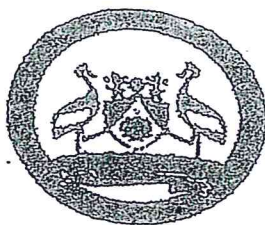
Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics

Copy to: Director, Valuation & Taxation, NLC



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Telephone: 020 344194
web: www.nairobi.go.ke

City Hall,
P. O. Box 30075-0010
Nairobi,
KENYA.

URBAN PLANNING

UP&H/ADMIN/00326/BNG/jwk

17TH FEBRUARY, 2017

Managing Director
Afrison Export Import Limited & Huelands Limited
P.O. Box 46817 - 00100
NAIROBI

Dear Sir,

RE: SUBDIVISION OF LR NO. 7879/4 ALONG OUTERING ROAD

I refer to your letter dated 7th February 2017 on the above subject.

Please note that subsequent to your letter dated 5th April 1984 the development application for Subdivision of LR No. 7879/4 was halted and no further processing was done.

Further note that the conditions of approval were waived by the fact that the land remained intact i.e. as was on application.

A handwritten signature in dark ink, appearing to read 'Gitau'.

J. W. GITAU
FOR: DIRECTOR
DEVELOPMENT MANAGEMENT & REGULARIZATION

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Annex 13

Republic of Kenya

MINISTRY OF EDUCATION

Office of the Cabinet Secretary

Telephone: +254 20 3318581
Facsimile: +254 20 2251991
Email: cs@education.go.ke
Website: www.education.go.ke

Jogoo House "B"
Harambee Avenue
P. O. Box 30040-00100
Nairobi, Kenya

When replying please quote:

MOE. CONF/G5 VOL.II/16

17th March 2017

Prof. Mohammed A. Swazuri, PhD, OGW

Chairman

National Land Commission

Ardhi House

P.O. Box 44417

NAIROBI

Dear

Prof. Swazuri,

RE: L.R. NO. 7879/4 RUARAKA HIGH SCHOOL AND DRIVE INN PRIMARY SCHOOL

I refer to your letter dated 16th February 2017 addressed to Dr. Belio Kipsang, the Principal Secretary responsible for Basic Education, in response to his letter dated 7th February 2017.

As per the provisions of Section 107(1) of the Land Act, the Ministry of Education has determined that it is necessary to acquire all that piece of land on which the two respective institutions named above, are situated. I therefore formally request the National Land Commission to commence the process leading to the acquisition of the said private land.

The procedure for the acquisition is well within your purview and I will urge that you address yourself to this matter as soon as practicable to enable the two government institutions acquire title deeds to the land they currently occupy.

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Thank you for your cooperation.

Yours

Sincerely

Fred Matiang'i

Fred Matiang'i, PhD, EGH
CABINET SECRETARY

Copy to: Dr. Belio R. Kipsang, CBS
Principal Secretary
State Department of Basic Education
Ministry of Education
NAIROBI

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Annex 14



REPORT AND VALUATION UPON

LR NO.7879/4 (PART),

RUARAKA HIGH SCHOOL

DRIVE INN PRIMARY SCHOOL

NAIROBI COUNTY

The National Land Commission received instructions from **Ministry of Education** ON **17th March 2017** to compulsory acquire land for Ruaraka High School and Drive Inn Primary School in accordance with the Land Act No.6 of 2012. The Inspection Report and Valuation for compulsory acquisition and compensation purposes is hereby appended.

DATE OF INSPECTION: 14th June 2017

DATE OF GAZETMENT: Gazette Notice No. 6322 of 30th June 2017

SITUATION:

The property is situated off the upgraded Mathare -North Road that connects Outer-Ring Highway and Juja road. The Ruaraka High School and Drive Inn Primary School share the same compound and are sandwiched between the General Service Unit (GSU), De La Rue Company and Kenya School of Monetary Studies.

TITLE NUMBER:

LR NO. 7879/4(part)

SERVICES:

All main services, electricity, water and sewer are connected to the Property. Access roads are tarmacked and social amenities are in the vicinity.

AREA ACQUIRED:

Approximately 2.8255Ha or 6.9818 Acres for Drive Inn primary School and 2.7472Ha or 6.7883 Acres for

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Ruaraka High School. This totals to 5.5727 Ha or 13.7701 Acres.

DESCRIPTION:

A fairly flat land parcel developed with permanent schools having complimentary administrative offices and classes as well as the playing grounds that have been approved to adoptive standards. The subject focus is land valued on unimproved land basis (USV).

COMPARABLES:

These are based on similar locality, complimentary use and approved development planning in accordance with the County Government of Nairobi. The analysis of values is elaborated here below:

LR. NO.	User	Location	Acreage	Stamp Duty Declaration	Acre Rate Analysis	Date of Valuation
LR 12803/43	Thika Commercial	Thika Road - Kamiti Junction	0.1774 Ha or 0.4383 acres	60 million	137 M	9/9/2011
LR. 29/14	Garden City	Ruaraka	5.0 acres	1,150,000,000	230 m	June 2015
214/625/5	Residential	Muthaiga, near Kobil Plaza	0.48 Ha	230,000,000	193 m	February 2014
209/1646	Residential cum commercial	Pangani	0.50 Ha	200,000,000	162m	October 2015
209/9035	Residential cum Office flats	2nd Parklands Avenue	0.33 Ha	378,000,000	463m	March 2016
209/83/6	Residential	Kusi Lane/3rd Parklands Avenue	0.75 Ha	373,000,000	201m	Mid 2017
214/656	Residential	Muthaiga near Limuru Road Junction	0.383 Ha	133,000,000	140m	July 2013

Market Trend Analysis from the table above on comparable sales in the area indicates a rate of Kshs 218m per acre.

REMARKS:

The area acquired is large and accommodates the two schools together with their complimentary uses. The schools were developed in 1984 and 1987 respectively by the Ministry of Education on private land.

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This is an accessible high potential area that is well served with public infrastructure and social amenities. The surrounding developments being the GSU, De La Rue Company and Kenya School of Monetary Studies forming an exclusive neighbourhood that secures the area giving it prominence compared to the lower parts bordering Mathare area.

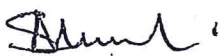
The rest of the neighbourhood has different retail investor enterprises that include banks, shopping malls, petrol stations and commercial premises. The current zoning is open to change of users and land values. Unimproved parcels of land in the vicinity have been escalating in a range of 20% to 50% per annum since 2010. The basis of comparable comprises of both stamp duty declaration and comparable sales recorded in the Land office registry.

It is further noted that this is a statutory valuation undertaken underpart VIII of the Land Act 2012 on compulsory acquisition on interest on land. The Ministry of Education has duly noted that the 2 schools were built on private land with no consideration having exchanged hands. Therefore a statutory provision of 15% is duly included in the valuation.

VALUATION:

The Commission is opined that a fair value to attach to this property for compulsory purchase in accordance with above land market analysis is approximately **Kshs.206m per acre**. Therefore total compensation for 13.7701 acres will be **Kshs.3,269,040,600** (**READ: THREE BILLION TWO HUNDRED AND SIXTY NINE MILLION AND FORTY THOUSAND, SIX HUNDRED ONLY**) inclusive of statutory 15% disturbance allowance.

For and on behalf of
CHAIRMAN, NATIONAL LAND COMMISSION



DR. SALOME L. MUNUBI
B.A. LAND ECON (HONS) M.I.S.K, MBA (UoN)
LICENSED AND PRACTISING VALUER

F8

Annex 15

Summit House
Fifth Floor Room 1
Moi Avenue
P.O. Box 38804-00623
Mob: 0722-375034
Nairobi-Kenya

CAMP VALUERS
Property Consultants & Valuers

Githalga J.T.
B.A. (LAND ECONOMICS) NRE
MISK (VS)
REGISTERED VALUER (RV)
PRACTISING VALUER

Our Ref:

Date.....

CV/NBI/08/61/02

02.08.2016

REPORT AND VALUATION

UPON

PORTION UNDER PUBLIC SCHOOLS

(Ruaraka High School & Drive-in Primary School)

LR. NO. 7879/4 (PART OF SUBPLOT NO. 7879/25)

DRIVE-IN ESTATE, KASARANI AREA

NAIROBI COUNTY

Duly instructed by Mr. F.M Mungai of P.O. Box 46817-00100 GPO Nairobi, we inspected the subject property with a view to advising on its current open market value.

Hereunder is the inspection report and value of the same.

1.0 DATE INSPECTED: We inspected the property for appraisal on 25th July 2016..

2.0 SITUATION:

The property which include the land for Ruaraka High School and Drive-in School which is adjacent to each other is off Thika Super Highway and off Outer Ring Road in Drive-in Estate of Kasarani Area in Nairobi County.

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Mill House
5th Floor Room 1
Moi Avenue
P.O.Box 38804-00623
Mob: 0722- 375034
Nairobi-Kenya

CAMP VALUERS

Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON) HONS NRI
M.I.S.K. (V S)
REGISTERED VALUER (R V)
PRACTISING VALUER

Our Ref:

Date:

The property is found near GSU residence and the main spine road linking the schools to Mathare North Estate and Outer Ring Road.

3.0 THE TITLE:

3.1 REGISTERED:

Afrison Export Import Ltd and Huelands Ltd. as tenants in common in equal shares.

The portion of land subject of this valuation is occupied by Ruaraka High School and Drive-in primary School both of which are Public Schools.

3.2 TENURE:

Freehold interest.

3.3 SIZE:

LR. No. 7879/25 extends over approximately 96.0 acres. the holding is subdivided into two subplots: LR No. 7879/24 and 25.

The subject portion of land is on LR No 7879/25 (part of LR No. 7879/4) and extends as follows:

Drive-in primary School
Ruaraka High School
Total area

2.74 ha or 6.773 acres
6.763 acres
13.5364 Acres

3.4 USER:

This is a freehold title.

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Summit House
Fifth Floor Room 1
Moi Avenue
PO Box 38804-00823
Mob: 0722- 375034
Nairobi-Kenya

CAMP VALUERS

Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND EC)
MISK. (V.S.)
REGISTERED
PRACTISING

Our Ref.

Date:

The property is near the City Center and is in the Thika Super Highway fast growing corridor.

6.1 DEVELOPMENT OF THIKA ROAD:

The modernisation of Thika Road into a ten (10) lane super highway has eased traffic jam along Nairobi-Thika corridor. The project is now complete and has had a immediate tremendous effect on property values along the corridor. Outgoing road is being improved and modernized

7.0 IMPROVEMENTS:

This valuation is for serviced land. Improvements thereon belong to the public schools and are not considered in this valuation.

8.0 COMPARABLE SALES:

The estate is in the same locality as Eastleigh, Pangani, Thome, Donholm, Tasia, Fedha, Nairobi South B, Nairobi South C and Parklands estates among others in relation to the City Centre.

Current comparable sales are as follows.

i. Pipeline Estate

Residential (away from tarmac road)
10 x 20m = 200 m² or 2156 sq ft

Sold for 3,000,000/= to Mr. Mwangi of Tena (2009)
Analysis: 1,395 p.s.f

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Summit House
Fifth Floor, Room 1
Moi Avenue
P.O.Box 38804-00623
Mob 0722-375034
Nairobi-Kenya

CAMP VALUERS

Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON) HONS IN
MIS.K. (V S)
REGISTERED VALUER (R V)
PRACTISING VALUER

Our Ref:

Date:.....

- influx of Somalis from Somalia
- influx of Indians from the East African region
- Easy money from the Arab countries.
- Influx of Kenyans from areas affected by insecurity arising from tribal animosity.
- Scarcity of land of similar size and qualities as the subject land.
- The potential of subject land due to nearness to City Centre and high density neighbourhood.
- Development of major infrastructure such as road, water and sewer among others.

9.0 GENERAL REMARKS:

- o This valuation is for a serviced plot situated along a major line of communication. Mains services are connected while access is through tarmac roads. Secondary roads, stormwater drainage and street lighting done.
- o The user is open.

10.0 RECOMMENDATION: From the above analysis we recommend a rate of Kshs. 10,000/= per sq ft of land element for the subject property.

Hence:

13.5364 Ac or 589,646 sq ft

@ 10,000/= per sq ft..... 5,896,456,000/=

Call Kshs. 5,900,000,000/=

Mill House
4th Floor, Room 1
Moi Avenue
P.O. Box 38804-00823
Mob: 0722-375034
Nairobi-Kenya

CAMP VALUERS

Property Consultants & Valuers

Githaiga J.T.
B.A. (LAND ECON) HON
M.I.S.K. (V.S.)
REGISTERED VALUER
PRACTISING VALUER

Our Ref.

Date:

11.0 VALUATION:

Having considered the above factors we value the freehold interest in the portions under Public Schools land on L.R No. 7879/25 (Part of L.R No. 7879/4) in the sum of Kshs. 5,900,000,000/= (Read Kenya Shillings Five Point Nine Billion Only).

DATED THIS 2nd DAY OF AUGUST, 2016.

Yours faithfully,
For: CAMP VALUERS

Valuer: GITHAIGA J.T.
BA (LAND ECON.) HONS; M.I.S.K. (V.S.)
REGISTERED/PRACTISING VALUER.

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Summit House
Fifth Floor Room 1
Moi Avenue
P.O. Box 38804-00623
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Nairobi-Kenya

CAMP VALUERS

Property Consultants & Valuers

Githaiga J.T.
B.A (LAND ECON)
M.I.S.K (V.S)
REGISTERED VALU
PRACTISING VALU

Our Ref.

Date:.....

ii. Plot for Continental Development Ltd behind Doonholm Caltex petrol station on Outer Ring Road
Total area: 800 sq m (8,610 sq ft)
Asking: Kshs. 35,000,000/= (2010)
Analysis: Kshs. 4,065/= per sq ft

iii. Plots in Eastleigh Garissa Road.
Measuring 50 x 100 ft = 5,000 sq ft
Selling at 60,000/= to 60,000,000/=.
Analysis 6,000/= to 10,000/= per sq ft.

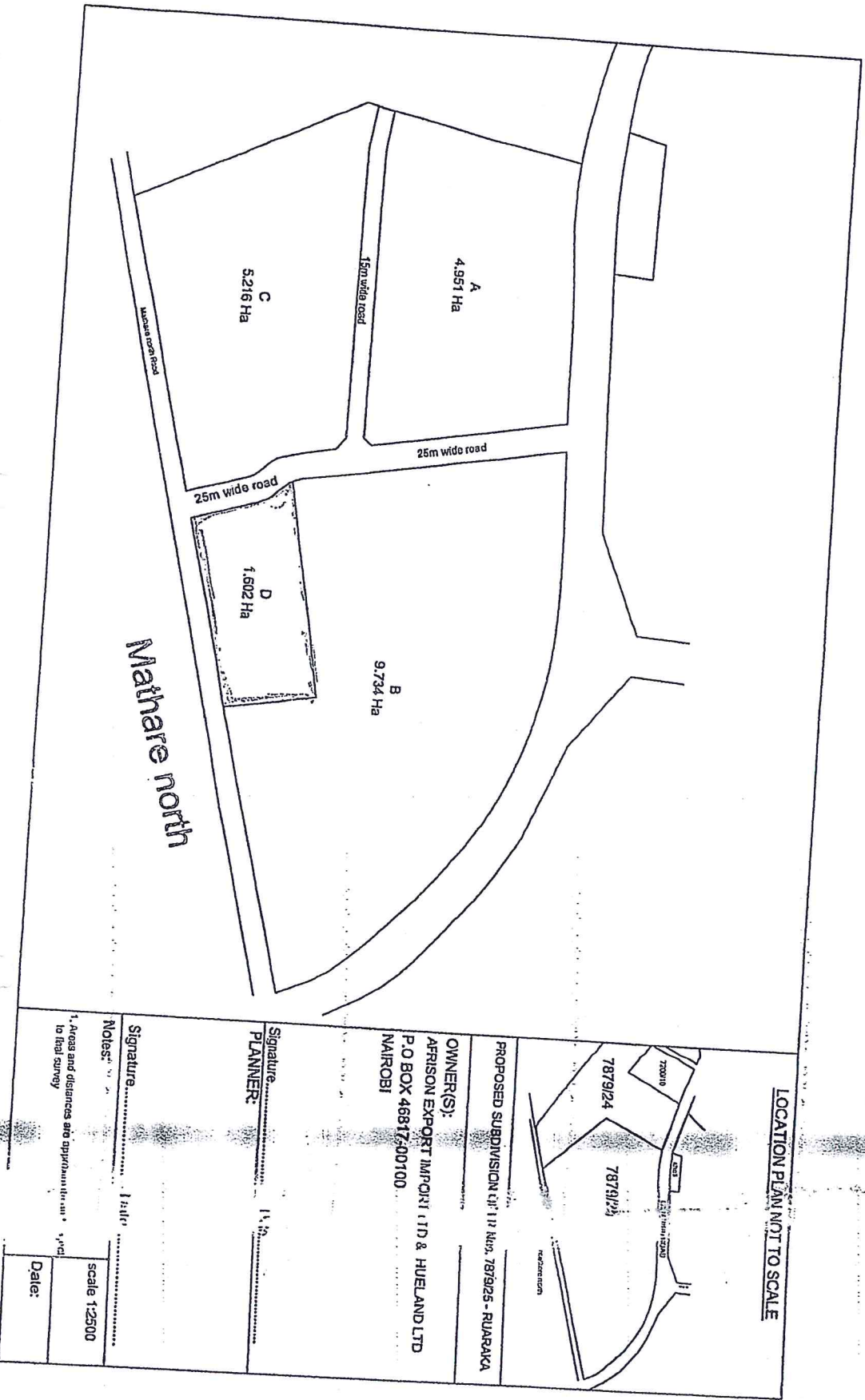
iv. Jesus Winners Ministry. LR No. 12803/43
1st row plot at Thika Road/Kamiti Rd junction
Sale: 2011
Measuring 0.25 Ac
Selling price : Kshs. 60,000,000/=.
Analysis Kshs. 5,510/= p.s.f

Vacant properties for development in these areas are in high demand and rare.

The subject property is at the junction of Outer Ring Road and Thika Super Highway. The property should attract a rate in excess of Kshs. 10,000/= per sq ft.

8.1 VIBRANT PROPERTY MARKET :

Currently the Nairobi property market is very vibrant with abnormal sales noted in Eastleigh (near the subject property), Nairobi South B, Nairobi South C, Nairobi Central Business District, Westlands and Parklands among others. The reason given for such sales are: -



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issued to the said M'Atugi M'Ichunge (deceased), shall be deemed to be cancelled and of no effect.

Dated the 30th June, 2017.

MR/3425459 C. M. MAKAU,
Land Registrar, Meru District.

GAZETTE NOTICE NO. 6321

THE LAND REGISTRATION ACT
(No. 3 of 2012)

REGISTRATION OF INSTRUMENT

WHEREAS Joseph Kajogi M'Rujau (deceased), is registered as proprietor of all that piece of land known as Abogeta/U-Kiungone/1872, situate in the district of Meru, and whereas the High Court in succession cause No. 486 of 2012, has issued grant of letters

of administration and certificate of confirmation of grant in favour of Jane Ngoro Kajogi, and whereas the said court has executed an application to be registered as proprietor by transmission R.L. 19, and whereas the land title deed in respect of Joseph Kajogi M'Rujau (deceased) is lost, notice is given that after the expiration of thirty (30) days from the date hereof, provided no valid objection has been received within that period, I intend to dispense with the production of the said land title deed and proceed with registration of the said application to be registered as proprietor by transmission R.L. 19 in the name of Jane Ngoro Kajogi, and upon such registration the land title deed earlier issued to the said Joseph Kajogi M'Rujau (deceased), shall be deemed to be cancelled and of no effect.

Dated the 30th June, 2017.

MR/3425459 C. M. MAKAU,
Land Registrar, Meru District.

GAZETTE NOTICE NO. 6322

THE LAND ACT

(No. 6 of 2012)

MINISTRY OF EDUCATION

DRIVE INN PRIMARY SCHOOL AND RUARAKA HIGH SCHOOL

MINISTRY OF TRANSPORT AND INFRASTRUCTURE—ACCESS ROAD TO UPGRADED OUTERING ROAD

INTENTION TO ACQUIRE LAND

IN PURSUANCE of sections 112 and 162 (2) of the Land Act (No. 6 of 2012), the National Land Commission, on behalf of Ministry of Education gives notice that the Government intends to acquire the following parcels of land for Ruaraka High School, Drive Inn Primary School and access road to the upgraded Outering Road in Nairobi County.

SCHEDULE

L.R. No.	Registered Owner	Area to be Acquired (Ha)
L.R. 209/7879/4 Purpose—Drive Inn Primary School	Afrison Import Export Limited and Huelands Limited	2.8255
L.R. 209/7879/4 Purpose—Ruaraka High School	Afrison Import Export Limited and Huelands Limited	2.7472
L.R. 209/7879/4 Purpose—Access Road to upgraded Outering Road	Afrison Import Export Limited and Huelands Limited	1.198

Plans of the affected land may be inspected during office hours at the office of the National Land Commission, Ardhi House, 3rd Floor, Room No. 305, 1st Ngong Road, Nairobi. Notice of inquiries will be published in the *Kenya Gazette* as per section 112 (1) of the Land Act (No. 6 of 2012).

Dated the

MR/3588561

MUHAMMAD A. SWAZURI,
Chairman, National Land Commission.

GAZETTE NOTICE NO. 6323

THE CONSTITUTION OF KENYA

TURKANA COUNTY ASSEMBLY STANDING ORDERS

FIRST ASSEMBLY (FIFTH SESSION)

HOUSE BUSINESS CALENDAR (2017)

IT IS NOTIFIED for general information of the members of county Assembly of Turkana and the public that pursuant to the provisions of Standing Order 26 of the Turkana County Assembly Standing, by a resolution made on 19th April, 2017, the County Assembly approved the calendar of the Assembly (Regular Sessions) for 2017 as set out in the Schedule.

SCHEDULE

Period	Days
A: Sitting Days Tuesday, 7th February to Thursday, 20th April, 2017 B: Short Recess Friday, 21st April, 2017 to Monday, 8th May, 2017	Tuesday, 7th February to Monday, 8th May, 2017 Tuesday (Morning) Wednesday (Morning and Afternoon and Thursdays (Morning)
Fifth Session: second Part C: Sitting Days Tuesday, 9th May to Thursday, 15th June, 2017 D: Sine Die Recess Period Friday, 16th June, 2017 to Monday, 7th August, 2017	Tuesday, 9th May to Monday, 7th August, 2017 Tuesday (Morning) Wednesday (Morning and Afternoon and Thursdays (Morning) Sine Die Recess Period

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Annex 17

MINISTRY OF EDUCATION

Office of the Principal Secretary, State Department of Basic Education

Telegrams: "EDUCATION" Nairobi
Telephone: Nairobi 3318581
Fax No.: 254-2-214287
E-mail: ps@education.go.ke
When replying please quote

PRINCIPAL SECRETARY
JOGOO HOUSE 'B'
HARAMBEE AVENUE
P. O. BOX 30040
NAIROBI

MOEST/CON/2/31TY/39

18th July, 2017

Ref. No.

Dr. Kamau Thugge CBS
Principal Secretary
The National Treasury
NAIROBI

Dear PS

Director Valuation and Compensation
Please analyse and act as
per laws and procedures

MLK

2017/17

RE: LEGAL OPINION ON COMPENSATION FOR LR NO. 7879/4 RUARAKA
HIGH SCHOOL AND DRIVE IN PRIMARY SCHOOL

Further to my letter Ref. MOE GEN/31L/8VOLX dated 30th June 2017 on the
above subject, please find enclosed self explanatory opinion from the Attorney
General.

Kindly proceed to process the compensation sum and release directly to the
National Land Commission. The Commission will process the acquisition of the
land on which the two schools are situated as advised.

The Ministry awaits further updates from the National Land Commission and
confirmation of the issuance of title deeds to the two schools.

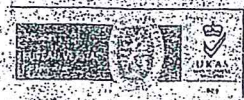
Yours

Dr. Belio R. Kipsang, CBS
PRINCIPAL SECRETARY



Encl.

Copy to: Prof. Mohammed A. Swazuri, PhD, OGW
Chair
NATIONAL LAND COMMISSION



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