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**PARLIAMENT
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**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY**

**THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026
PUBLIC PETITIONS COMMITTEE**

REPORT ON-

NO. 04 OF 2023

**REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS
AFTER THE EXPIRY OF THE LEASE OF MACALDER MINES LIMITED LAND**

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| THE NATIONAL ASSEMBLY PAPERS LAID | |
| DATE: | 01 APR 2026 |
| | DAY: <i>Wednesday</i> |
| TABLED BY: | <i>Hon. Muchangi Karen</i> |
| | <i>Chair, Public Petitions</i> |
| PREPARED BY: | <i>Mado Minam</i> |



**Directorate of Audit Appropriations &
General-Purpose Committees
Clerk's Chambers
Main Parliament Buildings
NAIROBI**

MARCH, 2026

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CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on Public Petition No. 4 of 2023 regarding the delayed adjudication and settlement of squatters after the expiration of the lease of Macalder Mines Limited land by the residents of Nyatike Constituency. The petition was presented to the House pursuant to the provisions of Standing Order No. 225 (2) (a) by the Member for Nyatike Constituency, Hon. Tom Mboya Odege, M.P., on behalf of the residents.

The Petitioner prayed that the National Assembly, through the Public Petitions Committee, engages the Ministry of Lands, Public Works, Housing and Urban Development to ensure that the Macalder land is re-adjudicated to allow the owners to acquire title deeds and save the residents from alleged erroneous records and missing parcels and makes any other recommendation it deemed fit in addressing the plight of the petitioners.

The Committee considered the Petition and observed that records held by the Ministry of Lands, Public Works, Housing and Urban Development reveal that the subject land is registered in favour of South Nyanza County Council, whose successor is the County Government of Migori. Through Legal Notice 85 of 2023 dated 13th June, 2023, the Cabinet Secretary in the Ministry of Environment, Climate Change and Forestry, declared the subject land as a forest area pursuant to section 31(2) of the Forest Conservation and Management Act. A section of residents of the subject land have since filed a petition at the Environment and Lands Court at Migori to challenge the declaration of the land as a forest area. The Court is yet to determine this matter.

The Committee recommends that Macalder land be degazetted and re-adjudicated to allow the owners to acquire title deeds.

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

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.

HON. MUCHANGI KAREMBA, CBS, M.P.

CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

PART ONE

1. PREFACE

1.1 Establishment and Mandate of the Committee

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

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

1.2 Committee Membership

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

Chairperson

Hon. Muchangi Karemba, CBS, M.P.
Runyenjes Constituency
United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency
United Democratic Alliance (UDA)

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

**Wiper Democratic Movement-Kenya
(WDM-K)**

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

**Wiper Democratic Movement-Kenya (WDM-
K)**

Hon. Ntwiga Patrick Munene, M.P.
Chuka Igambang'ombe Constituency
United Democratic Alliance (UDA)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency
United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency
United Democratic Alliance (UDA)

Hon. Beatrice Kadeveresia Elachi, M.P.
Dagoretti North Constituency
Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere South Constituency
Independent

Hon. Biego Paul Kibichy, M.P.
Chesumei
United Democratic Alliance (UDA)

Hon. Peter Irungu Kihungi, M.P.
Kangema Constituency
Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency
**Wiper Democratic Movement-Kenya (WDM-
K)**

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency
Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency
United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency
**Wiper Democratic Movement-Kenya
(WDM-K)**

1.3 Committee Secretariat

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

Lead Clerk

Mr. Victor Weke

Principal Clerk Assistant II

Ms. Miriam Modo

First Clerk Assistant

Ms. Kafuyai Wamae

Third Clerk Assistant

Ms. Nancy Akinyi

Research Officer III

Ms. Roselyne Njuki

Principal Serjeant-at-Arms

Mr. Pascal Valerian

Hansard Officer III

Ms. Felistus Muiya

Public Communication Officer

Mr. Benard Toroitich

Third Clerk Assistant

Mr. Clinton Sindiga

Legal Counsel II

Mr. Arkan Mumin

Research Officer III

Mr. Paul Shana

Serjeant-at-Arms

Mr. Collins Mahamba

Audio Officer III

Mr. Calvin Karungo

Media Relations Officer III

PART TWO

2 BACKGROUND TO THE PETITION

2.1 Introduction

1. Public Petition No. 4 of 2023 regarding the delayed adjudication and settlement of squatters after the expiration of the lease of Macalder Mines Limited land by the residents of Nyatike Constituency was presented to the House by the Hon. Tom Mboya Odege, MP, on 22nd February 2023.
2. The Petitioners stated that the Macalder area, measuring approximately 3,000 acres, formed part of the ancestral land belonging to the people of Nyatike Constituency. The land was granted, under a mining lease, to Macalder Mines Limited in 1935, which conducted mining operations on the land until 1966.
3. The leasing of the land rendered the rightful owners landless, despite Macalder Mines Limited segregating portions of the land for residential and open mines. The locals became compound managers, domestic workers, and guards on the segregated land established by Macalder Mines Limited.
4. Upon Macalder Mines Limited's exit from Kenya in 1970, the land was not fully developed, except for the residential areas of gold miners and the servant quarters of local workers.
5. The landless citizens who had given up their land to Macalder Mines Limited began resettling and farming on the underdeveloped land. The number of people settling in the land increased between the 1970s and 1990s when the local chiefs allocated the said land.
6. The people settled in the land put it to good economic use by constructing residential houses and commercial centres that generated income, but the Government had yet to adjudicate the land or issue title deeds.
7. Records held by the Department of Land Adjudication, the Land Registrar, and the Department of Survey were erroneous, causing uncertainty among the affected families and landowners.
8. The alleged reluctance by the County Government of Migori and the Ministry of Lands, Public Works, Housing and Urban Development to adjudicate the land and issue title deeds amounted to a denial of fair administrative action to the residents.
9. To the best of the Petitioners' knowledge, the matter in respect of which the Petition was made was not pending before any Court of Law or Constitutional body.

2.2 Petitioner's Prayers

10. The Petitioners prayed that the National Assembly through the Public Petitions Committee:
 - a) Engages the Ministry of Lands, Public, Works, Housing and Urban Development to ensure that the Macalder land is re-adjudicated to allow the owners to acquire title deeds and save the residents from alleged erroneous records and missing parcels; and
 - b) Makes any other recommendation it deemed fit in addressing the plight of the Petitioners.

PART THREE

3 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 Petitioners

On Thursday, 13th April, 2023, the Member for Nyatike Constituency, Hon. Tom Mboya Odege, M.P. appeared before the Committee and submitted as follows:

11. The Macalder land, measuring approximately 3,000 acres, was acquired from the community by the colonial Government and leased to Macalder Mines Limited in 1935. The said land was part of the larger ancestral 6,000-acre land.
12. Macalder Mines Limited conducted mining activities on the land until 1966. Upon the exit of the Macalder Mines Limited from Kenya in 1970, the land was not fully developed, except for the residential areas of gold miners and the servant quarters of local workers.
13. The landless citizens who had given up their land to Macalder Mines Limited began resettling and farming on the underdeveloped land.
14. The number of people settling in the land increased between the 1970s and the 1990s, when the local chiefs allocated land.
15. The people who settled in the land utilized it for economic use, construction of residential houses and commercial centres which were earning them income but the County Government of Migori did not adjudicate the land nor issue title deeds to the residents.
16. The petitioners prayed that the Committee engages the Ministry of Lands, Public Works, Housing and Urban Development to ensure that the Macalder land is re-adjudicated to allow the owners to acquire title deeds and save the residents from alleged erroneous records and missing parcels.

3.2 Site Visit to Nyatike

The Committee conducted a site visit to Nyatike Location, Nyatike Constituency in Migori County, on Wednesday, 31st May 2023. During which the petitioners submitted as follows—

17. The Macalder land originally belonged to the community until the year 1933, when it was leased to Macalder Mines Ltd., a Canadian Company, to undertake mining activities, forcing the locals to relocate to other unoccupied lands within Nyatike and the nearby areas around the mines.
18. The affected people were issued permits or passes specifying the activities they were allowed to undertake on the land. The permits, for instance, only allowed them to cultivate up to 5 acres of land or keep a certain number of animals.
19. In 1971, the Canadians stopped the mining activities and left, leaving the land, which was then under the South Nyanza County Council, to be handed over to the current County Government of Migori in 1982.

20. Upon the Canadians' departure from the land, the people who had been displaced returned and occupied the land, but have not yet been issued title deeds to ensure legal ownership.
21. The land was held in trust, and the lease agreement was in effect.
22. The County Government had issued orders disallowing residents from erecting permanent structures or undertaking any activity on the land. In addition, the County Government of Migori's continuous renewal of Leases to traders and other users made it difficult for the community to acquire ownership of the land.
23. The area is currently underdeveloped, lacking permanent structures due to fear of evictions, with residents engaging in small-scale farming and artisanal mining activities that are not economically viable.
24. Non-residents were irregularly allocated land without consideration of the community, which had businesses running for decades in the area.
25. The Petitioners sought the committee's intervention to take up the matter with the County Government of Migori to establish the current ownership of the land, whether the lease was active or expired, and recommend urgent adjudication of the land to the community.

3.3 National Land Commission

On Wednesday, 4th October 2023, the Chairperson of the National Land Commission, Mr. Gerishom Otachi, appeared before the Committee and submitted as follows—

26. Macalder Mines Ltd., a Canadian Company started mining in that area in 1933. According to the locals, the company mapped out specific areas for mining and displaced the locals. However, it allowed them to settle in adjacent areas with conditions to obtain a permit from Macalder Mines Ltd. and some of the conditions included—
 - (i) The locals were not supposed to cultivate more than five acres of land.
 - (ii) The locals were not supposed to keep more than 16 heads of cattle.
27. When the lease expired around 1970, they moved in, claiming it as their ancestral land. The residents occupy the largest portion of the land, where they have built residential houses and cultivated crops for subsistence. Some dwelling houses have been constructed with permanent materials, but the majority are semi-permanent (mud walls and corrugated iron sheets). Some individuals also keep cattle, sheep, and goats.
28. The Nyatike Market occupies a portion of the land. The market was planned by the then County Council of Migori, and resultant plots were allocated to individuals by the defunct County Council. The entire block, including the market's perimeter, was surveyed, but the National Land Commission could not confirm with the county government whether individual plots were surveyed.

29. There is a Catholic church mission complex on the land, comprising a church, a convent, and offices. The mission complex was surveyed, but the Commission could not confirm whether their interest was registered.
30. There are old mines on the parcel. Adjacent to these old mines are residential buildings that appear to have been the dwellings of those who managed the mines. The mines were in the condition left by the Canadians, and they had not been rehabilitated.
31. There are also sub-county administration offices, residential quarters for the sub-county administrators, and a police station and police lines to the north. There is an airstrip in the northeastern part of the parcel and a primary school almost in the central part of the land.
32. The land records indicate that there was a reservation for Macalder Township, which was registered on 11th November 1941, and therefore, adjudication as requested may not be the procedure for regularization of settlement.
33. The land records also revealed that the parcel was registered in favour of South Nyanza County Council, whose successor was the County Government of Migori.

3.4 Ministry of Lands, Public Works, Housing and Urban Development

On Wednesday, 4th October, 2023, Hon. Generali Nixon Korir, the Principal Secretary of the State Department for Lands, appeared before the Committee and submitted as follows—

34. According to the records at the Ministry, the land in question falls within the parcel registered as Muhuru/Kadem/Macalder/498, which measures approximately 2167.5 Hectares. It was registered in favour of the defunct South Nyanza County Council (now County Government of Migori) on February 19, 1982, on a freehold tenure.
35. The land became public land under the County Government of Migori pursuant to Article 62 of the Constitution. Therefore, it can be alienated only through direct allocation, a process initiated by the county government. The Ministry will thereafter process the title documents after the land has been allocated. The matter can therefore be referred to the County Government of Migori for consideration.
36. The gazettelement of the Macalder land as a forest land by the Cabinet Secretary, Ministry of Environment, Forestry, and Climate Change, had not come to the attention of the Ministry of Lands, Public Works, Housing and Urban Development. However, there were instances of such gazettelements without the knowledge of the Ministry of Lands, Public Works, Housing and Urban Development.
37. The land in question measures 5,000 acres, but the petitioners claimed only 300 acres. However, Migori County Government should be answerable, as the Ministry of Lands, Public Works, Housing and Urban Development only facilitates the issuance of title deeds after the allocation has been made by the county. Further, the county oversees planning and approves the allocation before subdivision, and the NLC issues the allotment letter.
38. A Committee on historical land injustices was in place under the National Land Commission and was mandated to examine community interests in historical land cases.

On Wednesday, 15th November 2023, the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development, Hon. Alice Wahome, EGH, appeared before the Committee and submitted as follows -

39. Macalder Mines fall within a parcel registered as Muhuru/Kadem/Macalder/498 measuring approximately 2167.5 hectares. The parcel was still registered in favor of the defunct South Nyanza County Council (now County Government of Migori).
40. The Ministry had established that the Cabinet Secretary for the Ministry of Environment, Climate Change and Forestry gazetted the area as a forest land vide Legal Notice No. 85 of 2023 dated 13th June, 2023. The area was delineated and edged on boundary plan number 175/517. Henceforth, the land was public land under the management of the Kenya Forest Service (KFS) and could not be adjudicated by the Ministry.
41. Regarding information sharing and consultation between the two Ministries before the gazette, the CS indicated that perhaps the CS was not aware of the ongoing Petition before the Committee at the time of the gazette. Further, public participation ought to have been done. However, the fate of the people occupying the land was a priority for the government hence the two Ministries would engage on the matter and present a better response to the Committee and rectify any oversight that might have occurred.
42. Regarding why the land was gazetted as a forest, the CS stated that there must have been a reason why it was gazetted, and the information needed to be provided by the relevant Ministry. Further, the custodian of public property as well as all government lands was the National Treasury and the Ministry of Lands, Public Works, Housing and Urban Development's role was to keep the records. However, the Petitioners ought to have been aware of public participation even though the process of gazette is faster than de-gazette.
43. Regarding the status of the land, the CS indicated that the register read South Nyanza County Council, and therefore, until the gazette was regularised the change of ownership would not take place. Further, the Ministry of Lands, Public Works, Housing and Urban Development had not been informed officially to transfer ownership to Kenya Forest Service. The CS committed to instruct the Director of Survey and Lands Administrator in the area to research and provide a proper indication of the number of people affected. Further, a gazette notice could not override the proprietary interest by way of title and the status quo would remain, and the land ownership would not be transferred before the Petition is concluded.

On Thursday, 29th February, 2024, Hon. Alice Wahome, the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development, further appeared before the Committee and submitted as follows—

44. Macalder Mines was within a parcel registered as Muhuru/ Kadem/Macalder/498 measuring approximately 2167.5 Hectares (approximately 5,355.9 Acres).

45. The total acreage of the land gazetted as a forest by the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry vide Legal Notice No. 85 of 2023 marked annexure 2 was 2494.95 Hectares (approximately 6,165.0 Acres).
46. The initial land was MR. NO. 123 with an acreage of 6178 acres as presented in Survey plan FR. NO. 4948. A resurvey was done in 1993 which converted MR. NO. 123 to LR. NO. 17955 with an acreage of 2,500 Hectares (6,178 acres).
47. In 1993, a sub-division of LR. NO. 17955 resulted into LR. NO. 17955/1 and 17955/2 with acreages of 1.019 Hectares (2.518 acres) and 4.170 Hectares (10.30 acres), respectively.
48. The Committee sought clarity on the process of gazetting a land as a forest. The Cabinet Secretary clarified that all lands are registered by the Ministry whether private, public or community land. The land in question was registered under the County Government of Migori but was leased to individuals. After the expiry of the lease, the land reverted to the county. Therefore, any negotiation on gazettelement as a forest was between the county and the Ministry of Environment, Climate Change and Forestry and but the Ministry of Lands, Public Works, Housing and Urban Development was only to document the records.

3.5 County Government of Migori

Vide a letter dated Monday, 1st July 2024, the County Executive Committee Member of Lands, Physical Planning, Housing and Urban Development of the County Government of Migori, Hon. Eng. John Kobado submitted as follows—

49. Land Reference No. 17955, measuring 2,500 Hectares which translating to 6,177.8 Acres, as per Fixed Boundary Survey Plan No. 49/48, was approved by the Surveyor General on 13th March, 1942. The fixed boundary survey formed the basis of the lease to Macalder Mines Limited.
50. The land adjudication process for Macalder was initiated in 1969 and completed in 1981.
51. The parcel of land was adjudicated as Muhuru Kadem/Macalder/498 for SOUTH NYANZA COUNTY COUNCIL with reservation for Macalder Township.
52. When a Lease expires on a particular Parcel of Land, the land reverts to the Lessor but not to the people residing near such a parcel of land. In this particular case, the land reverted to the County Government of Migori. The County Government was the Lessor after it took over the Assets and Liabilities of the defunct Local Authorities.
53. The leasing of the land did not dispossess the rightful owners of the land rendering them squatters because leasing was effected before Land Adjudication started in Nyatike.
54. Land Adjudication is the process by which all existing rights in any particular parcel of land are finally and authoritatively ascertained. The existing rights are merely recognized and confirmed in adjudication record and demarcation map; collectively known as the Adjudication Register.
55. Upon the exit of the Macalder Mines Limited from Kenya in 1970, all the land that had been leased for mining reverted to the Lessor which is the County Government of Migori.

56. The land which was being used for mining was not leased from Private Citizens in Nyatike but from the then Local Authority.
57. In view of the foregoing, the people who had been farming in the undeveloped land did it illegally and therefore, public land would not be acquired through prescriptive rights available irrespective of the number of years they occupied the aforementioned land.
58. The local chiefs do not have powers to allocate any public land to a private developer under any laws in Kenya. The allocation of public land was clearly stipulated in the relevant laws in Kenya.
59. People who enter into public land illegally and make economic use, construct residential houses and commercial centres which are earning them an income, have no rights to legal occupation of any public land.
60. Records held at the Land Adjudication, Land registry and Department of Survey were not erroneous but were Government records which followed the laid down procedures of creating such Local Records as stipulated by the Law.
61. The Department of Survey is the only government institution in Kenya mandated to keep safe custody all official maps in Kenya including Maps for insurance of Title Deeds.
62. Land adjudication had been ongoing in Nyatike and determination of the rights of occupiers of Land through the Land Adjudication Process as stipulated in the Land Adjudication Act CAP 284 Laws of Kenya.
63. The issues raised in the petition were null and void because there were land records which followed the due process of creation in Nyatike.

3.6 Ministry of Environment, Climate Change and Forestry

On Thursday, 5th December 2024, the Cabinet Secretary for the Ministry of Environment, Climate Change and Forestry, Hon. Aden Bare Duale, EGH, appeared before the Committee and submitted as follows—

64. The case was under consideration before the Environment and Land Court in ELC Petition No. 1 of 2023 (Migori County Government V. Attorney General & 3 others), consolidated with ELC Petition No. 4 of 2023. The County Government of Migori along with other petitioners, was asserting ownership of 2,500 hectares of Macalder Forest.
65. The matter was active in court pending judgment. The Cabinet Secretary was not at liberty to proceed with the petition until the matter was determined and concluded by the court.

Vide a letter dated 30th July 2025, the Cabinet Secretary for the Ministry of Environment, Climate Change and Forestry, Dr. Deborah Barsasa, submitted as follows—

66. During a meeting with the Public Petitions Committee meeting held on 4th June 2025, it was resolved that the Ministry of Environment, Climate Change and Forestry provide a status report on the matter.

67. A stakeholder engagement meeting held on 14th July 2025 in Migori County was attended by a team lead by the Principal Secretary State Department for Forestry and chaired by the Principal Secretary State Department for Mining.
68. Others in attendance were officials from Kenya Forest Service (KFS), NEMA, National Police Service and the County Government of Migori.
69. After the lease for Macalder Mines Limited expired, the land, some of which overlaps with designated forest areas, has continued to be occupied by squatters and unregulated artisanal mining. These activities have caused significant environmental issues, including forest encroachment and pollution of water sources due to hazardous chemicals like sodium cyanide.
70. This therefore calls for a concerted effort through a multi-agency approach in order to address the issue of resettlement of squatters occupying the forest areas, who are at risk of exposure to harmful chemicals from mining activities. Further to this, there is also need to safeguard the ecological integrity of the landscape given the environmental services it provides to the neighbouring communities.

Key Challenges identified

71. During the site visit by the team who overflowed the entire land, the following observations were made—
 - a) There is continued occupation on gazetted forest areas by squatters with no ownership documents/title deeds.
 - b) Unregulated artisanal mining activities encroaching on gazetted forest areas, with reported use of sodium cyanide threatening watercourses through contamination.
 - c) Gaps in coordinated enforcement among lead agencies on encroachment of forest areas.

Stakeholder Intervention and Local Leadership Engagement

72. A multi-agency meeting was held on 14th July 2025, in Migori County, chaired by the Principal Secretary for Mining.
73. The meeting led to key resolutions focused on resettlement and environmental restoration. A significant resolution involved the participation of local leadership, including the area Member of Parliament, the County Government, County Commissioner, Kenya Forest Service (KFS), and representatives from the affected community.
74. The outcome of the meeting was a consensus to bring together all the leaders and the affected community to discuss and propose suitable resettlement strategies.
75. This cooperative approach has created a platform for inclusive decision-making, enhancing the legitimacy and ownership of the resettlement process by the local population.

Support from the Ministry

76. The Ministry of Environment, Climate Change and Forestry has fully supported these efforts and is acting on the recommendations from the stakeholder meeting. Specifically, the Ministry has formally requested the Director of Surveys (Ministry of Lands) to form a technical team of surveyors to collaborate with KES in marking the boundaries of Macalder Forest.
77. This step is crucial for determining the scope of resettlement and planning for forest conservation.

Recommendations and Way Forward

78. Continued support for discussions on resettlement led by local leadership comprising of the area Member of Parliament, County Government, national government administration officers and the representatives of the affected community.
79. Accelerated boundary demarcation efforts to guide land-use planning, adjudication and resettlement.
80. Hold regular multi-agency review sessions to monitor enforcement actions, adjudication progress, and environmental remediation.
81. Development of inclusive, sustainable land-use plans that balance environmental protection with human settlement needs.
82. Strengthening the Rapid Results Initiative (RRI) task force to ensure quick responses to environmental and enforcement issues.

Conclusion

83. The Ministry remains dedicated to a fair and sustainable resolution of the squatter resettlement issue in Macalder. Through organized stakeholder engagement and coordinated enforcement actions, the Ministry continues to support local leadership and ensure that the process protects both environmental integrity and community rights.

Vide a letter dated 16th October 2025, the Cabinet Secretary for the Ministry of Environment, Climate Change and Forestry, Dr. Deborah Barsasa, submitted as follows—

Status Update and Context

84. Original Status: Macalder land was registered as M.R. No. 123 as a Government land leased to a Canadian Mining Company by the Colonial Government in the 1930s.
85. The Company wound up soon after independence, leaving behind residential buildings which were later turned into Government residential quarters and offices. The current dwellers are among those who remained behind after being served with an eviction order in 1973.
86. In the year 1983, the then South Nyanza County Council passed a resolution No. 6/83 of 1983 and under Minute No. 6/83 of 1983 affirmed the need and urgency for afforestation/

reforestation activities and gazettelement of the underlined Government land (Nyatike Hill/Macalder forest).

87. The spatial spread of the area is approximately 2,500 Ha (6,178 Acres) and has always been managed as a forest area by the then Forest Department and now Kenya Forest Service after the Canadian Mining Company left.
88. Gazettelement: Considering Resolution No. 6/83 of 1983 - Minute No. 6/83 of 1983 and following the due process in accordance with Sec 31 (2) of the Forest Conservation and Management Act 2016, the area has since been Gazetted as a forest area via Legal Notice No. 85 of 13th June 2023 in the category of a Public Forest.
89. Core Challenge: The continued occupation by squatters and unregulated artisanal mining activities (including the use of hazardous chemicals like sodium cyanide) poses a significant risk of environmental degradation, forest encroachment, and water pollution.
90. Government Position: The fact that the land under reference is Government Forest land means that it could not be available for adjudication.
91. Action Taken (Multi-Agency Approach): A multi-agency forum involving the State Departments for Forestry and Mining, KFS, NEMA, National Police Service, and County Administration was convened on 14th July 2025 to coordinate a response. On 17th July 2025, the Kenya Forest Service (KFS) formally requested the Director of Surveys to expedite the process of determining and confirming the Macalder Gazetted Forest boundaries.

Response to Resettlement Plan and Adjudication

92. The Ministry's response regarding the petitioners' prayers for re-adjudication and settlement is governed by the current legal and judicial status of the land.
93. Sub Judice Status: It is imperative to note that there is an ongoing and active Court case whose mention was on April 29, 2025, and a further mention on July 16, 2025, at the Migori Environment and Land Court (ELCL PET. E001 of 2023). This case is consolidated with ELC Petition No. 4 of 2023.
94. Legal Prohibition on Resettlement/Adjudication Action: The County of Migori, alongside other petitioners, is asserting ownership of the 2,500 hectares of Macalder Forest in this suit. Commenting or taking any action on the matter of land adjudication or resettlement at this stage is Sub judice, which might amount to contempt of court.
95. Ecosystem Approach-Conflict Resolution Mechanism: The Ministry, in concurrence with the National Forest Policy, 2023, considers an ecosystem approach to address the issue, acknowledging that the piece of land being a gazetted public forest is not available for adjudication.

Ministry Recommendations

96. In addressing the concerns raised in Public Petition **No. 4 of 2023**, the Ministry of Environment, Climate Change and Forestry submits the following recommendations and a comprehensive road map, developed through a consultative approach.

1. Alternative Avenues for Community Participation

97. The Ministry, while noting the constraints imposed by the sub judice status of the matter, proposes to resolve the plight of the petitioners through participatory conservation mechanisms:
98. The affected people are encouraged to actively participate in forest conservation and management activities through the legally recognized Nyatike Mirema Community Forest Association (NYAMCOFA). This is consistent with PART V of the Forest Conservation and Management Act, 2016, which governs Community Participation.
99. The Ministry commits to exploring non-adjudication, non-settlement avenues for conflict resolution, as directed by the Court, including the use of the **County Intergovernmental Forum (CIF)**.

2. Formal Review of Public Forest Boundaries

100. Following three (3) local consultative forums (**Barazas**) with community stakeholders, the Ministry is actively **considering the initiation of a formal boundary review** of the affected Public Forest area.
- This review, being determined by the Kenya Forest Service (KFS), seeks to ensure that essential public infrastructure—including the Chief’s office, police station, market centers, and dispensaries—is officially recognized and protected within the designated settlement zones.
 - The Ministry shall allocate the necessary **technical resources** to ensure a prompt implementation of these actions and will provide continuous **policy oversight**.

3. Immediate Suspension of Activities and Unified Commitment

101. The Ministry notes that a crucial step toward de-escalation has been achieved:
- In the wake of the consultative forums (**Barazas**), the local communities, in close coordination with the oversight committee, reached a **unanimous decision to suspend all mining and related activities** within the affected areas surrounding Macalder Mines.
 - This collective action reflects a strong and unified commitment to safeguarding public assets, preserving ecological integrity, and promoting the long-term welfare of the local population.

4. Implementation Road Map

102. The Ministry has developed a multi-phase roadmap to guide the resolution process, and the table below outlines the current status of each phase.

| Phase | Timeline | Key Activities | Lead Institutions | Status |
|-----------|-----------------|--|---|----------|
| Immediate | July 1–15, 2025 | Stop all mining operations in the forest | Ministry of Environment, Ministry of Lands, Attorney General’s Office | achieved |

| | | | | |
|-------------|--------------------------------|--|--|--|
| Short-Term | July 16– August 31, 2025 | Field-based verification; conduct barazas; testimonies gather from residents. | NLC, Migori County Government, Ministry of Interior, Kenya Forest Service | Two (2) Barazas conducted-achieved |
| Medium-Term | September– November 2025 | Consider the Reports of the Field Based Verification at the Ministry | Ministries of Lands, Environment, Treasury, Education, Attorney General’s Office | Ongoing |
| Long-Term | December 2025–June 2026 | Consider Digitize zoning maps; propose and table legislative reforms on gazettelement practices. | Ministry of Housing, Survey of Kenya, Kenya Law Reform Commission, National Assembly | This is to seek Parliamentary approval |

PART FIVE

5 COMMITTEE OBSERVATIONS

Upon hearing from the Petitioners, County Government of Migori, Ministry of Lands, Public Works, Housing and Urban Development, Ministry of Environment, Climate Change and Forestry and conducting a site visit, the Committee observed that—

104. The records with the Ministry of Lands, Public Works, Housing and Urban Development, reveal that the subject land was registered in favour of South Nyanza County Council, whose successor is the County Government of Migori.
105. Vide Legal Notice No. 85 of 2023 dated 13th June 2023, the Cabinet Secretary in charge of the Ministry of Environment, Climate Change and Forestry in exercise of the powers conferred by section 31(2) of the Forest Conservation and Management Act declared an area of the land approximately 2494.95 hectares (6165.02 acres) as a forest land.
106. Following the gazettement of Macalder land as a public forest, residents of the subject land filed a petition at the Environment and Lands Court in Migori County on 16th September 2023, seeking the revocation of Legal Notice No. 85 of 2023, dated 13th June 2023. The case was under consideration by the Environment and Land Court in ELC Petition No. 01 of 2023 [Migori County Government -vs- Attorney General & 3 others].
107. The Ministry of Environment, Climate Change and Forestry, through the Kenya Forest Service, has since recorded a consent with the County Government of Migori, through the Office of the Attorney General. The parties to agree to determine through their respective Surveyors the area of Title No. 17955 Migori that is covered by forest and proceed to have the said title subdivided to demarcate the forested and give the area its own title in the name of The Kenya Forest Service, with the rest of the land remaining with the Migori County Government.
108. The Committee notes vide KFS/LS/16/24 Kenya Forest Service has duly reviewed the contents and terms of the proposed consent and wish to confirm that it is amenable to the same.
109. The Service concurs with the arrangement to have the respective survey teams from both parties determine the portion of Title No. 17955 - Migori that is covered by forest and proceed to demarcate and subdivide it accordingly.
110. The Committee further observes, a petition dated 16th September 2023 was presented to the court seeking the revocation of the said Legal Notice and that the parties herein to agree and determine through their respective Surveyors the area of Title No. 17955 Migori that is covered by forest and proceed to have the said title subdivided to demarcate the forested area and give the area its own title in the name of the Kenya Forest Service, the 1st respondent herein with the rest of the land remaining with the Migori County Government, the Petitioner herein

PART SIX

6 COMMITTEE RECOMMENDATIONS

111. Pursuant to the provisions of Standing Order 227, the Committee responds to the petitioners as follows—

On the prayer that the Committee engages the Ministry of Lands, Public Works, Housing and Urban Development to ensure that the Macalder land is re-adjudicated to allow the owners to acquire title deeds and save the residents from alleged erroneous and missing records, **the Committee recommends that:**

- i) Within six (6) months upon tabling of this report, the Cabinet Secretary in charge of the Ministry of Environment, Climate, County Government of Migori should proceed to have the said title subdivided to demarcate the forested area and give the area its own title in the name of the Kenya Forest Service, with the rest of the land remaining with the Migori County Government.**
- ii) Within six (6) months upon tabling of this report, the County Government should map out genuine beneficiaries and consider allocations to them and report back to the National Assembly.**

Signed: _____



Date: _____

01/04/2026

HON. MUCHANGI KAREMBA, CBS, M.P.

CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

ANNEXURES

Annex 1: The Adoption List

Annex 2: Public Petition No. 4 of 2023 regarding delayed adjudication and settlement of squatters after the expiration of lease of Macalder Mines Limited land

Annex 3: Minutes of proceedings



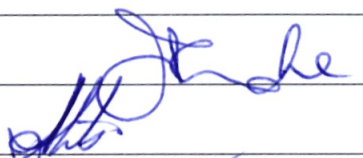
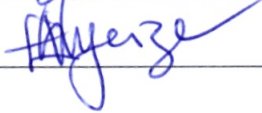
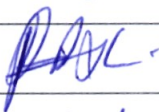
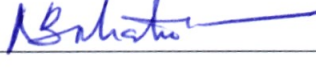

PUBLIC PETITIONS COMMITTEE

ADOPTION LIST

(i) **Consideration and adoption of the Report on Public Petition No. 4 of 2023 by Hon. Tom Mboya Odege, MP regarding the delayed adjudication and settlement of squatters on Macalder Mines Ltd. Land**

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 17/3/2026

| | HON. MEMBER | SIGNATURE |
|-----|---|---|
| 1. | Hon. Muchangi Karemba, CBS, M.P. (Chairperson) |  |
| 2. | Hon. Janet Jepkemboi Sitienei, CBS, M.P. (Vice Chairperson) |  |
| 3. | Hon. Patrick Makau King'ola, M.P. | |
| 4. | Hon. Beatrice Kadeveresia Elachi, CBS, M.P. | |
| 5. | Hon. Joshua Chepyegon Kandie, M.P. |  |
| 6. | Hon. Maisori Marwa Kitayama, M.P. | |
| 7. | Hon. Edith Vethi Nyenze, M.P. |  |
| 8. | Hon. Patrick Ntwiga Munene, M.P. | |
| 9. | Hon. Paul Biego Kibichichy, MP |  |
| 10. | Hon. (Eng.) Bernard Muriuki Nebart, M.P. |  |
| 11. | Hon. Peter Mbogho Shake, M.P. | |
| 12. | Hon. Suzanne Ndunge Kiamba, M.P. |  |
| 13. | Hon. John Bwire Okano, M.P. | |
| 14. | Hon. Sloya Clement Logova, M.P. | |
| 15. | Hon. Peter Irungu Kihungi, M.P. | |

AHHEX(1)

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Approved
SNA
17/2/23



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)

PUBLIC PETITION

(No. 4 of 2023)

**ON DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS
AFTER THE EXPIRY OF LEASE OF MACALDER MINES LTD LAND**

I, the **UNDERSIGNED**, on behalf of the residents of Nyatike Constituency;

DRAW the attention of the House to the following:

1. **THAT**, the Macalder Mines in Nyatike Location, Nyatike Constituency measuring approximately 300 acres is among ancestral land belonging to the people of Nyatike Constituency given up following a mining lease to the Macalder Mines Ltd in 1935 and which company had been conducting mining activities in the land until 1966;
2. **THAT**, the leasing of the land dispossessed the rightful owners of the land rendering them squatters despite Macalder Mines Ltd apportioning portions of the land for residential purposes and open mines;
3. **THAT**, upon the exit of the Macalder Mines Ltd from Kenya in 1970, the land was not fully developed except the residential areas inhabited by gold miners and a portion of land inhabited by local workers;

**ON DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS
AFTER THE EXPIRY OF LEASE OF MACALDER MINES LTD LAND**

4. **THAT**, most landless citizens who had given up their land to Macalder Mines Ltd began settling back and farming in the undeveloped lands;
5. **THAT**, the number of people settling in the land increased between 1970s and 1990s when the local chief allocated people the said land;
6. **THAT**, the people who have settled in the land have put it into good economic use, constructed residential houses and commercial centres which are earning them income, but the government has neither adjudicated the land nor issued title deeds;
7. **THAT**, records held at the Department of Land Adjudication, Land Registrar and Department of Survey are allegedly erroneous hence causing uncertainty among affected families and land owners;
8. **THAT**, the alleged reluctance of the County Government of Migori and the national government to adjudicate the land and issue title deeds amounts to denying the affected community access to fair administrative action;
9. **THAT**, the issues in respect of which this Petition is raised are not pending before any Court of Law, Constitutional or any legal body;

THEREFORE, your humble petitioners pray that the National Assembly through the Public Petitions Committee;

- i. Engages the Ministry of Lands to ensure that the Macalder land is re-adjudicated to allow the owners to acquire title deeds and save the residents from alleged erroneous and missing records; and

**ON DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS
AFTER THE EXPIRY OF LEASE OF MACALDER MINES LTD LAND**

- ii. Makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.

And your **PETITIONER** will ever pray.

PRESENTED BY:



**THE HON. TOM MBOYA ODEGE, MP
MEMBER FOR NYATIKE CONSTITUENCY**

DATE: 16.02.2023

MINUTES OF THE 15TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON TUESDAY, 17TH MARCH, 2026 IN FRANGAPINI CONFERENCE ROOM, SERENA HOTEL, MOMBASA COUNTY AT 10.00 A.M.

PRESENT

- | | | |
|---|---|-------------------------|
| 1. Hon. Eric Muchangi Karemba, CBS M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, CBS, M.P. | - | Vice-Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. Maisori Marwa Kitayama, M.P. | | |
| 5. Hon. Edith Vethi Nyenze, M.P. | | |
| 6. Hon. (Eng.) Bernard Nebart Muriuki, M.P. | | |
| 7. Peter Mbogho Shake, M.P. | | |
| 8. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 9. Hon. Paul Biego Kibichiy, M.P. | | |
| 10. Hon. Peter Irungu Kihungi, M.P. | | |
| 11. Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

1. Hon. Beatrice Kadeveresia Elachi, CBS, M.P.
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. Patrick Ntwiga Munene, CBS, M.P.
4. Hon. John Bwire Okano, M.P.

IN-ATTENDANCE

SECRETARIAT

- | | | |
|--------------------------|---|-------------------------------|
| 1. Mr. Victor Weke | - | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Mr. Bernard Toroitich | - | Clerk Assistant III |
| 4. Ms. Kafuyai Wamae | - | Clerk Assistant III |
| 5. Mr. Clinton Sindiga | - | Legal Counsel II |
| 6. Ms. Nancy Akinyi | - | Research Officer III |
| 7. Mr. Arkan Mumin | - | Research Officer III |
| 8. Mr. Collins Mahamba | - | Audio Officer |
| 9. Mr. Calvin Karungo | - | Media Relations Officer III |
| 10. Ms. Felistus Muiya | - | Public Communications Officer |
| 11. Mr. Paul Shana | - | Serjeant at Arm |

MIN./PPC/2026/079:

PRELIMINARIES

The Chairperson called the meeting to order at 11:30 am and said a word of prayer.

MIN./PPC/2026/080:

ADOPTION OF AGENDA

The proposed agenda was adopted having been proposed by Hon. Eng Nebart Muriuki, M.P and seconded by, Hon. Peter Irungu Kihungi, M.P

AGENDA

1. Prayer and Preliminaries
2. Adoption of the Agenda
3. Confirmation of previous Minutes
4. Matters Arising
5. **Consideration and adoption of the following Public Petition Reports:-**
 - i. **P/No.4/2023 regarding delayed adjudication and settlement of squatters on Macalder Mines Ltd. Land by Hon. Tom Mboya Odege, M.P;**
 - ii. **P/No.59 /2023 regarding Settlement of Ontulili Mount Kenya Forest Squatters by Mr. Patrick and Mr. Robert Wanjau;**
 - iii. **P/No.14/2025 regarding the proposal to amend the Consumer Protection Act to provide for the *In Duplum* Rule by Mr. Allen Waiyaki, EBS, SC, C.Arb; and**
 - iv. **P/No.19/2025 regarding policy and legislative interventions to reverse the decline in uptake of STEM subjects in the country by Computer Science Teachers Association of Kenya.**
6. Any Other Business
7. Adjournment.

MIN./PPC/2026/081: CONFIRMATION OF MINUTES

This agenda item was deferred to the next sitting.

MIN./PPC/2026/082: CONSIDERATION AND ADOPTION OF PUBLIC PETITIONS

1. **P/No.4/2023 regarding delayed adjudication and settlement of squatters on Macalder Mines Ltd. Land by Hon. Tom Mboya Odege, M.P**

The Committee recommended that the CS Ministry of Environment and the County Government of Migori proceed to have the said title subdivided to demarcate the forested area and to give the Kenya Forest Service its own title and the remaining residents of Migori County their own titles within six months on tabling of this report and have it registered by the Ministry of Lands.
2. **P/No.59 /2023 regarding Settlement of Ontulili Mount Kenya Forest Squatters by Mr. Patrick and Mr. Robert Wanjau**

The Committee considered the draft report and it recommended that the Land Settlement Fund Boards of Trustees identifies and acquires appropriate land for the resettlement of verified claimants and that the genuine squatters are identified by the Ministry of Interior.
3. **P/No.14/2025 regarding the proposal to amend the Consumer Protection Act to provide for the *In Duplum* Rule by Mr. Allen Waiyaki, EBS, SC, C.Arb ;**

The Committee considered the draft report and recommended that the departmental committee on Finance and National Planning amends the Consumer Protection Act to entrench the *In Duplum* rule.
4. **P/No.19/2025 regarding policy and legislative interventions to reverse the decline in uptake of STEM subjects in the country by computer science teachers association of Kenya.**

The Committee considered the draft report and recommended that the Ministry of Education in collaboration with the National Treasury, Kenya Institute of Curriculum Development and the Centre for Mathematics, Science and Technology Education in Africa strengthens policy coordination and resource allocation towards the expansion of STEM education programmes, including infrastructure, digital learning resources and teacher capacity development particularly in underserved and marginalized areas.

Adoption


The Committee unanimously adopted the following reports having been proposed by Hon. Paul Biego, M.P and seconded by Hon. Peter Irungu Kihungi, M.P:

- a) P/No.4/2023 regarding delayed adjudication and settlement of squatters on Macalder Mines Ltd. Land by Hon. Tom Mboya Odege, M.P;
- b) P/No.14/2025 regarding the proposal to amend the Consumer Protection Act to provide for the *In Duplum* Rule by Mr. Allen Waiyak, EBS, SC, C.Arb; and
- c) P/No.19/2025 regarding policy and legislative interventions to reverse the decline in uptake of STEM subjects in the country by Computer Science Teachers Association of Kenya.

Concerning, P/No.59/2023 regarding settlement of Ontulili Mount Kenya Forest Squatters by Mr. Patrick and Mr. Robert Wanjau, the committee did not adopt this report. It awaits further clarifications from the Estate of Angaine.

MIN./PPC/2026/083: ADJOURNMENT

There being no other business, the meeting was adjourned at 2:00 p.m.

Sign: 

HON. MUCHANGI KAREMBA, CBS, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date 11/4/2026

The committee shall have the honor to inform you that the following information is being furnished to you for your information. The information is being furnished to you for your information. The information is being furnished to you for your information.

The Committee (announced) reports that the following information has been proposed by the following persons: Mr. and Mrs. Peter J. ...
1. Mr. and Mrs. Peter J. ...
2. Mr. and Mrs. Peter J. ...
3. Mr. and Mrs. Peter J. ...
4. Mr. and Mrs. Peter J. ...
5. Mr. and Mrs. Peter J. ...
6. Mr. and Mrs. Peter J. ...
7. Mr. and Mrs. Peter J. ...
8. Mr. and Mrs. Peter J. ...
9. Mr. and Mrs. Peter J. ...
10. Mr. and Mrs. Peter J. ...

MINORITY GROUPS AND OTHERS

This being no other business, the meeting was adjourned at 2:00 p.m.

Signature: _____
Date: _____
HON. MICHANGI KAREMBA, CHAIRMAN
CHAIRPERSON, PUBLIC UTILITIES COMMITTEE

ANNEX (3)

Thirteenth Parliament

Second Session



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 80TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, NOVEMBER 15, 2023, IN COMMITTEE ROOM 12, GROUND FLOOR, MAIN PARLIAMENT BUILDINGS, AT 3.00 P.M

PRESENT

- | | | |
|---|---|------------------|
| 1. Hon. John Bwire Okano, M.P. | - | Chairing |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. Maisori Marwa Kitayama, M.P. | | |
| 5. Hon. Edith Vethi Nyenze, M.P. | | |
| 6. Hon. Bidu Mohamed Tubi, M.P. | | |
| 7. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 8. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 9. Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

- | | | |
|--------------------------------------|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | | |
| 3. Hon. John Walter Owino, M.P. | | |
| 4. Hon. Ernest Ogesi Kivai, M.P. | | |
| 5. Hon. Caleb Mutiso Mule, M.P. | | |
| 6. Hon. Peter Mbogho Shake, M.P. | | |

SECRETARIAT

- | | | |
|------------------------|---|-----------------------------|
| 1. Mr. Ahmed Kadhi | - | Senior Clerk Assistant |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Ms. Willis Obiero | - | Clerk Assistant III |
| 4. Mr. Shadrack Omondi | - | Legal Counsel II |
| 5. Ms. Lilian Mburugu | - | Media Relations Officer III |
| 6. Mr. Martin Sigei | - | Research Officer III |
| 7. Ms. Felistus Muiya | - | Protocol Officer |

IN ATTENDANCE

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

- | | | |
|-------------------------|---|-------------------------------|
| 1. Hon. Alice M. Wahome | - | Cabinet Secretary |
| 2. Mr. Gordon Ochieng | - | Director, Land Administration |
| 3. Mr. David Nyandoro | - | Ag. Chief Land Registrar |
| 4. Mr. Eric Mulevu | - | Technical Assistant to CS |
| 5. Ms. Stella Muthungu | - | Technical Assistant to CS |

MIN./PPETC/2023/503: PRELIMINARIES

The Chairperson called the meeting to order at 3:00 p.m. and Hon. Maisori Marwa Kitayama, M.P, M.P. said the prayers.

MIN./PPETC/2023/504: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Meeting with the CS, Ministry of Lands, Public Works, and Urban Development regarding -**
 - *Public Petition regarding Illegal Acquisition of private land by the defunct Awendo Town Council.*
 - *Public Petition regarding Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under an absentee landlord.*
6. Any Other Business
7. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Ernest Ogesi Kivai, M.P. and seconded by Hon. Edith Vethi Nyenze, M.P.

MIN./PPETC/2023/505: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/506: MEETING WITH THE MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT ON VARIOUS PETITIONS

The CS, Ministry of Lands, Public Works, Housing and Urban Development appeared before the Committee and submitted as follows:

Public Petition No. 4 of 2023 regarding delayed adjudication of squatters after the expiry of the lease of Macalder Mines Ltd. Land

- i.) In the response dated 3rd October 2023, the Ministry indicated that the Macalder Mines fall within a parcel registered as Muhuru/Kadem/Macalder/498 measuring approximately 216.5 hectares. The parcel was still registered in favor of the defunct South Nyanza County Council (now County Government of Migori).
- ii.) The Ministry had established that the Cabinet Secretary for the Ministry of Environment, Climate Change and Forestry gazetted the area as a forest land vide Legal Notice No. 85 of 2023 dated 13th June 2023. The area was delineated and edged on boundary plan number 175/517. Henceforth, the land was public land under the management of the Kenya Forest Service (KFS) and could not be adjudicated by the Ministry.
- iii.) The Ministry of Environment, Climate Change, and Forestry was better placed to explain the process leading up to the gazetting of the land as forest land.

Committee Concerns

- i.) **Regarding information sharing and consultation between the two Ministries before the gazetting**, the CS indicated that perhaps the CS was not aware of the ongoing Petition before the Committee at the time of the gazetting. Further, public participation ought to have been done. However, the fate of the people occupying the land was a priority for the government hence the two Ministries would engage on the matter and present a better response to the Committee and rectify any oversight that might have occurred.
- ii.) **Regarding why the land was gazetted as a forest**, the CS stated that there must have been a reason why it was gazetted, and the information needed to be provided by the relevant Ministry. Further, the custodian of public property as well as all government lands was the National Treasury and the Ministry of Lands's role was to keep the records. However, the Petitioners ought to have been aware of public participation even though the process of gazetting is faster than de-gazetting.
- iii.) **Regarding the status of the land**, the CS indicated that the register read South Nyanza County Council, and therefore, until the gazetting was regularised the change of ownership would not take place. Further, the Ministry of Lands had not been informed officially to transfer ownership to Kenya Forest Service. The CS committed to instruct the Director of Survey and Lands Administrator in the area to research and provide a proper indication of the number of people affected. Further, a gazette notice could not override the proprietary interest by way of title and the status quo would remain, and the land ownership would not be transferred before the Petition is concluded.

Committee Resolution

After the deliberations, the Committee resolved as follows:

- i.) The Director of Survey and the Lands Surveyor in the area prepare a report on the entire acreage gazetted as forest land by the Ministry of Environment, Climate Change, and Forestry.
- ii.) The Committee to explore the possibility of having a joint sitting of the two Ministries to clear any pending concerns before tabling the report.

Public Petition No. 11 of 2023 regarding the illegal acquisition of private land by the defunct Awendo Town Council

- i.) In 1976, the Government of Kenya issued two Gazette Notices informing the public of its intention to acquire privately owned parcels of land in the then South Nyanza District. The Government was acting pursuant to the provisions of Section 75 of the retired Constitution and Section 6(2) of the Land Acquisition Act of 1968 (now repealed).
- ii.) The Government proceeded to acquire various parcels in Awendo Township. Subsequently, the affected proprietors were fully compensated. In 2005, the acquisitions were challenged by the petitioners in the High Court Civil Suit No. 133 of 2005, Kisumu. The Petitioners herein challenged the process of compulsory acquisition of the gazetted parcels and the allocation of the unutilized portions to third parties by the Government. The High Court ruled in favour of the petitioners directing the District Land Registrar to re-survey the unutilized land and issue title deeds to the petitioners.
- iii.) The County Council of Awendo being dissatisfied by the decision of the High Court lodged an Appeal at the Court of Appeal in Civil Appeal No. 161 of 2010. The Court of Appeal upheld the Judgment of the High Court and dismissed the appeal.
- iv.) The County Council of Awendo further appealed the judgment of the Court of Appeal to the Supreme Court. In Petition No. 37 of 2014, the Supreme Court overturned the Judgement of the Court of Appeal.
- v.) It was the Supreme Court's opinion that the parcels were compulsorily acquired by the Government of Kenya and that the proprietors of the parcels in the Gazette Notices were fully compensated. However, the court noted that parcel no. North Sakwa/Kamasoga/1193 was not listed in the gazette notices and the proprietor had not been compensated. Annexure 3 is a copy of the Supreme Court Judgement.
- vi.) The issues canvassed in this Petition have been adjudicated by the highest court in the Country.

Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufini, Vibandani, and Kibarani Sublocations, Tezo Location, Kilifi County

In the response dated 3rd October 2023, the Ministry promised to furnish further information on the ownership status of L.R. No's 5046/9-38. However, the CS requested additional time to continue compiling a comprehensive list of the respective landowners.

Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County

The CS requested additional time to give a comprehensive response to the Petition.

Committee Concerns

Regarding the restriction on the North Sakwa/Kamasoga/1193 land and whether the land was also compulsorily acquired, the Ministry stated that current records in the Ministry of Lands indicated a restriction by way of acquisition. From the Supreme Court decision, there was a possibility that there could have been a restriction, and the government did not proceed to acquire the specific land. The Supreme Court on the land indicated that it was not acquired pointing to an error in the documents brought before it. The CS stated to be given time to establish the facts about the matter. Assuming the land was restricted and recorded as acquisition, then it would vacate the restriction and release the land to the original owners. However, there was a possibility that the land may have not been paid for by way of compensation.

The Ministry indicated that the restriction was lifted in 2014 and a title deed was issued to Mr. Obiero Anedo as per High Court decree in Civil Suit No. 133 of 2005. The restriction was no dealing until the portion acquired had been transferred to the government. The practice has been that whenever there is acquisition, a search restriction is placed until the land is surveyed and the actual acreage for the owner is established.

The CS undertook to reappear and shed more light on the restriction which was lifted in favour of Obiero Anedo to establish whether he was the owner and whether he may have been compensated.

Regarding initial owners of the land at the time of acquisition and beneficiaries from any compensation, the CS indicated that the Ministry would provide further information on the matter.

Committee Resolution

After the deliberations, the Committee resolved as follows:

The CS Ministry of Lands is to reappear in two weeks to respond to the pending issues in the four Petitions as follows -

- i.) Public Petition No. 4 of 2023 regarding delayed adjudication of squatters after the expiry of the lease of Macalder Mines Ltd Land**

The CS is to provide further information regarding the total acreage of the gazetted land.

- ii.) Public Petition No. 11 of 2023 regarding the illegal acquisition of private land by the defunct Awendo Town Council**

The CS is to provide further information regarding the nature of the restriction put on Parcel No. North Sakwa/Kamasoga/1193 land and the list of all the original owners of the entire, which is the subject matter of the Petition, as well as those that were compensated after compulsory acquisition.

iii.) Public Petition No. 36 of 2023 regarding Delayed adjudication and settlement of residents of Misufini, Vibandani, and Kibarani Sublocations, Tezo Location, Kilifi County

The CS is to furnish the Committee with further information on the ownership status of L.R No.'s 5046/9-38.

iv.) Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County

The CS is to provide a comprehensive response to the petition within two weeks as requested.

MIN./PPETC/2023/507: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 2:15 p.m. The next meeting will be held on Thursday, 16th November, 2023 at 11.00 a.m.

Sign: 
(CHAIRPERSON)

Date..... 29/11/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 3RD SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON TUESDAY, FEBRUARY 20, 2024 IN COMMITTEE ROOM 12, MAIN PARLIAMENT BUILDINGS AT 12.00 NOON

PRESENT

- 1. Hon. Ernest Ogesi Kivai, M.P. - Chairing
- 2. Hon. John Walter Owino, M.P.
- 3. Hon. Maisori Marwa Kitayama, MP
- 4. Hon. Joshua Chepyegon Kandie, M.P
- 5. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
- 6. Hon. Edith Vethi Nyenze, M.P.
- 7. Hon. Suzanne Ndunge Kiamba, M.P.
- 8. Hon. Sloya Clement Logova, M.P.

APOLOGIES

- 1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
- 2. Hon. Janet Jepkemboi Sitienei, M.P. - Vice-Chairperson
- 3. Hon. Patrick Makau King'ola, M.P.
- 4. Hon. Bidu Mohamed Tubi, M.P.
- 5. Hon. Caleb Mutiso Mule, M.P.
- 6. Hon. Peter Mbogho Shake, M.P.
- 7. Hon. John Bwire Okano, M.P.

SECRETARIAT

- 1. Mr. Ahmed Kadhi - Senior Clerk Assistant
- 2. Ms. Miriam Modo - Clerk Assistant I
- 3. Ms. Anne Shibuko - Clerk Assistant I
- 4. Mr. Edison Odhiambo - Fiscal Analyst I
- 5. Mr. Isaac Nabiswa - Legal Counsel II
- 6. Mr. Martin Sigei - Research Officer III
- 7. Mr. Peter Mutethia - Audio Officer III

MIN./PPETC/2024/ 013: PRELIMINARIES

The Chairperson called the meeting to order at 12:00 noon and proceedings began with prayers by the Hon. Walter Owino, M.P.

MIN./PPETC/2024/014: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of the previous Sitting
4. Matters Arising
- 5. Consideration and Adoption of the Report of P/No. 4 of 2022 regarding Funds Spent by National Government Contrary to Provisions of Article 223 of the Constitution**
6. Any Other Business
7. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Walter Owino, MP and seconded by Hon. Benard Muriuki, MP.

MIN./PPETC/2024/015: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

Minutes of the 2nd Sitting held on Thursday, 15th February 2024 were confirmed, having been proposed by Hon. Walter Owino, MP and seconded by Hon. Benard Muriuki, MP.

MIN./PPETC/2024/016: MATTERS ARISING

Arising from *MIN./PPETC/2024/011* on Consideration and Adoption of the Report of Public Petition No. 3 of 2022 regarding Degazettement of Hola Irrigation Scheme Land, the Secretariat clarified the amendments made on the Report with a further amendment made on recommendation No. 2.

MIN./PPETC/2024/017: CONSIDERATION AND ADOPTION OF THE REPORT OF P/NO. 4 OF 2022 REGARDING FUNDS SPENT BY NATIONAL GOVERNMENT CONTRARY TO PROVISIONS OF ARTICLE 223 OF THE CONSTITUTION

The secretariat took the Committee through the draft Report on **Public Petition No. 4 of 2022 regarding Funds Spent by National Government Contrary to Provisions of Article 223 of the Constitution as follows:**

The meeting went through the observations and noted as follows:

Paragraph 107 that *Transition periods have continued to be avenues for expenditure of government resources by exiting governments without proper checks* was an opinion and not accurate and therefore needed to be reframed/redrafted.

Paragraph 113 that *The Kenya Defence Forces Referral and Research Hospital needed to be completed to provide health care services to the increasing number of officers in the Forces discipline and the public at large* was beyond the mandate of the Committee and needed to be rephrased to read “*Contrary to the belief that the funds were utilised to construct the KDF Hospital, when the Committee visited, the project was still in its preliminary stages. There was no urgency to warrant the money to be spent at the time.*”

Upon advice by the Parliamentary Budget Office, the Committee directed the Secretariat as follows: -

- i.) The observations should be redrafted to point to the fact on whether there was misappropriation of Funds or not; and whether it was an emergency expenditure or not.
- ii.) The observations need to explain whether the Principle of Public Finance on prudent utilisation of resources was observed.
- iii.) Given that Parliament has pronounced itself on most of the expenditures by approving the Budget. The Committee should pronounce itself on the *Helios acquisition of shares in Telkom Kenya* and the *Maize Flour Subsidy Programme*.
- iv.) Review the recommendations based on the issues raised in (iii) above.

MIN./PPETC/2024/018: ANY OTHER BUSINESS

The meeting was informed of the two upcoming site visits to Gilgil, Mlolongo and Ruiru Weighbridges and Taveta Constituency on two petitions i.e. Public Petition No. 23 of 2023 regarding punitive charges levied by the Kenya National Highways Authority and Public Petition No. 53 of 2023 regarding access to National Parks by livestock grazers during droughts respectively.

The Chairperson directed that Members to indicate their preferred sub-committees to the secretariat for planning purposes,

MIN./PPETC/2024/019: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 01:50 p.m. The next meeting will be held on Thursday, 22nd February, 2024 at 12.00 noon.

Sign: 

(CHAIRPERSON)

Date: 05-03-2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 4TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON TUESDAY, FEBRUARY 27, 2024, IN COMMITTEE ROOM 25, BUNGE TOWERS, PARLIAMENT BUILDINGS AT 12.00 NOON

PRESENT

1. Hon. Ernest Ogesi Kivai, M.P. - Chairing
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. Maisori Marwa Kitayama, MP
5. Hon. Edith Vethi Nyenze, M.P.
6. Hon. Suzanne Ndunge Kiamba, M.P.

APOLOGIES

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
3. Hon. Patrick Makau King'ola, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. Peter Mbogho Shake, M.P.
8. Hon. John Bwire Okano, M.P.
9. Hon. Sloya Clement Logova, M.P.

IN ATTENDANCE

1. Hon. Tom Odege, M. P - Member for Nyatike Constituency
2. Hon. Victor Koech, M. P - Member for Chepalungu Constituency
3. Mr. Fredrick Nyabuogi - Teacher KUPPET, Nyatike branch
4. Mr. Samwel Orwa - Executive Secretary, KUPPET, Nyatike branch

SECRETARIAT

1. Mr. Ahmed Kadhi - Senior Clerk Assistant
2. Ms. Roselyne Njuki - Senior Serjeant-at-Arms I
3. Ms. Miriam Modo - Clerk Assistant I
4. Ms. Anne Shibuko - Clerk Assistant I
5. Ms. Patricia Gichane - Legal Counsel II
6. Mr. Martin Sigei - Research Officer III
7. Mr. Paul Shana - Serjeant-at-Arms
8. Mr. Calvin Karung'o - Media Relations Officer III
9. Mr. Peter Mutethia - Audio Officer III

MIN./PPETC/2024/ 020: PRELIMINARIES

The Chairperson called the meeting to order at 12:00 noon and proceedings began with prayers by Hon. Joshua Kandie, M.P.

MIN./PPETC/2024/021: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Meeting with CS, Environment, and Forestry on:
 - *Consideration of P/No. 15 of 2023 regarding the Declaration of Mukutani Forest as a Public Forest; and*
 - *Consideration of P/No. 04 of 2023 regarding Delayed adjudication and Settlement of Squatters after the expiry of the Lease of Macalder Mines Ltd Land.*
6. Consideration of Public Petition regarding Gazettement of Nyatike West, Nyatike North, and Nyatike South Sub-Counties as Hardship Areas
 - *Meeting with Petitioner (Hon. Tom Odege, M.P)*
7. Consideration of Public Petition regarding Gazettement of Chepalungu Sub-County as a Hardship Area
 - *Meeting with Petitioner (Hon. Victor Koech, M.P)*
8. Any Other Business
9. Adjournment

The Agenda was adopted to constitute business having been proposed by having been proposed by Hon. Walter Owino, M.P and seconded by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/022: CONFIRMATION OF MINUTES OF THE PREVIOUS SITTINGS
The Agenda was deferred.

MIN./PPETC/2024/023: MEETING WITH CS, ENVIRONMENT AND FORESTRY

1. Consideration of Public Petition No. 15 of 2023 regarding declaration of Mukutani Forest as a Public Forest; and
2. Consideration of Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of squatters after the expiry of the Lease of Macalder Mines Ltd Land.

The Committee was informed that the Principal Secretary, Ministry of Environment & Climate Change and Forestry vide a letter Ref. No. MEF/ADM/16/1 dated 20th February, 2024, communicated that the Cabinet Secretary was away on official duty and had requested to reschedule the meeting.

The Committee noted with concern that the Cabinet Secretary had postponed appearance before the Committee severally. The Committee deliberated on the matter and resolved that a final invitation be sent to the Cabinet Secretary considering the statutory timelines and the urgency to conclude the said petition.

The Committee had requested report regarding the gazettement of Macalder land as forest land by the government through a Gazette Notice dated 13th June 2023, however, the Cabinet Secretary proceeded to gazette the said land while she was aware that the petition was under consideration by the Committee.

Meeting with Petitioner, the Hon. Tom Odege, MP

The Hon. Tom Odege, MP, Member for Nyatike Constituency appeared before the Committee accompanied by two (2) teachers, one Mr. Fredrick Nyabuogi and Mr. Samwel Orwa and submitted as follows -

Background of the Petition

- i. Nyatike Constituency had fulfilled the criteria for gazettelement as a hardship area, owing to the vastness of its three sub-counties, dilapidated road networks impeding movements, human-wildlife conflicts, inadequate clean drinking water, food scarcity, deficient communication networks, and a lack of basic social amenities, among other challenges.
- ii. The geographical orientations of the sub-counties are characterized by barren sandy soils, rugged and rocky terrain, poor rainfall, perennial floods, and pervasive poverty, adversely affecting education standards and creating harsh climatic conditions.
- iii. Government workers posted to Nyatike Constituency exhibited reluctance in taking up jobs, and those promoted to work in the region sought transfers shortly afterward due to the hardship nature of the area.
- iv. Public schools in Nyatike were severely understaffed, with the few available teachers poorly motivated due to the non-payment of hardship allowances by the government. In contrast, teachers in neighboring sub-counties, such as Suba North, Suba South, Kuria East, and Kuria West, facing similar climatic and economic conditions, received hardship allowances.
- v. Nyatike Constituency was deprived of quality government services due to an insufficient workforce caused by harsh climatic conditions.

Challenges in the Region

- i. The region grappled with health challenges, with a Malaria prevalence rate of 32%, Typhoid at 14.2%, and HIV/AIDS at 14.8%.
- ii. Nyatike was a mining area situated between River Kuja and River Migori which were contaminated from mining activities rendering the waters unsafe. Extensive mining had also interfered with arable land, contributing to food insecurity in the area.
- iii. The region had poor telecommunication networks and other infrastructural challenges.
- iv. The teacher-student ratio was 1:2 with 61 secondary schools being served by 435 teachers (an average of 7 teachers per school) and 129 primary schools served by 1065 teachers (an average of 8 teachers per school). Additionally, teachers were unable to benefit from medical schemes due to lack of approved facilities, and the few available were distant, making it difficult to access quality medical care.

- v. Lack of enough TSC teachers in public schools led to candidates undertaking their national exams in neighbouring schools as the schools in Nyatike cannot be made examination centers.
- vi. Due to these challenges, public officers are reluctant to be posted to Nyatike.

Efforts to resolve the issues

A team from the Ministry of Public Service visited the area to investigate its eligibility for gazette as a hardship area and assess the conditions of workers in relation to hardship allowances. However, the report has never been released to-date.

Despite Nyatike Constituency meeting the criteria for gazette as a hardship area, the relevant Ministry has not taken the necessary steps to gazette it.

Prayers

The Petitioners are praying that the National Assembly through the Public Petitions Committee recommends to the relevant Ministry to gazette Nyatike West, Nyatike North, and Nyatike South Sub-Counties as hardship areas. The gazette is expected to enhance service delivery in the area by retaining and attracting government workers among other attendant matters.

Committee Concerns

- i. Regarding the expectations after gazette of the area as a hardship area, the Petitioner indicated that the gazette would enable workers in the region to receive hardship allowances. Therefore, the gazette would offer an opportunity for the workers in the region to also bargain for a fair share of Equalization Fund and other benefits. The initial benefits would include addressing the understaffing in schools and other civil servants.
- ii. Regarding efforts made to address the issues raised, the Petitioner indicated that there was a distinction between issues that could be addressed by national government and county government. However, the region was marginalized as well as other caucus of natural hardship. Therefore, it was difficult to address all challenges, though gazette as a hardship area would address the immediate problems.

MIN./PPETC/2024/025:

CONSIDERATION OF P/NO. 71 OF 2023 REGARDING
GAZETTEMENT OF CHEPALUNGU SUB COUNTY AS A
HARDSHIP AREA

Meeting with Petitioner

The Member for Chepalungu, Hon. Victor Koech, MP appeared before the Committee and submitted as follows -

Background of the Petition

- i. Chepalungu borders Narok West and Emurua Dikir constituencies which were both gazetted as hardship areas. The entire constituency had black cotton soil, which was not arable thereby hindering any income generating agricultural activity. Only small-scale farming was sustainable.
- ii. There was no definite source of drinking water or for domestic use and the two sources available serve less than 20 percent of the population.

- iii. The black cotton soil was unstable for construction of buildings and roads as they are swept away during heavy rains. In the recent past, three major roads and 22 toilets were swept away. In addition, majority of the classroom blocks done in the past five years were condemned due to structural issues.
- iv. Regarding healthcare, the residents of Chepalungu relied on the County Referral Hospital in Longisa which was a distant hence occasioning maternal deaths. There were only small dispensaries for minor medical procedures.
- v. On education, the constituency had 201 primary and 97 secondary schools with shortages of teachers as many teachers posted were hesitant to come and those working in the region sought transfers due to hardship and poor working conditions. About 15 primary schools did not have substantive headteachers. Delocalisation and lack of hardship allowance had occasioned mass transfer of teachers to neighbouring areas such as Emurwa Dikir and Narok which were gazetted. This had led to low education standards and the region.
- vi. There was inadequate water infrastructure as the residents survived on two main supplies serving only 20 per cent of the population both for domestic and drinking.
- vii. The constituency faced a challenge of infrastructural development as many contractors were reluctant to take jobs due to the deep black cotton soil and constructed roads were potholed shortly after construction.

Committee Concerns

Regarding the use of alternative technology in construction in the area, the Petitioner indicated that the findings on why most projects were collapsing had occasioned the use of a different technology which required more resources. However, the NGCDF had capped the amount for construction of classrooms and toilets to amounts that could not allow for use of advanced technology. Therefore, gazettement as a hardship area would attract the attention of other development partners who can avail the resources for alternative technology.

MIN./PPETC/2024/026: ANY OTHER BUSINESS

Regarding meeting with the Speaker, the Committee discussed on when the meeting would take place to discuss the directive raised by the Speaker on Wednesday, 21st February 2024. In light of the fact that the Chairperson and Vice-Chairpersons were indisposed, the Committee would consult further on when to meet the Speaker.

MIN./PPETC/2024/027: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 01:50 p.m. The next meeting will be held on Thursday, 29th February, 2024 at 12.00 noon.

Sign: 

(CHAIRPERSON)

Date: 07-03-2024



A/HK/6

REPUBLIC OF KENYA**THE NATIONAL ASSEMBLY**

MINUTES OF THE 66TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, OCTOBER 4, 2023, IN THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

- | | | |
|--|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Maisori Marwa Kitayama, M.P. | | |
| 6. Hon. Edith Vethi Nyenze, M.P. | | |
| 7. Hon. Peter Mbogho Shake, M.P. | | |
| 8. Hon. John Bwire Okano, M.P. | | |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. Suzanne Ndunge Kiamba, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. Sloya Clement Logova, M.P.

SECRETARIAT

- | | | |
|------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Mr. Willis Obiero | - | Clerk Assistant III |
| 4. Mr. Shadrack Omondi | - | Legal Counsel II |
| 5. Mr. Martin Sigei | - | Research Officer III |
| 6. Ms. Rahab Chepkilim | - | Audio Officer |

IN ATTENDANCE**MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT**

- | | | |
|------------------------------|---|-----------------------------------|
| 1. Hon. Generali Nixon Korir | - | PS, Lands |
| 2. Mr. B.K Mbiti | - | DDLAS |
| 3. Ms. Carolyn Menin | - | Legal Advisor |
| 4. Mr. Hilton Kamau | - | Ass. Director Land Administration |
| 5. Mr. Andrew Kositany | - | Personal Assistant |
| 6. Mr. Paul Ndungu | - | Ass. Dir. Land Survey |

NATIONAL LANDS COMMISSION

- | | | |
|-----------------------|---|---------------------------------------|
| 1. Mr. Gershon Otachi | - | Chairman, NLC |
| 2. Mr. Hezron Alela | - | Personal Assistant to the Chairperson |
| 3. Prof. David Kuria | - | Director |
| 4. Mr. Zachary Ndege | | |

MIN./PPETC/2023/427: PRELIMINARIES

The Chairperson called the meeting to order at 10.00 a.m. and said the prayers.

MIN.PPET/2023/428: ADOPTION OF THE AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Meeting with the Cabinet Secretary, Ministry of Lands regarding the following Petitions:**
 - i.) *Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of lease of Macalder Mines Ltd Land;*
 - ii.) *Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sub-location, Kilifi County;*
 - iii.) *Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufuni, Vibandani and Kibarani Sub-Locations, Tezo Location, Kilifi North;*
 - iv.) *Public Petition No. 10 of 2023 regarding resettlement of Residents of Muthanga Farm;*
 - v.) *Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest; and*
 - vi.) *Public Petition No. 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council.*
6. **Meeting with the CEO, National Lands Commission (NLC) regarding the following Petitions:**
 - i. *Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of lease of Macalder Mines Ltd Land*
 - ii. *Public Petition No. 10 of 2023 regarding resettlement of Residents of Muthanga Farm*
 - iii. *Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest*
 - iv. *Public Petition No. 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council*
7. Any Other Business
8. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. John Walter Owino, M.P. and seconded by Hon. Nimrod Mbithuka Mbai, M.P.

MIN./PPETC/2023/429: MEETING WITH THE CS MINISTRY OF LANDS

The Principal Secretary of the State Department for Lands, Hon. Generali Nixon Korir made submissions as follows: -

A. Consideration of Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of squatters after the expiry of the lease of Macalder Mines Ltd Land

- i.) The Petitioners, described as residents of Nyatike Constituency claim they were disposed of their ancestral land measuring approximately 300 acres when it was leased to Macalder Mines Ltd in 1935.
- ii.) According to the records at the Ministry, the subject falls within the parcel registered as Muhuru/Kadem/Macalder/498 which measures approximately 2167.5 Hectares. It was registered in favour of the defunct South Nyanza County Council (now County Government of Migori) on February 19, 1982 on freehold tenure.
- iii.) Following the Constitution of Kenya 2010, the land became public land under the County Government of Migori pursuant to Article 62. It can only be alienated under direct allocation, a process that can only be initiated by the county government. The Ministry will thereafter process the title documents. The matter can therefore be referred to the County Government of Migori for consideration.

Committees Concerns

Gazettement of the land as a forest

- i. The Committee inquired about the gazettement of the Macalder land as a forest land by the CS, Ministry of Environment, Forestry, and Climate Change. The PS indicated that the information had not come to the attention of the Ministry of Lands. However, there were instances of such gazettements without the knowledge of the Ministry of Lands. Further, the PS stated that a gazettement process needed public participation and involvement of the County Government of Migori which is the custodian of the land.

The status of the land

- ii. The Committee inquired about the status of the land. The PS indicated that the land in question was about 5000 acres, but the petitioners were claiming just 300 acres. However, Migori County Government should be answerable as the Ministry of Lands only facilitates issuance of title deed after the allocation has been done by the county. Further, the county oversees planning and approving the allocation before subdivision and NLC issuance of allotment letter.

Efforts by the Ministry in protection of community interest

- iii. The Committee inquired the efforts by the Ministry regarding the protection of community interest. The PS stated that a committee on historical land injustices was in place under the NLC and was mandated to look community interests in historical land instances.

Committee resolutions

After the deliberations, the Committee resolved to allow the PS two weeks to establish the records of the 5000 acres in question and any other relevant correspondences and full status of the land.

B. Consideration of Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest

- i.) The main contention in the Petition was that there was no public participation in the process of gazetting the forest. The area is occupied by three communities namely Pokot, Tugen, and Ilchamus. The Petitioners claim that the designation of the area as a forest poses an existential threat to the communities and requires urgent intervention to avert further conflict.
- ii.) The Mukutani Forest was gazetted as a public forest vide Legal Notice No. 265 of 2017 and it covers part of Mukutani Location. The forest measures approximately 13,195.8 hectares and by the time of gazettelement, the Ministry had already declared the area as an adjudication section per the Notice dated 18th February 2016.
- iii.) Due to insecurity in the area, demarcation and recording of rights had not commenced as there had been communal conflicts between residents of Mukutani Location and the neighbouring Arabal Location.
- iv.) Both Arabal and Mukutani Location residents claim that their views were not sought before gazettelement of the forest despite the area covering what they consider as their community land. The people from Arabal also view the forest as their hideout and refuge from cattle rustlers who continue to torment them.
- v.) That, if proper consultation was done and the locations involved, then issues regarding to its existence would not be in contest and measures of proper protection would have been put in place to allay the fears of the communities.
- vi.) The Forest Conservation and Management Act No. 34 of 2016 at section 30 classifies categories of forests as follows: -
 - (1) Forests may be classified as public, community, or private forests.
 - (2) Public forests include; public forests classified under Article 62(1)(g) of the Constitution; and forests on land between the high and low water marks classified under Article 62(1)(1) of the Constitution.
- vii.) Section 31(1) and (2) of the Act prescribed the procedure for the creation and management of public forests
- viii.) According to the records held by the Ministry of Lands, Mukutani Forest falls in the former trust land which transitioned to community land under Constitution of Kenya 2010 and the Community Land Act, 2016.

Committee Concerns

The Status of the land

With regards to the status of the land, the PS clarified that the land was under trust and was reverted to the community but in 2011, it was gazetted as a forest land. The gazettelement did not involve the community and ought to have been reversed and land given to the community.

The missing link between the Ministry of Land and Ministry of Environment, Forestry and Climate Change regarding gazettelement

The Committee sought to know why the two Ministries were to in tandem on matters gazettelement of forest lands and the way forward for handling the disconnect. The PS indicated that there was a missing link in decision making as the Forestry Department occasionally

gazetted forest lands without the input or knowledge of the Ministry of Lands. However, the Ministry of Environment had to get approval from the counties which allocated the lands.

The consequences of not involving the community

The Committee sought to know how the matter would be addressed when the views of the community were not collected before gazettment of their land as a forest land. The PS indicate that the Ministry of Land was in support of the case brought forth by the community. Further, the Ministry of Lands would bring to the attention of the Ministry of Environment, Forestry and Climate Change to degazette the land and release it to the community.

C. Consideration of Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufuni, Vibandani and Kibarani Sub-Locations, Tezo Location, Kilifi North

- i.) The Petitioners described as residents of Misufuni, Vibandani and Kibarani Sub Location, Tezo Sub location in Kilifi Constituency have been in occupation of Plot No. 5046/5 for more than 50 years as authorised by the registered proprietor, Coast Development Company.
- ii.) According to the records at the Ministry, the land in question, LR No. 5046/5 measuring approximately 107.24 Hectares (265 acres) was transferred from the estate of William Gilbert Lillywhite to Coast Development Company Limited from May 1, 1929 as per the Memorandum of Registration of transfer of Land (MRT) but not for 99 years as stated in the petition.
- iii.) The government vide a Gazette Notice No. 1782 of June 20, 1980 communicated the intention to acquire part of LR No. 5046/5 measuring approximately 34.44 Hectares for development of Coast Institute of Agriculture. On the same date, the government also issued a Notice of Inquiry vide Gazette Notice No. 1783 on the intended acquisition.
- iv.) The then Commissioner of Lands vide a letter Ref. VAL.559/50 dated April 1, 1982 issued a Notice of Taking Possession of the 34.44 Hectares acquired pursuant to section 19(3) of the Land Acquisition Act (Cap. 285) (Repealed).
- v.) A proposal by Coast Development Company Limited to subdivide LR Bo. 5046/5 was approved by the then Town Council of Kilifi vide a Notification of Approval of Development Permission (P.P A 2) Registration No. KTC/03/11 dated February 14, 2011. The Ministry also approved the same vide a letter Ref. No. KIL/LO/1750/VOL.XIX dated March 30, 2012.
- vi.) Upon subdivision, the acquired land was given L.R No. 5046/8 measuring approximately 34.48 Hectares as per the survey plan. The remaining subplots were given new LR Nos. 5046/9-38 as communicated vide a letter Ref: CT 52/VOL.28/150 dated June 3, 2015 from the Director of Surveys.
- vii.) There have been further subdivisions from the remaining resultant 30 sub plots of LR. 5046/5. The Ministry will provide a detailed report on ownership of the plots. Further, information on the registration and shareholding of Coast Development Company Limited should be sought from the
- viii.) According to the records held at the Ministry however, a title CR 76854 dated February 16, 2021 for LR No. 5046/8 was issued in the name of Coast Development Company Limited.

Committees Concerns

Status of the land

- i. The Committee inquired about the status of the land. The PS indicated that the title of the land is in the possession of Coast Development Company and the land was host to Pwani University. However, the acquisition process of the land was fraudulent, and the Director of Criminal Investigation (DCI) would investigate the matter. The PS requested the committee for additional two weeks to provide copies of the report on the directors of the company holding the title.

Addressing the concerns of squatters

- ii. The Committee inquired whether the Ministry would finalize and facilitate issuance of titles to the people who had already settled in the land. The PS indicated that the land was acquired to establish an institution hence it would be difficult to issue titles unless it uses the settlement fund after a comprehensive report on the status of ownership.

Land settlement fund

- iii. The Committee inquired on the land settlement fund and how it could be actualised to compensate the landowners to allow for closure and settlement of the people. The PS stated that the fund was a budgetary allocation for purchase of lands from absentee landlords. Further, most of the landlords were willing to surrender the lands and negotiate with government but there was need for a budgetary allocation into the fund to facilitate the process.

Different ways of acquisition

- iv. The Committee inquired about the various ways of land acquisition available for the Ministry. The PS indicated that the government could buy the land and give to the people or allow for a hybrid system where the government subsidises the costs and allows people to purchase. However, there was no provision in law for government to purchase from the landlords and the people buys back from the government.

MIN./PPETC/2023/430: MEETING WITH THE NATIONAL LANDS COMMISSION

The Chairperson, the National Lands Commission (NLC), Mr. Gerishon Otachi made the following submissions: -

A. Consideration of Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of the lease of Macalder Mines Ltd Land

Background

Facts gathered during the visit indicate that Macalder Mines Ltd., a Canadian Company started mining in that area in 1933. According to the locals, the company mapped out specific areas for mining and displaced the locals. However, it allowed them to settle in adjacent areas with conditions to obtain a permit from Macalder Mines Ltd. and some of the conditions included:

- The locals were not supposed to cultivate more than five acres of land.
- The locals were not supposed to keep more than 16 heads of cattle.

The locals indicate that when the lease expired around 1970, they moved in claiming it as their ancestral land.

The current situation

- i.) The residents occupy the largest portion of the land where they have built residential houses and cultivated crops for subsistence. Some dwelling houses have been constructed with permanent materials, but the majority are semi-permanent materials (mud walls and corrugated iron sheets). Some individuals also keep cattle, sheep, and goats.
- ii.) There is Nyatike Market, which was planned, and resultant plots were allocated to individuals by the defunct County Council of Migori. The entire block consisting of the perimeter of the whole market is surveyed but NLC could not authenticate from the county government whether individual plots are surveyed.
- iii.) There is a catholic mission complex which comprises the church, convent, and offices. The mission complex is surveyed but NLC could not confirm whether their interest is registered.
- iv.) There are old mines on the parcel. Adjacent to these old mines are old residential buildings which appear to have been dwelling places of those who were managing the mines. The mines are still in the state where they were left by the Canadians, and they have not been rehabilitated.
- v.) On the parcel, is a central government housing scheme under the Ministry of Land Housing and Urban Development.
- vi.) There are also sub-county administration offices, residential quarters for the sub-county administrators, a police station and police lines to the North.
- vii.) There is an airstrip to the northeastern part of the parcel and a primary school almost to the central part of the land.

Observations

- i.) The land records indicate that there is a reservation for Macalder Township which was registered on 11th November 1941 and therefore adjudication as requested may not be the procedure for regularisation of settlement.
- ii.) The land records also reveal that the parcel is registered in favour of South Nyanza County Council whose successor in law is now the County Government of Migori.
- iii.) There is a need to regularise ownership for local inhabitants settled on the ground. There are also public institutions on the land which need to be regularised by way of document ownership.

Recommendation

The subject matter under the petition will be effectively addressed in a participatory manner in consultation with all the relevant stakeholders. The following processes in the prioritized order can be implemented in regularising ownership: -

- i.) A public participation forum be organised for all stakeholders on the subject land and all the views be collected and collated.
- ii.) Census/enumeration of *bonafide* squatters/institutions/allottees by the County Government to determine genuine beneficiaries can be done with the help of County Government Administrators and community leaders.

- iii.) Proper planning be undertaken on the parcel putting into consideration the topographical and registry maps sheets which may be used to prepare a development plan. The plan will indicate the plot location, approximate sizes, and users of various plots.
- iv.) The development plan is subjected to a stakeholders' forum for adoption. The plan and the list of beneficiaries are then forwarded to the county assembly for approval.
- v.) A cadastral survey is done to determine the sizes of resultant subplots according to the development plan.
- vi.) Presentation of a formal request from the County to the NLC for processing.
- vii.) Verification and validation of owners.
- viii.) Preparation of Letters of Allotment
- ix.) Acceptance and payment of levies as stipulated in the letters of allotment.
- x.) Processing of titles/certificates of leases

The land is vested in the County Government of Migori; therefore, it will be the initiator and key player in the process with the support of the Ministry of Lands and the NLC. However, the Commission remains committed to assist in processing of ownership documents within its mandate.

Committees Concerns

Gazettement of Macalder Land

- i.) The Committee inquired on the gazettement of the land as forest land by the Ministry of Environment, Forestry and Climate Change. The Chairperson indicated that the Commission knew about the gazettement from the news hence there was no background information on the matter. However, the gazettement process was not as rigorous as de-gazettement which even requires the input of Parliament hence lots of complaints arise. NLC had no role in the gazettement.

Protection of land rights by NLC as an Independent Commission

- ii.) The Committee inquired into the role of NLC in the protection of the interest of the community. The Chairperson indicated that NLC would inquire from the CS why the gazettement was done, however, the Committee should invite the CS to respond. The Commission was involved in addressing cases of historical land injustices and there were no cases pending arising from historical land injustice out of the 1000 complaints filed formally.

Legal provisions and the process of allocation

- iii.) The Committee inquired into the legal provisions and the process of allocation. The Chairperson indicated that the NLC administers land in accordance with the provisions of the law and relevant statutes. The NLC receives requests for allocation from the county government as the law confers powers to county governments but there are checks and balances.

B. Consideration of Public Petition No. 10 of 2023 regarding the resettlement of Residents of Muthanga Farm

- i.) The dispute was between the current occupants who claim to have been living on the farm and Muthanga Farm Company Limited shareholders who purchased the land from the government and subsequently issued title deeds.

- ii.) The confrontation between squatters and law enforcers during efforts to execute court orders necessitated an urgent solution to the problem.
- iii.) The office of the President through the Ministry of Interior and Coordination of National Government stepped in to look into the matter.
- iv.) The PS, Internal Security constituted a Multi-Agency Committee to review the matter and submit a report for action. The committee is comprised of State Department of Internal Security and National Administration, State Department of Lands and Physical Planning, County Government of Murang'a, Police representatives at the constituency and ward levels, representatives of Muthanga Farm Limited, representatives from Royal Capital Holding Limited and the National Lands Commission.
- v.) The NLC therefore being a party to the ongoing efforts to resolve the matter as spearheaded by the Ministry of Interior, awaits adoption and communication of final recommendation to inform implementation by the Committee.

C. Consideration of Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest

- i.) While considering the petition, the NLC checked its records for any correspondence from the then Ministry in charge of Forestry or the Kenya Forest Service as anticipated under Section 21(2) of Forest Conservation and Management Act, 2016 leading to Legal Notice No. 265 of 27/10/2017 regarding gazettelement of Mukutani Forest. The NLC affirmed that its records do not have details of involvement in the gazettelement of Mukutani Forest.
- ii.) The Commission opined that the matter is better handled by direct involvement of the Ministry in charge of Forestry and the respective County Government involving all relevant stakeholders and/or residents.

Committee Concerns

Gazettelement of the land

- i.) The Committee inquired into best way to address the disconnect between the Ministry of Environment and NLC regarding the missing link on gazettelement. The Chairperson stated that NLC should be notified before gazettelement of a community land as a forest land. However, the process required public participation.

Recommendations on the gaps in the law

- ii.) The Committee sought to know where there were gaps in the law and some recommendations from the NLC. The Chairperson stated that NLC always works on recommendations on improvement of the law for example a Bill on historical land injustice was before the National Assembly. However, there was need to tighten the gaps that allow for gazettelement of lands without public participation or knowledge of the NLC.

D. Consideration of Public Petition No. 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council

- i.) While considering the petition, the NLC was informed by the Court of Appeal Ruling in Kisumu (Civil Appeal No.161 of 2010) in which Town Council of Awendo appealed against a judgement delivered at Kisii High Court Civil Suit No. 133 of 2006.

- ii.) The Decree by the High Court and confirmed by the Court of Appeal is to the effect that the original owners of the suit land ought to be registered as the lawful owners of the unutilized parcels of the suit land and that unutilized parcels be re-surveyed and title deeds thereof be issued to the rightful persons by the area Land Registrar.
- iii.) In view of the above, the implementation of the decree is ideally by the Director of Survey and the Chief Land Registrar who are officers of the Ministry of Lands. However, since the County Government of Migori is the successor to Awendo Town Council which was involved in the litigation, any challenges in implementing the Decree should be addressed jointly by the County and the Ministry.


Committee Concerns

Options that address the Petitioners' prayers

The Committee inquired into the available options that could address the concerns by the petitioners. The Chairperson NLC would analyse the Supreme Court's Ruling on the matter and advise the committee within two weeks.

MIN./PPETC/2023/431: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1:30 p.m. The next meeting would be held on Thursday 5th October 2023 at 10.00 a.m.

Sign: 

 (CHAIRPERSON)

Date..... 29/11/2023



ANNEX 7

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 54TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, AUGUST 24, 2023, IN COMMITTEE ROOM 10, GROUND FLOOR, NEW WING, MAIN PARLIAMENT BUILDINGS AT 03:00 PM

PRESENT

- | | | |
|--------------------------------------|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Maisori Marwa Kitayama, M.P. | | |
| 3. Hon. Caleb Mutiso Mule, M.P. | | |
| 4. Hon. John Bwire Okano, M.P. | | |
| 5. Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

- | | | |
|---|---|------------------|
| 1. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | | |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Ernest Ogesi Kivai, M.P. | | |
| 6. Hon. Edith Vethi Nyenze, M.P. | | |
| 7. Hon. Peter Mbogho Shake, M.P. | | |
| 8. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 6. Hon. Bidu Mohamed Tubi, M.P. | | |
| 7. Hon. Suzanne Ndunge Kiamba, M.P. | | |

INATTENDANCE**SECRETARIAT**

- | | | |
|------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Mr. Willis Obiero | - | Clerk Assistant III |
| 4. Mr. Shadrack Omondi | - | Legal Counsel II |

COUNTY GOVERNMENT OF MIGORI

- | | | |
|---------------------------|---|--|
| 1. Hon. John Kobado | - | The County Executive Committee Member, Lands, Physical Planning, Housing and Urban Development |
| 2. Mr. Gradus Oluoch Adis | - | County Attorney |

MIN./PPETC/2023/350: PRELIMINARIES

The Chairperson called the meeting to order at 3.00 pm. and Hon. Caleb Mutiso Mule, M.P. said the prayers.

MIN./PPETC/2023/351: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sittings
4. Matters Arising
5. **Consideration of Public Petition No. 4 of 2023 Regarding Delayed adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd Land**
 - *Meeting with CEC, Lands, Migori County Government*
6. Any Other Business
7. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Maisori Marwa Kitayama, M.P and seconded by Hon. Caleb Mutiso Mule, M.P.

MIN./PPETC/2023/352 CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/353: CONSIDERATION OF PUBLIC PETITION NO. 4 OF 2023 REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS AFTER THE EXPIRY OF LEASE OF MACALDER MINES LTD LAND

Meeting with Migori County CEC, Lands, Physical Planning, Housing and Urban Development

The CEC appeared before the Committee and submitted as follows:

- i.) The CEC provided a background of the Maclader Mines land, stating that the land adjudication process was initiated in 1970 and completed in 1981 and adjudicated as Muhuru-Kadem-Macalder/498 for South Nyanza County Council with a reservation for Macalder Township.
- ii.) The County Government agrees with the Petitioner but needed to meet with the area Member of Parliament (the Petitioner) to iron out certain issues before making a full presentation and reinforce the Petition.
- iii.) That the County government needed to conduct a public participation exercise as soon as possible and engage key stakeholders, therefore, the Committee should indulge the County government to do so before making further submissions.

Committee Concerns

- i.) With regards to the first encounter with the Petition, the CEC indicated that he had known about the Petition for the last two weeks.
- ii.) With regards to the position of the County in response to the issues raised in the petition and clarity on the matter, the CEC, indicated that the Committee allows for more time for the County Government to further engage the Petitioner and key stakeholders through public participation before making further submission.

Committee Resolution

After the deliberations, the Committee resolved to allow the CEC to make a written submission that provides clarity within 14 days from the date of the meeting.

MIN./PPETC/2023/354: ANY OTHER BUSINESS

There being no other business, the Chairperson adjourned the meeting at 01:30 p.m. The next meeting will be held on Tuesday, 29th August 2023 at 10.00 a.m.

Sign: .....
(CHAIRPERSON)

Date..... 07/11/2023

(i) D/AAGPC
Please deal
[Signature]
05/11/25

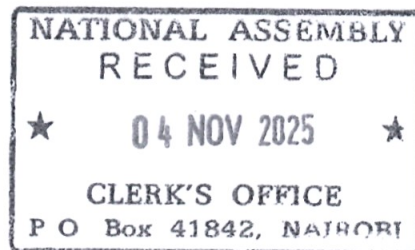
AHHEA 8) (ii) MAALDER

Please deal
for
06/11/25



MINISTRY OF ENVIRONMENT, CLIMATE CHANGE & FORESTRY

RESPONSE TO A PUBLIC PETITION BEFORE THE NATIONAL ASSEMBLY PUBLIC
PETITIONS COMMITTEE REGARDING DELAYED ADJUDICATION AND
SETTLEMENT OF SQUATTERS AFTER THE EXPIRY OF LEASE OF MACALDER
MINES LTD LAND



04 NOV 2025

16th OCTOBER, 2025

Ministerial Response to a Public Petition Before the National Assembly Public Petitions Committee Regarding Delayed Adjudication and Settlement of Squatters After the Expiry of The Lease of Macalder Mines Ltd Land

Introduction

1. The Clerk of the National Assembly, through letter Ref. No. NA/DAA&GPC/PPC/2025/031 dated 8th October 2025, requested the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry, to respond to a public petition by Hon. Tom Mboya Odege, MP Nyatike Constituency, on delayed adjudication and settlement of squatters after the expiry of the lease of Macalder Mines Ltd land.
2. Honourable Chair and Honourable Members, this statement outlines the Ministry of Environment, Climate Change and Forestry's response to Public Petition No. 4 of 2023, regarding the delayed adjudication and settlement of squatters on the former Macalder Mines Ltd lease land. The Ministry acknowledges the petition, which was presented by the Hon. Tom Mboya Odege, Member of Parliament for Nyatike Constituency.
3. Honourable Chair and Members, I wish to inform the committee that since our last appearance before this Honourable Committee, the Ministry has engaged with stakeholders on the ground and held consultative forums (Barazas) with the community on the ground (Annex 1 Status Report).
4. As guided by the said engagements, the Ministry, through the Kenya Forest Service (KFS), has received consent from the County government of Migori, through the office of the Attorney General with regards to a boundary review of the area being Migori ELC Petition No E001 of 2023 alongside Migori ELC Pet. No E004 of 2023 and is therefore considering a formal boundary review to establish the alterations (Annex 3 letter from AG).

5. This review aims to officially recognize and protect essential public infrastructure—like the Chief's office, police station, market centers, and dispensaries—within designated settlement zones. The Ministry affirms that ground visits were conducted as per the attached minutes and a multi-phased road map was established to guide the resolution process (Annex 4 Stakeholder Consultative Minute).
6. Honourable Chair and Members, the Ministry Further concurs with the consent registered with the Attorney General on April 29, 2025, as per the reply letter from the Chief Conservator of Forests (Annex 5 -CCF Letter) and awaits further direction from the Honourable court on October 30, 2025.
7. Any process aimed at altering boundaries will be consultative and guided by the provisions of the Constitution of Kenya 2010, all applicable laws and policies, and will involve the National Land Commission (NLC).
8. Honourable Chair and Honourable Members, I further wish to inform this Honourable Committee that the Ministry has a structured road map with the ultimate goal of seeking Parliamentary approval for the final resolution.

9. Implementation Roadmap

| Phase | Timeline | Key Activities | Lead Institutions | Status |
|-------|--------------------------|---|--|---|
| I. | July 1–15, 2025 | Stop all unauthorized mining operations in the forest | Ministry of Environment, Ministry of Lands, Attorney General's Office | achieved |
| II. | July 16– August 31, 2025 | Field-based verification; conduct barazas; gather testimonies from residents. | NLC, Migori County Government, Ministry of Interior, Kenya Forest Service | Two (2) Barazas were conducted and achieved |
| III. | September– November 2025 | Consider the Reports of the Field-Based Verifications and have discussions with relevant agencies | Ministries of Lands, Environment, Treasury, Education, and the Attorney General's Office | Ongoing |
| IV. | December 2025–June 2026 | Implement the report recommendations. | As per report recommendations | |

10. In conclusion, Honourable Chair and Honourable Members the Ministry affirms its commitment to provide continuous policy oversight and technical resources to ensure prompt implementation.

Thank you, Honorable Chair and Honorable Members


DR. DEBORAH M. BARASA

CABINET SECRETARY

MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY

DATE: 22.11.25.....

Encls.



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: ena@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote reference
REF: NA/DAA&GPC/PPC/2025/007

17th September, 2025

Gitonga Mugambi, CBS
Principal Secretary
State Department for Forestry
Ministry of Environment, Climate Change and Forestry
NHIF Building, Ragati Road, Upper Hill
NAIROBI

Dear Sir,

RE: INVITATION TO A MEETING WITH THE PUBLIC PETITIONS COMMITTEE

The Public Petitions Committee is established under Standing Order 208A and mandated to, *inter alia*, consider all public petitions tabled in the House and make such recommendations as may be appropriate with respect to the prayers sought in the petitions.

Pursuant to Standing Order 225 of the National Assembly Standing Orders, the Hon. Tom Mboya Odege, MP, conveyed Public Petition No. 4 of 2023 regarding the delayed adjudication and settlement of squatters after the expiry of the lease of Macalder Mines Ltd land to the House (*Copy attached*). Subsequently, the petition was referred to the Committee for consideration.


The petitioners, in the petition mentioned above, averred that they were promised an alternative settlement when the area they occupy was gazetted as a national forest after the expiry of the lease held by Macalder Mines. However, they have not been settled to date.

In this regard, the Committee invites the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry, to a meeting on **Wednesday, 8th October 2025, at 11:30 am**. The meeting will be held in a venue within Parliament Buildings, to be communicated in due course.

During the meeting, the Cabinet Secretary will be expected to make submissions addressing the key issues raised in the petition with specific recommendations addressing the prayers sought by the petitioners.

Our Liaison Officers for the meeting are Ms. Lucy Kimathi, Principal Clerk Assistant I, who may be contacted on Tel No. 0722355375 or Email: lucy.kimathi@parliament.go.ke and Mr. Leonard Machira, Principal Clerk Assistant II, who may be contacted on Tel No. 0718379275 or Email: leonard.ongegu@parliament.go.ke.

Yours sincerely,


Sarah M. Kioko, MBS
FQR: CLERK OF THE NATIONAL ASSEMBLY

Copy to: -
Dr. Deborah Mlongo Barasa
Cabinet Secretary
Ministry of Environment, Climate Change and Forestry
NHIF Building, Ragati Road, Upper Hill
NAIROBI



THE NATIONAL ASSEMBLY
OFFICE OF THE CLERK

P. O. Box 41842-00100
Nairobi, Kenya
Main Parliament Buildings

Telephone: +254202848000 ext. 3300
Email: ena@parliament.go.ke
www.parliament.go.ke/the-national-assembly

When replying, please quote reference

REF: NA/DAA&GPC/PPC/2025/031

8th October, 2025

Mr. Gitonga Mugambi, CBS
Principal Secretary
State Department for Forestry
Ministry of Environment, Climate Change and Forestry
NHIF Building, Ragati Road, Upper Hill
NAIROBI

Dear

**RE: INVITATION TO A MEETING WITH THE PUBLIC PETITIONS
COMMITTEE**

Reference is made to your letter Ref: MECCE/ SDF / ADM / 15 VOL. III (42) dated 6th October, 2025, on the above - mentioned subject.

The Committee has acceded to your request and rescheduled the meeting on the consideration of public petition No. 4 of 2023 by Hon. Tom Mboya Odege, MP on the delayed adjudication and settlement of squatters after the expiry of the lease of Macalder Mines Ltd land to **Thursday, 16th October, 2025 at 12:00 noon**. The meeting will be held in a venue within Parliament Buildings, to be communicated in due course.

Our Liaison Officers for the meeting are Ms. Lucy Kimathi, Principal Clerk Assistant I who may be contacted on Tel. No. 0722355375 or Email: lucy.kimathi@parliament.go.ke, and Mr. Leonard Machira, Principal Clerk Assistant II, who may be contacted on Tel. No. 0718379275 or Email: leonard.ongegu@parliament.go.ke.

Yours

Serah M. Kioko, MBS
FOR: THE CLERK OF THE NATIONAL ASSEMBLY

Copy to: -

Dr. Deborah Mlongo Barasa
Cabinet Secretary
Ministry of Environment, Climate Change and Forestry
NHIF Building, Ragati Road, Upper Hill
NAIROBI

Annex 1



REPUBLIC OF KENYA

MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND
FORESTRY

STATUS REPORT ON P/NO. 4 OF 2023 – DELAYED
ADJUDICATION AND SETTLEMENT OF SQUATTERS AFTER
EXPIRY OF LEASE OF MACALDER MINES LTD LAND

JULY 2025

1. Introduction

This report presents a summary of the status of efforts to address the delayed adjudication and settlement of squatters occupying land previously leased to Macalder Mines Limited in Migori County. It responds to matters raised during the meeting with the Public Petitions Committee meeting held on 4th June 2025, whereby it was resolved that the Ministry of Environment, Climate Change and Forestry provide status report on the same.

The following therefore, is a status report based on the stakeholder engagement meeting held on 14th July 2025 in Migori County that was attended by a team lead by the Principal Secretary State Department for Forestry and chaired by the Principal Secretary State Department for Mining. Others in attendance were officials from KFS, NEMA, National Police Service, and County Administration.

1. Background

After the lease for Macalder Mines Limited expired, the land, some of which overlaps with designated forest areas, has continued to see occupation by squatters and unregulated artisanal mining. These activities have caused significant environmental issues, including forest encroachment and pollution of water sources due to hazardous chemicals like sodium cyanide. This therefore calls for a concerted effort through a multi-agency approach in order to address the issue of resettlement of squatters occupying the forest areas, who are at risk of exposure to harmful chemicals from mining activities. Further to this, there is also need to safeguard the ecological integrity of the landscape given the environmental services it provides to the neighbouring communities.

2. Key Challenges Identified

During the site visit by the team who overflowed the entire land, the following observations were recorded;

- a. There is continued occupation on gazetted forest areas by squatters who lack ownership documents/title deeds.
- b. Unregulated artisanal mining activities encroaching on gazetted forest areas, with reported use of sodium cyanide threatening watercourses through contamination.
- c. Gaps in coordinated enforcement among lead agencies on encroachment of forest areas.

3. Stakeholder Intervention and Local Leadership Engagement

A multi-agency meeting was held on 14th July 2025, in Migori County, chaired by the Principal Secretary for Mining. The meeting led to key resolutions focused on resettlement and environmental restoration. A significant resolution involved the participation of local leadership, including the area Member of Parliament, the County Government, County Commissioner, Kenya Forest Service (KFS), and representatives from the affected community. The outcome of the meeting was a consensus to bring together all the leaders and the affected community to discuss and propose suitable resettlement strategies. This cooperative approach has created a platform for inclusive decision-making, enhancing the legitimacy and ownership of the resettlement process by the local population.

4. Support from the Ministry

The Ministry of Environment, Climate Change and Forestry has fully supported these efforts and is acting on the recommendations from the stakeholder meeting. Specifically, the Ministry has formally

requested the Director of Surveys (Ministry of Lands) to form a technical team of surveyors to collaborate with KFS survey officers in marking the boundaries of Macalder Forest. This step is crucial for determining the scope of resettlement and planning for forest conservation.

5. Recommendations and Way Forward

1. Continued support for discussions on resettlement led by local leadership comprising of the area member of parliament, county government, national government administration officers and the representatives of the affected community.
2. Accelerated boundary demarcation efforts to guide land-use planning, adjudication and resettlement.
3. Hold regular multi-agency review sessions to monitor enforcement actions, adjudication progress, and environmental remediation.
4. Strengthening the Rapid Results Initiative (RRI) task force to ensure quick responses to environmental and enforcement issues.
5. Development of inclusive, sustainable land-use plans that balance environmental protection with human settlement needs.

6. Conclusion

The Ministry remains dedicated to a fair and sustainable resolution of the squatter resettlement issue in Macalder. Through organized stakeholder engagement and coordinated enforcement actions, the Ministry continues to support local leadership and ensure that the process protects both environmental integrity and community rights.

Dr. Deborah M. Barasa



Photo showing the Principal Secretary for Mining Mr. Harry Kimutai, CBS, (center) accompanied by the Principal Secretary for Forestry Mr. Gitonga Mugambi, CBS (to the right) and other officials from KFS, NEMA and NGAO while addressing the press after the stakeholder engagement on 14th July, 2025 in Migori County.

OTIENO OKEYO & CO. ADVOCATES

COMMISSIONERS FOR OATHS
NOTARY PUBLIC AND PUBLIC SECRETARIES

Annex 2

OTIENO OKEYO & CO.
ADVOCATES
P.O. BOX 1000
MIGORI

OTIENO OKEYO & CO.
ADVOCATES
P.O. BOX 1000
MIGORI

COUR REF: OK/39/23

COUR REF:

April 28, 2025

The Deputy Registrar
The Environment & Forestry Dept
17/17 Law Courts
MIGORI

Dear Sir

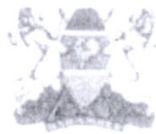
RE: MIGORI ELC PETITION NO E001 OF 2023
MIGORI COUNTY GOVERNMENT VS THE HONOURABLE ATTORNEY
GENERAL & OTHERS

.....
I make reference to the above matter
in the undersigned's capacity as the Deputy Registrar of the Environment & Forestry Dept
present

BY CONSENT THIS PETITION BE SETTLED IN THE FOLLOWING TERMS

1. The parties hereto agree to settle the above matter in the area of Title No. 17955 Migori and the parties hereto shall have the said area subdivided to be held in trust for the benefit of the people of Migori County by The Kenya Forest Service in accordance with the provisions of the Environment & Forestry Act, 2002 and the Migori County Government and the People of Migori.
2. The parties hereto agree to settle the above matter in the area of Title No. 17955 Migori and the parties hereto shall have the said area subdivided to be held in trust for the benefit of the people of Migori County by The Kenya Forest Service in accordance with the provisions of the Environment & Forestry Act, 2002 and the Migori County Government and the People of Migori.

The settlement is as follows:



Annex 3

REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY-GENERAL & DEPARTMENT OF JUSTICE

AG/KISII/MGR/LD/1365/2023

1st October, 2025

The Chief Conservator of Forests,
Kenya Forest Service,
Kenya Forest Service Headquarters,
Karura, Off Kiambu Road,
P. O. Box 30513 - 00100. (YOUR REF. NO. KFS/LS/16/23)
NAIROBI.

Dear Sir,

RE: MIGORI ELC PET. NO. E001 OF 2023
MIGORI COUNTY GOVERNMENT VS THE HON ATTORNEY GENERAL
AND 3 OTHERS

We refer to the above matter and to our letter dated 13th January, 2025.

We advise that we attended Court for Mention on 16th July, 2025 before Hon. Fred Nyagaka to confirm settlement and to take further directions.

We indicated to Court that we are yet to receive any written proposal for settlement from the Petitioner's Counsel following the meeting held on 31st January, 2025 by the parties.

The Court directed the Petitioner's Counsel to forward their proposal to us and fixed the matter for Mention on 30th October, 2025 alongside Migori ELC Pet. No. E004/2023 which relates to the same subject matter.

We are now in receipt of a written Consent dated 28th April, 2025, a copy of which we have enclosed herewith for your perusal and consideration.

Kindly but urgently let us have your written instructions on whether or not you are amenable to the terms of the consent to enable us to communicate with our counterparts well in advance.

We appreciate your continued co-operation in the matter.

DEPARTMENT OF CIVIL LITIGATION
ATTORNEY-GENERAL'S CHAMBERS, GROUND FLOOR KISHI-KILGORIS ROAD, P. O. BOX
2084 KISHI EMAIL: oagkisiicivillitigation@gmail.com


M. G. NDIRITU
Principal Litigation Counsel
FOR: ATTORNEY GENERAL
Encl.

DEPARTMENT OF CIVIL LITIGATION
ATTORNEY-GENERAL'S CHAMBERS, GROUND FLOOR KISHI-KILGORIS ROAD. P. O. BOX
2084 KISHI EMAIL: oagkisiicivil litigation@gmail.com



Annex 4.

REPUBLIC OF KENYA

MINISTRY OF MINING, BLUE ECONOMY AND MARITIME AFFAIRS
State Department for Mining
Migori Regional Office

**MINUTES FOR MINING AND ENVIRONMENTAL ISSUE WITHIN MIGORI COUNTY
VENUE: COUNTY COMMISSIONER'S OFFICE**

DATE: 17th JULY 2025

MIN 1: Preliminaries;

Having reached the set quorum, the meeting was called to order by the chairperson at 10.00 AM. The meeting was then opened by a word of prayer from one of the members Mr. Simon Mghanga.

In attendance, was the County Commissioner Migori (Chair), County Director NEMA (Secretary), the Regional Forest Conservator, Kenya Forest Service, and Deputy Direct Mineral Audit Division. Others in attendance were officials from National Police service and County Administration.

From 14th to 16th July 2025, Migori County proudly hosted the Nyanza Gold Summit 2025 under the theme; "Enabling Responsible Gold Mining: Bridging Innovation, Finance, and Collaboration for Kenya's Artisanal and Large-Scale Miners." The summit brought together key players in the mining sector, including national and county government representatives, miners, investors, and development partners. During the summit, the Principal Secretary, State Department for Mining, emphasized the urgent need for a coordinated approach to tackle illegal mining, environmental degradation, and loss of government revenue.

In response to this call, the County Commissioner of Migori County invited all relevant stakeholders for a follow-up meeting scheduled for 17th July 2025 at his office.

The aim of this meeting is to initiate collaborative strategies to address the challenges raised and to align local action with the summit's outcomes. The chairperson gave his remarks highlighting on the agenda for the day and opened up the forum.

Agenda

1. Environmental degradation
2. Illegal mining within gazette forest and its environs.
3. Illegal mining operation
4. Loss of revenue by government
5. Way forward
6. AOB

MIN 2: ENVIROMENTAL DEGRADATION

The meeting opened with a detailed report from the County Director of NEMA highlighting widespread environmental degradation across the county as a result of unregulated mining activities. Key issues raised included;

1. Environmental Degradation: Mining activities continue to pose significant negative impacts on the environment, especially through land degradation and water contamination.
2. Chemical Pollution: The use of hazardous chemicals such as mercury by artisanal miners and sodium cyanide by leaching operators has led to serious pollution of underground water sources and nearby rivers.
3. Regulatory Non-Compliance: A majority of miners begin operations without consulting or obtaining necessary approvals from the National Environment Management Authority (NEMA), leading to unregulated and unsafe practices.
4. Need for Water Quality Assessment: There is an urgent need for comprehensive water analysis along the river course of river Migori and Kuja to determine the extent of chemical contamination.

Way Forward;

1. Implementation of Stop Orders: Stop orders issued to illegal leaching sites must be fully enforced to halt ongoing environmental damage.
2. Water Sampling and Testing: Water quality testing targeting at least two critical parameters will commence on 21st July 2025. This exercise requires proper facilitation and logistical support.
3. Public Sensitization: Community barazas (public forums) to be used to educate miners and local residents on the dangers of hazardous chemicals and the importance of safe mining practices.
4. Stakeholder Engagement: A follow-up meeting to be scheduled on the 3rd week of August with leaching operators and sodium cyanide dealers to develop a framework for the regulation and controlled use of chemicals.
5. Support for Mercury-Free Processing: The Ministry of Environment and climate change to fast-track the construction of mercury-free gold processing demonstration centers in Masara and Kehancha, aimed at promoting safer alternatives for artisanal miners.

MIN 3: ILLIGAL MINING WITHIN GAZETTED FOREST AND ITS ENVIROMENT

The Kenya Forest Service Conservator raised serious concerns over the growing presence of illegal mining operations within gazetted forest areas, particularly in the Osiri-Matanda, Macalder, and Tess zones. Key issues highlighted included;

1. Accelerated Deforestation: The ongoing encroachment into forest reserves by illegal miners is contributing significantly to deforestation and environmental degradation.
2. Court Conservatory Orders: The court has issued conservatory orders directing that the status quo be maintained pending a final decision.
3. Legal Violations: Mining within forest areas constitutes a direct violation of both environmental protection laws and forest conservation regulations.

4. Pending Court Case: A court case between the County Government of Migori and Kenya Forest Service is scheduled for ruling on 30th July 2025.
5. The court has instructed the county to clearly state its interests and intended land use in the contested area.
6. Proliferation of Shafts: There are currently over 20 mine shafts operating in the upper part of the forest, far exceeding sustainable limits. The number should be reduced to eight (8) or fewer shafts.

Way Forward

1. Status Quo to be Maintained: Until the court delivers a ruling, the status quo remains.

This means no new activities should occur in;

- Osiri-Matanda
 - Macalder
 - Settlement areas
 - Lower part of the forest (Tess area)
2. Community Sensitization Forum: A public baraza to be held on 24th July 2025 at OsiriMatanda to sensitize artisanal miners and residents about:
 - Legal boundaries of forest land
 - Environmental risks of encroachment
 - Court directives and ongoing case
 3. Boundary Demarcation: The KFS Conservator, in collaboration with the Deputy County Commissioner (Nyatike Sub-county), will define and mark boundary lines clearly to prevent further encroachment into protected forest zones.
 4. Ban on Mining in Tess Area: No mining activities will be permitted in the Tess area until the state department for mining provides further guidance.

MIN 4: ILLEGAL MINING IN MIGORI COUNTY

The Deputy Director of the Mineral Audit Division from the State Department for Mining presented comprehensive data indicating widespread illegal gold mining activities in several sub counties across Migori County, including;

- Nyatike
- Rongo
- Kuria West
- Kuria East

He also outlined the various categories of licenses issued by the State Department for Mining and highlighted several compliance challenges within the region.

Key Issues Raised

1. **Unlicensed Operations:** A significant number of mining operators were found to be unlicensed or operating without valid permits, contrary to the provisions of the Mining Act.
2. **Proliferation of Leaching Sites:** There are currently over 200 leaching sites in Migori County, many of which operate without regulatory oversight or environmental safeguards.
3. **Non-Compliance Enforcement:** The Migori Regional Mining Office has issued stop orders to some of the illegal operators, but enforcement remains inconsistent and requires strengthening.

Types of Licenses Issued by the State Department for Mining

1. **Reconnaissance License** – Allows preliminary surface-level exploration across large areas.
2. **Prospecting License** – Grants rights to conduct detailed mineral exploration.
3. **Retention License** – Allows a license holder to retain rights to a discovered deposit before full mining operations commence.
4. **Mining License** – Authorizes commercial extraction of minerals:
 1. Large-Scale Mining License
 2. Small-Scale Mining License
5. **Artisanal Mining Permit** – Issued to community-based small-scale miners.
6. **Mineral Dealer's Licence** – For buying, selling, or trading minerals.
7. **Export Permit** – Required for the legal export of minerals.

8. Processing Licence – Allows for processing activities like leaching, crushing, refining, etc.
9. Permit for Use of Radioactive Substances – For exploration and handling of radioactive mineral elements.

Way Forward

1. Enforcement of Stop Orders: Strengthen the enforcement of stop orders already issued to illegal leaching and mining operations in the region.
2. Mapping of Remaining Leaching Sites: Undertake a detailed mapping exercise to identify and register all active and unregulated leaching sites across Migori County.
3. Stakeholder Engagement Forum: Organize a follow-up stakeholder meeting in the third week of August 2025. The meeting will involve:
 1. Leaching operators
 2. Sodium cyanide suppliers/dealers
 3. Regulatory agencies

MIN5: LOSS OF REVENUE BY GOVERNMENT

It was established that illegal mining activities are significantly undermining government revenue collection efforts. Key concerns include:

1. Smuggling of Gold: A large portion of gold extracted in the region is smuggled out without going through official channels, bypassing monitoring systems and legal export procedures.
2. Loss of Revenue: As a result, the government loses out on critical royalties, taxes, and licensing fees, which would otherwise support development and regulatory oversight.

MIN 6: AOB

The County Commissioner emphasized the need for collaborative action among all relevant stakeholders in addressing the challenges posed by illegal mining. He called for:

1. Partnership Approach: All stakeholders—including government departments, enforcement agencies, community leaders, and mining associations—should work in close coordination as partners to ensure sustainable and lawful mining practices.
2. Joint Site Enforcement Visits: It was agreed that following the upcoming public baraza, all stakeholders will conduct site visits to specific mining locations for joint enforcement actions and compliance verification.

There being no other business, the meeting was adjourned with a vote of thanks to the Chairperson and the members present. The Chairperson expressed appreciation for the commitment shown and reiterated the importance of due diligence and timely attendance for the meeting. The meeting was closed with a word of prayer led by Mr. Simon Mghanga.


For Simon Mghanga
County Mining Officer



Annex 5.

Kenya Forest Service Hqs
Karura, Off Kiambu Rd
P.O. Box 30513 - 00100
Nairobi, Kenya

KFS/LS/16/24

8th October 2025

Ref: No.....

Date:.....

Office of the Attorney General &
Department of Justice,
Department of Civil Litigation,
Kisii-Kilgoris Road,
P.O. Box 2084,
KISII.

**RE: MIGORI ELC PETITION NO. E001 OF 2023 – MIGORI COUNTY GOVERNMENT
VS THE HONOURABLE ATTORNEY GENERAL & 3 OTHERS**

Reference is made to your letter Ref. No. **AG/KISII/MGR/LD/1365/2023** dated **1st October, 2025**, and the enclosed draft consent dated **28th April, 2025**.

Kenya Forest Service has duly reviewed the contents and terms of the proposed consent and wish to confirm that it is **amenable to the same**. The Service concurs with the arrangement to have the respective survey teams from both parties determine the portion of **Title No. 17955 – Migori** that is covered by forest and proceed to demarcate and subdivide it accordingly.

The Service shall **dispatch its team of surveyors** to collaborate with the Migori County Government's technical officers in identifying and delineating the forest area. Upon completion of the demarcation exercise, the forest portion will be processed for registration under a separate title in the name of the **Kenya Forest Service**, while the remainder shall vest in the **Migori County Government**, as agreed.

We remain grateful for your continued guidance and representation in this matter and will keep your office duly informed.

E.K. Aluda
For: CHIEF CONSERVATOR OF FORESTS

Copy to: **M/s Otieno Okeyo & Co. Advocates**
CMS Africa Building, 9th Floor, Suite B-1,
Chania Avenue, Off Ring Road, Ngong Road,
P.O. Box 9684-00100,
NAIROBI.
Email: info@otienookeyo.co.ke

LY/ei

Trees for better lives

Tel: (254)020-3754904/5/6, (254)020-2014663, (254)020-2020285, Fax: (254)020-2385374

Email: info@kenyaforestservice.org, Web: www.kenyaforestservice.org

AMT/EF (9)

~~Annexure 1~~



REPUBLIC OF KENYA

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN
DEVELOPMENT

RESPONSES TO THE NATIONAL ASSEMBLY PUBLIC PETITIONS COMMITTEE ON
VARIOUS PETITIONS

Honourable Chair,

Pursuant to a letter Ref. KNA/DLPS/PPETC/CORR/2023/266 dated November 6, 2023, the Committee invited the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development to respond to;

- i. Public Petition No. 4 of 2023 regarding delayed adjudication of squatters after the expiry of lease of Macalder Mines Ltd Land
- ii. Public Petition No. 11 of 2023 regarding the illegal acquisition of private land by the defunct Awendo Town Council.
- iii. Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sublocations, Tezo Location, Kilifi County.
- iv. Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County.

Honourable Chair, this is further to our response dated October 3, 2023, marked annexure 1.

Responses

- i. Public Petition No. 4 of 2023 regarding delayed adjudication of squatters after the expiry of lease of Macalder Mines Ltd Land

Honourable Chair,

In our response dated October 3, 2023, we had indicated the Macalder Mines fall within a parcel registered as Muhuru/Kadem/Macalder/498 measuring approximately 2167.5 hectares. According to our records, the parcel is still

registered in favour of the defunct South Nyanza County Council (now County Government of Migori).

We have since established that the Cabinet Secretary for Environment and Forestry gazetted the area as forest land. Annexure 2 is a copy of Legal Notice No. 85 of June 13, 2023. The area gazetted is delineated, edged on boundary plan number 175/517. Henceforth, the land is public land under the management of the Kenya Forest Service and cannot be adjudicated by the Ministry.

The Ministry of Environment and Forestry is better placed to explain the processes leading up to the gazettelement of the land as forest land.

- ii. Public Petition No. 11 of 2023 regarding the illegal acquisition of private land by the defunct Awendo Town Council.

Honourable Chair, I wish to submit as follows: -

Background

The Petitioners state that in 1988, the allocation of plots to various persons was halted by the then South Nyanza District Plot Allocation Committee on grounds that the Government had acquired the said pieces of land. The petitioners claim to have lodged a complaint with the Ministry of lands and were confirmed to be the legal owners of the said land.

The Petitioners contend that in 2003, the Awendo Town Council embarked on evicting landowners without any notice or orders on grounds that the said parcels of land had been compulsorily acquired by Government.

The Petitioners state that they took legal action in 2005 by suing the Awendo Town Council at the High Court in Kisumu, which ruled in their favour. They allege the Council failed to produce acquisition and compensation documents to the court. The court directed the District Land Registrar to issue title deeds to the original landowners. They state that the Council moved to the Court of Appeal but lost.

The Petitioners further allege that the Awendo Town Council having been dissatisfied by the judgment of the Court of Appeal appealed the decision at the Supreme Court which was dismissed by the Supreme Court.

The Petitioners therefore pray to be compensated for the lands they lost due to illegal allocation by the defunct Awendo Town Council.

Honourable Chair, I wish to respond as follows;

Response

In 1976, the Government of Kenya issued two Gazette Notices informing the Public of its intention to acquire privately owned parcels of land in the then South Nyanza District. The Government was acting pursuant to the provisions of Section 75 of the retired Constitution and Section 6(2) of the Land Acquisition Act of 1968 (now repealed).

The Government proceeded to acquire various parcels in Awendo Township. Subsequently, the affected proprietors were fully compensated. In 2005, the acquisitions were challenged by the Petitioners in the High Court Civil Suit No. 133 of 2005, Kisumu. The Petitioners herein challenged the process of compulsory acquisition of the gazetted parcels and the allocation of the unutilised portions to third parties by the Government. The High Court ruled in favour of the Petitioners directing the District Land Registrar to re-survey the unutilised land and issue title deeds to the Petitioners.

The County Council of Awendo being dissatisfied by the decision of the High Court lodged an Appeal at the Court of Appeal in Civil Appeal No. 161 of 2010. The Court of Appeal upheld the Judgment of the High Court and dismissed the appeal.

Honourable Chair, the County Council of Awendo further appealed the judgement of the Court of Appeal to the Supreme Court. In Petition No. 37 of 2014, the Supreme Court overturned the Judgment of the Court of Appeal.

It was the Supreme Court's opinion that the parcels were compulsorily acquired by the Government of Kenya and that the proprietors of the parcels in the Gazette Notices were fully compensated. However, the court noted that parcel no. North Sakwa/Kamasonga/1193 was not listed in the gazette notices and that the proprietor had not been compensated. Annexure 3 is a copy of the Supreme's Court Judgment.

Honourable Chair, the issues canvassed in this Petition have been adjudicated by the highest court in the Country.

- iii. Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sublocations, Tezo Location, Kilifi County.

Honourable Chair, in our response dated October 3, 2023, we promised to furnish further information on the ownership status of L.R. No's 5046/9-38. We request for more time as we continue to compile a comprehensive list of the respective land owners.

- iv. Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County.

The Petitioners, who are residents of Mnarani Village in Mnarani Ward, Kilifi North Constituency claim that they have occupied the subject land for more than 100 years. They allege that the whole Mnarani village was surveyed on 28th May 1912 and granted in favour of Mr. Byremji Rustumji Khanjuri but the land was later illegally acquired by Arab families who registered the land as their property.

The petitioners aver that the land measures approximately 172.8 acres and is registered as plot No. YSR130 section V in the name of Kalthum Binti Mohammed and Shariffa Binti Mohamed as an agricultural land. They further claim that the registered owners migrated to the Middle East leaving the property under the care of the trustees who invited the locals to settle in the area willingly and pay a monthly fee. They claim they were allowed to build a school which is the present Mnarani Primary School.

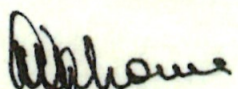
The Petitioners further allege that the land ceased being an agricultural land and became residential owing to the population size of 20,000 people with a Mosque, Churches, Schools and other social amenities. They claim that they have put the land into good economic use, constructed residential houses and commercial centres which is earning them income.

The petitioners claim that efforts to have the matter addressed by the relevant authorities have been futile and it is the reason they have prayed this Committee;

- i. Inquire into the ownership of the land occupied by Mnarani residents registered as plot No. YSR130 Section V situated at Mnarani-Kilifi Takaungu in the name of Kalthum Binti Mohammed and Shariffa Binti Mohammed;
- ii. Recommend that the parcel of land in Mnarani be acquired and granted to the present occupants and that the process of compensation be finalized;
- iii. Recommend that the land be adjudicated so as to ensure that the residents acquire title deeds and save the residents from the alleged erroneous records and missing information on the parcels of land; and,
- iv. Makes any other recommendation or action it deems fit in addressing the plight of the petitioners.

Honourable Chair, we request for more time to be able to give a comprehensive response on this petition.

Honourable Chair, I submit.


Hon. Alice Wahome
CABINET SECRETARY
November 14, 2023

Annex 110

~~Annexure 2~~

LEGAL NOTICE No. 85

THE FOREST CONSERVATION AND MANAGEMENT ACT

(No. 34 of 2016)

DECLARATION OF MACALDER FOREST.

IN EXERCISE of the powers conferred by section 31(2) of the Forest Conservation and Management Act, the Cabinet Secretary for Environment and Forestry declares that the area described in the Schedule hereto be a forest area.

SCHEDULE

An area of land approximately 2494.95 hectares (6165.02 Acres), situated Approximately 25 kms north west of Migori Township, Migori County the boundaries of which are more particularly delineated, edged green, on Boundary Plan No. 175/517 which is signed and sealed with a seal of Survey of Kenya, and deposited at the Survey Records Office, Survey of Kenya, Nairobi and a copy of which may be inspected at the office of the County Forest Conservator, Migori County and Kenya Forest Service Headquarters, Nairobi.

Made on 13th June, 2023.

SOIPAN TUYA,
*Cabinet Secretary Ministry of
Environment, Climate Change and Forestry.*

LEGAL NOTICE No. 86

THE FOREST CONSERVATION AND MANAGEMENT ACT

(No. 34 of 2016)

DECLARATION OF DANDU HILL FOREST

IN EXERCISE of the powers conferred by section 31(2) of the Forest Conservation and Management Act, the Cabinet Secretary for Environment and Forestry declares that the area described in the Schedule hereto be a forest area.

SCHEDULE

An area of land approximately 1779.70 hectares (4397.73 Acres), situated Approximately 227 kms south west of Mandera Township, Mandera County the boundaries of which are more particularly

CERTIFICATE
 OF REGISTRATION
 OF LAND

Annexure 3.

| | | | | | | | |
|-----------------------------|-------------------------|---------------------------------|---|---|--|----------------------|--|
| EDITION | | PART A | | PROPERTY | | ION | |
| OPENED: 3.4.75 | | EASEMENTS ETC. | | NATURE OF TITLE | | ABSOLUTE | |
| REGISTRATION NO. | | NORTH SAKWA/KAMASOGA | | PARCEL NUMBER | | 1193 | |
| APPROXIMATE AREA | | 0.5 | | APPROXIMATE AREA | | 0.5 | |
| TITHE MAP SHEET No. | | 542 | | TITHE MAP SHEET No. | | 542 | |
| SUB-DIVISION OF PLOT NO. 39 | | | | PART B PROPRIETORSHIP SECTION | | | |
| DATE | NAME | ADDRESS AND CLERK OF REGISTERED | DESCRIPTION AND REMARKS | SIGNATURE | | | |
| 9.2.77 | OBIERO OMEDO | P.O. SARE | | [Signature] | | | |
| 18.4.99 | RESTRICTION | | NO DEALING UNTIL THE PORTION ACQUIRED HAS BEEN TRANSFERRED TO THE GOVT. SARE NOTICE NO 2737 OF 24/12/76 | [Signature] | | | |
| 3. 19.9.14 | RESTRICTION ENTRY NO. 2 | | ABOVE REMOVED BY DLO | [Signature] | | | |
| 4. 19.9.14 | OBIERO OMEDO | ID/NO. 16046825 | TRANSFER | [Signature] | | | |
| 5. 19.9.2014 | TITLE DEED | (Box 53 SARE) | ISSUED | [Signature] | | | |
| | | | | AS PER HIGH COURT DECREE IN CIVIL SUIT NO. 133 OF 2005 (06) OF 13/11/2009 AT KISUMU | | | |
| 6. 26.5.021 | GEORGE OTENO OBIERO | 12824870 | TRANSFER | [Signature] | | | |
| TITLE NUMBER | | P. 17, 0 | | REGISTRATION SECTION | | NORTH SAKWA/KAMASOGA | |
| | | | | PARCEL No | | 1193 | |

WASHINGTON
 1670338-01
 TITLE BELOW
 THIS LINE

→ COPY 1

THE BELTON
LAND CO.

| | | | |
|----------------------|-----------------|---------------------------|-----------------|
| EDITION | 1 | PART A - PROPERTY SECTION | NATURE OF TITLE |
| OPENED | 5.14.25 | LEASEMENTS ETC. | ABSOLUTE |
| REGISTRATION SECTION | WEST SMOULHURST | | |

| | |
|------------------------|--------|
| PARCEL NUMBER | 1193 |
| APPROXIMATE AREA | 0.5 Ha |
| REGISTRY MAP SHEET No. | 42 |

PART B - PROPRIETORSHIP SECTION

| ENTRY No. | DATE | NAME OF REGISTERED PROPRIETOR | ADDRESS AND DESCRIPTION OF REGISTERED PROPRIETOR | CLASSIFICATION AND RANKING |
|-----------|-----------|--|--|----------------------------|
| 7. | 26.5.201 | GERARD O'BRIEN | O'BRIEN ROAD SMOULHURST | 1st |
| 8. | 26.5.201 | TERRY JONES | SUB-DIVISION 1470 | 2nd |
| 9. | 25.9.2023 | PARCEL CLOSERS ON TOWN (02) PARCELS, 8TH RU 2945 & 2946. | | |

THIS IS A TRUE COPY OF THE ORIGINAL DATE: 11/11/25

| | | |
|--------------|----------------------|------------|
| TITLE NUMBER | REGISTRATION SECTION | PARCEL NO. |
|--------------|----------------------|------------|

Annexure 4

VACANCIES—PUBLIC SERVICE COMMISSION—(Contd.)

Trainee Vacancies in the Ministry of Agriculture:

Librarian (Trainee) (Two Posts) (No. 143/76)

Applicants must be in possession of the East African Advanced Certificate of Education or its equivalent which should include preferably science subjects at the principal level. They must have a keen interest in library and information dissemination in relation to Agriculture. The candidates selected for training will be required to work in the Ministry of Agriculture Library for at least six months or until training facility for the diploma course is secured.

The successful candidates will receive a Training Allowance of £399 per annum plus house allowance of Sh. 300 per month during the period of in-service training. The trainees will thereafter be sponsored for two years' diploma course in Librarianship on successful completion of which and being awarded a Diploma in Librarianship they will be eligible for appointment as Librarian II Job Group "H" i.e. £1,086 to £1,446 per annum.

GAZETTE NOTICE NO. 3737

THE LAND ACQUISITION ACT, 1968

(No. 47 of 1968)

NOTICE OF INTENTION TO ACQUIRE LAND

IN PURSUANCE of section 6 (2) of the Land Acquisition Act, 1968, I hereby give notice that the Government intends to acquire the following land for the South Nyanza Sugar scheme (Awendo Township Expansion) in South Nyanza District.

SCHEDULE

AWENDO TOWNSHIP EXPANSION

KAMASOGA SUB-LOCATION

| Plot No. | Registered Owner | Area to be Acquired in Hectares |
|----------|---|---------------------------------|
| 34 | Nyandete Ndengo | 3.2 |
| 35 | John Olatie | 2.0 |
| 36 | Kamulus Ochola Sidika | 0.44 |
| 37 | John Okwany | 0.38 |
| 38 | Abol Akomo | 1.2 |
| 39 | Oboro Omotin | 0.9 |
| 40 | Obat Omerio | 0.5 |
| 41 | S.N.C.C. (Reserved for Awendo Community Hall) | 0.18 |
| 42 | James Onyango Odera | 0.4 |
| 43 | Daniel Dida Oluoch | 1.0 |
| 44 | S.N.C.C. (Reserved for Awendo Seventh Day Adventist Church) | 9.6 |
| 45 | Andrea Amindo Nyakachunga | 12.4 |
| 51 | S.N.C.C. (Reserved for Awendo Water Point) | 0.45 |
| 104 | Awiti Ollio | 2.8 |
| 105 | Mbogo Ollio | 2.1 |
| 106 | Joseph Oduol Ollio | 2.2 |
| 107 | Petalis Ratipo Ollio | 1.5 |
| 108 | Daniel Owawa Ollio | 1.7 |
| 109 | Olodo Olodo | 1.7 |
| 110 | Obeyo Ollio | 2.6 |
| 111 | Ochome Sautia | 3.1 |
| 117 | S.N.C.C. (Reserved for Sare Coffee Society) | 0.7 |
| 118 | S.N.C.C. (Reserved for Sare Water Point) | 0.45 |
| 119 | Raywer Ninga | 1.7 |
| 212 | S.N.C.C. (Reserved for Awendo Water Pump) | 0.41 |
| 589 | John Olieko Acanda and R. Awuonda Olieko | 12.6 |
| 590 | Izge Obago | 0.36 |
| 1026 | S.N.C.C. (Reserved for Sare Muslim) | 0.12 |
| 1029 | S.N.C.C. (Reserved for Awendo-Pancreatic Church) | 0.14 |
| 1054 | John Mijungu Kisa | 0.17 |
| 1067 | John Eliud Ogutu Siraran | 1.70 |
| 1079 | Kusupko Group | 0.21 |
| 1080 | Nelson Orwa Obain and Kennedy Odueng Orwa | 0.60 |
| 1081 | Rosalina Nyakure | 0.18 |
| 1082 | Barack Owiro Sit and Rasud Sit | 0.23 |
| 1083 | Joab Oyangi | 1.2 |
| 1089 | John Aggrey Onjala | 0.09 |
| 1090 | James Onyango | 0.11 |
| 1091 | Siemen Ogunu Odera | 0.11 |

KAMASOGA SUB-LOCATION—(Contd.)

| Plot No. | Registered Owner | Approx. Area to be Acquired in Hectares |
|----------|--|---|
| 1092 | Festus Oguta Osoi and Elija Odongo Owiro | 0.23 |
| 1093 | Jairo Owino Odera | 0.49 |
| 1094 | Agazi Odera | 0.47 |
| 1095 | James Onyango | 0.5 |
| 1102 | Enaz Owino Opiyo | 0.6 |
| 1111 | Timotho Rayamo Okwach | 0.6 |
| 1114 | Phoebe Akinyi Odenyo | 0.07 |
| 1115 | Denis Ochere Owino | 0.09 |
| 1116 | Samuel Ondiege Okwach | 0.48 |
| 1117 | Salim Nyamwanda Okwach | 0.6 |
| 1118 | Vinlis Nyaisia Okwach | 0.7 |
| 1153 | Bernard Otieno | 0.05 |
| 1182 | Joel Orega Ayosi | 0.21 |

WAWARE SUB-LOCATION

| Plot No. | Registered Owner | Area to be Acquired in Hectares |
|----------|---|---------------------------------|
| 155 | Odoyo Ojambi | 6.0 |
| 156 | Fatuma Achieng | 3.2 |
| 157 | Odhiambo Odundo | 5.4 |
| 158 | Joseph Oduogo | 1.7 |
| 159 | Opiyo Oluoma | 6.0 |
| 161 | S.N.C.C. | 3.0 |
| 162 | S.N.C.C. | 0.14 |
| 163 | Barack Adno | 5.9 |
| 164 | Ismael Mijungu | 3.2 |
| 165 | Dalms Kawa Achacha | 3.6 |
| 166 | Washington Wagumba | 3.6 |
| 167 | Silvanus Opiyo Chacha | 2.3 |
| 167 | Okumbo Okwiri—1 share Okwiri Okwiri—1 share | 0.1 |
| 169 | Opany Okwiri | 1.4 |
| 171 | Nehemia Okinyi | 3.5 |
| 172 | Jeremia Kamala | 0.4 |
| 198 | Opere Odek | 1.8 |
| 199 | Andrea Angila | 1.3 |
| 200 | Odhiambo Dawo | 1.4 |
| 201 | Mijungu Ochala | 2.0 |
| 202 | Dawo Mijungu | 4.4 |
| 203 | Ronga Misweta | 1.2 |
| 204 | Mijungu Misweta | 1.4 |
| 205 | Otieno Misweta | 1.1 |
| 206 | Wagumba Misweta | 1.1 |
| 207 | Silvanus Misweta | 1.1 |
| 208 | Odwar Misweta | 1.4 |
| 209 | Mijungu Ochola | 0.9 |
| 299 | Okuma Oyler | 1.1 |
| 502 | John Wagumba | 0.1 |
| 525 | Miganda Madipi | 0.1 |
| 526 | Pius Arido | 7.0 |
| 592 | Aura Ojambi | 1.1 |
| 511 | Odongo Madipi—1 share Otieno Muganda—1 share | 1.1 |

WAIENDARA SUB-LOCATION

| Plot No. | Registered Owner | Area to be Acquired in Hectares |
|----------|-----------------------------------|---------------------------------|
| 138 | Joram Ogonduh | 1.1 |
| 139 | Christopher Akando | 1.1 |
| 422 | James Otieno Amamo Owiti Mamba | 1.1 |

Plans of the affected land may be inspected during office hours in the office of the Commissioner of Lands, Nairobi or District Commissioner's Office, Homa Bay.

Dated this 17th day of December, 1976.

J. R. NJENGE
Commissioner of Lands

A RNEK 11)

ANNEXURE 5
~~ANNEXURE 5.~~

NELSON ODUOR ONYANGO & 12 others v TOWN COUNCIL OF AWENDO [2009] eKLR



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
OF KISII

Civil Case 133 of 2005

NELSON ODUOR ONYANGO 1ST PLAINTIFF
MIJUNGU MISWETA..... 2ND PLAINTIFF
HEZRON OTIENO..... 3RD PLAINTIFF
ROSALINA NYAKURE 4TH PLAINTIFF
JAIRO OWINO ODERA 5TH PLAINTIFF
TIMOTHEO RAYAMO OKWACH 6TH PLAINTIFF
OBIERO OMEDO 7TH PLAINTIFF
ELIUD OGUTU SIRAMA 8TH PLAINTIFF
JOSEPH OMONDI RONGO 9TH PLAINTIFF
JAMES OMONDI ANINDO..... 10TH PLAINTIFF
JOSEPH ODIWUOR OCHOME 11TH PLAINTIFF
JOHN ONYANGO DAWO 12TH PLAINTIFF
CHARLES OBUNGA OKOMBO 13TH PLAINTIFF

VERSUS

TOWN COUNCIL OF AWENDO DEFENDANT

JUDGMENT

On 14th October, 2005 the plaintiffs filed Originating Summons brought under Order XXXVI rule 1 of the Civil Procedure Rules and urged the court to determine seventeen questions which relate to the following parcels of land:

- (a) Land Parcel No. North Sakwa/Kamasoga/46
- (b) Land Parcel No. South Sakwa/Waware/ 204

- (c) Land Parcel No. North Sakwa/Kamasoga/34
- (d) Land Parcel No. North Sakwa/Kamasoga/1081
- (e) Land Parcel No. North Sakwa/Kamasoga/1093
- (f) Land Parcel No. North Sakwa/Kamasoga/1111
- (g) Land Parcel No. North Sakwa/Kamasoga/1193
- (h) Land Parcel No. North Sakwa/Kamasoga/1067
- (i) Land Parcel No. South Sakwa/Waware/207
- (j) Land Parcel No. North Sakwa/Kamasoga/45
- (k) Land Parcel No. North Sakwa/Kamasoga/111
- (l) Land Parcel No. South Sakwa/Waware/202
- (m) Land Parcel No. South Sakwa/Waware/168

All the aforesaid parcels of the land shall collectively be referred to as "the suit lands."

The defendant claims to have acquired the suit lands by way of compulsory acquisition through the Government of Kenya. The court was asked to determine the following questions:

- "1. Whether the Government of Kenya
compulsorily acquired the above parcels
of land.**

- 2. Whether the said acquisition (if any) by
the Government of Kenya was for the sole
purpose of establishing the nuclear estate
for South Nyanza Company Limited
(hereinafter referred to as "SONY")**

- 3. Whether the Government upon acquisition
(if any) utilized the whole or part of the
said parcels of land.**

4. Whether Sony utilized only part of the said parcels of land leaving the balance which was unfit for the purposes of which the land was compulsorily acquired by the Government of Kenya.

5. Whether the unutilized portion of the above parcels of land reverts back to the original owners and/or their heirs or whether the original owners have rights over and above all others except the Government of Kenya.

6. Whether the respondent has any proprietary rights over and above the applicants in respect of the unutilized portions of the above listed parcels of land.

7. Whether the respondent acquired any proprietary rights from the Government of Kenya in respect of the unutilized portions in the above parcels through Gazettement.

8. Whether the respondent through its officers is guilty of fraudulent and unlawful dealings on the unutilized portions of the said parcels including irregular and unlawful subdivisions, allocations and allotments.

9. Whether the said dealings (if any) should be declared null and void and cancelled.

10. Whether the respondent and/or its
officials have any right or authority to
evict, demolish or interfere with the
applicants' properties and quiet
possession of the suit lands.

11. Whether the respondent has any right or interest over the suit property capable of being transferred to a third party.

12. Whether the applicants are the beneficial owners of the unutilized portions of the suit parcels of land and entitled to have the said interests registered as such at the relevant lands registry.

13. Whether an injunction should issue against the respondent by her self, her agents or workers preventing her from evicting, dispossessing or in any way interfering with the applicants' occupation, use and quiet enjoyment of the unutilized portions of the said parcels.

14. Whether the respondent should compensate the applicants for any losses incurred through her acts of destruction of the applicants' properties on the suit lands.

15. Whether a perpetual injunction should issue restraining the respondent and its agents or workers from interfering with the applicants' quiet possession and use of the suit lands.

16. Whether the respondent should pay costs of this suit.

17. That such orders may be issued by the court as may attain the ends of justice."

Each of the plaintiffs swore an affidavit in support of the originating motion. The contents of the affidavits are more or less the same.

The first plaintiff stated in his affidavit that he was one of the owners of a parcel of land known as **North Sakwa/Kamasoga/46**. The said parcel of land was registered in the names of **Amara Obat, Odang Obat, Samson Oloo Onyango** and himself (**Nelson Oduor Onyango**) with each of the registered proprietors owning one quarter share thereof. The land measured 12.4 Hectares. The said registration was effected on 31st August, 1976. On 24th September, 1976, the Government of Kenya through Gazette Notice No. 2996 compulsorily acquired the aforesaid parcel of land. The Gazette Notice referred to was issued by the Commissioner of Lands and

stated in part as hereunder:

"GAZETTE NOTICE NO. 2996

THE LAND ACQUISITION ACT 1968

(NO. 47 OF 1968)

NOTICE OF INTENTION TO ACQUIRE LAND.

IN PURSUANCE of section 6 (2) of the Land

Acquisition Act, 1968, I hereby give notice that

**the Government intends to acquire the
following land for the South Nyanza Sugar
Scheme in South Nyanza District:"**

In the Gazette Notice the registered owners of the ear marked parcels of land and the area or measurements of the parcels of land that were to be compulsorily acquired were set out. These were ancestral lands belonging to some local people in the said areas. The suit lands were to be acquired solely for the development and/or expansion of South Nyanza Sugar Company Limited (SONY) and not for any other purpose.

The first plaintiff deposed that out of the 12.4 hectares comprising North Sakwa/Kamasoga/46, only about 6.61 hectares were actually utilized for the said purpose and 6.70 hectares was never utilized and SONY does not require the remainder thereof.

The first plaintiff continued to occupy the unutilized portion of the suit land but the defendant attempted to evict him, claiming that it had acquired that land from the Government of the Republic of Kenya. The first plaintiff's contention was that he was still the beneficial owner of the unutilized portion of his ancestral land and the defendant has no proprietary interest over the same. He urged the court to make a declaration to that effect.

On 28th April, 2006 the defendant, through **Barnaba Kosgey**, the then Town Clerk, filed a replying affidavit to the aforesaid Originating Summons. He agreed that the Government of Kenya compulsorily acquired the suit lands for the purpose of development of SONY. He contended that when land is compulsorily acquired by the Government and parties are compensated as was the case herein, the rights of those who were hitherto private land owners become fully extinguished and the land remains state land. If there is any residue of the land after utilization for the purpose it had been acquired for by the Government, the residue thereof reverts to the Local Authority to hold in trust for the Government and the same cannot revert back to the original owners. He further stated that the suit lands are under the jurisdiction of the defendant who, by virtue of the provisions of the Constitution of Kenya and the Land Acquisition Act, has a better right over any residue thereof than any other party. The defendant's claim over the suit land is therefore lawful and the plaintiffs are busy bodies who are merely nursing the nostalgia of their extinguished rights, the deponent stated.

In his testimony before the court, the first plaintiff stated that he is living on the remaining portion of parcel No. 46. He produced a certified copy of the register as an exhibit. In the proprietorship section it is indicated that the Government of Kenya vide Gazette Notices Nos. 2996 of 24th September 1976 and 3737 - 8 of 24th December 1976 acquired the whole of the said parcel of land. He claimed that the defendant was alleging that it had acquired the remainder of the land through Gazette Notice No. 3737 of 24th December, 1976. He produced the said Gazette Notice which was issued by the Commissioner of Lands. A schedule was drawn for parcels of land that were to be acquired within Kamasoga sub-location, Waware sub-location and Waundaha Sub-Location. The first plaintiff said that plot No. 46 within Kamasoga sub-location was not among the parcels of land included in the aforesaid Gazette Notice. A perusal of the Gazette Notice confirms the first plaintiff's contention. He claimed that no enquiry was done before the Government purported to acquire a portion of the said land. He further stated that there was nothing to show that the

defendant had acquired any lawful interest over the remaining portion of the land. He wondered why the defendant had purported to have acquired the land and subdivided the same.

In cross examination by Mr. Kiseru for the defendant, the first plaintiff said that he had not sued the Government of Kenya in respect of its acquisition of his land. He conceded that the extract of the land register which he had produced in court showed that the Government took the entire parcel of land. He denied that the defendant was holding the remainder of the land on behalf of the Government of Kenya. He further conceded that in 1976 he was paid for the portion that was compulsorily acquired.

In re-examination, the first plaintiff stated that he was no longer living on the remaining portion of parcel No. 46 because his home was destroyed by the defendant. Thereafter the defendant subdivided the land into several plots and allocated them to various people. The Government did not give him a title deed for the portion that remained.

The second plaintiff was the registered owner of **Land Parcel No. South Sakwa/Waware/204**. He produced a copy of the title deed thereof. It showed that the approximate area of the land is 1.4 hectares. On the proprietorship section it is noted that the entire land was acquired by the Government vide Gazette Notice No. 3737 of 24th December, 1976. He however wondered how the defendant purported to have acquired the land from the Government since, according to him, the land had been acquired for the benefit of SONY. He also claimed that there was no enquiry made before the land was compulsorily acquired and there was no agreement on the amount of money that was paid as compensation. He further claimed that the defendant pushed him out of his land.

The third plaintiff, **Hezron Otieno**, claimed that he was the only son of **Nyadete Ndege** who was the registered proprietor of **North Sakwa/Kamasoga/34**. He conceded that the said parcel of land was listed in Gazette Notice No. 3737 of 24th December 1976 as one of the parcels of land that had been acquired by the Government for the SONY. He however insisted that the acquisition was not valid. He said that he was still residing on the land and the defendant was not entitled to it.

In cross examination, the third plaintiff said that at the time when he testified his mother was still alive and he did not have any power of Attorney issued by her enabling him to file the case and conduct it on her behalf. He also admitted that no suit had been filed against the Government in respect of the parcel of land.

The fourth plaintiff, **Rosalina Nyakure**, was the registered proprietor of **North Sakwa/Kamasoga/1081** measuring 0.18 hectares. According to the extract of the register which she produced as an exhibit, the Government of Kenya vide Gazette Notice No. 3738 of 24th December, 1976 acquired the whole of the said land. She however claimed that the defendant removed her from the land and no compensation was paid. The defendant had purported to allocate portions of the land to other people. She claimed that the defendant's action was illegal.

In cross examination, the fourth plaintiff stated that she did not have the title deed to the aforesaid parcel of land. She also conceded that she had not sued the Government challenging its acquisition of the said parcel of land.

The fifth plaintiff was the registered proprietor of **North Sakwa/Kamasoga/1093**. The said parcel of land appears on Gazette Notice No. 3737 of 24th December 1976 aforesaid. He alleged that he was not paid any compensation by the Government. He claimed that he was evicted from the land by the defendant.

In cross-examination, the fifth plaintiff said that he did not have any title deed to the said parcel of land and that he had been informed by the area Land Registry that a caution had been registered against the title. He also conceded that he had not sued the Government claiming any compensation.

The eighth plaintiff, **John Eliud Ogutu**, was the registered proprietor of parcel No. **North Sakwa/Kamasoga/1067**. The land measures 1.7 hectares. An extract of the title that was produced in court showed that the land was compulsorily acquired by the Government vide Gazette Notice No. 3738 of 24th December 1978. However, the eighth plaintiff said that he was not aware of such acquisition. He claimed that he was still in occupation of a portion of the land and the Government had not told him to vacate the same. However, the defendant had purported to subdivide the remaining portion of the land and allocate it to various people. He added that he had no claim regarding the portion of his land that was utilized by SONY in growing sugarcane.

The eighth plaintiff referred to a letter dated 29th February, 1976 that was written by the Chief Land Registrar to the District Land Registrar, Homa Bay. The letter referred to various complaints from people whose lands were compulsorily acquired for the benefit of SONY. They complained that they had not been issued with title deeds for the portions of lands that remained after the compulsory acquisition exercise. The Chief Land Registrar further stated that:

"Some of those remainder portions have been subdivided by the owners but mutations have not been registered by your office for reasons which are not clear. It is also alleged that some of the remainder portions have been allocated to third parties by the Commissioner of Lands despite the fact that the owners are in occupation.

Some of the parcels affected are numbers South Sakwa/Waware/170, 171,153,154,592,594, and 652, and also the land of the late Andrea Amindo (parcel No. North Sakwa/Kamasoga/45).

Please have this matter sorted out once

and for all in consultation with the
District Surveyor, Migori. In case you do
not have all the Gazette Notices
concerned, you should arrange to obtain
them from the Chief Valuer, Nairobi."

In cross-examination, the eighth plaintiff said that he was not aware of the compulsory acquisition cited in Gazette Notice No. 3738. He said that he did not receive any compensation from the Government. He further claimed that he was occupying the whole of his land but the defendant has been interfering with it. He alleged that the defendant burnt his home on 25th August 2008 and a report was made to the police.

The tenth plaintiff, **James Omondi Anindo**, said that he was bringing the claim as an heir of the late **Andrea Anindo Nyakachunga** who was the registered proprietor of **North Sakwa/Kamasoga/45**. The said parcel of land measures 13.4 hectares. He said that he had been living on the land since 1954 when he was born. In 2003 his family was forcibly evicted from the land by the defendant. He produced an extract of the title (green card) which showed that the Government acquired 2.802 acres vide Gazette Notice No. 6 of 5th January 1979 for purpose of construction of a road. A copy of the said Gazette Notice was produced as evidence. There is also a restriction that was registered on 18th April 1994 restricting all dealings on the land until the entire land is transferred to the Government as per Gazette Notice No. 3737 of 24th December 1976. In the said Gazette Notice the area shown as having been acquired by the Government is 13.4 hectares. The witness said that apart from the area measuring 2.802 acres which was acquired for purposes of construction of a road, his family continued to occupy the remaining portion of the land and his late father's grave is on that land. He complained that the defendant had unlawfully allocated portions of the remaining land to third parties. He produced a plot card which showed that the defendant had allocated **plot No. 203** to one **Elizabeth Nyamwaya** sometime in 1990. He urged the court to nullify Gazette Notice No. 3737.

In cross examination, the witness stated that his father died in 1977 but since then no letters of administration in respect of his estate had been obtained.

The defendant called one witness, **Josphat Ayonga**, the Town Clerk, DW1. He testified that the suit lands are held by the defendant in trust for the Government of Kenya, the suit lands having been compulsorily acquired. He referred to Gazette Notices Nos. 2996 of 24th September, 1976, 3346 of 5th November, 1976, No. 3737 of 24th December 1976 and 3738 of 24th December 1976. However, he did not produce the said Gazette Notices, he only produced extracts of the register in respect of the suit lands (Green Cards) which referred to those Gazette Notices. He said that all the previous owners of the suit lands were lawfully dispossessed of their lands following their compulsory acquisition by the Government.

The witness testified that any residue of the compulsorily acquired lands, that is, the portions that may have remained after attainment of the purpose for which the lands had been acquired, reverted to the Local Authority (the defendant). He cited the provisions of **section 119** of the **Constitution of Kenya**. He said that the Government

acquired the suit lands for the benefit of SONY and the plaintiffs had not shown that any portions of the acquired lands remained unutilized. But even if SONY was not using all the lands that had been compulsorily acquired by the Government, the plaintiffs could not claim any portions thereof as they had been fully compensated. He urged the court to dismiss the case.

In cross examination, DW1 said that he had no letter from the President to show that the unutilized portions of the suit lands were to revert to the defendant. He reiterated that the suit lands were acquired for purposes of establishing SONY. The witness said that he was not aware that any portions of the suit lands remained in occupation of the plaintiffs.

The witness was shown a copy of Gazette Notice No. 3737 and he conceded that it does not include parcel No. North Sakwa/Kamasoga/46 as one of the parcels of land that had been compulsorily acquired by the Government. However, the whole of that parcel of land was included in Gazette Notice No. 2996. The witness further stated that the defendant had no letter from the Commissioner of Lands or the Minister for Lands authorizing the defendant to evict the plaintiffs from the suit lands. He further stated that he was not aware that the defendant was allocating or selling parts of the suit lands. When the witness was referred to the plot card that had been produced as plaintiff's exhibit 12, he said that the defendant does not receive any money when it allocates plots within its jurisdiction. That notwithstanding, he maintained that the plaintiffs, having been fully compensated by the Government, should vacate the suit lands if they were still in occupation upon which the defendant will be free to allocate those lands. He added that if the plaintiffs wished to apply for such allocation, they will be considered among other applicants.

Mr. Nyasimi for the plaintiffs and Mr. Kisera for the defendant filed written submissions which I have taken into consideration and I need not summarize the contents of the same.

The concept of compulsory acquisition of private land is an exception to the constitutional protection of private property under section 75 of the Constitution of Kenya. Section 75 (1) thereof provides as hereunder:

"No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied –

- (a) the taking of possession or acquisition is necessary in the interests of defence, public safety, public order, public morality, public**

health, town and country planning
or the development or utilization of
property so as to promote the
public benefit; and

(b) the necessity thereof is such as to
afford reasonable justification for
the causing of hardship that may
resort to any person having an
interest or right over the property;
and

(c) provision is made by a law
applicable to that taking of
possession or acquisition for the
prompt payment of full
compensation."

The Land Acquisition Act Cap 295 sets out the law under which the Government may compulsorily acquire land for the public benefit. Under section 3 of the Act, whenever the Minister concerned is satisfied that a given parcel of land ought to be compulsorily acquired for a relevant public benefit, he causes a notice thereof to be published in the Kenya Gazette. A copy of the notice is delivered to every person who appears to be interested in the land.

Under section 6 (1) of the Act, the Minister has to be satisfied that the purpose of acquiring the land complies with the provisions of section 75 (1) (a) of the Constitution and also that the necessity thereof is such as to afford reasonable justification for the causing of any hardship that may result to any person interested in the land.

Those requirements are absolutely necessary. Such acquisition must be done in strict conformity with the constitutional provisions aforesaid and in absolute good faith. Where the minister is so satisfied he directs the Commissioner of Lands to acquire the land compulsorily. On receiving a direction from the Minister, the Commissioner of Lands causes a notice to be published in the Kenya Gazette and a copy thereof is served upon every person who appears to be

interested in the land. The Commissioner is under an obligation to pay full compensation to all persons whose land is so acquired.

It is not in dispute that the Commissioner of Lands published Gazette Notices Nos. 3737 on 24th December, 1976 and 2996 on 8th October, 1976.

The plaintiffs testified that the suit lands were not acquired in their entirety, only portions thereof that were utilized. Their contention was that the unutilized portions of the suit lands ought to have reverted back to them. The defendant's contention on the other hand was that the plaintiffs, having been fully compensated, their interests on the suit lands were extinguished and the remainder of the suit lands that were not taken by SONY became Government property and the defendant was holding the same in trust for the Government. The defendant cited the provisions of **section 119 of the Constitution**.

I do not think that section of the Constitution is applicable in this case because the suit lands did not form part of Trust Land as defined under **section 114 of the Constitution**. The suit lands had been demarcated and registered under the relevant provisions of the **Registered Land Act** in names of individuals. **Section 115 (1)** provides that all Trust Land shall vest in the County Council within whose area of jurisdiction it is situated. Under **section 118 of the Constitution**, where the President is satisfied that the use and occupation of the area of Trust Land is required for any purpose as specified in sub-section (2) thereof, he may, after consultation with the County Council concerned, give notice to the County Council that the land is required to be set apart for use and occupation for those purposes and the land is thereafter set apart accordingly. **Section 119** of the Constitution applies where the land so set apart is no longer required for purposes it was set aside for by the Government. Where that is the case the section requires that the President shall in writing notify the county council and thereupon the setting apart shall cease to have effect.

I have highlighted the provisions of **section 114, 115, 118 and 119 of the Constitution** to show that the defendant's contention that it is holding portions of the suit lands in trust for the Government of Kenya has no legal basis. Even if the suit lands were once part of Trust Land, upon the demarcation and registration of the same in the names of the plaintiffs, the land ceased to be under the jurisdiction of the local County Council and became private property. At the time when the Government compulsorily acquired the suit lands they were registered in the names of the plaintiffs and/or their family members.

Going back to the provisions of the **Land Acquisition Act**, **section 17** thereof states as follows:

"Where part only of the land comprised in documents of title has been acquired, the Commissioner shall, as soon as practicable, cause a final survey to be made of all the land acquired."

From the plaintiffs' evidence, the Chief Land Registrar wrote to the District Land Registrar, Homa Bay, on 29th February, 1996 and drew his attention to the provisions of **section 17** as quoted herein above. The plaintiffs testified that they remained in occupation of the portions of their respective lands that were not put under sugarcane growing by SONY. Majority of them claimed that they were later evicted by the defendant. They claimed that the defendant was allocating portions thereof to third parties. **Section 19 (4)** of the **Land Acquisition Act** provides that after taking possession of land that has compulsorily been acquired the land vests in the Government absolutely free from encumbrances. But here is a situation where the Government or SONY did not take possession of the entire parcels of land which it had compulsorily acquired but only took possession of parts thereof. The plaintiffs remained in occupation of the remainder. Between the plaintiffs and the defendant, who has a better claim over the remainder of the suit lands if the Government, the legal owner, is not interested in the same? Is it equitable for the defendant to evict the plaintiffs out of the land and cause the same to be subdivided and allocated to other people? I do not think so. Equity requires that the unutilized portions be surrendered back to the persons from whom the land was compulsorily acquired, even if they have to pay back a proportionate amount of the compensation sum that had been paid to them. It must be borne in mind that these were private properties that were compulsorily acquired by the Government for a particular purpose. The plaintiffs did not voluntarily choose to sell their ancestral lands to the Government. One of the plaintiffs testified that his late father was buried on the remainder of the land which he was still occupying. It is unconstitutional for the Government to compulsorily acquire a citizen's ancestral land, having paid minimal compensation, utilize only a portion of the land and then allocate the unutilized portion to other people. That is what the defendant is purporting to do, saying that it is holding the land in trust for the Government. In **MOHAMED – VS- COMMISSIONER OF LANDS & 4 OTHERS**, KLR (E&L) 217, Waki, J. (as he then was), was not persuaded that upon compulsory acquisition of land and the consequent vesting of that land in the Government, the land falls to be used by the Government in any manner it desires other than the purpose for which it was so acquired. He delivered himself thus:

"There is plainly no such *carte blanche* intended in the provisions of the law cited above. The land must be used, subsequent to the acquisition, for a lawful purpose, and as I see it, the only lawful purpose is the one for which it was intended."

In **MUNICIPAL COUNCIL OF SYDNEY –VS- CAMPBELL** [1923] AC 338, it was held that:

"A body such as the municipal council of Sydney, authorized to take land compulsorily for specified purposes will not be permitted to exercise its power for

different purposes, and if it attempts to do

so, the courts will interfere."

In my view, it is unacceptable that the plaintiffs are forced to sell their lands by the Government so as to establish SONY and later on the defendant forces them out of the unutilized portions so as to allocate the land to other people. I am not convinced that such allocation is done free of charge as DW1 wanted the court to believe. I do not know the basis upon which the defendant assumed any rights over the unutilized portions of the suit lands. It did not obtain any grant to itself from the Commissioner of Lands.

I will now proceed to determine the issues that were raised by the plaintiffs as hereunder:

1. Whether the Government of Kenya compulsorily acquired the suit lands.

The answer is definitely in the affirmative. I have already referred to the two Gazette Notices.

2. Whether the said acquisition was for the sole purpose of establishing the nuclear estate for SONY.

Yes, that was the purpose as clearly indicated in the Gazette Notices aforesaid and admitted by the defendant.

3 & 4 .Whether the Government upon acquisition

of the suit lands utilized all or part of the

aforesaid lands.

SONY did not utilize the suit lands in their entirety. Some parts were found to be unfit for sugarcane growing or were not put under sugarcane. The plaintiffs' contention to that effect was not challenged.

5. Whether the unutilized portion of the suit lands should revert back to the original owners and/or their heirs and/or whether the original owners have rights over and above all others except the Government of Kenya.

In my view, the unutilized portions of the suit lands should revert back to original owners. Other than the Government of Kenya, no other person has any better right over the unutilized portions than the original owners whom, I would state, have

equitable interest over the same.

6. Whether the defendant has any proprietary rights over and above the plaintiffs in respect of the unutilized portions of the suit lands.

The answer to this question is in the negative. The defendant sought to rely on the provisions of **section 119** of the **Constitution** to show that it is holding the land in trust for the Government but that was not proved. I have already determined that the above cited section of the Constitution cannot assist the defendant since this was not Trust Land.

7. Whether the defendant acquired any proprietary rights from the Government of Kenya in respect of the unutilized portions.

It was not demonstrated by the defendant that it acquired any proprietary rights from the Government of Kenya. There was no grant or any form of authorization from the Commissioner of Lands authorizing the defendant to move into the unutilized portions of the suit lands.

8 & 9. Whether the defendant through her officers is guilty of fraudulent and unlawful dealings with the unutilized portions.

Having said that the original owners of the suit lands have equitable rights over the unutilized portions of the suit lands, and having stated that the defendant did not acquire any proprietary rights over the same, I believe the defendant acted fraudulently in evicting the original owners from the unutilized portions of the land which they were still in occupation of. The defendant had no right whatsoever to subdivide the said lands and purport to allocate them to third parties. In the circumstances the defendant's dealings are null and void and are ordered cancelled.

10. Whether the defendant has any right to evict, demolish or interfere with the plaintiffs' properties and their quiet possession of the suit lands.

In view of what has been stated above, the defendant has no right to evict the original owners from the unutilized portions of the suit lands or interfere with their possession in any manner.

11. Whether the defendant has any right or interest over the suit lands capable of

being transferred to a third party.

The simple answer is no, a person cannot transfer that which he has no legal right over or authorization to transfer. If the defendant was to be allowed to do so, it would be enriching itself and benefiting third parties at the expense of the original land owners.

12. Whether the plaintiffs as the beneficial

owners of the unutilized portions of the

suit lands are entitled to have the same

interests registered.

Having established that the unutilized portions of the suit lands were found to be unsuitable for sugarcane farming and were not therefore occupied by SONY, and considering that **section 75 of the Constitution** requires that once land has been compulsorily acquired ought to be used for the designated purpose only, the original owners of the suit lands ought to be registered as the lawful owners of the unutilized parcels of the suit lands. Those parcels that were not utilized by SONY should be re-surveyed and title deeds thereof issued to the rightful persons by the area Land Registrar.

13 & 15. Whether an Injunction

should issue against the defendant

to restrain her from evicting,

dispossessing or in any way

interfering with the plaintiffs'

occupation of the unutilized

portions of the suit lands.

Since the plaintiffs and/or the original owners of the suit lands are the beneficial owners of those lands and the defendant has no rights over the same, an injunction ought to, and is hereby issued, restraining the defendant, her agents and/or servants from evicting, dispossessing or interfering with the plaintiffs' occupation, use and enjoyment of the unutilized portions of the suit lands.

14. Whether the defendant should

compensate the plaintiffs for any losses

**incurred through her acts of destruction
of their properties.**

I believe the original owners of the suit lands or their legal representatives are entitled to compensation by the defendant for the losses incurred through the defendant's acts of destruction of their properties. The plaintiffs may have to file appropriate cases and prove their losses before any compensation is paid to them.

16. Costs of this suit.

The defendant shall bear the costs of this suit.

DATED, SIGNED AND DELIVERED AT KISII THIS 13TH DAY OF NOVEMBER, 2009.

D. MUSINGA

JUDGE.

ANNEX 12

~~Annexure C~~

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012^(c)

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER: L. R. NO. 5046/10 - KILIFI

TITLE NUMBER: CR. 71563

AREA: 22.30 HA.

TENURE: **LEASEHOLD**
TERM: 999 YEARS
FROM: 1/5/1929
RENT: KSHS. 41,325/= P. A. (REV)

REGISTERED OWNER: **THE COAST DEVELOPMENT COMPANY LIMITED**

ENCUMBRANCE: NIL

S. N. Satta *407

REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

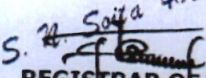
IN THE MATTER OF LAND ACT No. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER: L. R. NO. 5046/11 - KILIFI
TITLE NUMBER: CR. 71564
AREA: 1.520 HA.
TENURE: FREEHOLD
REGISTERED OWNER: **THE COAST DEVELOPMENT COMPANY LIMITED**
ENCUMBRANCE: TITLE CLOSED ON SUBDIVISIONS.

S. ²⁴ Soifa '407

REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012^(c)

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER: L. R. NO. 5046/14 - KILIFI

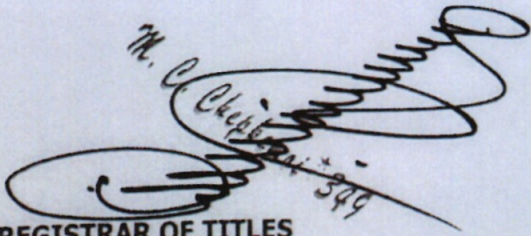
TITLE NUMBER: CR. 73536

AREA: 0.0281 HA.

TENURE: **LEASEHOLD**
TERM: 99 YEARS
FROM: 1/8/2018
RENT: KSHS. 620/= P. A. (REV)

REGISTERED OWNER: **THE COAST DEVELOPMENT COMPANY LIMITED**

ENCUMBRANCE: CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012^(c)

THE REGISTRATION OF TITLES ACT

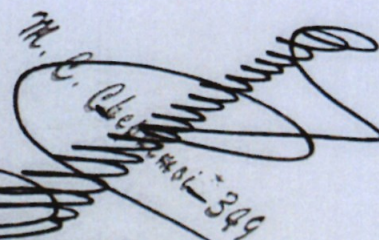
CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER: L. R. NO. 5046/15 - KILIFI
TITLE NUMBER: CR. 73537
AREA: 0.0293 HA.
TENURE: **LEASEHOLD**
TERM: 99 YEARS
FROM: 1/8/2018
RENT: KSHS. 630/= P. A. (REV)

REGISTERED OWNER: **THE COAST DEVELOPMENT COMPANY LIMITED**

ENCUMBRANCE: CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012[©]

THE REGISTRATION OF TITLES ACT



CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER: L. R. NO. 5046/16 - KILIFI
TITLE NUMBER: CR. 73538
AREA: 0.0386 HA.
TENURE: **LEASEHOLD**
TERM: 99 YEARS
FROM: 1/4/2018
RENT: KSHS. 830/= P. A. (REV)

REGISTERED OWNER: **THE COAST DEVELOPMENT COMPANY LIMITED**

ENCUMBRANCE: CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.



REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

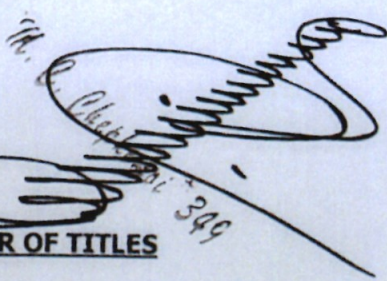
IN THE MATTER OF LAND ACT No. 6 OF 2012^(c)

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER: L. R. NO. 5046/17 - KILIFI
TITLE NUMBER: CR. 73539
AREA: 0.0405 HA.
TENURE: **LEASEHOLD**
TERM: 99 YEARS
FROM: 1/8/2018
RENT: KSHS. 970/= P. A. (REV)
REGISTERED OWNER: **THE COAST DEVELOPMENT COMPANY LIMITED**
ENCUMBRANCE: CAUTION DATED 9TH MAY, 2023 BY VICTORIA NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012©

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:

L. R. NO. 5046/18 - KILIFI

TITLE NUMBER:

CR. 73540

AREA:

0.0425 HA.

TENURE:

LEASEHOLD

TERM: 99 YEARS

FROM: 1/8/2018

RENT: KSHS. 925/= P. A. (REV)

REGISTERED OWNER:

THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE:

CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.

M. C. Akhavanani 349
REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012


IN THE MATTER OF LAND ACT No. 6 OF 2012^(c)

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER: L. R. NO. 5046/19 - KILIFI
TITLE NUMBER: CR. 73541
AREA: 0.0444 HA.
TENURE: **LEASEHOLD**
TERM: 99 YEARS
FROM: 1/8/2018
RENT: KSHS. 960/= P. A. (REV)
REGISTERED OWNER: **THE COAST DEVELOPMENT COMPANY LIMITED**
ENCUMBRANCE: CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012[©]

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

| | |
|--------------------------|--|
| PLOT NUMBER: | L. R. NO. 5046/20 - KILIFI |
| TITLE NUMBER: | CR. 73542 |
| AREA: | 0.0463 HA. |
| TENURE: | LEASEHOLD TERM: 99 YEARS FROM: 1/8/2018 RENT: KSHS. 1,000/= P. A. (REV) |
| REGISTERED OWNER: | THE COAST DEVELOPMENT COMPANY LIMITED |
| ENCUMBRANCE: | CAUTION DATED 9 TH MAY, 2023 BY VICTORIA NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST. |

S. N.
REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT NO. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/21 - KILIFI

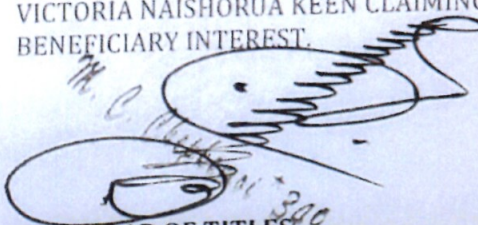
TITLE NUMBER : CR. 73543

AREA : 0.0482 HA.

TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: kshs.1,040/= P.A. (REV)

REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT NO. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/22 - KILIFI

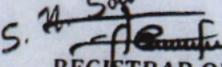
TITLE NUMBER : CR. 73544

AREA : 0.0501 HA.

TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.1,080/= P.A. (REV)

REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.

S. N. Soita 407

REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT NO. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/24 - KILIFI

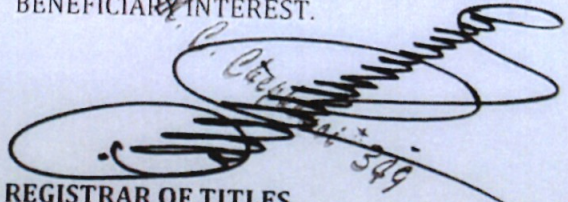
TITLE NUMBER : CR. 73546

AREA : 0.0446 HA.

TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.960/= P.A. (REV)

REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT NO. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/25 - KILIFI

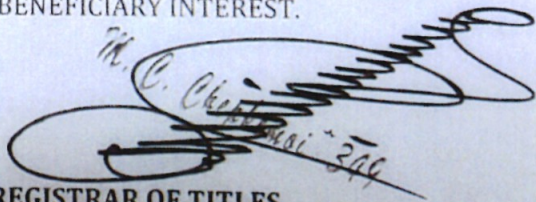
TITLE NUMBER : CR. 73547

AREA : 0.0450 HA.

TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.970/= P.A. (REV)

REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT NO. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/26 - KILIFI

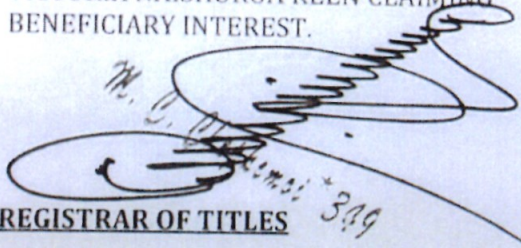
TITLE NUMBER : CR. 73548

AREA : 0.0450 HA.

TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.970/= P.A. (REV)

REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES 3/19

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT NO. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/27 - KILIFI

TITLE NUMBER : CR. 73549

AREA : 0.1543 HA.

TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.3,330/= P.A. (REV)

REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012[©]

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER: L. R. NO. 5046/28 - KILIFI

TITLE NUMBER: CR. 73550

AREA: 0.0969 HA.

TENURE: **LEASEHOLD**
TERM: 99 YEARS
FROM: 1/8/2018
RENT: KSHS. 2,090/= P. A. (REV)

REGISTERED OWNER: **THE COAST DEVELOPMENT COMPANY LIMITED**

ENCUMBRANCE: NIL

S. N. Soita 407

REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT NO. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/29 - KILIFI

TITLE NUMBER : CR. 73551

AREA : 0.0677 HA.

TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.1,460/= P.A. (REV)

REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT NO. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/30 - KILIFI


TITLE NUMBER : CR. 73552

AREA : 0.0410 HA.

TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.885/= P.A. (REV)

REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT NO. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/32 - KILIFI

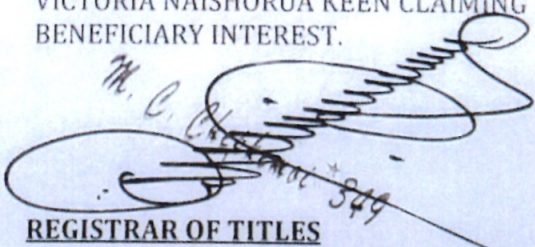
TITLE NUMBER : CR. 73554

AREA : 0.0422 HA.

TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.910/= P.A. (REV)

REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES

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REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT NO. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/34 - KILIFI

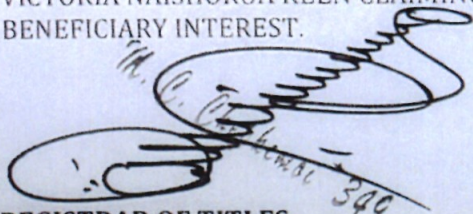
TITLE NUMBER : CR. 73556

AREA : 0.0594 HA.

TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: kshs.1,280/= P.A. (REV)

REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES 349

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012©

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER: L. R. NO. 5046/35 - KILIFI

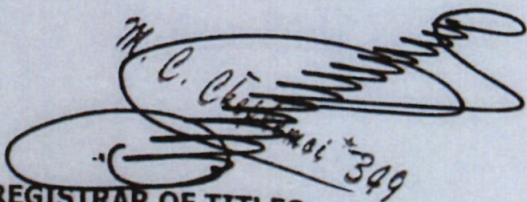
TITLE NUMBER: CR. 73557

AREA: 0.0450 HA.

TENURE: **LEASEHOLD**
TERM: 99 YEARS
FROM: 1/8/2018
RENT: KSHS. 920/= P. A. (REV) W.E.F 1/4/2019

REGISTERED OWNER: **COAST DEVELOPMENT COMPANY LIMITED**

ENCUMBRANCE: CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012^(c)

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER: L. R. NO. 5046/36 - KILIFI

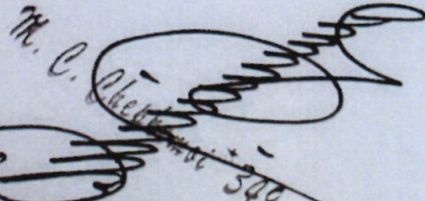

TITLE NUMBER: CR. 73558

AREA: 0.0450 HA.

TENURE: **LEASEHOLD**
TERM: 99 YEARS
FROM: 1/8/2018
RENT: KSHS. 920/= P. A. (REV)

REGISTERED OWNER: **THE COAST DEVELOPMENT COMPANY LIMITED**

ENCUMBRANCE: CAUTION DATED 9TH MAY, 2023 BY VICTORIA NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.



REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012©

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:

L. R. NO. 5046/37 - KILIFI

TITLE NUMBER:

CR. 73559

AREA:

0.0437 HA.

TENURE:

LEASEHOLD

TERM: 99 YEARS

FROM: 1/8/2018

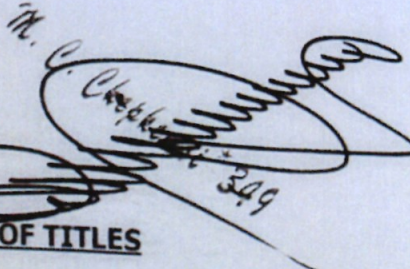
RENT: KSHS. 940/= P. A. (REV)

REGISTERED OWNER:

THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE:

CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT NO. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/33 - KILIFI

TITLE NUMBER : CR. 73555

AREA : 0.0342 HA.

TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: kshs.740/= P.A. (REV)

REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES

Annexure 7

REPUBLIC OF KENYA
IN THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012
IN THE MATTER OF LAND ACT NO. 6 OF 2012
THE REGISTRATION OF TITLES ACT
CAP.281 (REPEALED)

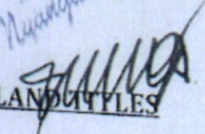
CERTIFICATE OF POSTAL SEARCH AS ON 21ST FEBRUARY, 2024

PLOT NUMBER : PLOT NO. 7 GROUP V - KILIFI
TITLE NUMBER : LT. 45, FOLIO 475, FILE 15284
AREA : 172.80 ACRES
TENURE : FREEHOLD
REGISTERED OWNER : WAKF OF KHADIJA BINTI SULEIMAN EL-BUSAIDY

ENCUMBRANCES : CAVEAT DATED 21ST APRIL, 1965 BY
AG. REGISTRAR OF TITLES MOMBASA
CLAIMING OWNERSHIP BY COMPULSORY
ACQUISITION BY VIRTUE OF GAZETTE NOTICE
NO.1298 OF 1865 - 7.20 ACRES.

CAVEAT DATED 4TH NOVEMBER, 1965 BY
EAST AFRICAN POWER & LIGHTING CLAIMING
A GRANT OF EASEMENT.

CAVEAT DATED 2ND FEBRUARY, 1965 BY
AG. REGISTRAR OF TITLES ON BEHALF OF
GOVERNMENT OF KENYA CLAIMING OWNERSHIP
BY COMPULSORY ACQUISITION OF 2.83 ACRES
BEING PORTION OF PLOT 7 GROUP V BY VIRTUE
OF GAZETTE NOTICE NO.72 OF 1966

J. Njiraguwa

REGISTRAR OF COAST LAND TITLES



NATIONAL LAND COMMISSION

**RESPONSE TO THE PUBLIC PETITIONS COMMITTEE
REGARDING VARIOUS PETITIONS**

*Macalder.
Land.*

REPORT BY:

GERSHOM OTACHI BW'OMANWA

CHAIRMAN

4TH OCTOBER 2023

Honourable Chairperson and Committee Members, pursuant to a letter Ref. KNA/DLPS/PPETC/CORR/2023/197 dated 18th September, 2023, where the National Land Commission (NLC) was requested to report on the following: -

1. Public petition No. 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of lease of Macalder Mines Ltd Land;
2. Public petition No. 10 of 2023 regarding resettlement of residents of Muthanga Farm;
3. Public petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest; and
4. Public petition No. 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council.

Honourable Chairperson, we wish to respond as follows: -

1. Petition on Delayed adjudication and settlement of Squatters after the expiry of lease of Macalder Mines Ltd Land;

Hon Chairperson, facts gathered during the visit indicate that Macalder Mines Ltd, a Canadian company, started mining in that area in 1933. According to the locals, the Canadian company mapped out specific areas for mining and displaced the locals from those areas. However, the company allowed the locals to settle in adjacent areas with conditions to obtain permits from Macalder Mines Ltd. Some of the conditions in the permits included;

- The locals were not supposed to cultivate more than five (5) acres of land.
- The locals were not supposed to keep more than sixteen (16) heads of cattle.

According to the locals, when the lease expired around 1970, they moved in claiming it as their ancestral land.

The Current Situation

The current status on the ground is as follows:

- i. The residents occupy the largest portion of the land where they have built residential houses and also cultivated crops for subsistence. Some dwelling houses have been constructed with permanent materials but the majority are with semi-permanent materials (mud wall and corrugated iron sheets). Some individuals also keep cattle, sheep and goats.
- ii. There is Nyatike market which was planned and the resultant plots allocated to individuals by the defunct County Council of Migori. The entire block constituting the perimeter of the whole market is surveyed, but we could not

authenticate from the County Government whether the individual plots are surveyed.

- iii. There is a catholic mission complex which comprises the church, convent and offices. The mission complex is surveyed but we could not confirm whether their interest is registered.
- iv. There are old mines on the parcel. Adjacent to these old mines are old residential buildings which appear to have been the dwelling places of those who were managing the mines. The mines are still in the state where they were left by the Canadians, they have not been rehabilitated.
- v. On this parcel is a central Government Housing Scheme under the Ministry of Land Housing & Urban Development.
- vi. There are also sub county Administration offices. Next to these offices are the Residential quarters for the Sub County Administrators. There is also a police station and police lines to the North.
- vii. There is an Airstrip to the North Eastern part of the parcel.
- viii. There is a primary school almost to the central part of the whole land.

Observations

- i. Arising from the land records, it was noted that there is a reservation for Macalder Township which was registered on 11th November, 1941 and therefore adjudication as requested by the Honourable Member of Parliament may not be the procedure for regularization of settlement.
- ii. The land records also reveal that the parcel is registered in favour of South Nyanza County Council, whose successor in law is now the County government of Migori.
- iii. **There is need to regularize ownership for local inhabitants/individuals settled on the ground.** There are also public institutions on the land which need to be regularized by way of documentation of ownership.

Recommendation

The subject matter under petition will be effectively addressed in a participatory manner in consultation with all stakeholders. The following processes in the prioritized order can be implemented in regularizing ownership;

- i. A public participation forum be organized for all stakeholders on the subject land and all the views be collected and collated.
- ii. Census/Enumeration of bonafide squatters/institutions/allotees by the County government to determine genuine beneficiaries. This is done with the help of government administrators and community leaders.

- iii. Proper planning is done within the parcel. Topographical maps and Registry map sheets should be used to prepare a development plan. The plan will show plot location, approximate sizes and users of various plots.
- iv. Development plan is subjected to stakeholder's forum for adoption. The plan together with the list of beneficiaries are then forwarded to the County Assembly for approval.
- v. Cadastral Survey is done to determine the sizes of resultant sub plots according to the development plan.
- vi. Presentation of formal request from the County to the National Land Commission for Processing
- vii. Verification and validation of owners
- viii. Preparation of Letters of Allotment
- ix. Acceptance and Payment of levies as stipulated in the letters of allotment.
- x. Processing of titles/ Certificates of Leases .

It must be emphasized that since the land is vested in the County Government of Migori, it will be the initiator and key player in this process, with the support of the Ministry of Lands and the Commission.

Hon Chairperson, the Commission remains committed to assist in processing of ownership documents within our mandate.

2. Petition on Resettlement of Residents of Muthanga Farm;

Hon Chairperson, the dispute is between the current occupants who claim to have been living on the farm and Muthanga Farm Company Limited shareholders who purchased the land from government and subsequently issued with titles deeds.

The confrontation between squatters and Law enforcers during efforts to execute court orders necessitated an urgent solution to the problem.

The office of the President through the Ministry of Interior and Coordination of the National Government stepped in to look at the matter.

The Principal Secretary Internal Security constituted a Multi Agency Committee to review the matter and submit a report for action. The Multi Agency team comprised of the State Department of Internal Security and National Administration, State Department of Lands and Physical Planning, County Government of Murang'a, Political Representatives at the Constituency and Ward levels, Representatives of Muthanga Farm Limited, Representatives from Royal Capital Holding Limited and the National Land Commission.

Hon Chairperson, the National Land Commission therefore being a party to the ongoing efforts to resolve the matter as spearheaded by Ministry of Interior awaits adoption and communication of final recommendations to inform implementation by the Committee.

3. Petition on Declaration of Mukutani Forest as a Public Forest;

Hon Chairperson, the National Land Commission states that while considering the petition checked its records of any correspondence from the then Ministry in charge of Forestry nor Kenya Forest Service as anticipated under Section 31(2) of Forest Conservation and Management Act, 2016 leading to Legal Notice No. 265 of 27/10/2017 regarding gazettelement of Mukutani Forest. The Commission affirms that its records do not have details of involvement in the gazettelement of Mukutani Forest.

Hon Chairperson, the Commission opines that the matter is better handled by direct involvement of the Ministry in charge of Forest and the respective County Government involving all relevant stakeholders/residents.

4. Petition on illegal acquisition of private land by the defunct Awendo Town Council;

Hon Chairperson, the National Land Commission states that while considering the petition it was informed by the Court of Appeal ruling at Kisumu (Civil Appeal No 161 of 2010) in which Town Council of Awendo appealed against a judgement delivered at Kisii High Court Civil Suit No 133 of 2006 (*Detailed Judgement annexed*).

The Decree by the High Court and confirmed by the Court of Appeal is to the effect that the original owners of the suit land ought to be registered as the lawful owners of the unutilized parcels of the suit land and that unutilized parcels be re-surveyed and title deeds thereof issued to the rightful persons by the area Land Registrar.

Hon Chairperson in view of the above, the implementation of the decree is ideally by the Director of Survey and the Chief Land Registrar who are officers of the Ministry of Lands. However, since the County Government of Migori is the Successor to Awendo Town council which was involved in the litigation, any challenges in implementing the Decree should be addressed jointly by the County and the Ministry.

Honourable Chairperson and Committee Members, I submit.



**GERSHOM OTACHI BW'OMANWA
CHAIRMAN**

4th October, 2023

ANNEX (13)



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: ONYANGO OTIENO, AZANGALALA & KANTAI JJ.A)

CIVIL APPEAL NO. 161 OF 2010

BETWEEN

TOWN COUNCIL OF AWENDO APPELLANT

AND

NELSON ODUOR ONYANGO, MIJUNGU MISWETA,

HEZRON OTIENO, ROSALINA NYAKURE,

JAIRO OWINO ODERA, TIMOTHEO RAYAMO OKWACH,

OBIERO OMEDO, ELIUD OGUTU SIRAMA,

JOSEPH OMONDI RONGO, JAMES OMONDI ANINDO,

JOSEPH ODIWUOR OCHOME,.....1ST – 13TH RESPONDENT

ATTORNEY GENERAL14TH RESPONDENT

(Appeal from the judgment and/or decree of the High Court of Kenya at Kisii

(Musinga, J) dated 13th November, 2009

in

KISII HIGH COURT CIVIL SUIT NO. 133 OF 2006 (OS))

JUDGMENT OF THE COURT

The genesis of the entire saga that has ended up in this appeal before us is pieces of land which originally belonged to various respondents herein, on the basis of various claims and which, in order to enable **South Nyanza Sugar Company** expand its nuclear scheme were acquired by the Government under the **Land Acquisition Act No. 47 of 1968** pursuant to **Gazette Notice No. 2996**. The same

Gazette Notice made specific the purpose for which the same pieces were acquired. It stated:-

“Gazette Notice No. 2996

The Land Acquisition Act 1968 No. 47 of 1968.

Notice of intention to acquire land. In pursuance of Section 6

(2) of the Land Acquisition Act, 1968, I hereby give notice

that the Government intends to acquire the following land for

the South Nyanza Sugar Scheme in South Nyanza District.”

The same Gazette Notice set out the registered owners of each of the same pieces of land, the area or sizes of the various parcels that were to be acquired. Almost all the people affected were local people from the area and most of those people were living on their respective pieces of land. That Gazette Notice was of 24th September, 1976. Later, vide another Gazette Notice dated 24th December, 1976, Gazette Notice No. 3737, most pieces were acquired. Most of those pieces of land were in **Kamasoga** and **Waware areas of North Sakwa**. They were as follows:-

- (a) *Land parcel No. North Sakwa/Kamasoga/46 registered in the name of the first respondent, Nelson Oduor Onyango,*
- (b) *Land Parcel No. South Sakwa/Waware/204 registered in the name of Mijungu Misweta, the second respondent,*
- (c) *Land parcel No. North Sakwa/Kamasoga/34 registered in the name of the third respondent, Hezron Otieno,*
- (d) *Land parcel No. North Sakwa/Kamasoga/1081 registered in the name of the fourth respondent, Rosalina Nyakure,*
- (e) *Land parcel No. North Sakwa/Kamasoga/1093 registered in the name of Jairo Owino Odera, the fifth respondent,*
- (f) *Land parcel No. North Sakwa/Kamasoga/1111 registered in the name of Timotheo Rayamo Okwach, the sixth respondent,*
- (g) *Land parcel No. North Sakwa/Kamasoga/1193 registered in the name of Obiero Omedo, the seventh respondent,*
- (h) *Land parcel No. North Sakwa/Kamasoga/1067 registered in the name of Eliud Ogutu Sirama, the eighth respondent,*
- (i) *Land parcel No. South Sakwa/Waware/207 registered in the name of Joseph Omondi Rongo, the ninth respondent,*

(j) Land parcel No. North Sakwa/Kamasoga/45 registered in the name of James Omondi Onindo, the tenth respondent,

(k) Land parcel No. North Sakwa/Kamasoga/111 registered in the name of Joseph Odiwuor Ochome, the eleventh respondent,

(h) Land parcel No. South Sakwa/Waware/202 registered in the name of John Onyango Dawo, the twelfth respondent,

and (m) Land parcel No. South Sakwa/Waware/168 registered in the name of Charles Obunga Okombo, the thirteenth respondent.

After the Gazette Notices acquiring the above parcels had been issued and South Nyanza Sugar Company had acquired and utilised whatever portion it wanted for the expansion of its scheme, parts of the pieces above remained unutilised by the same company. The evidence in the record shows that some of the respondents continued to live on some parts of the land parcels and were not disturbed by South Nyanza Sugar Company in respect of the parts that the same company did not require for the purposes of their expansion. However, the appellant in this appeal the **Town Council of Awendo**, which is a local authority established under the *retired Local Government Act*, and which is the local authority established near Sony Sugar Scheme area, was allegedly attempting to evict the respondents on the basis that the land acquisition was for purposes of its expansion and on the basis that as the land had been acquired under the **Land Acquisition Act**, none of it was any longer the property of the respondents and thus it required the respondents to vacate their various remaining portions and it is in evidence that it started allocating those parcels to third parties albeit temporarily. This did not go well with the respondents who felt that as South Nyanza Sugar Company in favour of which the land was acquired did not use the parts they occupied, the appellant had no legal right to take over such parcels and to evict them from the same pieces of land.

The respondents lodged their complaints with the **Chief Land Registrar**. The record shows that the 8th respondent was one of the complainants to the Chief Land Registrar. In response, the Chief Land Registrar in a letter reference **No. GEN/A/I VOL V/107** dated 29th February, 1996, addressed to the District Land Registrar Homa Bay stated as follows:-

RE: COMPULSORY LAND ACQUISITION FOR VARIOUS

PROJECTS IN SOUTH NYANZA.

I refer to your letter SN/LR/92/4 dated 29th June, 1994 on the above matter.

I have received complaints from people whose lands were compulsorily acquired in part for nuclear estate of South Nyanza Sugar Company Limited to the effect that they have not been issued with their titles for the portions of those lands that remained for them after the acquisition. Some of those remainder portions have been subdivided by the owners but the mutations have not been registered by your office for reasons which are not clear. It is also alleged that some of the remainder portions have been allocated to third parties by the Commissioner of Land despite the fact that the owners are in occupation.

Some of the parcels affected are numbers South Sakwa/Waware/170, 171, 153, 154, 592, 594 and 652 and also the land of the late Andrea Anindo (parcel number North Sakwa/kamasoga/45).

Please have this matter sorted out once and for all in consultation with the District Surveyor Migori. In case you do not have all the Gazette Notices concerned, you should arrange to obtain them from the Chief Valuer, Nairobi.

Please give the exercise top priority and advise us of the progress you make in the matter.

F.R.S. ONYANGO

Chief Land Registrar."

That letter was copied to the Permanent Secretary Ministry of Lands and The Commissioner of Lands among others. The record before us does not show any reaction from the then District Land Registrar Homa Bay. But from the affidavits in

the record sworn by each respondent, the appellant, The Town Council of Awendo, took over the control of the pieces of land that were not utilised by the the South Nyanza Sugar Company Ltd and as the letter says, it started allocating it to third parties and evicting the respondents on the pretext that as the parcels had been acquired by the Government, the original owners no longer had any claim on any part of it unused by the original intended beneficiaries and particularly because the original owners had allegedly been compensated for the pieces of land. The respondents complained to the Ministry of Local Government which in turn, apparently contacted the Town Clerk, Awendo Town Council on the matter.

As no satisfactory results were received by the respondents, they moved to the High Court - *Civil Case No. 133 of 2005 (O.S)*. This was filed pursuant to **Order XXXVI rule 1** of the **Civil Procedure Rules** and all other enabling provisions of law and **Section 3A** of the **Civil Procedure Act**. Even though the entire Originating Summons is lengthy , yet because of its importance, we do reproduce it below. It reads:-

"LET AWENDO TOWN COUNCIL, within 15 days of the service of this Summons upon it enter an appearance when the council which claims to have acquired title to the following parcels of land namely:-

(i) Land parcel No. North Sakwa/Kamasoga/46.

ii) Land parcel No. North Sakwa/Kamasoga/204.

- iii. Land parcel No. North Sakwa/Kamasoga/34.
- iv. Land parcel No. North Sakwa/kamasoga/1081.
- v. land parcel No. North Sakwa/Kamasoga/1093.
- vi. Land parcel No. North Sakwa/Kamasoga/1111.
- vii. Land parcel No. North Sakwa/Kamasoga/1193.
- viii. Land parcel No. North Sakwa/Kamasoga/1067.
- ix. Land parcel No. South Sakwa/Waware/207.
- x. Land parcel No. North Sakwa/Kamasoga/45.
- xi. Land parcel No. North Sakwa/Kamasoga/111.
- xii. Land parcel No. North Sakwa/Waware/202.
- xiii. Land parcel No. South Sakwa/Waware/168.

By compulsory land acquisition through the Government of Kenya for the determination of the following questions:-

1. *Whether the Government of Kenya compulsorily acquired the above parcels of land.*
2. *Whether the said acquisition (if any) by the Government of Kenya was for the sole purpose of establishing the nuclear estate for South Nyanza Company Limited (Hereinafter referred to as "Sony.")*
3. *Whether the Government upon acquisition (if any) utilised the whole or part of the said parcels of land.*
4. *Whether Sony utilised only part of the said parcels of land leaving the balance which was unfit for the purposes for which the land was compulsorily acquired by the Government of Kenya.*
- (5) *Whether the unutilised portion of the above parcels of land reverts back to the original owners and/or their heirs or whether the original owners have rights over and above all others except the Government of Kenya.*
- (6) *Whether the respondent has any proprietary rights over and above the applicants in respect of the unutilised portions on the above listed parcels of land.*
7. *Whether the respondent acquired any proprietary rights from the Government of Kenya in respect to the unutilised portions in the above parcels through Gazettement.*
8. *Whether the Respondent through its officers is guilty of fraudulent and unlawful dealings on the unutilised portions of the said parcels including irregular and unlawful subdivisions, allocations and allotments.*
9. *Whether the said dealings (if any) should be declared null and void and cancelled.*
10. *Whether the Respondent and/or its officials have any right or authority to evict, demolish or interfere with the Applicants' properties and quiet possession of the suit land.*
11. *Whether the Respondent has any right or interest over the suit property capable of being transferred to a third party.*
12. *Whether the Applicants are the beneficial owners of the unutilised portions of the suit parcels of land and entitled to have the said interest registered as such at the relevant lands registry.*
13. *Whether an injunction should issue against the Respondent by herself, her agents or workers preventing her from evicting, dispossessing or in any way interfering with the Applicants' occupation, use and quiet enjoyment of the unutilised portions of the said parcels.*
14. *Whether the Respondent should compensate the Applicants for any losses incurred through her acts of destruction of the Applicants' properties on the suit lands.*
15. *Whether a perpetual injunction should issue restraining the Respondent and its agents or workers from interfering with the Applicants' quiet possession and use of the suit lands.*
16. *Whether the Respondent should pay costs of this suit.*
17. *That such orders may be issued by the court as may attain the ends of justice."*

The respondents cited eight grounds in support of the Originating Summons, a summary of these grounds is that the respondent has no proprietary rights over the subject land parcels; that the attempted eviction of the respondents from the suit parcels is illegal and unlawful; that, the Government never utilised the entire acreage of any of the suit parcels of land; that the appellant was intending to fraudulently and unlawfully subdivide the unutilised portions of the suit land so as to allocate them or dispose of them to third parties; that the respondents were bound to suffer irreparable losses if the intended evictions, subdivisions and allotments that were planned by the appellants were not quashed or prohibited; that the respondents had lived on the suit land for over thirty (30) years and they had their homes, some permanent homes and fences on the suit land, and that the respondents' ancestors, parents and their other kin were buried on the same land. Further, the originating summons was also buttressed by affidavits sworn by each respondent to which were annexed exhibits including documents of title in each case and a letter dated 26th May 2004, addressed to the appellant's Town Clerk by the Permanent Secretary Ministry of Lands. In our view, all the thirteen affidavits were in substance the same in that each of the thirteen respondents on the main claimed to be the registered owner to one of the parcels in dispute; gave its registration number; stated how the appellant had through its employees trespassed on to his/her land parcel and that the Government acquired the whole portion of the registered land through **Land Acquisition Act** but subsequently the portions remained unutilised by South Nyanza Sugar Company for whose expansion the subject land was acquired and briefly stating his/her prayers to the court. As we have stated, other than the different names of the respondents, the different parcel numbers which are and must in such cases be different, the contents of the affidavits are in essence the same.

On being served with the summons, the appellant filed a Notice of Preliminary Objection in which it claimed that the entire summons was bad in law and incurably defective as the matter was subjudice before that court and that the summons was an abuse of the process of the court and contravened mandatory provisions of the law and lastly, that the same is misconceived. That Notice of Preliminary Objection was filed on 26th April, 2006. In the replying affidavit sworn by the then clerk to the appellant, Mr. Barnaba Kosgey, the appellant deponed in brief that it was conceded that the Government of Kenya compulsorily acquired the suit parcels of land in whole for the agreed purpose of the development of South Nyanza Sugar Company Limited; that once the compensation is paid to the original owner in such a situation where the land is compulsorily acquired, the rights of the owner to such a piece of land are wholly extinguished and the subject land remains that of the Government; that where there is any residue of land after the purposes is satisfied and thus after utilisation of such land by the Government, such residue would revert to the Local Authority to hold in trust and the same land would never revert to the original owner as the rights of such original owner had been extinguished; that pursuant to the provisions of the Constitution and Land Acquisition Act, the Appellant in the circumstances has better title to such residues and that being so, he contended that the Appellant has better rights to the residues and the respondents were busy bodies.

When the Originating Summons came up for directions, it does not appear that the Preliminary Objections filed together with Replying affidavit, was pursued. The parties, by consent agreed to treat the originating summons and all the supporting affidavits as plaint and the replying affidavit as defence and thus the hearing to proceed by way of *Viva voce* evidence in open court.

After hearing seven witnesses for the respondents and one witness for the appellant and considering written submissions filed by the learned counsel for both the appellant and the respondents, the learned Judge (*Musinga, J. as he then was*), in a lengthy judgment dated and delivered on 13th November, 2009, granted the main orders sought by the respondent. The learned Judge in doing so answered each and every question posed by the originating summons answering each and every question on its own. On the main issue of the situation as regards whether the respondents were

entitled to have the unutilised portions of the suit land registered in their names, the learned Judge stated:-

“Having established that the unutilised portions of the suit lands were found to be unsuitable for sugar cane farming and were not therefore occupied by SONY, and considering that Section 75 of the Constitution requires that once land has been compulsorily acquired ought to be used for the designated purpose only, the original owners of the suit lands ought to be registered as the lawful owners of the unutilised parcels of the suit land. Those parcels that were not utilised by SONY should be re-surveyed and title deeds thereof issued to the rightful persons by the area Land Registrar.”

Coupled with that order, the learned Judge also issued injunction order in these terms:-

“Since the plaintiffs and/or the original owners of the suit lands are the beneficial owners of those lands and the defendant has no rights over the same, an injunction ought to, and is hereby issued restraining the defendant, her agents and/or servants from evicting, dispossessing or interfering with the plaintiffs occupation, use and enjoyment of the unutilised portions of the suit land.”

The learned Judge was also of the view that the respondents were entitled to compensation by the appellant for the losses incurred through the appellant's acts of destruction of the respondents properties, but that is the furthest he went and rightly so because the issue of compensation was not fully pleaded and fully canvassed before him. As we have stated, the learned Judge considered each question posed by the originating summons and made a finding on each. We have reproduced the two findings above as we deem them as the final orders made on the matter that could be executed.

The appellant felt aggrieved by the entire decision and hence this appeal before us premised on five grounds which are:-

“1. That the learned trial Judge erred in finding that the acquisition of the suit parcels of lands was not meant for the benefit of the appellant contrary to the Gazette Notices.

2. That the learned trial Judge erred in finding in favour of the respondents without taking into account the fact that the Government which acquired the said parcels was never made a party to this suit.

3. That the learned trial Judge erred in finding in favour of the respondents in a claim that was statutorily time barred and therefore the court had no jurisdiction to entertain the claim.

4. That the learned trial Judge erred entertaining (sic) the suit brought by way of originating summons when the issues involved are not suitable for determination by way of originating summons.

5. That the learned trial Judge's finding was against the weight of evidence,”

Mr. Kisera, the learned counsel for the appellant in his address to us referred us to *page 112* of the record where a gazette notice No. 3737 is annexed and invited us to observe that that gazette notice says that the acquisition of the suit parcels was for the expansion of the appellant and thus the finding that the acquisition was only for the expansion of the South Nyanza Sugar Company Limited is not, according to Mr. Kisera altogether proper. On the second ground, Mr. Kisera submitted that in so far as

the Government was not made a party, the respondents' Originating Summons could not succeed as the lands, on acquisition, reverted to the Government and that being so the Government was a necessary party for the success of the suit. On third ground, Mr. Kisera stated that the originating summons was filed in October, 2005 and was for a claim of land which was allegedly acquired in 1977 and the suit was time barred. He however conceded that this complaint was not raised in a proper way before the trial court and was not an issue properly raised and argued before the trial court but he maintained that as it was a point of law this Court could still go over the record and deliberate on it. On the fourth ground Mr. Kisera's take was that, as there was need to adduce proper evidence and full pleadings the matter should have proceeded by way of a plaint and defence, and on the last point he argued i.e the fifth ground he submitted that the entire decision was against the weight of evidence that was before the court as though the learned Judge found that the residue of the acquired land should revert to the respondents yet there was no evidence adduced as to what was the residue or unutilised land that could revert to the original owners. He urged us to allow the appeal.

Mr. Maroro, the learned counsel who represented the office of the Attorney General opposed the appeal. He submitted that it was true that the various pieces of land were acquired under the **Land Acquisition Act** for purposes of South Nyanza Sugar Scheme. In one of the Gazette Notices, Awendo Town Council is entered in brackets and that was to him because South Nyanza Sugar Scheme was not separated from Awendo Township. There was a residue and the appellant had admitted that much. However, Mr. Maroro, stated, there was nothing on the record to show that the Government had given the remaining portions to the appellant and under the Constitution, the residue would revert to the original owners of the land as there was nothing to show that the residue or whatever unutilised portions of the various land parcels were handed over to the appellant by the Government. He asked us to dismiss the appeal.

Mr. Nyasimi, the learned counsel for the respondents also opposed the appeal contending that after the Government had acquired the parcels of land in dispute through **Land Acquisition Act** and fenced off the land required, some portions remained and this was admitted by the appellant. This was after the purpose of the acquisition had been realised. There was nothing to show that Government handed over this land to the appellant, and according to Mr. Nyasimi, the Chief Land Registrar, in his letter we have reproduced herein above agreed that the unutilised parcels should have been surveyed and the original owner given his/her title respectively. Instead, the appellant started claiming the subject parcels and started allocating them to various third parties thereby leaving the original owners with nothing. He submitted that as the Government did not do wrong to the respondents, they could not join the Government in the suit. He further submitted on the issue of limitation that the Originating Summons did touch on limitation and the affidavit of the appellant which was treated as statement of defence also did not touch on the issue of limitation and thus in law it is not an issue in dispute. On whether the procedure adopted by the court in handling the originating summons was proper, Mr. Nyasimi argued that the parties accepted the procedure and the originating summons was treated as plaint whereas the replying affidavit was treated as statement of defence and that was proper in law. As to the claim that the land parcels in question were not identifiable, Mr. Nyasimi's take was that the learned Judge of the High Court had directed that the subject land parcels be resurveyed before title deeds were issued and that took care of that claim.

In reply, Mr. Kisera felt that as the Government of Kenya was not joined as a party the Originating Summons was defective and he felt it was unfortunate that Mr. Maroro for the Attorney General should have stated that the Government was comfortable. He again urged us to allow the appeal.

We have anxiously considered the evidence that was before the High Court together with the exhibits that were produced at the trial in that court. We have considered, again anxiously, the judgment

rendered by the High Court, the grounds of appeal, the able submissions by the Counsel on both sides of the divide for which we feel indebted to them and finally we have also considered the law. It is not in doubt that the subject parcels of land were originally registered either in the names of the respondents or in the names of those from whom they would in law claim legal interests in their properties. It is also, not in dispute that the subject pieces of land were acquired by the Government pursuant to the **Land Acquisition Act 1968 Act NO. 47 of 1968** Laws of Kenya and there were more than one Gazette Notices through which each of them were acquired. The respondents maintained that the various parcels were acquired for the sole purpose of expansion of South Nyanza Sugar Company (SONY) Scheme and although Mr. Kisera in his submissions before us says in support of his first ground of appeal that the learned Judge erred in finding that the acquisition of the suit parcels of lands was not meant for the benefit of the appellant, that contention is contradicted by the only witness called by the appellant, **Josphat Ayonga** the then Town Clerk of the Town Council of Awendo who said in his evidence in chief.

"The Government acquired the parcels of land for South Nyanza

Sugar Company,

Even if SONY is not using the lands, the plaintiffs cannot claim the land,"

and said in cross examination that :-

"The lands were taken for purposes of establishing SONY."

We shall revisit this aspect later in this judgment when we will be discussing the grounds of appeal each of which we intend to consider in turn.

As the matter before us, is in essence touching on the right to property, the proper starting point when considering it is the Constitution of Kenya at the relevant time, *ie the retired Constitution Section 75* of that Constitution provided as follows:-

'No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied:-

(a) the taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of property so as to promote the public benefits; and

(b) the necessity thereof is such as to afford reasonable justification for the causing of hardship that may resort to any person having an interest or right over the property; and

(c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation."

Pursuant to the provisions above, *Land Acquisition Act Chapter 295* Laws of Kenya was enacted. The preamble to that Act stated:-

“An Act of Parliament to make provision for the compulsory acquisition of land for the public benefit.

(underlining provided)

Section 3 of the same Act gave the Minister power if satisfied that the need for acquisition of some land was likely to arise under the provisions of **Section 6**, to direct, a Gazette Notice to be published by the Commissioner of Lands of that impending acquisition and affected parties would be served with a copy of that Gazette Notice and under **Section 6**, the Minister is directed to consider certain specific circumstances before he directs the Commissioner of Lands to issue notices for the acquisition of such parcels of land. **Section 17** and **18** of the **Act** dealt with what happens where part only of the parcel is acquired leaving a part remaining **Section 17** states:-

“Where part only of the land comprised in document of title has been acquired, the Commissioner shall, as soon as practicable, cause a final survey to be made of all the land acquired.”

Section 19 deals with taking of possession and vesting of the acquired land in the Government and stipulates upon the land so acquired being vested in the Government, a notice that possession of the land has been taken and that the land has vested in the Government and a notice to that effect has to be served upon all registered proprietors of the land. We observe that in this case no such notices were exhibited by either party. But as that was not made an issue before us, we will not belabor it. Each of the respondents gave evidence to the effect that after acquisition of their lands, part of their lands remained which apparently was not surveyed as was required vide **Section 17** of the **Land Acquisition Act** and thus the respondents remained on those parcels now in dispute. This in effect means that the Government did not in practice take the whole of the land acquired through the various Gazette Notices and equally South Nyanza Sugar Company Limited for whose benefit the land was being acquired also did not utilise the acquired land fully. There remained parts of the acquired land which were not surveyed notwithstanding the letter from the Chief Land Registrar we have reproduced herein above, and on which the respondents continued to live. The appellant, under the pretext of being a local authority in the area and on the assumption that the unutilised parcels of land were Trust land, assumed authority over the same land, and according to the evidence on record started removing the respondents who were physically on the land to give room for its own expansion and also started allocating to third parties either parts or whole of those parcels of land.

We think we have, in our capacity as the first appellate Court on this appeal analysed the matters that were before the High Court to a fairly detailed extent and we now revert to the grounds of appeal each of which as we have stated, we will discuss in turn.

We have, to an extent considered the first ground. The first Gazette Notice No. 2996 states in its preamble as follows:-

“THE LAND ACQUISITION ACT 1968

(NO. 47 OF 1968)

NOTICE OF INTENTION TO ACQUIRE LAND IN

PURSUANCE of Section 6 (2) of the Land Acquisition Act

**1968, I hereby give notice that the Government intends to
acquire the following land for the South Nyanza Sugar
Scheme in South Nyanza District.”**

That Gazette Notice leaves no doubt that the land acquisition was for South Nyanza Sugar Scheme. The second Gazette Notice was No 3737. It stated in its preamble as follows:-

“THE LAND ACQUISITION ACT 1968

(NO. 47 OF 1968)

NOTICE OF INTENTION TO ACQUIRE LAND

IN PURSUANCE OF SECTION 6 (2) of the land

Acquisition Act 1968. I hereby give Notice that the

Government intends to acquire the following land

for the South Nyanza Sugar Scheme (Awendo

Township Expansion) in South Nyanza District.”

That in our view meant that the main purpose for acquiring land was South Nyanza Sugar Scheme and that Awendo Township expansion was within the sugar scheme complex. Several land parcels fell in this category. Gazette Notice No. 6 of 5th January 1979, did not mention Awendo Town Council and stated that the purpose for the acquisition was the South Nyanza Sugar Roads in South Nyanza. We have looked at the Gazette Notices on the record before us and we are unable to find out one that says the purpose of the acquisition was meant for the benefit of the appellant. Indeed if that were so nothing would have stopped the Government, once it acquired the same parcels to allocate all of them to the the appellant for its control. Further in its affidavit sworn by its then Town Clerk, Barnaba Kosgey, to which we have referred above, the appellant readily admitted at paragraph 4 and 5 that the purpose of the acquisition of the subject parcels of land was for the development of South Nyanza Sugar Company Limited. Hear him:-

“4. *That the applicants have all admitted that the Government of Kenya compulsorily acquired the suit parcels of land in whole.*

5. *That, the purpose is also agreed to have been for Development of South Nyanza Sugar Co. Ltd.”*

That was a clear admission by the then clerk to the council who was the person in custody of its assets and all matters pertaining to land that the parcels were acquired for purposes of development of South Nyanza Sugar Company Limited. At paragraphs 6 and 7 of that affidavit, Mr. Kosgey explained the basis of the appellant's claim to the residue or the unutilised portions of the acquired land. He does not claim at any stage that the land was acquired for the development of the appellant council. That affidavit was by consent, at the time of directions treated as defence and thus this ground is in effect complaining against a position that the learned trial Judge had no alternative but to take as the appellant never offered any evidence to the effect that the disputed parcels were acquired for the development of

the Town Council of Awendo. In fact Mr. Josphat Ayonga, the only witness called by the appellant and who, as we have said was its Town Clerk later when the case was heard said that the land in dispute was held by the appellant in trust for the Government of Kenya. His further evidence was that the land reverted to the appellant merely because it was the local authority within which the compulsorily acquired land was situate. He also stated categorically as we have stated elsewhere as follows in his evidence in chief:-

"The Government acquired the parcels of land for South Nyanza Company,"

and agreed as we have stated that the lands were taken for purposes of establishing SONY. Indeed he conceded that he had no authority in writing from the Commissioner of Lands or the Minister authorising the appellant to evict the plaintiffs.

We have considered the first ground of appeal at great length, but we cannot see any merit in it. The mere fact that in Gazette Notice No. 3737 the name of the appellant was included in brackets as we have stated only meant that South Nyanza Sugar Company Scheme would include the appellant as it was in proximity within the area covered by the scheme and did not mean it was beneficiary of the compulsory acquisition.

The second ground is in our view also not tenable. The Government acquired the land parcels for the benefit of South Nyanza Sugar Company. The company did not utilise all the parcels acquired for its purposes. The Government through the Chief Land Registrar wrote to the District Land Registrar way back, in fact some nine years before the originating summons was filed, indicating that it was alive to the respondents' complaints and appreciated the same. It did not stand in the way of the respondents getting their unutilised portions back. That being the case, much as it would have been legally more clinical, particularly for purposes of execution of court orders, for the Government to be made a party, the respondents had no claims against the Government.

On the contrary, it was the appellant which needed to have it joined as a party for it was the appellant which was claiming through the Government as it was stating that it had a right to hold onto residues that resulted from the compulsory acquisition as according to it the same land was trust land, (*which we agree with the learned Judge was a misconception*), and it was the local authority in whose geographical area the residue fell therefore it had a right to control it. It was the appellant who needed the Government for its success. We do not see how the appellant's case cannot succeed on account of non inclusion of Government as a party. In any event, before us, Mr. Maroro, representing the Attorney General asked us to dismiss the appeal thereby disowning the appellant's claim. We are not persuaded that non inclusion of the Government renders the Originating Summons so defective as to warrant the Originating Summons being quashed and the appeal being allowed.

The third ground claims that the suit was statutorily time barred. This complaint is being raised for the first time in this appeal. We have perused the appellant's replying affidavit which was treated as defence when directions were taken on the Originating Summons and limitation was not raised in that affidavit. We have perused carefully the proceedings and questions put in cross examination to the respondents' witnesses and there is no indication that that issue of limitation was being canvassed. We have lastly perused the appellant's written submissions in the High Court and that issue of limitation is not raised anywhere. The law, as spelt out in **Order 2 Rule 4 (1)** of the **Civil Procedure Rules** is clear, that the defence of limitation must be pleaded before a party can rely on it and before a court of law can entertain it. That rule states:-

"4 (1) A party shall in any pleading subsequent to a plaint plea specifically any matter, for

example performance, release, payment, fraud, inevitable accident, act of God, any relevant statute of limitation or any fact showing illegality:

(a) Which he alleges makes any claim or defence of the opposition party not maintainable....

(b)
.....
.....

(c) Which raises issues of fact not arising out of the proceeding pleading.”

But even if it were not a matter specifically required to be pleaded before it is canvased still, the fact that it was not pleaded is fatal, particularly as the issue was never canvased and left to the court to decide upon. In the case of Galaxy Paints Co. Ltd vs Falcon Guards Ltd (2000) EA 885 this Court held:-

“The issue of determination in a suit generally flowed from the pleadings and a trial court could only pronounce judgment on the issues arising from the pleadings or such issues as the parties framed for the court’s determination. Unless pleadings were amended, parties were confined to their pleadings. Gandy v Caspair (1956) EACA 139 and Fernandes v People Newspapers Ltd (1972) EA 63 considered.”

That is the law. In cases where parties have canvassed the issue and left it to the court, the court can pronounce judgment on it though it was not pleaded. This was the holding in the case of Odd Jobs vs Mubia (1970) EA 476, where it was held:-

“A court may base its decision on unpleaded issue if it appears from the course followed at the trial court that the issue has been left to the court for decision.”

In the matter before us the issue of limitation was not pleaded as the law requires pursuant to Order 2 Rule 4 (1) we have cited above, neither was it pleaded in general even if the law had not required it to be pleaded and in any case it was not canvased in the course of trial and left to the court to decide upon. That being the case how would one find fault with the trial court" Where would one find fault with" He heard the case to its completion and pronounced judgment without the appellants raising limitation at all. The ground cannot succeed and must be and is hereby rejected.

The fourth ground is again a non starter. It complains that the learned Judge erred in entertaining the suit brought by way of Originating Summons when issues involved were not suitable for determination by way of Originating Summons. The reason why we say it is a non starter is because the record speaks for itself. The matter was commenced by way of Originating Summons for whatever reasons. But the record shows that immediately the matter was placed before Deputy Registrar, for mention, the Originating Summons was fixed for directions on 29th March, 2006. On that day the originating summons was placed before *Bauni J. (as he then was)* but directions could not be taken because the appellant was absent and had not filed replying affidavit though it had filed Memorandum of Appearance. The matter was adjourned and came up for directions on 4th July, 2006. On that day both Mr. Nyasimi for the respondents who were the applicants and Mr. Kisera for the appellant which was the respondent then, appeared before *Bauni J. (as he then was)* and Mr. Nyasimi informed the learned

Judge that the matter was for directions and that both of them requested that the parties do give *viva voce* evidence. Mr. Kisera responded to that by saying “**That is so.**” Upon that consent by the two, the learned Judge made an order as follows:-

“Order Parties to give viva voce evidence. Applicant to be referred to as plaintiff and respondent as defendant. The O.S. and supporting affidavit be regarded as plaint and replying affidavit as defence. Parties to get a date.”

Pursuant to that, the matter now as a complete suit with plaint and defence was fixed for hearing by the parties for 29th November, 2006 and the hearing indeed started on that day. Under that scenario, it is difficult to appreciate why the appellant could not mount a full hearing as is done in respect of a plaint and a defence. In any case, if the appellant felt the issues involved could not be determined by way of Originating Summons which was already a plaint, why did he not seek to file a further or supplementary affidavit to boost his defence in the matter” We say no more on that ground.

The last ground is not clear, but on our own and having analysed and evaluated the evidence that was before the High Court, we have no reason to accept that the judgment was against weight of evidence. Mr. Kisera submitted on this that there was no evidence of unutilised portions as there had been no survey of what was allegedly the residues. We find an answer to this in the learned Judge's order which reads as follows:-

“Having established that the unutilised portions of the suit lands were found to be unsuitable for sugarcane farming and were not therefore occupied by SONY, and considering that Section 75 of the Constitution requires that once land has been compulsorily acquired ought to be used for the designated purpose only, the original owners of the suit land ought to be registered as the lawful owners of the unutilised parcels of the suit land. Those parcels that were not utilised by SONY should be re-surveyed and title deeds thereof issued to the rightful persons by the area Land Registrar.”

In short, much as the sizes of the unutilised parcels of land in dispute are as yet not clear, the owners are known and some of them are the respondents, and as the utilised land is known, a re-survey of the unutilised parcels will reveal the real sizes and the respondents will each be registered as appropriate. This would not be a difficult task, nor would it be a matter of law if the entire parcels had been registered and their acreages known and were cited in the relevant Gazette Notices. It would be a surveyor's duty to resurvey the residues and have the original owners registered as appropriate.

We think we have said enough to indicate that this appeal cannot succeed. It lacks merit and is hereby dismissed with costs to the respondents.

Judgment accordingly.

Dated and Delivered at Kisumu this 18th day of October, 2013.

J.W. ONYANGO OTIENO

.....

JUDGE OF APPEAL

F. AZANGALALA

.....
JUDGE OF APPEAL

S. ole KANTAI

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR



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TAWS

| | | | | |
|---|--|---|--|--|
| EDITION: 1 | | PART A - PROPERTY SECTION | | NATURE OF TITLE ABSOLUTE |
| OPENED: 19/2/82 | | EASEMENTS ETC. | | |
| REGISTRATION SECTION MOHURU KADEM/ MACALDER | | RESERVED FOR MACALDER TOWN SHIP : PLAN REGISTERED | | |
| PARCEL NUMBER 498 | | ON THE 11.11.1941 (49/48). | | |
| APPROXIMATE AREA 2167.5 Ha. | | | | |
| REGISTRY MAP SHEET No. 55, 12, 13, 14, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 33, 34, 35, 40, 41, | | | | |

| PART B - PROPRIETORSHIP SECTION | | | | |
|---------------------------------|---------|-------------------------------|--|---------------------------|
| ENTRY No. | DATE | NAME OF REGISTERED PROPRIETOR | ADDRESS AND DESCRIPTION OF REGISTERED PROPRIETOR | CONSIDERATION AND REMARKS |
| 42, 43. | | | | |
| 1 | 19/2/82 | SOUTH NYANZA COUNTY COUNCIL | P.O. HOMA BAY | |
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CERTIFIED AS
 A TRUE COPY OF
 THE ORIGINAL
 DATE 2/5/2024
 BY [Signature]

Kalamazoo
767038-611
TITLE BELOW
THIS LINE

| | | |
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| TITLE NUMBER | REGISTRATION SECTION MOHURU KADEM/MACALDER | PARC 4 |
|--------------|---|-----------|

TAWIS

PART A PROPERTY SECTION

NATURE OF TITLE

ABSOLUTE

EASEMENTS

EDITION: 1

OPENED: 19/2/82

REGISTRATION SECTION

MOHURU KADEM/
MACALDER

PARCEL NUMBER
498

APPROXIMATE AREA
2167.5 Ha.

REGISTRY MAP SHEET NO.

55, 12, 13, 14, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 33, 34, 35, 40, 41

RESERVED FOR MACALDER TOWN SHIP PLAN REGISTERED

ON THE 11.11.1941 (49/48)

PART B - PROPRIETORSHIP SECTION

CONSIDERATION AND REMARKS

ADDRESS AND DESCRIPTION OF REGISTERED PROPRIETOR

NAME OF REGISTERED PROPRIETOR

P.O. HOMA BAY

SOUTH NYANZA COUNTY COUNCIL

DATE

19/2/82

ENTRY NO.

1

SEE TITLE DEED FOR THE ORIGINAL REGISTERED PROPRIETOR

Kalamazon
767038-61
TITLE BELOW
THIS LINE

REGISTRATION SECTION

MOHURU KADEM/MACALDER

TITLE NUMBER

PARC

ENCUMBRANCES SECTION

FURTHER PARTICULARS

| TRX No. | DATE | NATURE OF ENCUMBRANCE | FURTHER PARTICULARS |
|---------|----------|-----------------------|---|
| | 29.7.09 | LEASE | TO CERTIFIC KENYA LTD FOR A TERM OF 10 YRS W.E.F. 1/2/2005. LENT LEAS 60,000/= REV. TO KENYA TOWERS LIMITED FOR A TERM OF 6 YEARS WEF 1/2/2005 RENT: 116,000/= P.A. (KENYA) BZEJ AREA: 150M ² |
| | 26.7.016 | LEASE | |

CERTIFIED AS A TRUE COPY OF THE ORIGINAL BY DATE: 2/12/2005

PART C ENCUMBRANCES SECTION

| TRY 101 | DATE | NATURE OF ENCUMBRANCE | FURTHER PARTICULARS |
|------------|---------|--------------------------|--|
| | 29.7.09 | LEASE | TO CENTER KENTIA LTD FOR A TERM OF 10 YRS W.E.F. 1/2/2005. RENT 1CRHS 60,000/2 REV. TO KENTIA TOWERS LIMITED FOR A TERM OF 6 YEARS WEF 1/2/20 RENT: 116,000/- P.A. (REVISABLE) AREA: 150M ² |

CERTIFIED
 A TRUE COPY
 OF THE ORIGINAL
 DATE: 11/5/2011

TAMS

EDITION: 1
OPENED: 19/2/82

REGISTRATION SECTION

MOHURU KADEM/
MACALDER

PARCEL NUMBER
498

APPROXIMATE AREA
2167.5 Ha.

REGISTRY MAP SHEET NO.

42, 43.

ENTRY NO.

DATE
19/2/82

1

NAME OF REGISTERED PROPRIETOR
SOUTH NYANZA COUNTY COUNCIL

ADDRESS AND DESCRIPTION
OF REGISTERED PROPRIETOR
P.O. HOMA BAY

CONSIDERATION
AND REMARKS

PART B - PROPRIETORSHIP SECTION

PART A PROPERTY SECTION

EASEMENT

RESERVED FOR MACALDER TOWN SHIP : PLAN REGISTERED
ON THE 11.11.1941 (49/48)

NATURE OF TITLE

ABSOLUTE

CERTIFIED TRUE COPY OF THE ORIGINAL
DATE 19/2/82

REGISTRATION SECTION

MOHURU KADEM/MACALDER

TITLE NUMBER

Kalamazoo
767038-611
TITLE BELOW
THIS LINE

NACALDER

AMTEX (14)



REPUBLIC OF KENYA

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN
DEVELOPMENT

RESPONSES TO THE NATIONAL ASSEMBLY PUBLIC PETITION COMMITTEE

Honourable Chair,

Pursuant to the letters Ref. KNA/DLPS/PPETC/CORR/2023/193 dated September 18, 2023, the Committee invited the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development to respond to the following public petitions:

- i. Petition regarding declaration of Mukutani Forest as a public forest
- ii. Petition regarding delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub-Locations, Tezo Location-Kilifi North Constituency
- iii. Petition on delayed adjudication and settlement of squatters after the expiry of lease of Macalder Mines Limited land.

1. **PETITION REGARDING DECLARATION OF MUKUTANI FOREST AS A PUBLIC FOREST**

The Petition

The petition dated July 4, 2023 presented on behalf of residents of Baringo County mainly challenges Legal Notice No. 265 dated October 27, 2017 issued by the then Cabinet Secretary for Environment and Natural Resources declaring Mukutani Forest as a public forest under the Forest Management and Conservation Act, 2016. The main contention is that there was no public participation in the process of gazetting the forest. The said area is occupied by three (3) communities namely Pokot, Tugen and Ilchamus. According to the petitioners, the designation of the area as a forest poses an existential threat to the communities and requires urgent intervention to avert further conflict.

The petitioners request the Committee to:

- i) find that the process leading to declaration of Mukutani Forest as a public forest was done in brazen and egregious contravention of the Constitution and Forest Conservation and Management Act, 2016

- ii) recall the decision of the then Cabinet Secretary for Environment and Natural Resources contained in Legal Notice No. 265 dated 27/10/2017, interrogate the same and order that fresh exercise towards declaration of the alleged forest named Mukutani Forest to be undertaken by the Cabinet Secretary, the Board of Kenya Forest Service, the National Land Commission and all relevant stakeholders

Response

Honourable Chair,

Mukutani Forest was gazetted as a public forest vide Legal Notice No. 265 of 2017 and it covers part of Mukutani Location. It measures approximately 13,195.8 Hectares as shown in the Boundary Plan. No. 175/437 marked **annexure 1**. However, by the time of gazettment, the Ministry had already declared the area as an adjudication section as per the notice dated February 18, 2016 marked **annexure 2**. Due to insecurity in the area demarcation and recording of rights had not commenced. There have been communal conflicts between residents of Mukutani location and the neighbouring Arabal location.

Residents of both Arabal and Mukutani locations complain that their views were not sought when the forest was gazetted despite the area covering what the two communities consider as their community land. Those from Arabal location also view the forest as a hideout for cattle rustlers who continue to torment them and take refuge in the forest and they feel that if proper consultations were done and all the locations involved, then issues regarding its existence would not be in contest and measures of proper protection would have been put in place to allay their fears.

Honourable Chair,

The Forest Conservation and Management, Act No. 34 of 2016 at section 30 classifies categories of forests as follows:

“Section.30 Classification of forests

(1) Forests may be classified as public, community or private forests.

(2) Public forests include—

(a) public forests classified under Article 62 (1)(g) of the Constitution; and

(b) forests on land between the high and low water marks classified under Article 62 (1)(1) of the Constitution”

Section 31 of the Act prescribes the procedure for creation and management of public forests as follows:

“31. Creation and management of public forests

(1) All public forests in Kenya are vested in the Service, subject to any rights of user in respect thereof, which by or under this Act or other written law, have been or are granted to any other person.

(2) The Cabinet Secretary may, on the recommendation of the Board and after consultation with the National Land Commission declare through a Gazette notice any un-alienated public land or any land purchased or otherwise acquired by the Service to be a public forest.”

Honourable Chair,

According to our records, Mukutani Forest falls on former Trust land which transitioned to community land under the Constitution of Kenya, 2010 and the Community Land Act, 2016.

2. PETITION REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MISUFINI, VIBANDANI AND KIBARANI SUB-LOCATIONS, TEZO LOCATION-KILIFI NORTH CONSTITUENCY

The Petition

The petitioners described as residents of Misufuni, Vibandani and Kibarani Sub-Location, Tezo Location in Kilifi Constituency have been in occupation of Plot No. 5046/5 for more than fifty (50) years. They state their occupation has been authorized by the registered proprietor, Coast Development Company Limited.

They claim that in the year 2010, they entered into an agreement with the company for purchase of shares in the company. However the land was subdivided without their knowledge. They state that sub plot registered as Plot No. 5046/8 was compulsorily acquired by the Government for construction of Coast Institute of Agriculture now Pwani University.

They are apprehensive that the 99 year lease granted on the parcel is almost lapsing and are worried about their fate. Their prayer is that they would want to be resettled on the land. They have petitioned the Committee to:

- i. inquire into the ownership of the land occupied by residents of Misufuni, Vibandani and Kibarani Sub location -Kilifi North Constituency in the name of Coast Development Company
- ii. establish whether Coast Development Company is a legally registered Company and the number of locals that bought shares in Coast Development Company and their fate in terms of their shareholding in the Company,
- iii. recommend that the Government under the I million-acre Compulsory Land Acquisition programme acquires the land for the local residents and that the land be adjudicated so as to ensure that the residents acquire title deeds;
- iv. make any other recommendation or action it deems fit in addressing the plight of the petitioners.

Response

Honourable Chair,

According to our records, the land in question, L.R. No.5046/5 measuring approximately 107.24 Hectares (265 Acres) was transferred from the Estate of William Gilbert Llywhite to Coast Development Company Limited on October 9, 1972. The term of the lease was 999 years with effect from May 1, 1929 as per the Memorandum of Registration of Transfer of Lands (MRT) marked **annexure 3** and not 99 years as stated in the petition.

The Government vide Gazette Notice No. 1782 of June 20, 1980 communicated the intention to acquire part of L.R No. 5046/5 measuring approximately 34.44 Hectares for development of Coast Institute of Agriculture. On the same date, the Government also issued a Notice of Inquiry vide Gazette Notice No.1783 on the intended acquisition. Copies of the two notices are marked **annexure 4**.

The then Commissioner of Lands vide a letter Ref. VAL.559/50 dated April 1, 1982 issued a Notice of Taking Possession of the 34.44 Hectares acquired pursuant to section 19(3) of the Land Acquisition Act (Cap. 285) (Repealed). A copy of the notice is marked **annexure 5**.

A proposal by Coast Development Company Limited to subdivide L.R No. 5046/5 was approved by the then Town Council of Kilifi vide a Notification of Approval of Development Permission (P.P. A 2) Registration No. KTC/03/11 dated February 14, 2011 marked **annexure 6**. The Ministry also approved the same vide a letter Ref No. KIL/LO/1750/VOL.XIX dated March 30, 2012 marked **annexure 7**.

Upon subdivision, the acquired land was given L.R No. 5046/8 measuring approximately 34.48 Hectares as per the attached Survey Plan marked **annexure 8**. The remaining subplots were given new L.R Nos. 5046/9-38 as communicated vide a letter Ref: CT 52/VOL.28/150 dated June 3, 2015 from the Director of Surveys marked **annexure 9**.

According to our records however, a title C.R 76854 dated February 16, 2021 for L.R No. 5046/8 was issued in the name of Coast Development Company Limited.

Honourable Chair,

There have been further subdivisions from the remaining resultant thirty (30) sub plots of L.R No. 5046/5. We request for additional two weeks to provide a comprehensive report on ownership of these plots

Information regarding registration and shareholding of Coast Development Company Limited is best provided by the Registrar of Companies.

As to whether the subject land can be compulsorily acquired for settlement of the petitioners, we shall refer the matter to the Land Settlement Fund Board of Trustees for consideration in the current financial year 2023/2024.

3. PETITION BY RESIDENTS OF NYATIKE CONSTITUENCY REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS AFTER EXPIRY OF LEASE OF MACALDER MINES LIMITED LAND

The Petition

The petitioners, described as residents of Nyatike Constituency claim that they were dispossessed of their ancestral land measuring approximately 300 acres when it was leased to Macalder Mines Limited in 1935. They aver that when the company exited the country in 1970 the land was not fully developed save for the residential areas inhabited by the gold miners and local workers. The residents therefore moved back to undeveloped parts of the land and that as the numbers increased, the local chief allocated them the land.

However, they claim that both the County Government of Migori and the National Government have been reluctant to adjudicate the land and issue title deeds thereby infringing on their right to fair administrative action.

They have petitioned the Committee to:

- i. engage the Ministry of Lands Public Works, Housing and Urban Development to ensure that the Macalder land is re-adjudicated to allow the owners to acquire title deeds and save the residents from alleged erroneous and missing records; and
- ii. make any other recommendation or action it deems fit in addressing the plight of the Petitioners

Response

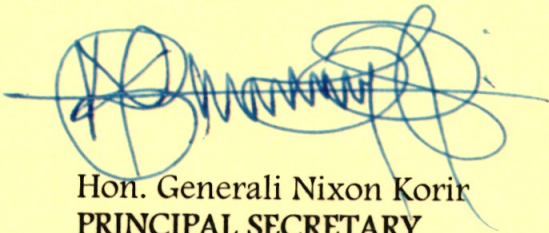
Honourable Chair,

According to our records, the subject land falls within parcel registered as Muhuru/ Kadem/ Macalder/498 which measures approximately 2167.5 Hectares. It was registered in favour of the defunct South Nyanza County Council (now County Government of Migori) on February 19, 1982 on a freehold tenure. A copy of the official search is marked **annexure 10**.

Following the promulgation of the Constitution of Kenya, 2010, the land became public land under the County Government of Migori pursuant to Article 62. It can only be alienated under direct allocation, a process that can only be initiated by the County Government of Migori. This Ministry will thereafter process the title

documents. The matter can therefore be referred to the County Government of Migori for consideration.

Honourable Chair, I submit.

A handwritten signature in blue ink, consisting of a circular scribble on the left and a series of horizontal, wavy lines extending to the right, ending in a large loop.

Hon. Generali Nixon Korir
PRINCIPAL SECRETARY

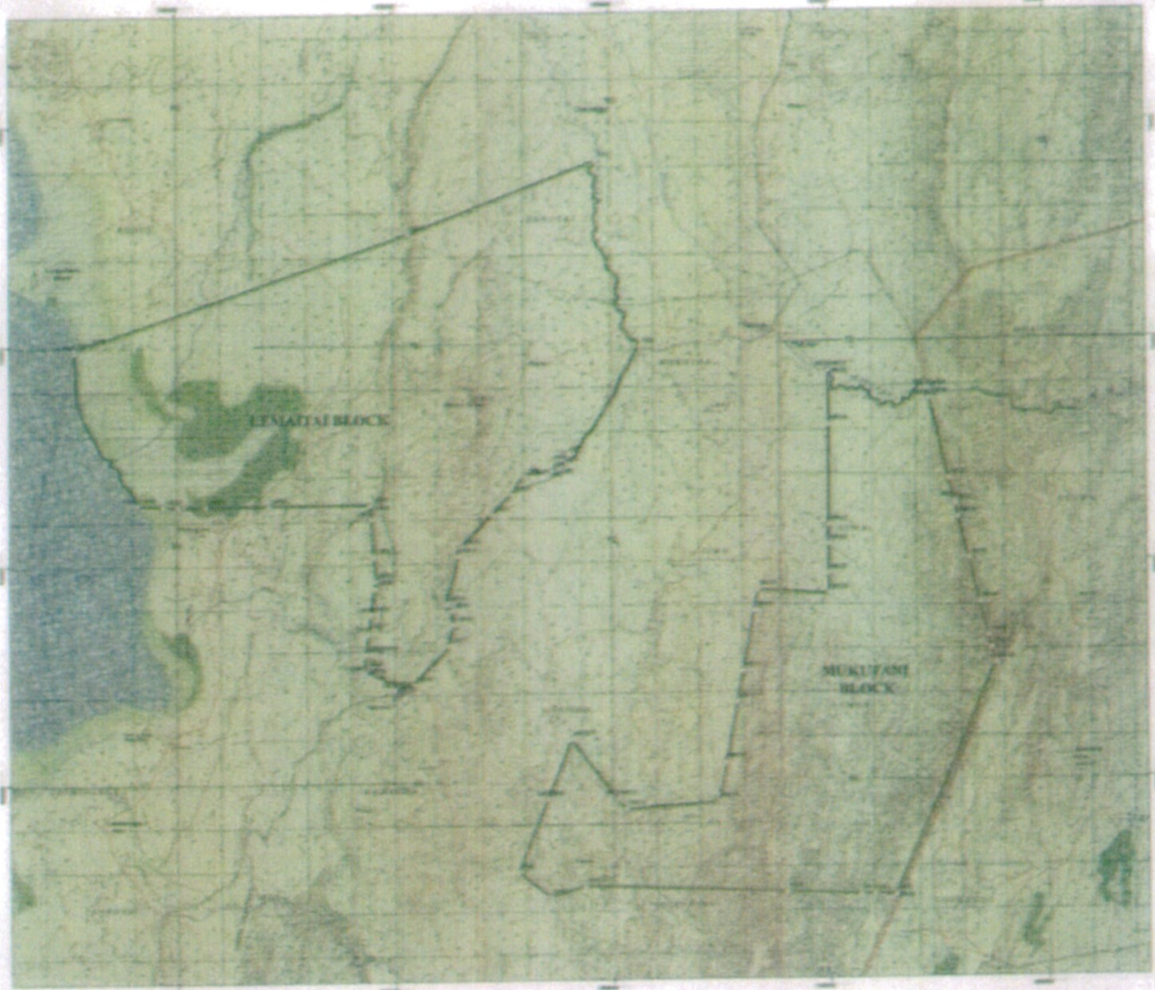
October 3, 2023

ANNEXURE 1

MUKUTANI FOREST

SCALE 1:50,000

AREA = 13,195.8 Ha. (Approx)



| | |
|--|-----------------|
| MUTUAL BOUNDARY PLAN | |
| NAME | MUKUTANI FOREST |
| APPROX. DATE | 1975/76 |
| SCALE | 1:50,000 |
| DATE | 1975/76 |
| BOUNDARY NORTH EAST OF MUKUTANI FOREST | |
| BOUNDARY NORTH EAST OF MUKUTANI FOREST | |
| DISTRICT - BAROTSE | |
| APPROVED BY | SECTION OFFICER |
| DATE | 1975/76 |
| APPROVED BY | C. J. MURPHY |
| DATE | 1975/76 |



| | | |
|------|---------|-----------------|
| DATE | 1975/76 | SECTION OFFICER |
| DATE | 1975/76 | SECTION OFFICER |
| DATE | 1975/76 | SECTION OFFICER |
| DATE | 1975/76 | SECTION OFFICER |

BOUNDARY PLAN NO. 175/437

Annexure 2

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN
DEVELOPMENT
STATE DEPARTMENT FOR LANDS AND PHYSICAL PLANNING

Phone: 053-22012
When replying please quote



Land Adjudication and Settlement
Office
Baringo County
P.O Box 7
KABARNET

Ref No: LA/BAR/6/1/V6/LXI/33
/ And date

ALHAF (15)

Date: 28th September, 2023

THE DIRECTOR OF
LAND ADJUDICATION & SETTLEMENT
P.O.BOX 30297
NAIROBI

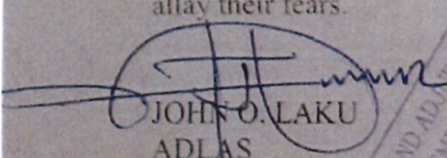
RE: MEETING WITH PUBLIC PETITIONS COMMITTEE ON VARIOUS
PETITIONS.
PUBLIC PETITION (NO. 15 OF 2023) REGARDING DECLARATION OF
MUKUTANI FOREST AS A PUBLIC FOREST

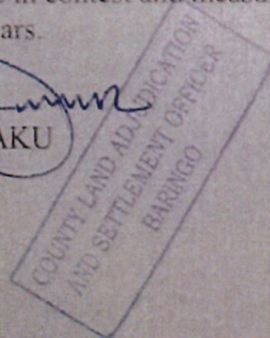
I here refer to the above-mentioned subject regarding declaration of Mukutani forest as a public forest. (It's Located in Mukutani ward, Baringo South Constituency).

Mukutani Forest was gazetted vide legal notice No. 265 of 27//10/2017 and that it covers parts of Mukutani Location and that at the time of such gazettelement, our office was not consulted despite the fact that we declared Mukutani Location as an Adjudication Section and it was therefore necessary to involve the department.

It is also in contention by the residents of Arabal Location that their views were not sought when the forest was gazetted and equally some residents of Mukutani Location are also of the same view, despite the area covering what the two communities consider as their community land.

The existence of the said public forest as was gazetted in 2017 has met contestations from Arabal Location residents who also view the same as a hideout of cattle rustlers who continue to torment them and take refuge in the said forest and that they feel that if proper consultations were done and all the locations involved, then issues regarding its existence would not be in contest and measures of proper protection would have been put in place to allay their fears.


JOHN O. LAKU
ADLAS
BARINGO.



MINISTRY OF LANDS AND PHYSICAL PLANNING

Phone: 053-22012
When replying please quote



LAND ADJUDICATION AND SETTLEMENT
BARINGO COUNTY
P.O BOX 7
KABARNET

Ref. No: LA/BAR/2/2 VOL.V/33
And date

Date: 18.2.2016

LAND ADJUDICATION ACT CAP 284 LAWS OF KENYA

**NOTICE OF ESTABLISHMENT OF THE ADJUDICATION SECTION
MUKUTANI ADJUDICATION SECTION OF MUKUTANI WARD**

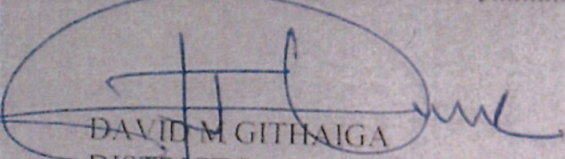
Under section 5 of the Land Adjudication Act Cap 284, I, the District Land Adjudication and Settlement Officer for Baringo Adjudication Area, do hereby declare Mukutani location of Mukutani Ward of Baringo County to be an Adjudication Section and the boundaries are as follows: -

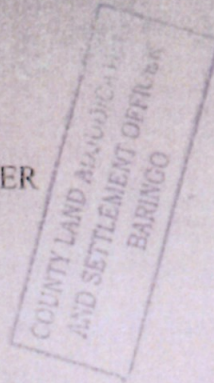
Commencing at a point where Mukutani/Kiserian road crosses river Ngasotok, point 18500E 062000N, the boundary runs in northerly direction following river Ngasotok upto the shores of Lake Baringo at point 179700 063300 thence the boundary turns in a northerly direction along the shores of Lake Baringo upto Rungus area point 076650 074000, thence the boundary turns in an easterly direction in a straight line until it meet river Mukutani at point 181700 074150, then the boundary joins river Mukutani and follows the same upto confluence of Ngasotok and river norikwetan, the boundary turns in a southerly direction upto sokotei point 187300E 072300, the boundary turns eastward in a straight line crossing river Mukutani straight Mukutani/Tangulbei road junction thence the boundary runs along Mukutani/Tangulbei road upto Mukutani trading centre then join Mukutani river at the centre point 193650E 070150N, then it runs along river Mukutani to Laikipia ranch at Laikipia ridge at point 097150 06900, the boundary turns southward along Laikipia ranch upto Itwa stream point 098500 062000, the boundary turns in a westerly direction in straight line through Lorisho and Narokwe to the point of commencement at intersection of river Ngasotok and Mukutani/Kiserian road.

All rights and interest in land within this adjudication section will be ascertained and recorded in accordance with the provisions of Land Adjudication Act. Any person claiming any right or interest is requested to present his/her claim to the recording officer either in person or by duly authorized agent in accordance to the land within 90 days from the date of this NOTICE.

In accordance with section 30 of Land Adjudication Act Cap 284 with effect from the date of this notice e except with prior consent in writing of the Land Adjudication and Settlement Officer, no person shall institute and no court shall hear any proceedings whatsoever, in which any right or interest in land within this adjudication section is called in question until the adjudication Register for this adjudication section has become final in all aspects under section 29 of the Land Adjudication Act Cap 284 Laws of Kenya.

Dated this 18th day of February 2016


DAVID M. GITHAIGA
DISTRICT LAND ADJ/SETT OFFICER
BARINGO ADJUDICATION AREA



cc.

The Director
Land Adjudication and Settlement
P.O Box 30297 00100
Nairobi

The Director of Surveys
P.O Box 30046 00100
Nairobi

The Inspector of General Police - Kenya

The Commander of Kenya Army, Navy, Air force

The Governor
Baringo County

The County Commissioner
Baringo County

Deputy County Commissioner(S)
Baringo North, Central, East and South

All Chiefs
Baringo County

Serial No. 10

DEPARTMENT OF LANDS
LAND TITLES REGISTRY
NAIROBI/MOMBASA

To:—

THE COMMISSIONER OF LANDS (RECORDS BRANCH)
~~THE COMMISSIONER OF LANDS (VALUATION OFFICE).~~
THE COMMISSIONER OF LANDS (LAND RENTS)
THE COMMISSIONER OF INCOME TAX.
THE CITY VALUER, NAIROBI.

MOMBASA
NAIROBI

ANNEXURE 3

THE TOWN CLERK,

THE CLERK, COUNTY COUNCIL OF KILIFI

THE SENIOR ECONOMIST/STATISTICIAN, P.O. BOX 30289, NAIROBI.

THE EXECUTIVE OFFICER, THE PROVINCIAL AGRICULTURAL BOARD, P.O. BOX

MEMORANDUM OF REGISTRATION OF TRANSFER OF LANDS

{ the details whereof appear below, has this day been registered as
CR. 8271/20

Date of Document 9-10-72

Transferor The Standard Bank & the personal representatives
of William Gilbert Lillywhite.

Transferee Coast Development Company Limited

Address of Transferee, P.O. Box

L.R. No. 5046/4 & 5046/5 (Orig. No.)

Area 141.64 & 107.24 ha.

Locality N.W. of Kilifi town.

Consideration Sh. —

Term 999 yrs.

Annual Rent Sh. 159/- (revisable)

Due From 1-5-29

Presented by Atkinson & Satchu, advocates, Mombasa.

Date of Presentation 9/10/72

for Registrar of Titles

| | Noted by | Checked by | Remarks |
|--------------------------|----------------------------|---------------------------|--|
| OFFICER I/C RECORDS: | | | |
| Land Register | <i>[Signature]</i> | ✓ | <p>REFERENCE SECTION To note this file on the card</p> <p><i>[Signature]</i> Record Keeper</p> |
| Return of Grants | | | |
| Files | | | |
| Cards | | | |
| RECORD DRAUGHTSMAN | <i>[Signature]</i> 18/1/73 | <i>[Signature]</i> 2/1/73 | |
| VALUATION OFFICE | | Noted | 6-1-73 |



THE KENYA GAZETTE

Published by Authority of the Republic of Kenya

(Registered as a Newspaper at the G.P.O.)

Vol. LXXXII—No. 25

NAIROBI, 20th June, 1980

Price Sh. 3

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GAZETTE NOTICE No. 1782

THE LAND ACQUISITION ACT
(Cap. 295)

NOTICE OF INTENTION TO ACQUIRE LAND

IN PURSUANCE of section 6 (1) of the Land Acquisition Act (Cap. 295), I give notice that the Government intends to acquire the following land for development of Coast Institute of Agriculture:

SCHEDULE

| L.R. No. | Situation | Approx. Area to be Acquired in Hectares |
|---------------|-----------------|---|
| 9402/R (Part) | Kilifi District | 501.0 |
| 5024/2 | " | 75.59 |
| 2614 | " | 3.80 |
| 5046/5 (Part) | " | 34.44 |

A plan of the affected land may be inspected during office hours at the office of the Commissioner of Lands, Room 471, 4th Floor, Kencom House, City Hall Way/Moi Avenue or at Lands Office, Mombasa.

Dated the 16th June, 1980.

J. R. NJENGA,
Commissioner of Lands.

GAZETTE NOTICE No. 1783

THE LAND ACQUISITION ACT
(Cap. 295)

NOTICE OF INQUIRY

IN PURSUANCE of section 9 (1) of the Land Acquisition Act (Cap. 295), I give notice that an inquiry will be held from 10.00 a.m. on Wednesday, 30th July, 1980, at the valuation office, Mombasa (1st Floor of the P.C.'s Office, Coast Province) and from 9.30 a.m. on Tuesday, 5th August, 1980, at Room 471, 4th Floor, Kencom House, Nairobi, for hearing of claims to compensation by persons interested in the following land.

SCHEDULE

| L.R. No. | Situation | Approx. Area to be Acquired in Hectares |
|---------------|-----------------|---|
| 9402/R (Part) | Kilifi District | 501.0 |
| 5024/2 | " | 75.59 |
| 2614 | " | 3.80 |
| 5046/5 (Part) | " | 34.44 |

Every person who is interested in the land is required to deliver to me not later than the day of inquiry, a written claim to compensation.

Dated the 16th June, 1980.

J. R. NJENGA,
Commissioner of Lands.

GAZETTE NOTICE No. 1784

THE LAND ACQUISITION ACT
(Cap. 295)

CANCELLATION AND ADDITION

IN GAZETTE Notice Nos. 1630 and 1631 of 6th June, 1980, cancel the Marmanet Settlement Scheme in Schedule I and Add Marmanet Forest Area in Schedule II heretobelow.

SCHEDULE

MARMANET SETTLEMENT SCHEME

| Plot No. | Registered Owner | Approx. Area to be Acquired in Hectares |
|----------|----------------------------|---|
| 169 | Muiga Wangotho | 0-04761 |
| 145 | Michael Karum Matumba .. | 0-03412 |
| 140 | Njoroge Njuguna | 0-02777 |
| 132 | Kamau Kairu | 0-22222 |
| 131 | Syrus Mwaura Karuthi | 0-22406 |
| 122 | Kimoso Kiplangat | 1-00001 |
| 112 | Peter Mungai Mwangi | 0-52778 |
| 111 | Oslago Nyagesero | 0-03174 |

SCHEDULE—Contd.

MARMANET SETTLEMENT SCHEME

| Plot No. | Registered Owner | Approx. Area to be Acquired in Hectares |
|----------------------|--|---|
| 183 | Kiplangat A. Barusoi | 0-01417 |
| 177 | Mugo Njoroge | 0-05952 |
| 98 | Johnson M. Ndirangu | 0-00793 |
| 88 | Wamahiga Waigwa | 0-05952 |
| 87 | Gichovi Keiru | 0-00793 |
| 69 | Jomo Kirungo | 0-11349 |
| 68 | Watahi Mboti | 0-38889 |
| 64 | Wanjiku Wanjohi | 0-68651 |
| 62 | Mungai Keinama | 0-71826 |
| 146 | Wambugu Rinana | 0-17301 |
| 61 | Kijibu Kibugi | 0-42302 |
| 25 | Mberere Ngetho | 0-34365 |
| 24 | Mrs. Peris Mwangi | 0-26309 |
| 23 | Kimutai Barngetuny | 0-25119 |
| 22 | Kipchirchir Koros | 0-29087 |
| 20 | Wambiro Kimondo | 0-35713 |
| 6 | Cheira Kamoro | 0-01984 |
| 11 | Nyambura w/o Kirungo | 0-41905 |
| 9 | Tapsabel Langat | 0-30000 |
| 4 | Kipserema Komen | 0-03541 |
| 3 | Ndirangu Gichovi | 0-04047 |
| 38 | Ngarariga Mwangi | 0-68095 |
| 285 | Thondeu Mathengo Githambo | 0-91508 |
| 292 | Mulwa Metho | 0-17698 |
| 293 | Marmanet Forest Reserve EXF Marshall Mutungi s/o Gichuki | 0-08293 |
| 295 | Kezia Walthera | 0-32381 |
| 360 | Kipruto A. Tiyon | 0-17857 |
| 359 | Kingau Gatheru | 0-50914 |
| 358 | Paul Mugane Ngugi | 0-29603 |
| 308 | John Joseph Ikonya | 0-73810 |
| 317 | John Joseph Ikonya | 0-00515 |
| 12 | Mbuthia Mbiru | 0-28966 |
| 16 | Mrs. Teresiah Wangari Macharia | 0-37024 |
| 39 | Mwangi Njogu | 0-24841 |
| | Samuel Nderitu Wambugu | 0-01031 |
| MARMANET FOREST AREA | | |
| 169 | J. N. Mathe | 0-04761 |
| 145 | School | 0-03412 |
| 140 | M. W. Ndiritu | 0-02777 |
| 132 | W. Mariara | 0-22222 |
| 131 | T. Kariuki | 0-24206 |
| 122 | G. Kinywa | 1-00001 |
| 112 | E. M. Muteru | 0-52778 |
| 111 | M. Mukiyo | 0-03174 |
| 183 | Gikonyo Kariuki | 0-01417 |
| 177 | W. W. Ndaiga | 0-05952 |
| 98 | Gate Rebo | 0-00793 |
| 88 | G. N. Muriithi | 0-05952 |
| 87 | J. M. Muriithi | 0-00793 |
| 69 | Kibui Peter | 0-11349 |
| 68 | D. Kabui | 0-38889 |
| 64 | J. Kibe | 0-68651 |
| 62 | M. Gachanja | 0-71826 |
| 146 | M. M. Choge | 0-17301 |
| 61 | M. Wanyava | 0-42302 |
| 25 | Paul Muriithi Muteithia | 0-34365 |
| 24 | Joshua Gitau | 0-26309 |
| 22 | Jennifer Muthoni | 0-29087 |
| 20 | Sarah Wanjiku | 0-35713 |
| 6 | P. Gikuiyu | 0-01984 |
| 11 | Chiuri Irimu | 0-41905 |
| 9 | L. Gaita | 0-30000 |
| 4 | Beth Mwangi | 0-03541 |
| 3 | Muchiri Wandiga | 0-04047 |
| 38 | Kariuki Kiragu | 0-63095 |
| 285 | N. M. Kaburu | 0-91508 |
| 292 | W. K. Mwangi | 0-17698 |
| 23 | T. W. Ambany | 0-35119 |
| 293 | M. W. Githaiga | 0-32381 |
| 295 | E. Opap | 0-17857 |
| 360 | C. K. Mwangi | 0-50914 |
| 359 | M. N. Wanjohi | 0-29603 |
| 358 | E. Miheso | 0-73810 |
| 308 | M. Mukuna | 0-00515 |
| 317 | R. Kabubui | 0-28966 |
| 16 | C. K. Mukumbu | 0-24841 |
| 18 | Newton Gathegora Kiai | 0-37024 |
| 39 | Peter Ngungu | 0-1031 |
| | Marmanet Forest Reserve | 0-08293 |

J. R. NJENGA,
Commissioner of Lands.

Ministry of Lands, Settlement & Physical Planning

~~OFFICE OF THE COMMISSIONER~~

ANNEXURE 5

Telegrams: "LANDS"
Telephone: ~~274333~~ 27456
When replying please quote



DEPARTMENT OF LANDS
P.O. Box 30089, NAIROBI

Ref. No. VAL. 559/50
and date

.....1st April,..... 1982.

26/8203

(14) 16

Land Acquisition Act (CAP.295)
Coast Institute of Agriculture

L.R.Nos. 9402/R (part) 50.01 Hectares
5024/2 71.23 Hectares
5045/5 (part) 34.44 Hectares.

Notice of Taking Possession And
Vesting of Land in The Government.

Take Notice that I have taken possession of the above mentioned land in pursuance of Section 19(3) of the Land Acquisition Act (CAP.295).

The land accordingly vests in the Government absolutely free from encumbrances.

Dated this *5th* day of April, 1982.

L.W. Muchiri
(L.W. Muchiri)
for COMMISSIONER OF LANDS.

c.c.

Coast Development Co.Ltd.,
P.O. Box 43998,
NAIROBI.

Principal Registrar of Titles,
NAIROBI.

(Plans showing the land acquired are enclosed. Please register caveats against the titles).

RT (Mrs Okunga)

Sumy
29/4

(23)

ANNEXURE 6

PHYSICAL PLANNING ACT
No.6 of 1996

S.33[1][A]

Form.P.P.A.2

Registered Number KTC /03/11

NOTIFICATION OF APPROVAL/REFUSAL/DEFERMENT OF
DEVELOPMENT PERMISSION
COAST DEVELOPMENT CO, LTD

Your application number as above, submitted on 17th January 2011 for permission to Subdivide parcel L.R 5046/5, Kilifi township, KILIFI DISTRICT situated in Mombasa-Malindi Road, TOWN COUNCIL OF KILIFI has approved this day of 14th February 2011, for the following reasons/subject to the following conditions:

- a) Physical Planning Officer - No adverse comments.
- b) District Lands Officer - No adverse comments
- c) District Surveyor - No adverse comments

Town Council of Kilifi - Has approved

14th February 2011

signed.....

APPROVED



CLERK TO TOWN COUNCIL

KILIFI

DATE 14th / 02 / 2011

CC:

The Commissioner of Lands Nairobi

The Lands Registrar Nairobi

The Director of Physical Planning Nairobi

The Direct of Surveys Nairobi



MINISTRY OF LANDS

(24)

ANNEXURE 7

Telephone: (041) 7522475
When replying please
quote
Ref.
No.KIL/LO/1750/VOL.XIX
And date:

DISTRICT LANDS OFFICE
KILIFI DISTRICT
P. O. BOX.258
KILIFI

30th March 2012

Coast Development Co. Ltd
P. O BOX
NAIROBI

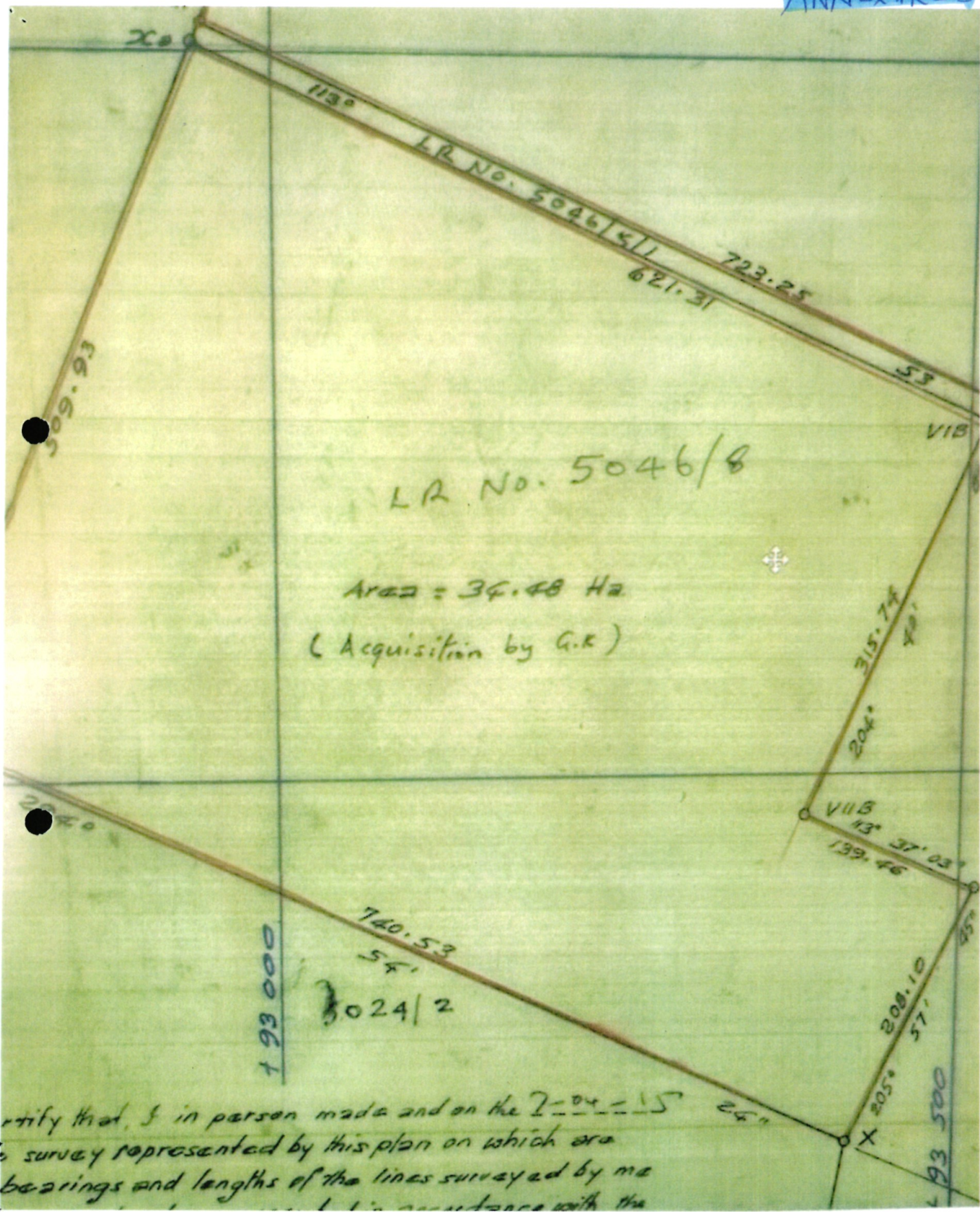
RE: PROPOSED SUBDIVISION LR 5046/5 – KILIFI TOWN

Further to my provisional approval letter reference number KIL/LO/1750/XIX dated March 27, 2012 and your written acceptance of the conditions contained therein vide your letter dated 28th March, 2012 kindly note that final approval is hereby accorded


MATHEKA B.N
DISTRICT LAND OFFICER
KILIFI/MALINDI/KALOLENI & GANZE

Cc.

1. **DIRECTOR OF SURVEYS**
NAIROBI
2. **COUNTY CLERK**
KILIFI



I certify that, I in person made and on the 7-04-15
 the survey represented by this plan on which are
 bearings and lengths of the lines surveyed by me
 in accordance with the

SK/L/31

ANNEXURE 9

MINISTRY OF LAND, HOUSING & URBAN DEVELOPMENT

SURVEY OF KENYA,
P. O. BOX 30046.
NAIROBI.

E. M. J. Kiguru,
Licensed land Surveyor,
P. O. Box 87482-80100,
MOMBASA

Ref No CT 52/MOL.28/150

Date: 03rd June, 2015

SIR,

L.R. No.5046/9-10; 5046/11;5046/12-37 formerly (Subdivision & Change of User on L.R.
No.5046/5)

Situation North West of Kilifi Town

I have to refer to your letter No.C/CAD/4320


Dated 7th April, 2015 and wish to inform you that plan number *F/R 409/68*
representing your survey/re-establishment of the above has been approved.

Deed plans may be submitted for signature now/when the conditions of approval have
been complied with,

Checking fees amount **Ksh.31,000/=**

I am, Sir,

Your Obedient Servant,


J. M. Mwaniki

For: DIRECTOR OF SURVEYS

Copy to:

Comps 67173

ANNEX 4

ANNEXURE 10

REPUBLIC OF KENYA

THE LAND REGISTRATION ACT
THE LAND REGISTRATION (GENERAL) REGULATIONS, 2017

CERTIFICATE OF OFFICIAL SEARCH

TITLE NO. MIV 2400 KADEN / MURALE 22 / 498
SEARCH NO. 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 40, 41, 42, 43

On the 24th day of August, 2023, the following were the subsisting entries on the Register of the above-mentioned title:

Part A - Proprietorship section (easements, etc.)

Nature of title ABSOLUTE

Approximate area (2167.5) HA TWO ONE SIX SEVEN DECIMAL FIVE

Part B - Proprietorship Section

Name and address of proprietor P.O. BOX 82 SOUTHERN DISTRICT COUNCIL

Inhibitions, cautions and restrictions

Part C - Encumbrances Section (lease, charge, etc.)

- 1. 29-7-09 LEASE TO CLEVEL KENYA LTD FOR A TERM OF 10 YRS W.E.F. 1/2/2005
- 2. 26-7-2016 LEASE TO KENYA TOWERS LIMITED FOR A TERM OF 6 YRS W.E.F. 1/2/2015

The following applications are pending:

- (a)
- (b)
- (c)
- (d)

The following certified copies are attached as requested:

- (a)
- (b)
- (c)
- (d)

Date 24th day August 2023

Signed by the Registrar

Name

Signature

Official Seal

Seal

2023

АННЕР (16)

**MINISTERIAL RESPONSE TO PUBLIC PETITION NO. 04 OF 2023
REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF
SQUATTERS AFTER THE EXPIRY OF LEASE OF MACALDER
MINES LTD LAND**



REPUBLIC OF KENYA

MINISTRY OF ENVIRONMENT, CLIMATE CHANGE & FORESTRY

MINISTERIAL RESPONSE TO PUBLIC PETITION NO. 04 OF 2023
REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF
SQUATTERS AFTER THE EXPIRY OF LEASE OF MACALDER MINES LTD
LAND

5TH DECEMBER, 2024

CABINET SECRETARY'S RESPONSE TO PUBLIC PETITION NO. 04 OF 2023 ON DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS AFTER THE EXPIRY OF LEASE OF MACALDER MINES LTD LAND – MACALDER FOREST

1. Introduction

The Clerk of the National Assembly, through letter Ref. No. KNA/DLPS/PPETC/CORR/2024/201 dated 20th November 2024, requested the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry to respond to a public petition by Hon. Tom Mboya Odege, MP Nyatike Constituency on delayed adjudication and settlement of squatters after the expiry of lease of Macalder Mines Ltd land.

Petitioners Prayer

- i. Engages the Ministry of Lands to ensure that the Macalder land is re-adjudicated to allow the owners to acquire title deeds and save the residents from alleged erroneous and missing records; and
- ii. Makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.

Hon. Chair and Hon. Members,

Allow me to go on record that the matters involved in this petition are before a court of law.

This case is currently under consideration by the Environment and Land Court in ELC Petition No. 1 of 2023 [Migori County Government -v- Attorney General & 3 others] consolidated with ELC Petition No. 4 of 2023. The County of Migori, along with other petitioners, is asserting ownership of 2,500 hectares of Macalder Forest. The matter remains active in court and is pending judgment. (Annex 1- AG's letter).

As such, I am not at liberty to proceed with the petition until the matter is determined and concluded by the Honourable court.

Thank you Chair and Hon. Members,



HON. ADEN BARE DUALE, EGH

CABINET SECRETARY

MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY

DATE 3rd Dec 2024



REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY-GENERAL & DEPARTMENT OF JUSTICE

AG/KISII/MGR/LD/1365/2023

22nd November, 2024

The Principal Secretary,
State Department of Forestry,
Ministry of Environment, Climate Change and Forestry,
NHIF Building, 11th – 13th Floor,
Ragati Road, Upper Hill,
P. O. Box 30126 – 00100,
NAIROBI.

Dear Sir,

RE: MIGORI ELC PET. NO. E001 OF 2023
MIGORI COUNTY GOVERNMENT VS. THE HON. ATTORNEY GENERAL
AND 3 OTHERS

We refer to the above matter wherein we act for the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry.

Vide the Petition dated 16th September, 2023 the Petitioner herein is seeking for revocation of the Kenya Gazette Legal Notice No. 85 dated 13th June, 2023 issued by the Cabinet Secretary declaring that Land Refence No. MUHURU KADEM/ MACALDER/498 or as is described in the said Legal Notice as Macalder Forest. The Petitioner alleges that Migori County Government is the registered owner of the parcel of land known as MUHURU KADEM/ MACALDER/498 and that the same has never been a public forest or reserved for that purpose.

In response to and in opposition of the Petition, we filed a Replying Affidavit sworn by EVANS KEGODE, the Head of Survey and Mapping at Kenya Forest Service detailing the circumstances leading to the declaration of Macalder Forest by the Cabinet Secretary vide the aforesaid Legal Notice.

We advise that we attended Court for Mention on 17th October, 2024 before Hon. Justice Sila Munyao when the Court directed the parties to explore an out of Court settlement in the matter.

DEPARTMENT OF CIVIL LITIGATION
ATTORNEY-GENERAL'S CHAMBERS, GROUND FLOOR KISII-KILGORIS ROAD, P. O. BOX
2084 KISII EMAIL: oagkisiicivilitigation@gmail.com

Consequently, this is to request your office to nominate a representative to attend a meeting hosted by the Migori County Government on 29th November, 2024 to negotiate an amicable settlement in the matter.

Please note that the matter is scheduled for Mention on 4th December, 2024 to confirm settlement and take further directions.

We appreciate your continued co-operation in the matter.



M. G. NDIRITU
Senior Litigation Counsel
FOR: ATTORNEY GENERAL

CC: The Chief Conservator of Forests,
Kenya Forest Service,
Kenya Forest Service Headquarters,
Karura, Off Kiambu Road,
P. O. Box 30513 – 00100, (YOUR REF. NO. KFS/LS/16/23)
NAIROBI.

DEPARTMENT OF CIVIL LITIGATION
ATTORNEY-GENERAL'S CHAMBERS, GROUND FLOOR KISII-KILGORIS ROAD. P. O. BOX
2084 KISII EMAIL: oagkisiicivillitigation@gmail.com



ANNEX (7)

REPUBLIC OF KENYA

MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY

**CABINET SECRETARY'S RESPONSE TO PUBLIC PETITION NO. 04 OF 2023
ON DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS AFTER
THE EXPIRY OF LEASE OF MACALDER MINES LTD LAND – MACALDER
FOREST**

1. Introduction

The National Assembly, through letter Ref. No. Ref. No. KNA/DLPS/PPETC/CORR/2024/059 dated 11th April 2024 requested the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry to respond to a public petition by Hon. Tom Mboya Odege, MP Nyatike Constituency on delayed adjudication and settlement of squatters after the expiry of lease of Macalder Mines Ltd land.

Petition

- i. **Engages the Ministry of Lands to ensure that the Macalder land is re-adjudicated to allow the owners to acquire title deeds and save the residents from alleged erroneous and missing records; and**
- ii. **Makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.**

The County Government of Migori has filed a suit (**ELC 001 of 2023: County Government of Migori vs CS Ministry of Environment, Climate Change and Forestry, KFS and AG**) challenging the gazettelement of Macalder as a public forest and Section 31(2) of the Forest Conservation and Management Act, 2016 on the process of gazetting public forests.

Thank you Chair and Hon. Members,

A handwritten signature in blue ink, appearing to be 'Soipan Tuya', written in a cursive style.

Hon. Soipan Tuya, EGH
Cabinet Secretary
Ministry of Environment, Climate Change and Forestry

Date 21st June 2024

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ELC PET CASE NO 4 OF 2023

Ministry of Environment and Forestry
P. O. Box 50126-00100, Nairobi

01/dec/2023

| | |
|-----------------------------|-----------------------------|
| PETER OGIDI OGWANG..... | 1 ST PETITIONER |
| DAVID OGWENO OPIYORO..... | 2 ND PETITIONER |
| CHARLES ODHIAMBO ODIWA..... | 3 RD PETITIONER |
| HELLEN ALUOCH OKOTH..... | 4 TH PETITIONER |
| PETER OLUOCH OTIENO..... | 5 TH PETITIONER |
| LINET AWINO PANYAKO..... | 6 TH PETITIONER |
| CALVINCE OTIENO OGAYO..... | 7 TH PETITIONER |
| CHARLES OTIENO OWIRA..... | 8 TH PETITIONER |
| JAMES PAMBA ONYANGO..... | 9 TH PETITIONER |
| KEPHERS OJUKA..... | 10 TH PETITIONER |
| PETER ONYANGO..... | 11 TH PETITIONER |
| ALFAYO OJUNGA..... | 12 TH PETITIONER |
| PHYLIS ADEDE..... | 13 TH PETITIONER |
| RICHARD AJUOGA..... | 14 TH PETITIONER |
| ISSAAC OGALLO..... | 15 TH PETITIONER |
| JOSEPH OTIENGO..... | 16 TH PETITIONER |
| PHILIP KONGO..... | 17 TH PETITIONER |
| CHARLES OJUKA..... | 18 TH PETITIONER |
| DAVID SEWE..... | 19 TH PETITIONER |
| MARY AWINO AGOLLA..... | 20 TH PETITIONER |
| SOFIA ANYANGO ODEGI..... | 21 ST PETITIONER |
| MAURICE ONGALA..... | 22 ND PETITIONER |
| MICHAEL OKWETO..... | 23 RD PETITIONER |
| PETER SURE..... | 24 TH PETITIONER |
| CHARLES ADERO..... | 25 TH PETITIONER |
| FRED ONGONGE..... | 26 TH PETITIONER |
| FRANCIS JUMA..... | 27 TH PETITIONER |
| ALBERT MICURA..... | 28 TH PETITIONER |
| WICLIFF OKOTH OGOCHA..... | 29 TH PETITIONER |
| NELSON GOR OMAMO..... | 30 TH PETITIONER |
| CYPRIAN AYONG..... | 31 ST PETITIONER |
| ERIC GEORGE OKOTH..... | 32 ND PETITIONER |
| JACK OKEYO..... | 33 RD PETITIONER |
| STEPHEN OYARE..... | 34 TH PETITIONER |
| FELIX ANDERE..... | 35 TH PETITIONER |
| ERIC SURE..... | 36 TH PETITIONER |
| ESTHER ODANGA..... | 37 TH PETITIONER |
| LILIAN ACHIENG MIKOBIA..... | 38 TH PETITIONER |
| SAMUEL ARESI ARESI..... | 39 TH PETITIONER |

VERSUS

CABINET SECRETARY MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND

FORESTRY.....1ST RESPONDENT
 CABINET SECRETARY MINISTRY OF LANDS, PUBLIC WORKS,
 HOUSING AND URBAN DEVELOPMENT.....2ND RESPONDENT
 THE NATIONAL LAND COMMISSION.....3RD RESPONDENT
 COUNTY LAND REGISTRAR, MIGORI COUNTY.....4TH RESPONDENT
 THE ATTORNEY GENERAL.....5TH RESPONDENT

ORDER

THIS matter coming up for hearing of Notice of Motion dated 23RD October 2023, under certificate of urgency before Hon. Justice Mohammed N. Kullow, this 30TH day of October 2023,

IT IS HEREBY ORDERED: -

1. THAT this application be and is hereby certified as urgent
2. THAT pending the hearing and determination the instant application on orders of temporary Conservatory orders be and is hereby issued staying the implementation of Kenya Gazette No. 85 of 2023.
3. THAT the application be served on the Respondents within 3 days.
4. THAT the Respondent do file and serve their replying affidavit within 7 days of service of the applicant.
5. That the application be canvassed by way of written submissions. The applicant to file and serve the submissions within 3 days of service of the respondents replying affidavit together with any further affidavit if any.
6. THAT the Respondent to file their submissions within 3 days thereafter.
7. THAT the matter be mentioned on 20/11/2023 to confirm compliance with the above directions.

GIVEN UNDER MY HAND AND THE SEAL OF THIS HONOURABLE COURT THIS 30th DAY OF OCTOBER 2023

HON. M. N. KULLOW
 JUDGE

ISSUED at MIGORI this 31st day of OCTOBER 2023



[Handwritten signature]

DEPUTY REGISTRAR
 ENVIRONMENT AND LAND COURT
MIGORI

PENAL NOTICE:

TAKE NOTICE this is a valid Court Order any party served with the order herein and does not comply with orders therein will be cited for contempt of the same and be liable to imprisonment for a term not exceeding six months or attachment of your property or to both.



REPUBLIC OF KENYA

MINISTRY OF ENVIRONMENT, CLIMATE CHANGE AND FORESTRY

**CABINET SECRETARY'S RESPONSE TO PUBLIC PETITION NO. 04 OF 2023
ON DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS AFTER
THE EXPIRY OF LEASE OF MACALDER MINES LTD LAND – MACALDER
FOREST**

1. Introduction

The National Assembly, through letter Ref. No. Ref. No. KNA/DLPS/PPETC/CORR/2024/059 dated 11th April 2024 requested the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry to respond to a public petition by Hon. Tom Mboya Odege, MP Nyatike Constituency on delayed adjudication and settlement of squatters after the expiry of lease of Macalder Mines Ltd land.

Petition

- i. Engages the Ministry of Lands to ensure that the Macalder land is re-adjudicated to allow the owners to acquire title deeds and save the residents from alleged erroneous and missing records; and**
- ii. Makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.**

The County Government of Migori has filed a suit (**ELC 001 of 2023: County Government of Migori vs CS Ministry of Environment, Climate Change and Forestry, KFS and AG**) challenging the gazettelement of Macalder as a public forest and Section 31(2) of the Forest Conservation and Management Act, 2016 on the process of gazetting public forests.

Thank you Chair and Hon. Members,

A handwritten signature in blue ink, appearing to read 'Soipan Tuya', with a large, stylized flourish at the end.

**Hon. Soipan Tuya, EGH
Cabinet Secretary
Ministry of Environment, Climate Change and Forestry**

Date 21st June 2024

AHPEX (18)



REPUBLIC OF KENYA

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

RESPONSES TO THE NATIONAL ASSEMBLY PUBLIC PETITIONS COMMITTEE ON VARIOUS PETITIONS

Honourable Chair,

Pursuant to a letter Ref. KNA/DLPS/PPETC/CORR/2024/006 dated February 15, 2023, the Committee invited the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development to respond to;

- i. Public Petition No. 4 of 2023 regarding delayed adjudication of squatters after the expiry of lease of Macalder Mines Ltd Land on the total acreage of the gazetted land
- ii. Public Petition No. 11 of 2023 regarding the illegal acquisition of private land by the defunct Awendo Town Council on the nature of restriction put on parcel no. North Sakwa/ Kamasoga/1193 land and the list of all the original owners of the entire land, which is the subject matter of the petition, as well as those that were compensated after compulsory acquisition.
- iii. Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sublocations, Tezo Location, Kilifi County on the ownership status of L.R. No's. 5046/9-38
- iv. Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County on the provision of a comprehensive response on the petition

Honourable Chair, this is further to our response dated November 14, 2023, marked annexure 1.

Responses

- i. Public Petition No. 4 of 2023 regarding delayed adjudication of squatters after the expiry of lease of Macalder Mines Ltd Land on the total acreage of the gazetted land

Honourable Chair,

Macalder Mines falls within a parcel registered as Muhuru/Kadem/Macalder/498 measuring approximately 2167.5 Hectares (approximately 5,355.9 Acres).

The total acreage of the land gazetted as a forest by the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry in Legal Notice No. 85 of 2023 marked annexure 2 is 2494.95 Hectares (approximately 6,165.0 Acres).

The initial land was MR. NO. 123 with an acreage of 6178 acres as presented in Survey plan FR. NO. 4948. A resurvey was done in 1993 which converted MR. NO. 123 to LR. NO. 17955 with an acreage of 2,500 Hectares (6,178 acres).

In 1993, a subdivision of LR. NO. 17955 resulted into LR. NO. 17955/1 and 17955/2 with acreages of 1.019 Hectares (2.518 acres) and 4.170 Hectares (10.30 acres), respectively.

- ii. Public Petition No. 11 of 2023 regarding the illegal acquisition of private land by the defunct Awendo Town Council on the nature of restriction put on parcel no. North Sakwa/ Kamasoga/1193 land and the list of all the original owners of the entire land, which is the subject matter of the petition, as well as those that were compensated after compulsory acquisition.

Honourable Chair, I wish to respond as follows;

The parcel North Sakwa/Kamasoga/1193 measuring 0.5Ha was initially registered in favour of Obiero Omedo on February 9, 1977 as the absolute proprietor. However, on April 18, 1984 a restriction was registered against the said parcel of land restricting any dealings on the within written land until a portion measuring 0.5Ha set aside for the expansion of the South Nyanza Sugar Scheme (Awendo Township Expansion) in South Nyanza District has been transferred to the Government. Annexure 3 is a copy of the green card.

The parcels which were supposed to be surrendered to the Government were advertised vide gazette notice No. 3737 of December 24, 1976 outlining various parcels to be acquired by the government for the aforesaid reason. Annexure 4 is a copy of the Gazette Notice

It is worth noting that the parcel in question being Lr No. North Sakwa/Kamasoga/1193 was unutilized for gazetted reason as the lands were found to be unsuitable for sugarcane farming and were not therefore, occupied by South Nyanza Sugar Scheme, and considering section 75 of the constitution requires that once land has been compulsorily acquired ought to be used for the designated purpose only, the original owners of the suit land ought to be registered as the lawful owners of the unutilised parcels of the suit land.

A case was filed by the registered owner of the land together with twelve (12) others where they placed seventeen (17) issues for court determination and a decision on the same was made vide a court Judgment dated November 13, 2009 in Civil Suit No 133 of 2005 at Kisii High Court. Annexure 5 is a copy of the judgment.

According to the decree, the court ordered for the restriction to be withdrawn and a transfer to be registered in favour of the initial owner (Obiero Omedo). Upon the registration of the transfer a title deed was issued in favour of one Obiero Omedo the initial registered proprietor.

On May 26, 2021 vide Succession Case No. 179 of 2019 in Migori Law Courts the said parcel of land was transferred to George Otieno Obiero as a beneficiary and a title deed was issued. Upon transfer the register was closed on September 25, 2023 on subdivision in to two portions number 2945 and 2946 and therefore, the above register ceased to exist.

The following is the list of original land owners as the Gazette Notice No. 47 of 1968.

| Kamasoga Sub-location | |
|-----------------------|---|
| Plot No | Registered Owner |
| 34 | Nyandele Ndege |
| 35 | John Olale |
| 36 | K. Ochola Sidika |
| 37 | John Okwany |
| 38 | Abol Ahomo39 |
| 39 | Obiero Omedo |
| 40 | Obat Omedo |
| 41 | S.N.C.C (Reserved for Awendo Community Hall) |
| 42 | James Onyango Odera |
| 43 | Daniel Dida Oluoch |
| 44 | S.N.C.C (Reserved for Awendo Seventh Day Advestists Church) |
| 45 | Andrew Amido |
| 51 | S.N.C.C (Reserved for Awendo water point) |
| 104 | Awiti Olilo |
| 105 | Mbogo Olilo |

| | |
|---------------------|--|
| 106 | Joseph Oduol Olilo |
| 107 | Petalis Radipo Olilo |
| 108 | Daniel Owawa Olilo |
| 109 | Oludo Oludo |
| 110 | Okeyo Olilo |
| 111 | Ochome Saula |
| 117 | S.N.C.C (Reserved for Coffee Society) |
| 118 | S.N.C.C (Reserved for Sare Water Point) |
| 119 | Raywer Hinga |
| 212 | S.N.C.C (Reserved for Awendo Water Pump) |
| 589 | John Olieko Aenda and R. Awuondu Alieko |
| 590 | J. Obogo (<i>name not legible</i>) |
| 1025 | S.N.C.C (Reserved for Awendo Muslim) |
| 1039 | S.N.C.C (Reserved for Awendo Pentocostal Church) |
| 1054 | John Mijungu Kisia |
| 1067 | John Eliud Ogutu |
| 1079 | K. Group (<i>name not legible</i>) |
| 1080 | Nelson Orwa OObuja and Kenedy Ochieng Orwa |
| 1081 | Rosalina Nyakure |
| 1082 | Barrack Owiro and |
| 1083 | Joab Oylugi |
| 1089 | John Agreey Onjola |
| 1090 | James Onyango |
| 1091 | Solomon Ogutu Odera |
| 1092 | Festus Oguta Osoi and Elija Odongo Owiro |
| 1093 | Jairo Owino Odera |
| 1094 | Agani Odera |
| 1095 | James Onyango |
| 1102 | Boaz Owino Opiyo |
| 1111 | Timotheo Rayamo Okwach |
| 1114 | Phoebe Akinyi Odenyo |
| 1115 | Denis Ochora Owinog |
| 1116 | Samuel Ondiega Okwach |
| 1117 | Salim Nyamwanda Okwach |
| 1118 | Vitalis Nyaisia Okwach |
| 1155 | Bernard Otieno |
| 1182 | Joel Orege Atisu |
| Wawere Sub-location | |
| 155 | Odoyo Ojamb |
| 156 | Fatuma Achieng |
| 157 | Odhiambo Odundo |
| 158 | Joseph Oduogo |

| | |
|-----------------------|-----------------------|
| 159 | Opiyo Olumwa |
| 161 | S.N.C.C |
| 162 | S.N.C.C |
| 163 | Barack Aduo |
| 164 | Ishmael Mijungo |
| 165 | Dalmas Kawa Achacha |
| 166 | Washington Wagamba |
| 167 | Silvanus OpiyoChacha |
| 167 | Okombo Okwiri - share |
| | Okwiri Okwiri-share |
| 169 | Opany Okwiri |
| 171 | Nehemia Okinyi |
| 172 | Jeremia Kamala |
| 198 | Opero Odek |
| 199 | Anderea Angila |
| 200 | Odhiambo Dawo |
| 201 | Mijungu Ochala |
| 202 | Dawo Mujungu |
| 203 | Ronga Miswetu |
| 204 | Mijungu Miswetu |
| 205 | Otieno Miswetu |
| 206 | Wagumba Miswetu |
| 207 | Silphano Miswetu |
| 208 | Oduor Miswetu |
| 363 | Mijungu Ochola |
| 499 | Okumu Oyier |
| 502 | John Wagumba |
| 525 | Miganda Madiri |
| 592 | Pius Arido |
| 611 | Aura Ojambi |
| | Odongo Madiri-share |
| | Otieno Maganda-share |
| Waundaha Sub-location | |
| 138 | Joram Ogundha |
| | Christopher alando |
| 139 | James Otieno Amamo |
| 422 | Owiti Mamba |

Honourable Chair, we request for more time to provide the list of persons who were compensated after compulsory acquisition.

- iii. Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sublocations, Tezo Location, Kilifi County on the ownership status of L.R. No's. 5046/9-38

Honourable Chair, information on the ownership status of L.R. No's 5046/9-38 is presented in the matrix below.

| L.R. NO. | C.R. NO. | SIZE(HA.) | REGISTERED OWNER |
|----------|----------|-----------|--|
| 5046/9 | | | (To be provided) |
| 5046/10 | 71563 | 22.30 | The Coast Development Company Ltd |
| 5046/11 | 71564 | 1.520 | The Coast Development Company Ltd. The title has been closed on surrender. |
| 5046/12 | | | (To be provided) |
| 5046/13 | | | (To be provided) |
| 5046/14 | 73536 | 0.0281 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/15 | 73537 | 0.0293 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/16 | 73538 | 0.0386 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/17 | 73539 | 0.0405 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/18 | 73540 | 0.0425 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/19 | 73541 | 0.0444 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/20 | 73542 | 0.0463 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/21 | 73543 | 0.0482 | The Coast Development Company Ltd. |

| | | | |
|---------|-------|--------|---|
| | | | There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/22 | 73544 | 0.0501 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/23 | | | (To be provided) |
| 5046/24 | 73546 | 0.0446 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/25 | 73547 | 0.0450 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/26 | 73548 | 0.0450 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/27 | 73549 | 0.1543 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/28 | | | (To be provided) |
| 5046/29 | 73551 | 0.0677 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/30 | 73552 | 0.0410 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/31 | | | (To be provided) |
| 5046/32 | 73554 | 0.0422 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/33 | 73555 | 0.0342 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/34 | 73556 | 0.0594 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |

| | | | |
|---------|-------|--------|---|
| 5046/35 | 73557 | 0.0450 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/36 | 73558 | 0.0450 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/37 | 73559 | 0.0437 | The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest. |
| 5046/38 | | | (To be provided) |

Copies of the search certificates are marked **annexure 6**.

iv. Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County.

The Petitioners, who are residents of Mnarani Village in Mnarani Ward, Kilifi North Constituency claim that they have occupied the subject land for more than 100 years. They allege that the whole Mnarani village was surveyed on 28th May 1912 and granted in favour of Mr. Byremji Rustumji Khanjuri but the land was later illegally acquired by Arab families who registered the land as their property.

The petitioners aver that the land measures approximately 172.8 acres and is registered as plot No. YSR130 section V in the name of Kalthum Binti Mohammed and Shariffa Binti Mohamed as an agricultural land. They further claim that the registered owners migrated to the Middle East leaving the property under the care of the trustees who invited the locals to settle in the area willingly and pay a monthly fee. They claim they were allowed to build a school which is the present Mnarani Primary School.

The Petitioners further allege that the land ceased being an agricultural land and became residential owing to the population size of 20,000 people with a Mosque, Churches, Schools and other social amenities. They claim that they have put the land into good economic use, constructed residential houses and commercial centres which is earning them income.

The petitioners claim that efforts to have the matter addressed by the relevant authorities have been futile and it is the reason they have prayed this Committee;

- i. Inquire into the ownership of the land occupied by Mnarani residents registered as plot No. YSR130 Section V situated at Mnarani-Kilifi

- Takaungu in the name of Kalthum Binti Mohammed and Shariffa Binti Mohammed;
- ii. Recommend that the parcel of land in Mnarani be acquired and granted to the present occupants and that the process of compensation be finalized;
 - iii. Recommend that the land be adjudicated so as to ensure that the residents acquire title deeds and save the residents from the alleged erroneous records and missing information on the parcels of land; and,
 - iv. Makes any other recommendation or action it deems fit in addressing the plight of the petitioners.

Honourable Chair,

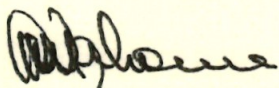
As per our records, the land in question falls under Plot No. 7 Group V Kilifi measuring approximately 172.80 acres. It is registered as LT. 45, Folio 475, File 15284 on freehold basis in favour of Wakf of Khadija Binti Suleiman El-Busaidy who is still the current registered owner. **Annexure 7** is a copy of the certificate of postal search.

However, the parcel of land has been encumbered by three different caveats registered in favor of three different parties;

- Caveat dated April 21, 1965 by Ag. Registrar of Titles Mombasa claiming ownership by compulsory acquisition by virtue of Gazette Notice No. 12 of 1965 – 7.20 acres.
- Caveat dated November 4, 1965 by East African Power and Lighting claiming a grant of easement.
- Caveat dated 1965 by Ag. Registrar of Titles on behalf of Government of Kenya claiming ownership by compulsory acquisition of 2.83 acres being portion of Plot 7 Group V by virtue of Gazette No. 72 of 1966.

Honourable Chair, the Ministry will in the next Financial Year (2024/2025) initiate negotiations with the registered land owners with a view of arriving at an agreeable compensation and surrender of the land for settlement.

Honourable Chair, I submit.



Hon. ~~Alice Wahome~~
CABINET SECRETARY

February 28, 2024