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THE NATIONAL ASSEMBLY

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21/12/21
DSM*

TWELFTH PARLIAMENT-FIFTH SESSION

SELECT COMMITTEE ON IMPLEMENTATION

REPORT ON IMPLEMENTATION STATUS OF

1. THE REPORT OF THE DEPARTMENTAL COMMITTEE ON LANDS ON A PETITION ON IRREGULAR RENEWAL OF LEASES OF LAND BY DEL MONTE KENYA LIMITED; AND
2. THE REPORT OF THE DEPARTMENTAL COMMITTEE ON LANDS ON ITS CONSIDERATION OF THE PETITION BY FORMER WORKERS OF THE LATE MAYER JACOB SAMUELS REGARDING THE INVASION AND EVICTION OF THE WORKERS FROM THEIR LAND IN ROYSAMBU CONSTITUENCY BY THE KENYA DEFENCE FORCES

Directorate of Audit, Appropriations & Other Select Committees
Clerk's Chambers
National Assembly
Parliament Buildings
NAIROBI

DECEMBER, 2021

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ABBREVIATIONS

Ha	Hectare
L.R. No.	Land Reference Numbers
NLC	National Land Commission
KAEMA	Kenya Army Electrical and Mechanical Engineers

CHAIRPERSON'S FOREWORD

The Select Committee on Implementation scrutinizes resolutions of the House (*including adopted Committee Reports*), petitions and the undertakings given by the National Executive. It examines whether such decisions and undertakings have been implemented within sixty (60) days as provided for in the National Assembly Standing Orders and whether such implementation has taken place within the minimum time necessary.

The report of the Departmental Committee on Lands regarding the Petition on irregular renewal of leases of Land by Del Monte Kenya Limited was tabled before the House on 21st November, 2019; while the report of the Departmental Committee on Lands regarding the Petition by former workers of the Late Mayer Jacob Samuels on the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces was tabled before the House on 5th December, 2019.

The Select Committee on Implementation sought to follow up on the implementation status of the aforementioned reports. Subsequently, it held meetings with the Ministry of Lands and Physical Planning officials, the National Land Commission, and the petitioners.

The Committee registers its appreciation to the Offices of the Speaker and the Clerk of the National Assembly for facilitation and support in producing this report.

Pursuant to Standing Order 199(6), it is, therefore, my pleasant duty and privilege, on behalf of the Committee on Implementation, to lay this report on the Table of the House.

Hon. Moitalel Ole Kenta, MP

EXECUTIVE SUMMARY

The Select Committee on Implementation scrutinizes resolutions of the House (*including adopted Committee Reports*), Petitions and the undertakings given by the National Executive. It examines whether such decisions and undertakings have been implemented within sixty (60) days as provided for in the National Assembly Standing Orders and whether such implementation has taken place within the minimum time necessary.

The report of the Departmental Committee on Lands regarding irregular renewal of leases of Land by Del Monte Kenya Limited was tabled in the House on 21st November, 2019, while the report of the Departmental Committee on Lands regarding the Petition by Former Workers of the Late Mayer Jacob Samuels on the invasion and eviction of the workers from their Land in Roysambu Constituency by the Kenya Defence Forces was tabled before the House on 5th December, 2019.

The Select Committee on Implementation sought to follow up on the implementation status of the aforementioned reports. Subsequently, it held meetings with the Ministry of Lands and Physical Planning officials, the National Land Commission, and the petitioners.

As regards the report of the Departmental Committee on Lands regarding irregular renewal of leases of Land by Del Monte Kenya Limited, the Committee observed that the Ministry of Lands and Physical Planning surveyed the Land currently owned by Del Monte Kenya Limited both in Muranga and Kiambu counties as guided by subdivision scheme plans prepared by a registered physical planner practising as Real Plan Consultants Limited. The survey of all the parcels is complete and awaits approvals from both County Governments of Muranga and Kiambu.

The Committee noted that the recommendation that required survey of the Land owned by Del Monte Kenya Limited in Muranga and Kiambu counties was implemented, while the recommendation that instructed NLC to investigate how Del Monte Kenya Limited later acquired some parcels of Land that have been surrendered to the Government was not implemented. This has not been done due to lack of sufficient records on how the land transfer to Del Monte Kenya Limited was carried out in 1973, The National Land Commission submitted that it had not been able to unearth how the Company acquired the land.

Therefore, the Committee recommends that the lease for L.R No. 12158 be reverted to the Government and declared as public land. Further, The Ministry of Lands and Physical Planning in consultation with the National Land Commission, should allocate the land excised from Del Monte Kenya Limited to Kandara Residents Association and County Governments of Muranga and Kiambu in the ratio of 70:30 respectively, as per the National Land Commission's Gazette Notice 1995 of 2019, within sixty (60) days of the adoption of the report, failure to which the Committee shall enforce appropriate sanctions pursuant to Standing Order 209 (3) of the National Assembly Standing Orders.

As regards the report of the Departmental Committee on Lands regarding the Petition by Former Workers of the Late Mayer Jacob Samuels on the invasion and eviction of the workers from their Land in Roysambu Constituency by the Kenya Defence Forces, the Committee observed that the Ministry of Lands and Physical Planning is yet to complete the titling process for L.R. No. 5875/2 as directed by the House, the Ministry submitted that the land belonged to the Kenya Defence Forces.

The Committee recommends that the House approves that the Select Committee on Implementation initiates the process for removal of the Cabinet Secretary for the Ministry of Lands and Physical Planning from office, for failure to implement the House resolution *'that the Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County does complete the titling process for L.R. No. 5875/2 within 180 days of tabling of the report'*. The Committee also recommends that the Inspector General of Police should ensure that the Directorate for Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to L.R. No. 5875/2 and submits a report to the National Assembly within sixty (60) days of the adoption of this report.

The Ministry of Lands and Physical Planning should issue titles to the former workers of the Late Mayer Jacob Samuels, within sixty (60) days of the adoption of the report failure to which, the Committee shall enforce appropriate sanctions pursuant to Standing Order 209 (3) of the National Assembly Standing Orders.

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Select Committee on Implementation is established under Standing Order 209 of the National Assembly Standing Orders.
2. The Committee is charged with scrutinizing the resolutions of the House (*including adopted committee reports*), petitions and the undertakings given by the National Executive and examines whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary; and whether or not legislation passed by the House has been operationalised and where operationalised, the extent to which such operationalisation has taken place within the minimum time necessary. The Committee may propose to the House sanctions against any Cabinet Secretary who fails to report to the relevant select Committee on implementation status without justifiable reasons.
3. Standing Order 201 further provides that within sixty days of a resolution of the House or adoption of a report of a select committee, the relevant Cabinet Secretary under whose portfolio the implementation of the resolution falls shall provide a report to the appropriate Committee of the House.
4. The mandate of the Committee is further enhanced by the provisions of Article 153(4) (b) of the Constitution which requires Cabinet Secretaries to provide Parliament with full and regular reports concerning matters under their control.

1.2 Committee Membership

5. The Committee membership comprises -

Chairperson

Hon. Moitalel Ole Kenta, MP
Narok North Constituency

Orange Democratic Movement

Vice Chairperson

Hon. Godfrey Osotsi, MP
Nominated

Amani National Congress

Members

Hon. Joash Nyamache Nyamoko, MP
North Mugirang'o Constituency

Jubilee Party

Hon. Paul Simba Arati, MP
Dagoretti North Constituency

Orange Democratic Movement

Hon. Alois Lentoimaga, MP
Samburu North Constituency

Jubilee Party

Hon. Benjamin Tayari, MP
Kinango Constituency

Orange Democratic Movement

Hon. (Dr.) James Murgor, MP
Keiyo North Constituency

Jubilee Party

Hon. Johnson Many Naicca, MP
Mumias West Constituency

Orange Democratic Party

Hon. John Muchiri Nyagah, MP
Manyatta Constituency

Jubilee Party

Hon. Moses Kuria, M.P
Gatundu South Constituency

Jubilee Party

Hon. Feisal Abdalla, MP
Msambweni Constituency

Independent

Hon. Richard Onyonka, MP
Kitutu Chache South Constituency

Ford Kenya

Hon. Paul Odalo Abuor, MP
Rongo Constituency
Orange Democratic Movement

Hon. Hassan Oda Hulufu, MP
Isiolo North Constituency
Kenya Patriots Party

Hon. Nelson Koech, MP
Belgut Constituency
Jubilee Party

Hon. Joshua Mbithi Mwalyo, MP
Masinga Constituency
Wiper Democratic Movement-Kenya

Hon. Mukuha Gabriel Kago, M.P
Githunguri Constituency
Jubilee Party

Hon. Silvanus Onyiego Osoro, MP
South Mugirang'o Constituency
Kenya National Congress

Hon. John Wanjiku, MP
Kiambaa Constituency
United Democratic Alliance

Hon. Michael Thoya Kingi, MP
Magarini Constituency
Orange Democratic Movement

Hon. Kihara Peter Kimari, MP
Mathioya Constituency
Jubilee Party

Hon. Charles Ngusya Nguna, MP
Mwingi West Constituency
Wiper Democratic Movement

Hon. Jared Okello, MP
Nyando Constituency
Orange Democratic Movement

1.3 Committee Secretariat

6. The Secretariat facilitating the Committee in executing its mandate comprise of: –

Ms Tracy Chebet Koskei
Clerk Assistant I /Team Leader

Mr Abdirahman Hassan
Clerk Assistant II

Dr Donald Manyala
Research Officer II

Ms Mercy Wanyonyi
Legal Counsel

Ms Winnie Kizia
Media Relations Officer

2.0 THE REPORT OF THE DEPARTMENTAL COMMITTEE ON LANDS ON A PUBLIC PETITION ON IRREGULAR RENEWAL OF LEASES OF LAND BY DEL MONTE KENYA LIMITED

2.1. Background

7. The Petition by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases held by Del Monte Kenya Limited was presented to the House by the Honorable Speaker on 11th June, 2019.
8. The Petitioners claimed to be the original owners of the land presently occupied by Del Monte Kenya Limited but were illegally displaced and the land leased to the company. They were aggrieved that the County Government of Muranga had renewed the leases for the company without first involving the public as required by Section 13 of the Land Act, 2012. They also claimed that the County Government disregarded the determination of the National Land Commission rendered on February 7, 2019 in their historical injustice claim filed with the Commission.
9. In a Gazette Notice No. 1995 of 2019, the National Land Commission directed that the land held by Del Monte Kenya Limited should be resurveyed to establish if the company owned land that it is not registered to have. The surplus land, if any, should be surrendered to the Kandara Residents Association and the county government for a public purpose in the ratio of 70:30 respectively. Where no surplus land is found, the county government of Muranga should retain adequate land for the settlement of the claimants and for public purpose upon expiry of the leases. The Commission also directed that Del Monte Kenya Limited should surrender all public utilities within the land in question to the relevant national and county government agencies whether the leases have expired or not.

2.1 Recommendations by the Departmental Committee on Lands

10. In considering the Petition, the Departmental Committee on Lands observed that the submissions made by the Ministry of Lands and Physical Planning and Hon. Jude Njomo, Member of Parliament, Kiambu Constituency regarding registration of the lease held by the company in Muranga County registered as L.R No. 12158 (measuring approximately 2900 acres); and differed. While the Ministry submitted that the parcel of land arose out of the amalgamation of land parcels L.R Nos. 10862, 10741, 11312, 2953, 4873 and 11146, the Honourable Member of Parliament informed the Committee that the said parcels were surrendered to the Government by two companies, Sassa Coffee Rappit B Limited and were later irregularly acquired by Del Monte Company Limited.
11. In view of the above, the Committee in its report tabled on 21st November, 2019, recommended that the Director of Survey, Ministry of Lands & Physical Planning,

resurvey the land held by Del Monte Kenya Limited in Muranga and Kiambu Counties.

12. The Committee also recommended that the National Land Commission does investigate the circumstances under which L.R Nos. 10862, 10741, 11312, 2953, 4873 and 11146 that were said to have been surrendered to the Government by Sassa Coffee and Rappit B were irregularly acquired by Del Monte Kenya Limited.

2.2 Submissions on the implementation status

13. The Select Committee on Implementation commenced to apprise itself on the implementation status of the matter and invited the Cabinet Secretary for the Ministry of Lands and Physical Planning and the Chairperson, National Land Commission to a meeting on 27th October, 2020, 14th April, 2021 and 29th July, 2021.
14. The Committee also received written submission by the Cabinet Secretary for the Ministry of Lands and Physical Planning on 2nd August, 2021. Kandara Residents Association also made a written submission on 7th October, 2021.

2.3 Submission by the Ministry of Lands and Physical Planning

15. The Chief Administrative Secretary for the Ministry of Lands and Physical Planning appeared before the Committee on 27th October, 2020. During the meeting, the Committee was informed that a resurvey of the land legally held by Del Monte in Kiambu and Muranga Counties was done. However, the two counties have not approved the subdivisions and the extension/renewal of the leases.
16. The Ministry submitted that it had surveyed the following land currently owned by Del Monte Kenya Limited both in Muranga and Kiambu counties:
 - i. L.R. No. 12157/ 1 (measuring 3860 Ha) in Muranga County (as per F/R 316/67)
 - ii. L.R No. 12157/3 (measuring 2.987 Ha) in Muranga County as per F/R16/67)
 - iii. L.R No. 12158 (measuring 2963.1 Hectares) traversing Muranga and Kiambu Counties (as per F/R 127/3
 - iv. L.R. No. 12203/1 (measuring 2072 Hectares) in Kiambu County.

The Ministry informed the Committee that the survey was guided by subdivision scheme plans prepared by a registered physical planner practising as Real Plan Consultants.

17. In a meeting held on 29th July, 2021 and through a further written submission dated 2nd August 2021, the Cabinet Secretary outlined the proposed excisions for public

purpose/utility plots. The proposals are contained in five scheme plans referenced as follows:

- (i) RPC/1170 (F) –a proposed subdivision of L.R. No. 12157/1 located in Gatanga Sub-County, Murang’a County to excise all twelve (12) portions;
- (ii) RPC/1170 (c) /020/005 –proposed subdivision of L.R. No. 12157/3 located in Gatanga Sub-county, Muranga County in two (2) portions;
- (iii) RPC/1169/020/017- proposed subdivision of L.R. No. 12158 located in Gatanga Sub-county, Muranga County in three (3) portions;
- (iv) RPC/1169/019/025 – a proposed subdivision of L.R. No. 12158 located in Kiambu County into three portions and change of user of sub plot C from agricultural to educational (Ndula Primary and Secondary Schools);
- (v) RPC/1169/019/026 – proposed subdivision of L.R. No. 12203/1 located in Kiambu County into five (5) portions.

18. The outcome of the survey was as follows:

- (1) L.R. No. 12203/1 – measuring 2101 Hectares has a leasehold of 49 years with effect from 1st July, 1970. The lease expired on 1st July, 2019 and the application for renewal of the lease was submitted to the National Land Commission.

The Land is proposed to be subdivided into five portions as follows:

- (i) Portion ‘A’ measuring approximately 1792.54 Ha remains with Delmote Kenya Ltd;
 - (ii) Portion ‘B’ measuring 55.32 Ha - surrender to the County Government of Kiambu;
 - (iii) Portion ‘C’ measuring approximately 67.30 Ha - surrender to the County Government of Kiambu;
 - (iv) Portion ‘D’ measuring approximately 131.50 Ha - surrender to County Government of Kiambu;
 - (v) Portion ‘E’ measuring approximately 25.50 Ha - surrender to County Government of Kiambu.
- (2) L.R. No. 12203/2 measuring 56.57 Ha with a leasehold of 49 years with effect from 1st July, 1970. The lease expired on 1st July, 2019 and the application for renewal of the lease was submitted to the National Land Commission.

The Ministry submitted that the survey had established the boundary beacon were found to be intact. Del Monte Company Ltd was within its borders.

19. Resurvey of Land held by Del Monte Limited in Muranga County

- (1) L.R. No. 12157/1 measuring 3860 Ha, leasehold of 49 years with effect from 1st May, 1973. The lease will expire in 2022.

Application for extension of lease submitted to the National Land Commission and forwarded to the Ministry. Provisional approval is given by the Ministry and waiting for approval by the County Government of Murang'a.

The Land is proposed to be subdivided into twelve (12) portions;

- (i) The portion "A:" measuring approximately 8245.06 acres for agricultural purposes (to remain in the Company's name);
- (ii) Portion 'B' measuring approximately 5.02 acres for public purposes (Ngati Police Station and Chief's camp) – to be surrendered;
- (iii) Portion "C" measuring approximately 5.16 acres for educational purposes (Del Monte secondary school) to be surrendered;
- (iv) Portion 'D' measuring approximately 2.62 acres for educational purposes (Kinguru primary school – to be surrendered)
- (v) Portion 'E' measuring approximately 4.62 acres for recreational purposes (public playground) to be surrendered;
- (vi) Portion 'F' measuring 2.99 acres for public utility (Ithanga water supply intake) to be surrendered;
- (vii) Portion 'G' measuring 1187.17 acres for public land to be surrendered to the County of Muranga;
- (viii) Portion 'H' measuring approximately 192.83 acres for public land to be surrendered to the County Government of Murang'a;
- (ix) Portion 'J' measuring approximately 20 acres for public use (to be surrendered to the County Government of Murang'a);
- (x) Road widening area measuring approximately 14.78 acres for transport (Oloitiptip Road, 40M to be surrendered;
- (xi) Road widening area measuring approximately 47.25 acres for transport (Kakuzi Road, 40 M to be surrendered;
- (xii) The proposed area for 12 Meter access roads measuring approximately 4.05 acres (Del Monte Mixed Secondary School, public playground and Ithanga Water Supply Intake) to be surrendered.

- (2) 12157/2 measuring 40.87 Ha with a leasehold of 49 years from 1st May, 1973. The lease will expire in 2022. The Ministry submitted that the survey had established that the boundary beacon was found to be intact. Del Monte Company Ltd was within its borders

The Ministry further submitted that the Company had applied for an extension of lease submitted to the National Land Commission and forwarded to the Ministry. Additionally, provisional approval had been given by the Ministry and was waiting for approval by the County Government of Murang'a.

- (3) 12157/3 measuring 2.987 Ha with a leasehold of 49 years from 1st May, 1973. The lease will expire in 2022. The boundary beacon was found to be intact. Del Monte Company Ltd was within its borders.

The land is to be sub-divided into two portions: -

- (i) Portion 'A' measuring approximately 1.88 Ha to remain agricultural land (in the company name);
 - (ii) Portion 'B' measuring approximately 1.11 Ha to be used as a playground for Moi Primary School.
- (4) L.R. No. 12157/4 measuring 2.311 Ha with a leasehold of 49 years from 1st May, 1973. The lease will expire in 2022. The boundary beacon was found to be intact. Del Monte Company Ltd was within its borders.

Application for extension of lease submitted to the National Land Commission and forwarded to the Ministry. Provisional approval was given by the Ministry and is awaiting approval by the County Government of Murang'a.

- (5) L.R.12157/5 is measuring 5.677 Ha with a leasehold of 49 years from 1st May, 1973. The lease will expire in 2022. The boundary beacon was found to be intact. Del Monte Company Ltd was within its borders.

The Ministry informed the Committee that the Company had applied for an extension of lease submitted to the National Land Commission and forwarded to the Ministry. Further, provisional approval had been given by the Ministry and was waiting for approval from the County Government of Murang'a.

20. Resurvey of Land held by Del Monte Kenya Limited traversing Murang'a and Kiambu Counties

- (1) L.R. No. 12158, measuring 2972.8 Ha less road reserve of 9.7 Ha is an amalgamation of L.R No. 10741, L.R. 10862, L.R. No. 11146. LR No. 11312, LR No. 2953. The land has a leasehold of 49 years from 1st May, 1973. The lease will expire in 2022.

The survey also established that the boundary beacon was intact and that Del Monte Company Ltd was within its borders.

Further, the Ministry submitted that the Company had applied for an extension of lease and provisional approval given by the Ministry. The Company was awaiting approval by the County Governments of Murang'a and Kiambu.

The Ministry also submitted that the land is proposed to be subdivided into three portions and change of user of subplot C from agricultural to educational (Ndula Primary and Secondary Schools) as follows:

- (i) Portion 'A' measuring approximately 1938.12 Ha for agricultural purposes (situated in Murang'a County, to remain in the Company's name;

- (ii) Portion ‘B’ measuring approximately 1029.41 Ha for agricultural purposes (situated in Kiambu County, to remain in the Company’s name);
- (iii) Portion ‘C’ measuring approximately 4.97 Ha for public purposes (Ndula Primary and Secondary Schools situated in Kiambu County- to be surrendered;
- (iv) Portion ‘D’ measuring approximately 1.54 Ha for public purposes (Nginyi Primary School situated in Murang’a County- to be surrendered;
- (v) Approximately 17.90 Ha have been set aside for roads (to be surrendered).

21. In conclusion, the Cabinet Secretary submitted that the Ministry had established during the resurvey that Beacons for all the parcels were intact and that Del Monte was within its boundaries. She added that the Company does not hold excess land.

2.4 Submission by the Chairperson National Land Commission

22. The NLC Chairperson, Mr. Gershom Otachi, appearing before the Committee on 29th July, 2021 submitted that original parcels L.R. Nos. Chui Estates Limited owned 10862, 10741, 11312, 2953, 4873 and 11146 up to around 1973 when through a memorandum of registration of transfer of lands and at a consideration of Kshs. two million were transferred to the Government of Kenya. The transfer was executed on 1st May, 1973.

23. The Commission took note of passage in time and parties involved in the transaction (unidentified directors of Chui Estates Limited and one James Aloisius O’loughlif as Commissioner of Lands). It could not unearth further details that necessitated the transfer nor amalgamation of the said parcels of land.

2.5 Submission by Kandara Residents Association

Kandara Residents Association, represented by their lawyers; Mr. Duncan Okatch and Mr. Jackson Ikua, during a meeting held on 14th April, 2021; 29th July, 2021 and 30th September, 2021 submitted as follows:

24. From the resurvey of the land, it showed that 1,400 acres was set aside as public land, however they raised concern how much of the Land would go to the petitioners.

25. They also raised concern with the submission by the Chairperson NLC, regarding the parcels of land owned by Chui estates, that the Commission could not unearth details that necessitated transfer of the land to Del Monte. The petitioners noted that the land should have reverted back to the public and not Del Monte.

26. The Petitioners made the following prayers to the Committee: -

- i. In the report by the Cabinet Secretary for the Ministry of Lands and Physical Planning tabled before the Committee, there was an indication that there were plans by Del Monte Kenya Limited to excise land for public use prior to the renewal of leases and that the excised land will be surrendered to the County Governments of Kiambu and Muranga. The petitioners noted that that went against the directive of NLC, further the County Governments had not asked for land. The petitioners therefore prayed that any land to be allocated in settlement of the claims be surrendered to them directly and not County Governments.
- ii. Del Monte Kenya Limited is occupying public land that is L.R. 12158 which was amalgamated from L.R Nos. 10741, 10862, 11146, 11312 and 2953. The land should therefore be declared as public land and used for resettlement of the Petitioners.
- iii. That all property known as Sassa Coffee L.R. 9213/1 measuring 511 acres be declared public land as the same never belonged to Del Monte Kenya but existed as a separate entity. The land should then be used to resettle the Petitioners.
- iv. That no renewal of leases for Del Monte Kenya should take place until resettlement of the Petitioners is done.

The petitioners also raised the following issues pertaining the submission by the Cabinet Secretary for the Ministry of Lands and Physical Planning and the Chairperson National Lands Commission.

The Chairperson, NLC indicated that they could not find any records on amalgamation of L.R No. 10741, L.R. 10862, L.R. No. 11146. LR No. 11312, LR No. 2953, whose previous owners were legal entities that have since been wound up. Prior to the winding up their operations, they had surrendered the said properties to the Government of Kenya.

Available records at the Ministry of Land show the last entry and/or dealing with regards to the above parcels were the surrender to the Government of Kenya and to this end, these parcels constitute public land.

The Petitioners also submitted that records at the Directorate of Survey show that due process was not followed when the amalgamation of the aforementioned land parcels was done.

2.6 Implementation status of House Resolutions

The Departmental Committee on Land in its report tabled on 21st November, 2019, recommended that the Director of Survey, Ministry of Lands & Physical Planning does resurvey the Land held by Del Monte Kenya Limited in Muranga and Kiambu Counties

27. The Ministry of Lands and Physical Planning has surveyed the Land currently owned by Del Monte Kenya Limited both in Muranga and Kiambu counties; L.R

No. 12157/1 measuring 3860 Hectares in Muranga County, L.R No. 12157/3 measuring 2.987 Hectares in Muranga County, L.R No. 12158 measuring 2963.1 Hectares traversing Muranga & Kiambu Counties and L.R No. 12203/1 measuring 2072 Hectares in Kiambu County.

28. The survey was guided by subdivision scheme plans prepared by a registered physical planner practicing as Real Plan Consultants Limited. The survey of all the parcels is complete and awaits approvals from both county governments of Muranga and Kiambu.

Committee observation

29. This recommendation has been implemented. However, the Committee was not satisfied with the Ministry of Land and Physical Planning's submission that Del Monte Kenya Limited does not hold excess Land.

On the recommendation that the NLC investigates the circumstances under which L.R. Nos. 10862, 10741, 11312, 2953, 4873 and 11146 that were said to have been surrendered to the Government by two companies namely Sassa Coffee and Rappit B. Limited were later irregularly acquired by Del Monte Kenya Limited

Implementation status

30. This has not been done as the Ministry of Lands and NLC submitted that due to passage of time it had not been able to unearth how the Company acquired the land.

Committee observation

31. There were no sufficient records on how the transfer of the land to Del Monte Kenya Limited in 1973 was carried out. The Committee therefore notes that this land ought to be public land.

2.7 Committee Recommendations

32. The lease for L.R No. 12158, which resulted from the amalgamation of L.R No. 10741, L.R. 10862, L.R No. 11146. L.R No. 11312 and L.R No. 2953 should be reverted to the Government of Kenya and declared as public land. Further, the land should be allocated to Kandara Residents Association for their settlement; and
33. The Ministry of Lands and Physical Planning in consultation with the National Land Commission should allocate the land excised from Del Monte Kenya Limited to Kandara Residents Association and County Governments of Muranga and Kiambu in the ratio of 70:30 respectively, as per the National Land Commission's Gazette Notice 1995 of 2019.

3.0 REPORT OF THE DEPARTMENTAL COMMITTEE ON LANDS ON ITS CONSIDERATION OF THE PETITION BY FORMER WORKERS OF THE LATE MAYER JACOB SAMUELS REGARDING THE INVASION AND EVICTION OF THE WORKERS FROM THEIR LAND IN ROYSAMBU CONSTITUENCY BY THE KENYA DEFENCE FORCES

3.1 Background

34. The Petition by former workers of the Late Mayer Jacob Samuels regarding invasion and eviction from their land by the Kenya Defence Forces was presented to the House by the Hon. Speaker on 27th June, 2019.
35. The petitioners claimed that they were former workers of the late Mayer Jacob Samuels employed in his sisal processing farm and workshop industry on L.R. No. 5875/2 before he passed away in 1974. They claimed that the deceased's family allowed them to continue staying on the land after they could not pay their salaries.
36. The petitioners registered Roysa Community Development Society to safeguard the land from grabbers and later requested the Nairobi City County Government to allocate the land to them. The County Government of Nairobi and the National Land Commission approved the subdivision of the land and the Ministry of Lands and Physical Planning subsequently issued letters of allotment.
37. According to the Ministry of Defence, LR No. 5875/2, the land in dispute was compulsorily acquired by the Commissioner of Lands vide Gazette Notices Nos. 5151 and 5152 of 1985 pursuant to a request by the then Permanent Secretary in charge of the Department of Defence in the Office of the President.
38. The land was valued at Kshs. 3,530,500 by the Commissioner of Lands and the compensation award was duly paid by the Department of Defence to the Commissioner of Lands. The beneficial owner of the land, Mr. Meshunor Jacob Samuels was dissatisfied with the compensation award and commenced proceedings to challenge the valuation in the High Court under Land Acquisition Appeal No. 2 of 1986.
39. In accordance with section 13(2) of the Land Acquisition Act, the compensation award was deposited in the High Court by the Commissioner of Lands and a deposit receipt issued by the High Court Registrar and subsequently released to Mr. Jacobs on 3rd of October, 1987. This was confirmed by the Attorney General's letter and M/s Robson Harris & Co. Advocates confirming that the Kshs. 3,530,500 was received by them on behalf of their client, Mr. Jacobs.

40. The Commissioner of Lands issued a notice of taking possession in accordance with section 19(1) of the Land Acquisition Act on 25th June, 1986. The notice also required Mr. Jacobs to deliver the title documents to the Registrar of Titles for cancellation. In accordance with section 19(4) of the Land Acquisition Act, the title to the land vested in the Government absolutely, free from encumbrances for the unexpired term of 99 years from 1906 as at the 25th June, 1986.
41. The High Court enhanced the award to Kshs. 23,000,000. The decision was subsequently appealed by the Attorney General vide Nairobi Civil Appeal No.109 of 1987 which was later settled and the Government agreed to pay the enhanced award. The land in question was formally handed over to the Ministry of Defence on the 25th of June, 1986. The land was used as a training ground by the Kenya Army Electrical and Mechanical Engineers (KAEMA) and a temporary vehicle workshop by the Kenya Army. Following the establishment of a fully-fledged workshop at Kahawa Garrison, the temporary workshop was closed. The land was subsequently used as a temporary camp for military athletes owing to its close proximity to Kasarani Sports Complex.
42. The Ministry was in early 2019 requested to identify potential land for affordable housing programme. The Roysambu camp was identified as potential land for the construction of Senior Non-Commissioned Officers (NCO) housing under the affordable housing programme. Consequently, the Ministry elected to improve security at the camp by repairing the stone fence. The camp also houses a detachment from Kahawa Garrison.
43. Kasarani Mall Ltd which is a subsidiary of Uchumi Supermarkets Plc is the registered owner of LR. No. 5875/2 situated in the Kasarani area of Nairobi. Records held by Kasarani Mall Ltd indicate that the Commissioner of Lands on behalf of the President granted the land to Solio Construction Company Limited vide Grant of Lease No. I.R. 85371. The Grant was transferred to Kasarani Mall Ltd vide a transfer registered at the Lands registry on the 20th March, 2001 as L.R. No. 85371/2.
44. Uchumi claims that Kasarani Mall Ltd lawfully acquired a valid title from Solio Construction Company Limited through the said transfer. That after acquisition of the land, the title has been used by Uchumi Supermarkets Plc. to secure financing from KCB Bank Kenya Limited and Eastern and Southern Africa Trade and Development Bank on the 7th December, 2004. Each of these facilities was repaid and the respective charges registered therein discharged on the 28th June, 2011.
45. Uchumi Supermarkets Plc. further claims that the Directorate of Criminal Investigations, then known as Criminal Investigations Department (CID) investigated the validity of the transfer in 2008, following allegations that the transaction was fraudulent. The CID confirmed that the property was procedurally

allocated to Solio Construction Company Limited who acquired a valid title. There was no evidence of collusion or conspiracy between Solio Construction Company Limited and the Lands Registry during the allocation of the property. Solio Construction Company Limited transferred a valid title to Kasarani Mall's title in 2001 on 'willing buyer willing seller' and that the caveat on Kasarani Mall's title had no legal basis or justification and had unreasonably prevented the sale or development of the property.

46. In 2010, members of Roysambu Self Help Group (an unregistered society) invaded the property. In response, Kasarani Mall Ltd filed a case at the Environment and Land Court being Civil Case No. 495 of 2011. According to court records, the defendants therein similarly alleged that being former employees of Major Jacob Samuels, the previous owner and following his demise, they were given the land by individuals identified as Rapahel and Meshmor Samuel (allegedly Major Samuel's sons) to develop the same.
47. The court allowed Kasarani Mall Ltd's claim for vacant possession and a permanent injunction against the defendants and declared that Kasarani Mall Ltd is the absolute and indefeasible owner of the property in terms of section 26(1) of the Land Registration Act.
48. The National Land Commission's position is to the effect that the Department of Defence acquired Land which was on a 99-year lease in 1986 and that the lease was to expire in 2005. Solio Construction Company Limited which sold land Kasarani Mall Ltd was allocated L.R No. 5875/2 on the 1st of July, 1999 and the allocation was done when another lease was subsisting leading to double allocation.
49. The NLC recommended that Kasarani Mall Ltd should surrender their title back to the Government because it was irregularly issued, or in the alternative the Chief Land Registrar should place a Government Caveat on the said title. All letters of allotment issued irregularly on the irregular subdivision of LR No. 5875/2 by the Ministry of Lands and Physical Planning to be surrendered for cancellation because records from the Ministry of Lands show that the notice of taking possession was lodged and registered in the Government Lands Register of the 25th June 1986 committing the said land to the Department of Defence.
50. Further, during deliberation of the matter by the Departmental Committee on Lands, the Committee heard that investigations by the NLC showed that Solio Construction Company had two sets of titles for the same property. The first was registered on 18th May, 1992 with different L.R. numbers, while the second set of title was registered on 20th January, 2001.

51. Additionally, it also emerged that that the transfer form that was used to transfer parcel of land L.R. No. 5875/2 was fraudulent as the officer who was purported to have signed the document, appearing before the Departmental Committee on Lands, disowned the document and claimed that her signature was forged.
52. The Ministry of Lands and Physical Planning submitted that there is no evidence that the Ministry of Defence ever relinquished their interest on the land. Subsequently, all transactions undertaken by the Nairobi City County Government purporting to allocate and sub-divide the Land are un-procedural and misleading. The Ministry was never consulted to give the true position, nor approved the purported sub-division. The Ministry recommended that the subdivision scheme and the letter of subdivision issued to individuals be cancelled or withdrawn and the status quo as per their records be retained since the land remains the property of the Government, alienated to the military. Further that the Director of Surveys be informed to reinstate the parcel to its original number.
53. According to the Petition submitted to Parliament, the petitioners, who claim to be former workers in the estate of the late Mayor Jacob Samuels, allege that the Kenya Defence Forces invaded the property in Roysambu Constituency which was given to them by the estate of the deceased.
54. Subsequently, the Government filed a case at the Environment and Land Court in Nairobi Judicial Review Application No.008 of 2020, Republic Vs Director Land Administration Ministry of Lands and Physical Planning, Chief Land Registrar Ministry of Lands and Physical Planning, Attorney General and Roysambu Community Development Society. A Notice of Motion Application dated 21st May, 2021 was filed seeking that the court grants a Judicial Review Order of Mandamus directed at the Director Land Administration and the Chief Land Registrar to process and issue Certificate of Leases and Certificate of Titles to individual members as per the approved subdivision scheme relating to LR No. 5875/2 as approved by the National Land Commission; and to process and issue Certificate of Leases and Certificate of Titles for public utilities being Roysambu Technical Institute, Roysambu Bus and Market, Roysambu Recreation Centre, TITI and secondary school as per the approved subdivision scheme relating to LR No. 5875/2 as approved by the National Land Commission and as per the allotment letters issued by the Nairobi City County.

3.2 Recommendations by the Departmental Committee on Lands

55. The Departmental Committee on Lands tabled its report on 5th December, 2019 and made the following recommendations:
 - (i) That the Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County Government does complete the titling process for L.R. No. 5875/2 within 180 days of the tabling of the report;

- (ii) The Director for Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to L.R. No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within ninety (90) days of tabling of the report; and
- (iii) That the Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R. 5875/2.

3.3 Submissions by the Cabinet Secretary for the Ministry of Lands and Physical Planning

- 56. The Ministry submitted that the Government issued a notice of intention to acquire the Land for the Kenya Defence Forces vide Gazette Notices No. 5151 and 5152; and a Notice of taking possession 'by the Government absolutely' was lodged and registered in 25th June, 1986. This position was supported by the Ministry of Defence.
- 57. The Ministry of Defence stated that the Commissioner of Lands valued the land at Kshs. 3,530,500 which sum was duly paid by the Commissioner. The valuation was challenged in the High Court which enhanced the award to Kshs. 23,000,000. The decision was subsequently appealed by the Attorney General Vide Nairobi Civil Appeal No. 109 of 1987 which was later settled and the Government agreed to pay the enhanced Award.
- 58. The CS confirmed to the meeting that the Government had paid Kshs. 3, 530, 500 to the family of the late Mr. Samuels, through Middle East Bank. She added that there is documentation to confirm this.
- 59. Regarding who the owner of the land is, the Cabinet Secretary submitted that the land was allocated to Kasarani Mall limited.
- 60. Regarding allegations that the Department of Defence was a front to grab the land for individuals, the Cabinet Secretary submitted that this was untrue and she had herself engaged with the Department of Defence regarding the said land and the land indeed was to go to the Military.
- 61. The Honourable Member noted that during deliberations of the Departmental Committee on Lands the Director of Land Administration had submitted that the land belonged to the Kenya Defence Forces having compulsorily acquired the land in 1986. However, he reported that during the current on-going Court Case, the office of the Attorney General has submitted that the land belongs to Kasarani Mall Limited.

3.4 Implementation status

i. *The Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County Government does complete the titling process for L.R. No. 5875/2 within 180 days of tabling of the report;*

62. The Cabinet Secretary submitted that it had not implemented the House resolutions due to the advisory by the Hon. Attorney General vide letter Ref. AG/CIV/47/20 dated 11th August, 2020 to the National Assembly indicating that the land parcel L.R. No. 5872/2 belonged to the Kenya Defence Forces.

Committee Observation

63. The Committee noted that the National Land Commission and the County Government of Nairobi had played their roles as directed by the House. However, the Ministry of Lands and Physical Planning has failed to implement the resolution. At the time of tabling the report, it was eighteen (18) months past the timelines given by the Departmental Committee on Lands.

ii. *The Director for Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to L.R. No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within ninety (90) days of tabling of the report.*

Implementation status

64. The Committee is yet to receive a report from the Directorate of Criminal Investigations.

iii. *That the Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R. 5875/2.*

Implementation status

65. L.R. No. 23393 is registered in favour of Kasarani Mall Limited. The parcel is adjacent to L.R 5875/2 and is not in contention given that the application by Kasarani Mall Limited for amalgamation of the two properties was never finalized.

Committee Observation

66. Implementation has been done.

3.5 Committee Recommendations

67. The House should initiate the process for removal of the Cabinet Secretary for the Ministry of Lands and Physical Planning for failure to implement the House resolution 'that the Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County does complete the titling process for L.R. No. 5875/2 within 180 days of tabling of the report'.

68. The Inspector General of Police should ensure that the Directorate for Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to L.R. No. 5875/2 and submits a report to the National Assembly within sixty (60) days of the adoption of this report.

4.0 COMMITTEE RECOMMENDATIONS

The Committee, having reviewed the implementation status of the two reports and considered the evidence received, finally recommends that: -

69. The lease for L.R No. 12158, which resulted from the amalgamation of L.R No. 10741, L.R. 10862, LR No. 11146. LR No. 11312 and LR No. 2953 should be reverted to the Government of Kenya and declared as public land and allocated to Kandara Residents Association for their settlement, within Sixty (60) days of the adoption of the report failure, to which the Committee shall enforce appropriate sanctions pursuant to Standing Order 209 (3) of the National Assembly Standing Orders.
70. In consultation with the National Land Commission, the Ministry of Lands and Physical Planning should allocate the Land excised from Del Monte Kenya Limited to Kandara Residents Association and County Governments of Muranga and Kiambu in the ratio of 70:30 respectively as per the National Land Commission's Gazette Notice 1995 of 2019, within Sixty (60) days of the adoption of the report failure, to which the Committee shall enforce appropriate sanctions pursuant to Standing Order 209 (3) of the National Assembly Standing Orders.
71. The House approves that the Select Committee on Implementation initiates the process for removal of the Cabinet Secretary for the Ministry of Lands Physical Planning from office for failure to implement the House resolution *'that the Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County does complete the titling process for L.R. No. 5875/2 within 180 days of tabling of the report'*, pursuant to Article 152 (6) of the Constitution of Kenya and Standing Order 66 of the National Assembly Standing Orders.
72. The Inspector General of Police should ensure that the Directorate of Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to L.R. No. 5875/2, and submits a report to the National Assembly within sixty (60) days of the adoption of this report.

SIGNED.....  DATE 10/12/2021

HON. MOITALEL OLE KENTA, MP
CHAIRPERSON, COMMITTEE ON IMPLEMENTATION
THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 22 DEC 2021	DAY: <input checked="" type="checkbox"/> DAY <input checked="" type="checkbox"/> WED
TABLED BY:	HON. MOITALEL OLE KENTA - CHAIR
CLERK-AT THE-TABLE:	F. MURIUKI

Appendix I
Adoption List



**THE NATIONAL ASSEMBLY
PAPERS LAID**

The National Assembly

DATE: 22 DEC 2021

DAY:

Wed

**TABLED
BY:**

HON. MOITALEL OLE
KENTA - CHAIR

**CLERK-AT
THE-TABLE:**

F. MURIUKI

12th Parliament-5th Session-2021



Committee on Implementation

Agenda: Adoption of the following reports:-
 1. Report on implementation status of the report on irregular removal of leases by Del Monte
 2. Report on implementation status on the report on invasion of lands of smokers from their land in Kericho constituency

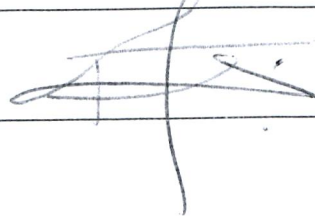
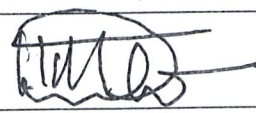

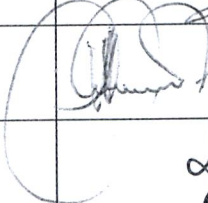

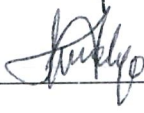
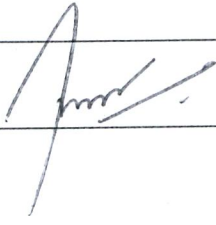
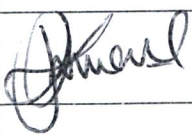
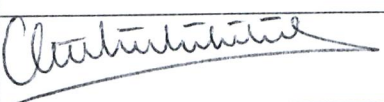
Date: 2-12-2021

Start Time: 11:30 am

Venue: 2nd floor committee room, Continental House

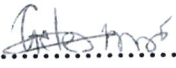
End Time: 12:10 pm

S/NO.	NAME	SIGNATURE
1.	The Hon. Moitalel Ole Kenta, MP – Chairperson	
2.	The Hon. Godfrey Osotsi, MP - Vice Chairperson	
3.	The Hon. Richard Onyonka, MP	
4.	The Hon. Alois Musa Lentoimaga, MP	
5.	The Hon. (Dr.) James Kipkosgei Murgor, MP	
6.	The Hon. Johnson Many Naicca, MP	
7.	The Hon. Moses Kiarie Kuria, MP	
8.	The Hon. Paul Simba Arati, MP	
9.	The Hon. Charles Ngusya Nguna, MP	

10.	The Hon. Feisal Abdalla Bader, MP	
11.	The Hon. Gabriel Kago Mukuha, MP	
12.	The Hon. Hassan Oda Hulufo, MP	
13.	The Hon. Jared Okello, MP	
14.	The Hon. Joash Nyamache Nyamoko, MP	
15.	The Hon. John Muchiri Nyagah, MP	
16.	The Hon. Joshua Mwalyo Mbithi, MP	
17.	The Hon. Michael Thoya Kingi, MP	
18.	The Hon. Nelson Koech, MP	
19.	The Hon. Benjamin Dalu Tayari, MP	
20.	The Hon. Paul Abuor, MP	
21.	The Hon. Peter Kimari Kihara, MP	
22.	The Hon. Silvanus Osoro, MP	
23.	The Hon. John Njuguna Wanjiku, MP	

Committee Clerk

Name... Abdirahman Gele Hassan



Date... 02/12/2021

Director Audit, Appropriations & Other Select Committees.....

THE NATIONAL ASSEMBLY
PAPERS LAID

Date.....

DATE: 22 DEC 2021

DAY:
WED

TABLED
BY:

HON. MOITALEL OLE
KENTA - CHAIR

CLERK-AT
THE-TABLE:

F. MURIUKI

Appendix II
Minutes of the Select Committee on
Implementation

**MINUTES OF THE 52ND SITTING OF THE COMMITTEE OF IMPLEMENTATION
HELD ON THURSDAY, 2ND DECEMBER, 2021, IN COMMITTEE ROOM ON 2ND
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 11.30 A.M.**

PRESENT

1. The Hon. Moitalel Ole Kenta, MP - **Chairperson**
2. The Hon. (Dr.) James Kipkosgei Murgor, MP
3. The Hon. Paul Simba Arati, MP
4. The Hon. Charles Ngusya Nguna, MP
5. The Hon. Feisal Bader, MP
6. The Hon. Hassan Hulufu, MP
7. The Hon. Jared Okello, MP
8. The Hon. Joash Nyamache Nyamoko, MP
9. The Hon. John Muchiri Nyagah, M.P
10. The Hon. John Njuguna Wanjiku, MP
11. The Hon. Joshua Mbithi Mwalyo, MP
12. The Hon. Nelson Koech, MP
13. The Hon. Peter Kihara, MP

ABSENT WITH APOLOGIES

1. The Hon. Godfrey Osotsi, MP - **Vice Chairperson**
2. The Hon. Alois Musa Lentoimaga, MP
3. The Hon. Silvanus Osoro, MP
4. The Hon. Benjamin Dalu Tayari, MP
5. The Hon. Paul Odalo Abuor, MP
6. The Hon. Richard Onyonka, MP
7. The Hon. Johnson Manya Naicca, MP
8. The Hon. Moses Kuria, MP
9. The Hon. Michael Kingi, MP
10. The Hon. Mukuha Gabriel Kago, MP

IN-ATTENDANCE

COMMITTEE SECRETARIAT

1. Ms. Tracy Chebet Koskei - First Clerk Assistant
2. Mr. Abdirahman Hassan - Second Clerk Assistant
3. Mr. Collins Mahamba - Audio Officer
4. Mr. Moses Kariuki - Serjeant-at-Arms

MIN.NO.NA/COI/2021/238: PRELIMINARIES

The Chairperson called the meeting to order at thirty five minutes past eleven o'clock (11.35 a.m.) and said a word of prayer. The agenda for the meeting was adopted, as proposed and seconded by the Hon. Peter Kihara, MP, and the Hon. Jared Okello, MP respectively.

MIN.NO.NA/COI/2021/239: CONFIRMATION OF PREVIOUS MINUTES

The Agenda item was deferred to the next sitting.

MIN.NO.NA/COI/2021/240: CONSIDERATION & ADOPTION OF THE REPORT ON IMPLEMENTATION STATUS OF THE REPORTS REGARDING THE INVASION AND EVICTION OF THE WORKERS FROM THEIR LAND IN ROYSAMBU CONSTITUENCY BY THE KENYA DEFENCE FORCES; AND THE PETITION ON IRREGULAR RENEWAL OF LEASES OF LAND BY DEL MONTEKENYA LIMITED

The Committee considered the report on implementation status of the following reports: -

1. The Report of the Departmental Committee on Lands regarding a petition on irregular renewal of leases of land by Del Monte Kenya Limited; and
2. The Report of the Departmental Committee on Lands on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding invasion and eviction of workers from their land in Roysambu Constituency by the Kenya Defence Forces.

The Committee having reviewed the implementation status of the two reports and considered the evidence received adopted the report after being proposed and seconded by the Hon. John Muchiri Nyagah, MP and the Hon. Joshua Mwalyo, MP, respectively, with the following recommendations:

1. The lease for L.R No. 12158, which resulted from the amalgamation of L.R. No. 10741, L.R. 10862, L.R No. 11146, L.R. No. 11312 and L.R. No. 2953 should be reverted to the Government of Kenya and declared as public land and allocated to Kandara Residents Association for their settlement, within sixty (60) days of the adoption of the report, failure to which the Committee shall enforce appropriate sanctions pursuant to Standing Order 209 (3) of the National Assembly Standing Orders.
2. In consultation with the National Land Commission, the Ministry of Lands and Physical Planning should allocate the land excised from Del Monte Kenya Limited to Kandara Residents Association and County Governments of Muranga and Kiambu in the ratio of 70:30 respectively as per the National Land Commission's Gazette Notice 1995 of 2019, within sixty (60) days of the adoption of the report, failure to which the Committee shall enforce appropriate sanctions pursuant to Standing Order 209 (3) of the National Assembly Standing Orders.

3. The House approves that the Select Committee on Implementation initiates the process for removal of the Cabinet Secretary for the Ministry of Lands and Physical Planning from office for failure to implement the House resolution *'that the Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County does complete the titling process for L.R. No. 5875/2 within 180 days of tabling of the report'*, pursuant to Article 152 (6) of the Constitution of Kenya and Standing Order 66 of the National Assembly Standing Orders.
4. The Inspector General of Police should ensure that the Directorate of Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to L.R. No. 5875/2, and submits a report to the National Assembly within sixty (60) days of the adoption of this report.

MIN.NO.NA/COI/2021/241: ADJOURNMENT

There being no other business, the meeting was adjourned at 12.10 p.m. The Next meeting was scheduled for Thursday, 9th December, 2021 at 10.00 a.m.

Sign.....

Date.....

(Chairperson)

MINUTES OF THE 41ST SITTING OF THE COMMITTEE OF IMPLEMENTATION HELD ON FRIDAY, 8TH OCTOBER, 2021, IN COMMITTEE ROOM 9, MAIN PARLIAMENT BUILDINGS, AT 10.00 A.M.

PRESENT

1. The Hon. Moitalel Ole Kenta, MP - **Chairperson**
2. The Hon. Charles Ngusya Nguna, MP
3. The Hon. Feisal Bader, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. John Muchiri Nyagah, M.P
6. The Hon. Hassan Hulufo, MP
7. The Hon. Paul Odalo Abuor, MP
8. The Hon. John Njuguna Wanjiku, MP
9. The Hon. Michael Kingi, MP

ABSENT WITH APOLOGIES

1. The Hon. Godfrey Osotsi, MP - Vice Chairperson
2. The Hon. Richard Onyonka, MP
3. The Hon. (Dr.) James Kipkosgei Murgor, MP
4. The Hon. Peter Kihara, MP
5. The Hon. Paul Simba Arati, MP
6. The Hon. Alois Musa Lentoimaga, MP
7. The Hon. Johnson Many Naicca, MP
8. The Hon. Moses Kuria, MP
9. The Hon. Nelson Koech, MP
10. The Hon. Benjamin Dalu Tayari, MP
11. The Hon. Joshua Mbithi Mwalyo, MP
12. The Hon. Jared Okello, MP
13. The Hon. Mukuha Gabriel Kago, MP
14. The Hon. Silvanus Osoro, MP

IN-ATTENDANCE

Hon. Isaac Waihenya, M.P - Petitioner

COMMITTEE SECRETARIAT

1. Ms. Tracy Chebet Koskei - First Clerk Assistant
2. Mr. Dennis Mawira - Audio Officer

MIN.NO.NA/COI/2021/193 PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past ten and said a word of prayer. The agenda for the meeting was adopted, as proposed and seconded by the Hon. Hassan Hulufo, MP, and the Hon. Paul Odalo Abuor, MP, respectively.

MIN.NO.NA/COI/2021/194 CONFIRMATION OF THE PREVIOUS MINUTES

Confirmation of Minutes of previous Sitting was deferred to the next Sitting.

**MIN.NO.NA/COI/2021/195 SUBMISSION BY HON. ISAAC WAIHENYA, M.P
REGARDING THE IMPLEMENTATION STATUS OF THE
REPORT OF THE DEPARTMENTAL COMMITTEE ON
LANDS ON ITS CONSIDERATION OF THE PETITION BY
FORMER WORKERS OF THE LATE MAYER JACOB
SAMUELS REGARDING INVASION AND EVICTION
FROM THEIR LAND IN ROYSAMBU CONSTITUENCY BY
THE KENYA DEFENCE FORCES**

Hon. Isaac Waihenya, M.P the Member for Roysambu submitted as follows:

That, in the meeting of 29th July, 2021 the Cabinet Secretary for the Ministry of Lands and Physical Planning acknowledged that the Ministry had received money from the Petitioners for processing of d titles. The Cabinet Secretary further submitted that the land belong to the Kenya Defence Forces.

Due to the delay in implementation of the report, the Petitioners and public utilities had gone to Court seeking that the Ministry of Lands implement the House resolutions that directed the Ministry of Lands and Physical Planning and the National Land Commission does complete the titling process for L.R No. 5875/2 within 180 days of tabling of that report.

The Honourable Member noted that during deliberations of the Departmental Committee on Lands the Director of Land Administration had submitted that the land belonged to the Kenya Defence Forces having compulsorily acquired the land in 1986. However, he reported that during the current on-going Court Case, the office of the Attorney General has submitted that the Land belongs to Kasarani Mall Limited.

The Member tabled a written submission by the Office of the Attorney General and their grounds o pposition on the aforementioned petition. The Member also undertook to submitted a copy of the transcribed proceedings of the Departmental Committee on Lands.

Following deliberation, the Committee resolved to finalize and table its report to the House informing the House that its resolutions had not been implemented.

MIN.NO.NA/COI/2021/196: ANY OTHER BUSINESS

1) Retreat/Inspection visit

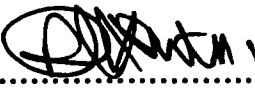
The Committee was informed that the inspection visit at the Kenya Ports Authority regarding the implementation status of the **Report of the Departmental Committee on Finance and National Planning regarding optimization of Revenue in Grain Handling Services at the Port of Mombasa** scheduled for Friday, 15th October, 2021 had been rescheduled to Friday, 22nd October, 2021.

2) **Delegation from Ghana**

The Chairperson informed the meeting that the Committee would be hosting a visiting delegation from the Parliament of Ghana on Thursday, 14th October, 2021 at 11.30 am. The Chairperson urged the Members to attend the meeting.

MIN.NO.NA/COI/2021/197: ADJOURNMENT

The meeting was adjourned at 11.20 a.m. The Next meeting will be held on notice.

Sign.....

Date.....27/10/2021.

(Chairperson)

MINUTES OF THE 40TH SITTING OF THE COMMITTEE OF IMPLEMENTATION HELD ON THURSDAY, 30TH SEPTEMBER 2021, IN THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS, AT 10.00 A.M.

PRESENT

1. The Hon. Moitalel Ole Kenta, MP - **Chairperson**
2. The Hon. Godfrey Osotsi, MP - **Vice Chairperson**
3. The Hon. Richard Onyonka, MP
4. The Hon. (Dr.) James Kipkosgei Murgor, MP
5. The Hon. Peter Kihara, MP
6. The Hon. Charles Ngusya Nguna, MP
7. The Hon. Feisal Bader, MP
8. The Hon. Jared Okello, MP
9. The Hon. Joash Nyamache Nyamoko, MP
10. The Hon. John Muchiri Nyagah, M.P
11. The Hon. Joshua Mbithi Mwalyo, MP
12. The Hon. Silvanus Osoro, MP

ABSENT WITH APOLOGIES

1. The Hon. Paul Simba Arati, MP
2. The Hon. Alois Musa Lentoimaga, MP
3. The Hon. Johnson Manya Naicca, MP
4. The Hon. Moses Kuria, MP
5. The Hon. Hassan Hulufu, MP
6. The Hon. Mukuha Gabriel Kago, MP
7. The Hon. Paul Odalo Abuor, MP
8. The Hon. John Njuguna Wanjiku, MP
9. The Hon. Michael Kingi, MP
10. The Hon. Nelson Koech, MP
11. The Hon. Benjamin Dalu Tayari, MP

IN-ATTENDANCE

KANDARA RESIDENTS ASSOCIATION (KRA)

1. Mr. Joseph Kibiru Njuguna - Patron KRA
2. Mr. Jackson IKua - Advocate
3. Mr. Duncan Okatch - Advocate
4. Mr. Geoffry Kairu - KRA
5. Ms. Florence Njeri Mwaura -KRA
6. Mr. Karira Kimara - KRA
7. Mr. Victor Wambutoi - KRA

COMMITTEE SECRETARIAT

1. Ms. Tracy Chebet Koskei - First Clerk Assistant
2. Ms. Jane Serem - Audio Officer
3. Mr. Donald Manyala - Research Officer
4. Mr. Yeziel Jillo - Sergeant-at-Arms
5. Ms. Winnie Gatuiri - Intern

MIN.NO.NA/COI/2021/186 PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past ten and said a word of prayer. The agenda for the meeting was adopted, as proposed and seconded by the Hon. Godfrey Osotsi, MP, Vice Chairperson, and the Hon. (Dr.) James Murgor, MP, respectively.

The Chairperson thereafter informed the meeting of the mandate of the Committee as provided for in Standing Order 209 of the National Assembly Standing Orders, which was to follow up on the implementation of House resolutions and ensure that the House does not act in vain.

The Chairperson further informed the meeting that the meeting was a follow up to meeting held on 29th July, 2021 with the Cabinet Secretary for the Ministry of Lands and Physical Planning and the Chairperson, National Land Commission. During the meeting, the Cabinet Secretary undertook to submit a more comprehensive document following the resurvey exercise carried out by the Ministry on the land held by Del Monte Kenya Limited in Kiambu and Muranga Counties.

The document was submitted on 2nd August, 2021 and shared to the Kandara Residents Association. The meeting was therefore to accord them an opportunity to respond to the submission by the Ministry.

MIN.NO.NA/COI/2021/187 CONFIRMATION OF THE PREVIOUS MINUTES

Confirmation of Minutes of previous Sitting was deferred to the next Sitting.

MIN.NO.NA/COI/2021/189 SUBMISSION BY KANDARA RESIDENTS ASSOCIATION REGARDING THE IMPLEMENTATION STATUS OF THE REPORT OF THE DEPARTMENTAL COMMITTEE ON LANDS ON ITS CONSIDERATION OF THE PETITION ON IRREGULAR RENEWAL OF LAND LEASES TO DEL MONTE KENYA LIMITED

Mr. Duncan Okatch, the Advocate for the Kandara Residents Association submitted as follows:
That the report tabled by the Cabinet Secretary in is total non-compliance to the report of the Departmental Committee on Lands

The Advocate based their case on Section 13 of the Land Act, 2012 which gives the National Land Commission (NLC) the mandate to renew and extend leases. In that regard, the Committee heard that the NLC, in gazette Notice 1995 of March, 2019 directed that resurvey if the Delmonte Kenya Ltd be done by the Director of Survey in conjunction with the County Government of Kiambu and Muranga to establish if there is any variance between land leased and the land occupied by the Company. Any residue should be given or surrendered to the claimants for resettlement and the County Government for public purpose in the ration of 70:30 respectively.

Further, the NLC directed that if found there is no residue, then on expiry of the lease a suitable amount of land should be set aside and held in trust by the County Governments for resettlement and Public Utilities.

The Advocate decried the submission by the Cabinet Secretary that there was no surplus land from the resurvey. He further submitted that the land that had reverted back to the County Government of Kiambu has already been a subject of development plans without considering the claimants.

The KRA also faulted the Ministry of Lands alleging that they did not all parcels owned by Del monte during the resurvey. These are LR No.s 12157/2, 12157/6, 12157/7, 13169, 10735, 7232/2, 9213/1.

The Advocate also brought to the attention of the Committee of the land that had been owned by Sassa Coffee which was surrendered to the Government in 1973 but was reallocated to Del monte Kenya under unclear circumstances. The Committee acknowledged that it indeed during the meeting of 29th July, 2021 the Cabinet Secretary for the Ministry of Lands and the National Land Commission officials admitted that they could not trace documents pertaining to the renewal of the lease to the Company.

The Kandara Residents Association made the following prayers:

1. Since the Association are the petitioners at the National Land Commission, Parliament and in courts, they should be represented in the implementation of the NLC determination in process such as resurvey public participation as per the Constitution.
2. Since neither NLC nor the Ministry disputed the Association's claim that the land in LR No.s 10862, 1041,11146, 11312 and 2953 were surrendered to the Government of Kenya, the Association requested that they be declared excess/surplus land of which they are entitled to 70% according to NLC determination.

That all parties be granted an opportunity to simultaneously view and query the official cadaster's spatial extent of all the claims representing

- i. Various leases requiring renewal
- ii. Public land that was surrendered back to government
- iii. Actual utilized/ Unutilized land

The Committee raised concern over the statement by the Ministry of Lands that there was no surplus land and yet had gone ahead and allocated land to the County Governments of Kiambu and Muranga.

Following deliberations, the Committee directed that the Association provides a comprehensive report on the specific land they were laying claim on and also on the Association's claim that the Cabinet Secretary had usurped the power of the National Land Commission.

MIN.NO.NA/COI/2021/191: ANY OTHER BUSINESS

1) **Retreat/Inspection visit**

The Committee resolved to undertake a meeting with the Kenya Ports Authority regarding the implementation status of the **Report of the Departmental Committee on Finance and National Planning regarding optimization of Revenue in Grain Handling Services at the Port of Mombasa on Friday, 15th October, 2021.**

Additionally, the Committee resolved to have a meeting with the **Ahmed Noormohamed Issak Hardware** regarding the implementation status of the Special report by PIC on the regarding construction of Ronald Ngala Utalii College in Kilifi County, on Saturday, 16th October, 2021.

2) **Foreign Trips**

The Committee resolved to follow up on the proposed training of Members in Turkey and also engage other committees on scheduled conferences so as to include members of the committee. The Secretariat was asked to report on the matter in the next meeting.

MIN.NO.NA/COI/2021/192: ADJOURNMENT

The meeting was adjourned at 11.35 a.m. The Next meeting will be held on notice.

Sign.....

Date.....27/10/2021

(Chairperson)

MINUTES OF THE 28TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON THURSDAY, 29TH JULY 2021, IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS, AT 11.00 A.M.

PRESENT

1. The Hon. Moitalel Ole Kenta, MP - **Chairperson**
2. The Hon. (Dr.) James Kipkosgei Murgor, MP
3. The Hon. Johnson Many Naicca, MP
4. The Hon. Paul Simba Arati, MP
5. The Hon. John Muchiri Nyagah, M.P
6. The Hon. Joshua Mbithi Mwalyo, MP
7. The Hon. Michael Kingi, MP
8. The Hon. Jared Okello, MP
9. The Hon. Hassan Oda Hulufu, MP

APOLOGIES

1. The Hon. Godfrey Osotsi, MP - **Vice Chairperson**
2. The Hon. Richard Onyonka, MP
3. The Hon. Alois Musa Lentoimaga, MP
4. The Hon. Joash Nyamache Nyamoko, MP
5. The Hon. Peter Kihara, MP
6. The Hon. Benjamin Dalu Tayari, MP
7. The Hon. Moses Kuria, MP
8. The Hon. Mukuha Gabriel Kago, MP
9. The Hon. Nelson Koech, MP
10. The Hon. Paul Odalo Abuor, MP
11. The Hon. Feisal Bader, MP
12. The Hon. Silvanus Osoro, MP
13. The Hon. Charles Ngusya Nguna, MP

IN-ATTENDANCE

Hon. Waihenya Ndirangu, MP - Friend of the Committee

MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Ms. Farida Karoney, EGH - Cabinet Secretary
2. Hon. Alex Mhuri Muiri - Chief Administrative Secretary
3. Ms. Jacinta Mutua - Deputy Director, Valuation
4. Ms, Carolyn Menin - Legal Counsel
5. Mr. Hilton Kamau - Assistant Director, Land Administration
6. Mr. Geoffrey Kibowen - Assistant Director of Surveys

NATIONAL LANDS COMMISSION

1. Mr. Gershom Otachi Bw'Omanwa - Chairperson
2. Mr. Reginald Okumu - Commissioner
3. Mr. Daniel Kithuku - Deputy Director

KANDARA RESIDENTS ASSOCIATION

1. Mr. Joseph Kibiru Njuguna - Patron
2. Mr. Karira Kimara - Chairman
3. Mr. Geoffrey Kairu - Secretary General
4. Ms. Florence Mwaura - Organizing Secretary
5. Mr. Duncan Okatch - Advocate
6. Mr. Jackson Ikua - Advocate

COMMITTEE SECRETARIAT

1. Ms. Chebet Koskei - First Clerk Assistant
2. Mr. Abdirahman G. Hassan - Second Clerk Assistant
3. Ms. Jane Serem - Audio Officer I
4. Ms. Winnie Gatuiri - Intern

MIN. NO.NA/COI/2021/132:

PRELIMINARIES

The Chairperson called the meeting to order at eleven o'clock and said the Prayer. The Agenda for the meeting was adopted, as proposed and seconded by the Hon. Hassan Oda Hulufu, MP and the Hon. John Muchiri Nyagah, M.P, respectively. This was followed by a round of introductions.

The Chairperson thereafter informed the meeting of the mandate of the Committee as provided for in Standing Order 209 of the National Assembly Standing Orders, which was to follow up on the implementation of House resolutions and ensure that the House does not act in vain.

MIN. NO.NA/COI/2021/133:

CONFIRMATION OF MINUTES

Confirmations of the Minutes of the previous sitting were deferred to the next sitting.

MIN. NO.NA/COI/2021/134:

MEETING WITH THE MINISTRY OF LAND AND PHYSICAL PLANNING

The Cabinet Secretary for the Ministry of Lands and Physical Planning and the Chairperson of the National Lands Commission and other government officials appeared before the Committee and submitted the following as status of implementation of various resolutions under their purview:

1. Report of the petition regarding delayed compensation of land owners for expansion of Sigalagala-Musoli-Bukura-Butere Road

Implementation Status

NLC gave an update of the matter that the Commission is finalizing on valuation with a view to issuing awards to the project affected persons. The Commission in liaison with KeRRA, the acquiring entity is addressing various matters that arose during enquiry to ensure that all project affected persons are compensated. The following targets have been set:

- (i) To facilitate compensation, KeRRA took inventory of all developments affected during road construction (prior to NLC inspection) and in consultation with relevant departments, mainly Agriculture and Forestry have valued them in readiness for compensation
- (ii) Subdivisions: the Authority has dispatched a team of surveyors to the ground to take stock and document changes occasioned by other subdivisions. The exercise is to be completed by Mid-August, 2021.
- (iii) The Commission to be furnished with a reviewed list of parcels to be considered for addendum, corrigendum and deletion by end of August.

Committee Resolution

The Committee directed that the Commission reports on the matter by first week of September, 2021.

2. The Report of the petition regarding the obstruction of the tarmacking of Konza-Katumani Road

The Committee during its sitting of Wednesday, 21st July, 2021 resolved to invite the Director General, Kenya Urban Roads Authority (KURA) and the Chairperson, National Lands Commission to brief the Committee on the implementation of the report.

The Managing Director for KURA, through a letter dated 28th July, 2021 requested for more time to conclude on the matter. He also submitted that the Authority, the Ministry of Lands and Physical Planning and NLC had agreed to implement the creation of right of way as recommended in the report.

Further, in the letter, the Authority also requested for a corrigendum on the Kenya Gazette Notice No. 6381 dated 25th June, 2021 to reflect the creation by NLC and not the Ministry of Transport and Public Works.

The Chairperson NLC confirmed that pending matters have been resolved and the Commission was currently processing request by KURA to amend the aforementioned Gazette Notice.

Committee Resolution

It was resolved that the Commission and KURA provides an update to the Committee on the implementation status within two (2) weeks.

3. Report on the Land issues in Taita Taveta

In its report dated 3rd March, 2021, the Ministry had submitted that the excision of Singila Majengo village, Mwandisha Primary School and the public utilities including the roads and the railway reserves was undertaken vide Survey Plan No. F/R 467/87. The County Government of Taita Taveta approved the application for subdivision and change of user vide a PPA 2 form dated 14th November, 2019. The Ministry had also submitted that it's waiting for surrender of the mother title to facilitate registration of the scheme and issuance of titles.

The Cabinet Secretary reported that the title has since been surrendered. There were charges registered against the title in favour of Standard Chartered Bank Limited which was discharged on 5th May, 2021, to facilitate registration of the subdivisions.

Committee Resolution

The Ministry to provide an update on the matter within two (2) weeks.

4. Report on petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces

Implementation status

The Cabinet Secretary submitted that the Ministry had not implemented the House resolutions due to an advisory by the Hon. Attorney General vide letter Ref. AG/CIV/47/20 dated 11th August, 2020 to the National Assembly. The House had recommended that the Ministry of Land and Physical Planning in consultation with the National Land Commission and the Nairobi County does complete the titling process for L.R. 5875/2 within 180 days of tabling the report.

The meeting however noted that the Honourable Speaker of the National Assembly ruled the advisory by the Attorney General inadmissible.

The CS confirmed to the meeting that the government had paid Kshs. 3,530,500 to the family of the Mr. Samuels, through Middle East Bank. She added that there is documentation to confirm this.

Regarding who the owner of the land is, the Cabinet Secretary submitted that the land was allocated to Kasarani Mall limited.

On whether the Ministry had received money from petitioners for processing of titles, the Cabinet Secretary acknowledged that the Ministry had received money from petitioners.

Regarding allegations that the Department of Defence was a front to grab the land for individuals, the Cabinet Secretary submitted that this was untrue and she had herself engaged with the Department of Defence regarding the said land and the land indeed was to go to the Military.

Committee Resolution

The Committee noted that the National Land Commission and the County Government of Nairobi had played their roles as directed by the House. However, the Ministry had failed to implement the resolution.

The Committee resolved to table a report to the House on the same for the House to guide on how to enforce implementation of its resolution.

5. Report of the Departmental Committee on Lands on its consideration of the Petition regarding irregular renewal on leases by Del monte Kenya Limited

Implementation status

The Cabinet Secretary submitted that a resurvey of the land legally held by Del monte in Kiambu and Muranga Counties was done. However, the two counties have not given their approvals to the subdivisions and the extension/renewal of the leases.

On the recommendation that the NLC investigates the circumstances under which L.R. Nos. 10862, 10741, 11312, 2953, 4873 and 11146 that were said to have been surrendered to the Government by two companies namely Sassa Coffee and Rappit B. Limited were later irregularly acquired by Del Monte Kenya Limited;

NLC Chairperson submitted that original parcels L.R. Nos. 10862, 10741, 11312, 2953, 4873 and 11146 were owned by Chui Estates Limited up to around 1973 when through a memorandum of registration of transfer of lands and at a consideration of Kshs. 2,000, 000 they were transferred to the Government of Kenya. The transfer was executed in 1973.

The Commission took note of passage in time and parties involved in the transaction (unidentified directors of Chui Estates Limited and one James Aloisius O'loughlif as Commissioner of Lands) could not unearth further details that necessitated the transfer nor amalgamation of the said parcels of land.

Submission by Kandara Residents Association

Kandara Residents Association, represented by their lawyer Mr. Dancun Okatch and Mr. Jackson Ikua, submitted as follows:

From the resurvey of the land, it showed that 1,400 hectares was set aside as public land, however they raised concern how much of the land would go to the petitioners.

They also raised concern with the submission by the Chairperson NLC, regarding the parcels of land owned by Chui estates, that the Commission could not unearth details that

necessitated transfer of the land to Del Monte. The petitioners noted that the land should have reverted back to the public and not Del Monte.


Committee Resolution

- (i) The Committee resolved that the Ministry submits a tabulated report on the reallocation of land following the resurvey for easier understanding of the submission.
- (ii) The Ministry to confirm on the surplus land following the resurvey.
- (iii) The Kandara Residents Association were asked to make a response to the Ministry's submission within three (3) days.

MIN. NO.NA/COI/2021/135:

ADJOURNMENT

There being no other business, the meeting was adjourned at half past one o'clock (1.30 pm).

Sign.......... Date.....05/08/2021.....
(Chairperson)

MINUTES OF THE 25TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON WEDNESDAY, 21ST JULY 2021, IN THE MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS, AT 11.30 A.M.

PRESENT

1. The Hon. Moitalel Ole Kenta, MP - **Chairperson**
2. The Hon. Godfrey Osotsi, MP - **Vice Chairperson**
3. The Hon. (Dr.) James Kipkosgei Murgor, MP
4. The Hon. Johnson Many Naicca, MP
5. The Hon. Paul Simba Arati, MP
6. The Hon. Joash Nyamache Nyamoko, MP
7. The Hon. Peter Kihara, MP
8. The Hon. Joshua Mbithi Mwalyo, MP
9. The Hon. Charles Ngusya Nguna, MP
10. The Hon. Hassan Oda Hulufu, MP
11. The Hon. Michael Kingi, MP
12. The Hon. Jared Okello, MP

APOLOGIES

1. The Hon. Richard Onyonka, MP
2. The Hon. Alois Musa Lentoimaga, MP
3. The Hon. Benjamin Dalu Tayari, MP
4. The Hon. Moses Kuria, MP
5. The Hon. John Muchiri Nyagah, M.P
6. The Hon. Mukuha Gabriel Kago, MP
7. The Hon. Nelson Koech, MP
8. The Hon. Paul Odalo Abuor, MP
9. The Hon. Feisal Bader, MP
10. The Hon. Silvanus Osoro, MP

IN-ATTENDANCE

Hon. Waihenya Ndirangu, MP - Friend of the Committee

NATIONAL LANDS COMMISSION

1. Mr. Gershom Otachi Bw'Omanwa – Chairperson
2. Mr. Reginald Okumu - Commissioner
3. Mr. Brian Ogot - Director
4. Ms. Nancy Nyamwea - Director Legal Affairs

KANDARA RESIDENTS ASSOCIATION

- | | | |
|------------------------------|---|----------------------|
| 1. Mr. Joseph Kibiru Njuguna | - | Patron |
| 2. Mr. Karira Kimara | - | Chairman |
| 3. Mr. Geoffrey Kairu | - | Secretary General |
| 4. Ms. Florence Mwaura | - | Organizing Secretary |
| 5. Mr. Duncan Okatch | - | Advocate |
| 6. Mr. Jackson Ikua | - | Advocate |

COMMITTEE SECRETARIAT

- | | | |
|-----------------------------|---|------------------------|
| 1. Mr. Abdirahman G. Hassan | - | Second Clerk Assistant |
| 2. Ms. Jane Serem | - | Audio Officer |
| 3. Ms. Zeinab Wario | - | Serjeant-at-arms |

MIN. NO.NA/COI/2021/115:

PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past eleven o'clock and said the Prayer. The Agenda for the meeting was adopted, as proposed and seconded by the Hon. Joash Nyamoko, MP, and the Hon. Charles Nguna, MP, respectively.

MIN. NO.NA/COI/2021/116:

CONFIRMATION OF MINUTES

Confirmations of the Minutes of the previous sitting were deferred to the next sitting.

MIN. NO.NA/COI/2021/117:

MEETING WITH THE MINISTRY OF LAND AND PHYSICAL PLANNING

The Committee was scheduled to meet the Cabinet Secretary for the Ministry of Lands and Physical Planning, to consider implementation status of various House resolutions on land matters. However, the Committee received correspondence from the Ministry requesting for reschedule of the meeting to a later date. In the letter, the Principal Secretary for Lands indicated that the meeting coincided with a presidential function that the Cabinet Secretary, the Chief Administrative Secretary and the Principal Secretary would be attending.

The Committee however noted with concern the failure by the Cabinet Secretary, Ministry of Land and Physical Planning, to attend its sittings and the inordinate delay in implementation of some House resolutions.

The Committee, following deliberations resolved to accord the Cabinet Secretary another opportunity to appear on Thursday, 29th July 2021, failure to which the Committee will issue summons as contemplated under Standing Order 191 of the National Assembly Standing Orders.

The Chairperson, National Lands Commission, Mr. Gershom Otachi and other officials of the Commission, appeared before the Committee to apprise it on implementation status of the following reports-

1. The Report of the Departmental Committee on Lands on its consideration of the petition regarding delayed compensation of land owners for expansion of Sigalagala-Musoli-Bukura-Butere Road;
2. The Report of the Departmental Committee on Lands on its consideration of the Petition by residents of Vota, Mua Ward in Machakos Town Constituency, regarding the obstruction of the tarmacking of Konza- Katumani Road;
3. The Report of the Departmental Committee on Lands on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces;
4. The Report of the Departmental Committee on Lands on its consideration of the petition on irregular renewal of leases of land by Del Monte Kenya Limited; and
5. The Report on the petition regarding land issues in Taita Taveta County.

The Committee however deferred consideration of the reports regarding invasion and eviction of workers from their land in Roysambu Constituency, the petition on irregular renewal of leases of land by Del Monte Kenya Limited and the petition regarding land issues in Taita Taveta County, which required the presence of the Ministry of Lands.

The Chairman of the National Land Commission thus presented implementation status of the other two reports, as follows;

1. Report of the petition regarding delayed compensation of land owners for expansion of Sigalagala-Musoli-Bukura-Butere Road

Implementation Status

The Commission is finalizing on valuation with a view to issuing awards to the project affected persons. The Commission in liaison with Kenya Rural Roads Authority (KeRRA), the acquiring entity, is addressing various matters that arose during inquiry to ensure that all project affected persons are compensated. These issues include the following:

- i. Claims presented by projected affected persons during inquiry citing the destruction of crops, trees and buildings resulting from the road's construction. Details of what had been affected by the road were not available at the Commission since the road had already been constructed at the time of inspection.

The Commission requested KeRRA to confirm whether they had paid compensation for the improvements as in previous cases or if they have in their possession the inventory of the affected improvements.

- ii. Some parcels had been subdivided and this would necessitate publication of a notice of addendum to include the new parcels for compensation.
- iii. Ungazetted parcels affected which require inclusion for compensation.

The Commission in consultation with KeRRA is expediting completion of the valuation process and issue awards for all the affected parcels.

The Chairperson of the Commission reiterated that the project is dependent on KeRRA and requested for 14 days to liaise and get feedback from KeRRA.

2. The Report of the petition regarding the obstruction of the tarmacking of Konza-Katumani Road

The National Assembly Departmental Committee on Lands considered a petition by residents of Vota, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of Konza-Katumani road.

The petitioners sought to have the affected portion of land, L.R. No. 7374 (stretching approximately 400 meters) acquired by the National Land Commission to create a public right of way over the parcel.

Implementation Status

The National Land Commission proceeded to initiate the process of creating a public right of way on the identified land parcel L.R. No. 7374/3 registered in the name of Muambi Properties Limited where an area of 0.7972 Ha would be affected by the right of way.

The CS, Ministry of Land responded vide letter Ref. MOLPP/ADM/CSO/1/760 dated 29th April 2021. Subsequent discussions were held with representatives from the Ministry of Lands and Physical Planning who pointed out that NLC must initiate the process by publishing a gazette notice. The Ministry also wanted confirmation on who will pay compensation.

In order to fast track the process and taking into consideration the contractor was on site, the Commission prepared and had the notice of intention to create a public right of way published by the Government printer in gazette notice number 6381 dated 25th June 2021.

The Commission requested Kenya Urban Roads Authority (KURA) to settle the proforma invoice No.000271520-21 issued by the Government printer vide letter ref:

NLC/VAL.1555/16 dated 22nd June 2021. In their letter ref: KURA/URPD/SUR/3 (30) dated 2nd July 2021, KURA responded and requested for termination of the process citing the fact that the road had been re-aligned.

A subsequent letter dated 9th July 2021 from KURA affirmed its inability to execute the matter as envisioned by the Lands Committee.

The Commission is unable to process this matter further without assurance of availability of budgetary support to meet administrative costs as well as compensation, if any, for the land affected.

The Commission sought for guidance from the Committee on the overall way forward as well as clarity on Government Agency that is to be vested with the public right of way once created, taking into consideration that the identified agency will be responsible for the administrative costs as well as compensation, if any.

The Committee urged the Commission to provide its legal opinion on the matter and challenges faced in implementation of the resolution.

The Committee after deliberations resolved to invite the Director General, KURA and the Chairperson, National Lands Commission, for a joint meeting on Thursday 29th July 2021, to apprise the Committee on implementation status of the aforementioned report.

Conclusion

Regarding the report on the petition on irregular renewal of leases of land by Del Monte Kenya Limited, the lawyer representing Kandara Residents Association, Mr. Duncan Okatch asked the Committee to intervene as the Ministry was planning to proceed to renew the lease in favour of Del Monte Ltd.

The Committee cautioned the National Lands Commission against renewal of the lease of land in question until the matter is conclusively discussed and addressed between the Committee and the Ministry of Lands and Physical Planning.

MIN. NO.NA/COI/2021/119:

ADJOURNMENT

There being no other business, the meeting was adjourned at quarter past one o'clock (1.15 pm).

Sign.....
(Chairperson)

Date..... 28/07/2021

MINUTES OF THE 15TH SITTING OF THE COMMITTEE ON IMPLEMENTATION HELD ON WEDNESDAY 14TH APRIL 2021, IN THE COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS AT 11.00 AM

PRESENT

1. The Hon. Moitalel Ole Kenta, MP - **Chairperson**
2. The Hon. Godfrey Osotsi, MP - **Vice Chairperson**
3. The Hon. Richard Onyonka, MP
4. The Hon. Alois Musa Lentoimaga, MP
5. The Hon. Joshua Mbithi Mwalyo, MP
6. The Hon. Owen Yaa Baya, MP
7. The Hon. Johnson Many Naicca, MP
8. The Hon. Paul Simba Arati, MP
9. The Hon. Mukuha Gabriel Kago, MP
10. The Hon. Peter Kihara, MP
11. The Hon. Feisal Bader, MP
12. The Hon. Jared Okello, MP
13. The Hon. Joash Nyamache Nyamoko, MP

APOLOGIES

1. The Hon. (Dr.) James Kipkosgei Murgor, MP
2. The Hon. Moses Kuria, MP
3. The Hon. Charles Ngusya Nguna, MP
4. The Hon. Hassan Oda Hulufu, MP
5. The Hon. John Muchiri Nyaga, M.P
6. The Hon. Michael Kingi, MP
7. The Hon. Nelson Koech, MP
8. The Hon. Silvanus Osoro, MP
9. The Hon. Paul Odalo Abuor, MP

IN-ATTENDANCE

Hon. Waihenya Ndirangu, MP – Friend of the Committee

National Land Commission

1. Mr. Gershom Otachi - Chairperson
2. Mr. Samuel Nthuni - Commissioner
3. Ms. Kabale Tache - Acting Chief Executive Officer (CEO)
4. Mr. Ken Alelo - Personal Assistant to the CEO

Committee Secretariat

1. Ms. Tracy Chebet Koskei - First Clerk Assistant
2. Mr. Abdirahman G. Hassan - Second Clerk Assistant

MIN. NO.NA/COI/2021/66:

PRELIMINARIES

The Chairperson called the meeting to order at ten minutes past eleven o'clock and said the Prayer. The Agenda for the meeting was adopted, as proposed and seconded by the Hon. Godfrey Osotsi, MP, Vice Chairperson and the Hon. Johnson Naicca, MP, respectively.

The witnesses were informed of the mandate of the committee, which was to follow up on implementation of resolutions, and adopted reports of the National Assembly in order to ensure that the House does not act in vain.

MIN. NO.NA/COI/2021/67:

CONFIRMATION OF MINUTES

Confirmations of the Minutes of the previous sitting were deferred to the next sitting.

MIN. NO.NA/COI/2021/68:

**CONSIDERATION OF
IMPLEMENTATION STATUS OF
VARIOUS HOUSE RESOLUTIONS**

The Chairperson of the National Land Commission Mr. Gershom Otachi, the acting CEO of the National Lands Commission Ms. Kabale Tache and other representatives of the Commission appeared before the Committee to appraise the committee on implementation status of the following reports: -

1. The report on consideration of a petition regarding irregular renewal of leases of land leased by Del Monte Kenya Limited;
2. The report on petition regarding the status of leased land meant for expansion of Moi International Airport;
3. The report on petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura-Butere road D260;
4. The report on petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces;
5. The report on petition by residents of Pongwe area, Lunga Lunga Constituency on the imminent eviction from L.R No. 1083, Shimoni in Kwale County;
6. The report on petition by residents of Vota, Mua ward in Machakos Town Constituency regarding the obstruction of public road (Konza-Katuani road);
7. The report on petition by residents of Golini, Kwale County regarding regularization of allocation of land in the Golini settlement scheme; and
8. The report on petition regarding land issues in Taita Taveta County.

The report on consideration of a petition regarding irregular renewal of leases of land leased by Del Monte Kenya Limited

The Chairperson of the Commission submitted that the Commission had not prepared a written submission on the matter and requested to give an oral submission on the matter. The Committee however felt that this matter had taken too long and it would be better if the Commission gave a written submission against which they could be held accountable.

Following deliberation and with the concurrence of the petitioners, it was agreed that the Commission makes a written submission to the Committee within seven (7) days, the Committee would thereafter schedule another sitting to consider the matter.

The report on petition regarding the status of leased land meant for expansion of Moi International Airport

Implementation will be achieved through two land use plans prepared by the County Government of Mombasa i.e. the Mombasa Development Master Plan 2018 and the Mombasa Integrated Strategic Urban Development Plan, 2015-2035 that are meant to secure public utilities within the county including those in the Airport and Port Reitz wards. The Commission is in consultation with the County Government of Mombasa in that regard.

A preliminary site visit by the Commission did not conclusively determine the status of the land and the public access sections. The commission intends to conduct a verification visit together with the Ministry of Lands and County officials as soon as Covid-19 restrictions are lifted to be able to prepare a comprehensive report.

The Committee directed the Commission to provide a written response detailing implementation status of the report by 15th May 2021.

The report on petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura-Butere road D260

The Commission published in the Kenya Gazette a notice of deletion, addendum and inquiry No. 10918 of 22nd December 2020 upon receipt of the amended acquisition plan from KERRA. The Committee directed the Commission to provide the aforementioned gazette notice soonest possible.

The inquiry was held between 16th February 2021 and 25th February 2021 at Shivakala chief's office as per the notice of inquiry.

The Commission is finalizing on valuation with a view to issuing awards to the project affected persons.

The Commission stated that it was striving to complete the process of issuing awards and requesting for funds from Kenya Rural Roads Authority within sixty (60) days from the date of the meeting.

The committee acceded to a request by the Commission to issue evaluation and release of awards within sixty days.

The report on petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces

Issuance of letters of allotment and titles is a multi-stakeholder exercise involving cancellation of any current titles, resurvey and planning where County Government and National Government agencies and the National Land Commission are involved. Once there is clarity regarding cancellation of existing titles, resolution within National Government as to the claim by Department of Defence on the land and, thereafter submission of the letters of allotment for regularization, the Commission shall process the request appropriately.

NLC is aware of the claim by the State Department of Defence to the parcel and enquiry by the office of the Attorney General (who is handling the litigation on the land) into the matter. There is equally a multi sectoral ad-hoc committee established under the recommendation of the National Assembly's Departmental Committee on Defense & Foreign Relations and the Departmental Committee on Lands investigating land owned by the military in the country with a view of recommending necessary legal and policy interventions required to resolve these disputes.

The Commission requested for seven days to liaise with the County Government of Nairobi regarding issuance of titles and processing of allotment letters.

The report on petition by residents of Pongwe area, Lunga Lunga Constituency on the imminent eviction from L.R No. 1083, Shimoni in Kwale County

The Commission does not have and has not been able to such records that would enable it easily trace the heirs of Bhovanbhai Lalji Gadhi and Maganlal Chakubhai Pattani. Meanwhile the Commission is exploring options that exist within its mandate to ensure implementation of the resolutions.

The Committee instructed the Commission to liaise with the Ministry of Lands & Physical Planning and provide a status report by 15th May 2021.

The report on petition by residents of Vota, Mua ward in Machakos Town Constituency regarding the obstruction of public road (Konza-Katuani road)

The Commission recommended the creation of public right of way by the Cabinet Secretary, Ministry of Lands & Physical Planning as provided for in Section 146 (1)(b) of the Land Act, 2012.

The Chairperson of the National Land Commission requested for thirty days to fast track the matter and report progress.

The Committee instructed the National Land Commission to provide the letter from the Commission to the Ministry of Lands and Physical Planning on the creation of public right of way.

MIN. NO.NA/COI/2021/69:

ADJOURNMENT

There being no other business, the meeting was adjourned at fifteen minutes to one o'clock (12.45 pm).

Sign.......... Date.....21/04/2021.....
(Chairperson)

Appendix III

Report of the Departmental Committee on Lands
regarding the Petition on irregular renewal of leases
of Land by Del Monte Kenya Limited

Approved for tabling *RB*

SNA
21/11/19

PARLIAMENT OF KENYA




THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF A PETITION BY MR. PHILIP NJUGUNA ON BEHALF OF KANDARA RESIDENTS ASSOCIATION REGARDING IRREGULAR RENEWAL OF LEASES OF LAND LEASED BY DELMONTE KENYA LIMITED

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 21 NOV 2019	DAY: THURSDAY
TABLED BY: Lemunio Mages	Chair, Lands Committee
CLERK'S CHAMBERS	NOVEMBER 2019



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CHAIRPERSON'S FOREWORD

The Petition by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases of land leased by Del Monte Kenya Limited was reported to the House by the Honorable Speaker on behalf of the Petitioner on 11th June 2019.

In considering the Petition, the Committee held meetings with the Petitioners, the Ag. Chief Executive Officer, National Land Commission, the Chief Administrative Secretary, Ministry of Lands & Physical Planning and the Managing Director Del Monte Kenya Limited

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee is also thankful to the Petitioner, representatives of Kandara Residents Association, the Ag. Chief Executive Officer, National Land Commission, the Chief Administrative Secretary, Ministry of Lands & Physical Planning and the Managing Director Del Monte Kenya Limited for the submissions they made to the Committee.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my pleasant duty to table the Report of the Departmental Committee on Lands on its consideration of the Petition by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases of land leased by Del Monte Kenya.

Hon. Dr. Rachael Kaki Nyamai, MP
Chairperson, Departmental Committee on Lands

EXECUTIVE SUMMARY

The purpose of this report is to respond to prayers made in a Petition by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases of land leased by Del Monte Kenya Limited. The Petitioner's prayers are that the National Assembly through the Departmental Committee on Lands does;

- a) Consider , investigate and inquire into all the matters raised in the petition with a view to ensuring that the process of renewing the lease of the land held by Del Monte Kenya Limited is conducted within the law and in a transparent and participatory process that takes into account the rights and interests of the members of Kandara Residents Association over the said land are safeguarded ;and
- b) Makes relevant recommendations thereof.

The Committee observed the National Land Commission had received a historical injustice claim from Kandara Residents Association against Del Monte Kenya Limited and determined the matter on 7th February 2019 and the same was gazetted vide Gazette Notice No. 1995 dated 1st March 2019.

The Committee also observed that the Commission recommended, among other things, that the land held by Del Monte Kenya Limited should be resurveyed to establish if the company was in possession of land that it is not registered to hold.

The Committee however observed that there are several cases regarding the renewal of leases and the recommendations of the Commission.

The Committee further noted that the petition limited its focus to renewal of leases for land owned by Del Monte Kenya Limited by Muranga County. However, the Committee observed that the role of the County government was limited to making recommendations on the renewal of the leases and could not undertake the actual renewal as this is the mandate of the National Land Commission.

The Committee observed that on the question regarding the implementation of a recommendation made by the National Land Commission regarding resurveying of the land owned by Del Monte to establish if the company held land that it is not registered to hold, the Ministry indicated that it would require three weeks to complete the exercise.

The Committee further observed that the Managing Director, Del Monte Kenya Limited was not opposed to the recommendation made by the National Land Commission for resurvey of the land as demonstrated by the letters to the Director of Survey in the Ministry of Lands and Physical Planning seeking the fast tracking of the exercise.

The Committee observed that the National Land Commission in its submission averred that three court cases had been filed in the High Court in Nairobi and Muranga touching on matters contained in the Petition. The cases included the following:

- a) ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.;

- b) High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General; and
- c) ELC Judicial Review No. 1 of 2019 at Muranga: Kandara Residents Association and Others Vs National Land Commission, Director of Survey and the Attorney General.

The Committee observed that the Managing Director, Del Monte Kenya Limited in his submissions averred that three court cases in which Kandara Residents Association is a party had been filed in court touching on matters contained in the Petition. The cases included the following:

- a) ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.
- b) High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General.
- c) ELC Judicial Review No. 1 of 2019 at Muranga: Kandara Residents Association and Others Vs National Land Commission, Director of Survey and the Attorney General.

The Committee observed that the submissions made by the Ministry of Lands & Physical Planning indicated that LR. No. 12158 measuring 2900 acres in Muranga County that is registered in the name of Del Monte Kenya Limited is an amalgamation of LR. Nos 10862,10741,11312 and 11146. However, the Hon. Jude Njomo, MP informed the Committee that the said parcels of land were surrendered to the government by two companies namely Sassa Coffee and Rappit B Limited and were later acquired by Del Monte Kenya Limited.

In view of the foregoing, the Committee observed that although there may be matters pending in court, Standing Order 89(5) allows a Committee to refer to matters that may be active in court. The Committee further observed that the reference to the matters are also not likely to prejudice the fair determination of the cases because both the Petitioners and the Del Monte Company Limited are not opposed to the issue of resurveying of the land in question.

In response to the prayers by the Petitioners, the Committee recommends that the Director of Survey, Ministry of Lands and Physical Planning does resurvey the land held by Del Monte Kenya Limited in Muranga and Kiambu Counties within ninety days of tabling of this report.

The Committee also recommended that the National Land Commission does investigate the circumstances under which LR. Nos 10862,10741,11312 and 11146 that were said to have been surrendered to the government by two companies namely Sassa Coffee and Rappit B Limited were later acquired by Del Monte Kenya Limited.

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216(1) and (5) with the following terms of reference: -
 - (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - (ii) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
 - (iii) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
 - (iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - (v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House.
 - (vi) study and review all legislation referred to it.

1.2 Committee subjects

2. The Committee is mandated to consider the following subjects:
 - a) Lands
 - b) Settlement

1.3 Oversight

3. The Committee oversees the Ministry of Lands and Physical Planning; and the National Land Commission.

1.4 Committee Membership

4. The Committee membership comprises: -

Hon. Dr. Rachael Nyamai, MP – Chairperson

MP for Kitui South Constituency

Jubilee Party

Hon. Khatib Mwashetani, MP – V/Chairperson

MP for Lunga Lunga Constituency

Jubilee Party

Hon. Jayne Wanjiru Kihara, MP

Member for Naivasha
Constituency

Jubilee Party

Orange Democratic Movement
(ODM)

Hon. Omar Mwinyi, MP

Member for Changamwe
Constituency

Orange Democratic Movement
(ODM)

Hon Joshua Kutuny Serem, MP

Member for Cherangany
Constituency

Jubilee Party

Hon. Ali Mbogo, MP

Member for Kisauni
Constituency

Wiper Democratic Movement
(WDM)

Hon. Kimani Ngunjiri, MP

Member for Bahati Constituency

Jubilee Party

Hon. Mishi Mboko, MP

Member for Likoni Constituency

Hon. Babu Owino, MP

Member for Embakasi East
Constituency

Orange Democratic Movement (ODM)

Hon. Caleb Kipkemei Kositany, MP

Member for Soy Constituency

Jubilee Party

Hon. Catherine Waruguru, MP

Member for Laikipia County

Jubilee Party

Hon George Aladwa, MP

Member for Makadara Constituency

Orange Democratic Movement (ODM)

Hon George Risa Sunkuyia, MP

Member for Kajiado West Constituency

Jubilee Party

Hon. Jane Wanjuki Njiru, MP

Member for Embu County

Jubilee Party

Hon. Josphat Gichunge Kabeabea, MP

Member for Tigania East Constituency

Party of National Unity (PNU)

Hon. Owen Yaa Baya, MP

Member for Kilifi North Constituency

Orange Democratic Movement (ODM)

Hon. Samuel Kinuthia Gachobe, MP

Member for Subukia Constituency

Jubilee Party

Hon. Simon Nganga Kingara, MP

Member for Ruiru Constituency

Jubilee Party

Hon. Teddy Mwambire, MP

Member for Ganze Constituency

Orange Democratic Movement (ODM)

1.5 Committee Secretariat

5. The Committee secretariat comprises: -

Lead Clerk
Mr. Leonard Machira
Clerk Assistant I

Mr. Ahmad Guliye
Clerk Assistant III

Mr. Adan Abdi
Fiscal Analyst III

Mr. Joseph Tiyan
Researcher III

Ms. Winnie Kizia
Media Relations Officer III

Ms. Jemimah Waigwa
Legal Counsel I

Mr. Nimrod Ochieng
Audio Officer

Ms. Peris Kaburi
Serjeant-At-Arms

2.0 INTRODUCTION

6. The Petition by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases of land leased by Del Monte Kenya Limited was reported to the House by the Honorable Speaker on behalf of the Petitioner on 11th June 2019.
7. The Petitioner wished to draw the attention of the House to the following, that:
 - i. The petition was presented to the National Assembly on behalf of Kandara Residents Association, whose members are drawn from Muranga and Kiambu Counties;
 - ii. The members of the association had originally settled in the land currently occupied by the Del Monte Kenya Limited but were illegally removed and a lease allocated to the company;
 - iii. Upon the expiry of the leases ,the County Government of Muranga renewed leases to Del Monte Kenya Limited contrary to section 13 of the Land Act 2012, which provides that before the expiry of a leasehold tenure, the National Land Commission shall inform the lessee of his or her preemptive right to allocation of the land upon application provided:
 - a) Such lessee if a Kenyan citizen; and
 - b) The land is not required by the national or county government for public purposes.
 - iv. Del Monte Company is fully owned by foreigners and the national and county government has interest in the land;
 - v. There was no public participation done to determine whether the public had an interest in the land;
 - vi. The power to renew a lease is vested in the National Land Commission and not the County Government of Muranga;
 - vii. The National Land Commission failed to implement the resolutions of the Kandara residents held in February, 2017 on the matter, which recommended that the public interest of the residents be held;
 - viii. The determination of the historical land injustice dated 7th February 2017 by the National Land Commission recommended that where no surplus land is

found, the county government of Muranga should retain adequate land for the settlement of the claimants and public purpose upon the expiry of the leases;

- ix. The leases expired in May 2019 and the commission is allegedly seeking to renew the leases despite its recommendation;
 - x. The petitioners' efforts to have the matters raised in the petition addressed by the National Land Commission and the County Government of Muranga have been futile; and
 - xi. The matters raised in the petition were not pending in any court of law in Kenya.
8. The petitioner prayed that the National Assembly through the Departmental Committee on Lands
- i. Does consider , investigate and inquire into all the matters raised in the petition with a view to ensuring that the process of renewing the lease of the land held by Del Monte Kenya Limited is conducted within the law and in a transparent and participatory process that takes into account the rights and interests of the members of Kandara Residents Association over the said land are safeguarded; and
 - ii. Makes relevant recommendations thereof.

3.0 SUBMISSIONS

3.1 Submissions by the Petitioners

9. The Committee held a meeting with the representatives of Kandara Residents Association on 6th August 2019. During the meeting the representatives informed the Committee that:
10. Members of Kandara Residents Association are drawn from Muranga and Kiambu Counties. Their forefathers originally settled in the land currently occupied by the Del Monte Kenya Limited but were illegally removed and leases allocated to the company. Upon the expiry of the leases, the County Government of Muranga renewed them in favour of Del Monte Kenya Limited contrary to section 13 of the Land Act 2012.
11. Del Monte Kenya Limited is fully owned by foreign nations as evidenced by the list of its directors, which does not include a single Kenyan. Therefore, they argued that the company did not enjoy preemptive rights of extension of the leases for land in question and that the company should surrender 50% of the land before the leases would be renewed.
12. The County government of Muranga had no power to renew the leases for land held by Del Monte Kenya Limited because the said powers are held by the National Land Commission as provided in section 13 of the National Land Commission Act 2012. However, the Committee noted that the petitioners were not able to table evidence to indicate that indeed Muranga County Government had renewed the said leases. They clarified that both the County Governments of Muranga and Kiambu had submitted no objection reports to the National Land Commission and had not actually renewed the leases. Therefore, the petition was contesting the no objection reports submitted by the two Counties regarding the renewal of the said leases.
13. The petitioner noted that public participation was mandatory in the renewal of the leases and that Kandara Residents Association through the instructions of the National Land Commission had undertaken extensive public participation on the matter and had held meetings across Muranga County and received views from approximately 4500 persons on the renewal of leases for land held by Del Monte Kenya Limited. A report on the exercise was tabled and approved by the Muranga County assembly.
14. Kandara Residents Association had also lodged a historical land injustice claim with the National Land Commission alleging injustices committed by Del Monte Kenya Limited together with the colonial soldiers and the Anglo-French, who planted sisal in the area and the Kenya Cannery Limited. The Committee was further informed that the Commission had recommended that the land held by Del Monte Kenya Limited be resurveyed to establish if the company was in possession of land that it did not own. It was also recommended that any surplus land should be surrendered to the Association and the County government of Muranga for public purpose in the ratio of 70:30. The company was also required to surrender all public utilities within the land to the relevant National and County Government Agencies whether the leases had expired or not.

15. The Committee noted that the petition limited its focus to renewal of leases for land owned by Del Monte Kenya Limited by Muranga County. It therefore meant that the petition did not include land in Kiambu County. It was further noted that the role of the County government was limited to making recommendations on the renewal of the leases and could not undertake the actual renewal as this is the mandate of the National Land Commission.

3.2 Submissions by the Ag Chief Executive, National Land Commission

16. The Committee held a meeting with Ag Chief Executive, National Land Commission on 8th August 2019. During the meeting the Chief Executive Officer informed the Committee that:

17. The Commission received a historical injustice claim from Kandara Residents Association against Del Monte Kenya Limited together with the colonial soldiers, the Anglo-French, who planted sisal in the area and the Kenya Cannery Limited. The Commission decided the matter on 7th February 2019 and the same was gazetted vide Gazette Notice No. 1995 dated 1st March 2019. The commission recommended that:

- The land held by Del Monte Kenya Limited should be resurveyed to establish if the company was in possession of land that it is not registered to hold.
- The surplus land, if any, should be surrendered to Kandara Residents Association and the County Government for public purpose in the ratio of 70:30 respectively.
- Where no surplus land is found the County Government of Muranga should retain adequate land for the settlement of the claimants and for public purpose upon the expiry of the leases.
- Del Monte Kenya Limited should surrender all public utilities within the land in question to the relevant National and County Government agencies whether the leases have expired or not.

18. The Ag. Chief Executive Officer further informed the Committee that three court cases had been filed in the High Court in Nairobi and Muranga. Therefore, she would not make more comments on the same due to the doctrine of *sub judice* as the matters raised in the petition were also pending determination in court. The cases included the following:

- **ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.** The suit seeks to restrain the National Land Commission from renewing leases in favour of Del Monte Kenya Limited.
- **High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General:** The suit seeks to quash the determination of the National Land Commission Historical Injustice Committee dated 7th February 2019 in complaint No. NLC/HLI/004/2017. It also seeks to expel the Gazette Notice No. 1995 dated 18th February 2019 and published on 1st March 2019 on parcels of land registered under Del Monte Kenya Limited.

- ELC Judicial Review No. 1 of 2019 at Muranga: Kandara Residents Association and Others Vs National Land Commission, Director of Survey and the Attorney General : The suit seeks to compel the Director of Survey to implement the National Land Commission's Historical Land Injustice Committee resolution dated 7th February 2019 in complaint No. NLC/HLI/004/2017.

3.3 Submissions by the Chief Administrative Secretary of Lands and Physical Planning

19. The Committee held a meeting with the Chief Administrative Secretary of Lands and Physical Planning on 6th August 2019. During the meeting the Chief Administrative Secretary informed the Committee of the following regarding the petition:
20. LR. No. 12158 measuring 2900 acres in Muranga County that is registered in the name of Del Monte Kenya Limited is an amalgamation of LR. Nos 10862,10741,11312,2953,4873, and 11146.
21. The term of lease for the said land was 49 years effective from 1st May 1973. It is due to expire on 1st May 2022. He added that an application had been made seeking renewal of the lease to the National Land Commission and the County Government of Muranga. The said application was under consideration by the Commission.
22. The Ministry was not aware of any renewal of lease regarding the said land and had not received any documents recommending the renewal. The Chief Administrative Secretary therefore argued that the petition was premature as it allegedly that the lease had been renewed.
23. The lease Gatuanyaga Farm LR. No. 12203 measuring 2,133 Ha which is in Kiambu County also owned by Del Monte expired on 1st July 2019 and an application for renewal had been tendered by the company; and
24. On the question regarding the implementation of a recommendation made by the National Land Commission in a Gazette Notice No. 1995 dated 1st March 2019 following a historical land injustice claim lodged by Kandara Residents Association regarding resurveying of the land owned by Del Monte to establish if the company held land that it is not registered to hold, The Chief Administrative Secretary informed the Committee that the Ministry would require three weeks to complete the exercise.

3.4 Submissions by the Managing Director, Del Monte Kenya Ltd

25. The Committee held a meeting with the Managing Director, Del Monte Kenya Limited on 8th August 2019. During the meeting the Managing Director, through his advocate,

Mr. Njoroge Regeru informed the Committee that seven court cases had been filed in the High court in Nairobi and Muranga. The seven cases are as follows:

Item	Case Number and Parties	Status / Remarks
1	Nairobi High Court Constitutional Petition No. 398 of 2015 – Del Monte Kenya Limited -vs- The County Government of Muranga and 2 others	Hearing concluded before a 3 – judge bench. Judgement scheduled for 20 th September 2019
2	Amended Complaint to the National Land Commission – Kandara Residents Association and Another -vs- Del Monte Kenya Limited	The Amended Complaint was determined vide Determination published in the Kenya Gazettee on 1 ST March 2019. The implementation of the determination has since been stayed by the High Court vide its Order given on 22 nd May 2019 in petition No. 48 of 2019
3	ELC No. 53 of 2018 at Muranga- Kandara Residents Association and 4 others Vs Del Monte Kenya Limited	The suit was scheduled for hearing on 31 st July 2019
4	ELC No. 86 of 2018 – Kenya National Chamber of Commerce and others Vs Del Monte Kenya Limited	The suit was scheduled for ruling on 19 th September 2019
5	Muranga Constitutional Petition No. 6 of 2018 – Ephantus Githae and another vs the National Land Commission	
6	Nairobi High Court Constitutional Petition Number 48 of 2019, Del Monte Kenya Limited vs National Land Commission and Another	The suit was scheduled for hearing on 16 th October 2019
7	Thika ELC Number 85 of 2019 – Gatwanyaga Residents Association -vs- Del Monte Kenya Limited and 3 others	The matter was scheduled for direction on 1 st August 2019

26. He added that Kandara Residents Association was party to three of the cases and had filed two of the said suits. He argued that based on the doctrine of *sub judice*, the petition should be barred. The three cases as follows:

- **ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.** The suit seeks to restrain the National Land Commission from renewing leases in favour of Del Monte Kenya Limited.
- **High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General:** The suit seeks to quash the determination of the National land Commission Historical Injustice Committee dated 7th February 2019 in complaint No. NLC/HLI/004/2017/ It also seeks to expel the Gazette Notice No. 1995 dated 18th February 2019 and published on 1st March 2019 on parcels of land registered under Del Monte Kenya Limited.
- **ELC Judicial Review No. 1 of 2019 at Muranga: Kandara Residents Association and Others Vs National land Commission , Director of Survey and the Attorney General :** The suit seeks to compel the Director of Survey to implement the National land Commission's Historical Land Injustice Committee dated 7th February 2019 in complaint No. NLC/HLI/004/2017.

27. He further observed that the petitioners were required by the National Assembly Standing Orders to indicate that the matters raised in the petition were pending before court. He noted that the Petitioners did not make the said disclosure.
28. In view of the above, the Managing Director urged the Committee to put the consideration of the petition on hold as the matters pending in court mainly dealt on the issue of renewal of leases for land owned by Del Monte Kenya Limited and the same matters were also the key subject of the petition.
29. The Managing Director further informed the Committee that the Company was not opposed to the recommendation made by the National Land Commission in a historical land injustice claim lodged by Kandara Residents Association against Del Monte Kenya Limited that the land held by Del Monte Kenya Limited should be resurveyed to establish if the company was in possession of land that it is not registered against. He added that the company had severally written to the Director of Survey in the Ministry of Lands and Physical Planning seeking the fast tracking of the exercise but had not received a reply from the said office.

3.5 Submissions by Hon. Jude Njomo, MP

30. The Committee received submissions from Hon. Jude Njomo, MP on 7th November 2019. He informed the Committee that;

31. The ownership documents held by Del Monte Kenya Limited are not title deeds but agreements between the government and the company that were drawn on 19th February 1973. The agreements grant the company use of 20,000 acres of land. He noted that contravention to the said agreements, the company is currently in possession of 22,000 acres.

32. He also stated that part of the land granted to the company has been idle since the agreement were reached. He added that the company in their brochure admitted to utilizing only 6000 Ha out of the 9000 Ha allocated to the company for 50 years hence depriving the residents the use of 3000 Ha of idle land.

- i. He further informed the Committee that Land parcels Nos. LR.10740, LR 10741, LR 11146, LR 10862, LR 2955 and LR.11312 comprising 7,400 acres that were surrendered to the government by two companies namely Sassa Coffee and Rappit B Limited after subdivision, were irregularly being used by Del Monte Kenya Limited. He also stated that the owners of SASSA coffee passed on in Europe and the land held by the company was occupied by residents who were later evicted by Del Monte Kenya Limited from the land.
- ii. Contrary to the agreement between the government and the company on 19th February 1973, Del Monte Kenya Limited had carved off a portion of LR. No. 13169 and allocated it to ANNANAS Holding where a mall has been constructed.
- iii. He urged the Committee to recommend that the land held by Del Monte Kenya Limited be resurveyed to establish the actual acreage of land occupied by the company.

4.0 OBSERVATIONS

The Committee made the following observations:

1. The Committee observed the National Land Commission had received a historical injustice claim from Kandara Residents Association against Del Monte Kenya Limited and determined the matter on 7th February 2019 and the same was gazetted vide Gazette Notice No. 1995 dated 1st March 2019.
2. The Committee observed that the Commission recommended, among other things, that the land held by Del Monte Kenya Limited should be resurveyed to establish if the company was in possession of land that it is not registered to hold.
3. The Committee however observed that there are several cases regarding the renewal of leases and the recommendations of the Commission.
4. The Committee noted that the petition limited its focus to renewal of leases for land owned by Del Monte Kenya Limited by Muranga County. However, the Committee observed that the role of the County government was limited to making recommendations on the renewal of the leases and could not undertake the actual renewal as this is the mandate of the National Land Commission.
5. The Committee observed that on the question regarding the implementation of a recommendation made by the National Land Commission regarding resurveying of the land owned by Del Monte to establish if the company held land that it is not registered to hold, the Ministry indicated that it would require three weeks to complete the exercise.
6. The Committee further observed that the Managing Director, Del Monte Kenya Limited was not opposed to the recommendation made by the National Land Commission for resurvey of the land as demonstrated by the letters to the Director of Survey in the Ministry of Lands and Physical Planning seeking the fast tracking of the exercise.
7. The Committee observed that the National Land Commission in its submission averred that three court cases had been filed in the High Court in Nairobi and Muranga touching on matters contained in the Petition. The cases included the following:
 - d) ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.;
 - e) High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General; and
 - f) ELC Judicial Review No. 1 of 2019 at Muranga: Kandara Residents Association and Others Vs National Land Commission, Director of Survey and the Attorney General.
8. The Committee observed that the Managing Director, Del Monte Kenya Limited in his submissions averred that three court cases in which Kandara Residents Association is a

party had been filed in court touching on matters contained in the Petition. The cases included the following:

- d) ELC No. 53 of 2018 at Muranga: Kandara Residents Association and Others Vs Del Monte Kenya Limited.
 - e) High Court Constitutional Petition No. 48 of 2019 at Nairobi: Del Monte Kenya Limited Vs National Land Commission and Attorney General.
 - f) ELC Judicial Review No. 1 of 2019 at Muranga: Kandara Residents Association and Others Vs National Land Commission, Director of Survey and the Attorney General.
9. The Committee observed that the submissions made by the Ministry of Lands & Physical Planning indicated that LR. No. 12158 measuring 2900 acres in Muranga County that is registered in the name of Del Monte Kenya Limited is an amalgamation of LR. Nos 10862,10741,11312 and 11146. However, the Hon. Jude Njomo, MP informed the Committee that the said parcels of land were surrendered to the government by two companies namely Sassa Coffee and Rappit B Limited and were later acquired by Del Monte Kenya Limited.
10. In view of the foregoing, the Committee observed that although there may be matters pending in court, Standing Order 89(5) allows a Committee to refer to matters that may be active in court. The Committee further observed that the reference to the matters are also not likely to prejudice the fair determination of the cases in particular because both the Petitioners and the Del Monte Company Limited are not opposed to the issue of resurveying of the land in question.

5.0 COMMITTEE RECOMMENDATIONS

In response to the prayers by the Petitioners, the Committee recommends that;

1. The Director of Survey, Ministry of Lands and Physical Planning does resurvey the land held by Del Monte Kenya Limited in Muranga and Kiambu Counties within ninety days of tabling of this report.
2. The National Land Commission does investigate the circumstances under which LR. Nos 10862,10741,11312 and 11146 that were said to have been surrendered to the government by two companies namely Sassa Coffee and Rappit B Limited were later acquired by Del Monte Kenya Limited within ninety days of tabling of this report.

Signed.....

Date.....19-11-2019.....

Hon. Dr. Rachael Kaki Nyamai, MP
Chairperson, Departmental Committee on Lands

Appendix IV

**Submission by the Ministry of Lands and Physical
Planning regarding the implementation status of the
report of the Departmental Committee on Lands
regarding irregular renewal of leases of Land by
Del Monte Kenya Limited**



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING
Office of the Cabinet Secretary

Tel: +254(0)20 2718050
Fax: +254(0)20 2724470
Email: psslandskenya@gmail.com
Web: www.ardhi.go.ke
When replying please quote:

Ardhi House
1st Ngong Avenue
P.O. BOX 30450-00100
Nairobi, KENYA

Ref. No. MOLPP/ADM/CSO/1/843

August 2, 2021

Mr. Michael Sialai, CBS
The Clerk
National Assembly
Parliament Buildings
P.O Box 41842-00100
NAIROBI

Dear *Mr. Sialai,*

RE: MEETING REGARDING IMPLEMENTATION STATUS OF HOUSE
RESOLUTIONS

Reference is made your letters Ref. NA/DAASC/COI/2021/(084) dated June 10, 2021 and Ref. NA/DAASC/COI/2021/(087) dated July 22, 2021 on the above captioned matter (copies enclosed for reference).

Following the meeting held on July 29, 2021, the Select Committee on Implementation requested the Ministry to summarise and tabulate the outcome of the resurvey exercise carried out by the Ministry on land held by Del Monte Kenya Limited in Kiambu and Murang'a counties as reported vide the reports dated October 27, 2020 and July 29, 2021.

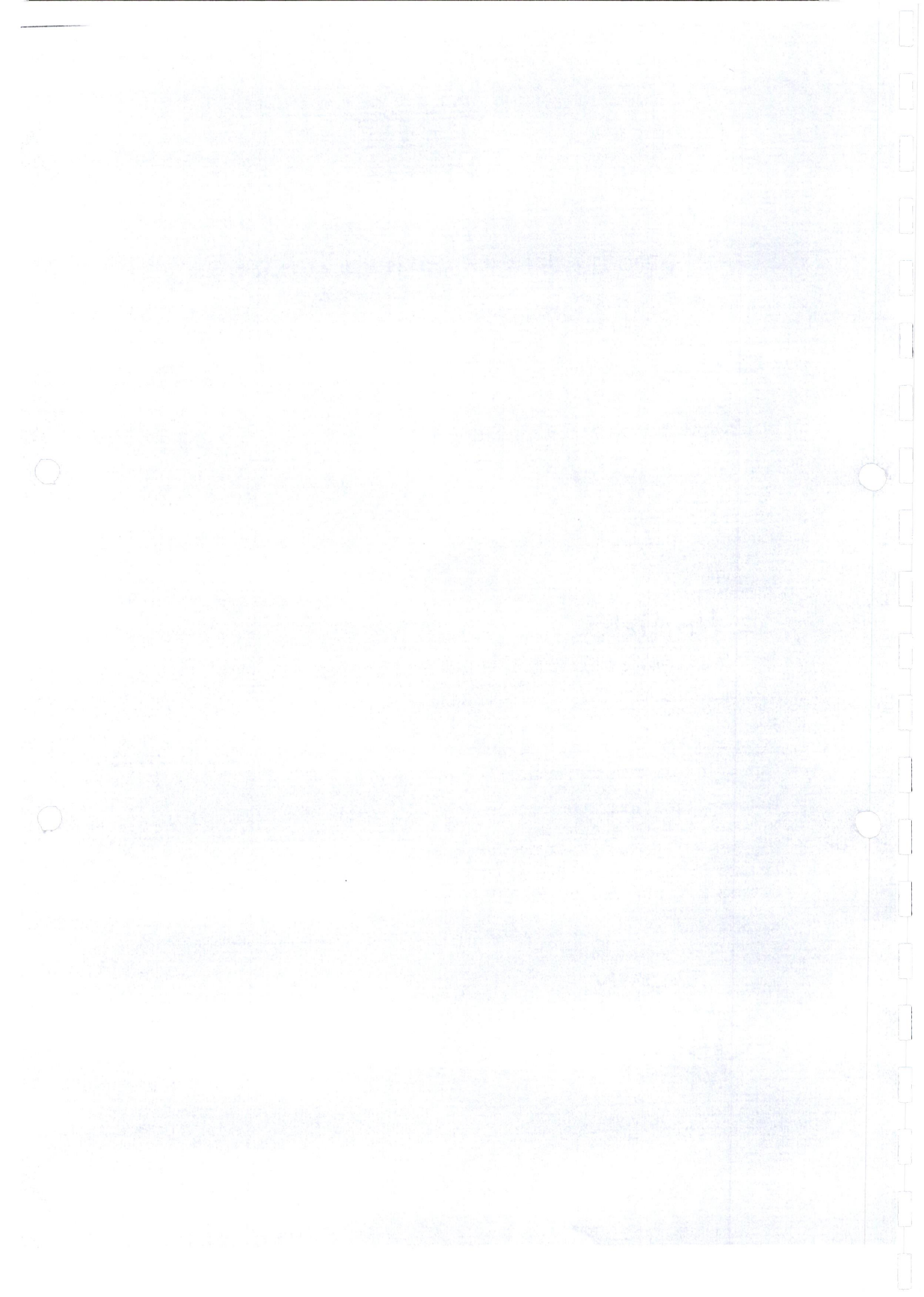
Accordingly, we hereby forward our report as requested. We hope that the information is sufficient.

Yours

Sincerely

Farida Karoney, EGH
CABINET SECRETARY

Encl





MINISTRY OF LANDS AND PHYSICAL PLANNING

FURTHER SUBMISSIONS TO THE SELECT COMMITTEE ON IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

REPORT ON THE RESURVEY OF LAND PARCELS HELD BY DELMONTE KENYA LIMITED IN KIAMBU AND MURANG'A COUNTIES

Honourable Chair,

Following the meeting held on July 29, 2021, the Committee requested the Ministry to summarise and tabulate the outcome of the resurvey exercise carried out by the Ministry on land held by Del Monte Kenya Limited in Kiambu and Murang'a counties as reported vide the reports dated October 27, 2020 and July 29, 2021.

Background and Context

Honourable Chair,

The Departmental Committee on Lands on its consideration of a petition presented by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding alleged irregular renewal of leases held by Del Monte Kenya Limited recommended in its report dated November 2019 as follows:

- i. The Director of Surveys, Ministry of Lands and Physical Planning does resurvey the land held by Del Monte Kenya Limited in Murang'a and Kiambu Counties within ninety days of tabling of this report
- ii. The National Land Commission does investigate the circumstances under which L.R Nos. 10862, 10741, 11312, 2953, 4873 and 11146 that were said to have been surrendered to the Government by two companies namely Sassa Coffee and Rappit B Limited were later irregularly acquired by Del Monte Kenya Limited within ninety days of tabling this report.

Honourable Chair,

Recommendation (i) directed at the Ministry was made pursuant to the determination of the National Land Commission dated February 7, 2019 in historical injustices claim nos.

NLC/HLI/004/2017 & NLC/HLI/064/2017 published vide Gazette Notice No. 1995 of March 1, 2019 in which the Commission inter alia, directed that the land held by Del Monte Kenya Limited should be resurveyed to establish if the company was in possession of land that it is not registered to hold.

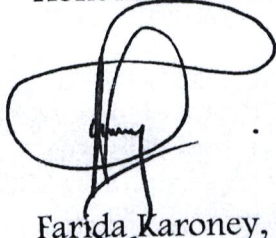
Honourable Chair,

In compliance with recommendation (i), the Ministry carried out the field survey exercise as directed from August 5-20, 2020. In the course of the resurvey, Del Monte Kenya Limited proposed to excise the existing public purpose/utility plots. The company also proposed to surrender part of their land to the county governments of Kiambu and Murang'a. The proposals are contained in five (5) Scheme Plans prepared by Real Plan Consultants Limited (Registered Physical Planners) referenced as follows:

- i. RPC/1170(F)/2020/016 - Proposed subdivision of L.R No. 12157/1 located in Gatanga Sub-County, Murang'a County to excise all twelve (12) portions
- ii. RPC/1170(c)/020/005 - Proposed Subdivision of L.R No. 12157/3 located in Gatanga Sub-County, Murang'a County into two (2) portions
- iii. RPC/1169/020/017 - Proposed Subdivision of L.R No. 12158 located in Gatanga Sub-County, Murang'a County into three (3) portions
- iv. RPC/1169/019/025 - Proposed Subdivision of L.R No. 12158 located in Kiambu County into three (3) portions and change of user of subplot C from Agricultural to Educational (Ndula Primary and Secondary Schools)
- v. RPC/1169/019/026 - Proposed Subdivision of L.R No. 12203/1 located in Kiambu County into five (5) portions

The outcome of the resurvey exercise is as shown in the table attached.

Honourable Chair, I submit.



Farida Karoney, EGH
CABINET SECRETARY

August 2, 2021

REPORT ON THE RESURVEY OF LAND HELD BY DEL MONTE KENYA LIMITED IN KIAMBU AND MURANG'A COUNTIES

i. Resurvey of land held by Del Monte Kenya Limited in Kiambu County

Item	L.R. Number & Area	Status	Outcome of Resurvey
1	12203/1 (I.R 129929) (Measuring 2101 Hectares as per Survey Plan F/R 315/66) (Annexure 1 - Survey Plan F/R 315/66)	<ul style="list-style-type: none"> Leasehold term of 49 years with effect from July 1, 1970. The lease expired on July 1, 2019 Application for renewal of lease submitted to the National Land Commission 	<ul style="list-style-type: none"> Re-establishment of beacons using Survey Plan F/R 315/66. The boundary beacons were found to be intact. The company was within its boundaries RPC/1169/019/026- Proposed Subdivision of L.R No. 12203/1 into five portions as follows: <ol style="list-style-type: none"> Portion 'A' measuring approximately 1792.54Ha - Remains with Del Monte Kenya Ltd Portion 'B' measuring approximately 55.32Ha - Surrender to County Government of Kiambu Portion 'C' measuring approximately 67.30Ha - Surrender to County Government of Kiambu Portion 'D' measuring approximately 131.50Ha- Surrender to County Government of Kiambu Portion 'E' measuring approximately 25.50Ha - Surrender to County Government of Kiambu <p>(Annexure 2 - Subdivision Scheme Plan)</p>
2	12203/2 (I.R 129930)	<ul style="list-style-type: none"> Leasehold term of 49 years with effect from July 1, 1970. The lease expired on July 1, 2019 	<ul style="list-style-type: none"> Re-establishment of beacons using Survey Plan F/R 315/66. The boundary beacons

(Measuring 56.57 Hectares as per Survey Plan F/R 315/66) (Annexure 1 - Survey Plan F/R 315/66)	<ul style="list-style-type: none"> Application for renewal lease submitted to the National Land Commission 	<p>were found to be intact. The company was within its boundaries</p>
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ii. Resurvey of land held by Del Monte Kenya Limited in Murang'a County

Item	L.R. Number & Area	Status	Outcome of Resurvey
1	12157/1 (L.R 27081) (Measuring 3860 Hectares as per Survey Plan F/R 315/67) (Annexure 3 - Survey Plan F/R 315/67)	<ul style="list-style-type: none"> Leasehold term of 49 years with effect from May 1, 1973. The lease will expire in 2022 Application for extension of lease submitted to the National Land Commission and forwarded to the Ministry Provisional Approval given by the Ministry awaiting approval by the County Government 	<ul style="list-style-type: none"> Re-establishment of beacons using Survey Plan F/R 315/67. The boundary beacons were found to be intact. The company was within its boundaries RPC/1170(F)/2020/016 – Proposed subdivision of L.R No 12157/1 into twelve(12) portions as follows: <ul style="list-style-type: none"> i. Portion 'A' measuring approximately 8245.06 Acres for Agricultural purposes (to remain in the company's name) ii. Portion 'B' measuring approximately 5.02 Acres for public purposes (Ngati Police station and Chief's camp – to be surrendered) iii. Portion 'C' measuring approximately 5.16 Acres for Educational purposes (Del Monte Mixed Secondary School – to be surrendered) iv. Portion 'D' measuring approximately 2.62 Acres for Educational purposes (Kihunguru Primary School – to be surrendered)

			<p>v. Portion 'E' measuring approximately 4.62 Acres for Recreational purposes (Public playground – to be surrendered)</p> <p>vi. Portion 'F' measuring approximately 2.99 Acres for Public Utility (Ithanga water supply intake – to be surrendered)</p> <p>vii. Portion 'G' measuring approximately 1187.17 Acres for Public land (to be surrendered to the County Government of Murang'a)</p> <p>viii. Portion 'H' measuring approximately 192.83 Acres for Public land (to be surrendered to the County Government of Murang'a)</p> <p>ix. Portion 'J' measuring approximately 20 Acres for Public land (to be surrendered to the County Government of Murang'a)</p> <p>x. Road widening area measuring approximately 47.25 Acres for Transport (Kakuzi road, 40M – to be surrendered)</p> <p>xi. Road widening area measuring approximately 14.78 Acres for Transport- (Oloitiptip road, 40M – to be surrendered)</p> <p>xii. Proposed area for 12 Meter access roads measuring approximately 4.05 Acres (to Del Monte mixed secondary school, Kihunguru Primary School, public playground and Ithanga water supply intake – to be surrendered)</p> <p>(Annexure 4 - Subdivision Scheme Plan)</p>
2	12157/2 (I.R 130608/1)	<ul style="list-style-type: none"> Leasehold term of 49 years with effect from May 1, 1973. The lease will expire in t 2022 	<ul style="list-style-type: none"> Re-establishment of beacons using Survey Plan F/R 315/67. The boundary beacons were found

<p>(Measuring 40.87 Hectares as per Survey Plan F/R 315/67)</p> <p>(Annexure 3 - Survey Plan F/R 315/67)</p>	<ul style="list-style-type: none"> • Application for extension of lease submitted to the National Land Commission and forwarded to the Ministry • Provisional Approval given by the Ministry awaiting approval by the County Government 	<p>to be intact. The company was within its boundaries</p>
<p>3</p> <p>12157/3 (IR 130609/1)</p> <p>(Measuring 2.987 Hectares as per Survey Plan F/R 315/67)</p> <p>(Annexure 3 - Survey Plan F/R 315/67)</p>	<ul style="list-style-type: none"> • Leasehold term of 49 years with effect from May 1, 1973. The lease will expire in 2022 • Application for subdivision and extension of lease submitted to the National Land Commission and forwarded to the Ministry • Provisional Approval given by the Ministry awaiting approval by the County Government 	<ul style="list-style-type: none"> • Re-establishment of beacons using Survey Plan F/R 315/67. The boundary beacons were found to be intact. The company was within its boundaries • RPC/1170(c)/020/005- Proposed Subdivision of L.R No 12157/3 located in Gatanga Sub-County, Murang'a County in to two (2) portions as follows: <ul style="list-style-type: none"> i. Portion 'A' measuring approximately 1.88 hectares to remain agricultural (in the company's name). ii. Portion 'B' measuring approximately 1.11 hectares to be used as a playground -*for Moi Primary School (to be surrendered). <p>(Annexure 5 - Subdivision Scheme Plan)</p>
<p>4</p> <p>12157/4 (IR 130610/1)</p> <p>(Measuring 2.311 Hectares as per Survey Plan F/R 315/67)</p> <p>(Annexure 3 - Survey Plan F/R 315/67)</p>	<ul style="list-style-type: none"> • Leasehold term of 49 years with effect from May 1, 1973. The lease will expire in the year 2022 • Application for extension of lease submitted to the National Land Commission and forwarded to the Ministry 	<ul style="list-style-type: none"> • Re-establishment of beacons using Survey Plan F/R 315/67. The boundary beacons were found to be intact. The company was within its boundaries

		<ul style="list-style-type: none"> Provisional Approval given by the Ministry awaiting approval by the County Government 	
5	<p>12157/5 (IR 130611/1)</p> <p>(Measuring 5.677 Hectares as per Survey Plan F/R 315/67)</p> <p>(Annexure 3 - Survey Plan F/R 315/67)</p>	<ul style="list-style-type: none"> Leasehold term of 49 years with effect from May 1, 1973. The lease will expire in the year 2022 Application for extension of lease submitted to the National Land Commission and forwarded to the Ministry Provisional Approval given by the Ministry awaiting approval by the County Government 	<ul style="list-style-type: none"> Re-establishment of beacons using Survey Plan F/R 315/67. . The boundary beacons were found to be intact. The company was within its boundaries

iii. Resurvey of land held by Del Monte Kenya Limited traversing Murang'a and Kiambu Counties

Item	L.R. Number & Area	Status	Outcome of Resurvey
1.	<p>12158 (IR 27082)</p> <p>(Measuring 2972.8 less road reserve of 9.7 hectares as per Survey Plan F/R 127/3)</p> <p>(Annexure 6 Survey Plan F/R 127/3)</p>	<ul style="list-style-type: none"> Amalgamation of L.R Nos. 10741,11145,2953,10862 &11312 Leasehold term of 49 years with effect from May 1, 1973. The lease will expire in the year 2022 Application for extension of lease and subdivision (to hive off public purpose plots and align the land to county boundaries) submitted to the National Land Commission and forwarded to the Ministry Provisional Approval given by the Ministry awaiting approval by the County Government 	<ul style="list-style-type: none"> Re-establishment of beacons using survey plan F/R 127/3. The boundary beacons were found to be intact. The company was within its boundaries RPC/1169/020/017- Proposed Subdivision of L.R No. 12158 into three (3) portions (Annexure 7a) RPC/1169/019/025- Proposed Subdivision of L.R No. 12158 into three (3) portions and change of user of subplot C from Agricultural to Educational (Ndula Primary and Secondary Schools) as follows (Annexure 7b): i. Portion 'A' measuring approximately 1938.12 hectares for agricultural purposes (situated in

		<p>Murang'a County, to remain in the company's name)</p> <p>ii. Portion 'B' measuring approximately 1029.41 hectares for agricultural purposes (situated in Kiambu County, to remain in the company's name)</p> <p>iii. Portion 'C' measuring approximately 4.97 hectares for public purposes (Ndula Primary and Secondary schools situated in Kiambu County – to be surrendered)</p> <p>iv. Portion 'D' measuring approximately 1.54 hectares for public purposes (Nginyi Primary School situated in Murang'a County – to be surrendered)</p> <p>v. Approximately 17.90 hectares have been set aside for roads (to be surrendered).</p>
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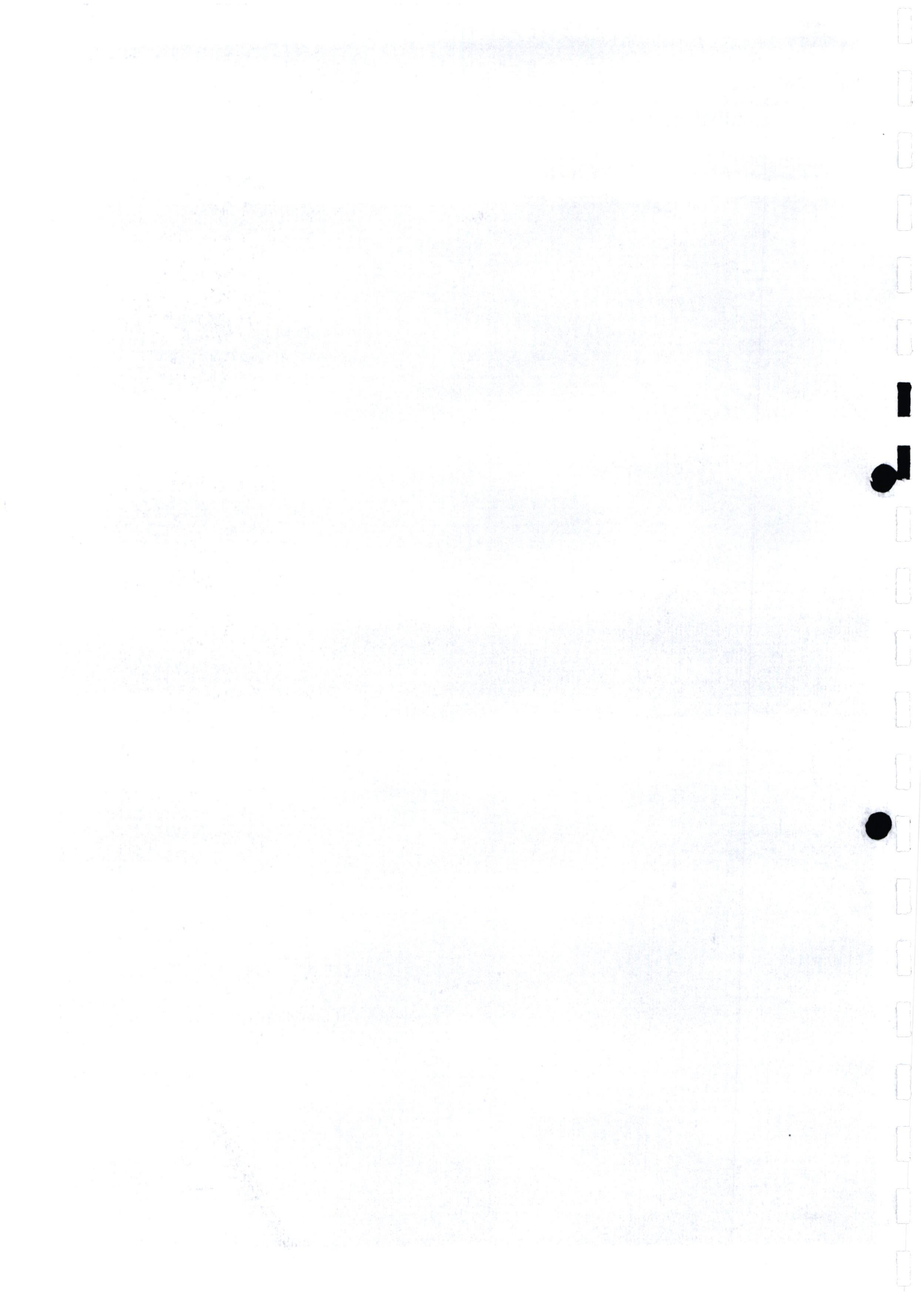
Note: The field survey of all the parcels is complete and awaits approvals from the County Governments of Kiambu and Murang'a to facilitate registration and processing of the survey.

Findings

1. Beacons for all the parcels were found to be intact during the process of establishment of the boundaries
2. Del Monte Kenya Limited was within its boundaries

Conclusion

1. Del Monte Kenya Limited does not hold excess land.



(H)

PROPOSED SUBDIVISION OF LA 166
1220/1 WITH FIVE (5) SUB PLOTS

OWNER
DEE MONTE RENTON LTD
P.O. BOX 143-07000
THIRUA

1992/1993/24

1220/1 WITH FIVE (5) SUB PLOTS

AVENUE

1220/1 WITH FIVE (5) SUB PLOTS

1220/1 WITH FIVE (5) SUB PLOTS

1220/1 WITH FIVE (5) SUB PLOTS

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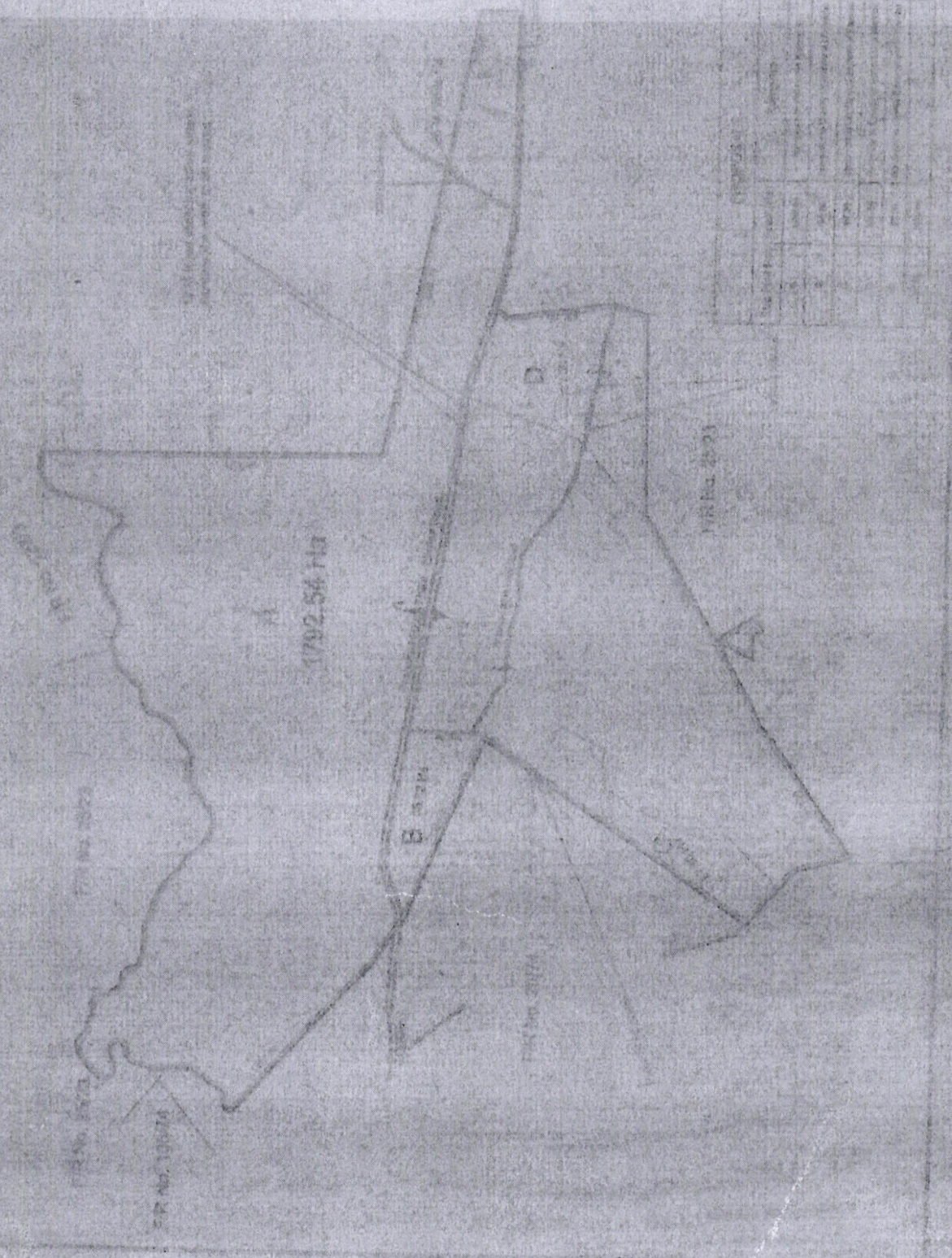
1220/1 WITH FIVE (5) SUB PLOTS

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1220/1 WITH FIVE (5) SUB PLOTS

1220/1 WITH FIVE (5) SUB PLOTS

1220/1 WITH FIVE (5) SUB PLOTS



Scale: 1:1000
 1. The boundaries are shown as solid lines.
 2. The boundaries are shown as dashed lines.
 3. The boundaries are shown as dotted lines.
 4. The boundaries are shown as long-dashed lines.
 5. The boundaries are shown as short-dashed lines.
 6. The boundaries are shown as dash-dot lines.
 7. The boundaries are shown as long-dash-dot lines.
 8. The boundaries are shown as long-dash-dot-dot lines.
 9. The boundaries are shown as long-dash-dot-dot-dot lines.
 10. The boundaries are shown as long-dash-dot-dot-dot-dot lines.

1220/1 WITH FIVE (5) SUB PLOTS

1792.56 HA

B

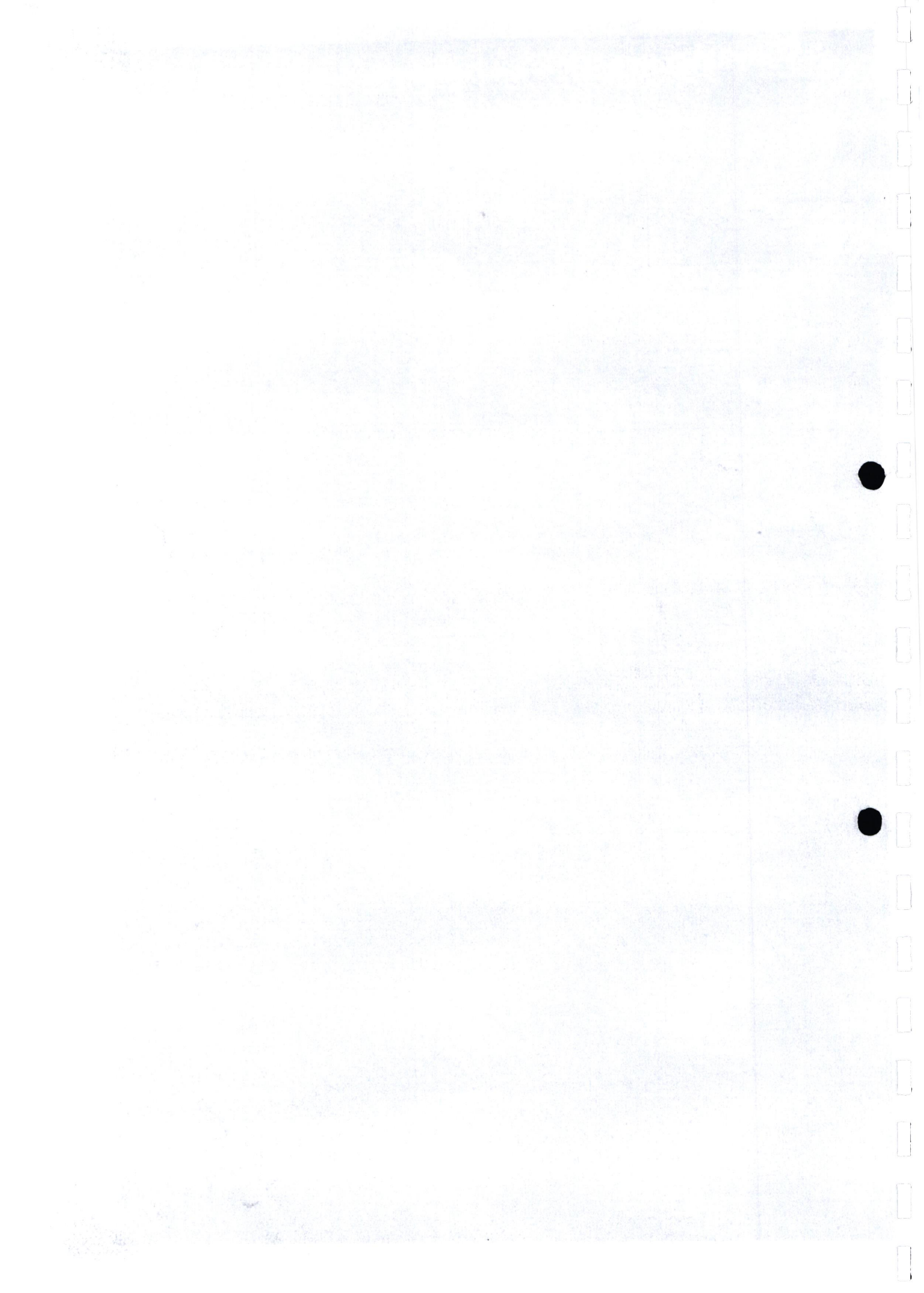
D

C

1220/1 WITH FIVE (5) SUB PLOTS

1220/1 WITH FIVE (5) SUB PLOTS

1220/1 WITH FIVE (5) SUB PLOTS



ANNEXURE 3

FOR LINES AND BEARINGS SEE T/R

INSET 2

L.R. 12157

SCALE 1:1000

INSET 1

SCALE 1:2500

Government of India, Survey of India

NO.	DESCRIPTION	DATE
1	FOR LINES AND BEARINGS SEE T/R	15/5/6

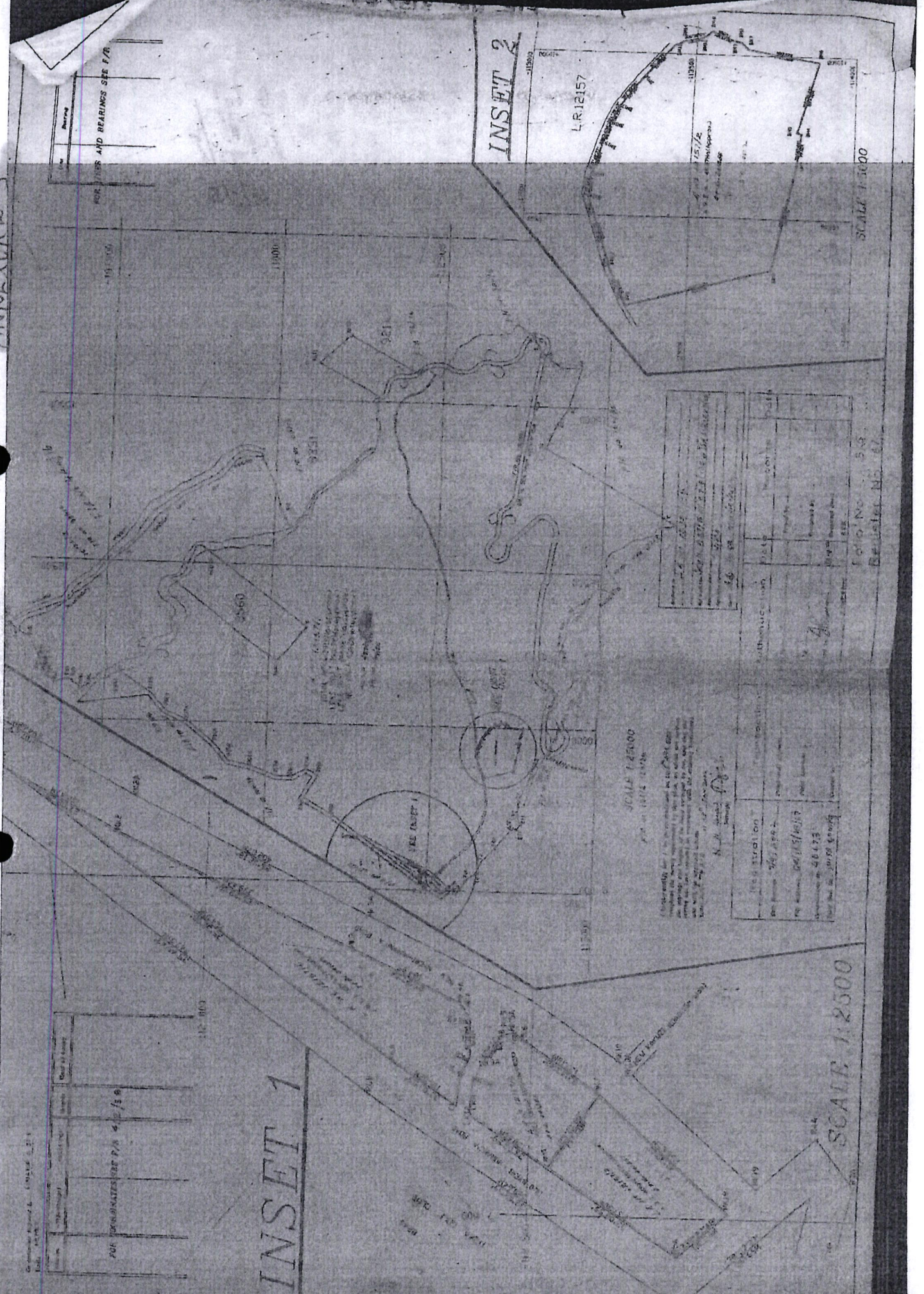
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Perimeter	12157
Scale	1:1000

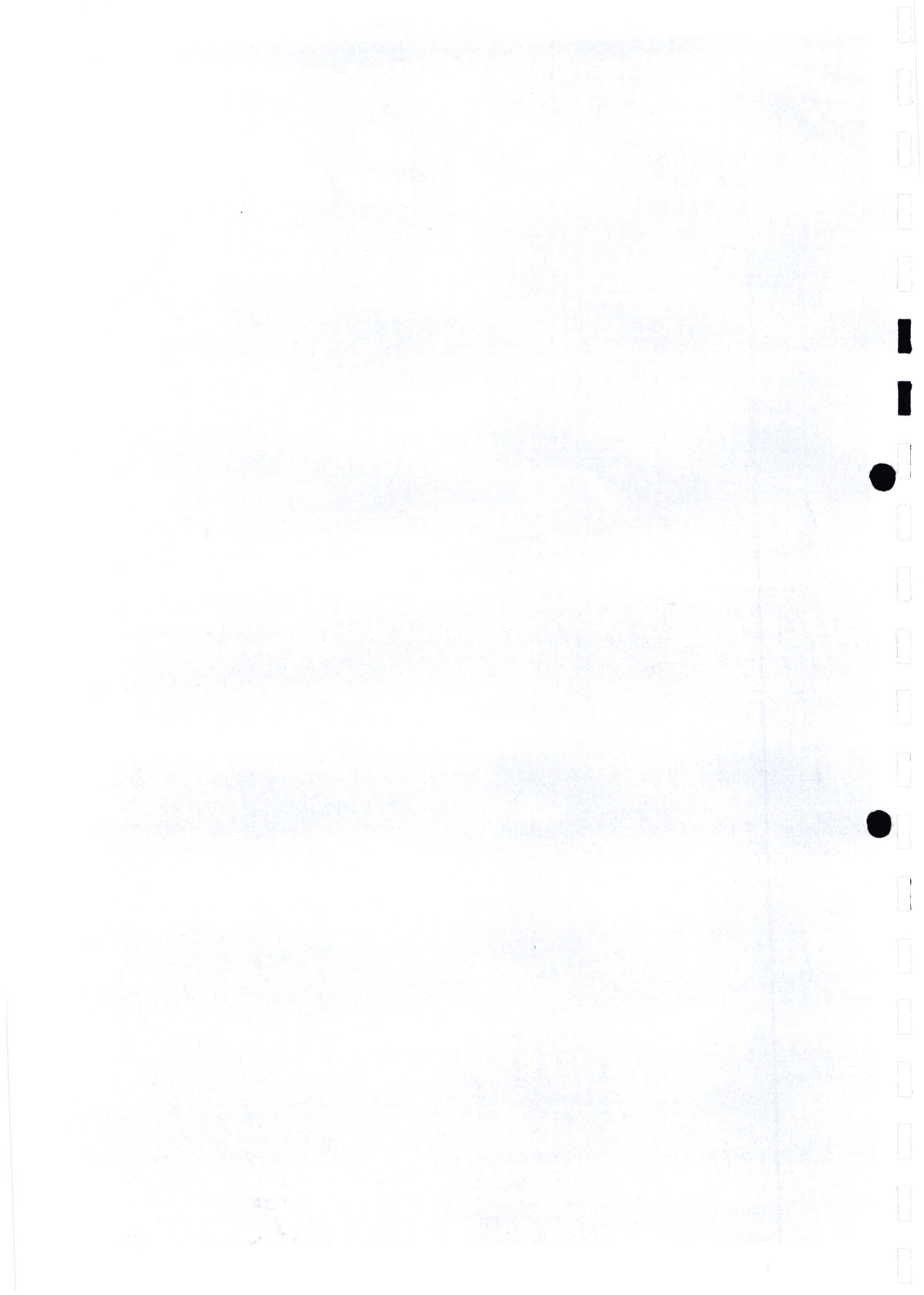
Station	12157
Scale	1:2500
Project No.	548
Sheet No.	57

SCALE 1:2500

1:2500
1:1000

1:2500





ANNE XU RIZ H

**PROPOSED SUBDIVISION PLAN OF L.R. NO: 1215/71 TO EXCISE ALL EIGHT (8) PUBLIC USE PLOTS
LOCATED IN GAYANGA SUB-COUNTY, MURANGA COUNTY**



SUBPLOT	AREA (sq. m)	PERCENTAGE OF TOTAL AREA
A	10,107.17	10.10717%
B	1,010.71	1.01071%
C	1,010.71	1.01071%
D	1,010.71	1.01071%
E	1,010.71	1.01071%
F	1,010.71	1.01071%
G	1,010.71	1.01071%
H	1,010.71	1.01071%
TOTAL	10,107.17	10.10717%

OWNERS: DEL MONTE RENTA LIMITED,
P.O. BOX 147 - 01000,
THIKA

Prepared by: Real Plan Consultants Ltd
P.O. BOX 1615 - 00100,
NAIROBI
Tel: 020-2728116, 4722475/500
Email: info@realplan.co.ke

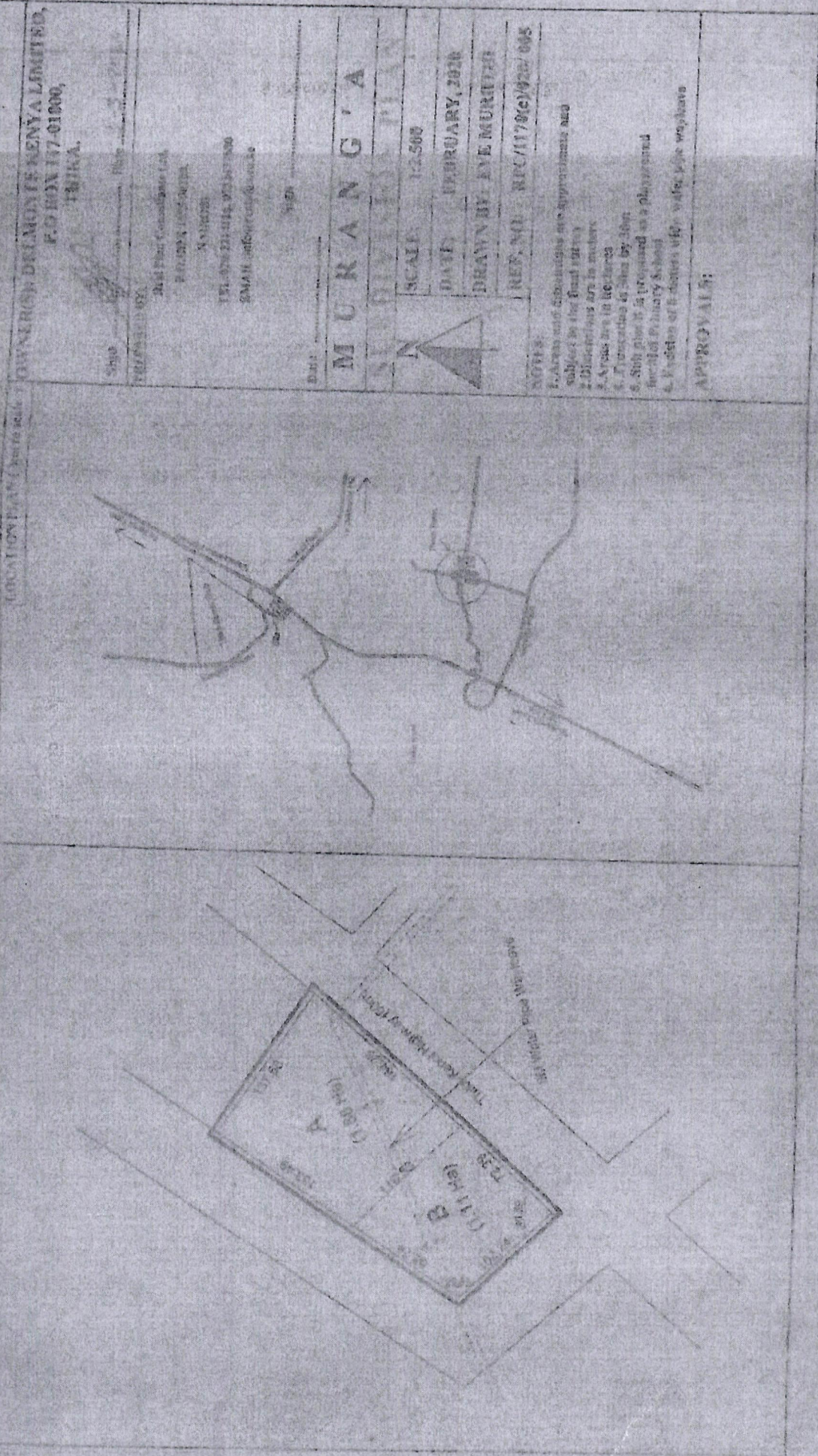
MURANGA

SCALE: 1:25,000
REF. NO. R/P/01/07020/056
DRAWN BY: STEPHEN KYARI
DATE: JULY 2020

All State and Government are approved, and subject to their conditions of approval, and to the provisions of the relevant laws.
This is a preliminary plan and is not to be used for any purpose other than the purpose for which it is intended.
This subdivision plan is subject to the approval of the relevant authorities.
The plan is valid for a period of 12 months from the date of approval.
If the plan is not approved within the above period, it shall be deemed to be withdrawn.

APPROVED:

PROPOSED SUBDIVISION OF LR NO 12157/3 LOCATED IN GATANGA SUBCOUNTY, MURANG'A COUNTY INTO TWO (2) SUB-PLOTS.



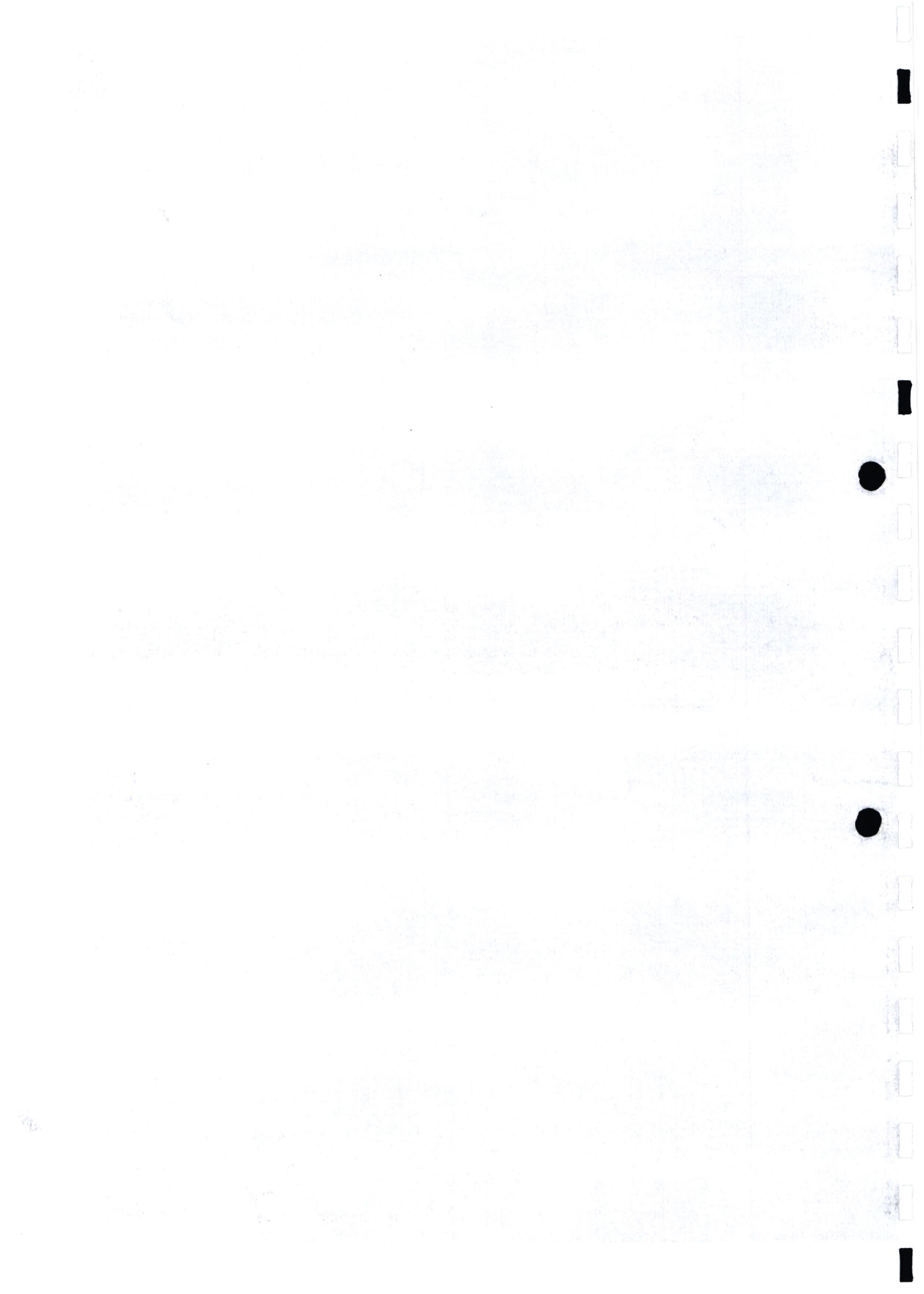
OWNER(S): DELMOS KENYA LIMITED,
P.O BOX 117-01000,
NAIROBI.

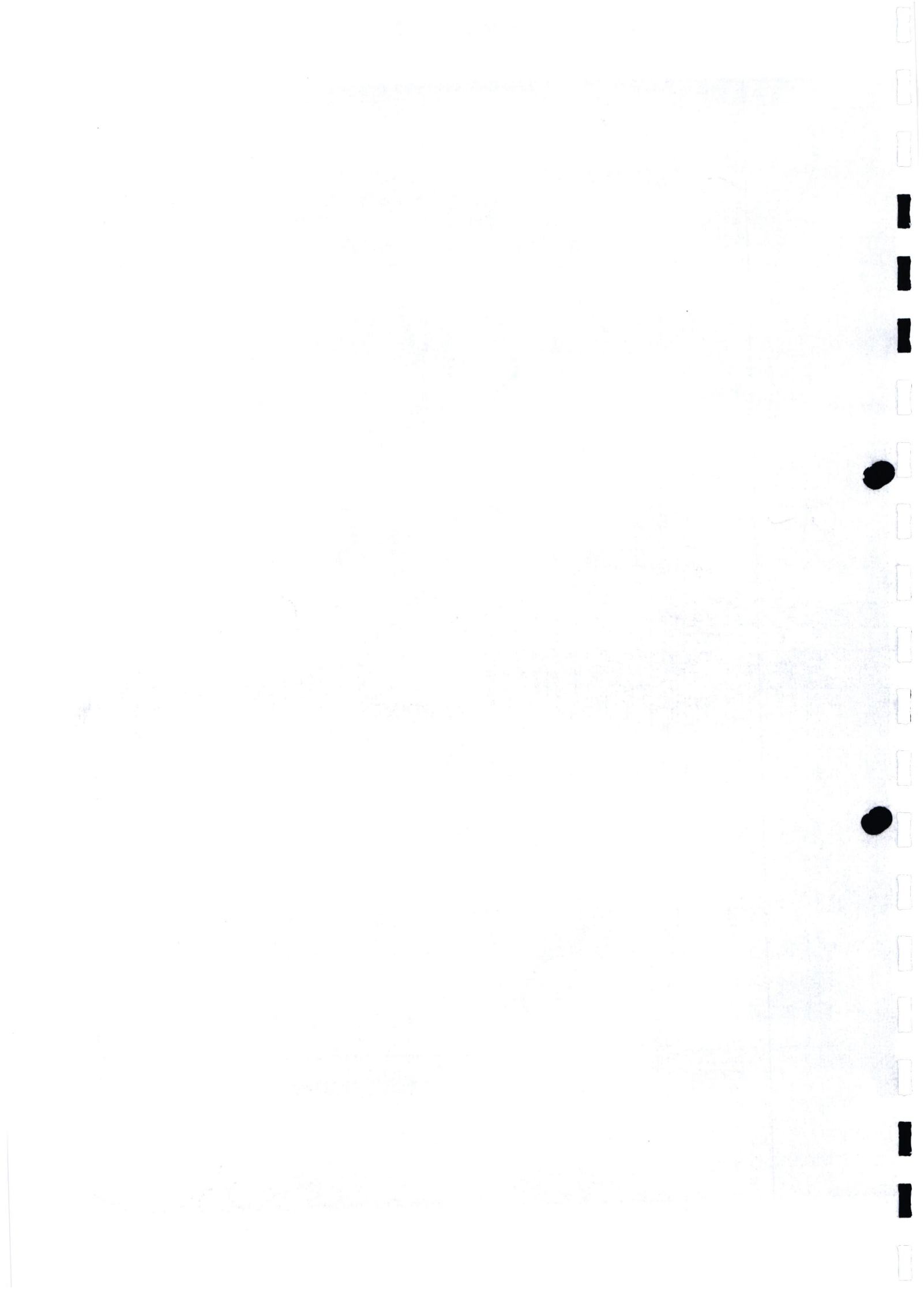
PREPARED BY:
M&E CONSULTANTS LTD
P.O BOX 10050 NAIROBI
N 0102005
TEL: 020 221 414, 221 407 000
EMAIL: info@mecol.co.ke

DATE: FEBRUARY, 2020
DRAWN BY: EYE MURIITHI
REF. NO: RPC/1179c/926/045

NOTES:
1. Areas and Subdivisions are approximate and subject to the final title.
2. All boundaries are to markers.
3. Areas are in hectares.
4. Encroachment of area by 10m.
5. Sub plot B is proposed as a playground for the primary school.
6. Details of the factors are: walls, site markers.

APPROVALS:

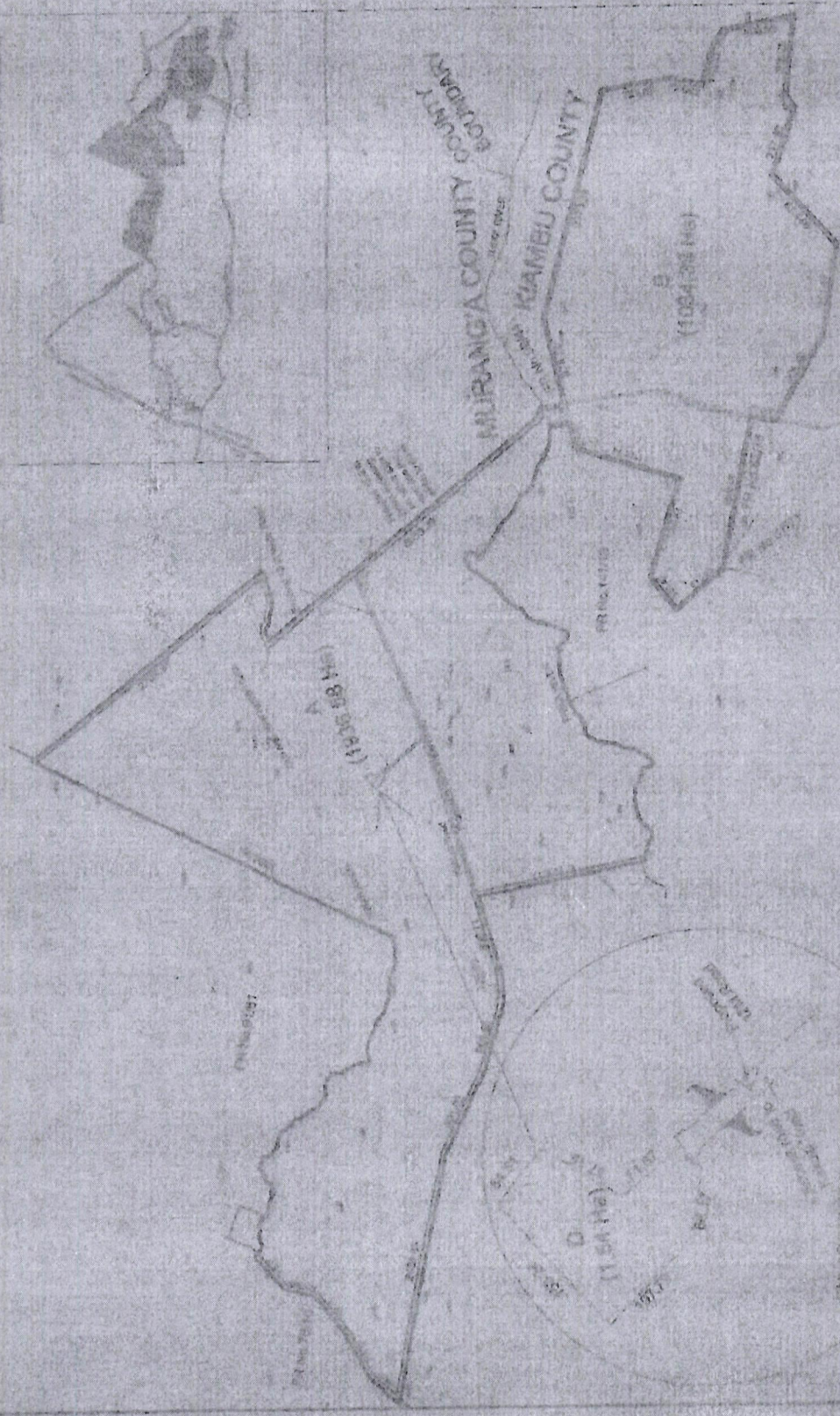




ANNEXURE
70

PROPOSED SUBDIVISION OF LR No. 12156 INTO THREE (3) SUB PLOTS LOCATED IN GATANGA
SUB-COUNTY MURANGA COUNTY

Location Plan filed by Survey

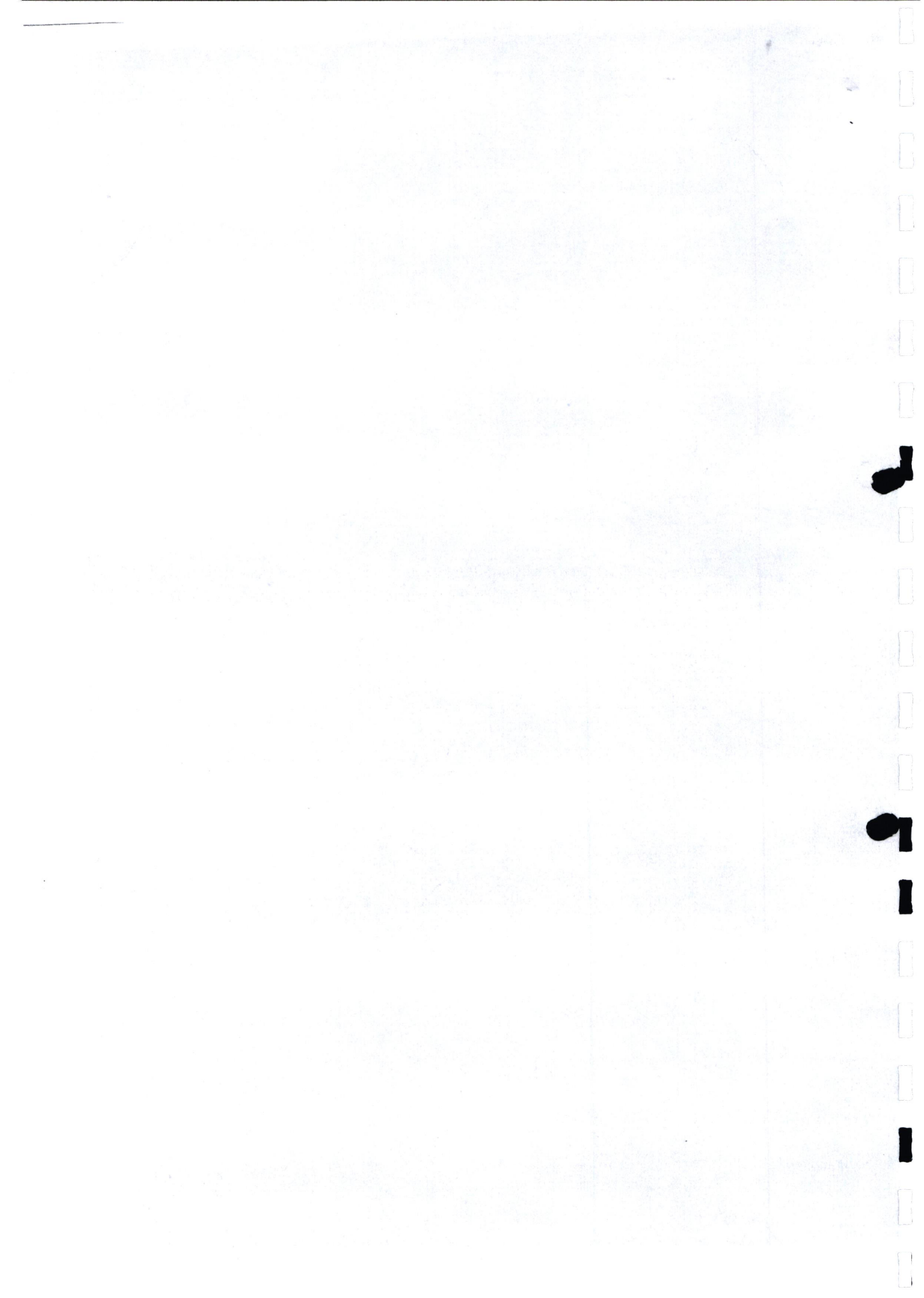


OWNER
DEL MONTE KENYA LTD
P.O. BOX 147-01000
THIKA

PREPARED BY:
RURAL PLANS CORP. (PVT) LTD
P.O. BOX 1955 NAIROBI
KENYA
Tel: 00254 20 424 424, 424 277000
Fax: 00254 20 424 424
www.ruralplanscorp.com

THIKA
SCALE: 1:20000
Ref No: SP/12156/12/07
Drawn By: CH. B. MURUGA
Date: FEBRUARY, 2020

- NOTES:
1. Survey boundaries are for information only and do not constitute a title.
 2. Boundaries are shown as per the survey plan.
 3. Boundaries are shown as per the survey plan.
 4. Boundaries are shown as per the survey plan.
 5. Boundaries are shown as per the survey plan.
 6. Boundaries are shown as per the survey plan.
 7. Boundaries are shown as per the survey plan.



WINWEAUE 70

PROPOSED SUBDIVISION OF LR No. 12158 INTO THREE (3) SUB PLOTS AND CHANGE USE OF SUBPLOT C FROM AGRICULTURAL TO EDUCATIONAL (NDULA PRIMARY & SECONDARY SCHOOLS).

OWNER:

DEL MONTE KENYA LTD
P.O. BOX 147-01000
THIKA.

Sign *[Signature]* Date *07/12/19*

PREPARED BY:
REAL PLANS CONSULTANTS LTD
P.O. BOX 1555-007/0
NAIROBI

Tel: 020-2714116, 072777600
Email: realplans@realplans.co.ke
SIGN APPROVAL Date: 07/06/19

THIKA

SCALE: 1:2500

Ref No. RPC/1/69/01/025

Drawn By: David M Ndu

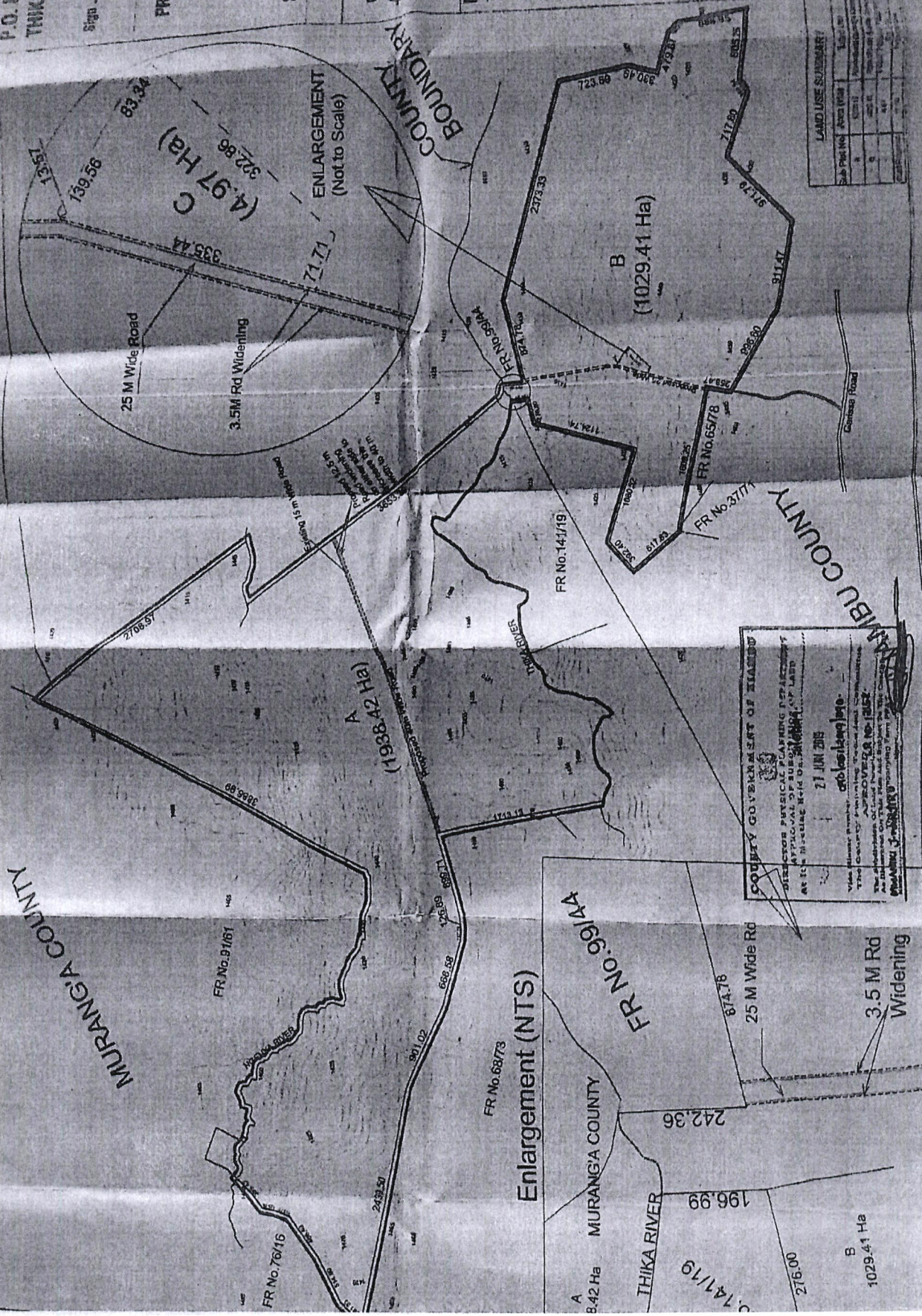
Date: 4/6/2019

Notes:

1. Areas & Dimensions are approximate and subject to final survey
2. Dimensions are in meters, areas in Hectares
3. Subplot "A" of about 1938.42 Ha covers the land in Murang'a County
4. Subplot "B" of 1029.41 Ha is partly within the Kenya Land.
5. Subplot "C" of 4.97 Ha to be allotted for public use under public primary and secondary schools.
6. This subdivision application is being submitted simultaneously with extension of these applications Sub plot B.

Consented By:

Approved By:



LAND USE SUMMARY

Sub Plot No.	Area (Ha)	Use
A	1938.42	Public Primary & Secondary Schools
B	1029.41	Public Primary & Secondary Schools
C	4.97	Public Primary & Secondary Schools

COUNTY GOVERNMENT OF KIAMBU
DIRECTOR PHYSICAL PLANNING & INFRASTRUCTURE
APPLICATION FOR SUBDIVISION OF LAND
AS PER ATTACHED MAP OF THE LAND

71 JUN 2019
[Signature]

Vide Minutes of the meeting held on 27th June 2019. The County Planning Department has approved the application for subdivision of the land as shown on the map and attached documents. Approved by: *[Signature]*

Enlargement (NTS)

B
1029.41 Ha

A
9.42 Ha

THIKA RIVER

C
4.97 Ha

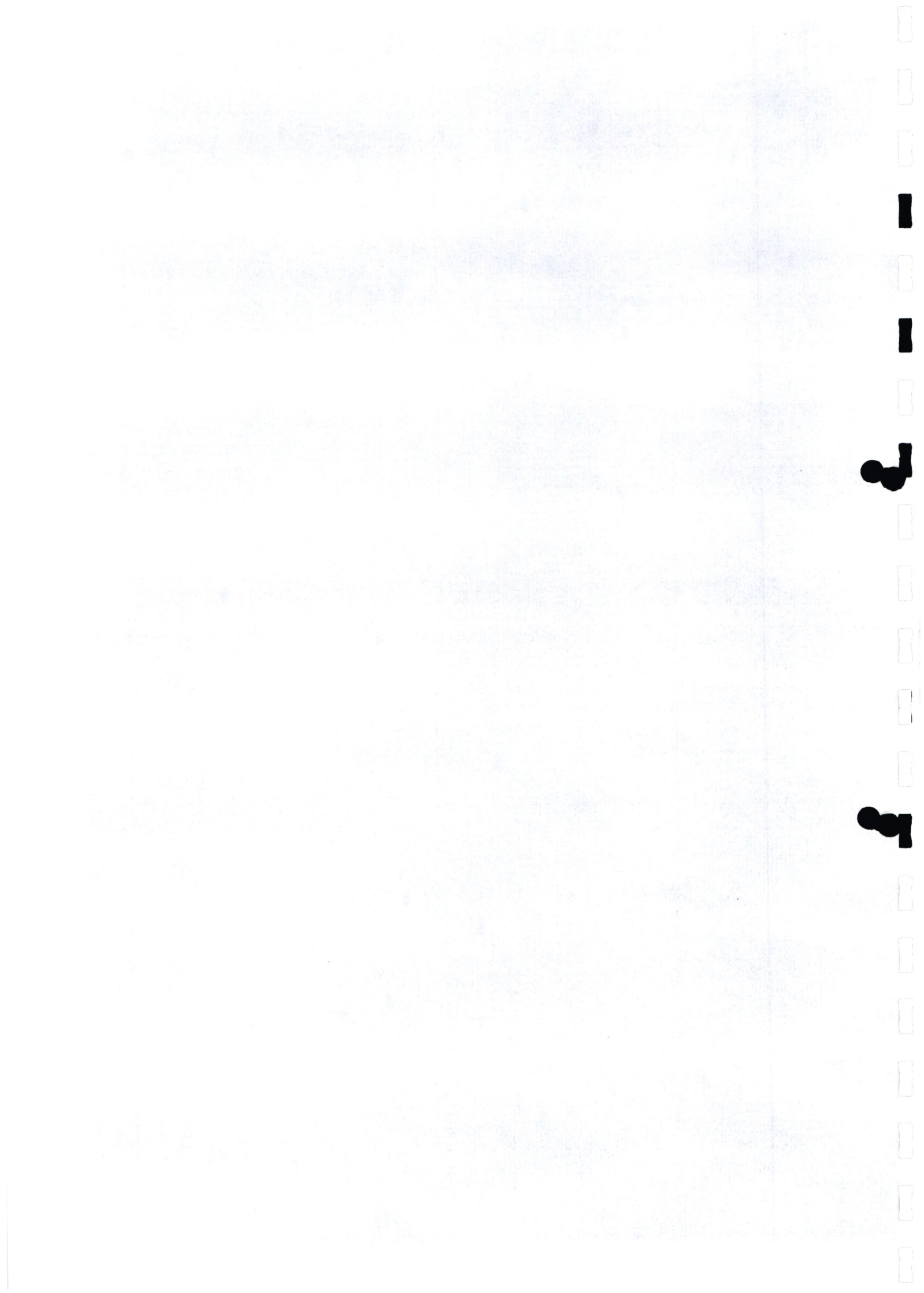
MURANG'A COUNTY

KIAMBU COUNTY

MURANG'A COUNTY

25 M Wide Rd

3.5 M Rd Widening





REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING

**SUBMISSIONS TO THE SELECT COMMITTEE ON IMPLEMENTATION ON
IMPLEMENTATION STATUS OF REPORTS OF THE DEPARTMENTAL COMMITTEE ON
LANDS**

Honorable Chair,

Pursuant to a letter Ref. **NA/DCS/COI/2020/ (69)** dated September 30, 2020 the Committee requested the Cabinet Secretary Ministry of Lands and Physical Planning to report on the implementation status of-

1. Report of the Departmental Committee on Lands on its consideration of the petition regarding the status of the leased land meant for expansion of Moi International Airport
2. Report of the Departmental Committee on Lands on its consideration of the petition regarding irregular acquisition of land in Ndalani Ward, Yatta Constituency
3. Report of the Departmental Committee on Lands on its consideration of the petition on unlawful occupation of ancestral land by KDF School of Artillery (78 Tank Battalion)
4. The Report of the Departmental Committee on Lands on its consideration of the petition on unlawful displacement of residents, loss of property and closure of schools in Ntoroni Sub-Location in Tharaka Constituency
5. Report of the Departmental Committee on Lands on its consideration of the petition on delay in allocation of land in Mwea Settlement Scheme to legitimate beneficiaries
6. Report of the Departmental Committee on Lands on the inquiry into a complaint by Kamiti Anmer Forest Squatters Association regarding allocation of land L.R No. 8390 in Kamiti Anmer Forest
7. Report of the Departmental Committee on Lands on its consideration of a petition on irregular renewal of leases of land by Del Monte Kenya Limited
8. Report of the Departmental Committee of Lands on its consideration of the petition regarding dispossession of ancestral land in Sabaki Ward, Magarini Constituency

9. Report of the Departmental Committee on Lands on its consideration of the petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura- Butere Road D260
10. Report of the Departmental Committee on Lands regarding land issues in Taita Taveta County.

Honorable Chair, we wish to submit as follows-

1. **Report of the Departmental Committee on Lands on its consideration of the petition on unlawful occupation of ancestral land by KDF School of Artillery (78 Tank Battalion)**

1.1 Background

The Committee considered a petition by residents of Tigania East Constituency regarding the alleged unlawful occupation of their ancestral land by KDF School of Artillery (78 Tank Battalion). The Petitioners sought the intervention of Parliament to:

- a) Inquire into the circumstances under which the Kenya Defence Forces annexed an extra 20,000 acres of land belonging to the residents in excess of what was allocated to it by the County Councils of Isiolo, Samburu and Turkana in 1977 and the issuance thereof of an allotment letter on June 12, 2018 in respect of the 20,000 acres.
- b) Intervene through the Ministry of Lands and Physical Planning and other relevant government agencies to cause survey of the land so as to clearly demarcate the portion of land that rightfully belongs to residents and that which was allocated to the Kenya Defence Forces by the County Councils of Isiolo, Samburu and Turkana.
- c) Make any other recommendation(s) deemed fit in the circumstances.

The Committee in considering the petition observed that the 78 Tank Battalion land was declared an adjudication section on March 11, 2016 and thereafter an amendment on the sectional boundaries was done on June 29, 2018. An allotment letter was subsequently issued on July 12, 2018 to the Kenya Defence Forces (KDF), two (2) years after the adjudication.

The Committee noted that the Ministry of Lands and Physical Planning erred in the demarcation of boundaries for the adjudication of Ngare Mara Adjudication Section and inadvertently adjudicated into the KDF land. The Committee further noted that the failure by the Kenya Defence Forces to secure and demarcate their land had contributed to the residents settling on the land.

It was also observed that although there was a Gazette Notice No. 3210 of 1977 inviting persons who had claim on the land allocated to the KDF to make application for compensation, the members of the public may not have had access to the Gazette Notice. There was also no evidence presented to the Committee indicating whether any person ever lodged a claim on the land in question.

The Committee thus recommended-

- i) The National Land Commission does determine the persons who had claim on the 78 Tank Battalion land as of the date of issuance of the Gazette Notice Number 3210 of 1977 and compensate the affected persons for loss of property within three months of tabling of this report.
- ii) The Ministry of Defence does secure all land allocated to the military to prevent encroachment and ownership disputes.
- iii) Finally, the Committee recommends that the Ministry of Lands and Physical Planning does survey the 78 Tank Battalion Land to clearly demarcate the land belong to the Kenya Defence Forces and the residents.

1.2 Implementation Status

Honorable Chair, the Ministry of Lands and Physical Planning in conjunction with the Ministry of Defence is currently undertaking a Military Titling Programme. Amongst the parcels targeted by the programme is the Isiolo Barracks (78 Tank Battalion Land is part of Isiolo Barracks).

The Ministry has surveyed the original land allocated to Isiolo Barracks issued L.R. No. 27098 measuring approximately 8323 Hectares and a Certificate of Title IR 213242 registered (**Annexure 1**).

The Ministry has also surveyed the land occupied by the 78 Tank Battalion issued L.R. No. 32634. A Deed Plan is being processed to facilitate preparation of a title in favour of Kenya Defence Forces.

2. Report of the Departmental Committee on Lands on its consideration of the petition on unlawful displacement of residents, loss of property and closure of schools in Ntoroni Sub-location in Tharaka Constituency

2.1 Background

The petitioners were displaced from their homes due to politically instigated communal clashes that took place between 1995 and 1997. They lost their property in addition nine (9) schools were razed down. The Government set up a taskforce led by Mr. Zachary Ogongo to look into the issue and report on the same. The report of the taskforce was published in 2007 with the following recommendations:

S/No.	Recommendation	Actor
1.	Government should give priority to peace and security in the area and the protection of beacons and control points from vandalism	Ministry of Interior & Coordination of National Government
2.	Enforcement of the rule of law and provision of impartial services to wananchi	Judiciary, All Ministries
3.	Government to expedite land adjudication in Meru region through crash programmes	Ministry of Lands & Physical Planning
4.	Promotion of peace and reconciliation accompanied by increased socio-economic investment to improve local infrastructure and standards of living	All Ministries, Multi - Sectoral
5.	Government to urgently address the plight of squatters	Ministry of Interior & Coordination of National Government & Ministry of Lands & Physical Planning
6.	Affirmative action in appointments and placements in training institutions and respect for ethnic minority rights	Multi-Sectoral
7.	Re-training of Chiefs and their assistants to make them true grassroots government representatives	Ministry of Interior & Coordination of National Government
8.	a) The former Northern Grazing Area (NGA) land should be managed in a transparent manner so that it does not become an area of conflict	Ministry of Interior & Coordination of National Government

Our report to the Committee dated July 12, 2019 outlined the steps taken to implement the recommendations directed at the Ministry:

- i) Held consultative meetings with leaders of Meru and Tharaka Nithi Counties to enhance a participatory approach in land adjudication.
- ii) Re-established the boundary between Isiolo and Meru Counties in liason with the Ministry of Interior and Coordination of National Government.
- iii) Regularized the informal settlements of Majengo and Mjini villages in Meru town. Ninety-Six (96) titles had been prepared. Forty -six (46) had been issued.
- iv) Fast tracked land adjudication in Lower East Magutuni, Ruiru/Rwarera, Turima, Mukothima, Karocho, Mbwaa I, Mbwaa II, New Kiare, Amung'enti B, C, D & E

and Kirindine B. The undeclared sections of Thiiti, Ntoroni, Makururuni and Kathura were to be administered under the Community Land Act, 2016.

The committee in considering the petition also received submissions from the petitioners, Ministry of Interior and Coordination of National Government and Ministry of Education. In the end, the Committee in a report dated December 2019 recommended:

- i) The Ministry of Lands & Physical Planning and the Ministry of Interior and Coordination of National Government do fully implement the Zachary Ogongo task force recommendations within 90 days of tabling of the report.
- ii) The Ministry of Lands and Physical Planning does operationalize the lands office in Tharaka Sub-County by deploying officers to serve in the station to ensure that the residents of Tharaka Constituency access land related services within 90 days of tabling of the report.

2.2 Implementation Status

Honorable Chair, further to our report of July 12, 2019, we wish to report as follows-

S/No.	Adjudication Section	Status
1.	Lower East Magutuni Kirindine B Ruri Rwarera	Adjudication has been finalized Annexure 2 a-c are copies of the certificates of finality. Number of titles prepared- 4,445 Data capture for 4,967 land parcels is in progress at the National Titling Centre and will be finalized by June 2021. Total expected titles – 9,412
2.	New Kiare	Adjudication Register was published complete on 31 st August 2020. Number of expected titles -12,610
3.	Amungenti B, C and E	Hearing and determination of objections to the Adjudication Register is ongoing. Number of pending objections-677 Number of expected titles- 7,480
4.	Mbwaa II	Under demarcation and Survey. Number of expected titles -4,873
5.	Mbwaa I	Adjudication halted by Environment and Land Court case No.16 of 2016 at Meru High Court.
6.	Amungenti D	Adjudication halted by Constitutional Petition No. 4 of 2017 at Meru High Court.
7.	Kiamuri B	Adjudication is still on hold due to the

<p>Igarie Thangatha/Ngongoaka Karocho Turima Mukothima Karie/Kamonka/Kathanje/Kathingithu</p>	<p>boundary dispute between Meru and Tharaka Nithi counties. Several meetings have been held between the Ministry of Lands and Physical Planning, Ministry of Interior and coordination of National government to resolve the Matter. A joint team toured the area between 16th and 20th of June 2020 on a fact-finding mission. A budget for the adjudication process has been prepared and the exercise is programmed to be undertaken in the current financial year.</p>
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The undeclared areas namely Thiiti, Ntoroni, Makururuni and Kathura are administered under the Community Land Act, 2016. The Act requires the Ministry in consultation with county governments, National Land Commission and other stakeholders to create awareness on the Act. Public education and awareness has been undertaken in 24 counties with community land. Sensitization programme for the communities in Meru County was carried out between December 16-20, 2020.

Honorable Chair, under the Act, County Governments (in consultation with the Communities) are required to prepare an inventory of all unregistered land in their jurisdiction to be submitted to the Ministry. This will pave way for the publication of an adjudication programme that would lead to registration of the community land. The Ministry will embark on the adjudication process once the inventory of the unregistered land is received.

The informal settlements of Majengo and Mjini Villages in Meru Town have been regularized and titles issued. The Ministry has opened a land registry in Marimanti in Tharaka Nithi County, which is now fully operational.

3. The report of the Departmental Committee on Lands on its consideration of a petition on delay in allocation of land in Mwea Settlement Scheme to legitimate beneficiaries.

3.1 Background

Honorable Chair, Mr. Stephen Ngari Njuki petitioned Parliament regarding delay in the allocation of land in Mwea Settlement Scheme located in Embu County. The Scheme was established on LR No. 26461 (FR No. 317/30) and measures approximately 17, 830.6 Hectares. There have been conflicts regarding administration of the scheme dating back to the 1970s which relevant agencies including the courts have been trying to resolve.

Efforts to resolve the disputes through alternative dispute resolution mechanism led by the National Land Commission, the County Government of Embu and the local leadership reached a consensus on sharing of the scheme to the disputing communities (Mbeere 40%, Embu 20%, Mwea (Kamba) 30% and Kirinyaga (Kikuyu 10%).

The scheme was surveyed and allocated by the County Government in 2014. The process was however challenged in court and an order issued by the High Court on August 26, 2016 to restrain the Ministry of Lands & Physical Planning from issuing title deeds. The court order was vacated on December 6, 2016 paving way for the issuance of title deeds.

The resettlement exercise resumed and 6,292 title deeds were issued. Disputes arose during the showing of plots in 2018, which posed security concerns and led to suspension of the exercise. By this time, 3,641 beneficiaries had been shown their plots.

The National Assembly Departmental Committee on Lands considered the petition and, in its report, dated December 4, 2019 recommended that a multi-agency committee led by the Ministry of Interior and Coordination of National Government, County Government of Embu and the Ministry of Lands & Physical Planning do ensure that the beneficiaries of the scheme access the land within ninety (90) days.

3.2 Implementation Status

Honorable Chair, the Ministry nominated officers to the proposed multi-agency Committee to address the pending issues. The exercise has however been hampered by the Covid-19 pandemic and the Ministry of Health guidelines on management of the disease. We shall resume the process once the Ministry of health eases the guidelines issued.

4. Report on inquiry into a complaint by Kamiti Anmer Forest Squatters Association regarding allocation of land L. R No. 8390 in Kamiti Anmer Forest

4.1 Background

The Committee considered a petition by members of Kamiti Anmer Forest Squatters Association claiming ownership of L. R No. 8390 Kamiti/Anmer Forest measuring approximately 419.5 acres (169.8 Ha). The forest was gazetted vide proclamation No. 14 of 1933 and subsequently declared a central forest vide Legal Notice No. 174 of May 20, 1964.

Following the 1992 post-election violence, H. E. Retired President Daniel T. Arap Moi made a public presidential pronouncement directing the excision of part of the forest for resettlement of internally displaced persons from then Rift Valley Province. By a letter Ref. D74/1/173 the then Provincial Commissioner, Central Province, Mr. Victor Musoga conveyed the pronouncement to the defunct Kiambu County Council and allowed the County Council to resettle the squatters on 300 acres of the forest land.

The land was settled on and is now fully developed. 149 titles have been issued to members of Kamiti Anmer Development Association despite the degazettement process not having been undertaken under the repealed Forest Act (Cap. 385), the Forest Act, 2005 or the Forest Conservation and Management Act, 2016.

Three other groups residing on the land namely Kamiti Forest Squatters Association, Muungano Kamiti Group and Kamiti Anmer Development Group also claim ownership of the land and have disputed the titles issued to Kamiti Anmer Development Association.

In the report dated June 13, 2019 the Committee found that security concerns due to disputes between the groups concerning ownership of the land required urgent settlement through regularization of the degazettement process and subsequent allocation to members of the four groups.

The Committee thus recommended as follows-

- i) Pursuant to Section 34 of the Forest Conservation and Management Act, 2016, L.R No. 8390 Kamiti/ Anmer Forest be de-gazetted and excised from the Kamiti Forest for purposes of settlement of members of Kamiti Forest Squatters Association, Kamiti Anmer Development Association, Muungano Kamiti Group and Kamiti Anmer Development Welfare Group
- ii) The Cabinet Secretary, Ministry of Lands and Physical Planning in consultation with the Cabinet Secretaries, Ministry of Interior and Coordination of National Government, Ministry of Environment and Forestry and the National Land Commission do ensure through alternative dispute resolution mechanisms that the allocation of L.R No. 8390 Kamiti/Anmer is regularized taking into consideration the membership of the four groups, physical developments undertaken on the land and the public utilities existing on the land within sixty days of adoption of this report by the House.

4.2 Implementation Status

Honorable Chair, further to our submissions vide our report dated February 3, 2020, we wish to report that we are in the process of preparing for tabling before cabinet, a cabinet memorandum on degazettement of forestlands settled by squatters. Kamiti/Anmer Forest is among the forestland identified to be included in the cabinet memorandum. We shall update the Committee on the progress.

5. Report on a petition on irregular renewal of leases of land by Del Monte Kenya Limited

5.1 Background

The Committee considered a petition presented by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases held by Del Monte Kenya Limited.

The Petitioners claimed to be the original owners of land presently occupied by Del Monte Kenya Limited but were illegally displaced and the land leased to the company. They were aggrieved that the County Government of Muranga had renewed the leases for the company without first involving the public as required by Section 13 of the Land Act, 2012. They also claimed that the county government disregarded the determination of the National Land Commission rendered on February 7, 2019 in their historical injustice claim filed with the Commission.

The Commission had directed that-

- i) The land held by Del Monte Kenya Limited should be resurveyed to establish if the company was in possession of land that it is not registered to hold
- ii) The surplus land, if any, should be surrendered to Kandara Residents Association and the county government for public purpose in the ratio of 70:30 respectively
- iii) Where no surplus land is found, the county government of Muranga should retain adequate land for the settlement of the claimants and for public purpose upon expiry of the leases
- iv) Del Monte Kenya Limited should surrender all public utilities within the land in question to the relevant national and county government agencies whether the leases have expired or not.

In considering the report, the observed that the submissions made by the Ministry and Hon. Jude Njomo, Member of Parliament, Kiambu Constituency regarding registration of the lease held by the company in Muranga County registered as L. R No. 12158 (measuring approximately 2900 acres) differed. While the Ministry submitted that the parcel of land arose out of the amalgamation of land parcels L.R Nos. 10862, 10741, 11312, 2953, 4873 and 11146, the Hon. Member of Parliament informed the Committee that the said parcels were surrendered to the Government by two companies namely, Sassa Coffee and Rappit B Limited and were later irregularly acquired by Del Monte Company Limited.

In view of the above, the Committee recommended as follows-

- i) The Director of Survey, Ministry of Lands and Physical Planning does resurvey the land held by Del Monte Kenya Limited in Muranga and Kiambu counties within 90 days of tabling of the report
- ii) The National Land Commission does investigate the circumstances under which L.R Nos. 10862, 10741, 11312, 2953, 4873 and 11146 that were said to have been surrendered to the government by two companies namely Sassa Coffee and

Rappit B Limited were irregularly acquired by Del Monte Kenya Limited within ninety days of tabling of the report

5.2 Implementation Status

Honorable Chair, further to our submission vide a report dated February 3, 2020 the Ministry has surveyed the following land currently owned by Del Monte Kenya Limited both in Muranga and Kiambu counties -

- i) L.R No.12157/1 (measuring 3860 Ha) in Muranga County (as per F/R 316/67) (**Annexure 3**)
- ii) L.R No. 12157/3 (measuring 2.987 Ha) in Muranga County (as per F/R316/67)
- iii) L.R No.12158 (measuring 2963.1 Hectares) traversing Muranga and Kiambu Counties (as per F/R 127/3) (**Annexure 4**)
- iv) L.R No.12203/1 (measuring 2072 Hectares) in Kiambu County (as per F/R 315/66) (**Annexure 5**)

The Survey was guided by subdivision scheme plans prepared by a registered physical planner practicing as Real Plan Consultants Limited of P.O. Box 1555 – 00200, Nairobi. The Subdivision Scheme Plans were referenced:

- a) RPC/1170(F)/2020/016 – Proposed subdivision of LR. No 12157/1 to excise all eight (8) public use plots in Gatanga Sub-County, Muranga County (**Annexure 6**)

The parcels excised were:

- i) A – 8245.06 Acres to remain under Del Monte Kenya Ltd (Agricultural)
 - ii) B – 5.02 Acres for Public purpose (Ngati Police Station and Chief's camp)
 - iii) C – 5.16 Acres for Educational purpose (Del Monte Mixed Secondary School)
 - iv) D – 2.62 Acres for Educational purpose (Kihunguru Primary School)
 - v) E – 4.62 Acres for Recreational purpose (Public Play Ground)
 - vi) F – 2.99 Acres for Public utility purpose (Ithanga Water Supply Intake)
 - vii) G – 1187.17 Acres – Public Land
 - viii) H – 192.83 Acres – Public Land
 - ix) J – 20.00 Acres – Public Land
 - x) 66.08 Acres for road widening and access roads
- b) RPC/1170(c)/020/005 – Proposed Subdivision of L.R No 12157/3 located in Gatanga Sub-County, Muranga County in to two portions (**Annexure 7**)
 - i) A – 1.88 Ha
 - ii) B – 1.11 Ha
 - c) RPC/1169/020/017 - Proposed Subdivision of L.R No 12158 into three subplots located in Gatanga Sub-County, Muranga County in to two portions (**Annexure 8**)

- i) A – 1936.58 Ha – Agricultural (Muranga County)
 - ii) B – 1034.38 Ha – Agricultural (Kiambu County)
 - iii) D – 1.54 Ha – Education (Nginyi Primary School)
- d) RPC/1169/019/025 - Proposed Subdivision of L.R No 12158 into three subplots and change of user of subplot C from Agricultural to Educational (Ndula Primary and Secondary Schools) located in Kiambu County (**Annexure 9**)
- i) A – 1938.12 Ha – Agricultural (Muranga County)
 - ii) B – 1029.41 Ha – Agricultural (Kiambu County)
 - iii) D – 4.97 Ha – Educational (Ndula Primary and Secondary Schools)
- e) RPC/1169/019/026 – Proposed Subdivision of L.R No. 12203/1 in to five subplots in Kiambu County (**Annexure 10**)
- i) A – 1792.54Ha – Remains with Del Monte Kenya Ltd.
 - ii) B – 55.32Ha - Surrender to County Government of Kiambu
 - iii) C – 67.30Ha - Surrender to County Government of Kiambu
 - iv) D – 131.50Ha- Surrender to County Government of Kiambu
 - v) E – 25.50Ha - Surrender to County Government of Kiambu

The survey of all these parcels is complete and awaits approvals from both county governments of Muranga and Kiambu.

6. Report on a petition by residents of Sabaki Ward, Magarini Constituency regarding dispossession of ancestral land

6.1 Background

The Committee considered a petition presented by residents of Sabaki Ward, Magarini Constituency in Malindi County regarding dispossession of their ancestral land (known as ADC Kiswani Home Farm) within land registration nos. 540, M53, M3B and L.R 5061.

The residents were evicted by the colonial government from the land in 1927 to pave way for establishment of Kisima Farm owned by a foreign national. They did not receive compensation. The Government purchased the land after independence through Lands Limited and allocated it to Agricultural Development Corporation (ADC). The management of ADC subdivided the land and allocated it to individuals and companies in the 1990s without the approval of the ADC board or Lands Limited Board.

The Ethics and Anti-Corruption Commission commenced investigations into the irregular subdivisions and allocations in 2010. The matter has been pending before the Commission since then. The case was also referred to the National Land Commission in 2014 by the residents. In 2015, the Commission directed that the transactions be stopped. By this time, approximately 66% of the titles had been issued.

The Commission had not concluded the case at expiry of the prescribed period for review grants and dispositions under Section 14 of the National Land Commission Act, 2012.

In its report dated July 2019, the Committee noted with concern the inordinate delay by the Ethics and Anti-Corruption Commission and the National Land Commission to investigate the allegations of irregular allocations despite having received the complaints in 2010 and 2014 respectively. The committee was also concerned that EACC has not placed caveats to restrict further sub-divisions of the land.

It therefore made the following recommendations-

- i) Pursuant to section 15 of the National Land Commission Act, 2012, the National Land Commission investigates the historical land injustice claim of the Petitioners and where it establishes valid claims of historical land injustice consider ordering the revocation of titles issued in respect of ADC Kiswani Home Farm, comprising land registration numbers 540, M53, M3B and LR. No. 5061 in Malindi and reallocation of the land to the Petitioners
- ii) The Ethics and Anti-Corruption Commission should expedite and conclude investigating all persons who may have been involved in illegally disposing of the ADC Kiswani Home Farm, comprising land registration numbers 540, M53, M3B and LR. No. 5061 in Malindi, including issuance of titles on public land and recommend prosecution to the Director of Public Prosecutions if any person is found culpable within ninety days of tabling of this report
- iii) Pursuant to the procedure provided under section 76 of the Lands Registration Act, 2012, the Registrar of Lands does immediately place restrictions on the ADC Kiswani Home Farm, comprising land registration numbers 540, M53, M3B and LR. No. 5061 in Malindi to guard against further illegal disposal of the land upon tabling of this Report
- iv) The Ethics and Anti-Corruption Commission investigates the circumstances a person serving as an officer of a state corporation acquired a share in the said same state corporation and therefore establish the propriety under which the former managing director of ADC, Dr. Andrew Tuimur acquired one share of Lands Limited a subsidiary of the ADC.

6.2 Implementation Status

Honorable Chair, further to our report of February 20, 2020, we confirm that restrictions were placed on the said parcels Nos. 540, M53, M3B and LR. No 5061 to prohibit further dealings on the land. Copies of the current official searches are hereby attached marked **Annexure 11**.

7. Report on a petition by residents of Ikolomani Constituency regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura Butere Road D260

7.1 Background

The National Government through the Kenya Rural Roads Authority embarked on upgrading of the approximately 35 Kilometres long Sigalagala-Musoli-Bukura Butere Road in 2011. The construction encroached into private properties displacing many of the residents residing along the road.

At the start of the project, the Authority entered into an agreement with the landowners to allow it to enter into the affected land for the purpose of construction of the road. The Authority jointly with the landowners and an agricultural officer documented the developments for purposes of compensation.

In 2012, the Authority submitted the request for compulsory land acquisition to the then Commissioner of Lands. However, the enactment of the Land Act in 2012 shifted the mandate of compulsory land acquisition to the National Land Commission. The Commission was constituted in 2013 and it took over the matter and published the intention to acquire the land vide gazette notice no. 6472 of July 7, 2017. The Commission and KeRRA between March and May 2018 carried out inspections of the properties affected by the project. After the inspections, the Commission requested KeRRA to revise the land acquisition maps to reflect the actual status on the ground.

Gazettement of inquiries into claims of compensation by those affected by the project has been pending awaiting submission of the revised land acquisition maps and the appointment of the new Commissioners as it is only the Chairperson who can approve and gazette the inquiries.

In the report, the Committee observed that the delay in compensating the affected residents was inordinate, not justifiable and contravened the requirement for prompt and just compensation as contained in Article 40 of the Constitution as read with the Land Act, 2012.

The Committee thus recommended as follows-

- i) Pursuant to the provisions of Article 40 of the Constitution and the Land Act, 2012, the Chairperson National Land Commission does gazette the inquiry dates for the compulsory acquisition of land for the Sigalagala – Musoli – Bukura Butere Road project within ninety days of the tabling of this report
- ii) The National Land Commission does conduct the valuation of parcels of land, crops and trees affected by the project within ninety days upon the gazettement of the inquiry dates for the Sigalagala – Musoli – Bukura Butere Road

- iii) Upon the conclusion of the inquiries and remittance of compensation funds from Kenya Rural Road Authority (KeRRA), the Chairperson, National Land Commission does disburse the compensation funds to the respective project affected persons within ninety days.

7.2 Implementation Status

The mandate to compulsorily acquire private land for government projects lies with the National Land Commission. The recommendations for implementation as advised by the Committee are to be actioned by the Commission and KeRRA.

8.0 Report of the Departmental Committee on Lands regarding land issues in Taita Taveta County.

Background

The petition emanated from allegations that Teita Sisal Estate had encroached into a contiguous community land. The National Assembly Departmental Committee on Lands recommended that the Ministry ascertain the boundaries. A boundary confirmation survey was carried out on the land and it was discovered that the community had encroached into the Sisal Estate. Consequently, the proprietor of the Estate offered to surrender the portion of land occupied by the community.

The Committee on its consideration of the matter therefore recommended the excision of 250 acres of land from Teita Sisal Estate for formalization of settlement of residents of Singila Majengo village in addition to the public utilities within the estate as agreed by the Management of Teita Sisal Estate.

This Committee invited the Cabinet Secretary to a meeting on June 17, 2020 vide a letter Ref. NA/DCS/CO1/2020/ (12) dated May 27, 2020 to provide a status report on the excision of the 250 acres from Teita Sisal Estate. A report dated June 16, 2020 was submitted to the Committee (**Annexure 1**).

The Ministry reported that the excision of Singila Majengo Village, Mwandisha Primary School and the public utilities including the roads and the railway reserves was undertaken vide Survey Plan No. F/R 467/87. This was to be followed by an approval of the subdivision scheme plan by the County Government of Taita Taveta which had not been obtained. The Ministry requested for time to conclude the excision process and settle the genuine squatters.

1.2 Implementation Status

Honourable Chair, further to our report of June 15, 2020, a meeting between the County Government of Taita Taveta and the Ministry of Lands & Physical Planning was held on July 19, 2019.

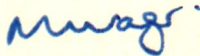
It was agreed that the County Government would facilitate the preparation and approval of the subdivision scheme plan based on the survey data collected by the survey team. The County Government is yet to approve the same.

A total of 1368 out of the 1500 parcels have been demarcated and the ground occupants verified. 45 ownership disputes have been resolved.

Teita Sisal Estate has committed to surrender the original title so that the excision process can be finalized.

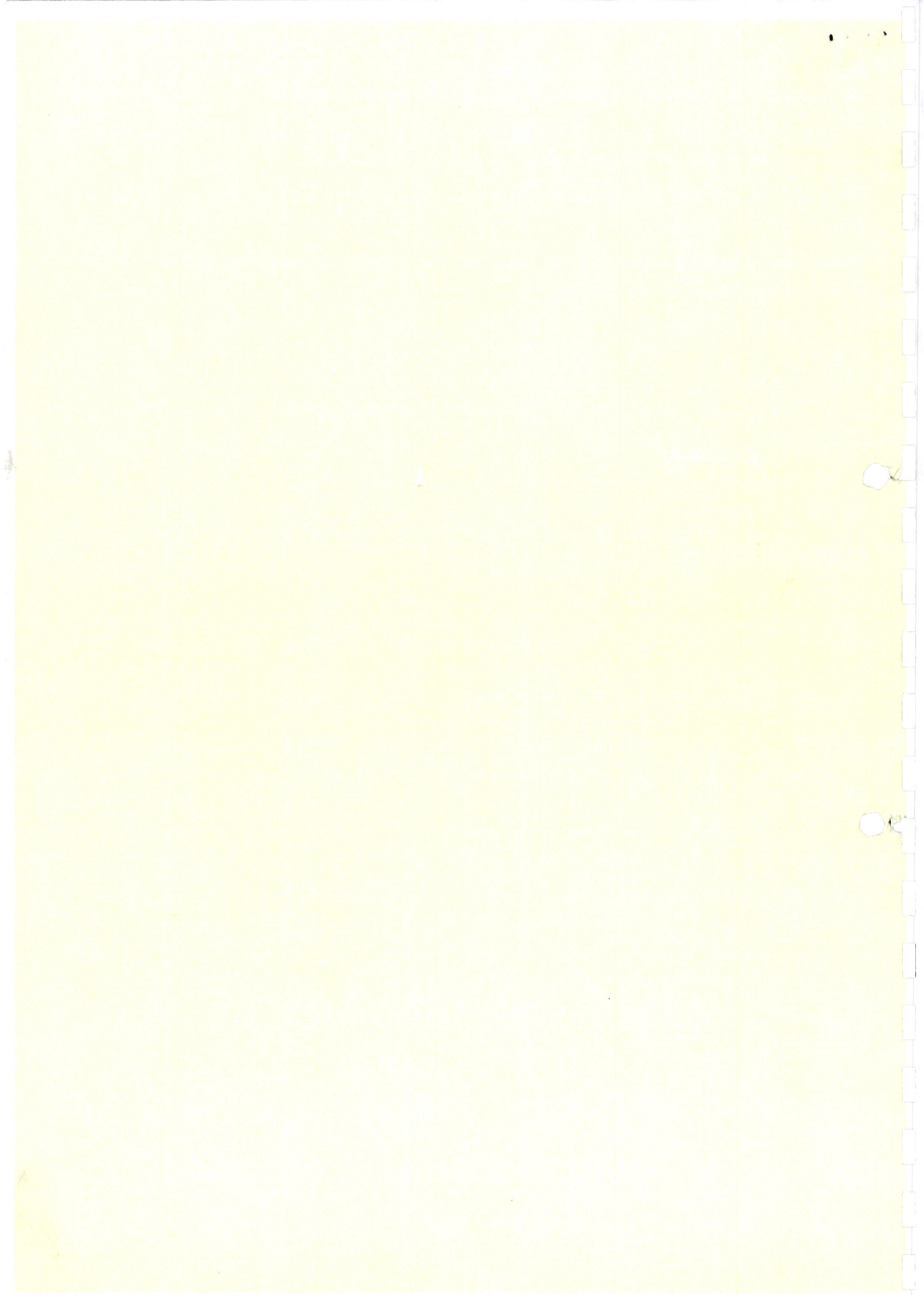
Honourable Chair, the Ministry is engaging the county government with a view to finalize the process as soon as possible.

Honorable Chair, I submit.



Dr. Nicholas Muraguri
Principal Secretary

October 27, 2020





MINISTRY OF LANDS AND PHYSICAL PLANNING

SUBMISSIONS TO THE NATIONAL ASSEMBLY SELECT COMMITTEE ON IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

Honourable Chair,

Pursuant to a letter Ref. **NA/DAASC/COI/2021/ (084)** dated June 10, 2021, the Committee requested the Cabinet Secretary, Ministry of Lands and Physical Planning to report on the implementation status of the following reports:

1. Report of the Departmental Committee on its consideration of the petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura- Butere Road D260
2. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces
3. Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vuta, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of Konza-Katumani Road
4. Report of the Departmental Committee on Lands on its consideration of the petition on irregular renewal of leases of land by Del Monte Kenya Limited
5. Report on the Petition regarding land issues in Taita Taveta County

Honourable Chair, I wish to respond as follows:

1. **Report of the Departmental Committee on its consideration of the petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura- Butere Road D260**

Honourable Chair,

The Departmental Committee on Lands considered a petition regarding delayed compensation for private land compulsorily acquired by Kenya Rural Road Authority (KeRRA) in 2011 for construction of the Sigalagala-Musoli-Bukura Butere Road. The Committee in its report dated November 19, 2019 recommended as follows:

- i) Pursuant to the provisions of Article 40 of the Constitution and the Land Act, 2012, the Chairperson, National Land Commission does gazette the inquiry dates for the compulsory acquisition of land for the Sigalagala – Musoli – Bukura Butere Road project within ninety days of the tabling of this report
- ii) The National Land Commission does conduct the valuation of parcels of land, crops and trees affected by the project within ninety days upon the gazette of the inquiry dates for the Sigalagala – Musoli – Bukura Butere Road
- iii) Upon the conclusion of the inquiries and remittance of compensation funds from Kenya Rural Road Authority (KeRRA), the Chairperson, National Land Commission does disburse the compensation funds to the respective project affected persons within ninety days.

Implementation Status

Honourable Chair,

Recommendations (i) (ii) and (iii) are to be actioned by the National Land Commission and Kenya Rural Road Authority KeRRA.

2. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces

Honourable Chair,

The petition concerned land L.R No. 5875/2 claimed by the petitioners (Roysa Community Development Society, the Kenya Defence Forces (KDF) and Kasarani Mall Limited (a subsidiary of Uchumi Supermarket PLC).

The land was registered in the name of Mayer Jacob Samuels (who died in 1974). The Government published a notice of intention to acquire the parcel for the Kenya Defence Forces vide Kenya Gazette Notice No. 5151 and 5152 of November 22, 1985. On August 8, 1995 an award for Kshs. 4,140,000/- was issued by the Commissioner of Lands. A 'Notice of Taking Possession' by the Government was lodged and registered in volume N. 10, Folio 494/30 File 6943 on June 25, 1986. The notice required the owner to deliver the title document to the Registrar of Titles for cancellation

The award was however challenged in the High Court under Land Acquisition Appeal No. 2 of 1986. In accordance with Section 13(2) of the Land Acquisition Act, the compensation money was deposited in the High Court and a deposit receipt issued by the Registrar. The money was subsequently deposited to Middle East Bank and released to the owner of the land on October 3, 1987. The High Court enhanced the award to Kshs. 23,000,000 and the same was subsequently appealed by the Hon. Attorney General vide Civil Appeal No. 109 of 1987.

The appeal was stood over generally to pave way for an out of court settlement. The out of court settlement was not finalized owing to the fact that the family of the late Mayer Jacob Samuels relocated from Kenya to Israel.

Despite the compulsory acquisition, the land was allocated to Solio Construction Company Limited as a fresh allocation in 2001 and was later transferred to Kasarani Mall Limited on March 20, 2001. In 2019, the County Government of Nairobi and the National Land Commission also allocated the land to the petitioners who claimed to be occupying the same. Subsequently, the Ministry of Lands and Physical Planning issued the subdivision scheme approval letters.

In considering the petition, the Committee noted in its report dated December 2019 that:

- i) Whereas there exists evidence that the government intended to acquire the subject parcel of land, the acquisition process was not completed as the out of court settlement on amount of compensation to be made were never concluded
- ii) That although the Ministry of Defence submitted that the land was valued at Kshs. 3,530,500 and the sum was duly paid by the Ministry to the Commissioner of Lands, the Committee noted that the High Court under the Land Acquisition Appeal No. 2 of 1986 had enhanced the award to Kshs. 23,000,000 and the same has not been paid to date. It had not also been demonstrated that the Kshs. 3,530, 500 allegedly paid to the Commissioner of Lands was released to Mr. Jacobs
- iii) The Committee noted with concern that the KDF only occupied the land thirty-three years later and the land remains undeveloped to date.

It thus recommended that:

- i) The Ministry of Lands and Physical planning in consultation with the National Land Commission and the Nairobi County government does complete the titling process for L.R No. 5875/2 within 180 days of tabling this report
- ii) The Director for Criminal Investigation does investigate the officers in the Ministry of Lands and Physical planning who may have caused loss of public funds by effecting fraudulent transactions relating to L.R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling this report
- iii) The Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R No. 5875/2.

Implementation status

Honourable Chair, in response to recommendation (i), I wish to state as follows:

The Honourable Attorney General as the Principal Legal Advisor to the Government gave an advisory to the National Assembly vide a letter Ref. AG/CIV/47/20 dated August 11, 2020 regarding implementation of the report of the Departmental Committee on Lands in this matter (**Annexure 1a**). In view of this advisory, the Ministry has not been able to implement the recommendation. We have written to the Hon. Attorney General to seek guidance on the way forward and shall report to the Committee as soon as we are guided.

Further, the Environment and Land Court in Nairobi issued a judgement in ELC Case No. 153 of 2017 (formerly 495/2011) concerning the subject parcel of land L.R 5875/2. The said judgment upheld the title held by Kasarani Mall Limited and issued a permanent injunction restraining the petitioners from trespassing on the land. A copy of the judgment is marked (**Annexure 1b**).

The Petitioners also have a subsisting court case over the subject land at the Environment and Land Court in Nairobi, Judicial Review Application No. E008 OF 2020 (Republic-versus-Director Land Administration, Ministry of Lands & Physical Planning, Chief Land Registrar and the Attorney General)

Honourable Chair, in response to recommendation (ii), I wish to state as follows:

The recommendation of the Committee is to be actioned by the Director of Criminal Investigations.

Honourable Chair, in response to recommendation (iii), I wish to state as follows:

L. R No. 23393 is registered in favour of Kasarani Mall Limited. The parcel is adjacent to L. R 5875/2 and is not in contention given that the application by Kasarani Mall Limited for amalgamation of the two properties was never finalised.

3. Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vuta, Mua Ward in Machakos Town Constituency regarding the obstruction of public road (Konza-Katumani Road)

Honourable Chair,

The National Assembly Departmental Committee on Lands considered a petition by residents of Vuta, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of the Konza-Katumani road over a contested 400 Meters portion of the road traversing on private land L.R No. 355/2.

In its report dated October, 2020 the Committee noted that although the 400 meters road passing through L.R No. 7374 is not a public road, the petitioners have been in

continuous use for over 50 years. Further, the road is the shortest and most convenient route joining the Mombasa Road for use by the residents of Vota and other members of the public. It thus recommended:

- i) That the National Land Commission does consider facilitating the creation of a public right of way pursuant to Section 143 of the Land Act, 2012 to ensure the convenient passage of the residents of Vota through the 400 meters road which they have been using for over fifty years within six months of the tabling of this report
- ii) The Cabinet Secretary Ministry of Lands and Physical Planning does fast track the development of the land value index as contained in the Land Value (Amendment) Act 2019 to address the challenge of over-valuation of land identified for the development of public projects within three months of the tabling of this report.

Implementation Status

Honourable Chair, in response to recommendation (i), I wish to state as follows:

The process for the creation of a public right of way is prescribed under Sections 143-148 of the Land Act, 2012 read together with Part VII of the Land Regulations, 2017.

The National Land Commission is empowered under Sections 143 to 148 of the Land Act, 2012 to create a public right of way. A public right of way created for the benefit of the National Government or County Government, a Local Authority or any corporate body to facilitate the functions of such bodies is referred to as a wayleave. Where a public right of way is created for the benefit of the public as is the case herein it is referred to as a communal right of way.

Under Section 145 of the Act and Regulation 51 (2) of the Land Regulations, 2017, a county government, an association or any group of persons may make the application to the Commission for creation of a communal right of way. The Commission may also make the application on its own motion pursuant to Section 146 of the Act. The applicant is required to obtain a survey map from the authority responsible for survey and mark the proposed position of the public (communal) right of way.

Regulation 52 (1) requires the Commission to serve a notice of the application to all persons occupying the land over which the communal right of way is sought and make an announcement of the notice in a radio station with nationwide coverage. The Commission is also supposed to publish the notice along the route of the proposed right of way.

Upon receipt of all information and where there are no objections after expiry of the period specified in the notice (90 days) the Commission shall recommend to the Cabinet Secretary to create the communal right of way (Regulation 53).

Where there are objections/representations to the application, Section 146 of the Land Act requires the Commission to consider representations and objections received pursuant to the said notices and recommend to the Cabinet Secretary whether to carry out a public inquiry into the representations/objections or refer the application for creation of a communal right of way to the county government for its opinion or to initiate and facilitate negotiations with persons who have made representations/objections on the application with a view of reaching a consensus on that application.

Honourable Chair,

Where the recommendation is for a public inquiry, the Cabinet Secretary will constitute a public inquiry panel constituting a representative of the Institution of Surveyors of Kenya, Ministry of Lands and Physical Planning, Law Society of Kenya, National Land Commission, the respective county government and Kenya Institute of Planners. The inquiry panel will then place a two weeks' notice specifying the date, time and place of inquiry to all parties to make submissions on the application for the communal right of way. At the expiry of two weeks from the date of hearing, a report of the inquiry shall be submitted to the Cabinet Secretary (Regulations 55 & 56 of the Land Regulations, 2017).

Where the Commission recommends that the matter be referred to the respective county government, the Cabinet Secretary shall within two weeks refer the matter to the county government to give their opinion. The county government shall within two weeks forward its opinion to the Cabinet Secretary in writing (Regulation 57 of the Land Regulations, 2017).

Where the Commission recommends negotiations, the Cabinet Secretary shall within two weeks initiate negotiations between the persons who made objections/ representations and the applicant.

The Cabinet Secretary will determine whether or not to create the communal right of way after considering as the case be the recommendation of the Commission, or the advice of the county government or the outcome of any negotiations that may have been reached between the applicant for the right of way and those who made representations or objections.

If the Cabinet Secretary decides to create a right of way, an Order to that effect which shall be published in the Kenya Gazette. Once the order is made, any person who had made representation or objection to the application to the creation of the right of way may appeal against the decision of the Cabinet Secretary to the Court only on a point of law.

Honourable Chair,

Section 148 (1) of the Act provides that compensation shall be payable to any person for the use of land which the person is in lawful or actual occupation with respect to the communal right of way which compensation shall be based on the value of the land as determined by a qualified valuer. Section 148 (4) of the Act places the duty to pay compensation upon the state department, public authority or corporate authority that has applied for the communal right of way.

Under Regulation 60 (1) of the Land Regulations, 2017 the Cabinet Secretary may create the public right of way upon completion of the processes outlined above.

Honourable Chair,

The Land Act, 2012 and the Land Regulations, 2017 have an elaborate procedure to be followed when one wants to create a communal right of way over private land. The Commission through a letter Ref. NLC/1/26/1 dated April 13, 2021 recommended the creation of the communal right of way on land L. R 7374/3 on the basis of the recommendation of the Departmental Committee on Lands (**Annexure 2**). However, the recommendations of the Committee are subject to the process prescribed in law. We have engaged the Commission to take the necessary steps provided in law vide our letter Ref. MOLPP/ADM/CSO/1/760 dated April 29, 2021 (**Annexure 3**). Once this is done, we shall action accordingly.

Honourable Chair, in response to recommendation (ii), I wish to state as follows:

Further to our report dated March 3, 2021 contained in **Annexure 4** (Pgs. 11-14), I wish to report that we have since prepared and undertaken stakeholder validation of Land Value Index Maps for Kakamega, Busia, Bungoma, Vihiga and Siaya counties. The main challenge remains shortage of funds to fast track the process.

The Land Value Index Maps shall be submitted by end of August, 2021 for approval by the National Assembly and the Senate in accordance with Section 107A of the Land Act, 2012.

4 Report of the Departmental Committee on Lands on its consideration of the petition on irregular renewal of leases of land by Del Monte Kenya Limited.

Honourable Chair,

The Committee considered a petition presented by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases held by Del Monte Kenya Limited. The petitioners claimed that the County Government of Muranga renewed the leases to Del Monte contrary to Section 13 of the Land Act requiring public participation to determine whether the public had an interest in the land.

The Committee in considering the petition noted that the National Land Commission dealt with the matter as a historical land injustice claim and recommended, among other things, that the land held by Del Monte Kenya Limited be resurveyed to establish if the company was in possession of land that it is not registered to hold. The Committee also observed that despite there being several court cases regarding renewal of leases and implementation of the recommendations of the Commission, Del Monte Kenya Limited was not opposed the resurvey of the land in question.

It therefore made the following recommendations in its report dated November 2019:

- i) The Director of Surveys, Ministry of Lands and Physical Planning does resurvey the land held by Del Monte Kenya Limited in Murang'a and Kiambu Counties within ninety days of tabling of this report.
- ii) The National Land Commission does investigate the circumstances under which L.R. Nos. 10862, 10741, 11312, 2953, 4873 and 11146 that were said to have been surrendered to the Government by two companies namely Sassa Coffee and Rappit B. Limited were later irregularly acquired by Del Monte Kenya Limited within ninety days of tabling this report.

Implementation status

Honourable Chair, in response to recommendation (i), I wish to state as follows:

In our report dated October 27, 2020 (**Annexure 5**) (Pgs. 9-11), the Ministry reported that the resurvey of the land held by Del Monte Kenya Limited in Muranga and Kiambu counties was undertaken as directed.

The County Governments of Muranga and Kiambu have not yet given their approvals to the subdivisions and the extension/renewal of the leases (Form PPA 2) to facilitate registration.

Honourable Chair, in response to recommendation (ii), I wish to state as follows:

The recommendation is directed at the National Land Commission.

5. Report on the Petition regarding land issues in Taita Taveta County

Honourable Chair,

The petition emanated from allegations that Teita Sisal Estate had encroached into a contiguous community land. The National Assembly Departmental Committee on Lands recommended that the Ministry ascertain the boundaries. A boundary confirmation survey was carried out on the land and it was discovered that the community had encroached into the Sisal Estate. Consequently, the proprietor of the Estate offered to surrender the portion of land occupied by the community.

The Committee on its consideration of the matter therefore recommended in its report dated June, 2015 the excision of 250 acres of land from Teita Sisal Estate for formalization of settlement of residents of Singila Majengo village in addition to the public utilities within the estate as agreed by the management of Teita Sisal Estate.

Implementation status

Honourable Chair,

In our report dated March 3, 2021 (**Annexure 4**) (Pgs. 16-17), the Ministry reported that the excision of Singila Majengo Village, Mwandisha Primary School and the public utilities including the roads and the railway reserves was undertaken vide Survey Plan No. F/R 467/87. The County Government of Taita Taveta approved the application for subdivision and change of user vide a PPA 2 form dated November 14, 2019.

This resulted in creation of Mwatate/Mwatate Block 1/ (11-13). Parcels 11 and 12 are to be surrendered to the National Government while parcel 13 is to be registered in the original owner's name. The owner proposed to further subdivide parcel 13.

The Director Land Administration issued subdivision scheme approval letters on January 4, 2021 as follows;

Parcel No.	Size (Ha.)	Beneficiary
Mwatate/Mwatate Block 1/11 (Shingila Majengo)	85.81	Land Settlement Fund Board of Trustees

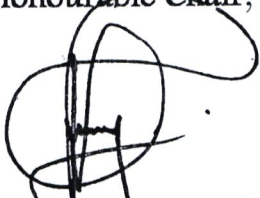
Mwatate/Mwatate Block 1/12 (Mwandishi Primary School)	6.34	Cabinet Secretary to the National Treasury
Mwatate/Mwatate Block 1/14	1191.19	Teita Estates Limited
Mwatate/Mwatate Block 1/15	4936.57	Teita Estates Limited
Mwatate/Mwatate Block 1/16	406.26	Teita Estates Limited
Mwatate/Mwatate Block 1/17 (Langatani)	132.54	Land Settlement Fund Board of Trustees

In our last report dated March 3, 2021, we reported that we were waiting for surrender of the mother title to facilitate registration of the scheme and issuance of titles.

Honourable Chair, I wish to report that the title has since been surrendered. There were Charges registered against the title in favour of Standard Chartered Bank Limited which were discharged on May 5, 2021 to facilitate registration of the subdivisions. **Annexure 6** is a copy of the title.

The Ministry shall process the titles in two weeks time.

Honourable Chair, I submit.

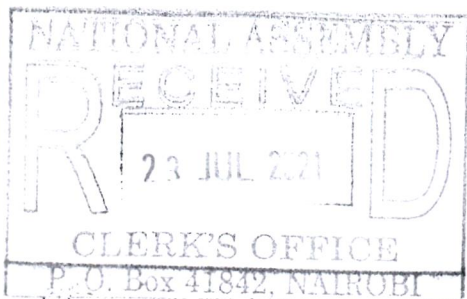


Farida Karoney, EGH
CABINET SECRETARY

July 29, 2021

Appendix V

Submission by the National Land Commission
regarding the implementation status of the Report of
the Departmental Committee on Lands regarding
irregular renewal of leases of Land by Del Monte
Kenya Limited



OFFICE OF THE CHAIRMAN

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When replying please quote

**ACK GARDEN ANNEX BUILDING
1ST NGONG AVENUE
P.O BOX 44417-00100
NAIROBI**

OUR REF: NLC/1/7/13

19th July, 2021

Mr. Michael Sialai, EBS

Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100

NAIROBI

Dear *Michael Sialai,*

Tray checked
see serial
26/7/21

SUBMISSION OF RESPONSES TO VARIOUS PARLIAMENTARY MATTERS

Reference is made to the following under listed matters that the National Land Commission was invited by respective National Parliamentary Committees.

S/NO	Ref/Date	Subject Matter	Committee
1	NA/DAASC/COI/2021/(32) of 10 th March 2021	Various responses to petitions	Implementation Status on House Resolutions
2	NA/DAASC/COI/2021/(071) of 10 th June 2021	Various responses to petitions	Implementation Status on House Resolutions

The sessions were conducted virtually and respective responses shared in advance to the Committees.

The purpose of this letter is to officially submit above responses which are hereby enclosed for your record keeping and reference.

Thank you for your continued support and cooperation.

Yours

Gershom Otachi Bw'Omanwa

Gershom Otachi Bw'Omanwa

CHAIRMAN

Encl



NATIONAL LAND COMMISSION

RESPONSE ON IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

REPORT BY:

GERSHOM OTACHI BW'OMANWA

CHAIRMAN

19th July, 2021

RESPONSE TO THE SELECT COMMITTEE ON IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

Honourable Chair,

Pursuant to a letter Ref. **NA/DAASC/COI/2021/ (071)** dated 10th June, 2021, the Committee requested the Ministry of Lands and Physical Planning (MoLPP) and the National Land Commission (NLC) to apprise it on the implementation status of the following reports-

1. Report of the Departmental Committee on its consideration of the petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura- Butere Road D260, as communicated vide our letter Ref: NA/DCS/COI/2019/ (134) dated 17th December, 2019;
2. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces as communicated vide our letter Ref: NA/DLP/TBO/RES.006/2020 dated 17th August, 2020;
3. Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vota, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of the Konza-Katumani Road, as communicated vide our letter Ref: NA/DLP/TBO/RES.09/2020 (11) dated 18th September, 2020;
4. Report of the Departmental Committee on Lands on its consideration of the petition on irregular renewal of leases of land by Del Monte Kenya Limited; and
5. Report on the Petition regarding land issues in Taita Taveta County

Honourable Chair, we are grateful for your Committee's consideration and understanding in rescheduling the meeting as requested vide our letter Ref. NLC/1/31 dated 25th June 2021 and your subsequent invitation as communicated vide your letter Ref **NA/DAASC/COI/2021/ (082)** dated 12th July, 2021 for a physical appearance.

Honourable Chair on the matters stated above NLC wishes to respond as follows-

1. **Report on a petition by residents of Ikolomani Constituency regarding delayed compensation of landowners for the expansion of Sigalagala-Musoli-Bukura Butere Road D260**

The NLC in its submission to this Committee on Wednesday 14th April 2021 responded as follows;

2. Subdivisions: Some parcels had been subdivided and this would necessitate publication of a notice of addendum to include the new parcels for compensation.

3. Ungazetted parcels affected which require inclusion for compensation.

The Commission in consultation with KeRRA is expediting completion of the valuation process and issue awards for all the affected parcels.

2. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces

The NLC in its submission to this Committee on Wednesday 14th April 2021 responded as follows;

2.1 Background and Context

Honourable Chair,

The Committee considered a petition by former workers of the late Mayer Jacob Samuels regarding invasion and eviction of the workers by the Kenya Defence Forces from L.R No. 5875/2 located in Roysambu measuring 17.16 acres.

The petitioners claimed that they were former workers of the late Mayer Jacob Samuels employed in his sisal processing farm and workshop industry on L.R No. 5875/2 before he passed away in 1974. They claimed that the deceased's family allowed them to continue staying on the land after they were unable to pay their salaries. The petitioners registered Roysa Community Development Society to safeguard the land from grabbers and later requested the Nairobi City County government to allocate the land to them. The County government of Nairobi and the National Land Commission approved the subdivision of the land and the Ministry of Lands and Physical Planning subsequently issued letters of allotment. From the petition, the Kenya Defence Forces (KDF) evicted the petitioners from the land in April 2019.

In its response to the petition, the Ministry submitted that L.R. No. 5875/2 arose from the subdivision of L.R. No. 1012, which measured approximately 4,443 Acres. The land was transferred to Mayer Jacob Samuels from Bau Salau under a 99-year lease with effect from November 1, 1904. The lease expired on November 1, 2003.

The Government published a notice of intention to acquire the land for the Kenya Defence Forces and a 'Notice of Taking Possession' by the Government absolutely was lodged and registered in June 25, 1986. This position was supported by the Ministry of Defence.

The Ministry of Defence stated that the Commissioner of Lands valued the land at Kshs. 3,530,500 which sum was duly paid by the Commissioner. The valuation was challenged in the High Court which enhanced the award to Kshs. 23,000,000. The appeal therefrom is pending in the Court of Appeal.

An application for extension of the lease was made by the administrator of the estate of the late Mr. Jacobs on November 4, 1985. This was however declined by the Commissioner of Land since the process of compulsory acquisition was ongoing. According to the National Land Commission and the Nairobi City County the land therefore reverted to the county government upon expiry of the lease. This was the basis for the approval of the subdivision and subsequent allocation to Roysa Community Development Society.

In 2001, the land was allocated to Solio Construction Company Limited through an allotment letter as a fresh allocation and a title issued. The land was later transferred to Kasarani Mall a subsidiary of Uchumi Supermarket PLC on March 20, 2001.

In considering the petition, the Committee noted in its report dated December 2019 that-

- i) Whereas there exists evidence that the government intended to acquire the subject parcel of land, the acquisition process was not completed as the out of court settlement on amount of compensation to be made were never concluded.
- ii) That although the Ministry of Defence submitted that the land was valued at Kshs. 3,530,500 and the sum was duly paid by the Ministry to the Commissioner of Lands, the Committee noted that the High Court under the Land Acquisition Appeal No. 2 of 1986 had enhanced the award to Kshs. 23,000,000 and the same has not been paid to date. It had not also been demonstrated that the Kshs. 3,530, 500 allegedly paid to the Commissioner of Lands was released to Mr. Jacobs.
- iii) The Committee noted with concern that the KDF only occupied the land thirty-three years later and the land remains undeveloped to date

In the end, the Committee made the following findings-

- i) There was no evidence submitted to the Committee to indicate that the Kenya Defence Forces having allegedly acquired the land in 1986, gazetted L.R No. 5875/2 as a protected area
- ii) Based on the submissions of the National Land Commission, a current search at the Land Registry indicated that no record on the land was available save for that the last registered owner of L.R. No. 5875/2 was Mr. M.J. Samuels.
- iii) There was no surrender or cancellation of the original certificate of lease held by Mr. Mayer Jacob Samuels on L.R No. 5875/2
- iv) In accordance with the property rates payment request submitted by the Nairobi County Government, the property rates were still due to be paid by Mr. M. J. Samuels signifying that the records of the county still identify Mr. M. J. Samuels as the owner of the land
- v) The National Land Commission confirmed that the lease for LR. No. 5875/2 expired on November 1, 2003 and reverted back to the Nairobi County Government by virtue of Article 62 of the Constitution

- vi) The Nairobi County Government in its submissions confirmed that survey of LR. No. 5875/2 had been undertaken and completed and a subdivision scheme approved identifying each subplot including plots designated for public utilities,
- vii) The Nairobi county Government had already issued allotment letters to the members of Roysa Community development society regularizing individual ownership upon payment of Kshs. 69,500.00 of which some of the members had already paid.
- viii) There was collusion between officials of the Ministry of Lands and Physical Planning as evidenced by the second and third files in order to effect fraudulent transactions on L. R No. 5875/2 leading to loss of public funds.
- ix) Although, the Ministry of Lands and Physical Planning submitted that it was aware that the titles for L. R No. 5875/2 and L.R 23393 had been presented to it for amalgamation, the Ministry did not submit the two titles to the Committee.
- x) The Committee noted with concern that although the Ministry of Lands and Physical Planning submitted that the second and third file were fraudulent, it was still receiving transactions payments from members of Roysa Community Development Society for titling of L.R. 5875/2 to individual members.
- xi) The Ministry of Lands and Physical Planning never informed the Committee that it was aware there was any sub-division scheme that was ongoing, yet the documents submitted to the Committee indicate that the Ministry was involved in the sub-division process
- xii) In response to the Petitioners' prayers and based on the observations, the Committee recommends that the Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County Government does complete the titling process for L. R No. 5875/2 within 180 days of tabling of this Report
- xiii) The Committee also recommends that the Director for Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to L. R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling of this Report.
- xiv) Finally, the Committee recommends that the Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R 5875/2

Honourable Chair,

In the report dated December 5, 2019, the Departmental Committee on Lands made the following recommendations;

- i) The Ministry of Lands and Physical planning in consultation with the National Land Commission and the Nairobi County government does complete the titling process for L.R No. 5875/2 within 180 days of tabling this report.
- ii) The Director for Criminal Investigation does investigate the officers in the Ministry of Lands and Physical planning who may have caused loss of public funds by effecting fraudulent transactions relating to L.R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling this report.
- iii) The Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R No. 5875/2

2.2 Implementation status

Honourable Chair, I wish to respond as follows-

The Commission is cognizant of the history of the allocation process, the contents of the report by the Lands Committee and its final recommendations; That NLC is expected to play a consultative role with regards to recommendation number (i) as listed above.

Notably, the NLC does not have a direct or primary role in the processes of registration, cancellation of titles and issuance of titles as per its mandate as interpreted by the Supreme Court in SC Advisory Opinion No. 2 of 2014 - In particular, in Paragraphs 289, 292, 293, 310 and 311 the Supreme Court addresses the issues of the role of National Government and NLC in the exercise of that role)- **(Annex 2)**

The NLC nevertheless remains available for consultation on any of the processes and any preparatory or residual activity that may be necessary and within the law and it's mandate.

3 Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vota, Mua Ward in Machakos Town Constituency regarding the obstruction of public road (Konza-Katumani Road)

3.1 Background and context

Honourable Chair,

The National Assembly Departmental Committee on Lands considered a petition by residents of Vota, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of Konza-Katumani road.

3.2.2 Statutory provisions

The land Act, 2012 section 143(1) provides that subject to and in accordance with this section and section 146, the Commission may, create a right of way which shall be known as public right of way. Further, section 145 states that a county government, an association, or any group of persons may make an application to the Commission for a communal right of way. Section 146 provides the determination of public right of way, process and procedure the Commission shall use to create a public right of over private land. The section further provides that it is the Cabinet Secretary responsible for lands who makes an order through a gazette notice upon recommendation by the Commission.

Once the Cabinet Secretary has made an order to create a public right of way the Commission shall cause all the necessary documents, plans, demarcations and surveys to be delivered to the Registrar to enable the registrar to exercise the powers under this section.

Section 148 states that compensation is payable to any person for the use of land, of which the person is in lawful or actual occupation, as a public/communal right of way based on the value of the land as determined by a qualified valuer. A public right of way once created shall vest in either National or County Government as the case may be. The Land (General) Regulations provides the instruments required in creation of the right of way (i.e. FORM LA.54 and FORM LA.55).

3.2.3 Recommendation to the Cabinet Secretary

The Commission recommend the creation of public right of way by the Cabinet Secretary, Ministry of Lands and Physical Planning as provided for in Section 146 (1)(b) of the Land Act, 2012. A letter Ref. NLC/1/26/1 dated 13th April 2021 has been written to the Cabinet Secretary, Ministry of Lands and Physical Planning to this effect **(Annex3)**.

3.4 Current Implementation Status

The national land Commission pursuant to the recommendations of the Committee proceeded to initiate the process of creating a public right of way on the identified land parcel L.R. No. 7374/3 registered in the name of Muambi properties Limited where an area of 0.7972 Ha would be affected by the right of way. The CS, MoLPP responded vide letter Ref.MOLPP/ADM/CSO/1/760 dated 29th April 2021. Subsequent discussions were held with representatives from the ministry of Lands and physical planning who pointed out that NLC must initiate the process by publishing a gazette notice. The Ministry also wanted confirmation on who will pay compensation. **(Annex 4)**

In order to fast track the process and taking into consideration the contractor was on site, the Commission prepared and had the notice of intention to create a public right of way published by the Government printer in gazette notice number 6381 dated 25th June 2021**(Annex 5)**.

The Commission requested KURA to settle the proforma invoice No PTG No.000271520-21 issued by the Government printer vide letter ref: NLC/VAL.1555/16 dated 22nd June 2021(**Annex 6**). In their letter Ref KURA/URPD/SUR/3 (30) dated 2nd July 2021 (**Annex 7**), KURA responded and requested for termination of the process citing the fact that the road had been re-aligned.

A subsequent letter Ref KURA/URPD/SUR/3 (31) dated 9th July 2021 quoting earlier correspondence Ref.KURA/URPD/SUR/5(2) dated 4th June 2021 from KURA affirmed its inability to execute the matter as envisaged by the Lands Committee (**Annex 8 &9**).

The Commission is unable to progress this matter further without assurance of availability of budgetary support to meet administrative costs as well as compensation (if any) for the land affected. The Commission further needs guidance from the Committee on the overall way forward as well clarity on Government Agency that is to be vested with the Public Right of Way once created taking into consideration that the identified agency will be responsible for the administrative costs as well as compensation (if any).

4. Report of the Departmental Committee on Lands on its consideration of the petition on irregular renewal of leases of land by Del Monte Kenya Limited;

4.1 Background

Honourable Chair, as per information in our custody, the following constitute the presented status of Del Monte landholding;

<i>SN</i>	<i>Parcel No.</i>	<i>Use</i>	<i>Size(Ha)</i>	<i>Lease Period</i>	<i>Term</i>	<i>County</i>
1	13289	Industrial	22.84Ha	1973 - 2022	49	Muranga
2	12157/2	Agricultural	40.87Ha	1973 - 2022	49	Muranga
3	12157/3	Agricultural	2.987Ha	1973 - 2022	49	Muranga
4	12157/4	Agricultural	2.311Ha	1973 - 2022	49	Muranga
5	12157/5	Agricultural	5.677Ha	1973 - 2022	49	Muranga
6	12203/1	Agricultural	2101Ha	1970 - 2019	49	Kiambu
7	12203/2	Agricultural	56.57Ha	1970 - 2019	49	Kiambu
8	12158	Agricultural	2972.8Ha	1973 - 2022	49	Muranga/Kiambu
9	12157	Agricultural	3938.4Ha	1973 - 2022	49	Muranga
	Total (Ha)		9,143.455Ha	Appx.22,584.33 acres		

4.2 Implementation Status with regard to Del Monte Lease Renewal

Honourable Chairman,

The NLC received applications for extension of leases for three (3) listed properties; **LR NOS. 12203/1, 12203/2 & 12158** located in Kiambu County and Seven (7) listed properties; **LR NOS. 12157/1, 12157/2, 12157/3, 12157/4, 12157/5, 12158 & 13289** located in Muranga County from Del-Monte Kenya Limited.

Guided by rule 2 (1) of the Land (Renewal and Extension of Leases) Rules, 2017 the application letters were supported by the following documents:-

- i. Completed Form LA 22;
- ii. Official Searches from Land Registry;
- iii. Copy of titles for each property;
- iv. Copies of Certificates of Incorporation;
- v. Company Search (CR 12);
- vi. A resolution of the Del-Monte (K) Limited Board to apply for extension of leases
- vii. Kiambu/ Murang'a County Rates Clearance Certificate;
- viii. Rent payment receipts;
- ix. A Planning Report prepared by their appointed Planners;
- x. Copy of the Physical Planner's Practicing Certificate;
- xi. Copy of the written consent from Del-Monte Kenya Limited appointing Plan Consultants Limited to act on their behalf; and
- xii. Summary report on Del-Monte.

The National Land Commission vide letter NLC/8/1 dated 9th October 2020 forwarded the above documents for consideration by the Ministry of Lands and Physical Planning and copied to respective County's Executive Committee Member in charge of Lands as provided for in rules 2 (2), 2 (3), 2 (4) and 2 (5) of the Land (Renewal and Extension of Leases) Rules, 2017(**Annex 10**).

Further NLC drew the attention of all parties vide letter Ref. NLC/8/1 dated 9th October 2020 to a determination of the Commission of a Historical Land Injustice Claim filed by Kandara Residents Association- Claim No. NLC/HLI/004/2017 and Gazette Notice Number 1995 dated 1st March 2019 (page 879) for consideration as they made their decision amongst other active litigations over the Del Monte land (**Annex 11**).

Honourable Chair once the Commission receives a feedback on lease renewal request, it will proceed to process the request as per the law.

4.3 Response with respect to LR No 12158

The National Assembly Committee on Implementations on its sitting on Wednesday 14th April 2021 discussed and tasked the National Lands Commission investigate claims that parcels related to LR. No 12158 were surrendered to the government by two companies namely Sassa Coffee and Rapids Limited before being acquired by Del Monte Kenya Limited.

The Committee specifically on its consideration of a report from the Departmental Committee on Lands, observed that the submissions made by the Ministry of Lands and Physical Planning indicated that LR. No 12158 measuring 2900 acres in Muranga County that is registered in the name of Del Monte Kenya Limited is an amalgamation of LR. Nos 10862,10741, 11312 and 11146.

Honourable Chair, we wish to submit as follows-

The National Lands Commission investigated the claims and established the following;

Original parcels LR. No. 10862, 10741,11312 and 11146 (including LR. No. 2953 not mentioned in this report) were owned by Chui Estates Limited upto around 1973 when through a memorandum of registration of transfer of lands and at a consideration of Ksh.2,000,000 they were transferred to the Government of the republic of Kenya. The transfer was executed on 21st May 1973 (**Annex 12 &13**).

Implementation Status

The Commission has written to the Ministry of Lands as custodian of land registration and survey records vide our letter NLC/8/1 dated 22nd April 2021 and is awaiting response. (**Annex 14**)

The Commission notes that the recommendations of the Committee on amalgamation and subsequent ownership of the parcels of land in question by Del Monte is better actioned by the MoLPP who are in a better position to conclusively respond to the amalgamation question,

5. Report on the Petition regarding land issues in Taita Taveta County

Honourable Chair,

5.1 Background

The petition emanated from allegations that Teita Sisal Estate had encroached into a contiguous community land. The National Assembly Departmental Committee on Lands recommended that the Ministry ascertain the boundaries. A boundary confirmation survey was carried out on the land and it was discovered that the community had encroached into the Sisal Estate. Consequently, the proprietor of the Estate offered to surrender the portion of land occupied by the community.

The Committee on its consideration of the matter therefore recommended the excision of 250 acres of land from Teita Sisal Estate for formalization of settlement of residents of Singila Majengo village in addition to the public utilities within the estate as agreed by the management of Teita Sisal Estate.

5.2 Implementation status

Honourable Chair,

The recommendations of the Committee are to be actioned by the Ministry of Lands and Physical Planning.

Honourable Chair, I Submit



GERSHOM OTACHI BW'OMANWA

CHAIRMAN

19th July, 2021



REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA

(Coram: Mutunga, CJ; Rawal, DCJ; Tunoi, Ibrahim, Ojwang & Ndungu, SCJJ.)

ADVISORY OPINION REFERENCE NO. 2 OF 2014

-BETWEEN-

THE NATIONAL LAND COMMISSIONAPPLICANT

-AND-

1. ATTORNEY-GENERAL

2. MINISTRY OF LAND, HOUSING AND URBAN DEVELOPMENT

3. THE INSTITUTION OF LAND SURVEYORS OF KENYA

4. THE LAND DEVELOPMENT AND GOVERNANCE INSTITUTE

5. COMMISSION FOR THE IMPLEMENTATION OF THE CONSTITUTION

6. THE LAW SOCIETY OF KENYA.....INTERESTED PARTIES

-AND-

1. KITUO CHA SHERIA

2. KATIBA INSTITUTE.....AMICI CURIAE

ADVISORY OPINION

[309] From the foregoing assessment, it is clear that the applicant's specific request, that this Court delineate the respective functions of the NLC and of the Ministry of Land, is already answered with sufficient clarity: the allocation of discrete functions to the one or the other is not possible, or indeed necessary. The essence of the Supreme Court's Advisory Opinion is that ***the vital subject of land-asset governance runs in functional chains, that incorporate different State agencies; and each of them is required to work in co-operation with the others, within the framework of a scheme of checks-and-balances—the ultimate goal being to deliver certain essentials to the people of Kenya.***

[310] Falling within that broad opinion are more limited sub-sets—an important one being this: ***The NLC has a mandate in respect of various processes leading to the registration of land, but neither the Constitution nor statute law confers upon it the power to register titles in land. The task of registering land title lies with the National Government, and the Ministry has the authority to issue land title on behalf of the said Government.***

[311] That the Ministry of Land is the special entity with authority to register and issue land title, in this Court's opinion, bears restating. Land title, by its singularity as the mark of entitlement to landed property, is the ultimate expression of a vital property right, quite apart from being the very reference-point in numerous financial and business transactions-national and international. On that account, ***the sole national repository to issue, and to guarantee the validity and integrity of title, is the central State machinery, as a player on the international plane, acting through the Executive organ.***

[312] As already noted herein, the various statutes relating to land are not in all cases consistent among themselves; and in some cases they have been framed with imprecision, and without a clear reflection of the relevant principles of the Constitution. We recommend that ***the complete set of land-related statutes, be placed before the Honourable the Attorney-General, and before the Kenya Law Reform Commission, for a detailed professional review, in the context of this Advisory Opinion.***

[313] In the course of rendering this Advisory Opinion, we have considered the mandates of the NLC as set out in the Constitution [Article 67(2) (d), (e) and (f)]. These are: conducting research on land issues and on natural resources—with appropriate recommendations to certain agencies; initiating inquiries into historical land grievances—and recommending courses of redress; promoting traditional methods of resolving land conflict.

[314] From those provisions, it is clear to us that the NLC bears a brains-trust mandate in relation to land grievances, with functions that are in nature consultative, advisory, and safeguard-oriented. As regards such functions, the NLC, on the basis of clearly-formulated statutes, should be able to design a clearly-structured agenda for regular operations and *inter alia*, should seek to devise a well-focussed safeguard-mandate in relation to land issues.

[315] ***Co-operation and consultation with other State organs will be important, in identifying, and defining urgent tasks on the NLC's agenda.*** And "consultation" in this regard, is aptly defined in comparative judicial experience, in the English case,

[289] The foregoing sub-Section separates the role of “land administration” from “registration”, notwithstanding that the term “land administration” has a wider meaning under the Act, which suggests the inclusion of functions of registration of title. As implementation is of the essence, we are of the view that a definition on its own, does not confer any definite category of power; only by a substantive provision in the relevant Act, can a specific head of power be vested upon any agency. As observed in para. 287, the position is that, under the Land Registration Act, the NLC has *no power to register title documents*.

[290] We recall that neither of the other statutes have defined the term “management”, or “administration”. Consequently, the meaning of the two terms can only be inferred from the context within which they have been used. For instance, Section 8 of the Land Act is prescriptive of the management role of the NLC. It should also be noted that the Section falls under Part II of the Act, entitled ‘*management of public land*’: and this gives additional functions to the NLC, separate from those listed under Section 8. These roles include *identifying public land; keeping a database of all public land; sharing of data; and land mapping*, among others. The Act also prescribes the roles to be performed by the *Cabinet Secretary*, with regard to *the management and administration of public land*.

[291] It is proper to observe, thus, that the Land Act substantively addresses the ‘management’ function of the NLC. This is because it establishes mechanisms with a bearing on interests in public land. This is consistent with the intention of a variety of public documents, and of the Constitution—that of establishing an independent institution that will, in consultation and co-operation with the National and County Governments, supervise dealings in public land.

[292] Now as regards the NLC Act, it was established to, *inter alia*, provide for the *management and administration of public land*; The roles of the NLC, according to the NLC Act, are in tandem with its roles in the Land Act. These include: *allocation of land; disposing of public land; leasing and effecting change of user*. These roles are the *preparatory steps towards registering a title*. Neither of the two statutes gives the NLC the function of *registration of title*, in express terms.

[293] In conclusion, the application of the term ‘management’ and ‘administration’, in all the three statutes, is consistent with the functions of the Commission as expressly donated by the Constitution. It is clear to us that the function of “registration of title” is not with reference specifically to “public land”. Registration is conceived to entail all categories of land; and in our view, fragmenting title issuance—such a crucial indicia of the fundamental right of property—could not possibly have been in contemplation during the legislative process. For such would not only negate constitutional principle, but would probably breed such anarchy and abuse, as would certainly harm the public interest. *Land title, the symbol of a vital asset, requires the effectual and conclusive mechanisms of the State’s most central agency*. A proper interpretation of the provisions of the Constitution and the statute law, in this context, should be aimed at achieving coherence, clarity, and certainty.

- The NLC, National and County Governments: Relationship of Agency"

[294] Mr. Kilukumi, learned counsel for the 2nd Interested Party, urged that the relationship between the NLC and the National Government is one of *agency*: since NLC’s Advisory Opinion Reference 2 of 2014 | Kenya Law Reports 2021 Page 66 of 88.

Annex 10



OFFICE OF THE CHAIRMAN

Tel. 0208000242
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Website: www.landcommission.go.ke
When replying please quote

ACK GARDEN ANNEX BUILDING
1st NGONG AVENUE
P.O BOX 44417-00100
NAIROBI

Ref: NLC/8/1

9th October, 2020

Ms. Farida Karoney, EGH
Cabinet Secretary
Ministry of Lands and Physical Planning
Ardhi House
NAIROBI

Dear *C.S. Karoney,*

RE: APPLICATION FOR EXTENSION OF LEASES FOR LR NOS. 12203/1, 12203/2 AND 12158, DELMONTE (K) LIMITED: KIAMBU COUNTY

We have received applications for extension of leases for the above three (3) listed properties located in Kiambu County from Del-Monte Kenya Limited under rule 2 (1) of the Land (Renewal and Extension of Leases) Rules, 2017. The application letters are supported by the following documents:-

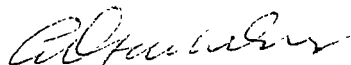
- i. Completed Form LA 22;
- ii. Official Searches from Land Registry;
- iii. Copy of titles for each property;
- iv. Copies of Certificates of Incorporation;
- v. Company Search (CR 12);
- vi. A resolution of the Del-Monte (K) Limited Board to apply for extension of leases Murang'a County Rates Clearance Certificate;
- vii. Rent payment receipts;
- viii. A Planning Report prepared by their appointed Planners;
- ix. Copy of the Physical Planner's Practicing Certificate;
- x. Copy of the written consent from Del-Monte Kenya Limited appointing Plan Consultants Limited to act on their behalf; and
- xi. Summary report on Del-Monte.

We forward the above documents for your consideration as provided for in rules 2 (2), 2 (3), 2 (4) and 2 (5) of the Land (Renewal and Extension of Leases) Rules, 2017.

We look forward to your response.

Thank you for your support and cooperation.

Yours *Sincerely,*



Gershom Otachi Bw'Omanwa
CHAIRMAN

Encls.

Copy to: The County Executive Committee Member
Lands, Housing, Physical Planning, Municipal Administration
and Urban Development
Kiambu County
P.O. BOX 2344-00900
KIAMBU

Annex II



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ACK GARDEN ANNEX BUILDING
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P.O BOX 44417-00100
NAIROBI

Ref: NLC/8/1

9th October, 2020

Ms. Farida Karoney, EGH
Cabinet Secretary
Ministry of Lands and Physical Planning
Ardhi House
NAIROBI

Dear *C.S. Karoney*,

NATIONAL LAND COMMISSION DETERMINATION ON HISTORICAL LAND INJUSTICE CLAIMS AND LITIGATION RELATING THERETO LEASE RENEWAL FOR DELMONTE (K) LIMITED

We make reference to the above matter and correspondences forwarding applications for renewal of leases.

The Commission is mandated under Article 67(1) (e) of the Constitution to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress. The Commission received a complaint from Kandara Residents Association over Land Reference Numbers 12157, 12157/2, 12157/3, 12157/4, 12157/5 and 13289 located within Murang'a County and L.R 12158 located partly in Murang'a and Kiambu Counties which are in use and registered to Delmonte (K) Limited, alleging historical land injustices had been occasioned upon them. The Commission after investigating the alleged historical injustice gave its finding vide a determination dated 7th February 2019 and which was subsequently gazetted vide Gazette Notice No. 1995 dated 1st March 2019 with a recommendation that;

1. A resurvey should be undertaken by the Director of Survey in conjunction with County Governments of Murang'a and Kiambu to establish if there is any variance between land leased and land the company occupies. Any residue should be given/surrendered to the Claimants for resettlement and the County Government for public purpose in the ratio of 70:30 respectively;

2. Should it be found that there is no residue, then on expiry of the lease a suitable amount of land should be set aside and held in trust by the County Governments for purposes of resettlement and public utilities; and
3. That Delmonte (K) Limited to surrender all public utility within the land to the relevant National and County Government agencies whether the leases have expired or not.

Extension and Renewal of leases over the subject parcels registered under Delmonte (K) Limited have however been in constant contention among various parties as enumerated below.

That four (4) court cases have since been filed by/against Delmonte (k) Limited and have been under judicial consideration in both the High Court, Environment and Land Court at Nairobi and Muranga. The court matters are follows;

- a) **High Court Constitutional Petition No. 398 of 2015 at Nairobi, Delmonte (K) Limited Vs County Government of Muranga and The Honourable Attorney General**, which predominantly is anchored on that the County Government of Murang'a had unreasonably and illegally withheld a letter of no objection to the renewal of the leases to land registered under Delmonte (K) Limited, by demanding that it cedes a portion of its land to the County Government. The conduct of the County Government was faulted for violating the petitioner's right to private property; for offending the right to a fair hearing and for being discriminatory as enshrined under Article 10, 27 (1) & (2), 40 and 47 of the Constitution therefore urging the court to intercede.

The same was however dismissed vide a judgement dated 20th September 2019 where the constitutional court held that the issue raised by the Petitioner (Delmonte (k) Limited) in its suite was principally on extension of leases of its land and that the same solely fell within the parameters of the Environment and Land Court;


- b) **Environment and Land Court No. 53 of 2018 at Muranga, Kandara Residents Association and Others Vs Delmonte (k) Limited, National Land Commission, County Government of Kiambu and Muranga**, which primarily seeks to restrain the National Land Commission from renewing the leases for the properties known as L.R Nos. 12157/2, 12157/3, 12157/4, 12157/5, 12158, 13169, 12203/1, 12203/2 and 13289 in favor of Delmonte (K) Limited. The same is still under judicial consideration before the Environment and Land Court (ELC) in Murang'a;
- c) **Environment and Land Court No. 86 of 2018 at Muranga, Kenya National Chamber of Commerce & Industry (Murang'a Chapter) and Others Vs Delmonte (k) Limited, National Land Commission, County Government of Muranga and Others**, which seeks to redeem their historical rights and atone over L.R Nos. 12157/2, 12157/3, 12157/4, 12157/5, 12158, 13169, 12203/1, 12203/2 and 13289 which are currently registered and in occupation by Delmonte (k) Limited.

Annex II

The matter has since been dismissed after a Preliminary Objection was raised challenging the legality/capacity of the Claimant group in suing on or behalf of its 2000 or more members;

- d) **High Court Constitutional Petition Number 48 of 2019 at Nairobi, Delmonte (K) Limited Vs National Land Commission and Attorney General**, which predominantly seeks to challenge the constitutionality of Section 15 (3) (b) (i), (ii) and quash the Determination of the National Land Commission's Historical Land Injustice Committee dated 7th February, 2019 made in Complaint Number NLC/HLI/004/2017. Further, it seeks to expel the Gazette Notice number 1995 dated 18th February, 2019 and published on 1st March, 2019 in so far as it relates to parcels of land registered under Delmonte (K) Limited. The matter has however since been transferred to Environment and Land Court at Murang'a for judicial consideration, after a challenge was raised as to the jurisdiction of the constitutional court at Nairobi in adjudicating of the matter. It is coming up for mention for directions on the Hearing of the substantive Petition on 13th October 2020.

Yours *Sincerely,*



Gershom Otachi Bw'omanwa
CHAIRMAN

Copy to: Dr. Nicholas Muraguri
Principal Secretary
Ministry of Lands Physical Planning
NAIROBI

The County Executive Committee Member
Lands, Housing, Physical Planning, Municipal Administration
and Urban Development
County Government of Muranga
MURANGA

The County Executive Committee Member
Lands, Housing, Physical Planning, Municipal Administration
and Urban Development
Kiambu County
P.O. BOX 2344-00900
KIAMBU

No. 15/1/1975

DEPARTMENT OF LANDS
LAND TITLES REGISTRY
NAIROBI/MOMBASA

3

4

- 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

- THE TOWN CLERK, MURANGA COUNTY COUNCIL, P.O. BOX 112, MURANGA
- THE CLERK, COUNTY COUNCIL OF ...
- THE SENIOR ECONOMIST/STATISTICIAN, P.O. BOX 30289, NAIROBI
- THE EXECUTIVE OFFICER, THE PROVINCIAL AGRICULTURAL BOARD, P.O. BOX ...

MORANDUM OF REGISTRATION OF TRANSFER OF LANDS

the details whereof appear below, has this day been registered as

IN 10000/2, 10005/2, 10008/2, IN 10500 AND IN 24/200/20

Document 51st December, 1974.

of that estate limited.

The Government of the Republic of Kenya.

... 11140, 10761, 11012, 10902, and 10905.

... 10000/2, 10005/2, 10008/2, IN 10500 AND IN 24/200/20

... (revisable), ... (revisable), ... (revisable)

... (revisable) and ...

... 10000/2, 10005/2, 10008/2, IN 10500 AND IN 24/200/20

by ...

On 5th January, 1975.

A. S. K. MULLS

for Registrar of Titles

	Noted by	Checked by	Remarks
RECORDS:	<i>[Signature]</i>		
ster Grants			
RTSMAN	<i>[Signature]</i> 27/1/75	<i>[Signature]</i> 29/1/75	<i>[Signature]</i>
CE:			21-3-75

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General Services Administration
Washington, D.C. 20540
HARRIS

(Classification of this document)

Dear Sir:

Reference is made to

MEMORANDUM FOR THE RECORD
DATE: 11/14/68, RE: 11/15/68, 11/20/68
SUBJECT: [Illegible]

I refer to our discussion regarding the proposed purchase of the [Illegible] in [Illegible] 1961.

I confirm that I am prepared without prejudice to discuss on behalf of the Government, a request of [Illegible] (U.S. [Illegible]) for the purchase of this property and the [Illegible] of the [Illegible] including all [Illegible] and [Illegible] of [Illegible] including [Illegible] in the [Illegible] and [Illegible] [Illegible].

I have also previously advised the [Illegible] that your offer to [Illegible] to the [Illegible] of a [Illegible] to [Illegible] that the [Illegible] be [Illegible] over [Illegible] of [Illegible].

I would be glad to answer questions you might have regarding the [Illegible] of this offer.

Very respectfully,

[Illegible]

[Illegible]

[Illegible]

[Illegible]

The Department Secretary,
Bureau of [Illegible]

The Personnel Director,
Bureau of [Illegible]

The Personnel Director,
Bureau of [Illegible]

Myra [Illegible]
P.O. Box 447,
[Illegible]

Annex 14



OFFICE OF THE CHAIRMAN

Tel. 0208000242
Email. chair@landcommission.go.ke
Website: www.landcommission.go.ke
When replying please quote

ACK GARDEN ANNEX BUILDING
1st NGONG AVENUE
P.O BOX 44417-00100
NAIROBI

22nd April, 2021

Ref: NLC/8/1

Ms. Farida Karoney, EGH
Cabinet Secretary
Ministry of Lands and Physical Planning
P.O. Box 30297 -00100
NAIROBI

Dear

C.S. Karoney,

PARLIAMENTARY RESPONSE ON DEL MONTE LEASE RENEWAL

The National Assembly Committee on Implementations on its sitting on Wednesday 14th April 2021 discussed and tasked the National Land Commission to respond within two weeks on various matters.

On its consideration of a report from the Departmental Committee on Lands, it was observed that the submissions made by the Ministry of Lands and Physical Planning indicated that LR. No 12158 measuring 2900 acres in Muranga County that is registered in the name of Del Monte Kenya Limited is an amalgamation of LR. Nos 10862, 10741, 11312 and 11146.

In its recommendation, the Committee in part reported and directed as follows;

'The National Land Commission does investigate the circumstances under LR. Nos 10862, 10741, 11312 and 11146 that were said to have been surrendered to the Government by two companies namely Sassa Coffee and Rappit B Limited were later acquired by Del Monte Kenya Limited within ninety days of tabling this report.'

In view of the above, I kindly request that you provide us with a historical and survey search for the parcels in question to enable us respond appropriately to the National Assembly Committee on Implementation of House Resolutions.

Attached are relevant extracts of the report for your reference.

Thank you for your continued support and cooperation.

Yours *sincerely,*



Gershom Otachi Bw'Omanwa
CHAIRMAN

Copy: **Dr. Nicholas Muraguri, CBS**
Principal Secretary,
Ministry of Lands and Physical Planning
Ardhi House
NAIROBI

Appendix VI

Submission by Kandara Residents Association

OUR REF: KRA/LIT/1

YOUR REF: TBA

DATE: 7TH OCTOBER, 2021

THE CHAIRMAN
NATIONAL ASSEMBLY COMMITTEE ON IMPLEMENTATION
P.O BOX 41079
NAIROBI.

Dear Sir,

RE: HISTORICAL INJUSTICE CLAIM AGAINST DELMONTE KENYA LIMITED BY KANDARA RESIDENCE ASSOCIATION.


We refer to the above matter, the Petition by the Late Philip M. G Kamau to the National Assembly on behalf of Kandara Residence Association and several appearances before the Honourable Committee on the above subject matter.


These submissions are in response to the representations of the National Land Commission and the Ministry of Land and Physical Planning before yourselves as well as our client's prayers to the Honourable Committee as it embarks on preparing its report on the petition.

a) Background.


Our client is a society duly registered under the ***Societies Act Cap 108***, Laws of Kenya and it comprises a membership of more than four thousand members who live in the environs neighboring all that land Occupied by Del Monte Kenya Limited (*hereinafter referred to as "DMKL"*). In terms of geographical jurisdiction, the membership is drawn from Kiambu and Muranga Counties where the aforesaid land equally traverses.

1

 J. Ikua

 S. Nyambane

 J. Otieno

 +254 791 022 819

 info@ipadvocates.co.ke
ikuadvocates@gmail.com

 2nd floor, Suite 4C, Elysee Plaza
P.O Box 52237-00100
Nairobi, Kenya

As you may be aware, DMKL is a food processing Company that carries out extensive agricultural and processing activities which together with its predecessors; has been in occupation of the subject land as far back as the year 1895. Prior to acquisition of the land, it was owned by the local Kikuyu community before it was forcefully alienated by the colonial Government and allocated to the white settlers. At the said forceful alienation and acquisition, unspeakable atrocities were visited upon the local community including killings, rape, forceful relocation, destruction of properties etc.

Instructively, even after the end of colonial rule in 1963, wanton violation of human rights against the local community has continued unabated including by DMKL which took over possession of the land in 1973. Unfortunately, the community has not been able to get redress for the human rights violation for a number of reasons including high levels of poverty which was largely occasioned by historical issues such as forceful alienation of their land. This was further compounded by the existing legal system which apart from entrenching the abusers' rights, continued to protect the latter against any claims by the community on account of the abuses.

Fortunately, the advent of the Constitution of Kenya 2010 provided an avenue for addressing historical land injustices in Kenya under Article 67 thereof which establishes the National Land Commission and empowers the commission under sub-Article (e) to: -

*“(e) initiate investigations on its own initiative or on a complaint, into **present or historical land injustices** and recommend appropriate redress”*

In this regard, in the year 2017, our client lodged a historical injustice complaint; ref NLC/HLI/004/2017 before the National Land Commission (*hereinafter* referred to as "**The NLC**") Committee on historical injustices based on the issues raised herein above.

The Committee conducted comprehensive public hearing of the said complaint in September, 2018 and made a determination on the **7th day of February, 2019** which determination was subsequently **Gazetted on the 1st day of March, 2020** vide gazette Notice Number 1995.

That the said determination directed that: -

- **Resurvey should be undertaken by the Director of Survey in conjunction with County Governments of Murang'a and Kiambu to establish if there is any variance between land leased and land the company occupies.**
- **Any residue should be given /surrendered to Kandara Residence Association for resettlement of its members and the County Government for public purpose in the ratio of 70:30 respectively.**

(Enclosed at page 1 to 7 is a copy of the determination and gazette notice for your ease of reference.)

Notably, implementation of the determination by the NLC has experienced a lot of challenges which prompted our client to petition the National Assembly vide its petition dated xxx to ensure implementation of the determination as well as other issues pertaining to renewal of the lease for all that land currently occupied by Del Monte K limited (*hereinafter* "**DMKL**") under Article 119 of the Constitution.

The said Petition was ventilated before the Parliamentary Committee on Land Administration and the committee in its report of the **19th day of November, 2019**; in furtherance to the determination of the NLC ordered that: -

A resurvey of the parcels held by DMKL be conducted in order to establish the actual size of any public land and any land leased from third parties that is currently under the possession and occupation by the Company. (Enclosed herewith at page 8 to page 9 is a copy of the report by the Parliamentary Committee on implementation for your ease of reference)

The report by the Parliamentary Committee on Land Administration was forwarded to your Honourable Committee on Implementation which is mandated with ensuring compliance with Parliamentary decisions as per the National Assembly Standing Orders.

Consequently, the Committee on Implementation summoned the NLC as well as Cabinet Secretary, Ministry of Lands and Physical Planning (*hereinafter referred to as "the MoLPP"*) to explain the delay in implementation of the determination of the NLC dated 7th February, 2019 as well as the report of the Parliamentary Committee on Land Administration dated 19th November, 2019.

It is worthwhile to note that among the grievances our client raised before the NLC for determination in its complaint NLC/HLI/004/2017 was that DMKL was occupying land that it did not legally own to wit; Land Reference Numbers **10741, LR 10862, LR 11146, LR 11312, LR 2953** which were illegally amalgamated into LR 12158 measuring approximately 7400 acres. The National Land Commission vide its submission before the Committee on Implementation on the 29th day of July, 2021 indeed confirmed that it couldn't find records of how the properties were amalgamated and subsequently vested on DMKL. (**Enclosed at page 10 to page 11 herewith is a copy of the report by the National Land Commission for ease of reference**)

The CS, MoLPP, equally filed her report and made submissions before the Honourable Committee and confirmed that indeed, the Ministry had conducted a resurvey of the properties had by DMKL and there were plans to excise some of

the subject land for public use. **(Enclosed herewith at page 12 to page 41 is a copy of the said report for ease of reference)**

In the same report, the CS however indicated that their resurvey did not find any public land.

Our client however strongly disagrees with the Ministry's position as regards availability of public land that is in DMKL's possession. This is informed by a number of reasons as follows:

- i) As we have indicated herein above, the NLC in its submissions before the Committee on the 29th day of July, 2021 indicated that they couldn't find any records on amalgamation of **10741, LR 10862, LR 11146, LR 11312, LR 2953.**
- ii) Further, the Chairman, NLC indicated that the MoLPP being the custodian of land records was best placed to give the information on the impugned amalgamation of the properties hereinabove. Shockingly, the Ministry has not been forthcoming with the said information,
- iii) The previous owners of these four parcels were legal entities which have since been wound up. Prior to winding up their operations, they surrendered the said properties to the Government of Kenya for a consideration of Kshs. 2, 000, 000/=. **(Enclosed at page 42 to 47 are copies of the gazette notice showing winding up notice for the previous owners of the land as well as the memorandum of transfer.)**
- iv) Available records at the Ministry of land show the last entry and / or dealing with regards to the above parcels were the surrender to the Government of Kenya and to this end, these parcels constitute public land. **(Enclosed at page 48 to 61 are copies of official searches and a memorandum of transfer of the said parcels dated the 10th day of April, 2019.)**
- v) Records available at the Directorate of Survey equally show that due process was not followed when the impugned amalgamation *(if at all)*

of the parcels above was being done. (**enclosed at page 62 to 66 are copies of survey maps from the directorate of survey demonstrating the same**)

Conclusion

Finalization of this matter will manifestly impact on the livelihoods of the membership of our client in the following ways: -

- i) The NLC commission is empowered under the National Land Commission Act to order compensation in many ways including reinstatement of an impugned piece of land to a claimant like it did in the current case. Considering that land is a primary means of production in the country, conclusion of this matter and resettlement of members of our client will help alleviate poverty within Muranga and Kiambu Counties.
- ii) Landlessness is an endemic problem in Kenya and this has created a sizeable number of squatters in Muranga and Kiambu Counties. As this project is geared towards resettlement of members of the public, our client endeavors to significantly reduce the squatter's problem within its membership.
- iii) It is common ground that a sizeable chunk of the subject land is in close proximity to fast growing municipalities and towns such as Thika and Kenol. Availability of land plays a big role in attracting investors in many sectors of the economy which will invariably create jobs for the local community. This will also allow growth of home-grown and / or cottage industries which will improve the economic fortunes of the community.
- iv) Lastly, it is worthwhile to note that issues affecting land are very emotive in Kenya. Considering the circumstances under which the properties herein were acquired, the atrocities committed against the ancestors of the claimants during the said acquisition as well as the continued

violation of human rights by DMKL; successful conclusion of this will offer the long-awaited reparations and / or redress to our client's members.

Prayers:

Honourable Members, in view of the foregoing, your petitioners pray as follows:

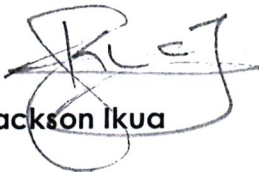
- 1) In the report by the CS, MoLPP, there was an indication that there were plans by DMKL to excise land for public use prior to the renewal of leases. It is indicated that the land will be surrendered to the County Governments of Kiambu and Muranga. This proposal goes against the directive of the NLC as well as the conduct of the County Governments themselves who haven't asked for allocation of any land from DMKL by the NLC. Historical injustices were suffered by individuals and therefore, any reparations ought to be made to individuals. **Your Petitioners pray that any land to be allocated in settlement of the claims herein be surrendered to them directly and not the County Governments.**

- 2) We have demonstrated beyond per adventure that indeed, DMKL is occupying public land to wit; Land Reference No. 12158 which resulted from the impugned amalgamation of Land Reference Numbers **10741, LR 10862, LR 11146, LR 11312, LR 2953.** **Your Petitioners pray that this Honourable Committee makes a finding that the parcels Land Reference Numbers 10741, LR 11146, LR 11312, LR 2953 are indeed public land and they ought to be utilized for resettlement of the Petitioners as per the determination of the NLC dated 7th February, 2019 and gazette notice number 1995 of 2019.**

- 3) **THAT all that property known as Sassa Coffee L.R 9213/1 measuring 511 acres be declared public land as the same never belonged to Delmonte but existed as a separate entity. (enclosed herewith at page 67 to 69 is a scheme/map, Kenya gazette Showing ownership and Kenya gazette Notice showing dissolution of the said Sassa Coffee)**

- 4) THAT no renewal of leases for DMKL should take place until resettlement of the Petitioners herein as per the determination of the NLC dated 7th February, 2019 and gazette notice number 1995 of 2019.
- 5) THAT the NLC spearheads allocation of land to the Petitioners and in any event not more than ninety (90) days from the date of the parliamentary report.

Yours faithfully,



Jackson Ikua

CC: OKATCH AND PARTNERS ADVOCATES
2ND FLOOR, LOWERHILL DUPLEX.
SUITE 18
P.O BOX 38480-00100
NAIROBI.

encl.

REPUBLIC OF KENYA



NATIONAL LAND COMMISSION

HISTORICAL LAND INJUSTICE COMMITTEE

In the matter of Article 67 (2) of the Constitution of Kenya
 In the matter of Section 15 of National Land Commission Act
 In the matter of Historical Land Injustice Reference:
 NLC/HLI/004/2017

Kandara Residents Association.....Claimant

-versus-

Del monte Kenya Limited..... Respondent

DETERMINATION

Hearing: 1st March 2018, 5th April 2018 (Nairobi County) and
 27th September 2018 (Thika- Kiambu County)

Panel: Commissioner Dr. Samuel Tororei-Chairman
 Commissioner Emma Njogu-Member
 Commissioner Dr. Rose Musyoka-Member
 Commissioner Dr. Clement Lenachuru- Member

Appearances: Duncan Okatch, Advocate and PMG Kamau (Philip
 Njuguna) for the Claimants.

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6. In conclusion to their claim, the Claimants further allege, out of 9000 hectares declared by the Respondent, only 6000 hectares have been put in use for the past 50 years.

Submissions:

By the Claimant: Kandara Residents Association

7. The Claimant submitted over 80 affidavits in support of the historical injustice claim by individuals whom the injustice was occasioned upon. This include complainants from Umoja settlement scheme in Thika, Madharau slum, Machagini slum, Gatanga, Makenji, Nguthoro, Sassa coffee and Kabati areas.
8. Further, the Claimants submitted that they used the land majorly for livestock and crop production. It was also a livestock holding ground and a livestock market for the Maasai, Kikuyu and the Kamba communities.
9. The first appearance of white settlers on the subject land were the Missionaries followed by the ex- soldiers of the First and Second World War, who were awarded the land by the colonial government.
10. The Colonialists and the Claimants co-existed well for a while before taking an abrupt turn and becoming bitter and exploitative by the white settlers. The white settlers moved with haste to evict the Claimants as they were in possession of superior weapons such as firearms unlike the native Claimants. This resulted in loss of lives and property and at most the land they called home.
11. They further alleged that after the Claimant's villages were converted into forced labour camps where those who resided

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acreage of the Respondents' lands is in tandem with what is indicated in the Nine (9) certificates of leases.

18. That the Respondent has lawfully leased from private persons, parcels of lands cumulatively measuring approximately 848.626 Ha.
19. That the Respondent is not aware of any amalgamation on L.R No. 12158, any subdivision on L.R Nos. 12157/2, 12157/3, 12157/4 and 12157/5.
20. That the Respondent is not opposed to the ground verification to ascertain the exact acreage by the authorized government institutions i.e the County Governments and the National Land Commission.
21. That the interest (claim against historical land injustices) by the Claimant should be represented by the respective County Government, the County Assembly and the Attorney General as they are custodians of the public interest.
22. The respective County Governments, being as they are custodians of public interest are then expected to carry out public participation and in the process take views of the people i.e. the Claimants.
23. That a win-win solution would have to ensure the Respondent retains the land to continue with its business activities.
24. That perhaps such a win-win solution would have a mechanism for compensating victims of historical land injustices as alleged by the Claimants.

1. 1948 - 1950

2. 1951 - 1953

3. 1954 - 1956

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31. In conclusion, and upon perusal of the written and oral submission by the parties herein and further investigation by the Commission it is established that the Claimant has sufficiently demonstrate their claim of historical land injustice has been proved.

Recommendation

32. From the foregoing, the Commission recommends that the land held or occupied by the Respondent (Del Monte (K) Limited) should be resurveyed to establish if the Respondent Company is in possession of land that it is not the registered owner.

33. In furtherance to the above, the surplus land, if any, should be given/surrendered to the Claimants for resettlement and the County Government for public purpose in the ratio of 70:30 respectively.

34. In the alternative, where no surplus land is found, the County Government of Murang'a should retain adequate amounts of land for settlement of the Claimants and public purpose upon expiry of the leases.

35. That the Respondent to surrender all public utilities within the land to the relevant National and County Government agencies whether the leases have expired or not.

Witnessed and delivered at Nairobi this 7th day of FEBRUARY 2019.

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Signed:

Commissioner Dr. Samuel Tororei

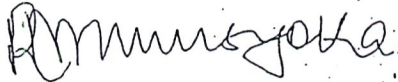


Chairman,

Historical Land Injustice Committee, National Land Commission

Signed:

Commissioner Dr. Rose Musyoka

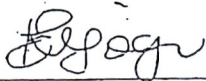


Member,

Historical Land Injustice Committee, National Land Commission

Signed:

Commissioner Emma Njogu



Member,

Historical Land Injustice Committee, National Land Commission

Signed:

Commissioner Dr. Clement Lenachuru



Member

Historical Land Injustice Committee, National Land Commission

L.D. 10741 CHU ESTATE CEASED TO EXIST FOLIO 7

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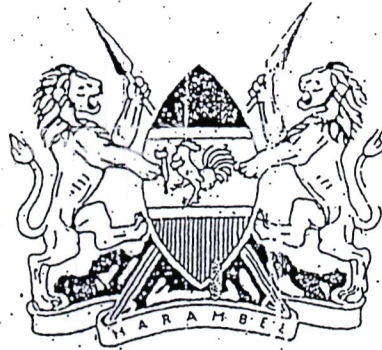
REPUBLIC OF KENYA
LAND OFFICE
I HEREBY TRUE COPY OF THE ORIGINAL

Reference.....

Signature.....

Date.....

[Handwritten Signature]
3/12/2019



THE KENYA GAZETTE

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Vol. LXXXI—No. 23

NAIROBI, 31st May, 1979

Price Sh. 3

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11th September, 1962

THE KENYA GAZETTE

GAZETTE NOTICE No. 4129

CHUI ESTATE LIMITED

CLOSING OF PRIVATE ROADS

NOTICE is hereby given that the private roads as under on the contiguous estates known as Chui and Ndula Estates in the district of Thika, east of Thika Township, will be closed from sundown on Saturday, 6th October, 1962, to sundown on Sunday, 7th October, 1962:—

- (a) Road running south-east/north-west along the boundaries of L.R. Nos. 11146 and 10731 from the junction with the Mitubiri Road to the Thika River.
- (b) Road running approximately east/west from midway along the Mitubiri Road reserve across L.R. No. 11146 to the boundary of that plot with L.R. No. 10731.

For Chui Estate Limited,
Queenway Trustees Limited, Secretaries,
E. S. BURNHAM,
Secretary.

Nairobi,
4th September, 1962.

GAZETTE NOTICE No. 4130

NAKURU WEST URBAN DISTRICT COUNCIL

TENDER—CONSTRUCTION OF AREA OFFICE, ELBURGON

TENDERS are invited for the construction of the above.

Forms of tender, drawings and specifications must be obtained within 14 days of the date of this advertisement from the Acting County Engineer, P.O. Box 138, Nakuru, on payment of a deposit of Sh. 40, which will be refunded on receipt of a bona fide tender or the return of all documents.

Tenders in plain sealed envelopes endorsed with the contract number, must reach the undersigned not later than noon on Saturday, 29th September, 1962.

The Council does not bind itself to accept the lowest or any tender.

L. E. TAPLEE,
Clerk of the Council,
County Hall,
P.O. Box 138, Nakuru.

Nakuru,
3rd September, 1962.

GAZETTE NOTICE No. 4131

OL KALOU URBAN AND RURAL DISTRICT COUNCIL

NOTICE OF ELECTION—OL BOLOSSAT WARD

NOTICE is hereby given that an election will be held to fill a casual vacancy by the resignation of Councillor W. H. Goddard.

Nomination papers may be obtained from the undersigned and must be delivered by the candidate or his proposer, or seconder, or sent by registered post to the Clerk of the Council and received by him not later than noon on Tuesday, 25th September, 1962.

H. A. CARR,
Clerk of the Council,
P.O. Box 126, Naivasha.

Naivasha,
6th September, 1962.

GAZETTE NOTICE No. 4132

THE MUNICIPAL COUNCIL OF NAKURU

THE MUNICIPALITIES ORDINANCE

(Cap. 136)

NOTICE OF RESOLUTION IMPOSING CHARGES

IT IS hereby notified that in pursuance of section 59 of the Municipalities Ordinance, the Municipal Council of Nakuru has by resolution imposed the following charges, viz:—

Mass Poliomyelitis Inoculation Campaign

That the following charges be made for the Trivalent vaccine:—

Children up to 5 years of age	Free of charge
Children from 5 to 16 years	50 cents
Adults	Sh. 1

K. M. LOUIS,
Town Clerk,
Municipal Offices Nakuru.

Nakuru,
6th September, 1962.

GAZETTE NOTICE No. 4133

THE TRUST LAND ORDINANCE

(Cap. 100)

SETTING APART OF LAND

NOTICE is hereby given that the land described in the Schedule hereto has been duly set apart in accordance with the provisions of Part III of the Trust Land Ordinance for the purpose specified in the said Schedule.

SCHEDULE

Place.—Mayenze, Bukhaya Location, Elgon Nyanza District.

Purpose.—Religious.

Area.—0.3 acre (approximately).

Description of land:—

This land is situated approximately three miles to the south of Eulanda Mill Hill Mission School. The boundaries are demarcated on the ground and are described as follows:—

Starting from a point A, which is a concrete beacon from which a large mufutu tree and a large mango tree are 600 feet and 160 feet distant on bearings of 353 degrees and 75 degrees respectively;

thence for 130 feet on a bearing of 360 degrees to point B;

thence for 98.4 feet on a bearing of 96 degrees to point C;

thence for 127 feet on a bearing of 181½ degrees to point D;

thence for 96 feet on a bearing of 273 degrees back to point A.

All bearings given above are magnetic.

A plan of the area may be inspected at the office of the District Commissioner, Bungoma, Elgon Nyanza District.

Dated this 11th day of August, 1962.

G. A. SKIPPER,
Provincial Commissioner,
Nyanza Province.

REGISTERED TRUE COPY OF THE ORIGINAL

Reference GAZETTE NOTICE No. 4133
Signature: [Signature] THE TRUST LAND ORDINANCE (Cap. 100)
Date: 19/11/1962 SETTING APART OF LAND

NOTICE is hereby given that the land described in the Schedule hereto has been duly set apart in accordance with the provisions of Part III of the Trust Land Ordinance for the purpose specified in the said Schedule.

SCHEDULE

Place.—Angurai, North Teso Location, Elgon Nyanza District.

Purpose.—Market.

Area.—1.1 acres (approximately).

Description of land:—

This land is situated approximately four miles to the north-west of Malakisi Trading Centre. The boundaries are demarcated on the ground and are described as follows:—

Starting from a point A, which is a concrete beacon from which Angurai trigonometrical beacon is half a mile distant on a bearing of 122 degrees;

thence for 430 feet on a bearing of 151 degrees to point B;

thence for 209 feet on a bearing of 244 degrees to point C;

thence for 387½ feet on a bearing of 328 degrees to point D;

thence for 230½ feet on a bearing of 53 degrees back to point A.

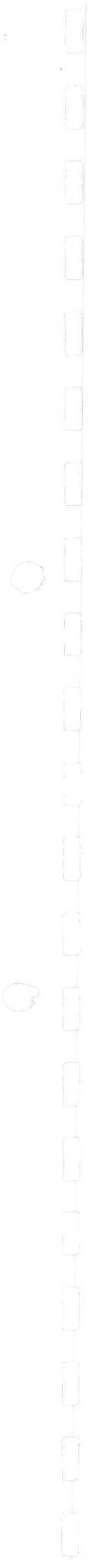
All bearings given above are magnetic.

A plan of the area may be inspected at the office of the District Commissioner, Bungoma, Elgon Nyanza District.

Dated this 15th day of August, 1962.

G. A. SKIPPER,
Provincial Commissioner,
Nyanza Province

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13098 United Import and Export Agencies Limited.
13963 Usalama Clearing & Forwarding Export Import Limited.
14287 Meta (Kenya) Limited.

Dated this 25th day of May, 1979.

RAUTTA-ATHLAMBO,
Assistant Registrar of Companies.

GAZETTE NOTICE No. 1542

THE COMPANIES ACT
(Cap. 486)

PURSUANT to section 339, sub-section (4) of the above Act, it is hereby notified that at the expiration of three months from the date hereof, the names of the undermentioned companies will, unless cause be shown to the contrary, be struck off the Register of Companies and the companies will be dissolved:—

Reg. No.	Name
5373	Maliu Estate (1968) Limited
5379	Kinenguy Estate (1962) Limited
5404	Ishwarbai & Sons Limited
5412	Saccone & Speed (East Africa) Limited.
5428	Gee's (E.A.) Limited
5437	Highlands Hotel Limited.
5441	Cally Limited.
5442	Pharmador (East Africa) Limited.
5478	Oldham Batteries East Africa Limited.
5483	Superstar Limited.
5488	New Grange Limited.
5499	P.T.S. Limited.
5519	Kapomboi Limited.

Dated this 24th day of May, 1979.

RAUTTA-ATHLAMBO,
Assistant Registrar of Companies.

GAZETTE NOTICE No. 1543

THE COMPANIES ACT
(Cap. 486)

PURSUANT to section 339, sub-section (5) of the above Act, it is hereby notified that the undermentioned companies have this day been struck off the Register of Companies, and the companies are dissolved:—

Reg. No.	Name
679	Kibos Flour & Oil Mills & Cotton Ginnery Limited.
4170	M. D. Purl & Sons Limited.
1877	Stirling Astaldi Bricks & Tiles Limited.
2204	Chul Estate Limited.
4554	Kenya Vernacular Press (1959) Limited.
5236	Direct Advertising Limited.
5259	Transit Congo (MSA) Limited.
5514	Elgon Tea Factory Limited.
5550	Cambrian Agencies Limited
6113	64 Estate Limited.
6411	City Centre Properties Limited.
6564	Emco Management Limited.
7023	Universal Metal Enterprises Limited.
7425	Ross Hart and Robinson Limited.
7472	Knox Estates Limited.
7485	Om Investments Limited.
9070	Standard Enterprises Limited.
11500	Sipili Hill Farmers Company Limited.
41644	Kericho Blanket House Limited.

Dated this 23rd May, 1979.

J. N. KING'ARUI,
Deputy Registrar of Companies.

GAZETTE NOTICE No. 1544

IN THE MATTER OF THE COMPANIES ACT
(Cap. 486)

AND

IN THE MATTER OF THOMAS (NAIROBI) LIMITED
MEMBERS' VOLUNTARY WINDING UP

NOTICE is hereby given that at an extraordinary general meeting of Thomas (Nairobi) Limited held at Jubilee Insurance House, Wabera Street, Nairobi on 10th May, 1979, the following were passed as special and extraordinary resolutions:—

1. "That the company be wound up voluntarily and that R. L. E. Kerr of P.O. Box 40612, Nairobi be appointed liquidator for the purposes of such winding-up".
2. "That the liquidator be authorized to divide in specie the whole or in part of the assets of the company in accordance with article 136 of the company's Articles of Association".

Notice is further given that the creditors of the above-named company are required on or before 10th June, 1979 to send their names and addresses with full particulars of their debts or claims against the said company to the undersigned, the liquidator of the said company, at P.O. Box 40612, Nairobi, and if so require by notice in writing from the said liquidator personally or by their advocates to come in and prove their debts or claims set out in such notice or in default thereof they may be excluded from the benefit of any distribution made before such debts are proved.

Dated this 17th day of May, 1979.

R. L. E. KERR,
Liquidator,
P.O. Box 40612, Nairobi.

GAZETTE NOTICE No. 1545

IN THE MATTER OF THE COMPANIES ACT
(Cap. 486)

AND

IN THE MATTER OF THOMAS (NAIROBI) LIMITED
MEMBERS' VOLUNTARY WINDING UP

Notice of Appointment of Liquidator

Name of company.—Thomas (Nairobi) Limited.
Address of registered office.—P.O. Box 40612, Nairobi.
Registered postal address.—P.O. Box 40612, Nairobi.

Nature of business.—Not trading.

Liquidator's name.—R. L. E. Kerr.

Address.—P.O. Box 40612, Nairobi.

Date of appointment.—10th May, 1979.

By whom appointed.—Members.

Dated this 17th day of May, 1979.

R. L. E. KERR,
Liquidator,
P.O. Box 40612, Nairobi.

GAZETTE NOTICE No. 1546

THE SOCIETIES RULES
(Cap. 108, Sub. Leg.)

PURSUANT to rule 14 of the Societies Rules, notice is hereby given that—

- (a) the societies listed in the First Schedule hereto have been registered;
 - (b) the societies listed in the Second Schedule hereto have been refused registration; and
 - (c) the registration of the societies listed in the Third Schedule hereto have been cancelled,
- under the provisions of the Societies Act (Cap. 108).

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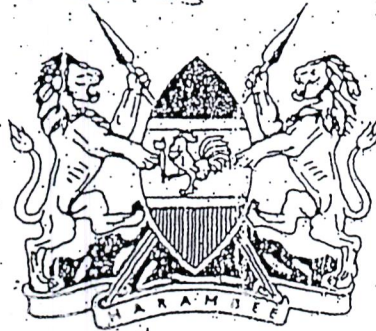
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OF LR 11312, SHOWING OVERTHEP
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Reference.....
Signature.....
Date..... 3/12/2019



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1. The first part of the document discusses the importance of maintaining accurate records.

2. The second part of the document discusses the importance of maintaining accurate records.

3. The third part of the document discusses the importance of maintaining accurate records.

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GAZETTE NOTICE No 2252

(QUAR/O/X/159)

SCHEDULE II—(Contd)

THE ANIMAL DISEASES ACT (Cap 364)

IN EXERCISE of the powers conferred by section 5 of the Animal Diseases Act, I hereby declare—

- (a) the areas specified in Schedule I to be "infected areas in respect of the disease indicated at the head of such Schedule,
(b) the notices specified in the first column of Schedule II to be amended in the manner specified in the second column of such Schedule

Kabote, 20th July 1969

I E MURIITHI, Director of Veterinary Services

SCHEDULE I—TRYPANOSOMIASIS

- LR No 10967, The Manager, Donyo Sabuk Estate, P O Thika, Machakos District
LR Nos 1851/3/2, 1849, 1848/3, 1848/1/R 5846/3, 1846/1, 1848/2, The Manager, Kianzabe Estate P O Box 24, Thika, Machakos District
LR No. 4714, The Manager, Risko Farm, P O Box 13, Makuyu, Murang'a District.
LR Nos 4519, 4520, 4742 and 4745, Mrs Harraway Nyangamala Estate, P O Makuyu, Murang'a District
LR No 2307, Fredrickson, Ngoleha Estate, P O Mutubiri, Murang'a District
LR Nos 6739, 11312, 2953, 6939, 11146 The Manager, Naita Estate and Chui Estate, P O Mutubiri, Kiambu District
LR Nos 2288, 2297 and 2302, The Commandant-in-Charge National Youth Service, Yatta Una, P O Box 153, Thika, Machakos District
LR No 1031/4, The Manager, Prams Co Limited P O Makuyu, Murang'a District
LR Nos 322, 323, 1979/2 1979/1 and 7001, The Manager, Swift Rutherford Co Limited, P O Makuyu, Murang'a District
LR Nos 9974 5938 and 4466/2, The Manager, Lands End Estate, P O Makuyu, Murang'a District
LR Nos 5847 5841/R, 4690, 5840, 5931 313/2/1, 3558, 1544, 1361, 5817 315/R, The Manager, Kakuzi Fibrelands Co Limited, P O Makuyu, Murang'a District
LR Nos 2303, 2304, The Manager, Yatta Ranch P O Box 255, Thika, Machakos District
LR Nos 6729 and 4751 P Rungeren, Mbogo Estate P O Makuyu Murang'a District
LR No 10719, The Manager, Changai Estate and Mumbu Estate Limited, P O Makuyu, Murang'a District
LR No 9452, T Fraser, Belingwe Estate P O Makuyu Murang'a District
LR Nos 9441, 9718, 10759, Stephen Kisilu P O Makuyu Murang'a District
LR Nos 271/1/2 272, 273 and 277 The Manager, Gatua Nyaga Estate, P O Box 211, Thika, Kiambu District
LR No 9442, The Manager, Two Rivers Estate, P O Makuyu, Machakos District
LR No 1428, The Manager, Gathini Ranching Co Limited, P O Box 189, Thika, Kiambu District
LR Nos 3566 and 3565, The Manager Makutuani Estate P O Makuyu, Machakos District

SCHEDULE II

Table with 2 columns: First Column, Second Column. Contains government notices and their corresponding amendments to Schedules I and V.

Table with 2 columns: First Column, Second Column. Contains Government Notice No 690 and its amendment to Schedule III.

Government Notice No 690 dated the 25th day of April 1955. By deleting from Schedule III (Trypanosomiasis) thereon the following -
LR Nos 4519 and 4520, C G Harraway, Esq, Nyangamara Ltd, P O Makuyu, Thika District.
LO 1363/1, 4690, 3558, 5931, 313/2/1, 5840, 5841, 315, 5817, 5847, 1544 and 4607, Kakuzi Fibrelands Ltd, P O Mutubiri, Thika District

Gazette Notice No 2023 dated the 6th day of May 1963. By deleting from Schedule III (Trypanosomiasis) thereon the following -
LO 6739, The Manager, Ndula Bridge Estate, P O Box 325, Thika, Thika District
LO 1851/3/2, 1846/2, 5846, 1849, 1848/2, 1851/3/1, 9631/1, 1848/1, The Manager, Kianzabe Estate, P O Box 24, Thika, Thika District
LO 2288, 2297, 2298, The Livestock Officer, L1 and A1 Centre, P O Box 303, Thika, Thika District
LO 322, 323, 1979/1, 1979/2, 7007, The Manager, Punda Mitha, P O Box 1, Makuyu, Thika District
LO 4714, The Manager, Risko Farm, P O Box 13, Makuyu, Thika District
LO 2299, The Manager, Mamba Farm, P O Makuyu, Thika District
LO 2303, 2304, The Manager, Yatta Ranch, P O Box 255, Thika, Thika District
LO 10314, The Manager, Muri Farm, P O Makuyu, Thika District
LO 10719, The Manager, Changai Mumbi Estate Ltd, P O Makuyu, Thika District
LO 9442, 3516, 1936, Two Rivers Estate, P O Makuyu, Thika District
LO 5938, 4466/2, 9974 Lands End Estate, P O Makuyu, Thika District
LO 9452, T Fraser, Esq, Belingwe Estate, P O Makuyu, Thika District
LO 3565, 3566, Messrs G and V Francescan, Mugutuani Estate, P O Mutubiri, Thika District
LO 262, 263 264, 265, 266, 5853, 5893, 5895, 270/1/R, 1851/2, 4401, 5894/2, 4004, 5896, 7316, 5894/R, 4162, The Manager, Donyo Sabuk Estate, P O Thika, Thika District
LO 6729, P Rungeren, Esq, Mbogo Estate, P O Makuyu, Thika District

Gazette Notice No 1480 dated the 19th day of April 1966. By Deleting from Schedule V (Trypanosomiasis) thereon the following -
LO 9441, 9718 and 10759, Stephen Kisilu, P O Box 165, Embu, Thika District
Gazette Notice No 177 dated the 31st day of December 1966. By deleting from Schedule V (Trypanosomiasis) thereon the following -
LO 271/1/2, 272, 273 and 277, The Manager, Gatuanaga Estate, P O Box 211, Thika, Thika District

Reference: Signature: Date: 31/12/2019

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KENYA NATIONAL ARCHIVES AND DOCUMENTATION SERVICE
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Reference.....
 Signature.....
 Date..... 20/11/2019

LAND GRANTS—(Contd.)

Name	L.R. or Plot No.	Locality	Area (Approx.) Acres	Stand Premium	Annual Rent	Term		Remarks
						Years	From	
I. FARM GRANTS—(Contd.)								
Hugh Cameron Coltart ..	5636 ..	Nakuru ..	3,249 less 57 Rd. Res. and 76 Rly. Res.	—	Sh. 623/20	946	1-11-60	In exchange for surrender of the same L.R.
Ernest Hay Wright ..	10551 ..	Nakuru ..	645 less 11 Rd. Res.	—	706	941	1-8-61	In exchange for surrender of L.R. 487/165 and 166
Nanga Estate Limited ..	10862 ..	Fort Hall ..	1,372	—	957/39	944 & 5 mths.	1-5-61	In exchange for surrender of part of L.R. 4681.
Nanga Estate Limited ..	10863 ..	Fort Hall ..	1,272 less 29 Rd. Res.	—	887/61	944 & 5 mths.	1-5-61	In exchange for surrender of part of L.R. 4681.
J. R. K. Milton and J. K. Reeder ..	9196 ..	Nakuru ..	1,143	—	1,237	948	1-7-61	In exchange for surrender of L.R. 1262/7.
C. J. C. Prait ..	10697 ..	Uasin Gishu ..	230 less 9 Rd. Res.	—	230	946 & 10 mths.	1-5-61	In exchange for surrender of L.R. 718/5.
Anna Mary Simpson ..	10385 ..	Nakuru ..	552	—	716	943 & 7 mths.	1-9-61	In exchange for surrender of L.R. 4805 and 4803/3.
Hugh Cameron Coltart ..	5628 ..	Nakuru ..	1,381 less 5 Rd. Res.	—	2,187	946 & 6 mths.	1-9-61	In exchange for surrender of the same L.R.
Banks Estate Limited ..	10581 ..	Nakuru ..	561 less 19 Rd. Res.	—	792	946	1-7-61	In exchange for surrender of L.R. 5296 and 6287
Phoebe L. Hawkins ..	9291 ..	Nakuru ..	285.5 less 6 Rd. Res.	—	219	949	1-6-61	In exchange for surrender of L.R. 4047/3, 4048/7 and 9.
II. FARM EXCHANGES								
III. FARM REVERSIONS								
European Agricultural Settlement Board	3391/2, 6371 and 7050/1	Nanyuki ..	848, 152 and 198	—	42/40, 10/40 and 19/80	999	1-10-19	Surrendered in exchange for two new grants of L.R. Nos. 10745 and 10746.
European Agricultural Settlement Board	6570 and 3390/3	..	710 and 69	—	142 and 13/80	999	1-7-19	Surrendered in exchange for two new grants of L.R. Nos. 10745 and 10746.
East African Coffee Plantations Ltd. ..	1478/2	Kericho ..	2,544	—	509	999	1-8-13	Surrendered in exchange for a new grant L.R. 10779.
Sidney William Smith ..	7211 ..	Nakuru ..	1,215	—	243	999	1-7-35	Surrendered in exchange for a new grant L.R. 10184.
Denis Nolan Neylan ..	4730/51 and 69	Nakuru ..	19.57 and 14.46	—	10 each	999	1-10-19	Surrendered in exchange for a new grant L.R. 10704, 10714 and 10715.
(a) Farm Reversions on Conversion to 999 Years								
Bavuni Limited ..	6573/1 ..	Nakuru ..	925	—	117/02	999	1-6-05	Surrendered in exchange for a new grant of L.R. 10458.
Bavuni Limited ..	4149 ..	Nakuru ..	401	—	50/12	999	1-6-05	Surrendered in exchange for a new grant of the same L.R.
Bavuni Limited ..	5244 ..	Nakuru ..	198.93	—	24/88	999	1-6-05	Surrendered in exchange for a new grant of the same L.R.
Harry John Mills ..	6631 ..	Nakuru ..	694 less 10 Rd. Res.	—	85/20	999	1-7-10	Surrendered in exchange for a new grant of the same L.R.
Agricultural Settlement Trust ..	1960 ..	Naivasha ..	281	—	33/72	999	1-8-10	Surrendered in exchange for a new grant of the same L.R.
Kapkoresh Limited ..	604/1 and 610	Kericho ..	1,000 and 795.80	—	125 and 99/50	999	1-7-08 and 1-4-08	Surrendered in exchange for a new grant of L.R. 10785.
Makindi River Estate Limited ..	5991 ..	Thika ..	199	—	12	999	1-6-07	Surrendered in exchange for a new grant of the same L.R.
P. H. J. Tuck ..	3765 ..	Uasin Gishu ..	2,021.46	—	242/58	999	1-11-10	Surrendered in exchange for a new grant of the same L.R.
Hugh Cameron Coltart ..	5636 ..	Nakuru ..	3,248 less 56 Rd. Res. and 76 Rly. Res.	—	203	999	1-3-07	Surrendered in exchange for a new grant of the same L.R.
Ernest Hay Wright ..	487/165	Nakuru ..	348 less 7 Rd. Res.	—	72/38	999	1-11-03	Surrendered in exchange for a new grant of L.R. 10551.

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Appendix VII

Report of the Departmental Committee on Lands on its consideration of the Petition by Former Workers of the Late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their Land in Roysambu Constituency by the Kenya Defence Forces

Approved for tabling. Bat

SNA

5/12/19

PARLIAMENT OF KENYA




THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF A PETITION BY FORMER WORKERS OF THE LATE MAYER JACOB SAMUELS REGARDING INVASION AND EVICTION OF THE WORKERS FROM THEIR LAND IN ROYSAMBU CONSTITUENCY BY THE KENYA DEFENCE FORCES

	
THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 DEC 2019	DAY: THURSDAY
TABLED BY: Hon. R. Nyamari Chairperson	
TABLED AT THE TABLE:	DECEMBER 2019

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

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CHAIRPERSON'S FOREWORD

The Petition by former workers of the late Mayer Jacob Samuels regarding invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces was conveyed to the House by the Honourable Speaker on behalf of petitioners on 27th June 2019.

In considering the petition, the committee held meetings with the petitioners on Tuesday, 6th August 2019, the Ag. Chief Executive Officer, National Land Commission, on 8th August 2019 the Chief Administrative Secretary Ministry of Lands and Physical Planning on 15th October, 2019, 26th and 28th November, 2019, the Principal Secretary, Ministry of Defence on 5th November 2019, the Chief Executive Officer Uchumi Supermarket Ltd on 21st and 26th November, 2019, the Director Legal Services, Kenya Commercial Bank and the Director, Jewel Complex Ltd on 21st November 2019

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee is also thankful to the Petitioner, the Ag. Chief Executive Officer, National Land Commission, the Chief Administrative Secretary Ministry of Lands and Physical Planning, the Principal Secretary, Ministry of Defence, the Chief Executive Officer Uchumi Supermarket Ltd, the Director Legal Service, Kenya Commercial Bank and the Director Jewel Complex Ltd for the submissions they made to the Committee.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my pleasant duty to table the Report of the Departmental Committee on Lands on its consideration of the Petition by former workers of the late Mayer Jacob Samuels regarding invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces

Hon. Dr. Rachael Kaki Nyamai, MP
Chairperson, Departmental Committee on Lands

EXECUTIVE SUMMARY

The purpose of this report is to respond to prayers made in a Petition by former workers of the late Mayer Jacob Samuels regarding invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces. The Petitioners prayers are that the National Assembly through the Departmental Committee on Lands does;

- i. Ensures the upholding of the petitioners' right to occupy, reside and do business and own LR. No. 5875/2
- ii. Expedites the issuance of subtitles/leases for the approved letters of allotment issued to the members of Roysa Community Development Society;
- iii. Preserve the title deeds and issues for public purposes whose allotments are held by the society;
- iv. Investigates the eviction and invasion by the Kenya Defence Forces from LR. No. 5875/2 and any claim of ownership by the same or any other interested party; and
- v. Order compensation for the demolition of the petitioners 'premises and any other relief that may be available

The Committee observed that the owner of the land in question LR. No. 5875/2 located in Roysambu, measuring 17.16 acres under a lease of 99-years which commenced from 1st November 1904 and expired on 1st November, 2003 is Mr. M. J Samuels.

The Committee noted that whereas there exists evidence that the government intended to acquire LR. No. 5875/2 belonging to Mr. M. J Samuels as evidenced by gazette notices No. 51515 and 51552 of 1985, the acquisition process was not completed as the out of court negotiations between the government and Mr. Meshumor Jacob Samuel on amount of compensation to be made were never concluded. (Annex 1).

There was contradictory information in the Ministry of Defence concerning the intended acquisition of L. R No. 5875/2. Indeed, in a letter dated 26th January 1987, the Permanent Secretary, Department of Defence informed the Commissioner of Lands that the military had carried out an inspection of the land and found it unsuitable for the intended purpose unless four additional parcels of land surrounding the plot was acquired to enhance security as the plot was located in a residential area. However, on 10th April 1987 Major General Munyao wrote to the Commissioner of Lands vide a letter Ref. DOD/CGS/49/LND asking the Commissioner to disregard the content of the letter by the Permanent Secretary until the military made further contact on the issue. Based on the submissions of the National Land Commission, the military did not make the said contact to date.

Although, the Ministry of Defence submitted that the land was valued at Kshs. 3,530,500 and the sum was duly paid by the Ministry to the Commissioner of Lands, the Committee noted that the High Court under Land Acquisition Appeal No. 2 of 1986 had enhanced the award to Kshs. 23,000,000 and the same has not been paid to date to Mr. Meshumor Jacob Samuel. The Committee noted that the provisions of section 8 of the Land Acquisition Act

compensation was to be paid promptly. This was never done. (Annex 2)

Additionally, despite, the fact that the Ministry of Defence submitted a receipt showing that Kshs. 3,530,500 was paid to the Commissioner of Lands, there was no evidence submitted to indicate that the money was deposited to Middle East Bank and released to Mr. Jacobs.

Further, while the Ministry of Defence submitted that the land in question was formally handed over to the Ministry on 25th June, 1986, the Committee noted with concern that the Kenya Defence Forces only occupied the said land thirty-three years later, this being in 2019 and the land remains undeveloped to date. This was further confirmed by a letter dated 14th June, 2004 by the then Permanent Secretary, Ministry of Lands and Settlement to Mr. John Githongo the then Permanent Secretary in the office of the President indicating that the Kenya Defence Forces had already taken possession of the property and moved in but had thought the cost was too much and consequently moved out of the property.

Based on the submissions of the Nairobi County Government, the squatters living on the parcel of land in question were about 400 to 500 persons, there was an informal primary school and nursey school for the squatters' children, the land was occupied by 43 rows each with 10 permanent and semi-permanent houses, there were few commercial buildings, garages and workshops, there were two structures used as churches and there were numerous kiosks and churches. This was corroborated by the minutes of 25th June, 1986 submitted by the Ministry of Defence which indicated that there were two hundred and fifteen persons living there, there were forty-three blocks still existing and two jua kali garages.

The Committee also observed that there were three files that had been opened in respect of LR No. 5875/ 2 these being-

- (1) The original file regarding the land in question No. 21946/2, LR. No. 5875 with an acreage of 17 acres indicating that the land belonged to Mr. Mayer Jacob Samuels.
- (2) A second file with file no. 202033 & LR No. 5875/2 with an acreage of 6.864 Ha. which contained an allotment letter that was issued on 26th June, 1999 to Solio Constructions Limited and contained other documents.
- (3) A third file no. 215826, LR No. 23393 for land owned by Grace Independent Baptist Mission Trustees, a file which was used by officials in the Ministry to register an amalgamation with land parcel No. 5875/2.

The Ministry of Lands and Physical Planning submitted and confirmed that the second file and third file had been opened fraudulently as evidenced by-

- (1) The purported transfer of lease to Solio Construction Limited was done when there was already a subsisting lease of 99 years which was to expire in 2003 and the transfer was effected in 2001, two years before the expiry of the lease.
- (2) The Chief Land Registrar, Ms. Sarah Mwenda denied signing the transfer form transferring the parcel of land LR. 5875/2 from Solio Construction

Company Ltd to Kasarani Mall Ltd in 2001, although a stamp bearing her unique number (14) was used in the said form.

- (3) The third file no. 215826, LR No. 23393 allegedly seeking to amalgamate land parcel No. 5875/2 with LR. No. 23393 was being done yet the lease for LR. No. 23393 had also expired.
- (4) The certificate of Incorporation of Solio Construction Company was dated 18th August 1999 while the letter of allotment was issued on 26th June, 1999 revealing that the allotment was done two months before the Company was incorporated.
- (5) A letter dated 14th June, 2004 by the then Permanent Secretary, Ministry of Lands and Settlement to Mr. John Githongo the then Permanent Secretary in the office of the President instructing the Anti-Corruption Commission to investigate and take action against the fraudulent allocation of L.R No. 5875/2 to Solio Construction Company; and
- (6) The subsequent attempt to amalgamate the two pieces of land was being done albeit the existence of a caveat on the land dating back to 2004.

However, the parcel of land L.R No. 23393 was not the subject matter of the Petition and was only relevant to the extent that the third file was opened for purposes of fraudulently amalgamating L.R No. 5875/2 with L.R No. 23393.

There was no evidence submitted to the Committee to indicate that the Kenya Defence Forces having allegedly acquired the land in 1986, gazetted L.R No. 5875/2 as a protected area.

Based on the submissions of the National Land Commission, a current search at the Land Registry indicated that no record on the land was available save for that the last registered owner of L. R No. 5875/2 was Mr. M.J. Samuels.

There was no surrender or cancellation of the original certificate of lease held by Mr. Mayer Jacob Samuels on L.R No. 5875/2.

In accordance with the property rates payment request submitted by the Nairobi County Government, the property rates were still due to be paid by Mr. M. J. Samuels signifying that the records of the county still identify Mr. M. J. Samuels as the owner of the land.

The National Land Commission confirmed that the lease for LR. No. 5875/2 expired on 1st November, 2003 and reverted back to the Nairobi County Government by virtue of Article 62 of the Constitution.

The Nairobi County Government in its submissions confirmed that survey of LR. No. 5875/2 had been undertaken and completed and a subdivision scheme approved

The Nairobi County Government had already issued allotment letters to the Members of Roysa Community Development Society regularizing individual ownership upon payment of Kshs. 69, 500 of which some of the members had already paid.

There was collusion between officials of the Ministry of Lands and Physical Planning as evidenced by the second and third files in order to effect fraudulent transactions on L. R No. 5875/2 leading to loss of public funds.

Although, the Ministry of Lands and Physical Planning submitted that it was aware that the titles for L. R No. 5875/2 and L.R 23393 had been presented to it for amalgamation, the Ministry did not submit the two titles to the Committee.

The Committee noted with concern that although the Ministry of Lands and Physical Planning submitted that the second and third file were fraudulent, it was still receiving transactions payments from members of Roysa Community Development Society for titling of L.R 5875/2 to individual members.

The Ministry of Lands and Physical Planning never informed the Committee that it was aware there was any sub-division scheme that was ongoing, yet the documents submitted to the Committee indicate that the Ministry was involved in the sub-division process.

In response to the Petitioners' prayers and based on the observations, the Committee recommends that the Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County Government does complete the titling process for L. R No. 5875/2 within 180 days of tabling of this Report.

The Committee also recommends that the Director for Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to L. R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling of this Report.

Finally, the Committee recommends that the Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R 5875/2.

1.0 PREFACE

1.1 Mandate of the Committee

2. The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference: -
 - (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - (ii) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
 - (iii) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
 - (iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - (v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister.
 - (vi) study and review all legislation referred to it.

1.2 Committee subjects

3. The Committee is mandated to consider the following subjects:
 - a) Lands
 - b) Settlement

1.3 Oversight

4. The Committee oversees the Ministry of Lands and Physical Planning; and the National Land Commission.

1.4 Committee Membership

5. The Committee membership comprises: -

Hon. Dr. Rachael Nyamai, MP – **Chairperson**

MP for Kitui South Constituency

Jubilee Party

Hon. Khatib Mwashetani, MP – **V/Chairperson**

MP for Lunga Lunga Constituency

Jubilee Party

Hon. Jayne Wanjiru Kihara, MP

Member for Naivasha
Constituency

Jubilee Party

Hon Joshua Kutuny Serem, MP

Member for Cherangany
Constituency

Jubilee Party

Hon. Kimani Ngunjiri, MP

Member for Bahati Constituency

Jubilee Party

Hon. Mishi Mboko, MP

Member for Likoni Constituency

**Orange Democratic Movement
(ODM)**

Hon. Omar Mwinyi, MP

Member for Changamwe
Constituency

**Orange Democratic Movement
(ODM)**

Hon. Ali Mbogo, MP

Member for Kisauni
Constituency

**Wiper Democratic Movement
(WDM)**

Hon. Babu Owino, MP

Member for Embakasi East
Constituency

**Orange Democratic Movement
(ODM)**

Hon. Caleb Kipkemei Kositany,
MP

Member for Soy Constituency

Jubilee Party

Hon. Catherine Waruguru, MP
Woman Member for Laikipia
County

Jubilee Party

Hon George Aladwa, MP
Member for Makadara
Constituency

**Orange Democratic Movement
(ODM)**

Hon George Risa Sunkuyia, MP
Member for Kajiado West
Constituency

Jubilee Party

Hon. Jane Wanjuki Njiru, MP
Woman Member for Embu
County

Jubilee Party

Hon. Josphat Gichunge
Kabeabea, MP

Member for Tigania East
Constituency

Party of National Unity (PNU)

Hon. Owen Yaa Baya, MP

Member for Kilifi North
Constituency

**Orange Democratic Movement
(ODM)**

Hon. Samuel Kinuthia Gachobe,
MP

Member for Subukia
Constituency

Jubilee Party

Hon. Simon Nganga Kingara,
MP

Member for Ruiru Constituency

Jubilee Party

Hon. Teddy Mwambire, MP

Member for Ganze Constituency

**Orange Democratic Movement
(ODM)**

1.5 Committee Secretariat

6. The Committee secretariat comprises: -

Lead Clerk
Mr. Leonard Machira
Clerk Assistant I

Mr. Ahmad Guliye
Clerk Assistant III

Mr. Adan Abdi
Fiscal Analyst III

Mr. Joseph Tiyan
Researcher III

Ms. Winnie Kizia
Media Relations Officer III

Ms. Peris Kaburi
Serjeant-At-Arms

Mr. Nimrod Ochieng
Audio Officer

Ms. Jemimah Waigwa
Legal Counsel

2.0 INTRODUCTION

7. The Petition by the former workers of the late Mayer Jacob Samuels regarding invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces was conveyed to the House by the Honourable Speaker on behalf of petitioners on 27th June 2019.
8. The Petitioners wished to draw the attention of the House to the following, that:
 - i. They are former workers of the late Mayer Jacob Samuels who were employed in various cadres in his sisal processing farm and workshop industry on L.R. No. 8575/2, before he passed away in 1974. They lived on the premises since then;
 - ii. The deceased 's sons revived the business later and the petitioners continued working for them. The employers defaulted on paying salaries and instead requested the employees to continue living on the land when they were abroad;
 - iii. The petitioners registered Roysa Community Development Society to safeguard the land from grabbers;
 - iv. They used the society to request the Nairobi City County Government to allocate the land to them.
 - v. A subdivision scheme was approved by the County Government of Nairobi and the National Land Commission and the petitioners were issued with letters of allotment;
 - vi. A platoon of the Kenya Defence Forces (KDF) evicted them from the land and demolished their homes, business premise and old structures in April 2019 on grounds that the land belonged to KDF. They have since been blocked from accessing the premises and
 - vii. There is no matter pending in court on relation to the petition.
9. Therefore, the petitioners pray that the National Assembly through the Departmental Committee on Lands;
 - i. Ensures the upholding of the petitioners' right to occupy, reside and do business and own LR. No. 5875/2
 - ii. Expedites the issuance of subtitles/leases for the approved letters of allotment issued to the members of Roysa Community Development Society;
 - iii. Preserve the title deeds and issues for public purposes whose allotments are held by the society
 - iv. Investigates the eviction and invasion by the Kenya Defence Forces from LR. No. 5875/2 and any claim of ownership by the same or any other interested party; and

- v. Order compensation for the demolition of the petitioners 'premises and any other relief that may be available

3.0 SUBMISSIONS

3.1 Submissions by the petitioners

10. The Committee held a meeting with the petitioners on Tuesday, 6th August 2019. During the meeting the petitioners informed the Committee as follows:
11. The petitioners stated that they used to work for the late Mayer Jacob Samuels, who owned the land in question land in Roysambu constituency. He left the country and passed on in 1974.
12. Thereafter the late Mayer Jacob Samuels' two sons came to manage the land and operate the business. They alleged that the brothers were deported from the country after they declined an offer on the compulsory acquisition of the land made by the Kenya Defence Forces (KDF). The owners had made an offer of Ksh. 26 million for the land, while the military offered Ksh 3 million.
13. The petitioners also stated that although the KDF intended to acquire the said land, senior military officers advised that the land was not suitable for use by the military as it was located in the middle of a densely settled area and it would require the acquisition of adjacent land to create enough land to secure a military facility.
14. There was also no evidence to indicate that the military paid any compensation to the owner.
15. In 2003 the government declined to renew the lease for the land and the two sons had also left the country leaving the workers with no income. The workers then decided to start businesses in the area that included a garage and parking yard for lorries in order to make ends meet.
16. In 2004 a group of invaders attempted to enter the land and erect old containers on it. However, the invaders were repulsed. Following the attempted grabbing of the land the petitioners were advised to register a company and use it to acquire the land.
17. On 6th May 2004 the petitioners registered a company known as Roysa Community Development Society; registration No. No. 446760 and used it to request the County Government of Nairobi to allocate them the land.
18. On 17th February 2015 the County Government of Nairobi wrote to the National Land Commission indicating that the County Government had allocated the land to the

society. The Commission in a rejoinder dated 10th March 2016 informed the County Government of Nairobi that since the lease to the land had expired and was not renewed, the land had reverted to the County Government and therefore it was in order for the County Government to allocate it to Roysa Community Development Society. The petitioners tabled the said correspondence to the Committee.

19. The petitioners accepted the offer and paid the required fees for the issuance allotment letters through their trustees. They also paid the required fees to amend the index map and for valuation of the parcel of land to facilitate subdivision and issues of a certificate of subdivision.
20. However, in April 2019 a group of people in military uniform and in green lorries invaded the land and displaced the petitioners. The invaders also erected six tents on the land.

3.2 Submissions by the Ag. Chief Executive Officer, National Land Commission

21. The Committee held a meeting with the Ag. Chief Executive Officer, National Land Commission on 8th August 2019. During the meeting the Ag. Chief Executive Officer informed the Committee that apart from the petitioners, the Kenya Defence Forces and Uchumi Supermarket Ltd also claimed to own the land that is the subject of the petition. She also stated that the County Government of Nairobi in conjunction with the National Land Commission had also issued letters of allotment to the petitioners.
22. Mr. Antipas Nyanjwa Deputy Director Investigations, National Land Commission informed the Committee that he was tasked by the Commission to investigate the matter and submitted a report that established the following:
23. **Chronology of land parcel LR No. 5875/2:** Lt. Col James Hays Sadler who was the Commissioner for East Africa Protectorate leased LR. No. 1012 comprising 4443 acres in 1904 to Henry Herbert Tarlton for a period on 99 years. The lease then subdivided the land into five plots each comprising 200 acres in 1920 and the said plots were further subdivided into 20-acre plots in 1927. LR 5875/2 comprising 17.16 acres was one of the plots created out of the further subdivision.
24. The plot was transferred to Mr. H.V. Briscoe on 19th February 1930, who transferred it to Mrs. K. M Forbes on 19th February 1930. Mrs. K. M Forbes also transferred it to Mr. F.K. Kelly on 1st MARCH ,1940, who transferred the plot to E.A. Residential Estate Limited. In 1964 a Mr. Smith was appointed as a liquidator of the company by the Kenya Government, but the company transferred the plot to Mr. Bau Salou Dean, Mr. Bau Saoul Dean also transferred it to Mr. Mayer Jacob Samuels, who died in 1974 but remained the registered owner ofc the land.

25. In 1976 a Mr. Rapahel Jacob Samuel a brother to the deceased owner and Mr. Meshumor Jacob Samuels the deceased's half-brother applied to the High Court in Nairobi for grant of letters of administration under Probate and Administration No. 103 of 1976.

In a letter to the Commissioner of Lands, dated 31st January 1986, Robson, Harris & Company Advocates, claimed that Mr. Meshumor Jacob Samuels obtained an order vesting the land in him as the sole registered owner.

26. **Purported acquisition of LR. 5875/2 by the Kenyan Military in 1985:** The Government through Gazette Notice No. 5151 dated 22nd November 1985 published an intention to compulsorily acquire the land to set up a Kenya Army School. But Mr. Meshumor Jacob Samuel through his advocate protested and an inquiry was held on the 5th and 18th of February 1986. During the inquiry Mr. Meshumor Jacob Samuel made an offer of Ksh. 25 million for the land while the government valued it at Ksh. 3,535,000, which Mr. Meshumor Jacob Samuel rejected and went to court.
27. The court ruled that the government acquires the land at a fee of Ksh. 23 million. The government appealed but in 1997 the court stood over the case generally to allow for both parties to reach an out of court settlement, but no agreement was reached to date.
28. In a letter Ref. DOD/698/2/Wks dated 26th January 1987 the Permanent Secretary, Department of Defence informed the Commissioner of Lands that the military had carried out an inspection of the land and found it unsuitable for the intended purpose unless four additional parcels of land surrounding the plot was acquired to enhance security as the plot was located in a residential area.
29. On 10th April 1987 Major General Munyao wrote to the Commissioner of Lands vide a letter Ref. DOD/CGS/49/LND asking the Commissioner to disregard the content of the letter by the Permanent Secretary until the military made further contact on the issue.
30. However, the military did not make the said contact to date. The Ministry of Defence also indicated it could not pay the Ksh. 3,530,500 as per the government valuation of the land due to financial constraints. Therefore, there is no evidence that the government made any payment towards the compulsory acquisition of the land.
31. **Current status of the land:** The Committee was informed that a current search at the Land Registry indicated that no record on the land were available, However the investigation officers extracted the above-mentioned information from the valuation

file. A search at the County government of NAIROBI indicated that the land was last registered to Mr. M.J. Samuels.

32. On 4th November 1985 Mr. M J. Samuel, through Tysons Habenga Limited, requested for an extension of the lease for the land in question in a letter Ref. BOR/VAL/mm explaining the land had only eighteen years left on the 99 years lease. However, the Commissioner of Lands refused to extend the lease. Technically the land then reverted to the government and by extension to the County Government of Nairobi as provided for the Constitution.
33. **Other Claimants:** The Committee was informed that other parties had made several attempts to acquire the land fraudulently. The said parties include Solio Construction Limited that claimed to have been allocated the land by the government. However, the investigations by the commission revealed that the said grant was fraudulent as the company had two sets of title for the same property. the first was registered on 18th May 1992 with two different IR numbers, raising doubt on the authenticity of the title. The title was also charged to Barclays Bank of Kenya on 26th October 1993 even before the title was registered and stamp duty paid.
34. The second set of title held by Soli Constructions company Limited was registered on 24th January 2001 when the same title was already charged to Barclays Bank of Kenya.
35. There was no surrender of the original certificate of lease and the claim that this was a new grant of 99 years effective 1st July 2019 but this cannot be so because the old lease held Mr. Mayer Jacob Samuels was still valid and was to expire 2003. Further the Solio Construction Limited title was registered on 18th May 1992 before the lease commenced on 1st July 1999.
36. Solio Construction Limited then purported to have sold the land to Kasarani Mall Limited who transferred it to Uchumi Supermarkets. 9998 shares of Kasarani Mall are held by Uchumi Supermarket according to records obtained from the Registrar of Companies.
37. **Conclusion:** In a letter Ref. 21046/II/50 addressed to Robson Harris & Company Advocates dated 13th March 1986 the Commissioner of Lands declined to renew the lease held by Mr. Mayer Jacob Samuels. This meant that the land reverted to the government and by extension of the new Constitution to the County Government of Nairobi. The County Government of Nairobi vide a letter Ref. No. LS/007/001754/sgm/MK dated 9th 2018 requested the Permanent Secretary Ministry of Lands to

include Roysa Community Development Society in the titling of the land LR.5875/2.

3.3 Submissions by the Chief Administrative Secretary, Ministry of Lands and Physical Planning

38. The Committee held a meeting with the Chief Administrative Secretary Ministry of Lands and Physical Planning on 15th October, 2019. The Chief Administrative Secretary informed the Committee that;
39. **Background;** L.R No. 5875/2 measuring 17.16 acres arose from a subdivision of L.R. No. 1012 which measured approximately 4,443 acres. In 1964, it was transferred to Mayer Jacob Samuels from Bau Salau under a 99-year lease with effect from 1st November 1904. The lease expired on 1st November, 2003.
40. **Notice of intention to acquire the land:** The Commissioner of Lands received a request for the reservation and eventual acquisition from the Department of Defence vide a letter dated 8th August 1985. Subsequently the Government published a notice of intention to acquire the land vide Kenya Gazette Notice No. 5151 and 5152 of 22nd November 1985.
41. The notice reflected the size of the land as being 16,16 acres but this was corrected vide a corrigenda in the Kenya Gazette on March 14th, 1986 to read 17,16 acres.
42. A 'Notice of Taking Possession' by the government absolutely was lodged and registered in volume N. 10, Folio 494/30 File 6943 on June 25, 1986.
43. **Request for extension of lease:** The Chief Administrative Secretary submitted a copy of a letter Tysons Habenga Limited on behalf of Mr. M/J. Samuel dated 4th November 1985 seeking an extension of the lease of the land LR. No. 5875/2. The said letter indicated that the term of the lease was 99 year effective from 1st November 1904. The lease expired on 1st November 2003
44. On 1st December 1995 a request for allocation of the same land from Prilscot Company Limited was communicated but was declined as the land had prior commitments and was not available for allocation.
45. The Chief administrative Secretary informed the Committee that the National Land Commission and the County Government of Nairobi made an irregular attempt to

allocate the same land to Roysa Development Society. He stated that LR No. 5875/2 was compulsorily acquired by the Government and reserved for KDF and hence is not within the purview of the County Government or the National Land Commission. Therefore, it was not available for allocation or subdivision.

46. The Committee held a follow up meeting with the Chief Administrative Secretary, Ministry of Lands & Physical Planning, who was accompanied by Mr. Edward Kosgei, Director, Land Administration, on Tuesday, 26th November, 2019.
47. During the meeting the Chief Administrative Secretary retaliated that the land in question initially belonged to one Mr. Mayer Jacob Samuels with 99-years lease that expired in 2003.
48. The Chief Administrative Secretary emphasized that the Government acquired the said parcel of land in 1985 for military use, however the acquisition was not completed as the owner went to court challenging the value of the land.
49. The court enhanced the amount payable to the owner in lieu of the land to 23 million. The government appealed the ruling to allow for an out of court settlement. The Department of Defence took possession of the land on 25th June, 1986 after depositing Ksh 3 million in court.
50. In 2001, officials in the Ministry fraudulently opened a new file for the land in question and allocated the same to Solio Construction Company Limited through an allotment letter as a fresh allocation. The land was transferred to Kasarani Mall, a subsidiary of Uchumi Supermarkets Plc on 20th March, 2001 as LR No. 85371/2.
51. In 2018, the said officials in the Ministry sought to amalgamate the parcel of land LR No. 5875/2 with another parcel LR. No. 23393 registered in the name of Kasarani Mall using the latter file.
52. The amalgamation deed plan and the new lease had been prepared however, the new lease could not be registered as the titles were charged by banks.
53. Mr. Edward Kosgei, Director, Land Administration stated that the Ministry officers implicated in the fraudulent transactions on the second file were;
 - a. Mr. S.K W. Wangilla,(deceased) - who opened the fraudulent file
 - b. Ms. Sarah Mwenda – who signed the transfer between Solio Construction Company and Kasarani Mall in 2001
 - c. Mr. Fedson Orare – who signed the amalgamation registration form regarding parcel of land LR No. 5875/2 with another parcel LR. No. 23393

- d. Mr. Gordon Ochieng - who endorsed the amalgamation registration form regarding parcel of land LR No. 5875/2 with another parcel LR. No. 23393
- e. An unidentified officer from the Survey of Kenya.

54. The Committee held a third meeting with the Chief Administrative Secretary, Ministry of Lands and Physical Planning on 28th November 2019. The Chief Administrative Secretary was accompanied by Ms. Sarah Mwenda, the Chief Land Registrar, and Mr. Fedson Orare, a Senior Land Registrar. They informed the Committee that;

55. The original file regarding the land in question No. 21946/2, LR. No. 5875 with an acreage of 17 acres indicated that the land belonged to Mr. Mayer Jacob Samuels. It contained a legal notice for compulsory acquisition by the Kenya Defence Forces.

56. They stated that the title deed for LR. No. 5875/2 was in a deed file stored in the Land Registry.

57. A second file with file no. 202033 & LR No. 5875/2, with an acreage of 6.864 Ha was fraudulently opened by Mr. S.K W. Wangilla, an officer in the Ministry, who is deceased. It contained an allotment letter that was issued on 26th June, 1999 to Solio Constructions Limited, which was signed by the deceased officer. The said file also contained the following documents:

- a) An acceptance of offer letter dated 22nd January, 2001 and a cheque of 3,306,800 for the allotment letter and a receipt from the Ministry of the same amount dated, 23rd January 2001.
- b) A certificate of incorporation dated 18th August 1999 and letter of allotment was issued on 26th June, 1999.
- c) An indent from the Survey of Kenya dated 19th October, 2000 for the Deed Plan. .
- d) A letter from the then Permanent Secretary for Lands – Eng. E. K Mwongera - dated 22nd July 2004 highlighting the fraudulent transactions on the land.
- e) A letter dated 26th July 2004 by Ms. J.M Okungu, the then Commissioner of Lands confirming to the Permanent Secretary that the land was acquired for Military use and a compensation of 3,530, 500 was to be paid to the owner by the Department of Defence.
- f) A letter dated 28th November 2005 by Uchumi Supermarkets Plc to the Commissioner of Lands making reference to a meeting and indicating that the company was aware that the land had been acquired by the government for military use and making reference of a land tribunal that would be formed determine the matter.

58. Ms. Sarah Mwenda denied signing the transfer form, which transferred the parcel of land LR. 5875/2 from Solio Construction Company Ltd to Kasarani Mall Ltd in 2001, although a stamp bearing her unique number (14) was used in the said form.
59. The officials also stated that a third file No. 215826, LR No. 23393 for land owned by Grace Independent Baptist Mission Trustees, was used by officials in the Ministry to register an amalgamation with land parcel No. 5875/2. Upon perusal of the third file the Committee noted that the lease for LR. No. 23393 had also expired.
60. Mr. Fedson Orare acknowledged that he signed a surrender of titles for LR.NO. 5875/2 and LR No. 23393 together with a new lease which were booked at the Ministry on 7th February 2019 by Kasarani Mall Company Ltd. He informed the Committee that one Mr. Ochieng prepared the documents and that he signed the amalgamation form based on the information provided by the said Mr. Ochieng.
61. Mr. Orare also claimed that the file containing the said amalgamation form did not contain a caveat, when he acted on it.
62. However, he stated that the said amalgamation was not completed, and the surrendered documents were in the custody of the chief Land Registrar. He added that the same were secured at the Land Registry at the Ministry of Lands and Physical Planning.

3.4 Submissions by the Cabinet Secretary Ministry of Defence

63. The Committee held a meeting with the Principal Secretary, Ministry of Defence on Tuesday, 5th November 2019. During the meeting the Principal Secretary informed the Committee that;
64. The Ministry of Defence lawfully owns the parcel of land that is the subject of the petition and the same was lawfully occupied by the Kenya Defence Forces.
65. The land in question LR. No. 5875/2 was compulsorily acquired by the Ministry of Defence through the Commissioner of Lands vide Gazette Notices No. 5151 and 5152 of 1985.
66. The land was valued at Kshs. 3,530,500 by the Commissioner of Lands which sum was duly paid by the Ministry to the Commissioner of Lands.
67. Mr. Samuels had commenced proceedings to challenge the government valuation of the land in the High Court under Land Acquisition Appeal No. 2 of 1986. In

accordance with section 13(2) of the Land Acquisition Act, the compensation money was deposited in the High Court by the Commissioner of Lands and a deposit receipt issued by the High Court Registrar. The money was subsequently deposited to Middle East Bank and released to Mr. Jacobs on 3rd October, 1987. This was confirmed by the Attorney-General in a letter dated 23rd April, 1997 and M/S Robson Harris and Company Advocates confirming that Kshs. 3,530,500 was received by them on behalf of their client. In accordance with section 19(1) of the Land Acquisition Act, the Commissioner of Lands issued a notice of taking possession on 25th June 1986. The notice also required Mr. Jacobs to deliver the title document to the Registrar of Titles for cancellation. The title for the land vests in Government free from encumbrance in accordance with section 19(4) of the Land Acquisition Act.

68. The High Court enhanced the award to Kshs 23,000,000 and the same was subsequently appealed by the Attorney-General vide Civil Appeal No. 109 of 1987. The Appeal was however stood over generally by consent of the Parties to enable them to pursue an out of court settlement. Owing to the fact that the family of Mr. Jacobs relocated from Kenya to Israel, the out of court negotiations were not concluded.
69. The land was used as a temporary camp for military athletes due to its proximity to Kasarani sports complex. In early 2019, the same land was identified as a potential land for construction of Senior Non-Commissioned Officers housing under the affordable housing program.
70. The Ministry was not aware of any other party claiming the land and no persons were evicted or property destroyed when the Ministry improved the security of camp through the deployment of officers who erected tents on the land in question as no persons were residing in the camp as claimed by the petitioners.
71. The Nairobi City Council lacked the capacity to allocate the land as it did not own the same land and the Ministry of Defence did not consent to the purported subdivision and allocation of the Land in question to the petitioners by the County Government and the National Land Commission.

3.5 Submissions by the County Secretary Nairobi City County Government

72. The Committee received written submissions from the Mr. Leboo Ole Moritant, the County Secretary, Nairobi City County dated 7th November 2019. He stated that:

73. According to the County Government records the owner of the land in question LR. No. 5875/2 located in Roysambu is Mr. M. J Samuels.
74. Roysa Community Development Society in a letter dated 6th May 2004, in which the society indicated that its membership comprised former workers of the owner of the parcel of land and that they had lived on the land since the early 1970s, requested the County Government of Nairobi to allocate them the land..
75. The County Government carried out due diligence on the application by the society and established, among other things, that:
- i. The squatters living on the parcel of land in question were about 400 to 500 persons.;
 - ii. There was an informal primary school and nurse school for the squatters' children;
 - iii. The land was occupied by 43 rows each with 10 permanent and semi-permanent houses;
 - iv. There were few commercial buildings, garages and workshops;
 - v. There were two structures used as churches; and
 - vi. There were numerous kiosks and churches.
76. On 17th February 2015 the County Government of Nairobi wrote to the National Land Commission indicating that the County Government had no objection in the allocation of the land in question to Roysa Community Development Society. The Commission in rejoinder dated 10th March 2016 informed the County Government of Nairobi that since the lease to the land had expired in 2003 and was not renewed the land had reverted to the county government and it was for the County Government to allocate it to Roysa Community Development Society.
77. The County Government then proceeded to allocate the parcel of land to the petitioners as per the Nairobi County Regularization Act of 2015, which gave the County Government the authority to settle people who occupied county or government land. There was also no court order preventing the allocation of the said land.
78. The petitioners accepted the offer and paid for the issuance an allotment letter through their trustees and they also paid the required fee to amend the index map and for valuation of the parcel of land to facilitate subdivision and issues of a certificate of subdivision and lease.
79. The County Government also carried out a survey of the land and the Director of Survey approved the said survey on 1st November 2017.and also produced an area list for each sub plot. The same was forwarded to the Land Registrar to facilitate the issuance of titles to the squatters on 19th December 2017.

80. The Ministry of Lands and Physical Planning started the processing of titles by issuing letters to individual members of Roysa Community Development Society. However, the process of titling was not completed for unknown reasons

3.6 Submissions by the Chief Executive Officer, Uchumi Supermarket Ltd

81. The Committee held a meeting with Mr. Mohamed Mohamed the Chief Executive Officer Uchumi Supermarket Ltd on Thursday 21st November, 2019 and a subsequent meeting on Tuesday, 26th November, 2019. During the meetings the Chief Executive Officer informed the Committee that:
82. Uchumi Supermarkets Plc lawfully acquired the land in question land, LR.No.5875/2 through its subsidiary Kasarani Mall Ltd from Solio Construction Company Ltd in 2001 and paid Ksh. 85, 000, 000 to Solio Construction Company.
83. According to the records held by Kasarani Mall Ltd a lease granting the piece of land to Solio Construction Company Limited was issued vide Grant of Lease No. I.R 85371 on 1st July 1999.
84. The transfer of the parcel of land from Solio Construction Company Ltd to Kasarani Mall Ltd was registered at the Lands Titles Registry and was signed by the Commissioner of Lands, Mr. Sammy Silas Komen Mwaita on behalf of the President and witnessed by the Registrar of Titles, Ms. Sarah Mwenda.
85. The Uchumi Supermarkets Plc then used title deed for the land to secure financing from Kenya Commercial Bank (KCB) and Southern African Trade and Development Bank on 7th December 2004. The facilities were paid and discharged on 28th June 2011.
86. The Uchumi Supermarkets Plc had also entered into agreement to sell the land to Jewel Complex Limited through financing by the bank. The buyer sought to buy the said parcel of land as amalgamated with LR. No 23393 also owned by Kasarani Mall.
87. Consequently, the company through its advocates requested KCB to release the two titles to facilitate change of user and amalgamation. The surrender of titles and the new lease were booked at the Ministry of Lands as evidenced by the booking form dated 7th February 2019 issued to the company.

88. The transfer of the land was a subject of investigations by the Directorate of Criminal following allegations of fraud and a caveat by the government that had been placed on the title. The Chief Executive Officer further stated that the DCI had found that the property was procedurally transferred to Uchumi Supermarkets Plc and that there was no evidence of conspiracy between Solio Construction, Uchumi Supermarkets Plc and the Land Registry during the allocation of the property. He also stated that the investigation found the caveat on the title held by Kasarani Mall Ltd had no legal basis.
89. The office of the Attorney General had also investigated the allegations of fraud relating to the land and found that the Solio Construction Company had transferred a valid title to Kasarani Mall.
90. Kasarani Mall had also filed a case in court Civil Case No. 495 of 2011 and obtained a permanent injunction against Roysambu Community Self Help Group who invaded the land and made similar claims to those contained in the petition. Therefore, the question of ownership of the property had been heard and determined in favour of Kasarani Mall by the Environment and Land Court.
91. The County Government of Nairobi demanded and accepted payments of land rates by Kasarani Mall as evidenced by payment receipts issued to the company by the County Government although, the County Government had not updated its records and still indicated the owner of the land as being Mr. M. J. Samuels.
92. Similarly, the Commissioner of Lands and its successor, the National Land Commission had continued to demand payment of annual land rent from Kasarani Mall.
93. The County Government of Nairobi and the National Land Commission have never sought to revoke the grant of title held by Kasarani Mall or claimed a reversion of the title to the Government.
94. The Petitioners have not produced documents to prove that they were indeed employees of the late Mayer Jacob Samuels and their National Identification Numbers reveal that they were minors at the time they claim to have been employees and some could not have been born at the time.
95. The petitioners had also not been in occupation of the land or erected structure on the property as claimed in the petition. Kasarani Mall took possession of the land in

2001. The company hired security guards to secure the land until the said guards were evicted by the Kenya Defence Forces.

96. The Chief Executive officer acknowledged that the company had a dispute regarding the land in question with the Kenya Defence Forces and the same was being address through negotiations led by the Head of Public Service

3.7 Submissions by the Company Secretary Kenya Commercial Bank

97. The Committee held a meeting with the Director Legal Service, Kenya Commercial Bank on 21st November 2019. During the meeting the Director Informed the Committee that:

98. The Bank had entered into a sale agreement with Kasarani Mall Ltd for the sale of the land in question LR.NO. 5975/2 to a client financed by the bank. The said parcel of land was used as a security for the transaction

99. The bank was not in possession of the original title deed for LR. No. 5875/2 as Kasarani Mall Ltd through Hamilton, Harrison & Mathew Advocates had requested the bank to release the documents to facilitate the amalgamation of land parcels No. LR No.5875/2 with LR.NO 23393 both owned by Kasarani Mall.

100. The bank accepted the request and released the two titles to the law firm.

101. The amalgamation of the two parcels has not been completed awaiting the issuance of a certificate of title upon the lifting of a caveat placed by one of the creditors of Uchumi Supermarkets Ltd. However, the two title deeds were surrendered to the Land Registry at the Ministry of Lands and Physical Planning as evidenced by a booking form issued to Kasarani Mall.

3.8 Submissions by Jewel Complex Limited

102. The Committee held a meeting with the Director, Jewel Complex Limited on 21st November 2019. He informed the Committee that:

103. The company was an interested party in the matter as it was in the process of purchasing the land in question LR NO.5875/2 and LR NO 23393 from Kasarani Mall on condition that the two parcels were amalgamated.

104. Jewel Complex Limited established contacts with Uchumi Supermarkets Limited through the Chief Executive officer Mr. Mohamed A. Mohamed and through its lawyers Messrs. Muchoki Kangata Njenga & Company Advocates.
105. He also stated that Jewel Complex Limited had paid a deposit of Ksh 330, 000,00 by way of Real Time Gross Settlement to the vendor's advocate client account held by Harrison Hamilton and Mathew Advocates at KCB to facilitate the purchase of LR. No. 5875/2.
106. The company had also acquired a loan from Equity Bank to facilitate the purchase of part of L.R 23393
107. He stated that the petition was submitted to the National Assembly in bad faith since the petitioners were named as the 4th defendants in Nairobi ELC No. 495 of 2011 in which they lost the case and no appeal was lodged in court against the decision of the court. In the said suit, the petitioners referred themselves as Roysa Community Self Help Group while in the petition they stated that they were Roysa Development Society. Therefore, the petition was an attempt to overturn a decision of the High Court.
108. Jewel Complex ltd had committed a substantial amount of money by way of a deposit and entered into an agreement with the Kenya Commercial Bank that shall substantially affect it in the event of adverse findings by the Committee.

4.0 OBSERVATIONS

The Committee made the following observations:

1. The owner of the land in question LR. No. 5875/2 located in Roysambu, measuring 17.16 acres under a lease of 99-years which commenced from 1st November 1904 and expired on 1st November, 2003 is Mr. M. J Samuels.
2. Whereas there exists evidence that the government intended to acquire LR. No. 5875/2 belonging to Mr. M. J Samuels as evidenced by gazette notices No. 51515 and 51552 of 1985, the acquisition process was not completed as the out of court negotiations between the government and Mr. Meshumor Jacob Samuel on amount of compensation to be made were never concluded. (Annex 1).
3. There was contradictory information in the Ministry of Defence concerning the intended acquisition of L. R No. 5875/2. Indeed, in a letter dated 26th January 1987, the Permanent Secretary, Department of Defence informed the Commissioner of Lands that the military had carried out an inspection of the land and found it unsuitable for the intended purpose unless four additional parcels of land surrounding the plot was acquired to enhance security as the plot was located in a residential area. However, on 10th April 1987 Major General Munyao wrote to the Commissioner of Lands vide a letter Ref. DOD/CGS/49/LND asking the Commissioner to disregard the content of the letter by the Permanent Secretary until the military made further contact on the issue. Based on the submissions of the National Land Commission, the military did not make the said contact to date.
4. Although, the Ministry of Defence submitted that the land was valued at Kshs. 3,530,500 and the sum was duly paid by the Ministry to the Commissioner of Lands, the Committee noted that the High Court under Land Acquisition Appeal No. 2 of 1986 had enhanced the award to Kshs. 23,000,000 and the same has not been paid to date to Mr. Meshumor Jacob Samuel. The Committee noted that the provisions of section 8 of the Land Acquisition Act Cap. 295 (now repealed), required that where land is compulsorily acquired, full compensation was to be paid promptly. This was never done. (Annex 2)
5. Additionally, despite, the fact that the Ministry of Defence submitted a receipt showing that Kshs. 3,530,500 was paid to the Commissioner of Lands, there was no evidence submitted to indicate that the money was deposited to Middle East Bank and released to Mr. Jacobs.
6. Further, while the Ministry of Defence submitted that the land in question was formally

handed over to the Ministry on 25th June, 1986, the Committee noted with concern that the Kenya Defence Forces only occupied the said land thirty-three years later, this being in 2019 and the land remains undeveloped to date. This was further confirmed by a letter dated 14th June, 2004 by the then Permanent Secretary, Ministry of Lands and Settlement to Mr. John Githongo the then Permanent Secretary in the office of the President indicating that the Kenya Defence Forces had already taken possession of the property and moved in but had thought the cost was too much and consequently moved out of the property.

7. Based on the submissions of the Nairobi County Government, the squatters living on the parcel of land in question were about 400 to 500 persons, there was an informal primary school and nurse school for the squatters' children, the land was occupied by 43 rows each with 10 permanent and semi-permanent houses, there were few commercial buildings, garages and workshops, there were two structures used as churches and there were numerous kiosks and churches. This was corroborated by the minutes of 25th June, 1986 submitted by the Ministry of Defence which indicated that there were two hundred and fifteen persons living there, there were forty-three blocks still existing and two jua kali garages.
8. There were three files that had been opened in respect of LR No. 5875/ 2 these being-
 - i. The original file regarding the land in question No. 21946/2, LR. No. 5875 with an acreage of 17 acres indicating that the land belonged to Mr. Mayer Jacob Samuels.
 - ii. A second file with file no. 202033 & LR No. 5875/2 with an acreage of 6.864 Ha. which contained an allotment letter that was issued on 26th June, 1999 to Solio Constructions Limited and contained other documents.
 - iii. A third file no. 215826, LR No. 23393 for land owned by Grace Independent Baptist Mission Trustees, a file which was used by officials in the Ministry to register an amalgamation with land parcel No. 5875/2.
9. The Ministry of Lands and Physical Planning submitted and confirmed that the second file and third file had been opened fraudulently as evidenced by-
 - i. The purported transfer of lease to Solio Construction Limited was done when there was already a subsisting lease of 99 years which was to expire in 2003 and the transfer was effected in 2001, two years before the expiry of the lease.
 - ii. The Chief Land Registrar, Ms. Sarah Mwenda denied signing the transfer form transferring the parcel of land LR. 5875/2 from Solio Construction Company Ltd to Kasarani Mall Ltd in 2001, although a stamp bearing her unique number (14) was used in the said form.
 - iii. The third file no. 215826, LR No. 23393 allegedly seeking to amalgamate land parcel No. 5875/2 with LR. No. 23393 was being done yet the lease for LR. No. 23393 had also expired.

- iv. The certificate of Incorporation of Solio Construction Company was dated 18th August 1999 while the letter of allotment was issued on 26th June, 1999 revealing that the allotment was done two months before the Company was incorporated.
 - v. A letter dated 14th June, 2004 by the then Permanent Secretary, Ministry of Lands and Settlement to Mr. John Githongo the then Permanent Secretary in the office of the President instructing the Anti-Corruption Commission to investigate and take action against the fraudulent allocation of L.R No. 5875/2 to Solio Construction Company; and
 - vi. The subsequent attempt to amalgamate the two pieces of land was being done albeit the existence of a caveat on the land dating back to 2004.
10. However, the parcel of land L.R No. 23393 was not the subject matter of the Petition and was only relevant to the extent that the third file was opened for purposes of fraudulently amalgamating L.R No. 5875/2 with L.R No. 23393.
 11. There was no evidence submitted to the Committee to indicate that the Kenya Defence Forces having allegedly acquired the land in 1986, gazetted L.R No. 5875/2 as a protected area.
 12. Based on the submissions of the National Land Commission, a current search at the Land Registry indicated that no record on the land was available save for that the last registered owner of L. R No. 5875/2 was Mr. M.J. Samuels.
 13. There was no surrender or cancellation of the original certificate of lease held by Mr. Mayer Jacob Samuels on L.R No. 5875/2.
 14. In accordance with the property rates payment request submitted by the Nairobi County Government, the property rates were still due to be paid by Mr. M. J. Samuels signifying that the records of the county still identify Mr. M. J. Samuels as the owner of the land.
 15. The National Land Commission confirmed that the lease for LR. No. 5875/2 expired on 1st November, 2003 and reverted back to the Nairobi County Government by virtue of Article 62 of the Constitution.
 16. The Nairobi County Government in its submissions confirmed that survey of LR. No. 5875/2 had been undertaken and completed and a subdivision scheme approved identifying each sub-plot including plots designated for public utilities.
 17. The Nairobi County Government had already issued allotment letters to the Members of Roysa Community Development Society regularizing individual ownership upon

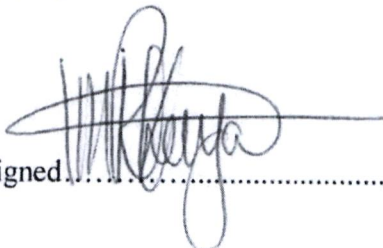
payment of Kshs. 69, 500 of which some of the members had already paid.

18. There was collusion between officials of the Ministry of Lands and Physical Planning as evidenced by the second and third files in order to effect fraudulent transactions on L. R No. 5875/2 leading to loss of public funds.
19. Although, the Ministry of Lands and Physical Planning submitted that it was aware that the titles for L. R No. 5875/2 and L.R 23393 had been presented to it for amalgamation, the Ministry did not submit the two titles to the Committee.
20. The Committee noted with concern that although the Ministry of Lands and Physical Planning submitted that the second and third file were fraudulent, it was still receiving transactions payments from members of Roysa Community Development Society for titling of L.R 5875/2 to individual members.
21. The Ministry of Lands and Physical Planning never informed the Committee that it was aware there was any sub-division scheme that was ongoing, yet the documents submitted to the Committee indicate that the Ministry was involved in the sub-division process.

5.0 COMMITTEE RECOMMENDATIONS

In response to the Petitioners' prayers and based on the observations, the Committee recommends that-

1. The Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County Government does complete the titling process for L. R No. 5875/2 within 180 days of tabling of this Report.
2. The Director for Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to L. R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling of this Report.
3. The Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R 5875/2.

Signed  Date 5/12/2019 2019

Hon. Dr. Rachael Kaki Nyamai, MP
Chairperson, Departmental Committee on Lands



NATIONAL ASSEMBLY

CLERK'S CHAMBERS

DEPARTMENTAL COMMITTEE ON LANDS

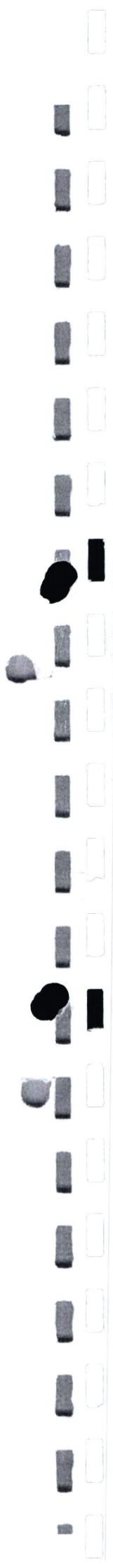
MEMBERS ADOPTION LIST

Consideration of the Report on the Petition by former workers of the Late Major Jacob Samuels regarding invasion and eviction of the workers from their land in Poyson by K.D.F.

NO	NAME	SIGNATURE
1.	Hon. Dr. Rachael Nyamai, MP - Chairperson	
2.	Hon. Khatib Mwashetani, MP - Vice Chairperson	
3.	Hon. Jayne Wanjiru Kihara, MP	
4.	Hon. Joshua Kutuny Serem, MP	
5.	Hon. Kimani Ngunjiri, MP	
6.	Hon. Mishi Mboko, MP	
7.	Hon. Omar Mwinyi Shimbwa, MP	
8.	Hon. Ali Mbogo, MP	
9.	Hon. Babu Owino, MP	
10.	Hon. Caleb Kipkemei Kositany, MP	
11.	Hon. Catherine Waruguru, MP	
12.	Hon. George Aladwa, MP	
13.	Hon. George Risa Sunkuyia, MP	
14.	Hon. Jane Wanjuki Njiru, MP	
15.	Hon. Josphat Gichunge Kabeabea, MP	
16.	Hon. Owen Yaa Baya, MP	
17.	Hon. Samuel Kinuthia Gachobe, MP	
18.	Hon. Simon Nganga Kingara, MP	
19.	Hon. Teddy Mwambire, MP	

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Appendix VIII

Submission by the Ministry of Lands and Physical Planning regarding the implementation status of the report of the Departmental Committee on Lands on its consideration of the Petition by Former Workers of the Late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their Land in Roysambu Constituency by the Kenya Defence Forces



MINISTRY OF LANDS AND PHYSICAL PLANNING

SUBMISSIONS TO THE NATIONAL ASSEMBLY SELECT COMMITTEE ON IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

Honourable Chair,

Pursuant to a letter Ref. NA/DAASC/COI/2021/ (084) dated June 10, 2021, the Committee requested the Cabinet Secretary, Ministry of Lands and Physical Planning to report on the implementation status of the following reports:

1. Report of the Departmental Committee on its consideration of the petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura- Butere Road D260
2. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces
3. Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vuta, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of Konza-Katumani Road
4. Report of the Departmental Committee on Lands on its consideration of the petition on irregular renewal of leases of land by Del Monte Kenya Limited
5. Report on the Petition regarding land issues in Taita Taveta County

Honourable Chair, I wish to respond as follows:

1. **Report of the Departmental Committee on its consideration of the petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura- Butere Road D260**

Honourable Chair,

The Departmental Committee on Lands considered a petition regarding delayed compensation for private land compulsorily acquired by Kenya Rural Road Authority (KeRRA) in 2011 for construction of the Sigalagala-Musoli-Bukura Butere Road. The Committee in its report dated November 19, 2019 recommended as follows:

- i) Pursuant to the provisions of Article 40 of the Constitution and the Land Act, 2012, the Chairperson, National Land Commission does gazette the inquiry dates for the compulsory acquisition of land for the Sigalagala – Musoli – Bukura Butere Road project within ninety days of the tabling of this report
- ii) The National Land Commission does conduct the valuation of parcels of land, crops and trees affected by the project within ninety days upon the gazette of the inquiry dates for the Sigalagala – Musoli – Bukura Butere Road
- iii) Upon the conclusion of the inquiries and remittance of compensation funds from Kenya Rural Road Authority (KeRRA), the Chairperson, National Land Commission does disburse the compensation funds to the respective project affected persons within ninety days.

Implementation Status

Honourable Chair,

Recommendations (i) (ii) and (iii) are to be actioned by the National Land Commission and Kenya Rural Road Authority KeRRA.

2. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces

Honourable Chair,

The petition concerned land L.R No. 5875/2 claimed by the petitioners (Roysa Community Development Society, the Kenya Defence Forces (KDF) and Kasarani Mall Limited (a subsidiary of Uchumi Supermarket PLC).

The land was registered in the name of Mayer Jacob Samuels (who died in 1974). The Government published a notice of intention to acquire the parcel for the Kenya Defence Forces vide Kenya Gazette Notice No. 5151 and 5152 of November 22, 1985. On August 8, 1995 an award for Kshs. 4,140,000/- was issued by the Commissioner of Lands. A 'Notice of Taking Possession' by the Government was lodged and registered in volume N. 10, Folio 494/30 File 6943 on June 25, 1986. The notice required the owner to deliver the title document to the Registrar of Titles for cancellation

The award was however challenged in the High Court under Land Acquisition Appeal No. 2 of 1986. In accordance with Section 13(2) of the Land Acquisition Act, the compensation money was deposited in the High Court and a deposit receipt issued by the Registrar. The money was subsequently deposited to Middle East Bank and released to the owner of the land on October 3, 1987. The High Court enhanced the award to Kshs. 23,000,000 and the same was subsequently appealed by the Hon. Attorney General vide Civil Appeal No. 109 of 1987.

The appeal was stood over generally to pave way for an out of court settlement. The out of court settlement was not finalized owing to the fact that the family of the late Mayer Jacob Samuels relocated from Kenya to Israel.

Despite the compulsory acquisition, the land was allocated to Solio Construction Company Limited as a fresh allocation in 2001 and was later transferred to Kasarani Mall Limited on March 20, 2001. In 2019, the County Government of Nairobi and the National Land Commission also allocated the land to the petitioners who claimed to be occupying the same. Subsequently, the Ministry of Lands and Physical Planning issued the subdivision scheme approval letters.

In considering the petition, the Committee noted in its report dated December 2019 that:

- i) Whereas there exists evidence that the government intended to acquire the subject parcel of land, the acquisition process was not completed as the out of court settlement on amount of compensation to be made were never concluded
- ii) That although the Ministry of Defence submitted that the land was valued at Kshs. 3,530,500 and the sum was duly paid by the Ministry to the Commissioner of Lands, the Committee noted that the High Court under the Land Acquisition Appeal No. 2 of 1986 had enhanced the award to Kshs. 23,000,000 and the same has not been paid to date. It had not also been demonstrated that the Kshs. 3,530, 500 allegedly paid to the Commissioner of Lands was released to Mr. Jacobs
- iii) The Committee noted with concern that the KDF only occupied the land thirty-three years later and the land remains undeveloped to date.

It thus recommended that:

- i) The Ministry of Lands and Physical planning in consultation with the National Land Commission and the Nairobi County government does complete the titling process for L.R No. 5875/2 within 180 days of tabling this report
- ii) The Director for Criminal Investigation does investigate the officers in the Ministry of Lands and Physical planning who may have caused loss of public funds by effecting fraudulent transactions relating to L.R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling this report
- iii) The Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R No. 5875/2.

Implementation status

Honourable Chair, in response to recommendation (i), I wish to state as follows:

The Honourable Attorney General as the Principal Legal Advisor to the Government gave an advisory to the National Assembly vide a letter Ref. AG/CIV/47/20 dated August 11, 2020 regarding implementation of the report of the Departmental Committee on Lands in this matter (**Annexure 1a**). In view of this advisory, the Ministry has not been able to implement the recommendation. We have written to the Hon. Attorney General to seek guidance on the way forward and shall report to the Committee as soon as we are guided.

Further, the Environment and Land Court in Nairobi issued a judgement in ELC Case No. 153 of 2017 (formerly 495/2011) concerning the subject parcel of land L.R 5875/2. The said judgment upheld the title held by Kasarani Mall Limited and issued a permanent injunction restraining the petitioners from trespassing on the land. A copy of the judgment is marked (**Annexure 1b**).

The Petitioners also have a subsisting court case over the subject land at the Environment and Land Court in Nairobi, Judicial Review Application No. E008 OF 2020 (Republic-versus-Director Land Administration, Ministry of Lands & Physical Planning, Chief Land Registrar and the Attorney General)

Honourable Chair, in response to recommendation (ii), I wish to state as follows:

The recommendation of the Committee is to be actioned by the Director of Criminal Investigations.

Honourable Chair, in response to recommendation (iii), I wish to state as follows:

L. R No. 23393 is registered in favour of Kasarani Mall Limited. The parcel is adjacent to L. R 5875/2 and is not in contention given that the application by Kasarani Mall Limited for amalgamation of the two properties was never finalised.

3. Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vuta, Mua Ward in Machakos Town Constituency regarding the obstruction of public road (Konza-Katuani Road)

Honourable Chair,

The National Assembly Departmental Committee on Lands considered a petition by residents of Vota, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of the Konza-Katumani road over a contested 400 Meters portion of the road traversing on private land L.R No. 355/2.

In its report dated October, 2020 the Committee noted that although the 400 meters road passing through L.R No. 7374 is not a public road, the petitioners have been in

continuous use for over 50 years. Further, the road is the shortest and most convenient route joining the Mombasa Road for use by the residents of Vota and other members of the public. It thus recommended:

- i) That the National Land Commission does consider facilitating the creation of a public right of way pursuant to Section 143 of the Land Act, 2012 to ensure the convenient passage of the residents of Vota through the 400 meters road which they have been using for over fifty years within six months of the tabling of this report
- ii) The Cabinet Secretary Ministry of Lands and Physical Planning does fast track the development of the land value index as contained in the Land Value (Amendment) Act 2019 to address the challenge of over-valuation of land identified for the development of public projects within three months of the tabling of this report.

Implementation Status

Honourable Chair, in response to recommendation (i), I wish to state as follows:

The process for the creation of a public right of way is prescribed under Sections 143-148 of the Land Act, 2012 read together with Part VII of the Land Regulations, 2017.

The National Land Commission is empowered under Sections 143 to 148 of the Land Act, 2012 to create a public right of way. A public right of way created for the benefit of the National Government or County Government, a Local Authority or any corporate body to facilitate the functions of such bodies is referred to as a wayleave. Where a public right of way is created for the benefit of the public as is the case herein it is referred to as a communal right of way.

Under Section 145 of the Act and Regulation 51 (2) of the Land Regulations, 2017, a county government, an association or any group of persons may make the application to the Commission for creation of a communal right of way. The Commission may also make the application on its own motion pursuant to Section 146 of the Act. The applicant is required to obtain a survey map from the authority responsible for survey and mark the proposed position of the public (communal) right of way.

Regulation 52 (1) requires the Commission to serve a notice of the application to all persons occupying the land over which the communal right of way is sought and make an announcement of the notice in a radio station with nationwide coverage. The Commission is also supposed to publish the notice along the route of the proposed right of way.

Upon receipt of all information and where there are no objections after expiry of the period specified in the notice (90 days) the Commission shall recommend to the Cabinet Secretary to create the communal right of way (Regulation 53).

Where there are objections/representations to the application, Section 146 of the Land Act requires the Commission to consider representations and objections received pursuant to the said notices and recommend to the Cabinet Secretary whether to carry out a public inquiry into the representations/objections or refer the application for creation of a communal right of way to the county government for its opinion or to initiate and facilitate negotiations with persons who have made representations/objections on the application with a view of reaching a consensus on that application.

Honourable Chair,

Where the recommendation is for a public inquiry, the Cabinet Secretary will constitute a public inquiry panel constituting a representative of the Institution of Surveyors of Kenya, Ministry of Lands and Physical Planning, Law Society of Kenya, National Land Commission, the respective county government and Kenya Institute of Planners. The inquiry panel will then place a two weeks' notice specifying the date, time and place of inquiry to all parties to make submissions on the application for the communal right of way. At the expiry of two weeks from the date of hearing, a report of the inquiry shall be submitted to the Cabinet Secretary (Regulations 55 & 56 of the Land Regulations, 2017).

Where the Commission recommends that the matter be referred to the respective county government, the Cabinet Secretary shall within two weeks refer the matter to the county government to give their opinion. The county government shall within two weeks forward its opinion to the Cabinet Secretary in writing (Regulation 57 of the Land Regulations, 2017).

Where the Commission recommends negotiations, the Cabinet Secretary shall within two weeks initiate negotiations between the persons who made objections/ representations and the applicant.

The Cabinet Secretary will determine whether or not to create the communal right of way after considering as the case be the recommendation of the Commission, or the advice of the county government or the outcome of any negotiations that may have been reached between the applicant for the right of way and those who made representations or objections.

If the Cabinet Secretary decides to create a right of way, an Order to that effect which shall be published in the Kenya Gazette. Once the order is made, any person who had made representation or objection to the application to the creation of the right of way may appeal against the decision of the Cabinet Secretary to the Court only on a point of law.

Honourable Chair,

Section 148 (1) of the Act provides that compensation shall be payable to any person for the use of land which the person is in lawful or actual occupation with respect to the communal right of way which compensation shall be based on the value of the land as determined by a qualified valuer. Section 148 (4) of the Act places the duty to pay compensation upon the state department, public authority or corporate authority that has applied for the communal right of way.

Under Regulation 60 (1) of the Land Regulations, 2017 the Cabinet Secretary may create the public right of way upon completion of the processes outlined above.

Honourable Chair,

The Land Act, 2012 and the Land Regulations, 2017 have an elaborate procedure to be followed when one wants to create a communal right of way over private land. The Commission through a letter Ref. NLC/1/26/1 dated April 13, 2021 recommended the creation of the communal right of way on land L. R 7374/3 on the basis of the recommendation of the Departmental Committee on Lands (**Annexure 2**). However, the recommendations of the Committee are subject to the process prescribed in law. We have engaged the Commission to take the necessary steps provided in law vide our letter Ref. MOLPP/ADM/CSO/1/760 dated April 29, 2021 (**Annexure 3**). Once this is done, we shall action accordingly.

Honourable Chair, in response to recommendation (ii), I wish to state as follows:

Further to our report dated March 3, 2021 contained in **Annexure 4** (Pgs. 11-14), I wish to report that we have since prepared and undertaken stakeholder validation of Land Value Index Maps for Kakamega, Busia, Bungoma, Vihiga and Siaya counties. The main challenge remains shortage of funds to fast track the process.

The Land Value Index Maps shall be submitted by end of August, 2021 for approval by the National Assembly and the Senate in accordance with Section 107A of the Land Act, 2012.

4. Report of the Departmental Committee on Lands on its consideration of the petition on irregular renewal of leases of land by Del Monte Kenya Limited.

Honourable Chair,

The Committee considered a petition presented by Mr. Philip Njuguna on behalf of Kandara Residents Association regarding irregular renewal of leases held by Del Monte Kenya Limited. The petitioners claimed that the County Government of Muranga renewed the leases to Del Monte contrary to Section 13 of the Land Act requiring public participation to determine whether the public had an interest in the land.

The Committee in considering the petition noted that the National Land Commission dealt with the matter as a historical land injustice claim and recommended, among other things, that the land held by Del Monte Kenya Limited be resurveyed to establish if the company was in possession of land that it is not registered to hold. The Committee also observed that despite there being several court cases regarding renewal of leases and implementation of the recommendations of the Commission, Del Monte Kenya Limited was not opposed the resurvey of the land in question.

It therefore made the following recommendations in its report dated November 2019:

- i) The Director of Surveys, Ministry of Lands and Physical Planning does resurvey the land held by Del Monte Kenya Limited in Murang'a and Kiambu Counties within ninety days of tabling of this report.
- ii) The National Land Commission does investigate the circumstances under which L.R. Nos. 10862, 10741, 11312, 2953, 4873 and 11146 that were said to have been surrendered to the Government by two companies namely Sassa Coffee and Rappit B. Limited were later irregularly acquired by Del Monte Kenya Limited within ninety days of tabling this report.

Implementation status

Honourable Chair, in response to recommendation (i), I wish to state as follows:

In our report dated October 27, 2020 (**Annexure 5**) (Pgs. 9-11), the Ministry reported that the resurvey of the land held by Del Monte Kenya Limited in Muranga and Kiambu counties was undertaken as directed.

The County Governments of Muranga and Kiambu have not yet given their approvals to the subdivisions and the extension/renewal of the leases (Form PPA 2) to facilitate registration.

Honourable Chair, in response to recommendation (ii), I wish to state as follows:

The recommendation is directed at the National Land Commission.

5. Report on the Petition regarding land issues in Taita Taveta County

Honourable Chair,

The petition emanated from allegations that Teita Sisal Estate had encroached into a contiguous community land. The National Assembly Departmental Committee on Lands recommended that the Ministry ascertain the boundaries. A boundary confirmation survey was carried out on the land and it was discovered that the community had encroached into the Sisal Estate. Consequently, the proprietor of the Estate offered to surrender the portion of land occupied by the community.

The Committee on its consideration of the matter therefore recommended in its report dated June, 2015 the excision of 250 acres of land from Teita Sisal Estate for formalization of settlement of residents of Singila Majengo village in addition to the public utilities within the estate as agreed by the management of Teita Sisal Estate.

Implementation status

Honourable Chair,

In our report dated March 3, 2021 (**Annexure 4**) (Pgs. 16-17), the Ministry reported that the excision of Singila Majengo Village, Mwandisha Primary School and the public utilities including the roads and the railway reserves was undertaken vide Survey Plan No. F/R 467/87. The County Government of Taita Taveta approved the application for subdivision and change of user vide a PPA 2 form dated November 14, 2019.

This resulted in creation of Mwatate/Mwatate Block 1/ (11-13). Parcels 11 and 12 are to be surrendered to the National Government while parcel 13 is to be registered in the original owner's name. The owner proposed to further subdivide parcel 13.

The Director Land Administration issued subdivision scheme approval letters on January 4, 2021 as follows;

Parcel No.	Size (Ha.)	Beneficiary
Mwatate/Mwatate Block 1/11(Shingila Majengo)	85.81	Land Settlement Fund Board of Trustees

Mwatate/Mwatate Block 1/12 (Mwandishi Primary School)	6.34	Cabinet Secretary to the National Treasury
Mwatate/Mwatate Block 1/14	1191.19	Teita Estates Limited
Mwatate/Mwatate Block 1/15	4936.57	Teita Estates Limited
Mwatate/Mwatate Block 1/16	406.26	Teita Estates Limited
Mwatate/Mwatate Block 1/17 (Langatani)	132.54	Land Settlement Fund Board of Trustees

In our last report dated March 3, 2021, we reported that we were waiting for surrender of the mother title to facilitate registration of the scheme and issuance of titles.

Honourable Chair, I wish to report that the title has since been surrendered. There were Charges registered against the title in favour of Standard Chartered Bank Limited which were discharged on May 5, 2021 to facilitate registration of the subdivisions. **Annexure 6** is a copy of the title.

The Ministry shall process the titles in two weeks time.

Honourable Chair, I submit.



Farida Karoney, EGH
CABINET SECRETARY

July 29, 2021



MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT
Internal Memo

To: The Deputy Chief State Counsel

From: Chief Land Registrar

Ref. LR NO. 5875/2

12th February, 2020.

**SUBJECT: BRIEF ON LR NO. 5875/2
GLA NO. 6943 ON Vol. N10 FOLIO 291 AND GRANT IR. NO. 85371)**

Reference is made to the above matter and to your letter dated 22nd January, 2020 referenced AG/CIV/MLS/413/19.

Land Reference No. 5875/2 measuring 17.16 Acres was a resultant subdivision of LR NO. 1012 and was registered under Government Lands Act Cap 280(repealed) in Vol N. 10 Folio 291 GLA file NO. 6943 vide correspondence file number 21946 in the names of BAU SALAU BEAN for a term of 99 years from 1st of November, 1906.

On the 15th of August, 1964 BAU SALAU BEAN transferred to MAYOR JACOB SAMWELS.

On the 26th June, 1999 LR NO. 5875/2 was allocated to SOLIO CONSTRUCTION COMPANY LIMITED and the grant registered on the 24th of January, 2001 for a term of 99 years from 1st July, 1999. According to our record this allocation was done through correspondence file number CF 202033. Subsequently, on the 20th of March, 2001 the SOLIO CONSTRUCTION COMPANY LIMITED transferred the said parcel to KASARANI MALL LIMITED, which transfer was registered as IR. 85371/2.

21st March, 1986

V.L. 450/66
and date

(Attachment No 4)

Department of Defence
27 MAR 1986
Central Registry
25

The Permanent Secretary,
Department Of Defence,
P.O. Box 40668,
NAIROBI.

LAND ACQUISITION

1. L.R. NO.: 5875/2 - ROYSAMBU - NAIROBI
2. TRUST LAND - MARIKANI

Though you had given me an A.I.E. , I am unable to effect payment due to cash flow problems. I shall be grateful if you would in the meantime let me have the following cheques:-

L.R. NO.: 5875/2 - ROYSAMBU - NAIROBI. ✓

Kshs. 3,530,500/- in the name of High Court of Kenya. The owner has rejected the Award of this amount and he intends to appeal to the High Court. However as soon as payment is made to Court, I shall issue the Notice of Taking Possession to enable you enter the land.

2. TRUST LAND - MARIKANI

The assessment of compensation has been completed and a cheque for Shs. 6,014,804/- should be made out to the District Commissioner, Kilifi. This amount covers land, the cultivations and all the improvements as follows:-

Land	Shs. 2,418,120/-
Cultivations	" 582,000/-
Improvements	" 3,014,684/-
	<u>SHS. 6,014,804/-</u>

This leaves Shs. 1,454,696/- which will be utilised to pay for the Kahawa Sewage, Isiolo and Kajiado. Please let me have plans indicating the areas to be paid for in Kajiado and Isiolo.

(R.J. KIGUNDA)
CHIEF VALUER
FOR: COMMISSIONER OF LANDS.

C.C.
VAL. 777
val. 847.

RJK/gwk.

58/2/Wks

5603

5 May 86

The Commissioner of Lands
Ministry of Lands & Settlement
P.O. Box 30089
NAIROBI
(Attn: Mr Kigunda)

PAYMENT FOR LAND

CHEQUE NO Z/A 291615 - AMOUNT KSHS. 11,000,000/-

Reference:

Your letter dated 13 March 1986

B: Our letter DOD/BIN/2(156) dated 2/10/85 forwarding
AIE No DOD/19/85-86.

1. Enclosed please find a cheque No Z/A 291615 amounting
to Kshs. 11,000,000/- payable by the Central Bank of Kenya
as requested by you vide reference A above.

2. Please note that the payments for land should be paid
out as under:

a. LR NO 5875/2 Roysambu - Kshs. 3,530,500/-

b. Trust Land Mariakani - " 6,014,804/-

c. The remaining Kshs. 1,454,696/- to be
distributed for paying the following.

(1) Kahawa Sewerage

(2) Isiolo ←

(3) Kajjado ←

3. Please acknowledge receipt.


J D KARURU
Major
for Permanent Secretary

.c.
Chief Accountant -DOD

6

In the instant suit, the **Summons to Enter Appearance** are **not dated signed or extracted**. It is therefore not clear whether the Plaint served upon the Defendants was accompanied by Summons.

However, the Court has noted that on **3rd November 2011**, the **Law Firm of Odour Henry John Advocates** filed a **Memorandum of Appearance** for all the Defendants. The Defendants further filed their **Defence** on **3rd November 2011**, and denied the allegations made in the Plaint. The issue of failure to serve Summons was never raised by the Defendants all along. The suit went through Pre-trial Conference and none of the parties pointed out the failure to extract the Summons. The suit was therefore certified ready for hearing and was given a hearing date. **Order 5 Rule 1(6)** provides that:-

"Every Summons except where the Court is to effect service shall be collected for service within thirty days of issue or notification whichever is late failing which the suit shall abate".

Going by the above provision, the **Plaintiff ought to have extracted and collected** the **Summons** within a period of **30 days** of the issue of the same. The Plaintiff **did not do so**. Therefore the **suit ought to have abated**.

However, the Court have noted that the Defendants never raised any objection to the suit and they entered appearance and filed their Defence. The suit herein was filed in the **year 2011** after the promulgation of the new Constitution 2010, which brought in **Article 159(2)(d)** which binds the Court to administer justice without undue regard to procedural technicalities. The said Article provides as follows:-

"in exercising judicial authority, the Courts and tribunals shall be guided by the following principles:-

a) Justice shall be administered without due regard to procedural technicalities."

Therefore bearing in mind the above provisions, this Court will exercise its discretion in this matter to ensure that substantive justice is done and will therefore overlook the procedural technicalities. The Defendant never raised that issue of failure to extract and serve them with Summons. They have entered appearance and filed their Defence. The Defendants will therefore not suffer any prejudice or injustice and the Court leaves it at that.

On the substantive issues, the Court will first point out the undisputed facts before picking out the issues for determination. There is no doubt that **LR.No.5875/2**, is registered in the name of **Kasarani Mall Limited** as from **20th March 2001**, which is evident from the Certificate of Title attached to the Plaintiff's bundle of documents. There is also no doubt that the said suit property was initially granted to **Solio Construction Company Limited** as from **1st July 1999**. There is also no doubt that the Defendants are also claiming ownership of this parcel of land **LR.No.5875/2**, having been conveyed the same by **Meshumor Jacob Samúel**, vide a conveyance dated **5th March 1990**.

There is also no doubt that **Kasarani Mall Limited** is a **subsidiary of Uchumi Supermarket Limited**, as confirmed by the Registrar of Companies vide a letter dated **21st April 2015**. There is also no doubt that this suit property was a subject of various correspondences among different Government offices. In particular is the letter dated **30th April 2008**, from **Director of Public Prosecutions (DPP)**, which made various conclusions. Among the conclusions made are that the land in question **LR.No.5875/2**, was procedurally applied for and allocated to **M/S Solio Construction Company Limited**. Further that **Solio Construction Company Limited** acquired a valid title to the said land which it later sold to **Kasarani Mall Limited (A subsidiary of Uchumi Supermarket Ltd)** in **2001**, on a willing buyer willing

7

seller basis.

There is also no doubt that the Defendants have threatened to take possession of the suit land and thus the filing of this suit.

Having now pointed out the undisputed facts, the Court finds that the issues for determination are:

- (i) Who is the legal owner of the suit property"***
- (ii) Is the Plaintiff's title to the suit property valid"***
- (iii) Is the Plaintiff entitled to the prayers sought in the Plaintiff"***
- (iv) Who is to bear the costs of this suit"***

i) Who is the legal owner of the suit property"

It is evident that legality of ownership of any property can be deduced from the registered documents. In our case herein the registration document herein is the Certificate of title. The Plaintiff herein has attached a Certificate of Title which shows that the *suit* land was ***transferred to Kasarani Mall Limited*** on ***20th March 2001***. ***Initially*** the suit land was ***owned by Solio Construction Limited***. Section 26(1) of the Land Registration Act provides that such Certificate of title is conclusive evidence of proprietorship except where the said title is acquired through fraud or misrepresentation. Though the Defendants alleged that the suit land belongs to them and that the Plaintiff acquired the same illegally, it is evident from the letter written by the Director of Public Prosecution on ***30th April 2008***, that he exonerated the Plaintiff from any wrong doing. Particularly, the Director of Public Prosecution stated that:-

"There is no evidence suggesting any collusion or conspiracy between the Company and the land officials during the allocation of the land to M/S Solio Construction Company Limited".

Further after investigations, the Director of Public Prosecution also came to the conclusion that ***M/S Solio Construction*** acquired a valid title to the said land which it ***later sold*** to ***Kasarani Mall Limited*** on a willing buyer willing seller basis.

The above investigations were done in the ***year 2008***. DW3 who prepared a Report in the ***year 2015*** did not tell this Court why he decided to fault the finding of the Director of Public Prosecution. Since the suit land was registered in the name of the Plaintiff in the ***year 2001***, under the Registration of Titles Act, (now repealed), Section 23(1) of the said Act provided that the said registration was conclusive evidence of ownership. The said Section states as follows:-

"The Certificate of title issued by the Registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all the Courts as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof, subject to the encumbrances, easements, restrictions and conditions contained therein or endorsed thereon and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party."

The Court will rely on the authority quoted by the Plaintiff; ***Nairobi Permanent Market Society & Others..Vs...Salima Enterprises (1995-1998) 1 EA 232***, where the Court held that:-

8

"The state shall not deprive a person of property of any description, or in any interest in, or right over property of any description, unless the deprivation:-

a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or

b) is for public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that:-

(i) requires prompt payment in full, of just compensation to the person; and

(ii) allows any person who has an interest in, or right over, that property a right of access to a court of law.

The Defendants have not denied that they have trespassed and/or threatened to trespass on the Plaintiff's parcel of land. The Plaintiff is entitled to protection of its property as provided by the Constitution and other provisions of law. The Court has found and held that the Plaintiff is the absolute and indefeasible owner of the suit property. The Plaintiff is entitled to enjoy the right of ownership of the suit land without interference from the Defendants.

The Plaintiff has sought for damages for trespass. However, the Plaintiff has alleged that it fenced off the suit land by constructing a wall around the property. Further, the Court issued a temporary injunction against the Defendants on **18th June 2012**. There is no evidence that the Defendants have defied the said Court Order. The Court comes to a conclusion therefore that there is no sufficient evidence provided by the Plaintiff to prove that the Defendants have barred them from the use of the suit land and thus entitled to damages.

In conclusion, the Court finds that the Plaintiff **are entitled** to the **orders sought** in the Plaintiff only to the extent of permanent injunction against the Defendants **but not damages** from trespass.

iv) Who is to bear costs of the suit"

The Plaintiff herein is the successful litigants. The Defendants' actions prompted the filing of this suit by the Plaintiff. The Court therefore finds that costs normally follow the event and since the Plaintiff is successful in its claim, then the **costs** of the suit **to be borne** by the **Defendants** herein, **jointly and severally**.

Having now carefully considered the available evidence, and the submissions therein, the Court finds that the Plaintiff herein **Kasarani Mall Limited** has proved its case on a balance of probabilities and consequently, the Court **enters judgement for the Plaintiff** against the Defendants as prayed in the Plaintiff in terms of **prayers no.(a) and (c)**.

It is so ordered.

Dated, Signed and Delivered at NAIROBI this 18th day of August 2017.

L. GACHERU

JUDGE

grams. "LANDS", Nairobi
phone: Nairobi 721760
or 723243
on replying please quote

No. LA/L/2477
and date

Attachment 5.

DEPARTMENT OF LANDS
P.O. Box 30089, NAIROBI

..... 25th July, 1975

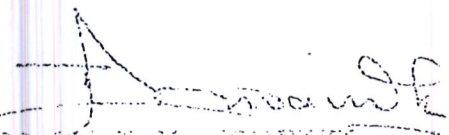
Mr. Robinson Jacob Samuel,
c/o Robson Harris & Co.,
Advocates,
P.O. Box 30423,
NAIROBI.

THE LAND ACQUISITION ACT CAP 295
KENYA COMPENSATION NOTICE NOS. 5151 AND 5152
DATED NOVEMBER 22, 1975
L.P. NO. 5975/2 ROBINSON ESTATE, NAIROBI

NOTICE OF TAKING POSSESSION

TAKE NOTICE that I have taken possession of the above mentioned land in pursuance of Section 19(1) of the Land Acquisition Act 1963 and the land is accordingly vested in the Government.

The documents of titles should be surrendered to the Principal Registrar of Titles/Chief Land Registrar, Nairobi under Section 23(1) for cancellation.


JOSEPH B.K. MWANIKI
DEPUTY CHIEF VALUER (URBAN)
for: COMMISSIONER OF LANDS

c.c.
The Principal Registrar of Titles,
Archd. House,
NAIROBI.

The Assistant Commissioner of Lands,
NAIROBI.

The Director of Surveys,
NAIROBI.

The Town Clerk,
Nairobi City Commission,
P.O. Box 30075,
NAIROBI.

BTM/ea

Attachments 6

35

Serial No. 2222/86

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.
- THE MANAGING DIRECTOR, KENYA RAILWAYS.

(Handwritten initials)

(Handwritten initials)

- THE TOWN CLERK,
- THE CLERK, COUNTY COUNCIL OF
- 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

NOTICE OF TAKING POSSESSION:- Vol N 10 Folio 494/30 File 6943

Date of Document 25-6-1986

Transferor Notice of taking Possession by the Government of the Republic of Kenya absolutely

Transferee

Address of Transferee, P.O. Box

L.R. No. 5875/2 (Orig. No. 1012/1/1/1)

Area 17.16 acres

Locality City of Nairobi

Consideration Sh.

Term 99 years from 3-11-1906

Annual Rent Sh. 600/-

Due From 3-11-1906

Presented by The Registrar of Titles Box 30089, Nairobi

Date of Presentation 29-8-1986

CALEB C. MURRAY

for Registrar of Titles

	Noted by	Checked by	Remarks
OFFICER I/C RECORDS:			
Land Register	<i>AK</i>		
Return of Grants			
Files			<i>AK</i>
Cards			<i>25/9/86</i>
RECORD DRAUGHTSMAN	<i>OPD</i>	<i>3/10</i>	
VALUATION OFFICE			

PK (L) Plot surrendered to Nairobi City Council
And reallocation.

41

25

FILE NO. VAL.21946/II

P.R.T.

THE LAND ACQUISITION ACT CAP.295
KENYA GAZETTE NOTICE NOS.5151 AND 5152
DATED NOVEMBER 22, 1985
L.R. NO. 5875/2 ROYSAMBU ESTATE, NAIROBI

I attach herewith a copy of Notice of Taking Possession of the above mentioned land and a plan showing the area acquire edged red.

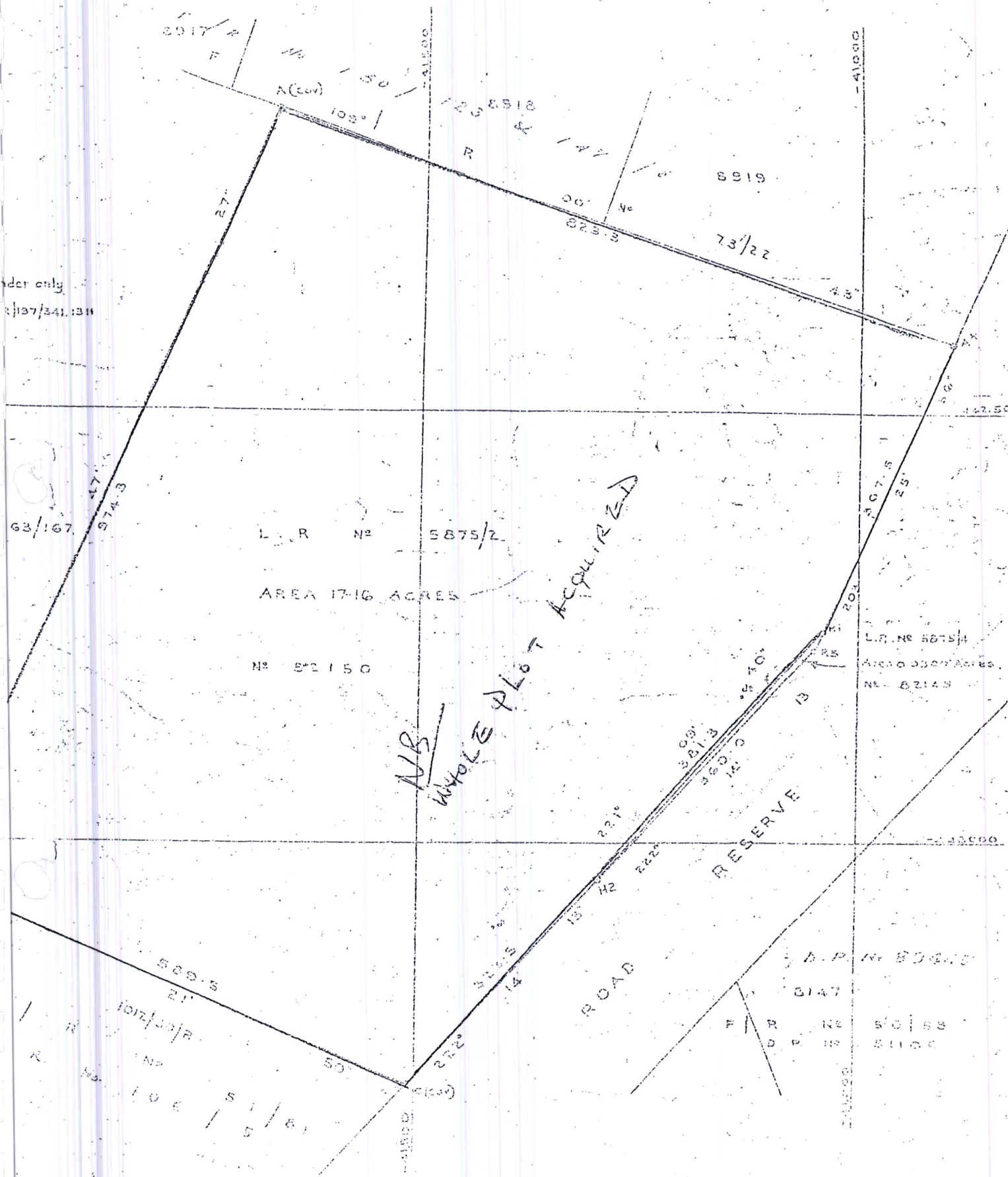
I should be very grateful if a caveat is urgently lodged against the title to protect Government's acquisition interest.

N. Muchai
N. MUCHAI
for: C.V.O.

C.C.
VAL.847

/SWS.

C.V.O.
This the above plot has been acquired
we should request
notice of taking possession rather
than a caveat at all
supplied and signed
original titled
for the
20/11/85



Under only
1/137/341.1311

63/167

L.R. No 5875/2

AREA 17.16 ACRES

No 52150

N.B.
WHOLE PLOT ACQUIRED

ROAD

RESERVE

L.R. No 5875/4
Area 0.587 Acres
No 52148

D.P. No 80248

8147

F.R. No 50188
D.P. No 51100

Scale 1:1000
Date of Survey 1954
Surveyed by J. G. ...
Approved by ...

8000 1125

Delaware

29

33

45

(Attachment NO. 7)

PRILSCOT Co. LTD.,
P.O. BOX 795,
NAKURU.

1st December, 1995

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

*Wanjia
Reply
This is my land
15/6/98*

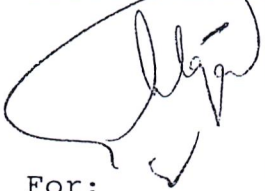
Dear Sir,

RE: LR 5875/2

We wish to apply for allocation consideration
of the referred Government vacant land situated
along Thika Road, Nairobi.

We are ready to develop same upon being allocated.

Yours faithfully,



For:
PRILSCOT CO. LTD.

Encl.

21946/66

25th June

98

PRIILSCOT CO. LTD
P.O. Box 795
NAKURU

RE: --LR-5875/2--

Your letter dated 1st December, 1995 refers.

The plot applied for is not available for allocation
as it is committed elsewhere.

S.K.W. WANGILA
FOR: COMMISSIONER OF LANDS

(Attachment 8)

222033-4
44

New file

①
222033
224153

REPUBLIC OF KENYA

DEPARTMENT OF LANDS

Telegrams: "LANDS", Nairobi
Telephone: Nairobi 718050/9

REGISTERED

P.O. Box 30089

NAIROBI

Solio Construction Ltd
P.O. Box 49634, NAIROBI

26th June 1999

Ref. No. 21946/11

SIR(S)/MADAM,

L.R. NO. 5875/2 NAIROBI

LETTER OF ALLOTMENT

I have the honour to inform you that the Government, on behalf of _____ County Council, hereby offers you a grant of the above plot shown edged red on the attached plan No. _____ subject to your formal written acceptance of the following conditions and to the payment of the charges as prescribed hereunder:

AREA: 6.864 hectares (approximately).

TERM: 99 years from the 1-7-99

STAND PREMIUM: Sh. 2,402,400
ANNUAL RENT: Sh. 480,480
Subject to adjustment on survey, but there is no claim for reduction in area on survey.

GENERAL: This Letter of Allotment is subject to, and the grant will be made under the provisions of, the Government Lands Act (Cap. 280 of the Revised Edition the Laws of Kenya) and title will be issued under the Registration of Titles Act (Cap. 281) or the Registered Land Act (Cap. 300).

SPECIAL CONDITIONS: See attached.

2. I should be glad to receive your acceptance of the attached conditions together with banker's cheque for the amount as set out below within thirty (30) days of the postmark:

	Sh
Stand Premium	2,402,400/-
Rent from 1-7-99 to 31-12-99	240,240/-
Conveyancing Fees	1,250/-
Registration Fees	250/-
Rates	-
Stamp Duty	105,740/-
Survey Fees	2,450/-
Road and Road Drains	-
Others approval fee	2,000/-
Planning fee	7 2,072/-

Receipt No. _____ Less Deposit _____

REFERENCE SECTION
TO BE FILED
IN THE CLERK
OF THE CLERK
TOTAL AMOUNT
2,826,402/-

[P.T.O.]

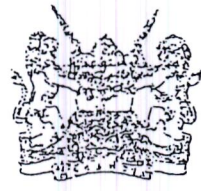
(Attachment 9)

46

803033-12

8

12



No.
C. 86743

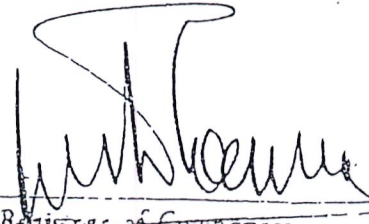
CERTIFICATE OF INCORPORATION

I hereby Certify, ~~that~~

SOLIO CONSTRUCTION COMPANY LIMITED.....

is this day Incorporated under the Companies Act (Cap. 486) and that the Company is LIMITED.

Given under my hand at Nairobi this EIGHTEENTH day
of AUGUST One Thousand Nine Hundred and NINETY NINE

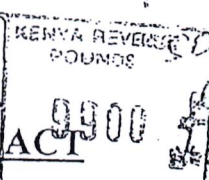
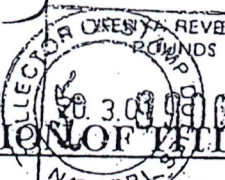

Snr. Dy. Registrar of Companies.



Attachment 10



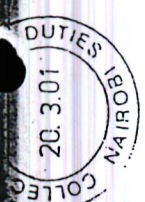
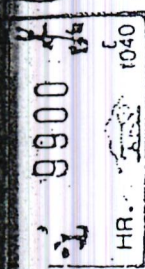
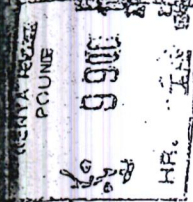
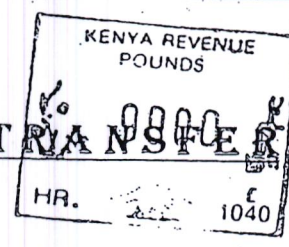
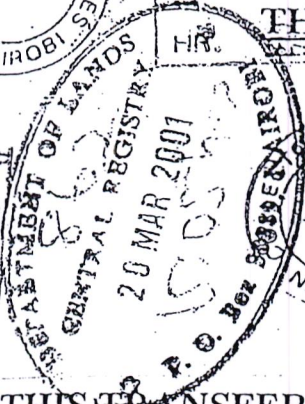
9900



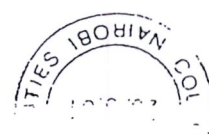
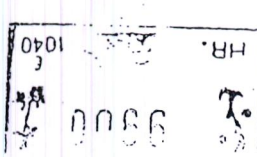
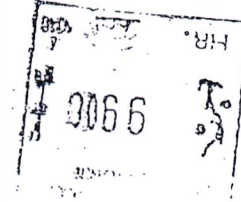
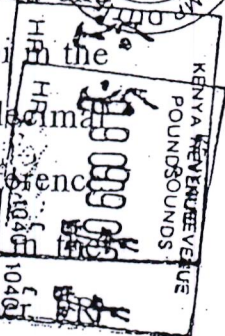
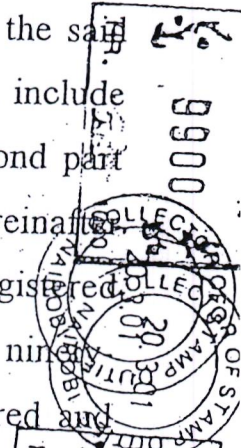
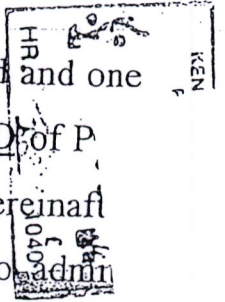
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THE REGISTRATION OF TITLE ACT

TITLE NUMBER LR-8537/1



THIS TRANSFER made the 20th day of March two thousand and one
 BETWEEN SOLIO CONSTRUCTION COMPANY LIMITED of P
 Office Box Number 49634 Nairobi in the Republic of Kenya (hereinaft
 called "the Vendor" which expression shall where the context so admin
 include its successors and assigns) of the first part AND KASARAN
MALL LIMITED of Post Office Box Number 73167, Nairobi in the said
 Republic (hereinafter called "the Purchaser" which expression shall include
 where the context so admits its successors and assigns) of the second part
 and THE PRESIDENT OF THE REPUBLIC OF KENYA (hereinafter
 called "the President") of the third part WHEREAS the Vendor is registered
 as proprietor as Lessee from the Government of Kenya for a term of nine
 nine (99) years from the first day of July one thousand nine hundred and
 ninety-nine of ALL THAT piece of land situate in the City of Nairobi in the
 Nairobi Area of the said Republic containing by measurement six decimal
 nine four four (6.944) hectares or thereabouts known as Land Reference
 Number 5875/2 which said piece of land being the land comprised in the
 Grant registered in the Lands Titles Registry at Nairobi as Number
 85371/1 is with the dimensions abutments and boundaries thereof is delineated
 on the plan annexed thereto and more particularly on Land Survey Plan
 Number 232448 deposited in the Survey Records Office at Nairobi aforesaid
 and thereon bordered red SUBJECT however to such Acts charges leases
 encumbrances and other matters as are notified in the Memorandum





endorsed hereon and to the payment of the annual revisable rental of Kenya Shillings four hundred eighty thousand four hundred and eighty (Shs.480,480.00) AND WHEREAS the said piece of land has not been developed in accordance with the Special Conditions contained in the said Grant AND WHEREAS the Vendor has agreed to sell the said piece of land to the Purchaser for the consideration and on the terms hereinafter appearing AND WHEREAS the President has agreed to join in these presents for the purpose and in the manner hereinafter stated.

NOW THIS TRANSFER WITNESSETH as follows:-

(a) that in pursuance of the said agreement and in consideration of the sum of Kenya Shillings eighty five million (K.Shs.85,000,000.00) paid by the Purchaser to the Vendor (receipt whereof the Vendor hereby acknowledges) the Vendor HEREBY TRANSFERS to the Purchaser all its right title and interest in and to the said piece of land.

(b) the Purchaser HEREBY COVENANTS with the President that within two (2) years from the date of registration of this Transfer the Purchaser will submit to the Local Authority and the Commissioner of Lands plans referred to in Special Condition Number 2 of the said Grant and complete the erection of buildings and the construction of the drainage system in conformity with plans drawings elevations and specifications to be approved by the Commissioner of Lands AND IT IS FURTHER AGREED between the Purchaser and the President that if there shall be any breach in performance and observance of this covenant it shall be lawful for the Commissioner of Lands or any person authorized by him on behalf of the President to re-enter into and upon the said piece of land or any part thereof in the name of the whole and thereupon the term created by the said Grant

(Attachment no. 11)

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62

S. Duty of 6,500
23.1.2001



REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT
(Chapter 281)

GRANT: NUMBER I.R. 85371
ANNUAL RENT: SHS. 480,480/- (REVISABLE)
TERM: 99 YEARS FROM 1.7.1999



KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum of Shillings two million four hundred and two thousand four hundred (Shs. 2,402,400/-) by way of stand premium paid on or before the execution hereof THE PRESIDENT OF THE REPUBLIC OF KENYA hereby GRANTS unto SOLIO CONSTRUCTION COMPANY LIMITED, a limited liability company having its registered office at NAIROBI (Post Office Box Number 49634) (hereinafter called "the Grantee") ALL that piece of land situate in the city of Nairobi in the Nairobi Area District containing by measurement six decimal nine four four (6.944) hectares/aces or thereabouts that is to say L.R. No. 5875/2

which said piece of land with the dimensions abutments and boundaries thereof is delineated on the plan annexed hereto and more particularly on Land Survey Plan Number 232448 deposited in the Survey Records Office at Nairobi

TO HOLD
of the term of ninety nine (99) years from the
First day of July One thousand nine hundred and
ninety nine

COMMISSIONER OF LANDS
P.O. Box 30089, NAIROBI

SUBJECT to (a) the payment in advance on the first day of January in each year of the annual rent of Shillings four hundred and eighty thousand four hundred and eighty (Shs. 480,480/-) (Revisable) with effect from 1.7.1999 (b) the provisions of the Government Lands Act (Chapter 280) and (c) the following Special Conditions (namely):

SPECIAL CONDITIONS

1. No buildings shall be erected on the land nor shall additions or external alterations be made to any buildings otherwise than in conformity with plans and specifications previously approved in writing by the Commissioner of Lands and the Local Authority. The Commissioner shall not give his approval unless he is satisfied that the proposals are such as to develop the land adequately and satisfactorily.
2. The Grantee shall within six calendar months of the actual registration of the Grant submit in triplicate to the Local Authority and the Commissioner of Lands plans (including block plans showing the positions of the buildings and a system of drainage for disposing of sewage surface and sullage water) drawings elevations and specifications of buildings the Grantee proposes to erect on the land and shall within 24 months of the actual registration of the Grant complete the erection of such buildings and the construction of the drainage system in conformity with plans drawings elevations and specifications as amended (if such be the case) by the Commissioner. PROVIDED that notwithstanding anything to the contrary contained in or implied by the Government Lands Act if default shall be made in the performance or observance of any of the requirements of this condition it shall be lawful for the Commissioner of Lands or any person authorized by him on behalf of the President to re-enter into and upon the land or any part thereof in the name of the whole and thereupon the term hereby created shall cease but without prejudice to any right of action or remedy of the President or the Commissioner of Lands in respect of any antecedent breach of any condition herein contained.

3. The Grantee shall maintain in good and substantial repair and condition all buildings at any time erected on the land.
4. Should the Grantee give notice in writing to the Commissioner of Lands that it is unable to complete the buildings within the period aforesaid the Commissioner of Lands shall (at the Grantee's expense) accept a surrender of the land comprised herein.
 - (i) Provided further that if such notice as aforesaid shall be given within 12 months of the actual registration of the Grant the Commissioner of Lands shall refund to the Grantee 50 per centum of the stand premium paid in respect of the land, or
 - (ii) at any subsequent time prior to the expiration of the said building period the Commissioner of Lands shall refund to the Grantee 25 per centum of the said stand premium. In the event of notice being given after the expiration of the said building period no refund shall be made.
5. The land and the buildings shall only be used for shops offices and/or flats (excluding the sale of petrol or motor oils).
6. The buildings shall not cover more than 75 per centum of the area of land if used for shops and/or office purposes or such lesser area as may be laid down by the Local Authority in its by-laws and not more than 50 per centum of the area of the land if used for the combined purposes of shops offices and flats or such lesser area as may be laid down by the Local Authority in its by-laws.
7. The land shall not be used for any purposes which the Commissioner of Lands considers to be dangerous or offensive.
8. The Grantee shall not subdivide the land without the prior consent in writing of the Commissioner of Lands.
9. The Grantee shall not sell transfer sublet charge or part with the possession of the land or any part thereof or any buildings thereon except with the prior consent in writing of the Commissioner of Lands. No application for such consent (except in respect of a loan required for building purposes) will be considered until Special Condition No. 2 has been performed. PROVIDED that such consent shall not be required for the letting of individual shops offices or flats.
10. The Grantee shall pay to the Commissioner of Lands on demand such sum as the Commissioner of Lands may estimate to be the proportionate cost of constructing all roads and drains and sewers serving or adjoining the land and the proportionate cost for the supply of both the water and the electric power and shall on completion of such construction and the ascertainment of the actual proportionate cost either pay (within 30 days of demand) or be refunded the amount by which the actual proportionate cost exceeds or falls short of the amount paid as aforesaid.
11. The Grantee shall from time to time pay to the Commissioner of Lands on demand such proportion of the cost of maintaining all roads and drains serving or adjoining the land as the Commissioner may assess.
12. Should the Commissioner of Lands at any time require the said roads to be constructed to a higher standard the Grantee shall pay to the Commissioner on demand such proportion of such construction as the Commissioner may assess.
13. The Grantee shall pay such rates taxes charges duties assessments or outgoings of whatever description as may be imposed charged or assessed by any Government or Local Authority upon the land or the buildings erected thereon including any contribution or other sum paid by the President in lieu thereof.
14. The President or such person or authority as may be appointed for the purpose shall have the right to enter upon the land and lay and have access to water mains service pipes and drains telephone or telegraph wires and electric mains of all descriptions whether overhead or underground and the Grantee shall not erect any buildings in such a way as to cover or interfere with any existing alignments of main or service pipes or telephone or telegraph wires and electric mains.
15. The Commissioner of Lands reserves the right to use the annual ground rent payable on the 1st January, 1989 and thereafter at the expiration of every ten years of the term. Such rental will be at the rate of 2 per centum of the unimproved freehold value of the land as at 31st December 1988 as assessed by the Commissioner of Lands or at the rate in force on the 31st December 1988 whichever is the greater.
16. The Commissioner of Lands reserves the right to revise the annual ground rent payable hereunder at the expiration of every ten years of the term. Such rental shall be at a rate to be determined by the Commissioner of Lands of the unimproved value of the land as at the end of every tenth year of the term.

OF COMMISSIONER OF LANDS
 P.O. Box 30089, NAIROBI

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REPUBLIC OF KENYA

Land Reference No. 5405/2

Orig. No.

Sub-division No. (Orig. No.)

Sub-division No.

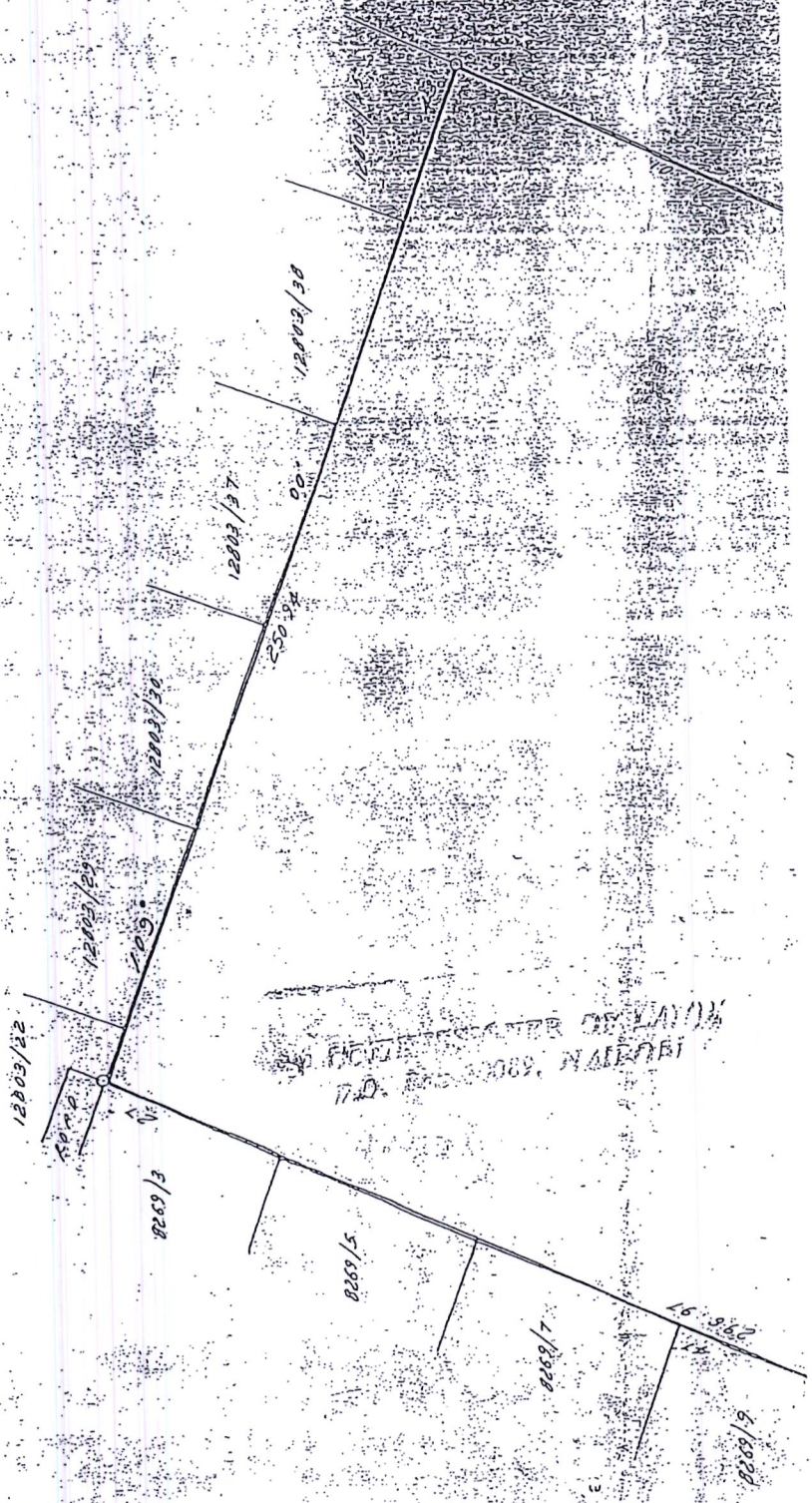
Area = 6 944 Ha. (Approx.)

DISTRICT OFFICE NAIROBI AREA

Location: City of Nairobi

Reference Map Sp. A 37 2

Buildings	Distances Metres





119-59

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66 COMMISSIONER OF LAND
P.O. BOX 3069, NAIROBI

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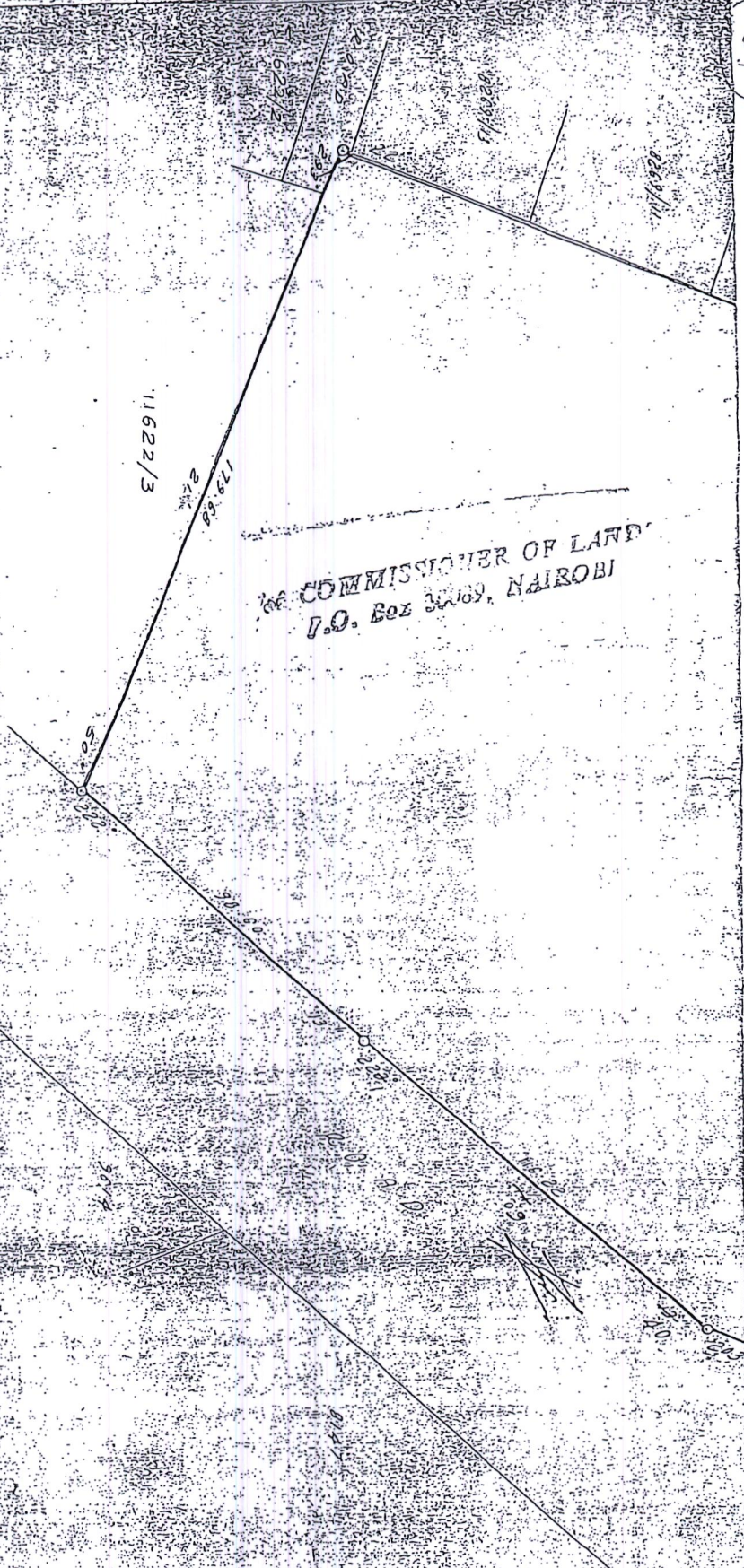
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Spole, 11/11/58

DEED PIAN NO 238478

Director of Surveys

Noted on 19/11/58



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2003-58
(58)

KENYA REVENUE POUND
650
HR.

IN THE WITNESS WHEREOF I, SAMMY SILAS ~~xxxx~~ KOMEN MWAITA
the
Commissioner of Lands have by order of the
President hereunto set my hand this 23rd
day of January
~~one thousand nine hundred and~~ Two thousand and one
in the presence of:

[Signature]

500
7.

[Signature]
CALEB T. MUHUYI (90)
REGISTRAR OF TITLES

DRAWN BY:

CALEB T. MUHUYI
REGISTRAR OF TITLES
P.O. BOX 30089
NAIROBI

million
sum paid
ANTS
gistered
Nairobi Area

LAND TITLES REGISTRY - NAIROBI REGISTRY
REGISTRATION OF TITLE ACT

REGISTERED AS No. LR- 85371/1
PRESENTED 24th January 2001
TIME 16.45 Hrs. *[Signature]*

Registrar of Titles
E. N. GICHEHA (010)

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE
Transfer to Kasaremi Mall Limited

Presentation No: 862 Date of Registration: 20-3-2001
[Signature]
Registrar
E. N. GICHEHA (010)

eighty

X

(Attachment No 12)

Telegrams: "SHERIA", Nairobi
Telephone: Nairobi 227461
When replying please quote

Ref. No. **AG/CR/2053/1110**
and date



ATTORNEY-GENERAL'S CHAMBERS
P.O. Box 40112-00100
NAIROBI, KENYA

.....20.....

30th April 2008

The Commissioner of Lands
Ministry of Lands
Ardhi House
P.O. Box 30089
NAIROBI



RE: CAVEAT REGISTERED AGAINST THE TITLE OF PLOT NO. L.R. 5875/2 ROYSAMBU OWNED BY KASARANI MALLS LTD, A SUBSIDIARY COMPANY OF UCHUMI SUPERMARKETS LTD

The above matter refers.

Following the placing of Uchumi Supermarkets Ltd under receivership, investigations were instituted by the police into the circumstances leading to the financial crisis that was facing the company. In the course of the afore-said investigations, it emerged that Uchumi Supermarkets Ltd through its subsidiary company known as Kasarani Malls Ltd had purchased the afore-mentioned parcel of land in 2001 from M/S Solio Construction Company Ltd at a cost of Kshs.85 million in order to develop a shopping mall or hyper market.

However, before Uchumi Supermarkets Ltd could utilize the plot for the intended purpose, the company fell into financial difficulties and, as part of its recovery strategy, resolved to sell the plot to unlock cash that was required for its business. In the process of obtaining the necessary clearances from the lands office Uchumi Supermarkets Ltd was informed that there was a problem with the plot in that the allocation to Solio Construction Company Ltd was irregular and therefore Uchumi Supermarkets Ltd's title to the plot was defective. The Government had already registered a caveat against the title forbidding any dealings in the land.



Upon conclusion of their investigations, the police forwarded the investigation file to the Hon. Attorney General for directions. After a thorough and careful consideration of the matter and the evidence on record, the Hon. Attorney General has concluded as follows:

1. The land in question was procedurally applied for and allocated to M/S Solio Construction Ltd
2. There is no evidence suggesting any collusion or conspiracy between the Company and the land officials during the allocation of the land to M/S Solio Construction Ltd
3. Solio Construction Company Ltd acquired a valid title to the said land which it later sold to Kasarani Mall Ltd (a subsidiary of Uchumi Supermarkets Ltd) in 2001 on a 'willing buyer-willing seller' basis
4. There is no legal basis or justification for the caveat placed by the Commissioner of Lands against the title and thereby stopping Kasarani Mall Ltd from selling or developing the land

Consequently, the Hon. Attorney General has concluded that Kasarani Mall Ltd has a valid title to the said land and directed accordingly that the caveat should be removed forthwith to allow the company to either sell or develop the land as there is no criminality established in the entire transaction.


KERIAHO TOBIKO
DIRECTOR OF PUBLIC PROSECUTIONS

CC

✓
Chief Executive Officer
Uchumi Supermarkets Ltd. (under receivership)
P.O. Box 73167-00200
NAIROBI

The Director of Criminal Investigations,
C.I.D Headquarters
P.O. BOX 30036
NAIROBI.





REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC.NO.153 OF 2017(FORMERLY 495/2011)

KASARANI MALL LTD.....PLAINTIFF

-VERSUS-

DANIEL OTIENO MIGANGA.....1st DEFENDANT

DAVID J. KOLLAL.....2nd DEFENDANT

GILBERT THUO MACHARIA.....3rd DEFENDANT

ROYSA COMMUNITY SELF HELP GROUP.....4th DEFENDANT

JUDGEMENT

By a *Plaint* dated **20th September 2011**, the Plaintiff herein, *Kasarani Mall Limited*, brought a claim against the Defendants herein and sought for these orders:-

- a) *A permanent injunction against the Defendants whether by themselves, their employees, servants or agents or any of them or whomsoever purporting to be a member of the 4th Defendant and any of them from trespassing on the Plaintiff's land known as LR.5875/2, Thika Road, entering thereon and committing any acts of waste or damage or in any other way purporting to alienate the property of the Plaintiff in any manner whatsoever.*
- b) *General damages for trespass.*
- c) *Costs.*

The Plaintiff alleged that it is the registered proprietor of all that piece of land known as **LR.No.5875/2**, located in the **Kasarani Area, Thika Road Nairobi**, measuring about **6.944 Hectares** and that it got **registered** as the proprietor of the land on **20th March 2001**.

The Plaintiff further alleged that the Defendants have threatened to invade the Plaintiff's land aforesaid and thereafter commit acts of waste, damage and alienation. It was also further alleged that the Plaintiff's threats and purported acts of trespass were detrimental to the Plaintiff's title. It was the

3

Plaintiff's contention that those threats by the Defendants and their purported acts of invasion are illegal and continues to be detrimental to the Plaintiff. Therefore unless protected by an order of the Court, the Plaintiff stands to suffer loss and damage in respect of the Defendants continued threats and acts of trespass. The Plaintiff urged the Court to allow its claim.

The Defendants herein **entered appearance** on **3rd November 2011**, through the **Law Firm of Odour Henry John Advocates** and filed their **joint statement of Defence** and denied all the allegations made in the Plaintiff. The 1st, 2nd and 3rd Defendants admitted that they are officials of the 4th Defendant. The Defendants further averred that they are the legal owners of **Plot No.5875/2**, located at the **Kasarani Area, Thika Road Nairobi**. They further alleged that the title documents in possession of the Plaintiff were forged documents and the Plaintiff was put to strict proof thereof. Therefore the Defendants alleged that they cannot threaten to invade what belongs to them. Further, the **Defendants alleged** that the **suit is bad in law** and they sought to have it **struck out**. The Defendants urged the Court to dismiss the suit with costs.

The matter **proceeded** for **viva voce evidence** on **3rd November 2015**, wherein the Plaintiff called only one witness.

Plaintiff's Case

PW1-Simon Sang, told the Court that he works for **Uchumi Supermarkets Limited** as a **Chief Security Officer**. He relied on his **witness statement** dated **5th December 2014**. In his statement, PW1 stated that the Plaintiff is the lawful and registered owner of the property known as **LR.No.5875/2**, located along **Kasarani area, Thika Road**, measuring **6.944 Hectares**. It was his testimony that the suit property was initially granted by the Government of Kenya to an entity known as **Solio Construction Company** on **18th May 1992**. He further stated that the property was transferred to the Plaintiff by that Company on **20th March 2001** for valuable consideration and the Plaintiff was registered as the legal owner. Further that the Plaintiff's title to the property **LR.No.5875/2**, has been confirmed by the Commissioner of Lands in his letter dated **3rd November 2010**, to the Permanent Secretary, Ministry of Trade. It was his testimony that the Defendants have threatened to invade the Plaintiff's land. That the Plaintiff reported the matter to OCS Kasarani Police Station who showed them a **Court Order** issued by the Court on **15th October 2010**. However upon inquiry from the Court registry, the Plaintiff's advocate was informed that no such case exists in the Court records. The witness was therefore apprehensive that if the Defendants are not permanently restrained by an Order of this Court, they will continue to issue those threats of invading the Plaintiff's land with impunity. That the Plaintiff is in possession of the land and has fenced it-all round with a stone wall. In cross examination, the witness confirmed that **Kasarani Mall Limited** is a subsidiary of **Uchumi Supermarket Limited**, although he did not possess documents to that effect.

He also stated that he safeguards the Company property and he is also involved in security of Uchumi property. He reiterated that **Kasarani Mall Limited** acquired the land in the **year 2001**, from a Company known as **Solio Company Limited**. He also confirmed that the payment of land rates dated **24th September 2010**, for **LR.No.5875/2** showed that the property was in the name of **M. J. Samuels**.

Defendants' Case

DW2 - David Jakenya Kollal, told the Court that he is the 2nd Defendant herein and Secretary to the 4th Defendant. It was his testimony that the 4th Defendant was a **Community Self Help Group**. He also stated that the person who gave evidence for the Plaintiff is a **Security Guard** at **Uchumi Supermarket** and not representative of the Plaintiff. That **Pauline Kimotho** is the one who swore affidavits but did not

testify in Court. It was his evidence that the suit land belongs to the Defendants herein. He denied that the land was ever sold to the Plaintiff. He stated so because there was *no Sale Agreement* produced in Court between the Plaintiff and the said *Solio Construction Limited*. He further clarified that the *land initially* belonged to *Major Jacob Samuel*, in 1964 who *died in 1974*. Then his *two young brothers took over the administration* of the land. That these two brothers are *Raphael* and *Meshmor Jacob Samuel*. It was his further testimony that the land was *conveyed* to them by *Meshmor Jacob Samuel*, who left the land to the children of the parents who were working for the three families of *Meshmor*. He also stated that they had lived on that land for a long time. Further that *Uchumi Supermarket Limited* had *filed* a case against the Defendants being *ELC No.515/2010*, which was later *dismissed* by the Court. Then the Plaintiff filed the instant suit and there is no evidence that Plaintiff owns the land. It was his further evidence that the documents produced by the Plaintiff were not genuine documents. He urged the Court to dismiss the Plaintiff's case. He insisted that the Defendants were given the suit land by *Meshmor Jacob Samuel* to develop the same. In cross-examination, he insisted that the *documents held by Kasarani Mall Limited* are a *forgery*.

DW2 - Arthur Wamiti Njoroge, the Chairman of the 4th Defendant relied on this witness statement dated *3rd December 2015*. He also relied fully on the Defendants' bundle of documents. In cross-examination he stated that he had no evidence to show that *Meshmor* and *Raphael Jacob Samuel* were the administrators of the Estate of *Major Jacob Samuel*. He also did not have a title for *Major Jacob Samuel*. He reiterated that the land was conveyed to them but they did not have the conveyance documents. He further stated that the land is registered in favour of the Defendants. The witness further stated that the *original owner* of the suit land *conveyed* it to *Roysa Community Self Help Group*, the 4th Defendant. It was his further evidence that the title deed by the Plaintiff was a forgery.

DW3 - Antipas Nyanjwa who works for *National Land Commission, Head of Investigations* told the Court that he prepared a report in regard to *LR.No.5875/2 Nairobi*. He produced the report as *exhibit no.2* in Court. In cross-examination, he stated that he got the information from the valuation file. He also confirmed that there are titles to the suit land. It was his evidence that the *title deed* for *Solio Construction Limited* was gotten from the Court File as the Deed file was missing. He therefore used the valuation file and he did not know how the documents were produced in Court. He further testified that a parcel of land cannot have two titles. He however confirmed that there was a transfer of this land to *Kasarani Mall Limited* for *Kshs.85 million* on *20th March 2001*. There was also a *caveat* by the proprietor and according to *exhibit no.15*, the land belongs to *Kasarani Mall Limited*.

After the close of the *Viva Voce evidence*, parties were directed to file their *Written Submissions* which directives they complied with. The *Defendants* filed their submissions on *30th September 2016*, and *Plaintiff's* filed their submissions on *30th October 2016*.

The Court has now carefully considered the Pleadings in general and the exhibits produced therein. The Court has also considered the tendered evidence by the witnesses, the Written Submissions and the relevant provisions of the law and the Court makes the following findings;

The *suit* herein was filed on *20th September 2011*, and simultaneous to the *Plaint*, a *Notice of Motion* Application even dated was also filed. The said *Notice of Motion* sought for injunctive orders against the Defendants herein. The Court has also noted that *Summons to Enter Appearance* though drawn were *not extracted nor saved* as provided by Order 5 Rule 1 of the Civil Procedure Rules which provides that:-

"where a suit has been filed, a summons shall issue to the Defendant ordering him to appear within the time specified therein"

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further averred that the Defendants have come up with grants which are not genuine as the same were registered in the year 2009 long after the conveyance between them and Meshumor Jacob Samuel had been registered.

In response thereto, the Defendants filed the Replying Affidavit of Pauline Kimotho, their Company Secretary, sworn on 19th May 2014 in which she averred that the Plaintiffs had made material misrepresentations to the court as regards the suit property in particular that the Conveyance dated 5th March 1990 has never been confirmed to exist and that the suit property has never been owned by the said Meshumor Jacob Samuel. She further averred that the Group is not an entity recognized in law and would not have received the purported conveyance in any event and further that the Group has never occupied that suit property at all. She added that the parcel of land is owned by the 1st Defendant, Kasarani Mall Limited. She further stated that the Plaintiffs failed to disclose to the court that there is further litigation between other plaintiffs and the Defendants in court namely:

1. **HCCC No. 495 of 2011** Kasarani Mall Limited versus Daniel Otieno Miganga, David J. Kollal, Gilbert Lou Macharia and Roysa Community Self Help Group.
2. **HCCC No. 47 of 2011** Richard Ochilla, David Ochieng, Kennedy Otieno Onyango (suing as officials of Roysambu Shell Youth Self Help Group) versus Uchumi Supermarkets Limited, Jacob Meshamur Samuel, Raphael Jacob Samuel and Kasarani Mall Limited.

She further indicated that in all three cases, the Plaintiffs allege to be officials of either Roysa Community Self Help Group or Roysambu Shell Youth Self Help Group. She added that the Plaintiffs are not entitled to any orders of adverse possession as they do not occupy and have never occupied the suit property as alleged or at all as the same is currently fenced off and vacant. She also stated that the Plaintiffs and others did attempt to invade the suit property but were repulsed and an injunction order issued against them by Ougo, J. She concluded by stating that the Plaintiffs are mere busybodies who are laying an invalid claim to the suit property which does not belong to them.

The court allowed parties to proceed by way of written submissions. However, only the Defendants filed their written submissions dated 7th August 2014.

The Plaintiffs case is that they entered into the suit property in the year 1990 after entering into a Conveyance Agreement dated 5th March 1990 with one Meshumor Jacob Samuel. They claim that from the year 1990, they have been in uninterrupted occupation of the suit property and have become entitled to be registered as the legal owners thereof in place of the Defendants, whom they admit are the title holders of the suit property. Against this background, the issue that arises for my determination is whether or not the Plaintiffs have acquired the suit property by way of adverse possession.

Section 7 of the Limitation of Actions Act provides as follows:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him...”

Further, **section 38 of the Limitation of Actions Act** provides as follows:-

“Where a person claims to have become entitled by adverse possession to land registered under any of the Acts cited in section 37 or land comprised in a lease registered under any of those Acts, he may apply to the High Court for an order that he be registered as the proprietor of the land or lease in place of the person then registered as proprietor of the land.”

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REPUBLIC OF KENYA

0910711

DEPOSIT RECEIPT

high

453232

Comm of Lands on 16-5-86
on five hundred thirty thousand five hundred only

Misc 243/86

Acquisition -

3530500/-

Finance Section

[Signature]

LINE

2001/03/55

Attachment No 14



**NATIONAL LAND COMMISSION
INTER OFFICE MEMO**

ARDHI HOUSE, 1ST NGONG AVENUE, OFF NGONG ROAD, P.O. BOX 44417 – 00100 NAIROBI, KENYA Tel: 020 2718050

Email: info@nlc.or.ke Web: www.nlc.or.ke

To: Director Legal
National Land Commission

Date: 7th February, 2020

Ref: 3354

**RE: MINISTRY OF DEFENCE VERSUS UCHUMI
SUPERMARKETS LIMITED**

This report is prepared in response to your letter ref. AG/CIV/MLS/413/19 of 22nd January 2020. The subject matter being ownership dispute over land parcel No. 5875/2 between Department of Defence and Uchumi Supermarkets Limited.

Land parcel No. 5875/2 came about as a result of subdivision of original LR No. 1012, it measures approximately 17.16 Acres held on a leasehold term of 99 years from 1st November 1906 at a rent of 600/- owner before the acquisition was Mayor Jacob Samuel.

This parcel of land was Registered under G.L.A title in Central Land Registry Vol. 10 folio 291 G.L.A file No. 6943 and Ministry of Land correspondence file being file No. 21946.

ACQUISITION OF LR NO. 5875/2 BY DEPARTMENT OF DEFENCE

By a letter dated 8th August 1985, P.S. Office of the President requested Commissioner of Lands to acquire LR No. 5875/2 for purpose of setting a Kenya Army School (KAEME & CORPS Headquarters), following this request, Commissioner of Lands published a notice of intention to acquired the land vide Kenya Gazette Notice No. 5151 and 5152 of 22nd November 1985.

Inquiry for the said acquisition were held on February 5 and 18 of 1986 and Meshumor Jacob Samuel (owner) gave oral claim of Kshs 25,000,000/- and Commissioner of Lands had give a value to Kshs 3,530,000 while the matter was going on in court, as it was provided for under Land Acquisition Act Cap 295 (now repealed) Section 13(2) Commissioner of Lands deposited Kshs 3,530,000/- and got issued with Deposit Receipt of high court serial No. 453232 of 16th May 1986.

With deposit of the money in court a taking over ceremony of the land by Department of Defence was done on 25th June 1986, this was in compliance of Section 19 of land acquisition Act Cap 295.

There are no record to show if the enhance value of Ksh 23,000,000/- has been paid because appeal case No. 109 of 1987 was stood over on 27th February 1997 to give parties time to settle the matter out of court.

Notice of taking possession dated 25th June 1986 was registered in the title on 29th November 1986 meaning the land was wholly vested in the Government. It is important to note that 99 years lease was to expire on 1st November 2005, so taking possession took place while lease term was still on.

ALLOCATION TO SOLIO CONSTRUCTION COMPANY LIMITED

Solio Construction Company Limited was allocated LR No. 5875/2 for 99 years from 1st July 1999 at annual rent of Ksh 480,000/- .

The grant was registered in central land registry as I.R No. 85371 on 24th January 2001. The land measured approximately 6.944 HA.

On 20th March 2001 a transfer of the said land was effected from Solio Construction Company Limited to Kasarani Mall Limited.

This allocation to Solio Construction Company Limited on 1st July 1999 was done on top of a running lease which was to expire on 1st November 2005, leading to double allocation.

CLAIM OF OWNERSHIP BY ROYSA COMMUNITY

From available records there is no proof that Roysa Community were ever registered as owners of LR No. 5875/2 if at all they had any interest they would have shown up during the day of inquiry in 1986 to put up their claim.

The inquiry team only met the owner who gave an oral value of 25,000,000/- against 3,530,000/- which was given by Chief valuer.

The purported allocation to Roysa Community was an illegality because the process should have been undertaken by National Land Commission who are mandated by the constitution under article 67 to administer public land on behalf of National & County Government.

There are no records to show National Land Commission was involved in replanning, subdivision and allocation of any part of LR No. 5875/2 .

Signatures appended in the purported letters of allocation are for the officers in the Ministry of Lands not National Land Commission.

NATIONAL ASSEMBLY REPORT & RECOMMENDATIONS

Departmental Committee on land of National Assembly had invited presentation by the interested parties to send light in relation to ownership of LR No. 5875/2

The presentation of Chief Administrative Secretary of the Ministry of Lands & Physical Planning disclosed that there was notice of intention to acquire LR No. 5875/2 vide Gazette Notice No. 5151 & 5152 a notice of taking possession by the Government absolutely was lodged and registered in Vol .10, folio 494/30 file 6943 of June 25th 1986.

Chief Administrative Secretary also informed parliament that there was an irregular attempt by National Land Commission and County Government of Nairobi to allocate the land to Roysa Development Society.

The report done by a Mr Antipas Nyanjwa of National Land Commission also presented in parliament stated that acquaisation process for the Military had not been finalized. The report by Antipas according to available records was prematurely sneaked out because there is a Memo dated 18th October 2015(copy attached) which placed doubts in most of his recommendations, meaning the report is not authoritative and should not have been used in making any decision. Further the same report has not been tabled or adopted by any of the National Land Commission Committees or the planery of National Land Commission.

These report to the Departmental Committee were misleading, because from Ministry records notice of taking possession by the Government was lodged and registered in G.L of register Vol. 10 folio 494/30 file 6943 of June 25th 1986. Committing the said land to Department of Defence.

OBSERVATION

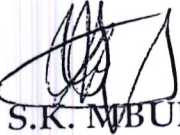
- Department of Defence acquired land which was on 99 years in 1986 and that lease was to expire in year 2005.

- Solio Construction Company Limited who sold land to Kasarani Mall Limited, were allocated LR No. 5875/2 on 1st July 1999. This allocation to Solio Construction was on top of another lease leading to double allocation .
- It is not possible to implement recommendation of Parliamentary Committee because the land is not available for allocation to Roysa Development Community.

RECOMMENDATIONS

- Kasarani Mall Limited should surrender their title back to Government because it was irregularly issued, or in alternative Chief Land Register should place a Government Caveat on the said title.
- Because LR No. 5875/2 was vested to Government in favour of Department of Defence, and the lease for the said land expired in November 2005, Department of Defence are at liberty to apply for extension of lease and a subsequent ownership documents because the current Government policy is for every Government Institution to apply for ownership document for land that they own.
- All letters of allotments issued irregularly on the irregular subdivision of LR No. 5875/2 by the Ministry of Land and Physical Planning to be surrendered for cancellation.

This report is subject to adoption by the plenary of the commission and any other relevant information availed.


S.K. MBURUGU
PLAO - NRB

(Attachment No 15)



①

REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING

MEMO

FROM : DIRECTOR LAND ADMINISTRATION

TO : DEPUTY CHIEF STATE COUNSEL

REF : 21946/II/148

DATE : 12th February 2020

RE: STATUS OF LR. NO.5875/2 (NOW NAIROBI BLOCK 84/1 – 147) TO ROYSA
COMMUNITY ROYSAMBU NAIROBI

I refer to letter ref AG/CIV/MLS/413/19 dated 22nd January, 2020.

BACKGROUND

The above mentioned plot was last owned by Mayer Samuels Jacob as per the MRT at folio (8) 1964. At (14) it is indicated that he passed on but in the event the plot is required for public purpose, it will be acquired and compensation paid in the usual manner.

— There is a gap between 1964 and 1980

At (19), the Department of Defense requested for reservation for eventual acquisition of land to establish a logistics center and associated elements. At folio (20) they further expressed their interest on the land to ease congestion within Kahawa Garrison and requested for acquisition machinery to be set in motion and the Commissioner of Lands indicated there is no objection if they have the money to acquire.

Valuation for acquisition was done at folio (22) at Kshs.4,140,000/= and formerly communicated to D.O.D at (23). At (24) the office of the President confirmed that they had adequate funds from which they intend to fund the acquisition of the land and the arrangements were under way to submit money to the Commissioner of Lands to compensate other land owners in various areas in the Country which they occupy.

Eventually the land was acquired as per Gazette Notice no. 5151 and 5152 of 22nd November, 1985. A notice of taking possession by the Government of Republic of Kenya absolutely was lodged at folio (25) and registered as per the MRT at folio (35).

NEW ALLOCATION

2

According to folio (42), the Nairobi City County Allocated the whole land to Roysa Community Development Society. Thereafter, they approved a subdivision scheme as per the form PPA 2 at (43) and survey of the whole parcel was processed and new numbers issued as **Nairobi block 184/1 – 147** as per the copy of the area list and RIM at folio (39) and (40) respectively. Letters of subdivision were issued erroneously by this office. Files opened and paid for a total of kshs. 271,950/= being legal fees for all sub-plots.

Letters of subdivision were issued directly to the beneficiaries whose names were submitted at folio (41). In the process of preparing the individual leases, it was discovered that the land had been acquired for military use and is now Government land, which information was not available earlier.

OBSERVATIONS

1. From the available documents, LR NO. 5875/2 is still Government land as there is no evidence that the Military (Department of Defense) ever relinquished their interest on the land.
2. All transactions undertaken by the Nairobi City County purporting to allocate and sub-divide the land are un-procedural and misleading. This Ministry was never consulted to give the true position, nor approved the purported subdivision.

RECOMMENDATION

In view of the above, I recommend that the sub-division scheme and the letter of subdivision issued to individuals be cancelled/withdrawn and the status quo as per our records be retained i.e (land remain property of the Government- Military Land) unless otherwise. The Director of Surveys should also be informed to reinstate the parcel to its original number.

The memo is therefore forwarded for you to note, approve or further instructions.



E.K. KOSGEI

DIRECTOR LAND ADMINISTRATION

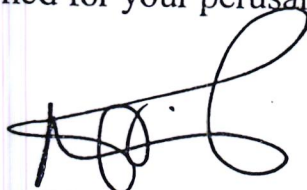
(e)

On the 14th of June, 2014 the Permanent Secretary requested that a government caveat be placed on the title to safeguard the interests of the government since the land had been grabbed in 2001. The said caveat was registered as entry 3 on the title. Copies of the same are herewith attached.

Third parties filed a case in Court and obtained a Court Order dated 23rd December, 2016 in the High Court of Kenya Judicial Review and Constitutional Division No. 652 of 2016. The Court order was staying evictions and demolitions of the on the said above parcel. That order was registered as entry no. 85371/4 on the said title.

In view of the above and from the correspondence from land administration, the term on the GLA title file no. 6953 expired on 1st November, 2005. The issues relating to allocation and acquisition will be better addressed by the Director Land Administration and Director of Survey.

Copies of all the relevant documents from the deed file IR NO. 85351 are herewith attached for your perusal.



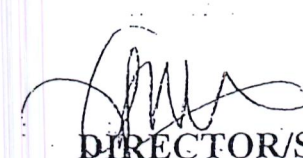
B. F. ATIENO
FOR: CHIEF LAND REGISTRAR

shall cease but without prejudice to any right of action or remedy of the President or the Commissioner of Lands in respect of any antecedent breach of any condition herein contained AND in pursuance of the foregoing the President HEREBY ACCORDS HIS CONSENT to these presents and extends as aforementioned the period mentioned in Special Condition Number 2 of the said Grant for the submission of plans and erection of buildings and construction of drainage systems as aforesaid.

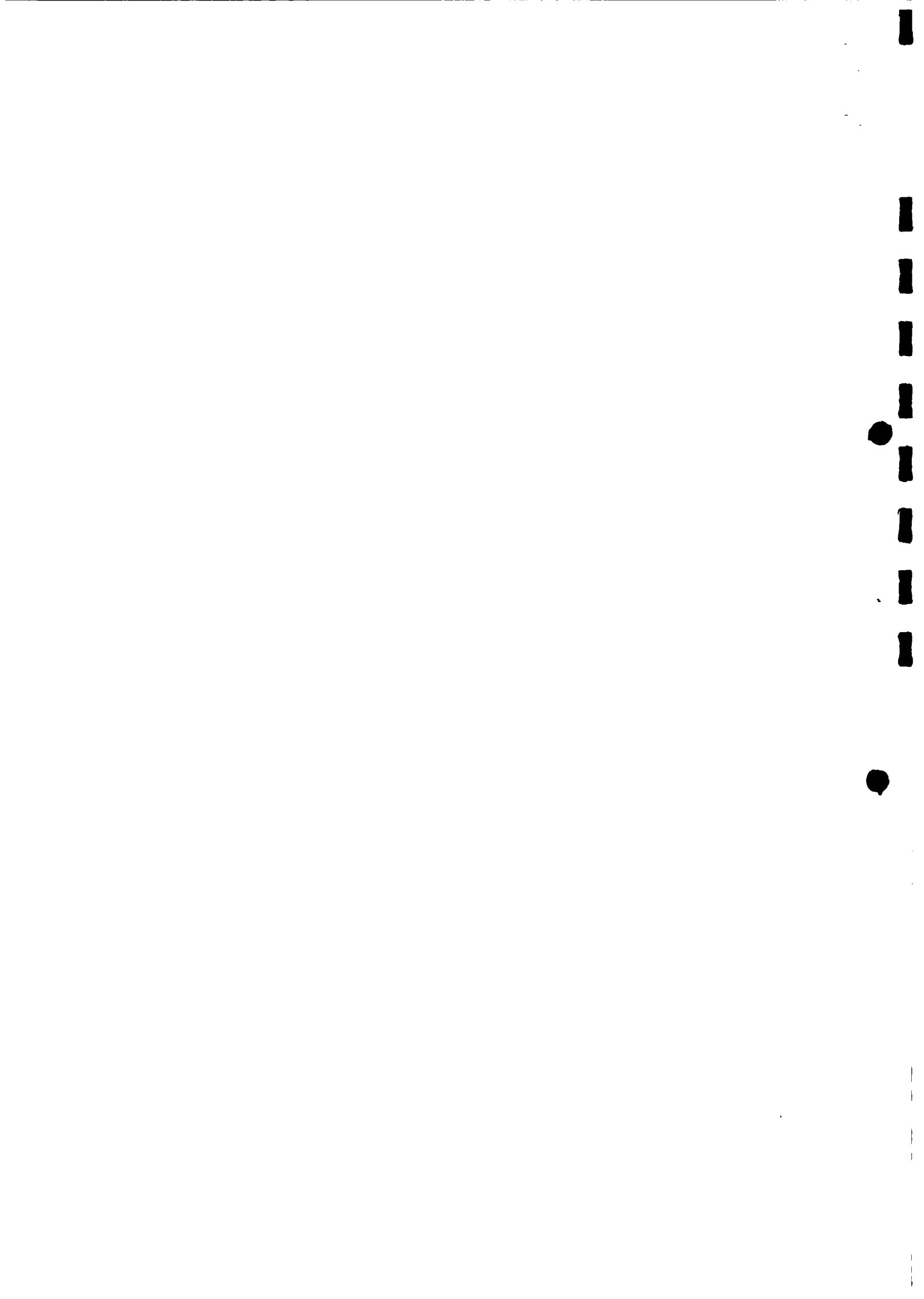
IN WITNESS whereof the Vendor and the Purchaser have hereunto affixed their respective common seals and the Commissioner of Lands on behalf of the President has hereunto set his hand the day and year first hereinbefore written.

SEALED with the Common Seal of the)
said SOLIO CONSTRUCTION)
COMPANY LIMITED in the in the)
presence of:-)


DIRECTOR)

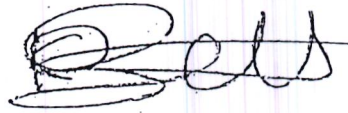

DIRECTOR/SECRETARY)
)
)
)
)

Z 001/1



SEALED with the Common Seal of)
the said KASARANI MALL)
LIMITED)

in the presence of:-)



DIRECTOR)



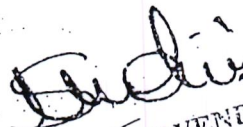
DIRECTOR/SECRETARY)

Conceded

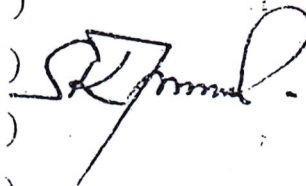
SIGNED by SAMMY SILAS KOMEN MWAITA)

on behalf of the President of the)

Republic of Kenya in the presence of:-)



SARAH MWENDA (014)
REGISTRAR OF TITLES



MEMORANDUM HEREINBEFORE REFERRED TO:

1. The provisions of the Government Lands Act (Chapter 280).
2. The Special Conditions contained in the said Grant.

LAND TITLES REGISTRY - NAIROBI REGISTRY
REGISTRATION OF TITLE ACT

REGISTERED AS No. I.R. 85371/2

PRESENTED 20th March 2001

TIME 15.05 Hrs Mwenda
Registrar of Titles

DRAWN BY:-

Rayani Rach & Sevany
Advocates
Agip House
Haile Selassie Avenue
P.O. Box 41919
NAIROBI.

Parliament team file

17/08/20

ASSEMBLY UNIT
SEARCHED
INDEXED (3)
KENYA



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

NATIONAL ASSEMBLY
RECEIVED
12 AUG 2020
LEADER OF MAJORITY
P.O. Box 41842, NAIROBI

ANNEXURE 1a

Ref: AG/CIV/47/20

Hon. Justin B. N. Muturi, EGH, MP
The Honourable Speaker of the National Assembly
Parliament Buildings
NAIROBI

11th August, 2020
RECEIVED
13 AUG 2020
1369
MINISTRY OF LANDS & PHYSICAL PLANNING
CABINET SECRETARY'S OFFICE
NAIROBI

REF: PETITION SUBMITTED TO THE NATIONAL ASSEMBLY BY THE DEPARTMENTAL COMMITTEE ON LANDS CONCERNING LR NO. 5875/2 ROYSAMBU BELONGING TO THE MINISTRY OF DEFENCE

Reference is made to the above subject matter and the letter dated 7th August, 2020 reference MOD/28/18/A from the Ministry of Defence a copy of which is attached for your ease of reference.

In the said letter, the Ministry of Defence states that it has become aware of a Petition submitted to the National Assembly by the Departmental Committee on Lands ("the Committee") touching on the above parcel of land above-referred. A report was prepared by the Committee following a Petition by alleged former employees of the late Mayer Jacob Samuels who was the previous registered owner.

The Ministry of Defence asserts that the land was compulsorily acquired by the Government in 1985 for use by the then Kenya Armed Forces and the parcel has since then been occupied by them.

The Ministry of Defence notes that the Committee in its report recommended that the land be allocated to the former workers. The Ministry understands that the report is scheduled for debate in the National Assembly on 12th August, 2020. The Ministry is apprehensive that if the report is adopted as drafted the same would have a negative implication on its possession of the land.

In the circumstances, the Ministry requested my office to provide an advisory opinion to the National Assembly which may be taken into consideration during the debate.

The Office of the Attorney General is established under Article 156 of the Constitution of Kenya. Under Article 156(4)(a) the Attorney General is the Principal Legal Advisor

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA. TEL: +254 20 2227461/2251355/07119445555/0732529995
E-MAIL: info.statelawoffice@kenya.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: legal@justice.go.ke WEBSITE: www.justice.go.ke

ISO 9001:2008 Certified



Received by
Wilson Kiprui
12/8/2020

to the Government while under Article 156(6) the Attorney General is to promote, protect, uphold the rule of law and defend the public interest. In this matter, this matter raises substantial issues of law and public interest which require the Attorney General to issue the advisory set out hereinbelow.

In proffering this advisory, reference is made to the Report by the Department of Lands and Physical Planning Committee on Lands dated December 5, 2019, and which is due for debate in the National Assembly on August 12, 2020. The Report addresses itself to various issues relating to the subject contested property, to wit, LR No. 5785/2 Roysambu. In the premises, it is imperative that some of the findings and/or observations of the Committee be clarified even as the National Assembly readies itself to discuss the import and substance of the Report. This is because if adopted, the Report recommendations are likely to disenfranchise legitimate title holder(s) to the subject property. This advisory supplements the position advanced by this office *vide* the Advisory dated June 18, 2020 and received in parliament on even date (see attachment No. 1).

In addition to the above we need to make clarification on the following issues:

Clarification No. 1: Acquisition and Compensation

The Report at page 17 (Observations No. 2, 3, 4, & 5) suggests the following, albeit in summary:

- The acquisition processes were not completed as out of court negotiations were not concluded;
- Full compensation was never paid; and
- No evidence that Kshs. 3,530,500.00 was paid to Meshumor Jacob Samuel.

The Ministry of Defence asserts that land LR No. 5875/2 was compulsorily acquired by the Commissioner of Lands *vide* Gazette Notices No. 5151 and 5152 of 1985 pursuant to a request from the then Department of Defence. This is the position largely adopted by the National Land Commission as well as the Ministry of Lands and Physical Planning. It is not disputed at all that through Gazette Notice No. 5151 of 1985 the Commissioner of Lands notified the public of the intention to acquire the land in accordance with section 6(2) of the Land Acquisition Act. Further, Gazette Notice No. 5152 of 1985 notified interested persons of the holding of an inquiry as to compensation as required under section 9(1) of the Land Acquisition Act.

The inquiry was duly conducted and an award of Kshs. 3,530,500.00 made. The heir to owner of the land the late Mayer Jacob Samuels, Mr. Meshumor Jacob Samuel challenged the award and later appealed to the High Court which enhanced the award to Kshs. 23,000,000. The government being dissatisfied with the enhanced award preferred an appeal at the Court of Appeal which was filed by the Attorney General *vide* Nairobi Civil Appeal No. 109 of 1987.

In the meantime, the amount in the initial award was deposited in court as stipulated under section 16(1) of the Land Acquisition Act and subsequently released to the registered owner's Advocates. That the Appeal was eventually compromised by consent as evidenced by the Commissioner of Lands letter dated 24th March, 2003 and a copy of the order dated 25th October, 2002 annexed to the Petition to Parliament.

However apart from the initial award of Kshs.3.5 Million the balance of the decretal sum was not paid and is still outstanding. The reason given is that there were no beneficiaries or legal representatives of the estate of the deceased to pay the funds. Though the amount is still outstanding, the judgment is now over 12 years and by virtue of Section 4(4) of the Limitation of Actions Act Cap 22 Laws of Kenya the judgment has lapsed and cannot be enforced.

Be that as it may, the notice of taking possession was issued by the Commissioner of Lands in accordance with section 19(1) of the Land Acquisition Act, and registered against the title hence vesting the land in the government.

The assertion that since the Ministry of Defence did not pay the enhanced award then the property rights did not pass and the land remained in the hands of the registered owner is a wrong interpretation of the law. Once notices of intention to acquire are issued, the award made and compensation paid and notice of taking possession issued, the land is deemed to be public land and must be dealt with as public land. This is supported by records from the Ministry of Lands which show that the notice of taking possession was lodged and registered in the Government Lands Register Vol. 10 folio 494/30 file 6943 of June 25th 1986 committing the said land to the Department of Defence.

If the purpose for which the acquisition was intended was no longer tenable then the notice of intention to acquire the land should have been formally rescinded. This did not happen. In fact, the Ministry of Defence took over possession of the land in 1986 and never vacated.

Section 19(4) of the Land Acquisition Act (repealed) provides that upon taking of possession, the land shall vest in the Government absolutely free from any encumbrances. It follows that the land vested in the government absolutely as contemplated by the Act. Further, the land became alienated government land since the purpose of the acquisition was for military use; the land vested in the Ministry of Defence and could not be reallocated by the Commissioner of Lands without the consent or surrender by the Ministry of Defence.

It follows that the process of an acquisition which was completed in 1986 cannot be challenged now. Consequently, the land is public land and was public land at the time it was purportedly allocated by the Commissioner of Lands to a private company. Similarly, when the land was purportedly subdivided and allocated by the County

Government of Nairobi for the benefit of the Petitioners in the Petition to Parliament it was alienated public land not available for allocation.

Clarification No. 2: Alleged Contradiction Information in the Ministry of Defence

Observation no. 3 is to the effect that there was contradictory information from the Ministry of Defence concerning the intended acquisition of LR No. 5875/2. The report alleges that in a letter dated 26th January, 1987 the Permanent Secretary, Department of Defence informed the Commissioner of Lands that the military had carried out an inspection of the land and found it unsuitable for the intended purpose unless four additional parcels of land surrounding the plot were acquired to enhance security since the plot was located in a residential area.

However, on the 10th April, 1987 Major Munyao wrote to the Commissioner of Lands vide a letter reference DOD/CGS/49/LND asking the Commissioner to disregard the contents of the letter by the Permanent Secretary until the military made further contact on the issue. That based on the submissions by the National Land Commission the military did not make the said contact. In our considered opinion, at the time the letter dated 26th January, 1987 was issued the process of compulsory acquisition was already complete.

Our understanding of the letter was that the Ministry of Defence was merely requesting for additional land which decision was subsequently rescinded in Munyao's letter. This action does not amount to surrender of the land and cannot be the basis of depriving the Department of Defence of the land.

Clarification No. 3: Occupation and/or Hand Over to Ministry of Defence

The Land in question was formally handed over to the Ministry of Defence on 25th June, 1986. The land was used as a training ground by the Kenya Army Electrical and Mechanical Engineers (KAEMA) and a temporary vehicle workshop by the Kenya Army. Following the establishment of a fully-fledged workshop at Kahawa Garrison, the temporary workshop therein was closed. The land was subsequently used as a temporary camp for military athletes owing to its close proximity to Kasarani Sports Complex.

The Ministry was in early 2019 requested to identify potential land for affordable housing programme. The Roysambu camp was identified as potential land for the construction of Senior Non-Commissioned Officers (NCO) housing under the affordable housing programme. Consequently, the Ministry elected to improve security at the camp by repairing the stone fence. The Camp also houses a detachment from Kahawa Garrison. The Ministry stated that at that time no persons other than the military athletes were residing in the land and no property was destroyed in the process. Consequently, the Petitioners cannot claim to be squatters on the land as it has been established that since the taking of possession by the military in 1986 it has remained in occupation and there have been no squatters on the land.

Clarification No. 4: The Issue of Double Allocation

The next issue to be resolved is whether the land was available for alienation to Solio Construction Company Limited and the validity of the subsequent transfer to Kasarasi Mall Limited as well as the validity of the County Government of Nairobi in allocating the land to the Petitioners to Parliament. In doing this we need to examine the process through which Solio acquired the land and whether the Commissioner of Lands had power to allocate the same and whether the County Government of Nairobi has power to subdivide and allocate land belonging to the National Government held by the Ministry of Defence.

It is evident that when the Commissioner of Lands issued a letter of allotment over the land in June 1999 to Solio Construction Company Ltd he was aware of the compulsory acquisition of the land. Subsequently grant No. I.R. 85371 was registered on 1st July, 1999 over the land. The grant was transferred by Solio Construction Company Limited to Kasarani Mall Ltd vide a transfer registered at the Land Titles Registry on 20th March 2001 as No. I.R.85371/2. Kasarani Mall Ltd paid a consideration of Kshs. 85,000,000.00 to Solio Construction Company Limited in respect of the Transfer.

According to Uchumi it bought the land in 2001 from Solio Construction Company Ltd, occupied it and put up a stone fence around it. It further claims that there have been various cases in court for/or against people claiming to be former employees of the previous owner for instance Environment and Land Court Case No 153 of 2017 (formally 495 of 2011) Kasarani Mall Ltd versus Daniel Otieno Miganga, Roysa Community Self Help Group and others and Nairobi ELC case No. 1522 of 2013 Daniel Otieno Miganga and Roysa Community Self Help Group and others versus Kasarani Mall Ltd and Uchumi Supermarkets Plc.

The defendants in the former and the Plaintiffs in the latter were claiming the land by virtue of being former employees of the former owners of the land and adverse possession. Both cases were however determined in favour of Kasarani Mall Limited. It would seem that the Petition to Parliament is an endeavor to achieve through the parliamentary process what could not be obtained through a court of law as it involved the same parties in the above cases.

There are a litany of authorities by the courts which assert the position that once land is compulsorily acquired for a public purpose it becomes public land and the land cannot be alienated for private use unrelated to the public purpose for which it was acquired. The Government Land Act Cap 280 (repealed) describes un-alienated government land under section 1 as follows:

“unalienated Government land” means Government land which is not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment.”

This means that any public land vested in any public entity is alienated government land. The President had power to alienate government land under section 3 of GLA (repealed). These powers were thereafter delegated to the Commissioner of Lands under section 3(a) of the Government Land Act (Repealed).

Under the principal of delegation, whoever is exercising delegated power cannot exercise it beyond the power granted to the principal, this means that under the repealed Government Land Act neither the President nor the Commissioner of Lands could alienate, alienated government land. This position was affirmed by Justice Obaga in *Kenya Anti-Corruption Commission v Wilson Gacanja & 2 others in Nairobi ELC 275 of 2009*.

The land having been compulsorily acquired there is no evidence that the Ministry of Defence consented to the land being alienated by the Commissioner of Lands. In the absence of such consent or a duly executed surrender to the government it is our considered opinion that the land was not available for allocation.

This position was affirmed by the Supreme Court decision in the *Town Council of Awendo vs. Nelson O Onyango & 13 others; Abdul Malik Mohamed & 178 others (Interested Parties) [2019] eKLR* where the Supreme Court essentially restated and reaffirmed the law on compulsory acquisition by setting out the guiding principles as follows:

"[61] On the basis of the foregoing analysis, we hereby issue the following guiding principles:

General Principles

- a. Where the Government, pursuant to the relevant constitutional and legal provisions, compulsorily acquires land, such land, shall only be used for the purpose for which it was compulsorily acquired.*
- b. The allocation of compulsorily acquired land, to private individuals or entities, for their private benefit, in total disregard of the public purpose or interest for which it was compulsorily acquired, shall be incapable of conferring title to that land in favour of the allottees.*
- c. A person whose land has been compulsorily acquired in accordance with the relevant constitutional and legal provisions does not retain any reversionary interest in the said land.*
- d. Un-utilized portions of compulsorily acquired land may be used for a different public purpose, or in furtherance of a different public interest, including the allocation of such portions to private individuals or entities, at the market price, in furtherance of such public interest.*

As was succinctly stated by the Supreme Court in *Town Council of Awendo vs Nelson O Onyango & 13 others; Abdul Malik Mohamed & 178 others (Interested Parties) [2019] eKLR* (supra) the allocation of compulsorily acquired land, to private individuals or entities, for their private benefit, in total disregard of the public purpose

or interest for which it was compulsorily acquired, shall be incapable of conferring title to that land in favour of the allottee. (emphasis added)

Equally, these authorities apply to the County Government of Nairobi which is divested of power to allocate Government land which has already been alienated. The same authorities also apply with equal force to Parliament. Meaning that Parliamentary process cannot be used to deprive the National Government land which has been alienated to the Ministry of Defence as this would be against the law and especially Article 40 of the Constitution which protects the right to property and also protects public land.

Conclusion

We therefore urge you to bring to the attention of the House the contents of this advisory when they are debating the Departmental Committee for Lands report so that a decision is made with full appreciation of the law and the facts surrounding LR No. 5785/2 Roysambu to avoid a situation where the military is needlessly deprived of its land which it lawfully acquired for a public purpose through compulsory acquisition.



P. Kihara Kariuki
ATTORNEY GENERAL

Copy to: **Hon. Dr. Amos Kimunya, FCPA, EGH, MP**
Leader of Majority in the National Assembly
Parliament Buildings
NAIROBI

Dr. Monica K. Juma, (OXON), CBS
Cabinet Secretary
Ministry of Defence
Ulinzi House
P. O. Box 40668-00100
NAIROBI

Mr. Michael Sialai, EBS
Clerk of the National Assembly
Parliament Buildings
NAIROBI

Mr. Kennedy Ogeto CBS
SOLICITOR GENERAL



MINISTRY OF DEFENCE OFFICE OF THE CABINET SECRETARY

Telegraphic Address: "DEFENCE"
Fax No .020-2726321
Telephone: 020-2721100
Email: cabinet-secretary@mod.go.ke

ULINZI HOUSE
P.O. Box 40668-00100
NAIROBI
KENYA

**MOST
URGENT**

7th August, 2020

When replying please quote: MOD/28/18A

Justice (Rtd) Paul Kihara Kariuki
Attorney General
Attorney General's Chambers
Harambee Avenue
Nairobi



Dear *Justice (Rtd) Paul K. Kariuki,*

LR NO. 5785/2 ROYSAMBU

Our attention is drawn to a petition submitted to the National Assembly Departmental Committee on Lands on the above parcel of land. The Petitioners allege to be the former workers of Major Mayer Jacobs Samuel who was the previous registered owner.

The parcel of land was in 1985 compulsorily acquired by the Government of Kenya for use by the then Kenya Armed Forces. The parcel of land is occupied by the Kenya Defence Forces.

The National Assembly Departmental Committee in its report on the petition recommended that the land be re-titled in favour of 'the former workers' of Major Mayer Jacobs Samuel. A copy of the report is forwarded herewith.

The Ministry understands that the report is schedule for debate in the National Assembly on Wednesday 12th August 2020. The Ministry is apprehensive that the report may be adopted by the National Assembly as drafted. Such an outcome would have huge negative implications on the MoD possession of the land.

In the light of this, I write to kindly request you to provide an advisory opinion to the National Assembly, hopefully before the debate of the Report.

Your action in this regard will be highly appreciated.

Mr. Oscar Eredi Please give this your immediate attention in view of the time line, and consult as necessary.

cc Ms. Christine Njirani

cc Mr. Njiru Wachara to follow up.



Receive, Honorable Attorney General, compliments of the highest consideration.

Yours *Sincerely,*

A handwritten signature in black ink, appearing to read 'Monica K. Juma', written in a cursive style.

Dr. Monica K. Juma, (Oxon), CBS
CABINET SECRETARY

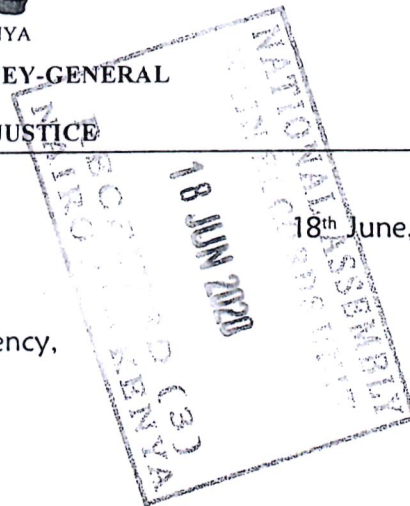


REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Our Ref: AG/CIV/47/20

Hon. Isaac Waihenya Ndirangu
Member of Parliament for Royasambu Constituency,
Continental House, 5th Floor, Room 514,
P.O Box 130 – 00618
NAIROBI



18th June, 2020

REF: ADVISORY ON THE PROPOSED COURTESY CALL BY NAIROBI MEMBERS
OF PARLIAMENT RELATING TO THE DISPUTE OVER LR NO. 5875/2
ROYSAMBU

Reference is made to your letters dated the 17th February and 9th March 2020, with regard to the above captioned subject matter, which we regret has taken more time than we expected to respond to, on account of the complex nature of the issue and the need to consult widely.

A. Background

Vide your letter dated the 17th February, 2020 addressed to this Office, you and your fellow Members of Parliament from Nairobi sought audience with the Honourable the Attorney General to discuss the report of the Departmental Committee on land relating to LR No. 5875/2.

The letter states that the Members of Parliament are keen on having the Parliamentary Departmental Committee on Lands' Report implemented, and the securing of title deeds for public utilities and for the former workers who paid a fee of Kshs. 69,500/= each for allocation of the land by the Nairobi County Government.

Having looked into the matter extensively it was noted that there are other parties who have claimed interest in the land particularly the Ministry of Defence and Uchumi Supermarkets PLC and at the time of receipt of your letter the office was actively engaging the two parties with a view to exploring an amicable settlement of the matter.

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CO-OPERATIVE BANK HOUSE, HAILLE SELLASIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
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From these meetings the following important issues have emerged:

i. Ministry of Defence

According to the Ministry of Defence, LR No. 5875/2, the land in dispute herein, was compulsorily acquired by the Commissioner of Lands vide Gazette Notices No. 5151 and 5152 of 1985 (see attachment No. 1) pursuant to a request from the then Permanent Secretary in charge of the Department of Defence in the Office of the President (see attachment No. 2).

The land was valued at Kshs. 3,530,500 by the Commissioner of Lands and the compensation award was duly paid by the Department of Defence to the Commissioner of Lands (see attachment No. 3). The beneficial owner of the land, Mr. Meshumor Jacob Samuels was dissatisfied with the compensation award and commenced proceedings to challenge the valuation in the High Court under Land Acquisition Appeal No. 2 of 1986.

In accordance with section 13(2) of the Land Acquisition Act, the compensation award was deposited in the High Court by the Commissioner of Lands and a deposit receipt issued by the High Court Registrar (see attachment No. 4) and subsequently released to Mr. Jacobs on the 3rd October, 1987. This was confirmed by the Attorney General's letter dated the 23rd April, 1997 and M/s Robson Harris & Co Advocates confirming that the Kshs. 3,530,500.00 was received by them on behalf of their client, Mr. Jacobs.

The Commissioner of Lands issued a notice of taking possession in accordance with section 19(1) of the Land Acquisition Act on the 25th June, 1986 (see attachment No. 5). The notice also required Mr. Jacobs to deliver the title documents to the Registrar of Titles for cancellation. In accordance with section 19(4) of the Land Acquisition Act, the title to the land vested in the Government absolutely, free from any encumbrances for the unexpired term of 99 years from 1906 as at the 25th June, 1986. The notice of taking possession was booked for registration against the title as per Day Book No. 1205 of 1986 (see attachment No. 6)

The High Court enhanced the award to Kshs. 23,000,000 the decision was subsequently appealed by the Attorney General vide Nairobi Civil Appeal No. 109 of 1987 which was later settled and the Government agreed to pay the enhanced award.

The Land in question was formally handed over to the Ministry of Defence on the 25th June, 1986. The land was used as a training ground by the Kenya Army Electrical and Mechanical Engineers (KAEMA) and a temporary vehicle workshop by the Kenya Army. Following the establishment of a fully-fledged workshop at Kahawa Garrison, the temporary workshop therein was closed. The land was subsequently used as a temporary camp for military athletes owing to its close proximity to Kasarani Sports Complex.

The Ministry was in early 2019 requested to identify potential land for affordable housing programme. The Roysambu camp was identified as potential land for the construction of Senior Non-Commissioned Officers (NCO) housing under the affordable housing programme. Consequently, the Ministry elected to improve security at the camp by repairing the stone fence. The Camp also houses a detachment from Kahawa Garrison. The Ministry stated that at the time no persons other than the military athletes were residing in the land and no property was destroyed in the process.

ii. Uchumi Supermarkets Plc.

Kasarani Mall Ltd which is a subsidiary of Uchumi Supermarkets Plc. is the registered owner of LR. No. 5875/2 situated in the Kasarani area of Nairobi.

Records held by Kasarani Mall Ltd indicate that the Commissioner of Lands on behalf of the President granted the land to Solio Construction Company Limited vide Grant of Lease No. I.R. 85371. The Grant was transferred to Kasarani Mall Ltd vide a transfer registered at the Land Titles Registry on the 20th March, 2001 as No. I.R. 85371/2 (see attachments No. 7 and 8).

Uchumi claims that Kasarani Mall Ltd lawfully acquired a valid title from Solio Construction Company Limited through the said transfer. That after acquisition of the land, the title has been used by Uchumi Supermarkets Plc. to secure financing from KCB Bank Kenya Limited and Eastern and Southern African Trade and Development Bank on the 7th December, 2004. Each of these facilities was repaid and the respective charges registered therein discharged on the 28th June, 2011.

Uchumi Supermarkets Plc. further claims that the Directorate of Criminal Investigations, then known as Criminal Investigations Department (CID) investigated the validity of the transfer in 2008, following allegations that the transaction was fraudulent. The CID confirmed that the Property was procedurally allocated to Solio Construction Company Limited who acquired a valid title. There was no evidence of collusion or conspiracy between Solio Construction Company Limited and the Lands Registry during allocation of the Property. Solio Construction Company Limited transferred a valid title to Kasarani Mall in 2001 on 'willing buyer willing seller' and that the caveat on Kasarani Mall's title had no legal basis or justification and had unreasonably prevented the sale or development of the property (see attachment No. 9).

In 2010, members of Roysambu Community Self Help Group (an unregistered society) invaded the Property. In response, Kasarani Mall Ltd filed a case at the Environment and Land Court being Civil Case No. 495 of 2011. According to court records, the defendants therein similarly alleged that being former employees of Major Jacob Samuels the previous owner and following his demise, they were given the land by individuals identified as Rapahel and Meshmor Samuel (allegedly Major Jacob Samuels' sons) to develop the same.

The court allowed Kasarani Mall Ltd.'s claim for vacant possession and a permanent injunction against the defendants and declared that Kasarani Mall Ltd is the absolute and indefeasible owner of the property in terms of Section 26 (1) of the Land Registration Act (see attachment No. 10).

iii. National Land Commission

The National Land Commission's position is to the effect that the Department of Defence acquired land which was on a 99-year lease in 1986 and that the lease was to expire in 2005. Solio Construction Company Limited who sold land to Kasarani Mall Limited was allocated L.R No. 5875/2 on the 1st July, 1999 and the allocation was done when another lease was subsisting leading to double allocation. The NLC recommended that Kasarani Mall Limited should surrender their title back to the Government because it was irregularly issued, or in the alternative the Chief Land Registrar should place a Government Caveat on the said title. All letters of allotment issued irregularly on the irregular subdivision of LR No. 5875/2 by the Ministry of Lands and Physical Planning to be surrendered for cancellation because records from the Ministry of Lands show that the notice of taking possession was lodged and registered in the Government lands Register Vol. 10 folio 494/30 file 6943 of the 25th June 1986 committing the said land to the Department of Defence. (See attachment No. 11)

iv. The Ministry of Lands and Physical Planning

The Ministry of Lands observed that from the available documents, LR No. 5875/2 is still government land as there is no evidence that the Ministry of Defence ever relinquished their interest on the land.

All transactions undertaken by the Nairobi City County Government purporting to allocate and sub-divide the land are un-procedural and misleading. The Ministry was never consulted to give the true position, nor approved the purported subdivision. The Ministry of Lands recommended that the subdivision scheme and the letter of subdivision issued to individuals be cancelled or withdrawn and the status quo as per their records be retained since the land remains the property of the Government, alienated to the military unless otherwise advised. The Director of Surveys should also be informed to reinstate the parcel to its original number (see attachment No. 12)

v. The Petition to Parliament

Your letter stated that according to the Petition submitted to Parliament on the 27th June, 2019 the Petitioners, who claim to be former workers in the estate of the late Mayer Jacob Samuels, allege that the Kenya Defence Forces invaded the property in Roysambu Constituency which was given to them by the estate of the deceased. In its Report, the Departmental Committee on Lands recommended that:

1. The Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County Government to complete the titling process for LR No. 5875/2 within 180 days of tabling of the report.
2. The Director of Criminal investigations to investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to LR No. 5875/2 and the DPP to prosecute any person found culpable within ninety (90) days of the tabling of the report.
3. The Ministry of Lands and Physical Planning to secure title relating to LR No. 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempts to amalgamate it with LR No. 5875/2.

It is these recommendations that the Honourable Members of Parliament are keen to have implemented. In the circumstances, your letter must be considered in the light of the submissions and claims made above by the other parties because any action taken unilaterally is bound to affect the rights and interests of other parties.

B. Analysis of the Dispute

In view of the foregoing, the following contentious issues have emerged which we proceed to set out, analyze, offer our opinion and our recommendations:

1. Whether the land was compulsorily acquired for a public purpose and vested in the Government of Kenya on behalf of the Ministry of Defence.
2. If the land was compulsorily acquired, whether the land was available for allocation to Solio Construction Company Ltd.
3. The legal validity of other claims over the land on the basis of a Parliamentary Select Committee report which has not been adopted by Parliament and whether the Petitioners can claim ownership through Adverse Possession.
4. Whether the Nairobi City County Government has the authority to allocate and subdivide public land.

1. Whether the land was compulsorily acquired for a public purpose and vested in the Ministry of Defence

The Ministry of Defence asserts that land LR NO. 5875/2 was compulsorily acquired by the Commissioner of Lands vide Gazette Notices No. 5151 and 5152 of 1985 pursuant to a request from the then Ministry of Defence. This is the position largely adopted by the National Land Commission as well as the Ministry of Lands and Physical Planning. It is not disputed at all that through Gazette Notice No. 5151 of 1985 the Commissioner of Lands notified the public of the intention to acquire the land in accordance with section 6(2) of the Land Acquisition Act. Further, Gazette

Notice No. 5152 of 1985 notified interested persons of the holding of an inquiry as to compensation as required under section 9(1) of the Land Acquisition Act.

The inquiry was duly conducted and an award of Kshs. 3,530,500.00 made. Mr. Meshumor Jacob Samuel, the heir to the owner of the land, the late Mayer Jacob Samuels, challenged the award and later appealed to the High Court which enhanced the award to Kshs. 23,000,000. The Government, being dissatisfied with the enhanced award, preferred an appeal at the Court of Appeal which was filed by the Attorney General vide Civil Appeal No. 109 of 1987.

In the meantime, the amount in the initial award was deposited in court as stipulated under section 16(1) of the Land Acquisition Act and subsequently released to the registered owner's Advocates. That the Appeal was eventually compromised by consent as evidenced by the Commissioner of Lands letter dated the 24th March, 2003 and a copy of the order dated the 25th October, 2002 annexed to the Petition to Parliament (see attachment No. 13).

However apart from the initial award of Kshs .3.5 Million the balance of the decretal sum was not paid and is still outstanding. The reason given is that there were no beneficiaries or legal representatives of the estate of the deceased to pay, though there was an advocate on record for them who should have received the funds. Though the amount is still outstanding, the judgment is now over twelve (12) years and by virtue of Section 4(4) of the Limitation of Actions Act Cap 22 Laws of Kenya the judgment has lapsed and cannot be enforced.

Be that as it may, the notice of taking possession was issued by the Commissioner of Lands in accordance with section 19(1) of the Land Acquisition Act, and registered against the title hence vesting the land in the government.

While aware of this compulsory acquisition the Commissioner of Lands issued a letter of allotment over the land in June 1999 to Solio Construction Company Ltd. Subsequently, grant No. I.R. 85371 was registered on the 1st July, 1999 over the land. The grant was transferred by Solio Construction Company Limited to Kasarani Mall Ltd vide a transfer registered at the Land Titles Registry on 20th March 2001 as No. I.R.85371/2. Kasarani Mall Ltd paid a consideration of Kshs. 85,000,000.00 to Solio Construction Company Limited in respect of the Transfer.

The question is whether the land was compulsorily acquired and vested in the Ministry of Defence. It was asserted in some of the submissions that were made including the findings of the Parliamentary Departmental Committee on Lands that since the Ministry of Defence did not pay the enhanced award then the property rights did not pass and the land remained in the hands of the registered owner.

We are of the opinion that this is the wrong interpretation of the law. Once notices of intention to acquire are issued, the award made and compensation paid and notice of taking possession issued, the land is deemed to be public land and must be dealt

with as public land. This is supported by records from the Ministry of Lands which show that the notice of taking possession was lodged and registered in the Government lands Register Vol. 10 folio 494/30 file 6943 of June 25th 1986 committing the said land to the Department of Defence.

If the purpose for which the acquisition was intended was no longer tenable then the notice of intention to acquire the land should have been formally rescinded. This did not happen. In fact, the Ministry of Defence took over possession of the land. It is not clear how, if and when the Ministry of Defence vacated the land as alleged though it insists it never vacated.

For their part, Uchumi through its subsidiary claims to have bought the land in 2001 from Solio Construction Company Ltd; it occupied the same and put up a stone fence around it. There have been various cases in court against people claiming to be former workers of the previous owner for instance Environment and Land Court Case No 153 of 2017 (formally 495 of 2011) Kasarani Mall Ltd versus Daniel Otieno Miganga, Roysa Community Self Help Group and others and Nairobi ELC case No. 1522 of 2013 Daniel Otieno Miganga and Roysa Community Self Help Group and others versus Kasarani Mall Ltd and Uchumi Supermarkets Plc. The defendants in the former and the Plaintiffs in the latter were claiming the land by virtue of being former employees of the former owners of the land and adverse possession. Both cases were however determined in favour of Kasarani Mall Ltd. It would seem that the Petition to Parliament is an endeavour to achieve through the parliamentary process what could not be obtained through a court of law (see attachment No. 14).

Section 19(4) of the Land Acquisition Act (repealed) provides that upon taking of possession, the land shall vest in the Government absolutely free from any encumbrances. It follows that the land vested in the government absolutely as contemplated by the Act. Further, the land became alienated government land since the purpose of the acquisition was for military use; the land vested in the Ministry of Defence and could not be reallocated by the Commissioner of Lands without the consent or surrender by the Ministry of Defence.

It follows that the process of an acquisition which was completed in 1986 cannot be challenged now. Consequently, the land is public land and was public land at the time it was purportedly allocated to Solio Construction Ltd. Similarly, it was public land when it was purportedly subdivided and allocated by the County Government of Nairobi.

2. Upon compulsory acquisition, whether the land was available for allocation to Solio Construction Company Ltd.

The next issue to be determined is whether the land was then available for alienation to Solio Construction Company Ltd and the validity of the subsequent transfer to Kasarani Mall Ltd. In doing this we need to examine the process through which Solio

acquired the land and whether the Commissioner of Lands had power to allocate the land.

There are a litany of authorities by the courts which assert the position that once land is compulsorily acquired for a public purpose it becomes public land and the land cannot be alienated for private use unrelated to the public purpose for which it was acquired.

The Government Land Act (GLA) Cap 280 (repealed) describes un-alienated government land under section 1 as follows:

“unalienated Government land” means Government land which is not for the time being leased to any other person, or in respect of which the Commissioner has not issued any letter of allotment.”

This means that any public land vested in any public entity is alienated government land. The President had the power to alienate government land under section 3 of the GLA which stipulated as follows:

These powers were thereafter delegated to the Commissioner of Lands under section 3(a) of the GLA. Under the principle of delegation, whoever is exercising delegated power cannot exercise it beyond the power granted to the principal, this means that under the repealed Government Land Act neither the President nor the Commissioner of Lands could alienate, alienated government land. This position was affirmed by Justice Ombwayo in *Timothy Ingosi & 87 others vs. Kenya Forestry Services & 2 others* [2015] eKLR.

The land having been compulsorily acquired, there is no evidence that the Ministry of Defence consented to the land being alienated by the Commissioner of Lands. In the absence of such consent or a duly executed surrender to the Government, it is our considered opinion that the land was not available for allocation.

This position was affirmed by the Supreme Court decision in the *Town Council of Awendo vs. Nelson O Onyango & 13 others; Abdul Malik Mohamed & 178 others (Interested Parties)* [2019] eKLR where the Supreme Court essentially restated and reaffirmed the law on compulsory acquisition by setting out the guiding principles as follows:

“[61] On the basis of the foregoing analysis, we hereby issue the following guiding principles:

General Principles

- a. Where the Government, pursuant to the relevant constitutional and legal provisions, compulsorily acquires land, such land, shall only be used for the purpose for which it was compulsorily acquired.*
- b. The allocation of compulsorily acquired land, to private individuals or entities, for their private benefit, in total disregard of the public purpose*

or interest for which it was compulsorily acquired, shall be incapable of conferring title to that land in favour of the allottees.

- c. A person whose land has been compulsorily acquired in accordance with the relevant constitutional and legal provisions does not retain any reversionary interest in the said land.*
- d. Un-utilized portions of compulsorily acquired land may be used for a different public purpose, or in furtherance of a different public interest, including the allocation of such portions to private individuals or entities, at the market price, in furtherance of such public interest.*

As was succinctly stated by the Supreme Court in *Town Council of Awendo vs Nelson O Onyango & 13 others; Abdul Malik Mohamed & 178 others (Interested Parties) [2019] eKLR (supra)* the allocation of compulsorily acquired land, to private individuals or entities, for their private benefit, in total disregard of the public purpose or interest for which it was compulsorily acquired, shall be incapable of conferring title to that land in favour of the allottee.

3. The legal validity of other claimants over the suit land on the basis of a Parliamentary Select Committee report which has not been adopted by Parliament and whether the Petitioners can claim ownership through Adverse Possession

The Hon. Members of Parliament claim that former workers in the estate who hail from different communities have an interest in seeing the implementation of the parliamentary Departmental Committee on Lands report and to secure title deeds for public utilities and former workers who paid a fee of Kshs .69,500/= for allocation by the Nairobi County Government. According to the attached documents a Petition on alleged invasion of the suit property in Roysambu Constituency by the Kenya Defence Forces was submitted to Parliament on the 27th June, 2019 by people who claim to be former workers of the late Mayer Jacob Samuels.

In your letter dated the 9th March, 2020 you raised other issues which include the claim for Adverse Possession and the allocation and subsequent subdivision of the property by the Nairobi City County Government.

Paragraph 10 of the said letter alludes to the fact that since former workers have occupied the land for a long time, they are entitled to occupy the same by way of adverse possession. Adverse possession was described in the case of *Mtana Lewa vs. Kahindi Ngala Mwangandi [2015] eKLR*:

... Adverse possession is essentially a situation where a person takes possession of land and asserts rights over it and the person having title to it omits or neglects to take action against such person in assertion of his title for a certain period, in Kenya, is twelve (12) years. The process springs into action essentially by default or inaction of the owner. The essential prerequisites being that the possession of the adverse possessor is neither by force or stealth nor

under the license of the owner. It must be adequate in continuity, in publicity and in extent to show that possession is adverse to the title owner.

The land as stated earlier is public land and vested in the Ministry of Defence. This brings the land under the category of "land otherwise enjoyed by the Government" under Section 41 (a) (i) of the Limitation of Actions Act as well as under the category of public land defined at Article 62 (1) of the Constitution as follows:

Public land is –

- a) Land which at the effective date was un-alienated government land as defined by an Act of Parliament in force at the effective date;*
- b) Land lawfully held, used or occupied by any State organ, except any such land that is occupied by the State organ as lessee under a private lease;*
- c) Land transferred to the State by way of sale, reversion or surrender;*
- d) Land in respect of which no individual or community ownership can be established by any legal process;*
- e) Land in respect of which no heir can be identified by any legal process.*

Section 41(a) (i) of the Limitation of Actions Act Cap 22 excludes public land from being acquired through adverse possession. It provides:

41. This Act does not-

- (a) enable a person to acquire any title to, or any easement over-
 - i) government land or land otherwise enjoyed by the Government;

The property in question is, therefore, public land since it is being lawfully held by the Ministry of Defence which acquired the same in 1986 and that adverse possession cannot operate against government land. Be that as it may, this is an issue that was the subject of determination by the court in Nairobi ELC 1522 of 2013 Daniel Otieno Miganga and Roysa Community Self Help Group and others versus Kasarani Mall Ltd and Uchumi Supermarkets Plc. (supra) (attachment no 14). The court found that the plaintiffs then who are now the petitioners to parliament were not in adverse possession of the land. The court proceeded to dismiss their claim and no appeal was preferred. It seems that they are now trying to use the petition to parliament to gain what they failed through the court process.

4. Whether the Nairobi City County Government has authority to allocate and subdivide public land belonging to the National Government

The land was compulsorily acquired by the Commissioner of Lands on behalf of the Ministry of Defence in 1986. The land was initially registered in the name of Mayer Jacob Samuels who was issued with a Grant by the Commissioner of Lands for a period of 99 years from 1906. The land having been compulsorily acquired vests absolutely in the Ministry of Defence and can thus be termed as public land. Article 67 of the Constitution establishes the National Land Commission with powers to *inter alia*, manage public land on behalf of the National and County governments. Section

5 (1) (a) of the National Land Commission Act is also explicit that one of the functions of the National Land Commission is to manage public land on behalf of the national and county governments. Under Section 5 (2) of the Act the Commission may,

“on behalf of, and with the consent of the national and county governments, alienate public land.”

Section 12 of the Land Act grants the Commission authority to allocate public land on behalf of the national or county governments and section 14 of the Act specifies the steps that the Commission ought to take before it undertakes any such allocation. The Commission has to issue, publish or send a notice of action to the public and interested parties, at least thirty days before offering for allocation a tract or tracts of land.

At least thirty (30) days prior to the allocation the Commission should send a notice to the Governor in whose county the public land proposed for allocation is located and to the head of the governing body of any administrative subdivision having development control, among others. The notice should then be published in the Kenya Gazette and at least once a week for a period of three weeks and thereafter published in a newspaper of general circulation in the general vicinity of the land being proposed to be offered for allocation.

It is therefore clear that it is the role of the Commission and not a county government to allocate public land. The allocation must however comply with the laid down constitutional and statutory procedure as stated above. The Petitioners did not follow the appropriate procedure in its effort to be allocated the parcel of land. The Nairobi City County Government had no power to alienate and/or allocate public land in the manner it did and any PDP that was prepared was therefore un-procedural, illegal and of no consequences in law.

However, the committee in its determination says that the lease belonging to Jacob Mayer lapsed and was not renewed hence the land devolved to the county government. It appears that the committee misread and selectively applied that provisions of Article 62 (2) of the Constitution which vests the land stated in article 62(1)(a) to (e) in the county government as follows:

62(2). Public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under—

(a) Clause (1)(a), (c), (d) or (e); and

(b) Clause (1)(b), other than land held, used or occupied by a national State organ.

Clearly the land in dispute is exempt by Article 62 (1) (a) which talks about un-alienated government land. In this case the land is owned by the Ministry of Defence and claimed by Uchumi Supermarkets Plc. which also has a title. Consequently, the

County Government of Nairobi had no business subdividing the land and allocating it to private individuals. Similarly, the Departmental Committee on Lands should have properly interpreted the law and rejected the Petition.

C. Conclusion and recommendations

We have no evidence that the Departmental Committee on Lands Report made on the 5th December, 2019 has been tabled before Parliament, debated and adopted according to the relevant Standing Orders.

Secondly, as can be seen above the land is claimed by other parties who include the Ministry of Defence hence making this public land.

Consequently, it may be difficult to implement the Report since the land is rightly occupied by the Military having been compulsorily acquired on their behalf. The Ministry of Defence has not relinquished its claim over the land or surrendered it back to the government. It is our opinion that the land having been validly compulsorily acquired the same was not available for alienation.

The Ministry of Defence stated that in early 2019 it was requested to identify potential land for affordable housing programme. The Roysambu camp was identified as a potential land for the construction of Senior Non-Commissioned Officers (NCO) housing under the affordable housing programme.

On your part, apart from securing titles to alleged former workers, you have also proposed to set up on the land a secondary school, whereby funds have been secured from the National Government Constituency Development Fund (NGCDF), a polytechnic (TVET) as well as Recreational facilities for PSV operators. You have also stated some land is required to resettle people who were affected by the expansion of the Thika Highway. Your proposed plans will conflict with the plans the government and the military have for the land.

In the circumstances, we consider that the most appropriate way to resolve this is for the Members of Parliament to request the National Land Commission to secure alternative land for purposes of implementing the proposed projects.


In view of the foregoing and the measures put in place by the government designed to contain the COVID 19 pandemic a physical meeting may not be possible we therefore recommend the following;

1. That the Honourable Members of Parliament be pleased to await the tabling and adoption of the Departmental Committee on Lands Report by Parliament.
2. That in the meantime Honourable Members of Parliament should engage the National Land Commission (NLC) on modalities of how to secure alternative land for construction of the proposed Roysambu Secondary School, the

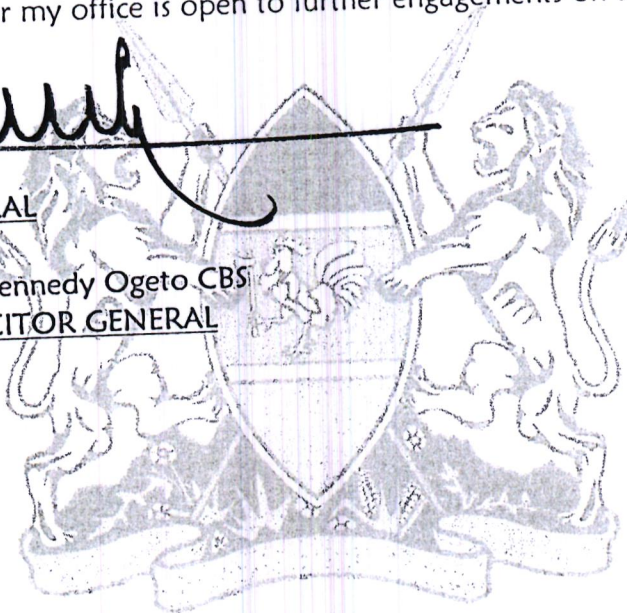
Polytechnic and Recreational Facilities as well as the relocation of Project Affected Persons (PAPs) and businesses which were affected by the expansion of Thika Highway.

3. The Director of Criminal investigations (DCI) to investigate and recommend prosecution of officers in the Ministry of Lands and Physical Planning, the National Land Commission (NLC), the County Government of Nairobi as well as officials of Roysa Community Development Society who may have caused loss of public funds by effecting fraudulent transactions relating to LR No. 5875/2.
4. That any money collected from members of the public under the pretext that they would be allocated the Military land should be recovered and refunded.

We hope that these recommendations will meet your expectations and resolve the issues raised however my office is open to further engagements on the same.


P. Kihara Kariuki
ATTORNEY GENERAL

Copy to: Mr. Kennedy Ogeto CBS
SOLICITOR GENERAL



Attachment NO 1

AG

27

GAZETTE NOTICE No. 5148

THE CIVIL AVIATION ACT

(Cap. 394)

THE CIVIL AVIATION BOARD

NOTICE OF APPLICATION FOR, OR VARIATION OF AN AIR SERVICE LICENCE

PURSUANT to the provisions of the Civil Aviation Act, 1977, notice is given that Coast Car Hire and Tours Ltd., P.O. Box 99143, Mombasa, has applied to the Civil Aviation Board for a three-year licence to operate air charter and inclusive tours based at Moi International Airport, Mombasa, with a capacity of twenty (20) seats.

Any objections or representations to this application should be made in writing to the Civil Aviation Board, Ministry of Transport and Communications, Ngong' Road, P.O. Box 52692, Nairobi, so as to reach it within twenty-eight (28) days of the date of publication of this notice. Every such objection or representation should state the specific grounds on which it is based and specify any conditions which it is desired that the board should impose on the licence, if granted. It should further be noted that a copy of every objection, or representation should be sent by the person making the same to the applicant at the same time that it is sent to the Civil Aviation Board.

Dated the 8th November, 1985.

F. J. UTAJJE,
for Chief Executive Officer/Secretary,
Civil Aviation Board.

GAZETTE NOTICE No. 5149

THE CIVIL AVIATION ACT

(Cap. 394)

THE CIVIL AVIATION BOARD

NOTICE OF APPLICATION FOR, OR VARIATION OF AN AIR SERVICE LICENCE

PURSUANT to the provisions of the Civil Aviation Act, notice is given that African Express Airways (K) Ltd., P.O. Box 42356, Nairobi, has applied to the Civil Aviation Board for a two-year renewal, with effect from 13th November, 1985 of their air service licence CAB No. 40. The current licence services for passengers and freight to and from and within Kenya expires on 17th November, 1985, and authorizes air charter based at Malindi with a capacity of twenty-one (21) seats.

Any objections or representations to this application should be made in writing to the Civil Aviation Board, Ministry of Transport and Communications, Ngong' Road, P.O. Box 52692, Nairobi, so as to reach it within twenty-eight (28) days of the date of publication of this notice. Every such objection or representation should state the specific grounds on which it is based and specify any conditions which it is desired that the board should impose on the licence, if granted. It should further be noted that a copy of every objection, or representation should be sent by the person making the same to the applicant at the same time that it is sent to the Civil Aviation Board.

Dated the 8th November, 1985.

F. J. UTAJJE,
for Chief Executive Officer/Secretary,
Civil Aviation Board.

GAZETTE NOTICE No. 5150

THE CIVIL AVIATION ACT

(Cap. 394)

THE CIVIL AVIATION BOARD

NOTICE OF APPLICATION FOR, OR VARIATION OF AN AIR SERVICE LICENCE

PURSUANT to the provisions of the Civil Aviation Act, notice is given that African Express Airways (K) Ltd., P.O. Box 42356, Nairobi, has applied to the Civil Aviation Board for a two-year renewal, with effect from 13th November, 1985.

of their air service licence CAB No. 54. The licence expires on 17th November, 1985, and authorizes non-scheduled air coach services (with right to sell individual seats) on the routes: Malindi-Lamu-Malindi; Malindi-Hoja-Malindi; and Lamu-Hoja-Lamu.

Any objections or representations to this application should be made in writing to the Civil Aviation Board, Ministry of Transport and Communications, Ngong' Road, P.O. Box 52692, Nairobi, so as to reach it within twenty-eight (28) days of the date of publication of this notice. Every such objection or representation should state the specific grounds on which it is based and specify any conditions which it is desired that the board should impose on the licence, if granted. It should further be noted that a copy of every objection, or representation should be sent by the person making the same to the applicant at the same time that it is sent to the Civil Aviation Board.

Dated the 8th November, 1985.

F. J. UTAJJE,
for Chief Executive Officer/Secretary,
Civil Aviation Board.

GAZETTE NOTICE No. 5151

THE LAND ACQUISITION ACT

(Cap. 295)

NOTICE OF INTENTION TO ACQUIRE LAND

IN PURSUANCE of section 6(2) of the Land Acquisition Act I give notice that the Government intends to acquire the following land for a public purpose.

SCHEDULE

L.R. No.	Locality	Registered Owner	Approx. Area to be Acquired in Acres
5875/2	Roysambu Estate, Nairobi.	Mayer Jacob Samuels	16-16

A plan of the affected land may be inspected during office hours at the Office of the Commissioner of Lands, Ardhi House, Ngong Road, Nairobi.

Dated the 8th November, 1985.

J. R. NJENGA,
Commissioner of Lands.

GAZETTE NOTICE No. 5152

THE LAND ACQUISITION ACT

(Cap. 295)

NOTICE OF INQUIRY

IN PURSUANCE of section 9(1) of the Land Acquisition Act I give notice that an inquiry will be held at 10. a.m. Wednesday 5th February, 1986 at Lands Office, 3rd floor, Ardhi House, Ngong Road, Nairobi for the hearing of claims to compensation by persons interested in the following land:

SCHEDULE

L.R. No.	Locality	Registered Owner	Approx. Area to be Acquired in Acres
5875/2	Roysambu Estate, Nairobi.	Mayer Jacob Samuels	16-16

Any person who is interested in the land is required to file a claim, not later than the day of inquiry, a written claim to compensation.

Dated the 8th November, 1985.

J. R. NJENGA,
Commissioner of Lands.

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CORRECTIENDUM

IN Gazette Notice No. 694 of 21st February, 1986, amend the latest planting date (fourth column) for Gadaana season to read 15th July, 1985, for hybrid maize in Kiambu District.

IN Gazette Notice Nos. 5151 and 5152 of 22nd November, 1985, delete 14.16 acres and insert 17.16 acres.

Gazette Notice No. 1112

THE NATIONAL SOCIAL SECURITY FUND

(Cap. 250)

APPOINTMENTS TO THE NATIONAL SOCIAL SECURITY ADVISORY COUNCIL

IN EXERCISE of the powers conferred by section 4 of the National Social Security Fund Act, the Minister for Labour appoints the following persons to be members of the National Social Security Advisory Council for a period of three years with effect from 1st March, 1986:

Government Representatives:

- The Permanent Secretary, Ministry of Labour,
- The Permanent Secretary, Ministry of Finance,
- The Permanent Secretary, Ministry of Commerce and Industry,
- The Permanent Secretary and Director of Personnel Management.

Employers Representatives:

- Albert Alexander Aggrey Ekirapa—*Vice-Chairman*,
- Tom Diju Owior,
- Raymond Hugh Kester,
- Joseph Kamunya Waweru,
- George Kang'ong'a Mwai.

Workers Representatives:

- Justus Muloi Vele,
- Philip Mwangi,
- Ambrose Adongo,
- George Odiko.

and appoints Albert Alexander Aggrey Ekirapa as Vice-Chairman and Benjamin Kakuti Kisilu as the Secretary.

The appointments in Gazette Notice No. 1727 of 12th June, 1982 are cancelled.

Dated the 10th March, 1986.

P. C. OLOO-ARINGO,
Minister for Labour.

Gazette Notice No. 1113

THE CO-OPERATIVE SOCIETIES ACT

(Cap. 490)

AUTHORIZATION

IN EXERCISE of the powers conferred by section 4 (2) of the Co-operative Societies Act, the Minister for Co-operative Development authorizes:

ASHFORD MUDISO MIRELL, Senior Assistant Commissioner for Co-operative Development

to exercise the powers and duties conferred on the Commissioner for Co-operative Development under the said Act on the dates between 11th March, 1986 and 10th April, 1986.

Dated the 11th March, 1986.

H. K. KOSGLEY,
Minister for Co-operative Development.

Gazette Notice No. 1114

THE POLICE ACT

(Cap. 84)

APPOINTMENT OF A POLICE STATION

IN EXERCISE of the powers conferred by section 2 of the Police Act, the Commissioner of Police appoints:

L.R. No. 209/H467—Nairobi

to be Police Station.

Dated the 7th March, 1986.

H. K. NJIRI,
Commissioner of Police.

Gazette Notice No. 1115

THE TIMBER ACT

(Cap. 350)

AUTHORIZATION OF FORESTERS

IN EXERCISE of the powers conferred by section 4 (1) of the Timber Act, the Chief Conservator of Forests authorizes:

- Francis Mwangi Kamau,
- Mahendra Vahabhai Patel,
- Jackson Eric Rutere,
- Willy Njote Akingo,
- Samson Mikhole,
- Hara Singh Ramana,
- Philip Chuma Wambua Mulwa,
- David Clement Kahuku,
- Ivor Samuel Keen,
- Narshabhai Ishwarabhai Patel,
- Gibson Wakutu,
- Harbans Singh Bamrah,
- Balbir Singh Bhachu,
- Samuel Kiario,
- Jonathan Paul Mbixi,
- Khwaja Abdul Qayyum,
- Ved-Prakash Bhasin,
- Mustafa Manujee,
- Gurshaban Singh Bhat,
- Stephen Njoroge,
- Alfred Mwanyama,
- Cyrus Mutahi Ndegwa,
- Titus Kathendu Njagi,
- Francis Nganga,
- Moses Obare Abwao,
- G. K. Harley,
- Job Nyaroo,
- Sebastian Njiraini Mwangi,
- Patric Weru Wangombe,
- Moses Muriithi Njiru,
- Samuel Mwangi,
- Andrew Kiario Mwiruri,
- Shadrack N. Kibua,
- Newton Njeru Mumanjama,
- John Njonjo,
- Bridget Njeri Kanga,
- John Kimea Kamali,
- Hudson Arema,
- Pascal Marangu Justus,

to be graders for the purposes of the Act, for a period of one year, with effect from 1st March, 1986.

Dated the 26th February, 1986.

S. C. MBESDA,
Acting Chief Conservator of Forests.

Gazette Notice No. 1116

THE LIQUOR LICENSING ACT

(Cap. 424)

THE WEST POKOT LIQUOR LICENSING COURT
Synodical Meeting

NOTICE is given that the next synodical meeting of the West Pokot Liquor Licensing Court will be held in the district court magistrates' court, Kapenguria, on Monday, 12th May 1986, at 10 a.m.

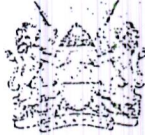
All applications for new licences, transfer, removal or renewal of existing licences must be submitted in triplicate on 11 appropriate forms affixed with revenue stamp of KSh. 10 to the original, on or before the Chairman, West Pokot Liquor Licensing Court, P.O. Box 1, Kapenguria, not later than Wednesday, 20th March 1986. Any application received after that date will only be considered if received on or before 16 April, 1986, and on payment of KSh. 500 late fee.

Applications for new licences, removal and transfers must also be lodged with the court to be represented by an advocate.

(Attachment No 2)

C T C

Telegrams: "Daresco", Nairobi
Telephone: Nairobi 721100
When replying please quote
Ref. No. DCD/598/2/WKS
and date



OFFICE OF THE PRESIDENT

DEPARTMENT OF DEFENCE
ULINZI HOUSE
P.O. Box 40668, NAIROBI
KENYA

8 August 1985

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

LAND RESERVATION AND ACQUISITION - LR NO. 5875/2 ROYSAMBU

1. Due to the congestion of troops in Kahawa Garrison, we have identified the above piece of land near Roysambu to establish our Logistics and associated elements. The land, comprising of 17.16 acres, is considered ideal and very suitable for our requirements.
2. In this respect therefore, you are kindly requested to issue the necessary letter of reservation for eventual acquisition and an estimated value for compensation purposes as there are about ten (10) standard houses and other developments.
3. We understand that there is a civil case No. 2799 of 1980 claiming the same land, and there are other two interested parties for the same. Kindly take up this matter as the area is vital to us.

For CGS

N T M MULANDI
Major
for Permanent Secretary

Sir

This is the letter we had already forwarded to the Commissioner of Lands in respect of the Roysambu Land for the EMB Corp HQS.

JAR 4 Sep 85

and CTC

(Attachment No 3)

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22

File No. 21946/II


C.L.

L.R. NO. 5785/2 - ROYSAMBU ESTATE, NAIROBI

Reference is made to your instructions.

The houses have been neglected over the years and I suggest the following:-

Land 17.16 acs	Shs. 1,700,000/=
Buildings	Shs. 1,900,000/=
	<hr/>
	Shs. 3,600,000/=
Add Statutory 15%	Shs. 540,000/=
	<hr/>
Total	Shs. 4,140,000/=
	<hr/>


JOSEPH B.K. MWANIKI
DEPUTY CHIEF VALUER (URBAN)

20th September, 1985

JBKM/em

V. 05. 207 Z. 14

50

23

25th September 85

21946/II/23

General J.K. Mulinge, EGH, CBS, DCO,
Chief of General Staff,
Department of Defence,
P.O. Box 40668,
NAIROBI.

Dear

L.R. NO. 5875/2 ROYSAMBU ESTATE, NAIROBI

The above estate has been subject to a discussion with H.E. the President. I have also discussed this issue with you. As stated briefly over the telephone, Lt.Col. James Hays Sadler who was His Majesty's Commissioner for East African Protectorate leased L.R.1012 comprising of 4,443 acres in 1904 to a Mr. Henry Herbert Tarlton for a period of 99 years with effect from 1st November 1904 at an annual rent of shs.138/-.

According to my records, the lessee, i.e. Mr.H.M. Tarlton subdivided the said land in 1920 into 5 sub-plots each comprising of 200 acres. In 1927 the sub-plots were further subdivided into 20 acres the sub-division which created L.R.5875/2 comprising 17.16 acres. This plot was transferred to Mr.H.V. Briscoe. On 19.2.1930, Mr. Briscoe transferred the plot to Mrs. K.M. Forbes who in turn on the 1st of March, 1940 transferred to Mr. E.F. Kelly, who in turn transferred the said plot to Mr. H.C. Walker who in turn transferred the plot to E.A. Residential Estate Ltd who built residential houses on the plot without approved building plans and without an approved change of use. However, on application, the situation was regularised in 1963.

In 1964 a Mr. Smith was appointed a liquidator of the Company by the Kenya Government but it would appear the company, namely E.A. Residential Estate Ltd. with Mr. S.C. Smith acting in his capacity as liquidator transferred the property to a Mr. Bau Salou Dean. Mr. D.S. Dean transferred the property during the same year to a Mr. Mayer Jacob Samuels who died on the 12th of December 1974 but remains the registered owner of the property to this day. However, in 1976 a Mr. Raphael Jacob Samuel the deceased's brother of the full blood and Mechumor Jacob Samuels the deceased's brother of the half blood by the same father applied to the High Court in Nairobi for the grant of letters of administrati

...../2

under Probate and Administrative Cause No.103 of 1976. According to the available records no letters of administration appear to have been granted by the Court. I also understand that under the law of Inheritance applical to Jewish Community of Aden, only the surviving brothers can inherit the deceased. The deceased has a brother and therefore a heir who can inherit the property and therefore if the plot is required for public purposes as contained in the Permanent Secretary, Department of Defence letters ref.DOD/698/2/Wks of 8th August, 1985 and DOD/28/18A(14) of 8th August, 1985, the property will have to be acquired and compensation paid in the normal way. My Department has therefore as a guide carried out a rough valuation of the property which if acquisition has to be done will have to be gone into in great details as follows:

Land	17.16 acres	=	1.700,000/-
Buildings		=	1.900,000/-
	Total	=	<u>3.600,000/-</u>
Add 15% statutory allowance		=	540,000/-
	Total	=	<u>4.140,000/-</u>

Let me please know whether funds are available so that I may proceed with the acquisition in accordance with the Land Acquisition Act.

Yours

J. R. NJENGA

J. R. NJENGA
COMMISSIONER OF LANDS.

c.c.

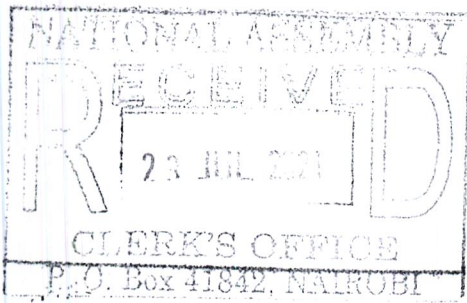
Mr. S. Nyachae,
 Chief Secretary,
 Office of the President,
NAIROBI

Mr. J.K. Ndoto
 Permanent Secretary
 Ministry of Lands & Settlement,
NAIROBI

Mr. A.K. Kiptanui
 Private Secretary/Comptroller,
 State House,
NAIROBI.

Appendix IX

Submission by the National Land Commission regarding the implementation status of the report of the Departmental Committee on Lands on its consideration of the Petition by Former Workers of the Late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their Land in Roysambu Constituency by the Kenya Defence Forces



OFFICE OF THE CHAIRMAN

Tel. 0208000242
Email. chair@landcommission.go.ke
Website: www.landcommission.go.ke
When replying please quote

ACK GARDEN ANNEX BUILDING
1st NGONG AVENUE
P.O BOX 44417-00100
NAIROBI

OUR REF: NLC/1/7/13

19th July, 2021

Mr. Michael Sialai, EBS

Clerk of the National Assembly
Clerk's Chambers
Parliament Buildings
P.O. Box 41842-00100

NAIROBI

Dear *Michael Sialai,*

Tracy chelot
see doc.
26/7/21

SUBMISSION OF RESPONSES TO VARIOUS PARLIAMENTARY MATTERS

Reference is made to the following under listed matters that the National Land Commission was invited by respective National Parliamentary Committees.

S/NO	Ref/Date	Subject Matter	Committee
1	NA/DAASC/COI/2021/(32) of 10 th March 2021	Various responses to petitions	Implementation Status on House Resolutions
2	NA/DAASC/COI/2021/(071) of 10 th June 2021	Various responses to petitions	Implementation Status on House Resolutions

The sessions were conducted virtually and respective responses shared in advance to the Committees.

The purpose of this letter is to officially submit above responses which are hereby enclosed for your record keeping and reference.

Thank you for your continued support and cooperation.

Yours

Gershom Otachi Bw'Omanwa

Gershom Otachi Bw'Omanwa
CHAIRMAN

Encl



NATIONAL LAND COMMISSION

RESPONSE ON IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

REPORT BY:

GERSHOM OTACHI BW'OMANWA

CHAIRMAN

19th July, 2021

RESPONSE TO THE SELECT COMMITTEE ON IMPLEMENTATION STATUS OF HOUSE RESOLUTIONS

Honourable Chair,

Pursuant to a letter Ref. **NA/DAASC/COI/2021/ (071)** dated 10th June, 2021, the Committee requested the Ministry of Lands and Physical Planning (MoLPP) and the National Land Commission (NLC) to apprise it on the implementation status of the following reports-

1. Report of the Departmental Committee on its consideration of the petition regarding delayed compensation of land owners for the expansion of Sigalagala-Musoli-Bukura- Butere Road D260, as communicated vide our letter Ref: NA/DCS/COI/2019/ (134) dated 17th December, 2019;
2. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces as communicated vide our letter Ref: NA/DLP/TBO/RES.006/2020 dated 17th August, 2020;
3. Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vota, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of the Konza-Katamani Road, as communicated vide our letter Ref: NA/DLP/TBO/RES.09/2020 (11) dated 18th September, 2020;
4. Report of the Departmental Committee on Lands on its consideration of the petition on irregular renewal of leases of land by Del Monte Kenya Limited; and
5. Report on the Petition regarding land issues in Taita Taveta County

Honourable Chair, we are grateful for your Committee's consideration and understanding in rescheduling the meeting as requested vide our letter Ref. NLC/1/31 dated 25th June 2021 and your subsequent invitation as communicated vide your letter Ref **NA/DAASC/COI/2021/ (082)** dated 12th July, 2021 for a physical appearance.

Honourable Chair on the matters stated above NLC wishes to respond as follows-

1. **Report on a petition by residents of Ikolomani Constituency regarding delayed compensation of landowners for the expansion of Sigalagala-Musoli-Bukura Butere Road D260**

The NLC in its submission to this Committee on Wednesday 14th April 2021 responded as follows;

2. Subdivisions: Some parcels had been subdivided and this would necessitate publication of a notice of addendum to include the new parcels for compensation.
3. Ungazetted parcels affected which require inclusion for compensation.

The Commission in consultation with KeRRA is expediting completion of the valuation process and issue awards for all the affected parcels.

2. Report of the Departmental Committee on its consideration of the petition by former workers of the late Mayer Jacob Samuels regarding the invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces

The NLC in its submission to this Committee on Wednesday 14th April 2021 responded as follows;

2.1 Background and Context

Honourable Chair,

The Committee considered a petition by former workers of the late Mayer Jacob Samuels regarding invasion and eviction of the workers by the Kenya Defence Forces from L.R No. 5875/2 located in Roysambu measuring 17.16 acres.

The petitioners claimed that they were former workers of the late Mayer Jacob Samuels employed in his sisal processing farm and workshop industry on L.R No. 5875/2 before he passed away in 1974. They claimed that the deceased's family allowed them to continue staying on the land after they were unable to pay their salaries. The petitioners registered Roysa Community Development Society to safeguard the land from grabbers and later requested the Nairobi City County government to allocate the land to them. The County government of Nairobi and the National Land Commission approved the subdivision of the land and the Ministry of Lands and Physical Planning subsequently issued letters of allotment. From the petition, the Kenya Defence Forces (KDF) evicted the petitioners from the land in April 2019.

In its response to the petition, the Ministry submitted that L.R. No. 5875/2 arose from the subdivision of L.R. No. 1012, which measured approximately 4,443 Acres. The land was transferred to Mayer Jacob Samuels from Bau Salau under a 99-year lease with effect from November 1, 1904. The lease expired on November 1, 2003.

The Government published a notice of intention to acquire the land for the Kenya Defence Forces and a 'Notice of Taking Possession' by the Government absolutely was lodged and registered in June 25, 1986. This position was supported by the Ministry of Defence.

The Ministry of Defence stated that the Commissioner of Lands valued the land at Kshs. 3,530,500 which sum was duly paid by the Commissioner. The valuation was challenged in the High Court which enhanced the award to Kshs. 23,000,000 . The appeal therefrom is pending in the Court of Appeal.

An application for extension of the lease was made by the administrator of the estate of the late Mr. Jacobs on November 4, 1985. This was however declined by the Commissioner of Land since the process of compulsory acquisition was ongoing. According to the National Land Commission and the Nairobi City County the land therefore reverted to the county government upon expiry of the lease. This was the basis for the approval of the subdivision and subsequent allocation to Roysa Community Development Society.

In 2001, the land was allocated to Solio Construction Company Limited through an allotment letter as a fresh allocation and a title issued. The land was later transferred to Kasarani Mall a subsidiary of Uchumi Supermarket PLC on March 20, 2001.

In considering the petition, the Committee noted in its report dated December 2019 that-

- i) Whereas there exists evidence that the government intended to acquire the subject parcel of land, the acquisition process was not completed as the out of court settlement on amount of compensation to be made were never concluded.
- ii) That although the Ministry of Defence submitted that the land was valued at Kshs. 3,530,500 and the sum was duly paid by the Ministry to the Commissioner of Lands, the Committee noted that the High Court under the Land Acquisition Appeal No. 2 of 1986 had enhanced the award to Kshs. 23,000,000 and the same has not been paid to date. It had not also been demonstrated that the Kshs. 3,530, 500 allegedly paid to the Commissioner of Lands was released to Mr. Jacobs.
- iii) The Committee noted with concern that the KDF only occupied the land thirty-three years later and the land remains undeveloped to date

In the end, the Committee made the following findings-

- i) There was no evidence submitted to the Committee to indicate that the Kenya Defence Forces having allegedly acquired the land in 1986, gazetted L.R No. 5875/2 as a protected area
- ii) Based on the submissions of the National Land Commission, a current search at the Land Registry indicated that no record on the land was available save for that the last registered owner of L.R. No. 5875/2 was Mr. M.J. Samuels.
- iii) There was no surrender or cancellation of the original certificate of lease held by Mr. Mayer Jacob Samuels on L.R No. 5875/2
- iv) In accordance with the property rates payment request submitted by the Nairobi County Government, the property rates were still due to be paid by Mr. M. J. Samuels signifying that the records of the county still identify Mr. M. J. Samuels as the owner of the land
- v) The National Land Commission confirmed that the lease for LR. No. 5875/2 expired on November 1, 2003 and reverted back to the Nairobi County Government by virtue of Article 62 of the Constitution

- vi) The Nairobi County Government in its submissions confirmed that survey of LR. No. 5875/2 had been undertaken and completed and a subdivision scheme approved identifying each subplot including plots designated for public utilities,
- vii) The Nairobi county Government had already issued allotment letters to the members of Roysa Community development society regularizing individual ownership upon payment of Kshs. 69,500.00 of which some of the members had already paid.
- viii) There was collusion between officials of the Ministry of Lands and Physical Planning as evidenced by the second and third files in order to effect fraudulent transactions on L. R No. 5875/2 leading to loss of public funds.
- ix) Although, the Ministry of Lands and Physical Planning submitted that it was aware that the titles for L. R No. 5875/2 and L.R 23393 had been presented to it for amalgamation, the Ministry did not submit the two titles to the Committee.
- x) The Committee noted with concern that although the Ministry of Lands and Physical Planning submitted that the second and third file were fraudulent, it was still receiving transactions payments from members of Roysa Community Development Society for titling of L.R. 5875/2 to individual members.
- xi) The Ministry of Lands and Physical Planning never informed the Committee that it was aware there was any sub-division scheme that was ongoing, yet the documents submitted to the Committee indicate that the Ministry was involved in the sub-division process
- xii) In response to the Petitioners' prayers and based on the observations, the Committee recommends that the Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County Government does complete the titling process for L. R No. 5875/2 within 180 days of tabling of this Report
- xiii) The Committee also recommends that the Director for Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to L. R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling of this Report.
- xiv) Finally, the Committee recommends that the Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R 5875/2

Honourable Chair,

In the report dated December 5, 2019, the Departmental Committee on Lands made the following recommendations;

- i) The Ministry of Lands and Physical planning in consultation with the National Land Commission and the Nairobi County government does complete the titling process for L.R No. 5875/2 within 180 days of tabling this report.
- ii) The Director for Criminal Investigation does investigate the officers in the Ministry of Lands and Physical planning who may have caused loss of public funds by effecting fraudulent transactions relating to L.R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling this report.
- iii) The Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R No. 5875/2

2.2 Implementation status

Honourable Chair, I wish to respond as follows-

The Commission is cognizant of the history of the allocation process, the contents of the report by the Lands Committee and its final recommendations; That NLC is expected to play a consultative role with regards to recommendation number (i) as listed above.

Notably, the NLC does not have a direct or primary role in the processes of registration, cancellation of titles and issuance of titles as per its mandate as interpreted by the Supreme Court in SC Advisory Opinion No. 2 of 2014 - In particular, in Paragraphs 289, 292, 293, 310 and 311 the Supreme Court addresses the issues of the role of National Government and NLC in the exercise of that role)- **(Annex 2)**

The NLC nevertheless remains available for consultation on any of the processes and any preparatory or residual activity that may be necessary and within the law and it's mandate.

3 Report of the Departmental Committee on Lands on its consideration of the petition by residents of Vota, Mua Ward in Machakos Town Constituency regarding the obstruction of public road (Konza-Katumani Road)

3.1 Background and context

Honourable Chair,

The National Assembly Departmental Committee on Lands considered a petition by residents of Vota, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of Konza-Katumani road.

3.2.2 Statutory provisions

The Land Act, 2012 section 143(1) provides that subject to and in accordance with this section and section 146, the Commission may, create a right of way which shall be known as public right of way. Further, section 145 states that a county government, an association, or any group of persons may make an application to the Commission for a communal right of way. Section 146 provides the determination of public right of way, process and procedure the Commission shall use to create a public right of way over private land. The section further provides that it is the Cabinet Secretary responsible for lands who makes an order through a gazette notice upon recommendation by the Commission.

Once the Cabinet Secretary has made an order to create a public right of way the Commission shall cause all the necessary documents, plans, demarcations and surveys to be delivered to the Registrar to enable the registrar to exercise the powers under this section.

Section 148 states that compensation is payable to any person for the use of land, of which the person is in lawful or actual occupation, as a public/communal right of way based on the value of the land as determined by a qualified valuer. A public right of way once created shall vest in either National or County Government as the case may be.

The Land (General) Regulations provides the instruments required in creation of the right of way (i.e. FORM LA.54 and FORM LA.55).

3.2.3 Recommendation to the Cabinet Secretary

The Commission recommend the creation of public right of way by the Cabinet Secretary, Ministry of Lands and Physical Planning as provided for in Section 146 (1)(b) of the Land Act, 2012. A letter Ref. NLC/1/26/1 dated 13th April 2021 has been written to the Cabinet Secretary, Ministry of Lands and Physical Planning to this effect **(Annex3)**.

3.4 Current Implementation Status

The national land Commission pursuant to the recommendations of the Committee proceeded to initiate the process of creating a public right of way on the identified land parcel L.R. No. 7374/3 registered in the name of Muambi properties Limited where an area of 0.7972 Ha would be affected by the right of way. The CS, MoLPP responded vide letter Ref.MOLPP/ADM/CSO/1/760 dated 29th April 2021. Subsequent discussions were held with representatives from the ministry of Lands and physical planning who pointed out that NLC must initiate the process by publishing a gazette notice. The Ministry also wanted confirmation on who will pay compensation. **(Annex 4)**

In order to fast track the process and taking into consideration the contractor was on site, the Commission prepared and had the notice of intention to create a public right of way published by the Government printer in gazette notice number 6381 dated 25th June 2021**(Annex 5)**.

The Commission requested KURA to settle the proforma invoice No PTG No.000271520-21 issued by the Government printer vide letter ref: NLC/VAL.1555/16 dated 22nd June 2021 (**Annex 6**). In their letter Ref KURA/URPD/SUR/3 (30) dated 2nd July 2021 (**Annex 7**), KURA responded and requested for termination of the process citing the fact that the road had been re-aligned.

A subsequent letter Ref KURA/URPD/SUR/3 (31) dated 9th July 2021 quoting earlier correspondence Ref.KURA/URPD/SUR/5(2) dated 4th June 2021 from KURA affirmed its inability to execute the matter as envisaged by the Lands Committee (**Annex 8 &9**).

The Commission is unable to progress this matter further without assurance of availability of budgetary support to meet administrative costs as well as compensation (if any) for the land affected. The Commission further needs guidance from the Committee on the overall way forward as well clarity on Government Agency that is to be vested with the Public Right of Way once created taking into consideration that the identified agency will be responsible for the administrative costs as well as compensation (if any).

4. Report of the Departmental Committee on Lands on its consideration of the petition on irregular renewal of leases of land by Del Monte Kenya Limited;

4.1 Background

Honourable Chair, as per information in our custody, the following constitute the presented status of Del Monte landholding;

SN	Parcel No.	Use	Size(Ha)	Lease Period	Term	County
1	13289	Industrial	22.84Ha	1973 - 2022	49	Muranga
2	12157/2	Agricultural	40.87Ha	1973 - 2022	49	Muranga
3	12157/3	Agricultural	2.987Ha	1973 - 2022	49	Muranga
4	12157/4	Agricultural	2.311Ha	1973 - 2022	49	Muranga
5	12157/5	Agricultural	5.677Ha	1973 - 2022	49	Muranga
6	12203/1	Agricultural	2101Ha	1970 - 2019	49	Kiambu
7	12203/2	Agricultural	56.57Ha	1970 - 2019	49	Kiambu
8	12158	Agricultural	2972.8Ha	1973 - 2022	49	Muranga/Kiambu
9	12157	Agricultural	3938.4Ha	1973 - 2022	49	Muranga
	Total (Ha)		9,143.455Ha	Appx.22,584.33 acres		

4.2 Implementation Status with regard to Del Monte Lease Renewal

Honourable Chairman,

The NLC received applications for extension of leases for three (3) listed properties; **LR NOS. 12203/1, 12203/2 & 12158** located in Kiambu County and Seven (7) listed properties; **LR NOS. 12157/1, 12157/2, 12157/3, 12157/4, 12157/5, 12158 & 13289** located in Muranga County from Del-Monte Kenya Limited.

Guided by rule 2 (1) of the Land (Renewal and Extension of Leases) Rules, 2017 the application letters were supported by the following documents:-

- i. Completed Form LA 22;
- ii. Official Searches from Land Registry;
- iii. Copy of titles for each property;
- iv. Copies of Certificates of Incorporation;
- v. Company Search (CR 12);
- vi. A resolution of the Del-Monte (K) Limited Board to apply for extension of leases
- vii. Kiambu/ Murang'a County Rates Clearance Certificate;
- viii. Rent payment receipts;
- ix. A Planning Report prepared by their appointed Planners;
- x. Copy of the Physical Planner's Practicing Certificate;
- xi. Copy of the written consent from Del-Monte Kenya Limited appointing Plan Consultants Limited to act on their behalf; and
- xii. Summary report on Del-Monte.

The National Land Commission vide letter NLC/8/1 dated 9th October 2020 forwarded the above documents for consideration by the Ministry of Lands and Physical Planning and copied to respective County's Executive Committee Member in charge of Lands as provided for in rules 2 (2), 2 (3), 2 (4) and 2 (5) of the Land (Renewal and Extension of Leases) Rules, 2017(**Annex 10**).

Further NLC drew the attention of all parties vide letter Ref. NLC/8/1 dated 9th October 2020 to a determination of the Commission of a Historical Land Injustice Claim filed by Kandara Residents Association- Claim No. NLC/HLI/004/2017 and Gazette Notice Number 1995 dated 1st March 2019 (page 879) for consideration as they made their decision amongst other active litigations over the Del Monte land (**Annex 11**).

Honourable Chair once the Commission receives a feedback on lease renewal request, it will proceed to process the request as per the law.

4.3 Response with respect to LR No 12158

The National Assembly Committee on Implementations on its sitting on Wednesday 14th April 2021 discussed and tasked the National Lands Commission investigate claims that parcels related to LR. No 12158 were surrendered to the government by two companies namely Sassa Coffee and Rapids Limited before being acquired by Del Monte Kenya Limited.

The Committee specifically on its consideration of a report from the Departmental Committee on Lands, observed that the submissions made by the Ministry of Lands and Physical Planning indicated that LR. No 12158 measuring 2900 acres in Muranga County that is registered in the name of Del Monte Kenya Limited is an amalgamation of LR. Nos 10862,10741, 11312 and 11146.

Honourable Chair, we wish to submit as follows-

The National Lands Commission investigated the claims and established the following;

Original parcels LR. No. 10862, 10741,11312 and 11146 (including LR. No. 2953 not mentioned in this report) were owned by Chui Estates Limited upto around 1973 when through a memorandum of registration of transfer of lands and at a consideration of Ksh.2,000,000 they were transferred to the Government of the republic of Kenya. The transfer was executed on 21st May 1973 (**Annex 12 &13**).

Implementation Status

The Commission has written to the Ministry of Lands as custodian of land registration and survey records vide our letter NLC/8/1 dated 22nd April 2021 and is awaiting response. (**Annex 14**)

The Commission notes that the recommendations of the Committee on amalgamation and subsequent ownership of the parcels of land in question by Del Monte is better actioned by the MoLPP who are in a better position to conclusively respond to the amalgamation question,

5. Report on the Petition regarding land issues in Taita Taveta County

Honourable Chair,

5.1 Background

The petition emanated from allegations that Teita Sisal Estate had encroached into a contiguous community land. The National Assembly Departmental Committee on Lands recommended that the Ministry ascertain the boundaries. A boundary confirmation survey was carried out on the land and it was discovered that the community had encroached into the Sisal Estate. Consequently, the proprietor of the Estate offered to surrender the portion of land occupied by the community.

The Committee on its consideration of the matter therefore recommended the excision of 250 acres of land from Teita Sisal Estate for formalization of settlement of residents of Singila Majengo village in addition to the public utilities within the estate as agreed by the management of Teita Sisal Estate.

5.2 Implementation status

Honourable Chair,

The recommendations of the Committee are to be actioned by the Ministry of Lands and Physical Planning.

Honourable Chair, I Submit



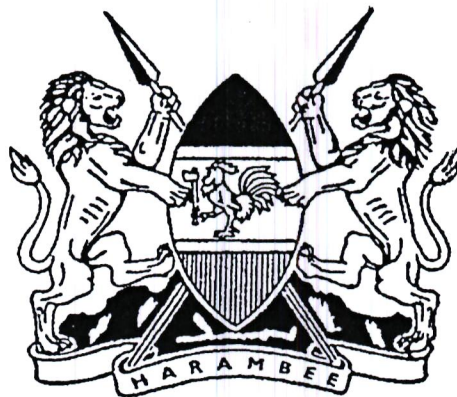
GERSHOM OTACHI BW'OMANWA

CHAIRMAN

19th July, 2021

Appendix X

Gazette Notice No. 1995 of 1st March, 2019 by the
National Lands Commission



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S/No. – Case No. and County	Parties	Recommendation
	Nairobi County	not available for allocation. The land lies within a riparian reserve and the County Government of Nairobi should clear the land of any human settlement.
8. NLC/HLI/070/2017	Kamiti Forest Squatters, Kamiti Anmer Development Association, Muungano wa Kamiti Society (Claimants) and Kenya Forest Services (KFS) (Respondent)	The claim is allowed. The allotment letters issued to the members of the 2nd Claimant (Kamiti Anmer Development Association) are found to be valid and therefore the rightful occupants of the subject land. The allottees and the squatters should adopt Alternative Dispute Resolution (A.D.R) with a view that the land held by the allottees be partly redistributed to the squatters. Kenya Forest Service is hereby directed to degazette the Kamiti Anmer Forest.
9. NLC/HLI/004/2017 NLC/HLI/064/2017	Kandara Residents Association (Claimant) and Del monte Kenya Limited (Respondent) County Government of Muranga (Interested)	The claim is allowed. A resurvey should be undertaken by the Director of Survey in conjunction with County Governments of Murang'a and Kiambu to establish if there is any variance between land leased and land the company occupies. Any residue should given/surrendered to the Claimants for resettlement and the County Government for public purpose in the ratio of 70:30 respectively. Should it be found that there is no residue, then on expiry of the lease a suitable amount of land should be set aside and held in trust by the County Governments for purposes of resettlement and public utilities. The respondent to surrender all public utility within the land to the relevant National and County Government agencies whether the leases have expired or not.
10. NLC/HLI/003/2017	Stanley Muigai Kiama and Jeremy Kiama	The claim is allowed. The Commission recommends monetary compensation by the National Government to the claimants over the loss of their ancestral land. The family should get recognition and an apology from the Government for their loss.
11. HLI/506/507/508/2018	Kiambu County	The claim is allowed. The commission recommends that the land L.R. 25484/2-22, L.R. 13121 and L.R. 15473 revert to County Government of Kiambu, title be issued in the name of the County Government as trustees. The Commission directs that the Land is not available for any allocation now or in future.
12. NLC/HLI/519/2018	Uplands – Kiambu	The claim is allowed. The commission recommends that the land L.R. No. 7593/1 and 7593/2 revert to County Government of Kiambu, title be issued in the name of the County Government as a trustees. The Commission directs that the Land is not available for any allocation now or in future.
13. NLC/HLI/550/2018	Flourspar Land-(Diatomite)	The claim is allowed. The commission recommends that the land L.R. Nguirubi/Thigio/1882, 1534, 1698 and 1699 reverts to County Government of Kiambu. Title be issued in the name of the County Government as a trustee. The Land is not available for any allocation now or in future. The Commission directs that any titles by private developers on the land be revoked.
14. NLC/HLI/537/2018	Mangu Block 19 and 20 Residents CBO	The claim is allowed. The Commission adopts the report by Thika District Land officer on public utilities within Thika Municipality block 19 Mang'u and block 20 Ngoingwa company limited. REF: LND/TKA/ADM/29/VOL.111 dated 12th September, 2018. The following plots are recovered for public utility and reverted to the National and County Government as appropriate. PLOT/Nos.1213,1990,1993, 1995, 1999, 2004, 255, 1992, 2058, 1142, 2260, 1995, 1999,142 and 1998. Similarly the Commission recovers the following plots from Block 20 for public utilities as follows: Plot No/Nos 533, 584, 202, 255, 340, 342, 1035 and 995, 457 and 335, 330, 341, 340, 2368 and 247. The Commission upholds titles to the following plots; Block 19/199, Block 19/2035, Block 20/2159, Block 20/1092, Block 20/2894, Block 20/ 338 & Block 20/994. If there are any other public lands parcel under ownership of private entities and/or individuals be surrendered and such titles be cancelled.
15. NLC/HLI/215/2018	Mau Mau Jamhuri ya Kenya Umbrella Body	The claim is allowed.

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