Approved for tabling
SNA
24/11/2020

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FOURTH SESSION – 2020

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF A PETITION BY RESIDENTS OF HOSPITAL WARD, MATHARE CONSTITUENCY REGARDING IMMENENT EVICTION OF RESIDENTS OF HOSPITAL WARD BY THE KENYA POLICE SERVICE

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

NOVEMBER, 2020

Contents

CHAIRPERSON'S FOREWORD

The Petition by residents of Hospital Ward in Mathare Constituency regarding imminent eviction of the residents by the Kenya Police Service was conveyed to the House by the Hon Anthony Olouch, MP on behalf of petitioners on 5th March 2020.

In considering the petition, the Committee held meetings with the Hon Anthony Olouch, MP and representatives of the petitioners on Thursday 11th June 2020, the Chairperson, National Land Commission, on 15th September 2020. The Committee also received written submissions from the Secretary Ministry of Lands and Physical Planning dated 24th June 2020 and the Cabinet Secretary, Ministry of Interior and Coordination of National Government dated 2nd June 2020.

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 Petitioners, the Hon Anthony Olouch MP, the Chairperson, National Land Commission, the Cabinet Secretary Ministry of Lands and Physical Planning and the Cabinet Secretary, Ministry of Interior and Coordination of National Government 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 residents of Hospital Ward in Mathare Constituency regarding imminent eviction of residents by the Kenya Police Service.

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

EXECUTIVE SUMMARY

The purpose of this report is to respond to prayers made in a Petition by residents of Hospital Ward in Mathare Constituency regarding imminent eviction of the residents by the Kenya Police Service. The petitioners prayed that that the National Assembly through the Departmental Committee on Lands:

i) Inquiries into the matters raised in the petition relating to the alleged ownership of the land in Hospital Ward in Mathare Constituency with a view to ensuring that the rights of the residents to land are not subverted by the Kenya Police;

ii) Intervenes through the relevant government ministries to halt the potential eviction of residents of Hospital Ward from their land by the Kenya Police until the dispute is investigated and resolved by the relevant agencies; and

iii) Intervenes through the Ministry of Lands & Physical Planning and the National Land Commission to ensure that land in Hospital Ward in Mathare Constituency is adjudicated, verified, residents issued with Title Deeds and appropriate sections of the land designated for public amenities are safeguarded.

The Committee observed that the evidence submitted by the Cabinet Secretaries Ministries of Lands & Physical Planning, Interior & Coordination of National Government and the Chairperson National Land Commission indicated that the National Police Service hold the ownership documents for the parcel of the land in question LR No. 209/8600, measuring 32.65 Ha. The land was set a part for the Mathare Police Depot and the Provincial Training Centre (PPTC) in 1975 and the Service obtained a letter of allotment Ref: 36040/165 issued on 4th November 2010.

Further the Mathare Police Depot land is protected under section 3 of the protected Areas Act Chapter 204 of the Laws of Kenya as read with the Sixth Schedule of the protected Areas Orders. Paragraph 3 of the Sixth Schedule describes the land in question as Mathare Police Depot and the Provincial Training Centre (PPTC) at Mathare area.

The Committee also noted that land was gazetted in the Kenya Gazette through legal notice No 56 of 1976 (LN. No. 56/1976) and legal notice No. 11 of 1991 (LN No.11/1991.

The Committee further observed that the land in question although validly allocated to the National Police Service comprises a large portion of Hospital Ward in Mathare North Constituency. The Committee further noted that various government development projects have been undertaken on the same land for the benefit of the community. The said projects include schools, dispensaries, churches and currently the Nairobi Metropolitan Service was developing a level three hospital on the land. The Independent, Electoral and Boundaries Commission had also built a sub-county office and created an electoral unit (ward) on the same land.

The National Commission Land had through a site visit and digital aerial study found out that informal settlements occupy 15.77 Ha of the land in question, the Police Service occupy about 12.90 Ha, while an area of approximately 2.2 Ha is open space under cultivation.

Submissions made to the Committee by the Cabinet Secretary Ministry of Interior and Coordination of National Government indicated that the land in question was originally bound with a fence but as times passed, the fence decayed and some portions were vandalized leaving the land open. As the land remained open due to lack of budgetary allocation to mend the fence, squatters encroached on the property and built both temporary and permanent structures on the land in question.

The Committee also observed that the National Land Commission in a ruling made on 26th January 2017 revoked 41 title deeds and held that the 32.65 Ha land in question belongs to the Kenya Police Service. Some of the 41 owners of buildings were summoned to appear and present their title documents before the commission on 2nd February 2016 and 26th January 2017 but failed to appear.

The Committee noted that the petitioners had encroached on protected government land and proceeded to construct temporary structures. Government agencies had also established social infrastructural facilities such as schools, hospitals, and playgrounds. The Committee further noted that the encroachment was aided by government officers as evidenced by the 41 cancelled tile deed and the inability of the National Police Service to fence off the subject property.

Although the petitioners do not dispute that the land is government land, the reality obtaining on the ground is that a large portion of the land is occupied by informal settlement that have existed for over thirty years with several public utilities established in the area.

The Committee noted that the petitioners did not challenge the validity of the allocation of the land in question to the National Police Service and indeed, 41 title deeds for a portion of the subject land held by third parties were cancelled by the National Land Commission.

The Committee also noted that despite the fact that the area was heavily settled and supported with government infrastructural facilities such as schools and hospitals, there was no attempt by the local leadership to formally seek the regularization the settlement on the protected government land.

In response to the Petitioners' prayers, the Committee recommends that the Cabinet Secretary, Ministry of Interior & Coordination of National Government in consultation with the Cabinet Secretary, Ministry of Lands & Physical Planning and the National Land Commission does consider amending Legal Notice No. 56 of 1976 (LN. No. 56/1976) and Legal Notice No. 11 of 1991 (LN No.11/1991 and the setting a part of land parcel LR No. 209/8600, measuring 32.65 Ha for the Mathare Police Depot and the Provincial Training Centre (PPTC) with a view to reallocating the same to the Kenya Police Service and residents of Hospital Ward to reflect the current occupancy within six months of the tabling of this Report.

The Committee also recommends that the Directorate of Criminal Investigations and the Ethics and Anti – Corruption Commission do undertake investigations on the role of Government officers who participated in the illegal allocation of protected land leading to the issuance of 41 title deeds that were later cancelled by the National Land Commission with a view to prosecuting any person found culpable within six months of the tabling of this Report.

Finally, the Committee recommends that the National Land Commission does consider fast tracking the development of a national inventory of government land and tiling of the same to ensure no further encroachment on government land reserved for government agencies, within six months of the tabling of this Report.

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

   (v) with their stated objectives;

   (vi) 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.

   (vii) 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 oversights the Ministry of Lands and Physical Planning; and the National Land Commission.

1.4 Committee Membership

4. The Committee membership comprises: -

Chairperson

Hon. Dr. Rachael Nyamai, CBS, MP
MP for Kitui South Constituency
Jubilee Party

Vice Chairperson
Hon. Khatib Mwashetani, MP
MP for Lunga Lunga Constituency

Jubilee Party

Hon. Benjamin Washiali, CBS, MP
Member for Mumias East Constituency
Jubilee Party

Hon Joshua Kutuny Serem, MP
Member for Cherangany 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. Ahmed Kolosh, MP
Member for Wajir West Constituency
Jubilee Party

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 George Aladwa, MP
Member for Makadara Constituency
Orange Democratic Movement (ODM)

Hon George Risa Sunkuyia, MP
Member for Kajiado West Constituency
Jubilee Party

Hon. John Muchiri Nyaga, MP
Member for Manyatta Constituency
Jubilee Party

Hon. Josphat Gichunge Kabeabea, MP
Member for Tigania East Constituency
Party of National Unity (PNU)

Hon. Lilian Tomitom, MP
Member for West Pokot County
Jubilee Party

Hon. Owen Yaa Baya, MP
Member for Kilifi North Constituency
Orange Democratic Movement (ODM)

Hon. Patrick Munene, MP
Member for Chuka/Igambangombe Constituency
Jubilee Party

Hon. Samuel Gachobe, MP
Member for Subukia Constituency
Jubilee Party

Hon. Teddy Mwambire, MP
Member for Ganze Constitueny
Orange Democratic Movement (ODM)

1.5 Committee Secretariat

5. The Committee secretariat comprises: -

Lead Clerk
Mr. Leonard Machira
Senior Clerk Assistant

Mr. Ahmad Guliye
Second Clerk Assistant

Ms. Winnie Kizia
Media Relations Officer III

Dr. Kefa Omoti
Principal Research Officer

Mr. Dennis Mawira
Audio Officer

Ms. Jemimah Waigwa
Legal Counsel I

Ms. Peris Kaburi
Serjeant-At-Arms

Mr. Adan Abdi
Fiscal Analyst III

2.0 INTRODUCTION

6. The Petition by residents of Hospital Ward in Mathare Constituency regarding imminent eviction of the residents by the Kenya Police Service was conveyed to the House by the Hon Anthony Olouch, MP on behalf of petitioners on 5th March 2020.

7. The Petitioners wished to draw the attention of the House to the following, that:
    i. Hospital Ward in Mathare Constituency is home to over thirty thousand residents who have lived in the area for over twenty years and have constructed both temporary and permanent residences on the said land;

    ii. There are several public amenities such as schools, hospitals, children's homes for the vulnerable and homeless children, a playground, among other public amenities on the said land;

    iii. Recently, the Kenya Police Depot situated in Hospital Ward claimed to have been issued an allotment letter to occupy the parcel of land where the depot is situated as well as the entire land in the ward, that is currently occupied by residents of Hospital Ward particularly in Kosovo and Mathare 4 B areas;

    iv. Residents of Hospital Ward particularly those in Kosovo and Mathare 4B areas are living in fear of imminent eviction by the Kenya Police Depot, who are alleging to have been issued Title Deeds for all parcels of land in Hospital Ward;

    v. The police have since prevented youths and children from accessing and using the only available community playground in Hospital Ward on account of the alleged ownership of the playground;

    vi. If the imminent occupation of Hospital Ward land by the Kenya Police is not mitigated, residents will be rendered homeless and cut-off from accessing critical social amenities like schools, hospitals, children homes and playgrounds;

    vii. Efforts to resolve the matters between the Constituency, community and political leadership of Mathare Constituency on the one hand and the Kenya Police on the other hand have failed to yield satisfactory response;

    viii. The matters in respect of which the petition is made is not pending before any court of law or constitutional or legal body

8. Therefore, the petitioners prayed that the National Assembly through the Departmental Committee on Lands:

   iv) Inquiries into the matters raised in this petition relating to the alleged ownership of the land in Hospital Ward in Mathare Constituency with a view to ensuring that the rights of the residents to land are not subverted by the Kenya Police;

   v) Intervenes through the relevant government ministries to halt the potential eviction of the residents of Hospital Ward from their land by the Kenya Police until the dispute is investigated and resolved by the relevant agencies; and

   vi) Intervenes through the Ministry of Lands & Physical Planning and the National Land Commission to ensure that land in Hospital Ward in Mathare Constituency is adjudicated, verified, residents issued with Title Deeds and appropriate sections of the land designated for public amenities are safeguarded.

3.0SUBMISSIONS

3.1 Submissions by the petitioners

9. The Committee held a meeting with the Hon Anthony Olouch, MP and representatives of the petitioners on Thursday 11th June 2020. During the meeting, they informed the Committee as follows:

10. The petitioners reside in Kosovo and Mathare B areas within Mathare Constituency.

11. The residents settled in Kosovo area in 1967 and in Mathare B in 1995. The latter informal settlement was established to accommodate people who had been displaced from Pangani area. They were allocated the land in Mathare B by the then area Member of Parliament in the 1990.

12. Hospital Ward in Mathare Constituency is mainly occupied by informal settlements with approximately thirty thousand inhabitants. The Ward has several public utilities including schools, dispensaries, Children homes and a playground.

13. Kenya Police Service officers, led by the Officer Commanding the Kenya Police Depot station, situated within the ward have been harassing the residents whenever they initiated any development projects in the Ward, claiming that the land belongs to the Kenya Police Service. The petitioners alleged that the officers destroyed pipes earmarked for a water project, prevented youth in the area from using the police depot playground for sport activities and opposed the upgrading of the informal settlements in the ward through the Kenya Informal Settlement Project.

14. Although the Kenya Police Service claimed ownership of almost the entire ward, the service was only awarded an allotment letter for the land recently and the residents were not consulted through public participation.

15. Only 10% of the land is occupied by the police with the police station occupying approximately an acre of land and the police houses occupy 5 -7 acres. 60% of the land in question is occupied by public utilities including the playing field claimed by the police.

16. Although petitioners did not dispute that the land was government land and that the police service could have been allocated the land. The reality obtaining on the ground was that a large portion of the land was occupied by informal settlement that have existed for over thirty years with several public utilities established in the area.

17. The petitioners requested the Committee to recommend an amicable solution to the problem that could stop harassment of the residents by the police officers stationed in Hospital Ward and ensure the allocation of land currently occupied by squatters to the residents through a block title, while the police are allocated a separate title for the land which the currently occupy. They further recommended that the playground would be shared by the police and the residents.

3.2 Submissions by the Cabinet Secretary, Ministry of Lands and Physical Planning

18. The Committee received written submissions from the Cabinet Secretary Ministry of Lands & Physical Planning dated 9th June 2020. The Cabinet Secretary stated that:

19. The land in question occupies two parcels: namely LR NO 209/6513 measuring approximately 2. 47 acres and LR.NO 209/8600, delineated in survey map No. F/R 134/199, measuring approximately 80.7 acres.

20. The title for LR NO 209/6513 was registered on 18th March 1965 in favour of the Permanent Secretary to the Treasury on a 99 – year lease with effect from 1st January 1961.

21. An allotment letter for LR.NO 209/8600, Ref No. 36040/165 in favour of the Principal Secretary to the Treasury as trustee for Mathari Police Post was issued by the Ministry of Lands & Physical Planning on 4th November 2010. The National Land Commission re- issued an allotment letter Ref. No. 36040/293 for the same parcel in favour of the Cabinet Secretary to the National Treasury as trustee for Mathari Police Depot.

22. The concluded that the land in question is the property of the Kenya Police Service and process of preparing title documents in respect of the allotment letters was on – going.

3.3 Submissions by the Cabinet Secretary, Ministry of Interior and Coordination of National Government

23. The Committee also received written submissions from the Cabinet Secretary, Ministry of Interior and Coordination of National Government dated 2nd June 2020. The Cabinet Secretary stated that:
24. Official documents held by the Ministry indicated that the land in question LR. NO. 209/8600 measuring 3265 Ha was set aside for the Kenya Police in 1975. The Police Depot borders Gatathuru River, Kosovo and Mathare IV B slums, the old Mathare Primary School and Mathare Mental Hospital.

25. An allotment letter in favour ofc the Police Depot was issued on 4th November 2010 for a period of 99 years with effect from 1st September 1998 and all requisite land payments were made.

26. The Police Depot comprises 32 housing units for senior officers,232 units for subordinate ranks, and 29 Mabati 'A' Frames for civilian officers. There is also a police canteen and an old block that was once used as the Provincial Training Centre.

27. The Mathare Police Depot land is protected under section 3 of the protected Areas Act Chapter 204 of the Laws of Kenya as read with the Sixth Schedule of the protected Areas Orders. Paragraph 3 of the Sixth Schedule describes the land in question as Mathare Police Depot and the Provincial Training Centre (PPTC) at Mathare area.

28. The land was gazetted in the Kenya Gazette through legal notice No 56 of 1976 (LN. No. 56/1976) and legal notice No. 11 of 1991 (LN No.11/1991.

29. The land was original bound with a fence but as times passed the fence decayed and some portions were vandalized leaving the land open. As the land remained open due to lack of budgetary allocation to mend the fence squatters encroached on the property and built both temporary and permanent structures on the land in question.

30. The National Land Commission in their ruling on 26th January 2017 revoked 41 title deeds and held that the 32.65 Ha land in question belongs to the Kenya Police Service. Some of the 41 owners of buildings were summoned to appear and present their title documents before the commission on 2nd February 2016 and 26th January 2017 but failed to appear. It was further established that a committee known as Mathare Settlement Scheme found in 1997 was involved in the illegal allocation of the land by issuing certificates to unsuspecting land buyers within Kosovo. Getathuru and Mathare IV B.

31. The allegations that the residents of Mathare are living in fear could not be ascertained since the Kenya Police Service has not engaged hem directly on the issue or issued any eviction notices to them.

32. The police have prevented the youths in the area from accessing the playing ground due to the following reasons:
    i) The playing ground is an open space and is approximately 5 meters from the administration block and the main armoury
    ii) The youths had converted the open space as a hard drugs den; and

iii) The ground was used by criminals, particularly at night to plan and coordinate criminal activities within the area.

33. The Ministry's position on the matters is that the land in question belongs to the police Further the land was not available for private allocation having been allocated to the police in 1975 has was confirmed by the National Land Commission.

34. All persons who have settled on the land are illegal occupiers and should be given notice to vacate and be forcefully be evicted at the expire of the notice.

3.4 Submissions by the Chairperson, National Land Commission

35. The Committee held a meeting with the Chairperson National Land Commission on 15th September, 2020. During the meeting, the Chairperson informed the Committee that:

36. The parcel of land in question LR No. 209/8600, measuring 32.65 Ha, was allotted to the Kenya Police Service under reference no. 36040/165 in November, 2010. The Kenya Police accepted the offer on 19th February, 2016 vide receipt no. 4350218.

37. The Kenya Police Service accepted the offer and deed plans 271348 to 271484 for LR Nos. 209/16806-42 were issued.

38. The Commission could not establish the status of the land since the Commission officials could not access the file which is in the custody of the Ministry of Lands and Physical Planning in time before the meeting.

39. However, the Commission had through a site visit and digital aerial study that:

    a) Informal settlements occupy 15.77 Ha of the land in question, the Police Service have occupied about 12.90 Ha, while an area of approximately 2.2 Ha is an open space under cultivation.

    b) The informal settlements contain semi-permanent structures made of iron sheets and mud covering about 90% and very few permanent houses covering about 10% of the area occupied.

    c) The area occupied by the Police has permanent buildings which include a police line and a newly constructed sub-county office.

40. The Chairperson concluded that the National Police Service has ownership documents for the land that they occupy in Mathare Constituency vide letter of allotment Ref:

36040/165 issued on 4th November 2010 for land reference number 209/8600 measuring 32.65 Ha.

41. He also stated that the Commission was also not aware if the Police Service had issued any eviction notice to the persons squatting on the land in question or prevented the youth and children from accessing and using the only available playground.

42. Finally, the Chairperson stated that the Commission was not able to adjudicate and issue titles for the land in question as the same had been allocated and hence not available.

4.0 OBSERVATIONS

The Committee made the following observations:

1. The evidence submitted to the Committee by the Cabinet Secretaries Ministries of Lands & Physical Planning, Interior & Coordination of National Government and the Chairperson National Land Commission indicated that the National Police Service hold ownership documents for the parcel of the land in question LR No. 209/8600, measuring 32.65 Ha as the land was set a part for the Mathare Police Depot and the Provincial Training Centre (PPTC) in 1975 and the Service obtained a letter of allotment Ref: 36040/165 issued on 4th November 2010.

2. The Mathare Police Depot land is protected under section 3 of the protected Areas Act Chapter 204 of the Laws of Kenya as read with the Sixth Schedule of the protected Areas Orders. Paragraph 3 of the Sixth Schedule describes the land in question as Mathare Police Depot and the Provincial Training Centre (PPTC) at Mathare area.

3. The land was gazetted in the Kenya Gazette through legal notice No 56 of 1976 (LN. No. 56/1976) and legal notice No. 11 of 1991 (LN No.11/1991.

4. The land in question although validly allocated to the National Police Service comprises a large portion of Hospital Ward in Mathare North Constituency. The Committee further noted that various government development projects have been undertaken on the same land for the benefit of the community. The said projects include schools, dispensaries, churches and currently the Nairobi Metropolitan Service was developing a level three hospital on the land. The Independent, Electoral and Boundaries Commission had also built a sub-county office and created an electoral unit (ward) on the same land.

5. The National Land Commission had through a site visit and digital aerial study found out that informal settlements occupy 15.77 Ha of the land in question, the Police Service occupy about 12.90 Ha, while an area of approximately 2.2 Ha is open space under cultivation.

6. Submissions made to the Committee by the Cabinet Secretary Ministry of Interior and Coordination of National Government had indicated that the land in question was initially bound with a fence but as times passed, the fence decayed and some portions were vandalized leaving the land open. As the land remained open due to lack of budgetary allocation to mend the fence, squatters encroached on the property and built both temporary and permanent structures on the land in question.
7. The National Land Commission in a ruling made on 26th January 2017 revoked 41 title deeds and held that the 32.65 Ha land in question belongs to the Kenya Police Service.

Some of the 41 owners of buildings were summoned to appear and present their title documents before the Commission on 2nd February 2016 and 26th January 2017 but failed to appear.

8. The Committee noted that the petitioners had encroached on protected government land and proceeded to construct temporary structures. Government agencies had also established social infrastructural facilities such as schools, hospitals, and playgrounds. The committee further noted that the encroachment was aided by government officers in as evidenced by the 41 cancelled tile deed and the inability of the National Police Service to fence off the subject property.

9. Although Petitioners do not dispute that the land in question is government land, the reality obtaining on the ground is that a large portion of the land is occupied by informal settlement that have existed for over thirty years with several public utilities established in the area.

10. The Committee noted that the Petitioners did not challenge the validity of the allocation of the land in question to the National Police Service and indeed, 41 title deeds for a portion of the subject land held by third parties were cancelled by the National land Commission.

11. The Committee also noted that despite the fact that the area was heavily settled and supported with government infrastructural facilities such as schools and hospitals, there was no attempt by the local leadership to formally seek the regularization the settlement on the protected government land.

5.0 COMMITTEE RECOMMENDATIONS

In response to the Petitioners' prayers, the Committee recommends that-

1. **The Cabinet Secretary, Ministry of Interior & Coordination of National Government in consultation with the Cabinet Secretary, Ministry of Lands & Physical Planning and the National Land Commission does consider amending Legal Notice No 56 of 1976 (LN. No. 56/1976) and Legal Notice No. 11 of 1991 (LN No.11/1991 and the setting a part of land parcel LR No. 209/8600, measuring 32.65 Ha with a view to securing public utilities and reallocating 12.90 hectares to the Mathare Police Depot and the Provincial Police Training Centre (PPTC), and 15.77 hectares to the residents of Hospital Ward to reflect the current occupancy within six (6) months of tabling of this Report.**

2. **The Directorate of Criminal Investigations and the Ethics and Anti – Corruption Commission do undertake investigations on the role of government officers who participated in the illegal allocation of protected land leading to the issuance of 41 title deeds that were later cancelled by the National Land Commission with a view to prosecuting any person found culpable within six (6) months of tabling of this Report.**

3. **The National Land Commission does consider fast tracking the development of a national inventory of government land and titling of the same to ensure no further encroachment on government land reserved for government agencies, within six (6) months of the tabling of this Report.**

Sign_____ **Date** 14/11/2020

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

REPUBLIC OF KENYA

KENYA NATIONAL ASSEMBLY
TWELFTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON LANDS

Adoption List

Date: 14th Nov' 2020

Adoption of report on the petition regarding imminent eviction of residents of Hospital Ward in Mathare Constituency by the Kenya Police Service

	NAMES	SIGNATURE
1.	Hon. Dr. Rachael Nyamai, CBS, MP - **Chairperson**	
2.	Hon. Khatib Mwashetani, MP **V/Chairperson**	
3.	Hon. Benjamin Washiali, CBS MP	
4.	Hon. Joshua Kutuny Serem, MP	
5.	Hon. Mishi Mboko, MP	
6.	Hon. Omar Mwinyi Shimbwa, MP	
7.	Hon. Ahmed Kolosh, MP	
8.	Hon. Ali Mbogo, MP	
9.	Hon. Babu Owino, MP	
10.	Hon. Caleb Kipkemei Kositany, MP	
11.	Hon. George Aladwa, MP	
12.	Hon. George Risa Sunkuyia,MP	
13.	Hon. John Muchiri Nyaga, MP	
14.	Hon. Josphat Gichunge Kabeabea, MP	
15.	Hon. Lilian Tomitom, MP	
16.	Hon. Owen Yaa Baya, MP	
17.	Hon. Patrick Munene Ntwiga MP	
18.	Hon. Samuel Kinuthia Gachobe, MP	
19.	Hon. Teddy Mwambire, MP	

MINUTES OF THE 47TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON SATURDAY 14TH NOVEMBER, 2020 IN BARAZA II BOARDROOM, SAROVA WHITESANDS, MOMBASA AT 09.00 A.M.

PRESENT

1. Hon. Dr. Rachael Nyamai, CBS, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M. P - **Vice Chairperson**
3. Hon. Mishi Mboko, M.P
4. Hon. Omar Mwinyi Shimbwa, M.P
5. Hon. Ahmed Kolosh, MP
6. Hon. Ali Mbogo, M.P
7. Hon. Caleb Kositany, M.P
8. Hon. George Aladwa, M.P
9. Hon. George Risa Sunkuyia, M.P
10. Hon. John Muchiri Nyaga, MP
11. Hon. Josphat Gichunge Kabeabea, M.P
12. Hon. Owen Yaa Baya, M.P
13. Hon. Patrick Munene Ntwiga, MP
14. Hon. Samuel Kinuthia Gachobe, MP
15. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Benjamin Washiali, CBS, MP
2. Hon. Joshua Kutuny, MP
3. Hon. Babu Owino, MP
4. Hon. Lilian Tomitom, MP

IN ATTENDANCE

THE NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira - Senior Clerk Assistant
2. Mr. Ahmad Guliye - Second Clerk Assistant
3. Dr. Kefa Omoti - Principal Research Officer
4. Mr. Sidney Lugaga - Legal Counsel
5. Mr. Adan Abdi - Fiscal Analyst
6. Ms. Winnie Kizia - Media Relations Officer

7. Ms. Peris Kaburi - Serjeant-At-Arms
8. Mr. Brian Ngetich - Audio Recording Officer

MIN. NO. NA/DCS/LANDS/2020/184: PRELIMINARIES

I. The meeting was called to order at nineteen minutes past nine o'clock and prayers were said.
II. The agenda of the meeting was adopted as outlined in the notice of the meeting after it was proposed and seconded by Hon. Teddy Mwambire, MP and Hon. Owen Baya, MP respectively.

MIN. NO. NA/DCS/LANDS/2020/185: BRIEF ON THE BUDGET IMPLEMENTATION OVERSIGHT OF THE FY 2020/2021 BY THE PARLIAMENTARY BUDGET OFFICE

I. The Committee was taken through a brief detailing the programs and projects that were appropriated for the Ministry of Lands & Physical Planning to be undertaken in the Financial Year 2020/2021.
II. The Committee noted key projects to be inspected in order to determine whether the Ministry has achieved its set targets as follows;
    a) Settlement of the landless
    b) Construction of land registries
    c) Digitization of land registries
III. The Committee resolved to invite the Ministry of Lands & Physical Planning to brief the Committee on the details of the specific projects before it starts its oversight programs at the beginning of the fifth session.

MIN. NO. NA/DCS/LANDS/2020/186: ADOPTION OF THE REPORT ON THE PRE-PUBLICATION SCRUTINY OF THE PROPOSED INSTITUTION OF SURVEYORS OF KENYA BILL, 2020

The Committee adopted the report on the pre-publication scrutiny of the proposed Institution of Surveyors of Kenya Bill, 2020 after it was proposed and seconded by Hon. Teddy Mwambire, M.P and Hon. George Aladwa, M.P respectively with the recommendation that;

Having undertaken an analysis of the provisions of the Legislative Proposal, the submissions of the sponsor, the Office of the Attorney General and the Kenya Law Reform Commission, the Committee recommends that the Legislative Proposal **not be proceeded** with in accordance with the provisions of Standing Order 114(7) of the National Assembly Standing Orders.

MIN. NO. NA/DCS/LANDS/2020/187: ADOPTION OF THE REPORT ON THE CONSIDERATION OF A PETITION BY RESIDENTS OF HOSPITAL WARD, MATHARE CONSTITUENCY REGARDING IMMENENT EVICTION OF RESIDENTS OF HOSPITAL WARD BY THE KENYA POLICE SERVICE

The Committee adopted the report on the petition by residents of Hospital Ward, Mathare Constituency regarding imminent eviction of residents by the Kenya Police Service with the following amended observations and recommendations after it was proposed and seconded by Hon. Owen Baya, M.P and Samuel Gachobe, M.P respectively.

Observations

i) The evidence submitted to the Committee by the Cabinet Secretaries Ministries of Lands & Physical Planning, Interior & Coordination of National Government and the Chairperson National Land Commission indicated that the National Police Service hold ownership documents for the parcel of the land in question LR No. 209/8600, measuring 32.65 Ha as the land was set a part for the Mathare Police Depot and the Provincial Training Centre (PPTC) in 1975 and the Service obtained a letter of allotment Ref: 36040/165 issued on 4th November 2010;

ii) The Mathare Police Depot land is protected under section 3 of the protected Areas Act Chapter 204 of the Laws of Kenya as read with the Sixth Schedule of the protected Areas Orders. Paragraph 3 of the Sixth Schedule describes the land in question as Mathare Police Depot and the Provincial Training Centre (PPTC) at Mathare area;

iii) The land was gazetted in the Kenya Gazette through legal notice No 56 of 1976 (LN. No. 56/1976) and legal notice No. 11 of 1991 (LN No.11/1991;

iv) The land in question although validly allocated to the National Police Service comprises a large portion of Hospital Ward in Mathare North Constituency. The Committee further noted that various government development projects have been undertaken on the same land for the benefit of the community. The said projects include schools, dispensaries, churches and currently the Nairobi Metropolitan Service was developing a level three hospital on the land. The Independent, Electoral and Boundaries Commission had also built a sub-county office and created an electoral unit (ward) on the same land;

v) The National Commission Land had through a site visit and digital aerial study found out that informal settlements occupy 15.77 Ha of the land in question, the Police Service occupy about 12.90 Ha, while an area of approximately 2.2 Ha is open space under cultivation;

vi) Submissions made to the Committee by the Cabinet Secretary Ministry of Interior and Coordination of National Government land indicated that the land in question was initially bound with a fence but as times passed the fence decayed and some portions were vandalized leaving the land open. As the land remained open due to lack of budgetary allocation to mend the fence squatters encroached on the property and built both temporary and permanent structures on the land in question;

vii) The National Land Commission in a ruling made on 26th January 2017 revoked 41 title deeds and held that the 32.65 Ha land in question belongs to the Kenya Police Service. Some of the 41 owners of buildings were summoned to appear and present their title documents before the commission on 2nd February 2016 and 26th January 2017 but failed to appear;

viii) The Committee noted that the petitioners had encroached on protected government land and proceeded to construct temporary structures. Government agencies had also established social infrastructural facilities such as schools, hospitals, and playgrounds. The committee further noted that the encroachment was aided by government officers in as evidenced by the 41 cancelled tile deed and the inability of the National Police Service to fence off the subject property;

ix) Although petitioners do not dispute that the land in question is government land, the reality obtaining on the ground is that a large portion of the land is occupied by informal settlement that have existed for over thirty years with several public utilities established in the area;

x) The Committee noted that the Petitioners did not challenge the validity of the allocation of the land in question to the National Police Service and indeed, 41 title deeds for a portion of the subject land held by third parties were cancelled by the National land Commission; and

xi) The Committee also noted that despite the fact that the area was heavily settled and supported with government infrastructural facilities such as schools and hospitals, there was no attempt by the local leadership to formally seek the regularization the settlement on the protected government land.

Recommendations

The Committee recommended that

i) The Cabinet Secretary for the Ministry of Interior & Coordination of National Government in consultation with the Cabinet Secretary for Lands & Physical Planning and the National Land

Commission does consider amending Legal Notice No 56 of 1976 (LN. No. 56/1976) and Legal Notice No. 11 of 1991 (LN No.11/1991 and the setting a part of land parcel LR No. 209/8600, measuring 32.65 Ha with a view to securing public utilities and reallocating 12.90 hectares to the Mathare Police Depot and the Provincial Police Training Centre (PPTC), and 15.77 hectares to the residents of Hospital Ward to reflect the current occupancy within six months of the tabling of this Report.

ii) The Directorate of Criminal Investigations and the Ethics and Anti- Corruption Commission does undertake investigations on the role of government officers who participated in the illegal allocation of protected land leading to the issuance of 41 title deeds that were later cancelled by the National Land Commission with a view to prosecuting any person found culpable within six months of the tabling of this Report.

iii) The National Land Commission does consider fast tracking the development of a national inventory of government land and the titling of the same to ensure no further encroachment on government land reserved for government agencies, within six months of the tabling of this Report.

MIN. NO. NA/DCS/LANDS/2020/188: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at thirty minutes past twelve noon. The next meeting would be held on notice.

Signature .....

HON. DR. RACHAEL KAKI NYAMAI, CBS, M.P.

(Chairperson)

Date.....18/11/2020.....

MINUTES OF THE 42ND SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON FRIDAY 23RD OCTOBER, 2020 IN THE PIER CONFERENCE ROOM, HOTEL ENGLISH POINT, MOMBASA AT 9.30 A.M.

PRESENT

1. Hon. Dr. Rachael Nyamai, CBS, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M. P - **Vice Chairperson**
3. Hon. Ahmed Kolosh, MP
4. Hon. Ali Mbogo, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Omar Mwinyi Shimbwa, M.P
7. Hon. George Risa Sunkuyia, M.P
8. Hon. George Aladwa, M.P
9. Hon. John Muchiri Nyaga, MP
10. Hon. Owen Yaa Baya, M.P
11. Hon. Patrick Munene Ntwiga, MP
12. Hon. Samuel Kinuthia Gachobe, M.P
13. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Benjamin Washiali, CBS, MP
2. Hon. Joshua Kutuny, MP
3. Hon. Caleb Kositany, M.P
4. Hon. Babu Owino, MP
5. Hon. Josphat Gichunge Kabeabea, M.P
6. Hon. Lilian Tomitom, MP

IN ATTENDANCE

THE NATIONAL ASSEMBLY SECRETARIAT

1. Ms. Florence Abonyo - Director, Committee Services
2. Mr. Leonard Machira - Senior Clerk Assistant
3. Mr. Ahmad Guliye - Third Clerk Assistant
4. Dr. Kefa Omoti - Principal Research Officer
5. Mr. Sidney lugaga - Legal Counsel
6. Ms. Peris Kaburi - Serjeant-At-Arms

7. Mr. Dennis Mawira - Audio Recording Officer
8. Ms. Evelyn Nyaayo - Secretary

MIN. NO. NA/DCS/LANDS/2020/163: PRELIMINARIES

The meeting was called to order at thirteen minutes to ten o'clock and prayers were said.

MIN. NO. NA/DCS/LANDS/2020/164: CONSIDERATION OF A REPORT ON A PETITION BY RESIDENTS OF HOSPITAL WARD, MATHARE CONSTITUENCY REGARDING IMMENENT EVICTION OF RESUDENTS BY THE KENYA POLICE SERVICE

The Committee considered the draft report on the petition by residents of Hospital Ward, Mathare Constituency regarding imminent eviction of residents by the Kenya Police Service and made the following observations and recommendations;

Observations

i) The evidence submitted to the Committee by the Cabinet Secretaries Ministries of Lands & Physical Planning, Interior & Coordination of National Government and the Chairperson National Land Commission indicate that the National Police Service had ownership documents for the parcel of the land in question LR No. 209/8600, measuring 32.65 Ha as the land was set a part for the Mathare Police Depot and the Provincial Training Centre (PPTC) in 1975 and the Service obtained a letter of allotment Ref: 36040/165 issued on 4th November 2010;

ii) The Mathare Police Depot land is protected under section 3 of the protected Areas Act Chapter 204 of the Laws of Kenya as read with the Sixth Schedule of the protected Areas Orders. Paragraph 3 of the Sixth Schedule describes the land in question as Mathare Police Depot and the Provincial Training Centre (PPTC) at Mathare area;

iii) The land was gazetted in the Kenya Gazette through legal notice No 56 of 1976 (LN. No. 56/1976) and legal notice No. 11 of 1991 (LN No.11/1991;

iv) The land in question although validly allocated to the National Police Service comprises the entire Hospital Ward in Mathare North Constituency. The Committee further noted that various government development projects have been undertaken on the same land for the benefit of the community. The said projects include schools, dispensaries, churches and currently the Nairobi Metropolitan Service was developing a level three hospital on the land. The Independent, Electoral and Boundaries

Commission had also built a sub-county office and created an electoral unit (ward) on the same land;

v) The National Land Commission had through a site visit and digital aerial study that Informal settlements occupy 15.77 Ha of the land in question, the Police Service have occupied about 12.90 Ha, while an area of approximately 2.2 Ha is an open space under cultivation;

vi) Submissions made to the Committee by the Cabinet Secretary Ministry of Interior and Coordination of National Government land was original bound with a fence but as times passed the fence decayed and some portions were vandalized leaving the land open. As the land remained open due to lack of budgetary allocation to mend the fence squatters encroached on the property and built both temporary and permanent structures on the land in question;

vii) The National Land Commission in a determination made on 26th January 2017 revoked 41 title deeds and held that the 32.65 Ha land in question belongs to the Kenya Police Service. Some of the 41 owners of buildings were summoned to appear and present their title documents before the commission on 2nd February 2016 and 26th January 2017 but failed to appear;

viii) The Committee noted that the petitioners had encroached on protected government land and proceeded to construct temporary structures. Government agencies had also established social infrastructural facilities such as schools, hospitals, and playgrounds. The committee further noted that the encroachment was aided by government officers in as evidenced by the 41 cancelled tile deed and the inability of the National Police Service to fence off the subject property;

ix) Although petitioners do not dispute that the land is government land the reality obtaining on the ground is that a large portion of the land is occupied by informal settlement that have existed for over thirty years with several public utilities established in the area;

x) The Committee noted that the Petitioners did not challenge the validity of the gazette notice and indeed, 41 title deeds for a portion of the subject land were cancelled by the National land Commission; and

xi) The Committee also noted that despite the fact that the area was heavily settled and supported with government infrastructural facilities such as schools and hospitals, there

was no attempt by the local leadership to formally seek the regularization the settlement on the protected government land.

Recommendations

i) The Cabinet Secretaries Ministries Interior & Coordination of National Government and Lands & Physical Planning in consultation with the National Land Commission do consider amending legal notices No 56 of 1976 (LN. No. 56/1976) and legal notice No. 11 of 1991 (LN No.11/1991 with a view to reallocating the parcel of the land in question LR No. 209/8600, measuring 32.65 Ha to the Kenya Police Service and residents of Hospital Ward according to current occupancy within six months of the tabling of this Report.

ii) The DCI and EACC undertake investigations on the role of Government officers who participated in the illegal allocation of protected land leading to the issuance of 41 title deeds that were later cancelled by the National Land Commission with aa view to prosecuting any person found culpable within six months of the tabling of this Report.

iii) The National Land Commission does consider fast tracking the development of a national inventory of government land and the tiling of the same to ensure no further encroachment on government land reserved for government agencies, within six months of the tabling of this Report.

MIN. NO. NA/DCS/LANDS/2020/165: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at twenty minutes to two o'clock. The next meeting would be held at 9.30 a.m. on the following day.

Signature.....

HON. DR. RACHAEL KAKI NYAMAI, CBS, M.P.

(Chairperson)

Date.....18/11/2020.....

Approved.
SNA
10/3/2020.

REPUBLIC OF KENYA
TWELFTH PARLIAMENT (FOURTH SESSION)
THE NATIONAL ASSEMBLY

PUBLIC PETITION

(No. 007 of 2020)

(11)

REGARDING IMMINENT EVICTION OF RESIDENTS OF HOSPITAL WARD IN MATHARE CONSTITUENCY BY THE KENYA POLICE

I, the **UNDERSIGNED**, on behalf of concerned residents of Hospital Ward in Mathare Constituency;

DRAW the attention of the House to the following:

1. **THAT**, Hospital Ward in Mathare Constituency is home to over thirty thousand residents who have lived on that land for over twenty years and have constructed both temporary and permanent residences on the land;

2. **THAT,** the said land has several public utilities such as schools, hospitals, children's homes for the vulnerable and homeless children, a playground for children, among other essential public amenities;

3. **THAT,** recently, Kenya Police Depot situated in Hospital Ward claimed to have been issued an allotment letter to occupy the parcel of land where the Depot is situated as well as the entire land in the Ward that is currently occupied by residents of Hospital Ward, particularly Kosovo and Mathare 4B areas;

4. **THAT,** residents of Hospital Ward, particularly those in Kosovo and Mathare 4B areas are living in fear of imminent eviction by the Kenya Police Depot, who are alleging to have been issued Title Deeds for all parcels of land in Hospital Ward;

5. **THAT,** it is an indisputable fact that Kosovo and Mathare 4B areas have been in existence as settlement areas in Mathare Constituency since 1967 and 1995, respectively;

6. **THAT,** the Police have since prevented youths and children from accessing and using the only available community playground in Hospital Ward on account of the alleged ownership of the playground;

7. **THAT,** if the imminent occupation of Hospital Ward land by the Kenya Police is not mitigated, residents will be rendered homeless and cut-off from accessing critical social amenities like schools, hospitals, children homes and playgrounds;

PUBLIC PETITION

REGARDING IMMINENT EVICTION OF RESIDENTS OF HOSPITAL WARD IN MATHARE CONSTITUENCY BY THE KENYA POLICE

8. **THAT,** efforts to resolve the matter between the constituency, community and political leadership of Mathare Constituency on one hand and the Kenya Police on the other hand have failed to yield satisfactory response;

9. **THAT,** the matters in respect of which this Petition is made is not pending before any court of law or constitutional or legal body;

THEREFORE, your humble Petitioner(s) Pray that the National Assembly, through the Departmental Committee on Lands –

1. inquires into the matters raised in this Petition relating to the alleged ownership of land in Hospital Ward in Mathare Constituency with a view to ensuring that rights of residents to land are not subverted by the Kenya Police;

2. intervenes through the relevant Government Ministries to halt any potential eviction of residents of Hospital Ward from their land by the Kenya Police until the dispute is investigated by the relevant authorities and resolved;

3. intervenes through the Ministry of Lands and the National Land Commission to ensure that land in Hospital Ward in Mathare Constituency is adjudicated and verified residents issued with Title Deeds and appropriate sections of the land designated for public amenities safeguarded.

And your Petitioners will ever Pray.

PRESENTED BY

THE HON. ANTHONY OLUOCH, MP
MEMBER FOR MATHARE CONSTITUENCY

DATE: 05/03/2020

PUBLIC PETITION

REGARDING IMMINENT EVICTION OF RESIDENTS OF HOSPITAL WARD IN MATHARE CONSTITUENCY BY THE KENYA POLICE

No.	NAME	ID NUMBER	ADDRESS OR TELEPHONE NO.	SIGNATURE OR THUMP IMPRESSION
1.	George Rama	20926226	0723270572	
2.	Sammy Amadi Kube	14667716	0720201581	
3.	MOREEN ATIENO	23169811	0706623413	
4.	EUNICE AUMA	21123019	0720757518	
5.	MUANAISHA ADHIAMBO	28421265	0716736948	
6.	Phillip ochieng	25026366	0727905633	
7.	Mueni Samantha	28146809	0710642629	
8.	John odhiambo	31485712	0722493030	
9.	Daniel Makoha	11423843	0724515151	
10.	Dickson Guyo	21072988	0722756330	
11.	Fredrick odhiambo	25301856	0720216900	
12.	Shamim Anyango	28071669	0725455513	
13.	Charles Otieno	256595	0724468589	
14.	Kenedy Onam	13235772	0722960977	
15.	Bonaventure [illegible]	22860269	0723494515	

No.	NAME	ID NUMBER	ADDRESS OR TELEPHONE NO.	SIGNATURE OR THUMP IMPRESSION
16.	Joseph Alaca	24174497	0721025298	
17.	Dickson Otieno Guga	21072988	0722 756330	
18.	Judith Adhiambo	27493690	0724795187	
19.	Pamela Asiko	13502152	0723967151	
20.	Aidah Nekesa	23558824	0722 11462	
21.	SYLVIA NAMALWA	24162356	0700450228	
22.	Benard Ouma	13656955	0723628828	
23.	EMILY ACHIENG	22961413	0727060951	E.A.O
24.	FELIX ODERO	23454331	0781681118	
25.	Mildred Achieng	14675828	0712 480723	
26.	Magret Ngin	11815539	0721 930939	
27.	Eunice Kamene	20401265	0723003242	EK.
28.	Petronela Mozeti	20003027	0723020550	
29.	Miriam Wrobi	21172673	0706623441	
30.	Eunice Imali	23146344	0725492118	
31.	Teresa Leesa Juma	11723625	0717265658	
32.	Margret Nduta	27562372	0703227060	

REPUBLIC OF KENYA

TWELFTH PARLIAMENT- (SECOND SESSION)

THE NATIONAL ASSEMBLY

PUBLIC PETITION

PETITION ON THE OWNERSHIP STATUS OF THE KENYA POLICE DEPOT SITUATED IN HOSPITAL WARD, MATHARE CONSTITUENCY

I, the **UNDERSIGNED**, on behalf of the residents of Hospital Ward, Mathare Constituency;

DRAW the attention of the House to the following:-

1) **THAT** the Kenya Police Depot situated at Hospital ward within Mathare Constituency claims to have been issued with an allotment letter to occupy the parcel of land where they are situated, as well as the entire ward known as the Hospital ward in Mathare Constituency.
2) **THAT** the Hospital Ward, Mathare Constituency is a home to over thirty thousand residents who have constructed both temporary and permanent residential places where they have lived for over twenty years.
3) **THAT** Hospital Ward has public facilities such as schools, hospitals, children homes, a child playground among others; which the Police Depot allegedly claims is land allotted to it.
4) **THAT** Kenya Police Depot is now claiming ownership of land in the whole of Hospital Ward having allegedly been issued with a Title Deed.
5) **THAT** the residents of Hospital ward, Mathare Constituency and in particular the residents living in Kosovo and Mathare 4B areas are living in

fear of imminent eviction by the Kenya Police Depot who also claim ownership of the entire land where the Hospital ward is situated.

6) **THAT** the areas known as 4B and Kosovo areas have been in existence since the years 1967 and 1995 respectively.

7) **THAT** section 4(1) (6) and (e) of the Limitation of Actions Act (Cap 22) provides that no action based on a constant and claim for equitable relief may be brought after the end of six years from the date on which the cause of action occurred.

8) **THAT** section 7 of the Limitation of Actions Act (Cap 22) provides that an action to recover land 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 or, if it first accrued to some person through whom he claims, to that person.

9) **THAT** the entire ward including schools, hospitals, children homes and other public facilities would all be affected if there is no intervention and were the police to make good their claim.

10) **THAT** a playground (police depot playground) enjoins the Police Depot which is a public facility open to use by all the area residents of Hospital ward; and which is also under threat.

11) **THAT** the police have prevented youths and children from using and accessing the only playground (police depot playground) available in Hospital ward on account of the alleged ownership of the playground.

12) **THAT** efforts have been made to have the matter addressed between the Constituency, community and political leadership and the Kenya Police Depot, and it failed to give satisfactory response.

13) **THAT** the issues in respect of which the petition is made are not pending before any court of law, or constitutional or legal body.

THEREFORE, your humble petitioner prays that the National Assembly, through a joint resolution between the Departmental Committee on Lands and Justice and Legal affairs;

a) Titles issued in the entire constituency be revoked.

b) Separate titles be developed for areas already occupied by;

   i. the Police Depot

   ii. the residential areas in 4B, Kosovo and Gitathuru

   iii. the depot community playground and

   iv. the school, hospitals, children homes and other public amenities

c) Title issued separately to the Police Depot already occupied claiming ownership of the entire ward known as Hospital ward be revoked.

d) An Order be issued restraining the police or any other person acting on their behalf from interfering with their residential occupation, businesses, schools, hospitals and playgrounds, on account of the alleged title or allotment to the police depot.

e) A declaration that the Playground that enjoins the Police Depot is a public facility open for use by all area residents.

f) This Petition be jointly resolved or placed before the joint committees of

   i. Lands and

   ii. National Security or Security Committee

And your **PETITIONER** will ever pray.

PRESENTED BY:

THE HON. ANTHONY TOM OLUOCH

MEMBER FOR MATHARE CONSTITUENCY

Date.....15/8/2019.....

MINISTRY OF LANDS AND PHYSICAL PLANNING

RESPONSES TO PETITIONS FROM THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON LANDS

Honourable Chair,

Pursuant to a letter Ref. **NA/DC/LANDS/2020/ (025)** dated May 18, 2020, the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning to submit written responses on the issues raised in the following petitions;

1. Petition by Hon. Tandaza Kasim Sawa, MP on behalf of beneficiaries of Golini Settlement Scheme on regularization of allocation of land in the Golini Settlement Scheme.

2. Petition by Hon. Anthony Tom Oluoch, MP on behalf of residents of Hospital Ward in Mathare Constituency regarding imminent eviction of residents by the Kenya Police Service.

Honourable Chair, I wish to respond as follows;

1. **Petition by Hon. Tandaza Kasim Sawa, MP on behalf of beneficiaries of Golini Settlement Scheme on regularization of allocation of land in the Golini Settlement Scheme**

Honourable Chair,

Background

Golini Settlement Scheme was declared in 1994 on L.R 5003 with an area of approximately 377.02 Ha. It was registered in October 1999 after completion of planning, squatter verification and survey. The scheme realized 395 plots which were registered and title deeds issued.

Complaints from locals alleging marginalization during plot allocation necessitated formation of a committee by the District Plot Allocation Committee in 2003. The scheme

was then abolished vide a ministerial directive of March 2, 2007 and a re-survey done as per ground occupancy. 268 parcels were realized in the re-survey.

The petitioners have requested issuance of letters of allotment in respect of the re-survey map of the year 2007 and restrain the beneficiaries of the allotment in the first survey from selling their respective plots before full issuance of allotment letters as per the resurvey of the year 2007 is concluded.

A legal conflict arose as there were 152 titled parcels from the initial allocation. The re-survey could only be registered upon the nullification of the first allocation.

In 2017, the National Land Commission in its recommendation stated that the scheme was improperly demarcated and registered. The Commission directed that the re-survey should be upheld and new titles reflecting the ground position be issued. However, it did not recommend the nullification of the already existing titles thereby creating a legal hurdle in the implementation of the taskforce report.

However, since the mandate of the National Land Commission to review grants and dispositions under section 14 of National Land Commission Act, 2012 has expired we advise that the aggrieved parties can initiate judicial proceedings to facilitate cancellation of existing titles.

2. **Petition by Hon. Anthony Tom Oluoch, MP on behalf of residents of Hospital Ward in Mathare Constituency regarding imminent eviction of residents by the Kenya Police Service**

The Petitioners aver that they have lived on the land in question for over twenty years and have developed temporary and permanent residences and several public utilities on the land. They also claim to be living in fear of imminent eviction, particularly in Kosovo and Mathare B areas after the Kenya Police Service alleged to have been issued with a title deed to the land and have petitioned the Committee to;

i) Inquire into the matters raised in the petition relating to the alleged ownership of land in Hospital Ward in Mathare Constituency with a view to ensuring that rights of residents to land are not subverted by the Kenya Police;
ii) Intervene through the relevant Government Ministries to halt any potential eviction of residents of Hospital Ward from their land by the Kenya Police until the dispute is investigated by the relevant authorities and resolved;
iii) Intervene through the Ministry of Lands and the National Land Commission to ensure that land in Hospital Ward in Mathare Constituency is adjudicated and verified residents issued with title deeds and appropriate sections of the land designated for public amenities safeguarded.

Honourable Chair,

Records held in the Ministry reveal that the land in question occupies two parcels namely L.R. NO. 209/6513 measuring approximately 2.47 acres, and L.R. NO. 209/8600 measuring approximately 80.7 acres.

The title for L.R. NO. 209/6513 was registered on March 18, 1965 in favour of the Permanent Secretary to the Treasury on a 99-year lease with effect from January 1, 1961. The land was to be used for police staff housing. A copy of the title is attached as **Annexure 1.**

In 1967, an additional 74 acres was reserved for Mathari Police Depot Rifle Range by the then Commissioner of Lands vide a letter Ref. No. 36040/130 dated April 29, 1967. A copy of the letter is attached as **Annexure 2.**

Upon survey, the portion was issued an L.R. NO. 209/8600. It measures approximately 32.65 Ha (80.7 acres) as delineated in survey map no. F/R 134/199 dated 1976. **Annexure 3A** is a copy of the map and **Annexure 3B** is a satellite overlay of the area.

An allotment letter for L.R. NO. 209/8600 Ref. No. 36040/165 in favour of the Principal Secretary to the Treasury as trustee for Mathari Police Post was issued by the Ministry of Lands on November 4, 2010.

The allotment letter Ref. No. 36040/ 293 was then re-issued by the National Land Commission on July 18, 2019 in favour of the Cabinet Secretary to the National Treasury as trustee for Mathari Police Depot. Copies of both letters of allotment are attached as **Annexures 4&5** respectively. The Ministry is in the process of preparing title documents in respect of these allotment letters.

Honourable Chair, from the foregoing, the land in question is the property of the Kenya Police Service.

Honourable Chair, I submit.

Farida Karoney, EGH
CABINET SECRETARY

June 9, 2020

ANNEXURE 1

I.R. 20634

PRESENTED 18 MAR 1965 NAIROBI LAND TITLES REGISTRY

REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT

(*Chapter* 281)

GRANT No. I.R.20634

ANNUAL RENT: A Peppercorn

TERM: 99 years from 1.1.1961

KNOW ALL MEN BY THESE PRESENTS that the PRESIDENT OF THE REPUBLIC OF KENYA hereby GRANTS unto THE PERMANENT SECRETARY TO THE TREASURY a body corporate duly established by the Permanent Secretary to the Treasury (Incorporation) Act 1962

(hereinafter called "the Grantee") all that piece of land situate in the City of Nairobi in the Nairobi Area

~~Extent~~ containing by measurement Two decimal four seven

acres or thereabouts that is to say Land Reference Number 209/6513

which said piece of land with the dimensions abuttals and boundaries thereof is delineated on the plan annexed hereto and more particularly on Land Survey Plan Number 82440 deposited in the Survey Records Office at Nairobi To HOLD for the term of Ninety-nine years

from the First day of January One thousand nine hundred and sixty-one

SUBJECT to (*a*) the payment in advance on the first day of January in each year of the annual rent of ~~Shillings~~ a peppercorn (if demanded)

(*b*) the provisions of the Crown Lands Act (Chapter 280) and (c) the following Special Conditions (namely) :-

G.P.K. 315—120—1/65

B1533225U

2

New Grant.

~~COLONY & PROTECTORATE OF~~ KENYA

DISTRICT OF NAIROBI AREA.

Locality City of Nairobi.

Meridional District South. A. 37 / G. II. d.

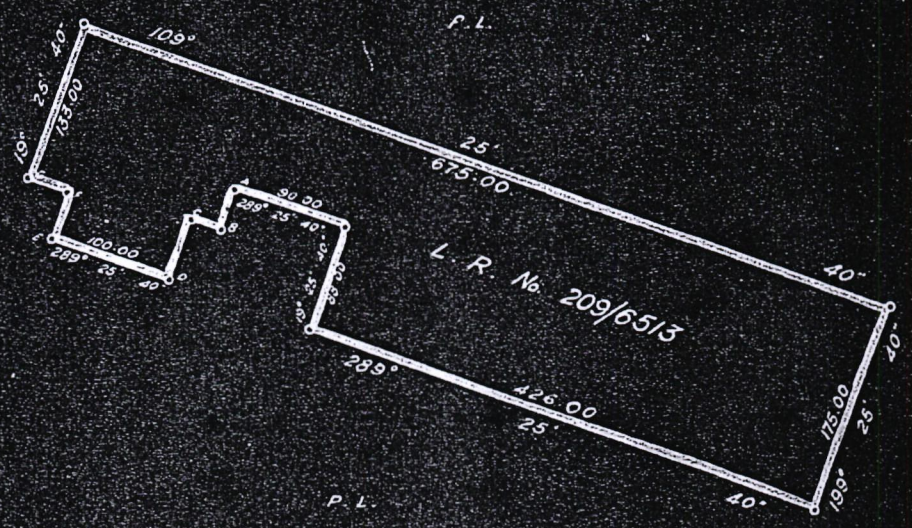
Scale: 1 in. 1250 or 104·16 Feet to 1 Inch

Land Reference No. 209/6513
(Orig. No. ——)

Subdivision No. —— (Orig. No. ——)
of Section No. ——

Area = 2.47 Acres (Approx).

Bearings °	'	"	Distances Feet
A-B 199	25	40	35.00
B-C 289	25	40	25.00
C-D 199	25	40	53.00
E-F 19	25	40	42.00
F-G 289	25	40	34.00



B9577885H

A.F. Taylor
for Director of Surveys
Nairobi 3rd February 1965

Traced by
Compared by

Please quote this PLAN No. 82440

3

SPECIAL CONDITIONS

1. The Grantee shall maintain all buildings now or hereafter erected on the land in good and substantial repair and condition.

2. No further buildings shall be erected until plans (including block plans showing the positions of the buildings and a system of drainage for disposing of sewage surface and sullage water on the land) drawings elevations and specifications thereof shall have been approved in writing by the Local Authority and the Commissioner of Lands.

3. The land and buildings shall only be used for police staff housing .

4. The Grantee shall not subdivide the land.

5. The Grantee shall not sell transfer sublet or charge the land or any part thereof except with the prior consent in writing of the President.

6. The Grantee shall pay to the Commissioner of Lands on demand such sum as the Commissioner may estimate to be the proportionate cost of constructing all roads and drains and sewers serving or adjoining the land and shall on completion of such construction and the ascertainment of the actual proportionate cost either pay (within seven days of demand) or be refunded the amount by which the actual proportionate cost exceeds or falls short of the amount paid as aforesaid.

7. 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.

8. 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.

9. 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 building 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.

IN WITNESS WHEREOF I, JAMES ALOYSIUS O'LOUGHLIN, the Commissioner of Lands have by Order of the President hereunto set my hand this Eighteenth day of March One thousand nine hundred and sixty-five in the presence of :

J A O'Loughlin

REGISTRAR OF TITLES

LAND TITLES REGISTRY—NAIROBI, KENYA
REGISTRATION OF TITLES ACT
REGISTERED AS No. I.R. 206341/1
Received 18.3.1965
Time 4.15 p.m.
Registrar of Titles

639

Charge to Sceptre Trust Limited

(with other lands)

Registration No. 639 Date of Registration 21.6.65 Registrar of Titles

(IR 18041)

ANNEXURE 4

New File

3604

B2220328U

GL/10/1486

REPUBLIC OF KENYA

Telegrams: "Lands",Nairobi
Telephone: Nairobi 718050/9

REGISTERED

DEPARTMENT OF LANDS
P.O. Box 30089
NAIROBI

Permanent Secretary to the Treasury
(Ministry of Provincial Administration &
Internal Security)
P.O. Box 30007
Nairobi

Ref. No...36040/165

DATE: 4th November 2010

SIR(s) MADAM,

RE: LR NO. 209/8600 – MATHARI POLICE POST

LETTER OF ALLOTMENT

I have the honor 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: ...32.65.....Ha (approximately).
TERM: .....99..... years from the .....1/9/1998.....
STAND PREMIUM: Ksh.....Nil..... . Subject to adjustment on survey, but
ANNUAL RENT:... Ksh ....72/= ..... . } 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.....		..Nil.....
Rent from .....1/10/2010.....to.....31/12/2010.....		... 20.00.....
Conveyancing Fees		.... 1,250.00.....
Registration Fees		..... 500.00.....
Rates	On demand ..	.....
Stamp Duty		... 50.00.....
Survey Fees	On demand	.....
Road and Road Drains . . .	On demand . . .	....
Others . . .	Approval fees	5,000.00

Receipt No. ..... *Less* Deposit .....

Total Ksh. 6,820/=

*Delete as appropriate

[P.T.O,

36040

If acceptance and payment respectively are not received within the said thirty (30) days from the date hereof the offer herein contained will be considered to have lapsed.

If the above plot is still unsurveyed at the time you commence building you should exercise the greatest care to ensure that any building or other works are contained within the boundaries of the plot for should you inadvertently overstep the aforesaid boundaries the coast of removal and reconstruction must be borne by you.

The issue of the Government grant or lease will be undertaken as soon as circumstances permit.

Your full name (s) in BLOCK LETTERS should be given for the purpose of the grant which will be submitted later to you. The attached special conditions form part of the offer which should be accepted in writing. **The Government shall not accept any liability whatsoever in the event of prior commitment or otherwise.**

I have the honour to be,
Sir(s) Madam,
Your obedient servant,

Authority: Govt. F 36040

.....P.K. KAHUHO.....
For Commissioner of Lands

TO: P/S Ministry of Lands and Settlement, Nairobi
The Director of Surveys, Nairobi.
The Town Clerk **Nairobi**
The Clerk to the Council, County Council of .....
The District Commissioner **Nairobi**
The Director of Physical Planning, Nairobi
District Land Officer **Nairobi**
Rates Assistant.)
The Accountant.)
O/C Records.) All to note.
Senior Plan Records Officer.)
Plot File.)

GPK (L)

ANNEXURE 2C

36040/1[illegible]

19th April,

The Administrative Secretary,
Police Headquarters,
P.O. Box 30083,
NAIROBI.

SUBJECT - NYAHURU POLICE DEPOT.

Please refer to your letter reference PHQ/3/1/3/313 dated 17th January, 1967, and subsequent correspondence in the above connection.

2. I now enclose a plan numbered L.R.36040/1391 showing, edged in pink, an area of approximately 7½ acres which is hereby reserved to the Kenya Police for the purposes of the Nyahuri Depot.

(C.J. [illegible])
for COMMISSIONER OF LANDS.

CY/[illegible].

Copy to:-

The Town Planning Adviser,
NAIROBI.

The City Engineer,
P.O. Box 30075,
NAIROBI.

The Permanent Per Works,
Buildings Branch,
P.O. Box 30260,
NAIROBI.

The Chief Police Officer,
Nyahuri Area Headquarters,
P.O. Box 30001,
NAIROBI.

S.P.R.O.)
) To note.
C/C Records)

36040/1[illegible]

STATEMENT ON THE PETITION BY RESIDENTS OF HOSPITAL WARD, MATHARE CONSTITUENCY REGARDING IMMINENT EVICTION OF RESIDENTS OF HOSPITAL WARD IN BY THE KENYA POLICE.

Hon. Chair, at a sitting of the National Assembly Hon. Anthony Tom Oluoch, MP sought a statement on behalf of the residents of Hospital Ward, Mathare Constituency from the Cabinet Secretary, Interior and Coordination of National Government on the imminent eviction of the residents by the Kenya Police Service.

The Honorable member sought to be informed on;

a) The matters raised in the petition relating to the alleged ownership of land in Hospital Ward in Mathare Constituency with a view to ensuring that rights of residents to land are not subverted by the Kenya Police.
b) Interventions be made to relevant Government Ministries to halt any potential eviction of residents of Hospital Ward from their land by the Kenya Police until the dispute is investigated by the relevant authorities and resolved.
c) The Ministry of Lands and National Land Commission ensures the land is adjudicated and verifies residents issued with title deeds and appropriate designate sections of the land for public amenities safeguarded.

I wish to state as follows:

Hon. Chair,

1. Official documents in our possession indicates that the Mathare Police Depot land **LR. NO. 209/8600** measuring **32.65 Ha** was set aside for Kenya Police in **1975**. The Police Depot borders Getathuru River, Kosovo, Mathare IVB slums,

the Old Mathare Primary School and Mathare Mental Hospital. A copy of map attached (appendix 1) and Allotment Letter issued on **4/11/2010** for a period of 99 years with effect from **1st September, 1998** and all requisite land payments made (appendix 2). The Police Depot comprises of 32 housing units for senior officers, 232 units for subordinate ranks and 29 Mabati "A" Frames for civilian officers. There is also a Police Canteen and an old block that once used to host the Provincial Training Centre

2. The Mathare Police Depot Land is protected under Section 3 of the Protected Areas Act Chapter 204 of the Laws of Kenya as read with the Sixth Schedule of the Protected Areas Orders. It is described in paragraph 3 of the Sixth Schedule as Mathare Police Depot and Provincial Police Training Centre (PPTC) at Mathare in Nairobi Area. The Land was gazetted in the Kenya Gazette through the Legal Notice No. 56 of 1976 (L.N.56/1976) and Legal Notice No. 11 of 1991(L.N. 11/1991). The land was originally bound with a fence but as time passed, the fence decayed and some portions vandalized leaving the land open. As the land remained open due to lack of budgetary allocation to mend the fence, this led to encroachments on the property by squatters who over time have constructed both temporary and permanent structures.

3. A committee calling itself Mathare Settlement Scheme formed in 1997 was found to be involved in the illegal allocation of the police land (plots) by issuing certificates to unsuspecting land buyers within Kosovo, Getathuru and Mathare IVB slums. Some 41 of the owners of buildings on the land were summoned to appear and present their title documents before the National Land Commission (NLC) on 02/12/2016 and 26/01/2017 but failed to appear. The NLC in their

ruling on 26/01/2017 revoked the 41 title deeds and held that the 32.65 parcel of land belongs to the Kenya Police Service.

Hon. Chair,

4. The allegation that residents of Mathare ward are living in fear cannot be ascertained, since the Kenya Police Service has not engaged them directly or issued any eviction notices to them.

5. We cannot confirm when the said residences started existing but the land invasion happened in the 90s. The Ministry of Lands can ascertain from documents in their possession.

6. It is true that youths have been prevented from accessing the playing ground due to the following reasons:
   i) The playing ground is an open space and is approximately 5 meters from the administration block and the main armory.
   ii) The resident youths had converted the open space as a hard drugs den.
   iii) At night, the ground was used by criminals to plan and coordinate criminal activities within the area.
7. It is therefore our opinion that those who have encroached on the land should be given notice to vacate and forcibly ejected upon the expiry of the notice. The land belongs to Police and the same has been confirmed by the National Land Commission. The land having been allocated in 1975 was not available for private allocation hence all those settled on the land are in illegal occupation.

Thank you,

Hon. Chair.

FRED MATIANG'I, PhD, EGH
CABINET SECRETARY
MINISTRY OF INTERIOR AND
COORDINATION OF NATIONAL GOVERNMENT
2nd June, 2020

NATIONAL LAND COMMISSION

RESPONSE TO PETITIONS AND STATEMENTS REFERRED TO THE DEPARTMENTAL COMMITTEE ON LANDS OF THE NATIONAL ASSEMBLY

REPORT BY:

GERSHOM OTACHI BW'OMANWA
CHAIRMAN

15TH SEPTEMBER, 2020

TABLE OF CONTENTS

HON CHAIR,

We are in receipt of an invitation dated 29th June, 2020, to provide responses to petitions referred to the Departmental Committee on Lands. The responses are as contained in the report hereunder:

(i) PETITION BY HON. ANTHONY TOM OLUOCH, MP ON BEHALF OF RESIDENTS OF HOSPITAL WARD IN MATHARE CONSTITUENCY REGARDING IMMINENT EVICTIONS OF THE RESIDENTS BY THE KENYA POLICE SERVICE

The Petitioners pray that the National Assembly through the Departmental Committee on Lands:

1. Makes inquiries into the matters raised in this Petition relating to alleged ownership of the land in Hospital Ward in Mathare Constituency with a view to ensuring that the rights to land of residents are not subverted.

2. Intervenes through the relevant government ministries to halt any potential eviction from their land by the Kenya Police until the dispute is investigated by the relevant authorities and resolved.

3. Intervenes through the Ministry of Lands and Physical Planning and the National Land Commission to ensure that Mathare Constituency is

adjudicated and verified, residents issued with title deeds and appropriate sections of the land designated for public amenities safeguarded.

RESPONSE

HON CHAIR

The parcel of land which is subject to this petition is known as land reference No. 209/8600. It is situated in Mathare Constituency and measures 32.65 ha. The reference for this land is file No. 36040 which is in the Ministry of Lands and Physical Planning. We did not access it. From the information that the Commission got from the Kenya Police, there is an allocation to Kenya Police who were issued an allotment letter Ref: 36040/165 in November 2010. The Kenya police accepted the offer as indicated by receipt No. 4350218 of 19th February 2016.

The acceptance of the offer was followed by subsequent correspondence between the Land Secretary Ministry of Lands and the Director of Surveys that culminated on forwarding of Deed Plan Number 398470 for Land Reference No. 209/8600. There was also indication that there were earlier commitments which gave rise to Deed Plans 271348 to 271484 for LR Nos. 209/16806-42 (about 36 subplots).

We were not able to establish the current status on registration or documentation progress on LR 209/8600 since the time the Deed Plans were received from the Director of Surveys since the correspondence files were not available. The Ministry of Lands to provide the current status.

From the Google maps and site inspection, we established the following:

1. People living in the informal settlements have encroached and occupied 15.77 ha of the Police land (LR 209/8600).
2. National police Service have occupied about 12.90 ha
3. A portion measuring approximately 2.2 ha is open space and under cultivation.

4. The informal settlement is developed with semi-permanent structures mainly of iron sheets and mud covering about 90% and very few permanent houses covering about 10% of the area occupied.
5. The area occupied by the Police has permanent buildings which include police line and newly constructed sub-county office.

ANSWER TO THE QUESTIONS

1. The National Police Service has ownership documents for the land that they occupy in Mathare Constituency vide letter of allotment Ref: 36040/165 issued on 4th November 2010 for land reference number 209/8600 measuring 32.65 ha.

2. The Commission is not aware if the Police have issued eviction notice to the persons squatting on their land at Mathare.

3. The Commission is not aware if the Police have prevented the youth and children from accessing and using the only available playground.

4. The Commission is not in a position to adjudicate and issue titles for any land in Hospital Ward in Mathare Constituency as the same has been allocated and hence not available.

(ii).PETITION BY HON TANDAZA KASSIM SAWA, MP ON BEHALF OF RESIDENTS OF GOLINI SETTLEMENT SCHEME ON REGULARIZATION OF ALLOCATION ON LAND IN GOLINI SETTLEMENT SCHEME

The Petitioners pray for intervention of the House through the Departmental Committee on Lands, to compel the concerned department to consider issuing them allotment letters in respect of the re-survey map of the year 2007 and restrain the beneficiaries of the allotment in the first survey from selling their respective plots before full issuance of allotment letters as per the re-survey of the year 2017 is concluded.

RESPONSE

HON.CHAIR,

Golini settlement scheme was established in 1994 on L.R 5003 as settlement scheme NO.469 with an area of 377.02 ha. 395 plots were realized, the scheme was registered and titles deeds issued.

Complains from locals alleging marginalization during plot allocation necessitated formation of a Task force committee by the District Plot Allocation Committee in 2003, which produced the Golini Task Force Report.

The scheme was abolished through a ministerial l directive on 2nd March 2007, and a re- survey done as per ground occupancy, realizing 268 plots as was recommended by the task force.

Conflicting legal status arose after the second re- survey as the first survey and allocation was not nullified and the same had already been registered.

It is on the strength of this resurvey that the Kwale County Land Management Board sought to hear any unresolved/pertinent issues and give recommendations on how to amend and or operationalize the task force proposals with a view of resolving the dispute in the second survey and make recommendations that were to resolve the Golini impasse.

In January 2017, the National Land Commission made recommendations under Article 67(2)(e) on historical land injustices as follows:

- The first survey map used to allocate the land be abolished because it led to erroneous allocation
- The letters of offer that followed were hence null and void
- The second survey map that was done with the consent and involvement of Golini people be upheld and used as a basis of allocation of the subject land
- Fresh letters of offer be issued in conformity with this map subject to resolving boundary and inheritance matters therein.
- A proper PDP be prepared to reflect the existing land use and public utilities
- New titles reflecting the actual scenario on the ground be issued and registered thereafter.

This decision was communicated to the Cabinet Secretary, Ministry of Lands and Physical planning and the Governor Kwale County for implementation in a letter reference NO.NLC/CHAIRMAN/VOL.XIX/49 of 25th January, 2017as per the attached report).

(iii).PETITION BY HON.RICHARD KEN KITI CHONGA MP. ON BEHALF OF INDIGENOUS PEOPLE OF VIPINGO

(a)The Petitioner prays that the national Assembly inquiries into the circumstances that led to irregular dispossession of Vipingo Community land from its indigenous owners by private entities, with a view to reverting ownership of the said land to the indigenous people of Vipingo in Kilifi County.

(b) Makes any other recommendations it deems appropriate in the circumstances of the petition.

RESPONSE

HON CHAIR,

(a)Vipingo Sisal Farm is along the 10 mile coastal strip. It was allocated under the Land Titles Ordinance in 1913 with 999 years leasehold and is owned by people who are citizens of Kenya. It was allocated specifically for sisal farming.
However over the years we have had several development applications affecting the farm that has led to several sub divisions some of which have converted to 99 years leases and transferred to several farms such as;

- Vipingo Development Limited
- Vipingo Energy Limited
- Vipingo Golf and Club House
- Vipingo Ridge Limited
- Mombasa Cement
- Sunsale Trading Limited

It is also noted that ownership has been changing hands to other companies which are incorporated with stakes such as REA Vipingo Plantation Incorporated in 1995 for sisal farming with shares floated in Nairobi Stock Exchange in 1996, Centum Investment Company acquired large acreage of the same land as well as REA Trading Limited. This makes it difficult to track down the real ownership of the land

Residents have for years been going to court against the sisal plantation owners .However they lost in case ELC. No.343 of 2016.

The Community filed a historical Land Injustice claim no.NLC/HLI/495/2018 against Vipingo Sisal Estate Limited. Both parties were notified to attend the Historical Land Injustices proceedings sitting at Kilifi on 30th.August 2018.The Community attended the hearing sitting and were represented by Mr. James Kalenga Mganga, but Vipingo Sisal Limited did not attend .The community was allowed to state their claim which they said they wanted restitution and compensation for loss of their land which they claimed was taken away from them by colonial masters with a promise of resettlement and compensation. However Vipingo Sisal Estate had embarked on selling the same to other parties and therefore it was seen wise that the land should revert to the original owners which are the community.

However, the Commission did not conclude the hearing concerning this particular claim because the respondent who is Vipingo Sisal Estate did not appear for the proceedings. The Historical Land Injustices committee of the commission promised to schedule another sitting at a later date .Unfortunately their term came to an end. This matter is among the 43 claims that were not concluded and the current commission has made arrangements to finalize them after the current protocols by the Ministry of Health on Covid-19 have been relaxed to allow for public gathering.. It is also important to note that the ELC Case no.343 of 2016 could have an impact on the outcome of this claim.

(iv)PETITION BY RESIDENTS OF KEIYO NORTH CONSTITUENCY ON COMPULSORY ACQUISITION OF LAND AND COMPENSATION FOR THE CONSTRUCTION OF TAMBACH TEACHERS TRAINING COLLEGE.

The Petitioners claim that their land was acquired by Government in 1985 for construction of a teacher training college in Keiyo after which they duly vacated the parcels to allow for the construction of Tambach Teachers College and awaited compensation by means of allocation of alternative land. The aforementioned compensation was afforded to other persons who were not original land owners and the legitimate beneficiaries have not received any form of compensation to date

The petitioners pray that the National Assembly through the Departmental Committee on Lands investigates the matters raised in this petition with a view to ensuring that their property rights are upheld by being paid, fair and timely compensation for their land.

RESPONSE

HON CHAIR,

The acquisition was undertaken simultaneously with that for Kaptarakwa Rural health centre and are both in the land acquisition file No. 834

Acquisition of land for the subject project was done through gazette notice number 4260 and 4261 being notices of intention to acquire land and inquiry respectively both dated October 1985.

It is evident from the file that the process was undertaken by the office of the Commissioner of Lands (CoL) (now defunct).

The processes of inspection, awarding and requisition of compensation funds were successfully undertaken.

A total of 58 Project affected Persons (PAPs) had been identified.

There seems to have been a delay in release of funds initially assessed with back and forth correspondences on the same between the CoL and the Ministry of Education.

A head of state pronouncement seems to have directed a land for land compensation other than cash compensation.

The affected were to be allocated alternative land at Sergoit grounds, an arrangement that they seem to have been agreeable to in anticipation that each would get about 5 acres.

The alternative land was surveyed and subdivided into about 160 parcels of various sizes for allocation.

The PAPs were allocated alternative land as evidenced by a sample of the letter of allotment by the District Commissioners office for Mr. Francis Cheplait of id no. 0243711/63

The PAPs were not satisfied with the various lands allocated to them and they complained of strangers being allocated "free land". The Commission wrote to the office of County Commissioner – Elgeyo Marakwet vide letter ref.

VAL.834/53 dated 20th October 2019 to furnish the Commission with the full list of persons allocated land at SERGOIT grounds and the respective acreage.

A response from the County Commissioner was received vide letter ref. CON.LND.CC.16/3/1/VOL.1/61 dated 4th December 2019. Attached is a report by a working group chaired by the assistant County Commissioner.

MAIN FINDINGS:

Land owners were compensated with alternative land at Sergoit holding grounds.

The land available at Sergoit grounds was made available to compensate other land owners whose land was acquired for other projects.

The total acreage was 300 acres against a presidential pronouncement that it was 600 Acres.

The land was enough for everyone.

It is therefore the Commission's confirmation that the land owners were compensated with alternative land.

Thank you Hon. Chair

GERSHOM OTACHI BW'OMANWA
CHAIRMAN