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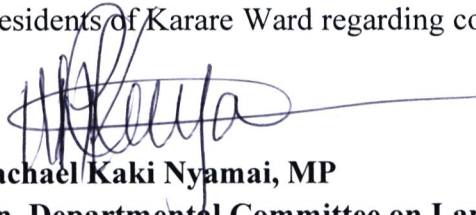
CHAIRPERSON'S FOREWORD

The Petition by residents of Karare Ward regarding compulsory acquisition of land in Marsabit County was conveyed to the House by the Hon Arbelle Malimo,MP on behalf of petitioners on 2nd July 2020.

In considering the petition, the committee held meetings with the Hon Arbelle Malimo, MP and representatives of the petitioners on Thursday 20th August 2020, the Chairperson, National Land Commission and the Secretary Ministry of Defence on Wednesday 23rd September, 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 Arbelle Malimo MP, the Chairperson, National Land Commission, the Secretary Ministry of Defence 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 Karare Ward regarding compulsory acquisition of land in Marsabit County.



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 residents of Karare Ward regarding compulsory acquisition of land in Marsabit County. The Petitioners prayed that the National Assembly through the Departmental Committee on Lands:

- i) Investigates the matter with a view to grant the petitioners their rights; and
- ii) Make any other further order(s) deemed fit in the circumstances.

The Committee observed that the submissions made by both the Cabinet Secretary, Ministry of Defence and the Chairperson National Land Commission indicated that the matters raised in the Petition were pending before the Environment and Land Court in Meru in Constitutional Petition No. 4 of 2020.

The Committee also noted Mr. Stephen Lesoroh Gambare. and the Rendile Professional Association are indicated as Petitioners in the Petition before the Committee and as plaintiffs in Petition No, 4 of 2020 pending at the Environment and Land Court in Meru.

The Committee also observed that Standing Order 89 provides that no Member shall refer to any particular matter which is *sub judice* and a matter is considered to be *sub judice* when it refers to active civil proceedings and the discussion of such matter is likely to prejudice its fair determination.

The Committee further noted that the matters raised in the Petition fall under the *sub judice rule* in accordance to Standing Order 89 as they refer to active civil proceedings and the consideration of the Petition is likely to prejudice the fair determination of the case.

In response to the prayers by the Petitioners, the Committee recommends that since the matters raised in the Petition were pending before the Environment and Land Court in Meru in Constitutional Petition No. 4 of 2020 and were therefore *sub judice*, the Petitioners do exhaust the judicial process in addressing the prayers.

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 or a Minister.
 - (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: -

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

Member for Wajir West
Constituency
Jubilee Party

Hon Joshua Kutuny Serem, MP
Member for Cherangany
Constituency
Jubilee Party

Hon. Ali Mbogo, MP
Member for Kisauni
Constituency
Wiper Democratic Movement
(WDM)

Hon. Mishi Mboko, MP
Member for Likoni Constituency
Orange Democratic Movement
(ODM)

Hon. Babu Owino, MP
Member for Embakasi East
Constituency
Orange Democratic Movement
(ODM)

Hon. Omar Mwinyi, MP
Member for Changamwe
Constituency
Orange Democratic Movement
(ODM)

Hon. Caleb Kipkemei Kositany,
MP
Member for Soy Constituency
Jubilee Party

Hon. Ahmed Kolosh, MP

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 Ntwiga,
MP
Member for
Chuka/Igambangombe
Constituency
Jubilee Party

Hon. Samuel Kinuthia Gachobe,
MP

Member for Subukia
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

Senior Clerk Assistant

Mr. Ahmad Guliye
Clerk Assistant III

Ms. Winnie Kizia
Media Relations Officer III

Dr. Kefa Omoti
Principal Researcher Officer

Mr. Dennis Mawira
Audio Officer

Ms. Jemimah Waigwa
Legal Counsel I

Ms. Peris Kaburi
Serjeant-At-Arms

Mr. Adan Abdi
Fiscal Analyst III

INTRODUCTION

6. The Petition by residents of Karare Ward regarding compulsory acquisition of land in Marsabit County was conveyed to the House by the Hon Arbelles Malimo, MP on behalf of petitioners on 2nd July 2020.
7. The Petitioners wished to draw the attention of the House to the following, that:
 - i. Article 63 of the Constitution of Kenya provides for the recognition and protection of communal land, while the Community Land Act affirms rights of communities in the administration of community land;
 - ii. The United Nations (UN) declaration of the Rights of the indigenous people advocate for free, prior and informed consent in legislative and administrative measures affecting the indigenous people;
 - iii. Residents of Marsabit County are predominantly pastoral community, who depend heavily on existing agro friendly land for the feeding of their livestock;
 - iv. Karare Ward being a water catchment during the dry season for the pastoral communities of Karare, Songa, Loglogo, Kamboye, Leisamis, Kargi and korr Communities plays a central role in the viability of pastoralism in Laisamis Sub County;
 - v. The Community has previously lost 150,0000 acres of land to the lake Turkana Wind Power project which was compulsorily acquired despite objection by the community;
 - vi. In 2019 the Kenya Defence Forces (KDF) expressed interest in acquiring 2,500 hectares of land in Saku Sub County;
 - vii. Owing to the environmental sustainability, cultural practices, impact on availability of pasture for livestock as well as food for residents the community had proposed acquisition of an alternative piece of land in Kubi Kalo which was turned down;
 - viii. On 29th May 2020, the KDF moved into the land with bulldozers to the contested land despite the objection and protest by the community;

- ix. The compulsory acquisition of the land will result into the loss of livestock due to malnutrition and related complications and consequent loss of livelihoods of an estimated 25,000 households;
 - x. Consequently, the Government will incur additional costs approximated at Kshs. 144 million in food handouts to the affected residents;
 - xi. Efforts to have the matter addressed by the relevant authorities including the County Government of Marsabit and the County Commissioner have been futile; and
 - xii. This matter is not pending in any court of law, constitutional or legal body.
8. Therefore, the petitioners pray that the National Assembly through the Departmental Committee on Lands:
- i) Investigates the matter with a view to grant the petitioners their rights; and
 - ii) Make any other further order(s) deemed fit in the circumstances.

3.0 SUBMISSIONS

3.1 Submissions by the Petitioners

9. The Committee held a meeting with the Hon. Arbelle Malimo, MP accompanied by representatives of the Petitioners on Thursday 20th August 2020. The Petitioners informed the Committee that:
10. The land in question is occupied by the Rendille and Samburu communities and is in Laisamis Sub County and Karare Ward of Saku Sub County within Marsabit County. The area is arid and semi-arid and therefore mobility and free movement of livestock in search of pasture is essential.
11. In 2012 representatives of Kenya Defence Force (KDF) approached the residents of Karare and expressed an intention to acquire land to construct a military camp. The community having taken into consideration several factors including the grazing potential and cultural value of available land accede to the request and agreed that KDF be allocated land in Mata Lama.
12. However, in 2019, the Kenya Defence Forces expressed interest in acquiring 2,500 Ha of land in Karare Ward, Saku Sub-County. Thereafter, in January 2020 the KDF representatives and the County Commissioner, Marsabit County informed the community that KDF would compulsorily acquire land in Lelkaria/Kurti Rib instead of Mata Lama as agreed earlier.
13. In February, 2020 The County Government of Marsabit unilaterally allocated land in Kurti rib/Lelkaria to the KDF despite the fact that the county government had no powers to allocate land in national reserve without the involvement of the community and the Kenya Wildlife Service.
14. The petitioners opposed the acquisition land by the KDF in Kurti rib/Lelkaria in due to the following reasons:
 - The community had already lost 150,000 acres of land to Lake Turkana wind power project and another 24,800 acres of Oredere to KDF
 - The acquisition of the land in question would negatively impact on the community who depend that land for livestock rearing and culture.
15. The compulsory acquisition of the land in question by the KDF was irregular as it did not adhere to the provisions of the Wildlife Conservation and management Act, 2013 which provides for;
 - An elaborate public participation process which is preceded by a gazette notice by Cabinet Secretary responsible for Wildlife

- Approval by the National Assembly
- Resolution of the County Assembly

16. No environmental and socio-economic impact assessment were undertaken as required by Environment Management and Coordination Act and Wildlife Conservation and Management Act, 2013. There was no National Assembly resolution that is required to approve the excision of the land as required by Wildlife Conservation and Management Act.
17. There was no evidence of the intention to excise the acquired land through Gazette Notice by the Cabinet Secretary responsible for Wildlife and documentation of public participation process except a purported public participation report which has been rejected by the community.
18. The land in question was community land and also a national reserve. The acquisition contravened:
 - Article 21 (3) of the Constitution which protects vulnerable and marginalized groups.
 - Article 35 of the Constitution which provides for access to information
 - Article 63 (3&4) and Article 62 (2)(d)
 - Environment Managing and Coordination Act which provides for Environmental impact assessment of such developments.
 - Community Land Act, 2016
19. On 29th May, 2020 Kenya Defence Forces moved into the land with bulldozers despite the objection and protests by the local community.
20. Efforts to have the matter addressed by the relevant authorities such the County Government and the County Commissioner Marsabit County had been futile;
21. The Petitioners prayed that the National Assembly through the Departmental Committee on Lands;
 - a. Investigate the matter with a view to grant the petitioners right to their land.
 - b. Make any other recommendations as it deems fit in the circumstances of the petition.

3.2 Submissions by the Cabinet Secretary, Ministry of Defence and Chairperson, National Land Commission

22. The Committee held a meeting with the Cabinet Secretary, Ministry of Defence and Chairperson, National Land Commission on Thursday 23rd September, 2020. During the meeting, the Cabinet Secretary informed the Committee that:
23. Although the Petitioners stated in paragraph (xii) of the Petition that the issues raised in the Petition were not pending in any court of law, constitutional or legal body, the matters raised in the Petition were pending before the Environment and Land Court in Meru in Constitutional Petition No. 4 of 2020.
24. The above-mentioned suit had been filed by elders, members, and professionals of the Rendile Community with the County Government of Marsabit, the Kenya Defence Forces, the Cabinet Secretary, Ministry of Defence and the Attorney General as the respondents.
25. The Petitioners in the said suit seek conservatory and prohibition orders to restrain the Ministry of Defence from acquiring, alienating, or otherwise dealing with land within Karale – Songa Ward on grounds that:
- i) The land in dispute is community land and therefore the County Government of Marsabit acted with impropriety by engaging with and by allocating land to the Ministry of Defence;
 - ii) During the process of public participation, the elders declined the ministry's request for land in the Ward on the basis that the land is culturally and biologically diverse and therefore important for conservation. Further, that it is their grazing area and therefore very crucial to the communities particularly during the dry season; and
 - iii) The 36 elders who participated in a public participation exercise regarding the acquisition of the contested land were handpicked by the National Government administration and therefore did not represent the views of the petitioners
26. Therefore, the Cabinet Secretary argued that it would be sub judice for the Committee to deal with the subject matter of the petition. Consequently, the Ministry of Defence raised a preliminary objection to any discussion of the matter as the same was already seized by a court of competent authority and jurisdiction.
27. The Cabinet Secretary further stated that the initial petitioners in the suit pending in court were:

- i) Leruk Murusi
- ii) Lecheku Angele
- iii) Lrado Stephen Lterios
- iv) Ltetian Lerupes
- v) Steve Timbor
- vi) Lendondondo Lolbalanga
- vii) Jummy Leneepe
- viii) Stephen Lesoroh Gambare
- ix) James Marleni
- x) Lpirikon Neepe
- xi) Partick Kuraki

28. The suit was amended on 16th June 2020 to add the following plaintiffs:

- i) Hon. Lekono Bernard
- ii) Hon Daniel Burcha
- iii) Hon Asunta
- iv) Hon. Leado Stephen
- v) Imariaton Loibalanga
- vi) Leteyon Nure
- vii) The Rendille Professional Association

29. The application for conservatory orders was set for mention on 28th October 2020 when directions on hearing of the Application would be given.

30. During the meeting the Chairperson, National Land Commission also informed the Committee that there was an active court matter filed by thirteen petitioners at the Environment and Land Court in Meru in Petition No. 4 of 2020. The said suit challenged the constitutionality of the process applied by the Department of Defence with to their interest in the subject land.

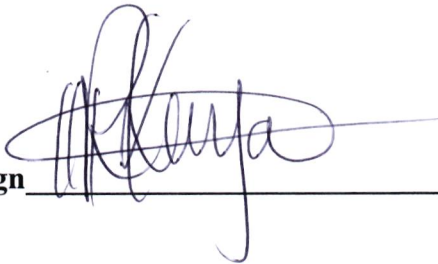
4.0 OBSERVATIONS

The Committee made the following observations:

- a. The submissions made to the Committee by both the Cabinet Secretary, Ministry of Defence and the Chairperson National Land Commission indicated that the matters raised in the Petition were pending before the Environment and Land Court in Meru in Constitutional Petition No. 4 of 2020.
- b. Mr. Stephen Lesoroh Gambare. and the Rendile Professional Association are indicated as Petitioners in the Petition before the Committee and as plaintiffs in Petition No, 4 of 2020 pending at the Environment and Land Court in Meru.
- c. Standing Order 89 provides that no Member shall refer to any particular matter which is *sub judice* and a matter is considered to be *sub judice* when it refers to active civil proceedings and the discussion of such matter is likely to prejudice its fair determination.
- d. The matters raised in the Petition fall under the *sub judice rule* in accordance to Standing Order 89 as they refer to active civil proceedings and the consideration of the Petition is likely to prejudice the fair determination of the case.

5.0 COMMITTEE RECOMMENDATION

In response to the prayers by the Petitioners, the Committee recommends that since the matters raised in the Petition were pending before the Environment and Land Court in Meru in Constitutional Petition No. 4 of 2020 and were therefore *sub judice*, the Petitioners do exhaust the judicial process in addressing the prayers.

Sign  Date 13/10/2020

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

**MINUTES OF THE 38TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON TUESDAY 6TH OCTOBER, 2020 IN THE COMMITTEE ROOM 5TH
FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 A.M.**

PRESENT

1. Hon. Dr. Rachael Nyamai, CBS, M.P - **Chairperson**
2. Hon. Joshua Kutuny, MP
3. Hon. Mishi Mboko, M.P
4. Hon. Omar Mwinyi Shimbwa, M.P
5. Hon. Ahmed Kolosh, MP
6. Hon. Babu Owino, MP
7. Hon. George Aladwa, M.P
8. Hon. John Muchiri Nyaga, MP
9. Hon. Josphat Gichunge Kabeabea, M.P
10. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Khatib Mwashetani, M. P - **Vice Chairperson**
2. Hon. Benjamin Washiali, CBS, MP
3. Hon. Ali Mbogo, M.P
4. Hon. Caleb Kositany, M.P
5. Hon. George Risa Sunkuyia, M.P
6. Hon. Owen Yaa Baya, M.P
7. Hon. Patrick Munene Ntwiga, MP
8. Hon. Samuel Kinuthia Gachobe, M.P
9. Hon. Lilian Tomitom, MP

IN ATTENDANCE

THE NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira - Senior Clerk Assistant
2. Mr. Ahmad Guliye - Third Clerk Assistant
3. Ms. Peris Kaburi - Serjeant-At-Arms
4. Mr. Dennis Mawira - Audio Recording Officer

MIN. NO. NA/DCS/LANDS/2020/147: PRELIMINARIES

The meeting was called to order at twenty-seven minutes past ten o'clock and prayers were said.

MIN. NO. NA/DCS/LANDS/2020/148: CONFIRMATION OF MINUTES

This agenda item was deferred to the next sitting.

MIN. NO. NA/DCS/LANDS/2020/149: ADOPTION OF REPORTS ON PETITIONS

I. Petition by residents of Karare Ward regarding compulsory acquisition of land in Marsabit County by the Kenya Defence Forces

The Committee adopted the report on the Petition by residents of Karare Ward regarding compulsory acquisition of land in Marsabit County by the Kenya Defence Forces with the following observations and recommendations after it was proposed and seconded by Hon. Mishi Mboko, M.P and Hon. Teddy Mwambire, M.P respectively.

Observations

- a. The submissions made to the Committee by both the Cabinet Secretary, Ministry of Defence and the Chairperson National Land Commission indicated that the matters raised in the Petition were pending before the Environment and Land Court in Meru in Constitutional Petition No. 4 of 2020.
- b. Mr. Stephen Lesoroh Gambare. and the Rendile Professional Association are indicated as Petitioners in the Petition before the Committee and as plaintiffs in Petition No, 4 of 2020 pending at the Environment and Land Court in Meru.
- c. Standing Order 89 provides that no Member shall refer to any particular matter which is *sub judice* and a matter is considered to be *sub judice* when it refers to active civil proceedings and the discussion of such matter is likely to prejudice its fair determination.
- d. The matters raised in the Petition fall under the *sub judice rule* in accordance to Standing Order 89 as they refer to active civil proceedings and the consideration of the Petition is likely to prejudice the fair determination of the case.

Recommendation

In response to the prayers by the Petitioners, the Committee recommended that since the matters raised in the Petition were pending before the Environment and Land Court in Meru in Constitutional Petition No. 4 of 2020 and were therefore *sub judice*, the Petitioners do exhaust the judicial process in addressing the prayers.

II. Petition by residents of Vota, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of Konza – Katumani road

The Committee adopted the report on the Petition by residents of Vota, Mua Ward in Machakos Town Constituency regarding the obstruction of the tarmacking of Konza – Katumani road with the following observations and recommendations after it was proposed and seconded by Hon. Muchiri Nyagah, M.P and Hon. Ahmed Kolosh, M.P.

Observations

- a. Although the Petitioners indicated in the Petition that the contested 400 meters portion of the Konza – Katumani Road traversed on land LR, No. 355/2, the Director General, Kenya Urban Roads Authority and the Chairperson National Land Commission clarified that the said portion was on land parcel LR No. 7374/3 owned by Muambi Proprieties Limited.
- b. The land parcel LR No. 7374/3 owned by Muambi Proprieties Limited and for purposes of Article 40 of the Constitution an acquisition of any interest in the land would require prompt payment in full of just compensation to the lawful owner.
- c. The land in question LR. No. 7374/3 owned by Muambi properties had not been subdivided and consequently no portion had been surrendered by the owner for public utility.
- d. Although the 400 meters road passing through the ranch LR. No. 7374/3 and joining Mombasa Road at Konza is not a public road, it has been in continuous use for over fifty (50) years by residents and other persons crossing from Mombasa Road to Machakos Town through Katumani.
- e. The members of the public use the said 400 meters road, which is a shorter and convenient route to access Mombasa Road.
- f. A compulsory land acquisition process had been initiated by the Kenya Urban Roads Authority to acquire the affected 0.7972Ha from LR. No. 7374/2 measuring approximately 880 acres located off Mombasa road.
- g. The notice of intention to acquire was published via gazette notice No. 3215 dated March 29, 2018 and Gazette Notice of inquiry No. 5264 dated 17th May, 2018 were issued accordingly.
- h. The submissions made to the Committee by the Director General, Kenya Urban Roads Authority indicated that the compulsory acquisition award of Ksh. 52, 632, 588, made by the National Land Commission in respect to subject piece of land measuring approximately 0.7972 Ha, owned by Muambi Properties Ltd, to facilitate the tarmacking of the Konza /Kutumani Road appeared to be expensive and exaggerated in comparison to the prevailing market price for comparable land in the

area.

- i. KURA did not pay the said award and decided to identify an alternative alignment, measuring approximately 1.55km. The National Land Commission was notified of the decision and requested to cancel the acquisition process and issue a degazettement notice thereof.
- j. Sections 143(1), 145, and 146 of the Land Act, 2012 allows the National Land Commission to facilitate the creation of a communal right of way which shall be known as a public right of way.
- k. There exists a basis for the National Land Commission to create a public right of way over the 400 meters portion of the Konza – Katumani Road traversing on private land LR No. 7374/3, considering-
 - i) the said road has been used by the residents of Vota and other members of the public for more than fifty (50) years; and maintained by the government; and
 - i) The 400 meters 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.
- l. The NLC did aver that it would upon request initiate the said creation of a public right of way of the 400 meters portion of land affected by the Konza – Katumani Road in accordance with the Lands Act, 2012.
- m. In view of the foregoing, the National Land Commission may consider creating a public right of way pursuant to section 143 of the Land Act, 2012 to facilitate the convenient passage of the residents of Vota through the 400 meters private road which they have been using for over fifty years.

Recommendations

1. 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.
2. 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.

III. Petition by residents of Golini, Kwale County regarding regularization of allocation of land in Golini settlement scheme

- IV. The Committee adopted the report on the Petition by residents of Golini, Kwale County regarding regularization of allocation of land in Golini settlement scheme with the

following observations and recommendations after it was proposed and seconded by Hon. Teddy Mwambire, MP and Hon. Mishi Mboko, MP respectively.

Observations

- a. The Golini settlement scheme L.R 5003 covering an area of 377.02 Ha. was established in 1994. The scheme was subsequently registered, and 152 titles deeds were issued.
- b. Thereafter complains from locals alleging marginalization during plot allocation necessitated the formation of a Task force in 2003 which produced the Golini Task Force Report.
- c. The scheme was subsequently abolished through a ministerial a directive issued on 2nd March 2007.
- d. Consequently, the scheme was resurveyed as per ground occupancy, realizing 268 plots as was recommended by the task force.
- e. The Committee noted with concern that the first survey and allocation were not nullified after the second re- survey and the latter had already been registered.
- f. In January 2017, the National Land Commission (NLC) considered the matter and delivered its findings under Article 67(2)(e) on historical land injustices and recommended, that:
 - 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.
- g. Despite the NLC having communicated its decision to the Cabinet Secretary, Ministry of Lands and Physical planning and the Governor Kwale County for implementation on 25th January, 2017, the Ministry has to date failed to ensure that the initial allocation of land in the scheme is legally cancelled to pave way for the settlement of genuine beneficiaries.
- h. Although the residents of Golini were issued with fresh allotment letters following the re- survey of the land in Golini Settlement Scheme, in 2007, the 152 title deeds that had been issued in the initial allocation were not cancelled and this has facilitated the continued transfer of the land to third parties.

- i. The Petitioners' were unable to raise the necessary fees to facilitate the lodging of a case in court seeking the revocation of the said title deeds due to the huge cost involved, including serving the 152 allottees.
- j. The Committee also took cognizant of the fact that the power of the National Land Commission to revoke the grant of review all grants or dispositions of public land to establish their propriety or legality had since expired under the National Land Commission Act.
- k. There is need for the Ministry to forthwith implement the recommendations of the NLC and ensure that the initial allocation of land in the scheme is revoked and cancelled to pave way for the settlement of beneficiaries as per the second re-survey.

Recommendations

- 1. Pursuant to section 76 of the Lands Registration Act, 2012, the Registrar of Lands does immediately place restrictions on Golini Settlement Scheme, L.R No. 5003 to guard against further sub-division and continued transfer of the land to third parties upon tabling of this Report.
- 2. The Cabinet Secretary, Ministry of Lands and Physical Planning does implement the recommendations of the NLC and ensure that the initial allocation of land in the scheme is revoked and cancelled to pave way for the settlement of the beneficiaries as per the second re-survey within six months of tabling of this Report.

MIN. NO. NA/DCS/LANDS/2020/150: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at five minutes to twelve o'clock. The next meeting would be held on notice.

Signature 

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

(Chairperson)

Date..... 13/10/2020

**MINUTES OF THE 36TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON WEDNESDAY 23RD SEPTEMBER, 2020 IN THE COMMITTEE
ROOM MINI – CHAMBER, 1ST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS
AT 10.00 A.M.**

PRESENT

1. Hon. Dr. Rachael Nyamai, CBS, M.P
 2. Hon. Khatib Mwashetani, M. P
 3. Hon. Benjamin Washiali, CBS, MP
 4. Hon. Joshua Kutuny, MP
 5. Hon. Omar Mwinyi Shimbwa, MF
 6. Hon. Ahmed Kolosh, MP
 7. Hon. Ali Mbogo, M.P
 8. Hon. Babu Owino, MP
 9. Hon. Caleb Kositany, M.P
 10. Hon. George Risa Sunkuyia, M.P
 11. Hon. George Aladwa, M.P
 12. Hon. Josphat Gichunge Kabeabea, M.P
 13. Hon. Patrick Munene Ntwiga, MP
 14. Hon. Teddy Mwambire, M.P
- Chairperson**
- Vice Chairperson

APOLOGIES

1. Hon. Mishi Mboko, M.P
2. Hon. John Muchiri Nyaga, MP
3. Hon. Owen Yaa Baya, M.P
4. Hon. Samuel Kinuthia Gachobe, M.P
5. Hon. Lilian Tomitom, MP

IN ATTENDANCE

The Ministry of Defence

1. Dr. Monica Juma - Cabinet Secretary
2. Hon. Peter Odoyo - Chief Administrative Secretary
3. Dr. Ibrahim Mohamud - Principal Secretary
4. Lt. Gen. Revi Mghola
5. Brig. D Odem
6. Col. J. M. Ngatia

7. Lt. Col. H. M. Mugisya
8. Col. M. S. Mwacharo

THE NATIONAL LAND COMMISSION

- | | | |
|---------------------------|---|-----------------|
| 1. Mr. Gershom Otachi | - | Chairperson |
| 2. Prof. James K. Tuitoek | - | Commissioner |
| 3. Mr. Francis Bor | - | Deputy Director |

THE NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Leonard Machira | - | Senior Clerk Assistant |
| 2. Mr. Ahmad Guliye | - | Third Clerk Assistant |
| 3. Ms. Peris Kaburi | - | Serjeant-At-Arms |
| 4. Mr. Eugene Luteshi | - | Audio Recording Officer |

MIN. NO. NA/DCS/LANDS/2020/138: PRELIMINARIES

The meeting was called to order at twenty-one minutes past ten o'clock and prayers were said.

MIN. NO. NA/DCS/LANDS/2020/139: CONFIRMATION OF MINUTES

This agenda item was deferred to the next sitting.

MIN. NO. NA/DCS/LANDS/2020/140: MEETING WITH THE CABINET SECRETARY, MINISTRY OF DEFENCE ON A PETITION REGARDING COMPULSORY ACQUISITION OF LAND IN MARSABIT COUNTY BY THE KENYA DEFENCE FORCES

The Cabinet Secretary, Ministry of Defence submitted the following in respect of the aforementioned petition:

- i. Contrary to the allegation of the petitioners, the matters raised in the petition were active before the Environment and Land Court in Meru under Constitutional petition no. 4 of 2020 filed on 24th March, 2020.
- ii. The said suit was lodged by elders, members and professionals of the Rendille Community versus the County Government of Marsabit, the Kenya Defence Forces, Cabinet Secretary, Ministry of Defence and the Attorney General.
- iii. The Petitioners sought conservatory and prohibitory orders to restrain the Ministry of Defence from acquiring, alienating or otherwise dealing with land within Karare-Songa Ward.
- iv. An application for conservatory orders was set for mention on 28th October, 2020 where directions on the application of the hearing will be given.

- v. It would be *sub-judice* to deliberate on the matter as the substance of the prayers sought in the petition was seized by a court of competent authority and jurisdiction.

Committee Observation

The Committee noted the submissions made by the Cabinet Secretary and observed that the matters pending court of law, constitutional or legal body. Due to the foregoing, the Committee resolved not to proceed with the petition and to inform the House accordingly by way of a report.

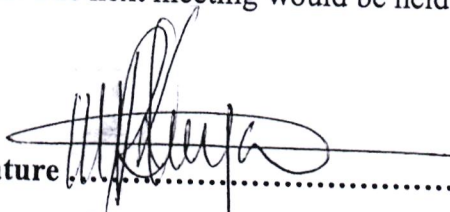
MIN. NO. NA/DCS/LANDS/2020/141: ANY OTHER BUSINESS (AOB)

The Committee was informed that there would be a consultative retreat between the Departmental Committees on Lands & Defence and Foreign Relations and the Ministry of Lands & Physical Planning, the Mistry of Defence and the National Land Commission on the recurring land disputes between the members of the public and the Kenya Defence Forces. The dates of the tentative dates to the retreat would be from 19th to 23rd October, 2020.

MIN. NO. NA/DCS/LANDS/2020/142: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at five minutes to eleven o'clock. The next meeting would be held on notice.

Signature



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

(Chairperson)

Date.....

06/10/2020

**MINUTES OF THE 29TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD VIRTUALLY ON THURSDAY 20TH AUGUST 2020 AT 10:00 A.M**

PRESENT

- | | |
|--|--------------------|
| 1. Hon. Dr. Rachael Nyamai, CBS, M.P | - Chairperson |
| 2. Hon. Khatib Mwashetani, M. P | - Vice Chairperson |
| 3. Hon. Benjamin Washiali, CBS, MP | |
| 4. Hon. Omar Mwinyi Shimbwa, MP | |
| 5. Hon. Caleb Kositany, M.P | |
| 6. Hon. George Risa Sunkuyia, M.P | |
| 7. Hon. Josphat Gichunge Kabeabea, M.P | |
| 8. Hon. Owen Yaa Baya, M.P | |
| 9. Hon. Patrick Munene Ntwiga, MP | |
| 10. Hon. Samuel Kinuthia Gachobe, M.P | |
| 11. Hon. Teddy Mwambire, M.P | |

APOLOGIES

1. Hon. Joshua Kutuny, MP
2. Hon. Mishi Mboko, M.P
3. Hon. Ahmed Kolosh, MP
4. Hon. Ali Mbogo, M.P
5. Hon. Babu Owino, MP
6. Hon. George Aladwa, M.P
7. Hon. John Muchiri Nyaga, MP
8. Hon. Lilian Tomitom, MP

IN ATTENDANCE

THE NATIONAL ASSEMBLY

Hon. Arbelle Malimo, MP

**PETITIONERS ON THE PETITION REGARDING THE COMPULSORY
ACQUISITION OF LAND IN MARSABIT COUNTY BY THE KENYA DEFENCE
FORCES**

1. Mr. Sunya Ore
2. MS. Rafaela Bulyar
3. Mr. Achiba Gargule
4. Mr. M. Gambare

PETITIONERS ON THE PETITION REGARDING THE COMPULSORY ACQUISITION OF LAND AND COMPENSATION OF KEIYO NORTH CONSTITUENCY RESIDENTS BY THE GOVERNMENT

1. Mr. Francis Cheplaiti
2. Mr. Josephat Maiyo
3. Mr. Benedict Kipruto
4. Mr. Jonathan Kiprop

THE NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Leonard Machira | - | Senior Clerk Assistant |
| 2. Mr. Ahmad Guliye | - | Third Clerk Assistant |
| 3. Ms. Jemimah Waigwa | - | Legal Counsel I |
| 4. Ms. Winnie Kizzia | - | Media Relations Officer |
| 5. Ms. Peris Kaburi | - | Serjeant-At-Arms |
| 6. Mr. Denis Mawira | - | Audio Recording Officer |

MIN. NO. NA/DCS/LANDS/2020/107: PRELIMINARIES

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

MIN. NO. NA/DCS/LANDS/2020/108: MEETING WITH THE PETITIONERS ON A PETITION REGARDING COMPULSORY ACQUISITION OF LAND IN MARSABIT COUNTY BY THE KENYA DEFENCE FORCES

The Hon. Arbelle Malimo, MP, accompanied by representatives of the petitioners, informed the Committee that:

- i) The land in question is occupied by the Rendille and Samburu communities and is located in Laisamis Sub County and Karare Ward of Saku Sub County within Marsabit County. The area is arid and semi-arid and therefore mobility and free movement of livestock in search of pasture is essential;
- ii) In 2012 representatives of Kenya Defence Force (KDF) approached the residents of Karare and expressed an intention to acquire land to construct a military camp. The community having taken into consideration several factors including the grazing potential and cultural value of available land accede to the request and agreed that KDF be allocated land in Mata Lama;
- iii) However, in 2019, the Kenya Defence Forces expressed interest in acquiring 2,500 Ha of land in Karare Ward, Saku Sub-County. Thereafter, in January 2020 the KDF representatives and the County Commissioner, Marsabit County informed the

- community that KDF would compulsorily acquire land in Lelekaria/Kurti Rib instead of Mata Lama as agreed earlier.
- iv) In February, 2020 The County Government of Marsabit unilaterally allocated land in Kurti rib/Lelekaria to the KDF despite the fact that the county government had no powers to allocate land in a national reserve without the involvement of the community and the Kenya Wildlife Service;
- v) The petitioners opposed the acquisition land by the KDF in Kurti rib/Lelekaria due to the following reasons:
- The community had already lost 150,000 acres of land to Lake Turkana wind power project and another 24,800 acres of land in Oredere to KDF.
 - The acquisition of the land in question would negatively impact on the community who depend on the land for livestock rearing.
- vi) The compulsory acquisition of the land in question by the KDF was irregular as it did not adhere to the provisions of the Wildlife Conservation and management Act, 2013 which provides for;
- An elaborate public participation process which is preceded by a gazette notice by Cabinet Secretary responsible for Wildlife
 - Approval by the National Assembly
 - A resolution of the County Assembly
- vii) No environmental and socio-economic impact assessment were undertaken as required by the Environment Management & Coordination Act and the Wildlife Conservation and Management Act, 2013.;
- viii) There was no National Assembly resolution approving the excision of the land as required by Wildlife Conservation and Management Act;
- ix) There was no Gazette Notice by the Cabinet Secretary responsible for Wildlife indicating the intention to excise the land acquired by KDF;
- x) The land in question was community land and also a national reserve. The acquisition contravenes:
- Article 21 (3) of the Constitution which protects vulnerable and marginalized groups.
 - Article 35 of the Constitution which provides for access to information
 - Article 63 (3&4) and Article 62 (2)(d)
 - Community Land Act, 2016

- xi) On 29th May, 2020 Kenya Defence Forces moved into the land with bulldozers despite the objection and protests of the local community;
- xii) Efforts to have the matter addressed by the relevant authorities such the County Government and the County Commissioner had been futile;
- xiii) The Petitioners prayed that the National Assembly through the Departmental Committee on Lands;
 - a. Investigate the matter with a view to grant the petitioners right to their land.
 - b. Make any other recommendations as it deems fit in the circumstances of the petition.

Committee resolution

The Committee noted the submissions made by the petitioners and resolved to hold meetings with the Cabinet Secretary, Ministry of Defence, the Director, Kenya Wildlife Service and the Chairperson, National Land Commission in respect of the petition.

MIN. NO. NA/DCS/LANDS/2020/109: MEETING WITH THE PETITIONERS ON A PETITION REGARDING COMPULSORY ACQUISITION OF LAND AND COMPENSATION OF KEIYO NORTH CONSTITUENCY RESIDENTS BY GOVERNMENT

Mr. Francis Cheplaiti and Mr. Josephat Maiyo on behalf of the petitioners informed the Committee that;

- i) The government acquired land in Tambach Training College through Gazette Notices 4260 and 4261 of 4th October, 1985 for the construction Tambach Teachers College;
- ii) The acquisition was premised on an agreement that the affected community would be compensated through the allocation of alternative land, comprising 600 acres in the *Sergiot Crown land*. The community paved way for construction of the college in 1988 while awaiting compensation.
- iii) On 15th February, 1993 the locals were required to collect their allotments letters at the then District Commissioner's office. However, they were allocated land ranging from 1 to 3 acres instead of the 5 acres that they were earlier promised. They later learnt that other persons including government officials had allocated themselves huge chunks of land at the expense of the locals.
- iv) The locals complained and then District Commissioner was asked to address their plight.

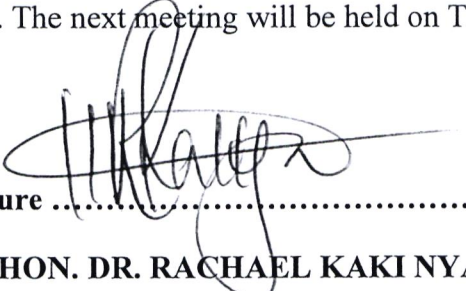
- v) Two lists were then generated; one comprising the rightful beneficiaries and the other contained names of persons who were allocated land illegally. The land was repossessed and reallocated to the rightful beneficiaries. The beneficiaries settled on the said land in January, 2003;
- vi) However, in June, 2003 unknown persons invaded the new farms and destroyed property. The affected residents lodged a case in court; however, the case was thrown out by the court due to lack of evidence as the witnesses were intimidated by powerful people;
- vii) In 2015, a surveyor surveyed the land without the input of the locals and then sent the report to Nairobi for titling;
- viii) In August 2015, the then Minister for Lands visited the area to issue the titles but the exercise was stopped after he was informed that the list of the beneficiaries was contested as the allocation of the said land contained irregularities;
- ix) However the land was illegally converted into private land and a title issued in favour of *Sergoit Karuna Blocks Crown Land LR 883 EX Crown Land*. The land has since been subdivided and 272 persons have since been issued with title deeds; and
- x) The Petitioners prayed that the National Assembly through the Departmental Committee on Lands ensure that the petitioners right to property is safeguarded and full, fair and timely compensation is made to the affected persons.

Committee resolutions

- i. The Committee requested the petitioners to submit to the Committee the list of those who illegally benefited from the land; and
- ii. The Committee resolved to hold a meeting with the Cabinet Secretary, Ministry of Lands & Physical Planning and the Chairperson, National Land Commission to address the matters raised in the petition.

MIN. NO. NA/DCS/LANDS/2020/110: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at sixteen minutes to one o'clock. The next meeting will be held on Thursday, 27th August 2020 at 10.00 a.m.



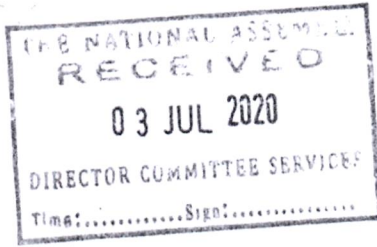
Signature

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

(Chairperson)

08/09/2020

Date.....



REPUBLIC OF KENYA



Approved,
SNA
27/2020

TWELFTH PARLIAMENT (THIRD SESSION)

THE NATIONAL ASSEMBLY

PUBLIC PETITION

(No. 14 of 2020)

REGARDING COMPULSORY ACQUISITION OF LAND IN MARSABIT COUNTY BY THE KENYA DEFENCE FORCES

I, the **UNDERSIGNED**, on behalf of the residents of Karare Ward, Marsabit County,

DRAW the attention of the House to the following:

- (i) **THAT**, Article 63 of the Constitution of Kenya provides for the recognition and protection of communal land rights, while the Community Land Act affirms rights of communities in the administration of community land;
- (ii) **THAT**, the United Nations (UN) declaration of the Rights of indigenous people advocate for free, prior and informed consent in legislative and administrative measures affecting the indigenous people;
- (iii) **THAT**, residents of Marsabit County are a predominantly pastoral community who depend heavily on existing agro friendly land for the feeding of their livestock;
- (iv) **THAT**; Karare Ward being a water catchment and dry season area for the pastoral communities of Karare, Songa, Loglogo, Kamboye, Leisamis, Kargi and Korr Communities plays a central role in the viability of pastoralism in Laisamis sub county;

**REGARDING COMPULSORY ACQUISITION OF LAND IN
MARSABIT COUNTY BY THE KENYA DEFENCE FORCES**

- (v) **THAT**, the Community has previously lost 150,000 acres of land to the Lake Turkana Wind Power project which was compulsorily acquired despite objection by the Community;
- (vi) **THAT**, in 2019, the Kenya Defense Forces (KDF) expressed interest in acquiring 2,500 hectares of land in Saku sub county;
- (vii) **THAT**, owing to the environmental sustainability; cultural practices, impact on availability of pasture for livestock as well as food for residents; the community had proposed acquisition of an alternative piece of land in Kubi Kalo which was turned down;
- (viii) **THAT**, on 29th May, 2020, the KDF moved into the land with bulldozers to the contested land despite the objection and protest by the Community;
- (ix) **THAT**, the compulsory acquisition of land will result into loss of livestock to malnutrition and related complications, and consequent loss of livelihoods of an estimated 25, 000 households;
- (x) **THAT**, consequently, the Government will incur additional costs approximated at Kshs. 144 Million in food hand outs to the affected residents;
- (xi) **THAT**, efforts to have the matter addressed by the relevant authorities including the Marsabit County Government and the County Commissioner have been futile;
- (xii) **THAT**, this matter is not pending in any court of law, constitutional or legal body;

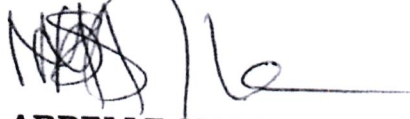
**REGARDING COMPULSORY ACQUISITION OF LAND IN MARSABIT
COUNTY BY THE KENYA DEFENCE FORCES**

THEREFORE, your humble Petitioners pray that the National Assembly through the Departmental Committee on Lands:

- (i) investigates the matter with a view to grant petitioners their right; and
- (ii) makes any other further order(s) deemed fit in the circumstances of the petitioners.

And your **PETITIONERS** will ever pray.

PRESENTED BY:



HON. ARBELLES MALIMO, MP

MEMBER FOR LAISAMIS CONSTITUENCY

DATE.....2/7/2020.....

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Petition to the National Assembly by the Rendille Professional Association Concerning Acquisition of Karare Land by Kenya Defense Forces (KDF)

The Clerk of the National Assembly
Parliament Building
P.O. Box 41842 – 00100
Nairobi
Email.cns@parliament.go.ke

Dear Sir/Madam

**RE: PETITION TO THE NATIONAL ASSEMBLY CONCERNING
ALLOCATION OF KARARE LAND IN MARSABIT COUNTY TO KENYA
DEFENCE FORCES**

We the undersigned,

Citizens of the Republic of Kenya, and residents of Marsabit County Karare Ward,

Draw the attention of the National Assembly to the following:

1. Background

- 1.1 THAT the petitioners are citizens of Kenya from the Rendille and Samburu Community living in Marsabit County specifically in Karare Ward.
- 1.2 THAT, the Rendille and Samburu community in Marsabit County respectfully objected to compulsory acquisition of our **ONLY** fertile land to KDF for reasons provided below.
- 1.3 THAT in 2019, the Kenya Defense Forces showed interest in land in Saku Sub County. The total land requested by the KDF was 2,500 acres.
- 1.4 THAT the land in question is the only agro pastoral, viable grazing area and has sensitive cultural value for Rendille and Samburu community of Marsabit County;
- 1.5 THAT the community appreciative of the Role of KDF has provided alternative land to the KDF in Kubi Kalo which they refused. The KDF is proceeding with compulsory acquisition despite objection by the community.
- 1.6 THAT, the community has already lost 150,000 acres to the Lake Turkana Wind Power project which was compulsorily acquired despite the community objection and an active court case
- 1.7 THAT, the KDF, the Marsabit County Government and the County Commissioner have on several occasions attempted to coerce the community to accept to give out its land but the community refused citing the centrality of the land in question for sustainability of their environment and livelihoods.
- 1.8 THAT, the now established pattern of forcefully taking away Rendille and Samburu communities land is understood to be as result of their minority and vulnerability status

Petition to the National Assembly by the Rendille Professional Association Concerning Acquisition of Karare Land by Kenya Defense Forces (KDF)

1.9 THAT, the pastoral community livelihoods are dependent on the mobility of their livestock. The communities plan grazing of their land into dry and wet season grazing areas in order to allow for rejuvenation of rangelands and minimize environmental degradation considering that the soils in these areas are very fragile.

Reasons for the petition

2.1 THAT, the KDF has moved in with bulldozers to the contested land on 29th May, 2020 despite the objection and protest by the community at a time when the community is reeling under the impact of COVID -19.

2.2 THAT, the Karare Ward, being a water catchment and dry season area for the pastoral communities of Karare, Songa, Loglogo, Kamboye, Laisamis, Kargi and Korr communities plays a central role in the viability of pastoralism in Laisamis sub county and Karare Ward.

2.5 THAT, the affected people will lose about 35% of their livestock to malnutrition and malnutrition related complications. As a result, an estimated 25,000 households will drop from pastoral production people and become destitute in towns to be supported through food hand-outs if the proposed compulsory allocation of Karare land by Government is not stopped.

2.6 THAT, the annual cost of food hand-outs is estimated conservatively at current value of **Ksh. 144,000,000** annually. This is in addition to lack of dignity due to dependency on hand outs.

2.8 THAT, the compulsory acquisition without community endorsement contravenes **Article 63 of the Constitution of Kenya**, which provides for the **recognition and protection of communal land rights** while Community Land Act 2016 and Community Land Regulations 2017 affirms rights of communities in the administration of communal land.

2.10 THAT, the unprocedural allocation of community land also contravenes, the Land Act (No. 6 of 2012) and Community Land Act 2016 and the United Nations (UN) declaration on the Rights of Indigenous Peoples¹ provides for **free, prior and informed consent** in legislative and administrative measures affecting indigenous people;

2.11 THAT, under the 2010 constitution, the indigenous communities to have secure access and rights to land, and the challenges of land availability, a situation exacerbated by climate change, population growth and the related expansion of settlements in grazing lands, and further recognizing the need for securing access to these vital resources for poverty reduction;

¹ The United Nations (UN) declaration on the Rights of Indigenous Peoples
<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

Petition to the National Assembly by the Rendille Professional Association Concerning Acquisition of Karare Land by Kenya Defense Forces (KDF)

3.0 Efforts made by the Community to present their case to relevant Government Agencies

3.1 THAT, the Community suggested alternative land to the KDF and taking into account various factors including environmental sustainability, cultural value, equity, impact on food and risk of extreme poverty, the community agreed to give land at Kubi Kalo in good faith.

3.2 THAT, the community having felt helpless, petitioned the County Commissioner, the County Governor, the Cabinet Secretary for Interior and Citizen Services and the National Land Commission for redress and reversion of the process

3.3 THAT, the community did not receive response from the above stated State agencies, except the National Assembly

4. The matter in respect to this petition is not pending in any court of law or other constitutional legal body

5. WHEREFORE, we humbly pray that the National Assembly:

1. To mandate the relevant Committee of Parliament to visit Karare community of Marsabit County to establish the facts as soon as possible
2. To make appropriate recommendations to the Cabinet Secretary for Ministry of Defense based on the findings
3. Give an opportunity for the Rendille Professional Association and the community to further present the Memorandum Orally to the National Assembly.

Dated this.....4th day ofJune...2020

Rendille and Samburu Community Representatives
P.O. Box 559 -00100
Nairobi
rpa@info.or.ke

Petition to the National Assembly by the Rendille Professional Association Concerning Acquisition of Karare Land by Kenya Defense Forces (KDF)

No.	Name	Tel. No/Address	ID. NO.	Signature
1.	STEPHEN LESOREN GAMBACE	0798615721 201, MARSABIT	24591919	
2.	JAMES LILWA LEORAP'o	0798055993 201, MARSABIT	23144822	
3.	GALGONZACHE. AMOIS FRUTE	07210530203 201, MARSABIT	22561771 2172	.
4.	LACALU KRINDINDI LEADUMA	0726636187 201, MARSABIT	24826313	
5.	LARAPU LEKASOLA	0710431280	28954898	



NATIONAL LAND COMMISSION

**RESPONSE TO A PETITION REFERRED TO THE DEPARTMENTAL
COMMITTEE ON LANDS OF THE NATIONAL ASSEMBLY**

BY

GERSHOM OTACHI BW' OMANWA

CHAIRMAN

23RD SEPTEMBER, 2020

RESPONSE TO PETITIONS

Hon Chair,

We received a letter dated 10th August, 2020, from the Clerk of the National Assembly inviting us to respond to a petition by residents of Karare Ward Marsabit County with regard to compulsory acquisition of land in Marsabit County by the Kenya Defence Forces

Hon chair,

We wish to respond to the petition as follows:

Background

1. The Ministry of Defence made a decision to establish a military barracks in Marsabit for security reasons and on 16th March 2012 made a formal request to be allocated land in Karare, Marsabit County. On 8th June 2015, the County Council of Marsabit formally allocated 2,500 Ha in Kubi Kalo. The processing of ownership of the land was overtaken by events following the coming in place of devolved governments in 2013.
2. On 18th June 2019, Ministry of Defence made a formal request to the County Government for allocation for land in Marsabit.
3. On 22nd July 2019, the County Government of Marsabit formally allocated land in Karare (5,000 Ha); Haiya (10,000 Ha) and Odda military camp (242 Ha). On 22nd August 2019 the department of defense requested the National Land Commission for allotment letters for the parcels of land. The Commission informed Department of Defence in a letter dated 4th November 2019, that it could not issue allotment letters because the land was community land. It turns out that this may not have been the correct position.
4. The petitioners are contesting the process followed in the allocation of Community Land at Karare ward.
5. The coordinates of the 5,000 Ha parcel of land allocated in Karare by the County Government of Marsabit is:-

STN	Eastings	Northings
A	376583	248844
B	374070	248821
C	370311	251031
D	366218	250703
E	366957	244713
F	373812	244527
G	373800	245810
H	376328	245840

When the above coordinates were plotted on the map it fell within the Marsabit National Reserve (Annex 1).

We subsequently sought and obtained gazette notices 936 of 1948 and 1982 of 1991 from KWS, confirming the status of reservation of the land. (annex 2).

Conclusion

The contested parcel of land in question is part of the Marsabit National Reserve sitting next to the Marsabit National Park and not Community Land as alleged by the petitioners.

Further Information

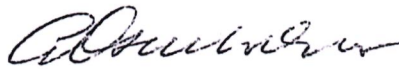
Hon Chair,

We wish to bring to the attention of this esteemed Committee that there is an active Court matter at the Meru Environment and Land Court - Constitutional Petition No 4 of 2020, filed by thirteen petitioners who are residents of Marsabit County challenging the constitutionality of the process applied by the Department of Defense with regard to their interest in the subject land.

Way forward

- The Ministry of Defense should engage with the Ministry of Environment and Forests (Parent Ministry of Kenya Wildlife Service) with a view to National Government following due process in formalizing the change of use of the subject land from National Reserve to military use.

Thank you for giving us audience and for the continued support.



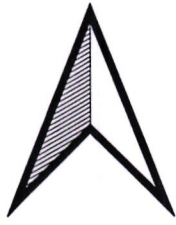
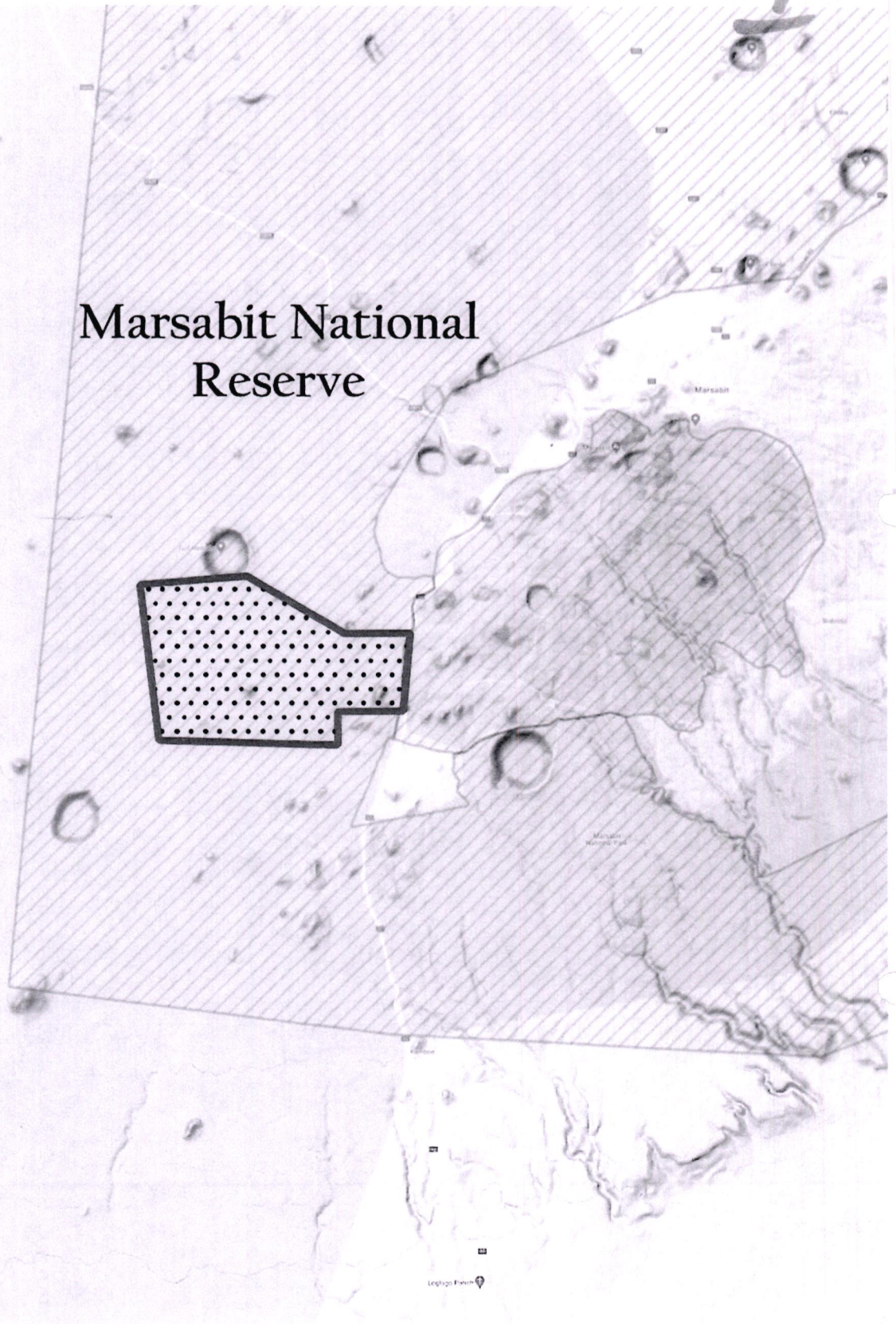
**GERSHOM OTACHI BW'OMANWA
CHAIRMAN**



23RD SEPTEMBER, 2020

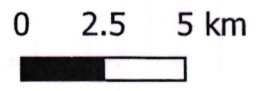
Military Land in Contention



Marsabit National Reserve



 Parcel of Interest
 National Reserve
Google Terrain Hybrid





GOVERNMENT NOTICE No. 934

THE MOMBASA MUNICIPALITY (SLAUGHTERHOUSE AND SALE AND CONVEYANCE OF MEAT) (AMENDMENT) BY-LAWS, 1948

IN EXERCISE of the powers conferred upon it by section 69 of the Local Government (Municipalities) Ordinance, 1928, the Municipal Board of Mombasa has made the following By-laws:—

1. These By-laws may be cited as the Mombasa Municipality (Slaughterhouse and Sale and Conveyance of Meat) (Amendment) By-laws, 1948, and shall be read as one with the Mombasa Municipality (Slaughterhouse and Sale and Conveyance of Meat) By-laws, 1929, hereinafter referred to as the principal By-laws.

2. By-law 27 of the principal By-laws is hereby revoked.

By Order of the Municipal Board of Mombasa.

Mombasa,
7th May, 1948.

E. G. TIDY,
Town Clerk.

Approved.

Nairobi,
20th September, 1948.

T. C. COLCHESTER,
Commissioner for Local Government.

GOVERNMENT NOTICE No. 935

CONFIRMATION OF ORDINANCES

The Secretary of State for the Colonies has been pleased to notify that His Majesty's power of disallowance will not be exercised in respect of the under-mentioned Ordinances:—

No. 34 of 1948.—An Ordinance to Amend the Sugar Ordinance.

No. 40 of 1948.—An Ordinance to Make Provision as to the Immunities, Privileges and Capacities of International Organizations of which His Majesty's Government in the United Kingdom and Foreign Governments are Members and for purposes connected with such matters.

No. 42 of 1948.—An Ordinance to Amend the Control of Life Assurance Business with Natives Ordinance, 1945.

No. 44 of 1948.—An Ordinance to Amend the Probation of Offenders Ordinance, 1943.

By Command of His Excellency the Governor.

Nairobi,
21st September, 1948.

J. B. HOBSON,
Acting Member for Law and Order.

GOVERNMENT NOTICE No. 936

THE NATIONAL PARKS ORDINANCE

MARSABIT NATIONAL RESERVE

IN EXERCISE of the powers conferred upon them by section 8 of the National Parks Ordinance, 1945, the Kenya National Parks Trustees have, with the approval of the Competent Authority, accepted certain specific rights in the area described in the Schedule hereto, which shall be known as the Marsabit National Reserve, and have been authorized by the Competent Authority, subject to the provisions of any law for the time being in force within the said area, and to the general or specific approval of the Senior Administrative Officer in charge of such area, to exercise in such area the powers, duties and functions conferred upon the Trustees by sections 6, 13 (2) and 18 of the said Ordinance.

Nairobi,
24th September, 1948.

M. H. COWIE,
Executive Officer,
Kenya National Parks Trustees.

SCHEDULE

Commencing on the bridge near Archer's Post at the intersection of the centre line of the Isiolo-Archer's Post-Marsabit Road with the centre line of the Uaso Nyiro;

thence up-stream by the centre line of that river to a point due south of a beacon on the north bank of the river (this beacon is near the big bend in the Uaso Nyiro about one mile north of the junction of the Kirimun River with the Uaso Nyiro);

thence due north to that beacon;

thence northerly by a straight line for approximately one mile to a beacon on the side of and at the nearest point of the Wamba-Maralal motor road;

thence onwards by that straight line to the centre line of that motor road;

thence north-westerly by that centre line to its intersection with the centre line of the motor road which runs northerly from Maralal to Poror, Baragoi and South Horr;

thence generally northerly by the centre line of that Maralal-South Horr Road to its intersection with the Sera Elbarta watercourse about half a mile north of Baragoi;

thence by a straight line to the summit of Kowop;

thence by a straight line to the summit of Teleki's volcano;

thence due north by a straight line to the southern shore of Lake Rudolf;

thence easterly and northerly by that shore to a point due west of a beacon approximately three miles north of El Molo Island;

thence by a straight line to that beacon;

thence easterly by a straight line to a beacon on the western side of the Lolyangalani-Gus motor road;

thence onwards by that straight line to the centre line on that road;

thence north-easterly by that centre line to its intersection with the centre line of the Gus-Sandasio Pass motor road;

thence south-easterly by that centre line to its intersection with the centre line of the Sirima-Kargi-Marsabit motor road;

thence generally easterly by that centre line to its intersection with the centre line of the Mega-Marsabit Road;

thence easterly by a straight line to a cairn on the summit of Orondele Hill;

thence south-easterly by a straight line to the summit of Matalamma Hill;

thence westerly by a straight line to the waterhole at Karsa Gudas;

thence by a straight line to the summit of Ret Hill and onward by that straight line through a beacon on the eastern side of the Marsabit-Archer's Post Isiolo Road to its intersection with the centre line of that road;

thence generally southerly by that centre line to the point of commencement.

These boundaries are roughly delineated, edged purple, on Boundary Plan No. 216/1, deposited in the Survey Records Office, Department of Lands, Mines and Surveys, Nairobi.

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CORRIGENDUM

IN Gazette Notice No. 1876 of 1991, on page 679, delete "G.N. 2944/1987" and insert "G.N. 2944/1982".

GAZETTE NOTICE No. 1979

PUBLIC SERVICE COMMISSION OF KENYA

PROMOTIONS

WILSON DEYA OMWODO, to be Senior Principal Personnel Officer/Senior Assistant Director of Personnel Management, Public Service Commission of Kenya, with effect from 30th January, 1991.

MOSES MUTHUI MBOGO, to be Senior Principal Personnel Officer/Senior Assistant Director of Personnel Management, Public Service Commission of Kenya, with effect from 30th January, 1991.

KIRORI, to be Director (Technical Services), Reclamation and Development of Arid, Semi-Wasteland, with effect from 1st June, 1990.

ONG'ONG'A MAKUNDA, to be Deputy Director (Technical Services), Ministry of Reclamation and Development of Arid, Semi-Arid Areas and Wasteland, with effect from 1st June, 1990.

to be Assistant Director (Land Use), Reclamation and Development of Arid, Semi-Wasteland, with effect from 12th November, 1989.

MIMI, to be Assistant Director (Range Management), Ministry of Reclamation and Development of Arid, Semi-Arid Areas and Wasteland, with effect from 13th June, 1990.

GODFREY GATAI MWANGI, to be Assistant Director (Agriculture Engineering), Ministry of Reclamation and Development of Arid, Semi-Arid Areas and Wasteland, with effect from 27th June, 1990.

KAMAU GATIBARU, to be Assistant Director (Agro-Forestry and Forestry Development), Ministry of Reclamation and Development of Arid, Semi-Arid Areas and Wasteland, with effect from 13th June, 1990.

JAMES MAINA NDIRANGU, to be Assistant Director (Soil Science), Ministry of Reclamation and Development of Arid, Semi-Arid, Areas and Wasteland, with effect from 13th June, 1990.

PAUL MWAURA MUNGAL, to be Assistant Director (Environmental Control and Management), Ministry of Reclamation and Development of Arid, Semi-Arid Areas and Wasteland, with effect from 13th June, 1990.

THOMAS THAIRU GAKURU, to be Superintendent of Police (Pilot), Office of the President, with effect from 13th December, 1989.

JOSEPH KITONYI NZIOKA, to be Superintendent of Police, Office of the President, with effect from 22nd June, 1990.

By Order of the Commission.

Dated the 8th May, 1991.

W. K. K. KIMALAT,
Secretary.

GAZETTE NOTICE No. 1980

THE CONSTITUTION OF KENYA

APPOINTMENT OF MEMBERS OF THE PUBLIC SERVICE COMMISSION

IN EXERCISE of the powers conferred by section 106 (2) of the Constitution of Kenya, I, Daniel Toroitich arap Moi, President and Commander-in-Chief of the Armed Forces of the Republic of Kenya, appoint—

David Muraguri Mureithi,
Joseph Nguta Kiiro,

to be members of the Public Service Commission, with effect from 6th November, 1990, for a term of three (3) years.

D. T. ARAP MOI,
President.

GAZETTE NOTICE No. 1981

THE LOCAL GOVERNMENT ACT

(Cap. 265)

APPOINTMENTS

PURSUANT to section 9 of the Local Government Act, it is notified that the Minister for Local Government proposes to exercise the powers conferred upon him in respect of Nyamarembe and Burnt Forest markets and surrounding areas to

be established as urban councils, and accordingly, the Minister appoints—

James E. Mbori—(Chairman),

Members:

Joseph Mwangovya,
Peter Waitete,

Joint Secretaries:

G. M. Gitau,
A. N. Kiragu,

to inquire into and report on the advisability of exercising the powers conferred under that section and confers upon them the powers of a commission appointed under the Commission of Inquiry Act (Cap. 102).

Dated the 8th May, 1991.

WILLIAM OLE NTIMAMA,
Minister for Local Government.

GAZETTE NOTICE No. 1982

THE WILDLIFE (CONSERVATION AND MANAGEMENT) ACT

(Cap. 376)

CESSATION OF PART OF A NATIONAL RESERVE

IN ACCORDANCE with section 7 (2) (a) of the Wildlife (Conservation and Management) Act, the Minister for Tourism and Wildlife, gives sixty (60) days' notice, with effect from the date of publication of this notice, of his intention to declare that the area of land specified in the schedule hereto shall cease to be part of Marsabit National Reserve.

Any objections to the internal cessation may be made in writing to the Director, Kenya Wildlife Service, P.O. Box 40421, Nairobi, within the notice period.

SCHEDULE

Excision from Marsabit National Reserve

All that area of land measuring approximately 534 square kilometres including Marsabit Town in Marsabit District of Eastern Province, the boundaries of which are particularly delineated, edged red on Boundary Plan No. 216/56, which is signed, sealed and deposited at the Survey Records Office, Survey of Kenya, Nairobi, and a copy of which may be inspected at the office of the Director of Kenya Wildlife Service, Nairobi.

Gazette Notice No. 3962 of 1983 is cancelled.

Dated the 5th April, 1991.

N. K. NGALA,
Minister for Tourism and Wildlife.

GAZETTE NOTICE No. 1983

THE FORESTS ACT

(Cap. 385)

THE SOUTH-WESTERN MAU FOREST

INTENTION TO ALTER BOUNDARIES

IN ACCORDANCE with the provisions of section 4 (2) of the Forests Act, the Minister for Environment and Natural Resources gives twenty-eight (28) days' notice, with effect from the date of publication of this notice, of his intention to declare that the boundaries of the South-Western Mau Forest shall be altered so as to exclude the area described in the schedule hereto.

SCHEDULE

All that area of land measuring approximately 20.38 hectares, lying within and adjoining the western boundary of the South-Western Mau Forest, situated approximately 17 kilometres south of Kericho District, Rift Valley Province, the boundaries of which are more particularly delineated, edged red on Boundary Plan No. 175/303, which is signed, sealed and deposited at the Survey Records Office, Survey of Kenya, Nairobi, and a copy of which may be inspected at the office of the District Forest Officer, Forest Department, Londiani.

Gazette Notice No. 1780 of 1991 is revoked.

Dated the 10th May, 1991.

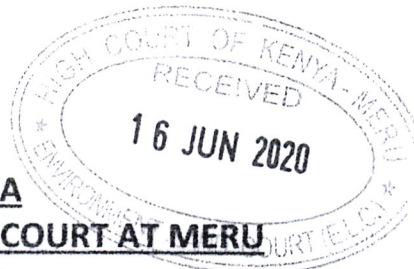
NJOROGE MUNGAL,
Minister for Environment and Natural Resources.

**RESPONSE TO THE PETITION TO THE NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON LANDS REGARDING ALLEGED
COMPULSORY ACQUISITION OF LAND IN MARSABIT COUNTY BY THE
KENYA DEFENCE FORCES**

1. The Ministry of Defence joins issue with paragraph (xii) of the Petition and states that the matter in dispute is placed before the Environmental and Land Court in Meru in Constitutional Petition No. 4 of 2020 between elders, members and Professionals of the Rendille Community versus the County Government of Marsabit, the Kenya Defence Forces, CS Ministry of Defence and the Attorney General.
2. As such, it would be *sub-judice* to deal with the subject matter and the Ministry of Defence raises a preliminary objection as to discussions over a matter already seized of by a court of competent authority and jurisdiction.
3. Notwithstanding the previous submissions, the Ministry states that the land in question was not acquired by compulsory acquisition as alleged but was allocated through an elaborate process that involved the County Government of Marsabit, the National Land Commission, the Kenya Wildlife Service and members of the host community.
4. Further, I wish to bring to the attention of the house that the land in dispute is part of the Marsabit National Reserve as gazetted in Gazette Notice Number 936 of 1948 vide Kenya Gazette Supplement Number 48 of 1948 and therefore only subject to the Wildlife Conservation and Management Act, No. 47 of 2013. The necessary steps to comply with this Statute are in progress.
5. The nation and the host community stand to benefit from the presence of the KDF in Karare Ward of Marsabit County.

Dated at Nairobi this day of September 2020.

Dr Monica K. Juma (OXON), CBS
CABINET SECRETARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
CONSTITUTIONAL PETITION NO4.....OF 2020.

IN THE MATTER OF ARTICLE 63(1),(2),(b),(d),(3) AND (4),62(1),(g) OF ARTICLE
10,40,23 and 258 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 6 (6),(8) AND 26 OF THE COMMUNITY LAND ACT
2016 .

AND

IN THE MATTER OF THE WILDLIFE AND CONSERVATION ACT 2013

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS PRACTICE AND PROCEDURE RULES

BETWEEN

LERUK MURUSI	1 ST PETITIONER
LECHEKU ANGELE	2 ND PETITIONER
HON LEKONO BERNARD	2 ND PETITIONER
LRADO STEPHEN LTERIOS.....	3 RD PETITIONER
LTETIAN LERUPES.....	4 TH PETITIONER
STEVE TIMBOR	5 TH PETITIONER
LENDODODO LOLBALANGA.....	6 TH PETITIONER
JIMMY LENEPE.....	7 TH PETITIONER
STEPHEN LESOROH GAMBARE.....	8 TH PETITIONER
JAMES MARLENI.....	9 TH PETITIONER
LPIRIKON NEEPE.....	10 TH PETITIONER
PARTICK KURAKI.....	11 TH PETITIONER
SAMUEL LOIBARBAN.....	12 TH PETITIONER
FRANCIS LEADUMA.....	13 TH PETITIONER

HON DANIEL BURCHA14TH PETITIONER
HON ASUNTA15TH PETITIONER
HON LEADO STEPHEN16TH PETITIONER
IMARIATON LOIBALANGA17TH PETITIONER
LETEYON NURE.....18TH PETITIONER
THE RENDILLE PROFESSIONAL ASSOCIATION19TH PETITIONERS.

AND

THE COUNTY GOVERNMENT OF MARSABIT1ST RESPONDENT
THE CHIEF OF THE KENYA DEFENCE FORCES2ND RESPONDENT
THE CABINET SECRETARY MINISTRY OF DEFENCE3RD RESPONDENT
THE HON ATTORNEY GENERAL.....4TH RESPONDENT

TO:-

THE ENVIRONMENT AND LAND COURT OF KENYA AT MERU

AMENDED PETITION

- 1. THE PETITIONERS** are elders, members, and Professionals of the RENDILLE community of KARARE WARD within Marsabit county, in the republic of Kenya and whose address of service for purposes of this petition shall be care of:

J.NELIMA ASSOCIATES &CO ADVOCATES
ELECTRICAL HOUSE, 3RD FLOOR, ROOM 15,
P.O BOX 2712
MERU .

- 2. THE 1ST RESPONDENT** is the County Government of Marsabit established under Article 176 of the constitution of Kenya with the mandate to hold in trust all community land within its jurisdiction and whose address for purposes of this petition shall be P.O BOX 384 MARSABIT.
- 3. THE 2ND RESPONDENT** is the Chief of Defence Forces an appointee of the president under ARTICLR 131 (1) of the constitution whose function is to be the principal adviser to the President and Cabinet Secretary on any military, operation and administrative matters within his competence and whose address of service for purposes of this suit shall be ULINZI HOUSE, LENANA ROAD P.O BOX 40668-00100NAIROBI.
- 4. THE 3RD RESPONDENT** is the Cabinet Secretary Ministry of Defence s an office created under Article 241 (6) of the constitution whose function is to advice the President on matters relating to defence policy whose address of service for purposes of this suit shall be ULINZI HOUSE LENANA ROAD P.O BOX 40668-00100 NAIROBI .
- 5. THE 4th RESPONDENT** is the Principal Legal Advisory to the Government of Kenya charged with amongst other responsibilities, the duty to diligently, impartially, objectively and competently advice the Government of Kenya on any legal matters and represent it legal proceedings.

FACTS OF THE SUIT

6. AT ALL MATERIAL times relevant to this petition the petitioners were and still are members and professionals of the indigenous Rendille minority Community of KARAREWARD, situated within Marsabit County.
7. THE PETITIONERS are and have been in occupation of all that land within the KARARE –SONGA WARD measuring approximately ~~600sq km~~, 877sq km since time in memorial.
8. The suit land is unregistered community land held in trust by the 1st respondent on behalf of the petitioners for purposes of wildlife, cultural and tourism land use and promotion.
9. The suit land is in the process of transition from trust land to community land.
10. On or about the year 2012 the 2nd and 3rd respondents approached the 1st respondent and requested to be given land within KARARE WARD for purposes of camping and range activities and after holding a series of meetings with the community elders, the elders agreed to give them land within MATA LAMA area which parcel of land is already demarcated for use by the 2nd and 3rd respondents.
11. The 2nd and 3rd respondents were dissatisfied with the portion of land given to them in the year 2012 and in January 2020 approached the 1st respondent and requested for alternative land within KARARE WARD Measuring 10,000sq km.
12. On the 20th day of January, the 2nd and 3rd defendants team led by the county commissioner held a public participation meeting and community elders present refused/rejected the request of the 2nd and 3rd respondents

for reasons that the proposed new site is a cultural and biologically diverse critical area of importance and sensitive conservation and pastoral grazing lands .

13. However in a bid to forcefully acquire the suit land and in ignorance of the public participation resolutions passed by the community the 2nd and 3rd respondents resulted in a divide and rule strategy through use of government administration chiefs and the county commissioner and handpicked 36 elders from the KARARE location and forced them to show them the suit land claiming that the land in question is public land and that they had a right over it for public use.

14. In furtherance of their bid to forcefully acquire the suit land, on the 12TH day of March 2020, the 1st 2nd and 3rd respondents visited the site together with the survey of Kenya, for purposes of demarcating the suit land for use by the 2nd and 3rd respondents and forced the area chiefs to show them the land claiming its public land.

14.A. On or about the 29th day of May 2020 the 2nd and 3rd respondents ,actualized their intentionsto forcefully acquire the suit land and ,illegally and unlawfully entered upon the suit land with tracks and bulldozers and have begun erecting a fence, and constructing a road therein.

14.BThe actions of the 2nd and 3rd respondents in forcefully entering into the suit land using military force have sparked tension and violence in the area .

14.C The Rendille community have already lost 150,000 acres to the Lake Turkana wind power project an active case in court and the continual forceful acquisition of more land from the community will render them landless and destitute in the near future.

15. The 1st respondent is a trustee of unregistered community land and ought to administer the same in accordance with the constitution ARTICLE 63 (3) AND (4) as well as section 6 (6) and (8) of the Community Land Act 2016.

16. The actions of the respondents in forcefully taking over ~~trying to acquire~~ acquiring the suit land are in contravention of ARTICLE 63 (3) AND (4) of the constitution and sections 6(6) and (8) of the Community Land Act 2016 and in breach of the trust bestowed upon them.

16. NATURE OF INJURY CAUSED OR LIKELY TO BE CAUSED TO THE PETITIONERS:

A.) The petitioners living within the proposed site of acquisition will be displaced and rendered homeless.

B.) The actions of the respondents have brought tension are likely to bring tension within the affected area as a result of which four innocent persons lost their lives .

C.) The value in provision of environmental goods and services is being will be adversely affected as the members of the community are not allowed to access that area by the 2nd and 3rd respondents who have mounted guard on the said area .

D.) The biodiversity conservation, cultural site protection, or its use for educational, ecotourism recreational, health and research purposes will be highly prejudiced.

E.) The actions of the respondents will interfere with migration and critical habitat of the wildlife and endanger any rare, threatened or endangered species.

F.) The affected area is the only fertile land and is also a water catchment and dry season area for the pastoral communities of not only Karare but also Songa, Logologo, Kamboye , and Laisamisthe illegal take over by the 2nd and 3rd respondents will greatly affect food production in that area .

G.) Over 150,000 camels, 215,00sheepand goats and 85,000cattle are dependent on Karare ecosystem during drought seasons.

H.) There is a likelihood that the affected people will lose about 35% of their livestock to malnutrition and malnutrition related complications.

OUR LORDSHIP THE PETITIONERS THEREFORE PRAY FOR ORDERS:

1. A declaration that land situated within the KARARE –SONGA WARD MEASURING APPROXIMATELY 877.30 SQUARE KILOMETERS is unregistered community land and ought to be dealt with only in accordance with Article 63 of the constitution of Kenya 2010, and the Community Land Act 2016 together with the Regulations thereof.

2. A declaration that the actions of the 1st respondent and the 2nd respondents in trying to forcefully acquire the said land for public use is in violation of article 63 and the community land act 2016 and the rights of the members of the community .

2.(a)A declaration that the actions of the 2nd and 3rd defendants in forcefully and illegally entering upon the suit land and ,erecting fences and constructing a road therein are unconstitutional and in violation of Article 63 of the Constitution and the Community land Act 2016 .

3. A declaration that failure by the 1st, 2nd and 3rd respondents to adhere to the public participation resolutions passed in the meeting held on the 20th day of January 2020 is unlawful and illegal.

4. A conservatory order do issue restraining the respondents from acquiring, alienating ,disposing of and or in any way dealing with the KARARE –SONGA land except in accordance with ARTICLE 63 and THE COMMUNITY LAND ACT 2016 .

5. An order of prohibition do issue prohibiting the respondents from forcefully acquiring ,alienating ,disposing off or in any other way dealing with the suit land except in accordance with the constitution and the community land act 2016 .

5.a) An order of mandamus do issue compelling the 2nd and 3rd respondents to move out of the suit land and demolish all illegal structures erected therein.

6. Costs of this petition.

7. ALL AND ANY order this court deems fit and just to grant.

DATED AT MERU THIS 24th DAY MARCH 2020.

AMMENDED AT MERU THIS 15th DAY OF June 2020.

FOR; J.NELIMA ASSOCIATES &CO
ADVOCATES FOR THE PETITIONERS.


FOR: J.NELIMA ASSOCIATES &CO

ADVOCATES FOR THE PETITIONER.

DRAWN & FILED BY

J.NELIMA ASSOCIATES & CO

ADVOCATES

ELECTRICAL HOUSE 3RD FLR RM 15

P.O BOX 2712

MERU

CELL NO: 0721883778

EMAIL ADDRESS: nelimaj79@gmail.com

Menucourt@gmail.com

TO BE SERVED UPON THE

COUNTY GOVERNMENT OF MARSABIT

P.O BOX 348

MARSABIT.

THE CHIEF OF DEFENCE FORCES

ULINZI HOUSE LENANA ROAD

P.O BOX 40668-00100

NAIROBI

THE CABINET SECRETARY MINISTRY OF DEFENCE

ULINZI HOUSE LENANA ROAD

P.O BOX 40668-00100

NAIROBI.

THE ATTORNEY GENERAL
THE IN CHARGE MERU OFFICE
NTARA PLACE
P.O BOX
MERU

THE NATIONAL LANDS COMMISSION
ARDHI HOUSE, 1ST NGONG AVENUE
OFF NGONG ROAD
P.O BOX 44417-00100
NAIROBI

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
CONSTITUTIONAL PETITION NO4.....OF 2020.

IN THE MATTER OF ARTICLE 63(1),(2),(b),(d),(3) AND (4),62(1),(g) OF ARTICLE
10,40,23 AND 258 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 6(6) (8) AND 26 OF THE COMMUNITY LAND ACT
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THE CABINET SECRETARY MINISTRY OF DEFENCE3RD RESPONDENT
THE HON ATTORNEY GENERAL.....4TH RESPONDENT

SUPPORTING AFFIDAVIT TO AMENDED PETITION

I LERUK MURUSI OF P.O BOX MARSABIT within the republic of Kenya do hereby make oath and swear as follows.

1. THAT I am an adult male of sound mind and the 1st petitioner herein hence competent to make and swear his affidavit on my own and with authority from the other petitioners to swear this affidavit on their behalf .
2. THAT I swear this affidavit in furtherance to the one sworn on the 24th day of March 2020.
3. THAT On the 29th day of March 2020 the 2nd and 3rd respondents actualized their intentions of forcefully acquiring the suit land and entered into the land with bulldozers and tracks and began erecting a fence therein and constructing a road.
4. THAT forceful acquisition of the suit land by the 2nd and 3rd respondents despite objections from the community is unlawful, and in contravention of the constitution and more especially ARTICLE 63 and the Community land ACT.
5. THAT the above laws have laid down the procedure for dealing with unregistered community land and the same have not been followed by the respondents in acquiring the suit land .

6. THAT way back in 2012 when the respondents wanted land for camping activities from the community they involved them and were allocated land at MATA LAMA which they currently occupy and use .
7. THAT one wonders why this time round they have forcefully acquired despite objections from the community.
8. THAT the land in question is community land and that the respondents 1 & 2 are fully aware of this fact as confirmed by their attempt to involve the community the land acquisition in 2012 and January 2020.
9. THAT the actions of the 2nd and 3rd respondents have sparked off riots in KARARE and heightened tension and despair in the area which is inhabited indigenous, minority and marginalized communities. Seven days later on 4th day of JUNE 2020 after respondent 2 forcefully moved in to the contested area four (4) people were brutally killed in Karare by armed assailants.
10. THAT all past 204 killings in Karare were all related to attempts by other communities or agencies attempt to forcefully grab environmentally and culturally sensitive Karare Land and community have a reason to believe that this may not be different.
11. THAT this is a third attempt to try and acquire the suit land illegally, with the first attempt being the inclusion of KARARE WARD as part of the municipality and there giving power to the 1st Respondent illegally takeover control and access of Karare land a move the community strongly objected to and the case is still pending in this court .
12. THAT second attempt is the LAKE TURKANA WIND POWER PROJECT which has resulted in the community losing 150,000 acres, despite objection by the community, and an active court case.

13. THAT the Rendille /Samburu community in Marsabit county cannot afford to lose any more land as they will be rendered landless and destitute in the near future.
14. THAT the land in question being a dry season grazing area and being important part of the Rendille and Samburu community grazing ecosystem may contribute to the collapse of the entire ecosystem by curtailing important interlinkages
15. THAT the 1st respondent who is just but a trustee of the suit land on behalf of the community has failed the community by allowing and even abetting the forceful taking over of the suit land .
16. THAT the county commissioner was overheard in a video clip saying that whether they like it or not they will give the land to the 2nd and 3rd respondents.
17. THAT the 1st respondents have no right to give out what does not belong to them.
18. THAT if the actions of the 2nd and 3rd respondents are not stopped by this courts intervention, then in the distance future, there will be no land left for the Rendille /Samburu community of Marsabit thereby curtailing livelihoods and curtailing intergenerational equity and sustainability pastoralist production system.
19. THAT the land in question is not public land and cannot be dealt with in the manner in which the respondents are dealing with it, in total disregard of the set down procedures and laws.
20. THAT if the actions of the respondents are not stopped by the intervention of this court then the Petitioners will be rendered landless and destitute.

21. THAT the petitioners have made out a case for grant of the orders sought and we urge the court to grant us the orders sought to prevent any further encroachment on the petitioners land.

22. THAT what is deponed to herein above is true to the best of my knowledge belief and information.

SWORN BY THE SAID MURUSI LERUK AT MERU
THIS 15th DAY OF June 2020.
BEFORE ME

~~DAVID~~
DEPONENT

KEVIN NYENYIRE
ADVOCATE
COMMISSIONER FOR OATHS
NOTARY PUBLIC
P. O. Box 2702 - 60200, MERU

DRAWN & FILED BY
J. NELIMA ASSOCIATES & CO
ADVOCATES
ELECTRICAL HOUSE 3RD FLR RM 15
P.O BOX 2712
MERU
CELL NO: 0721883778
EMAIL ADDRESS: nelimaj79@gmail.com

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
CONSTITUTIONAL PETITION NO4.....OF 2020.

IN THE MATTER OF ARTICLE 63(1), (2), (b), (d), (3), (4), 62(1), (g) 10, 40, 23 and
258 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 6 (6) (8) AND 26 OF THE COMMUNITY LAND
ACT 2016.

AND

IN THE MATTER OF THE WILDLIFE AND CONSERVATION ACT 2013

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA PROTECTION OF
RIGHTS AND FUNDAMENTAL FREEDOMS PRACTICE AND PROCEDURE
RULES

BETWEEN

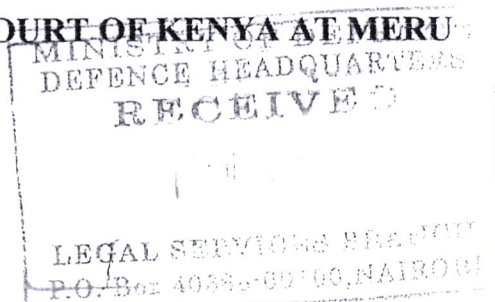
LERUK MURUSI	1 ST PETITIONER
LECHEKU ANGELE	2 ND PETITIONER
LRADO STEPHEN LTERIOS.....	3 RD PETITIONER
LTETIAN LERUPES.....	4 TH PETITIONER
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SAMUEL LOIBARBAN.....	12 TH PETITIONER
FRANCIS LEADUMA.....	13 TH PETITIONER

AND

THE COUNTY GOVERNMENT OF MARSABIT.....	1 ST RESPONDENT
THE CHIEF OF THE KENYA DEFENCE FORCES	2 ND RESPONDENT
THE CABINET SECRETARY MINISTRY OF DEFENCE.....	3 RD RESPONDENT
THE HON ATTORNEY GENERAL.....	5 TH RESPONDENT

TO:-

THE ENVIRONMENT AND LAND COURT OF KENYA AT MERU:



PETITION

1. THE PETITIONERS are elders and members of the RENDILLE community of KARARE WARD within Marsabit county in the republic of Kenya and whose address of service for purposes of this petition shall be care of: 24 MAR 20.

J.NELIMA ASSOCIATES & CO ADVOCATES
ELECTRICAL HOUSE, 3RD FLOOR, ROOM 15,
P.O BOX 2712
MERU .

2. THE 1ST RESPONDENT is the County Government of Marsabit established under Article 176 of the constitution of Kenya with the mandate to hold in trust all community land within its Jurisdiction and whose address for purposes of this petition shall be P.O BOX 384 MARSABIT .
3. THE 2ND RESPONDENT is the Chief of Defence Forces an appointee of the president under ARTICLR 131 (1) of the constitution whose function is to be the principal adviser to the President and Cabinet Secretary on any military, operation and administrative matters within his competence and whose address of service for purposes of this suit shall be ULINZI HOUSE, LENANA ROAD P.O BOX 40668-00100 NAIROBI.
4. THE 3RD RESPONDENT is the Cabinet Secretary Ministry of Defence s an office created under Article 241 (6) of the constitution whose function is to advice the President on matters relating to defence policy whose address of service for purposes of this suit shall be ULINZI HOUSE LENANA ROAD P.O BOX 40668-00100 NAIROBI .
5. THE 4th RESPONDENT is the Principal Legal Advisory to the Government of Kenya charged with amongst other responsibilities, the duty to diligently, impartially, objectively and competently advice the Government of Kenya on any legal matters and represent it legal proceedings.

FACTS OF THE SUIT

6. AT ALL MATERIAL times relevant to this petition the petitioners were and still are members of the indigenous Rendille Minority Community of KARARE WARD, situated within Marsabit County.
7. THE PETITIONERS are and have been in occupation, of all that land within the KARARE –SONGA WARD measuring approximately 600sq km, since time in memorial.

- 8.** The suit land is unregistered community land held in trust by the 1st respondent on behalf of the petitioners for purposes of wildlife, cultural and tourism land use and promotion.
- 9.** The suit land is in the process of transition from trust land to community land.
- 10.** On or about the year 2012 the 2nd and 3rd respondents approached the 1st respondent and requested to be given land within KARARE WARD for purposes of camping and range activities and after holding a series of meetings with the community elders, the elders agreed to give them land within MATA LAMA area which parcel of land is already demarcated for use by the 2nd and 3rd respondents.
- 11.** The 2nd and 3rd respondents were dissatisfied with the portion of land given to them in the year 2012, and in the month of January 2020 approached the 1st respondent and requested for alternative land within KARARE WARD Measuring 10,000sq km.
- 12.** On the 20th day of January, the 2nd and 3rd respondents team led by the county commissioner, held a public participation meeting and community elders present declined the request of the 2nd and 3rd respondents for an alternative site, citing amongst other reasons that the proposed new site is a cultural and biologically diverse critical area of importance and sensitive conservation and pastoral grazing lands.
- 13.** However in a bid to forcefully acquire the suit land and in ignorance of the public participation resolutions passed by the community the 2nd and 3rd respondents resulted in a divide and rule strategy through use of government administration chiefs and the county commissioner and handpicked 36 elders from the KARARE location and forced them to show them the suit land claiming that the land in question is public land and that they had a right over it for public use.
- 14.** In furtherance of their bid to forcefully acquire the suit land, on the 12TH day of March 2020, the 1st 2nd and 3rd respondents visited the site together with the survey of Kenya, for purposes of demarcating the suit land for use by the 2nd and 3rd respondents and forced the area chiefs to show them the land claiming its public land.
- 15.** The 1st respondent is a trustee of unregistered community land and ought to administer the same in accordance with the constitution ARTICLE 63 (3) AND (4) as well as section 6 (6) and (8) of the Community Land Act 2016.

16. The actions of the respondents in forcefully trying to acquire the suit land are in contravention of ARTICLE 63 (3) AND (4) of the constitution and sections 6(6) and (8) of the Community Land Act 2016.

16. NATURE OF INJURY CAUSED OR LIKELY TO BE CAUSED TO THE PETITIONERS:

- A) The petitioners living within the proposed site of acquisition will be displaced and rendered homeless.
- B) The actions of the respondents are likely to bring tension within the affected area.
- C) The value in provision of environmental goods and services will be adversely affected.
- D) The biodiversity conservation, cultural site protection, or its use for educational, ecotourism recreational, health and research purposes will be highly prejudiced.
- E) The actions of the respondents will interfere with migration and critical habitat of the wildlife and endanger any rare, threatened or endangered species.

YOUR LORDSHIP THE PETITIONERS THEREFORE PRAY FOR ORDERS:

1. A declaration that land situated within the KARARE –SONGA WARD is community land and ought to be dealt with only in accordance with Article 63 of the constitution of Kenya 2010, and the Community Land Act 2016 together with the Regulations thereof.
2. A declaration that the actions of the 1st respondent and the 2nd respondents in trying to forcefully acquire the said land for public use is in violation of article 63 and the community land act 2016 and the rights of the members of the community
3. A declaration that failure by the 1st, 2nd and 3rd respondents to adhere to the public participation resolutions passed in the meeting held on the 20th day of January 2020 is unlawful and illegal.
4. A conservatory order do issue restraining the respondents from acquiring, alienating ,disposing of and or in any way dealing with the KARARE –SONGA land except in accordance with ARTICLE 63 and THE COMMUNITY LAND ACT 2016 .
5. An order of prohibition do issue prohibiting the respondents from forcefully acquiring ,alienating ,disposing off or in any other way dealing with the suit land except in accordance with the constitution and the community land act 2016.

6. Costs of this petition.

7. ALL AND ANY order this court deems fit and just to grant.

DATED AT MERU THIS24th.....DAY OFMARCH.....2020.

.....*Jnelima*.....
FOR: J.NELIMA ASSOCIATES & CO
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY

J.NELIMA ASSOCIATES & CO
ADVOCATES
ELECTRICAL HOUSE 3RD FLR RM 15
P.O BOX 2712
MERU

TO BE SERVED UPON

THE COUNTY GOVERNMENT OF MARSABIT
P.O BOX 348
MARSABIT.

THE CHIEF OF DEFENCE FORCES
ULINZI HOUSE LENANA ROAD
P.O BOX 40668-00100
NAIROBI.

THE CABINET SECRETARY MINISTRY OF DEFENCE
ULINZI HOUSE LENANA ROAD
P.O BOX 40668-00100
NAIROBI.

THE ATTORNEY GENERAL
THE IN CHARGE MERU OFFICE
NTARA PLACE
P.O BOX
MERU

24 MAR 2020

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
CONSTITUTIONAL PETITION NOOF 2020.

IN THE MATTER OF ARTICLE 63(1),(2),(b),(d),(3) AND (4), ARTICLE 62(1),(g),ARTICLE 10
,40,23, 258 AND ARTICLE 10 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 6 (6) , (8) AND SECTION 26 OF THE COMMUNITY LAND
ACT 2016

AND

IN THE MATTER OF THE WILDLIFE AND CONSERVATION ACT 2013

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS PRACTICE AND PROCEDURE RULES

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LERUK MURUSI	1 ST PETITIONER
LECHEKU ANGELE	2 ND PETITIONER
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AND

THE COUNTY GOVERNMENT OF MARSABIT	1 ST RESPONDENT
THE CHIEF OF THE KENYA DEFENCE FORCES	2 ND RESPONDENT

THE CABINET SECRETARY MINISTRY OF DEFENCE4TH RESPONDENT
THE HON ATTORNEY GENERAL.....5TH RESPONDENT

24 MAR 2020

SUPPORTING AFFIDAVIT TO PETITION

I MURUSI LERUK OF P.O BOX MARSABIT within the republic of Kenya do hereby make oath and swear as follows:-

1. THAT I am a male adult of sound mind residing and working for gain within Marsabit and hence competent to swear this affidavit on my behalf and with authority from the petitioners to swear it on their behalf.
2. THAT I And the petitioners are members of the Rendille community within KARARE –SONGA WARD Marsabit county
3. THAT I and the other petitioners have been born and bred in KARARE and have built therein permanent houses, and I live there with our families.
4. THAT the suit land is unregistered community land established within Marsabit County and is held in trust by the 1st respondent on behalf of the petitioners for purposes of wildlife, cultural and tourism land use and promotion and is in the process of transition from trust land to community land.
5. THAT on or about the year 2012 the 2nd and 3rd respondents approached the 1st respondent and requested to be given land within KARARE-SONGA WARD for purposes of camping and range activities and after holding a series of meetings with the community elders, the elders agreed to give them land within MATA LAMA area which parcel of land is already demarcated for use by the 2nd and 3rd respondents.
6. THAT the 2nd and 3rd respondents were dissatisfied with the portion of land given to them in the year 2012 at MATA LAMA , and in January 2020 approached the 1st respondent and requested for alternative land within KARARE WARD Measuring 10,000sq km.
7. THAT on the 20th day of January ,the 2nd and 3rd defendants team led by the county commissioner held a public participation meeting and community elders present declined the request of the 2nd and 3rd for reasons that the proposed new site is a cultural and biologically diverse critical area of importance and sensitive to conservation and pastoral grazing lands .

8. THAT In a bid to forcefully acquire the suit land and in ignorance of the public participation resolutions passed by the community the 2nd and 3rd respondents resulted in a divide and rule strategy through use of government administration chiefs and the county commissioner and handpicked 36 elders from the KARARE location and forced them to show them the suit land claiming that the land in question is public land and that they had a right over its use.

9. THAT In furtherance of their bid to forcefully acquire the suit land, on the 12TH day of March 2020, the 1st 2nd and 3rd respondents visited the site together with the survey of Kenya, for purposes of demarcating it. Annexed and marked ML 1a, b, c, d, e and f are Copies of pictures taken of the survey of Kenya truck and KDF truck at KARARE.)

10. The suit land being unregistered community land is not owned by the 1st respondent but the 1st respondent only holds the same in trust for the community and ought to administer the same in accordance with the constitution ARTICLE 63 (3) AND (4) as well as section 6 (6) and (8) of the Community Land Act 2016.

11. THAT the respondents are trying to forcefully alienate the suit land for public purposes without following the set down procedures set out in the community land act 2016 and as well as article 10 and 63 (3) AND (4)of the constitution .

12. THAT the actions of the respondents in forcefully acquiring the suit land do not only violate the rights of the petitioners but are in in contravention of the constitution as well as the community land act 2016 which govern the manner in which such land ought to be administered .

13. THAT the activities of the respondents are causing tension within the community and if not restrained will generate into violence between the county officials the KDF and the members of the community.

14. THAT the actions of the respondents in trying to forcefully acquire the suit land will render the members of the community land less as they have settled there

from time in memorial ,have built houses, graze their animals therein and have even interred their loved ones therein.

15. THAT I am advised by my advocates on record that the 1st respondent is only a trustee of the suit land and the law especially section 6 of the community land act prohibits any transactions on unregistered community land.

16. THAT the respondents are dealing with the suit land as though it is public land yet it is not and the law prohibits any transactions on unregistered community land.

17. THAT the respondents have already been given land at MATA LAMA which has already been demarcated.

18. THAT the actions of the respondents if not restrained are likely to cause the community irreparable harm and damage that cannot be compensated by way of damages.

19. THAT in the premises we urge this honourable court to grant us the orders sought.

20. THAT if the orders sought are not granted the petitioners will suffer irreparable harm and damage that cannot be compensated by way of damages.

21. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

SWORN BY THE SAID LERUK MURUSI AT MERU.

THIS^{24th}.....DAY OF^{N. H. R. E. T.}.....2020

DEPONENT

BEFORE ME

JOSEPH KAIMENYI
ADVOCATE &
COMMISSIONER FOR OATHS
P.O. BOX 1654-80200 MERU
COMMISSIONER FOR OATHS

DRAWN & FILED BY

**J.NELIMA ASSOCIATES & CO
ADVOCATES
P.O BOX 2712
MERU**

TO BE SERVED UPON THE

**COUNTY GOVERNMENT OF MARSABIT
P.O BOX 348
MARSABIT.**

**THE CHIEF OF DEFENCE FORCES
ULINZI HOUSE LENANA ROAD
P.O BOX 40668-00100
NAIROBI**

**THE CABINET SECRETARY MINISTRY OF DEFENCE
ULINZI HOUSE LENANA ROAD
P.O BOX 40668-00100
NAIROBI.**

**THE ATTORNEY GENERAL
MERU OFFICE
NTARA PLACE
P.O BOX MERU**

25 MAR 2020

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
CONSTITUTIONAL PETITION NOOF 2020.

IN THE MATTER OF ARTICLE 63(1),(2),(b),(d),(3) AND (4), ARTICLE 62(1),(g),ARTICLE 10 ,
258 AND ARTICLE 10 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION 6 (6) , (8) AND SECTION 26 OF THE COMMUNITY LAND
ACT 2016

AND

IN THE MATTER OF THE WILDLIFE AND CONSERVATION ACT 2013

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IN THE MATTER OF THE CONSTITUTION OF KENYA PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS PRACTICE AND PROCEDURE RULES

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THE COUNTY GOVERNMENT OF MARSABIT	1 ST RESPONDENT
THE CHIEF OF THE KENYA DEFENCE FORCES	2 ND RESPONDENT

THE CABINET SECRETARY MINISTRY OF DEFENCE4TH RESPONDENT
THE HON ATTORNEY GENERAL.....5TH RESPONDENT

CERTIFICATE OF URGENCY

I **JACQUELINE NELIMA** an advocate of the high court of Kenya do certify that this application is urgent on the following grounds.

1. **THAT** the respondents have begun forcefully acquiring the petitioners land situated within the KARARE –SONGA ward without following the laid down procedures and without adhering to the public participation resolutions passed by the community.
2. **THAT** the respondents on the 12th of March 2020 brought the survey of Kenya to survey the suit land with the intention to demarcate the area intended to be acquired.
3. **THAT** if the actions of the respondents continue the petitioners who live on the said land will be displaced and rendered landless.
4. **THAT** the actions of the respondents have created unnecessary tension within the community.
5. **THAT** in view of the foregoing we urge the court to issue the orders sought.

DATED AT MERU THIS24th.....DAY OFMARCH.....2020

.....*J. Nelima*.....
FOR; J.NELIMA ASSOCIATES &CO
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY
J.NELIMA ASSOCIATES&CO
ADVOCATES
ELECTRICAL HOUSE 3RD FLR RM 15
P.O BOX 2712
MERU

TO BE SERVED UPON
THE COUNTY GOVERNMENT OF MARSABIT
P.O BOX 384
MARSABIT.

**THE CHIEF OF DEFENCE FORCES
ULINZI HOUSE LENANA ROAD
P.O BOX 40668-00100
NAIROBI**

**THE CABINET SECRETARY MINISTRY OF DEFENCE
ULINZI HOUSE LENANA ROAD
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**THE ATTORNEY GENERAL
MERU OFFICE
NTARA PLACE
P.O BOX
MERU**

24 MAR 2020

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
CONSTITUTIONAL PETITION NOOF 2020.

IN THE MATTER OF ARTICLE 63(1),(2),(b),(d),(3) AND (4), ARTICLE 62(1),(g),ARTICLE 10 ,
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AND

THE COUNTY GOVERNMENT OF MARSABIT1ST RESPONDENT
THE CHIEF OF THE KENYA DEFENCE FORCES2ND RESPONDENT

THE CABINET SECRETARY MINISTRY OF DEFENCE4TH RESPONDENT
THE HON ATTORNEY GENERAL.....5TH RESPONDENT

NOTICE OF MOTION

UNDER ARTICLE 165(3) (B) of the constitution of Kenya 2010 and all other enabling provision of the law .

TAKE NOTICE that this honourable court shall be moved on the.....
.....15th day ofFeb......2020 at 9.00 O'clock in the forenoon or soon thereafter for hearing of an application by counsel for the petitioners for orders that

1. THAT this honourable court be pleased to certify this application as extremely urgent and dispense with service in the first instance.
2. THAT this honourable court be pleased to issue conservatory orders restraining the 1st 2nd and 3rd defendants from forcefully acquiring, alienating, disposing of and in any other way dealing with the unregistered community land situated within KARARE-SONGA ward, except in accordance with ARTICLE 63 (4) of the constitution and the community land act 2016 until this application is heard inter parties .
3. THAT this honourable court be pleased to issue conservatory orders restraining the 1st 2nd and 3rd defendants from forcefully acquiring, alienating, disposing of and in any other way dealing with the unregistered community land situated within KARARE-SONGA ward, except in accordance with ARTICLE 63 (4) of the constitution and the community land act 2016 until the petition is heard and determined.
4. THAT costs of this application be provided for .

WHICH APPLICATION is supported by the annexed affidavit sworn by MURUSI LERUK and on more grounds to be adduced during the hearing hereof.

DATED AT MERU THIS24th.....DAY OFMARCH.....2020.

.....Melina.....
FOR: J.NELIMA ASSOCIATES &CO
ADVOCATES FOR THE PETITIONERS

DRAWN & FILED BY

**J.NELIMA ASSOCIATES & CO
ADVOCATES
ELECTRICAL HOUSE ROOM 15 3RD FLR
P.O BOX 2712
MERU**

TO BE SERVED UPON

**COUNTY GOVERNMENT OF MARSABIT
P.O BOX 384
MARSABIT .**

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ULINZI HOUSE
LENANA ROAD
P.O BOX
NAIROBI**

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ULINZI HOUSE, LENANA ROAD
P.O. BOX
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24 MAR 2020

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IN THE ENVIRONMENT AND LAND COURT AT MERU
CONSTITUTIONAL PETITION NOOF 2020.

IN THE MATTER OF ARTICLE 63(1),(2),(b),(d),(3) AND (4), ARTICLE 62(1),(g),ARTICLE 10
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THE CABINET SECRETARY MINISTRY OF DEFENCE4TH RESPONDENT
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SUPPORTING AFFIDAVIT

I MURUSI LERUK OF P.O BOX MARSABIT within the republic of Kenya do hereby make oath and swear as follows:-

1. THAT I am a male adult of sound mind residing and working for gain within Marsabit and hence competent to swear this affidavit on my behalf and with authority from the petitioners to swear it on their behalf.
2. THAT I And the petitioners are members of the Rendille community within KARARE –SONGA WARD Marsabit county
3. THAT I and the other petitioners have been born and bred in KARARE and have built therein permanent houses, and I live there with our families.
4. THAT the suit land is unregistered community land established within Marsabit County and is held in trust by the 1st respondent on behalf of the petitioners for purposes of wildlife, cultural and tourism land use and promotion and is in the process of transition from trust land to community land.
5. THAT on or about the year 2012 the 2nd and 3rd respondents approached the 1st respondent and requested to be given land within KARARE-SONGA WARD for purposes of camping and range activities and after holding a series of meetings with the community elders, the elders agreed to give them land within MATA LAMA area which parcel of land is already demarcated for use by the 2nd and 3rd respondents.
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7. THAT on the 20th day of January ,the 2nd and 3rd defendants team led by the county commissioner held a public participation meeting and community elders present declined the request of the 2nd and 3rd for reasons that the proposed new site is a cultural and biologically diverse critical area of importance and sensitive to conservation and pastoral grazing lands .

8. THAT In a bid to forcefully acquire the suit land and in ignorance of the public participation resolutions passed by the community the 2nd and 3rd respondents resulted in a divide and rule strategy through use of government administration chiefs and the county commissioner and handpicked 36 elders from the KARARE location and forced them to show them the suit land claiming that the land in question is public land and that they had a right over its use.
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10. The suit land being unregistered community land is not owned by the 1st respondent but the 1st respondent only holds the same in trust for the community and ought to administer the same in accordance with the constitution ARTICLE 63 (3) AND (4) as well as section 6 (6) and (8) of the Community Land Act 2016.
11. THAT the respondents are trying to forcefully alienate the suit land for public purposes without following the set down procedures set out in the community land act 2016 and as well as article 10 and 63 (3) AND (4)of the constitution .
12. THAT the actions of the respondents in forcefully acquiring the suit land do not only violate the rights of the petitioners but are in in contravention of the constitution as well as the community land act 2016 which govern the manner in which such land ought to be administered .
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14. THAT the actions of the respondents in trying to forcefully acquire the suit land will render the members of the community land less as they have settled there

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15. THAT I am advised by my advocates on record that the 1st respondent is only a trustee of the suit land and the law especially section 6 of the community land act prohibits any transactions on unregistered community land.
16. THAT the respondents are dealing with the suit land as though it is public land yet it is not and the law prohibits any transactions on unregistered community land.
17. THAT the respondents have already been given land at MATA LAMA which has already been demarcated.
18. THAT the actions of the respondents if not restrained are likely to cause the community irreparable harm and damage that cannot be compensated by way of damages.
19. THAT in the premises we urge this honourable court to grant us the orders sought.
20. THAT if the orders sought are not granted the petitioners will suffer irreparable harm and damage that cannot be compensated by way of damages.
21. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

SWORN BY THE SAID LERUK MURUSI AT MERU.

THIS 24th DAY OF MARCH 2020

MURUSI
DEPONENT

BEFORE ME

JOSEPH KAIMENYI
ADVOCATE &
COMMISSIONER FOR OATHS
P.O. BOX 1654 -60200 MERU
COMMISSIONER FOR OATHS

DRAWN & FILED BY
J.NELIMA ASSOCIATES & CO
ADVOCATES
P.O BOX 2712
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TO BE SERVED UPON THE
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NTARA PLACE
P.O BOX MERU

THIS IS EXHIBIT MARKED *ML1'a*,
REFERRED TO IN THE ANNEXED AFFIDAVIT
DECLARATION OF *Murphy, Kelly*
BEFORE ME THIS *24* DAY OF *March*
20 *12* AT *MEM*
JOSEPH K. *[Signature]* ADVOCATE
COMMISSIONER FOR OATHS



THIS IS EXHIBIT MARKED *ML16*
REFERRED TO IN THE ANNEXED AFFIDAVIT
DECLARATION OF *MURUS, KIRIK*
BEFORE ME THIS *24th* DAY OF *March*
20*20* AT *Muru*
JOSEPH K... ADVOCATE
COMMISSIONER FOR OATHS



THIS IS EXHIBIT MARKED **ML1(c)**
REFERRED TO IN THE ANNEXED AFFIDAVIT
DECLARATION OF **Muhammad Ibrahim**
BEFORE ME THIS **24th** DAY OF **March**
20**20** AT **Meru**
Joseph K... ADVOCATE
COMMISSIONER FOR OATHS



THIS IS EXHIBIT MARKED *ML1 d*
REFERRED TO IN THE ANNEXED AFFIDAVIT
DECLARATION OF *Muhammad Leleik*
BEFORE ME THIS *24th* DAY OF *March*
AT *M. E. P. I.*
COMMISSIONER OF THE ADVOCATE
GENERAL FOR OATHS



THIS IS EXHIBIT MARKED *ML(e)*
REFERRED TO IN THE ANNEXED AFFIDAVIT
DECLARATION OF *Nursh Levy*
BEFORE ME THIS *24th* DAY OF *March*
20 *no* AT *Nebu*
JOSEPH KAMM ADVOCATE
COMMISSIONER FOR OATHS

