

Approved for tabling *BT SNA*  
*6/6/17*



NATIONAL ASSEMBLY

*Paper laid on the Table of the House by Hon. Charles Nyamai (Member, Lands Committee) on Wednesday, 7th June 2017 (Afternoon).*

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ELEVENTH PARLIAMENT – FIFTH SESSION – 2017

THE DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE PETITION BY THE DAVID GIKARIA ON BEHALF OF THE RESIDENTS OF NAKURU TOWN EAST CONSTITUENCY ON REVOCATION AND CANCELLATION OF TITLE FOR LAND LR. NO. NAKURU MUNICIPALITY BLOCK 23/108, BELONGING TO NAKA PRIMARY SCHOOL

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS,  
PARLIAMENT BUILDINGS,  
NAIROBI

MAY, 2017

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## ANNEXES

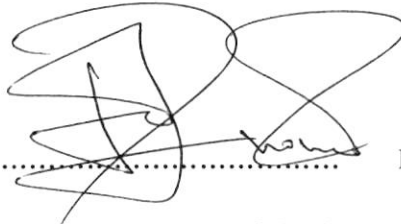

- A. Annex 1: Adoption Schedule
- B. Annex 2: Copy of the Petition
- C. Annex 3: Copies of Minutes – 54<sup>th</sup> of 20<sup>th</sup> May, 2017<sup>th</sup>, 78<sup>th</sup> of 7<sup>th</sup> October, 2016, 77<sup>th</sup> of 7<sup>th</sup> October, 2016, 65<sup>th</sup> of 4<sup>th</sup> August, 2016 & 11<sup>th</sup> of 27<sup>th</sup> February, 2017
- D. Annex 4: Submission from the Ministry of Lands & Physical Planning
- E. Annex 5: Submission from the Petitioners

## CHAIRMAN'S FOREWORD

On the Thursday of 18<sup>th</sup> August 2016, a Petition was tabled before the House pursuant to Article 119 (1) of the Constitution of Kenya (2010) and Standing Order 219, by the Hon. David Gikaria, M.P. on behalf of the residents of Nakuru Town East Constituency. The petition focused on revocation and cancellation of title for land LR. No. Nakuru Municipality Block 23/108 belonging to Naka Primary School.

The House, pursuant to Standing Order 227 referred the Petition to the Departmental Committee on Lands for investigation and preparation of the requisite Report. I'm happy to report that the Committee considered the prayers sought by the petitioners which included an investigation of the entire land transaction at the office of the Commissioner of lands.

The Committee appreciates the assistance provided by the Office of the Speaker and the Clerk of the National Assembly that enabled it to discharge its functions in considering the petition. Finally, it is my pleasant duty, on behalf of the Departmental Committee on Lands, to present this report in accordance with the provisions of Standing Order 227 which requires that the committee responds to a petition within sixty days through a report addressed to the petitioner(s) and Laid on the Table of the House.

SIGNED: .......... DATE: 25 May 2017 .....

(HON. ALEX M. MWIRU, MP)

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON LANDS

## EXECUTIVE SUMMARY

The Committee, in responding to the prayers by residents of Nakuru Town East Constituency held meetings with various leaders, Government Officers, Petitioners and other stakeholders who in their interaction with the Committee also made written and oral submissions.

In considering the petition, the Committee held a meeting with the Member for Nakuru Town East Constituency, Hon. David Gikaria, MP who presented the petition. In addition, Prof. Jacob Kaimenyi, Cabinet Secretary Ministry of Lands and Physical Planning accompanied by his Principal Secretary Ms. Mariam El. Maawy, briefed the Committee. Further, the Committee undertook a fact finding tour of Nakuru Town East Constituency on Friday 7<sup>th</sup> October, 2016 so as to assess the situation on the ground, collect views and receive representation from the residents.

The report is divided into four where the beginning it stipulates the mandate of the Committee, the second part is the introduction which introduced the facts as enumerated by the Petitioners, and expounded on the evidences collected by the Committee, the third parts is about finding or observations and the report concludes with recommendations.

## **MANDATE OF THE COMMITTEE**

Departmental Committee No. K on Lands was established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference: -

- a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations, and estimates of the assigned ministries and departments;
- b) Study the Programme and policy objectives of Ministries and Departments and effectiveness of the implementation;
- c) Study and review all legislation referred to it;
- d) Study, assess and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with their stated objectives;
- e) Investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as they may be referred to them by the House;
- f) Vet and report on all appointments where the Constitution or any Law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
- g) Make reports and recommendations to the House as often as possible, including recommendations on proposed legislation.

The Committee is mandated to Consider the following subjects: -

- a) Land Policy,
- b) Physical Planning,
- c) Land Transactions,
- d) Survey and Mapping,
- e) Land Adjudication,
- f) Settlement,
- g) Land registration,
- h) Land Valuation,
- i) Administration of Private, community and Public Land,
- j) Land Information and Management System.

### **Oversight**

In executing its Mandate, The Committee oversees the following Government Departments, Namely: -

- i. The Ministry of Lands and Physical Planning;
- ii. The National Lands Commission.

## Members of the Committee

<b>Chairperson</b>	Hon. Alex Mwiru, M.P.
<b>Vice Chairperson</b>	Hon. Moses Ole Sakuda, M.P.
	Hon. Mutava Musyimi, M.P.
	Hon. John Kihagi, M.P.
	Hon. Francis W. Nderitu, M.P.
	Hon. Kipruto Moi, M.P.
	Hon. Hellen Chepkwony, M.P.
	Hon. Sarah Korere, M.P.
	Hon. Benson Mbai, M.P.
	Hon. Suleiman Dori, M.P.
	Hon. George Oner, M.P.
	Hon. Mathew L. Lempurkel, M.P.
	The Hon. Shakila Abdallah, M.P.
	Hon. Dr. Paul Otuoma, M.P.
	Hon. Thomas Mwadeghu, M.P.
	Hon. Joseph Magwanga, M.P.
	Hon. Ali Shariff Athman, M.P.
	Hon. Francis Njenga, M.P.
	Hon. Hezron Awiti Bollo, M.P.
	Hon. Benard Bett, M.P.
	Hon. Esther Murugi, M.P.
	Hon. Onesmus Ngunjiri, M.P.
	Hon. Julius Ndegwa, M.P.
	Hon. Patrick Kingola, M.P.
	Hon. Kanini Kega, M.P.
	Hon. EusilahNgeny, M.P.
	Hon. Lawrence Aburi, M.P.
	Hon. Omar Mwinyi, M.P.
	Hon. Charles Nyamai, M.P.

## Secretariat

First Clerk Assistant	-	Mr. James Ginono
Third Clerk Assistant:	-	Ms. Joshua Ondari
Third Clerk Assistant	-	Mr. Emmanuel Muyodi

## **List of Recommendation**

Based on the Observations, Investigations, evidence adduced and submission made, the Committee made the following recommendations.

1. THAT, the Ethics and Anti Corruption Commission, the Director of Criminal Investigation and Director of Public Prosecution:
  - a) Investigates and Prosecutes the former Trustees of Naka Primary School namely Mr. Joshua Kiptoo Torotich, Mr. Harun Chelanga and Mr. Stephen Kibowen who sold the Public Land set aside for Naka Primary School;
  - b) Conducts a forensic audit on the entire land transactions with a view to prosecute all public and private individuals involved;
2. THAT, The Petitioner pursues the appeal processes available in the Courts and the National Land Commission since the matters therein were conclusively determined by the Courts and the Commission.

## INTRODUCTION

1. The Petitioners wished to draw to the attention of the House on the following, that:-
  - a) Nakuru Municipality Block 23 is a piece of private agricultural land registered as LR. No. 462/2 and owned by Nakuru Development Company Limited;
  - b) On all about 1985, Nakuru Development Housing Company Limited sought consent from the then local municipality in a meeting held on 3<sup>rd</sup> October, 1985 to subdivide the said block into individual residential blocks with about 10 acres set aside for a public utility;
  - c) The approval was granted on 6<sup>th</sup> November, 1985 in a meeting of the company as all the requirement as outlined by law had been met and the said decision was communicated to the Commissioner of lands who approved the proposed plan and subsequently gave it a new registration as MNB23;
  - d) The approved plan was consequently surrendered with the then area local authority as a public utility for construction of a primary school;
  - e) On all about June, 1999 the then area local authority was served with an order restraining it from constructing the said school on the land alleging that the land belonged to an individual and/or company called Pyboard Cooperative Society Limited;
  - f) Pyboard Cooperative Society Limited alleged that it bought the land from a company called Hyrax Developers Limited which was not in existence as per the search conducted at Nairobi Land Registry;
  - g) Further Survey done on 13<sup>th</sup> August 1999 indicated that the land in question was a public utility and was held in trust for the residents of Nakuru Municipality and the Community needed to have been furnished with any changes and/or emerging issues, if any;
  - h) The agreement between Pyboard Cooperative Society Limited and Hyrax Developers Limited dated 2<sup>nd</sup> October, 1998 regarding the purported transfer of Nakuru Municipality Block 23 is null and void as the land is a public utility and therefore any title issued in respect of the said agreement had been fraudulently obtained and contravenes Cap 300 of the laws of Kenya;
  - i) The National Land Commission issued a letter on 8<sup>th</sup> October, 2016 that the land belongs to the school because it is a public utility but two months later rescinded its letter;
  - j) Efforts to resolve the matter with National Land Commission and other government departments has been futile.
  
2. The petitioners prayed that the National Assembly, through the Departmental Committee on Lands:-
  - a) That the Committee to investigate the entire land transaction at the office of the Commissioner of lands especially where it only took one day to transfer the said title deed to the purported owners;
  - b) Establish the legality of the companies involved; and
  - c) Recommends that any guilty persons are brought to book.

## **2.0 EVIDENCE**

### **2.1 Evidence from the Member for Nakuru Town East Constituency**

Hon. David Gikaria, MP, appeared before the Committee and informed the Committee as follows:-

3. Nakuru Municipality Block 23 is a piece of private agricultural land registered as LR. No. 462/2 and owned by Nakuru Development Company Limited;
4. On all about 1985, Nakuru Development Housing Company Limited sought consent from the then local municipality in a meeting held on 3<sup>rd</sup> October, 1985 to subdivide the said block into individual residential blocks with about 10 acres set aside for a public utility;
5. The approval was granted on 6<sup>th</sup> November, 1985 in a meeting of the company as all the requirements as outlined by law had been met and the said decision was communicated to the Commissioner of lands who approved the proposed plan and subsequently gave it a new registration as MNB23;
6. The approved plan was consequently surrendered with the then area local authority as a public utility for construction of a primary school;
7. On all about June, 1999 the then area local authority was served with an order restraining it from constructing the said school on the land alleging that it instead belong to an individual and/or company called Pyboard Cooperative Society Limited;
8. Pyboard Cooperative Society Limited alleged that it bought the land from a company called Hyrax Developers Limited which was not in existence as per the search conducted at Nairobi Land Registry;
9. Further Survey done on 13<sup>th</sup> August 1999 indicated that the land in question was a public utility and was held in trust for the residents of Nakuru Municipality and the Community needed to have been furnished with any changes and/or emerging issues, if any;
10. The agreement between Pyboard Cooperative Society Limited and Hyrax Developers Limited dated 2<sup>nd</sup> October, 1998 regarding the purported transfer of Nakuru Municipality Block 23 is null and void as the land is a public utility and therefore any title issued in respect of the said agreement had been fraudulently obtained and contravenes Cap 300 of the laws of Kenya;
11. The National Land Commission issued a letter on 8<sup>th</sup> October, 2016 that the land belongs to the school because it is a public utility but two months later rescinded its letter;

### **2.2 Evidence from the Cabinet Secretary Ministry of Lands and Physical Planning**

Prof. Jacob Kaimenyi, Cabinet Secretary for the Ministry of Lands and Physical Planning appeared before the Committee and informed the Committee as follows:-

12. The parcel was formerly registered as LR 462/1 which was private agricultural land. The same block was subdivided by Nakuru Development Company Limited into 23 individual residential plots;

13. Upon subdivision Nakuru Development Co Limited (NAKA) surrendered some portions of land for public purpose and these included: -
  - a) LR No Nakuru Municipality Block 23/108
  - b) LR No Nakuru Municipality Block 23/521
  - c) LR No Nakuru Municipality Block 23/523
  - d) LR No Nakuru Municipality Block 23/519
  - e) LR No Nakuru Municipality Block 23/520
  - f) LR No Nakuru Municipality Block 23/273
14. Parcel LR No. NAKURU MUNICIPALITY BLOCK 23/108 was set aside for use as a primary school. It measures approximately 3.719 Ha (9.1 acres);
15. From records at the Nakuru Land Registry the first lessee was Joshua Kiptoo Torotich, Harun Chelanga and Stephen Kibowen all who held the land in trust TRUST for Saimoro Primary School;
16. The same was transferred to Hyrax Developers Limited on the 21<sup>st</sup> October 1998;
17. Subsequently on 24<sup>th</sup> November 1998 Hyrax Developers Limited transferred this parcel in favour of Pyboard Housing Cooperative Society Limited;
18. On 29<sup>th</sup> March 2011 the same was transferred to Enze Limited who until today remains the registered owner as per the green card held at Nakuru Land Registry;
19. According to the records, the land has been restricted on request from the firm of SHETH WATHIGO ADVOCATES;
20. Under section 14 of the NLC Act mandates the commission to review of grants and dispositions;
21. The commission on 8<sup>th</sup> October 2015 after exercising its quasi-judicial powers as provided by the law, recommended the following:
  - a) The registrar of titles sitting in Nakuru to revoke the title LR Nakuru Municipality Block 23/108.
  - b) The same parcel to revert back to National Government for use of public school as attended.
22. Public land is administered by the National Land Commission as mandated under Article 62 of the constitution and the Ministry is working very closely with the NLC to ensure the said land is repossessed for its initial intended purpose.

### **2.3 Evidence from County Executive Committee Member (CEC), Nakuru County**

Ms. Rachel Maina, the CEC Nakuru County appeared before the Committee and informed the Committee as follows:-

23. Naka Primary School is a public School that was established in 1999;
24. The private developer has erected a walled fence around the land previously owned by the school; Subsequently pushing the school to a smaller portion of land;

25. According the Nakuru County records the last time that ENSE Company Limited paid the land rates was in 2011; and
26. Due to dispute regarding the ownership of the said land Nakuru County Government declined ENSE Limited application for development.

#### **2.4 Evidence from District Land Registrar, Nakuru County**

Mr. Caleb Sunguti Land Registrar appeared before the Committee and informed the Committee as follows:-

27. The parcel of land Nakuru Municipality, Block 23/108, measures approximately 3.719 Ha which is equivalent to 9.1 acres;
28. From the records of the Land Office in Nakuru County, the first leasee was Joshua Kiptoo Toroitich, Harun Chelanga and Stephen Kibowen, all who held it in trust for Saimoro Primary School of Nakuru;
29. Later the said land was transferred to Hyrax developers limited and registered on 21<sup>st</sup> October, 1998; Subsequently on 24<sup>th</sup> November, 1998 Hyrax developers limited registered a transfer of this parcel of land in favor of Pyboard Housing Cooperative Society Limited;
30. On 29<sup>th</sup> March, 2011, the above said land was registered under Enze Limited; they are until now the registered owner;
31. Transfers document in all the above transactions were executed by the directors and original consent to transfer were issued by the commissioner of lands;
32. The said land has been in dispute and there is an ongoing civil case number 348 of 1999 High Court of Nakuru; and
33. Currently there is a restriction put on the said parcel of land. This was put after the advocate firm of ShethWathigo Advocates wrote a letter to district land registrar on 21<sup>st</sup> June, 2010 to restrict land against any dealings without any consent from Nita Shah.

#### **2.5 Evidence from Nakuru County Education Officer**

Mr. Willy Kariuki, the County Education Officer appeared before the Committee and informed the Committee as follows:-

34. Naka primary school is a public school established in 1999;
35. In 1999 the Municipal Council of Nakuru realized that there was need for a school in that area since there were many people settled there;
36. The originally proposed name for the school was “Saimoro” but later on it was changed to “Naka”;

37. Currently the school has a population of 315 pupils. However, the number could have been higher weren't it not for the dispute surrounding the ownership of the land; and
38. Although the Ministry of Education recognizes its existence the school is not yet registered since it does not have a title deed.

## **2.6 Evidence from Head/Teacher and Chairman Naka Primary School**

Mr. Francis Mwangi and Dr. Julius Kariuki, the Head/Teacher and Chairman Naka Primary School respectively appeared before the Committee and informed the Committee as follows:-

39. In 1985 Nakuru Housing Development Company sought for consent from the Municipal Council of Nakuru to subdivide a large agricultural farm into residential plots;
40. The Municipal Council of Nakuru directed the Housing Company to set aside some of the land for social amenities or public utilities such as school churches and social hall among others;
41. The Nakuru Housing Company complied with this requirement and parcel number NKU/MUNI/BLOCK 23/108 measuring 10 acres was set aside as a public utility for the construction of public school;
42. On 12<sup>th</sup> March, 1993 a certificate of lease for the parcel of land NKU/MUNI/BLOCK 23/108 was issued to 3 individuals who were referred to as trustees of Saimoro Primay School. This issuance of certificate of lease to the purported trustees was without the knowledge of Municipal Council of Nakuru who was by operation of the law the custodian of all public utility lands for school with its jurisdiction;
43. 5 years and 7 months later on 21<sup>st</sup> October, 1998 the purported trustees manipulated the land allocation/registration system and transferred the certificate of lease for Saimoro primary school to Hyrax developers company in which they were directors;
44. On 22<sup>nd</sup> October, 1998 the Hyrax developers sold the same land to Pyboard Housing Cooperative Society;
45. Pyboard Housing Cooperative Society was aware that the land they were buying was for public utility. In their sale agreement document 22<sup>nd</sup> October, 1998, the third condition of page 2 states that the vendor (Hyrax Developers) shall apply itself fully, truly and effectively to assist the purchaser to acquire and obtain the change of user of the sale property from a public utility to residential usage;
46. In 1999 the Municipal council of Nakuru realized that there was need for a school in the area since many people settled in what now was known as Naka estate. The Council constructed temporary structures on the said land to meet the immediate need for school since the children in Naka estate were travelling long distance to access schools in other estates;
47. The Pyboard Housing Cooperative Society went to court that the Council was illegally occupying its land NKU/MUNI/BLOCK 23/108;
48. The legal process took 9 years, before a judgement was delivered on 16<sup>th</sup> January 2008 in favor of Pyboard Housing Society with cost;
49. The Municipal Council of Nakuru appealed against the judgement and prayed for stay on execution of the orders thereof;
50. On 15<sup>th</sup> November, 2010, even as the appeal was pending in court the Pyboard Housing Cooperative Society sold the said land to ENSE Company Limited;

51. On 29<sup>th</sup> March, 2010, ENSE Limited was issued with certificate of lease for the parcel NKU/MUNI/BLOCK 23/108 while the ownership dispute appeal was still pending on court;
52. On 14<sup>th</sup> April, 2011, consent to withdraw the appeal by the Municipal Council of Nakuru against the judgement by Hon. Luka Kimaru was entered by both the plaintiff and the defendant;
53. In 2012 the school was coerced to relocate to the nursery school land NKU/MUNI/BLOCK 23/273 measuring 0.75 acre. ENSE Ltd fenced the 10 acre Primary school land;
54. The Naka residents lodged a complaint to the National Land Commission claiming that the loss of the 10 acre Public Utility Land NKU/MUNI/BLOCK 23/108 was a social injustice meted out to them through the Court. They requested the National Land Commissions to review the grants and dispositions of all the public utility parcels of lands within their estate, NKU/MUNI/BLOCK 23/108 being among them;
55. The National Land Commission carried out their investigations. In their determination dated 8<sup>th</sup> October, 2015, the commission declared that NKU/MUNI/BLOCK 23/108 was a public utility land set aside for construction of a primary school. It was stated that this land was never available for allocation to private individuals be revoked and that the primary school located in the nursery school land should move to the land NKU/MUNI/BLOCK 23/108;
56. In March 2016 , he wrote to the County Land Management Board – Nakuru County – Seeking information as to how they were to acquire certificate of lease for NKU/MUNI/BLOCK 23/108;
57. Later in May 2016, there were rumors that the National Land Commission had reversed their earlier decision to revoke. The certificate of lease for NKU/MUNI/BLOCK 23/108, held by some private individuals.

## **2.7 Evidence from Advocate for ENSE Company Limited**

Mr. Gordon Ogalo, Advocate for ENSE Company Limited appeared before the Committee and informed the Committee as follows:-

58. NKU/MUNI/BLOCK 23/108 was allocated to Hyrax developers Limited sometimes in 1993;
59. In 1998 Hyrax developers sold the same to Pyboard Housing Cooperative Limited;
60. On 15<sup>th</sup> November 2010 Pyboard Housing Cooperative Limited sold the same to ENSE Limited;
61. ENSE Limited is the currently the registered owner;
62. In the year 1999, Pyboard filed Nakuru High Court Case No. 348 of 1999 against the Municipal Council of Nakuru for declaration of ownership and injunctive orders;
63. On 16<sup>th</sup> January, 2008, the High Court entered judgment in favor of Pyboard and consequently declared it the lawful owner of the subject property;

64. The Municipal Council of Nakuru filed a notice of appeal against the judgments but the same was withdrawn by consent dated 14<sup>th</sup> April, 2011;
65. In 2015, ENSE Limited filed Nakuru ELC Case No. 146 of 2015 against Hon. David Gikaria, MP and others for damages, malicious damage, injunctive orders and declaration and ownership;
66. The Court issued interim orders restraining Hon. David Gikaria, MP and Company from in any way interfering with the subject property;
67. In 2016 ENSE Limited again filed another case being Nakuru ELC No. 181 of 2016 seeking for damages from malicious damages against Hon. David Gikaria, MP and others;
68. In July, 2016, the Director of public prosecutions instituted Nakuru CMCR No. 1526 of 2016 against Hon. David Gikaria, MP for malicious damages committed on 2<sup>nd</sup> June, 2015;
69. In the same month the Director of Public Prosecutions also instituted criminal case No. 1841 Of 2016 against Hon. David Gikaria, MP for damages committed on 19<sup>th</sup> May, 2016;
70. Cases No. 146 of 2016, 181 of 2016, 1526 of 2016 and 1841 Of 2016 are still pending hearing and determination in court;
  - a) On the 27<sup>th</sup> , October 2010 the Committee the Education Committee of Municipal Council unanimously resolved that the council no longer had dispute over the subject property;
  - b) On the 20<sup>th</sup> December, 2014 the full Council adopted the resolution of the 27<sup>th</sup> October 2010;
  - c) Vide letter dated 6<sup>th</sup> April, 2016 the National Land Commission confirmed the ownership of the subject property.

### **3.0 COMMITTEE FINDINGS, OBSERVATIONS AND CONCLUSIONS**


Based on the Investigations, evidence adduced and submission made, the Committee made the following observations:

1. THAT, In 1985 Nakuru Development Housing Company Limited set aside LR No. NAKURU MUNICIPALITY BLOCK 23/108 for us as a public school (Saimoro and later Naka Primary) the land measures approximately 3.719 Ha (9.1 acres);
2. THAT, The said land was transferred to Hyrax Developers Limited by trustees of Naka Primary School who were Mr. Joshua Kiptoo Torotich, Harun Chelanga and Stephen Kibowen;
3. THAT, Naka Primary School is a public school established in 1999 with approximately 315 pupils; Although recognized by the Ministry of Education it is not registered since it does not have a title deed to the land it occupies;
4. THAT, A Court judgment dated 16/1/2008 ruled in favor of Pyboard Housing Society upholding and restoring the title deed in possession of Pyboard Housing Society;
5. THAT, Plyboard Housing Society sold the land to Enze Company Limited who were issued with certificate of lease for the parcel NKU/MUNI/BLOCK/23/108 whereas the ownership dispute appeal was still pending in Court;
6. THAT, The Nakuru Municipality withdrew the consent to appeal the judgement by Hon. Luka Kimaru and the school relocated to the Nursery School land NKU/MUNI/BLOCK 23/273 measuring 0.75 acres;
7. THAT, The land whose lease Enze Limited hold measures 10 acres and the company proceeded to fence its land and part of the wall were demolished by protesters headed by Hon. David Gikaria, MP in which the case is still pending in the Court of law;
8. THAT, There are other subsequent sales on the Land and Enze Limited are the current registered owners of the Land;
9. THAT, The National Land Commission had declared the land to be public land but upon re-scrutiny it rescinded the decision and restored ownership of the land to Enze Limited ; and
10. THAT, There exists tension between the registered owner of the Land and the local community;

#### 4.0 RECOMMENDATIONS

Based on the Observations, Investigations, evidence adduced and submission made, the Committee made the following recommendations.

1. THAT, the Ethics and Anti Corruption Commission, the Director of Criminal Investigation and Director of Public Prosecution:
  - a) Investigates and Prosecutes the former Trustees of Naka Primary School namely Mr. Joshua Kiptoo Torotich, Mr. Harun Chelanga and Mr. Stephen Kibowen who sold the Public Land set aside for Naka Primary School;
  - b) Conducts a forensic audit on the entire land transactions with a view to prosecute all public and private individuals involved;
2. THAT, The Petitioner pursues the appeal processes available in the Courts and the National Land Commission since the matters therein were conclusively determined by the Courts and the Commission.

SIGNED:  .....

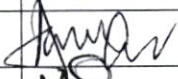


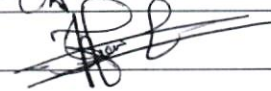
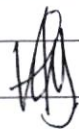
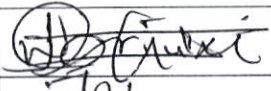

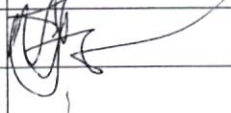

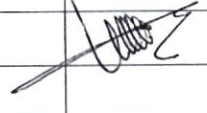



DATE: 20/05/2017 .....

(HON. ALEX M. MWIRU, MP)  
CHAIRPERSON  
DEPARTMENTAL COMMITTEE ON LANDS

Date: May 20<sup>th</sup>, 2017

Venue: Pier Conference Room, English Point Marina

Agenda: ADOPTION OF THE REPORT ON THE PETITION BY THE DAVID GIKARIA ON BEHALF OF THE RESIDENTS OF NAKURU TOWN EAST CONSTITUENCY ON REVOCATION AND CANCELLATION OF TITLE FOR LAND LR. NO. NAKURU MUNICIPALITY BLOCK 23/108, BELONGING TO NAKA PRIMARY SCHOOL

NO.	NAME	SIGNATURE
1.	The Hon. Alex Mwiru, M.P. (Chairperson)	
2.	The Hon. Moses Ole Sakuda, M.P (Vice-Chairperson)	 (Chairperson)
3.	The Hon. Onesmas Ngunjiri, M.P.	
4.	The Hon. Mutava Musyimi, M.P.	
5.	The Hon. John Kihagi, M.P.	
6.	The Hon. Francis W. Nderitu, M.P.	
7.	The Hon. Francis Njenga, M.P.	
8.	The Hon. Athman. Shariff, M.P.	
9.	The Hon. Eusilah Jepkosgei, M.P.	
10.	The Hon. Benard Bett, M.P.	
11.	The Hon. Kipruto Moi, M.P.	
12.	The Hon. Hellen Chepkwony, M.P.	
13.	The Hon. Sarah Korere, M.P.	
14.	The Hon. Julius Ndegwa, M.P.	
15.	The Hon. Benson Mbai, M.P.	
16.	The Hon. Kanini Kega, M.P.	
17.	The Hon. Esther Murugi Mathenge, M.P.	
18.	The Hon. Hezron Awiti Bollo, M.P.	
19.	The Hon. Suleiman Dori Ramadhani, M.P.	
20.	The Hon. George Oner Ogalo, M.P.	
21.	The Hon. Lekidime L. Mathew, M.P.	
22.	The Hon. Shakila Abdallah, M.P.	
23.	The Hon. Paul Otuoma, M.P.	
24.	The Hon. Thomas Mwadeghu, M.P.	
25.	The Hon. Patrick Makau, M.P.	
26.	The Hon. Magwanga Joseph Oyugi, M.P.	
27.	The Hon. Omar Mwinyi, M.P.	
28.	The Hon. Charles Nyamai, M.P.	

Approved  
B. S. N. A.  
18/8/16

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT  
(FOURTH SESSION)

PUBLIC PETITION

M. S. N. A.  
Please refer  
18/8/16

**BY RESIDENTS OF NAKURU TOWN EAST CONSTITUENCY ON REVOCATION  
AND CANCELLATION OF TITLE FOR LAND NUMBER LR NO. NAKURU  
MUNICIPALITY BLOCK 23/108 BELONGING TO NAKA PRIMARY SCHOOL**

I, the undersigned, on behalf of the residents of Biashara Ward and parents & pupils of Naka Primary School, Nakuru Town East Constituency,

DRAW the attention of the House to the following:-

1. THAT, Nakuru Municipality Block 23 is a piece of private agricultural land registered as L.R. 462/2 and owned by Nakuru Development Company Limited;
2. THAT, on or about 1985, Nakuru Development Housing Company Ltd sought consent from the then local municipality in a meeting held on 3<sup>rd</sup> October, 1985 to sub-divide the said block into individual residential plots with about ten acres set aside for a public utility;
3. THAT, this approval was granted on 6<sup>th</sup> November, 1985 in a meeting of the Company as all the requirements as outlined by law had been met, and the said decision was communicated to the Commissioner of Lands who approved the proposed plan and subsequently gave it a new registration as "MNB23";
4. THAT, the approved plan was consequently surrendered to the then area Local Authority as a public utility for construction of a primary school;
5. THAT, on or about June, 1999, the then area Local Authority was served with an Order restraining it from constructing the said school on the land alleging that it instead belonged to an individual and/or company called Pyboard Cooperative Society Limited;
6. THAT, Pyboard Cooperative Society Ltd alleged that it bought the land from a company called Hyrax Developers Limited, which was not existent as per the search conducted at the Nairobi Land Registry;



**BY RESIDENTS OF NAKURU TOWN EAST CONSTITUENCY ON REVOCATION  
AND CANCELLATION OF TITLE FOR LAND NUMBER LR NO. NAKURU  
MUNICIPALITY BLOCK 23/108 BELONGING TO NAKA PRIMARY SCHOOL**

7. **THAT**, a further survey done on 13<sup>th</sup> August, 1999 indicated that the land in question was a public utility, and was held in trust for the residents of Nakuru Municipality, and the community needed to have been furnished with any changes and/or emerging issues, if any;
8. **THAT**, the agreement between Pyboard Cooperative Society Ltd and Hyrax Developers Company Limited dated 2<sup>nd</sup> October, 1998, regarding the purported transfer of the Nakuru Municipality Block 23, is null and void as the land is a public utility and therefore, any title issued in respect of the said agreement has been fraudulently obtained and contravenes Cap 300 of the Laws of Kenya;
9. **THAT**, the National Land Commission issued a letter 8<sup>th</sup> October, 2016 that the land belongs to the school because it is a public utility but two (2) months later, rescinded its letter;
10. **THAT**, efforts to resolve the matter with the National Land Commission and other government departments have been futile;
11. **THAT**, the issues in respect of which this Petition is made are not pending before any Court of law, Constitutional or statutory body.

**THEREFORE** your humble petitioners pray that the National Assembly, through the Departmental Committee on Lands investigates the entire land transaction at the office of the Commissioner of Lands, especially where it only took one day to change the said title deed to the purported owners, establish the legality of the companies involved and recommends that any guilty persons are brought to book.

And your **PETITIONERS** will ever pray.

**PRESENTED BY,**

**HON. DAVID GIKARIA, MP**  
**MEMBER FOR NAKURU TOWN EAST CONSTITUENCY**

**DATE:** .....

ANNEX 3.

## **Copies of the Minutes**

**MINUTES OF THE 54<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON SATURDAY 20<sup>TH</sup> MAY, 2017, IN PIER CONFERENCE ROOM, AT ENGLISH POINT MARINA AT 10.00 AM**

**PRESENT:**

- |   |                         |
|---|-------------------------|
| 1. The Hon. Alex Mwiru, M.P.            | <b>Chairperson</b>      |
| 2. The Hon. Moses Ole Sakuda, M.P.      | <b>Vice Chairperson</b> |
| 3. The Hon. Omar Mwinyi, M.P.           |                         |
| 4. The Hon. Kanini Kega, M.P.           |                         |
| 5. The Hon. Dr. Paul Otuoma, M.P.       |                         |
| 6. The Hon. Hellen Chepkwony, M.P.      |                         |
| 7. The Hon. Joseph Oyugi Magwanga, M.P. |                         |
| 8. The Hon. Francis W. Nderitu, M.P.    |                         |
| 9. The Hon. John Kihagi, M.P.           |                         |
| 10. The Hon. Francis Njenga Kigo, M.P.  |                         |
| 11. The Hon. George Oner, M.P.          |                         |
| 12. The Hon. Eusilah Ngeny, M.P.        |                         |
| 13. The Hon. Shakila Abdallah, M.P.     |                         |
| 14. The Hon. Julius Ndegwa, M.P.        |                         |
| 15. The Hon. Mathew L. Lempurkel, M.P.  |                         |
| 16. The Hon. Esther Murugi, M.P.        |                         |
| 17. The Hon. Benson Mbai, M.P.          |                         |
| 18. The Hon. Suleiman Dori, M.P.        |                         |
| 19. The Hon. Onesmus Ngunjiri, M.P.     |                         |
| 20. The Hon. Hezron Awiti Bollo, M.P.   |                         |
| 21. The Hon. Thomas Mwadeghu, M.P.      |                         |
| 22. The Hon. Charles Nyamai, M.P.       |                         |

**ABSENT WITH APOLOGIES:**

1. The Hon. Bernard Bett, M.P.
2. The Hon. Kipruto Moi, M.P.
3. The Hon. Athman Shariff, M.P.
4. The Hon. Patrick Makau, M.P.
5. The Hon. Sarah Korere, M.P.
6. The Hon. Mutava Musyimi, M.P.

**IN ATTENDANCE:**

**KENYA NATIONAL ASSEMBLY**

- |                        |                      |
|------------------------|----------------------|
| 1. Mr. Daniel Mutunga  | Principal Clerk I    |
| 2. Mr. James Ginono    | Clerk Assistant I    |
| 3. Mr. Joshua Ondari   | Clerk Assistant III  |
| 4. Mr. Emmanuel Muyodi | Clerk Assistant III  |
| 5. Mr. Kefa Omoti      | Principal Researcher |
| 6. Ms. Mercy Wanyonyi  | Legal Counsel II     |
| 7. Ms. Rose Ometere    | Audio Officer        |

The chairman called the meeting to order at 10.10 pm with a word of prayer.

MINUTE NO. DCL/LN/2017/178

ADOPTION OF THE REPORT ON THE  
PETITION BY THE DAVID GIKARIA ON  
BEHALF OF THE RESIDENTS OF  
NAKURU TOWN EAST CONSTITUENCY  
ON REVOCATION AND CANCELLATION  
OF TITLE FOR LAND LR. NO. NAKURU  
MUNICIPALITY BLOCK 23/108,  
BELONGING TO NAKA PRIMARY  
SCHOOL

The Committee considered the report and upon deliberations made the following observations:

1. THAT, In 1985 Nakuru Development Housing Company Limited set aside LR No. NAKURU MUNICIPALITY BLOCK 23/108 for us as a public school (Saimoro and later Naka Primary) the land measures approximately 3.719 Ha (9.1 acres);
2. THAT, The said land was transferred to Hyrax Developers Limited by trustees of Naka Primary School who were Mr. Joshua Kiptoo Torotich, Harun Chelanga and Stephen Kibowen;
3. THAT, Naka Primary School is a public school established in 1999 with approximately 315 pupils; Although recognized by the Ministry of Education it is not registered since it does not have a title deed to the land it occupies;
4. THAT, A Court judgment dated 16/1/2008 ruled in favor of Plyboard Housing Society upholding and restoring the title deed in possession of Plyboard Housing Society;
5. THAT, Plyboard Housing Society sold the land to Enze Company Limited who were issued with certificate of lease for the parcel NKU/MUNI/BLOCK/23/108 whereas the ownership dispute appeal was still pending in Court;
6. THAT, The Nakuru Municipality withdrew the consent to appeal the judgement by Hon. Luka Kimaru and the school relocated to the Nursery School land NKU/MUNI/BLOCK 23/273 measuring 0.75 acres;
7. THAT, The land whose lease Enze Limited hold measures 10 acres and the company proceeded to fence its land and part of the wall were demolished by protesters headed by Hon. David Gikaria, MP in which the case is still pending in the Court of law;
8. THAT, There are other subsequent sales on the Land and Enze Limited are the current registered owners of the Land;

9. THAT, The National Land Commission had declared the land to be public land but upon re-scrutiny it rescinded the decision and restored ownership of the land to Enze Limited ; and
10. THAT, There exists tension between the registered owner of the Land and the local community;

Upon making the above-mentioned observations the Committee resolved as hereunder

1. THAT, the Ethics and Anti Corruption Commission, the Director of Criminal Investigation and Director of Public Prosecution:
2. Investigates and Prosecutes the former Trustees of Naka Primary School namely Mr. Joshua Kiptoo Torotich, Mr. Harun Chelanga and Mr. Stephen Kibowen who sold the Public Land set aside for Naka Primary School;
3. Conducts a forensic audit on the entire land transactions with a view to prosecute all public and private individuals involved;
4. THAT, The Petitioner pursues the appeal processes available in the Courts and the National Land Commission since the matters therein were conclusively determined by the Courts and the Commission.

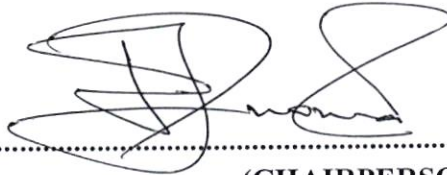
Consequently, the report was proposed and adopted unanimously by the Members present and signed by the Chair.

**MINUTE NO. DCL/LN/2017/179**

**ADJOURNMENT**

There being no any other business, and the time being 11:10 am the meeting was adjourned.

SIGNED.....



(CHAIRPERSON)

DATE.....

25/ May / 2017



**MINUTES OF THE 11<sup>th</sup> SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON MONDAY 27<sup>TH</sup> FEBRUARY 2017. IN AMANI MEETING ROOM AT BOMA HOTEL AT 9.00 AM**

**PRESENT:**

1. The Hon. Alex Mwiru, M.P. - Chairperson
2. The Hon. Moses Ole Sakuda, M.P. - Vice Chairperson
3. The Hon. Omar Mwinyi, M.P
4. The Hon. Onesmus Ngunjiri, M.P.
5. The Hon. Benson Mbai, M.P.
6. The Hon. Mathew L. Lempurkel, M.P
7. The Hon. A. Shariff, M.P.
8. The Hon. Charles Nyamai, M.P
9. The Hon. Shakila Abdallah, M.P.
10. The Hon. Hellen Chepkwony, M.P.
11. The Hon. Sarah Korere, M.P.
12. The Hon. Francis Njenga Kigo, M.P.
13. The Hon. Patrick Makau, M.P.
14. The Hon. Francis W. Nderitu, M.P
15. The Hon. Bernard Bett, M.P.
16. The Hon. John Kihagi, M.P.
17. The Hon. Dr. Paul Otuoma, M.P.
18. The Hon. George Oner, M.P.
19. The Hon. Julius Ndegwa, M.P.

**ABSENT WITH APOLOGIES:**

1. The Hon. Hezron Awiti Bollo, M.P.
2. The Hon. Kanini Kega, M.P.
3. The Hon. Esther Murugi, M.P
4. The Hon. Thomas Mwadeghu, M.P.
5. The Hon. Mutava Musyimi, M.P.
6. The Hon. Eusilah Ngeny, M.P.
7. The Hon. Suleiman Dori, M.P.
8. The Hon. Joseph Oyugi Magwanga, M.P.
9. The Hon. Kipruto Moi, M.P.

**IN ATTENDANCE:**

**KENYA NATIONAL ASSEMBLY**

- |                        |                     |
|------------------------|---------------------|
| 1. Mr. James Ginono    | Clerk Assistant I   |
| 2. Mr. Joshua Ondari   | Clerk Assistant III |
| 3. Mr. Emmanuel Muyodi | Clerk Assistant III |

4. Mr. Simon Muinde Audio Officer

**MINISTRY OF LANDS AND PHYSICAL PLANNING**

- |                               |                     |
|-------------------------------|---------------------|
| 1. Prof. Jacob Kaimenyi       | Cabinet Secretary   |
| 2. Mrs. Mariam El Maaway      | Principal Secretary |
| 3. Mr. Peter Kahuho           | S.L.                |
| 4. Mr. A.A Ombima             | Ag. US              |
| 5. Mr. Cesaria Mbaria         | Director of Survey  |
| 6. Mr. Johson Njuguna         | P.A.C               |
| 7. Mr. Owino Jacob Cattwright | S.L.R.O             |
| 8. Mr. Eustace Kithumbo       | PLASO               |
| 9. Mr. Edward Kosgei          | D.L.A               |
| 10. Mr. Paul Ndungu           | Ag. A.D             |
| 11. Mr. Joseph K. Mwangi      | Head/P.C.U          |

**MINUTE NO. DCL/LN/2017/48**

**PRELIMINARIES**

The chairman called the meeting to order at 9.15 a.m. with a word of prayer from the Hon. Paul Otuoma, MP

**MINUTE NO. DCL/LN/2017/49**

**MEETING WITH THE MINISTRY OF LANDS AND PHYSICAL PLANNING**

Prof Jacob Kaimenyi and the Principal Secretary appeared before the Committee and informed the Committee as follows:-

**Petition by The David Gikaria on behalf of the residents of Nakuru Town East Constituency on revocation and cancellation of title for land LR. No. Nakuru Municipality Block 23/108, belonging to Naka Primary School**

1. The parcel was formerly registered as LR 462/1 which was private agricultural land. The same block was subdivided by Nakuru Development Company Limited into 23 individual residential plots;
2. Upon subdivision Nakuru Development Co Limited (NAKA) surrendered some portions of land for public purpose and these included: -
  - a) LR No Nakuru Municipality Block 23/108
  - b) LR No Nakuru Municipality Block 23/521
  - c) LR No Nakuru Municipality Block 23/523
  - d) LR No Nakuru Municipality Block 23/519

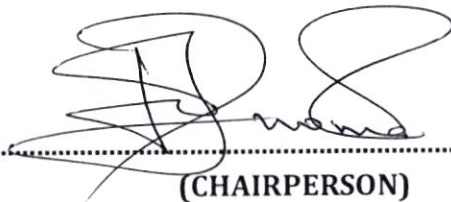
- e) LR No Nakuru Municipality Block 23/520
  - f) LR No Nakuru Municipality Block 23/273
3. Parcel LR No. NAKURU MUNICIPALITY BLOCK 23/108 was set aside for use as a primary school. It measures approximately 3.719 Ha (9.1 acres);
  4. From records at the Nakuru Land Registry the first lessee was Joshua Kiptoo Torotich, Harun Chelanga and Stephen Kibowen all who held the land in trust TRUST for Saimoro Primary School;
  5. The same was transferred to Hyrax Developers Limited on the 21<sup>st</sup> October 1998;
  6. Subsequently on 24<sup>th</sup> November 1998 Hyrax Developers Limited transferred this parcel in favour of Pyboard Housing Cooperative Society Limited;
  7. On 29<sup>th</sup> March 2011 the same was transferred to Enze Limited who until today remains the registered owner as per the green card held at Nakuru Land Registry;
  8. According to the records, the land has been restricted on request from the firm of SHETH WATHIGO ADVOCATES;
  9. Under section 14 of the NLC Act mandates the commission to review of grants and dispositions;
  10. The commission on 8<sup>th</sup> October 2015 after exercising its quasi-judicial powers as provided by the law, recommended the following:
    - a) The registrar of titles sitting in Nakuru to revoke the title LR Nakuru Municipality Block 23/108.
    - b) The same parcel to revert back to National Government for use of public school as attended.
  11. Public land is administered by the National Land Commission as mandated under Article 62 of the constitution and the Ministry is working very closely with the NLC to ensure the said land is repossessed for its initial intended purpose.

**MINUTE NO. DCL/LN/2017/51**

**ADJOURNMENT**

There being no any other business, and the time being 12:15 pm the Chairman adjourned the meeting.

SIGNED.....



(CHAIRPERSON)

DATE.....

25/ May / 2017

**MINUTES OF THE 78<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON  
LANDS HELD ON FRIDAY 7<sup>TH</sup> OCTOBER, 2016, NAKA PRIMARY SCHOOL  
NAKURU AT 2.00 PM**

**PRESENT:**

- |   |                         |
|---|-------------------------|
| 1. The Hon. Alex Mwiru, M.P.            | <b>Chairperson</b>      |
| 2. The Hon. Moses Ole Sakuda, M.P.      | <b>Vice Chairperson</b> |
| 3. The Hon. Omar Mwinyi, M.P.           |                         |
| 4. The Hon. Kanini Kega, M.P.           |                         |
| 5. The Hon. Dr. Paul Otuoma, M.P.       |                         |
| 6. The Hon. Hellen Chepkwony, M.P.      |                         |
| 7. The Hon. Bernard Bett, M.P.          |                         |
| 8. The Hon. Joseph Oyugi Magwanga, M.P. |                         |
| 9. The Hon. Francis W. Nderitu, M.P.    |                         |
| 10. The Hon. John Kihagi, M.P.          |                         |
| 11. The Hon. Francis Njenga Kigo, M.P.  |                         |
| 12. The Hon. George Oner, M.P.          |                         |

**ABSENT WITH APOLOGIES:**

1. The Hon. Mpuru Aburi, M.P.
2. The Hon. Kipruto Moi, M.P.
3. The Hon. Eusilah Ngeny, M.P.
4. The Hon. Shakila Abdallah, M.P.
5. The Hon. Julius Ndegwa, M.P.
6. The Hon. Athman Shariff, M.P.
7. The Hon. Patrick Makau, M.P.
8. The Hon. Sarah Korere, M.P.
9. The Hon. Mathew L. Lempurkel, M.P.
10. The Hon. Esther Murugi, M.P.
11. The Hon. Benson Mbai, M.P.
12. The Hon. Suleiman Dori, M.P.
13. The Hon. Onesmus Ngunjiri, M.P.
14. The Hon. Mutava Musyimi, M.P.
15. The Hon. Hezron Awiti Bollo, M.P.
16. The Hon. Thomas Mwadeghu, M.P.

**IN ATTENDANCE:**

**KENYA NATIONAL ASSEMBLY**

- |                        |                     |
|------------------------|---------------------|
| 1. Mr. James Ginono    | Clerk Assistant I   |
| 2. Mr. Joshua Ondari   | Clerk Assistant III |
| 3. Mr. Emmanuel Muyodi | Clerk Assistant III |
| 4. Ms. Farida Ngasura  | Audio Officer       |

### NAKA RESIDENTS

- |                       |                                    |
|-----------------------|------------------------------------|
| 1. Mr. Francis Mwangi | Head/teacher Naka Primary School , |
| 2. Dr. Julius Kariuki | Chairman Naka Primary School,      |
| 3. Gordon Ogalo       | Advocate for ENSE Company Limited  |

### MINUTE NO. DCL/LN/2016/319

### PRELIMINARIES

The chairman called the meeting to order at 2.15 p.m. with a word of prayer.

### MINUTE NO. DCL/LN/2016/320

### MEETING AT NAKA PRIMARY SCHOOL

Mr. Francis Mwangi, Head/teacher Naka Primary School, Dr. Julius Kariuki, Chairman Naka Primary School and Gordon Ogalo Advocate for ENSE Company Limited appeared before the Committee;

### **Submission from Mr. Francis Mwangi, Head/Teacher Naka Primary School and Dr. Julius Kariuki, Chairman Naka Primary School**

He informed the Committee as follows:- That,

- i) In 1985 Nakuru Housing Development Company sought for consent from the Municipal Council of Nakuru to subdivide a large agricultural farm into residential plots;
- ii) The Municipal Council of Nakuru directed the Housing Company to set aside some of the land for social amenities or public utilities such as school churches and social hall among others;
- iii) The Nakuru Housing Company complied with this requirement and parcel number NKU/MUNI/BLOCK 23/108 measuring 10 acres was set aside as a public utility for the construction of public school;
- iv) On 12<sup>th</sup> March, 1993 a certificate of lease for the parcel of land NKU/MUNI/BLOCK 23/108 was issued to 3 individuals who were referred to as trustees of Saimoro Primay School. This issuance of certificate of lease to the purported trustees was without the knowledge of Municipal Council of Nakuru who was by operation of the law the custodian of all public utility lands for school with its jurisdiction;
- v) 5 years and 7 months later on 21<sup>st</sup> October, 1998 the purported trustees manipulated the land allocation/registration system and transferred the certificate of lease for Saimoro primary school to Hyrax developers company in which they were directors;
- vi) On 22<sup>nd</sup> October, 1998 the Hyrax developers sold the same land to Pyboard Housing Cooperative Society;
- vii) Pyboard Housing Cooperative Society was aware that the land they were buying was for public utility. In their sale agreement document 22<sup>nd</sup> October, 1998, the third condition of page 2 states that the vendor (Hyrax Developers) shall apply itself fully, truly and effectively to assist the purchaser to acquire and obtain the change of user of the sale property from a public utility to residential usage;
- viii) In 1999 the Municipal council of Nakuru realized that there was need for a school in

the area since many people settled in what now was known as Naka estate. The Council constructed temporary structures on the said land to meet the immediate need for school since the children in Naka estate were travelling long distance to access schools in other estates;

- ix) The Pyboard Housing Cooperative Society went to court that the Council was illegally occupying its land NKU/MUNI/BLOCK 23/108;
- x) The legal process took 9 years, before a judgement was delivered on 16<sup>th</sup> January 2008 in favor of Pyboard Housing Society with cost;
- xi) The Municipal Council of Nakuru appealed against the judgement and prayed for stay on execution of the orders thereof;
- xii) On 15<sup>th</sup> November, 2010, even as the appeal was pending in court the Pyboard Housing Cooperative Society sold the said land to ENSE Company Limited;
- xiii) On 29<sup>th</sup> March, 2010, ENSE Limited was issued with certificate of lease for the parcel NKU/MUNI/BLOCK 23/108 while the ownership dispute appeal was still pending on court;
- xiv) On 14<sup>th</sup> April, 2011, consent to withdraw the appeal by the Municipal Council of Nakuru against the judgement by Hon. Luka Kimaru was entered by both the plaintiff and the defendant;
- xv) In 2012 the school was coerced to relocate to the nursery school land NKU/MUNI/BLOCK 23/273 measuring 0.75 acre. ENSE Ltd fenced the 10 acre Primary school land;
- xvi) The Naka residents lodged a complaint to the National Land Commission claiming that the loss of the 10 acre Public Utility Land NKU/MUNI/BLOCK 23/108 was a social injustice meted out to them through the Court. They requested the National Land Commissions to review the grants and dispositions of all the public utility parcels of lands within their estate, NKU/MUNI/BLOCK 23/108 being among them;
- xvii) The National Land Commission carried out their investigations. In their determination dated 8<sup>th</sup> October, 2015, the commission declared that NKU/MUNI/BLOCK 23/108 was a public utility land set aside for construction of a primary school. It was stated that this land was never available for allocation to private individuals be revoked and that the primary school located in the nursery school land should move to the land NKU/MUNI/BLOCK 23/108;
- xviii) In March 2016 , he wrote to the County Land Management Board – Nakuru County – Seeking information as to how they were to acquire certificate of lease for NKU/MUNI/BLOCK 23/108;
- xix) Later in May 2016, there were rumors that the National Land Commission had reversed their earlier decision to revoke. The certificate of lease for NKU/MUNI/BLOCK 23/108, held by some private individuals.

## Submission from Gordon Ogalo, Advocate for ENSE Company Limited

He informed the Committee as follows:- That,

- i) NKU/MUNI/BLOCK 23/108 was allocated to Hyrax developers Limited sometimes in 1993;
- ii) In 1998 Hyrax developers sold the same to Pyboard Housing Cooperative Limited;
- iii) On 15<sup>th</sup> November 2010 Pyboard Housing Cooperative Limited sold the same to ENSE Limited;
- iv) ENSE Limited is the currently the registered owner;
- v) In the year 1999, Pyboard filed Nakuru High Court Case No. 348 of 1999 against the Municipal Council of Nakuru for declaration of ownership and injunctive orders;
- vi) On 16<sup>th</sup> January, 2008, the High Court entered judgment in favor of Pyboard and consequently declared it the lawfull owner of the subject property;
- vii) The Municipal Council of Nakuru filed a notice of appeal against the judgement but the same was withdrawn by consent dated 14<sup>th</sup> April, 2011;
- viii) In 2015, ENSE Limited filed Nakuru ELC Case No. 146 of 2015 against Hon. David Gikaria, MP and others for damages, malicious damage, injunctive orders and declaration and ownership;
- ix) The Court issued interim orders restraining Hon. David Gikaria, MP and Company form in any way interfering with the subject property;
- x) In 2016 ENSE Limited again filed another case being Nakuru ELC No. 181 of 2016 seeking for damages from malicious damages against Hon. David Gikari, MP and others;
- xi) In July, 2016, the Director of public prosecutions instituted Nakuru CMCR No. 1526 of 2016 against Hon. David Gikaria, MP for malicious damages committed on 2<sup>nd</sup> June, 2015;
- xii) In the same month the Director of Public Prosecutions also instituted criminal case No. 1841 Of 2016 against Hon. David Gikaria, MP for damages committed on 19<sup>th</sup> May, 2016;
- xiii) Cases No. 146 of 2016, 181 of 2016, 1526 of 2016 and 1841 Of 2016 are still pending hearing and determination in court;
- xiv) On the 27<sup>th</sup> , October 2010 the Committee the Education Committee of Municipal Council unanimously resolved that the council no longer had dispute over the subject property;
- xv) On the 20<sup>th</sup> December, 2014 the full Council adopted the resolution of the 27<sup>th</sup> October 2010;
- xvi) Vide letter dated 6<sup>th</sup> April, 2016 the National Land Commission confirmed the ownership of the subject property.

**Prayer from Pendo Lekool, Standard Eight Pupil on behalf of fellow pupils of Naka Primary School,**

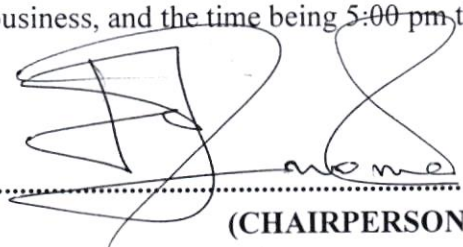
She requested the Committee as follows:- That  
The Committee should intervene and ensure that the grabbed land is reclaimed back, so that the school can build permanent classes, latrines and also for the pupils of Naka primary School to get enough space for playground.

MINUTE NO. DCL/LN/2016/321

ADJOURNMENT

There being no any other business, and the time being 5:00 pm the meeting was adjourned.

SIGNED.....



A large, stylized handwritten signature in black ink, appearing to be 'meme', is written over a horizontal dotted line. Below the signature, the text '(CHAIRPERSON)' is printed.

(CHAIRPERSON)

DATE.....

20 / May 2017

**MINUTES OF THE 77<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON FRIDAY 7<sup>TH</sup> OCTOBER, 2016, COUNTY COMMISSIONER OFFICE, NAKURU AT 9.00 AM**

**PRESENT:**

- |   |                         |
|---|-------------------------|
| 1. The Hon. Alex Mwiru, M.P.            | <b>Chairperson</b>      |
| 2. The Hon. Moses Ole Sakuda, M.P.      | <b>Vice Chairperson</b> |
| 3. The Hon. Omar Mwinyi, M.P.           |                         |
| 4. The Hon. Kanini Kega, M.P.           |                         |
| 5. The Hon. Dr. Paul Otuoma, M.P.       |                         |
| 6. The Hon. Hellen Chepkwony, M.P.      |                         |
| 7. The Hon. Bernard Bett, M.P.          |                         |
| 8. The Hon. Joseph Oyugi Magwanga, M.P. |                         |
| 9. The Hon. Francis W. Nderitu, M.P.    |                         |
| 10. The Hon. John Kihagi, M.P.          |                         |
| 11. The Hon. Francis Njenga Kigo, M.P.  |                         |
| 12. The Hon. George Oner, M.P.          |                         |

**ABSENT WITH APOLOGIES:**

1. The Hon. Mpuru Aburi, M.P.
2. The Hon. Kipruto Moi, M.P.
3. The Hon. Eusilah Ngeny, M.P.
4. The Hon. Shakila Abdallah, M.P.
5. The Hon. Julius Ndegwa, M.P.
6. The Hon. Athman Shariff, M.P.
7. The Hon. Patrick Makau, M.P.
8. The Hon. Sarah Korere, M.P.
9. The Hon. Mathew L. Lempurkel, M.P.
10. The Hon. Esther Murugi, M.P.
11. The Hon. Benson Mbai, M.P.
12. The Hon. Suleiman Dori, M.P.
13. The Hon. Onesmus Ngunjiri, M.P.
14. The Hon. Mutava Musyimi, M.P.
15. The Hon. Hezron Awiti Bollo, M.P.
16. The Hon. Thomas Mwadeghu, M.P.

**IN ATTENDANCE:**

**KENYA NATIONAL ASSEMBLY**

- |                        |                     |
|------------------------|---------------------|
| 1. Mr. James Ginono    | Clerk Assistant I   |
| 2. Mr. Joshua Ondari   | Clerk Assistant III |
| 3. Mr. Emmanuel Muyodi | Clerk Assistant III |
| 4. Ms. Farida Ngasura  | Audio Officer       |

### **COUNTY OFFICERS**

- |                      |  |
|----------------------|--|
| 1. Ms. Rachel Maina  | County Executive Committee Member,     |
| 2. Mr. Caleb Sunguti | District Land Registrar, Nakuru County |
| 3. Mr. Willy Kariuki | Nakuru County Education Officer        |

### **MINUTE NO. DCL/LN/2016/316**

### **PRELIMINARIES**

The chairman called the meeting to order at 9.15 a.m. with a word of prayer.

### **MINUTE NO. DCL/LN/2016/317**

### **MEETING AT NAKURU COUNTY COMMISSIONERS OFFICE**

The Deputy County Commissioner, Nakuru West Sub-County welcomed the Committee and thereafter he called upon Ms. Rachel Maina, County Executive Committee Member, Caleb Sunguti, District Land Registrar, Nakuru County and Mr. Willy Kariuki, Nakuru County Education Officer to shed more light on issues regarding Nakuru Municipality Block 23/108;

### **Submission from Ms. Rachel Maina, County Executive Committee Member, Nakuru County**

She informed the Committee as follows:- That,

- i) Naka Primary School is a public School that was established in 1999;
- ii) The private developer has erected a walled fence around the land previously owned by the school; Subsequently pushing the school to a smaller portion of land;
- iii) According the Nakuru County records the last time that ENSE Company Limited paid the land rates was in 2011; and
- iv) Due to dispute regarding the ownership of the said land Nakuru County declined ENSE Limited application for development.

### **Submission from Caleb Sunguti, District Land Registrar, Nakuru County**

He informed the Committee as follows:- That,

- i) The parcel of land Nakuru Municipality, Block 23/108, measures approximately 3.719 Ha which is equivalent to 9.1 acres;
- ii) From the records of the Land Office in Nakuru County, the first leasee was Joshua Kiptoo Toroitich, Harun Chelanga and Stephen Kibowen, all who held it in trust for Saimoro Primary School of Nakuru;
- iii) Later the said land was transferred to Hyrax developers limited and registered on 21<sup>st</sup> October, 1998;
- iv) Subsequently on 24<sup>th</sup> November, 1998 Hyrax developers limited registered a transfer of this parcel of land in favor of Pyboard Housing Cooperative Society Limited;

- v) On 29<sup>th</sup> March, 2011, the above said land was registered under Enze Limited; they are until now the registered owner;
- vi) Transfers document in all the above transactions were executed by the directors and original consent to transfer were issued by the commissioner of lands;
- vii) The said land has been in dispute and there is an ongoing civil case number 348 of 1999 High Court of Nakuru; and
- viii) Currently there is a restriction put on the said parcel of land. This was put after the advocate firm of Sheth Wathigo Advocates wrote a letter to district land registrar on 21<sup>st</sup> June, 2010 to restrict land against any dealings without any consent from Nita Shah.

**Submission from Mr. Willy Kariuki, Nakuru County Education Officer**

He informed the Committee as follows:- That,

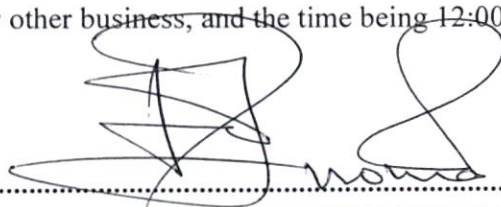
- i) Naka primary school is a public school established in 1999;
- ii) In 1999 the Municipal Council of Nakuru realized that there was need for a school in that area since there were many people settled there;
- iii) The originally proposed name for the school was “Saimoro” but later on it was changed to “Naka”;
- iv) Currently the school has a population of 315 pupils. However, the number could have been higher weren’t it not for the dispute surrounding the ownership of the land; and
- v) Although the Ministry of Education recognizes its existence the school is not yet registered since it does not have a title deed.

**MINUTE NO. DCL/LN/2016/318**

**ADJOURNMENT**

There being no any other business, and the time being 12:00 pm the meeting was adjourned.

SIGNED.....



(CHAIRPERSON)

DATE.....

20/ May / 2017

**MINUTES OF THE 65<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON THURSDAY 4<sup>TH</sup> AUGUST, 2016, IN THE BOARDROOM OF FOURTH FLOOR PROTECTION HOUSE PARLIAMENT BUILDINGS AT 10.00 AM**

**PRESENT:**

- |  |                 |
|--|-----------------|
| 1. The Hon. John Kihagi, M.P.          | <b>Chairing</b> |
| 2. The Hon. Francis W. Nderitu, M.P.   |                 |
| 3. The Hon. Bernard Bett, M.P.         |                 |
| 4. The Hon. Hellen Chepkwony, M.P.     |                 |
| 5. The Hon. Kipruto Moi, M.P.          |                 |
| 6. The Hon. Benson Mbai, M.P.          |                 |
| 7. The Hon. Julius Ndegwa, M.P.        |                 |
| 8. The Hon. Sarah Korere, M.P.         |                 |
| 9. The Hon. Esther Murugi, M.P.        |                 |
| 10. The Hon. Omar Mwinyi, M.P.         |                 |
| 11. The Hon. Patrick Makau, M.P.       |                 |
| 12. The Hon. Suleiman Dori, M.P.       |                 |
| 13. The Hon. Mathew L. Lempurkel, M.P. |                 |
| 14. The Hon. Dr. Paul Otuoma, M.P.     |                 |
| 15. The Hon. George Oner, M.P.         |                 |
| 16. The Hon. Shakila Abdallah, M.P.    |                 |
| 17. The Hon. Onesmus Ngunjiri, M.P.    |                 |
| 18. The Hon. Thomas Mwadeghu, M.P.     |                 |

**ABSENT WITH APOLOGIES:**

- |  |                         |
|--|-------------------------|
| 1. The Hon. Alex Mwiru, M.P.             | <b>Chairperson</b>      |
| 2. The Hon. Moses Ole Sakuda, M.P.       | <b>Vice Chairperson</b> |
| 3. The Hon. Mutava Musyimi, M.P.         |                         |
| 4. The Hon. Mpuru Aburi, M.P.            |                         |
| 5. The Hon. Hezron Awiti Bollo, M.P.     |                         |
| 6. The Hon. Eusilah Ngeny, M.P.          |                         |
| 7. The Hon. Athman Shariff, M.P.         |                         |
| 8. The Hon. Kanini Kega, M.P.            |                         |
| 9. The Hon. Francis Njenga Kigo, M.P.    |                         |
| 10. The Hon. Joseph Oyugi Magwanga, M.P. |                         |

Hon. David Gikaria – Nakuru Town East Constituency

**IN ATTENDANCE:**

**KENYA NATIONAL ASSEMBLY**

- |                        |                     |
|------------------------|---------------------|
| 1. Mr. Joshua Ondari   | Clerk Assistant III |
| 2. Mr. Emmanuel Muyodi | Clerk Assistant III |
| 3. Mr. Yakub Ahmed     | Media Officer       |

4. Ms. Winnie Atieno

Audio Officer

**MINUTE NO. DCL/LN/2016/262**

**PRELIMINARIES**

The chairman called the meeting to order at 10.20 a.m. with a word of prayer from the Hon. Julius Ndegwa, MP.

**MINUTE NO. DCL/LN/2016/263**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted as hereunder after being proposed by the Hon. Suleiman Dori, MP and Seconded by the Hon. Francis Nderitu, M.P.

**AGENDA**

1. Prayers
2. Preliminaries/introduction
3. Communication from the Chair
4. Confirmation of Minutes
5. Matters Arising
6. Bills
7. Petition
8. Papers
9. Statements:-
10. Substantive Agenda:-  
**Petition by the Hon. David Gikaria on behalf of the residents of Nakuru Town East Constituency on revocation and cancellation of title for land LR. No. Nakuru Municipality Block 23/108, belonging to Naka Primary School**
11. Any Other Business
12. Date of the Next Sitting

**MINUTE NO. DCL/LN/2016/264**

**PETITIONS**

**Petition by The David Gikaria on behalf of the residents of Nakuru Town East Constituency on revocation and cancellation of title for land LR. No. Nakuru Municipality Block 23/108, belonging to Naka Primary School**

**He further informed the Committee as follows;**

1. Nakuru Municipality Block 23 is a piece of private agricultural land registered as LR. No. 462/2 and owned by Nakuru Development Company Limited;
2. On all about 1985, Nakuru Development Housing Company Limited sought consent from the then local municipality in a meeting held on 3<sup>rd</sup> October, 1985 to subdivide the said block into individual residential blocks with about 10 acres set aside for a public utility;

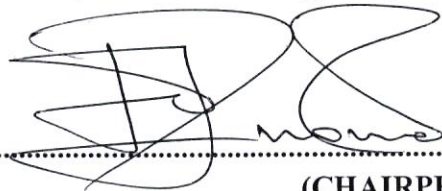
3. The approval was granted on 6<sup>th</sup> November, 1985 in a meeting of the company as all the requirement as outlined by law had been met and the said decision was communicated to the Commissioner of lands who approved the proposed plan and subsequently gave it a new registration as MNB23;
4. The approved plan was consequently surrendered with the then area local authority as a public utility for construction of a primary school;
5. On all about June, 1999 the then area local authority was served with an order restraining it from constructing the said school on the land alleging that it instead belong to an individual and/or company called Pyboard Cooperative Society Limited;
6. Pyboard Cooperative Society Limited alleged that it bought the land from a company called Hyrax Developers Limited which was not in existence as per the search conducted at Nairobi Land Registry;
7. Further Survey done on 13<sup>th</sup> August 1999 indicated that the land in question was a public utility and was held in trust for the residents of Nakuru Municipality and the Community needed to have been furnished with any changes and/or emerging issues, if any;
8. The agreement between Pyboard Cooperative Society Limited and Hyrax Developers Limited dated 2<sup>nd</sup> October, 1998 regarding the purported transfer of Nakuru Municipality Block 23 is null and void as the land is a public utility and therefore any title issued in respect of the said agreement had been fraudulently obtained and contravenes Cap 300 of the laws of Kenya;
9. The National Land Commission issued a letter on 8<sup>th</sup> October, 2016 that the land belongs to the school because it is a public utility but two months later rescinded its letter;

**MINUTE NO. DCL/LN/2016/265**

**ADJOURNMENT & DATE OF THE NEXT SITTING**

There being no any other business, and the time being 1:05 pm the meeting was adjourned.

SIGNED.....



(CHAIRPERSON)

DATE.....

20 / May / 2017





## MINISTRY OF LANDS AND PHYSICAL PLANNING

### DEPARTMENTAL COMMITTEE ON LANDS

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**Petition by Hon David Gikaria MP on Alleged revocation and cancellation of title for land parcel LR. No Nakuru Municipality Block 23/108 presented**

- a) Chronological history of ownership of the said land
- b) The current status of the land
- c) The status of the title deed of Naka Primary School currently using the land
- d) The real owners of the land
- e) What is the ministry doing to ensure that the said land is reverted to Naka primary school
- f) Any other information relevant to solving the petition

### ANSWER

**Honarouble Chair, I wish to respond as follows:-**

- a) Chronological history of ownership of the said land.

The above parcel was formerly registered as LR 462/1 which was private agricultural land. The same block was subdivided by Nakuru Development Company Limited into 23 individual residential plots.

Upon subdivision Nakuru Development Co Limited (NAKA) surrendered some portions of land for public purpose and these include: -

- a) LR No Nakuru Municipality Block 23/108
- b) LR No Nakuru Municipality Block 23/521
- c) LR No Nakuru Municipality Block 23/523
- d) LR No Nakuru Municipality Block 23/519
- e) LR No Nakuru Municipality Block 23/520
- f) LR No Nakuru Municipality Block 23/273

#### **LR No NAKURU MUNICIPALITY BLOCK 23/108**

This parcel was set aside for use as a primary school. It measures approximately 3.719 Ha (9.1 acres).

From our records at the Nakuru Land Registry the first lessee was Joshua Kiptootorotich, Harun Chelanga and Stephen Kibowen all who held the TRUST for Saimoro Primary School.

The same was transferred to Hyrax Developers Limited on the 21<sup>st</sup> October 1998.

Subsequently on 24<sup>th</sup> November 1998 Hyrax Developers Limited transferred this parcel in favour of Pyboard Housing Cooperative Society Limited.

On 29<sup>th</sup> March 2011 the same was transferred to Enze Limited who until today remains the registered owner as per the green card held at Nakuru Land Registry **(see Annex II copy of green card attached)**

**b) The current status of the land.**

Hon chair,

According to our records, the land has been restricted on request from the firm of SHETH WATHIGO ADVOCATES as evidence on the attached copy of the green card. **(see Annex II)**

**c) The status of the title deed of Naka Primary School currently using the land**

Honorable chair as stated above the land has been restricted on request from the firm of SHETH WATHIGO ADVOCATES as evidence on the attached copy of the green card.**(see Annex II)**

**d) The owners of the said land.**

Under section 14 of the NLC Act mandates the commission to review of grants and dispositions.

The commission on 8<sup>th</sup> October 2015 after exercising its quasi-judicial powers as provided by the law, recommended the following:

1. The registrar of titles sitting in Nakuru to revoke the title LR Nakuru Municipality Block 23/108.
2. The same parcel to revert back to National Government for use of public school as attended.

Hon chair the Ministry is bound by this decision. **( See Annex 12, a ruling by NLC)**

e) **What is the Ministry doing to ensure that the land is reverted back to Naka Primary School.**

Hon chair as this committee is aware, public land is administered by the National Land Commission as mandated under Article 62 of the constitution.

My Ministry is working very closely with the NLC to ensure this land is repossessed for its initial intended purpose

ANNEX 5.

## **Submission from the Petitioner**





# NAKA A RESIDENTS ASSOCIATION

P.O. BOX 12574 - 20100

NAKURU

TEL:-0723-179512, 0722-504889

THE CHAIRMAN  
NATIONAL LAND COMMISSION  
ARDHI HOUSE 1<sup>ST</sup> NGONG AVENUE  
P.O BOX 44417-00100  
NAIROBI

*Talib  
He. H. H. H. H.  
W. K. K. K. K.  
J. C. C. C. C.  
Francis Mwangi  
7/10/2016*

6<sup>th</sup> July 2016

**PETITION AGAINST REVERSION OF THE NATIONAL  
LAND COMMISSIONS  
DETERMINATION FOR PUBLIC UTILITY LAND –  
NKU/MUNI/BLOCK 23/108.**

We the Naka Estate Residents have received unconfirmed report that you have reversed or you are in the process of reversing your earlier determination of 8th October 2015 concerning the Public Utility piece of land **Nku/Muni/Block 23/108.**

We are made to understand that you are basing your afterthought on having discovered that there was a court judgment on the matter in which some private developers were declared lawful owners of the land.

We would like to point out to you that your core mandate as the National Land Commission is to initiate investigations on issues to do with present or historical land injustices and recommend or determine appropriate redress or remedies.

It is also true that as an independent constitutional body, your commission is not supposed to be swayed one way or the other by outside forces especially after you have carried out your own investigations and have come up with a determination.

As per the time we registered the land ownership dispute with you, there was no case pending in court over this piece of land.



The matter had been concluded to our dissatisfaction and that is why we brought the dispute to your attention for redress.

In this matter, you will realize that there is one thing that all the parties involved agree on; one thing that will not change no matter what:- the fact that the land in question –**Nku/Muni/Block 23/108** - is a Public Utility land, set aside for use as a Public Primary School.

- 1) The first/original allottee and holder of the first certificate of lease was **Saimoro Primary School**. A Public Primary School. The School held the certificate of lease from **12<sup>th</sup>. March 1993 to 21<sup>st</sup>. October 1998** when the same was fraudulently transferred to Hyrax Developers Ltd. ( see appendix 1 attached)
- 2) In the sale agreement between the Pyboard Housing Co. op Society Ltd and the Hyrax Developers Ltd. Dated **22<sup>nd</sup>. October 1998**, the 3<sup>rd</sup> sale condition on page 2 states that the vendor shall apply itself fully truly and effectively to assist the purchaser to acquire and obtain the change of user of the sale property from a **Public Utility** to a residential usage and that the purchaser shall hold the vendor fully responsible for any and all the consequences arising from failure to obtain the user conversion (appendix 2 attached)
- 3) In his judicial observation, the presiding judge Hon. Luka Kimaru stated that according to the evidence adduced by both the plaintiff and the defendant it was evident that **the suit land was originally set aside as Public Utility Land** by the Nakuru Housing Development Company Ltd. when consent was granted for conversion of a large parcel of land from agricultural to residential cum commercial purposes. The suit land measuring 10 aces was surrendered to the commissioner of lands for the **purpose of setting up a Public Primary School** ( appendix 3 judgment document page 8)

- 4) The judge also stated that it was apparent that the said **Hyrax Developers Ltd. manipulated the land allocation system** so as to have the suit land allocated to it. ( appendix 3. Judgment document page 9).
- 5) The National Land Commission in its determination titled ‘Naka Estate Nakuru‘ and dated 8<sup>th</sup> October 2015 asserts in its general analysis on page 4/5 that the surrender of **Nku/Muni/Block 23/108** parcel of land among others for **Public Purpose** automatically became **Public Utility Land** and was therefore not available for allocation to private individuals.

From the above extracts from various relevant documents, it is quite evident that the parcel of land **Nku/Muni/Block 23/108 is a Public Utility land**, set aside for use as a **Public Primary School**.

By the operation of law as was in the repealed Registration of Titles Act, a parcel land originally set aside or planned for public purpose was never available for allocation to individuals or private developers

In the current Land Act of 2012 Section 12 (2) (d) – it is stated that **Public Land** that has been **reserved for Education** among other strategic public uses **cannot** be allocated to individuals.

Pursuant to the aforesaid, we would like to **petition** your good office/Commission to declare conclusively that the parcel of land **Nku/Mun/Block 23/108** is a **Public Utility Land** set aside for **Public Primary School** and therefore **cannot** be allocated to individuals or private developers  
You should also take a bold step and uphold the revocation of the certificate of lease held by the ENSE Ltd and revert this piece of land **Nku/Muni/Block 23/108** to the National Government, Ministry of Education for construction of a **Public Primary School** as had been originally intended

We will resist any attempt to deprive us of the Public Utility Lands within our estate –Naka- and especially where due process and procedure is not followed or adhered-to.

It is us,- the **Naka Residents**- who initiated the process in which you, -the National Land Commission- carried out the necessary investigations, which

enabled you to review the grants and disposition of the **Public Utility Lands** in our Estate and then made a determination which you Gazetted. This is a commitment which you cannot just discard or wish-away.

We demand that we should be involved in any subsequent reviews and/or determinations made thereof.

Thank you in advance.

Yours faithfully,

**Joseph Karu Karanja**  
**Chairman**



**Hezron Nandasaba**  
**Secretary**



Cc.

- 1) The Cabinet Secretary  
Ministry of Education Science & Technology,  
Nairobi.
- 2) Hon, David Gikaria  
M.P. Nakuru Town East Constituency.
- 3) The Secretary,  
County Land Management Board.  
Nakuru County.
- 4) Mbeche & Co. Advocates  
Nakuru.
- 5) County Director of Education  
Nakuru County.
- 6) Sub-County Director of Education  
Nakuru Sub-County.

# NAKA PRIMARY SCHOOL P.O BOX 13876 – 20100 NAKURU

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7<sup>TH</sup> OCTOBER 2016

THE CHAIRMAN,  
PARLIAMENTARY LAND,  
AND HOUSING COMMITTEE.

## **RE: OWNERSHIP DISPUTE FOR PARCEL OF LAND NKU/MUNI/BLOCK 23/108**

1. In 1985 Nakuru Housing Development Company sought for consent from the Municipal Council of Nakuru to Sub-divide a large agricultural farm into residential plots.
2. The Municipal Council of Nakuru directed the Housing Company to set aside some of the land for Social Amenities or Public utilities such as School, Churches and Social hall among others.
3. The Nakuru Housing Development Company complied with this requirement and Parcel No. NKU/MUNI/BLOCK 23/108 measuring 10 acres was set aside as a Public utility for construction of a Primary School.
4. On 12<sup>th</sup> March 1993, a certificate of lease for the parcel of land NKU/MUNI/BLOCK 23/108 was issued to some 3 individuals who were referred to as trustees of Saimoro Primary School. This issuance of the certificate of lease to the purported trustees was without the knowledge of the Municipal Council of Nakuru who was by operation of the law, the Custodian of all the Public utility lands for schools with its jurisdiction.
5. Then 5 years and 7 months later, on the 21<sup>st</sup> October 1998, the purported trustees manipulated the land allocation/registration system and transferred the Certificate of lease for Saimoro Primary School to Hyrax Developers Company in which they were directors.
6. On the following day 22<sup>nd</sup> October 1998, the Hyrax Developers Company sold the same land Nku/muni/block 23/108 To Pyboard Housing Coop Society.
7. The Pyboard Housing Cooperative Society were aware that the land they were buying was for Public Utility. In their sale agreement document dated 22-10-1998, the 3<sup>rd</sup> condition on page 2 states that the vendor (Hyrax Developers) shall apply itself fully, truly and effectively to assist the purchaser to acquire and obtain the change of user of the sale property from a Public Utility to residential usage.
8. In 1999, the Municipal Council of Nakuru realized that there was need for a school in this area since many people settled in what now was known as Naka Estate. So the Council constructed temporary structures on NKU/MUNI/BLOCK/23/108 to meet the immediate need for school since the children in Naka Estate were travelling long distances to access schools in other estates.
9. The Plyboard Housing Coop Society went to Court claiming that the council was illegally occupying its land NKU/MUNI/ BLOCK 23/108.

10. The legal process took 9 years, before a judgment was delivered on 16<sup>th</sup> January 2008 in favour of the ply board Housing Coop Society with cost.
11. The Municipal Council of Nakuru appealed against the judgment and prayed for stay on execution of the orders there of.
12. On 15<sup>th</sup> November 2010 even as the appeal was pending in court the Plyboard Housing Coop. Society sold the land NKU/MUNI/BLOCK 23/108 to ENSE Ltd. On 29<sup>th</sup> March 20100 ENSE Ltd was issued with certificate of lease for the parcel No. NKU/MUNI/BLOCK 23/108 while the ownership dispute appeal was still pending in court.
13. On 14<sup>th</sup> April 2011, consent to withdraw the appeal by the municipal Council of Nakuru against the judgment by Hon. Luka Kimaru was entered by both the plaintiff and the defendant.
14. In 2012 the school was coarsed to relocate to the nursery school land – NKU/MUNI/BLOCK 23/273 measuring 0.75 acre. ENSE Ltd fenced the 10 acre Primary school land.
15. The Naka Residents lodged a complaint to the National Land Commission claiming that the loss of the 10 acre Public Utility Land NKU/MUNI/BLOCK 23/108 was a social injustice meted out to them through the Court. They requested the National Land Commission to review the grants and dispositions of all the Public Utility parcels of lands within their estate, NKU/MUNBI/BLOCK 23/108 being among them.
16. The National Land Commission carried out their investigations. In their determination dated 8<sup>th</sup> October 2015 the commission declared that NKU/MUNI/BLOCK 23/108 was a public Utility land set aside for construction of a primary school. It was stated that this land was never available for allocation to private individuals. They ordered the certificate of lease held by private individuals be revoked and that the primary school located in the nursery school land should move to the land NKU/MUNI/BLOCK 23/108.
17. In March 2016 I wrote to the County Land Management Board – Nakuru County – seeking information as to how we were to acquire the certificate of lease for NKU/MUNI/BLOCK 23/108.
18. Later in May 2016, there were rumors that the National Land Commission had reversed their earlier decision to revoke. The certificate of lease for NKU/MUNI/BLOCK 23/108, held by some private individuals.

**Compiled by:-**

**FRANCIS K. MWANGI**  
**HEAD TEACHER**  
**NAKA PRIMARY SCHOOL**

