

Approved for tabling. *RA SNA*
5/12/18

REPUBLIC OF KENYA

PARLIAMENT
OF KENYA
LIBRARY



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION

THE DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF A PETITION BY THE HON. GEORGE THEURI M.P ON BEHALF OF THE RESIDENTS OF MOWLEM WARD REGARDING ALLEGED IRREGULAR ALLOCATION OF LAND L.R. NO.11379/3

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI


 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 DEC 2018	DAY: THURSDAY
TABLED BY:	<i>Chers, Lands Committee</i>
CLERK-AT THE-TABLE:	DECEMBER, 2018 <i>Moses Lemung</i>



Table of Contents

CHAIRPERSON'S FOREWORD	3
EXECUTIVE SUMMARY	4
1.0 PREFACE	6
1.1 MANDATE OF THE COMMITTEE	6
THE DEPARTMENTAL COMMITTEE ON LANDS IS ESTABLISHED PURSUANT TO THE PROVISIONS OF STANDING ORDER No. 216 WITH THE FOLLOWING TERMS OF REFERENCE:	6
1.2 COMMITTEE SUBJECTS	6
1.3 OVERSIGHT	6
1.4 COMMITTEE MEMBERSHIP	7
COMMITTEE SECRETARIAT	7
1.5 RECOMMENDATIONS	8
2.0 INTRODUCTION	9
3.0 SUBMISSIONS	10
3.1 SUBMISSIONS BY HON GEORGE THEURI, MP AND THE PETITIONERS	10
3.2 SUBMISSIONS BY REPRESENTATIVES OF KIAMBU DANDORA FARMERS COMPANY LIMITED	11
3.3 SUBMISSIONS BY DANDORA HOUSING SCHEME COMPANY LIMITED	13
3.4 SUBMISSIONS BY THE CHAIRPERSON, NATIONAL LAND COMMISSION	15
3.5 SUBMISSIONS BY THE CHIEF ADMINISTRATIVE SECRETARY, MINISTRY OF LANDS AND PHYSICAL PLANNING	17
4.0 COMMITTEE OBSERVATIONS AND FINDINGS	19
5.0 COMMITTEE RECOMMENDATIONS	21

Appendices

- Adoption List
- Committee minutes
- Submission by the petitioners
- Submissions by representatives of Kiambu Dandora Farmers Company
- Submissions by representatives of Dandora Housing Scheme Company
- Submissions by Chairperson, National Land Commission
- Submissions by Chief Administrative Secretary, Ministry of Lands and Physical Planning

Chairperson's foreword

The petition by the Hon. George Theuri, MP on behalf of residents of Mowlem Ward regarding alleged irregular allocation of Land LR. No. 11379/3 was tabled in the House on 13th December 2017, pursuant to Article 119 (1) of the Constitution and Standing Order No. 225 (2) (a). The House, pursuant to Standing Order 227, referred the petition to the Departmental Committee on Lands for consideration. The Committee received the petition on 13th December 2017 and set out a procedure for its consideration and to report to the House as set out in Standing Order No 227(2).

In considering the petition the Committee held meetings with the Petitioners and the Hon. George Theuri, MP, representatives of Kiambu Dandora Farmers Company Ltd., representatives of Dandora Housing Scheme Ltd, the Chairperson National Land Commission and the Chief Administrative Secretary, Ministry of Lands and Physical Planning.

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. George Theuri, MP, representatives of Kiambu Dandora Farmers Company Ltd., representatives of Dandora Housing Scheme Ltd, the Chairperson National Land Commission and the Chief Administrative Secretary, Ministry of Lands and Physical Planning for the submissions they made.

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 Land on its consideration of a petition by Hon. George Theuri, MP on behalf of residents of Mowlem Ward regarding alleged irregular allocation of Land LR. No.11379/3.

EXECUTIVE SUMMARY

The purpose of this report is to respond to prayers made by Hon. George Theuri, MP on behalf of residents of Mowlem Ward in a petition regarding alleged irregular allocation of Land LR. No.11379/3. The Committee observed that the National Land Commission and the Ministry of Lands and Physical Planning held different views on the ownership of the disputed land. The commission stated that the land belonged to Kiambu Dandora Farmers Company while the Ministry indicated that it belonged to Dandora Housing Scheme Ltd. This led to an embarrassing situation in which two government agencies held conflicting positions on the matter.

The Committee also noted that a copy of a court decree in case No 1348/1972 issued on 18th October 2006 submitted to the Committee by of Kiambu Dandora Farmers Company Limited indicating that the court ruled in the favour of the company had a striking resemblance with another copy of a court ruling issued on 14th March 1985 that was submitted to the Committee by Dandora Housing Scheme Ltd which also indicated that the court vested the land in Dandora Housing Scheme Ltd case. Therefore, the authenticity of copies of the two court decrees would not be ascertained by the Committee.

Although the government had initiated the compulsory acquisition of LR. 11379 vide gazette notice No. 840 and 841 of 1974 and declared an intention to acquire the land under the Land Acquisition Act for purposes of urban development. The Committee did not find any evidence to indicate that any compensation money was paid to any party. Kshs. 1,316,980 that had been deposited in the court by the Ministry of Lands for onward transmission to the owner upon determination by the court. However, the money was returned to the Ministry of Lands by the court on 20th July 1993. Even though the compulsory acquisition of LR. No. 11379/3 by the government was not completed the then Ministry of Lands and Settlement allocated part of the land to several individual and companies that included Coca cola Ltd HAUL, EMCO and Steel structures.

The Committee observed that the two companies contesting ownership of the land accused each other of fraud. The representatives of Kiambu Dandora Farmers Company Ltd argued that a provisional title issued to Dandora Housing Limited following an order of the court granted on 6th August 1993 was obtained through fraud as the latter misled the court that the original title was lost. They further stated that Mr. Peterson Waithaka attempted to fraudulently transfer the title to his company MS/ Falcon Kenya Ltd. On the other hand, the representatives of Dandora Housing Scheme Ltd claimed that Kiambu Dandora Farmers Company used court orders obtained fraudulently to claim ownership of the land.

In response to the prayers by the petitioners, the Committee recommends the Cabinet Secretary, Ministry of Lands & Physical Planning and the Chairperson the National Land Commission should constitute a joint taskforce to conclusively investigate the matter with a view to determine the rightful owners within ninety days.

The Committee also recommended that the Chairperson, National Land Commission should withdraw a letter Ref NLC/CF/79 dated 19th July 2016 indicating that it entered into an out of court settlement with Kiambu Dandora Farmers Company Ltd regarding constitutional petition No. 47 of 2011 in which the commission undertook to resolve the dispute by securing the open spaces and deliver the same to Kiambu Dandora Farmers Company.

Lastly the Directorate of Criminal Investigations and the Ethics and Anti – Corruption Commission should investigate allegations of fraud and forgery of documents regarding the ownership of LR. No. 11379/3 with a view to recommending the prosecuting any person found culpable of having committed a criminal offence.

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 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 programmes 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

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

1.3 Oversight

The Committee oversights:

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

1.4 Committee Membership

Chairperson	The Hon. Dr. Rachael Nyamai, MP
Vice Chairperson	The Hon. Khatib Mwashetani, MP
	The Hon. Jayne Njeri Wanjiru Kihara, MP
	The Hon Joshua Kutuny Serem, MP
	The Hon. Kimani Ngunjiri, MP
	The Hon. Mishi Mboko, MP
	The Hon. Omar Mwinyi, MP
	The Hon. Ali Mbogo, MP
	The Hon. Babu Owino, MP
	The Hon. Caleb Kipkemei Kositany, MP
	The Hon. Catherine Waruguru, MP
	The Hon George Aladwa, MP
	The Hon George Risa Sunkuyia, MP
	The Hon. Jane Wanjuki Njiru, MP
	The Hon. Josphat Gichunge Mwirabua Kabeabea, MP
	The Hon. Owen Yaa Baya, MP
	The Hon. Samuel Kinuthia Gachobe, MP
	The Hon. Simon Nganga Kingara, MP
	The Hon Teddy Mwambire, MP

Committee Secretariat

Clerk Assistant I	Mr. Leonard Machira
Clerk Assistant III	Mr. Ahmad Guliye
Senior Fiscal Analyst	Mr. Joash Kosiba
Legal Counsel II	Ms. Jemimah Waigwa
Research Officer III	Mr. Joseph Tiyan
Audio Recording Officer	Mr. John Mungai
Media Relations Officer	Ms. Winfred Kizia
Serjeant At Arms	Ms. Peris Kaburi

1.5 Recommendations

In response to the prayers by the petitioners, the Committee recommends that: -

1. The National Land Commission does compensate the common membership of two hundred and twenty five (225) members of Dandora Housing Scheme Limited and Kiambu Dandora Farmers Company Limited in accordance with the law.
2. The Directorate of Criminal Investigations and the Ethics and Anti – Corruption Commission does investigate allegations of fraud and forgery of documents such as titles and court orders regarding the ownership of LR. No. 11379/3 with a view of recommending the prosecution of any person found culpable of having committed a criminal offence.

2.0 INTRODUCTION

- 2.1 The petition by residents of Mowlem Ward regarding alleged irregular allocation of Land LR. No.11379/3 was tabled in the House by the Hon. George Theuri, MP on 13th December 2017, pursuant to Standing Order 225 (2) (a).
- 2.2 The petition was referred to the Committee on 13th December 2016 for consideration and preparation of a report. The Committee considered the petition pursuant to the provisions of Standing Order 227.
- 2.3 The petitioners wished to draw to the attention of the House to the following, that: -
- Land reference 11379/3 is situated in Mowlem Ward, Embakasi West Constituency, Nairobi County.
 - The petitioners have been residing in the said parcel of land since 1990.
 - That in 2016 the said parcel of land was allocated to a group referred to as Kiambu Dandora Group
 - Several individuals and groups were claiming ownership of the said parcel of land and were holding titles to the land.
 - In the recent past the petitioners had lost their properties due to conflicting orders issued by the National Land Commission and the courts.
 - The residents had witnessed police harassment and brutality by some land grabbers and conflicts over the said land.
 - Efforts to resolve the matter with the relevant government agencies had been futile
 - The matter presented in the petition were not pending before any tribunal, court of law or Independent body.

The petitioners prayed that the National Assembly, through the Departmental Committee on Lands: -

- a) Recommends immediate investigations into the alleged irregular allocation and determine the validity of the current allocations and ensure corrective action is taken.
- b) Ensure that the plight of the petitioners is addressed.
- c) Make any other order or direction that it deems fit in the circumstances of the matter.

3.0 SUBMISSIONS

3.1 Submissions by Hon George Theuri, MP and the petitioners

The Committee held a meeting with Hon George Theuri, MP and the petitioners on Thursday 7th June 2018. During the meeting the Committee was informed, that:

- i. The government had compulsorily acquired 161 acres of part of LR. No. 11379/3 situated in Embakasi for the development of light industries in the 1970s. Thereafter, the government allocated part of the land to several companies that included Coca cola Ltd, HAUL, EMCO and Steel Structures Ltd in 1974;
 - ii. The government later allocated the land to other persons, who were issued with title deeds and some of them had used the said titles as collateral to secure loans;
 - iii. Squatters, including the petitioners occupied part of the undeveloped land that was acquired by the government in 1990 and currently approximately 70,000 people were living on the said land;
 - iv. Some of the owners sued the squatters seeking access to their land. Several squatters negotiated with the title holders and paid for the land they had occupied including Ksh. 62, 000,000 paid to AERO SUPPORT Ltd;
 - v. The National Land Commission issued a letter Ref NLC/CF/79 dated 19th July 2016 indicating that the commission had entered into an out of court settlement with Kiambu Dandora Farmers Company Ltd following a constitutional petition No. 47 of 2011 in which the commission undertook to resolve the long-standing land dispute by securing the open spaces and delivering the same to Kiambu Dandora Farmers Company. In the said letter the Commission requested the National Administration officers and the police to provide security to Kiambu Dandora Farmers Company to take possession of open spaces within the contested land and develop them;
 - vi. The Petitioners had not been consulted on the repossession of the land in question by Kaimbu Dandora Farmers Ltd Company and that the said company, with the assistance of the police and National Government Administration officers, had been harassing the petitioners;
 - vii. The petitioners had not been served with any court papers regarding constitutional petition No. 47 of 2011 and that Kiambu Dandora Farmers Ltd Company sought to
-

evict them from the land on the strength of the letter by the National Land Commission; and

- viii. The petitioners prayed that the National Assembly through the Departmental Committee on Land intervenes to have the matter investigated and ensure that corrective action is taken.

3.2 submissions by representatives of Kiambu Dandora Farmers Company Limited

The Committee held a meeting with representatives of Kiambu Dandora Farmers Company Ltd on Wednesday 18th July 2018. During the meeting the Committee was informed that the land in question land measures 331 acres and traverses Embakasi East and Embakasi West Constituencies in Nairobi County. The representatives stated that the land belongs to Kiambu Dandora Farmers Company and that the company held the title deed of the land. They further explained that Kiambu Dandora Farmers Company was incorporated in 1969 by a group of people who contributed money with the aim of buying the land that was previously owned by M/S Khan Nawaz, Khan Abbas and Mehdi Khan.

They also informed the Committee that all the instruments regarding the land were registered and payments had been made to the Khan family. Subsequently the land was transferred to Kiambu Dandora Farmers Ltd Company, who appointed five trustees to manage it on behalf of the members with a view to allocating each member a portion of the said land.

LR. NO 11379-ownership dispute: The Committee was further informed that in 1972 as the trustees were preparing to redistribute the land to the members, a dispute arose among the members who were divided into two groups; Kiambu Dandora Farmers Company Ltd and Dandora Housing Scheme Ltd. The matter was eventually resolved through a court decree issued in 2006 that stated that the disputed land belonged to Kiambu Dandora Farmers Company Ltd. In response to evidence tabled before the Committee that indicated that a ruling had been made in 1993 that vested the land in question to Dandora Housing Scheme Ltd. The representatives of Kiambu Dandora Farmers Company informed the Committee that the decree issued by the High Court in 1993 in favour of Dandora Housing Scheme Limited was set aside in a ruling made in 1999. This meant that the ownership of the disputed land reverted to Kiambu Dandora Farmers Company as confirmed by the court decree issued in 2006.

The representatives Kiambu Dandora Farmers Company Ltd also presented to the Committee copies of the following court orders and claimed that the said court orders, particularly the High Court ruling in Civil Case No. 1348 issued on 2006 vested the ownership of the land in question on the company:

- i. High Court Civil Case No. 1348 of 1972
 - ii. High Court Civil Case No. 3250 of 1995
 - iii. High Court Civil Case No. 735 of 1999
 - iv. High Court Civil Case No. 1903 of 1999
 - v. High Court Civil Case No. 1970 of 1999
 - vi. High Court Civil Case No. 1088 of 2000
-

- vii. High Court Civil Case No. 1420 of 2005
- viii. High Court Civil Case No. 618 of 2006
- ix. High Court Civil Case No. 447 of 2008

Compulsory acquisition of the land in question: The Committee was also informed that in 1974 the Government through the Commissioner of Lands initiated a process of compulsory acquisition of the land in question and issued a gazette notice to effect the said acquisition. However, the process was not completed as no compensation payments were made to Kiambu Dandora Farmers Company Ltd or to any other entity. Even though the compulsory acquisition of the land was not completed the Government allocated the land to different parties leading to the ensuring conflict between Kiambu Dandora Farmers Company Ltd and the new occupants of the land. In the process squatters, including the petitioners, invaded portions of the land.

Provisional title issued to Dandora Housing Scheme Limited: The representatives of Kiambu Dandora Farmers Company Ltd argued that a provisional title issued to Dandora Housing Scheme Limited following an order of the court granted on 6th August 1993 was obtained through fraud as the latter misled the court that the original title was lost. They argued that this was not true as the said original title was in the custody of Kiambu Dandora Farmers Company Limited. The Committee was also informed that the said court order was set aside by the court on 13th November 1993. They further stated that Mr. Peterson Waithaka, an official of Dandora Housing Scheme Limited, later attempted to fraudulently transfer the provisional title to his company MS/ Falcon Kenya Ltd.

Constitutional Petition No. 47 of 2011: The Committee was also informed that Kiambu Dandora Farmers Company Ltd, through Abdulahi Muiruri Mungai, filed a Constitutional petition No. 47 of 2011 against the Attorney General and the National Land Commission seeking payment of the market value of the land amounting to Kenya Shillings 17,035,200,000. The company also prayed that in the alternative the land reverted to the company. The representatives further indicated that the matter was still pending before court. Further the Committee was informed that all other cases related to the disputed land that were pending were consolidated in the said petition No. 47 of 2011.

The Committee was also informed that following the said Constitutional petition the National Land Commission and Kiambu Dandora Farmers Company Ltd held several consultative meetings with a view to resolving the matter out of court. The two parties executed a settlement agreement that allowed Kiambu Dandora Farmers Company to reclaim parts of their land that remained vacant. Also, the Commission undertook to regularize the occupation of the land by of members of Kiambu Dandora Farmers Company Ltd by issuing or causing to be issued letters of allotment to the said company within six months from the date of the execution of the agreement which was 18th August 2015. The said agreement was also filed in court.

The representatives also stated that the Nairobi County Government in the realization that the land is private had in consultation with the National Land Commission and the Ministry of Lands and Physical Planning approved the regularization of the land to members of Kiambu Dandora Farmers Company Ltd.

Lastly the representatives of Kaimbu Dandora Farmers Company Ltd argued that the Government should ensure that the land reverts to the company or in the alternative it should be compensated the for the land.

3.3 Submissions by Dandora Housing Scheme Company Limited

The Committee held a meeting with representatives of Dandora Housing Schemes Limited on Tuesday 31st July 2018. During the meeting the representatives informed the Committee that t Dandora Housing Schemes Limited was the legitimate owner of the land in question having acquired it in 1967 from M/S Khan Nawaz, Khan Abbas and Mehdi Khan. They explained that the Khan Family wanted to immigrate out of Kenya at the time and appointed five individuals namely; Kibiro Karanja, Reuben Kangara, Keingati Waiharo, Peter Gacheru Kingara and Njuguna Kimani, who had a partnership named Kiambu Dandora Farmers Company Ltd, as agents to facilitate the sale of the said land. The five agents offered the land for sale to the public between 1965 and 1967. Subsequently 225 persons contributed money towards the purchase of the said land on the understanding that the land would be allocated to the individual contributors after the vendor transferred it to the contributors.

Registration of the Land to Kiambu Dandora Farmers Company: The 225 contributors registered a company by the name Dandora Housing Schemes Limited on 13th August 1971 and applied to the agents to have the land transferred to the new company. However, the agents hijacked the deal by claiming that the money they paid to the vendor was their own and that it was not raised from the public and therefore the vendor had in effect sold the land to the five agents. The agents then registered the land in the name of Kiambu Dandora Farmers Company and failed to transfer it to Dandora Housing Scheme Ltd.

LR. No. 11379/3 Ownership Dispute The representatives of Dandora Housing Scheme Ltd further informed the Committee that the contributors became apprehensive when it was evident that no information was forthcoming from the agents regarding the sale of the land and conducted a search at the Ministry of Lands and discovered that the agents wanted to transfer the land to themselves. They then decided to seek advice from the then minister for Lands and Settlement who advised then to seek legal intervention to secure their interest in the land.

The Committee was further informed that the individuals who had contributed money towards the purchase of the land in question hired a lawyer, the late S.M Otieno who approached the agents' lawyer S. N. Waruhiu and agreed to suspend the registration of the land to the agents until the question of ownership was decided. In the meantime, Khan family wanted to finalize the sale the land and migrate out of the country. Therefore, the two lawyers advised that the land be transferred to the five agents as trustees to hold the land in trust for the contributors.

The land was to be transferred to the contributors' company being Dandora Housing Scheme Limited. The agents failed to fulfil the agreement.

The contributors subsequently sued the five agents and their company Kiambu Dandora Farmers Company through civil case HCC 1348 of 1972 seeking the transfer of the land to Dandora Housing Scheme Ltd. The court referred the matter to the then Provincial Commissioner, Nairobi Province who delegated it to the District Officer Makadara for arbitration. The matter was finally determined by the High Court in a ruling made on ...that vested the Land in Dandora Housing Scheme Ltd.

In 1985 the company extracted a court order in civil case HCC 1348 of 1972 that vested the entire land measuring 818 acres to Dandora Housing Scheme Ltd. However, the Ministry of Lands and Settlement declined to register the said decree on the pretext that the land was already government property following the purported compulsory acquisition in 1974. In 1993 Dandora Housing Scheme Ltd decided to go to court to have the 1985 decree enforced and get the land registered in its name. Following the said suit Justice Shields authorized the Deputy Registrar of the High Court to transfer the land to Dandora Housing Scheme Ltd. Deputy Registrar of the High Court effected the said transfer of the land to the company.

Dandora Housing Scheme Ltd was issued with a provisional title for the land in December 1988 after it was established that all the five agents who were the trustees were dead and the original title could not be obtained. The title was later charged to a company known as Falcon at the request of Dandora Housing Scheme Ltd. The representatives dismissed the allegations made by Kiambu Dandora Farmers Company Ltd that obtaining the provisional title was obtained fraudulently.

Loss of the Provisional title: The Committee was informed that Dandora Housing Scheme Ltd submitted the provisional title to the Ministry Lands of Lands and Physical Planning in June 2011 to discharge a charge made to Falcon Kenya Limited. The title had not been returned to Dandora Housing Scheme Ltd to date with the Ministry of Lands officials claiming that it had been lost.

Compulsory acquisition of the land in question: The Committee was also informed that in 1974 the Government through the Commissioner of Lands initiated a process of compulsory acquisition of the land in question and issued a gazette notice to effect the said acquisition. However, the process was not completed as no compensation payments were made to Dandora Housing Scheme or to any other entity. Meanwhile in August 1972 the Commissioner of Lands initiated a private deal to purchase 300 acres from Kiambu Dandora Farmers Company. Dandora Housing Schemes Company objected the said deal until the question of ownership had been decided and notified the Commissioner of Lands of the same. Dandora Housing Schemes Company also placed a caveat on the land.

The land remained unused until 1974 when the Commissioner of Lands started alienating it to several companies and persons contrary to the compulsory acquisition Act by claiming that Dandora Housing Schemes Limited would not be able to develop the land to the required standard. The Committee was further informed that High Court also returned the money for the compulsory acquisition of the land that had been lodged in court to the Commissioner of lands. Therefore, the land reverted to Dandora Housing Scheme Ltd.

Constitutional Petition No. 47 of 2011: The Committee was also informed that Kiambu Dandora Farmers Company Ltd through Abdulahi Muiruri Mungai filed a Constitutional petition No. 47 of 2011 against the Attorney General and the National Land Commission seeking payment of the market value of the land amounting to Kenya Shillings 17,035,200,000. The company also prayed that in the alternative the land reverts to the company. Following the said petition, the National Land Commission entered into an agreement with Kiambu Dandora Farmers Company Ltd that allowed Kiambu Dandora Farmers Company to reclaim parts of their land that remained vacant. Also, the Commission undertook to regularize the occupation of members of Kiambu Dandora Farmers Company Ltd by issuing or causing to be issued letters of allotment to the said members through their company Kiambu Dandora Farmers Company within six months from the date of the execution of the agreement which was 18th August 2015. The representatives of Dandora Housing Scheme Ltd argued that the said agreement was irregular as the land in question was private land and therefore the National Land Commission had no mandate to intervene in favour of one of the protagonists in the disputed land.

3.4 Submissions by the Chairperson, National Land Commission

The Committee held a meeting with the Chairperson National Land Commission on Thursday 26th July 2018. During the meeting the Committee was informed that the land in question was owned by Kiambu Dandora Farmers Company having purchased it from M/S Khan Nawaz, Khan Abbas and Mehdi Khan and that the transfer was registered on 8th April 1970 in the name of five trustees namely: Karanja Kibicho, Reuben Kanagara , Keingati Waiharo, Njuguna Kimanai and Peter Gachecru as evidenced by a copy a the title of the land that was availed to the Committee. A trust deed was drawn between the five trustees and 225 persons who had contributed money. The said trust deed indicated that the trustees held the land in own their own behalf and on behalf of the contributors who had formed a company known as Kiambu Dandora Farmers Company. He added that the five original trustees had died and were replaced by Raymond Mwangi Waweru, Major (Rtd) Peter Karumbi Keingati, Abdulahi Muingai Muiruri, Kariuki Njoroge and Joseph Nduati Ng'endo.

Ownership dispute: The Committee was informed that upon registration of the land LR.NO. 11379/3 to the trustees of Kiambu Farmers Company in April 1970, a splinter group in the name of Dandora Housing Scheme Company emerged with the aim of taking the leadership and management of the land from Kiambu Dandora Farmers Company Ltd. This led to various court cases such as HCC No. 1348 of 1972. The High Court awarded the ownership to Dandora

Housing Scheme Company in 1985 but Kiambu Dandora Farmers Company appealed the ruling vide civil case No. 1903 of 1999 and the judgement was overturned in favour of the latter. Therefore, the cases having been determined in favour of Kiambu Dandora Farmers Company the ownership of the land reverted to the company.

Compulsory acquisition of LR. 11379: The Chairperson informed the Committee that the government vide gazette notice No. 840 and 841 of 1974 declared an intention to acquire the land under the Land Acquisition Act for purposes of urban development. Following the gazette notices several cases were lodged in court challenging the ownership of the land. The compensation money amounting to Kshs. 1,316,980 was deposited in the court by the Ministry of Lands for onward transmission to the owner upon determination by the court. However, the money was returned to the Ministry of Lands by the court on 20th July 1993. Therefore, the Commission argued the land was not vested on the government and the title was still in the hands of Kiambu Dandora Farmers Company

Allocation of the disputed land to individuals and companies: During the period when the cases were being heard and for purposes of ensuring organized development the Ministry of Lands and Settlement jointly with the Nairobi City Council prepared a Part Development Plan No.42.12.77 that was approved on 8th January 1979 as plan No. 212 which covered LR.NO.11379/3 and other parts of the larger Dandora. The plan created several industrial plots. 657 acres out of the total 818 acres from the larger LR. NO.11379/3 were allocated different firms and individuals in the belief that the land vested in the government following the planned compulsory acquisition and hence the land was available for allocation. Later the situation degenerated, and cartels, politicians, provincial administration, City Council of Nairobi, private individuals and outlawed gangs and sects started selling the land to unsuspecting Kenyans using violence to give vacant possession of the land.

Constitutional petition No. 47 of 2011: Kiambu Dandora Farmers Company through Abdullahi Muiruri Mungai and others in Constitutional petition No. 47 of 2011 sued the National Land Commission and the Attorney General demanding to be compensation for the land at a market value of Kshs. 11,035,200,000 or in the alternative the land reverts to Kiambu Dandora Farmers Company. The Commission held several consultative meetings with the company with a view to resolving the matter out of court and the parties executed a settlement agreement that allowed Kiambu Dandora Farmers Company to reclaim parts of their land that remained vacant. Also, the Commission undertook to regularize the occupation of members of Kiambu Dandora Farmers Company Ltd by issuing or causing to be issued letters of allotment to the said members through their company Kiambu Dandora Farmers Company within six months from the date of the execution of the agreement which was 18th August 2015. The said agreement was also filed in court. The Nairobi County Government in the realization that the land is private had in consultation with the National Land Commission and the Ministry of Lands and Physical Planning approved the regularization of the land to members of Kiambu Dandora Farmers Company.

3.5 Submissions by the Chief Administrative Secretary, Ministry of Lands and Physical Planning

The Committee held a meeting with the Chief Administrative Secretary, Ministry of Lands and Physical Planning on Thursday 26th July 2018. During the meeting the Committee was informed that the land originally belonged M/S Khan Nawaz, Khan Abbas and Mehdi Khan. The Khan Family wanted to immigrate out of Kenya at the time and appointed five individuals namely; Kibiro Karanja, Reuben Kangara, Keingati Waiharo, Peter Gacheru Kingara and Njuguna Kimani who a group of 225 individuals that were interested in buying the land. The five agents upon receiving the purchase price from the 225 persons formed a company known as Kiambu Dandora Farmers Company and decided to transfer the land to the said company

A dispute arose when the five members refused to transfer the land to the members. The disgruntled members formed a different company by the name Dandora Housing Scheme Ltd and filed a court case number HCCC No. 1348 of 1972 and the matter was referred for arbitration to the Nairobi Provincial Commissioner for arbitration. The award of the Provincial Commissioner was adopted, and a ruling made by Hon. Justice Sachdeva dated 8th September 1983 conferred the land to the 225 contributors plus the five agents. The Chief Administrative Secretary also submitted a copy of the court ruling and the list of beneficiaries approved by the court. Based on the same he informed the committee that the land belonged to Dandora Housing Scheme Ltd.

Custody of the Original title for the disputed land: The Committee was informed that the original title for the disputed land was held by Kiambu Dandora Farmers Company Limited as the title was registered before the dispute over the land arose. However, the Ministry issued a provisional title to Dandora Housing Scheme Ltd following a court ruling regarding the ownership of the land in favour of the company. The Committee was informed that the provisional title obtained Dandora Housing Scheme, and which was collected by Mr. Peterson Waithaka was later fraudulently transferred to his private company, Falcon Kenya Ltd.

The Committee was further informed that the Ministry was aware of the complaint by the petitioners and residents of Mowlem Ward, who had submitted a claim over the land LR. No. 11379/3. The Ministry through the Public Complaints and Resolution Committee convened a meeting on 10th March 2016 which was attended by representative of Mowlem Ward residents and Dandora Housing Scheme Ltd. The Public Complaints and Resolution Committee ruled that:

- i. Dandora Housing Scheme Ltd were the rightful owners of the parcel of land LR No. 11379/3;
- ii. The Secretary of Lands should institute urgent and necessary measures to issue the group with new titles;

- iii. Some officers in the Ministry were engaged in corrupt practices leading to the delay in the issuance of the title deed; and
- iv. The Mowlem Ward residents should negotiate with Dandora Housing Scheme Ltd on a willing seller, a willing buyer basis to ensure their stay on the land

The Chief administrative Secretary recommended that a joint taskforce comprising of the Ministry of Lands and Physical Planning & the National Land Commission be constituted to look conclusively into the matter.

4.0 COMMITTEE OBSERVATIONS AND FINDINGS

The Committee made the following observations from evidence adduced in the meetings, that:

1. The National Land Commission and the Ministry of Lands and Physical Planning held different views on the ownership of the disputed land. The commission stated that the land belonged to Kiambu Dandora Farmers Company while the Ministry indicated that it belonged to Dandora Housing Scheme Ltd. This led to an embarrassing situation in which two government agencies held conflicting positions on the matter.
2. A copy of a court decree in case No 1348/1972 issued on 18th October 2006 that was submitted to the Committee by of Kiambu Dandora Farmers Company Limited indicated that the court ruled in the favour of the company had a striking resemblance with another copy of a court ruling issued on 14th March 1985 that was submitted to the Committee by Dandora Housing Scheme Ltd, which also indicated that the court vested the land in Dandora Housing Scheme Ltd case. Therefore, the authenticity of copies of the two court decrees could not be ascertained by the Committee.
3. Although the government had initiated the compulsory acquisition of LR. 11379 vide gazette notice No. 840 and 841 of 1974 for purposes of urban development. The Committee did not find any evidence to indicate that compensation money was paid to any party. Kshs. 1,316,980 that had been deposited in the court by the Ministry of Lands for onward transmission to the owner upon determination by the court was returned to the Ministry of Lands by the court on 20th July 1993.
4. Even though the compulsory acquisition of LR. No. 11379/3 by the government was not completed, the then Ministry of Lands and Settlement allocated part of the land to several individuals and companies that included Coca cola Ltd HAUL, EMCO and Steel structures.
5. The two companies contesting the ownership of the land LR.NO. 11379/3; Dandora Housing Scheme Ltd and Kiambu Dandora Farmers Company Limited have a common membership of 225 members. They differed mainly on whether the five trustees were entitled to a share of the disputed land.

6. The two companies contesting ownership of the land accused each other of fraud. The representatives of Kiambu Dandora Farmers Company Ltd argued that a provisional title issued to Dandora Housing Limited following an order of the court granted on 6th August 1993 was obtained through fraud as the latter misled the court that the original title was lost. They further stated that Mr. Peterson Waithaka attempted to fraudulently transfer the title to his company MS/ Falcon Kenya Ltd. On the other hand, the representatives of Dandora Housing Scheme Ltd claimed that Kiambu Dandora Farmers Company used court orders obtained fraudulently to claim ownership of the land.

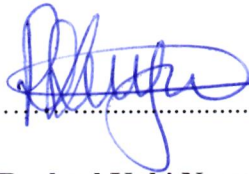
7. Both Kiambu Dandora Farmers Company Ltd and the National Land Commission indicated that the Constitutional petition No. 47 of 2011 was still pending before court and that all other cases related to the matter were consolidated in the said petition No. 47 of 2011. These two parties in their submissions to the Committee indicated that they agreed to allow Kiambu Dandora Farmers Company to repossess parts of the land in question. However, no evidence was availed to the committee indicating that they consulted other parties involved in the matter before reaching the decision.

5.0 COMMITTEE RECOMMENDATIONS

In response to the prayers by the petitioners, the Committee recommends that: -

1. **The National Land Commission does compensate the common membership of two hundred and twenty five (225) members of Dandora Housing Scheme Limited and Kiambu Dandora Farmers Company Limited in accordance with the law.**
2. **The Directorate of Criminal Investigations and the Ethics and Anti – Corruption Commission does investigate allegations of fraud and forgery of documents such as titles and court orders regarding the ownership of LR. No. 11379/3 with a view of recommending the prosecution of any person found culpable of having committed a criminal offence.**

Signed.....

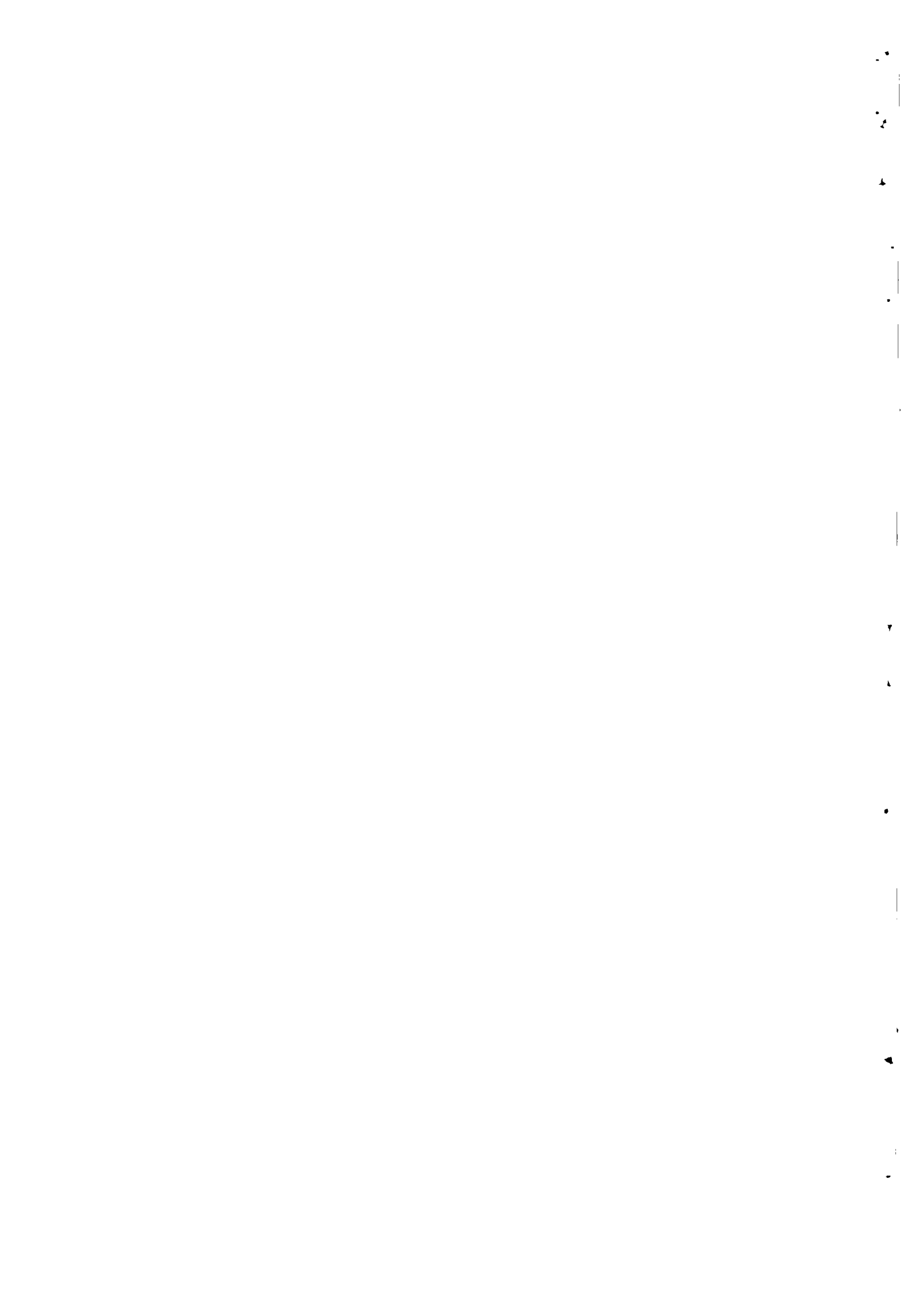


.....Date.....

29/11/2018

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

ANNEXURES





NATIONAL ASSEMBLY

CLERK'S CHAMBERS

DEPARTMENTAL COMMITTEE ON LANDS

Adoption list of the report on the consideration of a petition by the Hon. George Theuri M.P on behalf of the residents of Mowlem Ward regarding alleged irregular allocation of land LR. No. 11379/3

DATE: 29/11/2018 TIME: 10:00 a.m. VENUE: 1st Floor - Protection House

NO	NAME	SIGNATURE
1.	The Hon. Dr. Rachael Nyamai, MP - Chairperson	
2.	The Hon. Khatib Mwashetani, MP - Vice Chairperson	
3.	The Hon. Jayne Wanjiru Kihara, MP	
4.	The Hon Joshua Kutuny Serem, MP	
5.	The Hon. Kimani Ngunjiri, MP	
6.	The Hon. Mishi Mboko, MP	
7.	The Hon. Omar Mwinyi Shimbwa, MP	
8.	The Hon. Ali Mbogo, MP	
9.	The Hon. Babu Owino, MP	

10.	The Hon. Caleb Kipkemei Kositany, MP	
11.	The Hon. Catherine Waruguru, MP	
12.	The Hon George Aladwa, MP	
13.	The Hon George Risa Sunkuyia,MP	
14.	The Hon. Jane Wanjuki Njiru,MP	
15.	The Hon. Josphat Gichunge Kabeabea, MP	
16.	The Hon. Owen Yaa Baya, MP	
17.	The Hon. Samuel Kinuthia Gachobe, MP	
18.	The Hon. Simon Nganga Kingara, MP	
19.	The Hon Teddy Mwambire, MP	

MINUTES OF THE 89TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON THURSDAY 29TH NOVEMBER 2018, AT 11TH FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS, AT 10.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Omar Mwinyi Shimbwa, M.P
6. Hon. Ali Mbogo, M.P
7. Hon. Catherine Waruguru, M.P
8. Hon. Owen Yaa Baya, M.P
9. Hon. George Risa Sunkuyia, M.P
10. Hon. Simon Nganga Kingara, M.P
11. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Kimani Ngunjiri, M.P
2. Hon. Mishi Mboko, M.P
3. Hon. Caleb Kositany, M.P
4. Hon. Babu Owino, M.P
5. Hon. George Aladwa, M.P
6. Hon. Jane Wanjuki Njiru, M.P
7. Hon. Josphat Gichunge Kabeabea, M.P
8. Hon. Samuel Kinuthia Gachobe, M.P

IN ATTENDANCE

THE NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Guliye - Clerk Assistant III
3. Mr. John Mungai - Audio Officer
4. Ms. Peris Kaburi - Serjeant At Arms

MIN. NO. NA/DCS/LANDS/2018/329: PRELIMINARIES

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

MIN. NO. NA/DCS/LANDS/2018/330: ADOPTION OF THE REPORT ON THE CONSIDERATION OF A PETITION BY MEMBERS OF MT. KENYA FOREST SQUATTERS AND RESIDENTS OF MERU REGARDING EXCISION OF THE MT. KENYA FOREST PURSUANT TO LEGAL NOTICES NO. 68/1975 AND 107/1977 MEASURING 384 HECTARES FOR SETTLEMENT OF SQUATTERS

The Committee considered the above report and unanimously adopted it with the following recommendations after it was proposed and seconded by Hon. Teddy Mwambire, M.P and Hon. Jane Kihara, M.P respectively.

The Committee recommended that the National Land Commission should determine the historical injustice case HS 085/2017 lodged by the Petitioners within three months from the date of tabling this report with a view of settling the genuine squatters.

MIN. NO. NA/DCS/LANDS/2018/331: ADOPTION OF THE REPORT ON THE CONSIDERATION OF A PETITION BY HON. GEORGE THEURI, M.P ON BEHALF OF THE RESIDENTS OF MOWLEM WARD REGARDING ALLEGED IRREGULAR ALLOCATION OF LAND LR. NO. 11379/3

The Committee considered the above report and unanimously adopted it with the following recommendations after it was proposed and seconded by Hon. Ali Mbogo, M.P and Hon. Khatib Mwashetani, M.P respectively.

The Committee recommended that:

1. The National Land Commission does compensate the common membership of two hundred and twenty five (225) members of Dandora Housing Scheme Limited and Kiambu Dandora Farmers Company Limited in accordance with the law.
2. The Directorate of Criminal Investigations and the Ethics and Anti – Corruption Commission does investigate allegations of fraud and forgery of documents such as titles

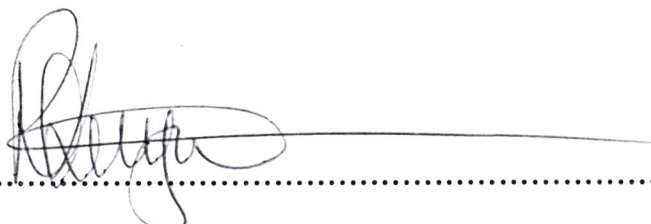
and court orders regarding the ownership of LR. No. 11379/3 with a view of recommending the prosecution of any person found culpable of having committed a criminal offence.

MIN. NO. NA/DCS/LANDS/2018/332: ANY OTHER BUSINESS (A.O.B)

The Committee resolved to undertake a field visit to Dunga-Unuse, Skembo and other areas in Changamwe Constituency from Thursday 6th to Sunday 9th December 2018 following a request made by the Hon Omar Mwinyi MP regarding recent evictions of residents from the land their had occupied for many years.

MIN. NO. NA/DCS/LANDS/2018/333: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at thirteen minutes past twelve o'clock.



Signature

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

(Chairperson)

04/12/2018

Date.....

MINUTES OF THE 65TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON THURSDAY 26TH JULY 2018 IN THE COMMITTEE ROOM 4TH FLOOR, CONTINENTAL HOUSE PARLIAMENT BUILDINGS, AT 10.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Mishi Mboko, M.P
3. Hon. Babu Owino, M.P
4. Hon. Caleb Kositany, M.P
5. Hon. Catherine Waruguru, M.P
6. Hon. George Aladwa, M.P
7. Hon. George Risa Sunkuyia, M.P
8. Hon. Jane Wanjuki Njiru, M.P
9. Hon. Owen Yaa Baya, M.P
10. Hon. Samuel Kinuthia Gachobe, M.P
11. Hon. Simon Nganga Kingara, M.P
12. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Joshua Kutuny, M.P
4. Hon. Kimani Ngunjiri, M.P
5. Hon. Omar Mwinyi Shimbwa, M.P
6. Hon. Ali Mbogo, M.P
7. Hon. Josphat Gichunge Kabeabea, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY

Hon. George Theuri, MP

MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Hon. Gideon Mungaro, - Chief Administrative Secretary
2. Ms. Jacinta Mulwa, - Lands Deputy Director
3. Ms. Juliana Mutua, - Deputy Director, Physical Planning

- | | | |
|-------------------------|---|---|
| 4. Mr. Charles Githenya | - | Deputy Director, Land Administration |
| 5. Mr. Eustace Kithumbi | - | Assistant Director of Land Adjudication |
| 6. Mr. Owino Cattwright | - | Senior Land Registrar |

NATIONAL LAND COMMISSION

- | | | |
|----------------------------|---|-------------------------------|
| 1. Prof. Muhammad Suwazuri | - | Chairperson |
| 2. Ms. Abigael Mukolwe | - | V/Chairperson |
| 3. Dr. Samuel Torerei | - | Commissioner |
| 4. Mr. Chavangi Aziz Tom | - | Chief Executive Officer |
| 5. Ms. Mercy Njamwea | - | Director, Land Administration |

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Leonard Machira | - | Clerk Assistant I |
| 2. Mr. Ahmad Guliye | - | Clerk Assistant III |
| 3. Ms. Jemimah Waigwah | - | Legal Counsel |
| 4. Mr. Joseph Tiyan | - | Research Officer III |
| 5. Mr. John Mungai | - | Audio Officer |
| 6. Ms. Peris Kaburi | - | Serjeant At Arms |
| 7. Ms. Winnie Kizziah | - | Media Relations Officer |

MIN. NO. NA/DCS/LANDS/2018/237: PRELIMINARIES

The meeting was called to order at fourteen minutes past ten o'clock in the morning, prayers were said and thereafter introductions were made.

MIN. NO. NA/DCS/LANDS/2018/238: MEETING WITH THE CHIEF ADMINISTRATIVE SECRETARY, MINISTRY OF LANDS AND PHYSICAL PLANNING ON VARIOUS PETITIONS BEFORE THE COMMITTEE

Hon. Gideon Mungaro, the Chief Administrative Secretary, Ministry of Lands and Physical Planning informed the Committee that;

- a) **Petition by Hon. George Theuri, MP on behalf of residents of Mowlem Ward regarding the alleged irregular allocation of land LR No. 11379/3**

- i. The land originally belonged to the Khan family but sold to a group of 225 people represented by five individuals under the registered company name Kiambu Dandora Farmers Company Limited;
- ii. Dispute arose when the five members refused to transfer the land to the members, and the disgruntled members formed a different company by the name Dandora Housing Scheme Limited;
- iii. Dandora Housing Scheme filed a court case number HCCC No. 1348 of 1972 and the matter was referred for arbitration under the then Nairobi Provincial Commissioner.
- iv. The award of the PC was adopted and the ruling by Hon. Justice Sachdeva dated 8th September 1983 conferred the land to the contributors (225) persons plus the five agents (if they had interest);
- v. The original title deed for the dispute land was in the custody of Kiambu Dandora Farmers Company Limited as the title was registered before the 1972 case .
- vi. The Ministry recommended that a joint taskforce comprising of the Ministry of Lands and Physical Planning & the National Land Commission be constituted to look conclusively into the matter.

b) Petition by Hon. Joseph Manje, MP on behalf of residents of Kadiajo County regarding alleged discrepancy in compensation offered to land owners by the National Land Commission for Compensation Standard Gauge Railway

The Chief Administrative Secretary informed that Committee that the National Land Commission requested the Ministry of Lands and Physical Planning vide a letter referenced NLC/V&T/Project dated March 2018 to provide comparable sales for land along the SGR Corridor for compensation of the affected persons.

The Ministry carried out a value survey of the land in question and came up with a value guide of Ksh. 700,000 per acre and forwarded the guide to the National Land Commission vide a letter referenced Admin/121/TPY/Memo/Vol 2/32 dated 28th March 2018.

Petition by the Indigenous People of Vipingo Lands Community in Kilifi County regarding alleged irregular acquisition of Land belonging to the Indigenous People of Vipingo Lands Community in Kilifi County

The Chief Administrative Secretary informed the Committee that concerns raised in the petition fall within the premise of Historical Land Injustices and the Constitution mandates the National Land Commission to initiate investigations on its own motion or on a complaint. The Commission should admit this particular petition as historical land injustice case with a view of addressing the concerns raised in it.

c) Petition by Mt. Kenya Forest Squatters and residents of Meru regarding excision of the Mt. Kenya Forest Pursuant to Legal Notice No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters

The Committee was informed as follows: -

- i. LR No. 13269 measuring 384.1 Ha was first granted to J.H Angaine and Sons Limited for a consideration of Ksh. 15,210,000 being capital value paid on or before the execution;
- ii. LR No. 122234 was granted to Home Grown (Kenya) Limited for a consideration of Ksh. 18,324,000 being capital value paid on or before the execution;
- iii. The title was issued to on 6th June 1995 by the Commissioner of Lands by the order of the President and was registered on 21st June 1995 at the Nairobi Central Registry as 66178;
- iv. On the same 21st June 1995, the same was transferred to J.H Angaine and Sons Limited for a sum of Ksh. 2,500,000;
- v. LR 13269 registered as IR 66177, LR 12234 registered as IR 66178, LR No. 13191 registered as IR 25667 and LR No. 13176 registered as IR 25956 were amalgamated to form LR. No. 20737 and issued with a new IR 66259 ON 28th June 1995;
- vi. The parcel with IR 66259 measures 1745.3 Ha as delineated on deed plan No. 196658 and was owned by J.H Angaine and Sons Limited;
- vii. On 28th June 1995, 11.70 Ha (LR No. 20737/1) was surrendered to Government.
- viii. On the same day 466.7 Ha. (LR No. 20737/3) was transferred to Homegrown (K) Limited for a term of free hold vide IR 66260;
- ix. 240.3 Ha. (LR No. 20737/2) was transferred to J.M Angaine and Sons Limited vide IR 66261.
- x. 825 Ha. (LR No. 20737/5) was issued under section 70 of RTA and belongs to J.M Angaine;
- xi. 201.5 Ha (LR No. 20737/4) was transferred to Elizabeth Kaliuntu Angaine for vide (IR 6666);

MIN. NO. NA/DCS/LANDS/2018/239: MEETING WITH THE CHAIRPERSON
NATIONAL LAND COMMISSION ON
VARIOUS PETITIONS BEFORE THE
COMMITTEE

a) **Petition by Hon. George Theuri, MP on behalf of residents of Mowlem Ward regarding the alleged irregular allocation of land LR No. 11379/3**

The Chairperson, National Land Commission adduced the following in respect of the above petition;

- i. The land originally belonged to the Khan family and was bought by Kiambu Dandora Farmers Company Limited.
- ii. Dandora Housing Scheme, a splinter group from Kiambu Dandora Farmers Company limited was formed in 1970.
- iii. When the government wanted to compulsorily acquire the land in 1974, no particular company could be paid as the two groups were still entangled on the ownership of the land.
- iv. The Court ruled in favour of the Dandora Housing Scheme Limited in the 1972 case, however the 1999 case was ruled in favour of Kiambu Dandora Farmers Company Limited and set aside the judgement of the 1348 of 1972 case.
- v. **Allocation of the disputed land to individuals and companies;** During the period when the cases were being heard and for purposes of ensuring organized development the Ministry of Lands and Settlement jointly with the Nairobi City Council prepared a Part Development Plan No.42.12.77 that was approved on 8th January 1979 as plan No. 212 which covered LR.NO.11379/3 and other parts of the larger Dandora. The plan created several industrial plots. 657 acres out of the total 818 acres from the larger LR. NO.11379/3 were allocated different firms and individuals in the belief that the land vested in the government following the planned compulsory acquisition and hence the land was available for allocation. Later the situation degenerated, and cartels, politicians, provincial administration, City Council of Nairobi, private individuals and outlawed gangs and sects started selling the land to unsuspecting Kenyans using violence to give vacant possession of the land.
- vi. **Constitutional petition No. 47 of 2011:** Kiambu Dandora Farmers Company through Abdullahi Muiruri Mungai and others in Constitutional petition No. 47 of 2011 sued the National Land Commission and the Attorney General demanding to be compensation for the land at a market value of Kshs. 11,035,200,000 or in the alternative the land reverts to Kiambu Dandora Farmers Company. The Commission held several consultative meetings

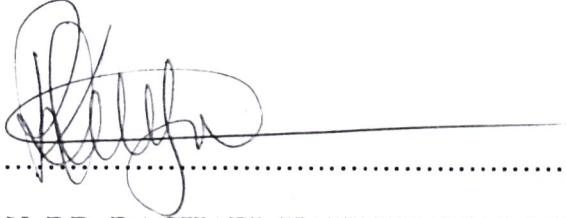
with the company with a view to resolving the matter out of court and the parties executed a settlement agreement that allowed Kiambu Dandora Farmers Company to reclaim parts of their land that remained vacant. Also, the Commission undertook to regularize the occupation of members of Kiambu Dandora Farmers Company Ltd by issuing or causing to be issued letters of allotment to the said members through their company Kiambu Dandora Farmers Company within six months from the date of the execution of the agreement which was 18th August 2015. The said agreement was also filed in court. The Nairobi County Government in the realization that the land is private had in consultation with the National Land Commission and the Ministry of Lands and Physical Planning approved the regularization of the land to members of Kiambu Dandora Farmers Company.

b) Petition by the Indigenous People of Vipingo Lands Community in Kilifi County regarding alleged irregular acquisition of Land belonging to the Indigenous People of Vipingo Lands Community in Kilifi County

- i. The information available to the commission indicated that the term of lease for most of the properties is 999 years hence expiry and renewal of leases could not arise contrary to the claims of the petitioners;
- ii. **Historical Land Injustice claim lodged by the petitioners:** The Committee was informed that the petitioners had lodged a Historical Injustice Claim with the National Land Commission seeking investigations to be carried out to establish the circumstances under which the land was taken away from the residents with a view to having it revert to the petitioners and the indigenous people of Vipingo. However, the Commission would not investigate the claim due to a court case No.343 of 2016 filed in the Malindi Environment and Land Court that had filed by some of the petitioners. The case had since been concluded on 28th June 2018 and the petitioners through lost the case. The Chairperson, National Land Commission further stated that should there not be an appeal to case No. 343 of 2016 or there being no application to the court by the petitioners, the request to undertake Historical Land Injustice investigations would be undertaken immediately;
- iii. **Addressing the plight of squatters residing in the land in question:** The Committee was also informed that Vipingo Sisal Estate Owners in conjunction with the Government and local authorities had surrendered land to the squatters. The areas surrendered included:
 - i. Boyani- Where 209 plots had been allocated in 2000
 - ii. Vipingo Trading centre – titles had been issued though there several disputes
 - iii. Bureni settlement scheme- Titles had been issued to the beneficiaries
 - iv. Gongoni – Titles had been issued to the beneficiaries
 - v.Kapecha- Titles had been issued to the beneficiaries
 - vi. Kadzimani- Titles had been issued to the beneficiaries

MIN. NO. NA/DCS/LANDS/2018/240: ADJOURNMENT

There being no other business, the meeting was adjourned at eighteen minutes to one o'clock in the afternoon.

Signature 

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

(Chairperson)

Date..... 04/10/2018



**MINUTES OF THE 63RD SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON WEDNESDAY 18TH JULY 2018 IN THE COMMITTEE ROOM 2ND
FLOOR, CONTINENTAL HOUSE PARLIAMENT BUILDINGS, AT 10.00 A.M**

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - Chairperson
2. Hon. Khatib Mwashetani, M.P - Vice Chairperson
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Omar Mwinyi Shimbwa, M.P
6. Hon. Babu Owino, M.P
7. Hon. Caleb Kositany, M.P
8. Hon. Catherine Waruguru, M.P
9. Hon. George Aladwa, M.P
10. Hon. Owen Yaa Baya, M.P
11. Hon. Samuel Kinuthia Gachobe, M.P
12. Hon. Simon Nganga Kingara, M.P
13. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Kimani Ngunjiri, M.P
2. Hon. Mishi Mboko, M.P
3. Hon. Ali Mbogo, M.P
4. Hon. George Risa Sunkuyia, M.P
5. Hon. Jane Wanjuki Njiru, M.P
6. Hon. Josphat Gichunge Kabeabea, M.P

IN ATTENDANCE

NATIONAL ASSEMBLY

Hon. Gorge Theuri, M.P

KIAMBU DANDORA FARMERS COMPANY LIMITED

1. Mr. J. B Kairu, - Director
2. Mr. Joseph Nduati, - Director
3. Mr. Samuel Wanjohi - Director

- | | | |
|------------------------------|---|-----------|
| 4. Mr. Joseph Mwangi Karanja | - | Secretary |
| 5. Mr. Namanda Simon, | - | Advocate |
| 6. Ms. Wanjiru Theuri, | - | Advocate |
| 7. Mr. Kennedy Murunga | - | Advocate |
| 8. Mr. P.K Kengati | - | Trustee |

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|----------------------|
| 1. Mr. Leonard Machira | - | Clerk Assistant I |
| 2. Mr. Ahmad Guliye | - | Clerk Assistant III |
| 3. Ms. Jemimah Waigwah | - | Legal Counsel |
| 4. Mr. Joseph Tiyan | - | Research Officer III |
| 5. Mr. John Mungai | - | Audio Officer |
| 6. Ms. Peris Kaburi | - | Serjeant At Arms |

MIN. NO. NA/DCS/LANDS/2018/229: PRELIMINARIES

- i. The meeting was called to order at twelve minutes past ten o'clock in the morning, prayers were said and thereafter introductions were made;and
- ii. The attention of the Committee was drawn to a letter written by an advocate acting for Kiambu Dandora Farmers Company Limited where the Committee was accused of bias by the company for having heard one party in the matter of ownership of LR. 113793. After lengthy discussion where it was explained that the Committee was in the process on hearing submission from all parties involved in the matter, the representatives of Kiambu Dandora Farmers Company withdrew the said letter.

MIN. NO. NA/DCS/LANDS/2018/230: SUBMISSION BY REPRESENTATIVES OF KIMABU DANDORA FARMERS COMPANY LIMITED IN RESPONSE TO THE PETITION BY RESIDENTS OF MOWLEM WARD REGARDING ALLEGED IRREGULAR OF ALLOCATION OF LAND LR NO. 11379/3

The representatives of Kiambu Dandora Farmers Company Limited informed the Committee, that.

- i. Kaimbu Dandora was land buying company incorporated in 8th August 1969 with Board of Directors and shareholders. The company currently owns parcel of land under land Reference Number 11379/3;
- ii. Kiambu Dandora Farmers Company Limited had a title to the land measuring 331 acres traversing Embakasi East and Embakasi West Constituency.

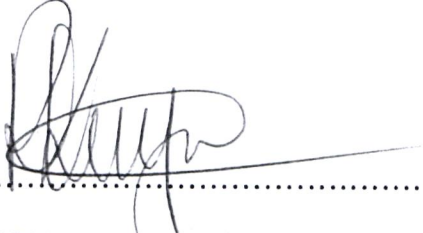
- iii. The land originally belonged to the Khan family and was bought by Kiambu Dandora Farmers Company Limited;
- iv. A dispute arose between the membership and suit no Hccc No. 1348/1972 was filed pitting 1348/1972 The case was resolved in 2006 and a decree in favour of Kiambu Dandora Farmers Company Limited was issued;
- v. Another suit was filed; petition No. 47 of 2011 on the matter which was still pending before the court.
- vi. There were parcels of land with the original parcel with double and triple titles within the contested land; and
- vii. The government should compensate Kiambu Dandora Farmers Company Limited being the genuine owners of the land;

Committee Observations

- i. The Committee noted that the copy of a ruling in civil case issued on 18th October 2006 that was issued in favour of Kiambu Dandora Farmers Company Limited which was submitted to the Committee had a striking resemblance with another ruling that was issued on 14th March 1985 on the same matter that indicated that the said land belonged to Dandora Housing Scheme Ltd. The Committee noted that the authenticity of the two documents would not be verified;
- ii. The Committee noted Kiambu Dandora Farmers Company Limited relied on evidence submitted by Mr. Peter Karungi Kengati who was barred from making any testimony by a court of law as he was found that he lied to court in a ruling made on 7th October 2005.
- iii. The Committee noted the two contesting companies had common membership of about 202 members. What they differ are the trustee of the two companies;
- iv. The Committee requested the representatives of Kiambu Dandora Farmers Company Limited to present to the Committee the following;
 - a. Chronology of court orders that were issued in respect of the matter beforehand within seven days.
 - b. The ruling of the 1999 case that vacated the ruling of 1993 that caused the transfer of the disputed land to to Dandora Housing Scheme Limited.

MIN. NO. NA/DCS/LANDS/2018/231: ADJOURNMENT

There being no other business, the meeting was adjourned at sixteen minutes past one o'clock in the afternoon.

Signature 

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

(Chairperson)

Date..... 04/10/2018

MINUTES OF THE 49TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON TUESDAY 7TH JUNE 2018, IN THE COMMITTEE ROOM 2ND FLOOR, CONTINENTAL HOUSE PARLIAMNET BUILDINGS, AT 10.00 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Omar Mwinyi Shimbwa, M.P
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Caleb Kositany, M.P
7. Hon. Simon Nganga Kingara, M.P
8. Hon. Ali Mbogo, M.P
9. Hon. Babu Owino, M.P
10. Hon. Catherine Waruguru, M.P

APOLOGIES

1. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
2. Hon. Kimani Ngunjiri, M.P
3. Hon. George Risa Sunkuyia, M.P
4. Hon. Jane Wanjuki Njiru, M.P
5. Hon. Owen Yaa Baya, M.P
6. Hon. Teddy Mwambire, M.P
7. Hon. Samuel Kinuthia Gachobe, M.P
8. Hon. George Aladwa, M.P
9. Hon Josphat Gichunge Kabeabea, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

1. Hon. Patrick Makau MP
2. Hon George Theuri, MP
3. Hon James Mwangi Gakuya

RESIDENTS OF KONZA/ MAKONZA

1. Julius Matheka
2. Harrison Ngui
3. Peter Munyao
4. Mirriam Mbithe
5. David. M. Mutemi
6. Bartlomew Nzilu Mutuke
7. Kwembe Kimeu
8. Benedict Kamili
9. Rose Mwikali
10. Shadrack S. Muli
11. Beatrice N. Githinji
12. Charles Mbithi
13. Daniel Mulinge
14. Joseph Muindi
15. Anna Kivondo
16. Peter Kavithi
17. Julius Kelin
18. Francis Kalwa
19. John Mutia Syanda
20. Teresia Musau
21. Christopher Kyalo

PETITIONERS/RESIDENTS OF MOWLEM WARD

1. Benson Mwangi
2. Mike Wambua
3. Magdaline M. Mbeke
4. Susan Ngui
5. Rev. Mark Anariko
6. Julius Kamandaaaaaae Manga
7. Francis Odhiambo
8. Samuel M. Muhika
9. Alex Nyamu Ali
10. Charles Waeweru
11. Elizabeth W. Musila
12. Moses M. Waweru
13. Arthur Sambaya
14. Joseph Mungai
15. Gideon Maundu
16. Daneil Mujngai

17. Michael Kiarie
18. George Njoroge
19. Anthony Ndalla

NATIONAL ASSEMBLY - SECRETARIAT

- | | | |
|------------------------|---|-------------------|
| 1. Mr. Leonard Machira | - | Clerk Assistant I |
| 2. Ms. Jemimah Waigwa | - | Legal Counsel I |
| 3. Mr. John Mungai | - | Audio Officer |
| 4. Ms. Peris Kaburi | - | Serjeant At Arms |

MIN. NO/ NA/ DCS/LANDS/2018/178: PRELIMINARIES

The meeting was called to order at eighteen minutes past ten o'clock in the morning and prayers were said.

**MIN.NO/NA/DCS/LANDS/2018/179: CONSIDERATION OF THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) (NO. 2) BILL, 2018.**

The Committee deliberated on the Bills as follows:

Urban Areas and Cities Act, 2011

Proposed amendment to section 3 Agreed to

The Committee observed that the proposed amendments do not conflict with the Constitution but seeks to create harmonization and standards in urban and cities development in the country. Further, the Committee observed that the amendments also seeks to establish a directorate of urban development and management within the Ministry of Lands and Physical Planning.

Having analyzed the Bill vis-à-vis the memoranda submitted by the public, the Committee agreed to the proposed amendments to the Urban Areas and Cities Act, 2011.

**MIN./ NA/ DCS/LANDS/2018/180: CONSIDERATION OF THE STATUTE LAW
(MISCELLANEOUS AMENDMENTS) BILL, 2018**

The Committee considered the Bill as follows:

Land Act, 2012

Proposed amendment to section 2

The Committee resolved that the proposed amendment to section 2 of the Land Act be deleted as it amendment contravenes the provisions of Article 165(5)(b) of the Constitution.

Proposed amendment to section 23

The Committee resolved that the proposed amendment to section 23 to provide for issuance of lease or licence for private land by the Cabinet Secretary and registered by the Chief Land Registrar.

Proposed amendment to section 28

The Committee agreed to the proposed amendment to section 28

Proposed amendment to section 29

The Committee agreed to the Proposed amendment to section 29

Proposed amendment to section 30

The Committee agreed to the Proposed amendment to section 30

Proposed further amendments

The Committee proposed further amendments to sections 31, 32, 33, 34, 35 and 36 that were necessary to align the sections with amendments already made to sections 28, 29 and 30 on collection of rent on leases and licenses

Land Registration Act, 2012

The resolved that the proposed amendment to section 2 be deleted

The Committee made the following observations and comments on the Bill:

1. The proposed amendment to section 2 of the Land Act No. 6 of 2012 which seeks to redefine the term "Court" to include the High Court established under Article 165 of the Constitution contravenes the provisions of Article 165(5)(b) of the Constitution which provides that the High Court shall not have jurisdiction in respect of matters falling with the jurisdiction of the courts contemplated in Article 162(2) of the Constitution which are the Environment and Land Court established under Article 162(2) of the Constitution.
2. The proposed amendment to section 23 of the Lands Act No, 6 of 2012 seeks to provide for issuance of lease or licence for private land by the Cabinet Secretary and registered by the

the Chief Land Registrar.

3. Pursuant to Article 67(2)(g) of the Constitution the NLC is mandated to assess tax on land and not collect rent hence necessitating the need to delete sections 28, 29 and 30 which deals with collection of rent and unpaid rent under any lease or licence.
4. There was also need to amend sections 31, 32, 33, 34, 35 and 36 of the Land Act to among things align the sections with amendments made to sections 28, 29 and 3 of the Land Act in respect of collection of rent on leases and licenses.
5. The proposed amendment to section 2 of the Land Registration Act No. 3 of 2012 which seeks to redefine the term "Court" to include the High Court established under Article 165 of the Constitution contravenes the provisions of Article 165(5)(b) of the Constitution which provides that the High Court shall not have jurisdiction in respect of matters falling with the jurisdiction of the courts contemplated in Article 162(2) of the Constitution which are the Environment and Land Court established under Article 162(2) of the Constitution.

Committee recommendation

The Committee recommends the Bill be approved and passed by the House subject to the proposed amendments in this Report.

MIN./ NA/ DCS/LANDS/2018/181: MEETING WITH PETITIONERS IN A PETITION BY RESIDENTS KONZA SOCIETY ON IRREGULAR ACQUISITION OF LAND IN ATHI KAPITI

The Hon. Patrick Makau MP and the petitioners informed the Committee as follows, that

- i. The two groups of petitioners had lived in LR. No. 7374 situated in Mavoko in Machakos County prior to 1973 ;
- ii. In 1973 the Agricultural Development Corporation was allocated the parcel of land to develop an animal pest control centre and the petitioners were displaced to malili were they currently lived as squatters;
- iii. The petitioners argued that since the ADC was no longer using the land for the intended purpose, ownership of the land should revert back to the Konza and Makonza communities;
- iv. The parcel of land in question measures 32,000 acres;
- v. The land was currently occupied by HILRI, who acquired ownership in an irregular manner;

- vi. The current occupants of the land had indicated willingness to allocate 10,000 acres to the squatters, however the petitioners were seeking to be allocated 22,000 acres of the said land; and
- vii. The Committee resolved to undertake a field visit to the area and also hold meetings with relevant stakeholders with a view to addressing the prayers sought by the petitioners

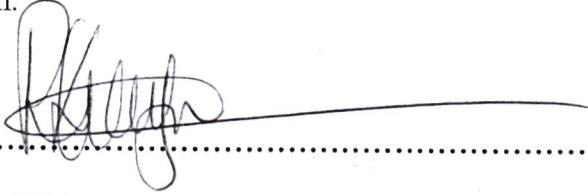
**MIN./ NA/ DCS/LANDS/2018/182: MEETING WITH PETITIONERS IN A PETITION
BY RESIDENTS OF MOWLEM WARD ON
IRREGULARITIES IN THE ACQUISITION OF LR. NO.
11379/3**

The Hon George Theuri, MP and the petitioners informed the Committee as follows, that:

- i. The government had compulsorily acquired 161 acres of land LR. NO. 11379/3 SITUATED in Embakasi from Kiambu Dandora Ltd for the development of light industries in the 1970s and allocated part of the land to several companies that included Coca cola Ltd HAUL,EMCO and Steel structures Ltd in 1974.
- ii. Squatters occupied part of the undeveloped in 1990 and currently approximately 70,000 people were living on the land;
- iii. The owners had been issued with title deeds by the government and some of them had used the titles as collateral to secure loans
- iv. Some of the sued the squatters seeking access to their land. Several squatters negotiated with the title holders and paid for the land their had occupied including Ksh. 62, 000,000 paid to AERO SUPPORT Ltd ;
- v. The National Land Commission issued a letter REF NLC/CF/79 dated 19th July 2016 indicating that it entered into out of court settlement with Kiambu Dandora Farmers Company Ltd regarding constitutional petition No. 47 of 2011 in which the commission undertook to resolve the long-standing land dispute by securing the open spaces and deliver the same to Kiambu Dandora Farmers Company. In the said letter the Commission requested the National Administration officers and the police to provide security to Kiambu Dandora Farmers Company to take possession of open spaces and develop them;
- vi. The petitioners were not consulted on the repossession of land by Kaimbu Dandora Farmers Company and the company had been harassing them with assistance of the police and National Administration officers;
- vii. The petitioners had not been served with any court papers regarding the case mentioned in the letter by the National Land Commission; and
- viii. The petitioners prayed that the National Assembly through the Departmental Committee on Land intervenes to have the matter investigated and ensure that corrective action is taken.

MIN./ NA/ DCS/LANDS/2018/183 ADJOURNMENT

There being no other business, the meeting was adjourned at twenty seven minutes past one o'clock in the afternoon.

Signature 

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

Date. 28/06/2018 (Chairperson)

Approved BNT
SNA
13/12/17



THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT
(FIRST SESSION)
PUBLIC PETITION
(No.002 of 2017)

M. S. SPEAKE
This petition is
being revised
for the 11th Parliament
as it was not
considered then
pls approve.
13/12/17

BY RESIDENTS OF MOWLEM WARD REGARDING ALLEGED IRREGULAR
ALLOCATION OF LAND LR NO.11379/3

I, the UNDERSIGNED, on behalf of residents and squatters of Mowlem Ward,
Embakasi West Constituency,

DRAW the attention of the House to the following: -

- i) THAT, land reference number 11379/3 is located in Mowlem Ward, Embakasi West Constituency, Nairobi County;
- ii) THAT, the Mowlem squatters have resided on the said parcel of land since the year 1990;
- iii) THAT, in 2016 the said parcel of land was allocated to a group referred to as Kiambu Dandora Group;
- iv) THAT, several individuals and groups are claiming ownership of the said parcel of land and allegedly hold title deeds in respect to this particular parcel;
- v) ~~THAT, in the recent past the Petitioners have lost their properties due to conflicting orders issued by the National Land Commission and Courts;~~
- vi) FURTHER THAT, residents have allegedly witnessed police harassment and brutality occasioned by some land grabbers and conflicts over the said land;
- vii) THAT, efforts to resolve this matter with the relevant government agencies have been futile; and
- viii) THAT, the matter presented in this petition is not pending before any tribunal, court of law or Independent body.

PUBLIC PETITION

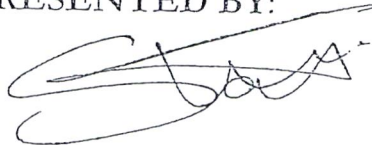
BY RESIDENTS OF MOWLEM WARD REGARDING ALLEGED IRREGULAR
ALLOCATION OF LAND LR NO.11379/3

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

- i. Recommends immediate investigations into the alleged irregular allocation and determine the validity of the current allocations and ensure corrective action is taken;
- ii. Ensures that the Petitioners' plight is addressed; and
- iii. Makes any other order or direction that it deems fit in the circumstances of matter.

And your PETITIONERS will ever pray.

PRESENTED BY:



HON. GEORGE THEURI, MP
MEMBER FOR EMBAKASI WEST CONSTITUENCY

DATE: 26/9/2017

Theuri

what informs you that the land was allocated irregularly

V
VI
D.C.P.D. - 68



NATIONAL LAND COMMISSION

Telegrams: "MINILANDS", Nairobi
Telephone: Nairobi 2718050
When replying please quote

ARDHI HOUSE
1ST NGONG ROAD
OFF NGONG ROAD
P.O. Box 44417
NAIROBI

REF: NLC/CF/79

DATE: 19th July 2016

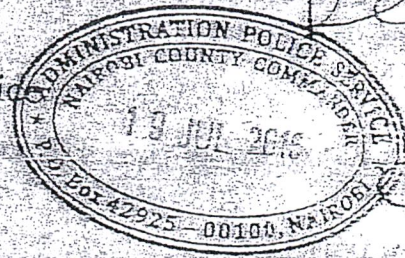
The County Commander of Kenya Police
Nairobi County
NAIROBI

The County Commander Administration Police
Nairobi County
NAIROBI

The County Commissioner
NAIROBI COUNTY

The Deputy County Commissioner
NJIRU DISTRICT

The Deputy County Commissioner
Embakasi District



Received
Register
Here
all

RE: KIAMBU DANDORA FARMERS COMPANY LIMITED L.R. NO. 11379/3

We refer to our previous correspondence and particularly ref: CF/79 of 19th December, 2014 on this matter.

The National Land Commission entered into an out of court settlement with Kiambu Dandora Farmers Company Limited in regard to Constitutional Petition No. 47 of 2011. In the settlement, the

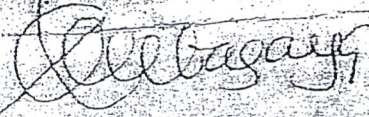
Commission undertook to resolve the long outstanding land dispute on the above property by securing the open spaces within LR 11379/3 and delivering the same to Kiambu Dandora Farmers Company Limited. Mechanisms are also in place to reclaim the occupied land through dialogue and consultation with relevant stakeholders.

It has however been brought to our attention that some unknown persons are now trying to unlawfully and forcefully occupy and/or trespass on parts of the land.

The purpose of this letter is to request you to assist in maintain peace and order in the land and to give security so that Kiam Dandora Farmers Company Limited can take possession of the open spaces and develop them as per documents issued by way of allotment letters.

Your kind indulgence will be highly appreciated.

Yours faithfully,



ABIGAEI MBAGAYA MUKOLWE (MRS)
VICE CHAIRPERSON
NATIONAL LAND COMMISSION

cc

19 JUL 2016

The County Executive Committee Member In-charge of Lands
Nairobi County
Nairobi ✓

Officer Commanding Police Division
Buruburu Division
Nairobi ✓

Officer Commanding Police Division
Kayole Division
Nairobi ✓

Reviewed on

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1348 OF 1972

ROBERT MACHARIA
C.P. WAITHAKA
RAYMOND MWANGI
MUTEGI KAREGA
WILLIAM MUTHAMA
NELSON MUCHAI
NJENGA CHEGE
DANDORA HOUSING SCHEME LTD..... PLAINTIFFS

VERSUS

KIBIRO KARANJA
REUBEN KANGARA
KEINGATI WAIHARO
NJUGUNA KIMANI
PETER G. KANGARA..... DEFENDANTS

DECREE

CLAIM FOR:

- a) An order for transfer by defendants to the plaintiff Company of L.R. NO 11379/3 Komorock Road, Nairobi to hold for and to the use of the purchasers.
- b) Account of the money paid to the Defendants by the purchasers.
- c) Registration of the property L.R. NO 11379/3 in the name of the plaintiff Company.
- d) Payment by the defendants to the plaintiff Company of any money found due in account with interest at 8% from date of filing.
- e) Costs of the suit with interest at 8% from date of judgement till payment in full.

COUNTER-CLAIM

- a) A declaration that LR NO. 11379/3 Komorock Road, Nairobi is held by the Defendants (Plaintiffs by Counter-claim in trust for Kiambu Dandora Farmers Company Limited), subject to the grant of consent or exemption as required by law to a transfer thereof.
- b) Costs.

UPON READING the application presented to this Court on the 17th day of August 1983, the 2nd day of September, 1983 and the 2nd day of February 1985 respectively, by counsel for the plaintiffs and defendants AND UPON READING the Affidavits of CORNELIUS PETERSON WAITHAKA and KEINGATI WAIHARO in support of the said Applications sworn on the 16th day of August 1983 and 25th day of August, 1983 and UPON HEARING Counsel for both parties.

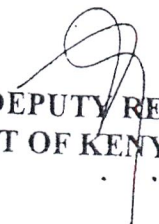
IT IS ORDERED


1. THAT the application to set aside the award be and is hereby dismissed.
2. THAT judgment be and is hereby entered for the Defendants in terms of the award as follows:-
 - (i) The suit premises LR NO 11379/3 Komarock Road, Nairobi was bought and is hereby vested in Kiambu Dandora Farmers Company Ltd for and on behalf of the members thereof as ascertained by the Provincial Commissioner-Nairobi.
 - (ii) The 3rd and 4th Respondents are not contributories to the purchase of the suit land.
 - (iii) THAT the actual contibutories to the purchase of land parcel L.R. NO 11379/3 Komorock Road are the persons whose contributions were made before 2nd July 1967.
 - (iv) THAT the plaintiffs do pay to the Defendants (plaintiffs in counter-claim) the costs of this suit to be taxed and certified by the taxing officer of this Court.

GIVEN under my hand and the SEAL of this Court this 8th day of March 1983.

ISSUED this

18th day of October 2006.


SENIOR DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI

23rd October 2006


11

④

3:59 P.
3/4/25
138

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.1348 OF 1972

ROBERT MACHARIA) CHEQUE NAME)
C.P. WAITHAKA)
RAYMOND MWANGI)
MUTEGI KAREGA)
WILLIAM MUTHAMA)
NELSON MUCHAI)
NJENGA CHEGE)	
DANDORA HOUSING SCHEME LIMITED)	

PLAINTIFFS

versus

KABIRO KARANJA) DEFENDANTS)
REUBEN KANGARA)
KEINGATI WAIHARO)
NJUGUNA KIMANI)
PETER G. KANGARA)

DEFENDANTS

DECREE

CLAIM FOR:

- (a) An order for transfer by the Defendants to the Plaintiff company of L.R.No.11379/3 Komorock Road, Nairobi to hold for and to the use of the purchasers.
- (b) Account of the money paid to the Defendants by the purchasers.
- (c) Registration of the property L.R.No.11379/3 in the name of the Plaintiff company.
- (d) Payment by the Defendants to the Plaintiff company of any money found due in account with interest at 8% from date of filing.
- (e) Costs of the suit with interest at 8% from date of judgement till payment in full.

COUNTER CLAIM:

- (a) A declaration that L.R.No.11379/3 Komorock Road, Nairobi is held by the Defendants (Plaintiffs by Counter-claim) in trust for Kiambu Dandora Farmers Company, subject to the grant of consent or exemption as required by law to a transfer thereof.
- (b) Costs.

This is the exhibit marked "Aau A" referred to in the annexed affidavit of Andrew Katar Kimani sworn before me this 21st day of June 2012 at Nairobi, Kenya

...../2

.....
COMMISSIONER FOR OATHS

UPON READING the application presented to this court on the 17th day of August 1983, the 2nd day of September, 1983 and the 26th day of February 1985 respectively, by Counsel for the Plaintiffs and Defendants AND UPON READING the Affidavits of CORNELIUS PETERSON WAITHAKA and KEINGATI WAITHARO in support of the said Applications sworn on the 16th day of August, 1983 and 25th day of August, 1983 and UPON HEARING Counsel for both parties:

IT IS ORDERED:

1. That the application to set aside the award be and is hereby dismissed.
2. That judgement be and is hereby entered for the Plaintiffs in terms of the award i.e.
 - (i) The suit premises L.R.No.11379/3, Komorock Road, Nairobi, was bought by and is hereby vested in DANDORA HOUSING SCHEMES LIMITED for and on behalf of the members thereof.
 - (ii) The Defendants do pay/account to the Plaintiffs the amount of the money found to be in excess of the actual purchase price of the land with interest at 8% p.a. from the date of filing this suit.
 - (iii) The Defendant's Counterclaim be and is hereby dismissed.
3. The Defendants do pay to the Plaintiffs the costs of this suit with interest to be taxed and certified by the Taxing Officer of this Court.

GIVEN UNDER my HAND and the SEAL of this Court this 13th day of March, 1985.

ISSUED this

14th

day of

MARCH

, 1985

16.3.85
J. M. M. M.
J. M. M.

SENIOR DEPUTY REGISTRAR
HIGH COURT OF KENYA
NAIROBI



Q. Petition by Hon. George Theuri MP on behalf of residents of Mowlem ward regarding alleged irregular allocation of land LR. NO. 11379/3.

Reply

Ownership of LR. NO. 11379/3

Land reference no. 11379/3 IR No. 19935 is on a freehold tenure measuring 818 Acres. The land is situated along Kagundo Road boarded by Umoja on the West, and East by Komarock and Kayole Estate.

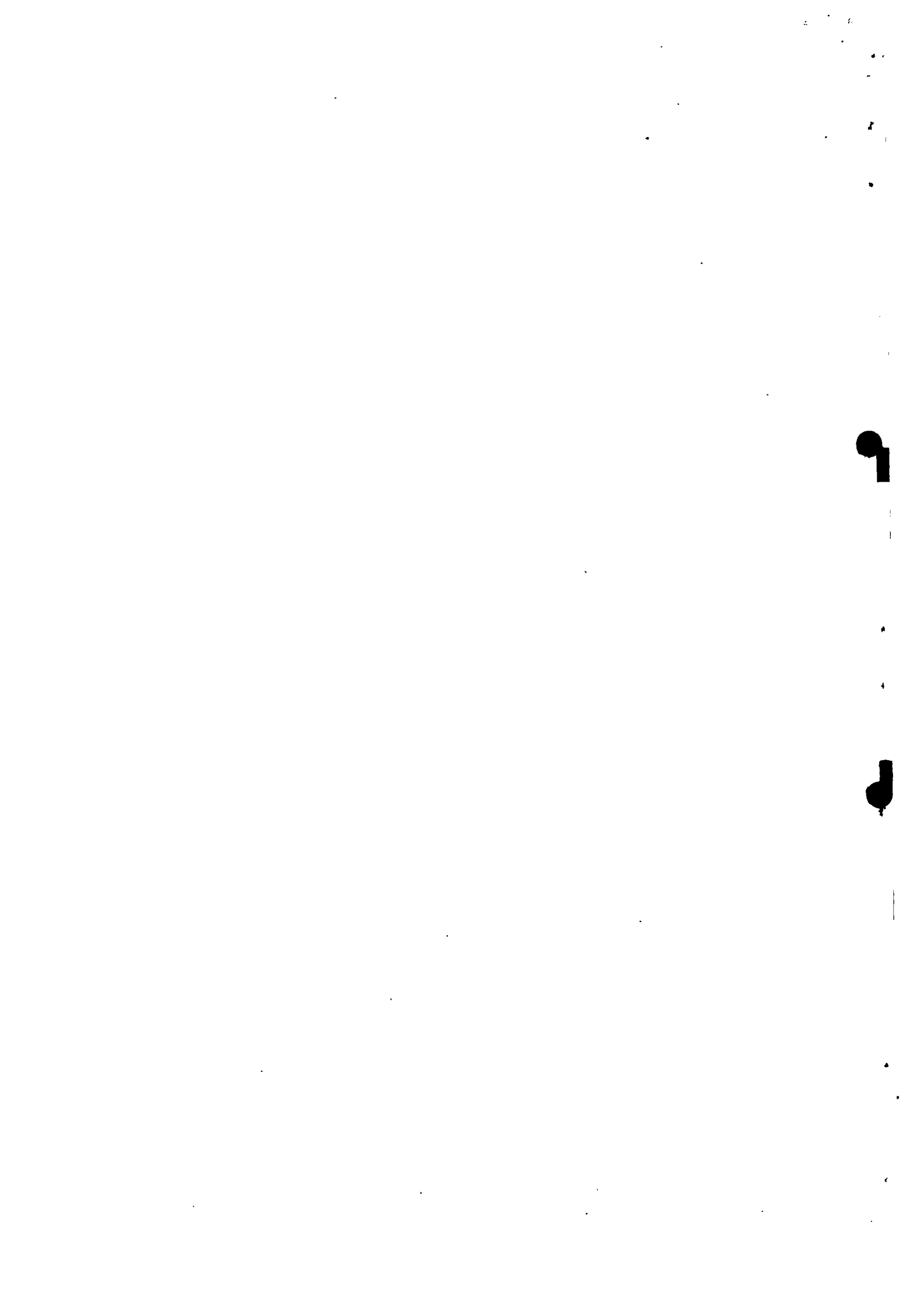
Before 1970, this land was owned by an Asian family namely Khan Nawaz, Khan Abbas and Meldi Khan and on 8th April, 1970 it was transferred to Kabiro Karanja, Reuben Kangara, Keingati Watharo, Njuguna Kimani and Peter Gacheru Kingara all who owned it as trustees for Kiambu Dandora Farmers Company Ltd in accordance to the deed of trust registered on 7th April, 1970.

From available records, vide Gazette Notice No.840 & 841, LR No.11379/3 was acquired by the Government in 1974 and an award of Kshs.1316980 was made to the owners, but due to the ownership dispute between Kiambu Dandora Farmers Company Ltd and Kiambu Housing Scheme Company, payment cheque was deposited with the registrar of High Court. Later the cheque was returned to the Ministry of Land and there is no proof it has ever been cashed.

Kiambu Dandora Farmers Co. have never recognized this acquisition because they were not involved in the process as the law requires.

Following the acquisition the land has been subdivided to create plots as follows:-

- 1) Umoja 2 Estate (Block 107)
- 2) Nasra Garden Estate
- 3) Kariobangi Civil Servant Housing Scheme L.R. No.12562
- 4) L.R. No.12633 to Vijay Tandhi
- 5) Industrial Development Plots 130 Plots
- 6) 274 residential and commercial plots to members of the company
- 7) L.R. No.15400 to Munene Kairo

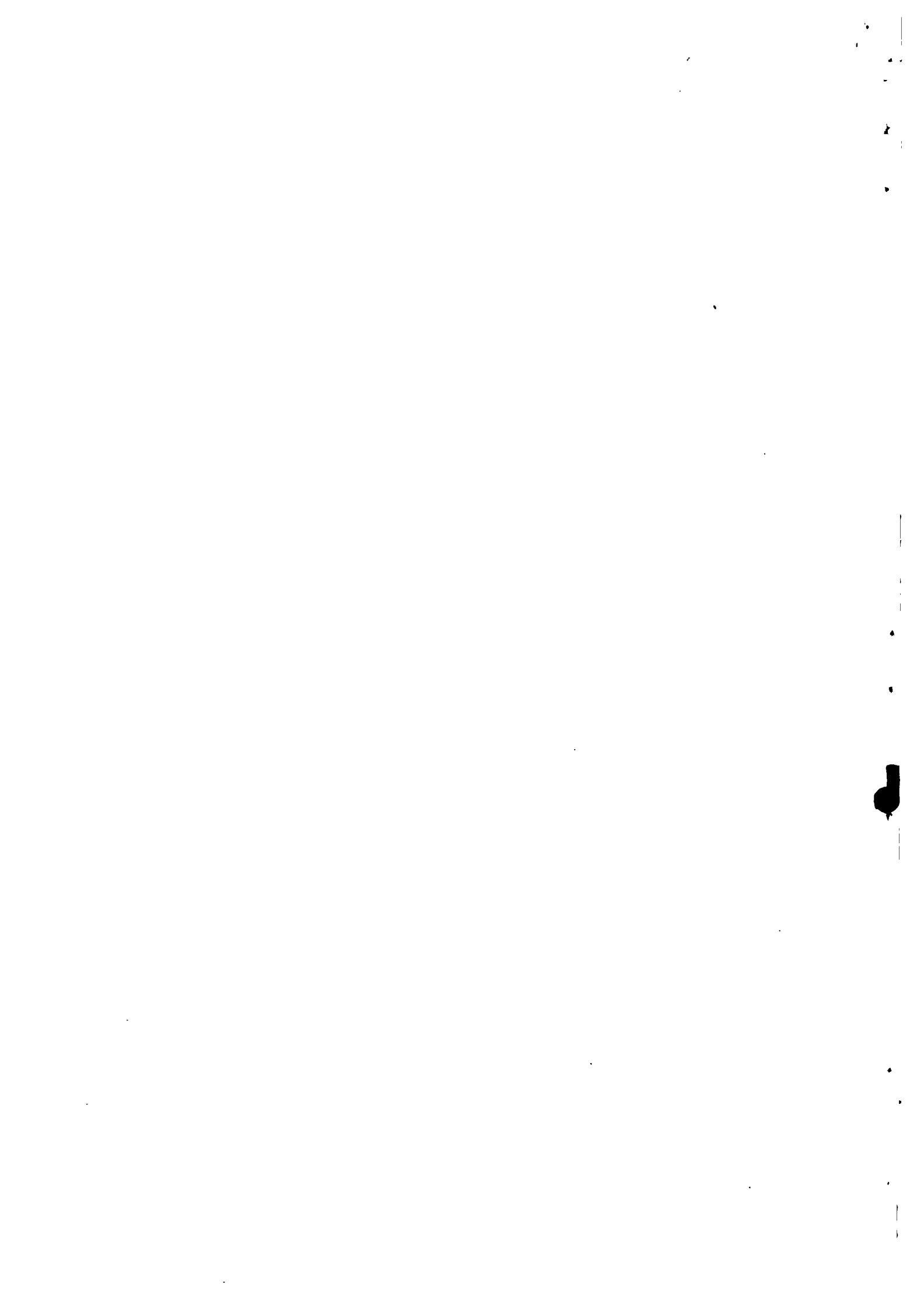


The aforementioned subdivision and allocation was done by Government following compulsory acquisition of 1974 vide Gazette notice No. 840 and 841.

Mowlem residents (squatters) occupies part of LR No.11379/3 which is owned by Kiambu Dandora farmers Company Ltd as stated here above.

Muhammad

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics



Supplementary Information

Upon registration of LR. No.11379/3 to the trustees of Kiambu Dandora Farmers Company in April 1970, a splinter group emerged in 1970 in the name of Kiambu Housing Scheme Company headed by Cornelius Peterson Waithaka. This group intention was to take leadership and management of the farm from Kiambu Dandora Farmers Company Ltd.

This resulted to various court battles like the case of HCCC No.1348 of 1972, the High Court awarded the ownership of LR No.11379/3 to Dandora Housing Company. Kiambu Dandora Farmers Company appealed against the High Court ruling vide civil case No.1903 of 1999 and they succeeded to have the 1972 judgement overturned in their favour.

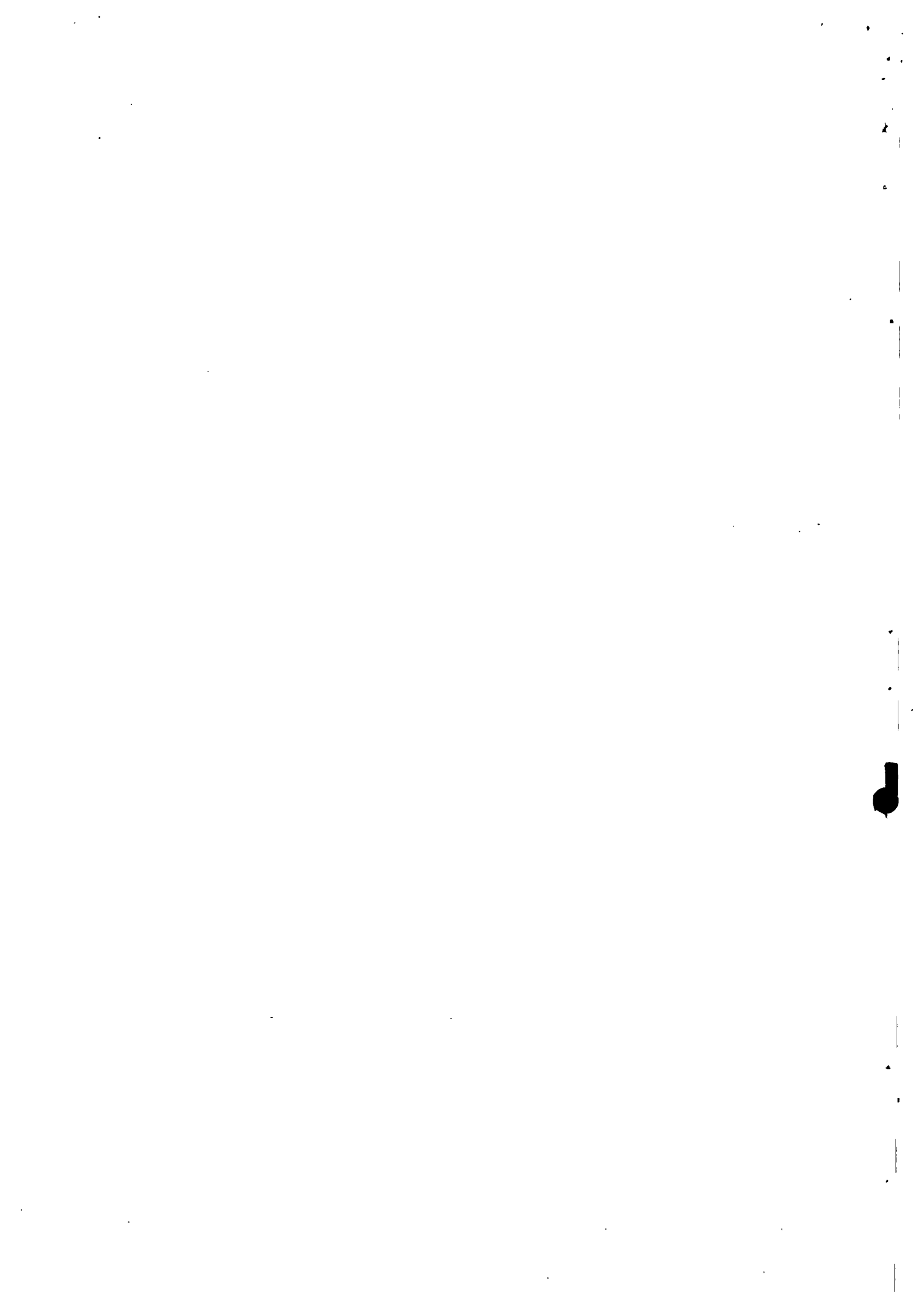
There is also a Constitution petition No.47 of 2011 where the owners of LR No. 11379/3 challenged the acquisition of their land by the Government and subsequent reallocation of some portions to other individuals as violation to their right of land ownership.

Following out of court settlement to resolve issues under petition No.47 of 2011 between Abdullahi, Muiruri Muigai and others (plaintiff) V.S. National Land Commission and Attorney General, it was resolved that The National Land Commission shall regularize the occupation of members of Kiambu Dandora farmers Co. Ltd by issuing or causing to be issued letters of allotment to members of Kiambu Dandora Farmers Co. Ltd through their company Dandora Farmers Co. Ltd within 6 months from the date of execution of agreement which was 18th August, 2015.

This agreement was filed in High Court and the High Court has not issued any decree in relation to this agreement.

The National Land Commission together with Nairobi City County has continued to implement content of this agreement and so far subdivision approvals have been accorded to:-

- Umoja Phase II zone 15
- Umoja Phase II zone 14
- Umoja Phase II Kayole
- Umoja Phase II zone (J)
- Umoja Phase II zone (H) Kangundo Road
- Umoja Phase II zone (E) Kangundo Road
- Umoja Phase II zone (C) Kangundo Road
- Umoja Phase II zone (B) Kangundo Road
- Umoja Phase II zone (A) Kangundo Road
- Umoja Phase II zone (K) Kangundo Road
- Umoja Phase II zone (1A) Kangundo Road



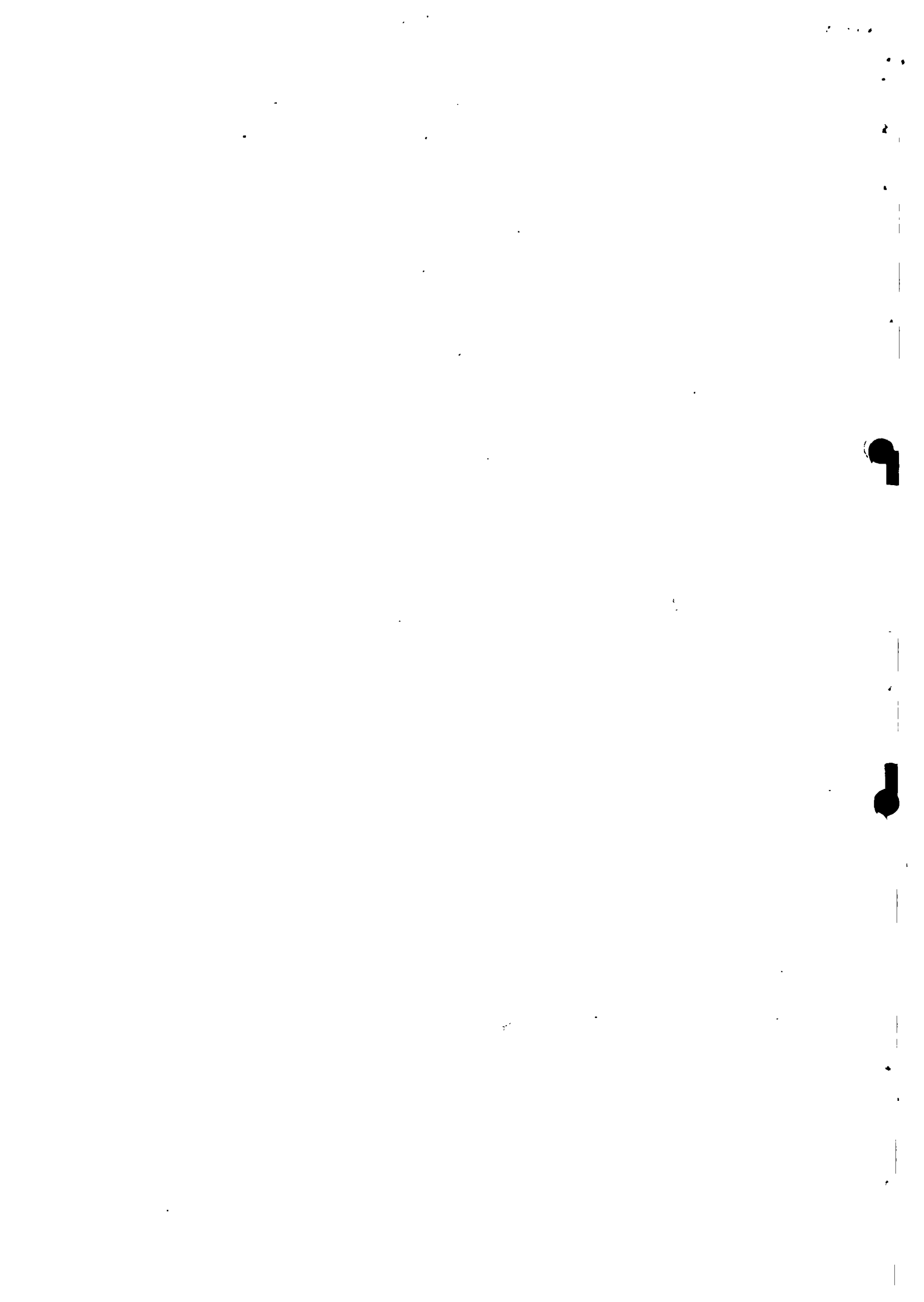
LR No.11379/3 over time has been invaded by various groups, through the support of politicians and other local leaders. Some of these groups include Mwangaza, Makongeni, Baraka, Mowlem, Pam, Kanguruwe, Bidii, Umoja III Central, Budalangi, Mungetho, kwa Miwa and G7 group.

Out of court settlement in petition No.47 of 2011, aims at regularizing some of these irregular invasions through a negotiated approach between the occupiers and Kiambu Dandora Farmers Co. Ltd.

MSWAZURI

Prof. Muhammad A. Swazuri, PhD, OGW
Chairman, National Land Commission and
Associate Professor in Land Economics

24th July, 2018



Settlement
Agreement

AMM/4/A

DATED AS OF THE 18TH DAY OF AUGUST 2015

NATIONAL LAND COMMISSION

AND

KIAMBU DANDORA FARMERS COMPANY

SETTLEMENT AGREEMENT

DRAWN BY

NATIONAL LAND COMMISSION

P.O BOX 4417-00100

ARDHI HOUSE

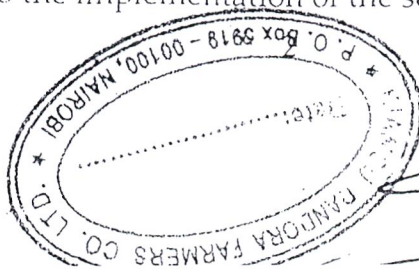
NAIROBI

This settlement agreement (Settlement Agreement) is made this 18th day of August 2015 by and between

1. National Land Commission ("NLC") a Constitutional Commission established under Article 67 of the Constitution of Kenya and whose address for the purpose hereof is post box number 44417-00100 Nairobi (hereinafter "the Respondents ") of the FIRST PART; AND
2. Kiambu Dandora Farmers Company Limited a company incorporated in the republic of Kenya and whose address for the purpose hereof is POST Box Number 5919-00100 Nairobi (hereinafter "the Petitioners") which expression shall where the context so admits include their respective heirs, assigns, successors in title) of THE SECOND PART:

WHEREAS

1. The parties have been engaged in court proceedings in the High Court of Kenya at *Constitutional petition No. 47 of 2011 (Abdulahi Muiruri Muigai & Others Vs National Land Commission & Attorney General)*, (the suit) filed by the petitioners against the Respondents.
2. The parties have reached a settlement (the settlement) in respect of all claims and disputes between them with regard to all the subject matter of the Suit namely all that property known as LR NUMBER 11379/3(I.R 23514) ("the Property") upon the terms and conditions hereinafter set out.
3. The parties wish to record and regulate the terms of the settlement reached and the agreed steps and actions to be taken by each of them, and the financial and other arrangements to be made with regard to the implementation of the settlement.

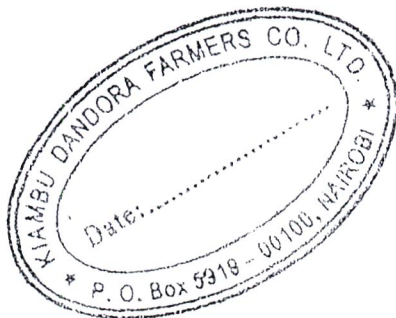


J. NAMANDA SIKHON
ATTORNEY
P. O. Box 72181-00200

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged and intending to be legally bound, the parties and each of them hereby agree as follows:-

1. The National Land Commission ("The Respondent") shall henceforth regularize the occupation of members of the Kiambu Dandora Farmers Company Limited by issuing or causing to be issued Letters of allotment to members of Kiambu Dandora Farmers Company Limited through their company Kiambu Dandora Farmers Company Limited within six months from the date of execution of this agreement, for the unoccupied and/or unallocated Areas as hereunder described;
 - (i) All the land compromised in the zone marked out as zone 8 in the Zoning of the said parcel of land, measuring 8.49 Ha (20.9 acres) or thereabouts.
 - (ii) All that land compromised in the zone marked out in the Zoning of the said parcel of land as zone 9 measuring 7.487 ha (18.5 acres) or thereabouts.
 - (iii) All that land compromised in the zone marked out in the Zoning of the said parcel of land as zone 11 (Sosiani Estate) measuring 20.66 Ha (51.05 acres) or thereabouts.
 - (iv) All that land compromised in the zone marked out in the Zoning of the said parcel of land as zone 13 measuring 134.08 Ha (331.31 acres) or thereabouts.
 - (v) All that land compromised in the zone marked out in the Zoning of the said parcel of land as zone 14 measuring 15.33 Ha (37.9 acres) or thereabouts.
 - (vi) All that land compromised in the zone marked out in the Zoning of the said parcel of land as zone 15 measuring 2.655 Ha (6.6 acres) or thereabouts.

Provided the same does not form part of Public utility properties or land otherwise unavailable for allocation.



3

J. NAKANDA SIMLANT
ADVOCATE
P. O. Box 72881-00200 NAIROBI

2. The Respondent undertakes to review all grants and Dispositions under Section 14 of the National Land Commission Act unlawfully or irregularly issued over the land LR NO. 11379/3 (I.R 23514) within a period of six months from the date of execution of this agreement with a view of causing such grants and dispositions to be revoked or regularized as the Commission may determine.
3. That to facilitate the implementation of this agreement Kiambu Dandora Farmers Company Limited ("the Petitioners") shall surrender the original grant/title to LR NO. 11379/3 (I.R 23514) immediately to the National Land Commission upon the successful implementation of Term No. 1 herein.
4. That within 45 days from the date of execution of this agreement the Petitioners shall file or cause to be filed a notice of withdrawal of *Constitutional Petition No. 47 OF 2011 (Abdulahi Muiruri Muigai & Others Vs National Land Commission & Attorney General)* and this settlement agreement shall be filed in court as the agreement of the parties herein in and upon the terms contained herein being implemented. The petition shall thereafter be marked as settled.
5. The parties shall each bear their own legal costs in relation to the court case and this agreement.
6. Each party agrees, on behalf of itself and on behalf of its Related Parties not to sue, commence, voluntarily aid in any way, prosecute or cause to be commenced or prosecuted against the other party or its Related Parties any action, suit or other proceedings concerning the Released claims and in this jurisdiction or any other.

CONDITIONS PRECEDENT

This agreement is conditional upon the following conditions ("the conditions precedent")

- a) This agreement being executed by the parties with full and proper corporate authority.
- b) Directors' and shareholders' resolutions being properly and validly passed by the petitioners approving and authorizing the execution of this Agreement, the implementation thereof including signing and filing of the consent judgement.

GENERAL

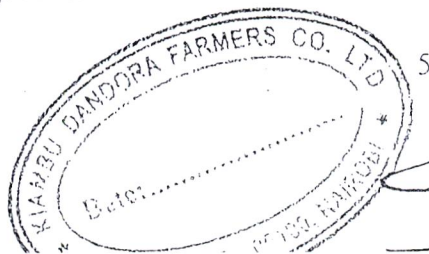
- (i) This settlement constitutes the entire agreement between the parties with respect to the matters contained in this settlement Agreement and supersedes all previous



J. NAWASA SIMONE
ADVOCATE
P. O. Box 22881-00200 NAIROBI

undertakings, commitments, promises or representations with respect to those matters. Each party acknowledges that none of the other parties has made any representations or promise other than those that are contained herein.

- (ii) This settlement agreement may be executed in counterparts each of which shall be deemed an original. And all of which together shall constitute one and the same agreement as at the date of signature of the party last signing one of the counterparts.
- (iii) Any notice or court proceedings given by, in respect of or under this settlement agreement may be given by delivering it in person or by sending it in pre-paid registered mail envelope to address set out below for each of the parties and nay such notice shall be deemed served in the case of personal service at the time of delivery to the party concerned and in any other case seven (7) days (inclusive of the date of posting) after the date on which it is put in the post and in proving such service it shall be sufficient to prove that the notice was properly addressed and posted by registered post.
- (iv) The terms and provisions of this settlement agreement are privileged and confidential and shall not be disclosed in any form to any party other than parties to, this Settlement Agreement or to a party referred to herein.
- (v) This agreement is entered into in connection with the compromise of disputed matters and in the light of other considerations. It is not, and shall not be represented or construed by the parties as, an admission of liability or wrongdoing on the part of either party to his agreement or any other person or entity.
- (vi) This agreement shall immediately be fully and effectively binding on all parties.
- (vii) if any provisions of this agreement is found to be void or unenforceable, that provisions shall be deemed to be deleted from this agreement and the remaining provisions of this agreement shall continue in full force and effect and the parties shall use their respective reasonable endeavors to procure that any such provision is replaced by a provision which is valid and enforceable, and which gives effect to the spirit and intent of this agreement.



J. NAMANDA SINDIGA
ADVOCATE
P. O. Box 72881-00200 NAIROBI

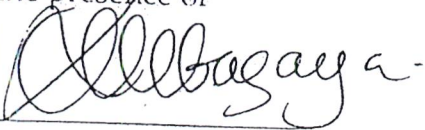
(viii) Each party acknowledges that it has not entered into this agreement in reliance wholly on any representation or warranty made by or on behalf of the other party (whether orally or in writing) other than as expressly set out in this agreement.

(ix) No amendment, change or addition hereto shall be effective or binding on any party unless in writing and executed by all the parties.

IN WITNESS WHEREOF this Settlement Agreement has been duly executed by the parties on the day and year first hereinbefore written

SEALED with the Common Seal of
NATIONAL LAND COMMISSION

In the presence of



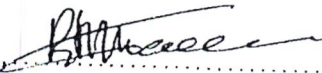
VICE CHAIRPERSON



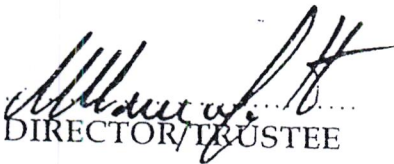
LEGAL OFFICER

SEALED with the Common Seal of
KIAMBU DANDORA FARMERS COMPANY

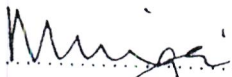
In presence of



DIRECTOR/TRUSTEE

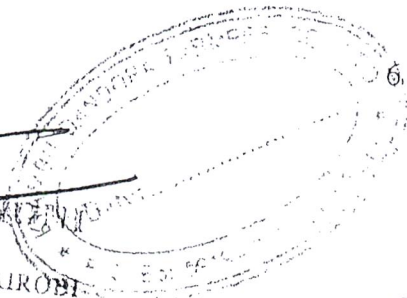


DIRECTOR/TRUSTEE



DIRECTOR/TRUSTEE


ADVOCATE
P.O. BOX 72881-00200 NAIROBI



~~1/20~~
.....
DIRECTOR/TRUSTEE

[Handwritten signature]

.....
DIRECTOR/TRUSTEE

[Handwritten signature]

.....
DIRECTOR/TRUSTEE

[Handwritten signature]
.....
ADVOCATE NAIMUDA SIMONI
ADVOCATE
P. O. Box 72881-00200 NAIROBI

Drawn By

National Land Commission
P.O Box 4417-00100
Ardhi House
NAIROBI

NAIROBI CITY COUNTY



Telephone: +254 20 2224281
Web: www.nairobi.go.ke
Facebook: NairobiCityCounty
Twitter: @county-nairobi

City Hall 2nd Floor
P.O. Box 30075 - 00100
Nairobi, Kenya

NCCA/CEGM UP&L/CSK/168/16(ns)
2016

5th August,

Kiambu Dandora Co. Ltd
P.O. Box 5919-00100
NAIROBI

RE: REGULARIZATION OF LR. NO. 11379/3

We acknowledge receipt of your request for regularization of ownership and developments into the above mentioned property.

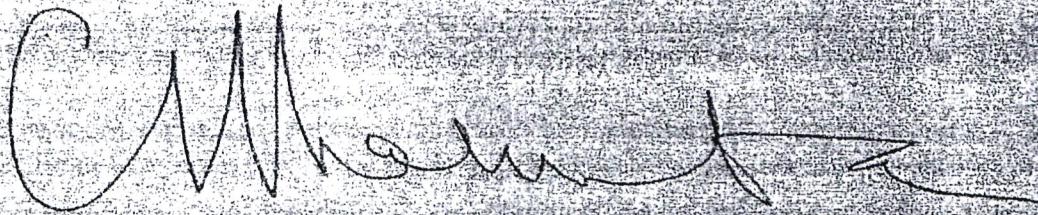
Kindly note that Nairobi City County is only interested in regularizing ownership and developments on properties where the registered plot number are in total agreement with the respective buyers/developers of the respective property/properties targeted for the exercise.

The following was agreed upon in a meeting held between yourselves, the Chief of Staff and the undersigned on the 26th July, 2016.

- (i) Your plans for subdivisions will be approved and released once submitted.
- (ii) The remaining empty spaces in the Kiambu/Dandora Scheme will be secured and no further developments will take place on the same before approval by the County.
- (iii) Negotiations for settlements of dues (value of land against rates owed) to be settled out of court.
- (iv) The Scheme will have one single invoice based on the mother title.

"The City of Choice to Invest, Work and Live in"

- (v) The County Government will expedite issuance of title deeds to legitimate individual allottees in conjunction with the Kiambu Dandora Farmers Company limited.
- (vi) Kiambu Dandora will finance the making and mounting of sign boards



CHRISTOPHER KHAEMBA
COUNTY EXECUTIVE COMMITTEE MEMBER
URBAN PLANNING AND LANDS

IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL PETITION NO. 47 2011

RECEIVED
24 MAY 2013
CONSTITUTION OF KENYA
JUDICIAL REVIEW & CONSTITUTIONAL
& HUMAN RIGHTS REGISTRY

IN THE MATTER OF SECTIONS 22, 23 & 165 (3) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOM UNDER SECTION 40 (1) AND (3) OF THE CONSTITUTION OF KENYA

referred to in the annexed affidavit/declaration

of PKIRCK MUDENE AND

sworn/declared before me this 30th

day of MAY IN THE MATTER OF PURPORTED COMPULSORY ACQUISITION OF

of NAIROBI LAND REFERENCE NO. 11379/3

AND

AND

NATIONAL LAND COMMISSION
CHAIRMAN
24 MAY 2013
P.O. Box 44417 NAIROBI

ABDULAH MUIGAI Commissioner for Oaths

RAYMOND MWANGI WAWERU 1ST PETITIONER

KARIUKI NJOROGE 2ND PETITIONER

PETER KERUMBI KEINGATI 3RD PETITIONER

JOSEPH NDUATI NGENDO 4TH PETITIONER

KIAMBU DANDORA FARMERS COMPANY LIMITED 5TH PETITIONER

6TH PETITIONER

AND

THE HON ATTORNEY GENERAL For: COMMISSIONER OF LANDS 1ST RESPONDENT
THE NATIONAL LAND COMMISSION 2ND RESPONDENT

FURTHER AMMENDED PETITION

To: The Honourable Judges High Court of Kenya
NAIROBI.

RECEIVED
1 MAY 2013
M.A.S.M. ADVOCATES
COMMISSIONERS
FOR
OATHS

THE HUMBLE AMMENDED PETITION OF RAYMOND MWANGI WAWERU, KARIUKI NJOROGE, PETER KERUMBI KEINGATI, JOSEPH NDUATI NGENDO & KIAMBU DANDORA FARMERS COMPANY LIMITED of Post Office Box 5919-00100, Nairobi SHOWETH;

1. That your 1st, 2nd, 3rd and 4th and 5th Petitioners are Trustees for and on behalf of Kiambu Dandora Farmers Company Limited the 6th Petitioner, a Limited liability Company registered in Kenya under the Companies Act, being the beneficiary of Land Reference No. LR. NO. 11379/3 which comprises 818 Acres and lies between Umoja Estate and Kayole Komarock Estates from East to West and between Jacaranda Estate and Dandora Estate from North to South of Nairobi. The said Trustees are the persons in whose names the Title to the aforesated parcel of land is registered. They also are equally the Directors of the said Company

9

9

That your 6th **Petitioner** is a Limited Liability company registered in Kenya under the Companies Act, Cap 486 Laws of Kenya and the beneficiary under a **Trust Deed** dated 7th April, 1970 for and on behalf of its contributory members.

009

Your **1st Respondent** is the Honourable Attorney General of the Republic of Kenya sued for and on behalf of the Republic of Kenya specifically the Ministry of Lands and the Commissioner of Lands therein.

That the 2nd Respondent is the Constitutional body now authorized to manage and handle all matters appertaining to Land acquisition for both National and Devolved Governments compulsorily and/or voluntarily within whose ambit the dispute the subject matter herein squarely falls.

That your Petitioners aver that sometime in the year 1966, a group of persons contributed money for the purpose of purchasing Land Reference No. 11379/3 from M/s Khan Nawaz, Khan Abbas and Mehdi Khan and duly paid the full purchase price for the 818 Acres.

That the said contributors formed themselves into a Company known as Kiambu Dandora Farmers Company Limited the 6th Petitioner herein and nominated 5 Trustees namely; KIBIRO KARANJA, REUBEN KANGARA, KEINGATI WAIHARO, NJUGUNA KIMANI and PETER G. KINGARA (hereinafter called "the deceased Trustees") to be registered on behalf of the members of the 3rd Respondent and to convey the title to the 6th Respondent as its Trustees.

That your Petitioners aver that the said Land Reference Number 11379/3 was duly conveyed to the deceased trustees on 8th April, 1970 and a Title Deed was duly issued to the deceased Trustees. Simultaneous with the issuance of the Title Deed the deceased Trustees also executed a Trust Deed to hold the aforesaid land for and on behalf of the 5th Respondent's members. To-date there has been continuous succession amongst the Trustees to the current Trustees being the 1st to 4th Petitioners.



Your Petitioners aver that sometimes in 1971,

Petitioner were embroiled in a land dispute with a rival company known as **Dandora Housing Schemes Limited** culminating in the filing of **HCCC NO. 1348 OF 1972**. The High Court referred the dispute to the arbitration of the **District Officer Makadara**, the award was filed on **7th July, 1983** and judgment thereon entered as per the **Award on 8th September, 1983**. Your Petitioners herein will crave leave of this Honourable Court to refer to the **Decree** which that the said entire parcel of land forming **LR. NO. 1379/3** belongs to your **Petitioners**.

010

8. That your Petitioners aver that in early **1974** whilst **HCCC No. 1348 of 1972** was pending in Court the Respondent herein offered to purchase from the deceased trustees **275 Acres** of land from the suit land at **Kshs. 68,000/=** but the deceased trustees declined.

9. That your Petitioners aver that after the refusal to sell their land, the Respondent herein purported to acquire your Petitioners **Land Parcel No. 11379/3** compulsorily under the **Land Acquisition Act** by publishing on the **15th March, 1974** **Gazette Notice Nos. 840 and 841** which read inter alia.

NOTICE OF INTENTION TO ACQUIRE LAND

"In pursuance of **Section 6 (2)** of the **Land Acquisition Act 1968**, I hereby give notice that the **Government** intends to acquire the following land for **future urban development**".

10. Your Petitioners avers that the said **Gazette Notice** was bad in law, defective and ineffectual in that it did not identify the public body or public interest for which the Respondent sought to acquire your Petitioners land for and that the Respondent had not complied with **Section 3** of the **Land Acquisition Act** prior to invoking **Section 6 (2)** and was therefore a gross violation of **Section 40 (1) and (3)** of the **Constitution of Kenya** and/or **Section 75 (i) (a)** of the **repealed Constitution**.



sought by the Respondent or granted directing the Respondent to acquire your Petitioners land and if there was any such direction the Petitioners aver that the same was not shown to them and in any event the Minister of Lands and Settlement consequently revoked any such directive in writing and conduct. 011

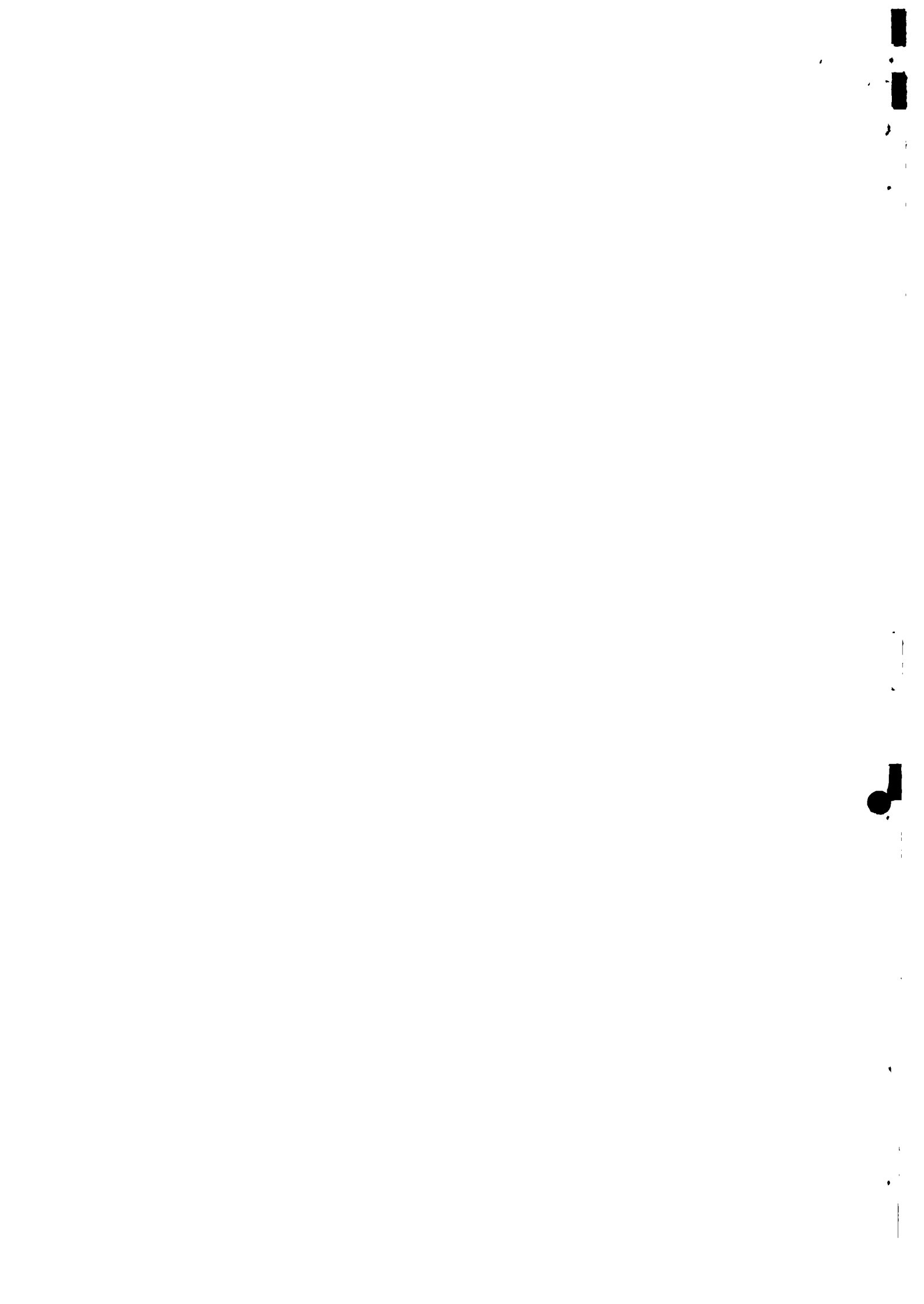
12. Your Petitioners aver that in any event the said **Gazette Notice Nos. 840 and 841** were ineffective in that the Respondent did not serve the said notice upon the deceased trustees as required under **Section 6 (2)** and further that a preliminary notice of acquisition under **Section 3** of the **Land Acquisition Act** had not been similarly served or issued by the Respondent and the necessity for causing such hardship to the Petitioners has never been disclosed up-to-date.
13. Consequently your Petitioners aver that no inquiry was ever held by the Respondent to determine the amount of compensation, and if such an inquiry was ever held your Petitioners were not invited or present.
14. Your Petitioners aver that the Respondent knew very well that a suit **HCC NO. 1348 of 1972** was pending in the High court and that this notwithstanding he did not make an attempt to inform the presiding judge of the impending acquisition and/or apply to be enjoined in the case as an **interested party** and your Petitioners will aver before this Honourable Court that the purported compulsory acquisition was malafide, unjustified, callous and an illegal deprivation of citizens of their private property.



1,316,980/= in the High Court purporting it to be the amount awarded as compensation but the said sum of money was never paid to the deceased trustees and was rejected by the High court and returned back to the Respondent. The Petitioners aver that the act of the Respondent to deposit money at the High Court when it was very well known that your Petitioners were the owners of the suit land is another evidence of the malafide motives of the Respondent. Up to-date your Petitioners have never been paid any money towards compensation for their land. 012

16. Your Petitioners aver that as further evidence of the bad faith and illegality on the part of the Respondent, the Respondent proceeded to sell or allocate huge parcels carved out of your Petitioner's Land Parcel No. 11379/3 to private companies and individuals, politicians, civil servants, policemen, business people and even employees of the Land Department thus negating any intention on its part to acquire the property for public purposes and showing clearly that the Respondent was only intent on depriving your Petitioners of their land. Your Petitioners will contend that the acts of the Respondent to alienate their land to private persons amounted to acts of corruption and bribery and are a gross violation of the Constitutional rights of your Petitioners. Your Petitioners assert that all such allocations of their land and that such title documents issued pursuant thereto are and should be declared null and void.

17. Your Petitioners aver that the Respondent has totally refused to give them access to Land Office documents or make a full disclosure as to whom their Land Parcel No. 1379/3 has been allocated and your Petitioners will as a preliminary point request this Honourable Court to direct the Respondent to produce into this Honourable Court the full list of individuals, companies and institutions to whom it has allocated the referred to parts of your Petitioners land.



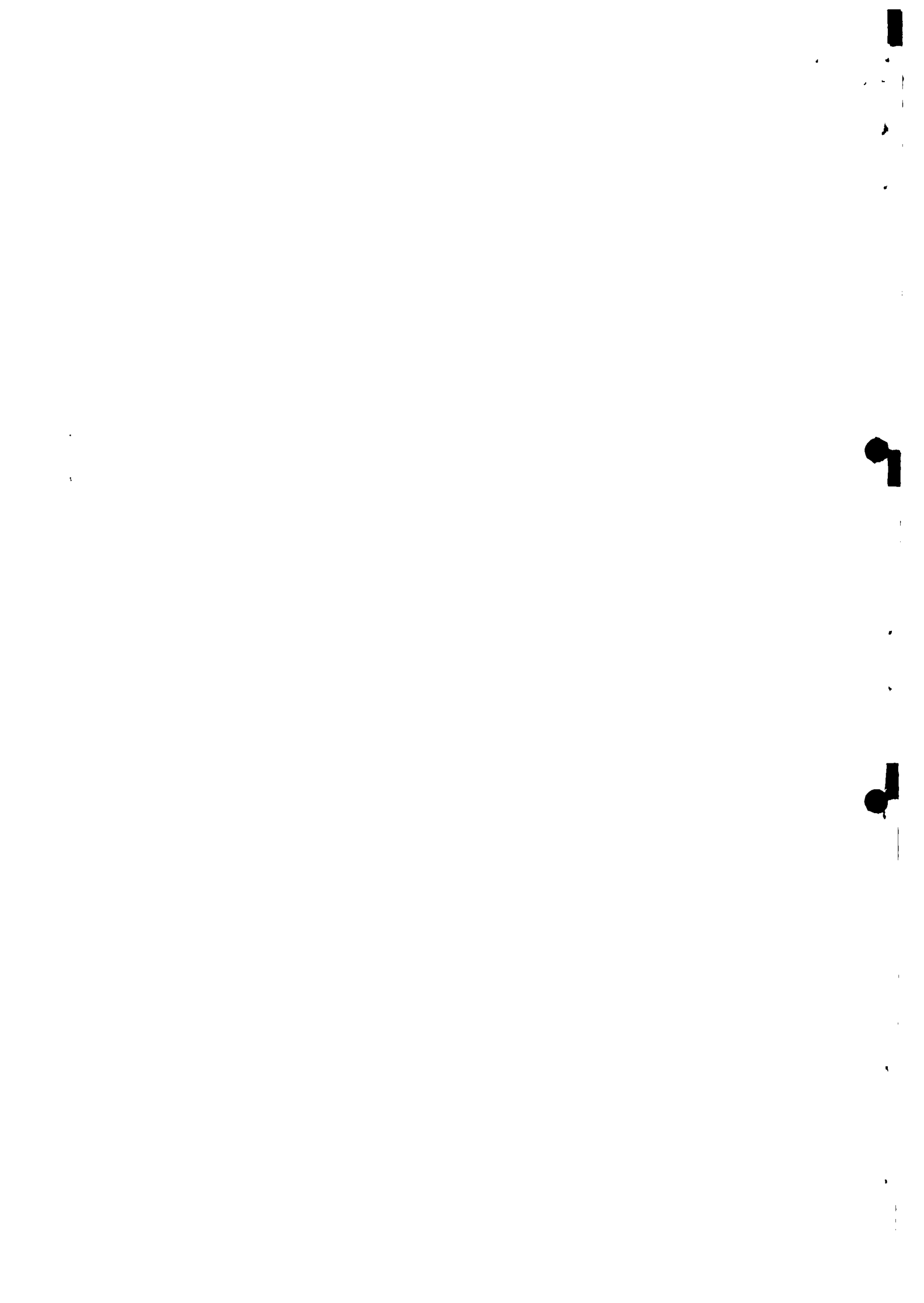
conclusion of HCCC No. 1348/72 and consequent thereto held several meetings with the Respondent and its lawful representatives during which deliberations the Respondent admitted officially, publicly and privately that the suit land is the property of your Petitioners but the Respondent has refused or failed to proceed to give effect to such decisions. In particular the Respondent and other Government representatives have severally confirmed

013

THAT:-

- i) The purported acquisition of the Petitioners parcel of land aforesated was illegal, unprocedural and not intended for any public benefit.
- ii) The Petitioners and their members be allowed to occupy the unallocated and undeveloped parts of their land with compensation for the already allocated parcels which could not reasonably be expected to revert to the Petitioners.
- iii) This position was even confirmed in Parliament by the Minister then -in-charge of lands, that the subject parcel of land belonged to the Petitioners.

19. Your Petitioner further aver that consequent to the aforesated engagements and Government realization of their fault they have surveyed and retaken owing to the engagements aforesated ~~130~~ 142 Acres out of Land Parcel No. 11379/3 with the knowledge and concession of the Respondent and allocated the said land to their members but the Respondent has refused to release the balance of ~~585~~ 676 acres of the parcel of land or compensate the Petitioners for its unlawful seizure and allocation to 3rd and 4th parties many who have developed the said parcels of land thus posing a practical difficulty and reality that the Petitioners may not be able to recover the said parcels within reasonable means.



014

Petitioners members in order to evict them from their land and/or deny them entry and access by using the Provincial Administration to beat, injure and arrest the members of the Petitioners and to prevent them from developing their plots. On the other hand the Respondent colludes with land grabbers, thieves, violent persons and trespassers who have been freely allowed by the Respondent to invade and occupy your Petitioners land with the permission or connivance of the Respondent.

1. The Petitioners avers that the Respondents illegal actions aforestated have had the effect of depriving them of their lawful parcels of land leading to a great loss of a large section of their land, loss of its user and creation of very high costs of recovery in Court cases meant to ward off other persons attempting to move into their parcel of land to claim rights and ownerships therein on the alleged authority and allocation of the Respondent. To that many cases have been filed by the Plaintiffs against 3rd parties or the Plaintiffs have been sued by the said 3rd parties, which cases are concluded, abandoned or pending in Courts at various stages of their litigation.

22. In spite of many meetings, written protests and memoranda, the Respondents have failed and refused to revoke such complained of allocations and have persisted to clandestinely allocate and issue new titles to 3rd and 4th parties to the detriment and continuing loss on the part of the Petitioners, acts which are and have remained outrightly fraudulent.

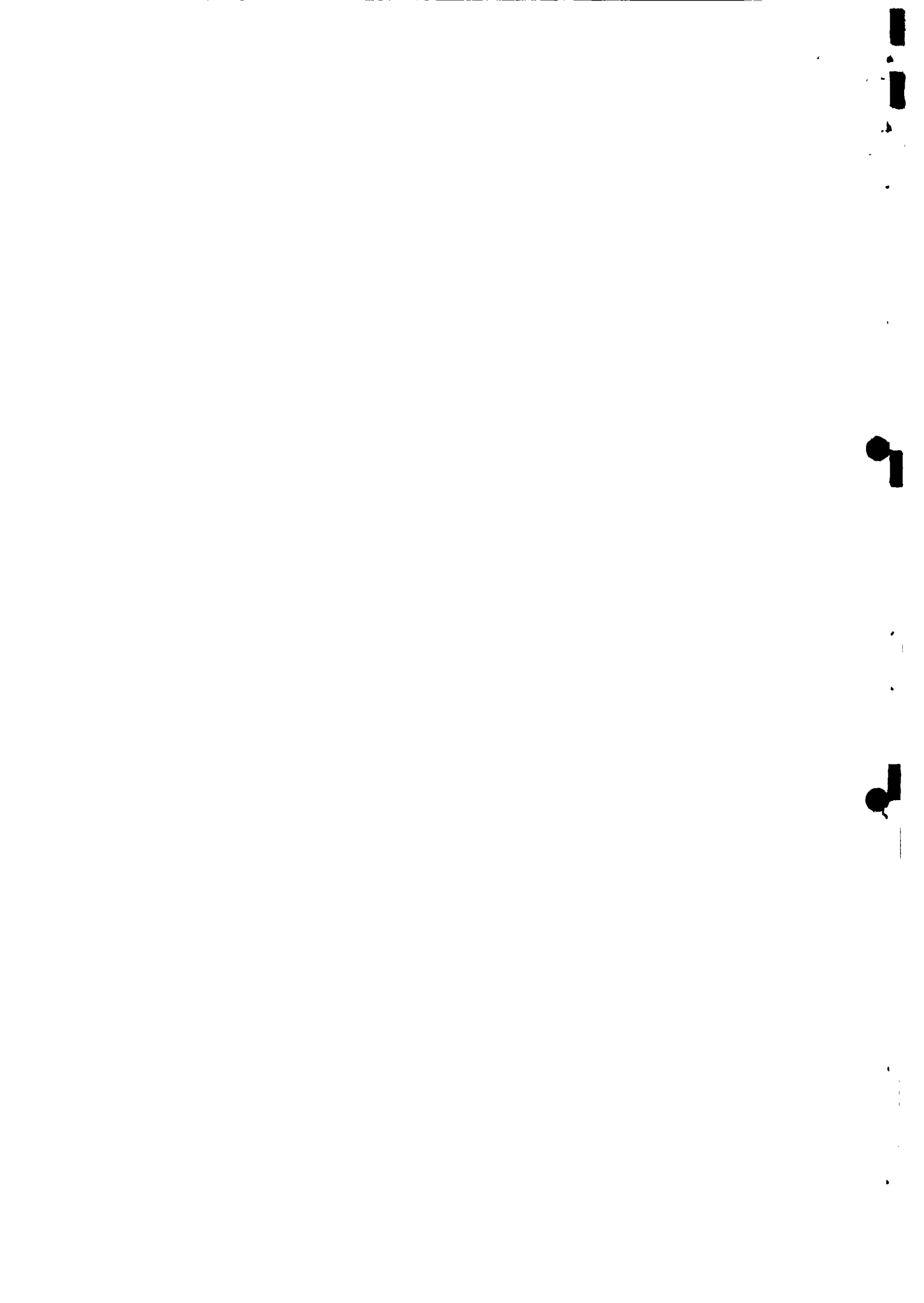
Particulars of fraud:-

i) The Respondent has known all along that the Government had no land in the particular Section the subject matter of this case but proceeded to forcefully get into the Petitioners parcel LR. No. 11379/3 and unilaterally allocate parcels therefrom to other private persons.



The Respondent knew that there had been no consideration at all or a negotiated consideration and yet purported to claim a right to the land and purported to allocate parcels thereof to other parties.

- ii) The Respondent and other officers simply allocated the parcels of land to well known connected persons and Senior Government Officers for speculation and re-sale for self aggrandizement knowing too well that the land belonged to your ordinary Petitioners.
 - iv) The Government knew the spirit and intent and provisions of the Land Acquisition Act and the Constitution in the realm of compulsory acquisition of private land but simply and with impunity acted contrary to the said Constitution and the Law.
 - v) The Government simply ignored the Plaintiffs protests and Memoranda in proceeding to allocate their parcel of land.
23. Your Petitioners aver that the acquisition of **Land Parcel No. 11379/3** was totally illegal or ineffective and if there was such an acquisition the same was negated by subsequent acts of the Respondent in particular by illegal and fraudulent actions of allocating or distributing your Petitioners land to private persons totally against the letter and spirit of Constitution and the Land Acquisition Act. Your Petitioners aver that by making public pronouncements in Parliament and other public fora that the suit was the property of the Petitioners, by several letters and various reports issued by the Respondent and Government Officers admitting the suit land is the property of the Petitioners and by allowing the Petitioners to survey and retake parts of their land and by issuing Ownership documents to some members of the 6th Petitioner the Respondent has lost whatever purported claim it may have on your Petitioners **Land Parcel No. 11379/3**.



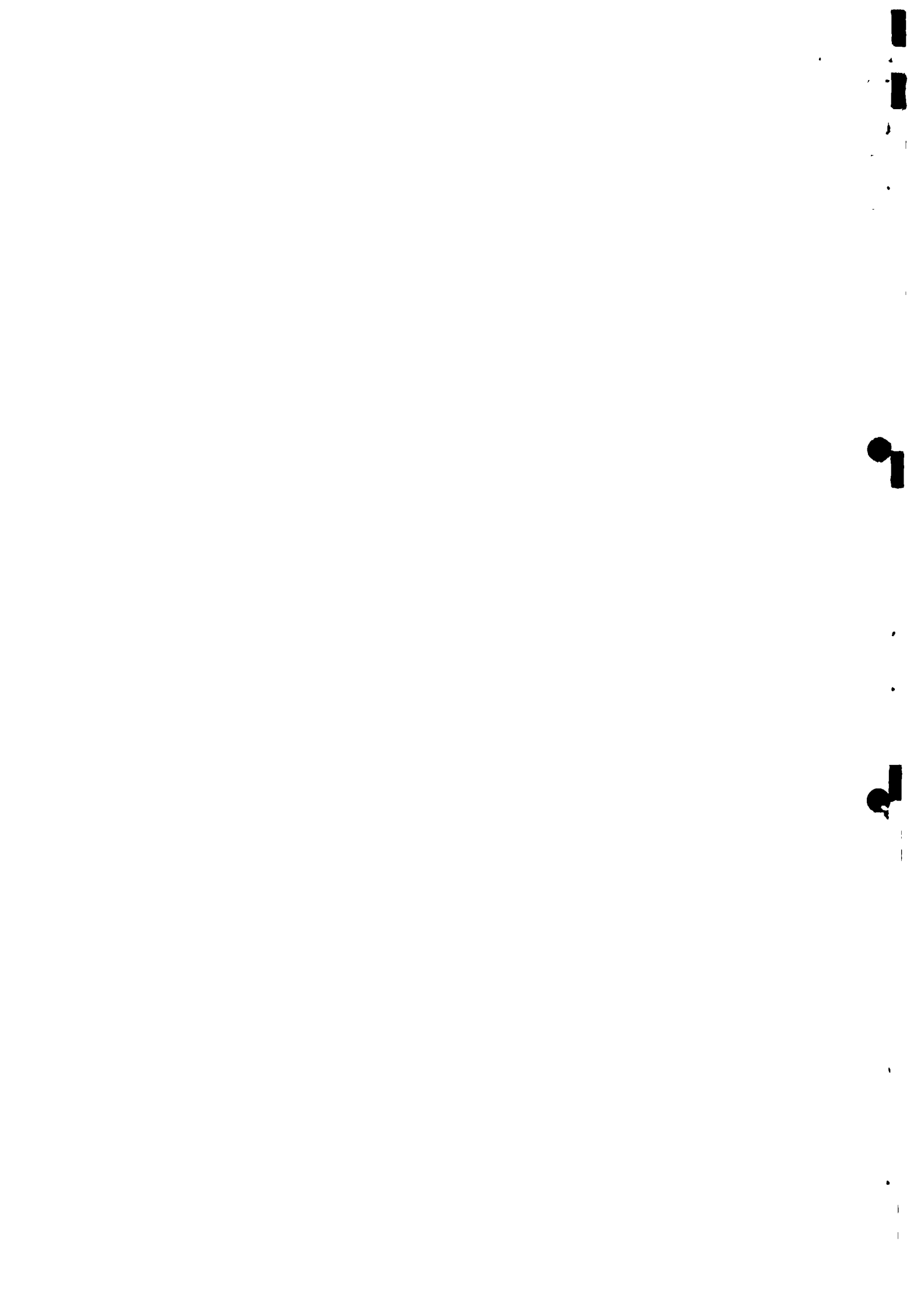
4. Your Petitioners will pray to this Honourable Court to find that the entire process purportedly engaged into by the Respondent be found to have been illegal, to be annulled together with any consequent acts on the part of the Respondents and to order and the Respondents and particularly the 2nd Respondent as the current authority in charge to remove from the suit land all persons it may have purported to put in possession and/or who are in occupation and to cancel such illegal titles as may have been issued to such person and on failure the Respondents should be ordered to pay full compensation to your Petitioners at the current value of the lost land measuring 485 676 acres assessed conservatively at Kshs. ~~4~~ 17,035,200,000/= Billion.

25. There is no other case pending or concluded involving the parties herein over the subject matter save for discussions referred to above. The previous cases filed and referred to in paragraph 21 above have involved the Petitioners and other 3rd and 4th parties who intended to move in and encroach into various parts of the Petitioners parcel of land, the subject matter herein.

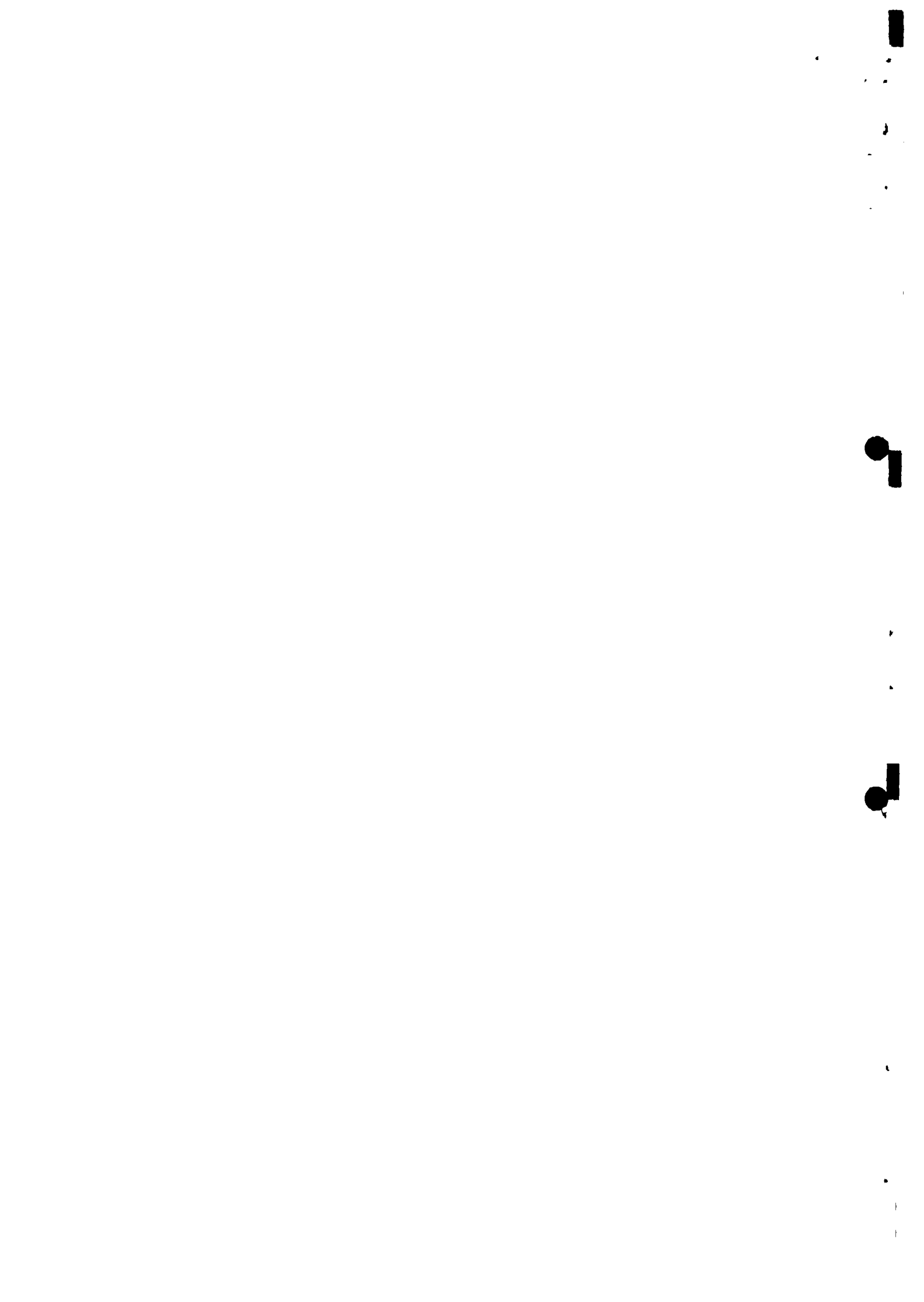
26. This Court has the Constitutional authority and jurisdiction to entertain this Petition.

REASONS WHEREFORE You Petitioners humbly pray for redress under Sections 23 as read together with Sections 165 and 40 of the Constitution of Kenya as follows;

- a) For a declaration that your Petitioners fundamental right to protection against arbitrary deprivation of private property under Section 40 of the Constitution of Kenya have been grossly infringed and violated by the Respondents purported act to compulsory acquire their Land Parcel No. LR. No. 11379/3.



- b) For a declaration that the purported compulsory acquisition of the Petitioners Land Parcel No. 11379/3 vide Kenya Gazette Notice Nos. 840 and 841 of 15th March, 1974 was unlawful, null and void *abinitio*.
- c) For an Order that all consequent dealing by the Commissioner of Lands and the National Land Commission in respect of Land Reference No. 11379/3 or any part thereof following the purported compulsory Acquisition including issuance of any Allotment letters, leases and/or titles therefrom to any 3rd parties other than the Petitioners and in particular members of the 6th Petitioner are null and void.
- d) For an Order directing the Commissioner of Lands to Respondents and Particularly the 2nd Respondent cancel any such allotments, leases and/or titles issued to such 3rd parties and to remove forthwith from any part of the said Land Parcel No. 11379/3 all persons, individuals, companies or institutions in occupation or possession thereof within 30 days of the Orders herein in default of which the Petitioners be at liberty to cause the removal of such persons, individuals or companies at the Respondents cost. AND IN PARTICULAR the 2nd Respondent to ordered to cancel all such Titles issued to Third and 4th Parties covering all Sections of L.R 11379/3 so far not developed and/or encroaching on Sections occupied and being inhabited by members of the 6th Petitioners.
- e) For an Order for the Petitioners to be paid damages for trespass and non-use of their Land Parcel No. 11379/3 from 1974 up-to-date.

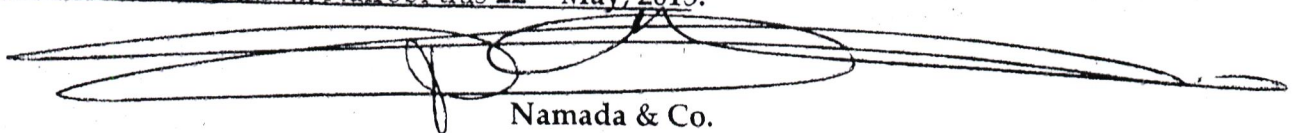


- f) IN THE ALTERNATIVE and/or in addition to the prayers sought above the Respondent be ordered to pay compensation to the Petitioners for the ~~485~~ 676 acres curved out of the Land Parcel No. 11379/3 and allocated to 3rd and 4th parties and which may not be practically recovered within reasonable means and cost which total land is at currently conservatively valued ~~of at Kshs. 6,000,000/=~~ 21,000,000/= per acre and together with 20% value in damages for loss and disturbances is valued in full at ~~Kshs. 4 Billion~~ at Kshs. 17,035,200,000/= (Kenya Shillings Seventeen Billion, Thirty Five Million and Two Hundred Thousand.
- g) An Order that the Petitioners be paid the costs of this Petition by the Respondent.
- h) Any further or other reliefs this Honourable Court may deem fit to grant.

DATED at Nairobi this 16TH day of MARCH 2011.

AMMENDED at Nairobi this 23rd May, 2011

FURTHER AMMENDED at Nairobi this 22nd May, 2013.



Namada & Co.
Advocates for the Petitioners.

Drawn & Filed by:-

Namada & Co. Advocates
Phoenix House, 6th Floor
Kenyatta Avenue
P. O. Box 72881-00200
NAIROBI.

To be served upon:-

1. The Attorney General
Attorney General's Chambers
State Law Office, Sheria House
Harambee Avenue
NAIROBI. *Ref M/Ls/22/08*
2. The Chairperson,
The National Land Commission
Ardhi House
NAIROBI.

③. Mbugua Atudo
Macharia Advocates
Nginyo Towers 6th Fl
Koinange Street
NRB

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. APPLICATION NO. 1507 OF 2004

REGISTRY
07 JUL 2005
CIVIL SIDE
NAIROBI

019

PETER KARUMBI KEINGATI 1ST APPLICANT
RAYMOND MWANGI WAWERU 2ND APPLICANT
KIAMBU DANDORA FARMERS CO. LTD. 3RD APPLICANT

VERSUS

COMMISSIONER OF LANDS RESPONDENT

AFFIDAVIT

I, PETER KARUMBI KEINGATI of P.O. Box 58409 Nairobi do make oath and state as follows:

1. THAT I am the Managing Director of Kiambu Dandora Farmers Co. Ltd. and also a Trustee for the members of the Company (Trust Deed annexed marked "PKK1").
2. THAT this matter came up for mention on 23rd June 2005 before the Hon. Mr. Justice Ibrahim.
3. THAT the court directed an inquiry to be held by the Honourable Court on 13th July 2005.
4. THAT the Honourable Judge directed me to avail myself for cross-examination on 13th July 2005 to explain where I got the court decree in HCC No. 1555 of 1984.
5. THAT I would like to state that I got the said decree from Buru Buru C.I.D. Office where the police were holding documents belonging to Cornelius Peterson Waithaka the then Chairman of Dandora Housing Schemes Ltd.
6. THAT sometimes in the year 1999 my company discovered that the said Cornelius Peterson Waithaka was selling our land using a provisional certificate of title allegedly issued by the Lands Office.
7. THAT we complained to Police since we were in possession of the original Certificate of Title.
8. THAT among the documents police recovered from Mr. Cornelius Peterson Waithaka were a copy of Provisional Certificate of Title, a Decree in HCCC No. 1348 of 1972, Decree in HCCC No. 1555 of 1984, Court orders in HCCC No. 1348 of 1972 copies of two letter written by the Permanent Secretary and Secretary to the Cabinet both dated 30th July 1998 and various correspondences and legal documents.

This is the exhibit marked PM - 4
referred to in the annexed affidavit/declaration
of PKK1 MUNENE
sworn/declared before me this 30th



(copies of Provisional certificate of Title, Decree in HCCC No. 1348 of 1972, and two letters, Court orders in HCCC No. 1348 of 1972 marked "PKK2 (a), (b), (c), (d), (e) and (f)".

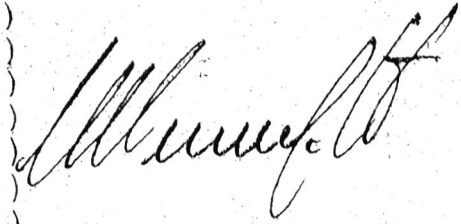
020

9. **THAT** among the entries made in the Provisional Certificate of title was entry no. 5 reading "Decree civil case no. 1555 of 1984 nullifying the acquisition no. 3 above".
10. **THAT** the said Cornelius Peterson Waithaka was charged in Makadara Criminal Case No. 516 of 1999 with various counts of forgery including forging the Provisional Certificate of title. (copy of charge sheet annexed marked "PKK3").
11. **THAT** the criminal case against Cornelius Peterson Waithaka never proceeded to hearing because of frequent interferences by senior police officers who interfered with the trial and even urged its withdrawal. (copy of letter annexed marked "PKK4")
12. **THAT** eventually the criminal proceedings against the said Cornelius Peterson Waithaka were stayed in two judicial Review Proceedings by H.C. Misc. 86 of 1999 and H.C. Misc. No. 670 of 2000 and to the best of my knowledge the two cases are still pending. (copies of order and application annexed marked "PKK5 & 6").
13. **THAT** we instructed our advocates on record to find out the legality of the court orders that were obtained and our Counsel advised us that he could only trace the court file in HCCC No. 1348 of 1972 but court file in HCCC No. 1555 of 1984 was not traceable. (copy of letter annexed marked "PKK7").
14. **THAT** our Counsel further advised us that the Decree obtained by Cornelius Peterson Waithaka in HCCC No. 1348 of 1972 transferring our land parcel No. 11379/3 to Dandora Housing Schemes Ltd. was wrong in that it did not follow the judgement of the court and that the High Court had vacated the said decree by an order dated 13th November 1985.
15. **THAT** our Counsel further advised us that despite the fact that the said court order was vacated, the said Cornelius Peterson Waithaka proceeded to apply to the High Court for its enforcement and the High Court (Mr. Justice Shields) ordered the Deputy Registrar to register the said parcel No. 11379/3 despite the fact that the decree was vacated.
16. **THAT** we filed an application to vacate the order of Hon. Mr. Justice Shields and our application was allowed. (copy of ruling and order annexed marked "PKK8 (a) & (b)".
17. **THAT** on 28th February 2001, M/s Amboseli Court Ltd. filed an application in HCCC No. 3130 of 1995 to join our company in its suit against Dandora Housing Schemes Ltd.



- 18. **THAT** whilst the matter was pending the Deputy Registrar Mr. C.K. Njai at the application of Counsel for Amboseli Court Ltd. directed the D.C.I.O. Central Police Station to investigate the court decree in HCCC No. 1555 of 1984.
- 19. **THAT** the report of the D.C.I.O. Central was filed in Court on 7th January 2002 which confirmed not only that there was no forgery but further, by an attached affidavit sworn by P.C. David M. Cheboi who was the investigating officer, confirmed that the signature was that of C.K. Njai the Deputy Registrar. (copy of report annexed marked "PKK9")
- 20. **THAT** the plaintiff in the said Decree are KIBIRO KARANJA, REUBEN KINGARA, KEINGATI WAIHARO, NJUGUNA KIMANI and PETER G. KINGARA who are the previous trustees of Kiambu Dandora Farmers Co. Ltd, in L.R. No. 11379/3.
- 21. **THAT** on 28th May 2003, the said Dandora Housing Schemes Ltd. again attempted to transfer our land to themselves by deceiving the Deputy Registrar Mrs. Matheka to sign a transfer to enforce the vacated Decree of 14th March 1985.
- 22. **THAT** to our consternation the Deputy Registrar Mrs. Matheka signed a transfer conveying our land again to Dandora Housing Schemes Ltd. and we had to go back to court to have the transfer cancelled. (copies of transfer and order annexed marked "PKK10, & 11)
- 23. **THAT** the facts deponed herein are true to the best of my knowledge, belief and information.

SWORN by the said:
PETER KARUMBI KEINGATI at Nairobi
 this 7th day of July 2005



BEFORE ME

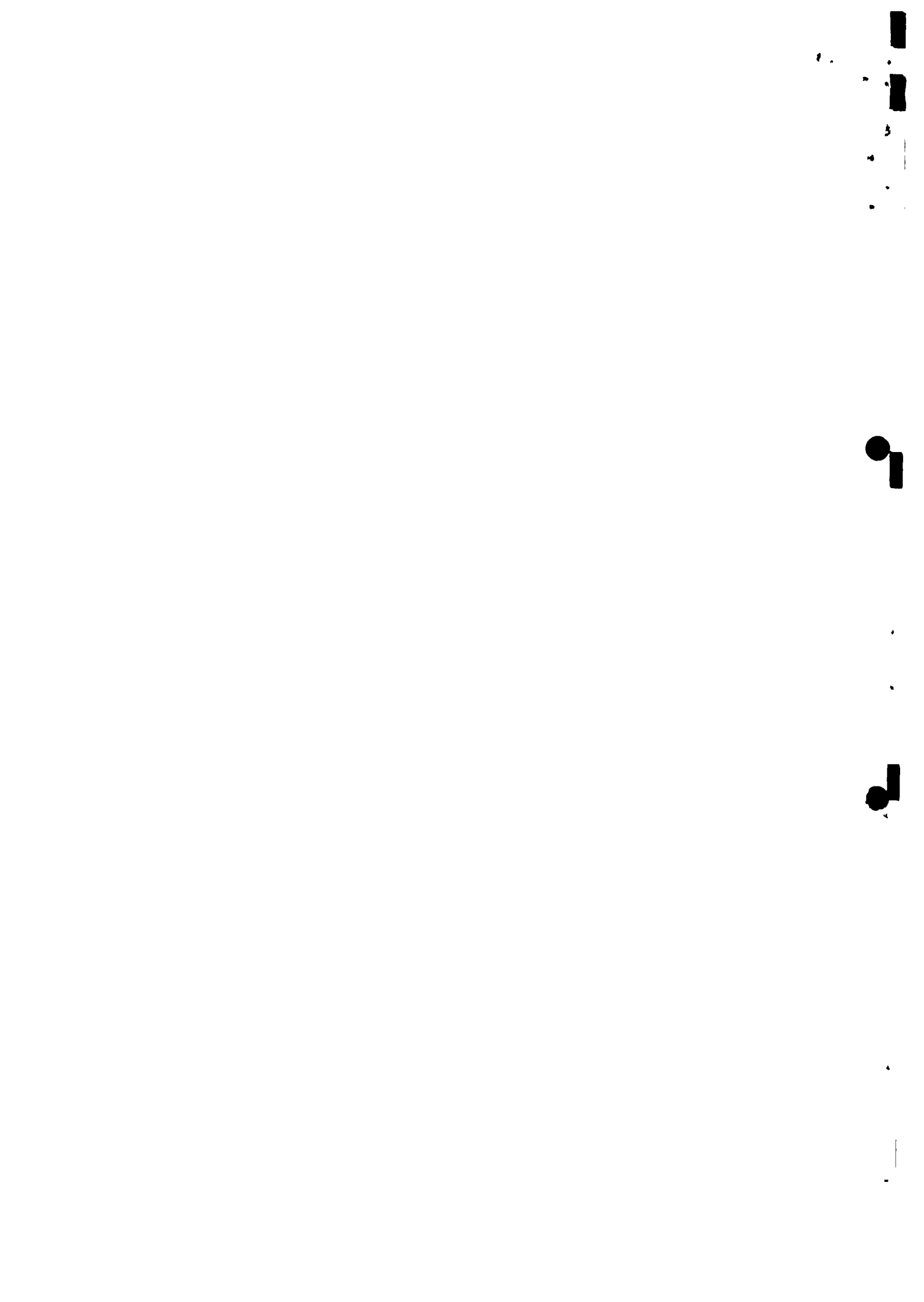
MARGARET OPONDO
 ADVOCATE
 COMMISSIONER FOR OATHS
 BOX 8901 - 00100
 NAIROBI - KENYA

1000

COMMISSIONER FOR OATHS

DRAWN & FILED BY:

NJIRU BONIFACE & CO.
ADVOCATES
JUBILEE INSURANCE EXCHANGE
2ND FLOOR, MAMA NGINA STREET
P.O. BOX 8638-00300





MINISTRY OF LANDS AND PHYSICAL PLANNING

RESPONSE TO PETITIONS REFERRED TO THE MINISTRY BY THE
DEPARTMENTAL COMMITTEE ON LANDS.

PETITION NO: 1

Petition by George Theuri, MP on behalf of residents of Mowlem Ward regarding the alleged irregular allocation land LR No 11379/3

- a) The chronological/history of the ownership of the said land.
- b) The real owners of the said land
- c) Provide a copy of the original title deed
- d) If the Ministry is aware of the dispute in the said land
- e) Any other information relevant to solving to petition

Hon Chair and members of the committee,

- a) The chronological history of the ownership of the said land

LR.No.11379/3 measures about 818 acres situated in the city of Nairobi.

The parcel first belonged to Khan Nawaz Klau and Khan Abbas Khan an Asian of Indian origin. The Khan family met and engaged with five (5) gentlemen namely: Kibiro Karanja; Reuben Kangara; Keingati Watharo; Njuguna Kimani and Peter Gacheru Kingara who were representatives of a group of 225 persons that were interested in purchasing the land. The five, upon receiving the purchase price, formed a company known as Kiambu Dandora Farmers Company Limited and decided to transfer the land into the name of the company.

Disputes ensued between the five and the rest of the 225 interested parties when they failed to transfer the land to the beneficiaries/members. The members then formed a company known as Dandora Housing Scheme Limited to institute a suit against the five individuals.

Dandora Housing Scheme Limited Filed High Court Suit No. 1348 of 1972 (Robert Macharia, C.P Waithaka, Raymond Mwangi, Mutegi Karega, William Muthaura, Nelson Muchai, Njenga Chege and Dandora Housing Scheme Limited Versus Kabito Karanja, Reuben Kangara, Keingati Waiharo, Njuguna Kimani and Peter G Kangura).

HCCC NO 1348 of 1972

The matter was referred to arbitration by the court under the then Provincial Commissioner of Nairobi. The award of the PC was registered and adopted. The Ruling by the Hon Justice Sachdeva dated 8th September 1983 conferred the land to the contributors (225) persons plus the five agents (if they had interest). (*See Annex 1* court order by Justice Sachdeva and the Arbitral Award).

b) The real Owners of the said Land

Hon chair,

As stated above, the court ruling by Hon Justice Sachdeva dated September 8, 1983, conferred the land to 225 contributors plus the five agents if they are interested. These are therefore, the legal owners of the land.

We have attached a list of the beneficiaries as approved by the court (*See Annex 2*) list of recipients).

c) Provide a Copy of the Original title deed

Hon Chair,

A copy of the title deed is attached. The original title is not with the Ministry but with one of the disputing parties which is Kiambu Dandora Farmers Company Limited. Please note that the title was registered before the case. (*See Annex 3 copy of the title of LR 11379/3*)

d) If the Ministry is aware of the Dispute.

Hon Chair,

The Ministry is fully aware of the complaint by the Mowlem Ward Residents. Mowlem Ward Residents brought a claim over this land. The Ministry's Public Complaints and Resolution committee (PCRC) convened on the March 10, 2016 purposely to interview Mowlem Ward residents and Dandora Housing Scheme Limited who laid claim over this land LR 11379/3 (IR 23514).

The committee ruled as follows:

- (1) That Dandora Housing Scheme Limited are the rightful owners of the parcel of land;
- (2) That the Secretary for Lands should institute urgent and necessary measures to issue the group with new titles;
- (3) The committee was of the opinion that some officers in the Ministry's Central Registry were playing games to delay the issuance of the title deed;
- (4) That Mowlem Ward Community should negotiate with Dandora Group on willing buyer, willing seller basis, if they wanted to stay on the parcel of land. (*See Annexure 4 ruling by the Public Complaints Committee*)

The Ministry has subsequently made the following observations and recommendations:

- (i) The land should be allocated to the 230 persons as per the court order in HCCC No 1348 of 1972.
- (ii) That most of the property (over 90%) has been either sold out or allocated to numerous persons, the City Council and Government institutions to the disadvantage of the original owners.
- (iii) That Dandora Housing Scheme title was collected by CP Waithaka who later fraudulently transferred it to his private company, Falcon Kenya Limited.

The Ministry recommends that criminal investigations be opened against C.P Waithaka. We also recommend due process be followed to lead to the revocation of the registration of the land in the name of Falcon Kenya Limited.

We propose the following as the way forward: -

- a) The formation of a joint task force involving the Ministry and the National Land Commission (NLC) to investigate and conclusively deal with the Dandora Housing scheme. *In light NLC Act. on historical injustices*
- b) The Ministry, NLC and the Ministry of Interior and National Coordination to profile the list of beneficiaries of the 225 plus the five agents (if interested) or their representatives or families since most of them are now deceased.
- c) The Ministry to find out how much of this land is left as the same has been sold out over the years.
- d) Necessary action to be taken against persons who have engaged in any fraudulent dealings through the Director of Criminal Investigation.

PETITION NO.2

Petition by Hon. Joseph Manje, MP on behalf of residents Kajiado County regarding alleged discrepancy in compensation offered to land owners by the National Land Commission due to a Land Value Survey undertaken by the Ministry of Lands and Physical Planning along the Standard Gauge Railway Phase.

Hon chair,

I wish to respond as follows:

The Ministry of Lands and Physical planning received a request from the chairman National Land Commission vide letter Ref. NLC/V&T/Project dated March 13 2018 to provide comparable sales of land along the SGR corridor for compensation of the affected persons.

Valuers from the Ministry carried out value survey of land parcels along/adjoining SGR corridor to gather valuation data for the intended purpose. This exercise was carried out in the months of February and March 2018. The outcome was a land value guide after analysis of property values spanning between Nairobi National Park to Naivasha covering Kajiado, Kiambu and Nakuru counties. In Kiambu County areas covered included Mikuyuni location in Kikuyu sub County and Ndiuni and Ndeiya locations in Limuru sub County.

The parcel gazetted for compulsory acquisition is indicated as Kiambu Western Grazing Land under communal ownership with Kiambu County as the Trustee. The individual owners/occupants of the land are yet to be identified. The entire stretch that is subject to acquisition is undeveloped with grazing land and shrubs on undulating slopes of land, with very few temporary structures.

We identified it as one sub-market and recommended a value guide of Kshs 700,000 per acre. After the valuation surveys, the Ministry vide letter Ref. Admin/121/TPY/Memo/Vol 2/32 of 28th March 2018, forwarded the land value guide to NLC.

PETITION NO.3

Petition by Indigenous People of Vipingo Lands Community in Kilifi County regarding alleged irregular acquisition of land belonging to the indigenous people of Vipingo Lands Community in Kilifi County.

Hon. Chair,

I wish to respond as follows:

Rea Vipingo Estate is located in Kilifi County with a land area of 8,990Ha. Most parcels of the estates are registered at Mombasa Central Registry under the Registration of Titles Act (Cap 281 repealed). There are various Companies and Individuals that own different parcels under the Rea Vipingo plantations. Some parcels of land have missing land records as shown on the attached schedule (*see Annexure 5*).

Hon. Chair,

The petitioners' claim their forefathers were evicted from the land in the year 1913 by the colonial government. They further claim that after independence in 1963 the land was not restored back to their community but allocated to private individuals and companies who are in occupation to date.

Hon Chair,

This is a case of historical injustice as the petitioners were forcefully evicted from their land. However, this is not unique to this community given the history of colonial settlements and displacements of indigenous Kenyans. That said, the law has a framework to address these injustices. Article 67(2) (e) of the Constitution of Kenya mandates the National Land Commission to initiate investigation on its own initiative or on a complaint into historical land injustices and recommend appropriate redress.

Hon Chair,

Since the petition touches on issues the Ministry is ready to provide any information concerning this petition to NLC. Attached is a schedule of all parcels stated in Schedule 1 of the petition that describes:

- a) The land reference number
- b) The coastal registry number
- c) Area and
- d) The current registered owner (*See attached as Annexure 5*)

We have also attached current land searches for the parcels (*see attached 6*)

✓ PETITION NO.4

Petition by members of Mt. Kenya Forest Squatters and residents of Meru regarding excision of the Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters.

Hon. Chair,

I wish to respond as follows:-

LR NO. 13269 was first granted to J. H. Angaine and Sons Limited for a consideration of Kenya shillings fifteen million two hundred and ten thousand (Kshs. 15,210,000) being capital value paid on or before the execution. The parcel measures 384.1 Ha as delineated on Deed Plan Number 194969 with a term held on fee simple subject to special conditions 1-6 as described on the title. (see copy of search of LR 13269 and IR 66177). Annex 7

The title was issued on 6th June 1995 by the Commissioner of Lands by order of the President and was registered on 21st June 1995 at the Nairobi Central Registry as IR 66177/1 (Annex 8, see copy of search).

Hon Chair,

LR No. 122234 was granted to Home Grown (Kenya) Limited for a consideration of Shillings (18,324,000/=) being capital Value paid on or before the execution hereof the President of the Republic of Kenya on behalf of the Government.

The parcel measures 540.2 Ha. as delineated on Deed Plan 194968 with term held on fee simple subject to special conditions 1-6 as describes on the title. (see copy of search of IR 12234 and IR 66178). The title was issued on 6th June 1995 by the Commissioner of Lands by order of the President and was registered on 21st June 1995 at the Nairobi Central Registry as 66178.

On the same 21st June 1995 the same was transferred to J. H. Angaine and Sons Limited for a sum of Kshs. 2,500,000.

LR 13269 registered as IR 66177, LR 12234 registered as IR 66178, LR No. 13191 registered as IR 25667 and LR No. 13176 registered as IR 25956 were amalgamated to form LR No. 20737 and issued with a new IR of IR 66259 on 28th June 1995. (Annex 9, see copy of search of IR 66259)

LR No. 20737 (IR 66259)

This parcel measures 1745.3 Ha as delineated on Deed Plan No.196658. The land was held by J. H. Angaine and Son's Limited.

- On 28th June 1995, 11.70 Ha (LR No. 20737/1) was surrendered to Government (see Entry No.2)
- On the same day 466.7 Ha. (LR No. 20737/3) was transferred to Home grown (k) Limited for a term of free hold vide IR 66260. (see Entry 3)(see Annex 10)
- 240.3 Ha. (LR No. 20737/2) was transferred to J. M. Angaine and Sons Limited vide IR 66261 (see Annex 11)
- 825 Ha (LR No. 20737/5) was issued under sec 70 of RTA and belongs to J. M. Angaine. (see Annex 12)
- 201.5 Ha (LR No. 20737/4) was transferred to Elizabeth Kaliuntu Angaine for vide (IR 6666). (see Annex 13)

PETITION NO.5

COMPLAINT BY Ndeiya Land owners regarding inadequate compensation paid by the National Land Commission for acquisition of land for the construction of the Standard Gauge Railway

Hon chair,

I wish to respond as follows: -

The Ndeiya land parcel is indicated communal within Kiambu Western grazing area. Kiambu County Government is the registered trustee.

The parcel stretches across Mikuyuni location in Kikuyu sub-county, Ndiuini & Ndeiya location in Limuru sub-county. The entire area is undeveloped with grazing land and thickets.

The Ministry of Lands and Physical Planning value guide recommends a market value of Ksh. 700,000 per acre for this area.

Thank you.

Farida Karoney, OGW
CABINET SECRETARY

Tele. No.
When replying, please quote
Ref. No. MT/LND/16/8/(11)
and date



OFFICE OF THE DISTRICT OFFICER
Makadara
P.O. Box 30124, NAIROBI
..... 6th July 1983

IN THE D.O.'S OFFICE AT MAKADARA
LAND DISPUTE NO. ONE (1) OF 1983

1. C.F. MATHURA
2. RAIKIN M'WANGI
3. NJENGA KARANI
4. NJENGA CHEGE
5. NELSON MUCHELI
6. DANDORA HOUSING SOCIETIES LTD

COMPLAINANT

RESPONDENTS

1. HIBERO KARANI
2. REUBEN MANGARA
3. KENIGATI MANGARA
4. GACHIRU MANGARA

RESPONDENTS

LIST OF WITNESSES

1. D.K. MAMENI
2. KAREBU MUCHELI
3. WAIMABA M'WANGI
4. GIBSON M'WANGI

D.O.'S OFFICE MAKADARA
BEFORE C.M. NURIA M'WANGI

The above land dispute coming before the D.O. Makadara, which involves the two parties referred to above is an order to the P.C. Nairobi Area from the High Court of Kenya. It is in the proceedings of the Civil Suit No. 1212 of 1972 that the arbitration in question was referred to the P.C. This was done by the consent of both parties.

The order is specific in that it requires the P.C. or his nominee to determine the contributors who purchased the land in dispute i.e. - L.N. 11379/3 Komo-Rock Road Nairobi. The rightful contributors are by definition of the order:- "Persons who have contributed to purchase price as the date moneys were paid to Sharpley Barrett Marsh, Advocates for the purchasers of suit property".

There is a common understanding between the parties before me that a total 202 people contributed to the purchase price of the suit property. Moreover, the complainants claim that 23 other persons also contributed.

The respondents, on the other hand, claim to have contributed, plus, 64 others. The problem before the panel, therefore, is to determine who, on top of the 202 agreed members, contributed to the purchase price of the suit property.

Both parties did not furnish the panel with the list of 202 contributors which they had agreed upon. The complainants, however, produced a list of 225 members and argued that those 225 members in the name and style of Dandora Housing Schemes Ltd were the rightful contributors. They also requested the panel to consider the five respondents in the name and style of Kiambu Dandora Farmers Company, if they would withdraw the suit and team up with them. This would make a total of 230 members. The respondents did not agree.

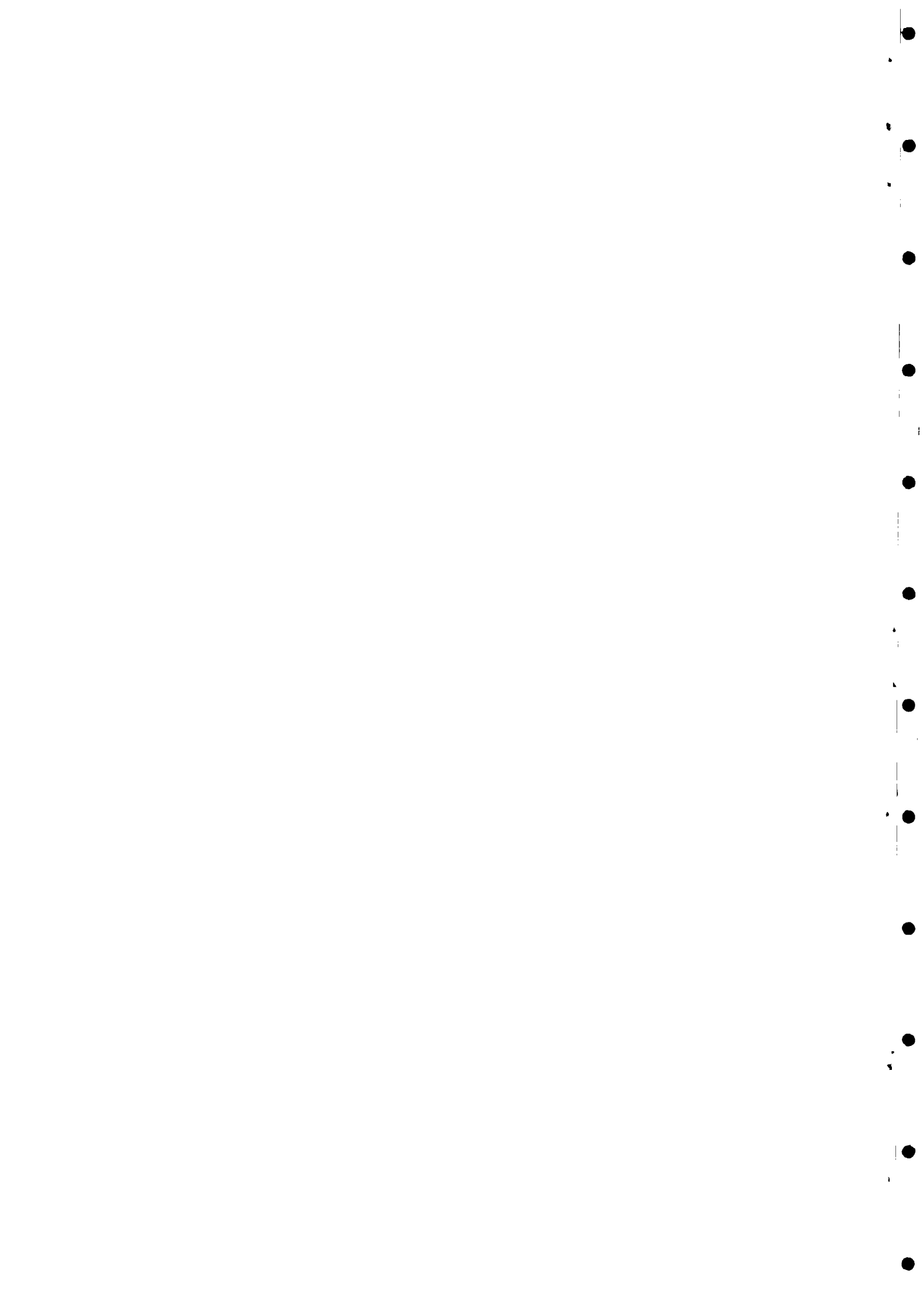
At this juncture, I reminded the parties of the guideline set out in paragraph No. 6 of the High Court Order, pointing out that the then directors of the purchasers of the suit property should tell the panel when the land in dispute was completely bought out and also when the money was taken to the advocate mentioned therein. Mr. Keingati Waiharo, the then secretary of the Respondents produced a receipt from Sharpley Barrett dated 8th May, 1968. The panel did not see the need of taking statements from both parties since the task before it was straight forward - namely examining the necessary and available documents to unearth the actual contributors to the purchase price of the land in dispute.

The complainants objected to the receipt arguing that at a general meeting held on 2nd July, 1967 called by the respondents, the complainants were told that the farm was completely bought out as at that date. A sale agreement was produced by the respondents. It is dated 3rd July, 1967. The agreement was therefore signed a day after the said general meeting took place. The sale agreement is between M/S Mubli Khan, Khan Nawaz Khan Abaas Khan on one part and the four respondents who appeared before me plus one other. The five respondents have clearly indicated under their signatures that they were land agents on the said agreement. It is on the part of the respondents to explain why they sat on the purchase money upto 8th May, 1968, having collected enough money to buy the land in dispute as at 2nd July, 1967.

The respondents agreed that Kiambu Dandora Farmers bought the disputed land on behalf of its members so that the land could be transferred later. The divisions was not possible in 1967 or soon thereafter. The respondents did not explain to the panel why this was not possible.

It was in 1973 that a dissatisfied group led by the complainants lodged a caveat in the Lands office after seeing no progress since 1967 the year of completing to buy the land in dispute. The caveat sought the transfer of the land in dispute from Kiambu Dandora Farmers (who were acting as agents) to Dandora Housing Schemes Ltd. The latter was formed by the members with an intention of developing individual houses for members once the land was sub-divided.

Moneys to buy the land were paid to the respondents in general but to Keingati Waiharo in particular, who was the secretary to the respondents. He kept all the necessary books and documents.



At this point it became clear that the only way left to the panel to determine the actual contributors is to go through the duplicates of the receipt books the respondents were using. Respondent three was caused to produce the books. They were produced and are marked exhibit 2

Examination of the receipt books revealed three categories of contributors:

1. Those that had contributed moneys on or before 2nd July, 1967.

2. Those that contributed later i.e. after the above date.

3. Those whose moneys were refunded.

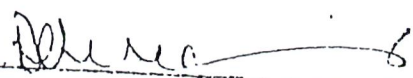
I have attached three separate lists to the panels' recommendation and the findings have been communicated to both parties. Further, scrutiny revealed that complainants number one (1) and five (5) did not appear on the list of the actual contributors. Both were given a chance to prove their membership but to-date, they have not done so. This perhaps explains why an objection was lodged in the middle of the proceedings. This honourable court has a copy of DEB/83/19 of 23rd May, 1983 from the complainants.

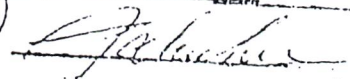
Arising from the foregoing it is evidently clear that the land in dispute belongs to more than five people. Since the four respondents plus one other have indicated that they were acting as agents, it means that other people plus the agents, if they had an interest, contributed to the purchase price. Respondent three (3) and four (4) paid for the land after 2nd July, 1967 and this shows that their moneys did not actually go to the purchasing of this disputed property. The total amount collected at No. 200 on the first list indicates that collections were far much higher than the purchase price as shown on the agreement (see page 7 of list one).

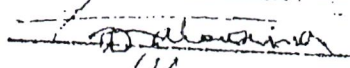
I am only asking this honourable court to go by the recommendation of the panel since it has exhausted the order moving slowly and meticulously through the documents that both parties produced before it.

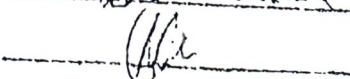
Throughout the proceedings, no witnesses were summoned since all the necessary evidence, in this case, documentary, was produced before the panel.

Signed  DISTRICT OFFICER
EASTERN DIVISION
HAKADARA 6-7-83

MEMBER 1. D.K. WAMERU 

2. KARURU KUOGOTINGIA 

3. WAINANA NGANGA 

4. GIBSON IMAUNG 

DEPOSIT SHARE CAP.

NO.	LIST DATE	N A M E	RECEIPT NOS.	DEPOSIT SHARE
1.	16-8-66	ALBERT KIROMO	79,82,85,25,55	2750.00
2.	14-9-66	ANAH WAMBUI ANDREW	73,15	1100.00
3.	26-4-67	ARTHUR KIMANI GACHOKA	44,90,37	1400.00
4.	7-6-67	BELITA WAIRIMU KARIUKI	53	350.00
5.	12-6-67	BONFACE NJAGA xxxxxxxGITHENE	82	2100.00
6.	30-6-67	B. G. GITHENE	47	700.00
7.	3-9-66	CHEGE KIGURU	31,10,85	750.00
8.	17-10-66	CHARLES KARIUKI TITUS	19	1800.00
9.	3-6-67	CHRISPINA WANGARE	22	1050.00
10.	21-6-67	CHEGE MWANIKI	12	1050.00
11.	10-8-66	DANIEL NGUGI	17,27	1400.00
12.	4-10-66	JEFFINO JUMA MWATHA	3,21	1000.00
13.	5-10-66	DAVIS MWITHIGA THUC	12,68,9,66	1750.00
14.	9-11-66	DAUGLASS MUTHIRU	22,81,84,88	2050.00
	15-5-67	DAGRETTE KABIRIA SGC.	76,45	1750.00
	4-6-67	DANIEL WAIGURU	4,32	1750.00
17.	1-7-67	DANIEL MUTHIRU GITHONGO	58	95.00
18.	8-9-66	EDITH WANYORA	56,65,89	1900.00
19.	29-9-66	ELIJAH THIONGO MUIGAI	91	1000.00
20.	5-10-66	ELIZABETH WANSIKU KINYANJUI	9	1000.00
21.	11-10-66	EVANSON G. GITAU	16,34	550.00
22.	17-4-67	EDWARD GACHOMO	51,53,38,51,71,37	3350.00
23.	4-6-67	ESTHER NGUHI	17	350.00
24.	8-6-67	ENOS THIANI S. NGETHE	56	700.00
25.	12-6-67	ELIZABETH MUTHONI	77,54	350.00
26.	26-6-67	EVANS KAMAU	30	700.00
27.	29-6-67	ELIZABETH GEFREY GICHOIYA	42	350.00
28.	4-8-66	FREDRICK NJOROGE	4,49,62	2150.00
29.	10-5-67	FRANCIS KIARIE	69,64	2100.00
30.	17-5-67	FREDRICK KIIRU WAMBUI		

REGISTRATION FEES AND SURVEYOR FEES

REPT. NOS.	REGIST. FEES	RECEIPT NOS.	SURVEYOR FEES	TOTAL
		87,86	50.00, 225.00	3025.00
				1100.00
		73	250.00	1650.00
	30.00	81, 9	50.00, 25.00	455.00
	30.00			2130.00
	30.00			730.00
		34	750.00	825.00
		51	125.00	1925.00
	30.00			1080.00
	30.00			1080.00
		90	100.00	1500.00
				1000.00
				1750.00
		76, 45, 5	150.00, 100.00	2300.00
	95.00			1845.00
	30.00	68	125.00	1905.00
		62	25.00	120.00
	30.00	30	125.00	2055.00
		37	125.00	1125.00
	100.00	95, 25	50.00, 25.00	1175.00
		38	50.00	600.00
		32	375.00	3725.00
	30.00	12	25.00	405.00
	30.00	37	50.00	780.00
	30.00	14	25.00	405.00
	30.00	95	50.00	780.00
	30.00			380.00
		60	200.00	2350.00
	30.00	100	150.00	2280.00
	30.00			380.00

31.	4-8-66	GRALYCE WANJIKU	5,41	1
32.	4-8-66	GICHUHI CHEGE	6,20	
33.	6-9-66	GABRIEL KAMAU NJORGE	37,84,96	1
34.	6-9-66	GEORGE GAKUBIA	38,96	1
35.	7-9-66	GICHUHI MAHIAGA	49	
36.				
36.	12-9-66	GICHEHA KANYORO	66	200
37.	29-9-66	GITHUI WARAMA	89,87,39	100
38.	3-6-67	GENOVETA WARAO	24	100
39.	7-6-67	GITUCHU KAHUTHU	46,9	30
40.	12-6-67	GLADWELL WAIRIMU	74	30
41.	12-6-67	GITHENGU FAMILY	81,73	210
42.	22-6-67	GEOFREY MUREI GAKURU	16	700
43.	22-6-67	GLADYS WAITHERERO	19	1050
44.	12-9-67	HARRISON KAMAU	61,86,30	1200
45.	15-9-66	HASSAN SEFFU	78,14	200
46.	2-12-66	HANNAH MUKUHI	30	200
47.	6-5-67	HANNAH NJOKI KARIUKI	52,25	350
48.	12-6-67	HARRISON RURU	86	350
49.	19-6-67	HERMAN HOMBIO	8	700
50.	21-6-67	HENRY NDUNGU	11	350
51.	17-5-68	HENRY NBIENGA GATHURI	77	350
52.	12-8-66	IKINYA WAITHAKA	24,35,90	350
53.	27-6-67	ISAAC NG'ANG'A	33	700
54.	9-8-66	JOSHUA NJONJO	9	1200
55.	6-9-66	JOHN KAHIU NDUKU	40,65	900
56.	13-9-66	JOSEPH CHEGW NJANE	66,70,40,12	2000
57.	3-10-66	JOHN KIARIE	98,24,48,96	850
58.	11-10-66	JOSHUA KAMAE	17,86	2100
59.	24-4-67	JOHN KARANJA	42	350
60.	7-5-67	JENIFER GIKUI	62,13	2070
61.	31-5-67	JCYCE NYAKIO	90,91	1400
62.	4-6-67	JOSEPH THUO KAMEKO	8	900

0.00			38	100.00	1500.00
0.00			14	75.00	625.00
0.00					1050.00
0.00			24	110.00	1110.00
0.00			64	25.00	425.00
CARRY FORWARD					<u>57225.00</u>

0.00					2000.00
0.00			6	750.00	1125.00
0.00	29	30.00			1080.00
0.00	45	30.00	4	25.00	405.00
0.00	60	30.00			380.00
0.00	49	30.00			2130.00
0.00	85	30.00	84	50.00	780.00
0.00	88	30.00	68	25.00	405.00
0.00			59	175.00	1375.00
0.00					2000.00
0.00					200.00
0.00	6	30.00	70	25.00	405.00
0.00	65	30.00	46	25.00	405.00
0.00	83	30.00	43	50.00	780.00
0.00	50	30.00			380.00
0.00	78	30.00	49	25.00	405.00
0.00		30.00	94	250.00	3750.00
0.00	90	30.00	6	50.00	780.000
0.00			11	75.00	1275.00
0.00			34	50.00	1040.00
0.00			18	200.00	2250.00
0.00			91	100.00	950.00
0.00			62	150.00	2250.00
0.00	5	30.00			380.00
0.00	13	30.00			2100.00
0.00	27	30.00	82	100.00	1530.00
0.00	85	30.00	64	50.00	780.00

65.	9-6-67	JAMES MAINA WACHIRA	61	
66.				
66.	9-6-67	JOHN KAMAU KANJIGI	63,71	
67.	12-6-67	JOHN MWANDIME	88,2	
68.	24-6-67	REV. JACKSON WANGAI NJIRAINI	23	
69.	30-6-67	JOEL KINYUA	63,48,59,77,54	
70.	2-7-67	JEREMIAH MWANGI	75	
71.	2-7-67	JAMES K. MURUTHI WERU	82	
72.	5-8-66	KARANJA RIUA	11,64,53	
73.	9-8-66	KEINGATI WANJUKI	20,12,45,7,94	3
74.	9-8-66	KIMATHI & ASUMAN WASUDI	14,42,31,36	
75.	2-9-66	KARANU KARIA	29	
76.	6-9-66	KARAGO MWANGI	39,55	
77.	7-9-66	KARUBI KUIBERE	41,11	
78.	7-9-66	KIMANI KIRORI	46,44	
79.	8-9-66	KAMURA MAINBA	50	
80.	14-9-66	KANYUGI GITHENGU	69	
81.	15-9-66	KAHUHO MATATHU	77,72,38	1
82.	12-10-66	KENNETH KURIA KABAKI	18,63,14	
83.	21-11-66	KIBE NDOYO	26	3
84.	25-5-67	KIHIU MWIRI THIEF UNION	87,52,80	2
85.	4-6-67	KINORO GIUETHUA	18	3
86.	5-6-67	KURIA KAMAU	29,93,35	6
87.	6-6-67	KIRIGU TRADING CO. DAGORETTI	39,99,45	175
88.	8-6-67	KARIUKI NJOROGE	60,17	175
89.	13-6-67	KARIUKI W KAMERO	92	140
90.	25-6-67	KARIUKI KARANJA	28,51	70
91.	30-6-67	KAMAU NYAGI	43	350
92.	2-7-67	KESIA NDUTA	72,87	70
93.	2-7-67	KIMONDO MWITHIGA	76	70
94.	20-6-72	KUNGU KIRIRA	648	1200
95.	7-6-67	LAZARO BARU & SONS	47	1400
96.	10-8-66	MBARI YA ANONE(FAMILY)	18,95,75	2400
97.	11-8-66	MUIGAI KAMAU	21,93	1800
	11-8-66	MUIGAI NJOROGE	22,94	700
	11-8-66	MWANGI KARANJA	23,8,35	1170
	9-6-67	MILIUM SOCIETY	32,58	30

54	30.00	39	75.00	1285.00
				730.00
		CARRY FORWARD		<u>102475.00</u>
57	30.00	47	100.00	1530.00
19	30.00			1430.00
66	30.00	49	25.00	405.00
77,50	30.00			2510.00
75	60.00	83	50.00	810.00
83	30.00			1430.00
				1200.00
2	30.00	55	325.00	1405.00
		53	75.00	975.00
		63	50.00	850.00
				1400.00
		21	75.00	1125.00
				1150.00
		89	25.00	625.00
				500.00
		60	125.00	1575.00
		55	100.00	1100.00
				3000.00
	95.00	51	150.00	2345.00
	30.00	3	25.00	405.00
		58	75.00	705.00
				1750.00
	30.00			1780.00
	30.00	97	100.00	1530.00
	30.00	65	50.00	780.00
	30.00	12	25.00	405.00
	30.00	34	75.00	805.00
	60.00	52	50.00	810.00
				12000.00
	30.00	27	100.00	1530.00
				2400.00
		88	125.00	1975.00
		96	50.00	750.00
		90,27	125.00, 100.00	1395.00
		23	100.00	400.00
				FORWARD

		MEMBERS REFUNDED THE	
	IST DATE	N A M E	RECEPT. NOS. DEPOSIT SHARE C.
1	3-10-66	DANIEL GATERE	99 1000.
2	8-9-66	GEORGE GITAU	53,95 1000.
3	28-7-66	JOSEPH MBURU	3, 68 1000.
4	2-9-66	JAMES NG'ANG'A	28 1000.
5	14-9-66	JAMES NJUGUNA S/O I. KAREUKI	70,23 400.
68	14-9-66	JAMES KIMANI GATHIGE	71,10 1000.
69	14-9-66	JOSEPH NDUNGU NJOROGE	28 1000.
72	27-11-66	JOHN MBURU	61 890.
74	7-5-67	ELIARIE NG'ANG'A	34 550.
93	6-9-66	KAMAU MAGU	48 1000.
97	7-9-66	MEGA H. FARMERS ASS.	30 400.
119	3-9-66	MICHAEL JOHN WAWERU	8872,86,68,36, 2600.
124	14-9-66	MUIRURI NJUGUNA	75 1200.
125	15-9-66	MERCY WANINI	90 1000.
129	29-9-66	MARGARET WAMBUI JAMES NJENGA	11 1030.
131	5-10-66	MUTHONI KAGERA WANJIRU K.	13 500.
132	6-10-66	MUCHIRI NGUNYI	27,29 1000.
133	23-11-66	MUTEGI KAREGA	6, 57 1750.
143	4-6-67	MBUGWA G. NJOROGE	25,43,72 810.
145	5-6-67	MWERURIO FAMILY EDUCATION F.	34 2100.
148		NGUGI WATA	43,47 2000.
162	7-9-66	PETER MUKABI	45 900.
187	7-9-66	STEPHEN MBUGUA	44 2300.
202	7-9-66	STEPHEN NUNU GATHIRU	92 1000.
206	29-9-66	SOLOMON KARIMI & PARTNERS	94,96 1750.
216	14-6-67	WAIRIMU NJUGUNA	7,57 1000.
221	6-8-66	WANGUI THOO	8,15,58 1000.
222	6-8-66	WAMBUI LUKAS	10 400.0
223	9-8-66	WAMBURU GUCHUNGA	16,59 1000.0
225	9-8-66	WARINGA KARERA	84,99,87 350.0
233	22-5-67		

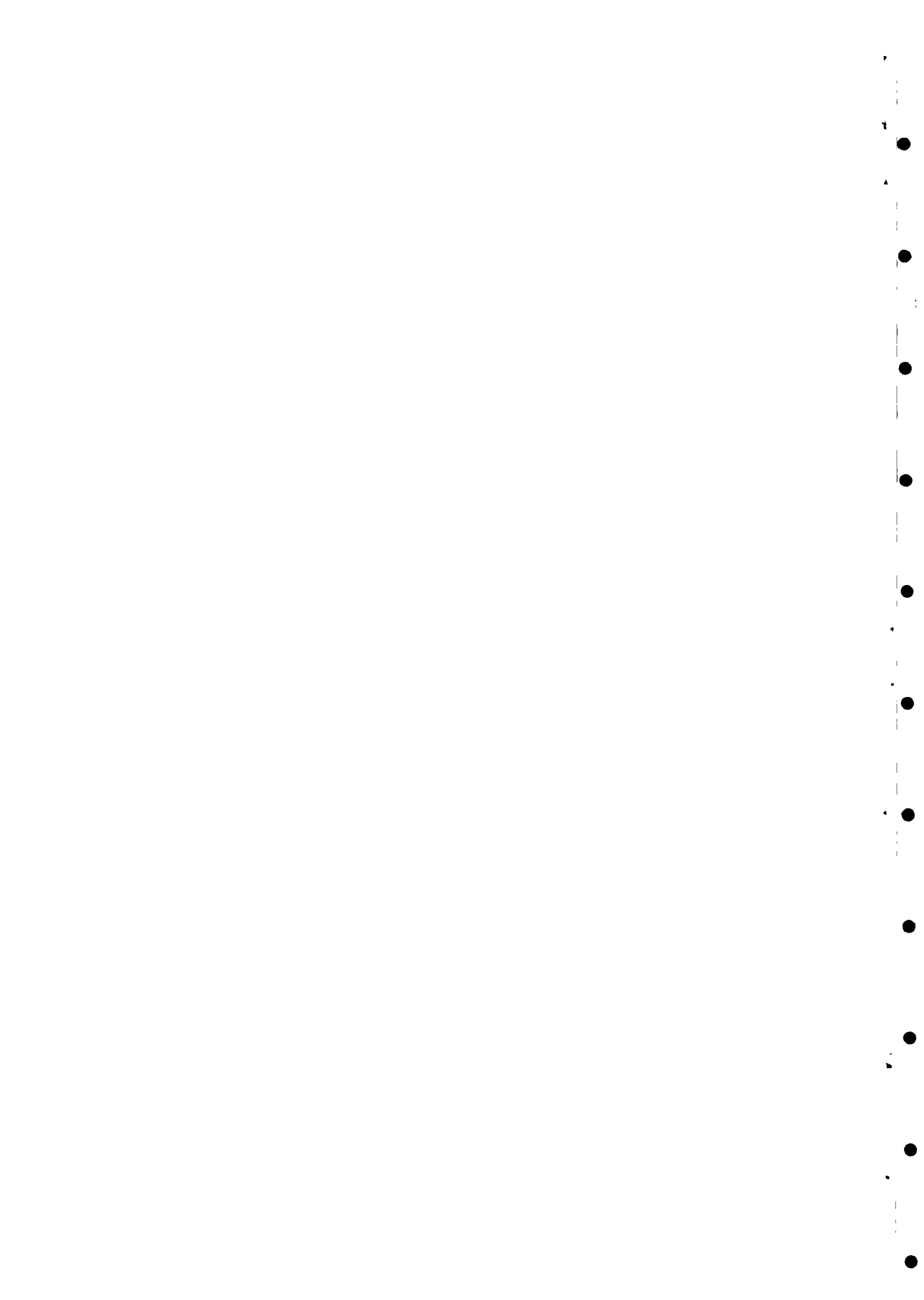
	ISS DATE	NAME	RECEIPT NOS.	D. SHA
	141. 7-6-67	NGONGE WAWERU	50	70
	142. 8-6-67	NYOKABI GIKANDI	59,65	105
	143. 17-6-67	NG'ANG'A MUGO	3,46	76
	144. 12-6-67	NDERU MWA NGI	78	140
	145. 15-6-67	NGENDO GAKAMI	100	35
	146. 22-6-67	NJENGA NG'ANG'A	18, 26	1050
	147. 24-6-67	NDUNGU WAITHANJI	82	350
	148. 17-5-68	NJAU KIRIKA	69	700
	149. 14-6-67	ONESPO MWINAMI	95	140
	150. 29-6-67	OWEN JACKSON KAMAU	41	350
	151. 17-5-68	ONDIRIA WAIRIMU NJOMO	73	1050
	152. 4-6-67	PAUL KEINGATI WAIHORO	19	100
	153. 22-6-67	PERIS WANJIKU KIARIE	14	700
	154. 1-7-67	PHILIS MUTHONI JOSEPHAT	60,25,32	1050
	155. 2-7-67	PETER WAIHERO & PARTNERS	80	100
	156. 13-5-68	PATTERSON KARIUKI	59	350
	157. 2-6-67	RAHABU NYOKABI	23	70
	158. 9-6-67	ROBERT MACHARIA & MBUGUA NG'ANG'A	67,57,70	3150
	159. 12-6-67	RICHARD KARIUKI MUNYOTA	73,76,13,40	2800
	160. 19-6-67	RUFUS WANGONGU	5	2100
	161. 26-6-67	RAHAB WAMBUI	31	350
	162. 16-5-68	RAYMOND MWANGI WAWERU	66	1750
	163. 28-8-66	STEPHEN KINIU	26,66	450
	164. 12-9-66	STEPHEN KARURU	62,5,32	1600
	165. 20-9-66	SAMUEL GAKUNGA	82,40	1400
	166. 23-9-66	SAMUEL NGUGI NG'ANG'A	88,69	2100
	167. 11-10-66	SIMON KARUGA MWAJURA	15	200
	168. 6-3-67	SAMUEL NDUNGU & DAVIS MWAJURA	37	5

LIST OF MEMBERS WHO PAID MONEY

	ST. DATE	N A M E	RECEIPT NOS.	
201	17-5-68	BENARD NJORGE KIRIKA	71	70
		202 B. KEINGATI WAIHARO		
202	21-5-68	B. KEINGATI WAIHARO	83	70
203	20-8-67	CHEGE & SONS	16, 39, 65,	17
204	5-7-67	GITHINJI GITUA	100	
205	21-9-67	God FUREY NJOROGE MARTA	28	
206	20-11-67	HERMAN NJOROGE	36	
207	26-7-66	JOHN NGUMBU	2	40
208	18-8-67	JOHN KINUTHIA	12	
209	13-10-67	JOHN NGUOTA WAINAINA	33	5
210	23-11-67	MWIGIO RUHIU	40, 42, 43	14
211	14-5-68	MAINA MACHARIA	61	23
212	15-8-67	NYANJUI NGANG'A	15	
213	20-9-67	NG'ANG'A JOSEPH THUO	27	
214	8-4-68	NJENGA KARARI	45, 55	14
215	2-9-67	PHILLIS MUKONYO	24, 31	7
216	17-7-67	REUBEN KANGARA	7, 68	24
217	17-7-67	WANGECHI NJOROGE	9, 49	7
218	20-8-67	WANJIRU KAMAU	18	3
219	11-4-68	WANGARI WACHIRA	50	5

	MUCHOGO & SONS	36,85,4,25	4240.00
6	MWANGI CHEGE	51	1000.00
	MARTHA GICHIGA & WANJIRU	54,64	1750.00
16	MARY WANGUI	76,57,44	700.00
66	MUNGAI KAMAU	81	5000.00
66	MARGARET WANGARI	87,62,82	1750.00
	MWANGI MUNIA	2,20,71	1050.00
	MATHARE SOCIAL HALL & CO.	47	470.00
	MBUGUA GITICE	54,3	1650.00
	MUGUMO WAINAINA	56,36	600.00
	MATHARE RIVER C. SOC. LTD.	66	1000.00
	MBUTHIA WAMBUGU	67	1400.00
7	MUHORO NGURU	73,27	1400.00
7	MUMBI COMPANY	81,7,58	4200.00
	M. WANGARE NASIDE	100	350.00
	MUGAI MURUA	2,38	1400.00
	MWAURA KINGIRI	16	200.00
	MURUA KARANJA	59,15,27,65	1230.00
	MARGARET WAREIYU	31	350.00
	MICHAEL NJENGA BARU	41,46	1500.00
	MARGARET WANJIKU	54	350.00
	MAINA MWANGI	58	700.00
	MWANGI MWEIKAKABERERE	85	350.00
5-67	MWANGI KIRIMA	97	700.00
5-67	MINE NJERU AMOS	24	250.00
5-67	MURUJI KINYUNGO	67	100.00
5-67	MOSES MUTHIORA	78	350.00
7-67	MARY WANGARE	89	350.00
5-68	MUCHOGO KAGUNYA	56	700.00
23-8-67	MARY WANJIKU MBURU	22	350.00
9-66	NGUGI MUCHOKA	52	400.00
3-9-66	NJERI MUCHENE	67,7,4,56	1400.00
9-66	NJUGUNA EBAKI	79	1000.00
4-67	NGETHE KARURI	33	700.00
4-67	NJCKI NJOROGE	39,43	500.00
4-67	NDUNGU KAMAU	46	300.00
5-67	NJENGA CHEGE	50,83,10,48	2800.00
5-67	NGIGI NDUNGI	75,1	1400.00
5-67	NGUMO IREGA	91,94	700.00
		44,60	

REGIST. FEES	RECEIPT NOS.	SURVEYOR FEES	TOTAL
30.00	19	50.00	730.00
	11	175.00	7000.00
30.00	68	25.00	1925.00
30.00			405.00
30.00	9	25.00	380.00
			405.00
			4000.00
30.00	29	25.00	405.00
30.00			730.00
30.00	8	100.00	1560.00
30.00	81	150.00	2280.00
			350.00
30.00	18	50.00	780.00
	48	250.00	1650.00
30.00	10	50.00	780.00
	48	175.00	2625.00
			750.00
30.00	3	20.00	400.00
	42	75.00	625.00



REC 1ST.
FEE 3

SURVOR
DEES

TOTAL

1000

93.00

10.00

30.00
30.00

TOTAL

1000.00

1000.00

1000.00

1000.00

400.00

1000.00

1000.00

900.00

550.00

1000.00

400.00

2600.00

1200.00

1000.00

1030.00

500.00

1000.00

1750.00

810.00

2195.00

2000.00

900.00

2300.00

1000.00

1845.00

1000.00

1000.00

400.00

1030.00

380.00

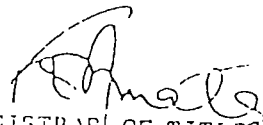
33190.00

12

REPUBLIC OF KENYA
THE REGISTRATION OF TITLES ACT
(CHAPTER 281)
CERTIFICATE OF TITLE: NUMBER I.R. 23514

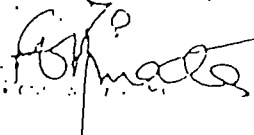
I HEREBY CERTIFY that KIPIRO KARANJA REUBEN KANGARA KEINGATI WATHARO NJUGUNA KIMANI and PETER GACHERU KINGARA all trading as KIAMBU DANDEWA FARMERS COMPANY of Kiambu (Post Office Box 152) in the Republic of Kenya pursuant to a Transfer registered as Number I.R. 19935/7 are now the registered proprietors as owners for an estate in fee simple of ALL that piece of land situate in the City of Nairobi in the Nairobi Area containing by measurement eight hundred and eighteen (818) acres or thereabouts and being Land Reference Number 11379/3 as delineated on Land Survey Plan Number 86048 annexed to the said Transfer SUBJECT however to the Act Special Conditions Encumbrances and other matters specified in the Memorandum hereunder written.

IN WITNESS whereof I have herunto set my hand and seal this eighth day of April One thousand nine hundred and seventy.


REGISTRAR OF TITLES

MEMORANDUM

- (1) The Government Lands Act (Chapter 280);
- (2) The Kenya (Land) Order-in-Council 1960 and the Regulations and Rules from time to time made thereunder;
- (3) The easements created by wayleaves registered in volume N.13 Folio 91/12, 13 and 16 in so far as the same can lawfully be granted;
- (4) The Special Condition contained in a Grant registered as Number I.R. 19935/1.

23514/1
8 4 70
10-15922


3
 11
 138
 45
 2011
 Certificate by the Chief Valuer taking to be of 818 acres. L.C. NO. 11379/3 in pursuance of section 19(1) of the Land Acquisition Act 1968 and the land is accordingly vested in the Government.
 884
 20 11 1974.

Court Order of civil case
 No 1348 of 1972

706
 1/97
 4

706 24/1/77 *[Signature]*

1635
 5/97
 5

Court order (decree) of High Court
 Civil Case No 1555 of 1986

1635 14/5/97 *[Signature]*

Transfer (vesting order) to Dindora Housing
 Schemes Limited

6

16/12/97 *[Signature]*



5/-
 100/-
 105/-
 28/1/98

[Signature]
 Registrar of Titles



MINISTRY OF LAND, HOUSING AND URBAN DEVELOPMENT

INTERNAL MEMO

To: Cabinet Secretary

From: ADI

Dated: 23rd March, 2016



RE: DANDORA HOUSING SCHEMES LIMITED

The ministry of Land Public Complaints and Resolution Committee (PCRC) convened on 10th March 2016 purposely to interview two groups which had written to you each claiming ownership of parcel NO IR.23514.

After cross examining the two groups, the Dandora Housing schemes limited and the Mowlem ward community, it became apparent that the rightful owner of that parcel of land are the Dandora Housing scheme. The Mowlem ward community accepted that they do not own the land and have no documents to support ownership.

However, they settled on the farm after former President Daniel Moi directed that the group which was habiting at the Kangurwe power line, be settled on that land. The directive arose after realization that the power line was emitting gas that was affecting children's lives.

However, the Mowlem Ward Community are the ones occupying the land parcel at the expense of the rightful owners and have built permanent structures.

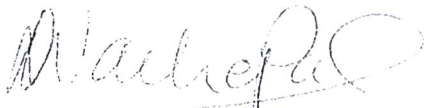
Dandora Housing Scheme limited surrendered their title deeds to the Central Registry seeking a discharge of charge registered against the title on 1st April, 2011.

The title was misplaced and has not been traced since then.

ruled as follows:-

- That the Dandora Housing Scheme Limited are the rightful owners of the parcel of land.
- That the Secretary Land should institute urgent and necessary measures to issue the group with a new title deed.
- The committee was of the opinion that some officers in the Central Registry were playing games to delay issuance of the title deed. This is the hugest problem that bedevils service delivery in this ministry and should be curbed.
- That the Mowlem Ward Community should negotiate with the Dandora Group on willing buyer, willing seller if they wished to stay on the land parcel.

I have enclosed necessary documents for your perusal and for your further action.



TOM NAMASAKA

CHAIRMAN- PUBLIC COMPLAINTS AND RESOLUTION COMMITTEE

CC:

Principal Secretary

Dandora Housing Schemes Limited

RESIDENTIAL & COMMERCIAL HOUSING DEVELOPERS

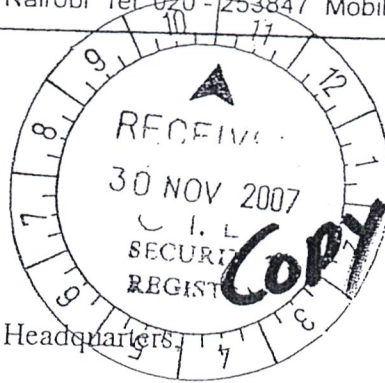
Bruce House 11th Floor, Northwing, Standard Street

P.O. Box 56770-00200, Nairobi Tel: 020-253847 Mobile: 0722 - 816021

Our Ref: DHS/2007/CPW/003

Your Ref: 29th November, 2007

Date:



The Director,
Criminal Investigation Department Headquarters,
Kiambu Road,
NAIROBI.

Book One

MEMORANDUM OF COMPLAINT

ON

LR.11379/3 – DANDORA LAND (818 ACRES)

1965

- Khan family, whose father had just died wanted to immigrate back to India and so decided to sell their land in Dandora to Kenyans hurriedly.
- Khan family appointed Kiambu Dandora Farmers Company (KDFC), a partnership of 5 persons, namely:-

- Kibiro Karanja
- Reuben Kangara
- Keingati Waiharo
- Peter Gacheru Kingara
- Njuguna Kimani

as their agents who offered the same to the general public at Kshs.350/= per acre plus Kshs.30/= as their agency fees.

1965 – 1967

- Many individuals contributed money towards purchase of this land on the sole understanding that each one would get his or her own acre/acres individually after the vendor transferred the land to them.

2nd July 1967

KDFC called a meeting for the contributors:-

- Confirmed that there were 225 individuals who had contributed towards the purchase of the entire property.

MEMORANDUM OF COMPLAINT

ON

LR 11379/3 DANDORA LAND (818 Acres)

BY

**DANDORA HOUSING SCHEMES
LIMITED**

**11th Floor Bruce House
P.O Box 56770 – 00200
NAIROBI.**

Contention. The process of compulsory acquisition is public and any of the plaintiffs had every opportunity to stop it by injunction or other suitable remedy. Furthermore, in order to protect the subject matter of the suit, the appellants could have obtained a Prohibitory Order and registered it against the title. This was not done and consequently, the Defendants were divested of their interest in the suit premises.

Finally any instrument that requires registration under the law derives its validity not from its issue or execution but from registration. Further, documents intended for registration have priority in accordance with the order of presentation. There can be no doubt that the Notice of Taking Possession has priority over the Decree and section 23 of the Registration of Titles Act is very clear on this point.

In the circumstances, I can find no merit in the appeal and accordingly dismiss it.


J. E. W. MURIUKI
PRINCIPAL REGISTRAR OF TITLES

11th July, 1985

b) 1972 - The Government notified the owners of LR No. 11379/3 that about 200 - 300 acres of that plot was to be acquired. ^{to be acquired} - (to buy) ⁷
Meanwhile, there was Civil Suit No. 1348 of the same year seeking to determine the ownership of LR. No. 11379/3 as between Kiambu Dandora Farmers Co. on the one hand and M/S Dandora Housing Schemes Ltd. on the other.

c) 1974 - The Govt. had gazzetted the acquisition of whole plot (818 acs) and finalized the acquisition by depositing total payment for the land of Kshs. 1,316,980/- in the High Court as there was a dispute to the ownership.

The D.H.S had objected to the acquisition but as they were not the registered owners, their objections were in vain as the Commissioner of Lands dealt with the registered owners who were Kiambu Dandora Farmers Co.

D.H.S in their opinion were not disheartened as they felt that acquisition can only be justified and done for public utilities and not for allocation to private individual. It is therefore the view of D.H.S that since after acquisition the Commissioner of Lands has continued to allocate the land to private developers, the acquisition is illegal and the land should be reverted back to D.H.S.

d) 1983 - After 11 years lapse the O.O.P wrote to the A-G and Chief Justice who ordered for the Case No. 1348 of 1972 to be heard. The D.H.S. won the case and the land, the subject of the dispute, was vested in D.H.S for the benefit of their members.

e) 1984 - The decision of the court could not be effected as the land had been acquired by the Commissioner of Lands compulsorily.

D.H.S therefore sued the Commissioner of Lands vide Case No. 1555 of 1984 claiming for the land back.

The Attorney General advised that the matter be sorted out of Court. In the circumstances the D.H.S view was that they were the aggrieved party and the Commissioner of Lands was the guilty party and therefore if Commissioner of Lands was willing to call them for negotiations and a common understanding the better. The matter remained in suspense until:-

- f) 1986 - Members organized and paid a visit to His Excellency, when it was agreed that the remaining portions of the subject land that had not been allocated be given back to D.H.S (about 320)acs.
- g) 1987 - Consequently, the then Commissioner of Lands called the D.H.S for a meeting to discuss the issue.
Meantime, there ensued an internal problem in D.H.S where six of the directors had formed their own group. Therefore no negotiations could take place. Members of D.H.S wrote to the Nairobi and a meeting to elect new directors was agreed upon. i.c.
- h) 1988 - Elections were held and the six were thrown out and new directors elected, with Mr. Waithaka being returned as the Managing Director.
- i) 1989 - Advocate for D.H.S wrote a reminder to the Attorney General about case No. 1555.
Commissioner of Lands then wrote to the Attorney General informing him to await for a Government decision before communicating with D.H.S.
The Government decision is still being awaited as at now.

III ISSUES ARISING

1. The new claim by D.H.S - they want the right to occupy and use the unallocated portions of LR.No. 11379/3 immediately and will negotiate for compensation for allocated portions.
2. Who was to implement His Excellency's decision? According to D.H.S the Office of the President had referred them to the Ministry and it is therefore the Ministry who should implement the decision.
Again, the Commissioner of Lands initial invitation for a discussion with D.H.S is still outstanding, and D.H.S are still asking for assistance.

IV CONCLUDING REMARKS

The Chairman assured D.H.S that the points they had raised had been noted and a decision will be taken. He added that as land matters

are sensitive a fair decision needs to be arrived at.

It was agreed that another meeting be held on 23.5.90 same time and venue -
i.e. 10.00 a.m. 12th Floor Conference Room.

Confirmed on

Chairman

MINUTES OF THE 2ND MEETING HELD IN ARDHI HOUSE 12TH FLOOR CONFERENCE ROOM
BETWEEN THE MINISTRY OF LANDS AND DANDORA HOUSING SCHEMES ON 23RD MAY 1990.

206

PRESENT

J. Sang	-	P.S. Ministry of Lands & Housing - Chairman
W. Gachanja	-	Commissioner of Lands.
Murage	-	US/ Development - Ministry of Lands & Housing
Mwaniki	-	C.V.O.
G. Gachuba	-)
Mwangi Minyua	-)
F. Mukuna of Masawa & Co	-)
J.T. Thiga	-) All of Dandora Housing Schemes
Simon Gichangi	-)
Anna Wamboi	-)
C.P. Waithaka (M.D)	-)
G.L. Mukofu	-	S.A.C.L. (Taking minutes)

Introductory.

The meeting noted that more Directors of D.H.S. had been able to come to this meeting than the one held on 16.5.1990.

The P.S. indicated that the meeting would be short as the D.H.S. had explained their issues since 1968 and today's meeting would confirm that the proceedings of the last meeting had been recorded accordingly.

11. Minutes of the meeting held on 16th May, 1990.

The minutes were read and translated in Kiswahili.

The word 'acquired' in part 11b of the minutes was wrong as the intention in 1972 was to purchase 200 - 300 acres and not to acquire.

This was accordingly corrected.

...../ :
The minutes were then confirmed to be a true record.

III Matters Arising.

The P.S. confirmed to the meeting that the issues raised are being seriously considered with a view to arriving at a fair and just decision.

The Ministry therefore needed at least a week within which to deliberate the matter fully. The decision will be communicated in writing to D.H.S.

IV. Any other Business.

The D.H.S. introduced a new item that had not been brought in the last meeting.

This concerned the allocation of 271 residential plots to individual members. The Plots were allocated in 1982 according to records. The view of D.H.S. in the matter of these plots is that they were allocated to people belonging to their rivals group viz. Kiambu Dandora Housing and therefore the D.H.S. want the plot back.

After a discussion it was agreed that D.H.S. would supply a list of their members together with proposals of their stand before the end of this week ie by Friday.

It was noted that the truth should be told.

Confirmed on

Chairman.

Telegrams: "LANDS", Nairobi
Telephone: Nairobi 728060
or 723348
When replying please quote
Ref. No. 81391/II/114
and date



DEPARTMENT OF LANDS

P.O. Box 30089

NAIROBI

27th August 1990

21

Mr. G. P. Waithaka,
Managing Director,
Dandora Housing Schemes Ltd.;
P.O Box 56770,
NAIROBI.

ACQUISITION OF LAND - DANDORA INDUSTRIAL AREA

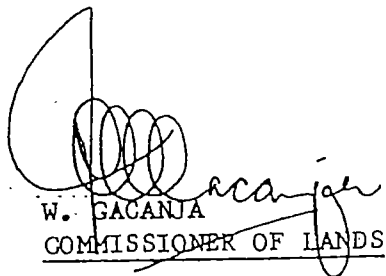
This is in reference to several meetings you and the Directors of the Dandora Housing Schemes Ltd. has had with the Ministry of Lands and Housing on the above subject. During these meetings you and the Directors were accorded the opportunity to avail to us all the relevant documents you had to support your case and this you did.

You will recall that when you last came to see the Permanent Secretary, in Ministry of Lands and Housing in July, 1990 in my presence, you were briefed on our conclusion. You immediately intercepted the briefing and promised that you would bring to us a letter from the former Commissioner of Lands which had informed you that the Government would return to you all the parcels of land so far unallocated at Dandora Industrial area. It is noted that to-date you have not availed the letter to us as promised.

I would like to summarise our position once more as follows:-

1. The compulsory acquisition of L.R. No. 11379/3 of approx. 818 acres acquired by the Government in 1974 cannot be nullified.
2. The award of this parcel of land of KSh. 1,316,980 was deposited with the High Court of Kenya and is available for collection at any time. The Department is however, willing to consider payment of interest in accordance with the Land Acquisition Act Cap. 295 for the period the money has been in the High Court. We trust that you will accept this offer.
3. It therefore follows that on the basis of (1) above the return to your company of all or some of the unallocated land by the Commissioner of Lands or compensation by the Government in respect of the already allocated land does not arise.

4. I trust that you will convey to your members this decision.



W. GACANJA
COMMISSIONER OF LANDS

c.c.

The Permanent Secretary,
Min. of Lands & Housing ,
NAIROBI.

The Attorney General,
P.O Box 40112,
NAIROBI. - (Att. Mr. Ole Keiwa)

Mr. Fred Waiganjo,
Provincial Commissioner,
NAIROBI AREA.



22

From the Desk of

HON. DARIUS M. MBELA, EGH, HSC, M.P.

Minister for Lands and Housing

MLH/29/002/8 Vol.I (14)

21st September, 1990

The Commissioner of Lands,
Ardhi House,
NAIROBI.

Thro'

Permanent Secretary,
Ministry of Lands and Housing,
NAIROBI.

RE: DANDORA HOUSING SCHEME: L.R.NO.11379/3 NAIROBI

This is in reference to previous correspondence and meetings with regard to the above subject, and in particular to your latest letter Ref. No.81391/11/114 of 27th August, 1990 addressed to the Dandora Housing Schemes Limited, a copy of which has been availed to me.

In response to your letter the Company has, through its lawyers Messrs. Waweru Gatonye & Company addressed two letters (dated 13th and 20th September, 1990) to me directly copies of which I forward herewith.

My initial view is that this whole matter should be reviewed in very detailed terms. It is government policy that it must act in such a manner as to be as fair as possible to the welfare of its citizenry. Government decisions and actions must not in any way be or appear to be oppressive or deprivatory of the people's rights.

The contents of your above quoted letter would seem to negate and contradict this principle. Besides the acquisition has not fully been in accordance with the spirit of the Land Acquisition Act.

In the proposed review serious consideration should be given to:

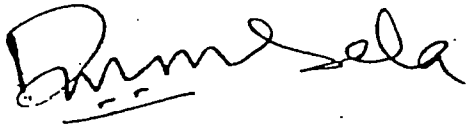
- (a) the fact that the land in question, though acquired for public purposes, has ended up being allocated to individual allottees for private uses. The image thus created is that Government has taken land from its poor at a nominal price, traded in it i.e. sold it at a higher price to allottees and helped enrich the better placed members of society to better their lot. It is not a very happy picture.

...../2

- (b) the possibility of returning the balance of the unutilised land (about 320 acres) to the claiming Company.
- (c) the level of compensation for the utilised portion (about 500 acres) vis a vis land market and the lapsed period of 18 years since acquisition.

The contents of your internal minute Ref.No.81391/11/54 of 22-9-1988 would be instructive on the matter.

It would be appreciated if your comments would reach me at the earliest opportunity.



HON DARIUS M MBELA EGH MP
MINISTER

c.c.

The Honourable, the Attorney General,
Attorney General's Chambers,
NAIROBI.

OFFICE OF THE PRESIDENT



PROVINCIAL COMMISSIONER
NAIROBI AREA
P.O. Box 30124
NAIROBI

...21st...January...., 1991..

23

NS "PROVINCER", Nairobi
id all other offices—
Nairobi 333551
ing please quote
T.&.C.2/2/2E/1
and date

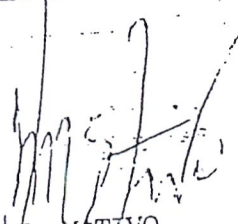
Mr C P Waithaka
P O Box 55207
NAIROBI [By hand]

Dear Sir,

RE: DANDORA HOUSING SCHEME.

Please call in this office on 23rd January, 1991 at 10.00 a.m.
and ask for the undersigned.

Yours faithfully,


D K MATIVO
for: PROVINCIAL COMMISSIONER
NAIROBI AREA

c c

Mr Raymond Mwangi
P O Box 44480
NAIROBI.

- Please re-apply for your Special Annual Meeting
and let us discuss on 23rd. January, 1991 together
with with your Director.

M/s Waweru Gatonye & Co.
P O Box 55207
NAIROBI

OFFICE OF THE PRESIDENT

24

Telegrams: "PROVISCAR", Nairobi
Inquiries and all other offices
Telephone: Nairobi 333551
When replying please quote:



PROVINCIAL COMMISSIONER
NAIROBI AREA
P.O. Box 30124
NAIROBI

Ref. No. T. & C. 6/2/2/E/11
and date

..13th..February, 19...91

Mr G P Waithaka
Managing Director
Dandora Housing Scheme
NAIROBI

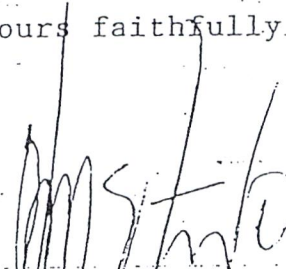
Dear

RE: BOARD OF DIRECTORS' DISPUTE

This follows the series of arbitration meetings that I have been chairing in this office. However, they were terminated immediately when one of the Shareholders, a Mr Robert Muthama produced a court order to restrain you from charging, alienating, interfering or any other dealing whatsoever in parcel of land known as L.R. 11379/3 Komo rock Road, Nairobi until 19th February, 1991 when the application will be heard by the court.

In the foregoing I want to put on record that according to records produced to me that time by the Registrar of Companies it appeared that there were two groups registered, however, your group, that is M/s. Cornelius Waithaka, Minua Mwangi, Gathuri Annah Mrs, Munyua Gachomba, Nganga Kimani, Gichanga Simon, Thiga James Thuita were seen to have genuinely registered. By a copy to this letter, the Registrar of Companies is therefore requested to confirm the genuine registered Directors. In the mean time, this office is unable to deal with the matter since it is in Court.

Yours faithfully,


D K MATIVO
for: PROVINCIAL COMMISSIONER
NAIROBI AREA

c.c.

The Registrar of Companies
NAIROBI

IN THE HIGH COURT OF KENYA AT NAIROBI

25(a)

CIVIL SUIT NUMBER 576 OF 1991

ROBERT MACHARIA MUTHAMA	FIRST	PLAINTIFF
JOSEPH NJENGA CHEGE	SECOND	PLAINTIFF
RAYMOND MWANGI WAWERU	THIRD	PLAINTIFF
NJENGA KARARI	FOURTH	PLAINTIFF
WILLIAM MUTHAMA	FIFTH	PLAINTIFF
DANDORA HOUSING SCHEMES LIMITED	SIXTH	PLAINTIFF

V E R S U S

C.P. WAITHAKA	FIRST	DEFENDANT
FALCON KENYA LIMITED	SECOND	DEFENDANT

IN CHAMBERS ON THE 22ND DAY OF JULY, 1991
BEFORE THE HONOURABLE MR. JUSTICE MWERA

O R D E R

UPON READING the application presented to this Honourable Court on the 14th day of June, 1991 by Counsel for the defendants/ applicants under Order VI Rule 13 (1) (a) (b) and (d) and Rule 13 of the Civil Procedure Rules AND UPON READING plaintiffs/respondents grounds of objection and supporting affidavit of the first plaintiff ROBERT MUTHAMA sworn on the 11th day of July, 1991 AND UPON HEARING Counsel for the defendants/ applicants and the Counsel for the plaintiffs/respondents,

IT IS ORDERED:-

1. THAT the plaint filed herein be and is hereby struck out.
2. THAT the costs of this suit be paid by the plaintiffs/respondents lawyers personally.

GIVEN under my hand and seal of the Court at Nairobi this 22nd day of July, 1991:

ISSUED this

day of

July

, 1991.

[Signature]
 29/7/91
 Deputy Registrar
 High Court of Kenya

[Signature]
 SENIOR DEPUTY REGISTRAR
 HIGH COURT OF KENYA - NAIROBI

25(1)

ROBERT MACHARIA MUTHAMA)
AND FIVE OTHERS) PLAINTIFFS

V E R S U S

C.P. WAIHAKA & ANOTHER DEFENDANTS

R U L I N G

On 5/2/91 plaintiffs/applicants filed an application seeking an injunction to restrain defendants/respondents from dealing with land ref. no. 11379/3 Komarock, Nairobi. A temporary injunction issued. It is still in force. Before that application was heard inter partes defendants/respondents filed a chamber summons on 14/6/91 seeking to strike out plaintiffs/applicants' plaint on grounds that it was bad in law on 3 grounds - (i) Plaintiff had no authority to file the suit on behalf of the company; (ii) plaintiff alleged fraud in the plaint but did not particularise it in the pleadings and (iii) plaintiff's had no locus standi in suing over this land which is vested in the Government.

The two summonses were to be heard together. The court heard the striking out one. A ruling thereon should determine whether the injunction matter should go on.

After counsel for defendants/applicants sought to strike out the plaint on the 3 grounds aforementioned, the plaintiffs/respondents to that applications replied.

At the end of the day, the court was of the view that the plaint should actually be struck out. This course should be taken only in the clearness^{est} of matters. Here while looking at all the representations it is settled law that where a suit is to be instituted for and on behalf of a company there should be a company resolution to that

effect. There was none exhibited before this court and so it is not necessary to go in the detail of what such a resolution should state.

The two cases cited to the court:

BUGERKRE COFFEE GROWERS LTD VS SEBADUKA & ANOTHER (1970) K.A. 147 and
SIMBA WOOD INDUSTRY LTD VS I.D.B. & 2 OTHERS HCCC NO.168/88 (unreported).

For all that stand is for i.e. to ensure that a company does not incur expenses and costs it has not resolved to incur, a minuted resolution is necessary before a suit. It is no matter that the plaintiffs here are directors, shareholders who sued also on their own behalf as well as the company's. A resolution ought to have been passed and exhibited.

In the same breath, it is prudent to include lack of particulars of fraud in the plaint. It is trite law that when fraud, forgery misrepresentation etc is alleged it should be pleaded and particulars given in the plaint. One can say that further and better particulars covers areas not sufficiently pleaded but emphasis for specifying particulars of fraud for instance in this court's view goes beyond those aspects for which better particulars are asked. Probably by itself this ground would not necessitate striking out the plaint, but along with the other 2 grounds it has noticeable weight to add to the prayer to strike out.

Finally both sides agree that the suit property is land vested in Government. Plaintiffs may or do have a complaint against the defendants. But they are not the owners of the land. They are not authorised by owner - the Government, to sue on their behalf.

So where is plaintiff's stand? Do they have a right on their own to sue the defendants? This court can hardly discern any.

Prayer to strike out granted. The costs to be paid by the plaintiff's lawyers personally not from company assets. It did not authorize anybody to sue on its behalf. Plaintiff's lawyers should have ascertained this and advised accordingly. They did not do so. They pay costs to defendants.

Delivered on this 22nd day of July, 1991.

J. MWERA
JUDGE

Telegrams: "COURT", Nairobi
When replying please quote

HGCC 1348/72

Ref. No.
and date



HIGH COURT OF KENYA

LAW COURTS

P.O. Box 30041

NAIROBI

20th July

93

19.....

The Commissioner of Lands,
P.O. Box 30089,
NAIROBI.

RE: THE LAND ACQUISITION ACT 1968
KENYA GAZETTE NOTICE Nos. 840 & 841
DATED 15TH MARCH 1974
L.R. 11379/3 DANDORA NAIROBI

I enclose herewith cheque No. 711800 for
Kshs. 1,271,044.10 dated 16th July, 1993 in respect of monies
deposited by you in Court vide your letter Ref. 81391/A
dated 24th July, 1974, for you to disburse same to the persons
entitled to it.

A sum of Kshs. 45,935.90, being part of the
total sum of Kshs. 1,316,980.00 deposit, was paid out to
M/S Machira & Co Advocates as ordered in RMCC No. 4217 of
1985.

Please acknowledge receipt.

D.M. KIOKO
FOR: AG. DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI.

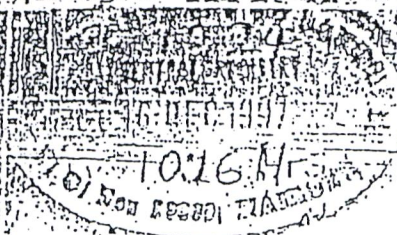
c.c.

Secretary
Dandora Housing Scheme Ltd.,
P.O. Box 56770,
NAIROBI.

Accounts-controller,
High Court of Kenya,
P.O. Box 30041,
NAIROBI.

DMK/mhk

Principal Instrument is stamped with Ch.



REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT (CHAPTER 281)

CERTIFICATE OF TITLE: NUMBER I.R.23514

TERM: FREEHOLD.

TRANSFER

I, M.J. BHATI, Senior Deputy Registrar of the High Court of Kenya Nairobi in pursuance of an Order of the court (The Hon. Mr. Justice Shields) dated 1ST DECEMBER, 1993 in High Court Case No. 1348 of 1972, and presented to the Land Registry on 1994 and marked as daily Fol. No. 331 HEREBY TRANSFER TO LANDORA HOUSING SCHEMES LIMITED of Post Office Box 56770 Nairobi Subject to the Memorandum of Charges notified hereunder, piece of land being an estate in fee simple of ALL that piece of land situate in the city of Nairobi in the Nairobi containing by measurement eight hundred and eighteen (818) or thereabouts and being Land Reference Number 113975 delineated on Land Survey Plan Number 36048 annexed to the said Transfer SUBJECT however to the Act, Special Conditions, Encumbrances and other matters specified in the Memorandum hereunder written.

DATED this 31st day of JANUARY 1994.

TRANSFERORS

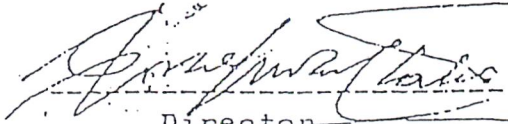
Signed by the said
Senior Deputy Registrar
Under the SEAL of
this Court
in the presence of

[Signature]
DEPUTY REGISTRAR
[Signature]
DEPUTY REGISTRAR

1-P4150
P4150 F1600
SD

TRANSFEREES

SIGNED under the Seal of
DANDORA HOUSING SCHEMES LTD
In the Presence of

) 
) Director

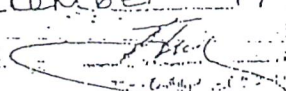
) Mwangi MINWA
) Director

MEMORANDUM

1. The Government Lands Act (Chapter 280)
2. The Kenya (Land) Order-In-Council 1960 and the Regulations and Rules from time to time made thereunder.
3. The easements created by way leaves registered in volume N. 1: Folio 91/12, 13 and 16 in so far as the same can lawfully be granted.
4. The special condition contained in a Grant registered as number I.R. 19935/1.

Drawn By:-

R.O. Onyimbo
Advocate,
2nd floor, Uganda House,
Kenyatta Avenue, Nairobi.

23514/6
16th December 1997
Time: 10:16 Hrs 

file

28

MINISTRY OF LANDS AND SETTLEMENT



DEPARTMENT OF LANDS
P.O. BOX 30089
NAIROBI

23th December 19 96

Nairobi
TEL 218180 9719010
FAX 218180
CLR/A/39/Vol.IV/85
date

Messrs Onesmus Githinji & Co.,
Advocates,
P.O. BOX 61579,
NAIROBI.

Dear Sirs,

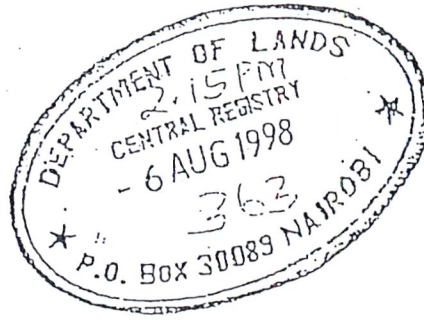
RE: L.R. No. 11379/3 - DANDORA - NAIROBI
DANDORA HOUSING SCHEME LIMITED

I acknowledge the receipt of your letter OGG/GEN/001/96/5/10 dated 9th December, 1996 on the above matter.

I am carrying out investigations into the issues raised therein with a view to taking corrective action where possible, and you will be informed of the position in due course.

Yours faithfully,

F. R. S. ONYANGO
PRINCIPAL REGISTRAR OF TITLES



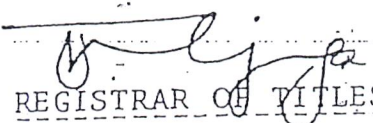
REPUBLIC OF KENYA,
REGISTRATION OF TITLES ACT
(CHAPTER 281)

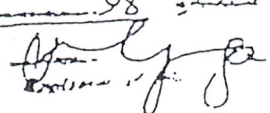
PROVISIONAL CERTIFICATE OF TITLE I.R. 23514

I HEREBY CERTIFY that by the reason of fact that the
CERTIFICATE OF TITLE registered as I.R. 23514/1 is
lost this Provisional Certificate of Title issued
under section 71 shall serve and be valid for all
purposes in lieu of the lost CERTIFICATE OF TITLE.

IN WITNESS WHEREOF I hereunto set my hand and seal this

SIXTH day of AUGUST. One Thousand
Nine hundred and Ninety Eight.


REGISTRAR OF TITLES

REGISTRATION OF TITLES ACT
REGISTERED AS No. LR 23514/7
6th August 98
7:15 P.M. 

REPUBLIC OF KENYA
THE REGISTRATION OF TITLES ACT
(CHAPTER 281)

CERTIFICATE OF TITLE: NUMBER I.R.23514

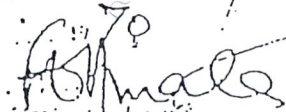
I HEREBY CERTIFY that KIBIRO KARANJA REUBEN KANGARA KEINGATI WATHARO NJUGUNA KIMANI and PETER GACHERU KINGARA all trading as KIAMBU DANDORA FARMERS COMPANY of Kiambu (Post Office Box 152) in the Republic of Kenya pursuant to a Transfer registered as Number I.R.19935/7 are now the registered proprietors as owners for an estate in fee simple of ALL that piece of land situate in the City of Nairobi in the Nairobi Area containing by measurement eight hundred and eighteen (818) acres or thereabouts and being Land Reference Number 11379/3 as delineated on Land Survey Plan Number 86048 annexed to the said Transfer SUBJECT however to the Act Special Conditions Encumbrances and other matters specified in the Memorandum hereunder written.

IN WITNESS whereof I have hereunto set my hand and seal this eighth day of April One thousand nine hundred and seventy.


REGISTRAR OF TITLES

M E M O R A N D U M

- (1) The Government Lands Act (Chapter 280);
- (2) The Kenya (Land) Order-in-Council 1960 and the Regulations and Rules from time to time made thereunder;
- (3) The easements created by wayleaves registered in volume N.13 Folio 91/12, 13 and 16 in so far as the same can lawfully be granted;
- (4) The Special Condition contained in a Grant registered as Number I.R.19935/1.

REGISTERED BY NO. I.R. 23514/1
INDEXED 8 4 70
10.15.70 

Locality City of Nairobi

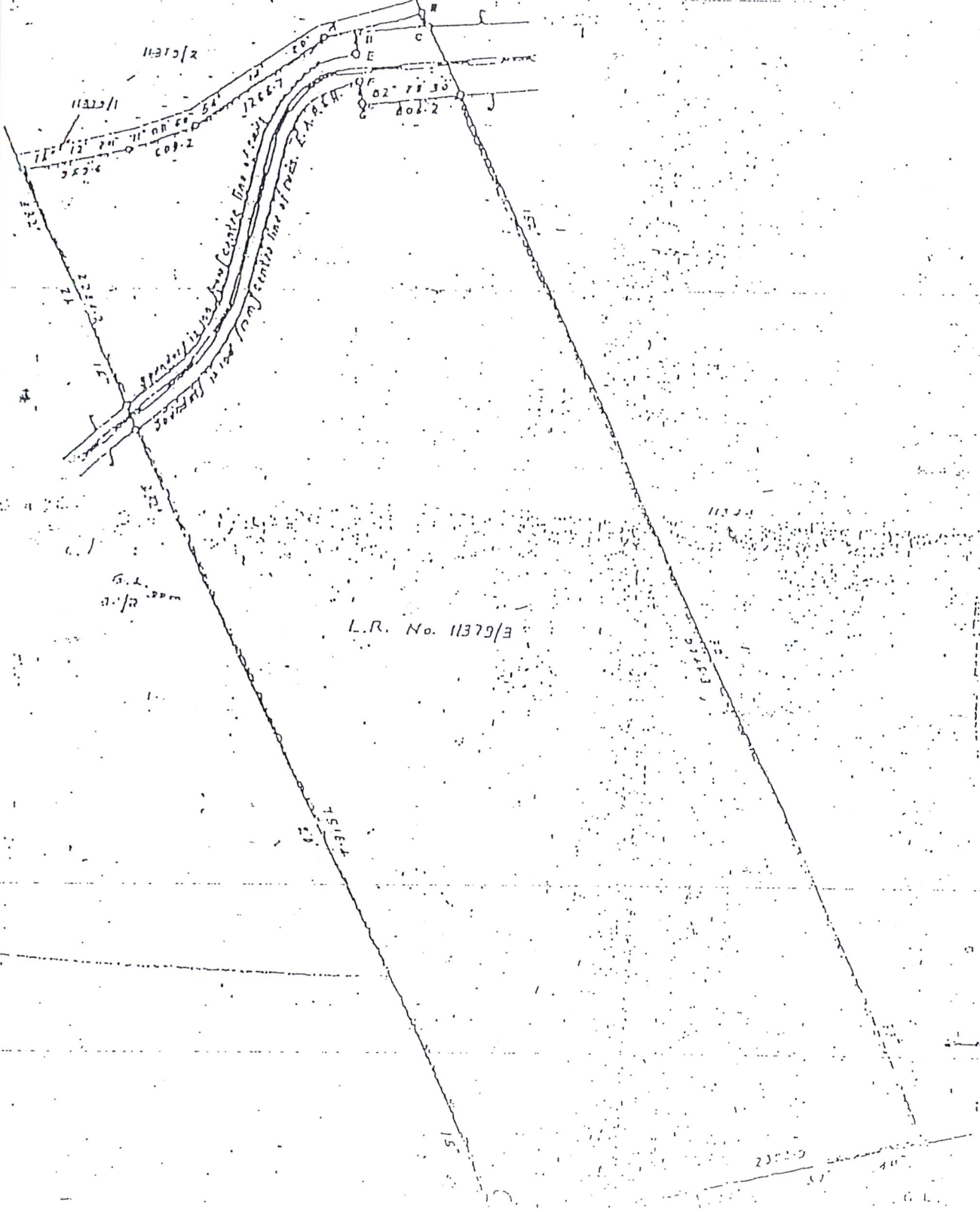
Meridional District South A-37
G.P.D. 2

Subdivision No. _____
of Section No. _____

Scale: 1 in. 12500 or 1041.66 Feet to 1 Inch

Area = 318 Acres (Approx)

	Bearings			Distances feet
	α	β	γ	
A-B	73	13	00	074.3
B-C	142	17	33	172.4
C-D	267	10	10	550.0
D-E	277	14	10	200.0
E-C	172	28	10	200.0



Telegrams: "VIGILANCE", Nairobi

Telephone: Nairobi 335124

When replying please quote

- SEC.POL.2/3/1/VOL.II/43

Ref. No.
and date~~CONFIDENTIAL~~

P. 188

POLICE HEADQUARTERS

P.O. Box 30083

NAIROBI

.....7TH May, 1999.....

The Permanent Secretary,
Secretary to the Cabinet & Head of Public Service,
P.O. Box 30510,
NAIROBI.

RE: L.R.NO.11379/3 MR.C.P.WAITHAKA

Please, this is with reference to your letter OP.29/8/8A dated 25th February, 1999 and OP.29/8/8A dated 29th March, 1999 on the above subject.

Mr. Waithaka's complaint was investigated. It was learnt that D.C.I.O Buru Buru had instituted investigation into an offence of making a document without authority vide Buru Buru Police Station case No. 134/50/99 which is pending before court.

Mr C.P. Waithaka and his clerk Kingori Maina are accused persons in this case. They however filed an injunction prohibiting police from prosecuting them. A court Order to that effect is still in force. The Attorney General was requested to represent the department on the matter.

On thorough investigation and perusal of documents especially those connected with civil case No. 1348/72 and the records held by Lands office we have no doubt Mr. C.P. Waithaka is the Chairman of Dandora Housing Scheme Ltd which is a company of 225 members who are the legal owners of LR 11379/3. Relevant copies of documents related to the case were obtained.

~~CONFIDENTIAL~~

It follows therefore, that we have no ground to prosecute the two at the moment. For this reason we are instructing DCIO Buru Buru to stop forthwith his investigation and to arrange and have the case in court terminated accordingly.

As you had pointed out, Mr C.P. Waithaka is at Liberty to proceed with his arrangements to negotiate mortgage facilities with his financiers.


E.S.K. CHESEREK DSM,

FOR: COMMISSIONER OF POLICE

Cc

MR. C.P. Waithaka,
P.O. Box 56770,
NAIROBI.

Provincial Police Officer,
Nairobi Area,
P.O. Box 30051,
NAIROBI.

PCIO Nairobi Area,
P.O. Box 30051,
NAIROBI.



32

OFFICE OF THE PRESIDENT

PERMANENT SECRETARY, SECRETARY TO THE CABINET
AND HEAD OF THE PUBLIC SERVICE

Telegraphic Address: "Rais"
Telephone: Nairobi 227411
When replying please quote

P.O. Box 30510
NAIROBI

Ref. No. OP.29/8/8A

Date: 17th January, 2000

Mr. Zakayo K. A. Cheruiyot, MGH, SS
Permanent Secretary
Provincial Administration
& Internal Security
Office of the President.
NAIROBI

Dear *Zakayo*

**RE: POLICE INVOLVEMENT IN ILLEGAL OCCUPATION OF PRIVATE
PROPERTY AND ABETMENT OF VIOLATION OF HIGH COURT
RULING AND ORDER**

Refer to this office's letter Ref. No. OP.29/8/8A of 30th July, 1998 copy attached for ease of reference.

LR NO. 11379/3 located in Dandora area is a freehold private property registered in the name of M/S Dandora Housing Schemes Ltd., a company with 225 Shareholders, who are old people. Mr. C. P. Waithaka is the Chairman of the company.

There was a legal battle between M/S Dandora Housing Schemes Ltd and M/S Kiambu Dandora Farmers Company Ltd over the ownership of this particular piece of land. The legal battle was settled in favour of M/S Dandora Housing Schemes Ltd by the High Court of Kenya vide HCCC No. 1348 of 1972 which was finalised in 1992 and a subsequent order confirming the ruling issued by Justice Shields on 1st December, 1993. In compliance with the Court ruling and order, the then Chief Land Registrar duly registered the land in the name of M/S Dandora Housing Schemes Ltd.

M/S Kiambu Dandora Farmers Company did not appeal against this ruling in the Court of Appeal nor has the High Court reviewed its decision.

Since the High Court ruling and following the issuance of a Provisional Title deed of the land by the Chief Land Registrar in compliance with High Court Order, M/S Dandora Housing Schemes Ltd have been occupying the land and hired the services of a Contractor to develop housing scheme for its members. M/S Dandora Housing Schemes Ltd put up a site office on their land.

On the night of 4th February, 1999, a mob armed with pangas and crude weapons apparently hired by M/S Kiambu Dandora Farmers Ltd invaded the site office of M/S Dandora Housing Schemes Ltd. The mob molested the contractor and his workers some of whom were beaten and injured. The matter was reported to the area District Officer who sent Administration Police to the scene and arrested some of the invaders and took them to Buru Buru Police Station.

Strangely, the invaders who had been arrested were on the same night returned to the site under police escort. The police chased away employees of the legal owners. The invaders then under supervision of the police from Buru Buru proceeded to occupy the site office and fix the company name of Kiambu Dandora Farmers Company Ltd on the site office.

Since then, the illegal occupants installed by police have with apparent accomplice and/or connivance some of officers from the Ministry of Lands & Settlement, and the Physical Planning Department of City Council have been swindling unsuspecting members of public of their money purporting to sell them plots on the private land over which they have no legal right.

The legally registered owners of the land have sought Government assistance to re-occupy their site offices and also to have the illegal subdivision and sell of their land stopped. There is tension building up over this matter and it needs to be diffused before peace is breached. This is a situation that the Government cannot allow to prevail. Firm action has to be taken so that private property is protected and court rules respected by all.

This office recently referred this issue to the Director of KACA who has advised that your office and that of Lands & Settlement should act as follows:

- (a) Persons escorted and installed by Buru Buru Police on the land and offices which lawfully belong to M/S Dandora Housing Schemes Ltd are forthwith removed and charged with the offences of criminal trespass and assault. The

Commissioner of Police should also investigate police involvement in this civil matter and take appropriate action against individual officers involved. The Commissioner should find out why the police at Buru Buru have not complied with his letter No. SEC. POL.2/3/1 VOL.11/43 of 7th May; 1999 a copy attached.

- (b) The Permanent Secretary, Ministry of Lands and Settlement should confirm that the titles if any and letters of allotment issued to persons other than Dandora Housing Schemes Ltd have been cancelled. Also through a press release or otherwise the Permanent Secretary, Ministry of Lands and Settlement should bring to the attention of the public that the land in question belongs to Dandora Housing Schemes Ltd and that neither the City Council of Nairobi nor the Government of Kenya has any interest in it and anybody purporting to allocate, sell or otherwise dispose of any interest therein and anybody who purports to buy or otherwise acquire any interest therein except from Dandora Housing Schemes is involved in a futile illegal exercise and can be charged not only with criminal trespass but also contempt of Court.

There is need to liaise with the Ministry of Lands and Settlement so that the removal of those people illegally installed on the farm by police is done simultaneously with the press release for the benefit of the unsuspecting public on the legal ownership of the land in question.

Mr. Waithaka may be contacted through Post Office Box 56770, Nairobi or Tel. No. 243588 at his offices in Vedic House, Mama Ngina street.

Yours *W*



R. E. LEAKEY
PERMANENT SECRETARY/SECRETARY TO THE
CABINET AND HEAD OF THE PUBLIC SERVICE

c.c. Hon. Amos Wako, EGH, EBS, MP
Attorney-General

NAIROBI (Refer to this office's letter to you Ref. No. OP.29/8/8A of 1st February, 1999 copy of which is attached for ease of reference.)

CONFIDENTIAL

Justice A. G. Ringera
Director
Kenya Anti-Corruption Authority

NAIROBI (Your letter No. KACA 1/10 Vol.X/V of 16th Dec. 1999.
Investigate if the Government lost any money through the
purported construction of Roads and Services on this private
property by M/S Firoze Construction Ltd. on behalf of the
Ministry of Lands & Settlement)

Dr. Nehemiah K. Nge'no, HSC
Permanent Secretary
Ministry of Lands & Settlement

NAIROBI (Refer to this office's letter to your predecessor Ref. No.
OP.29/8/8A of 30th July, 1998 copy of which is attached
for ease of reference - Take action as specified under (b)
above)

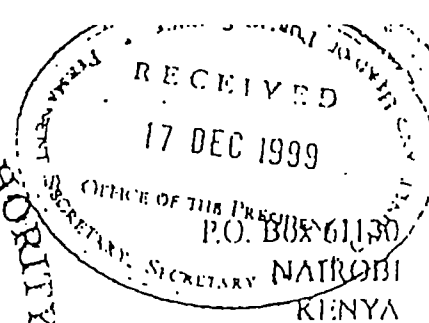
✓ Mr. C. P. Waithaka
Chairman
Dandora Housing Schemes Ltd
Vedic House
P. O. Box 56770
NAIROBI

Telephone: Nairobi 719755
Fax: 7195553
When replying please quote

Your Ref:

Our Ref

KACA 1/10 Vol. XIV



16th December, 1999

Dr. Richard Leakey,
Permanent Secretary/Secretary to the
Cabinet and Head of the public Service,
Office of the President,
NAIROBI

Dear *Richard,*

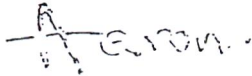
RE: L.R. NO. 11379/3 - (FREEHOLD) DANDORA, NAIROBI;
DANDORA HOUSING SCHEMES LTD

I regret the delay in replying to yours of 26th November, 1999. I have perused the documentation and would advise as below.

1. The brief to you by Richard Wa-Mwome dated 21/11/99 is excellent and is well supported by the documentation.
2. I am in agreement with his conclusion, and would respectfully suggest that your office issues necessary directions to:
 - (a) The Permanent Secretary in charge of internal security to ensure that persons escorted and installed by Baringo Police on land and offices which lawfully belong to M.S Dandora Housing Schemes Ltd are forthwith removed and charged with the offences of criminal trespass and assault; and
 - (b) The Permanent Secretary Ministry of Lands and Settlement to confirm that the titles issued to persons other than Dandora Housing Schemes Ltd have been cancelled and further put out a press release or otherwise to bring to the attention of the public that the land in question belongs to Dandora Housing Schemes Ltd and that neither the City Council of Nairobi nor the Government of Kenya has any interest in it and anybody purporting to allocate, sell, or otherwise dispose of any interest therein and anybody who purports to buy or otherwise acquire any interest therein except from Dandora Housing Schemes Ltd is involved in a futile illegal exercise.

As regards corruption relating to the land sales and contracts for roads and drains, KACA would be happy to investigate any allegations which your office may have. We would however be less than candid to promise immediate investigations as our hands are full at the moment. We can only do so in due course. If the matter is urgent, please do not hesitate to adopt another approach.

Yours Sincerely,

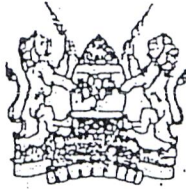


Justice A. G. Ringera
DIRECTOR

MINISTRY OF LANDS AND SETTLEMENT

Telegrams: "LANDS", Nairobi
Telephones: Nairobi 718050-9
When replying please quote

Ref. No.
and date



DEPARTMENT OF LAND
P.O. Box 30089
NAIROBI

23rd July 20...

33

C.N. KIHARA & CO,
ADVOCATES
P.O. BOX 50854
NAIROBI

Dear Sirs,

RE: CERTIFICATE OF TITLE L.R. 11379/3

In reference to your letter ref. CNK/O/1458 of 7th July, 2003 please be informed that the document attached to the said letter is not a copy of a Certificate of Title as stated but a copy of a Transfer from M.J. BHATI to DANDORA HOUSING SCHEMES LIMITED.

The deed file in our custody in respect of the above parcel of land is temporary and we would be very grateful if your client can avail to this office the original certificate of Title I.R. 23514 and originals of any documents registered against it to enable the office to reconstruct a deed file.

A handwritten signature in cursive script, appearing to read 'R.N. Mule', written over a horizontal line.

R.N. MULE

FOR: PRINCIPAL REGISTRAR OF TITLES



34

OFFICE OF THE PRESIDENT

PERMANENT SECRETARY, SECRETARY TO THE CABINET
AND HEAD OF THE PUBLIC SERVICE

Telegraphic Address: "Rais"

Telephone: Nairobi 227411

When replying please quote

OP.29/8/8A

P.O. Box 62345

NAIROBI

Ref. No.

and date

25th August, 2003

Attorney General
State Law Office
NAIROBI

(Attn: Mr. Horace Okumu)

RE: LR. NO. 11379/3 - NAIROBI DANDORA

Refer to our letter No. OP.29/8/8A of 1st July 2003 addressed to the Permanent Secretary, Ministry of Lands and Settlement and copied to you on the above parcel of land.

Attached find copy of unreferenced letter dated 23rd July, 2003 addressed to M/S. C. N. Kihara & Co. Advocates & by the Principal Registrar of Titles.

This latest development is a ray of light at the end of the long tunnel of darkness in this long running land saga.

The documents that are required for purpose of reconstructing the Deed file of this particular piece of land are in custody of Buru Buru Police who took them while investigating the alleged forgery case against Mr. Waithaka the Chairman of Dandora Housing Schemes Ltd.

CONFIDENTIAL

You may wish to consider asking the Police to avail to the Principal Registrar of Titles the documents so as to enable in the reconstruction of the file.



RICHARD O. WA-MWENJE, HSC
FOR: PERMANENT SECRETARY, SECRETARY TO
THE CABINET AND HEAD OF PUBLIC SERVICE

(Encl... 1)

c.c. Mr. Cornelius P. Waithaka
Chairman
Dandora Housing Schemes Ltd.
NAIROBI

REPUBLIC OF KENYA

35

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. APPLICATION NO. 1507 OF 2004

IN THE MATTER OF AN APPLICATION BY STEPHEN MUGO MUTOTHORI, RAYMOND MWANGI WAWERU AND PETER KARUMBI KEINGATI TRUSTEES FOR KIAMBU DANDORA FARMERS COMPANY LTD. AND KIAMBU DANDORA FARMERS CO. LTD. FOR JUDICIAL REVIEW

AND

IN THE MATTER OF LAND REFERENCE NO. 11379/3

REPUBLIC APPLICANT

BETWEEN

COMMISSIONER OF LANDS RESPONDENT

RULING

The court on 8th November, 2004 made ex-parte Orders^o in favour of the four Applicants in this judicial review application. The court granted leave to the Applicants to file an application for orders of Mandamus, Certiorari and Prohibition. The grant of leave was to operate as a stay for 90 days unless extended by the court of all further allocations or dealings by the Respondent of L.R. No. 11379/3. The Respondent is Commissioner of lands.

There was also an order that all interested parties be served with the Order.

For reasons which are on record, the said Orders of Stay were extended for another 90 days with effect from 1st February, 2005. On 4th March, 2005, an Interested Party AMBOSELI COURT LIMITED filed the present application for the following orders:-

1. That the Orders of Stay granted to the Main Applicants, Kiambu Dandora Farmers Co. Ltd. be set aside and/or discharged.
2. That this Honourable Court Order that conduct of the applicants and their advocates, Boniface Njiru Advocate be investigated with a view of ascertaining whether or not they have been involved in the pervasion of the cause of justice on the ground that they have knowingly used forged court orders and other documents in this suit and other suits.

One of the main grounds of the application is that Applicant is the registered owner of property known as L.R. NO. 15400 which used to be part of L.R. NO. 113 79/3. The Applicant asserts that the effect of the Orders granted by this court is to interfere with development of a project and rights of over 200 purchasers.

The main Applicants herein raised a preliminary objection that the Amboseli Court Ltd. has no locus

standi in this matter and that the court has not granted any leave to enjoin the said company as a party in these proceedings.

I have considered the application and the Preliminary Objection raised by the Main Applicant. In my view, the Main Applicant must know and ought to have known the possible effect of the ex parte orders they sought from the court. It is the duty of the Applicants ultimately to have identified all the persons who were likely to be affected by the ex parte orders and at the hearing to have served all those who ought to be served.

The present applicants have shown that physically the land purportedly represented in their title document was either formerly in the land identified as L.R. NO 11379/3 or forms part of it. There are allegations that the present applicant has a development project on the said land with over 200 purchasers of the subdivisions therein. For purposes of the Preliminary Objection, this fact is deemed to be true.

If this is the case, I am of the view that the present applicant is a person directly affected, by the proceedings herein and they not only have the right to be served but also to be aggrieved and come to this

court for redress. They could have come to this court to be heard at the hearing without any specific order once they disclosed their interest in the matter.

I hereby dismiss the Preliminary Objection herein and hold that the applicants have the locus standi to participate in these proceedings and are automatic parties by virtue of their interest.

In exercise of the court's discretion, they are enjoined in these proceedings as the 1st Interested Party and are given leave to prosecute their application.

Dated and Delivered at Nairobi on this 11th day of May, 2005

MOHAMMED K. IBRAHIM

JUDGE

11.05.2005

Coram: Ibrahim, J.

Court clerk - Buoro

Mr. Ngunjiri for the Interested Party/Applicant

Mr. Makori holding brief for Mr. Njiru for the Main Applicant

Mr. Mureithi for Interested parties

Ruling read in their presence.

MPHAMMED K. IBRAHIM

JUDGE

Further order

The Applicant dated 4th March, 2005 and that of the Main Applicant dated 5th May, 2005 shall now be heard together on 17th May, 2005 at 9. a.m.

MOHAMMED K. IBRAHIM

JUDGE

36

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. APPLICATION NO. 1507 OF 2004

PETER KARUMBI KEINGATI.....1ST APPLICANT
RAYMOND MWANGI WAWERU.....2ND APPLICANT
KIAMBU DANDORA FARMERS CO. LTD.....3RD APPLICANT

VERSUS

COMMISSIONER OF LANDS.....RESPONDENT

RULING

During the hearing of the application by an Interested party, M/S Amboseli Court Limited dated 4th March, 2005, it came to the court's attention that there was a serious allegation that a "Decree" used and annexed by the Ex parte Applicants and marked "PKK5" is a forgery and that it is alleged that this constitutes the main foundation of the said application for judicial review orders.

This court had been referred to the said exhibit and the court had granted leave and ex parte Orders of Stay. This court was compelled to make an inquiry into the matter and the Deponent who made presented the said "Decree", Mr. Peter Karumbi Keingati was examined by Mr. Ngunjiri Advocate and examined by Mr. Boniface Njiru Advocated. From the foregoing the court finds as follows:-


1. That the Parties in H.C.C.C. 1555 of 1984 were Dandora Housing Schemes Ltd -s- Attorney General and not as stated in "PKK5".

2. The Orders purportedly set out in the said "Decree" and allegedly granted by the High Court were never so granted.
3. The deponent was never a party in H.C.C.C. No. 1555 and he did not possess any Decree in the said suit to enable him make the Statements in paragraph 9 and 10 of his affidavit.
4. The deponent intended that the court relies on his affidavit and the "Decree" and the court did exactly that. As a result I find that the deponent has not only misrepresented material facts to the court but has actually lied to the court.
5. Upon considerations of this and the fact that the said document or copy thereof was procured by Mr. Boniface Njiru from the Police at Buru Buru, the deponent made his affidavit on the advice and encouragement of the said counsel who knew and ought to have known that such a Decree did not exist.

As a result this court is pained and disappointed by these facts and developments. This is a matter that could give rise to contempt proceedings and even perjury. However, I would leave that to the parties involved in this dispute if they wish to take up the matter.

For now, I think that the deponent must suffer for making the said false affidavit within these proceedings. This court shall not countenance such conduct or acts on the part of any parties, litigants or counsel. I therefore do hereby set aside the order of leave granted on 8th November, 2004 and do hereby discharge the Order of Stay therein and all interim orders granted to the Applicants. I hereby strike out the Notice of Motion dated 29th November 2004 with costs to the Respondents and Interested Parties. These shall be paid by Mr. Boniface Njiru Advocate personally. I hereby order that the deponent, Mr. Peter Karumbi Keingati shall not swear to or make any affidavit or Statutory Declaration in any suit pertaining to the subject matter of this suit and in particular in any Interim applications. This shall not be a bar to him being a witness or party in such proceedings. Orders accordingly.

Dated and delivered at Nairobi on this 7th day of October, 2005


MOHAMMED K. IBRAHIM

JUDGE

Coram:

Ibrahim, J.

Court Clerk-- Buoro

Mr. Ngunjiri for 1st Interested party/Applicant.

Mr. Cherogony for the Attorney General.

Mr. Omwega holding brief for Mr. Njiru for Original Applicant.

Ruling read in their presence.



MOHAMMED K. IBRAHIM

JUDGE

①

41 (b)

6

206

u. 70
10.15

REPUBLIC OF KENYA
 THE REGISTRATION OF TITLES ACT
 (CHAPTER 281)
 CERTIFICATE OF TITLE: NUMBER I.R.23514.

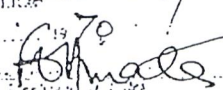
I HEREBY CERTIFY that KIBIRO KARANJA, REUBEN KANGARA, KEINGATI WATHARO, NJUGUNA KIMANI and PETER GACHERU KINGARA all trading as KIAMBU DANDORA FARMERS COMPANY of Kiambu (Post Office Box 152) in the Republic of Kenya pursuant to a Transfer registered as Number I.R.19935/7 are now the registered proprietors as owners for an estate in fee simple of ALL that piece of land situate in the City of Nairobi in the Nairobi Area containing by measurement eight hundred and eighteen (818) acres or thereabouts and being Land Reference Number 11379/3 as delineated on Land Survey Plan Number 86048 annexed to the said Transfer SUBJECT however to the Act Special Conditions Encumbrances and other matters specified in the Memorandum hereunder written.

IN WITNESS whereof I have hereunto set my hand and seal this eighth day of April One thousand nine hundred and seventy.


 REGISTRAR OF TITLES

M E M O R A N D U M

- (1) The Government Lands Act (Chapter 280);
- (2) The Kenya (Land) Order-in-Council 1960 and the Regulations and Rules from time to time made thereunder;
- (3) The easements created by wayleaves registered in volume N.13 Folio 91/12, 13 and 16 in so far as the same can lawfully be granted;
- (4) The Special Condition contained in a Grant registered as Number I.R.19935/1.

REGISTRY OF TITLES
 REGISTRATION OF TITLES
 REGISTERED AS No. I.R. 23514/1.
 8.4.70
 10.15 am


73

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL PETITION NO. 47 2011

IN THE MATTER OF SECTIONS 22, 23 & 165 (3) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOM UNDER SECTION 40 (1) AND (3) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF PURPORTED COMPULSORY ACQUISITION OF
LAND REFERENCE NO. 11379/3

AND

ABDULAH MUIGAI	1 ST PETITIONER
RAYMOND MWANGI WAWERU	2 ND PETITIONER
KARIUKI NJOROGE	3 RD PETITIONER
PETER KERUMBI KEINGATI.....	4 TH PETITIONER
JOSEPH NDUATI NGENDO	5 TH PETITIONER
KIAMBU DANDORA FARMERS COMPANY LIMITED	6 TH PETITIONER

AND

THE HON ATTORNEY GENERAL For: COMMISSIONER OF LANDSRESPONDENT

IN COURT ON 31ST OCTOBER 2011 BEFORE THE HON. LADY JUSTICE M. NGUGI

ORDER

Application for Orders:-

1. THAT this Court do Order and allow the Advertisement of this Petition in any Kenyan Nationally circulating Daily Newspaper to invite and allow all and any interested parties to apply to be enjoined and heard during the hearing of the Petition.

2. ~~THAT~~ pending the hearing and determination of the Petition herein there be a stay of proceedings in respect of all other cases instituted and pending before Court or any other tribunals which touch on and concern the whole, any part or any sub-division or partition of the subject property herein being LR No. 11379/3, situate in Nairobi and in particular;
 1. HC. ELC. NO. 393 OF 2008.
 2. HCCC NO. 328 OF 2004
 3. HCCC NO. 350 OF 2003
 4. HC ELC. NO. 412 OF 2010



HC ELC. NO. 618 OF 2010

6. HCCC NO. 213 OF 2010

7. CMCC NO. 1451 OF 2002

8. HCCC NO. 610 OF 2004

9. HCCC NO. 408 OF 2003

10. HCCC NO. 890 OF 2002

11. HCCC NO. 393 OF 2008

3. Any Orders issued and subsisting in the aforesaid suits be maintained pending the hearing and determination of this Petition.

4. This Honourable Court do grant orders and directions on the manner, format, place and bench which shall hear and determine this Petition.

5. The costs hereof be in the cause.

UPON READING the Application dated 20th June 2011 and presented to this court on 27th July 2011 by counsel for the petitioner/applicant under Order 1 Rule 8, Order 11 Rules 7,8 and 9 of the civil procedure Rules section 1A & B of the civil procedure Act and any other enabling provision of the Law AND UPON READING the supporting affidavit of ABDULAHI MUIRURI MUIGAI sworn on 20th June 2011, AND UPON HEARING the counsel for the petitioners.

IT IS HEREBY ORDERED :-

1. That leave be and is hereby granted to the petitioners to advertise the petition in any newspaper circulating naturally within thirty days from the date hereof.

2. That any party interested in joining in the matter may do so within 14 days from the date of advertisement.

3. That mention for further direction be on 8th December 2011.

GIVEN Under my hand and seal of this Court this 31st day of October, 2011.

ISSUED at Nairobi this 1st day of

Nov

2011.

CERTIFY THIS IS TRUE
COPY OF THE ORIGINAL.

DATED: 13/11/11

DEPUTY REGISTRAR
HIGH COURT OF KENYA
NAIROBI

DEPUTY REGISTRAR
HIGH COURT OF KENYA NAIROBI

DAILY NATION
MONDAY NOV 28, 2011

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI NAIROBI
CONSTITUTIONAL PETITION NO. 47 2011.

IN THE MATTER OF THE PURPORTED COMPULSORY ACQUISITION
OF LAND REFERENCE NO. 11379/3

BETWEEN

Abdulahi Muiruri Muigal 1st Petitioner
Raymond Mwangi Waweru 2nd Petitioner
Kariuki Njoroge 3rd Petitioner
Peter Karumbi Keingati 4th Petitioner
Joseph Nduati Ngendo 5th Petitioner
Kiambu Dandora Farmers Company Limited 6th Petitioner

AND

The Hon Attorney General for Commissioner of Lands Respondent

NOTICE TO ALL INTERESTED PARTIES

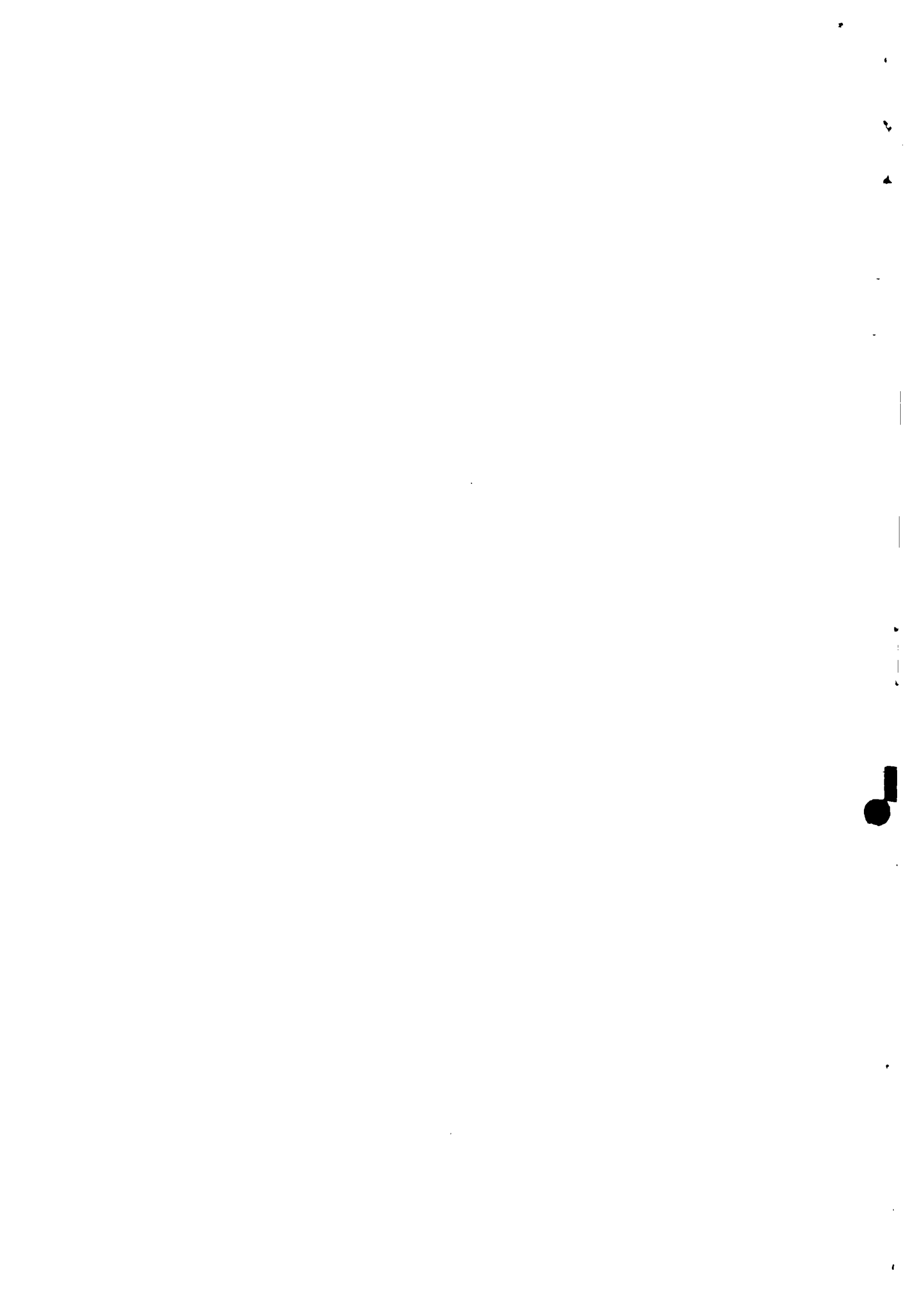
NOTICE is hereby given that the Petitioners aforesaid under Kiambu Dandora Farmers Company Limited the Title Holders of L.R No.11379/3 situated between Umoja 1, Komarock and Dandora in Nairobi have filed this Petition to have nullified the purported Government Acquisition of their land and equally for the Cancellation of any Titles issued to any third parties from the said Parcel of Land.

By an Order of the Court issued on 17th of November, 2011 any party or person interested in the said land or holding Title therefrom is hereby invited to enjoin in the stated Petition and to file their papers in Court in the next 14 days from the date hereof.

Copies of the petition can be obtained from the Petitioners Advocates or from the Court Registry.

DATED at Nairobi this 24th day of November, 2011

Namada & Co.
Advocates for the Petitioner
Phoenix Hse, 6th Floor
Kenyatta Avenue
P.O Box 72661-00200 Nairobi



205



GOVERNMENT OF KENYA

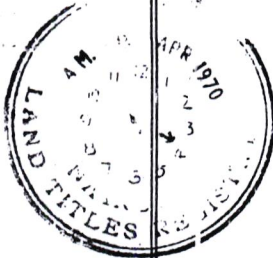
THE REGISTRATION OF TITLE ACT

(CHAPTER 281)

GRANT NO. I.R. 19935/7

FREEHOLD

6.
K200/1
K20
8/4/70
O/T/R 235/4



WE (1) KHAN NAWAZ KHAN and KHAN ABBAS KHAN as personal representatives of the estate of Khan Bahadur son of Khudadad Khan (deceased) and (2) MEHDI KHAN son of Fateh Khan all of Post Office Box Number 2947 Nairobi being registered as the proprietors for an estate in fee simple SUBJECT to (a) the Government Lands Act (Chapter 280) (b) the Kenya (Land) Order-in-Council 1960 and the Regulations and Rules from time to time made thereunder (c) the easements created by wayleaves registered in Volume N.13 Folio 91/12 13 and 16 in so far as the same can lawfully be granted (d) the special conditions contained in a Grant registered as number I.R. 19935/1 and (e) charges leases and encumbrances notified by the memorandum endorsed hereon of ALL THAT piece of land containing by measurement eight hundred and eighteen (818) acres or thereabouts situate in the City of Nairobi in the Nairobi Area of Kenya and known as Land Reference Number 11379/3 being a portion of the land comprised in the said Grant and delineated on the plan annexed hereto and more particularly on Land Survey Plan Number 86048 deposited in the Survey Records Office at Nairobi and thereon edged red IN CONSIDERATION of the sum of Shillings two hundred thousand (Shs.200,000/-) paid to us by KIBIRO KARANJA REUBEN KANGARA KEINGATI WATHARO NJUGUNA KIMANI and PETER GACHERU KINGARA all trading as KIAMBŪ DANDORA FARMERS COMPANY of Post Office Box Number 152 Kiambu the receipt whereof we hereby acknowledge DO HEREBY TRANSFER unto the said KIBIRO KARANJA REUBEN KANGARA KEINGATI WATHARO NJUGUNA KIMANI

Certified True
of the Original

WANJIRU ADVOCATE
P. O. Box 7969 NAIROBI

Transcribed by
Checked by

86048

and PETER GACHERU KINGARA all our right title and interest in the said piece of land.

IN WITNESS WHEREOF We the said KHAN NAWAZ KHAN KHAN ABBAS KHAN and MEHDI KHAN have hereunto subscribed our names this 7th day of April One thousand nine hundred and ~~sixty-nine~~ seventy.

SIGNED by the said KHAN NAWAZ KHAN)
in the presence of:-)

[Signature]
[Signature]
P.O. Box 286 Nairobi.

[Signature]

SIGNED by the said KHAN ABBAS KHAN)
in the presence of:-)

[Signature]
[Signature]
Nairobi

[Signature]

SIGNED by the said MEHDI KHAN in the)
presence of:-)

[Signature]
[Signature]
Nairobi

[Signature]

MEMORANDUM OF CHARGES LEASES
AND ENCUMBRANCES

- Nil -

LAND TITLE REGISTRY-NAIROBI, KENYA

REGISTERED AS NO. I.R. 17735/7..

Presented ... 8-4-... 1979

Time ... 3.55 p.m.

[Signature]
Registrar of Land

"APPENDIX A"
REPUBLIC OF KENYA
ABSTRACT FROM POLICE RECORDS

TO Buru Buru POLICE STATION

ABSTRACT REGISTER SERIAL NO.

POLICE REF. OB 38 OF 21/09/06

MISC. DATE

WE HAVE CONFIRMED THE REPORT OF Loss of Documents
..... WAS RECEIVED AT

CAST FILE NO. 151 134/50/99 NAME OF

COMPLAINANT MR CORNELIUS PERESON WAGHARA

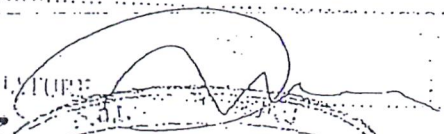
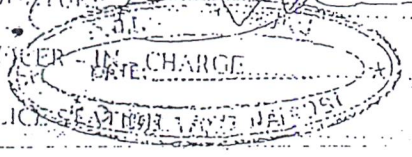
WHO HAS STATED AS BELOW:-

BRIEF SUMMARY OF COMPLAINANT:-

IN THE MONTH OF FEBRUARY 1999, ASSORTED DOCUMENTS WERE CONFISCATED BY POLICE FOR INVESTIGATION OF THE ABOVE QUOTED CASE DURING HANDING/TAKING OVER EXERCISE, TWO DOCUMENTS WERE MISPLACED (ORIGINALS)

IT IS FURTHER NOTED THAT THE PROPERTY WAS ESTIMATED TO VALUE OF KSHS.

DETAILS OF PROPERTY (1) COURT ORDER VIDE CASE NO 1348/72
(2) A LAND TRANSFER DOCUMENT OF CERTIFICATE OF TITLE NO B 12 23514

SIGNATURE 
OFFICER - IN CHARGE
POLICE STATION 



38

MINISTRY OF LANDS

OFFICE OF THE PERMANENT SECRETARY

Telegrams "MINILANDS", Nairobi
Telephone: Nairobi 2718050
When replying please quote

ARDHI HOUSE
1st NGONG AVENUE
OFF NGONG ROAD
P.O.BOX 30450
NAIROBI

Ref: ML/29/002/8/96/ VOL.II/45

12th July 2006

C.P. Waithaka
Managing Director
Dandora Housing Schemes Ltd.
P.O Box 56770
NAIROBI.

LR.NO.11379/3 - DANDORA LAND

I refer to your letter dated 3rd July 2006 on the above land.

The proposals that you had raised are not acceptable to this office and we request that you avail the original documents to the Chief Land Registrar, Ardhi House, Nairobi.

KOMBO MWERO
PERMANENT SECRETARY

c.c Commissioner of Lands
Nairobi

Chief Land Registrar
Nairobi.

Onesmus Githinji & Company

Advocates & Commissioners for Oaths

39

Onesmus G. Githinji L.L.B. (Hons) NRB Dip Law KSL
Daniel K. Musyoka L.L.B. (Hons) NRB Dip Law KSL

Shell & BP House
Harambee Avenue
3rd Floor, Room No. 304
P.O. Box 61579, Nairobi.

Tel: 241198 / 244021
Telefax: 246688
Mobile: 0725 870126
Email: ogg@wananchi.com

Our Ref: OGG/CIV/2253/2005

Your Ref:

18.10.06
Date

The Permanent Secretary
Ministry of Lands
Ardhi House
NAIROBI

Dear Sir,

RE: LR N^o. 11379/3 DANDORA LAND

We act for Dandora Housing Schemes Limited on whose instructions we write to you as hereunder:-

In your letter dated 12/7/06 addressed to Mr. C.P. Waitthaka, the Managing Director of Dandora Housing Schemes Limited, you had requested our client to avail the original documents in respect of the captioned land to the Chief Land Registrar, Ardhi House, Nairobi.

In this regard we enclose herein the following documents, duly certified as true copies of the original.


- (i) Police Abstract issued by Buruburu Police Station as regarding some original documents which were misplaced at the Police Station. Our client had to obtain others from the Court.
- (ii) Decree in HCCC NO. 1348 OF 1972
- (iii) Order given on 1st December 1993
- (iv) Transfer dated 31st January 1994
- (v) Provisional Certificate of Title I.R. 23514

Our client is ready to avail the original documents to the Chief Land Registrar but through your office.

Kindly give us an appointment when we can do so.

Treat as most urgent so that this matter can be brought to a suitable end.

Yours faithfully,


FOR: ONESMUS GITHINJI & CO. ADVOCATES

~~Enclosure~~

- CC: 1. Commissioner of Lands
Nairobi
2. Chief Land Registrar
Nairobi
3. Provincial Police Officer
Nairobi



MINISTRY OF LANDS

Telegrams "MINILANDS", Nairobi
Telephone: Nairobi 2718050
When replying please quote

ARDHI HOUSE
1st NGONG AVENUE
OFF NGONG ROAD
P.O.BOX 30450
NAIROBI

Ref:29/002/8/96 VOL.II/(110)

27th February 2007

Mr. James M. Waweru
Provincial Commissioner
Nairobi Area
NAIROBI

His Worship Dick Waithika
Mayor of City of Nairobi
NAIROBI

Mr. J. Gakuo
Town Clerk
Nairobi City Council
NAIROBI

NEW DATE FOR KIAMBU DANDORA FARMERS CO. LTD MEETING 8TH MARCH 2007 AT 9.00 A.M.

Kindly refer to my letter MLH.29/002/8/96/Vol.11/110 of 21st February 2007 convening a meeting to discuss land dispute for the above company.

I wish to propose again that the meeting be held on 8th March 2007 at 9.00 a.m. at Ardhi House 12th floor boardroom.

Please accept my apologies for unavoidable postponement.


KOMBO MWERO, CBS
PERMANENT SECRETARY

- CC: 1. Kiambu Dandora Farmers Ltd P. O. Box 58409 NRB
2. Dandora Housing Scheme Ltd P. O. 56770 NRB
3. C. N. Kibara & Co. Advocate P. O. Box 50854 NRB

T 22/9

Njirufac Njiru (L.L.B) NBI.
P.O. Box 8638
NAIROBI

**NJIRU BONIFACE & CO. ADVOCATES
COMMISSIONER FOR OATHS**

Jubilee Insurance Exchange
Mama Ngina Street
2nd Floor Room 203

Tel: 225244

DATE: 6 / 10 / 1999

Your Ref:.....

Our Ref:

Deputy Registrar
High Court
NAIROBI

**HIGH COURT OF KENYA
CENTRAL REGISTRY
08 OCT 1999
CIVIL SIDE
NAIROBI**

NAIROBI HCCC NO. 1903 OF 1999 (O.S)

IN THE MATTER OF AN APPLICATION BY HANNAH WANJIRU KAMAU
W/O NJUGUNA KIMANI

We have the honour to request that judgement be entered for the plaintiff by court as follows:-

1. PETER KERUMBI KEINGATI of Post Office Box 7541 Nairobi be and is hereby appointed as trustee for L.R. NO. 11379/3 in substitution for NJUGUNA KIMANI S/O KIMANI under the trust deed dated 7th April 1970.
2. Costs of this application be in cause.

DATED at NAIROBI this 6th day of October 1999.

NJIRU BONIFACE & CO.
ADVOCATES FOR THE APPLICANT

We consent

[Signature]
ALPHONSE MUTINDA
ADVOCATE
P.O. Box 47848
NAIROBI
RAYMOND MWANGI WAWERU
DIRECTOR KIAMBU DANDORA FARMERS CO. LI

We consent

[Signature]
PETER KERUMBI KEINGATI
ALPHONSE MUTINDA
ADVOCATE
Witnessed by [Signature] P.O. Box 47848
NAIROBI

[Signature] 8.10.99

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

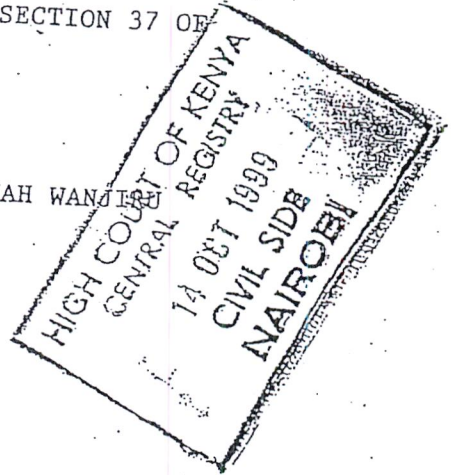
CIVIL CASE NO. 1903 OF 1999(O.S)

IN THE MATTER OF AN APPLICATION UNDER SECTION 37 OF
THE TRUSTEE ACT CAP 167

AND

IN THE MATTER OF AN APPLICATION BY HANNAH WANJIRI
KAMAU C/O NJUGUNA KIMANI

DECREE



CLAIM FOR

1. This Honourable Court be pleased to appoint PETER KERUMBI KEINGATI of P.O. Box 7541 Nairobi as trustee in substitution.
2. Costs of this application be provided for on ground
 - (a) That NJUGUNA KIMANI C/O KIMANI who died on 13th March 1995.
 - (b) That NJUGUNA KIMANI was the last surviving trustee under the trust deed dated 7th April 1970.
 - (c) That the applicant is the only widow of the deceased and wishes to appoint a trustee in substitution of her late husband.

ON READING the consent letter dated 6th October 1999, filed on 8th October 1999 and signed by Counsel for the Plaintiff/Applicant and Raymond Mwangi Waweru Director DANDORA FARMERS CO. LTD and Peter Kerumbi Keingati IT IS ORDERED BY CONSENT

THAT PETER KERUMBI KEINGATI of post office Box 7541 Nairobi be and is hereby appointed as trustee for L.R. No. 11379/3 in substitution for NJUGUNA KIMANI C/O KIMANI under the trust deed dated 7th April 1970.

THAT costs of this application be costs in the cause.

GIVEN under my hand and the Seal of this Honourable Court this 13th day of October

1999.

SUED at Nairobi this 14th day of October 1999.

I CERTIFY
THE ORIGINAL
DATE: 13/10/99
DEPUTY REGISTRAR
HIGH COURT OF KENYA AT NAIROBI

Raymond Mwangi Waweru
Peter Kerumbi Keingati

Boniface Njiru (L.L.B) NBI.
P.O. Box 8638
NAIROBI

Tel: 225244

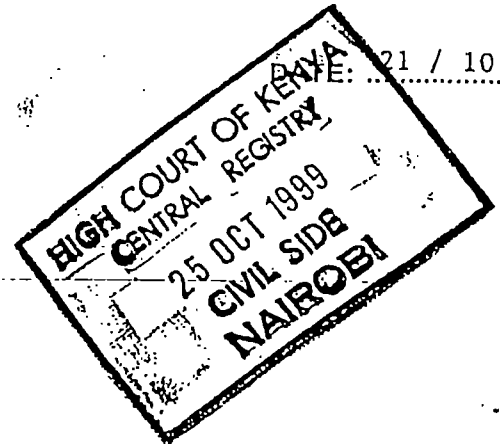
**NJIRU BONIFACE & CO. ADVOCATES
COMMISSIONER FOR OATHS**

Jubilee Insurance Exch.
Mama Ngina Street
2nd Floor Room 203

21 / 10 / 19

Your Ref:.....

Our Ref:



Deputy Registrar
High Court
NAIROBI

NAIROBI HCCC. NO. 1970 OF 1999 (O.S.)
IN THE MATTER OF AN APPLICATION BY PETER KERUMBI KEINGATI

We have the honour to request that judgement be entered for the plaintiff by court as follows:-

1. Hannah Wanjiru Kamau, Stephen Mugo Mutothori and Raymond Mwangi Waweru of Post Office Box 7541 Nairobi be and are hereby appointed as trustee for L.R. NO. 11379/3 In addition to Peter Kerumbi Keingati under the trust deed date 7th April 1970.
2. Costs of this application be in cause.

DATED at NAIROBI this

22nd

day of

[Signature]
October 1999.

NJIRU BONIFACE & CO.
ADVOCATES FOR THE APPLICANT.

We consent

[Signature]
CANISIUS KIRUGARA
ADVOCATE
P. O. Box 5113,
NAIROBI

We consent

[Signature]
MARY NJERI ON BEHALF OF
KIAMBU DANDORA FARMERS CO.

[Signature]
CANISIUS KIRUGARA
ADVOCATE
P. O. Box 5113,
NAIROBI

We consent

[Signature]
HANNAH WANJIRU
HANNAH WANJIRU KAMAU

[Signature]
CANISIUS KIRUGARA
ADVOCATE
P. O. Box 5113,
NAIROBI

We consent

[Signature]
STEPHEN MUGO MUTOTHORI

When Replying Please Quote our Reference

[Signature]

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 1970 OF 1999(O.S.)

IN THE MATTER OF AN APPLICATION UNDER SECTION 37 OF THE
TRUSTEE ACT CAP 167

AND

IN THE MATTER OF AN APPLICATION BY PETER KARUMBI KEINGATI

ORDER

UPON READING the Consent letter dated 21st October 1999 filed on 25th October 1999 and signed by Counsel for the plaintiff/applicant, Mary Njeri on behalf of Kiambu Dandora Farmers Co. Ltd. Hannah Wanjiru Kamau, Stephen Mugo Mutothori and Raymond Mwangi Waweru,

IT IS ORDERED BY CONSENT:-

1. That Hannah Wanjiru Kamau, Stephen Mugo Mutothori, Raymond Mwangi Waweru all of P.O. Box 7541 Nairobi be and are hereby appointed Trustees for L.R. No. 11379/3 in addition to Peter Karumbi Keingati under the Trustee deed dated 7th April 1970.
2. That the costs of this application be in the cause.

GIVEN under my hand and the Seal of the Court this 28th day of October, 1999.

ISSUED on

6th

day of

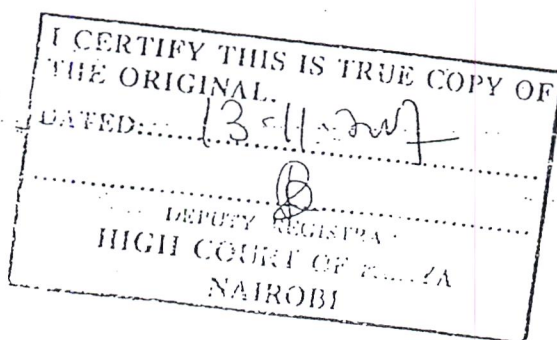
June,

2000.

P. Muthi
DEPUTY REGISTRAR

HIGH COURT OF KENYA AT NAIROBI

Checked
July
6/6



APPEAL AGAINST REFUSAL BY A REGISTRAR TO REGISTER

AN INSTRUMENT

14(b)

This is an appeal by Messrs Dandora Housing Scheme Limited acting through their Advocate Mr. H.A.M. Kithyema (hereinafter called the Appellant) against the refusal by the Registrar of Titles to register a Decree in High Court Civil Case Number 1348/72 which was presented for registration on 3rd April, 1983 under Day Book Number 138 of April.

The reason given by the Registrar to register the Decree is that Defendants no longer have any registered interest in the land. A perusal of the title has revealed that the land in question was compulsorily acquired by the Government after due process under Land Acquisition Act and a Notice of Taking Possession under section 19(1) of the said Act was registered against the title on 20th November, 1972.

In support of this appeal the appellant has stated:

- (1) The interest conferred on the Plaintiff by the Decree is as at April, 1972 when the defendants were the registered proprietors of the land in question.
- (2) The date of issue of the decree is not the effective date as a Court decree is effective from the date of filing the case in Court irrespective of when the case is finalized.
- (3) The refusal to register the decree is a clean denial of the plaintiff's right conferred therein.
- (4) Any action with regard to the plaintiffs' rights to the land since the filing of the suit ^{and} nullified by the Decree.

The appellants have not given any authorities in support of their contention that the compulsory acquisition after all the requisite notices was nullified by the decree. In the absence of any clear authority, I am unable to accept such a

MINUTES OF A MEETING HELD ARDHI HOUSE 12TH FLOOR CONFERENCE BETWEEN
THE MINISTRY OF LANDS AND DANDORA HOUSING SCHEMES LTD ON 16TH MAY, 1990

20/90

PRESENT:

- ✓ 1. J. Sang - Permanent Secretary - M. L. & H (Chairman)
2. O. N. Ireri - Deputy Secretary - M. L. & H
3. W. Gacanja - Commissioner of Lands
4. J. B. Mwaniki - Chief Valuer - Lands Department
5. Anna Wamboi - Director)
6. Mwangi Minyua - Director) Dandora Housing
7. C. P. Waithaka - M/Director)
8. G. L. Mukofu - S. A. C. L. - Lands Department (taking minutes)

INTRODUCTORY

It was agreed for the benefit of all present the meeting be conducted in Kiswahili. The Permanent Secretary introduced the Ministry's representatives and Mr. Waithaka introduced his colleagues from Dandora Housing Schemes Ltd. The Chairman acknowledged that he had received Mr. Waithaka's letter and that his officers had discussed the matter. The Chairman also informed the meeting that the Hon. Minister was aware of the issue and this meeting.

II. The Chairman then invited Dandora Housing Schemes to explain their problems and also what they wished the Government to do in solving their issues.

The Managing Director of Dandora Housing Schemes (DHS) Mr. Waithaka thanked the Chairman for convening the meeting and proceeded on to give an account of the developments regarding the acquisition of L.R. NO. 11379/3 (area ~~is~~ 818 acs) in Dandora.

- a) 1968 - 1969 - 70: A group (of some 225 people) was formed to purchase a piece of land at Dandora for the settlement of their members. The purchase was done through agents who on buying the land got themselves registered in their individual names (Five people trading ⁱⁿ the name of Kiambu - Dandora Farmers).



51

From the Desk of
James R. Noyce
Commissioner of Lands

21391/II/54

D.C.L.

L.R. NO. 11379/3 DANDORA

As you may be aware, the above mentioned farm was acquired by Government. There has been controversy over the ownership of the said land as you can see in the file. I would like you to study this case in view of the recommendations being made at (51 to 52). There was been no commitment to WE Bank's policy. Since a limited amount of money has been spent on the land, I have ordered that the land be returned to them. Most of this land has been allocated by the Government and indicated that the award made at the time of acquisition should be improved upon. It has also been suggested that whatever has not been allocated should be offered to the company.

As stated above, please go through the files and submit a report on the current situation in view of the Govt's policy.

R.N.

22.9.1955

Following the authority and Licence; whose copy is hereby attached, issued to MR. CORNELIUS PETERSON WAITHAKA OF P.O. BOX 56770, NAIROBI, by the Nairobi Provincial Commissioner's Office and dated 20th January, 1988 an Annual General Meeting of DANDORA HOUSING SCHEMES LIMITED was held at KIRIAKOR SOCIAL HALL NAIROBI on Sunday 31st January, 1988 where 158 members were present and the following Resolutions were recommended and passed, - THAT:-

- 1) All previous Directors were removed from Office with immediate effect
- 2) Then, the following SEVEN Directors, were recommended and duly elected to take over Office immediately:-

- a) CORNELIUS PETERSON WAITHAKA
- b) MANGI LINDA ✓
- c) ANNAH WAMBUI GATHURI (MRS) ✓
- d) GEORGE GACHOIBA KUNYUA ✓
- e) KILIAN NG'ANG'A ✓
- f) SIMON GICHANGA ✓
- g) JAMES THUITA THIGA

3) MR. CORNELIUS PETERSON WAITHAKA was recommended and overwhelmingly appointed the Chairman of the Company and in that capacity was empowered to contact the Kenya Government through the Executive, the Attorney-General and the Commissioner of Lands in regard to the latter's invitation in his letter Ref.No.S1391/11/37 dated 17th August, 1987 with a view for the said Commissioner of Lands to release the necessary Documents or Titles to the Company.

4) CORNELIUS PETERSON WAITHAKA through FAICOM KENYA LIMITED to pursue the already advanced negotiations with M/S. SAMBANI INVESTMENTS LIMITED OF P.O. BOX 44052, NAIROBI to facilitate these developers, and in case of these failing for any reason, to look for any other suitable and able developers to put up houses and other facilities or L.R.11379/3 for the benefit of the Shareholders as soon as the Commissioner of Lands releases the titles.

5) All books and Companies affairs be returned in the Offices of the Messrs. & Co. Auditors.

Signed for the Company

[Signature] 2/2/88

[Signature] 2/2/88

REPUBLIC OF KENYA

THE PUBLIC ORDER ACT
(Cap. 56)

17

LICENCE TO HOLD, CONVENE, ORGANIZE AND FORM A PUBLIC MEETING

THE CHAIRMAN, CORNELIUS PETERSON WAITHAKA

DAIDORA HOUSING SCHEMES LIMITED

P.O. BOX 50770, NAIROBI

is hereby licensed to hold, convene, organize and form a public meeting at (place)
KARIKOR SOCIAL HALL on (date) 31-1-1968

between the hours of 2.00 P.M. and 6.00 P.M.

UNDS AND SUBJECT TO THE following conditions:—

1. At the meeting hereby licensed there shall be transacted no business other than the items of agenda specified in the Schedule to this licence, and no person other than the speakers named in the said Schedule shall speak at the meeting.
2. There shall be no collection as defined in section 2 of the Public Collections Act at the meeting unless a licence under section 4 of that Act has first been obtained
3. The licensee shall be present at the meeting from the first assembly thereof to the final dispersal thereof, and shall forthwith comply with any directions which may be given to him by any police officer or administrative officer for ensuring the due performance of and compliance with the conditions of this licence and the maintenance of public order throughout the period of assembly, conduct and dispersal of the meeting and the period immediately following dispersal thereof.
4. No public address equipment shall be used at or in connexion with the meeting except within the hall or building, if any, within which the meeting is hereby licensed to take place, and any public address equipment used within the hall or building shall be so sited and managed that it is ineffective outside the hall or building.

The above conditions shall be clearly displayed at the entrance to the meeting place.

SCHEDULE

Items of Agenda

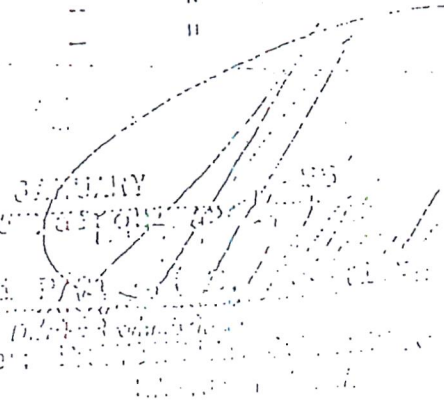
1. APPROVAL OF PROPOSED DEVELOPMENT
2. ELECTION OF DIRECTORS
- 3.
- 4.
- 5.
- 6.

Speakers

1. C. P. WAITHAKA
2. WILLIAM KUTHAKA
3. KWANGI NINUA
- 4.
- 5.
- 6.

DIRECTOR
" "
" "

Dated this 20TH day of JANUARY 1968
SIGNED: ASST. COM. OF POLICE (APPROVING)
D.O. Personnel Division
P.O. & O.C.S. Kamuhanga P.O.
O.C.P.D. Central Division




(12) Therefore, when we later learned that M/S. FALCON KENYA LIMITED on our behalf had found some Financiers and Land Developers who had agreed to take over the remaining 350 acres or thereabout, which the Commissioner of Lands has not yet made use of, and then develop it in line with Kenya Government's approval for the members benefit, we decided to act at once to safeguard our interest. We formed an Interim Committee, of which I am the Chairman, which fortunately has been seeing your Mr. Kiige in order to bring back order from chaos caused by Mr. Muthama, and indeed we were very happy for you to have demolished their office recently where our members were losing money through open fraud.

Finally Sir, Let us stress here and now that we are not after leadership; of the Company, we are only speaking for the 225 members who are about to lose everything if proper care is not taken. Meanwhile, we pray that you will stop Mr. W. Muthama and his group from interfering with what is being done by Mr. Waithaka for the benefit of all of us as we have confidence in Mr. Waithaka and support him completely. We want to show this in the shareholders' meeting if you so agree to give us one. We are applying for a meeting as usual through the District Officer.

If it would be also in your favour, Sir, we would appreciate it very much if you could kindly call upon Mr. Muthama and his group in your office inviting us as well before you, where we can peacefully straighten this matter. We pledge to stay and always agree with the decision made by our esteemed Nyayo Government.

Yours Obidiently,
for: DANDORA HOUSING SCHEMES LTD.


MWANGI MINUA
(Chairman Interim Committee)

C.C. Attorney-General - (Ref: (H.C.C.C. 1555 of 1984
Dandora Housing Schemes Ltd. -vs- A.- G.)

Commissioner of Lands
The Director of C.I.D.
Hon. Kariuki Chotara
Willian Muthama
Company Lawyers

- (9) Now, Mr. Provincial Commissioner, we are really surprised to note that immediately it was realized that FALCON KENYA LIMITED had finally succeeded in December, 1986 in accomplishing all that was required through the help of Hon. Kariuki Chotara M.P., and just before the finalisation of our case No. 1555 of 1984, the same Mr. William Muthama as Chairman of Dandora Housing Schemes Ltd, Njenga Cege, Njenga Karari and Raymond M. Kaweru in conjunction with some other individuals claiming to be freedom fighters led by of all people Gen. Chui Muhoro, J. Gachui, Gichuhi Kaniaru, Mukundi Ndaiga, Thogo Mwai and Ben Mwaura (who are non-members of this Company) and as we believe, all these being helped through remote control by hidden powerful and influential tycoons, who have all along tried to occupy our valuable land illegally, decided to destroy our aims by dubious means all in contravention of The Law of Contracts Act.
- (10) There is no need to enumerate here all that they have done ever since February, 1987 to date intending to hinder the progress already achieved by Mr. Waithaka, smearing his good name, and bringing Police into our matters unnecessarily, all in very bad taste.
- (11) But when we looked deeper into the matter, we found out that there was no truth into the allegations brought to the authorities by Mr. Muthama and his group. They were really out to destroy the good order, (thus obeying their masters voices) possibly hoping that, by confusing our members they would discourage those people who were out to help us, as they would naturally take us all to be foolish and hopelessly immature. We later learned that Mr. Muthama and his group were to be paid handsomely if they succeeded.

- (5) We would like you to particularly note that this Document was drawn between the parties by G.M. Muhoro Advocate and was duly registered by the Registrar of Documents in Nairobi on 22nd September, 1981, and that The Signatories on the side of Dandora Housing Schemes Ltd were - Mr. William Muthama, Njenga Cege and Nelson M. Kinuthia, all being the lawful and authorised officers of this Company.
- (6) M/s. FALCON KENYA LIMITED took the challenge and after paying the necessary money to S.M. Otieno & Co. Advocates, G.M. Muhoro Advocate, Kamere & Co. Advocates, the Late Mr. H.A.M. Kithyoma Advocate, and after going for an arbitration before the Provincial Commissioner Nairobi, a High Court decree in our favour was realized on 14th March 1985. We believe that more money than estimated there before was spent by them on our behalf.
- (7) In order to meet the condition (c) in sub-section No. 4 above, M/s. FALCON KENYA LIMITED employed some other Advocates to challenge a compulsory Acquisition which was imposed on our land in 1974 by the Commissioner of Lands hence necessitating the filing of another High Court Civil Case No. 1555 of 1984. (Dandora Housing Schemes Ltd Versus the Hon. Attorney-General) which is now due for hearing tomorrow the 23rd September, 1987. Because of this case the Commissioner of Lands has finally invited us for discussions (see attached herewith his letter addressed to Mr. C.P. Waithaka dated 17th August, 1987).
- (8) Before FALCON KENYA LIMITED went further, it was thought and finally agreed that another Agreement was necessary to strengthen the original one and this Document was duly drawn on 19th April 1985 by H.A.M. Kithyoma Advocates, signed on behalf of this Company by no other than Mr. William Muthama, Njenga Cege, Raymond Mwangi Kwareru and Njenga Karari whom we recognise to be fully authorised so to do. The Document was also registered as the Law demands by the Registrar of Documents on 26th April, 1985

- (2) As all money collected during 1965/67 from the individual Purchasers was given to the said Vendors' Agents, the new Directors were given no money at all by the Purchasers and indeed it was only through the influence of Mr. Waithaka that S.M. Otieno & Co. Advocates agreed to incorporate the new Company in 1971 after raising only KShs. 3,000/= and on further production of KShs. 2,000/= S.M. Otieno filed the High Court Civil Case No. 1348 in 1972.
- (3) The matter was left pending in Court as the Shareholders and their Directors were unable to raise the requested amount of KShs. 30,000/= by the Advocates, until 1981 when it was resolved that it could be more advantageous to all if we looked round for someone or a Company to help us financially with a view of sharing whatsoever was to be recovered thereafter rather than losing everything.
- (4) So, an Agreement was drawn between LAMUKA HOUSING SCHEMES LIMITED and FALCON KENYA LIMITED, who, (as you can see from the attached copy of the Agreement dated 30th June 1981) were appointed our:
 - (a) "True and lawful Attorney and Agent with full power and authority for the Company and in the name of the Company to Manage and Transact all the Company's affairs and instruments..... as the Company might or could do if personally present and acting therein," and
 - (b) "To pay out of its own resources the sum of KShs. 30,000/= now due to S.M. Otieno Advocates in respect of fees in Civil Suit No. 1348 of 1972," and further,
 - (c) "To prosecute and have finalised the said Suit No. 1348 of 1972 and recover the Land Reference Number 11379/3".

Dandora Housing Schemes Limited

New Ndandora Road P O Box 56770 NAIROBI, Kenya Telephone 791004

RESIDENTIAL & COMMERCIAL HOUSING DEVELOPERS

16

Our Ref: DHS/87/006

Date: 22nd September, 1987

Your Ref:

The Provincial Commissioner
Nairobi Area
P.O. Box 30124
NAIROBI

Thro!
The District Officer
Embakasi, Nairobi.

Dear Sir,

RE: LAND L.R. NO. 115799/5 KONO ROCK ROAD NAIROBI

We very humbly wish to put in writing our several discussions held in your office during July/August this year between our Mr. James Thuita Thiga of Muranga, Ms. Annah Wambui Gathuri of Nairobi, Mr. George Njenga Manyua, Mr. Simon Gichanga, Mr. Kimani Nganga all from Lower Kabete Kiambu, Mr. Cornelius P. Waithaka of Nairobi and myself Mwangi Muiua from Athi River Machakos and your Mr. Kiige the Embakasi District Officer. We all, while claiming to represent the majority Shareholders of this Company, informed you that;-

- (1) After realizing that the Vendors' Agents namely Kibiro Karanja, Reuben Kangara, Keingati Waiharo, Njuguna Kimani and Gacheru Kingara, trading as, Kiambu Dandora Farmers Co., had taken us for a ride, way back in 1968, and that they had caused our land to be fraudulently registered in their joint names; we sought and got co-operation and help from Mr. Martin, the then P.C. Nairobi, who ordered for the contributors' meeting in our land on 25th October, 1970 where the first SEVEN Directors were elected namely; Robert Macharia Muthama, Nelson M. Kinuthia, Raymond M. Waweru, William Muthama, Mutege Karega; Njenga Cege and Cornelius Waithaka. These Directors were authorised to engage a Lawyer who was to incorporate our new Company and institute a Civil Case in High Court of Kenya against the Vendors' Agents with a view to recovering the said land.

IN WITNESS HERETO the parties hereto have hereunto affixed their seals in the presence of their respective authorised officers the day and year hereinabove first written.

SEALED with the Seal of
DANDORA HOUSING SCHEMES LIMITED
and SIGNED in authentication
thereof by:-

William M. M. M.
CHAIRMAN/DIRECTOR

[Signature]
DIRECTOR

[Signature]
DIRECTOR

[Signature]
SECRETARY

SEALED with the Seal of
FALCON KENYA LIMITED
and SIGNED in authentication
thereof by:-

[Signature]
DIRECTOR

[Signature]
SECRETARY

Drawn by:

H.A.M. Kithyoma
Advocate
Uniafric House
Koinange Street
P.O. Box 62771
NAIROBI

20 APR 1972
72-1-15-115-115-115
[Handwritten notes and stamps]

2. The Agreement hereinabove referred to shall continue in force for the purpose of finalisation of the question of compensation and/or damages with regard to the portion of the said piece of land which has been utilised by the Commissioner of Lands on behalf the Government of Kenya and the proceeds thereof shall be shared equally between the parties hereto. In the event of failure to reach an agreement with regard to this portion of the land, Falcon Kenya Limited shall have the power/authority to sell the same to individual industrialists as an agent of Dandora Housing Schemes Limited.
3. Falcon Kenya Limited shall pursue and recover the costs of the abovementioned High Court Civil Case Number 1313 of 1972, the sums of monies not utilised towards purchase of the abovementioned piece of land, etc. etc. as ordered by the High Court of Kenya and the sums recovered shall be shared equally between the parties hereto.
4. Dandora Housing Schemes Limited's Managing Director's salary for the period 1972 to 1985, its Directors' fees (if any) and survey and subdivision costs shall be born by Falcon Kenya Limited and be refunded by Dandora Housing Schemes Limited out of and contemporaneously with its receipt of sums from paragraphs 2 and 3 above.
5. Falcon Kenya Limited shall negotiate and recover compensation from Kenya Power & Lighting Company Limited and the Ministry of Transport and Communications for the portions of the said piece of land respectively utilised by them and the same shall be shared as at paragraphs 2 and 3 above.
6. Paragraph Number 5 of the Agreement hereinabove first mentioned shall become inoperative on the execution of this Agreement.

10 208
23/4/85
724-
SD sn 10
TM 23/4

15

AGREEMENT

THIS AGREEMENT is made the 19th day of April, One Thousand Nine Hundred and Eighty Five BETWEEN DANDORA HOUSING SCHEMES LIMITED of Post Office Box Number 62771, Nairobi in the Republic of Kenya of the FIRST PART and FALCON KENYA LIMITED of Post Office Box Number 56770, Nairobi in the aforesaid Republic of Kenya, of the SECOND PART both parties being limited liability companies incorporated in and having their respective registered offices in the said Republic of Kenya.

WHEREAS the parties hereto entered into and executed an Agreement on the 30th day of June, One Thousand Nine Hundred and Eighty One wherein it was agreed inter alios that Falcon Kenya Limited was "to prosecute and have finalised the said suit 1343 - High Court of 1972 and recover Land reference-number 11379/3" on behalf of Dandora Housing Schemes Limited AND WHEREAS the said Falcon Kenya Limited has successfully prosecuted and finalised the said High Court Civil Suit and has had the said L.R. No.11379/3 duly vested in Dandora Housing Schemes Limited AND WHEREAS Falcon Kenya Limited has satisfied all its obligations under the aforementioned Agreement save for paragraph number 3(c) therein

NOW THIS AGREEMENT HEREBY WITNESSETH as follows:-

1. Dandora Housing Schemes Limited SHALL as soon as its right title and interest in L.R. Number 11379/3, Komorock Road, Nairobi are registered in this Land Registry of Titles TRANSFER one half (1/2) or fifty per cent (50%) of its right title and interest in the said piece of land to Falcon Kenya Limited absolutely.

MINISTRY OF LANDS AND SETTLEMENT

14 (A)

DEPARTMENT OF LANDS
P.O. BOX 2089, NAIROBI

Telegram: "LANDS", Nairobi
Telephone: Nairobi 27471 Ext.
When replying please quote

Ref. No. ... 81591/Val. II/12
and date

9th July 1985

M.A.M. Kithyoma,
Advocate,
P.O. BOX 63771,
NAIROBI.

Dear Sir,

LEGAL MAINTENANCE - L.M. NO. 1477/85

I refer to your appeal dated 17th June 1985 and
enclose herewith 2 copies of the appeal. I have also
returned the following documents:

1. Deed of ...
2. Application for Registration of ...

Yours faithfully,

J. E. V. MURIKI
J. E. V. MURIKI
PRINCIPAL REGISTRAR OF TITLES

Enc.

UPON READING the application presented to this court on the 17th day of August 1983, the 2nd day of September, 1983 and the 26th day of February 1985 respectively, by Counsel for the Plaintiffs and Defendants AND UPON READING the Affidavits of CORNELIUS PETERSON WAIHAKA and KEINGATI WAIHARO in support of the said Applications sworn on the 16th day of August, 1983 and 25th day of August, 1983 and UPON HEARING Counsel for both parties:

IT IS ORDERED:

1. That the application to set aside the award be and is hereby dismissed.
2. That judgement be and is hereby entered for the Plaintiffs in terms of the award i.e.
 - (i) The suit premises L.R.No.11379/3, Komorock Road, Nairobi, was bought by and is hereby vested in DAWDORA HOUSING SCHEMES LIMITED for and on behalf of the members thereof.
 - (ii) The Defendants do pay/account to the Plaintiffs the amount of the money found to be in excess of the actual purchase price of the land with interest at 8% p.a. from the date of filing this suit.
 - (iii) The Defendant's Counterclaim be and is hereby dismissed.

The Defendants do pay to the Plaintiffs the costs of this suit with interest to be taxed and certified by the taxing Officer of this Court.

GIVEN UNDER my HAND and the SEAL of this Court this 13th day of March, 1985.

ED this 14th day of March 1985

16 3-85
1722

16-2-85
Muthal

SENIOR DEPUTY REGISTRAR
HIGH COURT OF KENYA
NAIROBI

SR

13

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1348 OF 1972

ROBERT MACHARIA
C.P. WAITIHAKA
RAYMOND MWANZI
MUTEGI KARIGA
WILLIAM MUTIAMA
NELSON MUCHAI
NJENGA CHEGE
DANDORA HOUSING SCHEME LIMITED

PLAINTIFFS

versus

KABIRO KARANJA
REUBEN KANGARA
KEINGATI WAIHARO
NJUGUNA KIMANI
PETER G. KANGARA

DEFENDANTS

DECREE

CLAIM FOR:

- (a) An order for transfer by the Defendants, to the Plaintiff company of L.R. No. 11379/A Commercial Road, Nairobi to help for out to the use of the purchasers.
- (b) Account of the money paid to the Defendants, by the purchasers.
- (c) Registration of the property L.R. No. 11379/A in the name of the Plaintiff company.
- (d) Payment by the Defendants to the Plaintiff company of any money found due in account with interest at 8% from date of filing.
- (e) Costs of the suit with interest at 8% from date of judgment till payment in full.

COUNTER CLAIM:

- (a) A declaration that L.R. No. 11379/A Commercial Road, Nairobi is held by the Defendants (Plaintiffs) as trustees in trust for Kijera Dandora Housing Scheme, subject to the grant of consent or exemption as required by law for the same.
- (b) Costs.

REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

AT NAIR obi.

CIVIL CASE NO. 1343 OF 1972

12

ROBERT MUGANYIZA
C.P. WAITHAKA
RATMOND MSAJJI
MUTESI KAREGA
WILLIAM KUTELWA
NELSON MUCHEMI
WJENGA CHEBE
DAIDORA HOUSING SOCIETY LIMITED

}

PLAINTIFFS

VERSUS

KIBIRO KARAJJA
KEUSEN KAGARA
KIBISATI WAHABO
KIFUNA MUKHATI
PETER O. KAGARA

}

DEFENDANTS

R U L I N G

I am satisfied that the arbitrators have substantially considered all that they were required to do so, and with respect to Mr. Curyung-Otieno, I do not consider that there has been any breach of the rules of natural justice.

This matter has been pending for about eleven years, and must come to an end.

I enter judgment in terms of the award, and grant costs of this application also to the plaintiffs.

S. K. JACHOBYA

JUDGE

6/9/75

RECORDED AND INDEXED
IN THE HIGH COURT OF UGANDA

9953

[Handwritten signature]
S. K. JACHOBYA
JUDGE

OFFICE OF THE PRESIDENT
PROVINCIAL ADMINISTRATION

OFFICE OF THE DISTRICT OFFICER

MAKADARA

NAIROBI

7th July, 1968

When replying please quote

Ref. No. LRS/16/6/11

The Registrar,
High Court of Kenya,
MAKADARA

IN THE MATTER OF LAND L.N. II379/3

ROMO-ROCK ROAD NAIROBI H. C. C.

1348 OF 1972

The above suit was referred to the P. C. Nairobi Area by a High Court Order of 9th March, 1968. Consequently I was nominated by the Provincial Commissioner to chair the panel of officers and hear the same in my office.

Attached with this note, please find the findings and the recommendations from the panel. We restricted ourselves mainly to paragraph six (6) of the said order and arrived at our conclusion through logical arguments after setting out simple terms of reference.

Audited accounts were produced but no reference is made to them for they fall outside our area of focus.

However, the honourable court can cause and authorise a qualified person to examine them against the money shown having been collected by the respondents as at and after the land in dispute was completely bought out.

(S. N. VIKI) [Signature]
DISTRICT OFFICER, 1/6
ENGINEERING DIVISION
MAKADARA

shall be entitled to receipt of half the proceeds recovered from the High Court or half portion of the said land Reference number 11379/3.

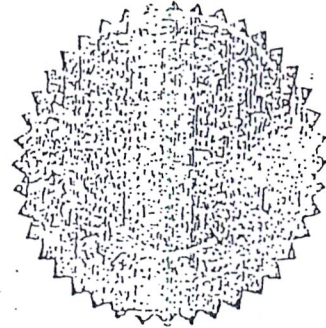
5. In execution of the above the Agent shall have full authority and power to settle and adjust accounts as it shall think fit and proper and shall have power and authority to submit any matter in dispute to arbitration and to sign and seal and execute the necessary acts for that purpose.

IN WITNESS WHEREOF the Parties hereto have subscribed their respective seals the day and the year hereinabove written.

Sealed with the seal of Dandora Housing Schemes Limited in the Presence of:-

[Signature] Director

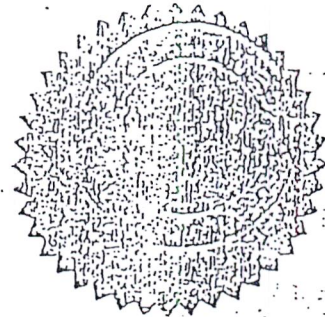
[Signature] Secretary



Sealed with the seal of Falcon Kenya Limited in the presence of:-

[Signature] Director

[Signature] Secretary



Drawn by:
G.M. Muboro
Advocate
P.O. Box 72490
Nairobi

REPUBLIC OF KENYA REGISTRY OF DOCUMENTS NAIROBI			
Presented at 12-056, 22-9-1981			
Registration No.	Value	Fees	Ext.
685	05	502 335	0XIV

[Signature]

22 SEP 1981 AGREEMENT

6.15/8
Penalty 5/1
10



THIS AGREEMENT is made the 3rd day of June One thousand nine hundred eighty one BETWEEN BRANDORA HOUSING SCHEMES LIMITED of Post Office Box number 56770 Nairobi in the Republic of Kenya (hereinafter called the Company) of the one part JEND FALCON KENYA LIMITED also of Post Office Box Number 56770 in Nairobi aforesaid (hereinafter called the Agent") of the other part WHEREBY IT IS AGREED AND DECLARED BETWEEN the parties as follows:-

1. The company hereby appoints the Agent to be its true and lawful attorney and Agent with full power and authority for the company and in the name of the company to manage and transact all the company's affairs in Kenya and execute such deeds or instruments as may be necessary or most to the company's advantage, and to use all lawful ways and means thereto, as fully and effectively to all intents and purposes as the company might or could do if personally present and acting therein.
2. The company hereby grants to the Agent full power and authority to substitute or appoint one or more Attorney/Agent or Agents under him and the same at pleasure to displace or remove and appoint another or others, hereby ratifying, allowing, confirming and promising at all times to ratify, allow and confirm all and whatsoever the said Agent, his substitute or substitutes shall lawfully do, or cause to be done in or about the premises by virtue of these presents.
3. Without prejudice and notwithstanding the generality of the foregoing the company hereby appoints the agent to do the following specific things:-
 - (a) To pay out of its own resources the sum of shillings 30,000/- now due and payable to the company's advocate known as S.M Otieno & Co advocates in respect of foen in civil suit 1348 of 1972.
 - (b) To prosecute and have finalised the said suit 1348 High Court of 1972 and recover the Land Reference number 11379/3.
 - (c) For the company and in the name of the company's benefit recover all the sums of money now lying in the High Court, the said sums of money having been paid as compensation for the compulsory acquisition of the land Reference number 11379/3 by the Commissioner of Lands on or about the year 1977.
4. The consideration for the appointment of the said Agent to act for the company shall be the nominal sum of shillings ten (10/-) (the receipt of which the Agent hereby acknowledges) and further and without prejudice to the foregoing the agent

9

GAZETTE NOTICE No. 740

THE REGISTERED LAND ACT, 1963

(No. 25 of 1963)

GEITA TOWNSHIP, GEITA SETTLEMENT SCHEME NO. 427—PLOTS FOR HOTELS, SHOPS AND RESIDENCE.

THE Commissioner of Lands gives notice that the plots in Geita Township, Geita Settlement Scheme No. 427 as described in the Schedule appended hereto are available for alienation and applications are invited for the direct grants thereof.

2. A plan of the plots may be seen at the offices of the District Commissioner, the Local Senior Settlement Officer and the Clerk to Council.

3. Applications should be submitted to the Commissioner of Lands through the District Commissioner and not direct so as to reach the District Commissioner not later than 5th April, 1974.

4. Applicants must enclose with their applications the sum of Sh. 200 as a deposit, which will be dealt with as follows:—

- If the applicant is offered and takes up and pays for a plot within a period of 30 days as required in paragraph 5 below the deposit will be credited to him.
- If the application is unsuccessful, the applicant's deposit will be refunded to him.
- If the application is successful and the applicant fails to take up and pay for the plot offered to him within a period of 30 days as required in paragraph 5, the Commissioner of Lands may declare the deposit forfeited and the applicant shall have no further claim thereto.

5. Each lessee of a plot shall pay to the Commissioner of Lands within 30 days of the notification that his application has been approved, the assessed stand premium and proportion of annual rent together with survey fees also the fees payable in respect of preparation and registration of the grant and stamp duty assessed at 2 per cent of the stand premium and annual rent, in default of payment of which within the specified time, the Commissioner of Lands may cancel the allocation and the applicant shall have no further claim to the grant of the plot offered.

General Conditions

The ordinary conditions applicable to township grants of this nature as varied hereby shall apply to the grants:—

- The grants shall be made initially for a term of 33 years convertible to 99 years in due course in cases where development has taken place to the required standard as shown in (b) below.
- The lessee will be required to erect within 24 months of the commencement of the lease buildings in traditional style in accordance with plans previously approved in writing by the local authority and the Commissioner of Lands. Should the building be of permanent materials and of an approved design and erected within two years of the commencement of the lease to the satisfaction of the authority concerned, the term of the lease, may, on application made prior to the expiry of the 33-year lease be extended to 99 years at such rental and condition as may then be prescribed.
- The lessee shall maintain in good and substantial repair all buildings at any time erected on the land.
- To provide on the land to the satisfaction of the local authority, a proper system for the disposal of sewage and sullage water.
- The lessee shall erect a fence or plant a hedge on the boundaries of the land other than the frontage and shall keep such fence or hedge in good repair.
- The lessee shall use the land for the purpose of business (excluding the sale of petrol except where specially permitted), and residence and shall not indulge in any trade or business which the Commissioner of Lands considers dangerous or offensive.
- The lessee shall not transfer, charge or part with the possession of the land without the previous written consent of the Commissioner of Lands.
- The Commissioner of Lands or such person or authority as may be appointed for the purpose shall have the right to enter upon the land and may not have access to water mains, service pipes and drains, telegraph or telephone wires and cables, under or over the land.

whether overhead or underground and the grantee shall not erect any buildings in such a way as to cover or interfere with any existing alignments of such installations.

- The lessee will be required to pay such rates, taxes, charges, duties, assessments or outgoings of whatever descriptions as may be imposed, charged or assessed by any Government or local authority upon the land or the buildings erected thereon including any contributions or other sums paid in lieu thereof.

SCHEDULE

Plot No.	Area	Stand Premium		Annual Rent		Survey Charges	Road Charges
		Hectares	Sh.	Sh.	Sh.		
20-28 (9 plots)	0-0392		1,020		204	100	On demand
29 (1 plot)	0-0448		1,160		232	100	
34-42 (9 plots)	0-0392		1,020		204	100	
43 (1 plot)	0-0388		1,000		200	100	

GAZETTE NOTICE No. 840

THE LAND ACQUISITION ACT, 1968

(No. 47 of 1968)

NOTICE OF INTENTION TO ACQUIRE LAND

IN PURSUANCE of section 6 (2) of the Land Acquisition Act, 1968, I hereby give notice that the Government intends to acquire the following land for the future urban development:—

SCHEDULE

L.K. No.	Area Approximately to be Acquired in Acres	Situation
11379/2	141	Dandora, Nairobi
11379/3	818	Dandora, Nairobi

A plan of the land affected may be inspected during office hours at the office of the Commissioner of Lands, Nairobi.

J. A. O'LOUGHLIN,
Commissioner of Lands.

GAZETTE NOTICE No. 841

THE LAND ACQUISITION ACT, 1968

(No. 47 of 1968)

NOTICE OF INQUIRY

IN PURSUANCE of section 9 (1) of the Land Acquisition Act, 1968, I hereby give notice that an Inquiry will be held at 10 a.m., on Monday, the 6th May, 1974, in the boardroom, Department of Lands, Harambee Avenue, Nairobi, for the hearing of claims to compensation by persons interested in the following land:—

SCHEDULE

L.R. No.	Area Approximately to be Acquired in Acres	Situation
11379/2	141	Dandora, Nairobi
11379/3	818	Dandora, Nairobi

Every person who is interested in the land is required to deliver to me, not later than the day of Inquiry a written claim to compensation.

J. A. O'LOUGHLIN,
Commissioner of Lands.

The Registrar,
High Court of Kenya,
NAIROBI.

(0) 8

THE LAND ACQUISITION ACT, 1968
KENYA GAZETTE NOTICE NOS. 840 AND 841
DATED 15TH MARCH, 1974
L.R. 11379/3, DANDORA, NAIROBI

The above mentioned land has been acquired compulsorily by the Government and enclose herewith the following:-

- a) Copies of Kenya Gazette Notice Nos. 840 and 841 dated 15th March, 1974.
- b) Copy of Award under Section 10 of the Land Acquisition Act.
- c) Copy of the Notice of Taking Possession and Vesting under Section 19 (1) of the Act.

There is a High Court Suit No. 1348 of 1972 in which the Court has been asked to determine the ownership of the property.

Therefore, I enclose herewith cheque No. LS/B/175828 for Shs. 1,316,980/- and the amount should remain deposited in the High Court till the High Court has determined the ownership of the farm.

Kindly acknowledge receipt.

C.M. PANDYA

(C.M. Pandya)
Chief Valuer

CMP/mnj.

for COMMISSIONER OF LANDS.

C.C.

Messrs Kibiro Karanja, ✓
Reuben Kangara, Kengati, Waiharo,
Njuguna Kimani,
Peter Gachery Kingara,
T/A Kiambu Dondora Farmers Company,
P.O. Box 152,
KIAMBU. (Registered Owners)

M/S S.M. Otieno
Advocates,
P.O. Box 12098,
NAIROBI.

Messrs Dandora Housing Schemes Limited,
P.O. Box 47635,
NAIROBI.

7(2)

11/11/73
20/1/75
2/75

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE
of a Vest by M/s. Landora Housing Scheme Limited Clipping -
Transferees and Beneficiaries' interest, by virtue of a trust deed
dated 15 April, 1970. Absolutely.
Registration No. 1247 (Date of Registration) 31-8-73. *Wheeler*



3
554
117-1
138 2/1
4/85

certificate by the Chief Valuer taking possession
of 818 acres. L.R. NO. 11379/3 in pursuance
of section 19(1) of the Land Acquisition Act
1968 and the land is accordingly vested in the
government.
884 20.11.1974. *Wheeler*



5/11/73
11/11/73

Wheeler

REPUBLIC OF KENYA

CAVEAT
FORBIDDING REGISTRATION OF DEALING WITH LAND

To: The Registrar,
Land Registry, Nairobi/Mombasa.

TAKE NOTICE that I, Y/S Bandora Housing Schemes Ltd. 26
of P.O. Box 47635, Nairobi.

at which address within Kenya notices may be served claiming -

(a) Transferee's and Beneficiaries' interest of the freehold
by virtue of a Trust Deed dated 7th April, 1970.

in (2) 11379/3

titles to which is registered as I.R./C.R. 23514/2

forbid the registration of any dealing with the said land -

(b) absolutely, or

(c) in any other manner whatsoever.

Dated this 26th day of June 1973

DANDORA HOUSING SCHEMES LTD.
(Signed)

I, Robert N. Muthana

of Bandora Housing Schemes Ltd. Nairobi.

make oath and say (b) that to the best of my knowledge and belief the claim above
referred to is true.

Signed at Nairobi



- (1) Nature of registrable interest in land.
- (2) Particulars of land and registration reference.
- (3) Date, whichever is not applicable.

LAND TITLES REGISTRY - REPUBLIC OF KENYA

Inland District, Nairobi - Registered No. I.R. 23514/2

Case No. 31-3-1973

Presented 31-3-1973

Time 10:10 A.M.

Drawn By -
Robert N. Muthana
Chairman
BOARD OF DIRECTORS.

REPUBLIC OF KENYA LANDS REGISTRY NAIROBI/MOMBASA			
Registration No.	Name	No.	File



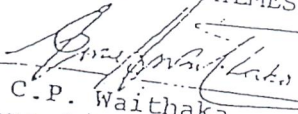
I hereby certify this to be a true copy of the original

Stamp duty Sh. 5/-
Copy fee Sh. 35/-
Sh. 40/-

19-10-73

developer or developers unless, we repeat, unless we ourselves are unable or completely fail to show evidence of sufficient funds or capabilities of meeting the high standard of development as required by our Authorities.

Yours Obedient Servant
DANDORA HOUSING SCHEMES LTD.,


C.P. Waithaka.
Managing Director.

cc. The City Engineer
Nairobi City Council
P.O. Box 30075
Nairobi.

D.J. Coward Esq, CMG, OBE,
Registrar General
P.O. Box 30031
Nairobi.

F.E. Charnley Esq.
Land Consultant
P.O. Box 73473
Nairobi.

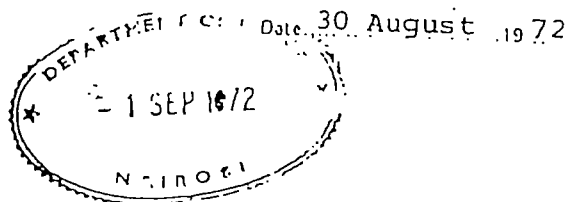
M/S Kiambu Dandora Farmers Co. Ltd.
P.O. Box 152
Kiambu.

M/S Otieno & Co. Advocates
P.O. Box 72098
Nairobi.

OUR REF.: DHS/72/32

YOUR REF.: 81391/20&22

The Commissioner of Lands
Department of Lands
P.O. Box 30089
NAIROBI.



Dear Mr. J.A. O'Loughlin,

Re: LR No. 11379/3 NAIROBI AREA.

We feel very much honoured when referring to your two letters Ref. Nos. 81391/20 and 81391/22 dated 31st July and 10th August 1972 respectively, which incidentally were addressed to M/S KIAMBU DANDORA FARMERS COMPANY LIMITED and kindly copied to us.

We note that you have very rightly observed that there is a dispute of ownership over this property and that this matter is currently in the High Court for a decisive legal action. We are also very happy to observe that at any rate someone in authority has of late somehow noted that there must have been some mistake or deliberate misrepresentation as to the initial filling of the application form to the Land Control Board in 1968, of which we are very much determined to put right once and for all. Your advice to the addressees, M/S Kiambu Dandora Farmers Company Limited, that it would be both wrong and premature for you or the Land Control Board to agree for an immediate change of user, before the settlement of this court case, was very much appreciated by all of us and therefore correct and acceptable.

Sir, while being aware that we can not at any time assume the right to fight against any acquisition of land by our honourable Government for PUBLIC USE, it is our sincere feeling that any binding negotiations as to purchase price must, of necessity, be carried out between the said Government or its Agent and the lawful owners; hence, we consider it to be equally premature for anyone to start any deliberations whatsoever before this dispute is settled completely.

We have, however, with a copy of this letter instructed our lawyers M/S Otieno & Company to take up the matter with you in order to make it absolutely impossible for any unlawful 'owner' or 'owners' to interfere with our property.

Needless to say, we would like to take this opportunity to announce that whatever has been discussed between you and the representatives of Kiambu Dandora Farmers Company Ltd., at any time, as regards to the intended development of this area, does not and should not be assumed that it has any support of our members. Thus, we shall object very strongly if any part of our property would be compulsorily acquired by the Government or its Agents only to be re-allocated to a private

...../2

DIRECTORS:

Mr. M. M. M. (Chairman) Mr. C. R. W. (Secretary) Mr. B. M. M. (Member) Mr. M. M. M. (Member) Mr. M. M. M. (Member)

102

e.c. The City Engineer,
Nairobi City Council,
P.O. Box 30975,
NAIROBI.

F.R. Charnley, Esq.,
Land Consultant,
P.O. Box 73473,
NAIROBI.

D.J. Conard, Esq., C.M.G., O.N.E.,
Registrar General,
P.O. Box 30031,
NAIROBI.

C.F. Mithaka, Esq.,
Managing Director,
Dandora Housing Schemes Ltd.,
P.O. Box 47635,
NAIROBI.

31st July

M/s. Kiambu Dandora Farmers Co. Ltd.,
P.O. Box 152,
KIAMBU.

Sirs,

THE LAND CONTROL ACT, 1967
Nairobi Area - L.R. No. 11379/3 -
331.04 Hectares - Proposed Change
of User from Agricultural to
Residential Plots

I have the honour to refer to your letter dated 7th July, 1972 enclosing a copy of your letter dated 7th February, 1972 addressed to me and my interim reply of 12nd February, 1972 Ref. 81391/13 and observe that you have come to the conclusion that nothing can grow on the farm and you are seeking approval for a change of user from agricultural to residential.

You will recall that when this land was purchased in 1968 it was purchased by the five gentlemen trading as "Kiambu Dandora Farmers Company" and it was stated on the application form that the purpose of the purchase was for cattle breeding. Accordingly, I do not see the justification now for applying for subdivisional approval to residential development merely because it has been decided not to continue with the cattle breeding venture and that the land is not suitable for the cultivation of crops.

I was surprised to find that the Kiambu Dandora Farmers Company had now become a Limited Company and that it had 230 members. I understand, in fact, that many of these persons had subscribed to the purchase price of the farm in 1968 and if my supposition is correct, the application to the Land Control Board by you did not disclose the true position as to the identity and purpose of the purchasers.

I note, that there is now litigation in the Court regarding the ownership of this land in which the Dandora Housing Schemes Limited is concerned and therefore until the matter is decided as to the legal ownership of the land, it would be premature to go any further in this matter. I should state, however, that I would not be prepared nor I doubt would the Land Control Board be prepared to approve any subdivision of this land for use for residential purposes until the Planning Study at present being carried out on behalf of the City Council is completed and everybody is aware of the proposals for the future growth of the city in this area.

I have the honour to be,
Sirs,
Your obedient servant,

J. A. O'Loughlin
(J.A. O'Loughlin)
COMMISSIONER OF LANDS

5/2

M/s. Kisumu Dandora Farmers Co. Ltd.,
P.O. Box 152,
KIAMBU.

Sirs,

THE LAND CONTROL ACT, 1967

Nairobi Area - L.R. No. 11379/3 -
331.04 Hectares - Proposed Change
of User from Agricultural to
Residential Plots

I have the honour to refer to previous correspondence herein resting with my letter Ref. 81391/20 dated 31st July, 1972 and our recent meeting when I informed you that as far as I could see at present Government would require some 300 acres of the above mentioned land in connection with the proposed development in this area of the city and that as soon as I had a plan of the area I would get in touch with you with a view to negotiating the purchase of this area.

As regards the rest of the land concerned as I pointed out previously any proposals in regard to its use will have to await the publication of the Nairobi City Planning Study which is not expected to be available till towards the end of the year.

I have the honour to be,
Sirs,
Your obedient servant,

J. A. O'Loughlin

(J.A. O'Loughlin)
COMMISSIONER OF LANDS

c.c. The City Engineer,
Nairobi City Council,
P.O. Box 30075,
NAIROBI.

(Could I please have a sketch plan of the approximate 300 acres under discussion.)

F.E. Charnley, Esq.,
Land Consultant,
P.O. Box 73473,
NAIROBI.

D.J. Coward, Esq., C.M.G., O.B.E.,
Registrar General,
P.O. Box 20031,
NAIROBI.

C.P. Wadhwa, Esq.,
Managing Director,
East Africa Land Services Ltd.,
P.O. Box 70000,
NAIROBI.

IN THE MATTER OF DANDORA HOUSING SCHEMES LIMITED

AND

IN THE MATTER OF LAND REFERENCE NO NUMBER 11379/3

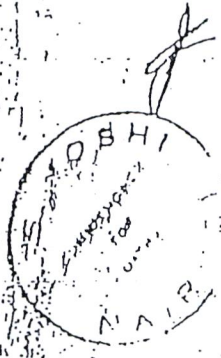
KOMOROOK ROAD NAIROBI

I KIBIRO KARANDA of Post Office Box Number 134 Kiambu make oath and say as follows:

1. That I was the chairman of the Firm known as Kiambu/Dandora Farmers Company;
2. That the above-Firm carried on the business of Estate Agents;
3. That in my capacity as chairman I and other members of the Firm, namely Rumbon Kangara, Koingeti Waiharo, Njuguna Kimani and Peter Gacharu Kinjara received from the present members of and share-holders in the Company known as Dandora Housing Scheme Limited money for the purchase of the property known as Land Reference Number 11379/3 Komorook Road, Nairobi which we jointly purchased and now hold in trust for the present members of and share-holder in the said Company.
4. That I am ready and willing to sign the documents of transfer to the Company of the said property if the Company will indemnify me against any claim regarding the said property.
5. That I make this affidavit from my own personal knowledge.

SWORN at Nairobi this 19th day of January, 1972
BEFORE ME

Kibiro Karanda
(Deponent)



Nairobi

No. 57/71.



CERTIFICATE OF INCORPORATION

I hereby Certify, that—

DAFDORA HOUSING SCHEMES LIMITED.

is this day Incorporated under the Companies Act (Cap. 486) and that the Company is LIMITED.

Given under my hand at Nairobi this THIRTEENTH day of AUGUST One Thousand Nine Hundred and SEVENTY ONE.

Asst. Registrar of Companies

Certificate received by ROBERT MACHARIA MUTIBAMA

P.O. Box 7635 NAIROBI

Date 12-8-71

[Signature]

DISTRICT OF NAIROBI AREA

Locality City of Nairobi

Meridional District South A 37 2
G. II. d

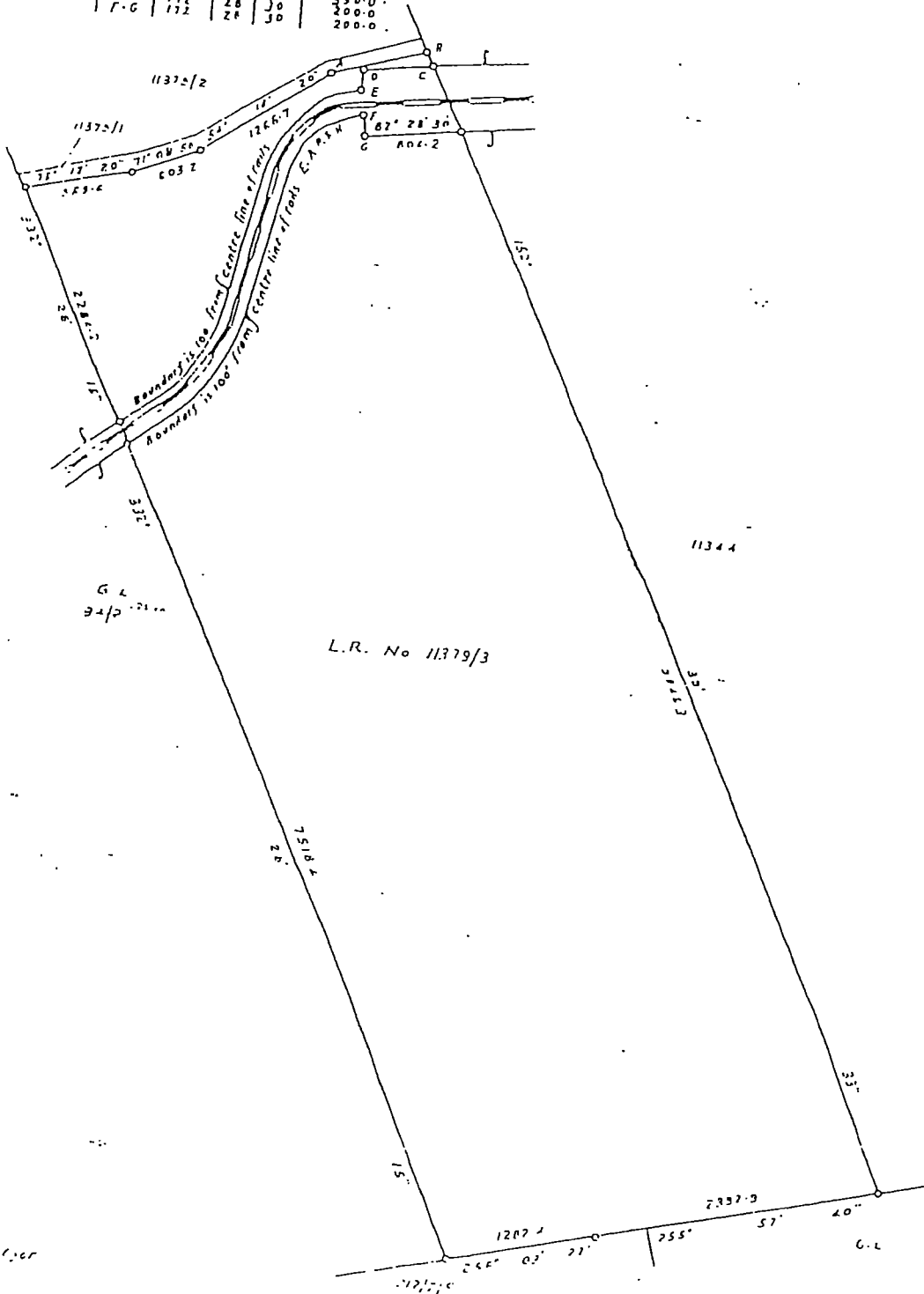
Scale: 1 In. 12500 or 1041.66 Feet to 1 Inch

Land Reference No. 11379/3
(Orig. No. _____)

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

Area = 618 Acres (Approx)

	Bearings			Distance
	o	'	"	Feet
A-B	72	13	00	834.3
B-C	152	33	33	1223
C-D	202	46	40	530.0
D-E	172	28	30	200.0
E-F	172	28	30	200.0



for Director of Surveys

Nairobi 2

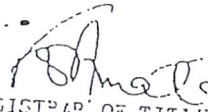
196

Please quote this PLAN No. 56720

REPUBLIC OF KENYA
THE REGISTRATION OF TITLES ACT
(CHAPTER 281)
CERTIFICATE OF TITLE: NUMBER I.R.23514

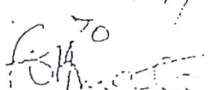
I HEREBY CERTIFY that KJEIRO KAHAMU REUBEN KANGARA KEMIGATI WATHARO MUSUNA KILANI and PETER GACHEFU KINGARA all trading as KIAMBU DANDORA FARMERS COMPANY of Kiambu (Post Office Box 152) in the Republic of Kenya pursuant to a Transfer registered as Number I.R.19935/7 are now the registered proprietors as owners for an estate in fee simple of ALL that piece of land situate in the City of Nairobi in the Nairobi Area containing by measurement eight hundred and eighteen (818) acres or thereabouts and being Land Reference Number 11379/3 as delineated on Land Survey Plan Number 86048 annexed to the said Transfer SUBJECT however to the Act Special Conditions Encumbrances and other matters specified in the Memorandum hereunder written.

IN WITNESS whereof I have hereunto set my hand and seal this eighth day of April One thousand nine hundred and seventy.


REGISTRAR OF TITLES

MEMORANDUM

- (1) The Government Lands Act (Chapter 280);
- (2) The Kenya (Land) Order-in-Council 1960 and the Regulations and Rules from time to time made thereunder;
- (3) The easements created by wayleaves registered in volume N.13 Folio 91/12, 13 and 16 in so far as the same can lawfully be granted;
- (4) The Special Condition contained in a Grant registered as Number I.R.19935/1.

8.4 23514/1
10.15970


and PETER GACHERU KINGARA all our right title and interest in the said piece of land.

IN WITNESS WHEREOF We the said KHAN NAWAZ KHAN KHAN ABBAS KHAN and MEHDI KHAN have hereunto subscribed our names this 7th day of April One thousand nine hundred and ~~sixty nine~~ seventy.

SIGNED by the said KHAN NAWAZ KHAN)
in the presence of:-)
H. Khan)
amir)
Nawaz)
P.O. Box 1000 Nairobi)

[Signature]

SIGNED by the said KHAN ABBAS KHAN)
in the presence of:-)
H. Khan)
amir)
Nawaz)

[Signature]

SIGNED by the said MEHDI KHAN in the)
presence of:-)
H. Khan)
amir)
Nawaz)

[Signature]

MEMORANDUM OF CHARGES LEASES
AND ENCUMBRANCES

- Nil -

LAND IN THE COUNTY OF NAIROBI, KENYA

REGISTERED IN THE REGISTER OF LANDS NO. 17.9.35/7.

Created on 8-4-1970

Time 3:55 pm

[Signature]
Registrar of Lands

property to be transferred to and registered in the name of the said
Kiambu Dandora Farmers Company Limited or the said Dandora Estates
Co-operative Society Limited as the case may be.

IN WITNESS WHEREOF the Trustees have hereunto set their respective
hands and seals the day and year first hereinbefore written

THE SCHEDULE HEREINBEFORE REFERRED TO

All that piece of land containing by measurement eight hundred and
eighteen (818) acres or thereabouts situate in the City of Nairobi in
the Nairobi Area of the said Republic and known as Land Reference Number
11379/3 which said piece of land being a portion of the premises comprised
in a Grant registered in the Land Titles Registry at Nairobi aforesaid
as Number I.R. 19935/1 is delineated on the plan annexed to the said
transfer and more particularly on Land Survey Plan Number 86048 deposited
in the Survey Records Office at Nairobi aforesaid and thereon bordered red

SIGNED SEALED and DELIVERED
by the said KLEIRO KARANJA
in the presence of:-

[Signature] 7/4/70

Kleiro

SIGNED SEALED and DELIVERED
by the said REUBEN KANGARA
in the presence of:-

[Signature] 2/7/70
MUGO - 2nd Class Magistrate

Reuben

SIGNED SEALED and DELIVERED
by the said KEINGATI WATHARO
in the presence of:-

[Signature] 2/7/70
M. MUGO - 2nd Class Magistrate

Keingati

SIGNED SEALED and DELIVERED
by the said NYUGUNA KIMANI
in the presence of:-

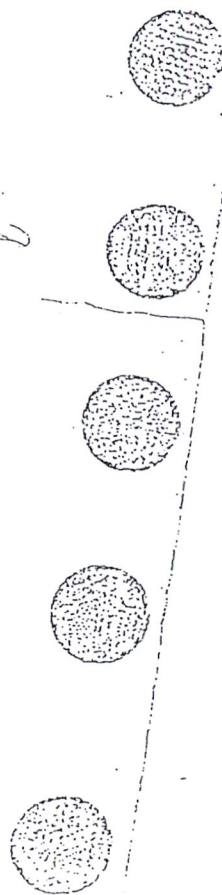
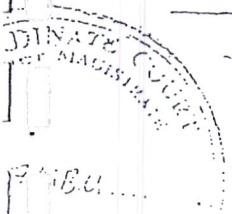
[Signature] 2/7/70
MUGO - 2nd Class Magistrate

Nyuguna

SIGNED SEALED and DELIVERED
by the said PEPER GACHERU
KINGARA in the presence of:-

[Signature] 2/7/70
M. MUGO - 2nd Class Magistrate

Peper Gacheru





5

of att-
Dile
3/4

THIS TRUST DEED is made the 7th day of April

One thousand nine hundred and ~~sixty-six~~ ^{Sixty-six} BY (1) KIBIRO KARAUJA
(2) REUBEN KANGARA (3) KEINGATI WATHARO (4) NJUQUYA KIMANI
and (5) PETER GACHERU KINCARA all of Post Office Box Number 152
Kiambu in the Republic of Kenya (hereinafter together called "the
Trustees")

WHEREAS

- (i) This declaration is supplemental to a transfer of even date and made between (1) Khan Nawas Khan (2) Khan Abbas Khan (3) Mehdi Khan AND the Trustees whereby the property describe in the Schedule hereto was transferred to the Trustees in fee simple in consideration of the sum of Shillings Two Hundred thousand (Shs.200,000/-) therein stated to have been paid by the Trustees to the said Khan Nawas Khan Khan Abbas Khan and Mehdi Khan;
- (ii) The said sum of Shillings Two hundred thousand (Shs.200,000/-) was provided by the Trustees and persons who have caused a limited liability company to be incorporated in the said Republic under the name of "KIAMBU DANDERA FARMERS COMPANY LIMITED" and who are also in the process of incorporating a co-operative society under the name of "DANDERA ESTATES CO-OPERATIVE SOCIETY LIMITED" and the said property was transferred to the Trustees as trustees for the Trustees and the said persons.

NOW THIS DEED WITNESSETH that the Trustees hereby declare that they hold the said property in trust for themselves and the said persons in fee simple and hereby agree (i) that they will as soon as the said Co-operative Society shall have been incorporated make an application to the Nairobi Land Control Board for its consent to the transfer of the said property to either the said Kiambu Dandera Farmers Company Limited or to the said Dandera Estates Co-operative Society Limited and (ii) so soon as is practicable after the obtaining of such consent to transfer the said

- b) Criminal charges be preferred against all offenders including the Government Officers.
- c) Finally the legal owner then negotiates with the Government about the future use of the land, removing all unauthorized structures from the land at the Government supervision.

Sign

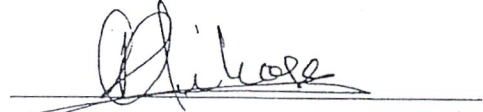


Mr. C.P. Waithaka
Managing Director,
Dandora Housing Schemes Limited

Date

29/11/07

Sign



for Mr. Njenga Chege
Chairman,
Dandora Housing Schemes Limited

Date

30/11/07

Njiru, all along had been obtaining Court Orders through giving false information to the Judges and has condemned them for perjury accordingly deserving further criminal proceedings.

[See Doc. Marked 36]

2006 & 2007

- With this in our hands, we approached the Office of the President once again and through the PPO Nairobi and Mr. William Okello the then OCPD Buruburu, we were able to retrieve all our confiscated documents from the Investigating Officer PC Warui and whatever documents they had lost, we managed to get certified ones from the Court of Law.

[See Doc. Marked 37]

- At our request, the Permanent Secretary Lands asked us to avail documents to Chief Land Registrar – Ardhi House.

[See Doc. Marked 38]

- Our Lawyers communicated with the PS enclosing certified copies and Police Abstract.

[See Doc. Marked 39]

- Finally we were invited to attend a meeting at Ardhi House which was chaired by the Minister for Lands, Hon. Kivutha Kibwana where we felt we were never given a chance to prove our ownership of the land. However we managed to get the opportunity to view the Title that the Kiambu Dandora Farmers Co. Ltd were depending on to claim ownership. We want to dispute the legality of that Title and the way it was obtained.

[See Doc. Marked 40]

- We here now enclose a copy of the same for you to clearly see that it has no basis of Law and that the Registrar of Titles who has signed it must be questioned to find out how it could be done outside the original file and more so, when the Government was claiming to have acquired the land. For you to be enlightened further, kindly study the two (2) attached versions.

[See Doc. Marked 41]

- Court Orders obtained in 1999 by the said KDFC Lawyer, which are real criminal and unacceptable by all legal practices. This proves Justice Ibrahim is very right and now surely Mr. Boniface Njiru should be questioned to tell us where and how a wife of one dead could get legal right to appoint Trustees for a public land.

[See Doc. Marked 42]

- We now kindly ask that:-

- a) The Ministry of Lands regularizes the ownership documents immediately and that DHS be returned onto the land with security as it was before 1999.

- Soon after, some unknown people invaded DHS offices on the land on the night of the 4th February and stayed on until the morning of 5th where they beat up our workers who, reported their complaints to the offices of Mr. Kangethe Thuku the then DO Embakasi. The DO ably mobilized his Officers who arrested four (4) of the intruders and took them to Buruburu Police Station where they were locked. The same day in the afternoon, the four were released and escorted by Police Officers to our land where our people were forcefully removed, and the intruders by then understood to have been sent by KDFC led by Raymond Mwangi Waweru and Mr. Mutothori were imposed on to the land by Buruburu Police, to this very day.

2000

- We complained to the Office of the President who investigated accordingly even through KACA but even then, they were as usual, surprisingly ignored.

[See Doc. Marked 32]

2003

- Meanwhile, as we were determined to prove our genuine ownership and as we needed the official search to satisfy our financiers, our lawyers M/s C.N. Kihara & Company Advocates contacted the Office of the Chief Registrar of Titles, who replied through their letter dated 23rd July 2003 disclosing for the first time that our land file was missing, but did nothing further.

[See Doc. Marked 33]

- We contacted Office of the President with a view to them helping us get the documents from Buruburu, who once again tried to have this matter settled through the office of the Attorney-General but nothing serious happened.

[See Doc. Marked 34]

2004

- We officially got the Change of User from Nairobi City Council

[See Doc. Marked 35]

- We officially got Approval of Housing Development from the Ministry of Land and Housing.

[See Doc. Marked 35]

- KDFC attempted to get the land transferred to them through court action when they filed miscellaneous application No. 1507 of 2004, but never prosecuted the same.

[See Doc. Marked 35]

2005

- At the time of the trial, however. Justice Mohammed Ibrahim of the High Court of Kenya found three of the chief conspirators namely, Mugo Mutothori, Raymond Mwangi Waweru and Peter Karumbi Keingati using their senior Lawyer Boniface

- Justice Shields authorized the Deputy Registrar of High Court to transfer the land to DHS who promptly put up an office on the land.
- The High Court returned compensation money to the Commissioner of Lands that way completely reversing his claims to DHS land.

[See Doc. Marked 26]

1994

- Deputy Registrar of High Court of Kenya effected the actual transfer.

[See Doc. Marked 27]

1996

- All manner of blocking the registration of the transfer was attempted by the then Commissioner of Lands until when our lawyers, M/S Onesmus Githinji & Company Advocates wrote to the then Chief Registrar (Mr. F.R.S. Onyango) who, on investigation, agreed to personally intervene and then the Court Orders were finally registered.

[See Doc. Marked 28]

1998

- Provisional Title was issued in December 1998, after establishing that all the five former Trustees were then dead and the original Title could not be obtained.

[See Doc. Marked 29]

- In order to safeguard the Title from any interference and from anyone else getting the Title without involving Falcon (wholly at the request of DHS Board of Directors) the land was transferred to Falcon to hold in trust for DHS.

[See Doc. Marked 30]

1999

- Early January, just as we feared most, when those behind the grand theft of our land realized that a Title had been issued to DHS, a conspiracy was quickly hatched between some senior Land Officers, CID Officers (mainly from Buruburu Police Station); One of the sons of the dead Trustees, a senior and well known Lawyer, the same willing Raymond Mwangi Waweru and some others like the known land grabber from Nyeri, the late Mutothori. Our C.P. Waithaka was arrested and hurriedly rushed to Court in Makadara accused of making a false document i.e. the DHS Provisional Title.
- To prove his innocence, C.P. Waithaka, using the good offices of Hon. Ndambuki, then Minister for Lands, managed to reach the Commissioner of Police complaining about the wrongful arrest by the Buruburu CID. The Commissioner of Police using principally the then SSP Waweru Mware of Police Headquarters did thorough investigations and exonerated Mr. Waithaka from any wrong doing, but the Buruburu DCIO ignored lawful orders and decided to continue with the case.

See Doc 31

- Just before Mr. James R. Njenga, former Commissioner of Lands retired, at our committee insistence, he recommended for a complete review and a better approach by the Government but this was never followed by the new Commissioner.

[See Doc. Marked 19]

1990

- Soon after Hon. Darius Mbela was appointed the Minister for Lands, the new DHS Committee approached him to see if he could enforce the registering of our Decree. He ordered for a joint meeting between DHS Board and the Department of Lands chaired by Mr. Sang, the then PS Lands.

[See Doc. Marked 20]

- After very cordial several meetings, the then Commissioner of Lands wrote a very dictatorial letter which completely stopped all deliberations and showed very negative official attitude.

[See Doc. Marked 21]

- The minister was not happy and wrote his letter dated 21st September 1990 but which was to our complete surprise ignored by the Commissioner of Lands.

[See Doc. Marked 22]

- Soon Mr. Gachanja the said Commissioner of Lands, started a false road and power project on the land where the Kenya Government lost millions. We reported this to the office of the president but no one was ever taken to Court of Law.

1991

- Once again Raymond M. Waweru and Robert Muthama came out with false accusations against C.P. Waithaka to the PC Nairobi.
- A meeting between the two parties was called. Serious investigations were done going all the way to the Registrar of Companies and the Commissioner of Lands.

[See Doc. Marked 23]

- Just before the PC Nairobi finished his work Muthama and Waweru sensing defeat, rushed to court and filed HCCC 576 of 1991 against Falcon Kenya Limited and C.P. Waithaka but the case was dismissed by Justice Mweru.
- Meanwhile, the PC gave out his findings in favour of C.P. Waithaka's team

[See Doc. Marked 24 & 25]

1993

- DHS decided to go to court to enforce the 1985 Decree and get the land registered in DHS.
- The matter went before Justice Shields.

- A further agreement between Dandora Housing Scheme Limited and Falcon Kenya Limited was also found necessary giving them authority to look for able developers to put up houses for the members in accordance to the Local Authority Bye Laws.

[See Doc. Marked 15]

1986

- Very senior City Council officials, in conjunction with the KDFC and some of our board members particularly Robert Macharia Muthama and Raymond Mwangi Waweru, assuming the unlawful acquisition by the Commissioner of Lands, using City Council lawyers attempted to destroy our court Decree but thank God they failed.

1987

- Some serious construction was started with USAID finances on the land; but DHS vigorously objected, causing USAID to pull out but the said City Officials illegally continued with what is today's Umoja II.
- Meanwhile, our Falcon (K) Limited project was progressing well but faced a lot of opposition from Lands Department refusing to allow physical planning or issuing of Official Search.

1988

- DHS Board was experiencing so much internal problems, but fortunately, some members led by Mwangi Minua, courageously wrote to the PC Nairobi who came to our rescue ordering a public meeting to be convened at Kariokor Social Hall with only two (2) agendas:-

- 1) Election of Directors
- 2) Approval of the intended Falcon Housing Development.

[See Doc. Marked 16& 17]

- Six (6) of the old directors were thrown out and new Directors elected to join Mr. C.P. Waithaka whose good work and dedication was commended and approved by the contributors who also approved the development DHS was planning through Falcon Kenya Limited.
- The elected were:-
 - a) Cornelius Peterson Waithaka
 - b) Mwangi Minua
 - c) Annah Wambui Gathuri (Mrs.)
 - d) George Gachomba Munyua
 - e) Kimani Nganga
 - f) Simon Gichanga
 - g) James Thuita Thiga

[See Doc. Marked 18]

1981

- Up to this time the DHS Board of Directors were unable to pay the lawyers or do anything worthwhile because of undue outside interference caused mainly by KDFC and underground parties making the contributors to completely fail, neglect or refuse to contribute any money towards the legal fees. So it was resolved by the Board of Directors that a third party, willing and able to contribute financially to the recovery of the land be legally mandated with a view to sharing whatever was eventually recovered. So Falcon Kenya Limited was approached by DHS and on getting interested were legally appointed in June 1981 as their financiers and recovery Agents with absolute mandate and authority on their behalf.

[See Doc. Marked 10]

- Soon after Falcon got their mandate, they paid the lawyers who arranged HCCC 1348 of 1972 to come up for hearing immediately.
- Justice Sachdeva ordered the matter to go for arbitration before the Provincial Commissioner, Nairobi.
- Arbitration Committee, which was chaired by Mr. Ruirie Njeru, the then DO, Makadara, after taking more than one year to deliberate, finally filed their Award in court.

[See Doc. Marked 11]

- KDFC appealed against the Award but lost.

[See Doc. Marked 12]

1983

- Court agreed with the terms of the Award and vested the land in DHS for the benefit of members and shareholders thereof.

1984

- On being the owners DHS now filed HCCC 1555 of 1984 against the Attorney General and the Commissioner of Lands challenging the defective 1974 compulsory acquisition.

1985

- S.M. Otieno & Company Advocates extracted a Decree vesting the entire land, 818 acres, to DHS.

[See Doc. Marked 13]

- Lands Department, on realizing the turn of events, declined to register the decree on pretext that the land was already Government property.

[See Doc. Marked 14]

- The five agents executed the Trust Deed, money given to the vendor, and then the land was transferred to them on 8th April 1970 as Trustees by Khan Nawaz and Khan Abban Khan.

[See Doc. Marked 2]

1971

- Finally the 225 contributors got their company incorporated in the name of Dandora Housing Schemes Limited (DHS) on 13th August 1971.

[See Doc. Marked 3]

- One of its objects in their Memorandum and Articles was to take over the land LR 11379/3.
- DHS lawyer applied to KDFC Trustees to transfer the land to new company.
- Although their chairman Kibiro Karanja swore an affidavit accepting to transfer the same, the Trustees never executed the same.

[See Doc. Marked 4]

1972

- DHS filed case HCCC 1348 of 1972 against KDFC to enforce the transfer.
- Curiously enough in August 1972 the Commissioner of Lands started a private deal with KDFC, wishing to purchase 300 acres from them.

[See Doc. Marked 5]

- DHS notified the Commissioner of Lands of their objections to underhand negotiations until the question of ownership was solved.

[See Doc. Marked 6]

1973

In order to safeguard their interest, DHS imposed a caveat on the land.

[See Doc. Marked 7]

1974

- The Commissioner of Lands initiated compulsory acquisition for the entire property claiming that we could never be able to develop the land to the required standards, a claim that was denied very strongly by DHS.

[See Doc. Marked 8 & 9]

1978

- The land remained unused until 1978 when the Commissioner of Lands started to alienate the land to private developers contrary to the compulsory acquisition Act.

1969

On 25th October 1969, the Kenyan Government took a positive step by ordering the then District Officer, Makadara (Mr. Muita) to call for a joint meeting between the individual purchasers and KDFC.

- At the meeting, the 5 partners were declared agents for the vendor, kept aside and strictly instructed to keep away from further dealings with the land as the land clearly belonged to the 225 contributors.
- Individual contributors advised to constitute themselves into a legal entity of their own.
- Contributors then elected 7 leaders (directors) giving them mandate to get new company incorporated and to legally pursue and reclaim the land back for 225.
- The elected were:-
 1. Robert Macharia muthama
 2. Cornelius Peterson Waithaka
 3. Raymond Mwangi Waweru
 4. Mutegi Karega
 5. Nelson Muchai Kinuthia
 6. Joseph Njenga Chege
 7. William Muthama
- The committee, through their lawyers, M/S S.M. Otieno & Company Advocates, decided to incorporate a co-op society in the name of Dandora Estates Co-op Society Limited as it was both quicker and cheaper. This was later rejected by the Government, on technicalities.
- The Committee also appointed R.M. Muthama to chair the Board and C.P. Waithaka a salaried full time Managing Director.

1970

- Khan family wanted to immigrate urgently, and therefore needed the land deal closed rather quickly, and the money released to them, otherwise they threatened to sell to some other people.
- Contributors had not yet incorporated the limited company.
- So the two lawyers, Waruhiu & Otieno, advised that land be transferred to the 5 KDFC partners in their joint names as Trustees to hold on trust for the contributors' Co-op Society or limited company as the case may be.

[See Doc. Marked 1]

- Sought approval for the money to be forwarded to the vendors.

3rd July 1967

The very next morning, KDFC without anyone knowing fraudulently hijacked the deal claiming that the money paid to them by the 225 individuals was theirs;

- They hired a lawyer, (S.N. Waruhiu & Company Advocates), paid him the money to buy the land for them.
- S.N. Waruhiu & Company Advocates then paid 10% deposit of the purchase price to Khan, and got the sale agreement direct to KDFC.
- Lawyer applied to Nairobi Land Board for the mandatory consent.

1968

- Some individuals became apprehensive when no information about the progress ever came from KDFC and began making search in Lands Office only to discover the ongoing fraud.
- Fortunately, for individuals the Nairobi Land Board had delayed in issuing the consent as the officials felt that the demanded price by the vendor was a bit too high for the undeveloped land.
- Individuals decided to see the late Hon. Angaine, the then Minister for Lands.
- Mr. Angaine, sympathizing with the individuals, advised them to get their own lawyer for further advice and possible remedial action.
- Individuals hired S.M. Otieno & Company Advocates who wrote to S.N. Waruhiu and appraised him of the situation.
- Waruhiu met with the individuals and verified the facts. He agreed not to pursue the registration until question of ownership of the money he was holding was resolved.
- Individuals reported the case to Central Police Station (then Kingsway Police Station).
- Police investigated and verified the facts reporting the same to the then Provincial Commissioner Nairobi (Mr. Bill Martin) and to the then Attorney General (Hon. Charles Njonjo).
- Individuals then were advised to file a civil case against KDFC 5 partners in their personal capacity.



11/11/81
D.H.K. 8/14

THIS TRUST DEED is made the 7th day of April

One thousand nine hundred and ~~sixty-nine~~ ^{Seventy} BY (1) KIBIRO KARANJA
(2) REUBEN KANGARA (3) KEINGATI WATHARO (4) NJUGUNA KIMANI
and (5) PETER GACHERU KINGARA all of Post Office Box Number 152
Kiambu in the Republic of Kenya (hereinafter together called "the
Trustees")

WHEREAS

- (i) This declaration is supplemental to a transfer of even date and made between (1) Khan Nawaz Khan (2) Khan Abbas Khan (3) Mehdi Khan AND the Trustees whereby the property described in the Schedule hereto was transferred to the Trustees in fee simple in consideration of the sum of Shillings Two Hundred thousand (Shs.200,000/-) therein stated to have been paid by the Trustees to the said Khan Nawaz Khan Khan Abbas Khan and Mehdi Khan;
- (ii) The said sum of Shillings Two hundred thousand (Shs.200,000/-) was provided by the Trustees and persons who have caused a limited liability company to be incorporated in the said Republic under the name of "KIAMBU DANDORA FARMERS COMPANY LIMITED" and who are also in the process of incorporating a co-operative society under the name of "DANDORA ESTATES CO-OPERATIVE SOCIETY LIMITED" and the said property was transferred to the Trustees as trustees for the Trustees and the said persons.

NOW THIS DEED WITNESSETH that the Trustees hereby declare that they hold the said property in trust for themselves and the said persons in fee simple and hereby agree (i) that they will as soon as the said Co-operative Society shall have been incorporated make an application to the Nairobi Land Control Board for its consent to the transfer of the said property to either the said Kiambu Dandora Farmers Company Limited or to the said Dandora Estates Co-operative Society Limited and (ii) so soon as is practicable after the obtaining of such consent execute and do all such documents acts and things as may be necessary to procure the said

property to be transferred to and registered in the name of the said Kiambu Dandora Farmers Company Limited or the said Dandora Estates Co-operative Society Limited as the case may be.

IN WITNESS WHEREOF the Trustees have hereunto set their respective hands and seals the day and year first hereinbefore written

THE SCHEDULE HEREINBEFORE REFERRED TO

All that piece of land containing by measurement eight hundred and eighteen (818) acres or thereabouts situate in the City of Nairobi in the Nairobi Area of the said Republic and known as Land Reference Number 11379/3 which said piece of land being a portion of the premises comprised in a Grant registered in the Land Titles Registry at Nairobi aforesaid as Number I.R. 19935/1 is delineated on the plan annexed to the said transfer and more particularly on Land Survey Plan Number 86048 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red.

SIGNED SEALED and DELIVERED
by the said KIBIRO KARANJA
in the presence of:-

~~Signature~~ 21/4/70

Kibiro

SIGNED SEALED and DELIVERED
by the said REUBEN KANGARA
in the presence of:-

N. MUGO - 2nd Class Magistrate
~~Signature~~ 21/3/70

Reuben

SIGNED SEALED and DELIVERED
by the said KEINGATI WATHARO
in the presence of:-

N. MUGO - 2nd Class Magistrate
~~Signature~~ 21/3/70

Keingati

SIGNED SEALED and DELIVERED
by the said NJUGUNA KIMANI
in the presence of:-

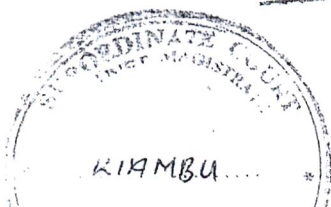
~~Signature~~ 21/3/70

Njuguna

SIGNED SEALED and DELIVERED
by the said PETER GACHERU
KINGARA in the presence of:-

~~Signature~~ 21/3/70

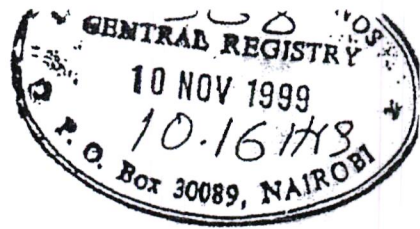
Peter Gacheru Kingara



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 1970 OF 1999(O.S)

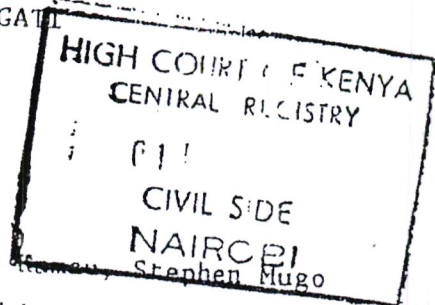


IN THE MATTER OF AN APPLICATION UNDER SECTION 37 OF THE TRUSTEE ACT CAP 167

AND

IN THE MATTER OF AN APPLICATION BY PETER KERUMBI KEINGATI

DECREE



CLAIM FOR

This Honourable Court be pleased to appoint Hannah Wanjiru Kamau, Stephen Mugo Mutothori and Raymond Mwangi Waweru of P.O. Box 7541 Nairobi as trustees for L.R. No. 11379/3 in addition to Peter Kerumbi Keingati under the trust deed dated 7th April 1970.

Costs of this application be in cause.

UPON READING the Consent letter dated 21st October 1999 filed on 25th October 1999 and signed by Njiru Boniface & Co. Advocates for the applicant, Mary Njeri on behalf of KIAMBU DANDORA FARMERS CO. LTD. HANNAH WANJIRU KAMAU, STEPHEN MUGO MUTOTHORI and RAYMOND MWANGI WAWERU.

IT IS ORDERED:-

1. THAT Hannah Wanjiru Kamau, Stephen Mugo Mutothori and Raymond Mwangi Waweru of P.O. Box 7541 Nairobi be and are hereby appointed as trustees for L.R. No. 11379/3 in addition to Peter Kerumbi Keingati Under the Trust deed dated 7th April 1970.
2. THAT costs of this application be in cause.

GIVEN under my hand and the Seal of the Court this 28th day of October 1999.

ISSUED at Nairobi this

day of November 1999.

*Checked
M. H.*

P. M. Mugo
DEPUTY REGISTRAR
HIGH COURT OF KENYA NAIROBI

[Large handwritten signature]

LAND TITLES REGISTRY - NAIROBI REGISTRY
REGISTRATION OF TITLE ACT

REGISTERED AS No. I.R. 23514/3

PRESENTED 10th November 1999

TIME 10.16hrs *Awaru*

Registrar of Titles
E. N. GACHARA (010)

MINISTRY OF LANDS AND SETTLEMENT



DEPARTMENT OF LANDS,
P.O. Box 30089, NAIROBI

21st July, 1974

Telegrams: "LANDS"
Telephone: 27471-ext.
When replying please quote
81301/N
Ref. No.
and date

The Registrar,
High Court of Kenya,
NAIROBI.

THE LAND ACQUISITION ACT, 1968
KENYA GAZETTE NOTICE NOS. 840 AND 841
DATED 15TH MARCH, 1974
L.R. 11379/3, DANDORA, NAIROBI

The above mentioned land has been acquired compulsorily by the Government and enclose herewith the following:-

- a) Copies of Kenya Gazette Notice Nos. 840 and 841 dated 15th March, 1974.
- b) Copy of Award under Section 10 of the Land Acquisition Act.
- c) Copy of the Notice of Taking Possession and Vesting under Section 19 (1) of the Act.

There is a High Court Suit No. 1348 of 1972 in which the Court has been asked to determine the ownership of the property.

Therefore, I enclose herewith cheque No. 15/B 175828 for Shs. 1,316,960/- and the amount should remain deposited in the High Court till the High Court has determined the ownership of the farm.

Kindly acknowledge receipt.

C.M.
C. M. PANDYA

(C.M. Pandya)
Chief Valuer

for COMMISSIONER OF LANDS.

CMP/maj.

C.C. Messrs Kibiro Karanja,
Reuben Kangara, Kengati, Waiharo,
Njuguna Kimani,
Peter Gachery Kingara,
T/A Kiambu Dondora Farmers Company,
P.O. Box 152,

M/S S.M. Otieno & Co
Advocates,
P.O. Box 12098,
NAIROBI.

Forms: "Court", Nairobi
In replying please quote

Ref. No. HCCC 1348/72
and date



HIGH COURT OF KENYA
LAW COURTS
P.O. Box 30041
NAIROBI

20th July 1974

The Commissioner of Lands,
P.O. Box 30089,
NAIROBI.

RE: THE LAND ACQUISITION ACT 1968
KENYA GAZETTE NOTICE Nos. 840 & 841
DATED 15TH MARCH 1974
L.R. 11379/3 DANDORA NAIROBI

I enclose herewith cheque No. 711300 for Kshs. 1,271,044.10 dated 16th July, 1974 in respect of monies deposited by you in Court vide your letter Ref. 81391/A dated 24th July, 1974, for you to disburse same to the persons entitled to it.

A sum of Kshs. 45,935.90, being part of the total sum of Kshs. 1,316,980.00 deposit, was paid out to M/S Machira & Co Advocates as ordered in RMCC No. 4217 of 1985.

Please acknowledge receipt.

D.M. KIOKO
FOR: AG. DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI.

c.c.

Secretary
Dandora Housing Scheme Ltd.,
P.O. Box 56770,
NAIROBI.

Accounts-controller,
High Court of Kenya,
P.O. Box 30041,
NAIROBI.

DMK/mwk

No. Z/B 711800

GOVERNMENT OF KENYA
CENTRAL BANK OF KENYA
BANKI KUU YA KENYA
NAIROBI



900

~~ACCOUNT NOT NEGOTIABLE~~

PAY TO THE ORDER OF	AMOUNT IN WORDS		DATE	VOUCHER No.	AMOUNT KENYA SHILLINGS and CENTS
	KENYA SHILLINGS	CENTS			
THE COMMISSIONER OF LANDS	K. SH. ONE MILLION TWO HUNDRED SEVENTY ONE THOUSAND AND FORTY FOUR	TEN	16-7-93	0090	1,271,044.10

VALID FOR SIX MONTHS FROM DATE OF ISSUE

PAYMASTER GENERAL
DEPOSITS - JUDICIAL ACCOUNTING UNIT

[Signature]

④

3:59 P.M.
3/4/25
138

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.1348 OF 1972

ROBERT MACHARIA)
C.P. WAITHAKA)
RAYMOND MWANGI)
MUTEGI KAREGA)
WILLIAM MUTHAMA)
NELSON MUCHAI)
NJENGA CHEGE)
DANDORA HOUSING SCHEME LIMITED)

PLAINTIFFS

versus

KABIRO KARANJA)
REUBEN KANGARA)
KEINGATI WAIHARO)
NJUGUNA KIMANI)
PETER G. KANGARA)

DEFENDANTS

DECREE

CLAIM FOR:

- (a) An order for transfer by the Defendants to the Plaintiff company of L.R.No.11379/3 Komorock Road, Nairobi to hold for and to the use of the purchasers.
- (b) Account of the money paid to the Defendants by the purchasers.
- (c) Registration of the property L.R.No.11379/3 in the name of the Plaintiff company.
- (d) Payment by the Defendants to the Plaintiff company of any money found due in account with interest at 8% from date of filing.
- (e) Costs of the suit with interest at 8% from date of judgement till payment in full.

COUNTER CLAIM:

- (a) A declaration that L.R.No.11379/3 Komorock Road, Nairobi is held by the Defendants (Plaintiffs by Counter-claim) in trust for Kiambu Dandora Farmers Company, subject to the grant of consent or exemption as required by law to a transfer thereof.
- (b) Costs.

This is the exhibit marked "A & A" referred to in the annexed affidavit of Andrew Kitema Kimani sworn before me this 20th day of March 1972 at Nairobi, Kenya

COMMISSIONER FOR OATHS

UPON READING the application presented to this court on the 17th day of August 1983, the 2nd day of September, 1983 and the 26th day of February 1985 respectively, by Counsel for the Plaintiffs and Defendants AND UPON READING the Affidavits of CORNELIUS PETERSON WAITHAKA and KEINGATI WAITHARO in support of the said Applications sworn on the 16th day of August, 1983 and 25th day of August, 1983 and UPON HEARING Counsel for both parties:

IT IS ORDERED:

1. That the application to set aside the award be and is hereby dismissed.
2. That judgement be and is hereby entered for the Plaintiffs in terms of the award i.e.
 - (i) The suit premises L.R.No.11379/3, Komorock Road, Nairobi, was bought by and is hereby vested in DANDORA HOUSING SCHEMES LIMITED for and on behalf of the members thereof.
 - (ii) The Defendants do pay/account to the Plaintiffs the amount of the money found to be in excess of the actual purchase price of the land with interest at 8% p.a. from the date of filing this suit.
 - (iii) The Defendant's Counterclaim be and is hereby dismissed.
3. The Defendants do pay to the Plaintiffs the costs of this suit with interest to be taxed and certified by the Taxing Officer of this Court.

GIVEN UNDER my HAND and the SEAL of this Court this 13th day of March, 1985.

ISSUED this 14th day of March, 1985

16-3-85
A. M. M. M.
J.R. B. G.

SENIOR DEPUTY REGISTRAR
HIGH COURT OF KENYA
NAIROBI

81391/20

2

31st July

M/s. Kiambu Dandora Farmers Co. Ltd.,
P.O. Box 152,
KIAMBU.

Sirs,

THE LAND CONTROL ACT, 1967

Nairobi Area - L.R. No. 11379/3 -
331.04 Hectares - Proposed Change
of User from Agricultural to
Residential Plots

I have the honour to refer to your letter dated 7th July, 1972 enclosing a copy of your letter dated 7th February, 1972 addressed to me and my interim reply of 22nd February, 1972 Ref. 81391/13 and observe that you have come to the conclusion that nothing can grow on the farm and you are seeking approval for a change of user from agricultural to residential.

You will recall that when this land was purchased in 1968 it was purchased by the five gentlemen trading as "Kiambu Dandora Farmers Company" and it was stated on the application form that the purpose of the purchase was for cattle breeding. Accordingly, I do not see the justification now for applying for subdivisional approval to residential development merely because it has been decided not to continue with the cattle breeding venture and that the land is not suitable for the cultivation of crops.

I was surprised to find that the Kiambu Dandora Farmers Company had now become a Limited Company and that it had 230 members. I understand, in fact, that many of these persons had subscribed to the purchase price of the farm in 1968 and if my supposition is correct, the application to the Land Control Board by you did not disclose the true position as to the identity and purpose of the purchasers.

I note, that there is now litigation in the Court regarding the ownership of this land in which the Dandora Housing Schemes Limited is concerned and therefore until the matter is decided as to the legal ownership of the land, it would be premature to go any further in this matter. I should state, however, that I would not be prepared nor I doubt would the Land Control Board be prepared to approve any subdivision of this land for use for residential purposes until the Planning Study at present being carried out on behalf of the City Council is completed and everybody is aware of the proposals for the future growth of the city in this area.

I have the honour to be,
Sirs,
Your obedient servant,

J. A. O'Loughlin

(J.A. O'Loughlin)
COMMISSIONER OF LANDS

This is the exhibit marked "AK2" referred to in the annexed affidavit of Andrew Kariuki sworn before me this 29th day of July 2012 at Nairobi, Kenya
[Signature]
COMMISSIONER FOR OATHS

e.e. The City Engineer,
Nairobi City Council,
P.O. Box 30975,
NAIROBI.

F.N. Charnley, Esq.,
Land Consultant,
P.O. Box 73473,
NAIROBI.

D.J. Coward, Esq., C.M.G., O.N.E.,
Registrar General,
P.O. Box 30031,
NAIROBI.

C.F. Mithaka, Esq.,
Managing Director,
Dandora Housing Schemes Ltd.,
P.O. Box 47635,
NAIROBI.

SR

11/10/94

REPUBLIC OF KENYA

I CERTIFY THIS IS TRUE COPY OF THE ORIGINAL.

CHAPTER 284 REGISTRAR HIGH COURT OF KENYA
I.R. 23514 NAIROBI

THE REGISTRATION OF TITLES ACT

CERTIFICATE OF TITLE NUMBER

TERM: FREEHOLD

TRANSFER

I, M.J. BHATI, Senior Deputy Registrar of the High Court of Kenya Nairobi in pursuance of an Order of the court (The Hon. Mr. Justice Shields) dated 1ST DECEMBER, 1993 in High Court Civil Case No. 1348 of 1972, and presented to the Land Registry on 14th Jan. 1994 and marked as daily Fol. No. 331 HEREBY TRANSFER to DANDORA HOUSING SCHEMES LIMITED of Post Office Box 56770 Nairobi. Subject to the Memorandum of Charges notified hereunder, all that piece of land being an estate in fee simple of ALL that piece of land situate in the city of Nairobi in the Nairobi area containing by measurement eight hundred and eighteen (818) acres or thereabouts and being Land Reference Number 11379/3 as delineated on Land Survey Plan Number 86048 annexed to the said Transfer SUBJECT however to the Act, Special Conditions, Encumbrances and other matters specified in the Memorandum hereunder written.

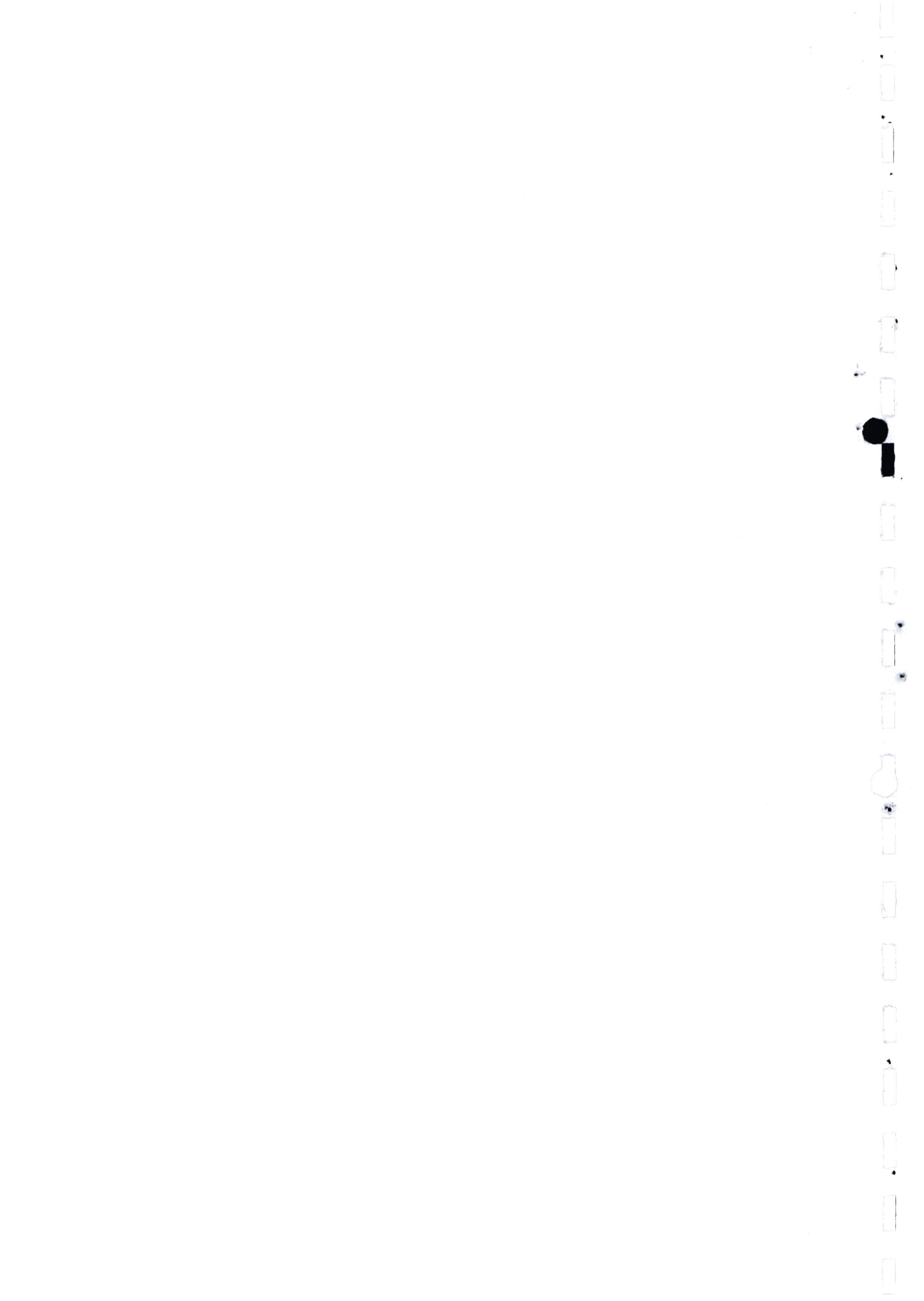
DATED this 31st day of JANUARY 1994.

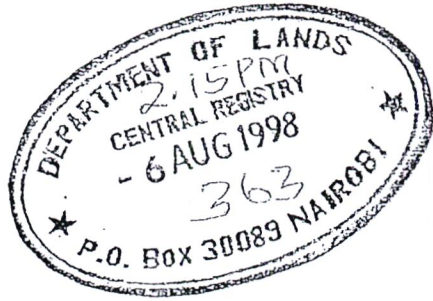
TRANSFERORS

Signed by the said Senior Deputy Registrar Under the SEAL of this Court in the presence of

DEPUTY REGISTRAR

DEPUTY REGISTRAR






REPUBLIC OF KENYA
REGISTRATION OF TITLES ACT
(CHAPTER 281)

PROVISIONAL CERTIFICATE OF TITLE I.R. 23514

I HEREBY CERTIFY that by the reason of fact that the CERTIFICATE OF TITLE registered as I.R. 23514/1 is lost this Provisional Certificate of Title issued under section 71 shall serve and be valid for all purposes in lieu of the lost CERTIFICATE OF TITLE.

IN WITNESS WHEREOF I hereunto set my hand and seal this

SIXTH day of AUGUST One Thousand Nine hundred and Ninety Eight.


REGISTRAR OF TITLES

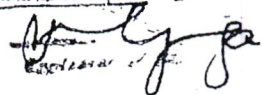
This is the exhibit marked "Akk 4" referred to in the annexed affidavit of Andrew W. K. K. sworn before me this 6th day of August 1998 at Nairobi, Kenya
COMMISSIONER FOR OATHS

LAND TITLES REGISTRY - NAIROBI, KENYA
REGISTRATION OF TITLES ACT

REGISTERED AS I.R. NO. 23514/7

6th August 98

2:15 P.M.

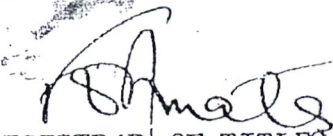




REPUBLIC OF KENYA
THE REGISTRATION OF TITLES ACT
(CHAPTER 281)
CERTIFICATE OF TITLE: NUMBER I.R.23514


I HEREBY CERTIFY that KIBIRO KARANJA REUBEN KANGARA KEINGATI WATHARO NJUGUNA KIMANI and PETER GACHERU KINGARA all trading as KIAMBU DANDORA FARMERS COMPANY of Kiambu (Post Office Box 152) in the Republic of Kenya pursuant to a Transfer registered as Number I.R.19935/7 are now the registered proprietors as owners for an estate in fee simple of ALL that piece of land situate in the City of Nairobi in the Nairobi Area containing by measurement eight hundred and eighteen (818) acres or thereabouts and being Land Reference Number 11379/3 as delineated on Land Survey Plan Number 86048 annexed to the said Transfer SUBJECT however to the Act Special Conditions Encumbrances and other matters specified in the Memorandum hereunder written.

IN WITNESS whereof I have hereunto set my hand and seal this eighth day of April One thousand nine hundred and seventy.


REGISTRAR OF TITLES

M E M O R A N D U M

- (1) The Government Lands Act (Chapter 280);
- (2) The Kenya (Land) Order-in-Council 1960 and the Regulations and Rules from time to time made thereunder;
- (3) The easements created by wayleaves registered in volume N.13 Folio 91/12, 13 and 16 in so far as the same can lawfully be granted;
- (4) The Special Condition contained in a Grant registered as Number I.R.19935/1.

LAND REGISTRY - NAIROBI
REGISTRATION OF TITLES
REGISTERED AS NO. I.R. 23514/1.
Dated 8.4.70
10.15 am


464/5m
1/2/71
243
3/7/71
905
2/15/71

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THIS TITLE
Conveyat by M/s Dandona Housing scheme Limited Clipping
Transferees and Beneficiaries' interest by virtue of a trust
dated 7th April, 1970. Absolutely
Registration No. 1247 (Date of Registration) 31-8-73

certificate by the Chief Valuer taking
of 818 acres. L.R. No. 11379/3 in plots
of section 19(1) of the Land Acquisition
1968 and the land is accordingly vest
government.

884 20.11.1974

3
584
11/2-4

138 of
4/5/72
331
1/19/74

Court order of
1348 of 1972

~~CANCELLED~~

331 Date of Registration 14-1-94

706
1/19/74

Court order of Civil Case No 1348 of
1972

Registration No. 106 Date of Registration 24-1-97

Decree Civil Case No. 1555 of 1984
Nullifying the acquisition of No. 3
above

(5)

1635 24-4-97

Transfer to Dandona Housing
schemes Limited

(6)

Registration No. 1024 Date of Registration 16-12-97

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE
Provisional Certificate of title

7

Amir

TRANSFER INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE
Transfer to FALCON KENYA
LIMITED

8

886

Date of Registration 11.12.98

Floris
Registrar of Title

CHARGE INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE
Charge to simply Perfect Development
Company limited

9

Registration No. 887

Date of Registration 11.12.98

Floris
Registrar of Title

Locality City of Nairobi

Meridional District South A 37
C. X. d

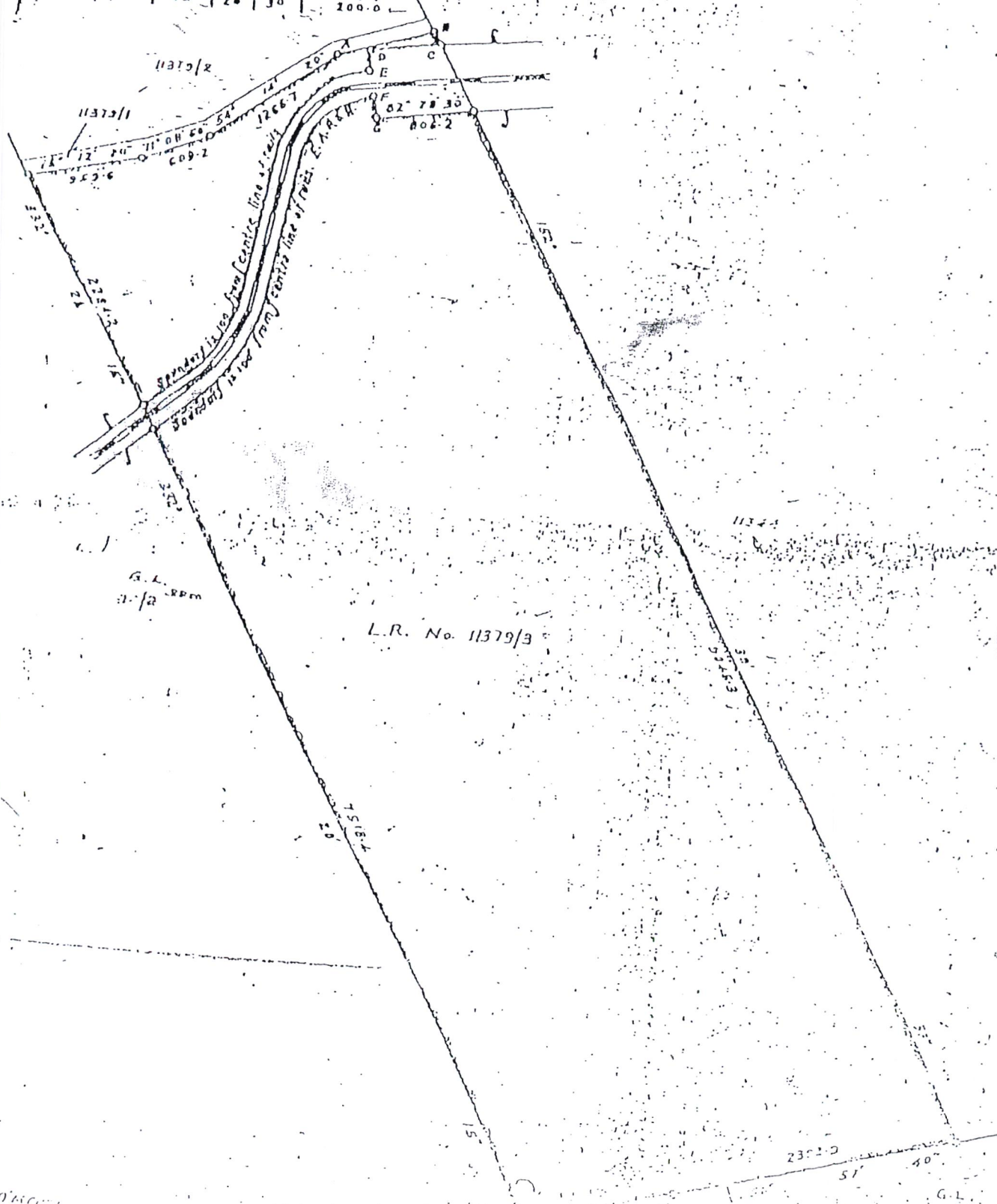
Subdivision No. _____ (Only)

of Section No. _____

Scale: 1 in. = 12500 or 1041.66 Feet to 1 Inch

Area = 818 Acres (Approx)

	Bearings			Distances
	°	'	"	Feet
A-B	71	13	00	874.3
B-C	162	43	33	122.3
C-D	467	40	19	590.0
D-E	712	44	10	100.0
E-F	171	28	30	100.0



A.T.O. 11/11/11

G.L.

Findings

- Kiambu Dandora was acting as Agent
- They got the land but was later transferred to Dandora's scheme
- The land legally was transferred back through the courts in 1953
- The title doesn't exist the original title

KIAMBU DANDORA FARMERS COMPANY LTD.
P.O. BOX 5919 - 00100,
TEL: 315176, 340783, 0724-298552(mobile)
NAIROBI.

Our Ref: DOCUMENTS 18/7/2018 002

Your Ref:

July 18, 2018

**THE CHAIRPERSON
DEPARTMENTAL COMMITTEE ON LANDS
NATIONAL ASSEMBLY OF KENYA
P.O. BOX 41842 – 00100
NAIROBI.**

Dear Madam,

RE: PETITION BY HON. GEORGE THEURI, MP ON LR NO. 11379/3 – KIAMBU DANDORA FARMERS CO. LTD

Pursuant to our presentation before your able committee, you requested that we present copies of Court orders that we referred to in our defense against the petition.

I hereby present to you the said copies in a chronological manner as events unfolded.

I have also attached copies of Orders appointing the existing Trustees to replace the original Trustees.

I pray that these documents will assist and guide your deliberations so as to reach an informed decision when writing your report.


Regards,

LIST OF DOCUMENTS.

	DOCUMENT	DATED	PAGE
1.	Consent Order – HCCC No. 1348 of 1972	9/3/1983	1, 2
2.	Arbitration Award By Provincial Commissioner Nairobi nominee pursuant to the Order above	6/7/1983	3 – 10
3.	Ruling by Justice Sachdeva after presentation of the Award in Court		11
4.	Dandora Housing Schemes Limited Decree	13/3/1985	12, 13
5.	Order HCCC No. 1378 of 1972 reviewing and vacating the Decree above	15/11/1985	14, 15
6.	Order by Justice Shields authorizing the Deputy Register of the High Court to transfer LR No. 11379/3 to Dandora Housing Schemes Limited	1/12/1993	16

7.	Transfer of LR No. 11379/3 by M J Bhatt, Senior Deputy Register of the High Court	31/1/1994	17, 18
8.	Ruling by Justice Khamoni in HCCC No. 3250 of 1995 declining to register a "consent order" between Dandora Housing Schemes Limited and City Council of Nairobi	20/7/1998	19 – 22
9.	Ruling on the Reviewing and Setting Aside the orders issued by Justice Shields on the transfer of LR No. 11379/3	26/10/1999	23 – 33
10.	Orders issued by Justice Kasanga Mulwa on Reviewing and Vacating the order issued by Justice Shields. All other consequential orders also vacated	26/10/1999	34, 35
11.	Ruling by Justice K H Rawal (Mrs) in HCCC 1088 of 2000 declaring matters of LR No. 11379/3 as 'Res-judicata'	29/9/2000	36 – 38
12.	Ruling by Justice Kasanga Mulwa in HCCC No. 1348 of 1972 dismissing Falcon Kenya Limited who wanted to be joined in the suit	5/3/2001	39 – 42
13.	2 nd transfer on LR No. 11379/3 by N Matheka, Senior Deputy Registrar of High Court following the same vacated Order issued by Justice Shioelds on 1/12/1993	28/5/2003	43
14.	Order by Hon. Matheka, PDY Registrar in HCCC 1348 of 1972 reviewing and cancelling the transfer above	29/10/2003	44
15.	Decree vesting the land in Kiambu Dandora Farmers Company Limited	18/10/2006	45, 46
16.	Order by Justice M Ngugi in Constitutional Petition No. 47 of 2011 for any party interested in joining the matter to do so	31/10/2011	47, 48
17.	Public Notice in National daily newspaper circulating naturally to effect the Order above	28/11/2011	49
18.	Ruling by Justice J M Mutungi in HCCC No. 698 of 2007 declining to grant Orders to dismiss this suit between Kiambu Dandora Farmers Company Limited and City Council of Nairobi	8/11/2013	50 – 55
19.	Ruling by Justice S Okong'o in ELC No. 1518 of 2013 directing this suit to be enjoined with Petition No. 47 of 2011	1/7/2016	56 – 62
20 A	Original Trust Deed	7/4/1970	63, 64
20 B	Decree	13/10/1999	65
20 C	Decree	28/10/1999	66
20 D	Order	24/2/2006	67
20 E	Decree	6/3/2009	68, 69

Yours Faithfully,


MWANGI KARANJA
SECRETARY.

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO 1348 OF 1972

ROBERT MACHARIA)
 C.P. WAITHAKA)
 RAYMOND MWANGI)
 MUTEGI KAREGA) PLAINTIFFS
 WILLIAM MUTHAMA)
 NELSON MUCHAI)
 NJENGA CHEGE)
 DANDORA HOUSING)
 SCHEMES LIMITED)

VERSUS

KIBIRO KARANJA)
 REUBEN KANGARA)
 KEINGATI WAIHARD) DEFENDANTS
 NJUGUNA KIMANI)
 PETER G. KANGARA)

IN CHAMBERS : On 9th March, 1983
 BEFORE: The Honourable Mr. Justice Sachdeva.

THIS SUIT coming on for mention in chambers on the 9th day of March, 1983 Before the Honourable Mr. Justice Sachdeva AND UPON HEARING counsel for the Plaintiff and counsel for the Defendants.

IT IS ORDERED BY CONSENT:

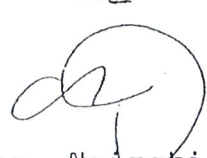
1. That the parties are agreed that 202 people have contributed towards the purchase price of the suit property and their names have been agreed to.
2. It is in dispute whether 23 persons claimed by the Plaintiffs to be contributories to the purchase price are really contributories and it is also in dispute from the Defendants whether the 5 defendants and 64 other persons on their side are contributories towards the purchase. This issue in

dispute is by consent referred to the arbitration of the Provincial Commissioner Nairobi or his nominee for determination and the arbitrator is to file his award in court within 90 days of today.

- 3. Mr. Manek wishes to put on record that the 5th Defendant has died, the 1st Defendant is now allegedly supporting the Plaintiffs and the 4th Defendant being a very elderly man has not been able to come to court. So Mr. Manek has received instructions from the 2nd and 3rd Defendants only.
- 4. Once the number of contributors has been determined by the Provincial Commissioner or his nominee, the suit property or proceeds thereof to be distributed pro rata according to the contributions of each contributory to the proven contributories by the Provincial Commissioner or his nominee.
- 5. It is confirmed that some accounts are held by the Second Defendant who undertakes to furnish the same to the Provincial Commissioner and advocates of the parties within 30 days of today.
- 6. The Provincial Commissioner will only take into account as contributories, persons who have contributed to purchase price as at the date moneys were paid to Shapley Barret Marsh, advocates for the purchasers of suit property.
- 7. Each party to bear its own costs.

GIVEN under my hand and the seal of the court this 9th day of March, 1983.

ISSUED this 22nd day of March 1983.


 Deputy Registrar
High Court of Kenya, Nairobi

OFFICE OF THE PRESIDENT
PROVINCIAL ADMINISTRATION



OFFICE OF THE DISTRICT OFFICER

MAKADARA

NAIROBI

7th July, 1983

Telephone:
When replying please quote

Ref. No. EST/LHD/.16/6/11

The Registrar,
High Court of Kenya,
NAIROBI.

IN THE MATTER OF LAND L.R. II379/3

KOMO-ROCK ROAD NAIROBI H. C. C.

1348 OF 1972

The above suit was referred to the P. C. Nairobi Area by a High Court Order of 9th March, 1983. Consequently I was nominated by the Provincial Commissioner to chair the panel of elders and hear the same in my office.

Attached with this note, please find the findings and the recommendations from the panel. We restricted ourselves mainly to paragraph six (6) of the said order and arrived at our conclusion through logical arguments after setting out simple terms of references.

Audited accounts were produced but no reference is made to them for they fall outside our area of focus.

However, the honourable court can cause and authorise a qualified person to examine them against the moneys shown, having been collected by the respondents as at and after the land in dispute was completely bought out.


~~(C. K. RUTALE NJERU)~~
DISTRICT OFFICER, i/c,
EASTERN DIVISION,
MAKADARA

4

OFFICE OF THE PRESIDENT
PROVINCIAL ADMINISTRATION

Telegrams

Telephone

When replying please quote

Ref. No. EST/LND/16/6/ (6)
and date



OFFICE OF THE DISTRICT OFFICER

Makadara.....

P.O.. Box 30124, NAIROBI

7th June..... 1983.

The Registrar
High Court of Kenya,
P.O. Box
NAIROBI.

IN THE MATTER OF LAND L.R.11379/3 KOMCROCK ROAD NAIROBI,
H.C.C.C. 1348 OF 1972 (BEFORE ARBITRATION TRIBUNAL)

You must have by now seen an objection brought to this office and copied to you among others by Mr. C.P. Waithaka on behalf of Dandora Housing Schemes Limited.

The High Court order dated 9th March, 1983 was brought to my office by the complainant sometimes in early May, 1983 and I fixed the first hearing on 10th May, 1983.

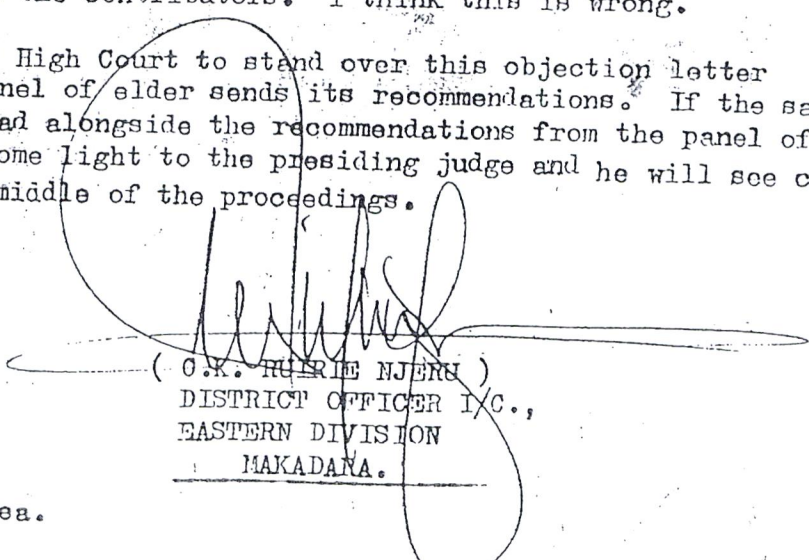
So far I have had four hearings and I have one more to go before I can be able to deliver a logical judgement. I have fixed it for 10th of June, 1983.

The judgement is supposed to be in the High Court on Thursday the 9th of June, 1983. It appears I will not be able to beat the deadline.

I am praying for an extension of time as provided under section C subsection 2(2)iii of the Magistrates Jurisdiction (Amendment) Act, 1981.

As for the objection letter, it is my feeling that some of the directors do not want the panel to go back to receipt books to determine the actual contributors. The complainants want the panel to make a decision as to who the land in dispute belongs without going into the necessary details of digging out the contributors. I think this is wrong.

I am praying the High Court to stand over this objection letter generally until the panel of elder sends its recommendations. If the said objection letter is read alongside the recommendations from the panel of elders, it may throw some light to the presiding judge and he will see clearly why it came up in the middle of the proceedings.


(O.K. HURIE NJERU)
DISTRICT OFFICER I/C.,
EASTERN DIVISION
MAKADARA.

c.c. The P.C. Nbi Area.

OFFICE OF THE DISTRICT OFFICER

Makadara.....

P.O. Box 30124, NAIROBI

6th July..... 1983



IN THE D.O.'S OFFICE AT MAKADARA

LAND DISPUTE NO. ONE (1) OF 1983

- 1. O.P. MATHAKA
- 2. RAYMOND MIAHICI
- 3. JEREMIA KARANJA
- 4. JEREMIA SINDIGA
- 5. JEREMIA MICHIAI
- 6. JEREMIA MICHIAI

COMPLAINANTS

VERSUS

- 1. KENNETH KARANJA
- 2. JEREMIA KARANJA
- 3. KENNETH MATHAKA
- 4. JEREMIA KARANJA

RESPONDENTS

TANGENT OF INTEREST

- 1. D.K. MATHAKA
- 2. KENNETH KARANJA
- 3. JEREMIA MATHAKA
- 4. JEREMIA MATHAKA

IN D.O.'S OFFICE MAKADARA

BEFORE G.R. RUMUKU MBERI

The above land dispute coming before the D.O. Makadara, which involves the two parties referred to above in an order to the P.C. Nairobi Area from the High Court of Kenya. It is in the proceedings of the Civil Suit No. 1348 of 1972 that the arbitration in question was referred to the P.C. This was done by the consent of both parties.

The order in dispute in that it required the P.C. or his nominee to determine the contributors who purchased the land in dispute is - J.R. 11179/3 Komo-Rock Road Nairobi. The rightful contributors are by definition of the order - "Persons who have contributed to purchase price as the date money was paid to Sharpley Darrot Hutch, Advocate for the purchasers of suit property".

There is a common understanding between the parties before me that a total 202 people contributed to the purchase price of the suit property. However, the complainants claim that 73 other persons also contributed.

6
The respondents, on the other hand, claim to have contributed, along with 64 others. The problem before the panel, therefore, is to determine who, on top of the 202 agreed members, contributed to the purchase price of the suit property.

Both parties did not furnish the panel with the list of 1967 contributors they had agreed upon. The complainants, however, produced a list of 225 members and argued that those 225 members in the name and title of Dandora Housing Scheme Ltd were the rightful contributors. They also agreed to consider the five respondents in the name of agents of Klamu Dandora Farmers Company, if they would withdraw the suit and team up with them. This would make a total of 230 members. The respondents did not agree.

At this juncture, I reminded the parties of the part set out in paragraph No. 6 of the High Court Order, pointing out that the then directors of the purchasers of the suit property should tell the panel when the land in dispute was completely bought out and also when the money was taken to the advocates mentioned therein. Mr. Koligall Mathare, the then secretary of the respondents produced a receipt from Charles Barrett dated 8th May, 1968. The panel did not see the need of taking statements from both parties since the task before it was straightforward - namely examining the necessity and available documents to ascertain the actual contributors to the purchase price of the land in dispute.

The complainants objected to the receipt arguing that at a general meeting held on 2nd July, 1967 called by the respondents, the complainants were told that the farm was completely bought out as at that date. A sale agreement was produced by the respondents. It is dated 3rd July, 1967. The agreement was therefore signed a day after the said general meeting took place. The sale agreement is between Mr. Robert Chen, then Havaz Khan Abeni Khan on one part and the four respondents who appeared before me plus one other. The five respondents have clearly indicated under their signatures that they were land agents on the said agreement. It is on the part of the respondents to explain why they act on the purchase money upto 8th May, 1968, having collected enough money to buy the land in dispute as at 2nd July, 1967.

The respondents agreed that Klamu Dandora Farmers bought the disputed land on behalf of its members so that the land could be transferred later. The division was not possible in 1967 or soon thereafter. The respondents did not explain to the panel why this was not possible.

It was in 1973 that a dissatisfied group led by the complainants lodged a caveat in the lands office after seeing no progress since 1967 the year of completing to buy the land in dispute. The caveat sought the transfer of the land in dispute from Klamu Dandora Farmers (who were acting as agents) to Dandora Housing Scheme Ltd. The latter was formed by the members with an intention of developing better housing for members once the land was sub-divided.

Money to buy the land was paid to the respondents in general but to Koligall Mathare in particular, the rest the proceeds to the respondents. He kept all the necessary books and documents.

At this point the complainant asks that they only go back to the panel to determine the actual contributors in to go through the list of the receipt books the respondents were using. Complainant asks that panel to produce the books. They were produced and are marked exhibit 2.

Examination of the receipt books revealed three categories of contributors:-

1. Those that had contributed money on or before 2nd July, 1967.
2. Those that contributed later i.e. after the above date.
3. Those whose money was returned.

I have attached three separate lists to the panel's recommendation and the findings have been communicated to both parties. Further, scrutiny revealed that complainants number one (1) and five (5) did not appear on the list of the actual contributors. Both were given a chance to prove their membership but to-date, they have not done so. This perhaps explains why an objection was lodged in the middle of the proceedings. This honourable court has a copy of DIB/33/19 of 23rd May, 1967 from the complainants.

Arising from the foregoing it is evidently clear that the land in dispute belongs to more than five people. Since the four respondents plus one other have indicated that they were acting as agents, it means that other people plus the agents, if they had an interest, contributed to the purchase price. Respondent three (3) and four (4) paid for the land after 2nd July, 1967 and this shows that their money did not actually go to the purchasing of this disputed property. The total amount collected at No. 200 on the first list indicated that collections were for much higher than the purchase price as shown on the agreement (see page 7 of list one).

I am only asking this honourable court to go by the recommendation of the panel since it has exhausted the order giving slowly and meticulously through the documents that both parties produced before it.

Throughout the proceedings, no witnesses were summoned since all the necessary evidence, in this case, documents, was produced before the court.

[Handwritten signature]

DISTRICT OFFICER
RABULI DIVISION
MAKADARA

6-7-83

- Signed
1. D.K. MATRU
 2. KAMUHU RUOCCU
 3. SALVANA WIA
 4. GUSON...

[Handwritten signature]
[Handwritten signature]
[Handwritten signature]

THE FOLLOWING IS A TRUE COPY (WORD FOR WORD) FROM THE ORIGINAL ARBITRATION AWARD OF 6TH JULY 1983 BEFORE P.C. NAIROBI NOMINEE AT MAKADARA.

OFFICE OF THE DISTRICT OFFICER

When replying please quote Ref. No. EST/LND/16/6/ (11)

Makadara P.O. Box 30184, Nairobi

6th July, 1983

IN THE D.O.'S OFFICE AT MAKADARA

LAND DISPUTE NO. ONE (1) OF 1983

- 1. C.P. WAITHAKA)
- 2. RAYMOND MWANGI)
- 3. NJENGA KARARI)
- 4. NJENGA CHEGE)
- 5. NELSON MUCHAI)
- 6. DANDORA HOUSING SCHEMES LTD)

COMPLAINANT

VERSUS

- 1. KIBIRO KARANJA)
- 2. REUBEN KANGARA)
- 3. KEINGATI WAIHARO)
- 4. GACHERU KANGARA)

RESPONDENTS

PANEL OF ELDERS

- 1. D.K. WAWERU
- 2. KAHUHU KUOGOTHOKA
- 3. WAINAINA NG'ANG'A
- 4. GIBSON MWANGI

IN THE D.O.'S OFFICE AT MAKADARA

BEFORE C.K. RUIRIE NJERU

The above land dispute coming before the D.O. Makadara, which involves the two parties referred to above in an order to the P.C. Nairobi Area from the High Court of Kenya. It is the proceedings of the Civil Suit No. 134 of 1972 that the arbitration in question was referred to the P.C. This was done by the consent of both parties.

The order is specific in that it requires the P.C. or his nominee to determine the contributors who purchased the land in dispute i.e. - L.R. 11379/3 Komo-Rock Road Nairobi. The rightful contributors are by definition of the order: - "Persons who have contributed to purchase price as the date monies were paid to Sharpley Barret Marsh, Advocates for the purchasers of suit property."

There is a common understanding between the parties before me that a total 202 people contributed to the purchase price of the suit property. However the complainants claim that 23 other persons also contributed.

9

The respondents, on the other hand claim to have contributed, plus 64 others. The problem before the panel, therefore is to determine who, on top of the 202 agreed members, contributed to the purchase price of the suit property.

Both parties did not furnish the panel with the list of 202 contributors they had agreed upon. The complainants, however, produced a list of 225 members and argued that those 225 members in the name and style of Dandora Housing Schemes Ltd were the rightful contributors. They also agreed to consider the five respondents in the name and style of Kiambu Dandora Farmers Company, if they would withdraw the suit and team up with them. This would make a total of 230 members. The respondents did not agree.

At this juncture, I reminded the parties of the guideline set out in paragraph No. 6 of the High Court order, pointing out that the then directors of the purchasers of the suit property should tell the panel when the land in dispute was completely bought out and also when the money was taken to the advocate mentioned therein. Mr. Keingati Waiharo, then the secretary of the Respondents produced a receipt from Sharpley Barret dated 8th May 1968. The panel did not see the need of taking statements from both parties since the task before it was straight forward – namely examining the necessary and available documents to unearth the actual contributors to the purchase price of the land in dispute.

The complainants objected to the receipt arguing that at a general meeting held on 2nd July, 1967 called by the respondents, the complainants were told the farm was completely bought out as at that date. A sale agreement was produced by the respondents. It is dated 3rd July, 1967. The agreement was therefore signed a day after the said general meeting took place. The sale agreement is between M/S Mehdi Khan, Khan Nawaz Khan Abaas Khan on one part and the four respondents who appeared before me plus one other. The five respondents have clearly indicated under their signatures that they were land agents on the said agreement. It is on the part of respondents to explain why they sat on the purchase money up to 8th May 1968, having collected enough money to buy the land as at 2nd July 1967.

The respondents agreed that Kiambu Dandora Farmers bought the disputed land on behalf of its members so that the land could be transferred later. The division was not possible in 1967 or soon thereafter. The respondents did not explain to the panel why this was not possible.

It was in 1973 that a dissatisfied group led by the complainants lodged a caveat in the Lands office after seeing no progress since 1967 the year of completing to buy the land in dispute. The caveat sought the transfer of the land in dispute from Kiambu Dandora Farmers (who were acting as agents) to Dandora Housing Schemes Ltd. The latter was formed by members with an intention of developing individual houses for members once the land was sub-divided.

Money to buy the land was paid to the respondents in general but to Keingati Waiharo in particular, who was the secretary to the respondents. He kept all the necessary books and documents.

At this point it became clear that the only way left to the panel to determine the actual contributors is to go through the duplicate of the receipt books the respondents were using. Respondent three was caused to produce the books. They were produced and are marked exhibit 2.

Examination of the receipt books revealed three categories of contributors: -

- 1. Those that had contributed moneys on or before 2nd July, 1967.
- 2. Those that contributed later i.e. after the above date.
- 3. Those whose moneys were refunded.

I have attached three separate lists to the panels' recommendation and the findings have been communicated to both parties. Further, scrutiny revealed that complainant's number one (1) and five (5) did not appear on the list of the actual contributors. Both were given a chance to prove their membership but to-date, they have not done so. This perhaps explains why an objection was lodged in the middle of the proceedings. This honourable court has a copy of DHS/83/19 of 23rd May, 1983 from the complainants.

Arising from the foregoing it is evidently clear that the land in dispute belongs to more than five people. Since the four respondents plus one other have indicated that they were acting as agents, it means that other people plus the agents, if they had an interest, contributed to the purchase price. Respondents three (3) and four (4) purchased the land after 2nd July 1967 and this shows that their moneys did not actually go to the purchasing of the disputed property. The total amount collected as at No. 200 on the first list indicated that collections were far much higher than the agreement (see page 7 of list one).

I am only asking this honourable court to go by the recommendations of the panel since it has exhausted the order moving slowly and meticulously through the documents that both parties produced before it.

Throughout the proceedings, no witnesses were summoned since all the necessary evidence, in this case, documentary, was produced before the panel.

Signed _____ (SIGNATURE) _____ (OFFICIAL STAMP) 6-7-83

- ELDERS**
- 1. D.K. WAWERU _____ (SIGNATURE)
 - 2. KAHUHU KUOGOTHOKA _____ (SIGNATURE)
 - 3. WAINAINA NGANGA _____ (SIGNATURE)
 - 4. GIBSON MWANGI _____ (SIGNATURE)

8/9/83

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 1349 OF 1972

ERT HACHARIA
WAITHAKA
KIONO KENAI
OTCHI KAREGA
WILLIAM KUTELIA
NELSON KUCHAI
JWENA CHIEB
DANDORA HOUSING SOCIETY LIMITED

PLAINTIFFS

VERSUS

KIBIRO KARANJA
KESON KAIKARA
KESICATI WAINARO
KJUMUNA MUMANI
PETER C. KAIKARA

DEFENDANTS

R U L I N G

I am satisfied that the arbitrators have substantially considered all that they were required to do so, and with respect to Mr. Chynggo-Otieno, I do not consider that there has been any breach of the rules of natural justice.

This matter has been pending for about eleven years, and must come to an end.

I enter judgment in terms of the award, and grant costs of this application also to the plaintiffs.

S. K. DACHOSYA

JUDGE

6/9/83

9-9-83

Secretary
High Court of Kenya

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1348 OF 1972

ROBERT MACHARIA)
 C.P. WAITHAKA)
 PLYMOND MWANGI)
 MUTEGI KAREGA)
 WILLIAM MUTHAMA)
 NELSON MUCHAI)
 NJENGA CHEGE)
 DANDORA HOUSING SCHEME LIMITED)

PLAINTIFFS

versus

KABIRO KARANJA)
 PEUBEN KANGARA)
 KEINGATI WAHAPU)
 NJUGUNA KIMANI)
 PETER G. KANGARA)

DEFENDANTS

DECREE

CLAIM FOR:

- (a) An order for transfer by the Defendants to the Plaintiff company of L.R.No.11379/3 Komorock Road, Nairobi to hold for and to the use of the purchasers.
- (b) Account of the money paid to the Defendants by the purchasers.
- (c) Registration of the property L.R.No.11379/3 in the name of the Plaintiff company.
- (d) Payment by the Defendants to the Plaintiff company of any money found due in account with interest at 10% from date of filing.
- (e) Costs of the suit with interest at 10% from date of judgement till payment in full.

COUNTER CLAIM:

- (a) A declaration that L.R.No.11379/3 Komorock Road, Nairobi is held by the Defendants (Plaintiffs by Counter-claim) in trust for Kiambu Dandora Farmers Company, subject to the grant of consent or exemption as required by law to a transfer thereof.
- (b) Costs.

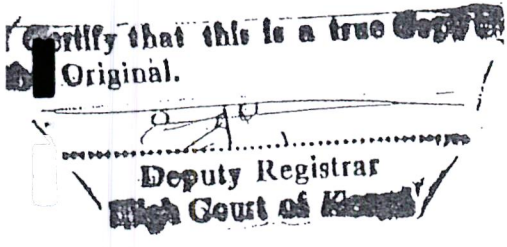
UPON READING the application presented to this court on the 17th day of August 1983, the 2nd day of September, 1983 and the 26th day of February 1985 respectively, by Counsel for the Plaintiffs and Defendants AND UPON READING the Affidavits of CORNELIUS PETERSON WAIHAKA and KEINGATI WAIHAKO In support of the said Applications sworn on the 16th day of August, 1983 and 25th day of August, 1983 and UPON HEARING Counsel for both parties:

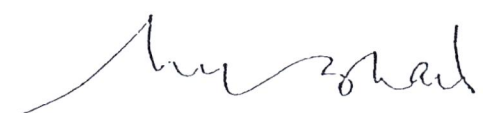
IT IS ORDERED:

1. That the application to set aside the award be and is hereby dismissed.
2. That judgement be and is hereby entered for the Plaintiffs in terms of the award i.e.
 - (I) The suit premises L.R.No.11379/3, Komorock Road, Nairobi, was bought by and is hereby vested in DANDORA HOUSING SCHEMES LIMITED for and on behalf of the members thereof.
 - (II) The Defendants do pay/account to the Plaintiffs the amount of the money found to be in excess of the actual purchase price of the land with interest at 8% p.a. from the date of filing this suit.
 - (III) The Defendant's Counterclaim be and is hereby dismissed.
3. The Defendants do pay to the Plaintiffs the costs of this suit with interest to be taxed and certified by the Taxing Officer of this Court.

GIVEN UNDER my HAND and the SEAL of this Court this 13th day of March, 1985.

ISSUED this 14th day of MARCH, 1985


 Certify that this is a true copy of the Original.
 Deputy Registrar
 High Court of Kenya


 SENIOR DEPUTY REGISTRAR
 HIGH COURT OF KENYA
 NAIROBI

14

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 1343 CP 1972

- 1. ROBERT MACHARIA
- 2. C.P. WAKITHA
- 3. RAYMOND MWANGI
- 4. MUTEGI KARIGA
- 5. WILLIAM NUTHAMA
- 6. NELSON IUCHAI
- 7. NJENGA CHEGE
- 8. DANDORA HOUSING SOCIETY LTD.

PLAINTIFFS

V E R S U S

- KABIRO KARANJA
- REUBEN KANGARA
- FRINGATI MATHARO
- NJUGUNA KIBIAHI
- PETER G. KANGARA

DEFENDANTS

(BEFORE THE HONOURABLE MR. JUSTICE SACHDEVA
IN CHAMBERS ON 13TH NOVEMBER, 1985)

O R D E R

UPON READING the application presented to this Court on 22nd day of October, 1985 by Counsel for the Nairobi City Commission under Section 80 of the Civil Procedure Act and Order XLIV of the Civil Procedure Rules AND UPON READING the affidavit of HENRY JIMMY MOSE in support thereof sworn on the 17th day of September, 1985 together with annexures thereto AND UPON READING the notice of objection presented to this Court by Counsel for the Plaintiffs on 1st November, 1985, AND UPON READING the Replying affidavit of CORNELIUS PETERSON WAKITHA sworn on the 31st day of October, 1985 together with the annexure thereto AND UPON READING Counsel for the Nairobi City Commission and Counsel for the Plaintiffs IT IS ORDERED :-

1. That the decree given on 13th March, 1985 be and is hereby reviewed;
2. That the decree given on 13th March, 1985 be and is hereby set aside;
3. That the orders contained in the decree given on 13th March,

...../2

1985 be and are hereby vacated.

4. That the Plaintiffs be and are hereby at liberty to extract a proper decree and the same do follow the Court's judgement upon reference to arbitration ~~and the~~ and the draft thereof be served on the applicant for approval.

5. That the costs of this application be and are hereby awarded to the applicant.

GIVEN under my hand and the Seal of this Court this ~~13th~~ ~~November~~ 1986.

ISSUED this 3rd day of January, 1986



DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI.

CIVIL CASE NO. 1348 OF 1972

ROBERT MACHARIA)	
C.P. WAITHAKA)	
RAYMOND MWANGI)	
MUTEGI KAREGA)	PLAINTIFFS
WILLIAM MUTHAMA)	
NELSON MUCHAI)	
NJENGA CHEGE)	
DANDORA HOUSING SCHEME LIMITED)	

VERSUS

KABIRO KARANJA)	
REUBEN KANGARA)	
KEINGATI WAIHARO)	DEFENDANTS
NJUGUNA KIMANI)	
PETER G. KANGARA)	

IN CHAMBER ON THE 1ST DAY OF DECEMBER 1993
BEFORE HONOURABLE MR. JUSTICE SHIELDS

O R D E R

UPON READING the application presented to this court on the 9th August 1993 by Counsel for the applicants under Sec. 3A of the Civil Procedure Code AND UPON READING the affidavit of Cornelius Peterson Waithaka sworn on the 6th August 1993 AND UPON HEARING Counsel for the Plaintiff/Applicant herein in absence of Counsel for the defendant duly served..

IT IS ORDERED:-

1. THAT the Deputy Registrar of the High Court be and is hereby authorised to sign the land Transfer forms on behalf of the defendants herein following the court decree dated 14th March 1985 in regard to Land L.R. 11379/3 Komorock Road Nairobi.

GIVEN under my hand and the seal of this court this 1st day of December 1993.

ISSUED at Nairobi this *9th* day of *December* 1993.

I Certify that this is a true Copy of the Original.

9-12-93

[Signature]

SR

Deputy Registrar
High Court of Kenya

SR **S. J. SHAI**
DEPUTY REGISTRAR
HIGH COURT OF KENYA AT NAIROBI

Date received for registration

Presentation Book

Registration Fees: Sh.

19..... No. /19.....

paid. Receipt No.

R.L. 1

REPUBLIC OF KENYA

THE REGISTERED LAND ACT
(Cap. 300)

TRANSFER OF LAND

TITLE NO. I.R. 23514

I/~~AVE~~ the Senior Deputy Registrar of the High Court of Kenya in Nairobi.

in consideration of High Court Order dated 1st December 1993 in regard to HCCC No. 1348 of 1972 made in chambers before Hon. Justice Shields.

(the receipt whereof is hereby acknowledged) HEREBY TRANSFER to Dandora Housing Schemes Limited.

of P.O Box 56770, Nairobi

the land comprised in the above-mentioned title. i.e Land Ref. No. 11379/3

The Transferees declare that they hold the land as joint proprietors/as proprietors in common* in the following undivided shares:—

For and on behalf of the members and Shareholders thereof

Dated this 14th day of December 1993

Signed by the Transferor

in the presence of:—

M. J. BHATT
Deputy Registrar

I CERTIFY that the above-named

appeared before me on the day of 1993

and, being known to me/being identified by*

acknowledged the above signatures or marks to be his [theirs] and that he [they] had freely and voluntarily executed this instrument and understood its contents.

Signature and Designation of Person Certifying

*None whichever is not applicable.

REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT (CHAPTER 281)

CERTIFICATE OF TITLE: NUMBER I.R. 23514

TERM: FREEHOLD

TRANSFER

This is the
 to in the
 of
 declared before me
 at
 NBI
 DEPUTY REGISTRAR

I, M. J. BHATI, Senior Deputy Registrar of the High Court of Kenya Nairobi in pursuance of an Order of the court (The Hon. Mr. Justice Shields) dated 1ST DECEMBER, 1993 in High Court Civil Case No. 1348 of 1972, and presented to the Land Registry on 14th Jan. 1994 and marked as daily Fol. No. 331 HEREBY TRANSFER to DANDORA HOUSING SCHEMES LIMITED of Post Office Box 56770 Nairobi. Subject to the Memorandum of Charges notified hereunder, all that piece of land being an estate in fee simple of ALL that piece of land situate in the city of Nairobi in the Nairobi area containing by measurement eight hundred and eighteen (818) acres or thereabouts and being Land Reference Number 11379/3 as delineated on Land Survey Plan Number 86043 annexed to the said Transfer SUBJECT however to the Act, Special Conditions, Encumbrances and other matters specified in the Memorandum hereunder written.

DATED this 31st day of January 1994.

TRANSFERORS

Signed by the said Senior Deputy Registrar Under the SEAL of this Court in the presence of

[Signature]
 DEPUTY REGISTRAR
)
)
)
)
 DEPUTY REGISTRAR

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 3250 OF 1995

DANDORA HOUSING SCHEMES LIMITED PLAINTIFF

VERSUS

CITY COUNCIL OF NAIROBI DEFENDANT

RULING

When I was requested by Counsel for the plaintiff, Mr. D.K. Thuo, to record a consent order in terms of the letter dated 26th June 1998 signed by the Advocates for the plaintiff and the advocates for the defendant, I asked for time to peruse the case file before recording the consent.

I have now perused the court case file and hold the opinion that it will not be proper to record a consent in the terms proposed in the consent letter dated 26th June 1998 for a number of reasons; among them the following:

First the proposed consent has the

Effect of settling the suit through

The Notice of Motion dated 20th

February 1998 without reference

to the amended plaint of same dated

Secondly prayers in the plaint, prayers in

Notice of Motion and the prayers the

Consent Letter are not consistent

and it will be difficult to execute the

prayers in the consent letter.

Thirdly, if the suit premises was vested in the

Plaintiff by an order of the High Court

given on 13th March 1985 in HCCC 1343

of 1972, I do not see the proprietor of a

declaratory prayer for ownership of the

suit and of prayer (i) in the consent letter.

Fourthly while it may be doubted whether the

so called "Certificate of Title" being relied

upon by the plaintiff in this suit is a proper

lawful document to prove proprietorship,

the said "Certificate of Title" is said to be in

21

the name of "Kiambu Dandora Farmers
Company" and not the name of the
Plaintiff herein, "Dandora Housing
Schemes Limited"

Fifthly, having obtained a vesting

order in HCCC No.1348 of 1972

there is no evidence that that

vesting order or a transfer giving

effect to the vesting order was

registered under the Regulation

of Titles Act.

I think the court is being asked, through the consent letter dated
26th June 1998, to make a bad order and same should not be
granted.

Dated this 20th July 1998 in the presence of.....

J.M. KHAMONI.

JUDGE

22

Present:

Mr. Njoroge for Mr. Thuo for the plaintiff/applicant.

J.M. KHAMONI

JUDGE

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1348 OF 1972

ROBERT MACHARIA & OTHERS PLAINTIFF
VERSUS

KABIRO KARANJA & OTHERS DEFENDANT

R U L I N G

A P P L I C A T I O N

By Chamber Summons and under order 44 rule 1 of the Civil Procedure Rules and section 3A of civil Procedure act the applicants are asking for orders that:-

- (1). This Honourable court be pleased to review and set aside the orders made by the Honourable Justice Shields on 1st December, 1993.
- (2). The court vacates all other consequential orders based on this order.
- (3). The costs off the application be provided for.

24

BACKGROUND:

The main suit which gave rise to this application was filed in 1972 by seven defendants against the five defendants. The dispute between the parties was the land known as LRR NO. 11379/3 of 818 acres and which was bought by the parties from one Mehdi Khan. In issue was whether the land belonged to the 5 defendants. The Plaintiff claimed that the land was bought by 225 persons and that the 5 defendants were agents of these persons. According to the plaintiffs the Vendor was in a hurry to leave the country and therefore the land was transferred to the five who were to hold it in trust for the buyers until their company Kiambu-Dandara Farmers Company Limited was incorporated. Three of the five had claimed they were the owners of the land with 2 admitting what the Plaintiffs were claiming. In the course of the hearing before Sachdeva J. on 9.3.83 a consent order on the following terms was entered namely:-

- "(1). Parties are agreed that 202 people have made contributions towards the purchase price of the suit property, and that their names have been agreed to.
- (2). It is in dispute whether 23 persons claimed by Plaintiffs to be contributors towards the purchase price, and it is also in dispute whether the 5 defendants and 64 other persons on their side are also contributories towards the purchase price. The issue in dispute is by consent referred to the arbitration of the Provincial commissioner Nairobi or his nominee for determination and the arbitrator shall file his award in court within 90 days of

today".

(The other parts of the consent order are not directly relevant to the present application and I shall not quote them).

On 12.7.83 the award was read to the people (28) who were present. An attempt was made to challenge the award but was dismissed by the Judge on the grounds that the application was out of time under order 45 of the Civil Procedure Rules.

On 8.9.83 the Judge made a ruling which I consider important and I reproduce the same in extenso.

"RULING"

I am satisfied that the arbitrators have substantially considered all that they were required to do so and with respect to Mr. Onyango-Otieno, I do not consider that there has been any breach of the rules of Natural Justice.

This matter has been pending for about eleven years and must come to an end. I enter Judgment in terms of the award and grant costs of this application also to the Plaintiffs.

S.K. SACHDEVA

JUDGE

8.9.93"

At this stage it is significant to examine the award itself. It shows that complainants Nos. one and five were not contributors and therefore not members.

At page 3 in paragraph 3 the award reads:-

"..... I have attached three separate lists to the panel's recommendation and findings have been communicated to both parties. Further scrutiny revealed that complainants No. one (C.P. KATHUKA) and number 5 (NELSON MUCHAI) did not appear on the list of actual contributors.

Both were given chance to prove their membership but to date they have not done so....."

After this and following the Judgment as aforesaid CORNELIUS PETERSON WAITHAKA and KEINGATI WAIHARO made an application on 17.8.83 AND 2.9.83 and 26.2.85 following a decree they purported to have extracted from the said Judgment and obtained an order which read:-

"UPON READING the application presented to this court on the 17th day of august, 1983 the 2nd day of September, 1983, and 26th day of February, 1985, respectively, by Counsel for the Plaintiffs and Defendants and upon reading the affidavit of Cornelius Peterson Waithaka and Keringati Waiharo, In the support of the said application sworn on 16th day of august, and 25th day of august, 1983 and upon hearing the counsel for both parties.

IT IS ORDERED:-

- (1). That the application to set aside the application be and is hereby dismissed.
- (2). That Judgment be and is hereby entered for the Plaintiffs in terms of the award i.e.,
 - (i) The suit premises LR No. 11379/3 Komarock road Nairobi was bought by and is hereby vested in DANDORA HOUSING SCHEME LIMITED for and on behalf of the members

27

thereof.

(ii) The Defendants do pay Account to the Plaintiffs the amount of the money found to be in excess the actual purchase price of the land with interest at 8% p.a. from the date of filing this suit.

(iii) The Defendants counter claim be and is hereby dismissed.

(3). The Defendants do pay to the Plaintiff's the costs of this suit with interest to be taxed.

Dated 14th Day of March, 1985.

SIGNED
SENIOR DEPUTY REGISTRAR"

This order was however reviewed and vacated on 13th November, 1985. Paragraph 4 of the order reads:-

"That the Plaintiffs be and are hereby at liberty to extract a proper decree and the same do follow the court's Judgment upon on reference to arbitration and the draft thereof be served on the application for approval."

It appears from the court record the main file disappeared and had to be reconstructed where upon on 6.8.93 Cornelius Peterson Waithaka filed an application asking for an order authorising the Deputy Registrar to sign a transfer of Land LR No. 209/1/379/3 to Dandora housing Scheme limited. This was to give effect to the court Decree of 14.3.85.

(This is the decree and order which were set aside on 13.11.85). The application was allowed on 1.12.93 by an order which read "order granted as prayed" and following this order the

Deputy Registrar issued an order authorising the signing of the transfer and giving effect to the decree of 14.3.85.

The Registrar did not sign the transfer as expected. He refused to sign the transfer and what happened next was that Cornelius P. Waithaka arranged for a certificate of title purporting to register the transfer in favour of Dandora Housing Scheme Limited. A copy of this forged certificate was annexed to the affidavit in support of this application.

The provisional Certificate under section 71 of RTA Cap 281 is issued when the original certificate is lost and is dated 6.8.1998. Mr. Peter K. Keingatti in his supplementary affidavit depones that at all times the company has had the original title and there is no time it was ever lost.

Following this provisional certificate Cornelius Peterson waithaka purported to transfer the land to Dandora Housing Scheme Limited and eventually to his own company Ms. Falson Kenya Ltd. on 11.12.98.

After this he was engaged in selling portions of the suit land and obtaining loans by charging the land documents and a copy of a charge for Kshs. 10 Million was annexed to the affidavit.

Consequently the said Cornelius Waithaka has been charged with criminal offenses related to the Provisional Licence in criminal case No. 516/99 in Makadara Resident Magistrate's Court and the case is pending hearing.

SUBMISSIONS:

Mr. Njiru for the applicant submitted that if the true facts of the case had been given to Judge Shields on 1st December, 1993 he would not have made the order he did. Mr. Njiru relied in his application on the facts as related in the affidavits in support deponed by Peter Keingatti as a further supplementary affidavit to that sworn by Mr. Njiru.

The affidavits give the historical facts as they happened and as described herein. There are supporting documents supporting each contention and all of these were not challenged by the Respondent. He further submitted that these facts contained in the affidavits in support of the application were found out after the order was made and are facts which could not have been found or established at the time when the application was heard.

He further submitted that the present application was made without delay taking into account that the court file had disappeared and had to be reconstituted. He pointed out that the award and the subsequent Judgment does not include the names of plaintiffs numbers one and five as their names were not included in the list of the contributors.

The Plaintiffs deliberately misled Judge Shield to obtain the order they obtained.

The title to the land clearly shows that the 5 persons ~~who~~ are referred to as agents are trustees holding the land on behalf of the contributors.

Mr. Musyoka for the respondent opposed the application and the gist of his arguments are that:-

The application does not satisfy the provisions of order 44(1) of the Civil Procedure rules in that:-

- (a) There was no discovery of important and new matter which was not known to the applicant at the time of the application.
- (b) There was no error apparent in the order sought to be reviewed.
- (c) There was delay in filing the present application.

He further submitted that the arbitration was to determine whether the 23 other persons were members of the company. The award according to Mr. Musyoka was in favour of the plaintiffs and that review of this order would not give the defendants the land.

Mr. wakahui for 1st, 3rd, 4th and 6th Respondents/Defendants in his submissions conceded that the original decree was set aside by the same Judge that is Justice Sachdeva on 13.11.85 in pursuance of an application by the Nairobi City Council. This application was opposed by Mr. Waithaka.

This decree was set aside mainly because it did not conform to the Judgment which was entered following the award. He urged that the decree of 13.3.85 should be set aside and all subsequent orders vacated. Plaintiffs should have drawn up the correct decree which they did not.

FINDINGS

I read and considered the contents of the affidavits filed in support and against the application. I have also gone through all

the annexures to these affidavits in particular the affidavit in support and the further affidavit filed by the applicant. I find that the averments therein are supported by the annexures. One of the issues contested was the contents of the award and the Judgment which was subsequently entered.

The award has three lists of the contributors and does not include the names of the first complainant (C.P. Waithaka) and the fifth complainant (Nelson Muchai).

The award is very emphatic that these two were unable to prove their contribution. I therefore find that the two complainants were not contributors as per the award and since this award became the Judgment any decree extracted from this Judgment should reflect the absence of their names as contributors. The terms of the Arbitration included the determination of who were the contributors and the judge found as a fact that the arbitration did what it was supposed to do. There being no appeal on this point the matter rested there and cannot be revived through the back door.

The other contentious point was whether the decree subject of the application by Cornelius Peterson Waithaka the 1st complainant of 6.8.93 purported to reflect the contents of the Judgment. Examination of the court record shows that the applicant in this application of 6.8.93 is the same Waithaka who was found by the Arbitration Tribunal not to be a contributor. The order granted by justice Shield in this application had the effect of resuscitating the decree which was set aside on 13.11.85 because it did not conform to the Judgment. This would in turn have the effect of

including Mr. Waithaka as a contributor. I therefore find that even this subsequent decree was not in conformity with the Judgment and it was worded in such a way as to include the applicant Mr. Waithaka as one of the contributors.

It is to be noted that soon after obtaining the order the applicant made efforts to get an order of the court authorising the deputy registrar to sign a transfer in favour of Dandora Housing Scheme Limited.

The manner in which the Provisional title was obtained is a further proof of the desperate efforts by Mr. Waithaka to change the court judgment to include his name as a contributor.

I therefore find that the decree of 14.3.85 having been set aside could not be reinstated by the order of 1.12.93 and consequently the order directing the Deputy Registrar to sign the transfer was irregular and it is no surprise that the Registrar refused to sign the transfer.

As to whether there was a dowry of important and new matter which was not known to the applicant at the time of this application one has to go back to the 14.3.85. An order was given by the court which was in favour of the plaintiff and it had sought to vest the land in Dandora Housing Scheme Limited which is what C.P. Waithaka has been seeking to achieve.

This order was reversed and vacated on 13.11.85 with a direction that the plaintiffs extract the correct order. As far as the defendants the present applicants were concerned the matter rested there. The next thing the defendants saw was an application on

33(1)

6.8.93 by Wathaka seeking the transfer of the land to Dandora Housing Scheme Ltd once more. He relied in his application on the ground that the original certificates had been lost which was not true. The applicants were not aware on 1.12.93 that C.P Waithaka had given false information in support of his application otherwise they would have opposed the application. They came to know of these facts later after the order had been obtained. I therefore find that there was important and new matters which were not known to the applicants at the time of the application. The order granted by the court ended up with the plaintiff CP Waithaka obtaining the provisional licence. There is evidence that the original certificate had not been lost as claimed by CP Waithaka. The Criminal proceedings against him before the Resident Magistrate Makadara testified to this mistake. That there is in existence the original title deed, constitutes an error apparent in the order. The checkered history of this case with the file frequently disappearing only to emerge with a new application by the same applicant makes a mockery of the requirement that the applicant for review should make his application without delay.

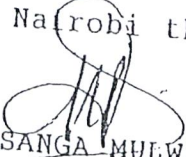
Upon realising that an order circumventing the award had been obtained the applicants moved the court for a review of this order. Considering that this was not the first application to change the terms of the judgment and the decree and it was not the first time such orders were set aside (see the applications of 17.8.83 and 26.2.85 and that of 13.11.85). I therefore find that the present applicants were not guilty of delay in filing this application.

They could only file the application after learning that their rights had been jeopardized. For the respondents to rely on delay on the part of the applicants he must show that the applicants were aware of the order and when it was granted and that since it was so granted has delayed in making the application. Section 80 of the Civil Procedure Act allows application for review of a Judgement to the court which passed the decree or made the order with Order 44 providing the Procedure, and the court upon such application can make such order as it things fit. See Rudd, J in Mohan Singh Chadha V. Sandhu Singh Bhoghal 1965 E.A 775.

I therefore find that the respondents' grounds have no merit and that the application like the other before it falls within the ampits of order 44(1) of the Civil Procedure Rules and it is a proper application for a review.

In the greater interests of Justice and taking into account that this is a land dispute involving many members and it is a dispute in which one or few individuals are repeatedly attempting to rob the members of the land I would grant the application which I hereby do. The orders made by Honourable Justice Shields on 1.12.1993 are hereby reviewed and set aside. All other consequential orders based on this order are hereby vacated. The respondents shall pay the costs of this application.

Dated and delivered at Nairobi this 26th day of October 1999.


KASANGA MULWA

JUDGE

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 1348 OF 1972

ROBERT MACHARIA)
 C.P. WAITHAKA)
 RAYMOND MWANGI)
 MUTEGI KAREGA)
 WILLIAM MUTHAURA)
 NELSON MUCHAI)
 NJENGA CHEGE)
 DANDORA HOUSING SCHEME LTD.)

PLAINTIFFS

VERSUS

KABITO KARANJA)
 REUBEN KANGARA)
 KEINGATI WAIHARO)
 NJUGUNA KIMANI)
 PETER G. KANGARA

DEFENDANTS

(BEFORE THE HONOURABLE MR JUSTICE
MULWA IN CHAMBERS ON 26TH OCTOBER, 1999)

ORDER

UPON READING the application presented to this Court on 17th February 1999 by Counsel for KIAMBU DANDORA FARMERS COMPANY LTD. under Order 44 Rule 1 Civil Procedure Rules and Section 3A Civil Procedure Act AND UPON READING the affidavit of Boniface Njiru sworn on 17th February 1999 and the annexures attached thereto, Peter K. Keingati sworn on 19th April 1999 and the annexures attached thereto and Replying affidavit of Robert Macharia sworn on 22nd February 1999, Raymond Mwangi sworn on 22nd February 1999, Mutegi Karega sworn on 23rd February 1999, William Muthama sworn on 22nd February 1999, Nelson Muchai sworn on 22nd February 1999 and C.P. Waithaka sworn on 1st March 1999 AND UPON HEARING COUNSEL for KIAMBU DANDORA FARMERS COMPANY LTD., Counsel for the 2nd plaintiff and Counsel for the 1st, 3rd, 4th, 5th and 6th plaintiff IT IS ORDERED

1. That the Orders made by Honourable Mr Justice Shields on 1st December 1993 be and are hereby reviewed and set aside.
2. That all such consequential orders as were issued pursuant to the order made on 1st December 1993 be and are hereby vacated.

3. That costs of this application be and are hereby awarded to the applicant.

GIVEN under my hand and the Seal of this Court this 26th day of October 1999.

ISSUED this 12th day of November, 1999.

P. M. Shauri
DEPUTY REGISTRAR
HIGH COURT NAIROBI

*Checked
Jesse
17/11*

I CERTIFY THIS IS TRUE COPY OF THE ORIGINAL.
DATED: 22-9-2000
P. M. Shauri
DEPUTY REGISTRAR
HIGH COURT OF KENYA
NAIROBI

36

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CIVIL CASE NO. 1088 of 2000

DANDORA HOUSING SCHEMES LTD. PLAINTIFF

- v e r s u s -


KIAMBU DANDORA FARMS COMPANY LTD..... DEFENDANT

RULING

Mr. Njiru appearing for the Respondent in the application dated 12th July 2000, raised a preliminary objection of Res Judicata.

The application prays that the Defendant be restrained from dealing in any manner with the plot of land bearing L.R No. 11379/3/Dandora/Nairobi pending hearing and determination of this suit. The Plaintiff/Applicant is Dandora Housing Schemes Limited and the Defendant is Kiambu Dandora Farmers Company Limited. The application is based on the grounds stated on the face thereof and on affidavit sworn by one Sarah Wacera Mwangi on 12th July 2000. The subject matter of this suit has a long history of legal wrangles dating back to the year 1972.

The Plaintiff before me was 8th Plaintiff in the plaint and 8th Defendant in the counter-claim filed in the H.C.C.S No. 1348 of 1972 between the alleged contributors of the plot of land in question which is admeasuring 882 acres. The Defendant herein was the 9th Defendant in the counter-claim therein. The parties have gone in and out of the Courts and Arbitral Tribunal severally and the last effective order was made under the Ruling of Kasanga-

This is the exhibit marked PKK.22 referred to in the annexed affidavit/declaration of Pete. KK sworn/declared before me This 11th day of FEB 192003 at NBI

COMMISSIONER FOR OATHS

Mulwa J in his ruling dated 26th October 1999 which reviewed and set aside the orders made by Sachdeva J on 1st December 1993. The essence of the ruling was that the present Applicant/Plaintiff has been excluded from the ownership of the suit land.

Mr. Njiru relying on the facts deponed in the replying affidavit sworn by one Peter Karambi Keingatti on 26th July 2000 and annexures thereof, submitted that the suit is squarely within the Doctrine of Res-judicata and thus the application be dismissed with costs.

Mr. Oyugi thinks that the matter is not pre-determined between the parties herein as the parties were on the same side in the counter-claim in the previous case filed in 1972. Furthermore the Award was in respect of the contributors and thus the companies were not involved. With respect, the said contention is not borne from the records. The contributors were specified in the award (though the list thereof is not before me) and that fact cannot be and has not been controverted. The several attempts to transfer the suit premises in the name of the Plaintiff have been rejected.

The submissions that the defence does not refer to the previous case and that is why the objection should not be upheld, deserves to be rejected. The issue is averred in the replying affidavit and at the moment they are praying for dismissal of the application. In any event that fact has been pleaded in the plaint and the Defence can always be amended under the Civil Procedure Rules.

The ruling of Kasanga-Mulwa J referred to hereinbefore specifically overruled the attempts to register the suit premises under dubious means in the name of the Plaintiff by one C.P. Waithaka.

The essence of the provisions of Section 7 is to make an end to the litigation severally attempted. The issue in this case was directly in issue in the earlier case. The Plaintiff herein was a Plaintiff in the Plaintiff and the Defendant herein was the Defendant in the counter-claim. The other parties were litigating for and/or under the same claim and/or title. This ^{is} how ^{is} simple the position is of this case.

The above factors satisfy me that the issues raised and reliefs claimed herein are barred under the doctrine of Res-judicata and I uphold the preliminary objection raised and dismiss the application with costs.

DATED at NAIROBI this 29th day of Sept^r 2000.

K.H. Rawal

K.H. RAWAL (Mrs)

JUDGE

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 1348 OF 1972

ROBERT MACHARIA & OTHERS.....PLAINTIFF

VERSUS

KABIRO KARANJA & OTHERS.....DEFENDANT

RULING

In this Application the applicant is asking for orders that Falcon Kenya Limited be joined as an interested party to the proceedings and that the order made by this Court on 26.10.1999 be vacated and set aside. A stay of further proceedings pending the hearing of this application is also asked for.

Mr. Thiongo, the Learned Counsel for the applicant in his submission contended that the applicant is a Limited Liability Company distinct from the Directors in particular from Mr.C.P. Waithaka. The applicant should have been given a chance to show that the documents were not a forgery. He further submitted that it is

his client's case that it bought the land for valuable consideration from the Dandora Housing Scheme Limited.

The application is opposed and Mr. Njiru, the Learned Counsel for the Respondent in the application submitted that the documents, which are relied upon by the applicant, were all shown to be forgeries. This Court found as a fact that Mr. Waithaka was not a contributor to the purchase of the land in question and in any case the applicant has not shown how being joined as a third party to the proceedings would assist. The Applicant Company belongs to Mr. Waithaka, his son and a Mr. Mwaura. They have not shown who the other directors are and who are the the shareholders.

This application is supported by an affidavit of Mr. C.P. Waithaka in which he attempts to go into the issues, which were considered in the review application whose ruling was delivered on 10.03.1999.

In that application the respondents were Kibiro Karanja and 4 others. Mr. C.P. Waithaka swore the supporting affidavit dated 1st March, 1999 and filed on 2nd March, 1999. The matters raised in this application were all gone into during the hearing of the application

and were adequately addressed to in the Ruling of this Court of 26.10.1999.

In the supporting affidavit by Mr. C.P. Waithaka filed on 29.2.2000 the same issues as those in the affidavit of 2nd March, 1999 are revisited only in more details this round. He now claims that in the earlier suit he was a plaintiff in his own capacity thereby distancing himself from Falcon Kenya Limited which he says had substantial interest in the suit land and was not afforded a chance to be heard. What Mr. Waithaka forgets is that what was before the court in the application was a review application and not a suit. Falcon Kenya Limited was not a party to the proceedings, which were subject of the Review, and in any case the court was reviewing a matter which had been concluded in 1983. How then and under what law is Falcon Kenya Limited is to be made a party to those proceedings? It will be seen from the Ruling of this court of 26.10.1999 that Mr. Waithaka repeatedly filed a number of applications whose aim was to circumvent the court finding of 1983 all without success. The application before the court is yet another attempt to try to undo the court finding of 1983. In the Ruling of 26.10.1999 the court reviewed the history of this case and made its

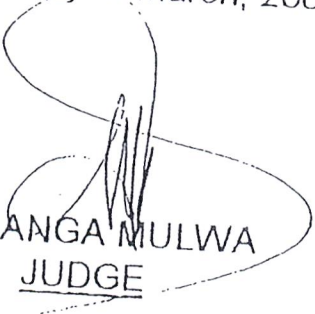
42

finding. The applicant cannot come at this stage asking to be made a party through a review application.

This is simply stretching the application of the Rules too far and clearly amounts to total abuse of the court process. Even if the Applicant Company had absolutely nothing to do with Mr. Waithaka let alone where it is apparent that the company is his, one fails to see how the company by any stretch of imagination could be made a party to these proceedings.

I find the application with no merits and the same is dismissed with costs.

Delivered and dated this 5th day of March, 2001.


KASANGA MULWA
JUDGE

43

REPUBLIC OF KENYA
THE REGISTRATION OF TITLES ACT (CHAPTER 281)
TITLE NUMBER R. 23514

TERM: FREEHOLD

TRANSFER

I, D. MATHEKA Senior Deputy Registrar of the High Court of Kenya, Nairobi in pursuance of an order of the Court (The Hon. Mr. Justice Sheilds) dated 1st December 1993, in High Court Civil Case NO. 1348 of 1972 and in consideration of the Decree dated 13th March 1985 HEREBY TRANSFER to DANDORA HOUSING SCHEMES LIMITED of Post Office Box 43456, Nairobi all that piece of land being an estate in fee simple of ALL that piece of land situate in the city of Nairobi in the Nairobi area containing by measurement eight hundred and eighteen (818) acres or thereabouts and being Land Reference Number 11379/3 as delineated on Land Survey Plan Number 85043 SUBJECT however to the Act, Special Conditions, Encumbrances and other matters specified in the Memorandum hereunder written.

DATED THIS 28th DAY OF May 2003

Signed by the said)
Senior Deputy Registrar)
Under the SEAL of)
This Court)
)
)
)
)
)
)
In the presence of)

KOR

Deputy Registrar

KOR

DEPUTY REGISTRAR

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 1348 OF 1972

ROBERT MACHARIA.....)
C.P. WAITHAKA.....)
RAYMOND MWANGI.....)
MUTEGI KAREGA.....) PLAINTIFF
WILLIAM MUTHAMA)
NELSON MUCHAI.....)
NJENGA CHEGE.....)
DANDORA HOUSING SCHEMES LIMITED.....)

VERSUS

KIBIRO KARANJA.....)
REUBEN KANGARA.....)
KEINGATI WAIHARO.....) DEFENDANT
NJUGUNA KIMANI.....)
PETER G. KINGARA.....)
KIAMBU DANDORA FARMERS CO. LTD.....)

IN CHAMBERS ON THE 29TH DAY OCTOBER 2003
BEFORE HON. MATHEKA PDY REGISTRAR

ORDER

This case coming up for mention on 29th day of October 2003 before Hon. Matheka PDY Registrar in respect of the transfer dated 28th May 2003 pertaining to L.R. No. 11379/3 **AND UPON HEARING** Counsel for the applicant/plaintiff and Counsel for the defendant/respondent.

IT IS ORDERED

1. That the transfer dated 28th May 2003 signed by Hon. Matheka PDY registrar which was based on false information given by Counsel for the applicant, be and is hereby reviewed and cancelled.
2. That the original transfer dated 28th May 2003 be forthwith brought to court on the 18th day of November 2003 for cancellation.

GIVEN under my hand and the Seal of this Court this 29th day of October, 2003.

ISSUED at Nairobi this

[Signature] day of *NWanish* 2003.

[Signature]
DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI

I CERTIFY THIS IS TRUE COPY OF THE ORIGINAL
A. K. W. B.
[Signature]
CLERK OF THE COURT
HIGH COURT OF KENYA
NAIROBI

This is the exhibit marked *KW 16* referred to in the petition/declaration of *[Signature]* and the same was read before me this *17* day of *October* 19. *2003* at *[Signature]*

45

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1348 OF 1972

ROBERT MACHARIA
C.P. WAITHAKA
RAYMOND MWANGI
MUTEGI KAREGA
WILLIAM MUTHAMA
NELSON MUCHAI
NJENGA CHEGE
DANDORA HOUSING SCHEME LTD..... PLAINTIFFS

VERSUS

KIBIRO KARANJA
REUBEN KANGARA
KEINGATI WAIHARO
NJUGUNA KIMANI
PETER G. KANGARA..... DEFENDANTS

DECREE

CLAIM FOR:

- a) An order for transfer by defendants to the plaintiff Company of L.R. NO 11379/3 Komorock Road, Nairobi to hold for and to the use of the purchasers.
- b) Account of the money paid to the Defendants by the purchasers.
- c) Registration of the property L.R. NO 11379/3 in the name of the plaintiff Company.
- d) Payment by the defendants to the plaintiff Company of any money found due in account with interest at 8% from date of filing.
- e) Costs of the suit with interest at 8% from date of judgement till payment in full.

COUNTER-CLAIM

- a) A declaration that LR NO. 11379/3 Komorock Road, Nairobi is held by the Defendants (Plaintiffs by Counter-claim in trust for Kiambu Dandora Farmers Company Limited), subject to the grant of consent or exemption as required by law to a transfer thereof.
- b) Costs.

46

UPON READING the application presented to this Court on the 17th day of August 1983, the 2nd day of September, 1983 and the 2nd day of February 1985 respectively, by counsel for the plaintiffs and defendants AND UPON READING the Affidavits of CORNELIUS PETERSON WAITHAKA and KEINGATI WAIHARO in support of the said Applications sworn on the 16th day of August 1983 and 25th day of August, 1983 and UPON HEARING Counsel for both parties.

IT IS ORDERED

1. THAT the application to set aside the award be and is hereby dismissed.
2. THAT judgment be and is hereby entered for the Defendants in terms of the award as follows:-
 - (i) The suit premises LR NO 11379/3 Komarock Road, Nairobi was bought and is hereby vested in Kiambu Dandora Farmers Company Ltd for and on behalf of the members thereof as ascertained by the Provincial Commissioner-Nairobi.
 - (ii) The 3rd and 4th Respondents are not contributories to the purchase of the suit land.
 - (iii) THAT the actual contibutories to the purchase of land parcel L.R. NO 11379/3 Komorock Road are the persons whose contributions were made before 2nd July 1967 .
 - (iv) THAT the plaintiffs do pay to the Defendants (plaintiffs in counter-claim) the costs of this suit to be taxed and certified by the taxing officer of this Court.

GIVEN under my hand and the SEAL of this Court this 8th day of March 1983.

ISSUED this

18th day of October 2006.

**SENIOR DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI**

23rd October 2006

IN THE HIGH COURT OF KENYA AT NAIROBI

CONSTITUTIONAL PETITION NO. 47 2011

IN THE MATTER OF SECTIONS 22, 23 & 165 (3) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOM UNDER SECTION 40 (1) AND (3) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF PURPORTED COMPULSORY ACQUISITION OF LAND REFERENCE NO. 11379/3

AND

- ABDULAH MUIGAI 1ST PETITIONER
- RAYMOND MWANGI WAWERU 2ND PETITIONER
- KARIUKI NJOROGE 3RD PETITIONER
- PETER KERUMBI KEINGATI 4TH PETITIONER
- JOSEPH NDUATI NGENDO 5TH PETITIONER
- KIAMBU DANDORA FARMERS COMPANY LIMITED 6TH PETITIONER

AND

THE HON ATTORNEY GENERAL For: COMMISSIONER OF LANDSRESPONDENT

IN COURT ON 31ST OCTOBER 2011 BEFORE THE HON. LADY JUSTICE M. NGUGI

ORDER

Application for Orders:-

1. THAT this Court do Order and allow the Advertisement of this Petition in any Nationally circulating Daily Newspaper to invite and allow all and any interested parties to apply to be enjoined and heard during the hearing of the Petition.

2. THAT pending the hearing and determination of the Petition herein there be a stay of proceedings in respect of all other cases instituted and pending before Court or any tribunals which touch on and concern the whole, any part or any sub-division or part of the subject property herein being LR No. 11379/3, situate in Nairobi and in particular

- 1. HC. ELC. NO. 393 OF 2008
- 2. HCCC NO. 328 OF 2004
- 3. HCCC NO. 350 OF 2003
- 4. HC ELC. NO. 412 OF 2010

- 5. HC ELC. NO. 618 OF 2010
- 6. HCCC NO. 213 OF 2010
- 7. CMCC NO. 1451 OF 2002
- 8. HCCC NO. 610 OF 2004
- 9. HCCC NO. 408 OF 2003
- 10. HCCC NO. 890 OF 2002
- 11. HCCC NO. 393 OF 2008

3. Any Orders issued and subsisting in the aforesaid suits be maintained pending the hearing and determination of this Petition.

4. This Honourable Court do grant orders and directions on the manner, format, place and bench which shall hear and determine this Petition.

5. The costs hereof be in the cause.

UPON READING the Application dated 20th June 2011 and presented to this court on 27th July 2011 by counsel for the petitioner/applicant under Order 1 Rule 8, Order 11 Rules 7,8 and 9 of the civil procedure Rules section 1A & B of the civil procedure Act and any other enabling provision of the Law AND UPON READING the supporting affidavit of ABDULAHI MUIRURI MUIGAI sworn on 20th June 2011, AND UPON HEARING the counsel for the petitioners.

IT IS HEREBY ORDERED :-

- 1. That leave be and is hereby granted to the petitioners to advertise the petition in any newspaper circulating naturally within thirty days from the date hereof.
- 2. That any party interested in joining in the matter may do so within 14 days from the date of advertisement.
- 3. That mention for further direction be on 8th December 2011.

GIVEN Under my hand and seal of this Court this 31st day of October, 2011.

ISSUED at Nairobi this 1st day of Nov. 2011.

I CERTIFY THIS IS TRUE
 COPY OF THE ORIGINAL.
 DATED: 12/11/11
 DEPUTY REGISTRAR
 HIGH COURT OF KENYA
 NAIROBI

DEPUTY REGISTRAR
 HIGH COURT OF KENYA NAIROBI

49

DAIRY NATION
MONDAY NOV 28, 2011

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MILIMANI NAIROBI
CONSTITUTIONAL PETITION NO. 47 2011.

IN THE MATTER OF THE PURPORTED COMPULSORY ACQUISITION
OF LAND REFERENCE NO. 11379/3

BETWEEN

- Abdulahi Muiruri Muigai 1st Petitioner
- Raymond Mwangi Waweru 2nd Petitioner
- Kariuki Njoroge 3rd Petitioner
- Peter Kerumbi Keingati 4th Petitioner
- Joseph Nduati Ngendo 5th Petitioner
- Kiambu Dandora Farmers Company Limited 6th Petitioner

AND

The Hon Attorney General for: Commissioner of Lands Respondent

NOTICE TO ALL INTERESTED PARTIES

NOTICE is hereby given that the Petitioners aforesated under Kiambu Dandora Farmers Company Limited the Title Holders of L.R No. 11379/3 situated between Umoja 1, Komarock and Dandora in Nairobi have filed this Petition to have nullified the purported Government Acquisition of their land and equally for the Cancellation of any Titles issued to any third parties from the said Parcel of Land.

By an Order of the Court issued on 17th of November, 2011 any party or person interested in the said land or holding Title therefrom is hereby invited to enjoin in the stated Petition and to file their papers in Court in the next 14 days from the date hereof.

Copies of the petition can be obtained from the Petitioners Advocates or from the Court Registry.

DATED at Nairobi this 24th day of November, 2011

Namada & Co.
Advocates for the Petitioner
Phoenix Hse, 6th Floor
Kenyatta Avenue
P.O Box 72651-00200 Nairobi

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
LAND AND ENVIRONMENTAL DIVISION
ELC CIVIL SUIT NO. 698 OF 2007

STEPHEN MUGO MUTOTHORI.....1ST PLAINTIFF/RESPONDENT
RAYMOND MWANGI WAWERU.....2ND PLAINTIFF/RESPONDENT
PETER KARUMBI KEINGATI.....3RD PLAINTIFF/RESPONDENT
KIAMBU DANDORA
FARMERS CO. LTD.....4TH PLAINTIFF/RESPONDENT

VERSUS

CITY COUNCIL OF NAIROBI.....DEFENDANT/APPLICANT

RULING

The Defendant has moved the court by way of a Notice of Motion dated 7th June 2012 brought under **Order 17 Rule 2(4)** of the **Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act**. The said Defendant is seeking orders that the suit be dismissed for want of prosecution, and that the costs of the application be borne by the Plaintiffs. The grounds for the application are that on 6th July 2011, the court declined to dismiss the suit pursuant to an application dated 5th March 2010 filed by the Defendant. The Defendant has stated that the court directed the Respondents to file an application for substitution of parties within 21 days and set the suit for hearing. According to the Defendant, the Respondents have failed to comply with the court's orders and the Defendant contends that the delay is prejudicial.

51

The application is supported by the affidavit of **Aduma J. Owuor** sworn on 7th June 2012 where the Defendant's Acting Director of Legal Services reiterated the grounds on which the application is premised and contended that 11 months had lapsed since the court orders of 6th July 2011 were issued with the Respondents failing to take action to have the suit heard expeditiously.

Further, the Defendant stated that a period of **8 years and 3 months** has lapsed since the suit was filed and the Defendant averred that the period is long, inordinate and unexplained. It is the Defendant's case that the delay is prejudicial to her due to the risk of losing defence witnesses and pertinent exhibits. According to the Defendant, the Respondents have lost interest in litigating the suit since they have not sought extension of the 21 days period allowed by the court on 6th July, 2011.

The application is opposed by the 4th Plaintiff, who through her director, **John Mburu Karega**, filed an affidavit on 16th October, 2012. The 4th Plaintiff averred that the Plaintiffs have filed a constitutional petition **No. 47 of 2011** whose amended petition was annexed as evidence. It is the Plaintiffs' case that on 28th November 2011, they put up a public announcement in the Daily Nation for any interested party to seek and be enjoined in the petition. Further, that on 31st October 2012, the court stayed all proceedings related to the dispute over **LR No. 11379/3** including **HCCC No. 890 of 2002** which is the previous court file number of the instant suit. According to the Plaintiffs, this suit could not

be fixed for hearing since all proceedings concerning to LR No. 11379/3 were stayed.

The application was canvassed by way of written submissions and the Defendant in submissions dated 5th June 2013, argued that the Plaintiffs are yet to comply with the court's order issued on 6th July 2011. Counsel for the Defendant argued that the proceedings of the instant suit were not stayed by Constitutional Petition No. 47 of 2011 as alleged by the Plaintiffs. It is the Defendant's case that the orders issued in Constitutional Petition no. 47 of 2011 on 31st October, 2011 were issued more than 100 days from 6th July, 2011 when the court directed that substitution be made within 21 days. Counsel submitted that the Plaintiffs failure to substitute the 1st to 3rd Plaintiffs within the stipulated 21 days since 6th July 2011 means that they have lost interest to litigate the matter.

It was argued for the Defendant that under **Order 17 Rule 2(4)**, the court has powers to dismiss the suit for non compliance with any directions given by the court and reliance was placed on the case of **Abdalla Tairara Godoro -vs- City Council of Nairobi(2008)eKLR** as well as the case of **Francisca Adikinyi Bwire -vs- Samuel K. Mutwiri (2006)eKLR** where the suits were dismissed for want of prosecution.

The Plaintiffs filed submissions dated 25th June 2013 where they argued that this suit raises complex legal and factual issues which included an examination of whether the Commissioner of Lands lawfully acquired

and conferred to the Defendant any rights over the Plaintiffs' land parcel **No. 11379/3**. The Plaintiffs submitted that they had filed Petition **No. 47 of 2011** against the Commissioner of Lands where they have challenged the acquisition of land parcel **No. 11379/3** and have also alleged violation of their constitutional rights through deprivation of land without compensation.

The Plaintiff submitted that the dismissal of the suit is inappropriate since they have not slept over their rights and are instead pursuing their suit diligently through constitutional petition **No. 47 of 2011**.

The issues that stands to be determined is whether there has been inordinate delay on the part of the plaintiff and for which no reasonable explanation has been offered and further whether the Defendant will suffer any prejudice if the suit is not dismissed.

Order 17 Rule 4 of the Civil Procedure Rules gives the court discretion to dismiss a suit where there is non-compliance with any direction given under Order 17. The Plaintiff are accused of non compliance of the court orders issued on 6th July 2011 directing them to substitute the 1st - 3rd Plaintiffs within 21 days. The plaintiffs have endeavoured to explain themselves on the apparent lapse and non action.

I have considered the arguments for and against the dismissal of the suit and I find that the Plaintiffs have offered a reasonable explanation for the delay in prosecuting the suit. The subject matter of the suit herein involves parcel **No. LR 11379/3** where the Plaintiffs are seeking

compensation from the Defendant for alleged compulsory acquisition of what they claim to be their parcel of land. The Plaintiffs have annexed pleadings in Constitutional petition **No. 47 of 2011** filed against the Commissioner of Lands where they have sought inter alia, a declaration that their private property rights were infringed under **Article 40** of the Constitution as well as a declaration that that the purported compulsory acquisition was unlawful, null and void. The constitution petition invites all affected persons to appear and ventilate their rights and interests. It does appear to me that determination of the constitution petition will invariably have a bearing to this suit. It is not clear or apparent what the actual status of the constitutional petition is at the moment.

In my view, it would be an abuse of the court process to have different proceedings going on in courts of concurrent jurisdiction relating to the same subject matter and in the interest of justice; the court should allow the Petition to be finalized since the orders to be issued therein will have a direct bearing on the current suit. The plaintiffs have stated that all the pending suits relating to the suit property were ordered stayed pursuant to an order issued in the said constitutional petition **No. 47 of 2011**. The order issued on 31st October 2011 by **Hon. Lady Justice Mumbi Ngugi** annexed to the replying affidavit of **John Mburu Karega** appears incomplete and the court in the premises directs that a duly certified copy of the order be abstracted and filed in this court file within the next 30 days from the date of this ruling.

The court declines to grant the orders sought in the Defendant's notice of motion dated 9th June 2012 and directs that this suit be mentioned on 26th February 2014 to ascertain the status of constitutional petition **No. 47 of 2011** and for further directions.

The court orders that each party meet their own costs for this application.

Ruling Delivered at Nairobi

this.....*8th*.....day of.....*November*.....2013.

J. M. Mutungi
J. M. MUTUNGI

JUDGE

56



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELCC NO. 1518 OF 2013

EMCO BILLETS AND STEEL LIMITED..... PLAINTIFF

VERSUS

KIAMBU DANDORA FARMERS COMPANY LIMITED.....DEFENDANT

RULING

I have two applications before me. The first application was brought by the plaintiff by way of Notice of Motion dated 16th December 2013 seeking orders to restrain the defendant from trespassing upon, carrying out unlawful acts of eviction or destruction against the plaintiff or its property and/or interfering with the plaintiff's quiet possession and enjoyment of LR No. 12034 (original number 11344/1), LR No.12504 and LR No. 12247(original number 11344/4) pending the hearing and determination of this suit. The plaintiff sought a further order that the Officer Commanding Buruburu Police Station be directed to deploy sufficient police officers to protect its assets and employees from unlawful acts of destruction and/or injury by the defendant pending the hearing and determination of the suit.

The plaintiff's application is supported by an affidavit sworn on 16th December 2013 by Joseph Chege Ngechu, the plaintiff's administration manager. The plaintiff's case as set out in the said affidavit is that; the plaintiff acquired the parcels of land known as LR No. 12034 (original number 11344/1) and LR No. 12247(original number 11344/4) from Emco Steel Works Kenya Ltd., and LR No. 12504 from Emco Billets Ltd. The three parcels of land are hereinafter referred to as "the suit properties". The suit properties are leasehold from the government of Kenya for a term of 99 years and were acquired by the original proprietors between 1975 and 1989. From the year 2008 when it acquired ownership of the suit properties until 20th September 2012 when the defendant purported to lay a claim over the properties through an advertisement in the Daily Nation newspaper, the legality of the plaintiff's titles over the suit properties had never been brought to question. On 25th November 2013, the plaintiff's advocates received a letter dated 25th November 2013 from the defendant's advocates alleging that the suit properties were located within the defendant's parcel of land known as LR No. 11379/3 and threatened to have the plaintiff evicted therefrom. On 6th and 7th December 2013, the defendant sent a gang of thugs to the plaintiff's office premises who destroyed the plaintiff's perimeter wall and gained access to its factory. The defendant's illegal entry onto the suit properties interrupted its operations and occasioned it massive losses. The defendant had threatened that it would destroy the plaintiff's steel mill business which is worth millions of shillings. It is on account of the foregoing that the present application has been brought.

57

The plaintiff's application was opposed by the defendant through grounds of opposition dated 23rd December 2013, notice of preliminary objection dated 6th January 2014 and a replying affidavit sworn on 7th January 2014 by Kariuki Njoroge. Kariuki Njoroge who has described himself as a director and trustee of the defendant company has stated in his affidavit as follows. The defendant is the owner of all that parcel of land known as LR No. 11379/3 which measures 818 acres (hereinafter referred to as "the defendant's land"). The defendant through its members purchased the defendant's land from Khan family in the year 1966 and five of the defendant's members were appointed as trustees to hold its title pending incorporation of the defendant. After the incorporation of the defendant but before the defendant's land could be transferred to the defendant by the said trustees, the said trustees were sued by a company known as Dandora Housing Company Ltd. in HCCC No. 1348 of 1972 concerning the ownership of the defendant's land which suit was determined in the defendant's favour in the year 1983.

The defendant's said trustees died thereafter. Dandora Housing Company Ltd. which lost the suit mentioned above took advantage of this development and came up with forged court orders with the intention of depriving the defendant of its land which orders were set aside on 26th October 1999. As the defendant was in the process of appointing new trustees, it became embroiled in yet another dispute with a company known as Dandora Housing Scheme Ltd. The Commissioner of Lands took advantage of this dispute and purported to compulsorily acquire the defendant's land. This purported acquisition of the defendant's land was fraudulent as the land was not intended for public purposes but rather to reward loyal politicians and civil servants. The defendant challenged the acquisition in court through HCCC No. 932 of 2002 in which an injunction was issued restraining the Commissioner of Lands from surveying the defendant's land.

The Commissioner of Lands engaged the defendant in discussions with a view to settle the dispute out of court. These discussions led to the surrender to defendant of part of its land. A large part of the defendant's land however remained in the hands of third parties. The defendant came to the conclusion that the dispute was not going to be resolved amicably and decided to file a constitutional petition against the Commissioner of Lands namely, Nairobi Constitutional Petition No. 47 of 2011. The defendant was ordered by the court to advertise the filing of the said petition in a daily newspaper so that whoever may wish to join the same can do so. The advertisement was placed in the Daily Nation of 28th November 2011. The plaintiff herein did not apply to court to be added as a party to the said petition.

After the defendant had filed the said petition, the National Land Commission notified the public of its intention to review grants including that of the defendant's land to determine the legality thereof. For the purposes of the said exercise, the National Land Commission stayed all further dealings or actions touching on the defendant's land. The defendant has contended that this suit is intended to circumvent the Constitutional Petition No. 47 of 2011 as well as the directions of the National Land Commission aforesaid in respect of the defendant's land. The defendant has contended that it has no interest in LR No. 12034 and LR No. 12247. The defendant has contended that its interest is on LR No. 12504 which measures 24.484 acres which it claims to be situated within its parcel of land and whose title it seeks to have cancelled.

The plaintiff's application which was filed under certificate of urgency came up for hearing on 24th December 2013 when the court directed that the status quo with regard to LR No. 12034, LR No. 12504 and LR No. 12247 be maintained. That order restrained the defendant from trespassing upon, undertaking acts of destruction on or interfering with the plaintiff's use and occupation of the said properties. On 8th January 2014, the court after considering the nature of the dispute between the parties directed them in the spirit of Article 159 of the Constitution to liaise with the National Land Commission with a view to having the dispute settled out of court. On 24th July 2014, a representative of the National

58

Land Commission attended court and informed the court that the commission was in the process of investigating the issues which have been raised herein by the parties. On 14th May 2015, the court directed the National Land Commission to file in court a report on their investigations within 60 days. On 20th August 2015, the National Land Commission submitted its report to court as earlier directed. In the report, the National Land Commission made a finding that LR No. 12504 which is owned by the plaintiff falls within the defendant's land, LR No. 11379/3 and that its allocation to the initial owner was irregular.

Following this report, the defendant filed an application by way Notice of Motion dated 20th August 2015 seeking to discharge, vary or set aside orders of status quo that had been issued herein on 24th December 2013. The defendant also sought an order to consolidate this suit with Constitutional Petition No. 47 of 2011, Abdullahi Muiruri Muigai vs. National Land Commission for hearing and final disposal. This is the second application before me. The defendant's application is supported by an affidavit sworn on 20th August 2015 by Joseph Mwangi Karanja, a director of the defendant company. The application is based on the grounds that the orders of status quo made herein on 24th December 2013 are not sustainable as they seek to prevent a registered proprietor of land from dealing with his land freely and from evicting a trespasser. The defendant has contended that following orders issued by the court on 14th May 2015 directing the National Land Commission (the "Commission") to file a report on the status of the disputed land, the Commission filed its report on 20th July 2015 in which it indicated that LR No. 11379/3 comprising 818 acres belongs to the defendant. The defendant has contended that the said report has concluded that the title held by the plaintiff in respect of LR No. 12504 is invalid and of no effect since LR No. 12504 was carved out of LR No. 11379/3 which was private land.

The application was opposed by the plaintiff through grounds of opposition dated 22nd September 2015. The plaintiff contended that the application is an abuse of the court process since it is intended to frustrate the hearing and determination of the plaintiff's application dated 16th December 2013. The plaintiff contended that the issues raised by the defendant in its application could be competently adjudicated within the framework of the said application dated 16th December 2013. The plaintiff contended further that its title to LR No. 12504 has not been revoked by the Commission or a court of law and that it is in the circumstances entitled to protection of its private property through the injunctive orders that were issued herein on 24th December 2013. On the defendant's prayer for consolidation of this suit with Petition No. 47 of 2011, the plaintiff opposed the same on the ground that it is not a party to the said petition and that its claim against the defendant herein related to the defendant's persistent invasion of its private property without any right to do so.

On 1st October 2015, the court consolidated the two applications and directed that the same be heard by way of written submissions. In its written submissions dated 12th October 2015, the plaintiff submitted that it acquired LR No. 12504 (hereafter "the disputed property") for value without notice of the dispute that the defendant had with the government with respect to the compulsory acquisition of the original title. The plaintiff submitted that its title to the disputed property has not been revoked by the Commission under section 14 of the National Land Commission Act or pursuant to a lawful court order. The plaintiff submitted that in its report which is the basis of the defendant's application herein, the Commission made a finding to the effect that the plaintiff is an innocent purchaser for value without notice and as such its title is protected by section 14(7) of the National Land Commission Act.

The plaintiff relied on the case of **Kuria Greens Ltd vs. Registrar of Titles and another (2012) eKLR** where the court stated that even if there was fraud or misrepresentation in alienating land to the original proprietor, the Registrar of Titles could not arbitrarily revoke the title of the said parcel of land without following the due process of the law. The plaintiff also referred the court to the case of **Cherotich vs. Timsales Ltd KLR (E & L) 611** where the court upon finding that the validity of the applicant's title was not in issue, proceeded to grant an interlocutory injunction.

59

The plaintiff submitted that there was no contention that it was the current registered proprietor of the suit property which it acquired procedurally and legally. The plaintiff submitted that its right to the disputed property is protected by Article 40 of the Constitution and urged the court to dismiss the defendant's application and confirm prayers 2(ii) and 3(ii) of the application dated 16th December 2013.

In its submissions in reply dated 16th November 2015, the defendant submitted that this suit is incompetent having been caught up by the provisions of section 6 of the Civil Procedure Act. The defendant submitted that the court has no option but to stay this suit and discharge the orders of maintenance of status quo since the Petition No. 47 of 2011 which had been filed earlier over the same subject matter is still pending.

The defendant cited section 75 of the repealed Constitution and submitted that it was unlawful for the Commissioner of Lands to compulsorily acquire its property for allocation to politicians, business men and civil servants and not for public purposes. The defendant submitted that such land remained the property of the original owners and further, that where compensation was not paid in accordance with the Constitution, the acquisition was unlawful and the land reverted back to its owners. The defendant argued that no person could claim to have acquired a good title over such land or give a good title over the same to another person. The defendant contended that the defence of innocent purchaser for value without notice cannot arise where there was gross violation of the constitution.

The defendant referred the court to the case of Re Kisima Farm Ltd (1978)KLR 36 and Commissioner of Lands & another vs. Coastal Aquaculture Ltd CA No. 252 of 1996 for the proposition that the test of the legality of an acquisition is whether the land is required for a public body for a public benefit. The defendant also referred the court to principles for grant of an interlocutory injunction as were enunciated in the case of Giella vs. Cassman Brown & Company Ltd (1973) EA 358. The defendant also cited the case of Satrose Ayuma & 11 others vs. Registered Trustees of the Kenya Railway Staff Retirement Benefit Scheme & 2 others (2011) eKLR for the proposition that in an application for interlocutory injunction to restrain breach of a fundamental right, the court may go beyond the test stated in Giella vs. Cassman Brown(supra) and consider whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of the specific right or freedom in the bill of rights. The defendant argued that the suit was about its right under Article 40 of the Constitution and that the effect of the Commission's finding that there was no valid acquisition of its parcel No. 11379/3 wherein the disputed property lies was that it did not lose its right over the said property since the titles that had been issued in respect thereof were illegal, null and void.

The court was also referred to the case of Niaz Mohamed Jan Mohamed vs. The Commissioner of Lands & others (1996)eKLR where the court stated that there was no right of compulsory acquisition of land by the government for purposes other than those provided under section 75 of the repealed Constitution. The defendant submitted that the granting of the injunction sought by the plaintiff would be a perpetuation of gross injustice against the defendant which would have been deprived of its property. The defendant submitted that the plaintiff cannot sustain a suit against it. The defendant submitted that the plaintiff's suit should have been directed against the government. The defendant submitted that the plaintiff has not established a prima facie case. In conclusion the defendant submitted that no amount of damages can compensate it since the harm being inflicted against it relates to infringement of a fundamental right.

The issues that a rise for determination herein are two fold, namely;

a) Whether the plaintiff has satisfied the conditions for grant of interlocutory injunction as enunciated in the case of Giella vs. Cassman Brown & Co. Ltd (1973) EA 358"

60

b) Whether this suit should be consolidated with Petition No. 47 of 2011 and the orders issued herein on 24th December, 2013 discharged"

On the first issue, the plaintiff was under a duty to show that it has a prima facie case with probability of success against the defendant and that it stands to suffer irreparable harm which cannot be compensated in damages unless the order is granted. If the court is in doubt as to the foregoing, the application is to be determined on a balance of convenience. The plaintiff placed before the court a copy of Grant No. I.R. 33501 for the disputed property. The said grant shows that the disputed property was registered in the name of Steel Billet Castings Limited as the first leasehold proprietor thereof from the government on 7th July 1979 and that the same was transferred by Steel Billet Castings Limited to the plaintiff on 27th August 2008.

It is clear from the parties' pleadings and submissions which I have highlighted above that the plaintiff's title over the disputed property is highly contested by the defendant. As stated above, the defendant has contended that the disputed property is part of its parcel of land LR No. 11379/3 which was unlawfully acquired by the government. The defendant has contended that it is still in possession of the original title for its said parcel of land and that the purported compulsory acquisition of the same by the Commissioner of Lands and subsequent allocation to among others the plaintiff's predecessor in title was fraudulent. The defendant has contended that no compensation was paid to it following the purported compulsory acquisition. The defendant's case finds support in the report dated 20th July 2015 by the National Land Commission which was filed in court on 21st August 2015. The Commission made a finding that the disputed property is within LR No. 11379/3 owned by the defendant and that the process of compulsory acquisition of LR No. 11379/3 was never completed. In the same report, the Commission noted that the plaintiff was a bonafide purchaser of the disputed property for value without notice of the irregularities in the root of its title. As matters stand now, both the plaintiff and the defendant have laid a claim over the suit property. The defendant's title over LR No. 11379/3 is not in doubt. There is also prima facie evidence before me that the disputed property has its origin in LR No. 11379/3 and that it is situated within that parcel of land. The circumstances under which LR No. 11379/3 was subdivided to give rise to among others, the disputed property is contentious and the same is the subject of a constitutional petition pending before the Constitutional Division of the High Court. It has not been settled conclusively that the compulsory acquisition process through which the government purportedly acquired LR No. 11379/3 from the defendant and allocated portions thereof to third parties including the plaintiff's predecessor in title was illegal. There has been no judicial pronouncement that the plaintiff's title over the disputed property is illegal. The plaintiff's title over the suit property has not been revoked or cancelled. I am in agreement with the plaintiff's submission that the said title can only be revoked or cancelled through the due process of the law. Until the said title is declared null and void through a legal process, it remains valid for all intents and purposes and unless there are exceptional circumstances that would sway the court such as public interest, the title is entitled to protection of law.

It was not open to the defendant to take the law in its own hands by forcefully taking possession of the disputed property from the defendant. So long as the plaintiff's title over the suit property has not been revoked or cancelled, the acts such as that of the defendant amounts to trespass. This court cannot lend its aid to acts of lawlessness. I am satisfied that the plaintiff has established a prima facie case of trespass against the defendant. I am also satisfied from the material before me that the plaintiff would suffer irreparable harm which cannot be compensated for in damages if the injunction sought is not granted. The plaintiff has therefore met the conditions for grant of interlocutory injunction.

Even if I am wrong on the above finding, I would still have allowed the application on another ground namely, to preserve the disputed property pending the hearing and determination of this suit. It is clear from the submissions by both parties that the highly contested issue of the legality of the plaintiff's title

61

over the disputed property can only be determined at the trial. I am of the view in the circumstances that justice would be better served if the prevailing *status quo* is maintained pending the hearing of the suit. This view finds support in the case of Ougo & another vs. Otieno (1987) KLR 364, where it was stated that “The general principle is that where there are serious conflict of facts, the trial court should maintain the status quo until the dispute has been decided at the trial.”

Having reached the conclusion that the plaintiff has satisfied the conditions for granting interlocutory injunction, the prayers in the defendant’s application seeking to discharge the interim orders that were granted on 24th December 2013 must fail. This leaves the defendant’s prayer for consolidation of this suit with Petition No. 47 of 2011. In the petition, the defendant has sought among others the following reliefs:-

- a) A declaration that the petitioner’s fundamental right to protection against arbitrary deprivation of private property under Article 40 of the Constitution have been grossly infringed and violated by the respondent purported acts to compulsorily acquire their land parcel LR No. 11379/3
- b) A declaration that the purported compulsory acquisition of the petitioners’ Land Parcel No. 11379/3 vide Kenya Gazette Notices Nos. 840 and 841 of 15th March 1974 was unlawful, null and void ab initio.
- c) An order that all consequent dealings by the Commissioner of Lands in respect to LR No. 11379/3 or any part thereof following the purported compulsory acquisition including issuance of any allotment letter, leases and/or titles therefrom to any third parties are null and void.
- d) An order directing the Commissioner of Lands to cancel any such allotments, leases and or titles issued to 3rd parties and to remove forthwith from any part of LR 11379/3 persons, individuals, companies or institutions in occupation or possession thereof within 30 days of the order in default of which the petitioners be at liberty to cause the removal of such persons, individuals or companies at the respondent’s costs.

In my view, the determination of Petition No. 47 of 2011 will have an impact on the suit herein. Both parties herein have made ownership claims to the suit property. In my view, some of the prayers sought in Petition No. 47 of 2011 surrounding the compulsory acquisition of LR No. 11379/3, if granted, will dispose of this suit. In the case of Kenya Anti-corruption Commission vs. Wilson Gachanja & 2 others (2014) eKLR the court in considering an application for consolidation stated that:-

“In my view the various actions in the separate suits touch and concern the same subject matter and although there are different plaintiffs and different defendants, the plaintiff in ELC No. 347 of 2013 can be said to be common as they claim the parcels of land that even the other plaintiffs in the other suits claim and the issue to be determined is who of the various claimants is entitled to the suit land or portion of the suit land. I am satisfied that the issue for determination in the various suits is common and in my opinion it would be expedient and time saving to try all the 5 cases together to obviate the necessity of having conflicting decisions on the same subject matter being rendered by different courts which could lead to “Judicial Confusion”.

In the case of David Ojwang’ Okebe & 11 others vs. South Nyanza Sugar Company Limited & 2 others Kisumu CA (Appl) No. 139 of 2008, the Court of Appeal discussed the main object of consolidation as follows:-

“...to save costs and time by avoiding a multiplicity of proceedings covering largely the same ground. Thus where it appears to the court that there are common questions of law or fact; that

62

the right to relief is in respect of the same transaction or series of transactions; or that for some other reason, it was desirable to make an order for consolidation of one or more cases, then the court will do so.”

From the foregoing, I am satisfied that the defendant has made out a case for the consolidation of this suit with Constitutional Petition No. 47 of 2011 for hearing and disposal by this court.

In conclusion, I will make the following orders on the two applications before me;

1. The plaintiff's application dated 16th December 2013 is allowed in terms of prayer 2 thereof.
2. The officer commanding Buruburu Police Station shall ensure compliance with order 1 above.
3. High Court Constitutional Petition No. 47 of 2011, Abdulahi Muiruri Muigai & 5 others vs. The Attorney General is transferred to this court for hearing and final determination if the same has not yet been transferred. The Executive Officer shall assign the court file Environment and Land Court number once the same is received at the registry.
4. The plaintiff herein, **EMCO BILLETS AND STEEL LIMITED** is joined in the said petition as **INTERESTED PARTY**.
5. The petitioner shall amend the petition within 21 days from the date hereof to effect the joinder of the plaintiff in the said petition.
6. The plaintiff shall be at liberty to respond to the petition within 21 days from the date of service of the amended petition.
7. The said petition and this suit shall be heard together.
8. The costs of the plaintiff's and the defendant's applications shall be in the cause.

Delivered and Signed at Nairobi this 1st Day of July, 2016

S. OKONG'O

JUDGE

In the presence of

Mr. Omuga	for the Plaintiff
Mr. Njiru	for the Defendant
Kajuju	Court Assistant



11/11/14
D.H.L. 3/4

THIS TRUST DEED is made the 7th day of April

One thousand nine hundred and ~~sixty-nine~~ ^{Sixty} BY (1) KIBIRO KARANJA
(2) REUBEN KANGARA (3) KEINGATI WATHARO (4) NJUGUNA KIMANI
and (5) PETER GACHERU KINGARA all of Post Office Box Number 152
Kiambu in the Republic of Kenya (hereinafter together called "the
Trustees")

WHEREAS

- (i) This declaration is supplemental to a transfer of even date and made between (1) Khan Nawaz Khan (2) Khan Abbas Khan (3) Mehdi Khan AND the Trustees whereby the property described in the Schedule hereto was transferred to the Trustees in fee simple in consideration of the sum of Shillings Two Hundred thousand (Shs.200,000/-) therein stated to have been paid by the Trustees to the said Khan Nawaz Khan Khan Abbas Khan and Mehdi Khan;
- (ii) The said sum of Shillings Two hundred thousand (Shs.200,000/-) was provided by the Trustees and persons who have caused a limited liability company to be incorporated in the said Republic under the name of "KIAMBU DANDORA FARMERS COMPANY LIMITED" and who are also in the process of incorporating a co-operative society under the name of "DANDORA ESTATES CO-OPERATIVE SOCIETY LIMITED" and the said property was transferred to the Trustees as trustees for the Trustees and the said persons.

NOW THIS DEED WITNESSETH that the Trustees hereby declare that they hold the said property in trust for themselves and the said persons in fee simple and hereby agree (i) that they will as soon as the said Co-operative Society shall have been incorporated make an application to the Nairobi Land Control Board for its consent to the transfer of the said property to either the said Kiambu Dandora Farmers Company Limited or to the said Dandora Estates Co-operative Society Limited and (ii) so soon as is practicable after the obtaining of such consent execute and do all such documents acts and things as may be necessary to procure the said

Certified true copy
of the Original

WANGIRU THEURI
ADVOCATE
P.O. BOX 79095 NAIROBI

64

property to be transferred to and registered in the name of the said Kiambu Dandora Farmers Company Limited or the said Dandora Estates Co-operative Society Limited as the case may be.

IN WITNESS WHEREOF the Trustees have hereunto set their respective hands and seals the day and year first hereinbefore written

THE SCHEDULE HEREINBEFORE REFERRED TO

All that piece of land containing by measurement eight hundred and eighteen (818) acres or thereabouts situate in the City of Nairobi in the Nairobi Area of the said Republic and known as Land Reference Number 11379/3 which said piece of land being a portion of the premises comprised in a Grant registered in the Land Titles Registry at Nairobi aforesaid as Number I.R. 19935/1 is delineated on the plan annexed to the said transfer and more particularly on Land Survey Plan Number 86048 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red.

SIGNED SEALED and DELIVERED
by the said KIBIRO KARANJA
in the presence of:-

[Signature] 21/4/70

Kibiro

SIGNED SEALED and DELIVERED
by the said REUBEN KANGARA
in the presence of:-

N. MUGO - 2nd Class Magistrate [Signature] 21/3/70

Reuben

SIGNED SEALED and DELIVERED
by the said KEINGATI WATHARO
in the presence of:-

N. MUGO - 2nd Class Magistrate [Signature] 21/3/70

Keingati

SIGNED SEALED and DELIVERED
by the said NJUGUNA KIMANI
in the presence of:-

[Signature] 21/3/70

Njuguna

SIGNED SEALED and DELIVERED
by the said PETER GACHERU
KINGARA in the presence of:-

[Signature] 21/3/70

Peter Gacheru Kingara

Certified true copy
of the Original.



65

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1903 OF 1999(O.S)

IN THE MATTER OF AN APPLICATION UNDER SECTION 37 OF
THE TRUSTEE ACT CAP 167

AND

IN THE MATTER OF AN APPLICATION BY HANNAH WANJIRU
KAMAU C/O NJUGUNA KIMANI

DECREE

CLAIM FOR

1. This Honourable Court be pleased to appoint PETER KERUMBI KEINGATI of P.O. Box 7541 Nairobi as trustee in substitution.
2. Costs of this application be provided for on ground
 - (a) That NJUGUNA KIMANI C/O KIMANI who died on 13th March 1995.
 - (b) That NJUGUNA KIMANI was the last surviving trustee under the trust deed dated 7th April 1970.
 - (c) That the applicant is the only widow of the deceased and wishes to appoint a trustee in substitution of her late husband.

UPON READING the consent letter dated 6th October 1999, filed on 8th October 1999 and signed by Counsel for the Plaintiff/Applicant and Raymond Mwangi Waweru Director KIAMBU DANDORA FARMERS CO. LTD and Peter Kerumbi Keingati IT IS ORDERED BY CONSENT

1. THAT PETER KERUMBI KEINGATI of post office Box 7541 Nairobi be and is hereby appointed as trustee for L.R. No. 11379/3 in substitution for NJUGUNA KIMANI C/O KIMANI under the trust deed dated 7th April 1970.
2. THAT costs of this application be costs in the cause.

GIVEN under my hand and the Seal of this Honourable Court this 13th day of October 1999.

ISSUED at Nairobi this 14th day of October 1999.

P
M. J. BHATT
DEPUTY REGISTRAR

HIGH COURT OF KENYA AT NAIROBI

I CERTIFY THIS IS TRUE COPY OF
THE ORIGINAL
DATED: 15-10-99
DEPUTY REGISTRAR
HIGH COURT OF KENYA
NAIROBI

66

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 1970 OF 1999(O.S)

DEPARTMENT OF LANDS
368
CENTRAL REGISTRY
10 NOV 1999
10-16 Hrs
P.O. Box 30089, NAIROBI

IN THE MATTER OF AN APPLICATION UNDER SECTION 37 OF THE TRUSTEE ACT CAP 167
AND

IN THE MATTER OF AN APPLICATION BY PETER KERUMBI KEINGATI

DECREE

HIGH COURT OF KENYA
CENTRAL REGISTRY
CIVIL SIDE
NAIROBI
Stephen Mugo

CLAIM FOR

This Honourable Court be pleased to appoint Hannah Wanjiru Kamau, Stephen Mugo Mutothori and Raymond Mwangi Waweru of P.O. Box 7541 Nairobi as trustees for L.R. No. 11379/3 in addition to Peter Kerumbi Keingati under the trust deed dated 7th April 1970.

Costs of this application be in cause.

UPON READING the Consent letter dated 21st October 1999 filed on 25th October 1999 and signed by Njiru Boniface & Co. Advocates for the applicant, Mary Njeri on behalf of KIAMBU DANDORA FARMERS CO. LTD. HANNAH WANJIRU KAMAU, STEPHEN MUGO MITOTHORI and RAYMOND MWANGI WAWERU.

IT IS ORDERED:-

1. THAT Hannah Wanjiru Kamau, Stephen Mugo Mutothori and Raymond Mwangi Waweru of P.O. Box 7541 Nairobi be and are hereby appointed as trustees for L.R. No. 11379/3 in addition to Peter Kerumbi Keingati Under the Trust deed dated 7th April 1970.
2. THAT costs of this application be in cause.

GIVEN under my hand and the Seal of the Court this 28th day of October 1999.

ISSUED at Nairobi this 1st

day of November 1999.

P. M. Shauri
DEPUTY REGISTRAR
HIGH COURT OF KENYA NAIROBI

(checked)
M. M. M.

LAND TITLES REGISTRY - NAIROBI REGISTRY
REGISTRATION OF TITLE ACT

REGISTERED AS No. I.R. 23514/3

PRESENTED 10th November 1999

TIME 10-16 Hrs *Awana*

Registrar of Titles.

67

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO 1420 OF 2005 (OS)

IN THE MATTER OF THE TRUSTEE ACT, CHAPTER 167, AND IN THE
MATTER OF L.R. 11379/3

RAYMOND MWANGI WAWERU APPLICANT

-VERSUS-

KIAMBU DANDORA FARMERS CO LIMITED RESPONDENT

IN THE CHAMBERS ON THE 24TH DAY OF FEBRUARY, 2006
BEFORE HONOURABLE MR. JUSTICE P. KIHARA KARIUKI

AMENDED ORDER

UPON READING the application dated 8th day of November, 2005, and brought under Section 37 & 42 (1) of the trustee Act and Orders 36 rules 5A and 7 of the Civil Procedure Rules and all enabling provisions of law and upon reading the affidavits of Raymond Mwangi Waweru sworn on 8th November, 2005 and 17th February, 2006, and the annexures thereto AND UPON HEARING counsel for Applicant in the absence of the counsel for the respondent IT IS HEREBY ORDERED THAT :-

1. THAT Joseph Nduati Ngendo and Kariuki Njoroge be and are hereby appointed as the additional trustees of Kiambu Dandora Farmers Co Ltd of LR NO. 11379/3 in substitution of Stephen Mugo Mutothori who is now dead.
2. That the cost of the application be paid for by the Respondent.

GIVEN under my hand and the Seal of this Court on the 24th day of February 2005

ISSUED at Nairobi this 1st day of March 2006.

AMENDED at Nairobi this

day of 4th 2006.

I CERTIFY THIS IS TRUE COPY OF THE ORIGINAL. 07/03/06

DATED:

.....

DEPUTY REGISTRAR

HIGH COURT OF KENYA

NAIROBI

DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI

PENAL CODE NOTICE: Failure to obey a Court order constitutes a contempt of Court and is punishable by law for a term of imprisonment or payment of fine or both.

68

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT No. 447 OF 2008 (OS)

IN THE MATTER OF THE TRUSTEE ACT, CHAPTER 167, AND IN THE
MATTER OF L.R. 11379/3

BETWEEN

RAYMOND MWANGI WAWERU
PETER KERUMBI KEINGATI
JOSEPH NDUATI NG'ENDO
KARIUKI NJOROGE PLAINTIFFS

AND

KIAMBU DANDORA FARMERS CO., LTD DEFENDANTS

IN CHAMBERS ON 6TH MARCH 2009 BEFORE HON. LADY JUSTICE
NAMBUYE

DECREE

CLAIM FOR:

- a) That this Court be pleased to appoint ABDILAHU MUIGAI MUIRURI as an additional Trustee.
- b) Cost of the application be provided for

UPON READING the originating summons dated 6th October, 2008 and made under Sections 37 & 42 (1) of the Trustee Act and Orders 36 Rules 5 A and 7 of the Civil Procedure Rules and all other enabling Provisions of the Law and upon READING the Affidavit of JOSEPH NDUATI NG'ENDO sworn on 6th October, 2008 and Affidavits of CHARLES MURIITHI sworn on 6th March, 2009 and on 9th February, 2009 respectively together with annexures AND UPON hearing Counsel for the Plaintiffs.

IT IS HEREBY ORDERED

- (a) That ABDILAHU MUIGAI MUIRURI be and is hereby appointed as an additional Trustee of the land LR No. 11379/3
- (b) That costs be awarded to the Plaintiffs

69


- 2 -

GIVEN under my hand and SEAL of this Honourable Court this 6th day of March, 2009.

ISSUED at Nairobi this 27th day of March 2009



DEPUTY REGISTRAR
HIGH COURT OF KENYA,
NAIROBI

THIS IS TRUE COPY OF
ORIGINAL
27th March 2009

DEPUTY REGISTRAR
HIGH COURT OF
NAIROBI

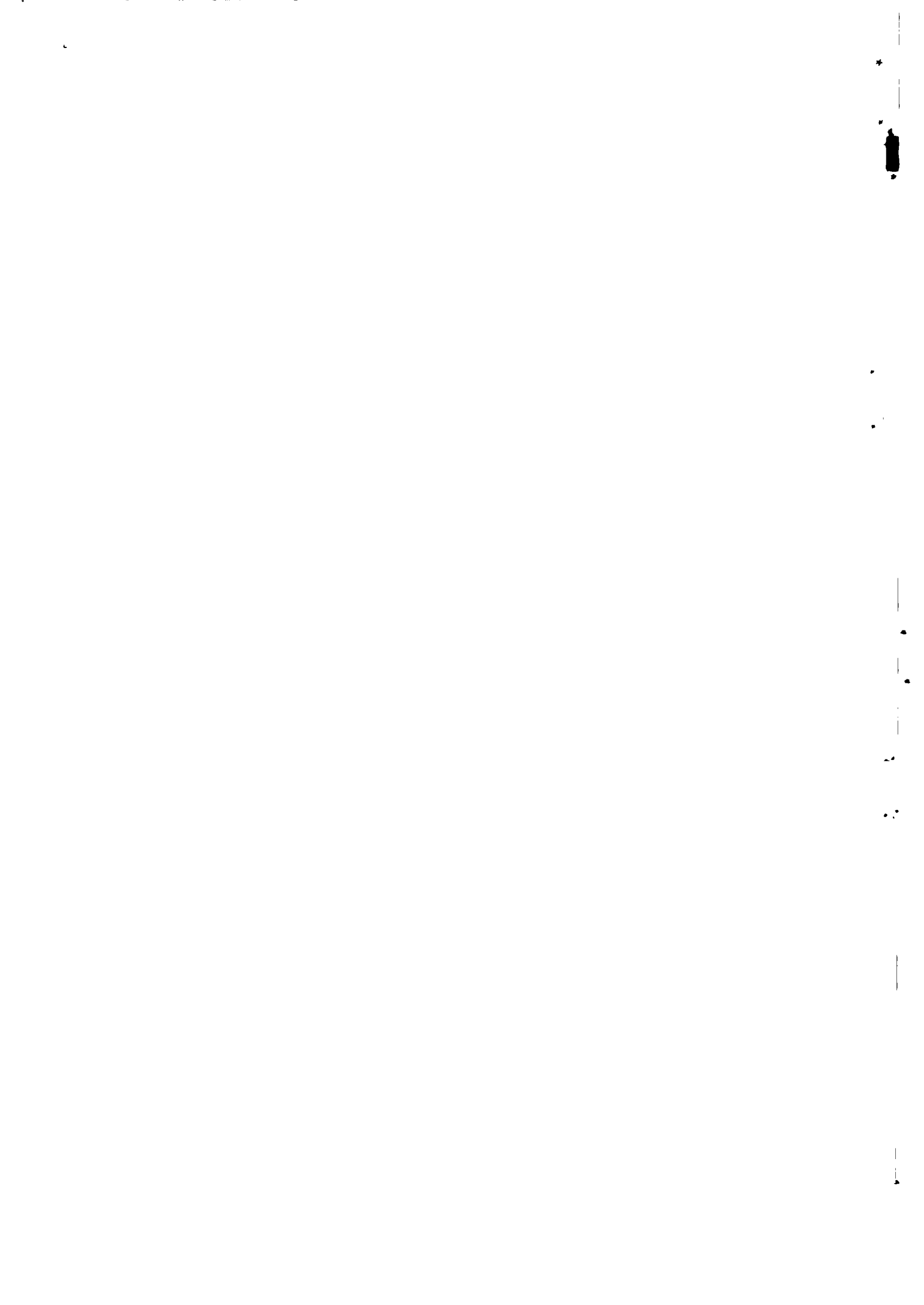
20

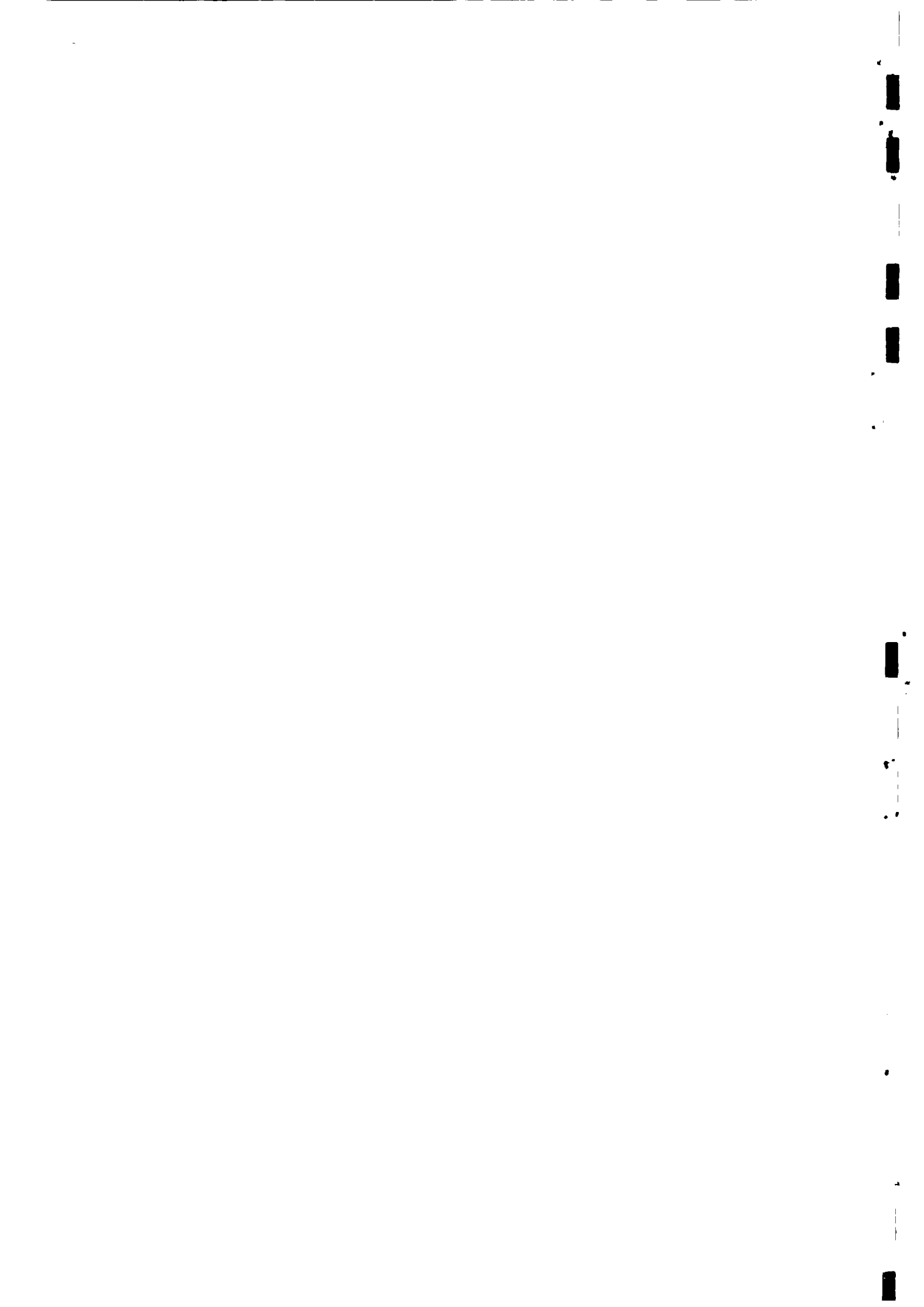
BU DANDORA FOREIGNS COMPANY MAIN LIST

DEPOSIT SHARE CAPITAL, REGISTRATION FEES AND SUPERVISOR FEES

Handwritten signature and notes on the right side of the page.

NO.	IST DATE	N A M E	RECEIPT NOS.	DEPOSIT SHARE C.	RECEIPT NOS.	REGISTR. FEES	RECEIPT NOS.	SUPERVISOR FEES	TOTAL
16-8-66	✓	ALBERT KIROKO	79, 82, 85, 25, 55	2750.00			87, 86	50.00, 225.00	3025.00
14-9-66		ANAH WAMBUI ANDREW	73, 15	1100.00					1100.00
26-4-67		ARTHUR KIMANI GACHOKA	44, 90, 37	1400.00					1400.00
7-6-67		BELITA WAIRIMU KARIUKI	53	350.00			73	250.00	1650.00
12-6-67		DONRAGE NJAGA KIBAKA KIBAKA	82	2100.00			81, 9	50.00, 25.00	455.00
30-6-67		B. G. CITHERR	47	700.00					2130.00
3-9-66	✓	CHEGE KIGURU	31, 10, 85	750.00			49	30.00	730.00
17-10-66		CHARLES KALUKI TITUS	19	1800.00			34	75.00	825.00
3-6-67		CHRISPINA WANGARE	22	1050.00			51	125.00	1925.00
21-6-67		CHEGE MWANIKI	12	1050.00			89	30.00	1080.00
10-8-66		DANIEL NGUGI	17, 27	1400.00					1080.00
4-10-66		JEFFINO JUMA MWAITA	3, 21	1000.00			90	100.00	1500.00
5-10-66		DAVIS MWITIGA THAO	12, 68, 9, 66	1750.00					1000.00
9-11-66		DAVIDAS MUTHIRU	22, 81, 84, 88	2050.00					1750.00
15-5-67		DAGORETTE KABIRIA SOG.	76, 45	1750.00			76, 45, 5	150.00, 100.00	2300.00
4-6-67		DANIEL WALGURU	4, 32	1750.00			68	125.00	1845.00
1-7-67		DANIEL MUTHIRU GITONGO	58	95.00			62	25.00	1905.00
8-9-66		EDITH WANYORA	56, 65, 89	1900.00			30	125.00	120.00
29-9-66		ELIJAH THONGO MUGAI	91	1000.00					2055.00
5-10-66		ELIZABETH WANJIKU KINYANJUI	9	1000.00			37	125.00	1125.00
11-10-66		EVANSON G. GITAU	16, 34	550.00			95, 25	50.00, 25.00	1175.00
17-4-67		EDWARD GACHOMO	51, 53, 38, 51	3350.00			38	50.00	600.00
4-6-67		ESTHER NGUHI	17	350.00			32	375.00	3725.00
8-6-67		ENOS THANI S. NGETHI	56	700.00			12	25.00	405.00
12-6-67		ELIZABETH MUTHONI	77, 54	350.00			37	50.00	780.00
26-6-67		EVANS KAMAU	30	700.00			14	25.00	405.00
29-6-67		ELIZABETH GEORGEY GIOHOIYA	42	350.00			95	50.00	780.00
4-9-66		FREDRICK NDOROGA	4, 19, 62	2150.00			98	30.00	380.00
10-5-67		FRANCIS KIARIRI	69, 64	2100.00			60	200.00	2350.00
17-5-67		FREDRICK KIBIRI WAMBUI	73				0	150.00	2280.00





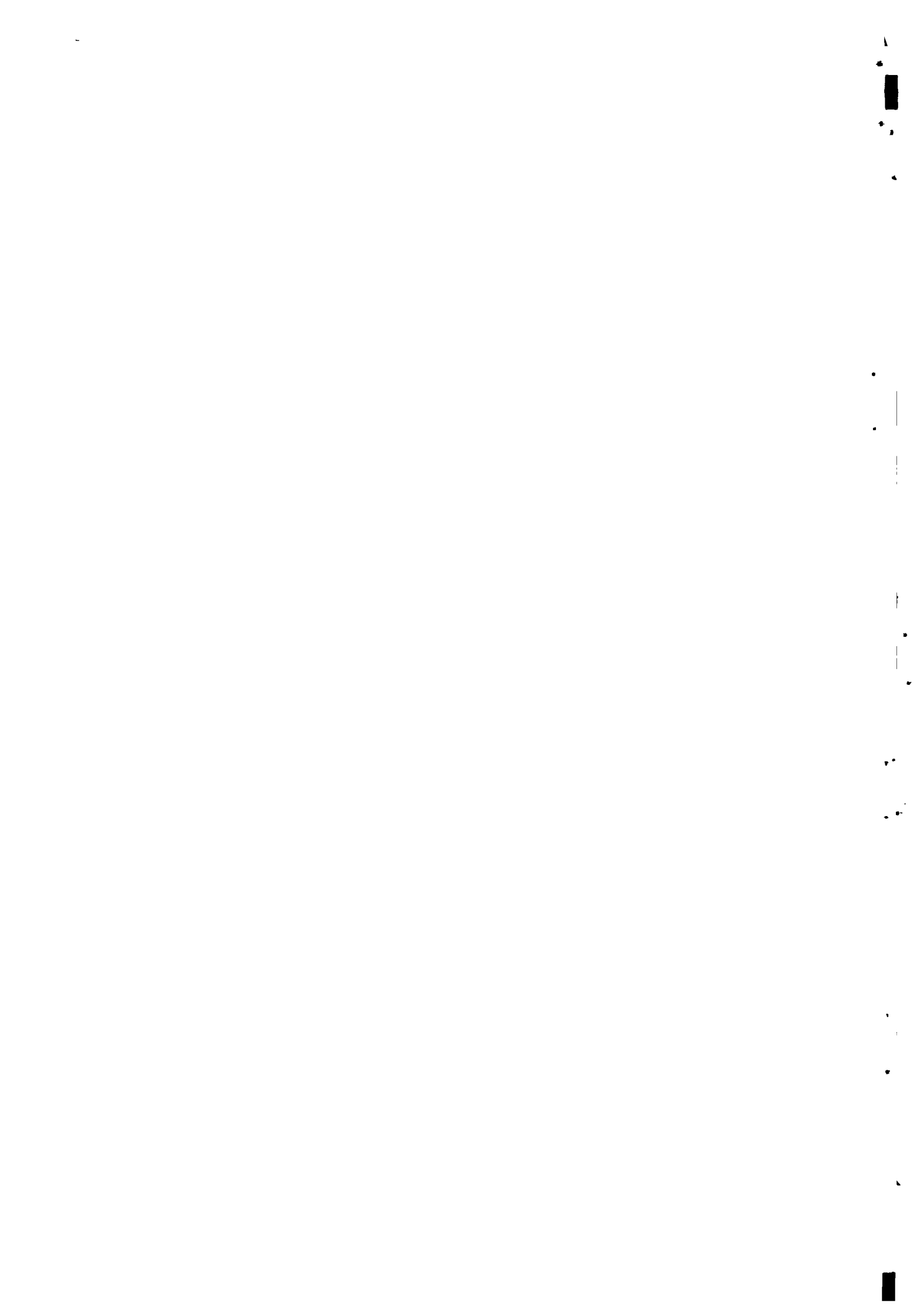
ISST DATE	NAME	RECEIPT NOS.	DEPOSIT SHARE C.	RECEIPT NOS.	REGISTRATION FEES	RECEIPT NOS.	SURVEYOR FEES	TOTAL
141 7-6-67 ✓	NAONGE WAWERU	50	700.00	90	30.00	23	50.00	780.00
142 8-6-67 ✓	NYOKABI GIKANDI	59, 65	1050.00	52	30.00	41, 41	100.00, 75.00	1255.00
143 17-6-67 ✓	NG'ANG'A MUGO	3, 16	760.00	80	30.00	78	50.00	840.00
144 12-6-67 ✓	NDERU MWA NGI	78	1400.00	99	30.00	78	100.00	1530.00
145 15-6-67 ✓	NGENDO GAKAMI	100	350.00	70	30.00	76	25.00	405.00
146 22-6-67 ✓	NIENGA NG'ANG'A	18, 26	1050.00	87	30.00	-	-	1080.00
147 24-6-67 ✓	NDUNGU WAITHANJI	22	350.00	92	30.00	30	25.00	405.00
148 17-5-68 ✓	NDALI KIRIKA	69	700.00	70	30.00	46	50.00	780.00
149 14-6-67 ✓	ONESPO MWINAMI	95	1400.00	73	30.00	-	-	1430.00
150 29-6-67 ✓	OWEN JACKSON KAMAU	41	350.00	94	30.00	50	25.00	405.00
151 17-5-68 ✓	ONDIRIA WAIRIMU NJOMO	73	1050.00	74	30.00	61	75.00	1155.00
152 4-6-67 ✓	PAUL KEINGATI WAHORO	19	1000.00	-	-	4	100.00	200.00
153 22-6-67 ✓	PERIS WANJIKU KIARIE	14	700.00	84	30.00	-	-	730.00
154 1-7-67 ✓	PHILIS MUTHONI JOSEPHAT	60, 25, 32	1050.00	61	30.00	56	75.00	1155.00
155 2-7-67 ✓	PETER MAHERO & PARTNERS	80	1150.00	81	95.00	-	-	1845.00
156 13-5-63 ✓	PATTERSON KARIUKI	59	350.00	60	30.00	20	50.00	430.00
157 2-6-67 ✓	RAHABU NYOKABI	23	700.00	24	30.00	23	50.00	780.00
158 9-6-67 ✓	ROBERT MACHARIA & MBUGUA NG'ANG'A	67, 57, 70	3150.00	55	50.00	-	-	3200.00
159 12-6-67 ✓	RICHARD KARIUKI MUNYOTA	73, 76, 13, 40	2800.00	58	30.00	8	200.00	3030.00
160 19-6-67 ✓	RUPUS WANGONGU	5	2100.00	81	30.00	35	150.00	2280.00
161 26-6-67 ✓	RAHAB WAMBUI	31	350.00	99	30.00	5	25.00	405.00
162 16-5-68 ✓	RAYMOND MWANGI WAWERU	66	1750.00	67	30.00	47	125.00	1905.00
163 28-8-66 ✓	STEPHEN KINIU	26, 66	450.00	-	-	-	-	262, 265.00
164 12-9-66 ✓	STEPHEN KARURU	62, 5, 32	1600.00	-	-	-	-	450.00
165 20-9-66 ✓	SAMUEL EAKUNGA	82, 40	1400.00	-	-	52	275.00	1875.00
166 23-9-66 ✓	SAMUEL NGUGI NG'ANG'A	89, 69	2100.00	-	-	24	100.00	1500.00
167 11-10-66 ✓	SIAMON KARUGA MWAURA	15	200.00	-	-	31	150.00	1250.00
168 6-3-67 ✓	SAMUEL NDUNGU & DAVIDS MWAURA	37	560.00	13	65.00	45, 15, 14	50.00, 50.00, 50.00	735.00
169 7-5-67 ✓	STEPHEN KABUNJITIA NGAGA	64, 15	350.00	-	-	26	50.00	400.00

Carry Forward

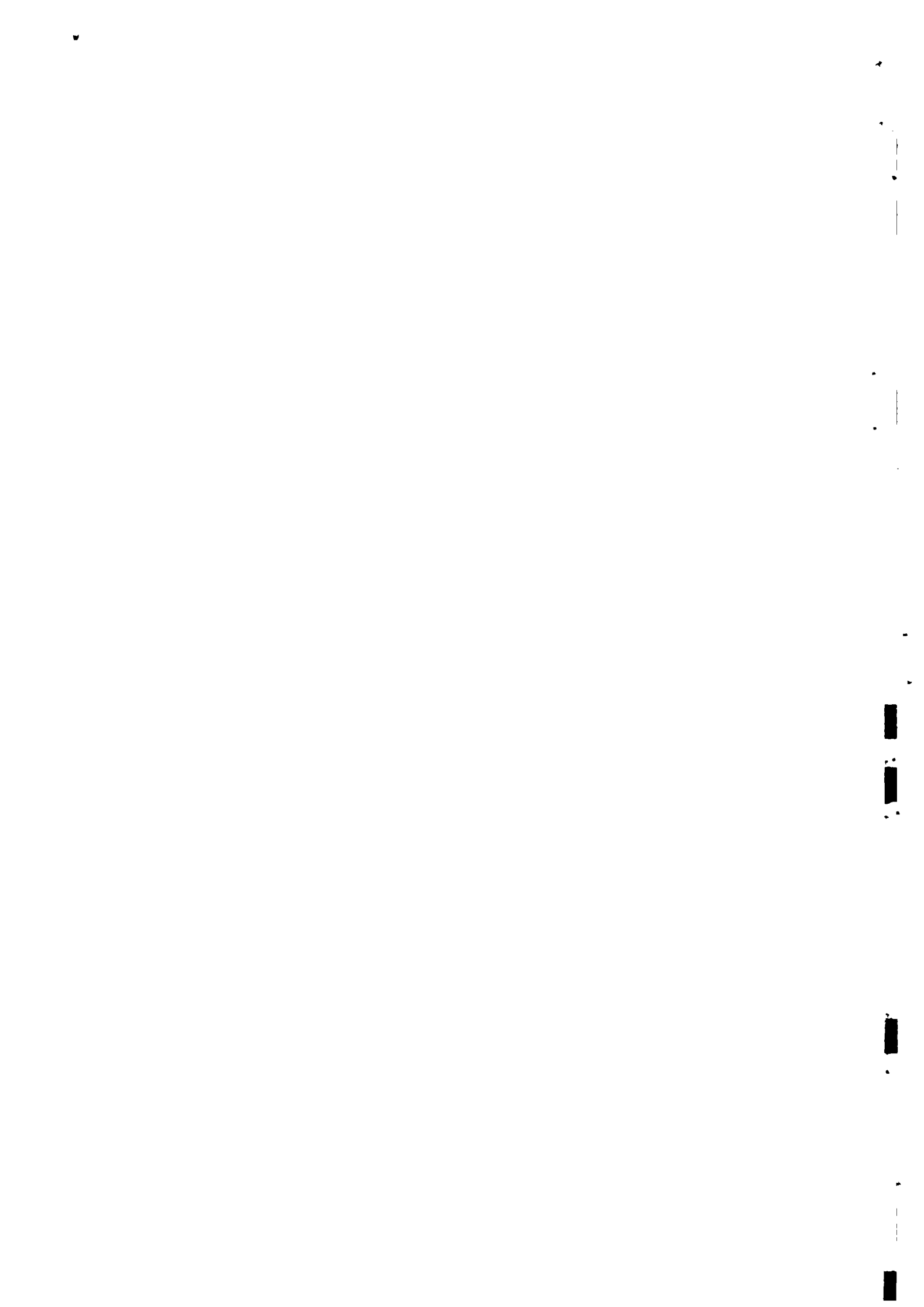
ISP DATE	NAME	RECEIPT NOS.	DEPOSIT SHEET Q.	RECEIPT NOS.	REGISTRATION FEES	RECEIPT NOS.	SURVEYOR FEES	TOTAL
170 31-5-67	STEPHEN KAMAU	97	50.00	-	-	-	-	50.00
171 3-6-67	SIMON KAMAU	20	700.00	35	30.00	36	50.00	790.00
172 3-6-67	SAMUEL THUO	21	350.00	36	30.00	2	25.00	405.00
173 6-6-67	SIMON GATHECHA	35, 95	700.00	3	30.00	61	50.00	780.00
174 10-6-67	SARAH WANJIKU	70	350.00	56	30.00	77	25.00	405.00
175 13-6-67	SIMON NGARARA	91	350.00	67	30.00	28	25.00	405.00
176 2-7-67	SOLOMON MBUVUA	74, 38, 79	4200.00	-	-	54	25.00	405.00
177 6-9-66	THUTTA THIGA	33, 63, 100, 60	3150.00	-	-	59	225.00	3375.00
178 5-6-67	VERONICA WANJIRU	32	350.00	40	30.00	89, 10	50/=, 25/=	455.00
179 25-7-66	WANGARI WANJUGI	1, 8	650.00	-	-	66	50.00	700.00
180 9-8-66	WAMBUI MURIOGA	13, 29	1950.00	-	-	1	150.00	2100.00
181 6-9-66	WAIPIHIRA GATHINJI	38	450.00	-	-	99	25.00	475.00
182 14-9-66	WANGUI CHEGE	74, 93	350.00	-	-	35	25.00	375.00
183 16-9-66	WANJIRU NJOROGE	30	120.00	-	-	-	-	120.00
184 4-10-66	WILFRED KIRUK&SAMUEL K.	6	500.00	-	-	-	-	500.00
185 12-5-67	WAKANYI MWANGI	74, 51	1050.00	77	30.00	20	100.00	1180.00
186 16-5-67	WILLY KAMAU KAMUNYU	79, 28, 33, 1	1750.00	20	30.00	53	125.00	1905.00
187 18-5-67	WANJIRU MWANGI	82	700.00	23	30.00	75, 21	25/=, 50/=	805.00
188 29-5-67	WILFRED K. NGUATA	89, 52	1050.00	30	30.00	40	75.00	1155.00
189 30-5-67	WAIPIHIRA NDIRANGU	92	350.00	31	30.00	89	25.00	405.00
190 30-5-67	WAKIA KIMINGI	93, 79	2800.00	32	30.00	-	9	2830.00
191 12-6-67	WANJOHI GATUBU	84	350.00	63	30.00	74	25.00	405.00
192 14-6-67	WARUI #/o. WANJIKU	98	700.00	86	30.00	70	50.00	790.00
193 19-6-67	WANGARI NJOROGE	6, 19	700.00	82	30.00	2, 42	10/=, 40/=	790.00
*194 24-6-67	WILLIAM MUYHAMA	21, 53	1050.00	91	30.00	36	100.00	1180.00
195 27-6-67	WAMERU GICHUMBU	34, 79	1050.00	97	30.00	-	-	30447000
196 30-6-67	ZIPOROLIS-PAUL KALOKI	83, 42	1400.00	-	-	-	-	1110.00
*197 18-8-67	AUTHUR NYANJUI NGLANGA	15	350.00	14	30.00	-	-	1400.00
198 15-6-67	ELIUD KARANJA	74	700.00	75	30.00	-	-	380.00
199 15-6-67	FRANCIS MUTHORAR	77	350.00	76	30.00	-	-	730.00
200 15-6-67	WALRIND KAMBER	75	350.00	6	30.00	-	-	380.00

Garry Forward

1









2-
filed
D.H.L. 8/4

THIS TRUST DEED is made the 7th day of April

One thousand nine hundred and ~~sixty-nine~~ ^{Seventy} BY (1) KIBIRO KARANJA
(2) REUBEN KANGARA (3) KEINGATI WATHARO (4) NJUGUNA KIMANI
and (5) PETER GACHERU KINGARA all of Post Office Box Number 152
Kiambu in the Republic of Kenya (hereinafter together called "the
Trustees")

WHEREAS

- (i) This declaration is supplemental to a transfer of even date and made between (1) Khan Nawaz Khan (2) Khan Abbas Khan (3) Mehdi Khan AND the Trustees whereby the property described in the Schedule hereto was transferred to the Trustees in fee simple in consideration of the sum of Shillings Two Hundred thousand (Shs.200,000/-) therein stated to have been paid by the Trustees to the said Khan Nawaz Khan Khan Abbas Khan and Mehdi Khan;
- (ii) The said sum of Shillings Two hundred thousand (Shs.200,000/-) was provided by the Trustees and persons who have caused a limited liability company to be incorporated in the said Republic under the name of "KIAMBU DANDORA FARMERS COMPANY LIMITED" and who are also in the process of incorporating a co-operative society under the name of "DANDORA ESTATES CO-OPERATIVE SOCIETY LIMITED" and the said property was transferred to the Trustees as trustees for the Trustees and the said persons.

NOW THIS DEED WITNESSETH that the Trustees hereby declare that they hold the said property in trust for themselves and the said persons in fee simple and hereby agree (i) that they will as soon as the said Co-operative Society shall have been incorporated make an application to the Nairobi Land Control Board for its consent to the transfer of the said property to either the said Kiambu Dandora Farmers Company Limited or to the said Dandora Estates Co-operative Society Limited and (ii) so soon as is practicable after the obtaining of such consent execute and do all such documents acts and things as may be necessary to procure the said



property to be transferred to and registered in the name of the said Kiambu Dandora Farmers Company Limited or the said Dandora Estates Co-operative Society Limited as the case may be.

IN WITNESS WHEREOF the Trustees have hereunto set their respective hands and seals the day and year first hereinbefore written

THE SCHEDULE HEREINBEFORE REFERRED TO

All that piece of land containing by measurement eight hundred and eighteen (818) acres or thereabouts situate in the City of Nairobi in the Nairobi Area of the said Republic and known as Land Reference Number 11379/3 which said piece of land being a portion of the premises comprised in a Grant registered in the Land Titles Registry at Nairobi aforesaid as Number I.R. 19935/1 is delineated on the plan annexed to the said transfer and more particularly on Land Survey Plan Number 86048 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red.

SIGNED SEALED and DELIVERED
by the said KIBIRO KARANJA
in the presence of:-

~~Signature~~ 7/4/70

Kibiro

SIGNED SEALED and DELIVERED
by the said REUBEN KANGARA
in the presence of:-

N. MUGO - 2nd Class Magistrate
~~Signature~~ 2/3/70

Reuben

SIGNED SEALED and DELIVERED
by the said KEINGATI WATHARO
in the presence of:-

N. MUGO - 2nd Class Magistrate
~~Signature~~ 2/3/70

Keingati

SIGNED SEALED and DELIVERED
by the said NJUGUNA KIMANI
in the presence of:-

N. MUGO - 2nd Class Magistrate
~~Signature~~ 2/3/70

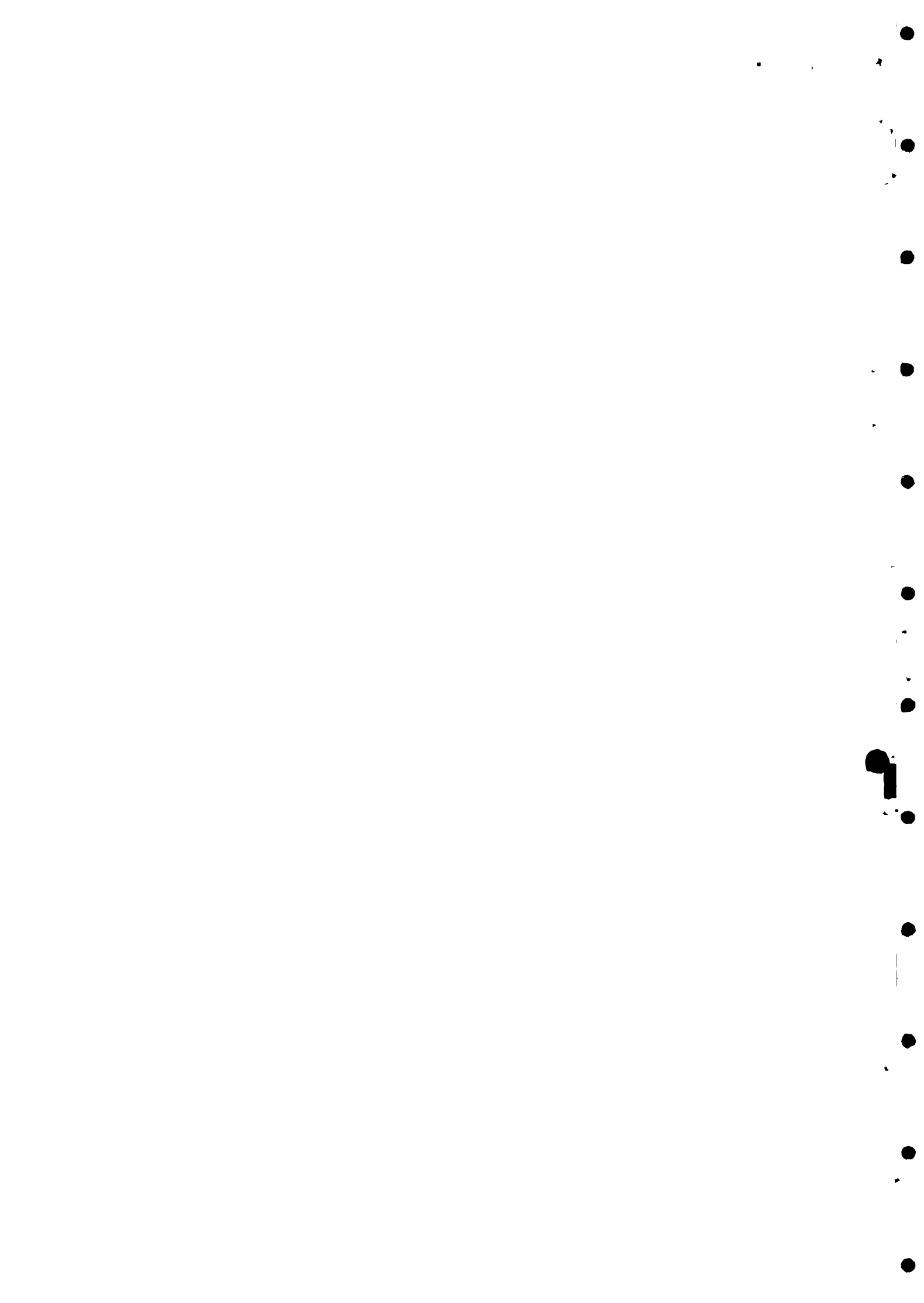
Njuguna

SIGNED SEALED and DELIVERED
by the said PETER GACHERU
KINGARA in the presence of:-

N. MUGO - 2nd Class Magistrate
~~Signature~~ 2/3/70

Peter Gacheru Kingara





REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 1970 OF 1999(O.S)

CENTRAL REGISTRY
10 NOV 1999
10.16 Hrs
P.O. Box 30089, NAIROBI

IN THE MATTER OF AN APPLICATION UNDER SECTION 37 OF THE TRUSTEE ACT CAP 167
AND

IN THE MATTER OF AN APPLICATION BY PETER KERUMBI KEINGATI

HIGH COURT OF KENYA
CENTRAL REGISTRY
P11
CIVIL SIDE
NAIROBI
Stephen Mugo

DECREE

CLAIM FOR

This Honourable Court be pleased to appoint Hannah Wanjiru Kamau, Mutothori and Raymond Mwangi Waweru of P.O. Box 7541 Nairobi as trustees for L.R. No. 11379/3 in addition to Peter Kerumbi Keingati under the trust deed dated 7th April 1970.

Costs of this application be in cause.

UPON READING the Consent letter dated 21st October 1999 filed on 25th October 1999 and signed by Njiru Boniface & Co. Advocates for the applicant, Mary Mjeri on behalf of KIAMBU DANDORA FARMERS CO. LTD. HANNAH WANJIRU KAMAU, STEPHEN MUGO MUTOTHORI and RAYMOND MWANGI WAWERU.

IT IS ORDERED:-

1. THAT Hannah Wanjiru Kamau, Stephen Mugo Mutothori and Raymond Mwangi Waweru of P.O. Box 7541 Nairobi be and are hereby appointed as trustees for L.R. No. 11379/3 in addition to Peter Kerumbi Keingati Under the Trust deed dated 7th April 1970.
2. THAT costs of this application be in cause.

GIVEN under my hand and the Seal of the Court this 28th day of October 1999.

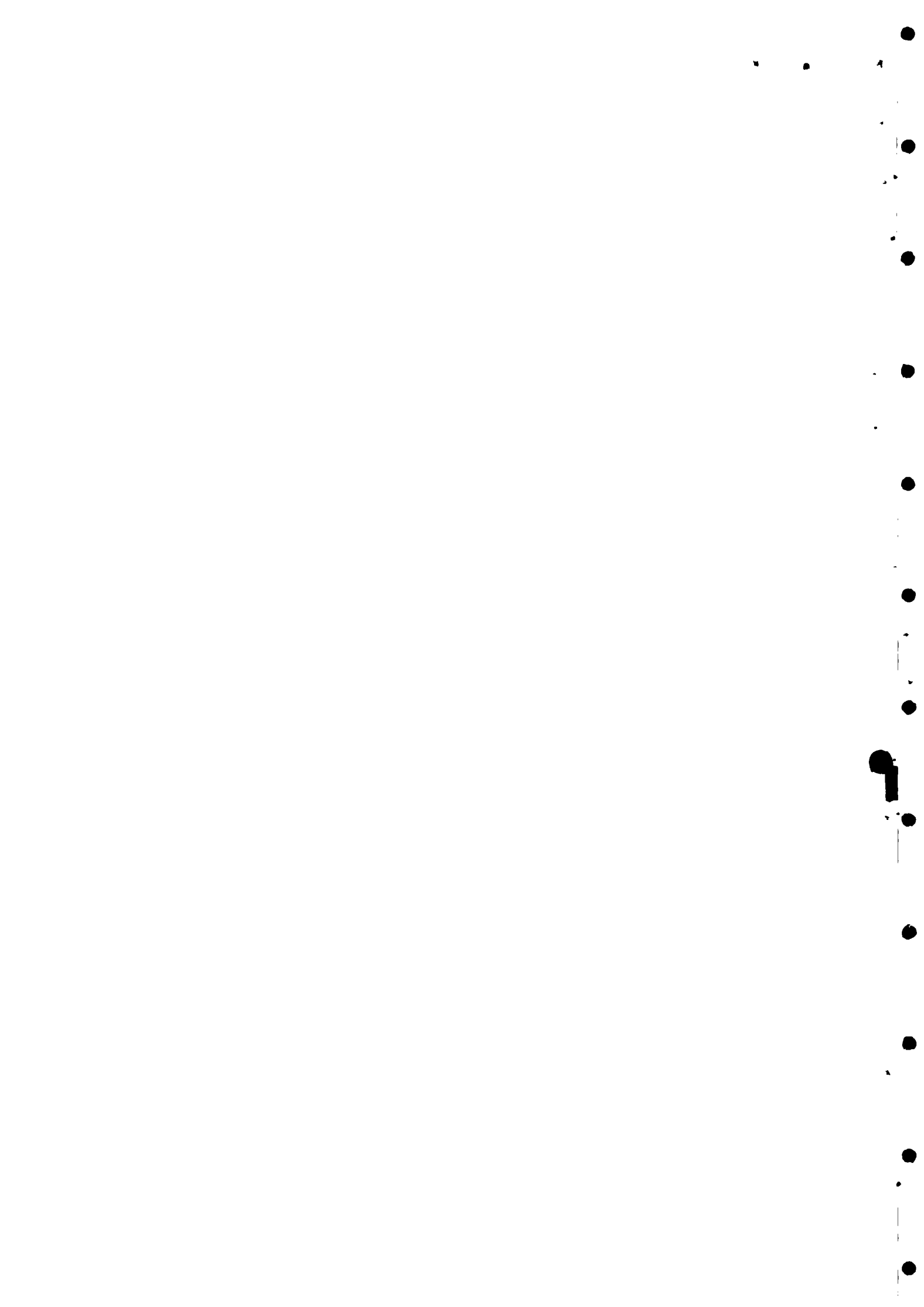
ISSUED at Nairobi this 1st day of November 1999.

(checked)
M. I. I.

P. M. M. M.
DEPUTY REGISTRAR
HIGH COURT OF KENYA NAIROBI

LAND TITLES REGISTRY - NAIROBI REGISTRY
REGISTRATION OF TITLE ACT
REGISTERED AS No. I.R. 23514/3
PRESENTED 10th November 1999
TIME 10.16 Hrs *Over*

Registrar of Titles
E. N. GACHARA (10)



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 1970 OF 1999(O.S)

CENTRAL REGISTRY
10 NOV 1999
10.16/11/8
P.O. Box 30089, NAIROBI

IN THE MATTER OF AN APPLICATION UNDER SECTION 37 OF THE TRUSTEE ACT CAP 167
AND

IN THE MATTER OF AN APPLICATION BY PETER KERUMBI KEINGATI

DECREE

HIGH COURT OF KENYA
CENTRAL REGISTRY
P11
CIVIL SIDE
NAIROBI
Stephen Mugo

CLAIM FOR

This Honourable Court be pleased to appoint Hannah Wanjiru Kamau, Muthothori and Raymond Mwangi Waweru of P.O. Box 7541 Nairobi as trustees for L.R. No. 11379/3 in addition to Peter Kerumbi Keingati under the trust deed dated 7th April 1970.

Costs of this application be in cause.

UPON READING the Consent letter dated 21st October 1999 filed on 25th October 1999 and signed by Njiru Boniface & Co. Advocates for the applicant, Mary Njeri on behalf of KIAMBU DANDORA FARMERS CO. LTD. HANNAH WANJIRU KAMAU, STEPHEN MUGO MUTOTHORI and RAYMOND MWANGI WAWERU.

IT IS ORDERED:-

1. THAT Hannah Wanjiru Kamau, Stephen Mugo Muthothori and Raymond Mwangi Waweru of P.O. Box 7541 Nairobi be and are hereby appointed as trustees for L.R. No. 11379/3 in addition to Peter Kerumbi Keingati Under the Trust deed dated 7th April 1970.
2. THAT costs of this application be in cause.

GIVEN under my hand and the Seal of the Court this 28th day of October 1999.

ISSUED at Nairobi this 1st day of

day of November 1999.

Checked
M. I. I.

P. M. M.
DEPUTY REGISTRAR
HIGH COURT OF KENYA NAIROBI

[Handwritten signature]

LAND TITLES REGISTRY - NAIROBI REGISTRY
REGISTRATION OF TITLE ACT
REGISTERED AS No. I.R. 23514/3
10/11/99

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1420 OF 2005 (OS)

IN THE MATTER OF THE TRUSTEE ACT, CHAPTER 167, AND IN THE
MATTER OF L.R. 11379/3

RAYMOND MWANGI WAWERU APPLICANT

-VERSUS-

KIAMBU DANDORA FARMERS CO.LIMITED RESPONDENT

IN THE CHAMBERS ON THE 24TH DAY OF FEBRUARY, 2006
BEFORE HONOURABLE MR. JUSTICE P. KIHARA KARIUKI

AMENDED ORDER

UPON READING the application dated 8th day of November, 2005, and brought under Section 37 & 42 (1) of the trustee Act and Orders 36 rules 5A and 7 of the Civil Procedure Rules and all enabling provisions of law and upon reading the affidavits of Raymond Mwangi Waweru sworn on 8th November, 2005 and 17th February, 2006, and the annexures thereto AND UPON HEARING counsel for Applicant in the absence of the counsel for the respondent IT IS HEREBY ORDERED THAT :-

1. THAT Joseph Nduati Ngendo and Kariuki Njoroge be and are hereby appointed as the additional trustees of ~~Kiambu Dandora Farmers Co. Ltd~~ of LR NO. 11379/3 in substitution of Stephen Mugo Mutothori who is now dead.
2. That the cost of the application be paid for by the Respondent.

GIVEN under my hand and the Seal of this Court on the 24th day of February 2005

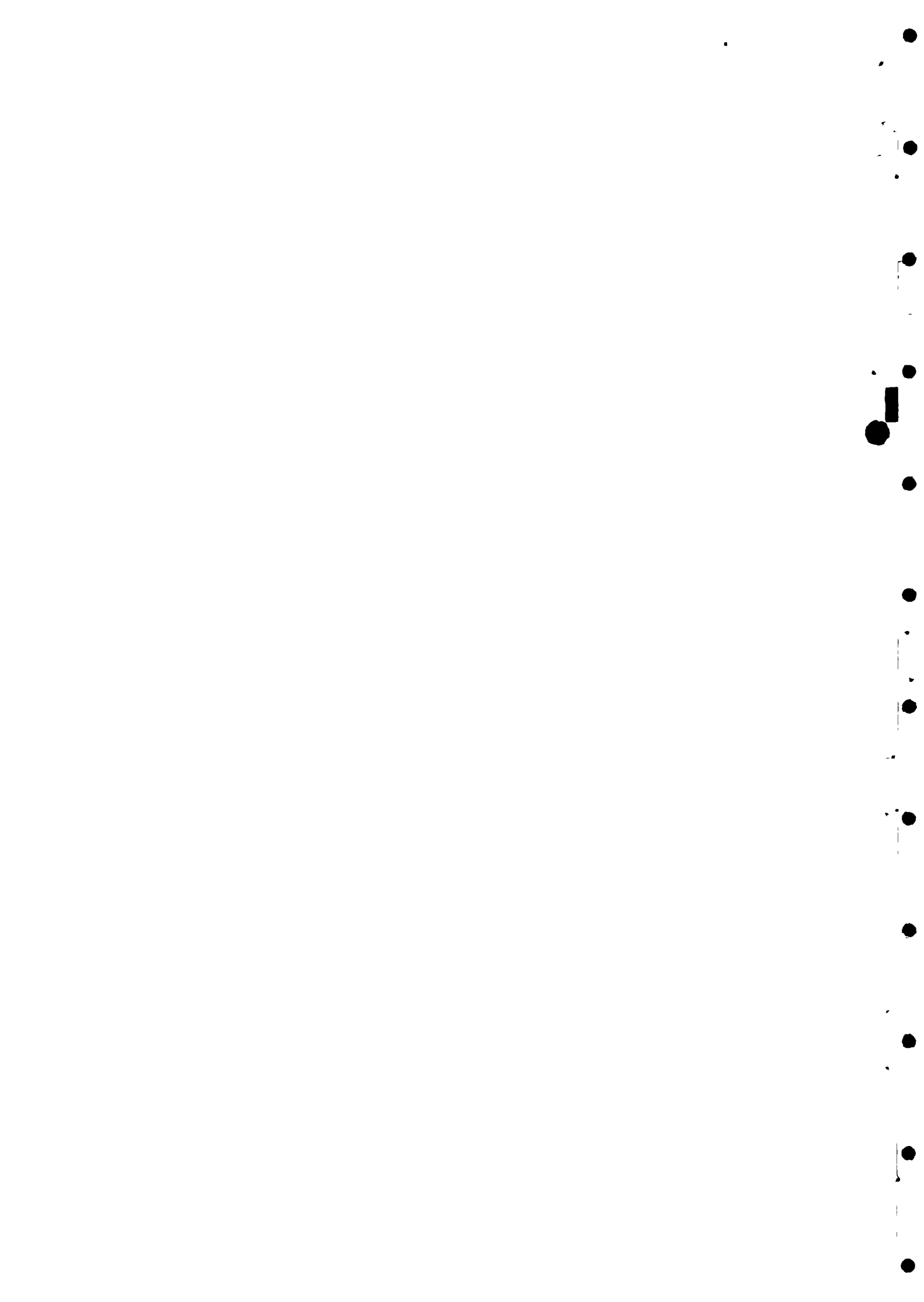
ISSUED at Nairobi this 1st day of March 2006.

AMENDED at Nairobi this day of March 2006.

CERTIFY THIS IS TRUE COPY OF ORIGINAL.
07/03/06
DEPUTY REGISTRAR
HIGH COURT OF KENYA
NAIROBI

DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI

PENAL NOTICE: Failure to obey a Court order constitutes a contempt of Court and is punishable by law for a term of imprisonment or payment of fine or both.



11/11/2009
10:00:00 AM

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT No. 447 OF 2008 (OS)

IN THE MATTER OF THE TRUSTEE ACT, CHAPTER 167, AND IN THE
MATTER OF L.R. 11379/3

BETWEEN

RAYMOND MWANGI WAWERU
PETER KERUMBI KEINGATI
JOSEPH NDUATI NG'ENDO
KARIUKI NJOROGE PLAINTIFFS

AND

KIAMBU DANDORA FARMERS CO., LTD DEFENDANTS

IN CHAMBERS ON 6TH MARCH 2009 BEFORE HON. LADY JUSTICE
NAMBUYE

DECREE

CLAIM FOR:

- a) That this Court be pleased to appoint ABDILAH I MUIGAI MUIRURI as an additional Trustee.
- b) Cost of the application be provided for


UPON READING the originating summons dated 6th October, 2008 and made under Sections 37 & 42 (1) of the Trustee Act and Orders 36 Rules 5 A and 7 of the Civil Procedure Rules and all other enabling Provisions of the Law and upon **READING** the Affidavit of JOSEPH NDUATI NG'ENDO sworn on 6th October, 2008 and Affidavits of CHARLES MURIITHI sworn on 6th March, 2009 and on 9th February, 2009 respectively together with annexures **AND UPON** hearing Counsel for the Plaintiffs.


IT IS HEREBY ORDERED

- (a) That ABDILAH I MUIGAI MUIRURI be and is hereby appointed as an additional Trustee of the land LR No. 11379/3
- (b) That costs be awarded to the Plaintiffs

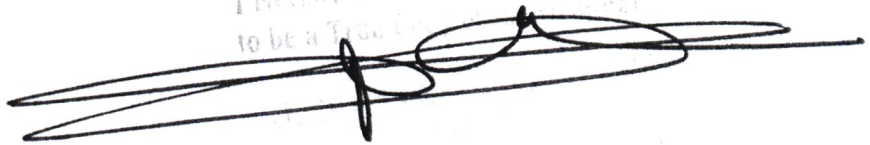
GIVEN under my hand and SEAL of this Honourable Court this 6th day of March, 2009.

ISSUED at Nairobi this 27th day of March 2009


DEPUTY REGISTRAR
HIGH COURT OF KENYA,
NAIROBI

THIS IS TRUE COPY OF
27th March 2009

WILLY KIBUKU
DEPUTY REGISTRAR
NAIROBI

I Hereto Seal
to be a True Copy





D

THIS AGREEMENT is made the

third

day of

July

One thousand nine hundred and sixty-seven BETWEEN (1) MERDI KHAN and (2) KHAN NAWAZ KHAN and KHAN ABAAS KHAN as Executors of the Estate of KHAN BAHADUR KHAN (hereinafter called "the Vendors") of the one part and KIBIRO KARANJA REUBEN KANGARA KEINGATI WAIHARO NJUGUNA KIMANI and PETER GACHEIU KINGARA all of Post Office Box Number 152 Kiambu in the Republic of Kenya (all trading under the style or firm name KIAMBU DANDORA FARMERS' CO. (hereinafter called "the Purchasers") of the other part

1. The Vendors agree to sell and the Purchasers agree to purchase save as herein provided free from encumbrances the immovable property described in the Schedule hereto (hereinafter referred to as "the said property") at the price of Shillings Two hundred and sixty thousand (Shs.260,000/-)
2. The said sum of Shillings Two hundred and sixty thousand (Shs.260,000/-) shall be paid by the Purchasers to the Vendors as follows:-
 - (i) Shillings Twenty-six thousand (Shs.26,000/-) on or before the execution hereof to Messrs. Shapley Barret Marsh & Co., Advocates as stakeholders as a deposit in part payment of the purchase price which shall be released to the Vendors on receipt of the Divisional Land Board consent to this transaction
 - (ii) Shillings One hundred and four thousand (Shs.104,000/-) within twenty-one days of the receipt of the said Divisional Land Board consent to Messrs. Shapley Barret Marsh & Co., which sum to be released to the Vendors on the date hereinafter fixed for completion
 - (iii) The balance of Shillings One hundred and thirty thousand (Shs.130,000/-) within sixty (60) days from the date of delivery by the Vendors to the Purchasers' advocates of the deed plan

or on the Thirty-first day of October One thousand nine hundred and sixt-seven whichever shall last happen

3. The Vendors' Advocates are Messrs. Shapley Barret Marsh & Co., of Prudential Assurance Building Wabera Street (Post Office Box Number 286, Nairobi)
4. The Vendors are registered at the Land Registry as proprietors of the said property under the Registration of Titles Act
5. The said property is sold with vacant possession on completion of the purchase *save as stated in clause 9 hereof*
6. The property is sold subject to all covenants conditions *Kibiki* restrictions reservations and easements subject to which the same is *Cessi* held by the Vendors namely the provisions of the Government Lands *Njogini* Act the provisions of the Registration of the Titles Act *Rk Kurder* the easement created by a wayleave agreement registered in Volume N. *B. P. 1. N. 1931* 13 Folio 91/12, 13 and 14 and the Special Conditions contained in *Certificate of title No. 1. N. 1931* a Grant No.
7. Completion shall take place at the offices of the Vendors' Advocates. The date fixed for completion shall be the date herein stipulated for the payment of the said balance of purchase price whereupon the Vendors shall deliver to the Purchasers and/or their nominees a transfer of the said property in favour of the Purchasers and/or their nominees together with all documents of title which are in their possession and relate solely to the said property in exchange for the balance of the purchase price
8. All taxes rates rents charges assessments and outgoings payable in respect of the said property and all income and rents receivable in respect of the sale shall be apportioned between the Vendors and the Purchasers as at the date fixed for completion
9. The said property is believed to be and shall be taken to be correctly described as to quantity and otherwise and any error omission misdescription or innocent misrepresentation relating thereto shall not annul the sale nor shall the Vendors or the

Purchasers be allowed any compensation in respect thereof Provide that nothing in this condition shall require the Vendors to convey or the Purchasers to accept property which differs substantially from the property hereby agreed to be sold and purchased whether in quantity quality tenure or otherwise The Purchasers having been afforded an opportunity of inspecting the said property shall be deemed to have full notice and knowledge of any and all illegal occupation trespass encroachments on the said property and of any and all squatters and other unauthorised persons thereon and it is hereby expressly agreed and declared by and between the parties hereto that the Vendors shall not be responsible for the removal and clearance of any such squatters or other unauthorised persons on the said property nor shall any compensation be payable by the Vendors to the Purchasers in respect of any such illegal occupation encroachment squatting or unauthorised occupation nor shall any diminution of the purchase price be claimable by the Purchasers in respect thereof

10. The said property being not surveyed the Vendors hereby agree and undertake to get the same surveyed in accordance with the plan annexed hereto and thereon bordered red and procure the deed plan thereof duly signed by the Director of Surveys The Vendors shall apply for such survey and sub-division immediately after (and not before) receipt by the parties of the Divisional Board consent to the transaction The Vendors shall bear and pay all the expenses of the survey and subdivision and the procuring of the deed plan in respect of the said property unless the Purchasers shall make default in completing the purchase of the said property after being served with the notice specified in Clause 14 hereof and in such event the Purchasers shall repay to the Vendors such expenses as aforesaid

11. The sale and purchase hereby effected is subject in all

applications for such consent without any avoidable delay and further undertake to use their best endeavours to obtain as quickly as possible a decision from such Board on such application

12. The Vendors shall give possession of the said property to the Purchasers against the actual receipt of the total purchase price by the Vendors

13. In the event of the consent of the appropriate Divisional Land Board referred to in Clause 11 hereof being refused or not obtained within four (4) months from the date of the application therefor then this Agreement shall (subject as hereinafter provided) be rescinded and the said deposit paid to Messrs. Shepley Barret Marsh & Co., shall be repaid to the Purchasers but without any interest. PROVIDED ALWAYS THAT the Vendors and the Purchasers shall at their option be entitled within fifteen (15) days from the date of receipt by the parties of the advice of such refusal to give consent to appeal against any refusal by such Board if they or either of them shall in their sole discretion think fit and in such an event the time limit provided for in this present clause shall be deemed to have been extended upto the time of determination of such appeal

14. If the Purchasers shall fail to comply with any of the conditions hereof the Vendors may give to the Purchasers or their Advocates at least thirty (30) days' notice in writing specifying the default and requiring the Purchasers to remedy the same before the expiration of the notice. And if the Purchasers shall not comply with the said notice the deposit money shall be absolutely forfeited to the Vendors and the Vendors shall be entitled (without tendering an assurance of the property to the Purchasers) to resell the property in any manner they shall think fit and (after bringing into account the deposit so forfeited) any deficiency arising on such sale and all expenses attending the same or any attempted resale shall be paid by the Purchasers to the Vendors

15. It is hereby agreed and declared by and between the parties hereto that time wherever it is mentioned herein shall be of the essence of the contract

16. The parties hereto shall bear the respective legal charges of their own advocates in connection with the preparation and completion of this Agreement and all matters arising therefrom and of the assurance and transfer of the property but all registration fees stamp duties and other disbursements on the Transfer shall be borne by the Purchasers

IN WITNESS whereof the parties hereto have hereunto set their respective hands the day and year first hereinbefore written

THE SCHEDULE

ALL THAT area of land comprising approximately eight hundred and twenty-six acres or thereabouts being a portion of Land Reference Number 11379 and situate South of the tarmae road known as Komorock Road which said area is bordered red on the plan annexed hereto The said portion is bounded on the North by the said Komorock Road as more particularly shown on the plan annexed hereto

SIGNED by the said MUHDI KHAN in the presence of:-

JHSamp
advocate
By 28/5
Nawaz

Muhdi Khan

SIGNED by the said KHAN NAWAZ KHAN in the presence of:-

JHSamp

Khan Nawaz Khan

SIGNED by the said KHAN ABAAS KHAN in the presence of:-

JHSamp

Khan Aabaas Khan

SIGNED by the said KIBIRO
KARANJA in the presence of:-

Chandrabhal, Samuel Mami Nyaga
Advocate, Estate Agent
P.O. Box 5839 P.O. Box 12765
Nairobi. Nairobi

Kibiro

SIGNED by the said Reuben
KANGARA in the presence of:-

Chandrabhal, Samuel Mami Nyaga
Advocate, Estate Agent
P.O. Box 5839 P.O. Box 12765
Nairobi. Nairobi

R. Kangara

SIGNED by the said KEINGATI
WAIHARO in the presence of:-

Chandrabhal, Samuel Mami Nyaga
Advocate, Estate Agent
P.O. Box 5839 P.O. Box 12765
Nairobi. Nairobi

R. Keingati

SIGNED by the said NJUGUNA
KIMANI in the presence of:-

Chandrabhal, Samuel Mami Nyaga
Advocate, Estate Agent
P.O. Box 5839 P.O. Box 12765
Nairobi. Nairobi

Njuguna Kimani

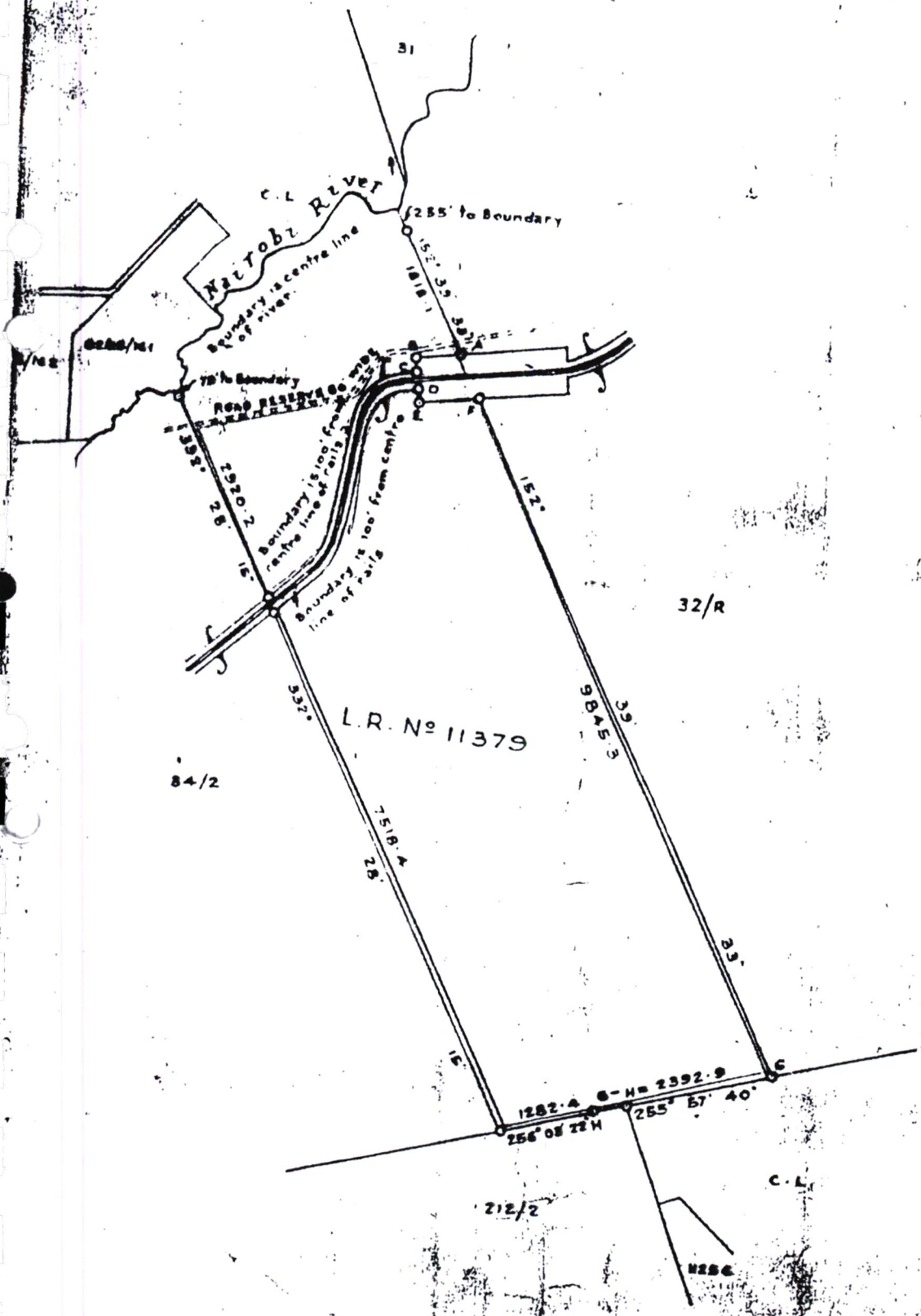
SIGNED by the said PETER
GACHEMUKI in the
presence of:-

Chandrabhal, Samuel Mami Nyaga
Advocate, Estate Agent
P.O. Box 5839 P.O. Box 12765
Nairobi. Nairobi

Pitegemu Kingetere



			Feet	
B	188	28	30	590.6
E	172	28	30	200.0
F	172	28	30	200.0
	82	28	30	806.2



i

.

.

.

b

r

i

.

.

.

.

No. 74 KIAMBU DANDORA FARMER'S CO.
P. O. Box 12768 NAIROBI

No. 77

Date 15-6-1967

RECEIVED from Mr. ~~Francis Muthama~~ WILLIAM MUTHAMA

the sum of Shillings Three hundred and fifty only

Deposit 1 acre

being payment of Khan Farm L.R. 10058

With Thanks

Shs. 350/-
CASH/CHEQUE



No. 91 KIAMBU DANDORA FARMER'S CO.
P. O. Box 12768 NAIROBI

No. 91

Date 24-6-1967

RECEIVED from Mr. William Muthama

the sum of Shillings Thirty

being payment of Registration 2 acres

With Thanks

Shs. 30/-
CASH/CHEQUE



No. 21 KIAMBU DANDORA FARMER'S CO.
P. O. Box 12768 NAIROBI

No. 21

Date 24-6-1967

Received from Mr. William Muthama

the sum of Shillings Seven hundred only

Deposit

being payment of Khan Farm L.R. 33/1

with thanks

Shs. 700/-
Cash/Cheque





No 203

KIAMBU DANDORA FARMERS CO.

P. O. Box 12768 NAIROBI

No. 53

1 - 7 - 1967

Received from Mr. William Muthama

the sum of Shillings Three hundred and fifty only deposit

being payment of Kham Farm LR 33/1

with thanks

Shs. 350/-
Cash/Cheque



No 203

KIAMBU DANDORA FARMERS CO.

P. O. Box 152 NAIROBI

No. 48

Date 29 - 10 - 1968

RECEIVED from Mr. William Muthama

the sum of Shillings Twenty only

being payment of Tractor

WITH THANKS

Shs. 20/-
CASH/CHEQUE

[Signature]

KIAMBU DANDORA FARMERS CO.

P. O. Box 152 NAIROBI Telephone P. O. Box

No. 36

27 - 8 - 1969

Received from Mr. William Muthama

the sum of Shillings one hundred only

being payment of Survey Charges

WITH THANKS

Shs. 100/-
CASH/CHEQUE

FOR

[Signature]







11/11/14
prots
D.H.L. 3/4

THIS TRUST DEED is made the 7th day of April

One thousand nine hundred and ~~sixty-nine~~ ^{Seventy} BY (1) KIBIRO KARANJA
(2) REUBEN KANGARA (3) KEINGATI WATHARO (4) NJUGUNA KIMANI
and (5) PETER GACHERU KINGARA all of Post Office Box Number 152
Kiambu in the Republic of Kenya (hereinafter together called "the
Trustees")

WHEREAS

- (i) This declaration is supplemental to a transfer of even date and made between (1) Khan Nawaz Khan (2) Khan Abbas Khan (3) Mehdi Khan AND the Trustees whereby the property described in the Schedule hereto was transferred to the Trustees in fee simple in consideration of the sum of Shillings Two Hundred thousand (Shs.200,000/-) therein stated to have been paid by the Trustees to the said Khan Nawaz Khan Khan Abbas Khan and Mehdi Khan;
- (ii) The said sum of Shillings Two hundred thousand (Shs.200,000/-) was provided by the Trustees and persons who have caused a limited liability company to be incorporated in the said Republic under the name of "KIAMBU DANDORA FARMERS COMPANY LIMITED" and who are also in the process of incorporating a co-operative society under the name of "DANDORA ESTATES CO-OPERATIVE SOCIETY LIMITED" and the said property was transferred to the Trustees as trustees for the Trustees and the said persons.

NOW THIS DEED WITNESSETH that the Trustees hereby declare that they hold the said property in trust for themselves and the said persons in fee simple and hereby agree (i) that they will as soon as the said Co-operative Society shall have been incorporated make an application to the Nairobi Land Control Board for its consent to the transfer of the said property to either the said Kiambu Dandora Farmers Company Limited or to the said Dandora Estates Co-operative Society Limited and (ii) so soon as is practicable after the obtaining of such consent execute and do all such documents acts and things as may be necessary to procure the said

2

property to be transferred to and registered in the name of the said Kiambu Dandora Farmers Company Limited or the said Dandora Estates Co-operative Society Limited as the case may be.

IN WITNESS WHEREOF the Trustees have hereunto set their respective hands and seals the day and year first hereinbefore written

THE SCHEDULE HEREINBEFORE REFERRED TO

All that piece of land containing by measurement eight hundred and eighteen (818) acres or thereabouts situate in the City of Nairobi in the Nairobi Area of the said Republic and known as Land Reference Number 11379/3 which said piece of land being a portion of the premises comprised in a Grant registered in the Land Titles Registry at Nairobi aforesaid as Number I.R. 19935/1 is delineated on the plan annexed to the said transfer and more particularly on Land Survey Plan Number 86048 deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red.

SIGNED SEALED and DELIVERED
by the said KIBIRO KARANJA
in the presence of:-

[Signature] 2/4/70

Kibiro

SIGNED SEALED and DELIVERED
by the said REUBEN KANGARA
in the presence of:-

N. MUGO - 2nd Class Magistrate
[Signature] 2/3/70

Reuben

SIGNED SEALED and DELIVERED
by the said KELINGATI WATHARO
in the presence of:-

N. MUGO - 2nd Class Magistrate
[Signature] 2/3/70

Watharo

SIGNED SEALED and DELIVERED
by the said NJUGUNA KIMANI
in the presence of:-

N. MUGO - 2nd Class Magistrate
[Signature] 2/3/70

Njuguna

SIGNED SEALED and DELIVERED
by the said PETER GACHERU
KINGARA in the presence of:-

N. MUGO - 2nd Class Magistrate
[Signature] 2/3/70

Peter Gacheru Kingara





REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT NO. 1970 OF 1999(O.S)

CENTRAL REGISTRY
10 NOV 1999
10-16 HRS
P.O. Box 30089, NAIROBI

IN THE MATTER OF AN APPLICATION UNDER SECTION 37 OF THE TRUSTEE ACT CAP 167

AND

IN THE MATTER OF AN APPLICATION BY PETER KERUMBI KEINGATI

DECREE

HIGH COURT OF KENYA
CENTRAL REGISTRY
P11
CIVIL SIDE
NAIROBI
Stephen Mugo

CLAIM FOR

This Honourable Court be pleased to appoint Hannah Wanjiru Kamau, Mutothori and Raymond Mwangi Waweru of P.O. Box 7541 Nairobi as trustees for L.R. No. 11379/3 in addition to Peter Kerumbi Keingati under the trust deed dated 7th April 1970.

Costs of this application be in cause.

UPON READING the Consent letter dated 21st October 1999 filed on 25th October 1999 and signed by Njiru Boniface & Co. Advocates for the applicant, Mary Njeri on behalf of KIAMBU DANDORA FARMERS CO. LTD. HANNAH WANJIRU KAMAU, STEPHEN MUGO MUTOTHORI and RAYMOND MWANGI WAWERU.

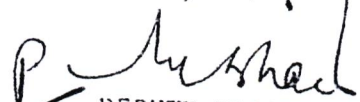
IT IS ORDERED:-

1. THAT Hannah Wanjiru Kamau, Stephen Mugo Mutothori and Raymond Mwangi Waweru of P.O. Box 7541 Nairobi be and are hereby appointed as trustees for L.R. No. 11379/3 in addition to Peter Kerumbi Keingati Under the Trust deed dated 7th April 1970.
2. THAT costs of this application be in cause.

GIVEN under my hand and the Seal of the Court this 28th day of October 1999.

ISSUED at Nairobi this

day of November 1999.


DEPUTY REGISTRAR
HIGH COURT OF KENYA NAIROBI

LAND TITLES REGISTRY - NAIROBI REGISTRY
REGISTRATION OF TITLE ACT

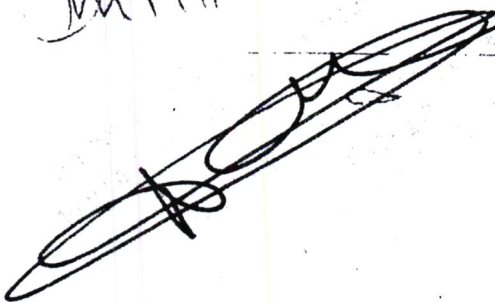
REGISTERED AS No. I.R. 23514/3

PRESENTED 10th November 1999

TIME 10-16 Hrs Decree

Registrar of Titles
E. N. GICHINA (010)

Checked
Mili





NAIROBI CITY COUNTY

Telephone: +254 20 3224281
Web: www.nairobi.go.ke
Facebook: NairobiCityCounty
Twitter: @county-nairobi



City Hall, 2nd Floor
P.O. Box 30075 - 00100
Nairobi, Kenya

NCC/CEGM UPS/L/CSK/168/16(n)
2016

5th August

Kiambu Dandora Co. Ltd
P.O. Box 5919-00100
NAIROBI

RE: REGULARIZATION OF L.R. NO. 11379/3

We acknowledge receipt of your request for regularization of ownership and developments into the above mentioned property.

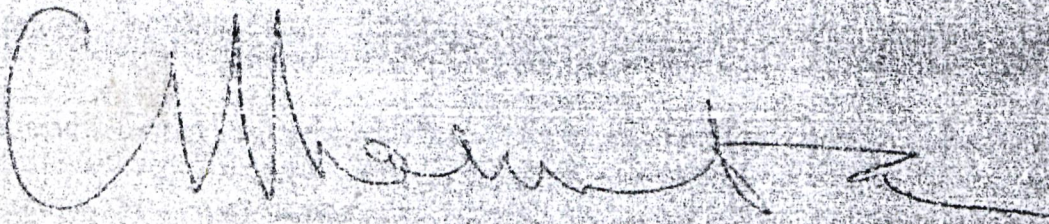
Kindly note that Nairobi City County is only interested in regularizing ownership and developments on properties where the registered plot owners are in total agreement with the respective buyers/developers of the respective property/properties targeted for the exercise.

The following was agreed upon in a meeting held between yourselves, the Chief of Staff and the undersigned on the 26th July, 2016.

- (i) Your plans for subdivisions will be approved and released once submitted.
- (ii) The remaining empty spaces in the Kiambu/Dandora Scheme will be secured and no further developments will take place on the same before approval by the County.
- (iii) Negotiations for settlements of dues (value of land against rates owed) to be settled out of court.
- (iv) The Scheme will have one single invoice based on the mother title.

"The City of Choice to Invest, Work and Live in"

- (v) The County Government will expedite issuance of title deeds to legitimate individual allottees in conjunction with the Kiambu Dandora Farmers Company Limited.
- (vi) Kiambu Dandora will finance the making and mounting of sign boards



CHRISTOPHER KHAEMBA
COUNTY EXECUTIVE COMMITTEE MEMBER
URBAN PLANNING AND LANDS