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SNA
11/11/25

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION (2025)

PUBLIC PETITIONS COMMITTEE

REPORT ON

THE CONSIDERATION OF PUBLIC PETITION NO. 11 OF 2023 BY MR BONIFACE OTIENO OPARE AND FOUR OTHERS REPRESENTING MEMBERS OF TIM KINDA SELF-HELP GROUP REGARDING THE ILLEGAL ACQUISITION OF PRIVATE LAND BY THE DEFUNCT AWENDO TOWN COUNCIL

**The Directorate of Audit, Appropriations
& General Purpose Committees**

The National Assembly

Parliament Buildings

NAIROBI

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 NOV 2025	
DAY: Tuesday	
TABLED BY:	Hon. Eric Katumba, CBS (Chairperson, Public Petitions Committee)
CLERK-AT THE-TABLE:	Afabo Moch

November, 2025





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THE NATIONAL ASSEMBLY

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CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the report of the Public Petitions Committee regarding the illegal acquisition of private land by the Defunct Awendo Town Council. The petition was conveyed by the Honourable Speaker on Wednesday, 8th March, 2023, pursuant to Standing Order No. 225 (2) (b) on behalf of Mr. Boniface Otieno Opere and four others representing members of Tim Kinda Self-Help Group in Awendo Town, Migori County.

The petitioners prayed that the National Assembly, through the Public Petitions Committee, engages the Ministry of Lands, Public Works, Housing and Urban Development to ensure that the Petitioners are duly compensated for the lands they lost due to illegal allocation by the defunct Awendo Town Council.

In consideration of the petition, the Committee met with the Petitioners, the Chairperson, National Land Commission, and the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development. The Committee also received written submissions from the County Secretary, Migori County.

The Committee observed that the issue under contention had been litigated to the Supreme Court; further, it concerned revisionary interest rights over compulsorily acquired land, rather than compensation. Further except for the 7th Respondent (*Obiero Omedo*), it is therefore evident from the Court ruling that the issue of compensation was not disputed.

The Committee recommends that the National Lands Commission, in collaboration with the Ministry of Lands, Public Works, Housing and Urban Development and the County Government Migori, compensate Mr Obiero Omedo for the loss of his land title No. North Sakwa/Kamasonga/1193 within ninety (90) days of the tabling of this report

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support offered during the consideration of the Petition. The Chairperson expresses gratitude to the Members of the Committee and the Secretariat for their devotion and commitment to duty during the consideration of the Petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to table the report before the House.

Signed: _____ **Date:** _____

THE HON. KAREMBA MUCHANGI, M.P.

CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

PART ONE

I PREFACE

1.1 Establishment and mandate of the committee

The Public Petitions Committee is established under the provisions of Standing Order 208A with the following terms of reference:

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and
- d) advising the House and reporting on all public petitions committed to it.

1.2 Committee Membership

The Public Petitions Committee was constituted in October 2022 and comprises the following Members:

Chairperson

Hon. Muchangi Karemba, CBS, M.P.

Runyenjes Constituency

United Democratic Alliance (UDA)

Chuka Igambang'ombe Constituency

United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, CBS, M.P.

Turbo Constituency

United Democratic Alliance (UDA)

Hon. Bernard Muriuki Nebart, M.P.

Mbeere South Constituency

Independent

Hon. Patrick Makau King'ola, M.P.

Mavoko Constituency

Wiper Democratic Movement-Kenya (WDM-K)

Hon. Bidu Mohamed Tubi, M.P.

Isiolo South

Jubilee Party (JP)

Hon. Edith Vethi Nyenze, M.P.

Kitui West Constituency

Wiper Democratic Movement-Kenya (WDM-K)

Hon. Peter Irungu Kihungi, M.P.

Kangema Constituency

United Democratic Alliance (UDA)

Hon. Maisori Marwa Kitayama, M.P.

Kuria East Constituency

United Democratic Alliance (UDA)

Hon. John Bwire Okano, M.P.

Taveta Constituency

Wiper Democratic Movement-Kenya (WDM-K)

Hon. Joshua Chepyegon Kandie, M.P.

Baringo Central Constituency

United Democratic Alliance (UDA)

Hon. Peter Mbogho Shake, M.P.

Mwatate Constituency

Jubilee Party (JP)

Hon. Beatrice Kadeveresia Elachi, M.P.

Dagoreti North Constituency

Orange Democratic Movement (ODM)

Hon. Suzanne Ndunge Kiamba, MP

Makueni Constituency

Wiper Democratic Movement-Kenya (WDM-K)

Hon. Sloya Clement Logova, M.P.

Sabatia Constituency

United Democratic Alliance (UDA)

Hon. Ntwiga Patrick Munene, M.P.

1.3 Committee Secretariat

The secretariat comprises the following:

Mr. Leonard Machira
Principal Clerk Assistant II

Mr. Benard Kipchumba

Clerk Assistant III

Ms. Nancy Akinyi

Research Officer III

Ms. Roselyn Njuki

Senior Sergeant at Arms

Ms. Felister Muiya

Public Communications Officer

Mr. Clinton Sindiga

Legal Counsel Officer II

Mr. Arkan Mumin

Research Officer III

Mr. Calvin Karungo

Media Relations Officer

Mr. Peter Mutethia

Audio Officer

PART TWO

2 BACKGROUND INFORMATION ON THE PETITION

2.1 Introduction

2. Public Petition No. 11 of 2023 regarding the Illegal acquisition of private land by the defunct Awendo Town Council was presented by the Honourable Speaker on Wednesday, 8th March, 2023, on behalf of Mr Boniface Otieno Opere and four others representing members of Tim Kinda Self-Help Group in Awendo Town, Migori County.
3. The Petitioners averred that in 1985, Awendo Town Council officials initiated the process of allocating 371.575 acres of land to third parties in Awendo without the consent of the original landowners.
4. The Petitioners stated that in 1988, the then South Nyanza District Plot Allocation Committee halted the allocation of plots to various persons because the government had not acquired the said plots. The Petitioners further claimed that they had complained to the Ministry of Lands and that they had been confirmed as the legal owners of the said land. Subsequently, the then Chief Land Registrar directed the District Land Registrar to resurvey and issue a title deed to the rightful land owners.
5. The Petitioners further averred that, in 2003, the Awendo Township Council began evicting landowners without any notice or court order, as the government had compulsorily acquired the parcels of land in question. The landowners subsequently complained to the then Ministry of Local Government for compensation; however, the Ministry declined the request and referred the petitioners to the Awendo Town Council.
6. Consequently, the petitioners took legal action in 2005 by suing the Awendo Town Council at the High Court in Kisii. The court ruled in the petitioners' favour because the Council failed to produce the acquisition and compensation documents as directed.
7. The Awendo Town Council appealed the High Court's decision to the Court of Appeal, which dismissed the appeal and directed the District Land Registrar to issue title deeds to the original owners.

8. The Awendo Town Council was dissatisfied with the Court of Appeal judgment and applied for a certificate to appeal to the Supreme Court, but the application was dismissed.
9. The efforts to have the matter raised in the petition addressed by the relevant bodies and offices were futile.

2.2 Petitioners' Prayers

The Petitioners prayed that the National Assembly, through the Public Petitions Committee—

10. Engages the Ministry of Lands, Housing & Urban Development to ensure that the Petitioners are duly compensated for the lands they lost due to illegal allocation by the defunct Awendo Town Council.

PART THREE

3 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 Submissions by the Petitioners

The Petitioners, led by Mr. Boniface Otieno Opere appeared before the Committee on Thursday, 10th August, 2023, and submitted as follows—

11. Awendo Team Kinda Group represented 100 families living on forty-three (43) parcels of land. The members of the group were the original owners of the land where Awendo Town is situated. Land adjudication in the area was completed from 1971 to 1974, and by 1975, title deeds were issued to the residents.
12. In 1976, Sony Sugar Company compulsorily acquired the land for cane growing. In December 1976, a Gazette Notice was issued stating that Sony Sugar Company was acquiring land for the sugar scheme (for the expansion of Awendo Market; Gazette Notice 3737), which later became Awendo Town.
13. However, the Awendo Town expansion land was not acquired as envisioned in the Gazette Notice. Later, the Awendo Town Council began allocating land to people without compensating the original owners.
14. Subsequently, the group met with the Town Clerk to resolve the matter. The Town Clerk informed them that the original landowners had been compensated and that the records were available. The group proceeded to engage the Ministry of Lands to obtain documents as proof of compensation. The Principal Secretary, Ministry of, found no record of the documents related to the compensation of Awendo's original landowners and referred them back to the Town Clerk, who would provide the necessary acquisition documents.
15. The petitioners filed a case in the High Court, which ruled that the land belonged to them because there were no records. Awendo Town Council appealed the ruling, and the Court of Appeal dismissed the case, ordering the land registrar to issue the title deed. When the Supreme Court heard the matter, it ruled that the land belonged to the Government. The petitioners, therefore, sought the Committee's assistance in obtaining titles to their land.

3.2 Submissions by the National Land Commission

The National Land Commission (NLC) Chairperson, Mr. Gershom Otachi, appeared before the Committee on 4th October, 2023, and submitted as follows—

16. While considering the petition, the NLC was informed of the Court of Appeal's ruling in Kisumu (Civil Appeal No. 161 of 2010), in which the Town Council of Awendo appealed against a judgment delivered in Kisii High Court Civil Suit No. 133 of 2006. The Decree by the High Court, which the Court of Appeal confirmed, was to the effect that the original owners of the suit land ought to be registered as the lawful owners of the unutilized parcels of the suit land and that the unutilized parcels be re-surveyed, title deeds thereof issued to the rightful persons by the area Land Registrar.
17. Therefore, the Director of Survey and the Chief Land Registrar were responsible for implementing the decree. In addition, since the County Government of Migori succeeded the Awendo Town Council, which was involved in the litigation, any challenges in implementing the Decree should be addressed jointly by the County and the Ministry.
18. That, since the case had been taken to the Supreme Court and the Court had issued a ruling, the ruling would inform the available options to address the Petitioners' prayers.

3.3 Submissions by the County Government of Migori

The County Secretary, Migori County, Mr Oscar Olima, vide a letter Ref: No. CGM/CS/G.C/VOL. VI/24/036 and dated 1st July 2024, submitted a written response to the Petition as follows—

19. The matter raised in the Petition was the subject of judicial proceedings culminating in the Supreme Court of Kenya's Civil Petition No. 37 of 2014, with a judgment delivered on 30th April 2019. The court ordered as follows—
 - (i) The Petition of Appeal, dated 10 December 2014, was allowed.
 - (ii) The Judgment of the Court of Appeal dated 18th October, 2013 was overturned;
 - (iii) Compensation by the Government of Kenya was ordered to the 7th Respondent for the loss of his Land Title No. North Sakwa/Kamasonga/1193; and
 - (iv) Each Party was to bear their own costs of the Appeal.

20. While the petitioners asserted in the petition that the Town Council of Awendo's appeal was dismissed, the matter was heard and determined in favour of the Petitioner (Town Council of Awendo).
21. The order concerning compensation as contained in the judgment referenced above affected only the 7th respondent (the proprietor of Parcel No. North Sakwa/ Kamasoga/ 1193), who was to be compensated by the Government of Kenya for the loss of his land.

3.4 Submissions by the Ministry of Lands, Public Works, Housing and Urban Development

The Principal Secretary for the State Department of Lands appeared before the Committee on Wednesday, 15th November 2023, and submitted as follows—

22. In 1976, the Government of Kenya issued two Gazette Notices informing the public of its intention to acquire privately owned parcels of land in the then South Nyanza District. The Government was acting pursuant to the provisions of Section 75 of the Constitution and Section 6(2) of the Land Acquisition Act of 1968 (now repealed).
23. The Government proceeded to acquire various parcels in Awendo Township. Subsequently, the affected proprietors were fully compensated. In 2005, the acquisitions were challenged by the petitioners in the High Court Civil Suit No. 133 of 2005, Kisumu. The Petitioners herein challenged the process of compulsory acquisition of the gazetted parcels and the Government's allocation of the unutilized portions to third parties. The High Court ruled in favour of the petitioners, directing the District Land Registrar to re-survey the unutilized land and issue title deeds to the petitioners.
24. The County Council of Awendo, being dissatisfied with the decision of the High Court, lodged an Appeal at the Court of Appeal in Civil Appeal No. 161 of 2010. The Court of Appeal upheld the Judgment of the High Court and dismissed the appeal.
25. The County Council of Awendo further appealed the Court of Appeal's judgment to the Supreme Court. In Petition No. 37 of 2014, the Supreme Court overturned the Court of Appeal's judgment.

26. It was the Supreme Court's opinion that the Government of Kenya compulsorily acquired the parcels and that the proprietors of the parcels in the Gazette Notices were fully compensated. However, the court noted that Parcel No. North Sakwa/Kamasoga/1193 was not listed in the gazette notices, and the proprietor had not been compensated. The issues canvassed in the Petition have been adjudicated by the highest court in the Country.
27. Regarding the restriction on the North Sakwa/Kamasoga/1193 land and whether it was also compulsorily acquired, the Ministry stated that current records in the Ministry of Lands indicate a restriction by way of acquisition. From the Supreme Court decision, there could have been a restriction, and the government did not proceed to acquire the specific land.
28. The Supreme Court's decision on the land indicated that it had not been acquired, highlighting an error in the documents presented to it. The Cabinet Secretary request more time to establish the facts about the matter. Assuming the land was restricted and recorded as an acquisition, the restriction would be vacated and the land released to the original owners. However, the land may not have been compensated.
29. The Ministry indicated that the restriction was lifted in 2014, and a title deed was issued to Mr. Obiero Anedo as per High Court decree in Civil Suit No. 133 of 2005. The restriction was that no dealings could occur until the acquired portion had been transferred to the government. The practice has been that whenever an acquisition occurs, a search restriction is placed until the land is surveyed and the owner's actual acreage is established.

On Thursday, 29th February 2024, the Cabinet Secretary for the Ministry of Lands, Public Works, Housing and Urban Development appeared before the Committee in a follow up meeting and clarified as follows—

30. The parcel, North Sakwa/Kamasoga/1193, measuring 0.5 Hectares, was initially registered in favour of Obiero Omedo on 9th February 1977 as the absolute proprietor. However, on 18th April 1984, a restriction was registered against the said parcel of land, prohibiting any dealings until a portion measuring 0.5 Hectares, set aside for the expansion of the South Nyanza Sugar Scheme (Awendo Township Expansion) in South Nyanza District, has been transferred to the Government.

31. The parcels that were supposed to be surrendered to the Government were advertised vide Gazette Notice No. 3737 of 24th December 1976, outlining various parcels to be acquired by the Government for the reasons mentioned above.
32. The parcel LR No. North Sakwa/Kamasoga/1193 was unutilized for gazetted reasons because the land was deemed unsuitable for sugarcane farming and was not occupied by the South Nyanza Sugar Scheme. Considering section 75 of the Constitution required that once land has been compulsorily acquired, it ought to be used for a designated purpose only, the original owners ought to be registered as the lawful owners of the unutilized parcels of the land.
33. A case was filed by the registered owner of the land, along with twelve (12) others, presenting seventeen (17) issues for court determination. A decision was made by a court judgment dated November 19, 2009, in Civil Suit No. 133 of 2005 at Kisii High Court.
34. According to the decree, the court ordered the restriction to be withdrawn and a transfer to be registered in favour of the initial owner (Obiero Omedo). Upon the registration of the transfer, a title deed was issued in favour of one Obiero Omedo, the initial registered proprietor.
35. On 26th May 2021, vide Succession Case No. 179 of 2019 in Migori Law Courts, the said parcel of land was transferred to George Otieno Obiero as a beneficiary, and a title deed was issued. Upon transfer, the register was closed on 25th September, 2023, due to the subdivision into two portions, numbers 2945 and 2946, and therefore, the above register ceased to exist.

PART FOUR

4 COMMITTEE OBSERVATIONS

Upon hearing from the Petitioner, with the various stakeholders, including the National Lands Commission, and Ministry of Lands, Public Works, Housing And Urban Development and the County Government of Migori the Committee made observations on various concerns raised by the petitioners as follows—

36. The main issue arising in the Petition is compensation of residents of North Sakwa/Kamasoga claiming twenty-eight (28) land parcels of the 68.28 Hectares, and South Sakwa/Wawere claim thirty-one (31) land parcels of the 76.31 Hectares.
37. The matter was considered by the *High Court in Kisii Civil Case 133 of 2005*, which held that the unutilised parcels of land should revert to the petitioners, the original owners.
38. The matter was appealed at the Court of Appeal in *Town Council of Awendo v Nelson Oduor Onyango & 13 Others (2015) eKLR* because: the High Court's finding that the acquired property was not meant to benefit the appellant was contrary to the pertinent Gazette Notices of 1976, and was made in error; the Government had not been enjoined as a party to the suit, despite the adverse orders against it; and that the suit was time barred. The appeal was dismissed, and the High Court's decision was upheld.
39. The matter was further appealed at the Supreme Court in *Town Council of Awendo v Nelson O Onyango & 13 others; Abdul Malik Mohamed & 178 others (Interested Parties) [2019] eKLR*. The Supreme Court determined that the Government compulsorily acquired the suit land in accordance with the provisions of Section 75 of the repealed Constitution and Section 6(2) of the Land Acquisition Act, 1968 (*now repealed*). The Supreme Court determined that:
 - (i) The 1st to the 13th Respondents were fully compensated in accordance with the applicable law. Finally, the Court determined that the parcels of land in question were acquired for a public purpose.

- (ii) The title acquired by the petitioners, save for the 7th Respondent, became extinguished upon the compulsory acquisition. Their estates in the said parcels ceased to exist and became fused with the States' superior title. These parcels became public land after being compulsorily acquired for public purposes in accordance with the Constitution and the law. The Petitioners were compensated for the loss of their land to the public interest.
- (iii) Through the Gazette Notices Nos. Sections 2996 and 3737 of 1976, all parcels of land whose land titles are listed therein, were compulsorily acquired for the South Nyanza Sugar Scheme and vested in the Government of Kenya. Migori County presently holds that land in trust for the residents, and as the implementing agency of the public purpose for which the land was compulsorily acquired.
- (iv) The 7th Respondent (*Obiero Omedo*) is to be fully compensated by the Government for the loss of his Land Title No. North Sakwa/Kamasonga/1193.
- (v) Except for the 7th Respondent (*Obiero Omedo*), it is evident from the Court ruling that the issue of compensation was not disputed. The main issue litigated was the reversionary interest of the unutilised land that was compulsorily acquired.

PART SIX

5 COMMITTEE RECOMMENDATIONS

Pursuant to the provisions of Standing Order 227, the Committee responds to the prayers as follows—

- I. On the prayer that the Committee engage the Ministry of Lands, Housing and Urban Development to ensure that the Petitioners are duly compensated for the lands they lost due to illegal allocation by the defunct Awendo Town Council, the Committee notes that the Supreme Court in Petition 37 of 2014 Town Council of Awendo V Onyango and 13 others determined that the original owners of the land in question, were compensated for compulsory acquisition, except for Mr. Obiero Omedo. **The Committee recommends that the National Lands Commission, in collaboration with the Ministry of Lands, Public Works, Housing and Urban Development and the County Government Migori, compensate Mr Obiero Omedo for the loss of his land title No. North Sakwa/Kamasonga/1193 within ninety (90) days of the tabling of this report.**

Signed: _____

Date: _____

11/11/2025

THE HON. KAREMBA MUCHANGI, M.P.

CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 11 NOV 2025	
DAY: Tuesday	
TABLED BY:	Hon. Eric Karemba, CBS (Chairperson, Public Petitions Committee)
CLERK-AT THE-TABLE:	Afako Mado.

ANNEXURES

- Annex 1: Adoption List
- Annex 2: Minutes of the 66th Sitting held on Wednesday, 4th October 2023
- Annex 3: Minutes of the 80th Sitting held on Wednesday, 15th November 2023
- Annex 4: Minutes of the 5th Sitting held on Thursday, 29th February 2024
- Annex 5: Ref: No. CGM/CS/G.C/VOL. VI/24/036 by the County Government of Migori
- Annex 6: Minutes of the 44th Sitting held on Thursday, 7th November 2025

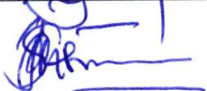
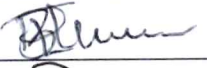
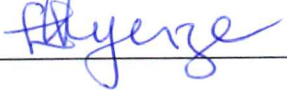
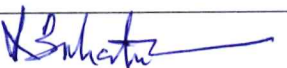
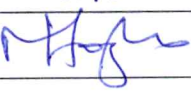
PUBLIC PETITIONS COMMITTEE

ADOPTION LIST

(i) Consideration and adoption of the Report on Public Petition No.11 of 2023 by Mr. Boniface Otieno Opere of Tim Kinda Self – Help Group, regarding Illegal acquisition of private land by the defunct Awendo Town Council.

We, the undersigned, hereby affix our signatures to this Report to affirm our approval:

DATE: 6/11/2025

	HON. MEMBER	SIGNATURE
1.	Hon. Muchangi Karemba, CBS, M.P. (Chairperson)	
2.	Hon. Janet Jepkemboi Sitienei, CBS, M.P. (Vice Chairperson)	
3.	Hon. Patrick Makau King'ola, M.P.	
4.	Hon. Beatrice Kadeveresia Elachi, CBS, M.P.	
5.	Hon. Joshua Chepyegon Kandie, M.P.	
6.	Hon. Maisori Marwa Kitayama, M.P.	
7.	Hon. Edith Vethi Nyenze, M.P.	
8.	Hon. Patrick Ntwiga Munene, M.P.	
9.	Hon. Bidu Mohamed Tubi, M.P.	
10.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	
11.	Hon. Peter Mbogho Shake, M.P.	
12.	Hon. Suzanne Ndunge Kiamba, M.P.	
13.	Hon. John Bwire Okano, M.P.	
14.	Hon. Sloya Clement Logova, M.P.	
15.	Hon. Peter Irungu Kihungi, M.P.	

Thirteenth Parliament
Fourth Session

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 44TH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON THURSDAY, 6TH NOVEMBER, 2025 IN COMMITTEE ROOM 24 5TH
FLOOR BUNGE HOUSE, PARLIAMENT BUILDINGS

PRESENT

1. Hon. Eric Muchangi Karemba, M.P. Chairperson
2. Hon. Janet Jepkemboi Sitienei, CBS, M.P. Vice-Chairperson
3. Hon. (Eng.) Bernard Nebart Muriuki, M.P.
4. Hon. Beatrice Kadeveresia Elachi, CBS, M.P.
5. Hon. Peter Irungu Kihungi, M.P.
6. Hon. Edith Vethi Nyenze, M.P.
7. Hon. Maisori Marwa Kitayama, M.P.
8. Hon. Joshua Chepyegon Kandie, M.P.
9. Hon. Peter Mbogho Shake, M.P.

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Peter Mbogho Shake, M.P.
3. Hon. Suzanne Ndunge Kiamba, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. Sloya Clement Logova, M.P.
6. Hon. John Bwire Okano, M.P.

IN ATTENDANCE

SECRETARIAT

1. Mr. Leonard Machira	Principal Clerk Assistant II
2. Mr. Bernard Toroitich	Clerk Assistant III
3. Mr. Clinton Sindiga	Legal Counsel II
4. Ms. Nancy Akinyi	Research Officer III
5. Mr. Arkan Mumin	Research Officer III
6. Mr. Calvin Karungo	Media Relations Officer III
7. Mr. Peter Mutethia	Audio Officer

MIN./PPC/2025/222:

PRELIMINARIES

The Chairperson called the meeting to order at 11:40 am. with the Prayer. A round of self-introductions was then conducted before proceeding with the business of the day.

MIN./PPC/2025/223:

ADOPTION OF AGENDA

The Committee then adopted the agenda as listed hereunder on the proposal of Hon. (Eng.) Bernard Nebart Muriuki, M.P, and seconded by Hon. Maisori Marwa Kitayama, M.P.

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. consideration and adoption of the following reports:
 - (i) Report on Public Petition No. 69 of 2023 by Messrs. Joel Songol and five others representing Koibem Village Squatters, regarding Delay in Settlement of Squatters in Koibem village, Ngerek village, Chepkumia Location in Nandi County; and
 - (ii) Report on Public Petition No. 11 of 2023 by Mr. Boniface Otieno Opere of Tim Kinda Self – Help Group, regarding Illegal acquisition of private land by the defunct Awendo Town Council
6. Any Other Business
7. Adjournment

MIN./PPC/2025/224: **SITTINGS**

CONFIRMATION OF MINUTES OF PREVIOUS

The Agenda was deferred.

MIN./PPC/2025/225:

CONSIDERATION OF A REPORT ON PUBLIC PETITION NO. 69 OF 2023 BY MESSRS. JOEL SONGOL AND FIVE OTHERS REPRESENTING KOIBEM VILLAGE SQUATTERS, REGARDING DELAY IN SETTLEMENT OF SQUATTERS IN KOIBEM VILLAGE, NGEREK VILLAGE, CHEPKUMIA LOCATION IN NANDI COUNTY

The Committee considered the draft report and noted as follows—

- (i) The Committee notes that the in Lunyasi and 3 others(Suing for and on behalf of 244 Ngerek Community Families/Members) versus Kenya Forest Service & 5 others (Petition E001 of 2023)(26th February 2025) judgement held that the recommendations made by the National Land Commission vide Gazette Notices: NLC/HLI/435/2018 and NLC/HLI/256/2018, dated 1st March
- (ii) The Committee also noted that since the judgement held that the recommendations made by the National Land Commission vide Gazette Notices: NLC/HLI/435/2018 and NLC/HLI/256/2018, dated 1st March and this should suffice and that this judgment should be included in recommendation
- (iii) The Committee, during its deliberations, sought clarity on the current occupants of the Ngerek land.

Committee Observations

The Committee observed as follows—

- 1. The Chepkumia Land Exchange Programme was initiated by the government in 1996 to resettle families in what was then known as Koibem and Ngerek villages in Nandi North District. The areas where the two (2) communities were living were very rocky and hilly. Thus, the Chepkumia land exchange programme intended to resettle the two communities from the hilly Chepkumia area to South Nandi Forest. The land exchange was to comprise 910.60 hectares in the Kaimosi block of South Nandi Forest along the Yala River. The Koibem Community was allocated 266.86 hectares, the Ngerek Community 455.45 hectares, and 188.29 hectares was reserved for public utilities.
- 2. The Chief Conservator of Forests, vide a letter Ref. **No. CON /ED/67/Vol. I/XVI/ 164**, authorized the excision of 1170 hectares from the Yala block of South Nandi Forest for the programme in 1999. The beneficiaries were required to surrender their titles to their ancestral lands in exchange for the allocation of alternative land excised from the forest.

3. While the Koibem Community was successfully relocated under the Chepkumia Land Exchange Programme, the Ngerek Community was not relocated to its original area after the land earmarked for its resettlement was illegally occupied.
4. Even though the Koibem community relocated to the allocated area in 1996 and surrendered their title deeds for the land they initially occupied, the forest land allocated to the Koibem community was not degazetted, hindering the titling process.
5. There is a need to degazette the 266.86 hectares of forest land allocated to the Koibem community, as well as the 188.29 hectares reserved for public utilities, to facilitate the issuance of title deeds to the petitioners to promote their security of tenure.
6. The Committee noted that the National Land Commission found that both Koibem and Ngerek Communities have a valid claim because they were exchanging land for land with the Kenya Forest Service. The National Land Commission also found that although the Koibem have taken possession of the area given to them by the Kenya Forest Service, the Ngerek Community cannot take possession because the land earmarked for their settlement is occupied.
7. The National Land Commission made the following recommendations vide Gazette Notices: NLC/HLI/435/2018 and NLC/HLI/256/2018 dated 1st March 2019:
 - (a) The Kenya Forest Service to facilitate the degazettement of the excised area from Nandi South Forest to enable the issuance of title deeds to Ngerek and Koibem Communities on a land-for-land basis.
 - (b) The Director of Survey, together with the Nandi County Government, to expedite the excision of the forest area that the Kenya Forest Service excised from Nandi South Forest and hand it over to the Ngerek and Koibem Communities.
8. The Court of Appeal held that the recommendations made by the National Land Commission vide Gazette Notices: NLC/HLI/435/2018 and NLC/HLI/256/2018, dated 1st March 2019, have the force of law and are otherwise enforceable by a court. The same is a binding pronouncement and creates rights and obligations, which are amenable to being actualized and can thus not be discarded, disregarded and or otherwise overlooked. Further, the findings of the National Land Commission hereinabove remain unchallenged.
9. The Cabinet Secretary, Ministry of Environment, Climate Change and Forestry has since submitted to the National Assembly a petition seeking the degazettement of 989.17 hectares. This includes the 455.45 hectares meant for the resettlement of the Ngerek Community as contemplated in the Chepkumia Land Exchange programme, despite the fact that the Ngerek Community has not been settled in the area .

Committee Recommendation

1. On the prayer that the Cabinet Secretary for Environment, Forestry and Climate Change to secure Cabinet Approval for the intended de-gazettement and seeks Parliamentary approval under Section 34 of the Forest Management and Conservation Act of 2016, The Committee that the Cabinet Secretary for Environment, Forestry and Climate Change has since submitted a petition seeking the degazettement of South Nandi Forest at Chepkumia area to the National Assembly. In addition, the Committee recognizes that the petitioners have settled in the land in question since 1996

The Committee recommends that pursuant to section 34 of the Forest Conservation and Management Act, 2016 the National Assembly approves the variation of the boundaries of South Nandi Forest at Chepkumia to exclude a total area of 455.15 hectares, as follows:

266.88 hectares for the settlement of the Koibem Community.

188.29 hectares for public utilities.

2. On the prayer that the Cabinet Secretary, Ministry of Lands, Physical Planning, Urban Development and Public Works, to facilitate the issuance of new title deeds in the new registration area and to waive the registration costs for the new titles. The Committee recommends that, upon the de - gazettement of the 266.88 hectares for the settlement of the Koibem Community and the 188.29 hectares for public utilities, the Cabinet Secretary, Ministry of Lands, Physical Planning, Urban Development and Public Works, in collaboration with the County Government of Nandi facilitates the demarcation of the area, then conducts the necessary survey and the issuance of title deeds in the new registration area.
3. On the prayer that the relevant government agencies to consider reallocating alternative lands within the same area to the seven (7) individuals whose parcels are uninhabitable and the two (2) individuals who received less acreage by amending the initial excision survey, The Committee recommends that the Director of Survey, in collaboration with the Nandi County Government, allocates new parcels of land to the seven (7) individuals, whose parcels are uninhabitable and the two (2) individuals who received less acreage, by amending the initial excision survey within the 266.88 hectares earmarked for the Koibem Community.
The Committee notes that the Court of Appeal in Lunyasi and 3 others (Suing for and on behalf of 244 Ngerek Community Families/Members) versus Kenya Forest Service & 5 others (Petition E001 of 2023)(26th February 2025) judgement held that the recommendations made by the National Land Commission vide Gazette Notices: NLC/HLI/435/2018 and NLC/HLI/256/2018, dated 1st March 2019, have the force of law and recommends that within six (6) months of the adoption of this report by the House, the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry, in collaboration with the County Government of Nandi, the National Land Commission and the Cabinet Secretary, Ministry of Interior and National Administration

facilitates the resettlement of the Ngerek Community in the 455.45 hectares, earmarked for the resettlement of the Community within the Nandi South Forest as envisioned in the Chepkumia Land Exchange Programme.

Adoption of the Report

The Committee unanimously adopted the report, having been proposed by Hon. Beatrice Elachi, CBS M.P, and seconded by Hon. Beatrice Elachi, M.P.

MIN./PPC/2025/226:

CONSIDERATION OF PUBLIC PETITION NO.11 OF 2023 BY MR. BONIFACE OTIENO OPERE OF TIM KINDA SELF – HELP GROUP, REGARDING ILLEGAL ACQUISITION OF PRIVATE LAND BY THE DEFUNCT AWENDO TOWN COUNCIL

Committee Observations

Arising from the engagement with the various stakeholders, including the Petitioners, National Lands Commission, and Ministry of Lands, the Committee made observations on various concerns raised by the petitioners as follows—

a) The main issue arising in the Petition is compensation of residents of North Sakwa/Kamasoga claiming twenty-eight (28) land parcels of the 68.28 Hectares, and South Sakwa/Wawere claim thirty-one (31) land parcels of the 76.31 Hectares.

b) The matter was considered by the **High Court in Kisii Civil Case 133 of 2005**, which held that the unutilised parcels of land should revert to the petitioners, the original owners.

c) The matter was appealed at the Court of Appeal in **Town Council of Awendo v Nelson Oduor Onyango & 13 Others (2015) eKLR** because: the High Court's finding that the acquired property was not meant to benefit the appellant was contrary to the pertinent Gazette Notices of 1976, and was made in error; the Government had not been enjoined as a party to the suit, despite the adverse orders against it; and that the suit was time barred. The appeal was dismissed, and the High Court's decision was upheld.

d) The matter was further appealed at the Supreme Court in **Town Council of Awendo v Nelson O Onyango & 13 others; Abdul Malik Mohamed & 178 others (Interested Parties) [2019] eKLR**. The Supreme Court determined that the Government compulsorily acquired the suit land in accordance with the provisions of Section 75 of the repealed Constitution and

Section 6(2) of the Land Acquisition Act, 1968 (*now repealed*). The Supreme Court determined that:

- (i) The 1st to the 13th Respondents were fully compensated in accordance with the applicable law. Finally, the Court determined that the parcels of land in question were acquired for a public purpose.
- (ii) The title acquired by the petitioners, save for the 7th Respondent, became extinguished upon the compulsory acquisition. Their estates in the said parcels ceased to exist and became fused with the States' superior title. These parcels became public land after being compulsorily acquired for public purposes in accordance with the Constitution and the law. The Petitioners were compensated for the loss of their land to the public interest.
- (iii) Through the Gazette Notices Nos. Sections 2996 and 3737 of 1976, all parcels of land whose land titles are listed therein, were compulsorily acquired for the South Nyanza Sugar Scheme and vested in the Government of Kenya. Migori County presently holds that land in trust for the residents, and as the implementing agency of the public purpose for which the land was compulsorily acquired.
- (iv) The 7th Respondent (*Obiero Omedo*) is to be fully compensated by the Government for the loss of his Land Title No. North Sakwa/Kamasonga/1193.
- (v) Except for the 7th Respondent (*Obiero Omedo*), it is evident from the Court ruling that the issue of compensation was not disputed. The main issue litigated was the reversionary interest of the unutilised land that was compulsorily acquired.

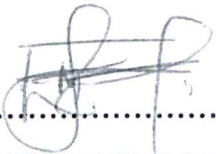
Committee Recommendation

On the prayer that the Committee engage the Ministry of Lands, Housing and Urban Development to ensure that the Petitioners are duly compensated for the lands they lost due to illegal allocation by the defunct Awendo Town Council, the Committee notes that the Supreme Court in *Petition 37 of 2014 Town Council of Awendo V Onyango and 13 others* determined that the original owners of the land in question, were compensated for compulsory acquisition, except for Mr. Obiero Omedo. The Committee recommends that the National Lands Commission, in collaboration with the Ministry of Lands, Public Works, Housing and Urban Development and the County Government Migori, compensate Mr Obiero Omedo for the loss of his land title No. North Sakwa/Kamasonga/1193 within ninety (90) days of the tabling of this report.

MIN./PPC/2025/227:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 01:15 p.m. The date of the next meeting will be on Tuesday 11th November, 2025 at 11:30 a.m.

Sign:  Date: 11/11/25

HON. MUCHANGI KAREMBA, CBS, M.P.

CHAIRPERSON, PUBLIC PETITIONS COMMITTEE



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 5TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, FEBRUARY 29, 2024, IN COMMITTEE ROOM 12, NEW WING, PARLIAMENT BUILDINGS AT 12.00 NOON

PRESENT

- | | |
|---------------------------------------|------------|
| 1. Hon. Ernest Ogesi Kivai, M.P. | - Chairing |
| 2. Hon. Joshua Chepyegon Kandie, M.P. | |
| 3. Hon. John Walter Owino, M.P. | |
| 4. Hon. Maisori Marwa Kitayama, MP | |
| 5. Hon. Bidu Mohamed Tubi, M.P. | |
| 6. Hon. Caleb Mutiso Mule, M.P. | |
| 7. Hon. Edith Vethi Nyenze, M.P. | |
| 8. Hon. Suzanne Ndunge Kiamba, M.P. | |
| 9. Hon. John Bwire Okano, M.P. | |
| 10. Hon. Sloya Clement Logova, M.P. | |

APOLOGIES

- | | |
|---|--------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - Vice Chairperson |
| 3. Hon. Patrick Makau King'ola, M.P. | |
| 4. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | |
| 5. Hon. Peter Mbogho Shake, M.P. | |

IN ATTENDANCE

PETITIONERS

- | | |
|--------------------------------|---|
| 1. The Hon. Richard Ken Chonga | - Member for Kilifi Constituency |
| 2. Mr. Chibuga Morris | - Chairman, KUPPET Kilifi Branch |
| 3. Mr. Caleb Mogere | - Executive Secretary, KUPPET Kilifi County |

MINISTRY OF LANDS

- | | |
|------------------------|-------------------------------------|
| 1. Hon. Alice Wahome | - Cabinet Secretary |
| 2. Hon. Nixon Korir | - PS for State Department for Lands |
| 3. Mr. Eric Mulevu | - PA to the CS |
| 4. Cathrine Muindi | |
| 5. Mr. Joseph Kamuyu | |
| 6. Mr. Andrew Kositany | |
| 7. Ms. Wambui Nganju | |

SECRETARIAT

- | | | |
|-------------------------|---|----------------------------|
| 1. Mr. Ahmed Kadhi | - | Senior Clerk Assistant |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Ms. Anne Shibuko | - | Clerk Assistant I |
| 4. Ms. Patricia Gichane | - | Legal Counsel II |
| 5. Mr. Willis Obiero | - | Clerk Assistant III |
| 6. Mr. Martin Sigei | - | Research Officer III |
| 7. Mr. Paul Shana | - | Assistant Serjeant-at-Arms |
| 8. Mr. Eugene Luteshi | - | Audio Officer |

MIN./PPETC/2024/ 035:

PRELIMINARIES

The Chairperson called the meeting to order at 12:00 noon and Hon. Caleb Mule, M.P. said the prayers.

MIN./PPETC/2024/036:

ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Meeting with CS, Lands, Public Works, Housing and Urban Development on consideration of the following Petitions—
 - i. *Delayed adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd Land;*
 - ii. *Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord;*
 - iii. *Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub location, Tezo Location, Kilifi North Constituency; and*
 - iv. *Illegal acquisition of private land by the defunct Awendo Town Council*
6. Meeting with CEC in charge of Lands, Migori County (Hon. John Kobado) regarding the consideration of the following Petitions—
 - i. *Delayed adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd Land; and*
 - ii. *Illegal acquisition of private land by the defunct Awendo Town Council*
7. Consideration of public petition regarding Hardship Allowance and Affirmative Action for Teachers in Chonyi Sub County—
 - i. *Meeting with Petitioner (Hon. Ken Chonga, MP)*
 - ii. *Meeting with KUPPET Kilifi Branch Chairperson (Mr. Morris Chiguba)*
8. Any Other Business
9. Adjournment

The Agenda was adopted to constitute business having been proposed by having been proposed by Hon. Caleb Mutiso, M.P and seconded by Hon. Joshua Kandie, M.P.

MIN./PPETC/2024/037:

CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/038:

MEETING WITH CEC IN CHARGE OF LANDS, MIGORI COUNTY, HON. JOHN KOBADO

The meeting was informed that Hon. John Kobado had not indicated his attendance before the committee after the invitation vide a letter Ref KNA/DLPS/PPETC/CORR/2024/008 dated 15th February 2024.

MIN./PPETC/2024/039:

**CONSIDERATION OF PUBLIC PETITION REGARDING
HARDSHIP ALLOWANCE AND AFFIRMATIVE ACTION FOR
TEACHERS IN CHONYI SUB COUNTY**

Meeting with Petitioners

The Petitioner, the Hon. Richard Ken Chonga, MP appeared before the Committee and submitted as follows—

Background of the Petition

- i. Teachers working in Chonyi area endured hardship hurdles since independence as they travel long distances without access to medical services, proper housing, food, and other essential social amenities which were only available in Kilifi Town, the headquarter of Kilifi County, 30 kilometres away. Teachers Service Commission (TSC) offices located in Vipingo area where a teacher from Chonyi area spends about Kshs. 1,000 to access their employer's office.
- ii. The hardship allowance was introduced as an incentive to teachers and other public officers working in remote areas to compensate for lack of basic amenities such as hospitals, improved infrastructure, harsh climatic conditions and communication access.
- iii. Teachers in some neighbouring constituencies in Kilifi South and areas such as Ganze were benefiting from hardship allowance.
- iv. The aforementioned challenges had caused many teachers working in Chonyi area to seek transfers to other areas with better working conditions leading to insufficient number of teachers in the area.
- v. The shortage of teachers had caused the ripple effect and created low morale for teachers remaining in the region due to heavy workload. Parents also were burdened to pay extra resources to hire teachers despite the poverty levels in the county.
- vi. The hardship allowance would motivate teachers in Chonyi and motivate others to come to Chonyi and improve the readiness of students to take exams.

Efforts made to address the issues

- i. A countrywide data collection exercise aimed at reviewing hardship areas was led by an inter-agency committee with representation from different ministries, state agencies and commissions. The committee concluded its report on 17th September, 2021 and listed Mbita, Lunga Lungu, Suba, and Chonyi areas to be gazetted as hardship areas to allow for enhanced allowances of public servants including teachers.
- ii. Despite the proposal, Chonyi was never been gazetted as a hardship area. In a collective bargaining agreement (CBA) signed between TSC and the teachers' unions, the Commission promised to embark on promotion of teachers serving in Arid and Semi-Arid Lands (ASAL) and revealed eighteen new hardship areas in the 2021-2025 CBA.
- iii. Kilifi County is an ASAL area but only had two sub counties of Magarini and Ganze being declared ASAL while other sub counties were left out including Chonyi. Further, most of the administrators in schools in Kilifi County are in acting capacity thus lowering their morale.
- iv. Efforts made to have this matter addressed by TSC had not resulted into satisfactory response.

Prayers

That the Committee—

- i. Engages the TSC to ensure teachers working in Chonyi area are paid hardship allowances.
- ii. Enquires into the matter and recommends that the entire Kilifi County be gazetted as a hardship area, be granted ASAL status as a hard to staff area to allow the teachers to benefit from all the affirmative action, promotion and hardship allowance going forward.

Meeting with KUPPET, Kilifi Branch

The Chairperson, KUPPET Kilifi Branch Mr. Morris Chiguba accompanied by the Executive Secretary, Mr. Caleb Mogere appeared before the Committee and submitted that they were in support of the petition for the following reasons—

- i. *Discrimination in Chonyi area as a hardship:* Despite its geographical location and lack of municipality status, Chonyi area was not gazetted as a hardship area. Consequently, teachers in the region were unable to benefit from hardship allowances, unlike other areas with similar work conditions.
- ii. *Medical services:* The area lacked even a single medical facility accredited by various medical schemes for teachers. It only had a poorly facilitated health center, putting the health of teachers at risk. Teachers relied on Kilifi County Referral hospital, located about 30 kilometres away.

- iii. *Poor housing conditions for teachers:* Due to inadequate housing in Chonyi, most teachers resided in Kilifi town hence the need for a hardship allowance.
- iv. *Food insecurity and harsh climatic conditions:* Unpredictable weather conditions led to failures in agricultural production, causing food insecurity.
- v. *Shortages and absence of water:* Key water and electricity infrastructure were absent in many parts of Chonyi. The available water sources were unhygienic and untreated, raising health concerns.
- vi. *Poor roads and communication network:* Major roads in Chonyi were impassable during bad weather and inconvenient during the dry season due to dust, potholes, and general damages, making it difficult for teachers to move around. Some areas had limited network coverage, hence affecting communication.
- vii. *Mass teacher transfers and understaffing:* All schools experienced understaffing, with only one out of the twelve secondary schools in Chonyi Sub County having a substantive deputy principal. The rest had deputies serving in acting capacities. This understaffing was a result of mass teacher transfers away from Chonyi due to poor working conditions.

Committee Concerns

- i. Regarding whether the gazettement should benefit Chonyi Sub County or the entire Kilifi County, the Petitioner indicated that the petition targeted teachers in Chonyi to benefit. However, the entire Kilifi County should also be considered as ASAL area to benefit from other concession that comes along with that.
- ii. Regarding the justification for gazetting Chonyi as a hardship area and whether the issues were perennial or seasonal, the Petitioner stated that the area deserved the gazettement as other areas with similar working conditions were already gazetted. Further, despite some of the challenges affecting other parts of the country the infrastructure in Chonyi was a perennial problem.
- iii. Members sought clarification regarding municipality status and in contributed to extra allowances for teachers. The Petitioner indicated that a municipality status would attract various benefits such as enhanced house allowance for teachers not accorded to rural areas.
- iv. The Committee sought clarification on the report quoted to recommend the gazettement of Mbita, Lunga Lungu, Suba and Chonyi. The Petitioner indicated that the report recommended the regions including Chonyi but there was no follow up yet Chonyi featured in the inter-agency committee collecting data on areas due for gazettement.
- v. Regarding the efforts made for TSC to address the concerns raised by the teachers, the Petitioner and KUPPET officials indicated that despite following up the matter with TSC, no action had been taken.

- vi. Regarding the fate of other civil servants in relation to the gazettelement, the Petitioner indicated that the teachers were putting pressure for gazettelement but other civil servants would also benefit as per the respective employers' terms.

MIN./PPETC/2024/040: MEETING WITH CS, MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

The Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development, Hon. Alice Wahome appeared before the Committee and submitted on the various petitions as follows—

Delayed adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd Land

- i. Macalder Mines was within a parcel registered as Muhuru/ Kadem/Macalder/498 measuring approximately 2167.5 Hectares (approximately 5,355.9 Acres)
- ii. The total acreage of the land gazetted as a forest by the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry in Legal Notice No. 85 of 2023 marked annexure 2 is 2494.95 Hectares (approximately 6,165.0 Acres)
- iii. The initial land was MR. NO. 123 with an acreage of 6178 acres as presented in Survey plan FR. NO. 4948. A resurvey was done in 1993 which converted MR. NO. 123 to LR. NO. 17955 with an acreage of 2,500 Hectares (6,178 acres).
- iv. In 1993, a subdivision of LR. NO. 17955 resulted into LR. NO. 17955/1 and 17955/2 with acreages of 1.019 Hectares (2.518 acres) and 4.170 Hectares (10.30 acres), respectively.

Committee Concern

The Committee sought clarity on the process of gazetting a land as a forest. The CS clarified that all lands are registered by the Ministry whether private, public or community land. The land in question was registered under the County Government of Migori but was leased to individuals. After the expiry of the lease, the land reverted to the county. Therefore, any negotiation on gazettelement as a forest was between the county and the Ministry of Environment, Forestry and Climate Change but the Ministry of Lands was only to document the records.

Illegal acquisition of private land by the defunct Awendo Town Council

The Committee had requested the CS to provide information on:

- i. The nature of restriction put on the Parcel No. North Sakwa/Kamasoga/1193 land;
- ii. A list of all original owners of the entire land, which was the subject matter of the Petition; and
- iii. A list of the owners who were compensated after compulsory acquisition of the land.

The CS submitted as follows—

- i. The parcel North Sakwa/Kamasoga/1 193 measuring 0.5 Ha was initially registered in favor of Obiero Omedo on 9th February, 1977 as the absolute proprietor. However, on 18th April 1984, a restriction was registered against the said parcel of land restricting any dealings on the within written land until a portion measuring 0.5 Ha set aside for the expansion of the South Nyanza Sugar Scheme (Awendo Township Expansion) in South Nyanza District has been transferred to the Government.
- ii. The parcels which were supposed to be surrendered to the Government were advertised vide Gazette Notice No. 3737 of 24th December 1976 outlining various parcels to be acquired by the government for the aforesaid reason.
- iii. The parcel LR No. North Sakwa/Kamasoga/1193 was unutilized for gazetted reason as the lands were found to be unsuitable for sugarcane farming and were not occupied by South Nyanza Sugar Scheme. Considering section 75 of the Constitution required that once land has been compulsorily acquired it ought to be used for designated purpose only, the original owners ought to be registered as the lawful owners of the unutilized parcels of the land.
- iv. A case was filed by the registered owner of the land together with twelve (12) others where they placed seventeen (17) issues for court determination. A decision was made vide a court judgment dated 19th November 2009 in Civil Suit No. 133 of 2005 at Kisii High Court.
- v. According to the decree, the court ordered for the restriction to be withdrawn and a transfer to be registered in favor of the initial owner (Obiero Omedo). Upon the registration of the transfer a title deed was issued in favor of one Obiero Omedo the initial registered proprietor.
- vi. On 26th May 2021 vide Succession Case No. 179 of 2019 in Migori Law Courts the said parcel of land was transferred to George Otieno Obiero as a beneficiary and a title deed was issued. Upon transfer the register was closed on 25th September, 2023 on subdivision in to two portions number 2945 and 2946 and therefore, the above register ceased to exist.

The CS provided a list of the original owners of the land and requested for more time to provide a list of persons who were compensated after the compulsory acquisition.

Committee Concern

In relation to the timelines for providing the list of individuals compensated following the compulsory acquisition, the CS stated that obtaining the list of original landowners was more straightforward through the gazette notice. However, when it came to identifying the actual beneficiaries who were compensated and those who were not, the records were inaccessible due to the relocation of the State Department of Lands from one ministry to another. The Ministry was working towards compiling the list and assured that it would be made available at the earliest opportunity.

Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub location, Tezo Location, Kilifi North Constituency

The Committee had requested the CS to provide the ownership status of LR No's 5046/9-38. The CS provided a list of ownership status of the LR No's 5046/9-38 noting that the Coast Development Company Ltd. was the registered owner of the parcels. However, there was a caution dated 9th May 2023 by Victoria Naishorua Keen claiming beneficiary interested in on the majority of the parcels as per the records in the Ministry.

Committee Concerns

- i. Concerning the significance of the claim of beneficiary interest placed on the parcels on 9th May 2023, by Victoria Naishorua Keen, the CS clarified that it signaled a dispute over the ownership of the land. It implied that the matter was either under investigation or subject to legal proceedings. However, the CS committed to engaging with the party issuing the caution to ascertain whether it still needed to be in place, as allowed by land laws. Should there be disagreement regarding her claimed interest, the matter would be resolved in court.
- ii. In response to the query by the Committee on whether due diligence was conducted on the Coast Development Company, which had not filed returns for 25 years but managed to renew the lease, the Ministry explained that the search results indicated lease tenures from 1st May 1929, with varying periods of 999 years and others for 99 years, both on leasehold and freehold. The Ministry acknowledged a potential inconsistency in tenure, particularly with the 999 years on leasehold, and committed to confirming whether that was an error since the standard should have been 99 years and not 999 years.
- iii. The Committee inquired about the awareness of the Ministry of allegations suggesting that squatters had made payments for settlement. The CS responded, expressing uncertainty regarding the terms and capacity in which the payments were made. She emphasized that, in most instances, Kenyans were deceived into making payments for land and were at risk of financial loss.

The adjudication and settlement fund strictly adhered to official records, ensuring that no money was accepted before the allocation. Any payments made without official documentation fell beyond the control of the Ministry. The CS pledged to investigate the matter further during discussions with Victoria Keen, including an inquiry into the available land for allocation, if any, for the settlers.

- iv. The Committee raised a question regarding the renewal of a lease for 99 years, starting from 1st May 1929, set to expire in 2028, which, according to the search, was renewed before its expiration. In response, the CS clarified that the renewal process typically commences before the lease term concludes.

However, she noted that extension was allowed for an expired lease, with renewal allowed for those who failed to apply for an extension before the expiration. Applying for lease renewal before the term lapsed was not a serious concern. Various motivations for application of renewals, include the intention to sell the land or the desire to embark on development projects. The Planning Department routinely

rejected expiring leases and recommended renewal to facilitate the approval of new development plans.

Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord

The Committee had requested the CS to provide a comprehensive response and way forward to the petition. The CS submitted as follows—

- i. As per the records, the land in question was under Plot No. 7 Group V Kilifi measuring approximately 172.80 acres. It was registered as LT. 45, Folio 475, File 15284 on freehold basis in favor of Wakf of Khadija Binti Suleiman El-Busaidy who was registered owner.
- ii. However, the parcel of land was encumbered by three different caveats registered in favor of three different parties as follows:
 - a) Caveat dated April 21, 1965 by Ag. Registrar of Titles Mombasa claiming Ownership by compulsory acquisition by virtue of Gazette Notice No. 12 of 1965 -7.20 acres;
 - b) Caveat dated November 4, 1965 by East African Power and Lighting claiming a grant of easement; and
 - c) Caveat dated 1965 by Ag. Registrar of Titles on behalf of Government of Kenya claiming ownership by compulsory acquisition of 2.83 acres being portion of Plot 7 Group V by virtue of Gazette No. 72 of 1966.
- iii. The Ministry would in the next Financial Year (2024/2025) initiate negotiations with the registered land owners with a view of arriving at an agreeable compensation and surrender of the land for settlement.

Committee Concerns

- i. Concerning the adjudication of Wakf land and whether the previous government had extended an offer of compensation to Khadija Binti Suleiman El-Busaidy, the Ministry acknowledged the possibility of previous engagements with Wakf for land acquisition through settlement or compensation. However, it clarified that such plans were occasionally formulated but not executed due to budgetary constraints. The Ministry expressed the intention to initiate discussions regarding the purchase of the land after budget allocation.

The CS pledged to engage with the Wakf of Khadija Binti Suleiman El-Busaidy to determine the available land for compensation. Notably, the land was registered as private and could not be allocated to individuals without a transfer, which would require payment through compulsory acquisition or settlement purchase. The land remained unavailable for allocation as it was titled under the name of Wakf Khadija Binti Suleiman El-Busaidy.

- ii. In response to the query by the Committee about the completion of the government's acquisition of the land, the CS clarified that the government's focus was on settling

individuals. The Ministry would identify the Wakf of Khadija Binti Suleiman El-Busaidy, negotiate ownership, and work towards compensating and resettling the occupants, aiming to put the land into economic use.

- iii. Regarding compensation for the landowners affected by roads built by KeNHA, the Ministry directed the inquiry to the National Lands Commission, emphasizing that it was the appropriate authority responsible for land acquisition matters.

MIN./PPETC/2024/041:

ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 01:50 p.m. The next meeting will be held on Tuesday, 5th March 2024 at 12.00 noon.

Sign: 

(CHAIRPERSON)

Date: 07-03-2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 80TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD
ON WEDNESDAY, NOVEMBER 15, 2023, IN COMMITTEE ROOM 12, GROUND
FLOOR, MAIN PARLIAMENT BUILDINGS, AT 3.00 P.M
PRESENT

- | | | |
|---|---|------------------|
| 1. Hon. John Bwire Okano, M.P. | - | Chairing |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. Maisori Marwa Kitayama, M.P. | | |
| 5. Hon. Edith Vethi Nyenze, M.P. | | |
| 6. Hon. Bidu Mohamed Tubi, M.P. | | |
| 7. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 8. Hon. Suzanne Ndunge Kiamba, M.P. | | |
| 9. Hon. Sloya Clement Logova, M.P. | | |

APOLOGIES

- | | | |
|--------------------------------------|---|-------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Patrick Makau King'ola, M.P. | | |
| 3. Hon. John Walter Owino, M.P. | | |
| 4. Hon. Ernest Ogesi Kivai, M.P. | | |
| 5. Hon. Caleb Mutiso Mule, M.P. | | |
| 6. Hon. Peter Mbogho Shake, M.P. | | |

SECRETARIAT

- | | | |
|------------------------|---|-----------------------------|
| 1. Mr. Ahmed Kadhi | - | Senior Clerk Assistant |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Ms. Willis Obiero | - | Clerk Assistant III |
| 4. Mr. Shadrack Omondi | - | Legal Counsel II |
| 5. Ms. Lilian Mburugu | - | Media Relations Officer III |
| 6. Mr. Martin Sigei | - | Research Officer III |
| 7. Ms. Felistus Muiya | - | Protocol Officer |

IN ATTENDANCE

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

- | | | |
|-------------------------|---|-------------------------------|
| 1. Hon. Alice M. Wahome | - | Cabinet Secretary |
| 2. Mr. Gordon Ochieng | - | Director, Land Administration |
| 3. Mr. David Nyandoro | - | Ag. Chief Land Registrar |
| 4. Mr. Eric Mulevu | - | Technical Assistant to CS |
| 5. Ms. Stella Muthungu | - | Technical Assistant to CS |

MIN./PPETC/2023/503: PRELIMINARIES

The Chairperson called the meeting to order at 3:00 p.m. and Hon. Maisori Marwa Kitayama, M.P, M.P. said the prayers.

MIN./PPETC/2023/504: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Meeting with the CS, Ministry of Lands, Public Works, and Urban Development regarding -**
 - *Public Petition regarding Illegal Acquisition of private land by the defunct Awendo Town Council.*
 - *Public Petition regarding Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under an absentee landlord.*
6. Any Other Business
7. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Ernest Ogesi Kivai, M.P. and seconded by Hon. Edith Vethi Nyenze, M.P.

MIN./PPETC/2023/505: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The Agenda was deferred.

MIN./PPETC/2023/506: MEETING WITH THE MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT ON VARIOUS PETITIONS

The CS, Ministry of Lands, Public Works, Housing and Urban Development appeared before the Committee and submitted as follows:

Public Petition No. 4 of 2023 regarding delayed adjudication of squatters after the expiry of the lease of Macalder Mines Ltd. Land

- i.) In the response dated 3rd October 2023, the Ministry indicated that the Macalder Mines fall within a parcel registered as Muhuru/Kadem/Macalder/498 measuring approximately 216.5 hectares. The parcel was still registered in favor of the defunct South Nyanza County Council (now County Government of Migori).
- ii.) The Ministry had established that the Cabinet Secretary for the Ministry of Environment, Climate Change and Forestry gazetted the area as a forest land vide Legal Notice No. 85 of 2023 dated 13th June 2023. The area was delineated and edged on boundary plan number 175/517. Henceforth, the land was public land under the management of the Kenya Forest Service (KFS) and could not be adjudicated by the Ministry.
- iii.) The Ministry of Environment, Climate Change, and Forestry was better placed to explain the process leading up to the gazettelement of the land as forest land.

Committee Concerns

- i.) **Regarding information sharing and consultation between the two Ministries before the gazettelement**, the CS indicated that perhaps the CS was not aware of the ongoing Petition before the Committee at the time of the gazettelement. Further, public participation ought to have been done. However, the fate of the people occupying the land was a priority for the government hence the two Ministries would engage on the matter and present a better response to the Committee and rectify any oversight that might have occurred.
- ii.) **Regarding why the land was gazetted as a forest**, the CS stated that there must have been a reason why it was gazetted, and the information needed to be provided by the relevant Ministry. Further, the custodian of public property as well as all government lands was the National Treasury and the Ministry of Lands's role was to keep the records. However, the Petitioners ought to have been aware of public participation even though the process of gazettelement is faster than de-gazettelement.
- iii.) **Regarding the status of the land**, the CS indicated that the register read South Nyanza County Council, and therefore, until the gazettelement was regularised the change of ownership would not take place. Further, the Ministry of Lands had not been informed officially to transfer ownership to Kenya Forest Service. The CS committed to instruct the Director of Survey and Lands Administrator in the area to research and provide a proper indication of the number of people affected. Further, a gazette notice could not override the proprietary interest by way of title and the status quo would remain, and the land ownership would not be transferred before the Petition is concluded.

Committee Resolution

After the deliberations, the Committee resolved as follows:

- i.) The Director of Survey and the Lands Surveyor in the area prepare a report on the entire acreage gazetted as forest land by the Ministry of Environment, Climate Change, and Forestry.
- ii.) The Committee to explore the possibility of having a joint sitting of the two Ministries to clear any pending concerns before tabling the report.

Public Petition No. 11 of 2023 regarding the illegal acquisition of private land by the defunct Awendo Town Council

- i.) In 1976, the Government of Kenya issued two Gazette Notices informing the public of its intention to acquire privately owned parcels of land in the then South Nyanza District. The Government was acting pursuant to the provisions of Section 75 of the retired Constitution and Section 6(2) of the Land Acquisition Act of 1968 (now repealed).
- ii.) The Government proceeded to acquire various parcels in Awendo Township. Subsequently, the affected proprietors were fully compensated. In 2005, the acquisitions were challenged by the petitioners in the High Court Civil Suit No. 133 of 2005, Kisumu. The Petitioners herein challenged the process of compulsory acquisition of the gazetted parcels and the allocation of the unutilized portions to third parties by the Government. The High Court ruled in favour of the petitioners directing the District Land Registrar to re-survey the unutilized land and issue title deeds to the petitioners.
- iii.) The County Council of Awendo being dissatisfied by the decision of the High Court lodged an Appeal at the Court of Appeal in Civil Appeal No. 161 of 2010. The Court of Appeal upheld the Judgment of the High Court and dismissed the appeal.
- iv.) The County Council of Awendo further appealed the judgment of the Court of Appeal to the Supreme Court. In Petition No. 37 of 2014, the Supreme Court overturned the Judgement of the Court of Appeal.
- v.) It was the Supreme Court's opinion that the parcels were compulsorily acquired by the Government of Kenya and that the proprietors of the parcels in the Gazette Notices were fully compensated. However, the court noted that parcel no. North Sakwa/Kamasoga/1193 was not listed in the gazette notices and the proprietor had not been compensated. Annexure 3 is a copy of the Supreme Court Judgement.
- vi.) The issues canvassed in this Petition have been adjudicated by the highest court in the Country.

Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufini, Vibandani, and Kibarani Sublocations, Tezo Location, Kilifi County

In the response dated 3rd October 2023, the Ministry promised to furnish further information on the ownership status of L.R. No's 5046/9-38. However, the CS requested additional time to continue compiling a comprehensive list of the respective landowners.

Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County

The CS requested additional time to give a comprehensive response to the Petition.

Committee Concerns

Regarding the restriction on the North Sakwa/Kamasoga/1193 land and whether the land was also compulsorily acquired, the Ministry stated that current records in the Ministry of Lands indicated a restriction by way of acquisition. From the Supreme Court decision, there was a possibility that there could have been a restriction, and the government did not proceed to acquire the specific land. The Supreme Court on the land indicated that it was not acquired pointing to an error in the documents brought before it. The CS stated to be given time to establish the facts about the matter. Assuming the land was restricted and recorded as acquisition, then it would vacate the restriction and release the land to the original owners. However, there was a possibility that the land may have not been paid for by way of compensation.

The Ministry indicated that the restriction was lifted in 2014 and a title deed was issued to Mr. Obiero Anedo as per High Court decree in Civil Suit No. 133 of 2005. The restriction was no dealing until the portion acquired had been transferred to the government. The practice has been that whenever there is acquisition, a search restriction is placed until the land is surveyed and the actual acreage for the owner is established.

The CS undertook to reappear and shed more light on the restriction which was lifted in favour of Obiero Anedo to establish whether he was the owner and whether he may have been compensated.

Regarding initial owners of the land at the time of acquisition and beneficiaries from any compensation, the CS indicated that the Ministry would provide further information on the matter.

Committee Resolution

After the deliberations, the Committee resolved as follows:

The CS Ministry of Lands is to reappear in two weeks to respond to the pending issues in the four Petitions as follows -

- i.) Public Petition No. 4 of 2023 regarding delayed adjudication of squatters after the expiry of the lease of Macalder Mines Ltd Land**

The CS is to provide further information regarding the total acreage of the gazetted land.

- ii.) Public Petition No. 11 of 2023 regarding the illegal acquisition of private land by the defunct Awendo Town Council**

The CS is to provide further information regarding the nature of the restriction put on Parcel No. North Sakwa/Kamasoga/1193 land and the list of all the original owners of the entire, which is the subject matter of the Petition, as well as those that were compensated after compulsory acquisition.

iii.) Public Petition No. 36 of 2023 regarding Delayed adjudication and settlement of residents of Misufini, Vibandani, and Kibarani Sublocations, Tezo Location, Kilifi County

The CS is to furnish the Committee with further information on the ownership status of L.R No.'s 5046/9-38.

iv.) Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County

The CS is to provide a comprehensive response to the petition within two weeks as requested.

MIN./PPETC/2023/507: ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 2:15 p.m. The next meeting will be held on Thursday, 16th November, 2023 at 11.00 a.m.

Sign: 
(CHAIRPERSON)

Date..... 29/11/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

**MINUTES OF THE 66TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD
ON WEDNESDAY, OCTOBER 4, 2023, IN THE COMMITTEE ROOM ON 2ND FLOOR,
CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10:00 AM**

PRESENT

- | | | |
|--|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Maisori Marwa Kitayama, M.P. | | |
| 6. Hon. Edith Vethi Nyenze, M.P. | | |
| 7. Hon. Peter Mbogho Shake, M.P. | | |
| 8. Hon. John Bwire Okano, M.P. | | |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. Suzanne Ndunge Kiamba, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. Sloya Clement Logova, M.P.

SECRETARIAT

- | | | |
|------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Mr. Willis Obiero | - | Clerk Assistant III |
| 4. Mr. Shadrack Omondi | - | Legal Counsel II |
| 5. Mr. Martin Sigei | - | Research Officer III |
| 6. Ms. Rahab Chepkilim | - | Audio Officer |

IN ATTENDANCE

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

- | | | |
|------------------------------|---|-----------------------------------|
| 1. Hon. Generali Nixon Korir | - | PS, Lands |
| 2. Mr. B.K Mbiti | - | DDLAS |
| 3. Ms. Carolyne Menin | - | Legal Advisor |
| 4. Mr. Hilton Kamau | - | Ass. Director Land Administration |
| 5. Mr. Andrew Kositany | - | Personal Assistant |
| 6. Mr. Paul Ndungu | - | Ass. Dir. Land Survey |

NATIONAL LANDS COMMISSION

- | | | |
|-----------------------|---|---------------------------------------|
| 1. Mr. Gershon Otachi | - | Chairman, NLC |
| 2. Mr. Hezron Alela | - | Personal Assistant to the Chairperson |
| 3. Prof. David Kuria | - | Director |
| 4. Mr. Zachary Ndege | | |

MIN./PPETC/2023/427: PRELIMINARIES

The Chairperson called the meeting to order at 10.00 a.m. and said the prayers.

MIN.PPET/2023/428: ADOPTION OF THE AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Meeting with the Cabinet Secretary, Ministry of Lands regarding the following Petitions:**
 - i.) *Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of lease of Macalder Mines Ltd Land;*
 - ii.) *Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sub-location, Kilifi County;*
 - iii.) *Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufuni, Vibandani and Kibarani Sub-Locations, Tezo Location, Kilifi North;*
 - iv.) *Public Petition No. 10 of 2023 regarding resettlement of Residents of Muthanga Farm;*
 - v.) *Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest; and*
 - vi.) *Public Petition No. 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council.*
6. **Meeting with the CEO, National Lands Commission (NLC) regarding the following Petitions:**
 - i. *Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of lease of Macalder Mines Ltd Land*
 - ii. *Public Petition No. 10 of 2023 regarding resettlement of Residents of Muthanga Farm*
 - iii. *Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest*
 - iv. *Public Petition No. 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council*
7. Any Other Business
8. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. John Walter Owino, M.P. and seconded by Hon. Nimrod Mbithuka Mbai, M.P.

MIN./PPETC/2023/429: MEETING WITH THE CS MINISTRY OF LANDS

The Principal Secretary of the State Department for Lands, Hon. Generali Nixon Korir made submissions as follows: -

A. Consideration of Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of squatters after the expiry of the lease of Macalder Mines Ltd Land

- i.) The Petitioners, described as residents of Nyatike Constituency claim they were disposed of their ancestral land measuring approximately 300 acres when it was leased to Macalder Mines Ltd in 1935.
- ii.) According to the records at the Ministry, the subject falls within the parcel registered as Muhuru/Kadem/Macalder/498 which measures approximately 2167.5 Hectares. It was registered in favour of the defunct South Nyanza County Council (now County Government of Migori) on February 19, 1982 on freehold tenure.
- iii.) Following the Constitution of Kenya 2010, the land became public land under the County Government of Migori pursuant to Article 62. It can only be alienated under direct allocation, a process that can only be initiated by the county government. The Ministry will thereafter process the title documents. The matter can therefore be referred to the County Government of Migori for consideration.

Committees Concerns

Gazettement of the land as a forest

- i. The Committee inquired about the gazettement of the Macalder land as a forest land by the CS, Ministry of Environment, Forestry, and Climate Change. The PS indicated that the information had not come to the attention of the Ministry of Lands. However, there were instances of such gazettements without the knowledge of the Ministry of Lands. Further, the PS stated that a gazettement process needed public participation and involvement of the County Government of Migori which is the custodian of the land.

The status of the land

- ii. The Committee inquired about the status of the land. The PS indicated that the land in question was about 5000 acres, but the petitioners were claiming just 300 acres. However, Migori County Government should be answerable as the Ministry of Lands only facilitates issuance of title deed after the allocation has been done by the county. Further, the county oversees planning and approving the allocation before subdivision and NLC issuance of allotment letter.

Efforts by the Ministry in protection of community interest

- iii. The Committee inquired the efforts by the Ministry regarding the protection of community interest. The PS stated that a committee on historical land injustices was in place under the NLC and was mandated to look community interests in historical land instances.

Committee resolutions

After the deliberations, the Committee resolved to allow the PS two weeks to establish the records of the 5000 acres in question and any other relevant correspondences and full status of the land.

B. Consideration of Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest

- i.) The main contention in the Petition was that there was no public participation in the process of gazetting the forest. The area is occupied by three communities namely Pokot, Tugen, and Ilchamus. The Petitioners claim that the designation of the area as a forest poses an existential threat to the communities and requires urgent intervention to avert further conflict.
- ii.) The Mukutani Forest was gazetted as a public forest vide Legal Notice No. 265 of 2017 and it covers part of Mukutani Location. The forest measures approximately 13,195.8 hectares and by the time of gazettment, the Ministry had already declared the area as an adjudication section per the Notice dated 18th February 2016.
- iii.) Due to insecurity in the area, demarcation and recording of rights had not commenced as there had been communal conflicts between residents of Mukutani Location and the neighbouring Arabal Location.
- iv.) Both Arabal and Mukutani Location residents claim that their views were not sought before gazettment of the forest despite the area covering what they consider as their community land. The people from Arabal also view the forest as their hideout and refuge from cattle rustlers who continue to torment them.
- v.) That, if proper consultation was done and the locations involved, then issues regarding to its existence would not be in contest and measures of proper protection would have been put in place to allay the fears of the communities.
- vi.) The Forest Conservation and Management Act No. 34 of 2016 at section 30 classifies categories of forests as follows: -
 - (1) Forests may be classified as public, community, or private forests.
 - (2) Public forests include; public forests classified under Article 62(1)(g) of the Constitution; and forests on land between the high and low water marks classified under Article 62(1)(1) of the Constitution.
- vii.) Section 31(1) and (2) of the Act prescribed the procedure for the creation and management of public forests
- viii.) According to the records held by the Ministry of Lands, Mukutani Forest falls in the former trust land which transitioned to community land under Constitution of Kenya 2010 and the Community Land Act, 2016.

Committee Concerns

The Status of the land

With regards to the status of the land, the PS clarified that the land was under trust and was reverted to the community but in 2011, it was gazetted as a forest land. The gazettment did not involve the community and ought to have been reversed and land given to the community.

The missing link between the Ministry of Land and Ministry of Environment, Forestry and Climate Change regarding gazettment

The Committee sought to know why the two Ministries were to in tandem on matters gazettment of forest lands and the way forward for handling the disconnect. The PS indicated that there was a missing link in decision making as the Forestry Department occasionally

gazetted forest lands without the input or knowledge of the Ministry of Lands. However, the Ministry of Environment had to get approval from the counties which allocated the lands.

The consequences of not involving the community

The Committee sought to know how the matter would be addressed when the views of the community were not collected before gazettelement of their land as a forest land. The PS indicate that the Ministry of Land was in support of the case brought forth by the community. Further, the Ministry of Lands would bring to the attention of the Ministry of Environment, Forestry and Climate Change to degazette the land and release it to the community.

C. Consideration of Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufuni, Vibandani and Kibarani Sub-Locations, Tezo Location, Kilifi North

- i.) The Petitioners described as residents of Misufuni, Vibandani and Kibarani Sub Location, Tezo Sub location in Kilifi Constituency have been in occupation of Plot No. 5046/5 for more than 50 years as authorised by the registered proprietor, Coast Development Company.
- ii.) According to the records at the Ministry, the land in question, LR No. 5046/5 measuring approximately 107.24 Hectares (265 acres) was transferred from the estate of William Gilbert Lillywhite to Coast Development Company Limited from May 1, 1929 as per the Memorandum of Registration of transfer of Land (MRT) but not for 99 years as stated in the petition.
- iii.) The government vide a Gazette Notice No. 1782 of June 20, 1980 communicated the intention to acquire part of LR No. 5046/5 measuring approximately 34.44 Hectares for development of Coast Institute of Agriculture. On the same date, the government also issued a Notice of Inquiry vide Gazette Notice No. 1783 on the intended acquisition.
- iv.) The then Commissioner of Lands vide a letter Ref. VAL.559/50 dated April 1, 1982 issued a Notice of Taking Possession of the 34.44 Hectares acquired pursuant to section 19(3) of the Land Acquisition Act (Cap. 285) (Repealed).
- v.) A proposal by Coast Development Company Limited to subdivide LR Bo. 5046/5 was approved by the then Town Council of Kilifi vide a Notification of Approval of Development Permission (P.P A 2) Registration No. KTC/03/11 dated February 14, 2011. The Ministry also approved the same vide a letter Ref. No. KIL/LO/1750/VOL.XIX dated March 30, 2012.
- vi.) Upon subdivision, the acquired land was given L.R No. 5046/8 measuring approximately 34.48 Hectares as per the survey plan. The remaining subplots were given new LR Nos. 5046/9-38 as communicated vide a letter Ref: CT 52/VOL.28/150 dated June 3, 2015 from the Director of Surveys.
- vii.) There have been further subdivisions from the remaining resultant 30 sub plots of LR. 5046/5. The Ministry will provide a detailed report on ownership of the plots. Further, information on the registration and shareholding of Coast Development Company Limited should be sought from the
- viii.) According to the records held at the Ministry however, a title CR 76854 dated February 16, 2021 for LR No. 5046/8 was issued in the name of Coast Development Company Limited.

Committees Concerns

Status of the land

- i. The Committee inquired about the status of the land. The PS indicated that the title of the land is in the possession of Coast Development Company and the land was host to Pwani University. However, the acquisition process of the land was fraudulent, and the Director of Criminal Investigation (DCI) would investigate the matter. The PS requested the committee for additional two weeks to provide copies of the report on the directors of the company holding the title.

Addressing the concerns of squatters

- ii. The Committee inquired whether the Ministry would finalize and facilitate issuance of titles to the people who had already settled in the land. The PS indicated that the land was acquired to establish an institution hence it would be difficult to issue titles unless it uses the settlement fund after a comprehensive report on the status of ownership.

Land settlement fund

- iii. The Committee inquired on the land settlement fund and how it could be actualised to compensate the landowners to allow for closure and settlement of the people. The PS stated that the fund was a budgetary allocation for purchase of lands from absentee landlords. Further, most of the landlords were willing to surrender the lands and negotiate with government but there was need for a budgetary allocation into the fund to facilitate the process.

Different ways of acquisition

- iv. The Committee inquired about the various ways of land acquisition available for the Ministry. The PS indicated that the government could buy the land and give to the people or allow for a hybrid system where the government subsidises the costs and allows people to purchase. However, there was no provision in law for government to purchase from the landlords and the people buys back from the government.

MIN./PPETC/2023/430: MEETING WITH THE NATIONAL LANDS COMMISSION

The Chairperson, the National Lands Commission (NLC), Mr. Gerishon Otachi made the following submissions: -

A. Consideration of Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of the lease of Macalder Mines Ltd Land

Background

Facts gathered during the visit indicate that Macalder Mines Ltd., a Canadian Company started mining in that area in 1933. According to the locals, the company mapped out specific areas for mining and displaced the locals. However, it allowed them to settle in adjacent areas with conditions to obtain a permit from Macalder Mines Ltd. and some of the conditions included:

- The locals were not supposed to cultivate more than five acres of land.
- The locals were not supposed to keep more than 16 heads of cattle.

The locals indicate that when the lease expired around 1970, they moved in claiming it as their ancestral land.

The current situation

- i.) The residents occupy the largest portion of the land where they have built residential houses and cultivated crops for subsistence. Some dwelling houses have been constructed with permanent materials, but the majority are semi-permanent materials (mud walls and corrugated iron sheets). Some individuals also keep cattle, sheep, and goats.
- ii.) There is Nyatike Market, which was planned, and resultant plots were allocated to individuals by the defunct County Council of Migori. The entire block consisting of the perimeter of the whole market is surveyed but NLC could not authenticate from the county government whether individual plots are surveyed.
- iii.) There is a catholic mission complex which comprises the church, convent, and offices. The mission complex is surveyed but NLC could not confirm whether their interest is registered.
- iv.) There are old mines on the parcel. Adjacent to these old mines are old residential buildings which appear to have been dwelling places of those who were managing the mines. The mines are still in the state where they were left by the Canadians, and they have not been rehabilitated.
- v.) On the parcel, is a central government housing scheme under the Ministry of Land Housing and Urban Development.
- vi.) There are also sub-county administration offices, residential quarters for the sub-county administrators, a police station and police lines to the North.
- vii.) There is an airstrip to the northeastern part of the parcel and a primary school almost to the central part of the land.

Observations

- i.) The land records indicate that there is a reservation for Macalder Township which was registered on 11th November 1941 and therefore adjudication as requested may not be the procedure for regularisation of settlement.
- ii.) The land records also reveal that the parcel is registered in favour of South Nyanza County Council whose successor in law is now the County Government of Migori.
- iii.) There is a need to regularise ownership for local inhabitants settled on the ground. There are also public institutions on the land which need to be regularised by way of document ownership.

Recommendation

The subject matter under the petition will be effectively addressed in a participatory manner in consultation with all the relevant stakeholders. The following processes in the prioritized order can be implemented in regularising ownership: -

- i.) A public participation forum be organised for all stakeholders on the subject land and all the views be collected and collated.
- ii.) Census/enumeration of *bonafide* squatters/institutions/allottees by the County Government to determine genuine beneficiaries can be done with the help of County Government Administrators and community leaders.

- iii.) Proper planning be undertaken on the parcel putting into consideration the topographical and registry maps sheets which may be used to prepare a development plan. The plan will indicate the plot location, approximate sizes, and users of various plots.
- iv.) The development plan is subjected to a stakeholders' forum for adoption. The plan and the list of beneficiaries are then forwarded to the county assembly for approval.
- v.) A cadastral survey is done to determine the sizes of resultant subplots according to the development plan.
- vi.) Presentation of a formal request from the County to the NLC for processing.
- vii.) Verification and validation of owners.
- viii.) Preparation of Letters of Allotment
- ix.) Acceptance and payment of levies as stipulated in the letters of allotment.
- x.) Processing of titles/certificates of leases

The land is vested in the County Government of Migori; therefore, it will be the initiator and key player in the process with the support of the Ministry of Lands and the NLC. However, the Commission remains committed to assist in processing of ownership documents within its mandate.

Committees Concerns

Gazettement of Macalder Land

- i.) The Committee inquired on the gazettement of the land as forest land by the Ministry of Environment, Forestry and Climate Change. The Chairperson indicated that the Commission knew about the gazettement from the news hence there was no background information on the matter. However, the gazettement process was not as rigorous as de-gazettement which even requires the input of Parliament hence lots of complaints arise. NLC had no role in the gazettement.

Protection of land rights by NLC as an Independent Commission

- ii.) The Committee inquired into the role of NLC in the protection of the interest of the community. The Chairperson indicated that NLC would inquire from the CS why the gazettement was done, however, the Committee should invite the CS to respond. The Commission was involved in addressing cases of historical land injustices and there were no cases pending arising from historical land injustice out of the 1000 complaints filed formally.

Legal provisions and the process of allocation

- iii.) The Committee inquired into the legal provisions and the process of allocation. The Chairperson indicated that the NLC administers land in accordance with the provisions of the law and relevant statutes. The NLC receives requests for allocation from the county government as the law confers powers to county governments but there are checks and balances.

B. Consideration of Public Petition No. 10 of 2023 regarding the resettlement of Residents of Muthanga Farm

- i.) The dispute was between the current occupants who claim to have been living on the farm and Muthanga Farm Company Limited shareholders who purchased the land from the government and subsequently issued title deeds.

- ii.) The confrontation between squatters and law enforcers during efforts to execute court orders necessitated an urgent solution to the problem.
- iii.) The office of the President through the Ministry of Interior and Coordination of National Government stepped in to look into the matter.
- iv.) The PS, Internal Security constituted a Multi-Agency Committee to review the matter and submit a report for action. The committee is comprised of State Department of Internal Security and National Administration, State Department of Lands and Physical Planning, County Government of Murang'a, Police representatives at the constituency and ward levels, representatives of Muthanga Farm Limited, representatives from Royal Capital Holding Limited and the National Lands Commission.
- v.) The NLC therefore being a party to the ongoing efforts to resolve the matter as spearheaded by the Ministry of Interior, awaits adoption and communication of final recommendation to inform implementation by the Committee.

C. Consideration of Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest

- i.) While considering the petition, the NLC checked its records for any correspondence from the then Ministry in charge of Forestry or the Kenya Forest Service as anticipated under Section 21(2) of Forest Conservation and Management Act, 2016 leading to Legal Notice No. 265 of 27/10/2017 regarding gazettement of Mukutani Forest. The NLC affirmed that its records do not have details of involvement in the gazettement of Mukutani Forest.
- ii.) The Commission opined that the matter is better handled by direct involvement of the Ministry in charge of Forestry and the respective County Government involving all relevant stakeholders and/or residents.

Committee Concerns

Gazettement of the land

- i.) The Committee inquired into best way to address the disconnect between the Ministry of Environment and NLC regarding the missing link on gazettement. The Chairperson stated that NLC should be notified before gazettement of a community land as a forest land. However, the process required public participation.

Recommendations on the gaps in the law

- ii.) The Committee sought to know where there were gaps in the law and some recommendations from the NLC. The Chairperson stated that NLC always works on recommendations on improvement of the law for example a Bill on historical land injustice was before the National Assembly. However, there was need to tighten the gaps that allow for gazettement of lands without public participation or knowledge of the NLC.

D. Consideration of Public Petition No. 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council

- i.) While considering the petition, the NLC was informed by the Court of Appeal Ruling in Kisumu (Civil Appeal No.161 of 2010) in which Town Council of Awendo appealed against a judgement delivered at Kisii High Court Civil Suit No. 133 of 2006.

- ii.) The Decree by the High Court and confirmed by the Court of Appeal is to the effect that the original owners of the suit land ought to be registered as the lawful owners of the unutilized parcels of the suit land and that unutilized parcels be re-surveyed and title deeds thereof be issued to the rightful persons by the area Land Registrar.
- iii.) In view of the above, the implementation of the decree is ideally by the Director of Survey and the Chief Land Registrar who are officers of the Ministry of Lands. However, since the County Government of Migori is the successor to Awendo Town Council which was involved in the litigation, any challenges in implementing the Decree should be addressed jointly by the County and the Ministry.

Committee Concerns

Options that address the Petitioners' prayers

The Committee inquired into the available options that could address the concerns by the petitioners. The Chairperson NLC would analyse the Supreme Court's Ruling on the matter and advise the committee within two weeks.

MIN./PPETC/2023/431: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1:30 p.m. The next meeting would be held on Thursday 5th October 2023 at 10.00 a.m.

Sign: 

 (CHAIRPERSON)

Date..... 29/11/2023



NATIONAL LAND COMMISSION

RESPONSE TO THE PUBLIC PETITIONS COMMITTEE REGARDING VARIOUS PETITIONS

REPORT BY:

*Awende Town
Council*

GERSHOM OTACHI BW'OMANWA

CHAIRMAN

4TH OCTOBER 2023

Honourable Chairperson and Committee Members, pursuant to a letter Ref. KNA/DLPS/PPETC/CORR/2023/197 dated 18th September, 2023, where the National Land Commission (NLC) was requested to report on the following: -

1. Public petition No. 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of lease of Macalder Mines Ltd Land;
2. Public petition No. 10 of 2023 regarding resettlement of residents of Muthanga Farm;
3. Public petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest; and
4. Public petition No. 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council.

Honourable Chairperson, we wish to respond as follows: -

1. Petition on Delayed adjudication and settlement of Squatters after the expiry of lease of Macalder Mines Ltd Land;

Hon Chairperson, facts gathered during the visit indicate that Macalder Mines Ltd, a Canadian company, started mining in that area in 1933. According to the locals, the Canadian company mapped out specific areas for mining and displaced the locals from those areas. However, the company allowed the locals to settle in adjacent areas with conditions to obtain permits from Macalder Mines Ltd. Some of the conditions in the permits included;

- The locals were not supposed to cultivate more than five (5) acres of land.
- The locals were not supposed to keep more than sixteen (16) heads of cattle.

According to the locals, when the lease expired around 1970, they moved in claiming it as their ancestral land.

The Current Situation

The current status on the ground is as follows:

- i. The residents occupy the largest portion of the land where they have built residential houses and also cultivated crops for subsistence. Some dwelling houses have been constructed with permanent materials but the majority are with semi-permanent materials (mud wall and corrugated iron sheets). Some individuals also keep cattle, sheep and goats.
- ii. There is Nyatike market which was planned and the resultant plots allocated to individuals by the defunct County Council of Migori. The entire block constituting the perimeter of the whole market is surveyed, but we could not



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- ii. There is Nyatike market which was planned and the resultant plots allocated to individuals by the defunct County Council of Migori. The entire block constituting the perimeter of the whole market is surveyed, but we could not

authenticate from the County Government whether the individual plots are surveyed.

- iii. There is a catholic mission complex which comprises the church, convent and offices. The mission complex is surveyed but we could not confirm whether their interest is registered.
- iv. There are old mines on the parcel. Adjacent to these old mines are old residential buildings which appear to have been the dwelling places of those who were managing the mines. The mines are still in the state where they were left by the Canadians, they have not been rehabilitated.
- v. On this parcel is a central Government Housing Scheme under the Ministry of Land Housing & Urban Development.
- vi. There are also sub county Administration offices. Next to these offices are the Residential quarters for the Sub County Administrators. There is also a police station and police lines to the North.
- vii. There is an Airstrip to the North Eastern part of the parcel.
- viii. There is a primary school almost to the central part of the whole land.

Observations

- i. Arising from the land records, it was noted that there is a reservation for Macalder Township which was registered on 11th November, 1941 and therefore adjudication as requested by the Honourable Member of Parliament may not be the procedure for regularization of settlement.
- ii. The land records also reveal that the parcel is registered in favour of South Nyanza County Council, whose successor in law is now the County government of Migori.
- iii. **There is need to regularize ownership for local inhabitants/individuals settled on the ground.** There are also public institutions on the land which need to be regularized by way of documentation of ownership.

Recommendation

The subject matter under petition will be effectively addressed in a participatory manner in consultation with all stakeholders. The following processes in the prioritized order can be implemented in regularizing ownership;

- i. A public participation forum be organized for all stakeholders on the subject land and all the views be collected and collated.
- ii. Census/Enumeration of bonafide squatters/institutions/allotees by the County government to determine genuine beneficiaries. This is done with the help of government administrators and community leaders.

- iii. Proper planning is done within the parcel. Topographical maps and Registry map sheets should be used to prepare a development plan. The plan will show plot location, approximate sizes and users of various plots.
- iv. Development plan is subjected to stakeholder's forum for adoption. The plan together with the list of beneficiaries are then forwarded to the County Assembly for approval.
- v. Cadastral Survey is done to determine the sizes of resultant sub plots according to the development plan.
- vi. Presentation of formal request from the County to the National Land Commission for Processing
- vii. Verification and validation of owners
- viii. Preparation of Letters of Allotment
- ix. Acceptance and Payment of levies as stipulated in the letters of allotment.
- x. Processing of titles/ Certificates of Leases .

It must be emphasized that since the land is vested in the County Government of Migori, it will be the initiator and key player in this process, with the support of the Ministry of Lands and the Commission.

Hon Chairperson, the Commission remains committed to assist in processing of ownership documents within our mandate.

2. Petition on Resettlement of Residents of Muthanga Farm;

Hon Chairperson, the dispute is between the current occupants who claim to have been living on the farm and Muthanga Farm Company Limited shareholders who purchased the land from government and subsequently issued with titles deeds.

The confrontation between squatters and Law enforcers during efforts to execute court orders necessitated an urgent solution to the problem.

The office of the President through the Ministry of Interior and Coordination of the National Government stepped in to look at the matter.

The Principal Secretary Internal Security constituted a Multi Agency Committee to review the matter and submit a report for action. The Multi Agency team comprised of the State Department of Internal Security and National Administration, State Department of Lands and Physical Planning, County Government of Murang'a, Political Representatives at the Constituency and Ward levels, Representatives of Muthanga Farm Limited, Representatives from Royal Capital Holding Limited and the National Land Commission.

Hon Chairperson, the National Land Commission therefore being a party to the ongoing efforts to resolve the matter as spearheaded by Ministry of Interior awaits adoption and communication of final recommendations to inform implementation by the Committee.

3. Petition on Declaration of Mukutani Forest as a Public Forest;

Hon Chairperson, the National Land Commission states that while considering the petition checked its records of any correspondence from the then Ministry in charge of Forestry nor Kenya Forest Service as anticipated under Section 31(2) of Forest Conservation and Management Act, 2016 leading to Legal Notice No. 265 of 27/10/2017 regarding gazettement of Mukutani Forest. The Commission affirms that its records do not have details of involvement in the gazettement of Mukutani Forest.

Hon Chairperson, the Commission opines that the matter is better handled by direct involvement of the Ministry in charge of Forest and the respective County Government involving all relevant stakeholders/residents.

4. Petition on illegal acquisition of private land by the defunct Awendo Town Council;

Hon Chairperson, the National Land Commission states that while considering the petition it was informed by the Court of Appeal ruling at Kisumu (Civil Appeal No 161 of 2010) in which Town Council of Awendo appealed against a judgement delivered at Kisii High Court Civil Suit No 133 of 2006 (*Detailed Judgement annexed*).

The Decree by the High Court and confirmed by the Court of Appeal is to the effect that the original owners of the suit land ought to be registered as the lawful owners of the unutilized parcels of the suit land and that unutilized parcels be re-surveyed and title deeds thereof issued to the rightful persons by the area Land Registrar.

Hon Chairperson in view of the above, the implementation of the decree is ideally by the Director of Survey and the Chief Land Registrar who are officers of the Ministry of Lands. However, since the County Government of Migori is the Successor to Awendo Town council which was involved in the litigation, any challenges in implementing the Decree should be addressed jointly by the County and the Ministry.

Honourable Chairperson and Committee Members, I submit.


GERSHOM OTACHI BW'OMANWA
CHAIRMAN
4th October, 2023

IN THE COURT OF APPEAL

AT KISUMU

(CORAM: ONYANGO OTIENO, AZANGALALA & KANTAI JJ.A)

CIVIL APPEAL NO. 161 OF 2010

BETWEEN

TOWN COUNCIL OF AWENDO APPELLANT

AND

NELSON ODUOR ONYANGO, MIJUNGU MISWETA,

HEZRON OTIENO, ROSALINA NYAKURE,

JAIRO OWINO ODERA, TIMOTHEO RAYAMO OKWACH,

OBIERO OMEDO, ELIUD OGUTU SIRAMA,

JOSEPH OMONDI RONGO, JAMES OMONDI ANINDO,

JOSEPH ODIWUOR OCHOME,.....1ST – 13TH RESPONDENT

ATTORNEY GENERAL14TH RESPONDENT

(Appeal from the judgment and/or decree of the High Court of Kenya at Kisii

(Musinga, J) dated 13th November, 2009

in

KISII HIGH COURT CIVIL SUIT NO. 133 OF 2006 (OS))

JUDGMENT OF THE COURT

The genesis of the entire saga that has ended up in this appeal before us is pieces of land which originally belonged to various respondents herein, on the basis of various claims and which, in order to enable **South Nyanza Sugar Company** expand its nuclear scheme were acquired by the Government under the **Land Acquisition Act No. 47 of 1968** pursuant to **Gazette Notice No. 2996**. The same

Gazette Notice made specific the purpose for which the same pieces were acquired. It stated:-

"Gazette Notice No. 2996

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 South Nyanza Sugar Scheme in South Nyanza District."

The same Gazette Notice set out the registered owners of each of the same pieces of land, the area or sizes of the various parcels that were to be acquired. Almost all the people affected were local people from the area and most of those people were living on their respective pieces of land. That Gazette Notice was of 24th September, 1976. Later, vide another Gazette Notice dated 24th December, 1976, Gazette Notice No. 3737, most pieces were acquired. Most of those pieces of land were in **Kamasoga and Waware areas of North Sakwa**. They were as follows:-

- (a) *Land parcel No. North Sakwa/Kamasoga/46 registered in the name of the first respondent, Nelson Oduor Onyango,*
- (b) *Land Parcel No. South Sakwa/Waware/204 registered in the name of Mijungu Misweta, the second respondent,*
- (c) *Land parcel No. North Sakwa/Kamasoga/34 registered in the name of the third respondent, Hezron Otieno,*
- (d) *Land parcel No. North Sakwa/Kamasoga/1081 registered in the name of the fourth respondent, Rosalina Nyakure,*
- (e) *Land parcel No. North Sakwa/Kamasoga/1093 registered in the name of Jairo Owino Odera, the fifth respondent,*
- (f) *Land parcel No. North Sakwa/Kamasoga/1111 registered in the name of Timotheo Rayamo Okwach, the sixth respondent,*
- (g) *Land parcel No. North Sakwa/Kamasoga/1193 registered in the name of Obiero Omedo, the seventh respondent,*
- (h) *Land parcel No. North Sakwa/Kamasoga/1067 registered in the name of Eliud Ogutu Sirama, the eighth respondent,*
- (i) *Land parcel No. South Sakwa/Waware/207 registered in the name of Joseph Omondi Rongo, the ninth respondent,*

(j) Land parcel No. North Sakwa/Kamasoga/45 registered in the name of James Omondi Onindo, the tenth respondent,

(k) Land parcel No. North Sakwa/Kamasoga/111 registered in the name of Joseph Odiwuor Ochome, the eleventh respondent,

(h) Land parcel No. South Sakwa/Waware/202 registered in the name of John Onyango Dawo, the twelfth respondent,

and (m) Land parcel No. South Sakwa/Waware/168 registered in the name of Charles Obunga Okombo, the thirteenth respondent.

After the Gazette Notices acquiring the above parcels had been issued and South Nyanza Sugar Company had acquired and utilised whatever portion it wanted for the expansion of its scheme, parts of the pieces above remained unutilised by the same company. The evidence in the record shows that some of the respondents continued to live on some parts of the land parcels and were not disturbed by South Nyanza Sugar Company in respect of the parts that the same company did not require for the purposes of their expansion. However, the appellant in this appeal the **Town Council of Awendo**, which is a local authority established under the *retired Local Government Act*, and which is the local authority established near Sony Sugar Scheme area, was allegedly attempting to evict the respondents on the basis that the land acquisition was for purposes of its expansion and on the basis that as the land had been acquired under the **Land Acquisition Act**, none of it was any longer the property of the respondents and thus it required the respondents to vacate their various remaining portions and it is in evidence that it started allocating those parcels to third parties albeit temporarily. This did not go well with the respondents who felt that as South Nyanza Sugar Company in favour of which the land was acquired did not use the parts they occupied, the appellant had no legal right to take over such parcels and to evict them from the same pieces of land.

The respondents lodged their complaints with the **Chief Land Registrar**. The record shows that the 8th respondent was one of the complainants to the Chief Land Registrar. In response, the Chief Land Registrar in a letter reference **No. GEN/A/I VOL V/107** dated 29th February, 1996, addressed to the District Land Registrar Homa Bay stated as follows:-

"RE: COMPULSORY LAND ACQUISITION FOR VARIOUS
PROJECTS IN SOUTH NYANZA.

I refer to your letter SN/LR/92/4 dated 29th June, 1994 on the above matter.

I have received complaints from people whose lands were compulsorily acquired in part for nuclear estate of South Nyanza Sugar Company Limited to the effect that they have not been issued with their titles for the portions of those lands that remained for them after the acquisition. Some of those remainder portions have been subdivided by the owners but the mutations have not been registered by your office for reasons which are not clear. It is also alleged that some of the remainder portions have been allocated to third parties by the Commissioner of Land despite the fact that the owners are in occupation.

Some of the parcels affected are numbers South Sakwa/Waware/170, 171, 153, 154, 592, 594 and 652 and also the land of the late Andrea Anindo (parcel number North Sakwa/kamasoga/45).

Please have this matter sorted out once and for all in consultation with the District Surveyor Migori. In case you do not have all the Gazette Notices concerned, you should arrange to obtain them from the Chief Valuer, Nairobi.

Please give the exercise top priority and advise us of the progress you make in the matter.

F.R.S. ONYANGO

Chief Land Registrar."

That letter was copied to the Permanent Secretary Ministry of Lands and The Commissioner of Lands among others. The record before us does not show any reaction from the then District Land Registrar Homa Bay. But from the affidavits in

the record sworn by each respondent, the appellant, The Town Council of Awendo, took over the control of the pieces of land that were not utilised by the the South Nyanza Sugar Company Ltd and as the letter says, it started allocating it to third parties and evicting the respondents on the pretext that as the parcels had been acquired by the Government, the original owners no longer had any claim on any part of it unused by the original intended beneficiaries and particularly because the original owners had allegedly been compensated for the pieces of land. The respondents complained to the Ministry of Local Government which in turn, apparently contacted the Town Clerk, Awendo Town Council on the matter.

As no satisfactory results were received by the respondents, they moved to the High Court - *Civil Case No. 133 of 2005 (O.S.)*. This was filed pursuant to **Order XXXVI rule 1** of the **Civil Procedure Rules** and all other enabling provisions of law and **Section 3A** of the **Civil Procedure Act**. Even though the entire Originating Summons is lengthy , yet because of its importance, we do reproduce it below. It reads:-

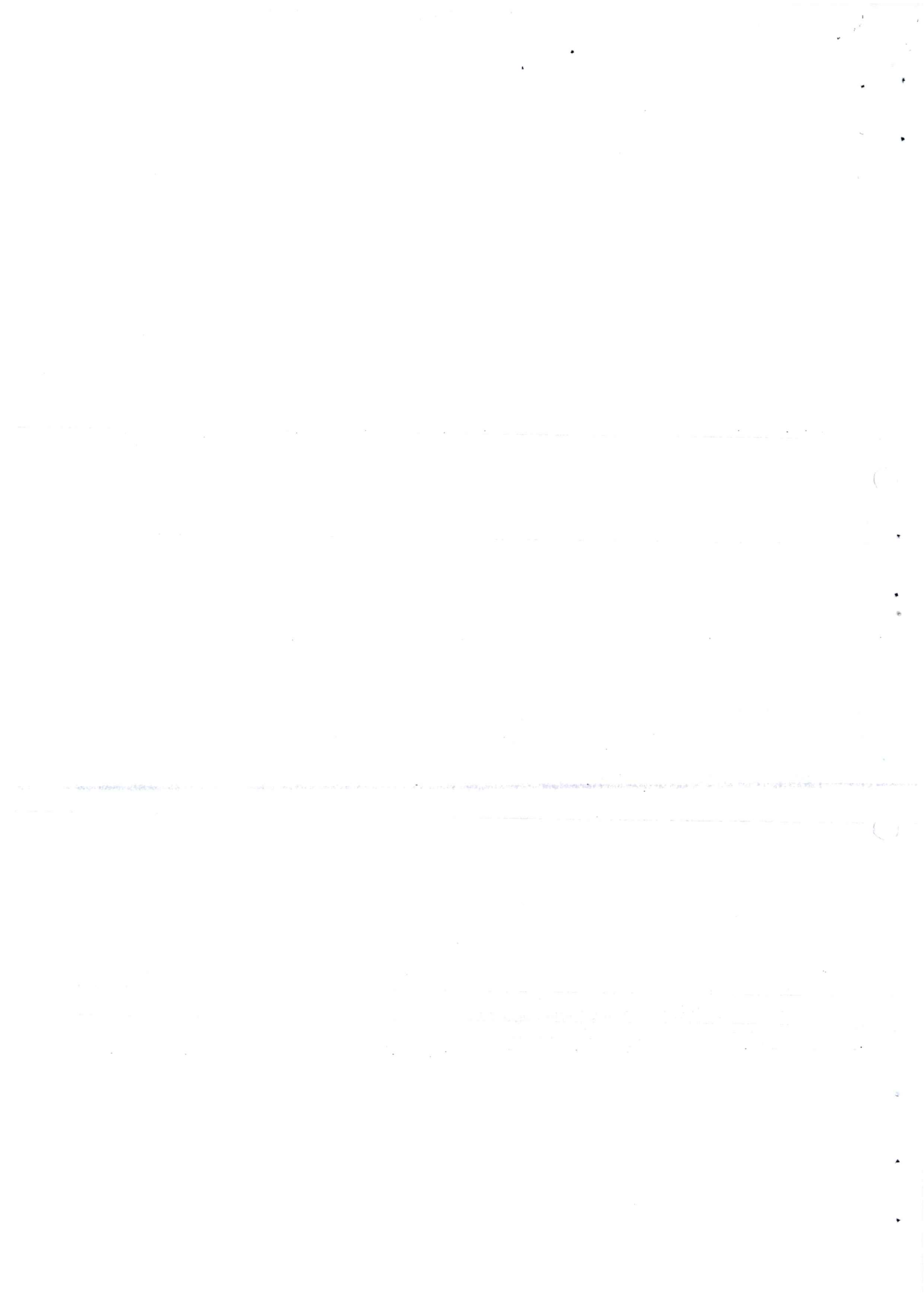
"LET AWENDO TOWN COUNCIL, within 15 days of the service of this Summons upon it enter an appearance when the council which claims to have acquired title to the following parcels of land namely:-

(i) Land parcel No. North Sakwa/Kamasoga/46.

(ii) Land parcel No. North Sakwa/Kamasoga/204.

- iii. Land parcel No. North Sakwa/Kamasoga/34.*
- iv. Land parcel No. North Sakwa/kamasoga/1081.*
- v. land parcel No. North Sakwa/Kamasoga/1093.*
- vi. Land parcel No. North Sakwa/Kamasoga/1111.*
- vii. Land parcel No. North Sakwa/Kamasoga/1193.*
- viii. Land parcel No. North Sakwa/Kamasoga/1067.*
- ix. Land parcel No. South Sakwa/Waware/207.*
- x. Land parcel No. North Sakwa/Kamasoga/45.*
- xi. Land parcel No. North Sakwa/Kamasoga/111.*
- xii. Land parcel No. North Sakwa/Waware/202.*
- xiii. Land parcel No. South Sakwa/Waware/168.*

By compulsory land acquisition through the Government of Kenya for the determination of the following questions:-



the Government was not made a party, the respondents' Originating Summons could not succeed as the lands, on acquisition, reverted to the Government and that being so the Government was a necessary party for the success of the suit. On third ground, Mr. Kisera stated that the originating summons was filed in October, 2005 and was for a claim of land which was allegedly acquired in 1977 and the suit was time barred. He however conceded that this complaint was not raised in a proper way before the trial court and was not an issue properly raised and argued before the trial court but he maintained that as it was a point of law this Court could still go over the record and deliberate on it. On the fourth ground Mr. Kisera's take was that, as there was need to adduce proper evidence and full pleadings the matter should have proceeded by way of a plaint and defence, and on the last point he argued i.e the fifth ground he submitted that the entire decision was against the weight of evidence that was before the court as though the learned Judge found that the residue of the acquired land should revert to the respondents yet there was no evidence adduced as to what was the residue or unutilised land that could revert to the original owners. He urged us to allow the appeal.

Mr. Maroro, the learned counsel who represented the office of the Attorney General opposed the appeal. He submitted that it was true that the various pieces of land were acquired under the **Land Acquisition Act** for purposes of South Nyanza Sugar Scheme. In one of the Gazette Notices, Awendo Town Council is entered in brackets and that was to him because South Nyanza Sugar Scheme was not separated from Awendo Township. There was a residue and the appellant had admitted that much. However, Mr. Maroro, stated, there was nothing on the record to show that the Government had given the remaining portions to the appellant and under the Constitution, the residue would revert to the original owners of the land as there was nothing to show that the residue or whatever unutilised portions of the various land parcels were handed over to the appellant by the Government. He asked us to dismiss the appeal.

Mr. Nyasimi, the learned counsel for the respondents also opposed the appeal contending that after the Government had acquired the parcels of land in dispute through **Land Acquisition Act** and fenced off the land required, some portions remained and this was admitted by the appellant. This was after the purpose of the acquisition had been realised. There was nothing to show that Government handed over this land to the appellant, and according to Mr. Nyasimi, the Chief Land Registrar, in his letter we have reproduced herein above agreed that the unutilised parcels should have been surveyed and the original owner given his/her title respectively. Instead, the appellant started claiming the subject parcels and started allocating them to various third parties thereby leaving the original owners with nothing. He submitted that as the Government did not do wrong to the respondents, they could not join the Government in the suit. He further submitted on the issue of limitation that the Originating Summons did touch on limitation and the affidavit of the appellant which was treated as statement of defence also did not touch on the issue of limitation and thus in law it is not an issue in dispute. On whether the procedure adopted by the court in handling the originating summons was proper, Mr. Nyasimi argued that the parties accepted the procedure and the originating summons was treated as plaint whereas the replying affidavit was treated as statement of defence and that was proper in law. As to the claim that the land parcels in question were not identifiable, Mr. Nyasimi's take was that the learned Judge of the High Court had directed that the subject land parcels be resurveyed before title deeds were issued and that took care of that claim.

In reply, Mr. Kisera felt that as the Government of Kenya was not joined as a party the Originating Summons was defective and he felt it was unfortunate that Mr. Maroro for the Attorney General should have stated that the Government was comfortable. He again urged us to allow the appeal.

We have anxiously considered the evidence that was before the High Court together with the exhibits that were produced at the trial in that court. We have considered, again anxiously, the judgment

rendered by the High Court, the grounds of appeal, the able submissions by the Counsel on both sides of the divide for which we feel indebted to them and finally we have also considered the law. It is not in doubt that the subject parcels of land were originally registered either in the names of the respondents or in the names of those from whom they would in law claim legal interests in their properties. It is also, not in dispute that the subject pieces of land were acquired by the Government pursuant to the **Land Acquisition Act 1968 Act NO. 47 of 1968** Laws of Kenya and there were more than one Gazette Notices through which each of them were acquired. The respondents maintained that the various parcels were acquired for the sole purpose of expansion of South Nyanza Sugar Company (SONY) Scheme and although Mr. Kiseru in his submissions before us says in support of his first ground of appeal that the learned Judge erred in finding that the acquisition of the suit parcels of lands was not meant for the benefit of the appellant, that contention is contradicted by the only witness called by the appellant, **Josphat Ayonga** the then Town Clerk of the Town Council of Awendo who said in his evidence in chief.

"The Government acquired the parcels of land for South Nyanza

Sugar Company,

Even if SONY is not using the lands, the plaintiffs cannot claim the land,"

and said in cross examination that :-

"The lands were taken for purposes of establishing SONY."

We shall revisit this aspect later in this judgment when we will be discussing the grounds of appeal each of which we intend to consider in turn.

As the matter before us, is in essence touching on the right to property, the proper starting point when considering it is the Constitution of Kenya at the relevant time, *ie the retired Constitution Section 75* of that Constitution provided as follows:-

"No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied:-

(a) the taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of property so as to promote the public benefits; and

(b) the necessity thereof is such as to afford reasonable justification for the causing of hardship that may resort to any person having an interest or right over the property; and

(c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation."

Pursuant to the provisions above, *Land Acquisition Act Chapter 295* Laws of Kenya was enacted. The preamble to that Act stated:-

“An Act of Parliament to make provision for the compulsory acquisition of land for the public benefit.

(underlining provided)

Section 3 of the same Act gave the Minister power if satisfied that the need for acquisition of some land was likely to arise under the provisions of **Section 6**, to direct, a Gazette Notice to be published by the Commissioner of Lands of that impending acquisition and affected parties would be served with a copy of that Gazette Notice and under **Section 6**, the Minister is directed to consider certain specific circumstances before he directs the Commissioner of Lands to issue notices for the acquisition of such parcels of land. **Section 17** and **18** of the **Act** dealt with what happens where part only of the parcel is acquired leaving a part remaining **Section 17** states:-

“Where part only of the land comprised in document of title has been acquired, the Commissioner shall, as soon as practicable, cause a final survey to be made of all the land acquired.”

Section 19 deals with taking of possession and vesting of the acquired land in the Government and stipulates upon the land so acquired being vested in the Government, a notice that possession of the land has been taken and that the land has vested in the Government and a notice to that effect has to be served upon all registered proprietors of the land. We observe that in this case no such notices were exhibited by either party. But as that was not made an issue before us, we will not belabor it. Each of the respondents gave evidence to the effect that after acquisition of their lands, part of their lands remained which apparently was not surveyed as was required vide **Section 17** of the **Land Acquisition Act** and thus the respondents remained on those parcels now in dispute. This in effect means that the Government did not in practice take the whole of the land acquired through the various Gazette Notices and equally South Nyanza Sugar Company Limited for whose benefit the land was being acquired also did not utilise the acquired land fully. There remained parts of the acquired land which were not surveyed notwithstanding the letter from the Chief Land Registrar we have reproduced herein above, and on which the respondents continued to live. The appellant, under the pretext of being a local authority in the area and on the assumption that the unutilised parcels of land were Trust land, assumed authority over the same land, and according to the evidence on record started removing the respondents who were physically on the land to give room for its own expansion and also started allocating to third parties either parts or whole of those parcels of land.

We think we have, in our capacity as the first appellate Court on this appeal analysed the matters that were before the High Court to a fairly detailed extent and we now revert to the grounds of appeal each of which as we have stated, we will discuss in turn.

We have, to an extent considered the first ground. The first Gazette Notice No. 2996 states in its preamble as follows:-

“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 South Nyanza Sugar
Scheme in South Nyanza District."

That Gazette Notice leaves no doubt that the land acquisition was for South Nyanza Sugar Scheme. The second Gazette Notice was No 3737. It stated in its preamble as follows:-

"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 South Nyanza Sugar Scheme (Awendo
Township Expansion) in South Nyanza District."**

That in our view meant that the main purpose for acquiring land was South Nyanza Sugar Scheme and that Awendo Township expansion was within the sugar scheme complex. Several land parcels fell in this category. Gazette Notice No. 6 of 5th January 1979, did not mention Awendo Town Council and stated that the purpose for the acquisition was the South Nyanza Sugar Roads in South Nyanza. We have looked at the Gazette Notices on the record before us and we are unable to find out one that says the purpose of the acquisition was meant for the benefit of the appellant. Indeed if that were so nothing would have stopped the Government, once it acquired the same parcels to allocate all of them to the the appellant for its control. Further in its affidavit sworn by its then Town Clerk, Barnaba Kosgey, to which we have referred above, the appellant readily admitted at paragraph 4 and 5 that the purpose of the acquisition of the subject parcels of land was for the development of South Nyanza Sugar Company Limited. Hear him:-

"4. That the applicants have all admitted that the Government of Kenya compulsorily acquired the suit parcels of land in whole.

5. That, the purpose is also agreed to have been for Development of South Nyanza Sugar Co. Ltd."

That was a clear admission by the then clerk to the council who was the person in custody of its assets and all matters pertaining to land that the parcels were acquired for purposes of development of South Nyanza Sugar Company Limited. At paragraphs 6 and 7 of that affidavit, Mr. Kosgey explained the basis of the appellant's claim to the residue or the unutilised portions of the acquired land. He does not claim at any stage that the land was acquired for the development of the appellant council. That affidavit was by consent, at the time of directions treated as defence and thus this ground is in effect complaining against a position that the learned trial Judge had no alternative but to take as the appellant never offered any evidence to the effect that the disputed parcels were acquired for the development of

the Town Council of Awendo. In fact Mr. Josphat Ayonga, the only witness called by the appellant and who, as we have said was its Town Clerk later when the case was heard said that the land in dispute was held by the appellant in trust for the Government of Kenya. His further evidence was that the land reverted to the appellant merely because it was the local authority within which the compulsorily acquired land was situate. He also stated categorically as we have stated elsewhere as follows in his evidence in chief:-

"The Government acquired the parcels of land for South Nyanza Company,"

and agreed as we have stated that the lands were taken for purposes of establishing SONY. Indeed he conceded that he had no authority in writing from the Commissioner of Lands or the Minister authorising the appellant to evict the plaintiffs.

We have considered the first ground of appeal at great length, but we cannot see any merit in it. The mere fact that in Gazette Notice No. 3737 the name of the appellant was included in brackets as we have stated only meant that South Nyanza Sugar Company Scheme would include the appellant as it was in proximity within the area covered by the scheme and did not mean it was beneficiary of the compulsory acquisition.

The second ground is in our view also not tenable. The Government acquired the land parcels for the benefit of South Nyanza Sugar Company. The company did not utilise all the parcels acquired for its purposes. The Government through the Chief Land Registrar wrote to the District Land Registrar way back, in fact some nine years before the originating summons was filed, indicating that it was alive to the respondents' complaints and appreciated the same. It did not stand in the way of the respondents getting their unutilised portions back. That being the case, much as it would have been legally more clinical, particularly for purposes of execution of court orders, for the Government to be made a party, the respondents had no claims against the Government.

On the contrary, it was the appellant which needed to have it joined as a party for it was the appellant which was claiming through the Government as it was stating that it had a right to hold onto residues that resulted from the compulsory acquisition as according to it the same land was trust land, *(which we agree with the learned Judge was a misconception)*, and it was the local authority in whose geographical area the residue fell therefore it had a right to control it. It was the appellant who needed the Government for its success. We do not see how the appellant's case cannot succeed on account of non inclusion of Government as a party. In any event, before us, Mr. Maroro, representing the Attorney General asked us to dismiss the appeal thereby disowning the appellant's claim. We are not persuaded that non inclusion of the Government renders the Originating Summons so defective as to warrant the Originating Summons being quashed and the appeal being allowed.

The third ground claims that the suit was statutorily time barred. This complaint is being raised for the first time in this appeal. We have perused the appellant's replying affidavit which was treated as defence when directions were taken on the Originating Summons and limitation was not raised in that affidavit. We have perused carefully the proceedings and questions put in cross examination to the respondents' witnesses and there is no indication that that issue of limitation was being canvassed. We have lastly perused the appellant's written submissions in the High Court and that issue of limitation is not raised anywhere. The law, as spelt out in **Order 2 Rule 4 (1)** of the **Civil Procedure Rules** is clear, that the defence of limitation must be pleaded before a party can rely on it and before a court of law can entertain it. That rule states:-

"4 (1) A party shall in any pleading subsequent to a plaint plea specifically any matter, for

example performance, release, payment, fraud, inevitable accident, act of God, any relevant statute of limitation or any fact showing illegality:

(a) Which he alleges makes any claim or defence of the opposition party not maintainable....

(b)
.....
.....

(c) Which raises issues of fact not arising out of the proceeding pleading."

But even if it were not a matter specifically required to be pleaded before it is canvassed still, the fact that it was not pleaded is fatal, particularly as the issue was never canvassed and left to the court to decide upon. In the case of **Galaxy Paints Co. Ltd vs Falcon Guards Ltd (2000) EA 885** this Court held:-

"The issue of determination in a suit generally flowed from the pleadings and a trial court could only pronounce judgment on the issues arising from the pleadings or such issues as the parties framed for the court's determination. Unless pleadings were amended, parties were confined to their pleadings. *Gandy v Caspair (1956) EACA 139* and *Fernandes v People Newspapers Ltd (1972) EA 63* considered."

That is the law. In cases where parties have canvassed the issue and left it to the court, the court can pronounce judgment on it though it was not pleaded. This was the holding in the case of **Odd Jobs vs Mubia (1970) EA 476**, where it was held:-

"A court may base its decision on unpleaded issue if it appears from the course followed at the trial court that the issue has been left to the court for decision."

In the matter before us the issue of limitation was not pleaded as the law requires pursuant to **Order 2 Rule 4 (1)** we have cited above, neither was it pleaded in general even if the law had not required it to be pleaded and in any case it was not canvassed in the course of trial and left to the court to decide upon. That being the case how would one find fault with the trial court? Where would one find fault with? He heard the case to its completion and pronounced judgment without the appellant raising limitation at all. The ground cannot succeed and must be and is hereby rejected.

The fourth ground is again a non starter. It complains that the learned Judge erred in entertaining the suit brought by way of Originating Summons when issues involved were not suitable for determination by way of Originating Summons. The reason why we say it is a non starter is because the record speaks for itself. The matter was commenced by way of Originating Summons for whatever reasons. But the record shows that immediately the matter was placed before Deputy Registrar, for mention, the Originating Summons was fixed for directions on 29th March, 2006. On that day the originating summons was placed before *Bauni J. (as he then was)* but directions could not be taken because the appellant was absent and had not filed replying affidavit though it had filed Memorandum of Appearance. The matter was adjourned and came up for directions on 4th July, 2006. On that day both Mr. Nyasimi for the respondents who were the applicants and Mr. Kisera for the appellant which was the respondent then, appeared before *Bauni J. (as he then was)* and Mr. Nyasimi informed the learned

Judge that the matter was for directions and that both of them requested that the parties do give *viva voce* evidence. Mr. Kisera responded to that by saying “**That is so.**” Upon that consent by the two, the learned Judge made an order as follows:-

“Order Parties to give viva voce evidence. Applicant to be referred to as plaintiff and respondent as defendant. The O.S. and supporting affidavit be regarded as plaint and replying affidavit as defence. Parties to get a date.”

Pursuant to that, the matter now as a complete suit with plaint and defence was fixed for hearing by the parties for 29th November, 2006 and the hearing indeed started on that day. Under that scenario, it is difficult to appreciate why the appellant could not mount a full hearing as is done in respect of a plaint and a defence. In any case, if the appellant felt the issues involved could not be determined by way of Originating Summons which was already a plaint, why did he not seek to file a further or supplementary affidavit to boost his defence in the matter” We say no more on that ground.

The last ground is not clear, but on our own and having analysed and evaluated the evidence that was before the High Court, we have no reason to accept that the judgment was against weight of evidence. Mr. Kisera submitted on this that there was no evidence of unutilised portions as there had been no survey of what was allegedly the residues. We find an answer to this in the learned Judge’s order which reads as follows:-

“Having established that the unutilised portions of the suit lands were found to be unsuitable for sugarcane farming and were not therefore occupied by SONY, and considering that Section 75 of the Constitution requires that once land has been compulsorily acquired ought to be used for the designated purpose only, the original owners of the suit land ought to be registered as the lawful owners of the unutilised parcels of the suit land. Those parcels that were not utilised by SONY should be re-surveyed and title deeds thereof issued to the rightful persons by the area Land Registrar.”

In short, much as the sizes of the unutilised parcels of land in dispute are as yet not clear, the owners are known and some of them are the respondents, and as the utilised land is known, a re-survey of the unutilised parcels will reveal the real sizes and the respondents will each be registered as appropriate. This would not be a difficult task, nor would it be a matter of law if the entire parcels had been registered and their acreages known and were cited in the relevant Gazette Notices. It would be a surveyor’s duty to resurvey the residues and have the original owners registered as appropriate.

We think we have said enough to indicate that this appeal cannot succeed. It lacks merit and is hereby dismissed with costs to the respondents.

Judgment accordingly.

Dated and Delivered at Kisumu this 18th day of October, 2013.

J.W. ONYANGO OTIENO

.....

JUDGE OF APPEAL

F. AZANGALALA

.....
JUDGE OF APPEAL

S. ole KANTAI
.....

JUDGE OF APPEAL

I certify that this is a true copy
of the original.

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ENCUMBRANCES SECTION

DATE	NATURE OF ENCUMBRANCE	FURTHER PARTICULARS
29.7.09	LEASE	TO CELESTE KENYA LTD FOR A TERM OF 10 YEARS W.E.F. 1/2/2005.
26.7.016	LEASE	LENT USH 60,000/= LENT TO KENYA TOWERS LIMITED FOR A TERM OF 6 YEARS WEF 1/2/2005 RENT: 116,000/= PA CRENSHAWLES AREA: 150M ²

CERTIFIED BY: [Signature]
 TRUE ORIGINAL
 DATE: 1/12/2005



REPUBLIC OF KENYA

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN
DEVELOPMENT

RESPONSES TO THE NATIONAL ASSEMBLY PUBLIC PETITIONS COMMITTEE
ON VARIOUS PETITIONS

Honourable Chair,

Pursuant to a letter Ref. KNA/DLPS/PPETC/CORR/2024/006 dated February 15, 2023, the Committee invited the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development to respond to;

- i. Public Petition No. 4 of 2023 regarding delayed adjudication of squatters after the expiry of lease of Macalder Mines Ltd Land on the total acreage of the gazetted land
- ii. Public Petition No. 11 of 2023 regarding the illegal acquisition of private land by the defunct Awendo Town Council on the nature of restriction put on parcel no. North Sakwa/ Kamasoga/1193 land and the list of all the original owners of the entire land, which is the subject matter of the petition, as well as those that were compensated after compulsory acquisition.
- iii. Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sublocations, Tezo Location, Kilifi County on the ownership status of L.R. No's. 5046/9-38
- iv. Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County on the provision of a comprehensive response on the petition

Honourable Chair, this is further to our response dated November 14, 2023, marked annexure 1.

Responses

- i. Public Petition No. 4 of 2023 regarding delayed adjudication of squatters after the expiry of lease of Macalder Mines Ltd Land on the total acreage of the gazetted land

Honourable Chair,

Macalder Mines falls within a parcel registered as Muhuru/Kadem/Macalder/498 measuring approximately 2167.5 Hectares (approximately 5,355.9 Acres).

The total acreage of the land gazetted as a forest by the Cabinet Secretary, Ministry of Environment, Climate Change and Forestry in Legal Notice No. 85 of 2023 marked annexure 2 is 2494.95 Hectares (approximately 6,165.0 Acres).

The initial land was MR. NO. 123 with an acreage of 6178 acres as presented in Survey plan FR. NO. 4948. A resurvey was done in 1993 which converted MR. NO. 123 to LR. NO. 17955 with an acreage of 2,500 Hectares (6,178 acres).

In 1993, a subdivision of LR. NO. 17955 resulted into LR. NO. 17955/1 and 17955/2 with acreages of 1.019 Hectares (2.518 acres) and 4.170 Hectares (10.30 acres), respectively.

- ii. Public Petition No. 11 of 2023 regarding the illegal acquisition of private land by the defunct Awendo Town Council on the nature of restriction put on parcel no. North Sakwa/ Kamasoga/1193 land and the list of all the original owners of the entire land, which is the subject matter of the petition, as well as those that were compensated after compulsory acquisition.

Honourable Chair, I wish to respond as follows;

The parcel North Sakwa/Kamasoga/1193 measuring 0.5Ha was initially registered in favour of Obiero Omedo on February 9, 1977 as the absolute proprietor. However, on April 18, 1984 a restriction was registered against the said parcel of land restricting any dealings on the within written land until a portion measuring 0.5Ha set aside for the expansion of the South Nyanza Sugar Scheme (Awendo Township Expansion) in South Nyanza District has been transferred to the Government. Annexure 3 is a copy of the green card.

The parcels which were supposed to be surrendered to the Government were advertised vide gazette notice No. 3737 of December 24, 1976 outlining various parcels to be acquired by the government for the aforesaid reason. Annexure 4 is a copy of the Gazette Notice

27.	ODHIAMBO DAWO		0715422320	SOUTH SAKWA WAWARE	200	1.4	
28.	GEORGE OTIENO OBIERO		07172586736	NORTH SAKWA KAMASOGA	1193	0.6	
29.	SILVANCE MAGALU AURA	6762825		SOUTH SAKWA WAWARE	1221	7.00	
30.	NAFTALI APONDI AYWAK	5497268		NORTH SAKWA KAMASOGA	2317	2.53	
31.	HENRY OKOLO AYOT						
THOSE AWAITING FOR COLLECTION OF LAND CERTIFICATE							
30	JOSEPH ODUOR OCHOME	5877378		NORTH SAKWA KAMASOGA			
31	PAULINE OBILO			NORTH SAKWA KAMASOGA			
32	ROSE OTIENO APUT			NORTH SAKWA KAMASOGA			
33	JAIR OWINO ODERA		0702956237		2448	0.375	
34	OPERE ODEK		0724316426				
OTHER NAMES WITH LAND CERTIFICATE							
35	DAVID OCHIENG DIDA			111			
36	BENARD JOSHUA WAGUMBA						
SOME OTHER MEMBERS							
37	BONFACE OTIENO OPERE	4238636	0724316426	SOUTH SAKWA WAW ARE			
38	JOHN OKOLO ANINDO	5958526	0727923852	NORTH SAKWA KAMASOGA			
39	JOHN OPONDO AJWANG	12686388	0727518140	SOUTH SAKWA WAW ARE			
40	SOSPETER OUMA ODUAR		0727398140	SOUTH SAKWA WAWARE			

It is worth noting that the parcel in question being Lr No. North Sakwa/Kamasoga/1193 was unutilized for gazetted reason as the lands were found to be unsuitable for sugarcane farming and were not therefore, occupied by South Nyanza Sugar Scheme, and considering section 75 of the constitution requires that once land has been compulsorily acquired ought to be used for the designated purpose only, the original owners of the suit land ought to be registered as the lawful owners of the unutilised parcels of the suit land.

A case was filed by the registered owner of the land together with twelve (12) others where they placed seventeen (17) issues for court determination and a decision on the same was made vide a court Judgment dated November 13, 2009 in Civil Suit No 133 of 2005 at Kisii High Court. Annexure 5 is a copy of the judgment.

According to the decree, the court ordered for the restriction to be withdrawn and a transfer to be registered in favour of the initial owner (Obiero Omedo). Upon the registration of the transfer a title deed was issued in favour of one Obiero Omedo the initial registered proprietor.

On May 26, 2021 vide Succession Case No. 179 of 2019 in Migori Law Courts the said parcel of land was transferred to George Otieno Obiero as a beneficiary and a title deed was issued. Upon transfer the register was closed on September 25, 2023 on subdivision in to two portions number 2945 and 2946 and therefore, the above register ceased to exist.

The following is the list of original land owners as the Gazette Notice No. 47 of 1968.

Kamasoga Sub-location	
Plot No	Registered Owner
34	Nyandele Ndege
35	John Olale
36	K. Ochola Sidika
37	John Okwany
38	Abol Ahomo39
39	Obiero Omedo
40	Obat Omedo
41	S.N.C.C (Reserved for Awendo Community Hall)
42	James Onyango Odera
43	Daniel Dida Oluoch
44	S.N.C.C (Reserved for Awendo Seventh Day Adventists Church)
45	Andrew Amido
51	S.N.C.C (Reserved for Awendo water point)
104	Awiti Olilo
105	Mbogo Olilo

106	Joseph Oduol Olilo
107	Petalis Radipo Olilo
108	Daniel Owawa Olilo
109	Oludo Oludo
110	Okeyo Olilo
111	Ochome Saula
117	S.N.C.C (Reserved for Coffee Society)
118	S.N.C.C (Reserved for Sare Water Point)
119	Raywer Hinga
212	S.N.C.C (Reserved for Awendo Water Pump)
589	John Olieko Aenda and R. Awuondu Alieko
590	J. Obogo (<i>name not legible</i>)
1025	S.N.C.C (Reserved for Awendo Muslim)
1039	S.N.C.C (Reserved for Awendo Pentocostal Church)
1054	John Mijungu Kisia
1067	John Eliud Ogutu
1079	K. Group (<i>name not legible</i>)
1080	Nelson Orwa OObuja and Kenedy Ochieng Orwa
1081	Rosalina Nyakure
1082	Barrack Owiro and
1083	Joab Oylugi
1089	John Agreey Onjola
1090	James Onyango
1091	Solomon Ogutu Odera
1092	Festus Oguta Osoi and Elija Odongo Owiro
1093	Jairo Owino Odera
1094	Agani Odera
1095	James Onyango
1102	Boaz Owino Opiyo
1111	Timotheo Rayamo Okwach
1114	Phoebe Akinyi Odenyo
1115	Denis Ochora Owinog
1116	Samuel Ondiega Okwach
1117	Salim Nyamwanda Okwach
1118	Vitalis Nyaisia Okwach
1155	Bernard Otieno
1182	Joel Orege Atisu
Wawere Sub-location	
155	Odoyo Ojamb
156	Fatuma Achieng
157	Odhiambo Odundo
158	Joseph Oduogo

159	Opiyo Olumwa
161	S.N.C.C
162	S.N.C.C
163	Barack Aduo
164	Ishmael Mijungo
165	Dalmas Kawa Achacha
166	Washington Wagamba
167	Silvanus OpiyoChacha
167	Okombo Okwiri - share
	Okwiri Okwiri-share
169	Opany Okwiri
171	Nehemia Okinyi
172	Jeremia Kamala
198	Opero Odek
199	Anderea Angila
200	Odhiambo Dawo
201	Mijungu Ochala
202	Dawo Mujungu
203	Ronga Miswet
204	Mijungu Miswet
205	Otieno Miswet
206	Wagumba Miswet
207	Silphano Miswet
208	Oduor Miswet
363	Mijungu Ochola
499	Okumu Oyier
502	John Wagumba
525	Miganda Madiri
592	Pius Arido
611	Aura Ojambi
	Odongo Madiri-share
	Otieno Maganda-share
Waundaha Sub-location	
138	Joram Ogundha
	Christopher alando
139	James Otieno Amamo
422	Owiti Mamba

Honourable Chair, we request for more time to provide the list of persons who were compensated after compulsory acquisition.

- iii. Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sublocations, Tezo Location, Kilifi County on the ownership status of L.R. No's. 5046/9-38

Honourable Chair, information on the ownership status of L.R. No's 5046/9-38 is presented in the matrix below.

L.R. NO.	C.R. NO.	SIZE(HA.)	REGISTERED OWNER
5046/9			(To be provided)
5046/10	71563	22.30	The Coast Development Company Ltd
5046/11	71564	1.520	The Coast Development Company Ltd. The title has been closed on surrender.
5046/12			(To be provided)
5046/13			(To be provided)
5046/14	73536	0.0281	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/15	73537	0.0293	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/16	73538	0.0386	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/17	73539	0.0405	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/18	73540	0.0425	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/19	73541	0.0444	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/20	73542	0.0463	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/21	73543	0.0482	The Coast Development Company Ltd.

			There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/22	73544	0.0501	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/23			(To be provided)
5046/24	73546	0.0446	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/25	73547	0.0450	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/26	73548	0.0450	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/27	73549	0.1543	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/28			(To be provided)
5046/29	73551	0.0677	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/30	73552	0.0410	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/31			(To be provided)
5046/32	73554	0.0422	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/33	73555	0.0342	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/34	73556	0.0594	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.

5046/35	73557	0.0450	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/36	73558	0.0450	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/37	73559	0.0437	The Coast Development Company Ltd. There is a caution dated May 9, 2023 by Victoria Naishorua Keen claiming beneficiary interest.
5046/38			(To be provided)

Copies of the search certificates are marked annexure 6.

iv. Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County.

The Petitioners, who are residents of Mnarani Village in Mnarani Ward, Kilifi North Constituency claim that they have occupied the subject land for more than 100 years. They allege that the whole Mnarani village was surveyed on 28th May 1912 and granted in favour of Mr.Byremji Rustumji Khanjuri but the land was later illegally acquired by Arab families who registered the land as their property.

The petitioners aver that the land measures approximately 172.8 acres and is registered as plot No. YSR130 section V in the name of Kalthum Binti Mohammed and Shariffa Binti Mohamed as an agricultural land. They further claim that the registered owners migrated to the Middle East leaving the property under the care of the trustees who invited the locals to settle in the area willingly and pay a monthly fee. They claim they were allowed to build a school which is the present Mnarani Primary School.

The Petitioners further allege that the land ceased being an agricultural land and became residential owing to the population size of 20,000 people with a Mosque, Churches, Schools and other social amenities. They claim that they have put the land into good economic use, constructed residential houses and commercial centres which is earning them income.

The petitioners claim that efforts to have the matter addressed by the relevant authorities have been futile and it is the reason they have prayed this Committee;

- i. Inquire into the ownership of the land occupied by Mnarani residents registered as plot No. YSR130 Section V situated at Mnarani-Kilifi

Takaungu in the name of Kalthum Binti Mohammed and Shariffa Binti Mohammed;

- ii. Recommend that the parcel of land in Mnarani be acquired and granted to the present occupants and that the process of compensation be finalized;
- iii. Recommend that the land be adjudicated so as to ensure that the residents acquire title deeds and save the residents from the alleged erroneous records and missing information on the parcels of land; and,
- iv. Makes any other recommendation or action it deems fit in addressing the plight of the petitioners.

Honourable Chair,

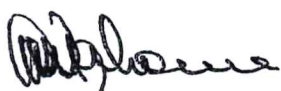
As per our records, the land in question falls under Plot No. 7 Group V Kilifi measuring approximately 172.80 acres. It is registered as LT. 45, Folio 475, File 15284 on freehold basis in favour of Wakf of Khadija Binti Suleiman El-Busaidy who is still the current registered owner. Annexure 7 is a copy of the certificate of postal search.

However, the parcel of land has been encumbered by three different caveats registered in favor of three different parties;

- Caveat dated April 21, 1965 by Ag. Registrar of Titles Mombasa claiming ownership by compulsory acquisition by virtue of Gazette Notice No. 12 of 1965 – 7.20 acres.
- Caveat dated November 4, 1965 by East African Power and Lighting claiming a grant of easement.
- Caveat dated 1965 by Ag. Registrar of Titles on behalf of Government of Kenya claiming ownership by compulsory acquisition of 2.83 acres being portion of Plot 7 Group V by virtue of Gazette No. 72 of 1966.

Honourable Chair, the Ministry will in the next Financial Year (2024/2025) initiate negotiations with the registered land owners with a view of arriving at an agreeable compensation and surrender of the land for settlement.

Honourable Chair, I submit.



Hon. Alice Wahome
CABINET SECRETARY

February 28, 2024

Annexure 1



REPUBLIC OF KENYA

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN
DEVELOPMENT

RESPONSES TO THE NATIONAL ASSEMBLY PUBLIC PETITIONS COMMITTEE ON
VARIOUS PETITIONS

Honourable Chair,

Pursuant to a letter Ref. KNA/DLPS/PPETC/CORR/2023/266 dated November 6 2023, the Committee invited the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development to respond to;

- i. Public Petition No. 4 of 2023 regarding delayed adjudication of squatter after the expiry of lease of Macalder Mines Ltd Land
- ii. Public Petition No. 11 of 2023 regarding the illegal acquisition of private land by the defunct Awendo Town Council.
- iii. Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sublocations Tezo Location, Kilifi County.
- iv. Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County.

Honourable Chair, this is further to our response dated October 3, 2023, marked annexure 1.

Responses

- i. Public Petition No. 4 of 2023 regarding delayed adjudication of squatters after the expiry of lease of Macalder Mines Ltd Land

Honourable Chair,

In our response dated October 3, 2023, we had indicated the Macalder Mines fall within a parcel registered as Muhuru/Kadem/Macalder/498 measuring approximately 2167.5 hectares. According to our records, the parcel is still

registered in favour of the defunct South Nyanza County Council (now County Government of Migori).

We have since established that the Cabinet Secretary for Environment and Forestry gazetted the area as forest land. Annexure 2 is a copy of Legal Notice No. 85 of June 13, 2023. The area gazetted is delineated, edged on boundary plan number 175/517. Henceforth, the land is public land under the management of the Kenya Forest Service and cannot be adjudicated by the Ministry.

The Ministry of Environment and Forestry is better placed to explain the processes leading up to the gazettelement of the land as forest land.

- ii. Public Petition No. 11 of 2023 regarding the illegal acquisition of private land by the defunct Awendo Town Council.

Honourable Chair, I wish to submit as follows: -

Background

The Petitioners state that in 1988, the allocation of plots to various persons was halted by the then South Nyanza District Plot Allocation Committee on grounds that the Government had acquired the said pieces of land. The petitioners claim to have lodged a complaint with the Ministry of lands and were confirmed to be the legal owners of the said land.

The Petitioners contend that in 2003, the Awendo Town Council embarked on evicting landowners without any notice or orders on grounds that the said parcels of land had been compulsorily acquired by Government.

The Petitioners state that they took legal action in 2005 by suing the Awendo Town Council at the High Court in Kisumu, which ruled in their favour. They allege the Council failed to produce acquisition and compensation documents to the court. The court directed the District Land Registrar to issue title deeds to the original landowners. They state that the Council moved to the Court of Appeal but lost.

The Petitioners further allege that the Awendo Town Council having been dissatisfied by the judgment of the Court of Appeal appealed the decision at the Supreme Court which was dismissed by the Supreme Court.

The Petitioners therefore pray to be compensated for the lands they lost due to illegal allocation by the defunct Awendo Town Council.

Honourable Chair, I wish to respond as follows;

Response

In 1976, the Government of Kenya issued two Gazette Notices informing the Public of its intention to acquire privately owned parcels of land in the then South Nyanza District. The Government was acting pursuant to the provisions of Section 75 of the retired Constitution and Section 6(2) of the Land Acquisition Act of 1968 (now repealed).

The Government proceeded to acquire various parcels in Awendo Township. Subsequently, the affected proprietors were fully compensated. In 2005, the acquisitions were challenged by the Petitioners in the High Court Civil Suit No. 133 of 2005, Kisumu. The Petitioners herein challenged the process of compulsory acquisition of the gazetted parcels and the allocation of the unutilised portions to third parties by the Government. The High Court ruled in favour of the Petitioners directing the District Land Registrar to re-survey the unutilised land and issue title deeds to the Petitioners.

The County Council of Awendo being dissatisfied by the decision of the High Court lodged an Appeal at the Court of Appeal in Civil Appeal No. 161 of 2010. The Court of Appeal upheld the Judgment of the High Court and dismissed the appeal.

Honourable Chair, the County Council of Awendo further appealed the judgement of the Court of Appeal to the Supreme Court. In Petition No. 37 of 2014, the Supreme Court overturned the Judgement of the Court of Appeal.

It was the Supreme Court's opinion that the parcels were compulsorily acquired by the Government of Kenya and that the proprietors of the parcels in the Gazette Notices were fully compensated. However, the court noted that parcel no. North Sakwa/Kamasonga/1193 was not listed in the gazette notices and that the proprietor had not been compensated. Annexure 3 is a copy of the Supreme's Court Judgement.

Honourable Chair, the issues canvassed in this Petition have been adjudicated by the highest court in the Country.

- iii. Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sublocations, Tezo Location, Kilifi County.

Honourable Chair, in our response dated October 3, 2023, we promised to furnish further information on the ownership status of L.R. No's 5046/9-38. We request for more time as we continue to compile a comprehensive list of the respective land owners.

- iv. Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County.

The Petitioners, who are residents of Mnarani Village in Mnarani Ward, Kilifi North Constituency claim that they have occupied the subject land for more than 100 years. They allege that the whole Mnarani village was surveyed on 28th May 1912 and granted in favour of Mr. Byremji Rustumji Khanjuri but the land was later illegally acquired by Arab families who registered the land as their property.

The petitioners aver that the land measures approximately 172.8 acres and is registered as plot No. YSR130 section V in the name of Kalthum Binti Mohammed and Shariffa Binti Mohamed as an agricultural land. They further claim that the registered owners migrated to the Middle East leaving the property under the care of the trustees who invited the locals to settle in the area willingly and pay a monthly fee. They claim they were allowed to build a school which is the present Mnarani Primary School.

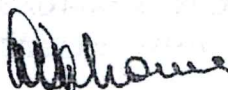
The Petitioners further allege that the land ceased being an agricultural land and became residential owing to the population size of 20,000 people with a Mosque, Churches, Schools and other social amenities. They claim that they have put the land into good economic use, constructed residential houses and commercial centres which is earning them income.

The petitioners claim that efforts to have the matter addressed by the relevant authorities have been futile and it is the reason they have prayed this Committee;

- i. Inquire into the ownership of the land occupied by Mnarani residents registered as plot No. YSR130 Section V situated at Mnarani-Kilifi Takaungu in the name of Kalthum Binti Mohammed and Shariffa Binti Mohammed;
- ii. Recommend that the parcel of land in Mnarani be acquired and granted to the present occupants and that the process of compensation be finalized;
- iii. Recommend that the land be adjudicated so as to ensure that the residents acquire title deeds and save the residents from the alleged erroneous records and missing information on the parcels of land; and,
- iv. Makes any other recommendation or action it deems fit in addressing the plight of the petitioners.

Honourable Chair, we request for more time to be able to give a comprehensive response on this petition.

Honourable Chair, I submit.



Hon. Alice Wahome
CABINET SECRETARY
November 14, 2023

ENCUMBRANCES SECTION

CPK (SP)-7115-2000-08/2014

EDITION: 1	PART A - PROPERTY SECTION	
OPENED: 5.4.25		
REGISTRATION SECTION	ASSESSMENTS ETC.	NATURE OF TITLE
NORTH SMOUL/CAVASSCOA		ABSOLUTE
PARCEL NUMBER		
1193		
APPROXIMATE AREA		
0.5 Ha		
REGISTRY MAP SHEET No.		
42		

PART B - PROPRIETORSHIP SECTION

ENTRY No.	DATE	NAME OF REGISTERED PROPRIETOR	ADDRESS AND DESCRIPTION OF REGISTERED PROPRIETOR	CONVEYANCE AND MARRIAGE	REMARKS
7.	26.5.2021	GEORGE OLIVO OLIVERO LRA 42 SUCNO - 19/09	MICRO CASE		
8.	26.5.2021	TITELB DEED	SND 3574385	155083	
9.	25.9.2023	PARCEL CLOSED ON SUB-DIVISION INTO TWO (02) PARCELS, STE MU 2945 & 2946		1470	
CERTIFIED BY A TRUE COPY OF THE ORIGINAL DATE... SIGN...					
TITLE NUMBER		REGISTRATION SECTION		PARCEL NO.	

A

OF REGISTRATION

ANCESTRAL RECORDS

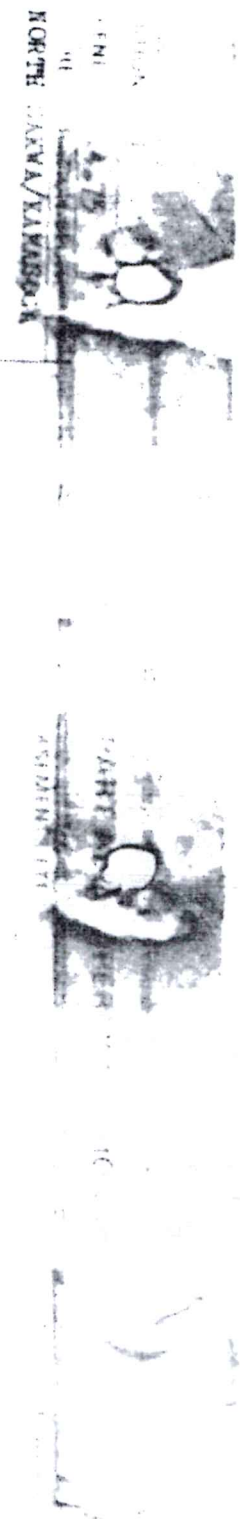
11

WATSON
JAN 11 1961

121

5,7038

Annexure 3.



1193

0.5

42

ABSOLUTE

SUB-DIVISION OF LOT NO. 39

CARTH PROPRRIETORSHIP SECTION

9.2.77

CHIRRO DND

P.O. SAKH

1549

3. 19.9.14 RESTRICTION EXTRA NO. 2 ABOVE REMOVED BY DEO
4. 19.9.14 DBICLO Omedo 10/mo. 16046825
5. 19.9.2014 TITLE DEED (Box 53 SANC) DEED

AS PER HIGH COURT DECREE IN CIVIL SUIT NO 13 OF 2005 (607) 1993

6. 16.5.2014 DEED OF 13/11/2009 AT HIS

1193

NORTH SAKYA/KANASOJA

1193

LEGAL NOTICE No. 85

THE FOREST CONSERVATION AND MANAGEMENT ACT

(No. 34 of 2016)

DECLARATION OF MACALDER FOREST.

IN EXERCISE of the powers conferred by section 31(2) of the Forest Conservation and Management Act, the Cabinet Secretary for Environment and Forestry declares that the area described in the Schedule hereto be a forest area.

SCHEDULE

An area of land approximately 2494.95 hectares (6165.02 Acres), situated Approximately 25 kms north west of Migori Township, Migori County the boundaries of which are more particularly delineated, edged green, on Boundary Plan No. 175/517 which is signed and sealed with a seal of Survey of Kenya, and deposited at the Survey Records Office, Survey of Kenya, Nairobi and a copy of which may be inspected at the office of the County Forest Conservator, Migori County and Kenya Forest Service Headquarters, Nairobi.

Made on 13th June, 2023.

SOIPAN TUYA,

*Cabinet Secretary Ministry of
Environment, Climate Change and Forestry.*

LEGAL NOTICE No. 86

THE FOREST CONSERVATION AND MANAGEMENT ACT

(No. 34 of 2016)

DECLARATION OF DANDU HILL FOREST

IN EXERCISE of the powers conferred by section 31(2) of the Forest Conservation and Management Act, the Cabinet Secretary for Environment and Forestry declares that the area described in the Schedule hereto be a forest area.

SCHEDULE

An area of land approximately 1779.70 hectares (4397.73 Acres), situated Approximately 227 kms south west of Mandera Township, Mandera County the boundaries of which are more particularly

VACANCIES—PUBLIC SERVICE COMMISSION—(Contd.)

Trainee Vacancies in the Ministry of Agriculture:

Librarian (Trainee) (Two Posts) (No. 143/76)

Applicants must be in possession of the East African Advanced Certificate of Education or its equivalent which should include preferably science subjects at the principal level. They must have a keen interest in library and information dissemination in relation to Agriculture. The candidates selected for training will be required to work in the Ministry of Agriculture Library for at least six months or until training facility for the diploma course is secured.

The successful candidates will receive a Training Allowance of £199 per annum plus house allowance of Sh. 300 per month during the period of in-service training. The trainees will thereafter be sponsored for two years' diploma course in librarianship on successful completion of which and being awarded a Diploma in Librarianship they will be eligible for appointment as Librarian II Job Group "H" i.e. £1,086 to £1,446 per annum.

GAZETTE NOTICE No. 3737

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 South Nyanza Sugar scheme (Awendo Township Expansion) in South Nyanza District.

SCHEDULE

AWENDO TOWNSHIP EXPANSION

KAMASOGA SUB-LOCATION

Plot No.	Registered Owner	Area to be Acquired in Hectares
34	Nyandete Ndenge	3.2
35	John Olale	2.0
36	Kamulus Ochola Sidiika	0.44
37	John Okwary	0.58
38	Abol Ahomo	1.2
39	Oboro Omedo	0.4
40	Obat Omedo	0.5
41	S.N.C.C. (Reserved for Awendo Community Hall)	0.18
42	James Onyango Odera	0.4
43	Daniel Dida Olucha	2.0
44	S.N.C.C. (Reserved for Awendo Synagogue)	0.6
45	Andrew Anindo Nyakachunga	12.1
51	S.N.C.C. (Reserved for Awendo Water Point)	0.45
104	Awiti Ollio	2.8
105	Mbogo Ollio	2.1
106	Joseph Ocol Ollio	2.2
107	Petals Ratipo Ollio	1.7
108	Daniel Owawa Ollio	1.7
109	Olodo Ollio	2.6
110	Okeyo Ollio	2.1
111	Ochong Sauti	0.7
117	S.N.C.C. (Reserved for Sare Coffee Society)	0.7
118	S.N.C.C. (Reserved for Sare Water Point)	0.45
119	Raywer Nigaa	1.7
212	S.N.C.C. (Reserved for Awendo Water Pump)	0.01
589	John Olieko Aenda and 3	13.6
590	Awuonda Olieko	0.36
1025	Izge Obago	0.12
1026	S.N.C.C. (Reserved for Sare Muslim)	0.14
1029	S.N.C.C. (Reserved for Awendo Pentecostal Church)	0.17
1054	John Mijungu Kila	1.70
1067	John Eliud Ogutu Siran	0.21
1079	Katuko Group	0.50
1080	Nelson Orwa Obain and Kennedy	0.18
1081	Ochong Orwa	0.23
1082	Rosalina Nyakure	1.2
1083	Barack Owino Sare and Rashid Sare	0.09
1084	Joab Oyugi	0.11
1085	John Aggrey Onjala	0.11
1090	James Onyango	0.11
1091	Solomon Ogutu Odera	

KAMISOGA SUB-LOCATION—(Contd.)

Plot No.	Registered Owner	Approx. Area to be Acquired in Hectares
1092	Festus Ogutu Osoi and Elija Odongo Owino	0.23
1093	Jairo Owino Odera	0.49
1094	Agusi Odera	0.47
1095	James Onyango	0.5
1102	Enaz Owino Opiyo	0.6
1111	Timothio Rayamo Okwach	0.6
1114	Phoebe Akinyi Odenyo	0.07
1115	Denis Ochere Owino	0.09
1116	Samuel Ondiege Okwach	0.48
1117	Salim Nyamwanda Okwach	0.6
1118	Vitalis Nyaisala Okwach	0.7
1155	Bernard Otieno	0.05
1182	Joel Orega Ayosi	0.21

WAWARE SUB-LOCATION

Plot No.	Registered Owner	Area to be Acquired in Hectares
155	Odoyo Ojambi	6.0
156	Fatuma Achieng	3.2
157	Odhiambo Odundo	5.4
158	Joseph Oduogo	1.7
159	Opiyo Okumwa	4.0
161	S.N.C.C.	3.4
162	S.N.C.C.	0.14
163	Barack Adno	5.0
164	Ismael Mijungu	3.2
165	Dalmas Kawa Achacha	3.6
166	Washington Wagumba	3.4
167	Silvanus Opiyo Chacha	2.35
167	Okombo Okwiri—1 share	
169	Okwiri Okwiri—1 share	
171	Osany Okwiri	1.4
172	Nehemia Okinyi	3.5
198	Jeremia Kamala	0.4
199	Opere Odek	1.4
200	Andrew Angila	1.3
201	Odhiambo Dawo	1.4
202	Mijungu Ochala	2.0
203	Dawo Mijungu	4.4
204	Ranga Miswet	1.2
205	Mijungu Miswet	1.4
206	Obiano Miswet	1.3
207	Wagumba Miswet	1.2
208	Silphano Miswet	1.1
209	Odwar Miswet	1.9
210	Mijungu Ochala	0.8
211	Okuma Oyier	1.1
212	John Wagumba	1.1
525	Miganda Madiri	0.1
526	Pius Arido	7.4
592	Aura Ojambi	
593	Odongo Madiri—1 share	
594	Otieno Muganda—1 share	

WAWANDA SUB-LOCATION

Plot No.	Registered Owner	Area to be Acquired in Hectares
133	Joram Ogonitha	1.1
139	Christopher Akando	1.1
322	James Otieno Amamo	1.1
	Ondi Mamba	1.1

Plans of the affected land may be inspected during office hours in the office of the Commissioner of Lands, Nairobi or District Commissioner's Office, Homabay.

Dated this 17th day of December, 1976.

I. R. NJENGE
Commissioner of

ANNEXURE 5
Annexure 5.

NELSON ODUOR ONYANGO & 12 others v TOWN COUNCIL OF AWENDO [2009] eKLR



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
OF KISII

Civil Case 133 of 2005

NELSON ODUOR ONYANGO 1ST PLAINTIFF
MIJUNGU MISWETA..... 2ND PLAINTIFF
HEZRON OTIENO..... 3RD PLAINTIFF
ROSALINA NYAKURE 4TH PLAINTIFF
JAIRO OWINO ODERA 5TH PLAINTIFF
TIMOTHEO RAYAMO OKWACH 6TH PLAINTIFF
OBIERO OMEDO 7TH PLAINTIFF
ELIUD OGUTU SIRAMA 8TH PLAINTIFF
JOSEPH OMONDI RONGO 9TH PLAINTIFF
JAMES OMONDI ANINDO..... 10TH PLAINTIFF
JOSEPH ODIWUOR OCHOME 11TH PLAINTIFF
JOHN ONYANGO DAWO 12TH PLAINTIFF
CHARLES OBUNGA OKOMBO 13TH PLAINTIFF

VERSUS

TOWN COUNCIL OF AWENDO DEFENDANT

JUDGMENT

On 14th October, 2005 the plaintiffs filed Originating Summons brought under Order XXXVI rule 1 of the Civil Procedure Rules and urged the court to determine seventeen questions which relate to the following parcels of land:

- (a) Land Parcel No. North Sakwa/Kamasoga/46
- (b) Land Parcel No. South Sakwa/Waware/ 204

- (c) Land Parcel No. North Sakwa/Kamasoga/34
- (d) Land Parcel No. North Sakwa/Kamasoga/1081
- (e) Land Parcel No. North Sakwa/Kamasoga/1093
- (f) Land Parcel No. North Sakwa/Kamasoga/1111
- (g) Land Parcel No. North Sakwa/Kamasoga/1193
- (h) Land Parcel No. North Sakwa/Kamasoga/1067
- (i) Land Parcel No. South Sakwa/Waware/207
- (j) Land Parcel No. North Sakwa/Kamasoga/45
- (k) Land Parcel No. North Sakwa/Kamasoga/111
- (l) Land Parcel No. South Sakwa/Waware/202
- (m) Land Parcel No. South Sakwa/Waware/168

All the aforesaid parcels of the land shall collectively be referred to as "the suit lands."

The defendant claims to have acquired the suit lands by way of compulsory acquisition through the Government of Kenya. The court was asked to determine the following questions:

**"1. Whether the Government of Kenya
compulsorily acquired the above parcels
of land.**

**2. Whether the said acquisition (if any) by
the Government of Kenya was for the sole
purpose of establishing the nuclear estate
for South Nyanza Company Limited
(hereinafter referred to as "SONY")**

**3. Whether the Government upon acquisition
(if any) utilized the whole or part of the
said parcels of land.**

4. Whether Sony utilized only part of the said parcels of land leaving the balance which was unfit for the purposes of which the land was compulsorily acquired by the Government of Kenya.
5. Whether the unutilized portion of the above parcels of land reverts back to the original owners and/or their heirs or whether the original owners have rights over and above all others except the Government of Kenya.
6. Whether the respondent has any proprietary rights over and above the applicants in respect of the unutilized portions of the above listed parcels of land.
7. Whether the respondent acquired any proprietary rights from the Government of Kenya in respect of the unutilized portions in the above parcels through Gazettement.
8. Whether the respondent through its officers is guilty of fraudulent and unlawful dealings on the unutilized portions of the said parcels including irregular and unlawful subdivisions, allocations and allotments.
9. Whether the said dealings (if any) should be declared null and void and cancelled.
10. Whether the respondent and/or its officials have any right or authority to evict, demolish or interfere with the applicants' properties and quiet possession of the suit lands.
11. Whether the respondent has any right or interest over the suit property capable of being transferred to a third party.
12. Whether the applicants are the beneficial owners of the unutilized portions of the suit parcels of land and entitled to have the said interests registered as such at the relevant lands registry.

13. Whether an injunction should issue against the respondent by her self, her agents or workers preventing her from evicting, dispossessing or in any way interfering with the applicants' occupation, use and quiet enjoyment of the unutilized portions of the said parcels.

14. Whether the respondent should compensate the applicants for any losses incurred through her acts of destruction of the applicants' properties on the suit lands.

15. Whether a perpetual injunction should issue restraining the respondent and its agents or workers from interfering with the applicants' quiet possession and use of the suit lands.

16. Whether the respondent should pay costs of this suit.

17. That such orders may be issued by the court as may attain the ends of justice."

Each of the plaintiffs swore an affidavit in support of the originating motion. The contents of the affidavits are more or less the same.

The first plaintiff stated in his affidavit that he was one of the owners of a parcel of land known as North Sakwa/Kamasoga/46. The said parcel of land was registered in the names of Amara Obat, Odang Obat, Samson Oloo Onyango and himself (Nelson Oduor Onyango) with each of the registered proprietors owning one quarter share thereof. The land measured 12.4 Hectares. The said registration was effected on 31st August, 1976. On 24th September, 1976, the Government of Kenya through Gazette Notice No. 2996 compulsorily acquired the aforesaid parcel of land. The Gazette Notice referred to was issued by the Commissioner of Lands and

stated in part as hereunder:

"GAZETTE NOTICE NO. 2996

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 South Nyanza Sugar Scheme in South Nyanza District:"

In the Gazette Notice the registered owners of the ear marked parcels of land and the area or measurements of the parcels of land that were to be compulsorily acquired were set out. These were ancestral lands belonging to some local people in the said areas. The suit lands were to be acquired solely for the development and/or expansion of South Nyanza Sugar Company Limited (SONY) and not for any other purpose.

The first plaintiff deposed that out of the 12.4 hectares comprising North Sakwa/Kamasoga/46, only about 6.61 hectares were actually utilized for the said purpose and 6.70 hectares was never utilized and SONY does not require the remainder thereof.

The first plaintiff continued to occupy the unutilized portion of the suit land but the defendant attempted to evict him, claiming that it had acquired that land from the Government of the Republic of Kenya. The first plaintiff's contention was that he was still the beneficial owner of the unutilized portion of his ancestral land and the defendant has no proprietary interest over the same. He urged the court to make a declaration to that effect.

On 28th April, 2006 the defendant, through Barnaba Kosgey, the then Town Clerk, filed a replying affidavit to the aforesaid Originating Summons. He agreed that the Government of Kenya compulsorily acquired the suit lands for the purpose of development of SONY. He contended that when land is compulsorily acquired by the Government and parties are compensated as was the case herein, the rights of those who were hitherto private land owners become fully extinguished and the land remains state land. If there is any residue of the land after utilization for the purpose it had been acquired for by the Government, the residue thereof reverts to the Local Authority to hold in trust for the Government and the same cannot revert back to the original owners. He further stated that the suit lands are under the jurisdiction of the defendant who, by virtue of the provisions of the Constitution of Kenya and the Land Acquisition Act, has a better right over any residue thereof than any other party. The defendant's claim over the suit land is therefore lawful and the plaintiffs are busy bodies who are merely nursing the nostalgia of their extinguished rights, the deponent stated.

In his testimony before the court, the first plaintiff stated that he is living on the remaining portion of parcel No. 46. He produced a certified copy of the register as an exhibit. In the proprietorship section it is indicated that the Government of Kenya vide Gazette Notices Nos. 2996 of 24th September 1976 and 3737 - 8 of 24th December 1976 acquired the whole of the said parcel of land. He claimed that the defendant was alleging that it had acquired the remainder of the land through Gazette Notice No. 3737 of 24th December, 1976. He produced the said Gazette Notice which was issued by the Commissioner of Lands. A schedule was drawn for parcels of land that were to be acquired within Kamasoga sub-location, Waware sub-location and Waundaha Sub-Location. The first plaintiff said that plot No. 46 within Kamasoga sub-location was not among the parcels of land included in the aforesaid Gazette Notice. A perusal of the Gazette Notice confirms the first plaintiff's contention. He claimed that no enquiry was done before the Government purported to acquire a portion of the said land. He further stated that there was nothing to show that the

defendant had acquired any lawful interest over the remaining portion of the land. He wondered why the defendant had purported to have acquired the land and subdivided the same.

In cross examination by Mr. Kisera for the defendant, the first plaintiff said that he had not sued the Government of Kenya in respect of its acquisition of his land. He conceded that the extract of the land register which he had produced in court showed that the Government took the entire parcel of land. He denied that the defendant was holding the remainder of the land on behalf of the Government of Kenya. He further conceded that in 1976 he was paid for the portion that was compulsorily acquired.

In re-examination, the first plaintiff stated that he was no longer living on the remaining portion of parcel No. 46 because his home was destroyed by the defendant. Thereafter the defendant subdivided the land into several plots and allocated them to various people. The Government did not give him a title deed for the portion that remained.

The second plaintiff was the registered owner of **Land Parcel No. South Sakwa/Waware/204**. He produced a copy of the title deed thereof. It showed that the approximate area of the land is 1.4 hectares. On the proprietorship section it is noted that the entire land was acquired by the Government vide Gazette Notice No. 3737 of 24th December, 1976. He however wondered how the defendant purported to have acquired the land from the Government since, according to him, the land had been acquired for the benefit of SONY. He also claimed that there was no enquiry made before the land was compulsorily acquired and there was no agreement on the amount of money that was paid as compensation. He further claimed that the defendant pushed him out of his land.

The third plaintiff, **Hezron Otieno**, claimed that he was the only son of **Nyadete Ndege** who was the registered proprietor of **North Sakwa/Kamasoga/34**. He conceded that the said parcel of land was listed in Gazette Notice No. 3737 of 24th December 1976 as one of the parcels of land that had been acquired by the Government for the SONY. He however insisted that the acquisition was not valid. He said that he was still residing on the land and the defendant was not entitled to it.

In cross examination, the third plaintiff said that at the time when he testified his mother was still alive and he did not have any power of Attorney issued by her enabling him to file the case and conduct it on her behalf. He also admitted that no suit had been filed against the Government in respect of the parcel of land.

The fourth plaintiff, **Rosalina Nyakure**, was the registered proprietor of **North Sakwa/Kamasoga/1081** measuring 0.18 hectares. According to the extract of the register which she produced as an exhibit, the Government of Kenya vide Gazette Notice No. 3738 of 24th December, 1976 acquired the whole of the said land. She however claimed that the defendant removed her from the land and no compensation was paid. The defendant had purported to allocate portions of the land to other people. She claimed that the defendant's action was illegal.

In cross examination, the fourth plaintiff stated that she did not have the title deed to the aforesaid parcel of land. She also conceded that she had not sued the Government challenging its acquisition of the said parcel of land.

The fifth plaintiff was the registered proprietor of **North Sakwa/Kamasoga/1093**. The said parcel of land appears on Gazette Notice No. 3737 of 24th December 1976 aforesaid. He alleged that he was not paid any compensation by the Government. He claimed that he was evicted from the land by the defendant.

In cross-examination, the fifth plaintiff said that he did not have any title deed to the said parcel of land and that he had been informed by the area Land Registry that a caution had been registered against the title. He also conceded that he had not sued the Government claiming any compensation.

The eighth plaintiff, John Eliud Ogutu, was the registered proprietor of parcel No. North Sakwa/Kamasoga/1067. The land measures 1.7 hectares. An extract of the title that was produced in court showed that the land was compulsorily acquired by the Government vide Gazette Notice No. 3738 of 24th December 1978. However, the eighth plaintiff said that he was not aware of such acquisition. He claimed that he was still in occupation of a portion of the land and the Government had not told him to vacate the same. However, the defendant had purported to subdivide the remaining portion of the land and allocate it to various people. He added that he had no claim regarding the portion of his land that was utilized by SONY in growing sugarcane.

The eighth plaintiff referred to a letter dated 29th February, 1976 that was written by the Chief Land Registrar to the District Land Registrar, Homa Bay. The letter referred to various complaints from people whose lands were compulsorily acquired for the benefit of SONY. They complained that they had not been issued with title deeds for the portions of lands that remained after the compulsory acquisition exercise. The Chief Land Registrar further stated that:

"Some of those remainder portions have been subdivided by the owners but mutations have not been registered by your office for reasons which are not clear. It is also alleged that some of the remainder portions have been allocated to third parties by the Commissioner of Lands despite the fact that the owners are in occupation.

Some of the parcels affected are numbers South Sakwa/Waware/170, 171, 153, 154, 592, 594, and 652, and also the land of the late Andrea Amindo (parcel No. North Sakwa/Kamasoga/45).

Please have this matter sorted out once

and for all in consultation with the
District Surveyor, Migori. In case you do
not have all the Gazette Notices
concerned, you should arrange to obtain
them from the Chief Valuer, Nairobi."

In cross-examination, the eighth plaintiff said that he was not aware of the compulsory acquisition cited in Gazette Notice No. 3738. He said that he did not receive any compensation from the Government. He further claimed that he was occupying the whole of his land but the defendant has been interfering with it. He alleged that the defendant burnt his home on 25th August 2008 and a report was made to the police.

The tenth plaintiff, **James Omondi Anindo**, said that he was bringing the claim as an heir of the late **Andrea Anindo Nyakachunga** who was the registered proprietor of **North Sakwa/Kamasoga/45**. The said parcel of land measures 13.4 hectares. He said that he had been living on the land since 1954 when he was born. In 2003 his family was forcibly evicted from the land by the defendant. He produced an extract of the title (green card) which showed that the Government acquired 2.802 acres vide Gazette Notice No. 6 of 5th January 1979 for purpose of construction of a road. A copy of the said Gazette Notice was produced as evidence. There is also a restriction that was registered on 18th April 1994 restricting all dealings on the land until the entire land is transferred to the Government as per Gazette Notice No. 3737 of 24th December 1976. In the said Gazette Notice the area shown as having been acquired by the Government is 13.4 hectares. The witness said that apart from the area measuring 2.802 acres which was acquired for purposes of construction of a road, his family continued to occupy the remaining portion of the land and his late father's grave is on that land. He complained that the defendant had unlawfully allocated portions of the remaining land to third parties. He produced a plot card which showed that the defendant had allocated plot No. 203 to one **Elizabeth Nyamwaya** sometime in 1990. He urged the court to nullify Gazette Notice No. 3737.

In cross examination, the witness stated that his father died in 1977 but since then no letters of administration in respect of his estate had been obtained.

The defendant called one witness, **Josphat Ayonga**, the Town Clerk, DW1. He testified that the suit lands are held by the defendant in trust for the Government of Kenya, the suit lands having been compulsorily acquired. He referred to Gazette Notices Nos. 2996 of 24th September, 1976, 3346 of 5th November, 1976, No. 3737 of 24th December 1976 and 3738 of 24th December 1976. However, he did not produce the said Gazette Notices, he only produced extracts of the register in respect of the suit lands (Green Cards) which referred to those Gazette Notices. He said that all the previous owners of the suit lands were lawfully dispossessed of their lands following their compulsory acquisition by the Government.

The witness testified that any residue of the compulsorily acquired lands, that is, the portions that may have remained after attainment of the purpose for which the lands had been acquired, reverted to the Local Authority (the defendant). He cited the provisions of section 119 of the Constitution of Kenya. He said that the Government

acquired the suit lands for the benefit of SONY and the plaintiffs had not shown that any portions of the acquired lands remained unutilized. But even if SONY was not using all the lands that had been compulsorily acquired by the Government, the plaintiffs could not claim any portions thereof as they had been fully compensated. He urged the court to dismiss the case.

In cross examination, DW1 said that he had no letter from the President to show that the unutilized portions of the suit lands were to revert to the defendant. He reiterated that the suit lands were acquired for purposes of establishing SONY. The witness said that he was not aware that any portions of the suit lands remained in occupation of the plaintiffs.

The witness was shown a copy of Gazette Notice No. 3737 and he conceded that it does not include parcel No. North Sakwa/Kamasoga/46 as one of the parcels of land that had been compulsorily acquired by the Government. However, the whole of that parcel of land was included in Gazette Notice No. 2996. The witness further stated that the defendant had no letter from the Commissioner of Lands or the Minister for Lands authorizing the defendant to evict the plaintiffs from the suit lands. He further stated that he was not aware that the defendant was allocating or selling parts of the suit lands. When the witness was referred to the plot card that had been produced as plaintiffs exhibit 12, he said that the defendant does not receive any money when it allocates plots within its jurisdiction. That notwithstanding, he maintained that the plaintiffs, having been fully compensated by the Government, should vacate the suit lands if they were still in occupation upon which the defendant will be free to allocate those lands. He added that if the plaintiffs wished to apply for such allocation, they will be considered among other applicants.

Mr. Nyasimi for the plaintiffs and Mr. Kisera for the defendant filed written submissions which I have taken into consideration and I need not summarize the contents of the same.

The concept of compulsory acquisition of private land is an exception to the constitutional protection of private property under section 75 of the Constitution of Kenya. Section 75 (1) thereof provides as hereunder:

**"No property of any description shall be
compulsorily taken possession of, and
no interest in or right over property of
any description shall be compulsorily
acquired, except where the following
conditions are satisfied –**

**(a) the taking of possession or
acquisition is necessary in the
interests of defence, public safety,
public order, public morality, public**

health, town and country planning
or the development or utilization of
property so as to promote the
public benefit; and

(b) the necessity thereof is such as to
afford reasonable justification for
the causing of hardship that may
resort to any person having an
interest or right over the property;
and

(c) provision is made by a law
applicable to that taking of
possession or acquisition for the
prompt payment of full
compensation."

The Land Acquisition Act Cap 295 sets out the law under which the Government may compulsorily acquire land for the public benefit. Under section 3 of the Act, whenever the Minister concerned is satisfied that a given parcel of land ought to be compulsorily acquired for a relevant public benefit, he causes a notice thereof to be published in the Kenya Gazette. A copy of the notice is delivered to every person who appears to be interested in the land.

Under section 6 (1) of the Act, the Minister has to be satisfied that the purpose of acquiring the land complies with the provisions of section 75 (1) (a) of the Constitution and also that the necessity thereof is such as to afford reasonable justification for the causing of any hardship that may result to any person interested in the land.

Those requirements are absolutely necessary. Such acquisition must be done in strict conformity with the constitutional provisions aforesaid and in absolute good faith. Where the minister is so satisfied he directs the Commissioner of Lands to acquire the land compulsorily. On receiving a direction from the Minister, the Commissioner of Lands causes a notice to be published in the Kenya Gazette and a copy thereof is served upon every person who appears to be

interested in the land. The Commissioner is under an obligation to pay full compensation to all persons whose land is so acquired.

It is not in dispute that the Commissioner of Lands published Gazette Notices Nos. 3737 on 24th December, 1976 and 2996 on 8th October, 1976.

The plaintiffs testified that the suit lands were not acquired in their entirety, only portions thereof that were utilized. Their contention was that the unutilized portions of the suit lands ought to have reverted back to them. The defendant's contention on the other hand was that the plaintiffs, having been fully compensated, their interests on the suit lands were extinguished and the remainder of the suit lands that were not taken by SONY became Government property and the defendant was holding the same in trust for the Government. The defendant cited the provisions of **section 119 of the Constitution**.

I do not think that section of the Constitution is applicable in this case because the suit lands did not form part of Trust Land as defined under **section 114 of the Constitution**. The suit lands had been demarcated and registered under the relevant provisions of the **Registered Land Act** in names of individuals. **Section 115 (1)** provides that all Trust Land shall vest in the County Council within whose area of jurisdiction it is situated. Under **section 118 of the Constitution**, where the President is satisfied that the use and occupation of the area of Trust Land is required for any purpose as specified in sub-section (2) thereof, he may, after consultation with the County Council concerned, give notice to the County Council that the land is required to be set apart for use and occupation for those purposes and the land is thereafter set apart accordingly. **Section 119 of the Constitution** applies where the land so set apart is no longer required for purposes it was set aside for by the Government. Where that is the case the section requires that the President shall in writing notify the county council and thereupon the setting apart shall cease to have effect.

I have highlighted the provisions of **section 114, 115, 118 and 119 of the Constitution** to show that the defendant's contention that it is holding portions of the suit lands in trust for the Government of Kenya has no legal basis. Even if the suit lands were once part of Trust Land, upon the demarcation and registration of the same in the names of the plaintiffs, the land ceased to be under the jurisdiction of the local County Council and became private property. At the time when the Government compulsorily acquired the suit lands they were registered in the names of the plaintiffs and/or their family members.

Going back to the provisions of the **Land Acquisition Act**, **section 17** thereof states as follows:

"Where part only of the land comprised in documents of title has been acquired, the Commissioner shall, as soon as practicable, cause a final survey to be made of all the land acquired."

From the plaintiffs' evidence, the Chief Land Registrar wrote to the District Land Registrar, Homa Bay, on 29th February, 1996 and drew his attention to the provisions of **section 17** as quoted herein above. The plaintiffs testified that they remained in occupation of the portions of their respective lands that were not put under sugarcane growing by SONY. Majority of them claimed that they were later evicted by the defendant. They claimed that the defendant was allocating portions thereof to third parties. **Section 19 (4)** of the **Land Acquisition Act** provides that after taking possession of land that has compulsorily been acquired the land vests in the Government absolutely free from encumbrances. But here is a situation where the Government or SONY did not take possession of the entire parcels of land which it had compulsorily acquired but only took possession of parts thereof. The plaintiffs remained in occupation of the remainder. Between the plaintiffs and the defendant, who has a better claim over the remainder of the suit lands if the Government, the legal owner, is not interested in the same? Is it equitable for the defendant to evict the plaintiffs out of the land and cause the same to be subdivided and allocated to other people? I do not think so. Equity requires that the unutilized portions be surrendered back to the persons from whom the land was compulsorily acquired, even if they have to pay back a proportionate amount of the compensation sum that had been paid to them. It must be borne in mind that these were private properties that were compulsorily acquired by the Government for a particular purpose. The plaintiffs did not voluntarily choose to sell their ancestral lands to the Government. One of the plaintiffs testified that his late father was buried on the remainder of the land which he was still occupying. It is unconstitutional for the Government to compulsorily acquire a citizen's ancestral land, having paid minimal compensation, utilize only a portion of the land and then allocate the unutilized portion to other people. That is what the defendant is purporting to do, saying that it is holding the land in trust for the Government. In **MOHAMED - VS- COMMISSIONER OF LANDS & 4 OTHERS**, KLR (E&L) 217, Waki, J. (as he then was), was not persuaded that upon compulsory acquisition of land and the consequent vesting of that land in the Government, the land falls to be used by the Government in any manner it desires other than the purpose for which it was so acquired. He delivered himself thus:

"There is plainly no such *carte blanche* intended in the provisions of the law cited above. The land must be used, subsequent to the acquisition, for a lawful purpose, and as I see it, the only lawful purpose is the one for which it was intended."

In **MUNICIPAL COUNCIL OF SYDNEY -VS- CAMPBELL** [1923] AC 338, it was held that:

"A body such as the municipal council of Sydney, authorized to take land compulsorily for specified purposes will not be permitted to exercise its power for

different purposes, and if it attempts to do so, the courts will interfere."

In my view, it is unacceptable that the plaintiffs are forced to sell their lands by the Government so as to establish SONY and later on the defendant forces them out of the unutilized portions so as to allocate the land to other people. I am not convinced that such allocation is done free of charge as DW1 wanted the court to believe. I do not know the basis upon which the defendant assumed any rights over the unutilized portions of the suit lands. It did not obtain any grant to itself from the Commissioner of Lands.

I will now proceed to determine the issues that were raised by the plaintiffs as hereunder:

1. Whether the Government of Kenya compulsorily acquired the suit lands.

The answer is definitely in the affirmative. I have already referred to the two Gazette Notices.

2. Whether the said acquisition was for the sole purpose of establishing the nuclear estate for SONY.

Yes, that was the purpose as clearly indicated in the Gazette Notices aforesaid and admitted by the defendant.

3 & 4 .Whether the Government upon acquisition of the suit lands utilized all or part of the aforesaid lands.

SONY did not utilize the suit lands in their entirety. Some parts were found to be unfit for sugarcane growing or were not put under sugarcane. The plaintiffs' contention to that effect was not challenged.

5. Whether the unutilized portion of the suit lands should revert back to the original owners and/or their heirs and/or whether the original owners have rights over and above all others except the Government of Kenya.

In my view, the unutilized portions of the suit lands should revert back to original owners. Other than the Government of Kenya, no other person has any better right over the unutilized portions than the original owners whom, I would state, have equitable interest over the same.

6. Whether the defendant has any proprietary rights over and above the plaintiffs in respect of the unutilized portions of the suit lands.

The answer to this question is in the negative. The defendant sought to rely on the provisions of section 119 of the Constitution to show that it is holding the land in trust for the Government but that was not proved. I have already determined that the above cited section of the Constitution cannot assist the defendant since this was not Trust Land.

7. Whether the defendant acquired any proprietary rights from the Government of Kenya in respect of the unutilized portions.

It was not demonstrated by the defendant that it acquired any proprietary rights from the Government of Kenya. There was no grant or any form of authorization from the Commissioner of Lands authorizing the defendant to move into the unutilized portions of the suit lands.

8 & 9. Whether the defendant through her officers is guilty of fraudulent and unlawful dealings with the unutilized portions.

Having said that the original owners of the suit lands have equitable rights over the unutilized portions of the suit lands, and having stated that the defendant did not acquire any proprietary rights over the same, I believe the defendant acted fraudulently in evicting the original owners from the unutilized portions of the land which they were still in occupation of. The defendant had no right whatsoever to subdivide the said lands and purport to allocate them to third parties. In the circumstances the defendant's dealings are null and void and are ordered cancelled.

10. Whether the defendant has any right to evict, demolish or interfere with the plaintiffs' properties and their quiet possession of the suit lands.

In view of what has been stated above, the defendant has no right to evict the original owners from the unutilized portions of the suit lands or interfere with their possession in any manner.

11. Whether the defendant has any right or interest over the suit lands capable of

being transferred to a third party.

The simple answer is no, a person cannot transfer that which he has no legal right over or authorization to transfer. If the defendant was to be allowed to do so, it would be enriching itself and benefiting third parties at the expense of the original land owners.

12. Whether the plaintiffs as the beneficial owners of the unutilized portions of the suit lands are entitled to have the same interests registered.

Having established that the unutilized portions of the suit lands were found to be unsuitable for sugarcane farming and were not therefore occupied by SONY, and considering that **section 75 of the Constitution** requires that once land has been compulsorily acquired ought to be used for the designated purpose only, the original owners of the suit lands ought to be registered as the lawful owners of the unutilized parcels of the suit lands. Those parcels that were not utilized by SONY should be re-surveyed and title deeds thereof issued to the rightful persons by the area Land Registrar.

13 & 15. Whether an Injunction should issue against the defendant to restrain her from evicting, dispossessing or in any way interfering with the plaintiffs' occupation of the unutilized portions of the suit lands.

Since the plaintiffs and/or the original owners of the suit lands are the beneficial owners of those lands and the defendant has no rights over the same, an injunction ought to, and is hereby issued, restraining the defendant, her agents and/or servants from evicting, dispossessing or interfering with the plaintiffs' occupation, use and enjoyment of the unutilized portions of the suit lands.

14. Whether the defendant should compensate the plaintiffs for any losses

incurred through her acts of destruction
of their properties.

I believe the original owners of the suit lands or their legal representatives are entitled to compensation by the defendant for the losses incurred through the defendant's acts of destruction of their properties. The plaintiffs may have to file appropriate cases and prove their losses before any compensation is paid to them.

16. Costs of this suit.

The defendant shall bear the costs of this suit.

DATED, SIGNED AND DELIVERED AT KISII THIS 13TH DAY OF NOVEMBER, 2009.

D. MUSINGA

JUDGE.

Annexure C.

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

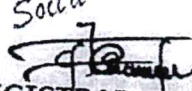
IN THE MATTER OF LAND ACT No. 6 OF 2012©

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:	L. R. NO. 5046/10 - KILIFI
TITLE NUMBER:	CR. 71563
AREA:	22.30 HA.
TENURE:	LEASEHOLD TERM: 999 YEARS FROM: 1/5/1929 RENT: KSHS. 41,325/= P. A. (REV)
REGISTERED OWNER:	THE COAST DEVELOPMENT COMPANY LIMITED
ENCUMBRANCE:	NIL

S. N. Satta 407

REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

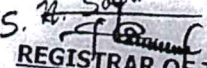
IN THE MATTER OF LAND ACT No. 6 OF 2012⁽⁶⁾

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:	L. R. NO. 5046/11 - KILIFI
TITLE NUMBER:	CR. 71564
AREA:	1.520 HA.
TENURE:	FREEHOLD
REGISTERED OWNER:	THE COAST DEVELOPMENT COMPANY LIMITED
ENCUMBRANCE:	TITLE CLOSED ON SUBDIVISIONS.

S. N. SOYA 407

REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012©

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:

L. R. NO. 5046/14 - KILIFI

TITLE NUMBER:

CR. 73536

AREA:

0.0281 HA.

TENURE:

LEASEHOLD

TERM: 99 YEARS

FROM: 1/8/2018

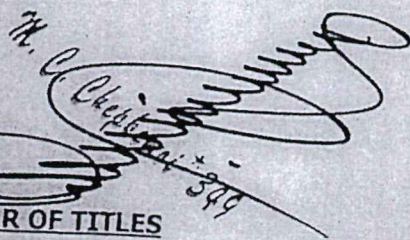
RENT: KSHS. 620/= P. A. (REV)

REGISTERED OWNER:

THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE:

CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:

L. R. NO. 5046/15 - KILIFI

TITLE NUMBER:

CR. 73537

AREA:

0.0293 HA.

TENURE:

LEASEHOLD

TERM: 99 YEARS

FROM: 1/8/2018

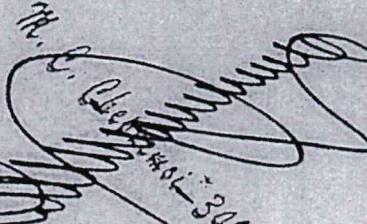
RENT: KSHS. 630/= P. A. (REV)

REGISTERED OWNER:

THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE:

**CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.**


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012©

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:

L. R. NO. 5046/16 - KILIFI

TITLE NUMBER:

CR. 73538

AREA:

0.0386 HA.

TENURE:

LEASEHOLD

TERM: 99 YEARS

FROM: 1/4/2018

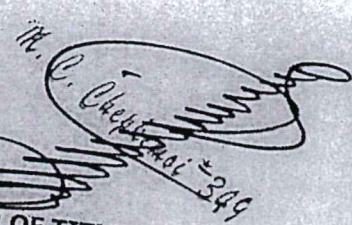
RENT: KSHS. 830/= P. A. (REV)

REGISTERED OWNER:

THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE:

CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012[©]

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:

L. R. NO. 5046/17 - KILIFI

TITLE NUMBER:

CR. 73539

AREA:

0.0405 HA.

TENURE:

LEASEHOLD

TERM: 99 YEARS

FROM: 1/8/2018

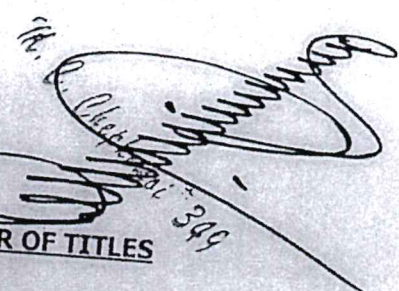
RENT: KSHS. 970/= P. A. (REV)

REGISTERED OWNER:

THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE:

CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012©

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:

TITLE NUMBER:

AREA:

TENURE:

L. R. NO. 5046/18 - KILIFI

CR. 73540

0.0425 HA.

LEASEHOLD

TERM: 99 YEARS

FROM: 1/8/2018

RENT: KSHS. 925/= P. A. (REV)

REGISTERED OWNER:

ENCUMBRANCE:

THE COAST DEVELOPMENT COMPANY LIMITED

CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.



REGISTRAR OF TITLES

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012
IN THE MATTER OF LAND ACT No. 6 OF 2012⁽²⁾
THE REGISTRATION OF TITLES ACT
CAP.281 (REPEALED)

PLOT NUMBER:

TITLE NUMBER:

AREA:

TENURE:

REGISTERED OWNER:

ENCUMBRANCE:

RENT: KSHS. 960/= P. A. (REV)

CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.

CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.

REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012©

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:

L. R. NO. 5046/20 - KILIFI

TITLE NUMBER:

CR. 73542

AREA:

0.0463 HA.

TENURE:

LEASEHOLD

TERM: 99 YEARS

FROM: 1/8/2018

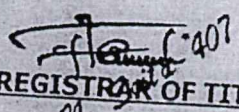
RENT: KSHS. 1,000/= P. A. (REV)

REGISTERED OWNER:

THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE:

CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.


REGISTRAR OF TITLES

S. N.

REPUBLIC OF KENYA
THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012
IN THE MATTER OF LAND ACT NO. 6 OF 2012
THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/21 - KILIFI

TITLE NUMBER : CR. 73543

AREA : 0.0482 HA.

TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: kshs.1,040/= P.A. (REV)

REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.

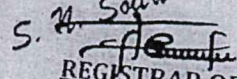

REGISTRAR OF TITLES

REPUBLIC OF KENYA
THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012
IN THE MATTER OF LAND ACT NO. 6 OF 2012
THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/22 - KILIFI
TITLE NUMBER : CR. 73544
AREA : 0.0501 HA.
TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.1,080/= P.A. (REV)
REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED
ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.

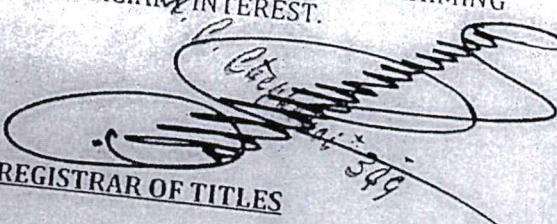
S. H. Soita 407

REGISTRAR OF TITLES

REPUBLIC OF KENYA
THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012
IN THE MATTER OF LAND ACT NO. 6 OF 2012
THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/24 - KILIFI
TITLE NUMBER : CR. 73546
AREA : 0.0446 HA.
TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.960/= P.A. (REV)
REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED
ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.

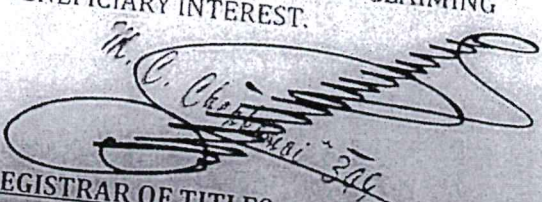

REGISTRAR OF TITLES

REPUBLIC OF KENYA
THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012
IN THE MATTER OF LAND ACT NO. 6 OF 2012
THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/25 - KILIFI
TITLE NUMBER : CR. 73547
AREA : 0.0450 HA.
TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.970/= P.A. (REV)
REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED
ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA
THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012
IN THE MATTER OF LAND ACT NO. 6 OF 2012
THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER

: 5046/26 - KILIFI

TITLE NUMBER

: CR. 73548

AREA

: 0.0450 HA.

TENURE

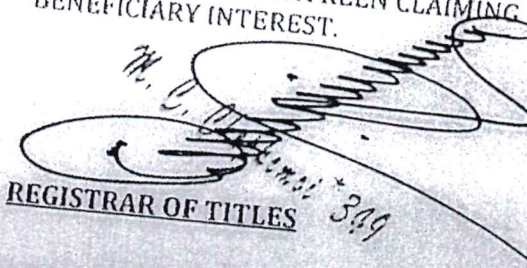
: LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.970/= P.A. (REV)

REGISTERED OWNER

: THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE

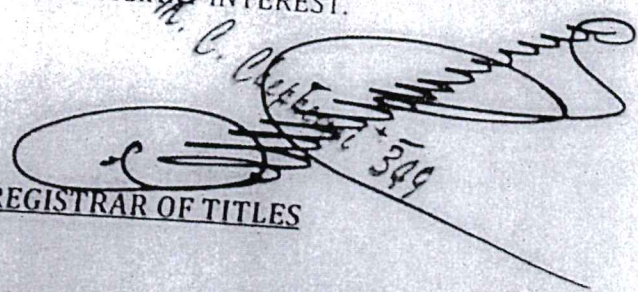
: CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES 3/19

REPUBLIC OF KENYA
THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012
IN THE MATTER OF LAND ACT NO. 6 OF 2012
THE REGISTRATION OF TITLES ACT
CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/27 - KILIFI
TITLE NUMBER : CR. 73549
AREA : 0.1543 HA.
TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.3,330/= P.A. (REV)
REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED
ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012[©]

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:

L. R. NO. 5046/28 - KILIFI

TITLE NUMBER:

CR. 73550

AREA:

0.0969 HA.

TENURE:

LEASEHOLD

TERM: 99 YEARS

FROM: 1/8/2018

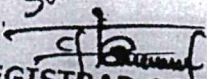
RENT: KSHS. 2,090/= P. A. (REV)

REGISTERED OWNER:

THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE:

NIL

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REGISTRAR OF TITLES

REPUBLIC OF KENYA
THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012
IN THE MATTER OF LAND ACT NO. 6 OF 2012
THE REGISTRATION OF TITLES ACT
CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/29 - KILIFI
TITLE NUMBER : CR. 73551
AREA : 0.0677 HA.
TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.1,460/= P.A. (REV)
REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED
ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO. 1 OF 2012

IN THE MATTER OF LAND ACT NO. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP. 201 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER

5046/10 KILIFI

TITLE NUMBER

CR. 71552

AREA

0.0410 HA.

TENURE

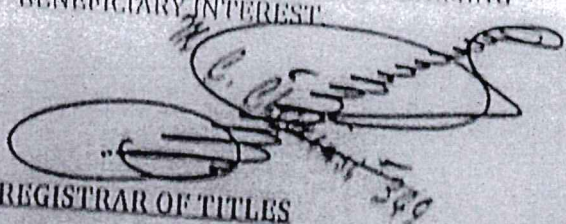
LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2011
RENT: KSH5,005/- P.A. (REV)

REGISTERED OWNER

THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE

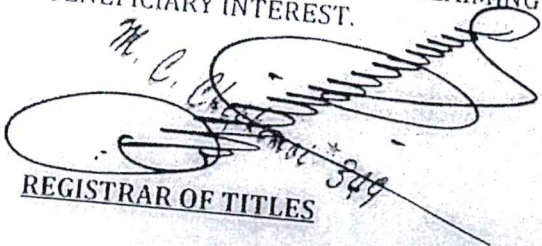
CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST


REGISTRAR OF TITLES

REPUBLIC OF KENYA
THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012
IN THE MATTER OF LAND ACT NO. 6 OF 2012
THE REGISTRATION OF TITLES ACT
CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/32 - KILIFI
TITLE NUMBER : CR. 73554
AREA : 0.0422 HA.
TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: KSHS.910/= P.A. (REV)
REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED
ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES

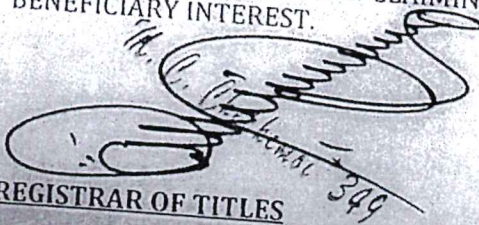
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REPUBLIC OF KENYA
THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012
IN THE MATTER OF LAND ACT NO. 6 OF 2012
THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/34 - KILIFI
TITLE NUMBER : CR. 73556
AREA : 0.0594 HA.
TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: kshs.1,280/= P.A. (REV)
REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED
ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES 349

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:

L. R. NO. 5046/35 - KILIFI

TITLE NUMBER:

CR. 73557

AREA:

0.0450 HA.

TENURE:

LEASEHOLD

TERM: 99 YEARS

FROM: 1/8/2018

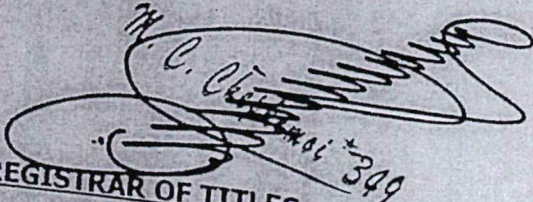
RENT: KSHS. 920/= P. A. (REV) W.E.F 1/4/2019

REGISTERED OWNER:

COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE:

CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012[©]

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:

L. R. NO. 5046/36 - KILIFI

TITLE NUMBER:

CR. 73558

AREA:

0.0450 HA.

TENURE:

LEASEHOLD

TERM: 99 YEARS

FROM: 1/8/2018

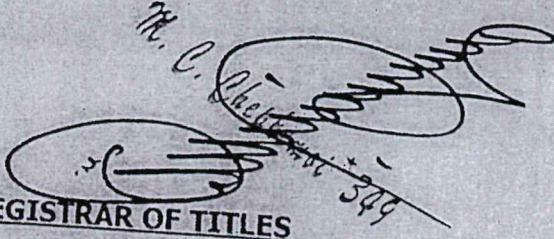
RENT: KSHS. 920/= P. A. (REV)

REGISTERED OWNER:

THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE:

CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.


REGISTRAR OF TITLES

REPUBLIC OF KENYA

THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012

IN THE MATTER OF LAND ACT No. 6 OF 2012[©]

THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH 15TH NOVEMBER, 2023

PLOT NUMBER:

L. R. NO. 5046/37 - KILIFI

TITLE NUMBER:

CR. 73559

AREA:

0.0437 HA.

TENURE:

LEASEHOLD

TERM: 99 YEARS

FROM: 1/8/2018

RENT: KSHS. 940/= P. A. (REV)

REGISTERED OWNER:

THE COAST DEVELOPMENT COMPANY LIMITED

ENCUMBRANCE:

CAUTION DATED 9TH MAY, 2023 BY VICTORIA
NAISHORUA KEEN CLAIMING BENEFICIARY INTEREST.

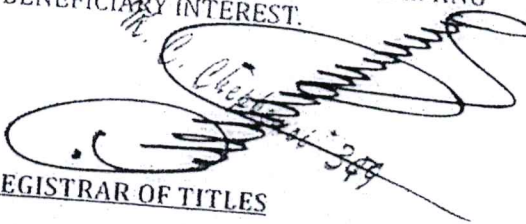

REGISTRAR OF TITLES

REPUBLIC OF KENYA
THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012
IN THE MATTER OF LAND ACT NO. 6 OF 2012
THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 15TH NOVEMBER, 2023

PLOT NUMBER : 5046/33 - KILIFI
TITLE NUMBER : CR. 73555
AREA : 0.0342 HA.
TENURE : LEASEHOLD
TERM: 99 YEARS
FROM: 1.8.2018
RENT: kshs.740/= P.A. (REV)
REGISTERED OWNER : THE COAST DEVELOPMENT COMPANY LIMITED
ENCUMBRANCE : CAUTION DATED 9TH MAY, 2023 BY
VICTORIA NAISHORUA KEEN CLAIMING
BENEFICIARY INTEREST.


REGISTRAR OF TITLES

Annexure 7

REPUBLIC OF KENYA
IN THE MATTER OF LAND REGISTRATION ACT NO 3 OF 2012
IN THE MATTER OF LAND ACT NO. 6 OF 2012
THE REGISTRATION OF TITLES ACT

CAP.281 (REPEALED)

CERTIFICATE OF POSTAL SEARCH AS ON 21ST FEBRUARY, 2024

PLOT NUMBER : PLOT NO. 7 GROUP V - KILIFI
TITLE NUMBER : LT. 45, FOLIO 475, FILE 15284
AREA : 172.80 ACRES
TENURE : FREEHOLD
REGISTERED OWNER : WAKF OF KHADIJA BINTI SULEIMAN EL-BUSAIDY
ENCUMBRANCES : CAVEAT DATED 21ST APRIL, 1965 BY
AG. REGISTRAR OF TITLES MOMBASA
CLAIMING OWNERSHIP BY COMPULSORY
ACQUISITION BY VIRTUE OF GAZETTE NOTICE
NO.1298 OF 1865 - 7.20 ACRES.

CAVEAT DATED 4TH NOVEMBER, 1965 BY
EAST AFRICAN POWER & LIGHTING CLAIMING
A GRANT OF EASEMENT.

CAVEAT DATED 2ND FEBRUARY, 1965 BY
AG. REGISTRAR OF TITLES ON BEHALF OF
GOVERNMENT OF KENYA CLAIMING OWNERSHIP
BY COMPULSORY ACQUISITION OF 2.83 ACRES
BEING PORTION OF PLOT 7 GROUP V BY VIRTUE
OF GAZETTE NOTICE NO.72 OF 1966

J. Ngunjiri
[Signature]
REGISTRAR OF COAST LAND TITLES

**PETITION PURSUANT TO ARTICLE 119 OF THE CONSTITUTION,
PETITION TO PARLIAMENT (PROCEDURE) ACT NO. 22 OF 2012
AND THE NATIONAL ASSEMBLY STANDING ORDERS**

TO THE SPEAKER OF THE NATIONAL ASSEMBLY,

P.O BOX 41842-00100,

NAIROBI.

1. **THAT** we are the Petitioners herein and present this Petition on our own behalf.
2. **THAT** in 1985 Awendo Town Council officials commenced the process of allocating plots of the pieces of land to third parties without the consent of the original land owners.
3. **THAT** in 1988 the allocation of the plots to various persons was halted by the then South Nyanza District Plot Allocation Committee under the Chairmanship of the District Commissioner Cyrus Gitui on grounds that the government had not acquired the said piece of land.
4. **THAT** as a result, the Petitioners lodged a complaint with the Ministry of Lands which confirmed that the Petitioners were the legal owners of the said land.
5. **THAT** subsequently the then Chief Land Registrar directed the district land registrar to re-survey and issue title deed to the land owners.
6. **THAT** in the year 2003, the Awendo Township Council instead embarked on evicting land owners by demolishing, burning their houses and destroying their properties without any notice or orders from any court on grounds that the said piece of land had been acquired by government.
7. **THAT** the owners of the land subsequently lodged a complaint with the then Ministry of Local Government for

PETITION PURSUANT TO ARTICLE 119 OF THE CONSTITUTION,
PETITION TO PARLIAMENT (PROCEDURE) ACT NO. 22 OF 2012
AND THE NATIONAL ASSEMBLY STANDING ORDERS

compensation following the acquisition of their land however the Ministry declined the request and referred the Petitioners back to the Awendo Town Council.

8. **THAT** subsequently in the year 2005, the land owners took legal action by suing the Awendo Town Council at the High Court in Kisii.
9. **THAT** the Awendo Town Council failed to produce acquisition and compensation documents to the court and the High Court declared that the land parcel belonged to the Petitioners.
10. **THAT** Awendo Town Council thereafter made an appeal of the judgement of the High Court at the Court of Appeal.
11. **THAT** the Awendo Town Council failed to produce acquisition and compensation documents and the Court of Appeal dismissed the appeal and directed the District Land Registrar to issue title deeds to the original land owners.
12. **THAT** the Court of Appeal observed that the procedures for acquiring the land including compensation were not followed.
13. **THAT** the Awendo Town Council not being satisfied by the judgement of Court of Appeal applied for a certificate to appeal its decision at the Supreme Court.
14. **THAT** the Court of Appeal dismissed the application for certificate to appeal at the Supreme Court.
15. **THAT** none of the matters raised herein are pending in any court of law in Kenya.



**PETITION PURSUANT TO ARTICLE 119 OF THE CONSTITUTION,
PETITION TO PARLIAMENT (PROCEDURE) ACT NO. 22 OF 2012
AND THE NATIONAL ASSEMBLY STANDING ORDERS**

16. **THAT** despite efforts to have matters raised in this petition addressed by the relevant bodies and offices, our efforts have been futile.
17. **THAT** the petitioners therefore pray for-
- (a) Pursuant to National Assembly Standing Order 216, the relevant Committee does consider, investigate and inquire into all the matters raised in this petition;
- (b) Pursuant to the National Assembly Standing Order 216, the relevant Committee does make the relevant recommendations thereof.

Petition presented by:

Name	Address	Identification number	Signature
BONIFACE OTIENO OPERE	P. O. BOX 72-40405 SARE-AWENDO	4238636 0724316426	
JOHN OKELLO ANINDO	P. O. BOX 72-40405 SARE -AWENDO	5958526	
ROSE AKUMU	P. O.BOX ONYANGO 72-40405 SARE - AWENDO	105930400 0715422320	
NELSON ODUOR ONYANGO CO-ORDINATOR	P.O.BOX 72-40405 SARE-AWENDO ID NO. 3981426	3981426	

TIM KINDA GROUP

WEEKLY MEETING ON 07/06/2023

MAIN AGENDA

LISTING OF TIM KINDA GROUP MEMBERS ORIGIN LAND OWNERS AROUND AWENDO SUB-COUNTY TOWNSHIP OF MIGORI COUNTY.

1. Members with Tittle deeds
2. Members who are attached to members with tittle Deeds
3. Members awaiting for tittle deeds

S/N	NAMES	ID NO	CONTACT	AREA	NO	HA	SIGN
1.	TERESA OBEL OLALE	13385279	0722476527	NORTH SAKWA KAMASOGA	35	0.2	
2.	JAMES OMONDI ANINDO	5781855	0727923852	NORTH SAKWA KAMASOGA	2310	13.29	
3.	ROSE AKUMU ONYANGO	5980400	0715422320	SOUTH SAKWA WAW ARE	202	4.4	
4.	TIMOTHEO O. RAYAMO	16022751		NORTH SAKWA KAMASOGA	1111	0.6	
5.	PETER OTIENO OCHOLA	13518750	0723581548	NORTH SAKWA KAMASOGA	36	0.44	
6.	MIJUNGU MISWETA	8114420	0792483750	SOUTH SAKWA WAWARE	1247	1.23	
7.	SOSPITA A. ODERA	16045860	0711723435	NORTH SAKWA KAMASOGA	2387	0.45	
8.	JOSEPH OMONDI RONGO	132975509	0722702355	SOUTH SAKWA WAWARE	207	1.1	
9.	DALMASUS CHACHA KAWA	8876186	0745981141	SOUTH SAKWA WAWARE	165	3.6	
10.	DANIEL OULO OTIENO	10792407	0726091768	SOUTH SAKWA WAWARE	170	3.4	
11.	JENIPHER AUMA ONYANGO	213483370	0700378601	SOUTH SAKWA WAWARE	685	1.78	
12.	JAMES OTIENO WAGUMBA	11125231		SOUTH SAKWA WAWARE	206	1.2	
13.	LUCAS OGINGA OPERE	1281237		SOUTH SAKWA WAWARE	687	3.13	
14.	PETER OUMA OMOLLO	0436837	0725890901	NORTH SAKWA KAMASOGA	1947	1.58	
15.	NELSON ODUOR ONYANGO	3981426	0715925414	NORTH SAKWA KAMASOGA	2432	4.46	
16.	NELSON ODUOR ONYANGO	3981426	0715925414	NORTH SAKWA KAMASOGA	2434	0.79	
17.	NELSON ODUOR ONYANGO	3981426	0715925414	NORTH SAKWA KAMASOGA	2435	2.68	
18.	NELSON ODUOR ONYANGO	3981426	0715925414	NORTH SAKWA KAMASOGA	2436	0.06	
19.	NELSON ODUOR ONYANGO	3981426	0715925414	NORTH SAKWA KAMASOGA	2433	0.77	
20.	EZEKIEL OLUMWA OTIENO	6912934	0720130032	SOUTH SAKWA WAWARE	163	5.0	
21.	EZEKIEL OLUMWA OTIENO	6912934	0720130032	SOUTH SAKWA WAWARE	164	3.2	
22.	PAMELA ATIENO OWUOR	13387319	0723266050	SOUTH SAKWA WAWARE	654	2.41	
23.	CHARLES OBUNGA OKOMBO	5877848		SOUTH SAKWA WAWARE	1213	1.18	
24.	ELIUD OGUTU SIRAMA	3980135	0723977305	NORTH SAKWA KAMASOGA	2305	0.92	
25.	OPANY OKWIRI	6369095	0701085343	SOUTH SAKWA WAWARE	1178	1.80	
26.	JOHN OWARE ABONYO	9049104	070778720	SOUTH SAKWA WAWARE	1218	0.05	

VACANCIES—PUBLIC SERVICE COMMISSION—(Contd.)

Trainee Vacancies in the Ministry of Agriculture:

Librarian (Trainee) (Two Posts) (No. 148/76)

Applicants must be in possession of the East African Advanced Certificate of Education or its equivalent which should include preferably science subjects at the principal level. They must have a keen interest in library and information dissemination in relation to Agriculture. The candidates selected for training will be required to work in the Ministry of Agriculture Library for at least six months or until training facility for the diploma course is secured.

The successful candidates will receive a Training Allowance of £399 per annum plus house allowance of Sh. 300 per month during the period of in-service training. The trainees will thereafter be sponsored for two years' diploma course in librarianship on successful completion of which and being awarded a Diploma in Librarianship they will be eligible for appointment as Librarian II Job Group "H" i.e. £1,086 to £1,446 per annum.

GAZETTE NOTICE NO. 3737

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 South Nyanza Sugar scheme (Awendo Township Expansion) in South Nyanza District.

SCHEDULE

AWENDO TOWNSHIP EXPANSION

KAMASOGA SUB-LOCATION

Plot No.	Registered Owner	Area to be Acquired in Hectares
34	Nyandete Ndenge	3.2
35	John Olale	2.0
36	Kamulus Ochola Sidika	0.44
37	John Okwany	0.38
38	Abol Ahomo	1.2
39	Obiero Omedo	0.6
40	Obat Omedo	0.5
41	S.N.C.C. (Reserved for Awendo Community Hall)	0.18
42	James Onyango Odera	0.6
43	Daniel Dida Oluoch	3.0
44	S.N.C.C. (Reserved for Awendo Seventh Day Adventist Church)	0.6
45	Andrea Anindo Nyakachunga	13.4
51	S.N.C.C. (Reserved for Awendo Water Point)	0.45
104	Awiti Olilo	2.8
105	Mbogo Olilo	2.2
106	Joseph Oduol Olilo	2.2
107	Petalis Ratipo Olilo	1.7
108	Daniel Owawa Olilo	1.7
109	Olodo Olodo	1.7
110	Okeyo Olilo	2.6
111	Ochome Saula	3.4
117	S.N.C.C. (Reserved for Sare Coffee Society)	0.7
118	S.N.C.C. (Reserved for Sare Water Point)	0.46
119	Raywer Ninga	1.7
212	S.N.C.C. (Reserved for Awendo Water Pump)	0.03
589	John Olieko Aenda and Richard Awuonda Olieko	13.6
590	Jane Obogo	0.36
1026	S.N.C.C. (Reserved for Sare Muslim)	0.12
1029	S.N.C.C. (Reserved for Awendo Pentecostal Church)	0.14
1054	John Mijungu Kisia	0.17
1067	John Eliud Ogutu Sirama	1.70
1079	Kutepko Group	0.23
1080	Nelson Orwa Obaja and Kenedy Ochieng Orwa	0.60
1081	Rosalina Nyakure	0.18
1082	Barack Owiro Sat and Rashidi Sat	0.25
1083	Joab Oyugi	1.2
1089	John Aggrey Onjala	0.09
1090	James Onyango	0.12
1091	Solomon Ogutu Odera	0.11

SCHEDULE—(Contd.)

KAMASOGA SUB-LOCATION—(Contd.)

Plot No.	Registered Owner	Approx. Area to be Acquired in Hectares
1092	Festus Oguta Osoi and Elija Odongo Owiro	0.23
1093	Jairo Owino Odera	0.49
1094	Agani Odera	0.47
1095	James Onyango	0.5
1102	Boaz Owino Opiyo	0.6
1111	Timotheo Rayamo Okwach	0.6
1114	Phoebe Akinyi Odenyo	0.07
1115	Denis Ochere Owino	0.09
1116	Samuel Ondiege Okwach	0.48
1117	Salim Nyamwanda Okwach	0.6
1118	Vitalis Nyulala Okwach	0.7
1155	Bernard Otieno	0.05
1182	Joel Orege Ayosi	0.21

WAWARE SUB-LOCATION

Plot No.	Registered Owner	Area to be Acquired in Hectares
155	Odoyo Ojambi	6.0
156	Fatuma Achieng	3.2
157	Odhambo Odundo	5.4
158	Joseph Oduogo	1.7
159	Opiyo Olumwa	6.0
161	S.N.C.C.	3.0
162	S.N.C.C.	0.14
163	Barack Aduo	5.0
164	Ismael Mijungu	3.2
165	Dalmas Kawa Achacha	3.6
166	Washington Wagumba	2.8
167	Silvanus Opiyo Chacha	2.35
167	Okoriba Okwiri— $\frac{1}{2}$ share Okwiri Okwiri— $\frac{1}{2}$ share	0.14
169	Opany Okwiri	1.8
171	Nehemia Okinyi	5.5
172	Jeremia Kamala	0.4
198	Opere Odek	3.4
199	Andrea Angila	1.8
200	Odhambo Dawo	1.4
201	Mijungu Ochala	2.0
202	Dawo Mijungu	4.4
203	Ronge Misweta	1.2
204	Mijungu Misweta	1.4
205	Otieno Misweta	1.3
206	Wagumba Misweta	1.2
207	Silphano Misweta	1.1
208	Odwar Misweta	1.9
363	Mijungu Ochola	0.8
499	Okumu Oyier	1.52
502	John Wagumba	1.1
525	Miganda Madiri	0.2
526	Pius Arido	0.6
592	Aura Ojambi	7.4
611	Odongo Madiri— $\frac{1}{2}$ share Otieno Muganda— $\frac{1}{2}$ share	1.9

WAUNDAHA SUB-LOCATION

Plot No.	Registered Owner	Area to be Acquired in Hectares
138	Jorani Ogondha	3.24
139	Christopher Alando	0.54
422	James Otieno Amamo	1.9
	Owiti Mamba	

Plans of the affected land may be inspected during office hours at the office of the Commissioner of Lands, Nairobi or District Commissioner's Office, Homa Bay.

Dated this 17th day of December, 1976.

J. R. NJENGA,
Commissioner of Lands.

MINISTRY OF LANDS AND SETTLEMENT

Department: "LANDS", Nairobi
Telephone: Nairobi 718050-9/719010
When replying please quote
Ref. No. GEN/A/L VOL. V/107



DEPARTMENT OF LANDS
P.O. BOX 30239
NAIROBI

29th February, 1994

The District Land Registrar,
P.O. Box 161,
HOMABAY

RE: COMPULSORY LAND ACQUISITION FOR VARIOUS PROJECTS IN SOUTH NYANZA

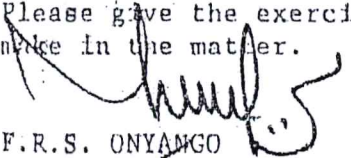
I refer to your letter SN/LR/92/4 dated 29th June, 1994 on the above matter.

I have received complaints from people whose Lands were compulsorily acquired in part for the nucleus estate of South Nyanza Sugar Company Limited to the effect that they have not been issued with their titles for the portions of those lands that remained for them after acquisition. Some of those remainder portions have been subdivided by the owners but the mutations have not been registered by your office for reasons which are not clear. It is also alleged that some of the remainder portions have been allocated to third parties by the Commissioner of Lands despite the fact that the owners are in occupation.

Some of the parcels affected are numbers South-Sakwa/Waware/170, 171, 153, 154, 592, 594 and 652, and also the land of the late Andrea Anindo (parcel number North Sakwa/Kamasoga/45).

Please have this matter sorted out once and for all in consultation with the District Surveyor Migori. In case you do not have all the Gazette Notices concerned, you should arrange to obtain them from the Chief Valuer, Nairobi.

Please give the exercise top priority and advise me of the progress you make in the matter.


F.R.S. ONYANGO
CHIEF LAND REGISTRAR

The Permanent Secretary,
Ministry of Lands & Settlement,
NAIROBI

The Director of Surveys
P.O. Box 30046,
NAIROBI

The Commissioner of Lands,
NAIROBI

The Chief Valuer,
Department of Lands,

MINISTRY OF LANDS AND SETTLEMENT

Telephone: 20565.....

When replying please quote

Ref. No. MIG/LR/22/25

and date



DISTRICT LANDS OFFICE

P.O. Box 484

SUNA

7th January 1954

The Chief Land Registrar,
P.O. Box 30089,
NAIROBI.

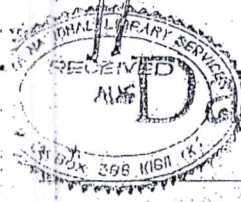
RE: LAND ACQUISITION
SOUTH SAKWA/WAKARE/153, 154, 152 & 154

The District Surveyor Migori has now surveyed the pockets of land in respect of the above titles and has submitted them for registration after extracting the portion of land acquired by the Government of Kenya.

The purpose of this letter is therefore to ask for your authority to remove the restriction to enable me to register the mutations.

J.O. ONYAMBU
DISTRICT LAND REGISTRAR
MIGORI/KURIA DISTRICTS.

JOO/ma.



Daily NATION

A publication of
Nation Media Group
No. 13494

Nairobi, Friday, August 29, 2003

KSh35/00 (TSh600/00 : US\$800/00)

Supa Africa's top **FREE** soccer story
Don't miss this sensational pullout in your Saturday Nation tomorrow.

Letter sparks family feud over Wamalwa burial site

INSIDE



Encounters of a
military kind

Weekend

NATIONAL

Les trapped in
floods

WORLD

British soldier killed
as convoy is hit

BUSINESS

Domestic debt
rises by Sh45b

NATIONAL

Tough measures
for lawyers

Back Page

General News 2-7, 23-26, Back

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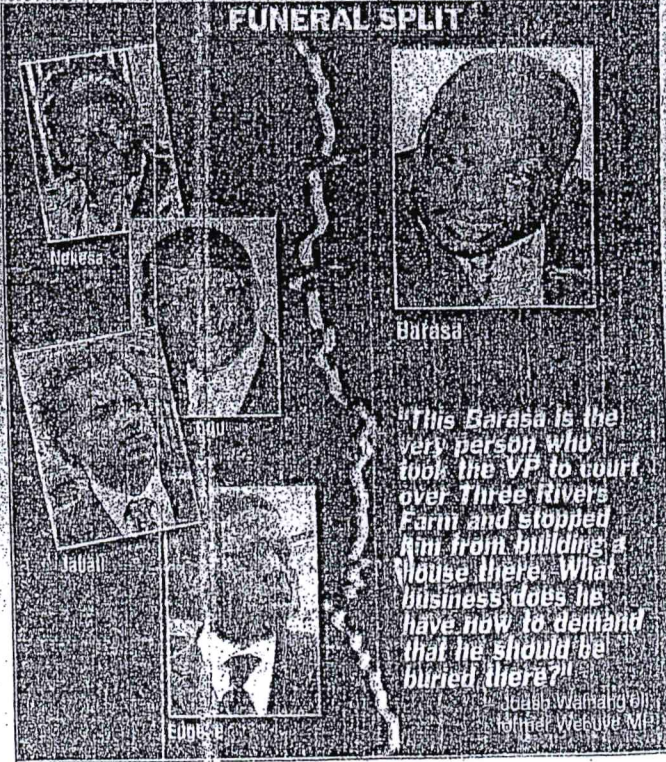
World 12-17

9-21

35

5

FUNERAL SPLIT



Barasa

"This Barasa is the
very person who
took the VP to court
over Three Rivers
Farm and stopped
him from building a
house there. What
business does he
have now to demand
that he should be
buried there?"

Joash Wamalwa (6)
former Wamala MP

Now VP's brother and cousin
demand interment at Saboti

By BERNARD
NAMUNANE

A fresh family feud broke out
over the burial place of Vice
President Michael Wamalwa
yesterday — and was quickly
fueled by the last-minute cancella-
tion of a visit by President
Kibaki to the VP's home in Na-
robi.

"He was said to be 'busy' and
would visit today instead. Other
engagements had gone on
beyond their scheduled time,
and Information minister Rap-
hael Tuji.

The row began when one of
Mr Wamalwa's half brothers, Mr
Stephen Barasa Wamalwa, and a
cousin, Mr Jeff Matumbi,

announced they had written to
the Government to state the fam-
ily had decided the VP should not
be buried at his home in Saboti
but at his late father's place, Ki-
tira Farm in Saboti. The Saboti
location, the letter added, was
land owned by the Government
and the family had to respect
the family's wishes.

The two later said they had not
actually sent the letter yet — but
the damage was done.

The VP's mother Mrs Esther
Nekesa, meanwhile, announced
her decision in favour of the Ki-
tira farm at Kileleshwa.

She told clan elders meeting at
the VP's home at Runda: "I want
my son buried at Milimani so that

CONTINUED ON PAGE 3

IRAQ FALLOUT

Blair in the dock

By DOMINIC EVANS
and JANET MCBRIDE

British Prime Minister Tony Blair
appeared in a London courtroom
yesterday to testify in a judicial inquiry
on whether his aides hyped intelligence reports
to justify invading Iraq.
Mr Blair, only the second British premier to be
called before such an inquiry, told the inquiry
men the suicide of a scientist at the centre of a

vicious row between the government and the
BBC over the Iraq war that if a BBC report
that spy agency data had been "sexed up" had
been true he would have resigned.
He conceded his Labour administration had
issued a controversial dossier last year on the
threat from Iraq under intense public pressure
to justify going to war.
But he dismissed the BBC report — for which
government scientist David Kelly, found dead

CONTINUED ON PAGE 12

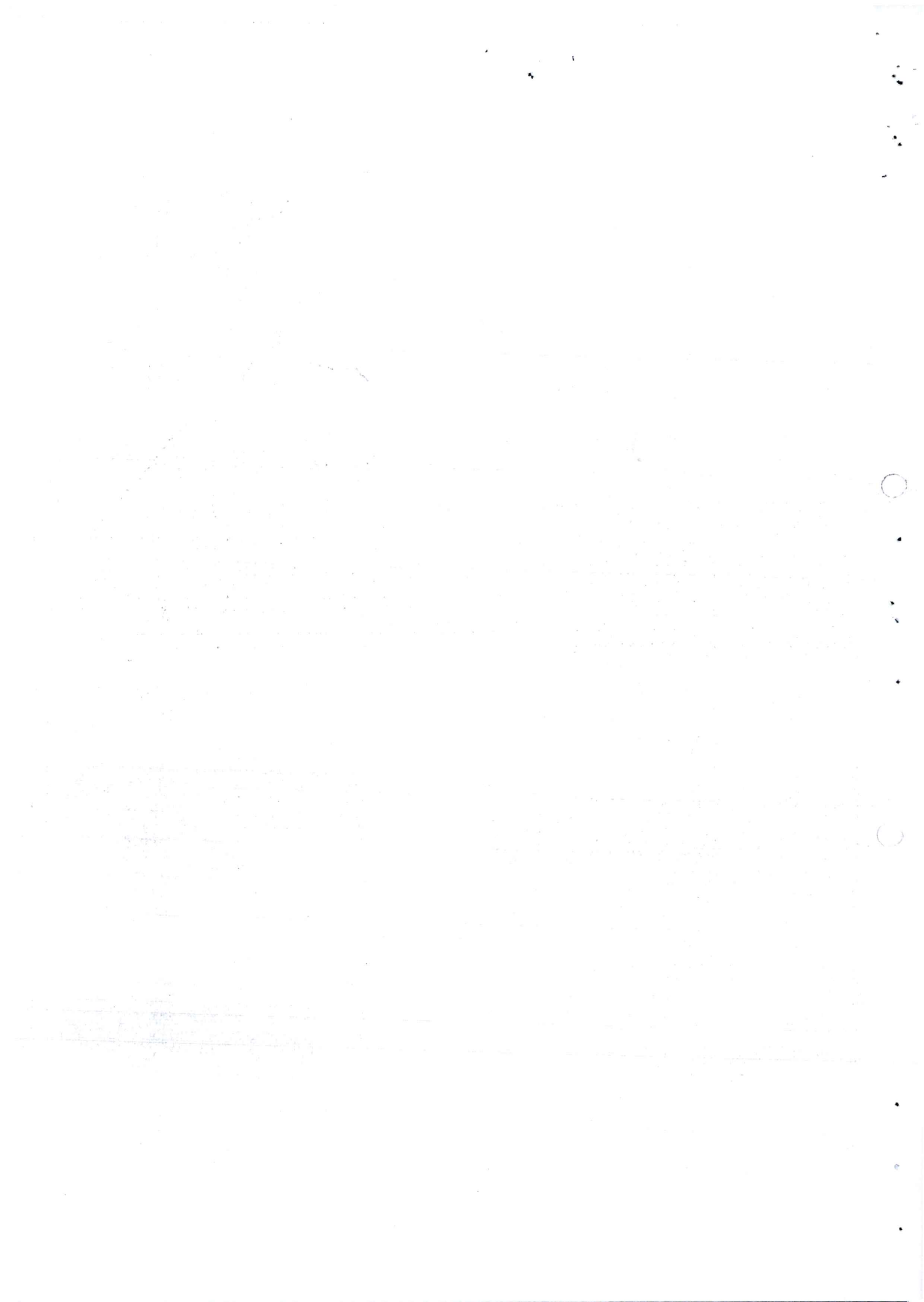
BACK TO SCHOOL

Wide range of school & travelling bags

NAKUMATI

Call: 011-2511111

150/-
1350/-
595/-
295/-



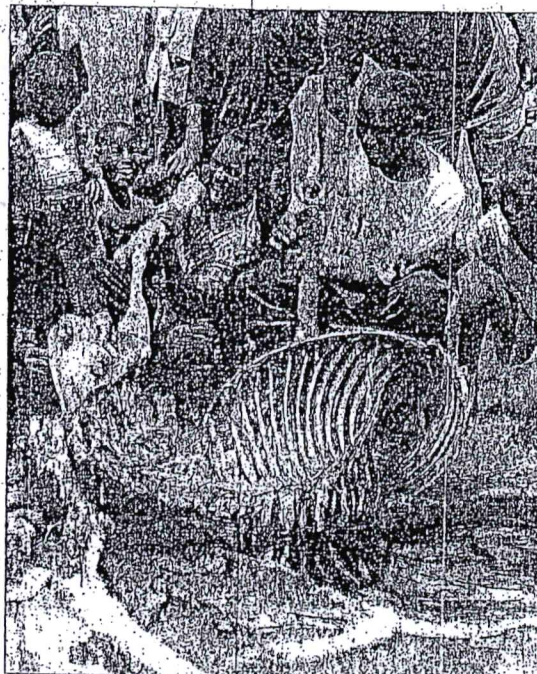
Five others transporting carcass escape arrest by veterinary officer

By SIMON SIELE

The district veterinary officer, Dr. Michael Cheruiyot, visited the scene and appealed to the public to expose the dealers. "There is nothing wrong with eating donkey meat but before this is

Although the law is silent about the consumption of donkey meat, it forbids anyone from selling food that is unknown to the consumer.

Additional reporting by Ibrahim Albinhi



Boys at Lanet in Nakuru near Muguga farm examine the remains of a donkey that was slaughtered in the area. So far five donkeys have been reported missing in the last two months.

Women to start new war against cattle theft

By NATION Correspondent

Tukweli and Sirgor health centres have received new staff from Kapenguria District Hospital.

Askari's pull down homes +

By NATION Correspondent

Awendo Town Council claimed that the families had built the semi-permanent houses on irregularly acquired plots and road reserves. Armed Administration police officers supervised the exercise.

The Local Government ministry ordered chief officers to stop irregular recruitment.

Yes! Clearly.

This month's
04 88 75 10 84 99
winning

23 50 56 80 44 24

Yes! lucky number

74 80 68 32 08 52

combinations

85 58 46 84 99 30

GOOD
NEWS
DAY
1800

Yes! Rewards Customers

The 28th of every month is synonymous with rewards for hundreds of thousands of Kenyans who have subscribed to Yes! - the most reliable mobile phone service provider in Kenya.

benefit more from this popular promotion, the promotion has been extended to the month of September with another 120,000/- jackpot to be split among up to four lucky winners.

January - Removal of the reload fee

February - Free SMS
upon every reload for
Yes! prepaid subscribers

* 3 free SMS for 300/-
and 600/- scratch cards

* 10 free SMS for 1,200/- and 3,000/- scratch cards

* 10 free SMS for Yes! privilege subscribers every month.

March - Double reload

April - Yes! per second billing.

May - 30 days of free SMS with one free SMS for Yes! prepaid subscribers and free SMS for Yes! privilege subscribers.

June • Voice mail messages alert.

July - Ksh 120,000/00
jackpot.

"Our Good News Day is a way of showing appreciation for our subscribers and to thank them regularly for their continued loyalty. We keep our promise to offer additional value for their money and we will continue to do so"

Philippe Vandebrouck,
Managing Director,
enCell Communications Ltd.

This month's good news day was the Yes! play & win which had an overwhelming response. To enable Yes! subscribers to

Since the launch of the Good News Days, Yes! subscribers have enjoyed the following Good News Day offers:

AWENDO TOWN COUNCIL

Tel: 059-43074

All correspondence to
be addressed to the Clerk to Council

Our Ref: ATC/LND/16/1/4/VOL.I/102

P.O BOX 280
SARE AWENDO

Your Ref: _____

Date: 3rd June 2004

Permanent Secretary
Ministry of Local Government
P O Box 30004
NAIROBI

ATTN: MULI N MALOMBE

Dear Sir

RE: ILLEGAL ALLOCATION OF LAND

The letter Ref: 1142-174/9 dated 10th July 2003, 1142-174 dated 26th May 2004 and our reply Ref: ATC/LND/16/1/4/VOL.I/07 dated 21st July 2003 refers.

The land occupied by Awendo Township was acquired by the Government in 1976 vide Kenya Gazette Notice 3737 of 24th December 1977 and Kenya Gazette Notice 3738 of 24th December 1977.

The affected group now calling itself Awendo Timkinda Group, the Government adequately compensated all of them in 1977, and there is evidence (which I will deliver in person) of payments.

Most of those who are now claiming the land are children and grand children of the plot owners most whom have since died.

The Awendo Timkinda group have filed a case against the Town Council Case No. HCC No. 30/2003 in the High Court Kisumu. It is suprising that since 1976 there has not been a single complain till late 1990s, i.e. over 23 years. The area has been planned and plots given to the Public in 1994.

However, there is over 50 acres of land which was grabbed and the Council has initiated the process of repossession. The construction of our Office block is complete and is situated on a planned site. The development plan for the Township was completed in 1980, and nobody has ever raise a finger apart from the Awendo Timkinda Group. Most of the group members had fraudulently acquired free hold titles which we have since cautioned.

It's known that the parents of the Awendo Timkinda Group bought land parcels elsewhere, using the money paid. If not where have they been since 1976! It's our wish that this case is solved once and for all.

I have held several meetings with the members but they have not been straight forward in their case. The Government gave sufficient Notice vide Kenya Gazette Notice of 3738 of 24th December 1977, a meeting was convened by the Commissioner of Lands in SARE Primary for hearing of claims on the Friday 20th January 1977 starting at 9.00 a.m.

5(w)

MINISTRY OF LOCAL GOVERNMENT

Telegrams: "AUTHORITY", Nairobi
Telephone: Nairobi 217475
When replying please quote



P.O. BOX 30004
NAIROBI

1142-174

and date

26th May 2004

Mr. J. K. K. Chebon
Town Clerk
Awendo Town Council
P. O. Box 280
SARE - AWENDO

RE: ILLEGAL ALLOCATION OF LAND

We write to draw your attention to this office letter of even reference dated 10th July 2003, on the above captioned subject.

Apparently your office has not responded to the issues/concerns raised by this office, your inaction has led to the officers of Awendo Timkinda Group, once again, calling on the Hon. Minister on the same issues/concerns they had earlier on raised.

In lieu of the above, I am therefore directed to write to you in person and instruct you to fully address the concerns/issues raised by the complainants, and appraise this office accordingly.

By a copy of this letter the Provincial Local Government Officer, Nyanza is also directed to take an interest in the finalization, of this case. I would be grateful if you do the needful.

Muli N. MALOMBE
For: PERMANENT SECRETARY

CC: Provincial Local Government Officer
Nyanza Province
P.O. Box 1571
KISUMU

MINISTRY OF LOCAL GOVERNMENT

Telegrams: 'AUTHORITY', Nairobi

Telephone: Nairobi 217475

When replying please quote

Ref. No. 1127474/25



P.O. Box 30094-00100
NAIROBI

29th June 2005 20.....

Mr. P. Nderitu
Provincial Local Government Officer
Central Province
P.O. Box 1571
KISUMU

Dear *Nderitu*

ALLEGED ILLEGAL LAND ALLOCATION BY THE AWENDO TOWN COUNCIL

Enclosed please find a self-explanatory copy of letters from Awendo Timkinda Group (Project) and the Kenya Anti-Corruption Commission on the above subject matter.

The allegations raised are of a serious nature and warrant thorough investigation. Please launch thorough investigations immediately and revert to this office with your findings and way forward. Treat this as urgent.

Thank you.

Yours

Sincerely
Muli N. Malombe

Muli N. Malombe, HSC

For: PERMANENT SECRETARY

Encl.

C.C. Awendo Timkinda Group (Project)

P.O. Box 416

SARE-AWENDO

AW 27/06/05

Awendo Timkinda Self Help Group
P.O. Box 416.
Sare-Awendo.
29th June 2004.

The Permanent Secretary,
Ministry of Local Government
P.O. Box 5004.
NAIROBI.

Dear Sir,

RE: ILLEGAL ALLOCATION OF LAND

Kindly may I inform you that we met with the clerk Awendo Town Council in his office on 21st June 2004. Those who attended that discussion were: -

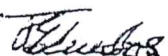
- | | |
|---|---------------------------------------|
| 1. Mr. John Eliud Ogutu Sirama | Chairman |
| 2. Mr. Nelson Odiwuor Onyango | Secretary |
| 3. Mr. James Omondi Anindo | Ass. Secretary |
| 4. Mr. Benard Odhiambo Wagunda - | (Member) all of Awendo Timkinda Group |
| 5. Mr. J. K. K. Chebon - | Clerk Awendo Town Council |
| 6. Cllr. John Oinollo Onoka - | Chairman Awendo Town Council |
| 7. Mrs. Hellen Okumu - | Market Superintendent and |
| 8. A Staff Member who was recording the deliberations | |

After lengthy discussion the clerk admitted to us that he did not have bulky document that he promised to take in person to you sir, as contained in his letter of even reference number ATC/LND/16/14-Vol 102 dated 3rd June 2004 in reply to yours Ref. 1142-174 dated 26th May 2004. He stated in the last paragraph that he was to avail to you records of payments among others in one week's time.

The chairman Awendo Town Council also stated to us that he only heard rumours from people that free hold-land parcels bordering Awendo market were bought by the government and he too was not in a position to produce the alleged documents of payments.

It is our prayer that you finalize this our plea to enable us be in peace with the council officials of Awendo town council.

I thank you in advance.


John Eliud Ogutu
Chairman.

Cc. The Clerk Awendo Town Council

REPUBLIC OF KENYA

THE LAND REGISTRATION ACT

No. 3 of 2012 (Section 108)

(Cap: 300) (Repealed)

APPLICATION FOR OFFICIAL SEARCH

Title No. WANA RE 1219To: The Land Registrar, MUHOA District Land Registry

PARTICULARS OF THE APPLICANT / ADVOCATE

Full Name: JOSEPH RONSO Signature

Identity Card Number/Passport Number (attach a copy)

Personal Identification Number (attach copy)

Address

Telephone (office): Cellphone: 0722702355Purpose of Search: confirmOwner of Property: JOSEPH RONSO

Proposed Purchaser of Property:

Advocate/ Agent:

Please supply—

- (a) Particulars of the subsisting entries in the register of the above-mentioned title, or
- (b) A certified copy of the register.

Joseph

Signature of Applicant or his Advocate

FOR OFFICIAL USE ONLY

Search Application Number

Booking Officer Time

DISPATCH:

COLLECTED BY

Name:

Signature:

Identity Card Number:

REPUBLIC OF KENYA

THE LAND REGISTRATION ACT

No. 3 of 2012 (Section 108)

(Cap. 300) (Repealed)

SHEET NO

12

CERTIFICATE OF OFFICIAL SEARCH

TITLE NO.: SOUTH SAKWIT WAIWARE / 1219 SEARCH NO.

On the 22nd day of APRIL 2015 the following were the subsisting entries on the register of the above-mentioned title:

PART A - Property Section (Easements, etc)

Nature of Title: ABSOLUTE

Approximate area: 1.02 HA (ONE POINT ZERO TWO HECTARE)

PART B - Proprietorship Section

Name and Address of the Proprietor:-

1. 25-9-2014 JOSEPH OMOND, RONGO
2. 28-10-2014 TITLE DEED ISSUED

Inhibitions, Cautions and Restrictions: -

NIL

PART C - Encumbrances section (Leases, Charges, etc)

NIL

The following applications are pending:

NIL

The certified copies requested are attached.

The minimum fee KSh. 500 (Five hundred only)

Dated this 22nd day of APRIL 2015

N.O. Otieno 260

Land Registrar
KILGORI

To: The Land Registrar,

District Land Registry,

P. O Box;

KSh. attached hereto.

Signature of the applicant or his advocate

TO BE SUBMITTED IN DUPLICATE

Form LRA-85

REPUBLIC OF KENYA

THE LAND REGISTRATION ACT

THE LAND REGISTRATION (GENERAL) REGULATIONS, 2017

CERTIFICATE OF OFFICIAL SEARCH

TITLE NO. SOUTH BUNDA WAWAWE / 1213

SEARCH NO.

On the 13th day of JULY 20 22 the following were the subsisting entries on the register of the above-mentioned title:SUB-DIVISION OF PLOT NO 168
Part A — Property Section (easements, etc.)Nature of title ABSOLUTEApproximate area ONE DECAHAL ONE EIGHTS (1.18 HA)

Part B — Proprietorship Section

Name and address of proprietor 2 2.10.2014 CHARLES OBUNGA OKOMBIOInhibitions, cautions and restrictions 3 2.10.2014 TITLE DEED ISSUEDPart C — Encumbrances Section (leases, charges, etc.) AS PER DECREE OF HCC SUN NO 133 of 2009
(O.S) AS WISH DATED 22.12.2009

The following applications are pending:

- (a)
- (b)
- (c)
- (d)

The following certified copies are attached as requested:

- (a)
- (b)
- (c)
- (d)

Date 13th day JULY 20 22

Seal

Signed by the Registrar

Witnessed by

Witnessed by

Witnessed by

THE LAND REGISTRATION ACT

THE LAND REGISTRATION (GENERAL) REGULATIONS, 2017

Date Received Presentation Book No. Official Fees Paid (KSh.)

APPLICATION FOR OFFICIAL SEARCH TITLE NO.

Date of Application	
Applicant	Name: ID/Passport No.: PIN No.: Address: Telephone No.: E-mail Address (if any) NB: Application for searches can be made by interested parties or their Agents. For purposes of this document, an agent is any person or firm registered by a professional body.
Purpose of Search	
Scope of Search	(a) particulars of the subsisting entries in the register of the above-mentioned title; or (b) particulars noted on: the Property Section/the Proprietorship Section/Encumbrances Section of the Register*. <i>*select as appropriate</i>
Copy of Documents Requested	Please supply a certified copy of each of the following:- (a) (b) (c) (d) NB: There is a fee for each copy
Signature of Applicant	
Search Application No.	
Time of Receipt	
Booking Officer	
Search Collected by	Name: ID/Passport No.: Signature: Date:

Notes:

- (1) Application to be submitted in triplicate.
- (2) Applicant to attach copy of original title document, unless exempted by Registrar.
- (3) Duplicate to be stamped and released to the Applicant.
- (4) Triplicate to be retained by the Land registry for its records.
- (5) Original to be returned to the Applicant together with the Certificate of Search.

REPUBLIC OF KENYA

THE LAND REGISTRATION ACT

THE LAND REGISTRATION (GENERAL) REGULATIONS, 2017

CERTIFICATE OF OFFICIAL SEARCH

TITLE NO. SOUTH SAKWA (WANGA) 1207

SEARCH NO.

On the 13th day of JULY 2022 the following were the subsisting entries on the register of the above-mentioned title:

SUB-DIVISION OF PHOTO NO 720

Part A — Property Section (easements, etc.)

Nature of title ABSOLUTE

Approximate area ZERO DECIMAL EIGHT TWO (0.8214)

Part B — Proprietorship Section

Name and address of proprietor 2 28.10.2014 MABAI QWANG OKIM

Inhibitions, cautions and restrictions 3 28.10.2014 TIME DEED ISSUED

Part C — Encumbrances Section (leases, charges, etc.)

The following applications are pending:

- (a)
- (b)
- (c)
- (d)

The following certified copies are attached as requested:

- (a)
- (b)
- (c)
- (d)

Date 13th JULY day 20 2022

Signed by the Registrar

Seal

Name:

Signature:

THE LAND REGISTRATION ACT

THE LAND REGISTRATION (GENERAL) REGULATIONS, 2017

Date Received Presentation Book No. Official Fees Paid (KSh.)

APPLICATION FOR OFFICIAL SEARCH TITLE NO.....

Date of Application	
Applicant	Name: ID/Passport No.: PIN No.: Address: Telephone No.: E-mail Address (if any) NB: Application for searches can be made by interested parties or their Agents. For purposes of this document, an agent is any person or firm registered by a professional body.
Purpose of Search	
Scope of Search	(a) particulars of the subsisting entries in the register of the above-mentioned title; or (b) particulars noted on: the Property Section/the Proprietorship Section/Encumbrances Section of the Register*. <i>*select as appropriate</i>
Copy of Documents Requested	Please supply a certified copy of each of the following:— (a) (b) (c) (d) NB: There is a fee for each copy
Signature of Applicant	
Search Application No.	
Time of Receipt	
Booking Officer	
Search Collected by	Name: ID/Passport No.: Signature: Date:

Notes:

- (1) Application to be submitted in triplicate.
- (2) Applicant to attach copy of original title document, unless exempted by Registrar.
- (3) Duplicate to be stamped and released to the Applicant.
- (4) Triplicate to be retained by the Land registry for its records.
- (5) Original to be returned to the Applicant together with the Certificate of Search.

REPUBLIC OF KENYA

THE LAND REGISTRATION ACT

No. 3 of 2012 (Section 108)

(Cap. 300) (Repealed)

CERTIFICATE OF OFFICIAL SEARCH

SHEET NO 18

TITLE NO.: SOUTH STIKINTI WALUARE / 1219
SEARCH NO.

On the 22nd day of APRIL 2015 the following
were the subsisting entries on the register of the above-mentioned title:

PART A - Property Section (Easements, etc)

Nature of Title: ABSOLUTE

Approximate area: 1.02 HA / ONE POINT TWO TWO HECTARE

PART B - Proprietorship Section

Name and Address of the Proprietor:-

1 25-9-2014 JOSEPH OMONDI RONGO
2 28-10-2014 TITLE DEED ISSUED

Inhibitions, Cautions and Restrictions: -

NIL

PART C - Encumbrances section (Leases, Charges, etc)

NIL

The following applications are pending:

NIL

The certified copies requested are attached.

The minimum fee KSh. 500 (Five hundred only)

Dated this 22nd day of APRIL 2015

N.O. Otieno

280

[Signature]
Land Registrar
WALUARE

To: The Land Registrar,

District Land Registry,

P. O Box;

KSh. attached hereto.

Signature of the applicant or his advocate

REPUBLIC OF KENYA

THE LAND REGISTRATION ACT

No. 3 of 2012 (Section 108)

(Cap. 300) (Repealed)

APPLICATION FOR OFFICIAL SEARCH

Title No. WATERA 1219
 To: The Land Registrar, MILICIA District Land Registry

PARTICULARS OF THE APPLICANT / ADVOCATE

Full Name: JOSEPH ROSTO Signature

Identity Card Number/Passport Number (attach a copy)

Personal Identification Number (attach copy)

Address

Telephone (office): Cellphone: 0722 702355

Purpose of Search: certification

Owner of Property: JOSEPH ROSTO

Proposed Purchaser of Property:

Advocate/ Agent:

Please supply—

- (a) Particulars of the subsisting entries in the register of the above-mentioned title, or
 (b) A certified copy of the register.

Joseph

Signature of Applicant or his Advocate

FOR OFFICIAL USE ONLY

Search Application Number

Booking Officer Time

DISPATCH:

COLLECTED BY

Name:

Signature:

TO BE SUBMITTED IN DUPLICATE

Signature of the applicant or his ad. agent

attached hereto

KSP

P. O. Box

District Land Registry

The Land Registrar

Land Registrar

20/11/14

The amount for KSP, 300, is enclosed only.
The amount for KSP, 300, is enclosed only.

The amount for KSP, 300, is enclosed only.

The following applications are pending:

PART C - Transfers, Easements, etc.

Transfers, Easements, etc.

4 24 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

PART B - Proprietorship Section

Approximate area

Nature of Title

PART A - Property Section (Easements, etc.)

were the following entries on the register of the above-mentioned title:

On the 15/11/14 day of Nov 20 14

SEARCH NO

CERTIFICATE OF OFFICIAL SEARCH

CCAP 300

THE REGISTERED LAND ACT

REPUBLIC OF KENYA

SL 27

42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

REPUBLIC OF KENYA

THE REGISTERED LAND ACT

(CAP 300)

APPLICATION FOR OFFICIAL SEARCH

WMS/SLA/35

Title No. _____
for the Land Registry

PARTICULARS OF THE APPLICANT / ADVOCATE

Full Name _____
Identity Card Number / Passport Number (attach a copy) _____
Personal Identification Number (attach copy) _____
Address _____
Telephone Office _____
Purpose of Search _____
Name of Property _____
Location of Property _____
Advocate Agent _____
District _____

(a) Particulars of the subject matter in the register of the above-mentioned district, or
(b) A certified copy of the register of the above-mentioned district, or
District _____
County _____
Sub-location _____
Location _____
Area _____
Purpose of Search _____
Name of Property _____
Location of Property _____
Advocate Agent _____
District _____

Signature of Applicant or his Advocate _____

FOR OFFICIAL USE ONLY

DISPATCHED BY _____
COLLECTED BY _____

Signature _____
Identity Card Number _____

THE LAND REGISTRATION ACT

THE LAND REGISTRATION (GENERAL) REGULATIONS, 2017

Date Received Presentation Book No. Official Fees Paid (KSh.)

APPLICATION FOR OFFICIAL SEARCH TITLE NO.

Date of Application	
Applicant	Name: ID/Passport No.: PIN No.: Address: Telephone No.: E-mail Address (if any) NB: Application for searches can be made by interested parties or their Agents. For purposes of this document, an agent is any person or firm registered by a professional body.
Purpose of Search	
Scope of Search	(a) particulars of the subsisting entries in the register of the above-mentioned title; or (b) particulars noted on: the Property Section/the Proprietorship Section/Encumbrances Section of the Register*. <i>*select as appropriate</i>
Copy of Documents Requested	Please supply a certified copy of each of the following:-- (a) (b) (c) (d) NB: There is a fee for each copy
Signature of Applicant	
Search Application No.	
Time of Receipt	
Booking Officer	
Search Collected by	Name: ID/Passport No.: Signature: Date:

Notes:

- (1) Application to be submitted in triplicate.
- (2) Applicant to attach copy of original title document, unless exempted by Registrar.
- (3) Duplicate to be stamped and released to the Applicant.
- (4) Triplicate to be retained by the Land registry for its records.
- (5) Original to be returned to the Applicant together with the Certificate of Search.

THE LAND REGISTRATION ACT

THE LAND REGISTRATION (GENERAL) REGULATIONS, 2017

CERTIFICATE OF OFFICIAL SEARCH

TITLE NO. SOUTH GRUWA / WOIWADE / 1213

On the 13th day of July 2017 the following were the subsisting entries on the

register of the above mentioned title

Part A - Property Section (caveats, etc.)

Nature of title Absolute

Approximate area ONE DECAHMETRE ONE EIGHT (1.18 HA)

Part B - Proprietorship Section

2. 2.10.2014 CHAIKAL OBUNDA DICOMBO

Name and address of proprietor

2. 2.10.2014 CHAIKAL OBUNDA DICOMBO

Inhibitions, caveats and other rights

Part C - Encumbrances Section (charges, etc.)

The following applications are for the

(a)

(b)

(c)

(d)

The following certificate copies are furnished as requested

(a)

(b)

(c)

(d)

Date 13th July 2017

Sealed by the Registrar

13th July 2017

REPUBLIC OF KENYA

THE LAND REGISTRATION ACT

THE LAND REGISTRATION (GENERAL) REGULATIONS, 2017

CERTIFICATE OF OFFICIAL SEARCH

TITLE NO. SOUTH SAKWA WANGA 1207

SEARCH NO.

On the 13th day of JULY 2022 the following were the subsisting entries on the register of the above-mentioned title:

SUB-DIVISION OF PLOT NO 120

Part A — Property Section (easements, etc.)

Nature of title ABSOLUTE

Approximate area ZERO DECIMAL EIGHT TWO (0.8212)

Part B — Proprietorship Section

Name and address of proprietor 2 28.10.2014 MUKHAI QWONG OKIMU

Inhibitions, cautions and restrictions 3 28.10.2014 TIME DEED ISSUED

Part C — Encumbrances Section (leases, charges, etc.)

The following applications are pending:

- (a)
- (b)
- (c)
- (d)

The following certified copies are attached as requested:

- (a)
- (b)
- (c)
- (d)

Date 13th JULY day 20 2022

Signed by the Registrar

Seal

Name:

Signature:

REPUBLIC OF KENYA

THE LAND REGISTRATION ACT

THE LAND REGISTRATION (GENERAL) REGULATIONS, 2017

Date Received Presentation Book No. Official Fees Paid (KSh.)

APPLICATION FOR OFFICIAL SEARCH TITLE NO.....

Date of Application	
Applicant	Name: ID/Passport No.: PIN No.: Address: Telephone No.: E-mail Address (if any) NB: Application for searches can be made by interested parties or their Agents. For purposes of this document, an agent is any person or firm registered by a professional body.
Purpose of Search	
Scope of Search	(a) particulars of the subsisting entries in the register of the above-mentioned title; or (b) particulars noted on: the Property Section/the Proprietorship Section/Encumbrances Section of the Register*. <i>*select as appropriate</i>
Copy of Documents Requested	Please supply a certified copy of each of the following:- (a) (b) (c) (d) NB: There is a fee for each copy
Signature of Applicant	
Search Application No.	
Time of Receipt	
Booking Officer	
Search Collected by	Name: ID/Passport No.: Signature: Date:

Notes:

- (1) Application to be submitted in triplicate.
- (2) Applicant to attach copy of original title document, unless exempted by Registrar.
- (3) Duplicate to be stamped and released to the Applicant.
- (4) Triplicate to be retained by the Land registry for its records.

REPUBLIC OF KENYA

THE REGISTERED LAND ACT

(Cap. 300)

APPLICATION FOR OFFICIAL SEARCH

Title No. N.I.S. Kamasoga/34

TO: THE LAND REGISTRAR,

DISTRICT REGISTRY.

Please supply—

- *(a) particulars of the subsisting entries in the register of the above-mentioned title;
- *(b) a certified copy of each of the following:

I propose (_____) (proposer)

and application is hereby made for a stay of registration in accordance with section 43 (1) of the Act. The written consent of the proprietor accompanies this application.

I enclose Postal Order/Money Order/Cash for KSh. _____

I understand that any additional fee which is payable must be paid by me forthwith on demand.

Date _____ 20 _____

Signature of Applicant
or his Advocate

Postal address:

*Delete if not applicable.

†The minimum fee is KSh. 100.

REGISTERED

REPUBLIC OF KENYA

THE REGISTERED LAND ACT

(Cap. 300)

Sheet 42

CERTIFICATE OF ORIGINAL SEARCH

SEARCH NO.

TITLE NO. N. SARUM / K.M. 150 G.M. / 34

On the 25th day of March, 2010, the following

were the subsisting entries on the register of the above-mentioned title:

Part A—Property Section (Easements, etc.)

Nature of title

Approximate area 3.244 (three to four)

Part B—Proprietorship Section

Name and address of proprietor

2-8-78 (Government of Kenya)

Inhibitions, cautions and restrictions

Part C—Incumbrances Section (leases, charges, etc.)

The following applications are pending:

The certified copies requested are attached

The fees payable now are KSh. 588; please detach the form below and remit this amount and return it to me within seven days of today's date.

A stay of registration has been noted in the register.

Dated 25.3.2010

g. A. O. 1500 248

To: The Land Registrar

District Registrar

For: Cash/Order/Cash for KSh. enclosed herewith.

SHEET 42

REPUBLIC OF KENYA
THE REGISTERED LAND ACT
(Cap. 300)

CERTIFICATE OF OFFICIAL SEARCH

North Nyanza / KAMAB 64/1029

28/7/2007

RECEIVED FOR AUGUST 2007

On the day of JULY 2007 the following were the subsisting entries on the register of the above mentioned title

ABSOLUTE
Nature of title
Approximate area
PART A - Property Section (Easements, etc.)

31.8.76 SOUTH NYANZA COUNTY COUNCIL
2. 2/11/95
GOVERNMENT OF KENYA ACQUIRED
LAND GAZETTE NOTICE NO 31
24/12/1976 WHITE (0.14)
PART B - Proprietorship Section

PART C - Encumbrances Section (leases, charges, etc.)
NIL

The following applications are pending
NIL

The certified copies requested are attached
The fees payable now are Ksh. 100/-
I remit this amount and return it to me within seven days of today's date.

A stay of registration has been noted in the register
Dated 5/7/2007
TO: THE LAND REGISTRAR,
DISTRICT REGISTRAR
MIGORI LAND REGISTRATION DISTRICTS
20.0.5000087

* Delete if not applicable
* The minimum fee is Kshs.5

Postal address

Signature of applicant
or his advocate

Date

5/7/84

I understand that any additional fee which is payable must be paid by me forthwith on demand

I enclose Postal Order/Money Order/Cash for Ksh. 100/-

and application is hereby made for a stay of registration of the above mentioned title

written consent of the proprietor accompanies this application.

TO THE LAND REGISTRY

HEZRON OTENO

APUT

(b) a certified copy of the following:

(a) particulars of the subsisting entries in the register of the above mentioned title.

Please supply -

FOR THE LAND REGISTRY

MGO RI / KURIA

APPLICATION FOR OFFICIAL SEARCH

THIS NO.

KAMA 506A / 1029

THE REGISTERED LAND ACT

(Cap. 280)

REPUBLIC OF KENYA

**PETITION PURSUANT TO ARTICLE 119 OF THE CONSTITUTION,
PETITION TO PARLIAMENT (PROCEDURE) ACT NO. 22 OF 2012
AND THE NATIONAL ASSEMBLY STANDING ORDERS**

TO THE SPEAKER OF THE NATIONAL ASSEMBLY,

P.O BOX 41842-00100,

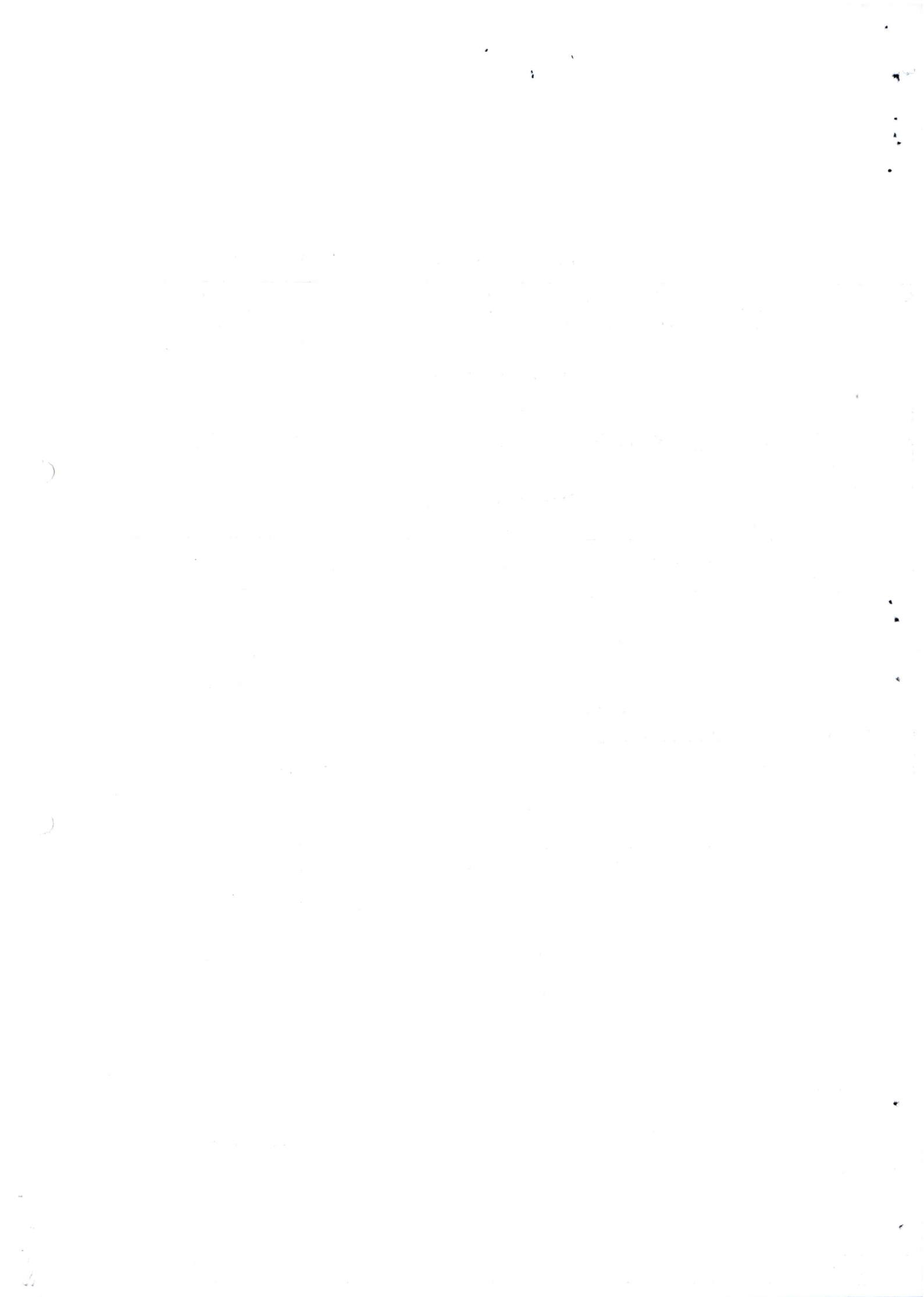
NAIROBI.

1. **THAT** we are the Petitioners herein and present this Petition on our own behalf.
2. **THAT** in 1985 Awendo Town Council officials commenced the process of allocating plots of the pieces of land to third parties without the consent of the original land owners.
3. **THAT** in 1988 the allocation of the plots to various persons was halted by the then South Nyanza District Plot Allocation Committee under the Chairmanship of the District Commissioner Cyrus Gitui on grounds that the government had not acquired the said piece of land.
4. **THAT** as a result, the Petitioners lodged a complaint with the Ministry of Lands which confirmed that the Petitioners were the legal owners of the said land.
5. **THAT** subsequently the then Chief Land Registrar directed the district land registrar to re-survey and issue title deed to the land owners.
6. **THAT** in the year 2003, the Awendo Township Council instead embarked on evicting land owners by demolishing, burning their houses and destroying their properties without any notice or orders from any court on grounds that the said piece of land had been acquired by government.
7. **THAT** the owners of the land subsequently lodged a complaint with the then Ministry of Local Government for

PETITION PURSUANT TO ARTICLE 119 OF THE CONSTITUTION,
PETITION TO PARLIAMENT (PROCEDURE) ACT NO. 22 OF 2012
AND THE NATIONAL ASSEMBLY STANDING ORDERS

compensation following the acquisition of their land however the Ministry declined the request and referred the Petitioners back to the Awendo Town Council.

8. **THAT** subsequently in the year 2005, the land owners took legal action by suing the Awendo Town Council at the High Court in Kisii.
9. **THAT** the Awendo Town Council failed to produce acquisition and compensation documents to the court and the High Court declared that the land parcel belonged to the Petitioners.
10. **THAT** Awendo Town Council thereafter made an appeal of the judgement of the High Court at the Court of Appeal.
11. **THAT** the Awendo Town Council failed to produce acquisition and compensation documents and the Court of Appeal dismissed the appeal and directed the District Land Registrar to issue title deeds to the original land owners.
12. **THAT** the Court of Appeal observed that the procedures for acquiring the land including compensation were not followed.
13. **THAT** the Awendo Town Council not being satisfied by the judgement of Court of Appeal applied for a certificate to appeal its decision at the Supreme Court.
14. **THAT** the Court of Appeal dismissed the application for certificate to appeal at the Supreme Court.
15. **THAT** none of the matters raised herein are pending in any court of law in Kenya.



**PETITION PURSUANT TO ARTICLE 119 OF THE CONSTITUTION
PETITION TO PARLIAMENT (PROCEDURE) ACT NO. 22 OF 2011
AND THE NATIONAL ASSEMBLY STANDING ORDERS**

16. **THAT** despite efforts to have matters raised in this petition addressed by the relevant bodies and offices, our efforts have been futile.
17. **THAT** the petitioners therefore pray for-
- (a) Pursuant to National Assembly Standing Order 216, the relevant Committee does consider, investigate and inquire into all the matters raised in this petition;
 - (b) Pursuant to the National Assembly Standing Order 216, the relevant Committee does make the relevant recommendations thereof.

Petition presented by:

Name	Address	Identification number	Signature
BONIFACE OTIENO OPERE	P. O. BOX 72-40405 SARE-AWENDO	4238636 0724316426	
JOHN OKELLO ANINDO	P. O. BOX 72-40405 SARE -AWENDO	5958526	
ROSE AKUMU	P. O. BOX ONYANGO 72-40405 SARE - AWENDO	105985400 0715422320	
NELSON ODUOR ONYANGO CO-ORDINATOR	P.O.BOX 72-40405 SARE-AWENDO ID NO. 3981426	3981426	

TIM KINDA GROUP

WEEKLY MEETING ON 07/06/2023

MAIN AGENDA

LISTING OF TIM KINDA GROUP MEMBERS ORIGIN LAND OWNERS AROUND AWENDO SUB-COUNTY TOWNSHIP OF MIGORI COUNTY.

1. Members with Tittle deeds
2. Members who are attached to members with tittle Deeds
3. Members awaiting for tittle deeds

S/N	NAMES	ID NO	CONTACT	AREA	NO	HA	SIGN
1.	TERESA OBEL OLALE	13385279	0722476527	NORTH SAKWA KAMASOGA	35	0.2	
2.	JAMES OMONDI ANINDO	5781855	0727923852	NORTH SAKWA KAMASOGA	2310	13.29	
3.	ROSE AKUMU ONYANGO	5980400	0715422320	SOUTH SAKWA WAW ARE	202	4.4	
4.	TIMOTHEO O. RAYAMO	16022751		NORTH SAKWA KAMASOGA	1111	0.6	
5.	PETER OTIENO OCHOLA	13518750	0723581548	NORTH SAKWA KAMASOGA	36	0.44	
6.	MIJUNGU MISWETA	8114420	0792483750	SOUTH SAKWA WAWARE	1247	1.23	
7.	SOSPITA A. ODERA	16045860	0711723435	NORTH SAKWA KAMASOGA	2387	0.45	
8.	JOSEPH OMONDI RONGO	132975509	0722702355	SOUTH SAKWA WAWARE	207	1.1	
9.	DALMASUS CHACHA KAWA	8876186	0745981141	SOUTH SAKWA WAWARE	165	3.6	
10.	DANIEL OULO OTIENO	10792407	0726091768	SOUTH SAKWA WAWARE	170	3.4	
11.	JENIPHER AUMA ONYANGO	213483370	0700378601	SOUTH SAKWA WAWARE	685	1.78	
12.	JAMES OTIENO WAGUMBA	11125231		SOUTH SAKWA WAWARE	206	1.2	
13.	LUCAS OGINGA OPERE	1281237		SOUTH SAKWA WAWARE	687	3.13	
14.	PETER OUMA OMOLLO	0436837	0725890901	NORTH SAKWA KAMASOGA	1947	1.58	
15.	NELSON ODUOR ONYANGO	3981426	0715925414	NORTH SAKWA KAMASOGA	2432	4.46	
16.	NELSON ODUOR ONYANGO	3981426	0715925414	NORTH SAKWA KAMASOGA	2434	0.79	
17.	NELSON ODUOR ONYANGO	3981426	0715925414	NORTH SAKWA KAMASOGA	2435	2.68	
18.	NELSON ODUOR ONYANGO	3981426	0715925414	NORTH SAKWA KAMASOGA	2436	0.06	
19.	NELSON ODUOR ONYANGO	3981426	0715925414	NORTH SAKWA KAMASOGA	2433	0.77	
20.	EZEKIEL OLUMWA OTIENO	6912934	0720130032	SOUTH SAKWA WAWARE	163	5.0	
21.	EZEKIEL OLUMWA OTIENO	6912934	0720130032	SOUTH SAKWA WAWARE	164	3.2	
22.	PAMELA ATIENO OWUOR	13387319	0723266050	SOUTH SAKWA WAWARE	654	2.41	
23.	CHARLES OBUNGA OKOMBO	5877848		SOUTH SAKWA WAWARE	1213	1.18	
24.	ELIUD OGUTU SIRAMA	3980135	0723977305	NORTH SAKWA KAMASOGA	2305	0.92	
25.	OPANY OKWIRI	6369095	0701085343	SOUTH SAKWA WAWARE	1178	1.80	
26.	JOHN OWARE ABONYO	9049104	070778720	SOUTH SAKWA WAWARE	1218	0.05	

27.	ODHIAMBO DAWO		0715422320	SOUTH SAKWA WAWARE	200	1.4	
28.	GEORGE OTIENO OBIERO		07172586736	NORTH SAKWA KAMASOGA	1193	0.6	
29.	SILVANCE MAGALU AURA	6762825		SOUTH SAKWA WAWARE	1221	7.00	
30.	NAFTALI APONDI AYWAK	5497268		NORTH SAKWA KAMASOGA	2317	2.53	
31.	HENRY OKOLO AYOT						
THOSE AWAITING FOR COLLECTION OF LAND CERTIFICATE							
30	JOSEPH ODUOR OCHOME	5877378		NORTH SAKWA KAMASOGA			
31	PAULINE OBILO			NORTH SAKWA KAMASOGA			
32	ROSE OTIENO APUT			NORTH SAKWA KAMASOGA			
33	JAIR OWINO ODERA		0702956237		2448	0.375	
34	OPERE ODEK		0724316426				
OTHER NAMES WITH LAND CERTIFICATE							
35	DAVID OCHIENG DIDA			111			
36	BENARD JOSHUA WAGUMBA						
SOME OTHER MEMBERS							
37	BONFACE OTIENO OPERE	4238636	0724316426	SOUTH SAKWA WAW ARE			
38	JOHN OKOLO ANINDO	5958526	0727923852	NORTH SAKWA KAMASOGA			
39	JOHN OPONDO AJWANG	12686388	0727518140	SOUTH SAKWA WAW ARE			
40	SOSPETER OUMA ODUAR		0727398140	SOUTH SAKWA WAWARE			

VACANCIES—PUBLIC SERVICE COMMISSION—(Contd.)

Trainee Vacancies in the Ministry of Agriculture:

Librarian (Trainee) (Two Posts) (No. 148/76)

Applicants must be in possession of the East African Advanced Certificate of Education or its equivalent which should include preferably science subjects at the principal level. They must have a keen interest in library and information dissemination in relation to Agriculture. The candidates selected for training will be required to work in the Ministry of Agriculture Library for at least six months or until training facility for the diploma course is secured.

The successful candidates will receive a Training Allowance of £399 per annum plus house allowance of Sh. 300 per month during the period of in-service training. The trainees will thereafter be sponsored for two years' diploma course in librarianship on successful completion of which and being awarded a Diploma in Librarianship they will be eligible for appointment as Librarian II Job Group "H" i.e. £1,086 to £1,446 per annum.

GAZETTE NOTICE No. 3737

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 South Nyanza Sugar scheme (Awendo Township Expansion) in South Nyanza District.

SCHEDULE

AWENDO TOWNSHIP EXPANSION

KAMASOGA SUB-LOCATION

Plot No.	Registered Owner	Area to be Acquired in Hectares
34	Nyandete Ndenge	3.2
35	John Olale	2.0
36	Kamulus Ochola Sidika	0.44
37	John Okwany	0.38
38	Abol Ahomo	1.2
39	Obiero Omedo	0.6
40	Obat Omedo	0.5
41	S.N.C.C. (Reserved for Awendo Community Hall)	0.18
42	James Onyango Odera	0.6
43	Daniel Dida Oluoch	3.0
44	S.N.C.C. (Reserved for Awendo Seventh Day Adventist Church)	0.6
45	Anderea Anindo Nyakachunga	13.4
51	S.N.C.C. (Reserved for Awendo Water Point)	0.45
104	Awiti Olilo	2.8
105	Mbogo Olilo	2.2
106	Joseph Oduol Olilo	2.2
107	Petalis Ratipo Olilo	1.7
108	Daniel Owawa Olilo	1.7
109	Olodo Olodo	1.7
110	Okeyo Olilo	2.6
111	Ochome Saula	3.4
117	S.N.C.C. (Reserved for Sare Coffee Society)	0.7
118	S.N.C.C. (Reserved for Sare Water Point)	0.46
119	Raywer Ninga	1.7
212	S.N.C.C. (Reserved for Awendo Water Pump)	0.03
589	John Olicko Acenda and Richard Awuonda Olicko	13.6
590	Jane Obogo	0.36
1026	S.N.C.C. (Reserved for Sare Muslim)	0.12
1029	S.N.C.C. (Reserved for Awendo Pentecostal Church)	0.14
1054	John Mijungu Kisia	0.17
1067	John Eliud Ogutu Sirama	1.70
1079	Kuteoko Group	0.23
1080	Nelson Orwa Obaja and Kenedy Ochieng Orwa	0.60
1081	Rosalina Nyakure	0.18
1082	Barack Owiro Sat and Rashidi Sat	0.25
1083	Joab Oyugi	1.2
1089	John Aggrey Onjala	0.09
1090	James Onyango	0.12
1091	Solomon Ogutu Odera	0.11

SCHEDULE—(Contd.)

KAMASOGA SUB-LOCATION—(Contd.)

Plot No.	Registered Owner	Approx. Area to be Acquired in Hectares
1092	Festus Oguta Osoi and Elija Odongo Owiro	0.23
1093	Jairo Owino Odera	0.49
1094	Agani Odera	0.47
1095	James Onyango	0.5
1102	Boaz Owino Opiyo	0.6
1111	Timotheo Rayamo Okwach	0.6
1114	Phoebe Akinyi Odenyo	0.07
1115	Denis Ochere Owino	0.09
1116	Saniwel Ondiege Okwach	0.48
1117	Salim Nyamwanda Okwach	0.6
1118	Vitalis Nyulala Okwach	0.7
1155	Bernard Otieno	0.05
1182	Joel Orege Ayosi	0.21

WAWARE SUB-LOCATION

Plot No.	Registered Owner	Area to be Acquired in Hectares
155	Odoyo Ojambi	6.0
156	Fatuma Achieng	3.2
157	Odhiambo Odundo	5.4
158	Joseph Oduogo	1.7
159	Opiyo Oluoma	6.0
161	S.N.C.C.	3.0
162	S.N.C.C.	0.14
163	Barack Aduo	5.0
164	Ismael Mijungu	3.2
165	Dalmas Kawa Achacha	3.6
166	Washington Wagumba	2.8
167	Silvanus Opiyo Chacha	2.55
167	Okorabo Okwiri— $\frac{1}{4}$ share Okwiri Okwiri— $\frac{1}{4}$ share	0.14
169	Opany Okwiri	1.8
171	Nehemia Okinyi	5.5
172	Jeremia Kamala	0.4
198	Opere Odek	3.4
199	Anderea Angila	1.8
200	Odhiambo Dawo	1.4
201	Mijungu Ochala	2.0
202	Dawo Mijungu	4.4
203	Ronge Misweta	1.2
204	Mijungu Misweta	1.4
205	Otieno Misweta	1.3
206	Wagumba Misweta	1.2
207	Silvanus Misweta	1.1
208	Odwar Misweta	1.9
363	Mijungu Ochola	0.8
499	Okumu Oyier	1.52
502	John Wagumba	1.1
525	Miganda Madiri	0.2
526	Pius Arido	0.6
592	Aura Ojambi	7.4
611	Odongo Madiri— $\frac{1}{4}$ share Otieno Muganda— $\frac{1}{4}$ share	1.9

WAUNDARIA SUB-LOCATION

Plot No.	Registered Owner	Area to be Acquired in Hectares
138	Joram Ogondha	3.24
139	Christopher Alando	6.54
422	James Otieno Amamo	1.9
	Owiti Mamba	

Plans of the affected land may be inspected during office hours at the office of the Commissioner of Lands, Nairobi or District Commissioner's Office, Homa Bay.

Dated this 17th day of December, 1976.

J. R. NJENGA,
District Commissioner

MINISTRY OF LANDS AND SETTLEMENT

Telephone: "LANDS", Nairobi
Telefax: Nairobi 718050-9/719010
when replying please quote

Ref. No. GEN/A/1 VOL. V/107

and date

DEPARTMENT OF LANDS
P.O. BOX 30046
NAIROBI

29th February, 1994

The District Land Registrar,
P.O. Box 161,
HOMABAY

RE: COMPULSORY LAND ACQUISITION FOR VARIOUS PROJECTS IN SOUTH NYANZA

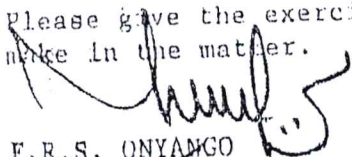
I refer to your letter SN/LR/92/4 dated 29th June, 1994 on the above matter.

I have received complaints from people whose Lands were compulsorily acquired in part for the nucleus estate of South Nyanza Sugar Company Limited to the effect that they have not been issued with their titles for the portions of those lands that remained for them after acquisition. Some of those remainder portions have been subdivided by the owners but the mutations have not been registered by your office for reasons which are not clear. It is also alleged that some of the remainder portions have been allocated to third parties by the Commissioner of Lands despite the fact that the owners are in occupation.

Some of the parcels affected are numbers South-Sakwa/Waware/170, 171, 153, 154, 592, 594 and 652, and also the land of the late Andrea Anindo (parcel number North Sakwa/Kamasoga/45).

Please have this matter sorted out once and for all in consultation with the District Surveyor Migori. In case you do not have all the Gazette Notices concerned, you should arrange to obtain them from the Chief Valuer, Nairobi.

Please give the exercise top priority and advise me of the progress you make in the matter.


F.R.S. ONYANGO
CHIEF LAND REGISTRAR

The Permanent Secretary,
Ministry of Lands & Settlement,
NAIROBI

The Commissioner of Lands,
NAIROBI

The Chief Valuer,
Department of Lands,

The Director of Surveys
P.O. Box 30046,
NAIROBI

MINISTRY OF LANDS AND SETTLEMENT

Telephone: 20565.....

When replying please quote

Ref. No. MIG/LR/22/25

and date



DISTRICT LANDS OFFICE

P.O. Box 484

SUNA

7th January 1964

The Chief Land Registrar,
P.O. Box 30089,
NAIROBI.

RE: LAND ACQUISITION
SOUTH SAKWA/WABARE/153, 154, 155 & 159

The District Surveyor Migori has now surveyed the pockets of land in respect of the above titles and has submitted them for registration after extracting the portion of land acquired by the Government of Kenya.

The purpose of this letter is therefore to ask for your authority to remove the restriction to enable me to register the mutations.

J.O. ONYAMBU
DISTRICT LAND REGISTRAR
MIGORI/KURIA DISTRICTS.

JCO/ma.

Man seized over donkey meat

Five others transporting carcass escape arrest by veterinary officer

By SIMON SIELE

Police have arrested a suspected donkey meat dealer as he transported the carcass towards Nakuru Town on a bicycle.

Five people escaped. The donkey meat was packed meat in a gunny bag and after slaughtering at Lanet Muguga farm, about six kilometres away.

They had slaughtered two others on Wednesday.

A meat inspector on his routine duty confronted the suspects, who immediately dumped the meat and fled. He, however, arrested one of them and handed him to the police.

Yesterday, Nakuru veterinary officers confirmed fears by area residents that they may have eaten donkey meat.

Journalists found two donkey skeletons and a fresh carcass at the farm.

The district veterinary officer, Dr Michael Cheruiyot, visited the scene and appealed to the public to expose the dealers. "There is nothing wrong with eating donkey meat but before this is

done, the donkey has to be inspected before and after it is slaughtered to check any noticeable disease," he said.

"Donkey meat can be consumed as a delicacy if inspected in the right manner and the members of the public should be notified of what they are buying."

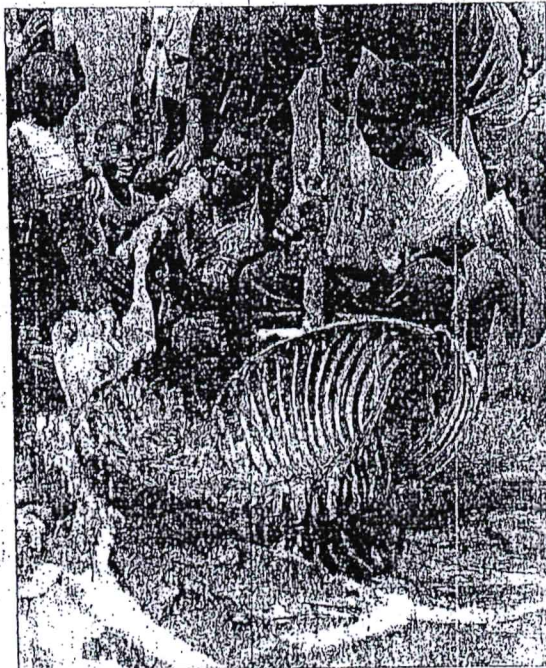
He said the suspect would be charged with cruelty because of slaughtering the donkey in the bush without observing the recommended humane manners.

Early this month, Chief Public Health Officer Alfred Lang'ndu appealed to the public to report any butchers they suspected as selling donkey meat to the authorities.

The appeal followed widespread claims of stolen donkeys in Kikuyu and Limuru, Kiambu, which were later found slaughtered.

Although the law is silent about the consumption of donkey meat, it forbids anyone from selling food that is unknown to the consumer.

Additional reporting by Ibrahim Albuli



Boys at Lanet in Nakuru near Muguga farm examining the remains of a donkey that was slaughtered in the area. So far five donkeys have been reported missing in the last two months.

Photo/Joseph Kibari

Women to start new war against cattle theft

By NATION Correspondent

Pastoralist women from Turkana, West Pokot and East Baringo have resolved to start a new campaign against cattle rustling.

They said they would patrol areas on their community boundaries.

District Officer Noah Tanyi of Arba in West Pokot, who chaired the meeting, asked them to reject stolen animals, saying that they were of no value to them.

They named areas in Turkana where they were prone to raids as Lorelay, Lohima, Lupa and Lorogon.

The peace crusade was sponsored by Community-Based Animal Health Participatory Epidemiology (CBAHE).

The women resolved that if they raid other communities, they would breast-feed their babies for 10 weeks in protest against the crime.

Ms Grace Rengeri read the resolution. "If our pastoralist men and women either Pokots or Turkana, who breastfeed our children until they are raised animals to the owners."

The women also warned against killing girls and old people, saying it was a curse to the local communities.

The government has reopened health centres in West Pokot that earlier been closed due to insecurity.

Turkwell and Supor health centres have received new staff from Eastern District Hospital.

Askaris pull down homes

By NATION Correspondent

More than 100 families were left homeless yesterday after council askaris pulled down their houses.

Awendo Town Council claimed that the families had built the semi-permanent houses on irregularly acquired plots and road reserves. Armed Administration police officers supervised the exercise.

Some building owners who attempted

to resist were beaten by the council workers. Scores of them were injured.

"Why should they evict us now when we have lived on the land for the last 10 years," said Mr Bernard Onyango, one of those evicted.

Meanwhile, the employment and promotion of some staff at Migori municipal council has been revoked.

The Local Government ministry ordered chief officers to stop irregular recruitment.

Yes! Clearly the best

This month's

04 88 75 10 84 99

winning

23 60 56 30 44 24

Yes! lucky number

74 80 68 32 08 52

combinations

85 58 46 84 99 30

GOOD NEWS DAY

2007-08

Yes! Rewards Customers

The 28th of every month is synonymous with rewards for hundreds of thousands of Kenyans who have subscribed to Yes! - the most reliable mobile phone service provider in Kenya.

benefit more from this popular promotion, the promotion has been extended to the month of September with another 120,000/- jackpot to be split among up to four lucky winners.

January - Removal of the reload fee.

February - Free SMS upon every reload for Yes! prepaid subscribers.

* 3 free SMS for 100/- and 600/- scratch cards

* 10 free SMS for 1,200/- and 3,000/- scratch cards

* 10 free SMS for Yes! privilege subscribers every month.

March - Double credit

April - Yes! per second billing.

May - 30 days of free SMS with one free SMS for Yes! prepaid subscribers and free 25/- for Yes! privilege subscribers.

June - Voice mail messages alert.

July - Ksh 120,000/- jackpot.

"Our Good News Day is a way of showing appreciation for our subscribers and to thank them regularly for their continued loyalty."

We keep our promise to offer additional value for their money and we will continue to do so"

Philippe Vandebrouck,
Managing Director,
KenCell Communications Ltd.

This month's good news day was the Yes! play & win which had an overwhelming response. To enable Yes! subscribers to

Since the launch of the Good News Days, Yes! subscribers have enjoyed the following Good News Day offers:

AWENDO TOWN COUNCIL

Tel: 059-43074

All correspondence to
be addressed to the Clerk to Council.

Our Ref: ATC/LND/16/1/4/VOL.I/102

P.O BOX 280
SARE AWENDO

Your Ref: _____

Date: 3rd June 2004

Permanent Secretary
Ministry of Local Government
P O Box 30004
NAIROBI

ATTN: MULI N MALOMBE

Dear Sir

RE: ILLEGAL ALLOCATION OF LAND

The letter Ref: 1142-174/9 dated 10th July 2003, 1142-174 dated 26th May 2004 and our reply Ref: ATC/LND/16/1/4/VOL.I/07 dated 21st July 2003 refers.

The land occupied by Awendo Township was acquired by the Government in 1976 vide Kenya Gazette Notice 3737 of 24th December 1977 and Kenya Gazette Notice 3738 of 24th December 1977.

The affected group now calling itself Awendo Timkinda Group, the Government adequately compensated all of them in 1977, and there is evidence (which I will deliver in person) of payments.

Most of those who are now claiming the land are children and grand children of the plot owners most whom have since died.

The Awendo Timkinda group have filed a case against the Town Council Case No. HCC No. 30/2003 in the High Court Kisumu. It is suprising that since 1976 there has not been a single complain till late 1990s, i.e. over 23 years. The area has been planned and plots given to the Public in 1994.

However, there is over 50 acres of land which was grabbed and the Council has initiated the process of repossession. The construction of our Office block is complete and is situated on a planned site. The development plan for the Township was completed in 1980, and nobody has ever raise a finger apart from the Awendo Timkinda Group. Most of the group members had fraudulently acquired free hold titles which we have since cautioned.

It's known that the parents of the Awendo Timkinda Group bought land parcels elsewhere, using the money paid. If not where have they been since 1976! It is our wish that this case is solved once and for all.

I have held several meetings with the members but they have not been straight forward in their case. The Government gave sufficient Notice vide Kenya Gazette Notice of 3738 of 24th December 1977, a meeting was convened by the Commissioner of Lands in SARE Primary for hearing of claims on the Friday 20th January

One of the complainants who signed the memorandum to the Minister collected his compensation claims on 17th May 1977 vide cheque No. 422232 of 25th March 1977 of Kshs 6,619/- ID No. 32336/61.

I'll forward other bulky details in one weeks time. For any other clarification please call me on 0734-829848 or 0734-547631.

Yours faithfully



J K K CHEBON
TOWN CLERK

c.c Commissioner of Lands
P O Box 30089
NAIROBI

District Commissioner
Migori District
P O Box 2
SUNA MIGORI

District Officer
Awendo Division
P O Box 22
SARE AWENDO

Provincial Local Government Office
Nyanza Province
P O Box 1571
KISUMU

OCPD
Migori District
P O Box
SUNA MIGORI

Chairman
Timkinda Group
P O Box 416
SARE AWENDO

5 (or)

MINISTRY OF LOCAL GOVERNMENT

Telegrams: "AUTHORITY", Nairobi
Telephone: Nairobi 217475
When replying please quote



P.O. BOX 30004
NAIROBI

26th May 2004 20.....

1142-174

and date

Mr. J. K. K. Chebon
Town Clerk
Awendo Town Council
P. O. Box 280
SARE - AWENDO

RE: ILLEGAL ALLOCATION OF LAND

We write to draw your attention to this office letter of even reference dated 10th July 2003, on the above captioned subject.

Apparently your office has not responded to the issues/concerns raised by this office, your inaction has led to the officers of Awendo Timkinda Group, once again, calling on the Hon. Minister on the same issues/concerns they had earlier on raised.

In lieu of the above, I am therefore directed to write to you in person and instruct you to fully address the concerns/issues raised by the complainants, and appraise this office accordingly.

By a copy of this letter the Provincial Local Government Officer, Nyanza is also directed to take an interest in the finalization, of this case. I would be grateful if you do the needful.

Muli N. MALOMBE
For: PERMANENT SECRETARY

CC: Provincial Local Government Officer
Nyanza Province
P.O. Box 1571
KISUMU

MINISTRY OF LOCAL GOVERNMENT

Telegrams: "AUTHORITY". Nairobi
Telephone: Nairobi 217475
When replying please quote



P.O. BOX 30004
NAIROBI

30th June 2004 20.....

Ref No. 1142-174
and date

Mr. J. K. K. Chebon
Town Clerk
Awendo Town Council
P.O. Box 280
SARE-AWENDO

RE: ILLEGAL ALLOCATION OF LAND

I refer to a letter written by Mr. John Ogutu , Chairman of Timkinda self Help Group on the above subject.

Kindly let us know your comments on the issues raised in this letter and urgently inform of your way forward to this issue.

Muli N. Malombe
FOR: PERMANENT SECRETARY

Encl.

CC: **Mr. John Eliud Ogutu**
Chairman
Awendo Timkinda Self Help Group
P.O. Box 416
SARE AWENDO

30/06/04

MINISTRY OF LOCAL GOVERNMENT

Telegrams: 'AUTHORITY', Nairobi
Telephone: Nairobi 217475
When replying please quote

P.O. Box 30004-00100
NAIROBI

Ref. No. 11226474/25



29th June 2005

Mr. P. Nderitu
Provincial Local Government Officer
Central Province
P.O. Box 1571
KISUMU

Dear *Nderitu*

ALLEGED ILLEGAL LAND ALLOCATION BY THE AWENDO TOWN COUNCIL

Enclosed please find a self-explanatory copy of letters from Awendo Timkinda Group (Project) and the Kenya Anti-Corruption Commission on the above subject matter.

The allegations raised are of a serious nature and warrant thorough investigation. Please launch thorough investigations immediately and revert to this office with your findings and way forward. Treat this as urgent.

Thank you.

Yours

Sincerely
Muli N. Malombe

Muli N. Malombe, HSC
For: PERMANENT SECRETARY

Encl.

C.C. Awendo Timkinda Group (Project)
P.O. Box 416
SARE-AWENDO

Don 29/06/05

Awendo Linkinda Self Help Group
P.O. Box 416,
Sare-Awendo,
29th June 2004.

The Permanent Secretary,
Ministry of Local Government
P.O. Box 5004,
NAIROBI.

Dear Sir,

RE: ILLEGAL ALLOCATION OF LAND

I kindly may I inform you that we met with the clerk Awendo Town Council in his office on 21st June 2004. Those who attended that discussion were:-

1. Mr. John Eliud Ogutu Sirama
2. Mr. Nelson Odhiambo Wanyango
3. Mr. James Omondi Amido
4. Mr. Bernard Odhiambo Wanyango
5. Mr. J. K. K. (Thebo)
6. Mr. John Chelilo Choka
7. Mrs. Helen Okumu
8. A Staff Member who was recording the deliberations

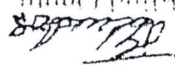
After lengthy discussion the clerk admitted to us that he did not have bulky document that he promised to take in person to you sir, as contained in his letter of even reference number A.T.C.L.ND 16-1 + Vol 102 dated 3rd June 2004 in reply to yours Ref. 1142-174 dated 26th May 2004. He stated in the last paragraph that he was to avail to you records of

payments among officers in one week's time.

The chairman Awendo Town Council also stated to us that he only heard rumours from people that free hold-land parcels bordering Awendo market were bought by the government and he too was not in a position to produce the alleged documents of payments.

It is our prayer that you finalize this our plea to enable us be in peace with the council officials of Awendo town council.

I thank you in advance.


John Eliud Ogutu
(Chairman)

(cc) The Clerk Awendo Town Council

Timkinda Self Help Group

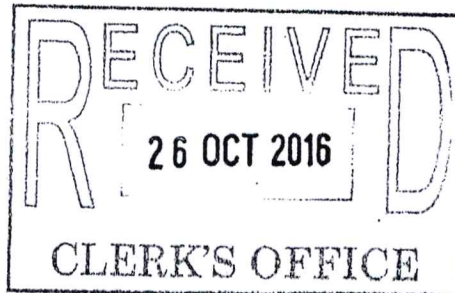
c/o P O Box 2008-40200

KISHI

25th October, 2016

To:

Kenya National Assembly
Clerk's Chambers
Parliament buildings
P O Box 41842-00100
Nairobi, Kenya



**RE: FIELD VISIT BY THE DEPARTMENTAL COMMITTEE ON LANDS
TO AWENDO, MIGORI COUNTY ON SUNDAY 15TH FEBRUARY, 2015**

Members of the above committee visited Awendo to investigate, inquire into and report on the status of land that had been given back to original owners by the government after the government had compulsorily acquired same but did not utilize it for the purpose of acquisition. Copies of the Chief Land Registrar's letter, title deeds and notice are attached herewith for your reference. However the committee has never made known its findings on the status of the land though the original owners have title deeds for their respective portions. The County Government of Migori continues to interfere with possession, use and occupation of the parcels of land by the original owners.

Land grabbers through the sanction and assistance of the County Government of Migori are invading the lands to terrorizing and unleash violence on the owners. We petition the departmental committee to make known to us its findings on the status of the land to stop further suffering and violence.

Yours faithfully

FOR: TIMKINDA SELF HELP GROUP

1. Eliud Ogutu Sirama
Chairman
2. Nelson Oduor Onyango
(Secretary)

.....*Eliud Ogutu*.....

.....*Nelson Oduor Onyango*.....



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)

CONVEYANCE OF PUBLIC PETITION

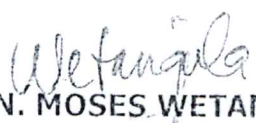
(No. 11 of 2023)

REGARDING THE ILLEGAL ACQUISITION OF PRIVATE LAND BY THE
DEFUNCT AWENDO TOWN COUNCIL

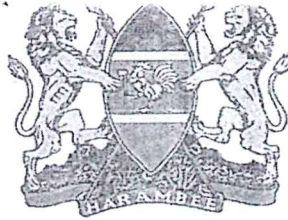
1. **Honourable Members**, Article 119 of the Constitution accords any person the right to petition Parliament to consider any matter within its authority. Further, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition other than those presented by a Member.
2. In this regard, **Honourable Members**, I wish to report to the House that my office has received a petition from one *Mr. Boniface Otieno Opere of Identification Number No. 4238636* and four others representing members of *Tim Kinda Self - Help Group* in Awendo Town, Migori County.
3. The Petitioners state that in 1988 the allocation of plots to various persons was halted by the then South Nyanza District Plot Allocation Committee on grounds that the government had not acquired the said pieces of land. The Petitioners claim to have lodged a complaint with the Ministry of Lands and were confirmed to be the legal owners of the said land.
4. The Petitioners further aver that, in 2003, the Awendo Township Council embarked on evicting land owners without any notice or orders from any court on grounds that the said parcels of land had been compulsorily acquired by government.

5. **Honourable Members**, the Petitioners consequently took legal action in 2005 by suing the Awendo Town Council at the High Court in Kisii, which ruled in their favour. Unfortunately, the Council failed to produce acquisition and compensation documents to the court as directed.
6. **Honourable Members**, further efforts by the petitioners to compel Awendo Town Council to produce acquisition and compensation documents were thwarted as the appeal was dismissed and directed to the District Land Registrar to issue title deeds to the original land owners.
7. **Honourable Members**, the petitioners further state that the Awendo Town Council having been dissatisfied by the judgement of Court of Appeal, applied for a certificate to appeal its decision at the Supreme Court which was dismissed by the Supreme Court.
8. **Honourable Members**, the Petitioners therefore pray that the National Assembly engages the Ministry of Lands, Housing & Urban Development to ensure that the Petitioners are duly compensated for the lands they lost due to illegal allocation by the defunct Awendo Town Council.
9. **Honourable Members**, having established that the matter raised in the Petition is well within the authority of this House; and further, that the matters raised are not pending before any court of law, constitutional or legal body, I hereby commit the Petition to the Public Petitions Committee for consideration pursuant to Standing Order 208A.
10. The Committee is required to consider the Petition and report its findings to the House and to the Petitioners in accordance with Standing Order 227(2).

I thank you.


THE RT. HON. MOSES WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Date



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)

CONVEYANCE OF PUBLIC PETITION

(No. 11 of 2023)

REGARDING THE ILLEGAL ACQUISITION OF PRIVATE LAND BY THE
DEFUNCT AWENDO TOWN COUNCIL

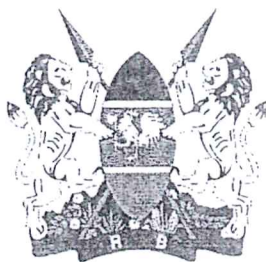
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4. The Petitioners further aver that, in 2003, the Awendo Township Council embarked on evicting land owners without any notice or orders from any court on grounds that the said parcels of land had been compulsorily acquired by government.

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I thank you.


THE RT. HON. MOSES WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Date



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION (2023)

BRIEF ON PETITION NO. 11 OF 2023 REGARDING THE ILLEGAL ACQUISITION OF
PRIVATE LAND BY THE DEFUNCT AWENDO TOWN COUNCIL

DIRECTORATE OF LEGAL SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

AUGUST, 2023

BRIEF ON PETITION NO. 11 OF 2023 REGARDING THE ILLEGAL ACQUISITION OF PRIVATE LAND BY THE DEFUNCT AWENDO TOWN COUNCIL

I. INTRODUCTION

A. Legal underpinning of the Petition

1. Article 37 of the Constitution under the Bill of Rights provides for the right of any citizen to present petition to public authorities. Article 119 of the Constitution further provides for the right of every person to petition Parliament to consider any matter within its authority.
 - a. **The Role of the National Assembly**
 2. Article 95 (4) and (5) of the Constitution provide that *The National Assembly represents the people of the constituencies and special interests in the National Assembly, deliberates on and resolves issues of concern to the people and exercises oversight of State organs among other functions.*
 - b. **The Right to Petition Parliament**
 3. Article 119 of the Constitution provides that *every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.*
 4. The Petition to Parliament (Procedure) Act 2012 and the National Assembly Standing Orders provides further for the procedure to be followed to ensure the right is exercised. Accordingly, the Standing Orders provides for a period of 90 days for the petition to be considered by the Committee upon referral by the Speaker.
 5. This petition seeks to have the intervention of this Committee to engage the Ministry of Lands to ensure the Petitioners are duly compensated for the lands they lost due to illegal allocation by the defunct Awendo Town Council and make any other recommendation or action it deems fit in addressing the matters raised in the Petition.
 6. It is on this account that the Petition was presented to the National Assembly by Mr. Boniface Otieno Opere, Mr. John Okello Anindo, Ms. Rose Akumu and Mr. Nelson Oduor Onyango all who are members of Tim Kinda Self-Help Group in Awendo Town.

B. Summary of details of the Petition

7. The Petitioners states that—
 - (a) in 1985 Awendo Town Council officials commenced the process of allocating 371.575 acres of land in Awendo to third parties without the consent of the original land owners;

- (b) in 1988 the allocation of the plots to various persons was halted by then South Nyanza District Plot Allocation Committee on grounds that the government had not acquired the said pieces of land;
- (c) as a result, the Petitioners lodged a complaint with the Ministry of Lands which confirmed that the Petitioners were the legal owners of the said land;
- (d) subsequently, the then Chief Land Registrar directed the district land registrar to re-survey and issue title deed to the land owners;
- (e) in the year 2003, the Awendo Township Council instead embarked on evicting land owners by demolishing, burning their houses and destroying their properties without any notice or orders from any court on grounds that the said piece of land had been acquired by government;
- (f) the owners of the land subsequently lodged a complaint with the then Ministry of Local Government for compensation following the acquisition of their land however the Ministry declined the request and referred the Petitioners to back to Awendo Town Council;
- (g) subsequently in 2005, the land owners took legal action by suing the Awendo Town Council in the High Court at Kisii;
- (h) the Awendo Town Council failed to produce acquisition and compensation documents to the court and the High Court declared that the parcel belonged to the Petitioners;
- (i) Awendo Town Council appealed against this decision before the Court of Appeal. The Court of Appeal; dismissed the Appeal and directed the district land registrar to issue title deeds to the original owners;
- (j) Awendo Town Council not being satisfied with the Appellate Judgment filed a certificate to appeal before the Supreme Court, the same was dismissed by the Court of Appeal;
- (k) That despite efforts to have the matters raised in the Petition addressed by the relevant bodies and offices, the efforts of the Petitioners have been futile; and

- (l) The matters raised in the Petitioner are not pending in any court of law, or constitutional, or legal body.

C. Prayers sought by the Petitioner

8. The petitioner therefore seeks the intervention of the House Committee to—
 - (a) engage the Ministry of Lands to ensure the Petitioners are duly compensated for the lands they lost due to illegal allocation by the defunct Awendo Town Council; and
 - (b) make any other recommendation or action it deems fit in addressing the matters raised in the Petition.

II. ANALYSIS OF THE MAJOR ISSUES IN THE PETITION/PRAYERS

(a) *Whether this matter was conclusively dealt with by the Courts*

9. The Petitioners allege that the matter was dismissed by the Supreme Court. However, that is not true. The Directorate did conduct a search in this matter and the evidence point to the contrary.
10. Through Miscellaneous Application in *Town Council of Awendo v Nelson Oduor Onyango & 13 Others (2015) eLKR*, the Applicant applied for review of the decision of the Court of Appeal in Civil Application No 5 of 2014. The Court of Appeal had declined to certify the matter as one including matters of general public importance. The Application was filed on the ground that the Court of Appeal did not evaluate all the material before it and making the decision it made.
11. The Court held that the matter raised raises weighty issues touching on good governance hence allowed the application and proceeded to hear the petition of Appeal.
12. In *Town Council of Awendo v Nelson O Onyango & 13 others; Abdul Malik Mohamed & 178 others (Interested Parties) [2019] eKLR* the Supreme Court determined the matters raised in the Petition. The Supreme framed issues and determined them as follows:
 - (i) *Whether a proprietor, whose land has been compulsorily acquired by the state, for a public purpose, in accordance with the Constitution and the Law, retains a reversionary interest in, or a pre-emptive right over any un-utilized portion of such land, should the public purpose for which it was acquired become spent"*
13. The Apex Court determined that the suit land was compulsorily acquired by the Government of Kenya in accordance with the provisions of Section 75 of the repealed Constitution and section 6(2) of the Land Acquisition Act 1968 (now repealed). The Court also determined that the 1st to the 13th Respondents were fully compensated in accordance with the applicable

purpose.

14. There was however contention as to whether the suit land was acquired for the establishing the South Nyanza Sugar Scheme in South Nyanza District and to whether that was public purpose. The Court determined that the purpose for which land parcels were acquired fall within the rubric of public purpose within the meaning of Section 75(1) of the retired Constitution. The said parcels were acquired on one hand for the town and county planning and on the other hand for the development of, or utilization of the said lands so as to promote the public benefit.
15. The Court held that the proper basis for determining the specific nature of the purpose for which the suit lands were acquired, is the language used in the two Gazette Notices. Gazette Notice No. 2996 states that the specified parcels of land are to be acquired for "the South Nyanza Sugar Scheme" while Gazette Notice No. 3737 states that the specified parcels are to be acquired for the South Nyanza Sugar Scheme (Awendo Township Expansion) in South Nyanza District.
16. The two Gazette Notices do not refer to the same parcels of land. On the contrary, the Notices are distinct and refer to different parcels of land. Thus Gazette Notice No. 3737 refers to land title nos. North Sakwa/Kamasonga/204 (plot no. 204), North Sakwa/Kamasonga/34 (plot no. 34), North Sakwa/Kamasonga/1081 (plot no. 1081), North Sakwa/Kamasonga/1093 (plot no. 1093), North Sakwa/Kamasonga/1111 (plot no. 1111), North Sakwa/Kamasonga/1067 (plot no. 1067), North Sakwa/Kamasonga/207 (plot no. 207), North Sakwa/Kamasonga/45 (plot no. 45), North Sakwa/Kamasonga/111 (plot no. 111), and North Sakwa/Kamasonga/202 (plot no. 202) in respect of the 2nd, 3rd, 4th, 5th, 8th, 9th, 10th, 11th and 12th respondents respectively (hereinafter the Suit Land).
17. North Sakwa/Kamasonga/1193 (Plot No. 1193) in respect of the 7th Respondent was not on the list of parcels of land acquired by the two Gazette Notices. **The tentative conclusion regarding the said title therefore, is that it was never compulsorily acquired.** Besides, it is noted from the Record that land title No. North Sakwa/ Kamasonga/ 46 (Plot No. 46) in respect of the 1st Respondent and Land Title No. North Sakwa/ Kamasonga /168 (Plot No. 168) in respect of the 13th Respondent were acquired vide Gazette Notice No. 2996. Finally, a perusal of the Record reveals the fact that some of the Respondents herein, to wit, the 3rd, 9th, 10th, 11th and 12th were not the original proprietors of the parcels in question. However, they refer to themselves in their supporting affidavits as beneficial owners.
18. The Court hence determined that a plain reading of notices clearly indicates that the intention of acquiring the land parcels listed therein was for establishing the South Nyanza Sugar Scheme. This must be taken to refer to all that it entails to establish such a scheme, including the factory, sugar plantations, offices, plant and machinery and all necessary

infrastructure. Hence no dispute regarding the establishment of South Nyanza Sugar Scheme. As for Gazette Notice No. 3737, it is stated that the listed parcels therein are to be acquired for the South Nyanza Sugar Scheme (Awendo township Expansion) in South Nyanza District.

19. The operative words are the bracketed ones i.e., "Awendo Township Expansion". The two Gazette Notices, although linked in material particulars, could not have been referring to the same purpose for the compulsory acquisition. The inclusion of the words "Awendo Township Expansion" must be taken to mean that there was another purpose other than, but related to, the actual establishment of the South Nyanza Sugar Scheme. This other purpose was the expansion of the Awendo Township. Is it any wonder then that the two Gazette Notices did not refer to the same parcels of land"
20. The establishment of the South Nyanza Sugar Scheme within the vicinity of Awendo Township meant that the latter, had to be expanded to accommodate the functionality of the former. The need to expand the Township, necessitated the further acquisition of extra land, for that purpose, as was clearly stated in the brackets. The words "Awendo Township Expansion" must surely be taken to mean something, otherwise why were they included in Gazette Notice No. 3737" Why didn't the latter Notice simply echo or replicate the words in Gazette Notice No. 2996" Is it not logical, if not compulsive, to assume that the establishment of the Sugar Company would trigger demands, upon the Township of a socio-economic, demographic and financial nature, hence the need for its expansion" For example, where were the experts, labourers, company executives, their spouses and children to be accommodated for them to serve the Sugar Company" Where were they to seek health, financial, recreational, educational, and other social services" One could go on and on. The purpose for which all that land, comprised in Gazette Notice No. 2996, i.e., the establishment of SOUTH NYANZA SUGAR SCHEME in South Nyanza, had been fully accomplished by the time of filing Civil Case No. 133 of 2005 at the High Court. Hence, there were no "un-utilized portions" of land in the block to which the said Gazette Notice applied.

(ii) Reversionary Interest in or Pre-Emptive Rights over Compulsorily Acquired Land

21. What was before the Court was whether a proprietor whose land has been compulsorily acquired, nonetheless retains some reversionary interest in, or pre-emptive rights over, the un-utilized portions the land.
22. Reversion refers that interest in land that survives the expiry or extinction of an estate in the said land. Upon the extinction or expiry of the estate, the interest reverts to the person or entity from whose superior title the estate was originally created.

time in the land or a land for a time. Hence a holder of a fee simple estate retains interest in that land for as long as there will be an heir to inherit the same. In case there is no heir to inherit, the land reverts back to the state. The state holds a superior title to the land commonly called, "radical title" upon it being compulsory acquired, the fee simple estate becomes extinguished as the State exercise its powers of Eminent Domain. Same to a landlord-tenant relationship. The tenant holds the leasehold estate while the landlord retains the reversion which, upon the expiry of the leasehold, is surrendered back to the landlord, since the landlord holds superior title which the lease was created.

24. The title acquired by the petitioners save for the 7th Respondent became extinguished upon the compulsory acquisition. Their estates in the said parcels ceased to exist and became fused with the States' superior title. These parcels became public land, having been compulsorily acquired for public purpose in accordance with the Constitution and the law. The Petitioners were compensated for the loss of their land to the public interest.

25. Consequently, the Court gave the following guiding principles insofar as this is concerned—

- (a) Where the Government, pursuant to the relevant constitutional and legal provisions, compulsorily acquires land, such land, shall only be used for the purpose for which it was compulsorily acquired.
- (b) The allocation of compulsorily acquired land, to private individuals or entities, for their private benefit, in total disregard of the public purpose or interest for which it was compulsorily acquired, shall be incapable of conferring title to that land in favour of the allottees.
- (c) A person whose land has been compulsorily acquired in accordance with the relevant constitutional and legal provisions does not retain any reversionary interest in the said land.
- (d) Un-utilized portions of compulsorily acquired land may be used for a different public purpose, or in furtherance of a different public interest, including the allocation of such portions to private individuals or entities, at the market price, in furtherance of such public interest.

26. With finality the Court ruled that—

- (a) Through the instrumentality of Gazette Notices Nos. 2996 and 3737 of 1976, all parcels of land whose land titles are listed therein respectively, were compulsorily acquired and vested in the Government of Kenya.
- (b) The Migori County Government holds that land in trust for the residents of the area, and as the Implementing Agency of the public purpose for which the land was compulsorily acquired.
- (c) The letter written by the Land Registrar, directing the Appellant to re-survey the land and allocate the same to the original owners or their successors in title had no legal basis.

- (d) The 1st and 13th Respondents have no reversionary interest in the parcels of land listed in the two Gazette Notices, since titles thereto were extinguished through the compulsory acquisition of the same.
- (e) The purpose for the acquisition of all those lands listed in Gazette Notice No. 3737 of 1976 (The Suit Land) was for the expansion of Awendo Township in South Nyanza District. Such expansion, was necessitated by the establishment of South Nyanza Sugar Scheme, through Gazette Notice No. 2996.
- (f) The land comprised in Gazette Notice No. 3737 was not “un-utilized land”, given the fact that the expansion of Awendo Township is an on-going process.
- (g) The allocation of various parcels of land comprised within Gazette Notice No.3737, at a price, to the Interested Parties, for the establishment of residential, commercial and other amenities such as churches, etc., was in furtherance of the expansion of Awendo Township.
- (h) By purchasing the said plots, and using them for residential, commercial and other purposes in consonance with the public interest, and in the absence of any proof of fraud on the part of the Interested Parties, the latter acquired valid title which cannot be defeated by the claims of the Respondents herein.
- (i) The 7th Respondent (Obiero Omedo) shall be fully compensated by the Government of Kenya for the loss of his Land Title No. North Sakwa/Kamasonga/1193.

27. In considering the prayer for compensation, the Honourable Committee should take note of the binding nature of the Supreme Court decision. The decision of the Supreme Court is binding on all Courts unless it is reviewed by the Supreme Court.

III. CONCLUSION

28. In light of the foregoing legal provisions, and in considering the Petition—

- (a) the Honourable Committee should take note of the binding nature of the Supreme Court decision;
- (b) Seek the views of the Petitioners to establish whether they were fully compensated by the Government as was declared by the Court; and
- (c) Seeks views of the National Land Commission.

Omondi Shadrach
LEGAL COUNSEL
NATIONAL ASSEMBLY

1292
04/07/24



3 JUL 2024
RECEIVED (1)
NAIROBI - KENYA

COUNTY GOVERNMENT OF MIGORI
OFFICE OF THE COUNTY SECRETARY

Telegrams: "MIGORI COUNTY" Migori
Tel: 0726319450/0736860086/0770304976
E-mail: countysecretary@migori.go.ke

P. O. Box 195-40400
SUNA MIGORI

REF: No. CGM/CS/G.C/VOL.VI/24/036

Date: 1st July, 2024

The Clerk

The National Assembly
P. O Box 41842-00100
NAIROBI

**NATIONAL ASSEMBLY
RECEIVED**

24 JUL 2024

PROCEDURAL, RESEARCH AND JOURNALS
P. O. Box 41842, NAIROBI

② Head, PRS
Please ensure registered
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108/07/24
③ Mr. Oben
TNA
AK

Dear

RE: RESPONSE TO PUBLIC PETITIONS COMMITTEE ON VARIOUS PUBLIC PETITIONS

The County Government of Migori is in receipt of your letter Ref: **KNA/DLPS/PPETC/CORR/2024/124** dated 20th June 2024 on the above subject matter and wish to respond as follows:

1. Public Petitions on Delayed Adjudication and Settlement of Squatters after the Expiry of Lease of Macalder Mines Ltd (marked as **Annex 1**)

a) **Honourable Members**, it is true that the National Assembly did invite the County Executive Committee Member (CECM) for Lands, Housing, Physical Planning and Urban Development to appear before the National Assembly's Public Petitions committee to provide response on the above matter. It is however not true that the CECM failed to appear before the committee.

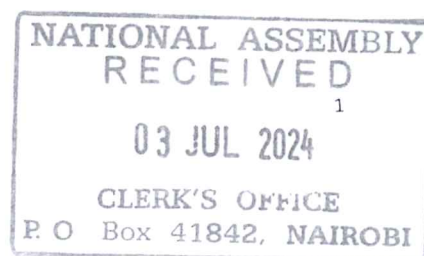
b) **Honourable Members**, the truth is that the County Government of Migori through the CECM for Lands, Housing, Physical Planning and Urban Development did appear before the committee on Thursday, 24th August 2023 in which meeting he undertook to provide a written response to the said petition.

c) **Honourable Members**, after his appearance before the committee, the CECM did submit a written response to the Public Petitions Committee on the Delayed Adjudication and Settlement of Squatters after the Expiry of the Lease of Land to Macalder Mines Ltd vide Ref: **MCG/CECM/LHPPUD/NA/13/5/024(2)**, dated 12th May, 2024. This written submission was sent to the Office of the Clerk of the National Assembly through G4S on 11th May, 2024. (Copies herewith attached marked as:)

- i. **Annex 1 A**
- ii. **Annex 1 B**



Written response letter
G4S receipt



d) **Honorable members**, our submissions on this matter as contained in our response above do take into account the interests of the members of the public in that area as contained in the petition while also seeking to uphold the rule of law in as far as the allocation of public land is concerned.

2. Public Petition on Illegal Acquisition of Private Land by the Defunct Awendo Town Council (marked as **Annex 2**)

a) **Honourable Members**, this matter that has been raised before this Honorable committee went through an entire judicial process which culminated in the Supreme Court of Kenya Civil Petition No. 37 of 2014 and a judgment was delivered on 30th April 2019 (Copy herewith attached marked as **Annex 2 A**). The orders were as follows;

(i) The Petition of Appeal dated 10th December 2014 was allowed.

(ii) The Judgment of the Court of Appeal dated 18th October, 2013 was overturned.

(iii) Compensation by the Government of Kenya was ordered to the 7th Respondent for the loss of his Land Title No. North Sakwa/Kamasonga/1193.

(iv) Each Party was to bear their own costs of the Appeal.

b) **Honorable members**, while the petitioners did assert (as contained in the petition document earlier referenced as Annex 2) that the appeal by the Town Council of Awendo was dismissed, the matter was, as a matter of fact heard and determined in favour of the Petitioner (Town Council of Awendo). (**See Annex 2 A above**).

c) **Honorable members**, the order with regards to compensation as contained in the judgment referenced above affected only the 7th respondent (the proprietor of Parcel No. **North Sakwa/ Kamasoga/ 1193**) who was to be compensated by the Government of Kenya for the loss of his land.

I wish to reiterate the commitment of the County Government of Migori to work effectively with this honorable committee and the National Assembly as we endeavor to serve the citizens of Migori County and the nation at large.

We would welcome the opportunity to discuss the matter in further details should there be need.

Yours

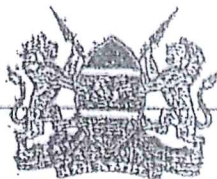


Oscar O. Olima
County Secretary and Head of Public Service
COUNTY GOVERNMENT OF MIGORI

CC. H.E the Governor
MIGORI COUNTY

CECM for Lands, Housing, Physical Planning and Urban Development
MIGORI COUNTY

Encl.



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)

PUBLIC PETITION

(No. 4 of 2023)

**ON DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS
AFTER THE EXPIRY OF LEASE OF MACALDER MINES LTD LAND**

I, the **UNDERSIGNED**, on behalf of the residents of Nyatike Constituency;

DRAW the attention of the House to the following:

1. **THAT**, the Macalder Mines in Nyatike Location, Nyatike Constituency measuring approximately 300 acres is among ancestral land belonging to the people of Nyatike Constituency given up following a mining lease to the Macalder Mines Ltd in 1935 and which company had been conducting mining activities in the land until 1966;
2. **THAT**, the leasing of the land dispossessed the rightful owners of the land rendering them squatters despite Macalder Mines Ltd apportioning portions of the land for residential purposes and open mines;
3. **THAT**, upon the exit of the Macalder Mines Ltd from Kenya in 1970, the land was not fully developed except the residential areas inhabited by gold miners and a portion of land inhabited by local workers;

**ON DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS
AFTER THE EXPIRY OF LEASE OF MACALDER MINES LTD LAND**

4. **THAT**, most landless citizens who had given up their land to Macalder Mines Ltd began settling back and farming in the undeveloped lands;
5. **THAT**, the number of people settling in the land increased between 1970s and 1990s when the local chief allocated people the said land;
6. **THAT**, the people who have settled in the land have put it into good economic use, constructed residential houses and commercial centres which are earning them income, but the government has neither adjudicated the land nor issued title deeds;
7. **THAT**, records held at the Department of Land Adjudication, Land Registrar and Department of Survey are allegedly erroneous hence causing uncertainty among affected families and land owners;
8. **THAT**, the alleged reluctance of the County Government of Migori and the national government to adjudicate the land and issue title deeds amounts to denying the affected community access to fair administrative action;
9. **THAT**, the issues in respect of which this Petition is raised are not pending before any Court of Law, Constitutional or any legal body;

THEREFORE, your humble petitioners pray that the National Assembly through the Public Petitions Committee;

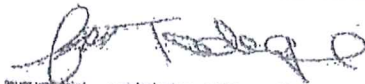
1. Engages the Ministry of Lands to ensure that the Macalder land is re-adjudicated to allow the owners to acquire title deeds and save the residents from alleged erroneous and missing records; and

**ON DELAYED ADJUDICATION AND SETTLEMENT OF SQUATTERS
AFTER THE EXPIRY OF LEASE OF MACALDER MINES LTD LAND**

- ii. Makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.

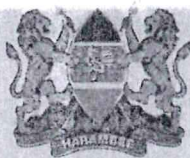
And your PETITIONER will ever pray.

PRESENTED BY:



THE HON. TOM MBOYA ODEGE, MP
MEMBER FOR NYATIKE CONSTITUENCY

DATE: 16.02.2023



REPUBLIC OF KENYA
COUNTY GOVERNMENT OF MIGORI

Telegrams: "MIGORI COUNTY" Migori

P.O. BOX 195 – 40400
SUNA – MIGORI

Email: migoricountygov@gmail.com

Ref No: MCG/CECM/LHPPUD/NA/13/5/024(2)

Date: 12th May, 2024

Clerk of The National Assembly
The National Assembly
P.O. Box 41842-00100
Nairobi, Kenya

Dear Sir,

**RE: MEETING WITH THE PUBLIC PETITIONS COMMITTEE ON VARIOUS
PUBLIC PETITIONS**

Reference is made to your letter Ref: KNA/DLPS/PPETC/CORR/2024/008 dated 15th February, 2024 on the above subject matter.

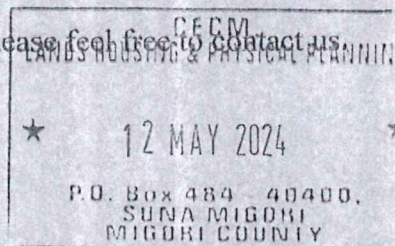
Please find enclosed our official response to the **Public Petition on Delayed Adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd Land** (*Copy attached*).

In contextualizing the petition, the basis of the interests and concerns centre around settlement of the occupants of the said parcel of land. Within my scope of responsibilities, I have provided some additional context and information to address specific inaccuracies contained in the petition including misconceptions around land ownership.

It gives me immense pleasure to inform you that your request for another meeting to deliberate on the **Public Petition on Illegal Acquisition of Private Land by the defunct Awendo Town Council** is most welcome.

In case of any further queries, please feel free to contact us.

Yours sincerely,



Hon. Eng. John O. Kobado, FKIM
CECM, Lands, Housing, Physical Planning & Urban Development

REPUBLIC OF KENYA
MIGORI COUNTY GOVERNMENT

RESPONSE TO PUBLIC PETITION

(No. 4 of 2023)

ON DELAYED ADJUDICATION

AND

SETTLEMENT OF SQUATTERS AFTER THE EXPIRY OF LEASE OF
MACALDER MINES LTD LAND

I, HON ENG. JOHN KOBADO OF P.O BOX 195-40400 Suna-Migori do hereby make oath and solemnly state as follows;

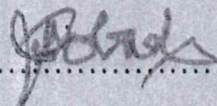
1. THAT I am a male adult of sound mind, a resident of Migori Town within Migori County.
2. THAT I am the County Executive Committee Member in the department of Lands, Housing, Physical Planning and Urban Development Migori County Government. I am familiar with the facts the subject of the present proceedings and having being duly authorised by Migori County Government hence competent to swear this Affidavit on its behalf.
3. THAT I have read the Public Petition No. 4 of 2023 dated 16th February by the residents of Macalder and having understood the import thereof, I wish to respond to the matters raised therein as below;
4. THAT the land parcel in question is Land Reference No. 17955, measuring 2,500 Hectares which translates to 6,177.8 Acres, as per Fixed Boundary Survey Plan No. 49/48, and approved by the Surveyor General on 13th March, 1942.
5. THAT the fixed boundary survey above formed the basis of the lease to Macalder Mines Limited.
6. THAT the land adjudication process for Macalder was initiated in 1969 and completed in 1981.

7. THAT the parcel of land was adjudicated as *Muhuru Kadem/Macalder/498* for **SOUTH NYANZA COUNTY COUNCIL** with reservation for Macalder Township.
8. THAT when a Lease expires on a particular Parcel of Land, the land reverts to the Lessor but not to the people residing near such a parcel of land.
9. THAT in this particular case, the land reverted to the County government of Migori. The County Government was the Lessor after it took over the Assets and Liabilities of the defunct Local Authorities.
10. THAT the leasing of the land did not dispossess the rightful owners of the land rendering them squatters because leasing was effected before Land Adjudication started in Nyatike.
11. THAT Land Adjudication is the process by which all existing rights in any particular parcel of land are finally and authoritatively ascertained.
12. THAT the existing rights are merely recognized and confirmed in adjudication record and demarcation map; collectively known as the Adjudication Register.
13. THAT upon the exit of the Macalder Mines Limited from Kenya in 1970, all the land that had been leased for mining reverted to the Lessor which is the County Government of Migori.
14. THAT the land which was being used for mining was not leased from Private Citizens in Nyatike but from the then Local Authority.
15. THAT in view of the foregoing, the people who have been farming in the undeveloped land have been doing it illegally and therefore, public land shall never be acquired through prescriptive rights available irrespective of the number of years they have occupied the aforementioned land.
16. THAT the local chief does not have any powers to allocate any public land to a private developer under any laws in Kenya. The allocation of public land is clearly stipulated in the relevant laws in Kenya.
17. THAT people who enter into public land illegally and make economic use, construct residential houses and commercial centres which are earning them income does not give any rights to legal occupation of any public land.
18. THAT the records held at the Land Adjudication, Land registry and Department of Survey are not erroneous but are Government records which followed the laid down procedures of creating such Local Records as stipulated by the Law.

mandated to keep in safe custody all official maps in Kenya including Maps for insurance of Title Deeds and therefore Survey of Kenya is the only Official Mapping in Kenya.

20. THAT land adjudication has been going on in Nyatike and determination of the rights of occupiers of Land through the Land Adjudication Process as stipulated in the Land adjudication Act CAP 284 Laws of Kenya.
21. THAT the issues raised in the petition are null and void because there are land records which followed the due process of creation in Nyatike.
22. THAT the facts deposed to hereinabove are true to the best of my knowledge, information and belief, save for facts which I have deposed to on information and beliefs the sources whereof I have disclosed.

SWORN BY THE SAID
HON ENG. JOHN KOBADO



COUNTY EXECUTIVE COMMITTEE MEMBER (CECM) FOR LANDS,
HOUSING, PHYSICAL PLANNING AND URBAN DEVELOPMENT MIGORI
COUNTY GOVERNMENT



IN THE PRESENCE OF



COMMISSIONER FOR OATHS

DATE: 14th May, 2024



Shipment Waybill

Cash ☐ Mobile Money ☐ Others: ☐



G4SWB0633464949602

Please quote this number for any enquiry

Consignor Name:

Physical Location:

Town:

TEL:

Consignee Name:

Physical Location:

Town:

Contact Person:

TEL:

Remarks:

Shipment Type:

No	Type	Qty	Weight (KGS)
	Cover		
	Mailbag		
	Parcel/Bulky		
1			
2			
3			
4			
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6			
7			
8			
9			
10			

TOTAL

Service Type(Tick)

Express-09:00 ☐ Express-11:00 ☐ Express-24Hrs ☐ Dedicated ☐
Same Day ☐ Export ☐ Other ☐

Confirmed by (Official use only)

Name	
Co No	
Signature	
Date	

Shipment Charges (KES)

Charges	
Other	
Insurance	
Extra Delivery	
Total	
GIT Insurance	Yes ☐ No ☐

Sender / Representative

Name	
Signature	
ID No	
Phone No	
Date	

The provision of services as depicted on this waybill are subject to the standard terms and conditions of G4S, as contained overleaf

Details of G4S employee who received the shipment

Name	
Company no:	
Collection Branch	
Time	
Date	
Signature	

Stamp	Remarks

Time:

Delivery Person Details:

Vehicle Reg No.:

Name:

Co. No:

OP Zone:

Signature:

I confirm the goods are in good condition.
Full Name:

ID:

Date:

Signature:

Time:

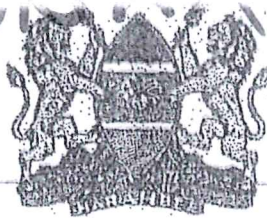
CONDITIONS OF SERVICE

Both $\mathcal{C}_1$ and $\mathcal{C}_2$ have the same size as the $\mathcal{C}_1$ group, and have the following properties:

- [illegible]

- [illegible]

- 1) The Customer may not bring the responsibility of the Contractor main payments to the Company, especially in case of a suspension of the Contractor's activity or the fact of such payments to be made by a person other than the Contractor's representative.
- 2) The Company shall have the right to increase by 12% the amount of any charge which is not paying the distribution which it constitutes the Contractor's representative.
- 3) During any work in which the fulfilment of the Contractor's activity require the Company to perform the service specified herein or a public works the Company shall be entitled to make a reasonable extra charge to reflect any additional costs incurred by the Contractor in performing such services.
- 4) In the event of the incidence of a "force majeure" or any situation other exceptional circumstance this Contractor shall require the Company and the Company shall agree to carry out the service herein requested by the Contractor by any other than that specified the Company that shall be needed to charge a reasonable additional fee to reflect any additional costs to be incurred.
- 5) The Customer understands that the Company shall not be required or bound to carry out country anything if such work or convenience would be unlawful, including the carrying out of any letter or any other documents or any legislation relating to the earnings of mail and the Company shall not, without its specific agreement carry out any postal services, goods, telecommunications and any other communication or transmission of information.
- 6) The Customer understands that:
- a) The Customer's relevant representative will accept delivery of any Commitment to be delivered to him under this Contract at the relevant delivery point and that the Customer's relevant representative will be liable to the Company's representative, excepting such relevant representative, in the event of the Company's representative not being able to deliver the Commitment to the relevant delivery point an appropriate record thereof which shall be conclusive evidence of the delivery of such Commitment save where such a statement is a result of a fraud or collusion or dishonesty on the part of the Company's representative.
- b) In the event of any of the Customers employees the company's representative will not be asked to perform any additional duties of a strike breaking nature.
- c) During the subsistence of this Contract and within one year after the termination thereof (however the same may be determined) the Customer will not either directly or indirectly employ in any capacity whatsoever any person who shall have been either worked or served of the Company or who shall have worked or served on the Customer hereunder or worked on services provided to the Customer hereunder.
- d) knowledge, acquired by any firm or company promoted, managed, assisted, carried on, controlled by or for or by any person owned (whether alone or in partnership) controlled by or for or by any person who shall have similar service to that to be provided by the company's representative.
- 7) The Contract
- a) Shall constitute the entire contract between the customer and the customer and shall not incorporate or be deemed to incorporate the provisions of any express or implied document.
- b) Shall supersede the provisions of any previous contract, warranty or representations or conditions or given relating to the same service as are described in the scope of work.
- 8) No variation, extension, amendment or cancellation of the expressed terms shall be binding upon the company unless and until it is confirmed in writing by the person or persons who are the Director or the Secretary for the avoidance of doubt it is declared that the person or persons who are the Director or the Secretary has authority to negotiate or enter into any commitment on behalf of the Company the effect of which would or might be for this present deal to involve the Company in any legal liability whatsoever.
- 9) This contract may be determined by either party, but only if the other party shall claim any breach of its obligations hereunder and such claim shall continue for seven days of any other party (being an individual) shall continue in case of bankruptcy or (being a corporate body) shall give notice to the other party for the purposes of reconstruction or amalgamation shall nullify the appointment of a Receiver of any his or to property or income or make any deed or arrangement with or compensation for the benefit of any of his or its creditors.



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)

CONVEYANCE OF PUBLIC PETITION

(No. 11 of 2023)

REGARDING THE ILLEGAL ACQUISITION OF PRIVATE LAND BY THE
DEFUNCT AWENDO TOWN COUNCIL

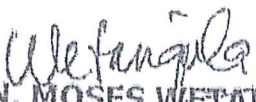
1. **Honourable Members**, Article 119 of the Constitution accords any person the right to petition Parliament to consider any matter within its authority. Further, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition other than those presented by a Member.
2. In this regard, **Honourable Members**, I wish to report to the House that my office has received a petition from one *Mr. Boniface Otieno Opere* of Identification Number No. 4238636 and four others representing members of *Tim Kinda Self - Help Group* in Awendo Town, Migori County.
3. The Petitioners state that in 1988 the allocation of plots to various persons was halted by the then South Nyanza District Plot Allocation Committee on grounds that the government had not acquired the said pieces of land. The Petitioners claim to have lodged a complaint with the Ministry of Lands and were confirmed to be the legal owners of the said land.
4. The Petitioners further aver that, in 2003, the Awendo Township Council embarked on evicting land owners without any notice or orders from any court on grounds that the said parcels of land had been compulsorily acquired by government.

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2005 by suing the Awendo Town Council at the High Court in Kisii, which ruled in their favour. Unfortunately, the Council failed to produce acquisition and compensation documents to the court as directed.

6. **Honourable Members**, further efforts by the petitioners to compel Awendo Town Council to produce acquisition and compensation documents were thwarted as the appeal was dismissed and directed to the District Land Registrar to issue title deeds to the original land owners.
7. **Honourable Members**, the petitioners further state that the Awendo Town Council having been dissatisfied by the judgement of Court of Appeal, applied for a certificate to appeal its decision at the Supreme Court which was dismissed by the Supreme Court.
8. **Honourable Members**, the Petitioners therefore pray that the National Assembly engages the Ministry of Lands, Housing & Urban Development to ensure that the Petitioners are duly compensated for the lands they lost due to illegal allocation by the defunct Awendo Town Council.
9. **Honourable Members**, having established that the matter raised in the Petition is well within the authority of this House; and further, that the matters raised are not pending before any court of law, constitutional or legal body, I hereby commit the Petition to the Public Petitions Committee for consideration pursuant to Standing Order 208A.
10. The Committee is required to consider the Petition and report its findings to the House and to the Petitioners in accordance with Standing Order 227(2).

I thank you.


THE RT. HON. MOSES WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Date

Town Council of Awendo v Nelson O Onyango 1st - 13th Respondents,
Attorney General 14th Respondent; Abdul Malik Mohamed & 178 others
(Petition 37 of 2014) [2019] KESC 38 (KLR) (Civ) (30 April 2019) (Judgment)

*Town Council of Awendo v Nelson O Onyango & 13 others; Abdul
Malik Mohamed & 178 others (Interested Parties) [2019] eKLR*

Neutral citation: [2019] KESC 38 (KLR)

REPUBLIC OF KENYA
IN THE SUPREME COURT OF KENYA

CIVIL

PETITION 37 OF 2014

DK MARAGA, CJ, MK IBRAHIM, SC WANJALA, NS NDUNGU & I LENAOLA, SCJJ
APRIL 30, 2019

BETWEEN

TOWN COUNCIL OF AWENDO PETITIONER

AND

NELSON O ONYANGO & 13 OTHERS 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

ABDUL MALIK MOHAMED & 178 OTHERS INTERESTED PARTY

*(Being an appeal from the entire Judgment and Order of the Court of Appeal
sitting at Kisumu (Onyango Otieno, Azangalala & Kantai, JJ.A) delivered
on the 18 day of October 2013 in Kisumu Civil Appeal No. 161 of 2010)*

JUDGMENT

A. Introduction

- (1) This is a Petition of Appeal dated 10th December, 2014 and filed on 23rd December, 2015 pursuant to its admittance by this Court as one involving a matter of general public importance under Articles 163(4) (b) and 163 (5) of the Constitution. The Appellant is challenging the entire Judgment and Orders of the Court of Appeal (Onyango Otieno, Azangalala & Kantai JJ.A) at Kisumu in Civil Appeal No.161 of 2010 delivered on the 18th day of October 2013. In certifying the Appeal as one involving a matter



of general public importance, in Miscellaneous Application No. 49 of 2014; (Mutunga CJ & P, Tunoi, Ibrahim, Ojwang, Njoki, SCJJ); this Court stated:

“.....The issues of the intended appeal cut across the former and the current Constitutions and law regimes. It is important to reconcile these two regimes, and the instant case provides the occasion. The question whether the respondents in this case are entitled to the revisionary interest in unutilized portions of land, invokes critical sub-themes of jurisprudential significance and which, in every respect touch on matters of public interest.” [Emphasis added]

B. Background

- (2) Sometime in 1976, in exercise of its powers of Eminent Domain, the Government of Kenya issued two Gazette Notices informing the public of its intention to acquire privately owned parcels of land in the then South Nyanza District. In doing so, the Government was acting pursuant to the provisions of Section 75 of the retired Constitution and Section 6 (2) of the Land Acquisition Act of 1968 (Now repealed). The first was Gazette Notice No. 2996 of 1968 (Legal Notice No. 47 of 1968) dated 8th October, 1976 (herein Gazette Notice 2996); which in its preamble read as follows:

“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 South Nyanza Sugar Scheme in South Nyanza” [emphasis added].

- (3) The second was Gazette Notice No. 3737 (Legal Notice no. 47 of 1968) dated 24th December, 1976, (herein after Gazette Notice 3737); which in its preamble read as follows:

“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 South Nyanza Sugar Scheme (Awendo Township Expansion) in South Nyanza District”. [Emphasis added]

- (4) The Government then proceeded to compulsorily acquire, various privately owned parcels of land. Some of the acquired parcels had been owned by the 1st to 13th respondents in this Appeal. Thus far, there was no legal dispute, until the year 2005, when the Respondents herein filed suit in the High Court at Kisumu, in Civil Case No. 133 of 2005; challenging the process of compulsory acquisition of the suit land and the allocation of unutilized portions to third parties by the Appellant.

At the High Court

- (5) At the High Court, the Plaintiffs (Respondents herein) sought determination of several issues, viz:
- (i) Whether the Government of Kenya had compulsorily acquired the suit land;
 - (ii) Whether that acquisition was for the “sole purpose” of establishing the South Nyanza Sugar Scheme;



- (iii) Whether the Government thereafter utilized the entire acquired portion of the suit land;
 - (iv) Whether some of the acquired Suit land was left unutilized, after being marked as unfit for "the purpose for which it was acquired";
 - (v) Whether the original owners had reversionary rights over the "unutilized portions" of the suit land;
 - (vi) Whether the Appellant in this case had any proprietary rights over the "unutilized portions" of the suit land, and whether such proprietary rights had been acquired through gazettement or if such interests (in any) were capable of being transferred to third parties; and
 - (vii) Whether there had been any improper dealings with the said "unutilized parcels of land" of the suit land, by officers of the Appellant.
- (6) In a Judgment dated 13th November, 2009 the High Court (Musinga J, as he then was) held that the sole purpose, of the compulsory acquisition of the suit land, was for the establishment of the Nuclear Estate for South Nyanza Sugar Scheme, as had been indicated on the Gazette Notices and admitted by the Appellant. That since the Government did not utilize the acquired suit land in its entirety, the Appellant neither had proprietary interests over the suit land, nor the right to evict the 1st to 13th respondents. That the unutilized parcels of the suit land which were unfit for sugarcane farming, ought to have reverted to the respondents, as the original or beneficial owners thereof. The learned Judge then ordered the Lands Registrar, to re-survey the land, and issue title deeds to the respondents, pursuant to Section 75 of the retired Constitution.

(ii) At the Court of Appeal

- (7) Aggrieved and dissatisfied with the entire Judgment of the High Court the Appellant Appealed to the Court of Appeal, Civil Appeal No. 161 of 2010 on the following grounds:
- (a) That the learned trial Judge erred in finding that the acquisition of the suit parcels of lands was not meant for the benefit of the Appellant contrary to the Gazette notices.
 - (b) That the learned trial Judge erred in finding in favor of the respondents without taking into account the fact that the Government which acquired the said parcels was never made a party to this suit.
 - (c) That the learned trial Judge erred in finding in favor of respondents in a claim that was statutory time barred and therefore the court had no jurisdiction to entertain the claim.
 - (d) That the learned trial judge erred in entertaining the suit brought by way of originating summons when the issues involved are not suitable for determination by way of originating summons.
 - (e) That the learned trial judge's finding was against the weight of the evidence.
- (8) In response, the Respondents opposed the Appeal on grounds that the Appellant had admitted, that the suit land was acquired solely, for the establishment of the South Nyanza Sugar Scheme. Further, the Respondents argued, that the Chief Land Registrar, in a letter dated 29th February, 1996 and produced before the High Court, had directed that the residue land, be resurveyed and titles issued to the original owners.
- (9) The Attorney-General also opposed the appeal and argued that, the suit land was acquired for the sole purpose of, establishing the South Nyanza Sugar Scheme and that nothing on the material Gazette



Notices showed that the suit land had been acquired for the benefit of the Appellant. It was further argued that there was nothing on record, to show that the residue suit land had been surrendered to the Appellant by the President, as required by the Constitution.

10. In a Judgment dated 18th October, 2013 the Court of Appeal (Onyango Otieno, Azangalala and Ole Kantai JJ.A) upheld the Judgment of the High Court and dismissed the appeal with costs. Consequently, the Applicant sought certification to appeal to the Supreme Court against the Court of Appeal judgment. The application for certification, having been declined by the Appellate Court, was later granted by the Supreme Court, as detailed earlier in this Judgment.

(iii) At the Supreme Court

- (11) The Appellant's grounds of appeal are that the learned Judges of the Court of Appeal erred in fact, in finding that, the suit was not acquired for purposes of the expansion of the Appellant; erred in law and fact, by reasserting the 1st to 13th Respondents' titles over the suit land, despite the said titles having extinguished upon completion of the process of compulsory acquisition by the government; that the impugned Judgment by the 1st Appellate Court had the effect of divesting the third party allottees (Interested Parties herein) of their property, including schools, hospitals, churches and financial institutions, in breach of Articles 40, 48 and 50 (2) of the Constitution.

(a) The Appellant's Case

- (12) On the basis of its submissions and List of Authorities in support thereof, it is the Appellant's case that the Gazette Notices leave no doubt that the compulsory acquisition of the suit land, was for purposes of establishment of the South Nyanza Sugar Company, as well as for expansion of Awendo Township, which purpose the Appellant facilitated by allocating the unutilized suit land to the Interested Parties for development. That upon compulsory acquisition and by virtue of Sections 19 (-) and (4) of the Land Acquisition Act (now repealed), the 1st to 13 Respondents' titles were extinguished in favor of the Government of Kenya.
- (13) It is also the Appellant's case that the Judgment of the Court of Appeal violates third parties rights' to property under article 40 of the Constitution, fair hearing under article 50 of the Constitution, and access to justice under article 48 of the Constitution as the allottees were never enjoined in the suits both at the High Court and Court of Appeal.

(b) The 1st to 13th Respondents' Case

- (14) The 1st to 13th respondents in their submissions dated 9th May 2016, and further submissions of 30th June 2017, argued that the purpose of acquisition of the suit land, was never in dispute before the trial court, as both the Appellant and the Respondents were in agreement that the same was acquired for the development of the South Nyanza Sugar Company Scheme. That the said position was rightfully upheld by the High Court and the Court of Appeal in their respective Judgments. They submitted that, the mere fact that the name of the Appellant appeared in brackets on Gazette Notice No 3737 only meant that South Nyanza Sugar Company Scheme was in the Appellant's proximity and did not mean that the Appellant was a beneficiary of the acquisition.
- (15) They urged that Section 19 of the Land Acquisition Act (now repealed) stipulates that upon the land so acquired being vested in the Government, a Notice to that effect, must issue upon all registered proprietors of the land. It was their contention that the said Notice, was not issued.
- (16) In conclusion the 1st to 13 Respondents submitted that being the original owners of the land, they enjoy pre-emptive rights by law to acquire the residue of the acquired land under Section 110 (2) of



the Constitution; that the government of Kenya through the Chief Land Registrar through the letter dated 29th February, 1996 had directed that the residue land be resurveyed and the 1st and 13th Respondents be issued with titles; that it would be unfair to displace them having lived on the suit land for decades. They also objected to the arguments by the Appellants and the Interested Parties that the impugned Judgment violated the cited provisions of the Constitution as being baseless and without proof. That the same had not been argued before the High Court and the Court of Appeal and are an attempt to divert the attention of this Court from the issue as it has been before the Courts below.

(c) 14th Respondent's Submissions

- (17) The 14th Respondent (the Attorney General) submitted that the suit land was acquired for the Appellant's expansion and not otherwise. It was submitted that the Gazette Notices were clear and un-ambiguous, and that notwithstanding, since there were two opposing interpretations, the best approach would have been to invite the maker of the Notices, i.e., the Commissioner of Lands, to clarify the purpose for the compulsory acquisition. He thus faulted the Court of Appeal's interpretation of the Notices and the entire Judgment.
- (18) It was further submitted that the 1st to 13th respondents had failed to authoritatively adduce evidence, that there was residue land after acquisition. It was argued that for compulsorily acquired land to revert to the original owners, the same must no longer be required for the purpose for which it was acquired, and this fact, must be communicated through a Gazette Notice by the Commissioner of Lands.
- (19) The Attorney General also submitted that the 1st to 13th Respondents were not entitled to unutilized suit land, if any, because they had been compensated. Furthermore, it was argued, the suit land was strictly speaking, still being used for the purpose for which it had been compulsorily acquired, hence the revisionary interests, could not be said to have crystallized. The 14th respondent relied on the cases of *Peter Ouma Omolo & Another versus Awendo Town Council* [2011] eKLR to support his argument.
20. Citing the decision in *Robert Wamititahi and the Republic v. Francis Kirihi* [2013] eKLR, the 14th respondent submitted that the Court of Appeal, erred in law by finding that the unutilized land should be resurveyed and titles issued to the 1st to 13th Respondents, without giving the Government, as the beneficial and registered owner, the Commissioner of Lands as the administrator and manager of public land and the third party allottees, an opportunity to be heard before the High Court and without a confirmation from South Nyanza Sugar company regarding the status of the land claimed as residue.
- (21) The 14th respondent contended that the Court of Appeal, should not have relied on oral evidence by the Appellant's Town Clerk, regarding the purpose of the acquisition, in total disregard of the express provisions of Gazette Notice no 3737 of 24th December, 1976 which set out that the acquired land was for expansion of Awendo Township. Further, argued the said respondent, the Gazette Notice was a public document, within the meaning of section 79 (1) (a) of the Evidence Act and having established that the two Gazette Notices were distinct, and clear as to the purpose of acquisition, the evidence by the Appellant's Town Clerk to the contrary should not have been admitted.
- (22) In conclusion, the 14th respondent submitted that the Court of Appeal had failed to take into consideration the overarching public interest controlling the compulsory acquisition. Such public interest, the said respondent contended, should have taken precedence over the tenuous claims of the 1st to 13th Respondents



(d) Interested Parties' Case

- (23) The Interested Parties submitted first, that the provisions of both the retired and the 2010 Constitutions are applicable to this Appeal. In support of their contention, they relied on this Court's decision in *Samuel Kamau Macharia & 2 Others v. Kenya Commercial Bank & 2 Others* [2012] eKLR.
- (24) Secondly, the Interested Parties argued that the Gazette Notices had clearly stated, that the purpose of acquisition, was for the establishment of the South Nyanza Sugar Scheme, and expansion of Awendo Township. That since not all the land acquired was used for development of the Sugar Scheme, the residue was appropriated towards expansion of the Appellant, as the successor in title to Awendo Township, through allocation of sections of the suit land to the Interested Parties. In furtherance of that purpose, the Interested Parties had built schools, hospitals, churches, and financial institutions.
- (25) Thirdly, it was submitted that the Court of Appeal Judgment, violated the Interested Parties' rights to the legitimate expectation, of free enjoyment of the suit land. They argued that since the state had exercised its powers to compulsorily acquire the suit land, and subsequently allocated the same to them, they should be protected in law. To this end, they relied on the decisions in *Diana Kethi Kilonzo & Another v. The Independent Electoral & Boundaries Commission (IEBC) & 2 Others* at paragraph 33 and *Council of Civil Services Union and Others v. Ministers for the Civil Services* (1985 AC 374 (408-409) as cited in *Multiple Haulers East Africa Limited v. the Attorney-General & 10 Others* [2013] eKLR.
- (26) In conclusion, they submitted that the Court of Appeal's decision violated their rights as enshrined under the Constitution more specifically the right to fair trial under articles 50 and 48 as they were not enjoined to the suit before the High Court or the Court of Appeal.

C. Analysis

(i) Issue for Determination

- (27) Having carefully considered the grounds of appeal, the submissions of the parties, the authorities cited in support thereof, and the pronouncement of this Court, admitting this appeal as one involving a matter of general public importance, it is clear to us that only one issue falls for determination. We hereby restate this single issue as being:

Whether a proprietor, whose land has been compulsorily acquired by the state, for a public purpose, in accordance with the Constitution and the Law, retains a reversionary interest in, or a pre-emptive right over any un-utilized portion of such land, should the public purpose for which it was acquired become spent?

(ii) What was the purpose for which the Suit Land was acquired?

- (28) From the Record of Appeal, it is not in doubt that the suit land, was compulsorily acquired by the Government of Kenya, pursuant to the provisions of Section 75 of the retired Constitution, and Section 6 (2) of the Land Acquisition Act 1968, (now repealed). It is also not in doubt that the proprietors of the land, including the 1st to the 13th Respondents herein, were fully compensated in accordance with the applicable law. The compulsory acquisition was actualized vide the two Gazette Notices No. 2996 of 8th October, 1976 and No. 3737 of 24th December 1976. However, while it is clear that the parcels of land were acquired for a public purpose, what remains in contention is the specific nature of the purpose for which some of the parcels were acquired. [Emphasis Added].



- (29) On the one hand, it is contended that the suit land was acquired for the sole purpose of establishing the South Nyanza Sugar Scheme in South Nyanza District. The proponents of this contention are the 1st to 13th Respondents. They base their argument on the opinion of the then State Counsel, Mr. Maroro, who on behalf of the Attorney General had submitted at the Court of Appeal (see VOL A Page 306, Para: 2), that the purpose of the acquisition was solely, for the establishment of the South Nyanza Sugar Scheme, and no other. This Opinion had also been expressed by the then Town Clerk of Awendo Town Council, Mr. Barnaba Kosgei, in his replying Affidavit to the Originating Summons in the High Court.
- [30] On the other hand, the Appellant, the Interested Parties, and the Attorney General (in a departure from his earlier position at the Court of Appeal) contend that the acquisition of the suit land was for the twin purposes of establishing the South Nyanza Sugar Scheme and the Awendo Township Expansion. They submit that Gazette Notice No. 2996 was issued to effect the establishment of the Scheme while Gazette Notice No. 3737 was for the Township Expansion.
- (31) Be that as it may, both purposes for which the various land parcels were acquired fall within the rubric of "public purpose", within the meaning of Section 75 (1) of the retired Constitution of which the relevant provisions read as follows:
- "No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied:
- (a) the taking of possession or acquisition is necessary in the interest of defence, public safety, public order, public morality, public health, town and country planning or the development or utilization of property so as to promote the public benefits; and
 - (b) the necessity thereof is such as to afford reasonable justification for the causing of hardship that may result to any person having an interest or right over the property; and
 - (c) provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation..."
- (32) Section 6 of the Land Acquisition Act (now repealed) replicates the above provisions of the retired Constitution. On the face of the two Gazette Notices therefore, we find little difficulty in concluding that the Suit lands in question were acquired, on the one hand for town and country planning and on the other hand, for the development of, or utilization of the said lands so as to promote the public benefit. This then immediately leads us to determine the lingering controversy, as to whether the parcels of land in question were acquired solely for the establishment of the South Nyanza Sugar Scheme, or in addition thereto, for the expansion of the Awendo Township.
- (33) Having taken note of the divergent opinions advanced by the parties regarding this issue, we hold that the proper basis for determining the specific nature of the purpose for which the suit lands were acquired, is the language used in the two Gazette Notices. Towards this end, Gazette Notice No. 2996 states that the specified parcels of land are to be acquired for "the South Nyanza Sugar Scheme" while Gazette Notice No. 3737 states that the specified parcels are to be acquired for the South Nyanza Sugar Scheme (Awendo Township Expansion) in South Nyanza District.



- (34) We also note from the Record, that the two Gazette Notices do not refer to the same parcels of land. On the contrary, the Notices are distinct and refer to different parcels of land. Thus Gazette Notice No. 3737 refers to land title nos. North Sakwa/Kamasonga/204 (plot no. 204), North Sakwa/Kamasonga/34 (plot no. 34), North Sakwa/Kamasonga/1081 (plot no. 1081), North Sakwa/Kamasonga/1093 (plot no. 1093), North Sakwa/Kamasonga/1111 (plot no. 1111), North Sakwa/Kamasonga/1067 (plot no. 1067), North Sakwa/Kamasonga/207 (plot no. 207), North Sakwa/Kamasonga/45 (plot no. 45), North Sakwa/Kamasonga/111 (plot no. 111), and North Sakwa/Kamasonga/202 (plot no. 202) in respect of the 2nd, 3rd, 4th, 5th, 8th, 9th, 10th, 11th and 12th respondents respectively (hereinafter the Suit Land).
- (35) It is also noted from the Record (VOL. A pages 137 and 158) that land title no. North Sakwa/Kamasonga/1193 (Plot No. 1193) in respect of the 7th Respondent was not on the list of parcels of land acquired by the two Gazette Notices. The tentative conclusion regarding the said title therefore, is that it was never compulsorily acquired. Besides, it is noted from the Record that land title No. North Sakwa/Kamasonga/46 (Plot No. 46) in respect of the 1st Respondent and Land Title No. North Sakwa/Kamasonga/168 (Plot No. 168) in respect of the 13th Respondent were acquired vide Gazette Notice No. 2996.
- (36) Finally, a perusal of the Record reveals the fact that some of the Respondents herein, to wit, the 3rd, 9th, 10th, 11th and 12th were not the original proprietors of the parcels in question. However, they refer to themselves in their supporting affidavits as beneficial owners.
- (37) Against this background, what meaning as to purpose ought to be attributed to the language in the two Gazette Notices? A plain reading of Gazette Notice No. 2996 clearly indicates that the intention of acquiring the land parcels listed therein was for establishing the South Nyanza Sugar Scheme. This must be taken to refer to all that it entails to establish such a scheme, including the factory, sugar plantations, offices, plant and machinery and all necessary infrastructure. Towards this end, there is no dispute regarding the establishment of South Nyanza Sugar Scheme.
- (38) As for Gazette Notice No. 3737, it is stated that the listed parcels therein are to be acquired for the South Nyanza Sugar Scheme (Awendo township Expansion) in South Nyanza District. The operative words are the bracketed ones i.e., "Awendo Township Expansion". It was the Attorney General's argument that the two Gazette Notices referred to one and the same purpose; the establishment of the South Nyanza Sugar Scheme. This was the same argument advanced by the 1st to 13th Respondents. Much later in the appeal before the Supreme Court, the Attorney General would abandon this argument. It was now his submission that a plain reading of the two Gazette Notices reveals that under Gazette Notice No. 2996 the parcels listed therein were acquired for the South Nyanza Sugar Company while Gazette Notice No. 3737 was for Awendo Township Expansion. He faulted the Court of Appeal for treating the two acquisitions as if they were one and the same, when they were in fact, different.
- (39) We are of the firm view that the two Gazette Notices, although linked in material particulars, could not have been referring to the same purpose for the compulsory acquisition. The inclusion of the words "Awendo Township Expansion" must be taken to mean that there was another purpose other than, but related to, the actual establishment of the South Nyanza Sugar Scheme. This other purpose was the expansion of the Awendo Township. Is it any wonder then that the two Gazette Notices did not refer to the same parcels of land? The establishment of the South Nyanza Sugar Scheme within the vicinity of Awendo Township meant that the latter, had to be expanded to accommodate the functionality of the former. The need to expand the Township, necessitated the further acquisition of extra land, for that purpose, as was clearly stated in the brackets. The words "Awendo Township Expansion" must surely be taken to mean something, otherwise why were they included in Gazette Notice No. 3737?



Why didn't the latter Notice simply echo or replicate the words in Gazette Notice No. 2996? Is it not logical, if not compulsive, to assume that the establishment of the Sugar Company would trigger demands, upon the Township of a socio-economic, demographic and financial nature, hence the need for its expansion? For example, where were the experts, labourers, company executives, their spouses and children to be accommodated for them to serve the Sugar Company? Where were they to seek health, financial, recreational, educational, and other social services? One could go on and on.

40. We also find and hold that, the purpose for which all that land, comprised in Gazette Notice No. 2996, i.e., the establishment of SOUTH NYANZA SUGAR SCHEME in South Nyanza, had been fully accomplished by the time of filing Civil Case No. 133 of 2005 at the High Court. That being the case, there were no "un-utilized portions" of land in the block to which the said Gazette Notice applied.

(iii) Reversionary Interest in or Pre-Emptive Rights over Compulsorily Acquired Land

- (41) We now turn to the crux at the heart of this Appeal, and that is, whether a proprietor whose land has been compulsorily acquired, nonetheless retains some reversionary interest in, or pre-emptive rights over, the un-utilized portions thereof. At the outset, it is important to set out the legal elements of a reversion in order to discharge the burden before us. Simply stated, a "reversion" is that interest in land that survives the expiry or extinction of an estate in the said land. It is called a "reversion" because upon the extinction of the estate, that interest reverts to the person or entity from whose superior title the estate was originally created. An estate on the other hand, is a time bound bundle of rights over land, or as they say at Common Law, "an estate is a time in the land or a land for a time". Thus a holder of a fee simple estate retains interest in that land for as long as there will be an heir to inherit the same. Where no heir remains to inherit the estate, then the land reverts to the state. The state holds a superior title to the land called "the radical title". The fee simple estate also becomes extinguished upon a compulsory acquisition by the State in exercise of its powers of Eminent Domain. By the same token, in a landlord and tenant relationship, the tenant holds the leasehold estate while the landlord retains the reversion which, upon the expiry of the leasehold, is surrendered back to the landlord, since the latter holds a superior title from which the lease was created.
- (42) For purposes of argument in this Appeal, we shall treat the 1st to 13th Respondents as the original owners of the suit land. (We say for purposes of argument, because some of the respondents were not the original owners). They had acquired title to their various parcels of land most likely, through registration pursuant to the necessary land adjudication processes. However, their titles to those parcels of land became extinguished upon compulsory acquisition. Upon the compulsory acquisition, their estates in the land (whether fee simple or absolute proprietorship) ceased to exist and became fused with the States' superior title. Their parcels of land now became public land, having been compulsorily acquired for a public purpose in accordance with the Constitution and the law. The Respondents were compensated for the loss of their land to the public interest.
- (43) Given this scenario, what rights or interests if any, could the Respondents be said to have retained following the compulsory acquisition of their parcels of land? As the law stood then, it is clear that the Respondents did not retain any interests in the land, capable of protection or resuscitation by the law. Section 19 (1) of the Land Acquisition Act (now repealed) provides that:
- "After the award has been made, the Commissioner shall take possession of the land by serving on every person in the land notice that on a specified day which shall not be later than sixty days after the award has been made, possession of the land and title the land will vest in the Government."



And Sub-Section 4 of the said Section provides:

“Upon taking possession, the land shall vest in the Government absolutely free from encumbrances.”

- (44) As we have stated, the Respondents did not have any reversion in the acquired lands, since whatever reversion that had existed, could only have been a reversion in favour of the State, and not Vice Versa. The suit lands all became vested in the Government of Kenya. But this legal position notwithstanding, can it be said that the Respondents retained some kind of reversionary interest over the un-utilized portions of the land, once the public purpose for which the land had been acquired became spent? What was the un-utilized portion of the land in question?
- (45) For purposes of this Appeal, we shall deem “un-utilized land” to refer to any residual portion of land which has been compulsorily acquired, but which remains unused, after the realization of the public purpose for which it had been acquired. Now coming to the case before us, it is the Respondents’ case that the land parcels appearing in Gazette Notice No. 3737, be deemed as un-utilized land. It is their argument that the said parcels are to be so deemed, because the purpose of establishing the South Nyanza Sugar Scheme, for which they had been acquired, was realized long ago. The Attorney General and the Interested Parties however, contend that the said parcels were acquired for the South Nyanza Sugar Scheme but specifically for the expansion of Awendo Township, a purpose, that is still ongoing. The Interested Parties submit that they have utilized their allocated plots for residential, commercial and other purposes in furtherance of the expansion of Awendo Township.
- (46) Having already pronounced ourselves regarding the meaning to be attributed to the Gazette Notices, we now proceed to determine the legal standing of the Respondents vis-a-vis what they consider as un-utilized portions of land. In this regard, neither the retired Constitution, nor the Land Acquisition Act, provide any direction as to what should happen to land that remains un-utilized after the public purpose for which it was compulsorily acquired becomes spent.
- (47) We begin by reasserting the long held legal principle that, land which has been compulsorily acquired, must be used for the purpose for which it was acquired. If for example, after compulsorily acquiring land, the Government or any of its agencies, proceeds to allocate the said land, to individuals or other entities, for their own private benefit, in total disregard of the public purpose, such allocation would not confer good title to the allottees. Such was the holding in *Niaz Mohammed v. Commissioner for Lands & 4 Others* (1996) eKLR in which Waki J, (as he then was) rendered himself thus:
- “I am not persuaded by the argument that upon compulsory acquisition of land and the consequent vesting of that land in the Government, then the land falls to be used by the Government in any matter it desires. There is plainly no such Carte Blanche intended in the provisions of the law...The land must be used, subsequent to the acquisition, for a lawful purpose, as I see it, the only lawful purpose is the one for which it was intended.”
- (48) This position was re-affirmed by the Court of Appeal in *Kenya National Highway Authority v. Salien Masood Mughal & 5 Others* (2017) eKLR. Also of persuasive value, is the decision of the Supreme Court of India in *M/S. Royal Orchid Hotels Ltd & Anor. v. G. Jayarama Reddy & Ors.* Civil Appeal No. 7588 of 2005; in which the question for determination was whether, land acquired for a specific public purpose, could be used for another purpose not being a public purpose. In that case, instead of



utilizing the acquired land for the purpose specified in the notifications or for any other public purpose, the Corporation transferred the same to private parties. The Supreme Court of India held:

"The Courts have repeatedly held that in exercise of its power of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be over-stretched to legitimize a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitutional right to property with a view to favour private persons.... The diversification of the purpose for which land was acquired under Section 4(1) read with Section 6 clearly amounted to a fraud on the power of eminent domain."

(49) Thus far, these judicial pronouncements in our view represent the correct legal position regarding compulsorily acquired land, under both the retired Constitution and the 2010 Constitution.

(50) However, the question as to what should happen to un-utilized land remains unanswered. It is worth reiterating that under the law as it then stood, the original owners of compulsorily acquired land have no reversionary rights in that land. In *Niaz Mohamed v. Commissioner of Lands*, [supra]; Justice Waki appeared to suggest that such land would legally revert to the original owners through Equity. The learned judge opined thus:

"....Un-utilized portions in my view would remain as road reserves. And if it was the case that it was found unnecessary after all to have acquired the portion for the expressed purpose, does equity not require that the portions be surrendered back to the person from whom the land was compulsorily acquired?" [Emphasis added].

(51) The fallback to Equity is compelling, given that what is involved here, is land, a subject that unendingly continues to generate, emotive disputes among all and sundry. Indeed, Equity grew out of the interstices of Common Law rigidity. The doctrines that have catapulted it into the cosmos of law are themselves handmaidens of justice and fairness. But even Equity, in all its splendor, follows the law, lest it be deformed, by judicial caprice or whim. Therefore, in the face of clear constitutional and legal provisions, that extinguish private title to compulsorily acquired land, not even Equity can resuscitate such title to un-utilized portions thereof.

(52) The public purpose, for which the land was compulsorily acquired, may have been spent, but the un-utilized portions thereof, remain public land. It is therefore our view, that such land as remains un-utilized can only be applied to a public purpose, or be utilized to promote the public interest, even if the said interest is not such as had been originally envisaged. Un-utilized portions of land, may in this instance, be allocated to private entities, including those from whom the land was acquired, at a price, provided that, the land is to be put to such use as will promote the public interest. The Privy Council decision in *Blanchfield and Others v. Attorney General and Another* (2002) 4 LRC 689; is persuasively instructive in this regard. This was an appeal against the judgment of the Court of Appeal of Trinidad and Tobago. The plaintiffs were descendants of landowners, whose land had been compulsorily acquired by the government. They had sought a declaration that the land in question should automatically revert to them by operation of law, since the said land was no longer required for the purpose for which it had been acquired. The Privy Council held:

"In the absence of an express reverter clause in the enabling legislation or in the conveyance or order by which the land was conveyed to or vested in the acquiring authority, none can be implied. Consequently, where land compulsorily acquired becomes surplus to the requirements of the acquiring authority, there is no automatic reversion in favour of the original owners or their descendants." (Emphasis added).



- (53) In the Indian case of *Gulam Mustafa & Ors v. The State of Maharashtra & Ors* 1977 AIR 448, 1977 SCR (1) 875, certain land was compulsorily acquired for running a country fair or market. After the acquisition, the municipality parcelled out the excess land and sold it for a housing colony. On appeal to the Supreme Court of India, it was contended that the acquisition by the housing colony was not for a public purpose and that it was mala fide. With regard to the status of the excess land, the Supreme Court held:

“Once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring authority diverts it to a public purpose other than the one stated in the s. 5(3) declaration.”

- (54) Even as the law as we have pronounced it, appears to be clear, it is imperative that we consider the provisions of the 2010 Constitution to determine whether any insights can be drawn therefrom for a just and fair resolution of the dispute at hand. In this regard, we derive inspiration from this Court’s dictum in *Samuel Kamau Macharia & 2 Others v. Kenya Commercial Bank & 2 Others* [2012] eKLR; on when a court of law may fall back to the provisions of the Constitution of 2010 in determining a dispute that may have crystallized before the promulgation of the Constitution. At paragraph 62, the Court stated:

“At the onset, it is important to note that a Constitution is not necessarily subject to the same principles against retrospectivity as ordinary legislation. A Constitution looks forward and backward, vertically and horizontally, as it seeks to re-engineer the social order, in quest of its legitimate object of rendering political goods. In this way, a Constitution may and does embody retrospective provisions, or provisions with retrospective ingredients. However, in interpreting the Constitution to determine whether it permits retrospective application of any of its provisions, a Court of law must pay due regard to the language of the Constitution. If the words used in a particular provision are forward-looking, and do not contain even a whiff of retrospectivity, the Court ought not to import it into the language of the Constitution. Such caution is still more necessary if the importation of retrospectivity would have the effect of divesting an individual of their rights legitimately acquired before the commencement of the Constitution.”

- (55) When certifying this appeal as one involving a matter of general public importance, the determination of which, goes beyond the interests of the parties, we were cognizant of the fact that similar disputes were likely to occur in other parts of the Country. In resolving such disputes as may occur post the 2010 Constitution, our decision in this appeal will no doubt be instructive, hence the need to consider the relevant provisions of the Constitution, to the extent that the same are backward and forward looking.

- (56) The relevant provisions for purposes of this appeal are as follows:

Article 40 (3) and (4) of the Constitution provide thus:

“The State shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation-

- (a) results from an acquisition of land or an interest in land or a conversion of an interest in land, or title to land, in accordance with Chapter Five; or



(b) is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that:

- i. requires prompt payment in full, of just compensation to the person; and
- ii. allows any person who has an interest in, or right over, that property a right of access to a court of law.

(4) Provision may be made for compensation to be paid to occupants in good faith of land acquired under clause (3) who may not hold title to the land."

(57) The provisions relating to the doctrine of "Eminent Domain" as are enshrined in Article 40 of the 2010 Constitution, and Part VIII, of the Land Act (Sections 107 to 133), mirror those of Section 75 of the retired Constitution, and Section 6 of the Land Acquisition Act (now repealed) with a few modifications. Towards this end, Section 110 (1) of the Land Act provides that:

"Land may be acquired compulsorily under this Part if the Commission certifies, in writing, that the land is required for public purposes or in the public interest as related to and necessary for the fulfillment of the stated public purpose."

Subsection 2 of the said Section provides that:

"If, after land has been compulsorily acquired, the public purpose or interest justifying the compulsory acquisition fails or ceases, the Commission may offer the original owners or their successors in title pre-emptive rights to re-acquire the land, upon restitution to the acquiring authority the full amount paid as compensation."

Article 62 (2) of the Constitution provides that:

"Public land shall vest in and held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission..."

(58) Article 68 (c) (ii) of the Constitution provides that Parliament shall enact legislation to regulate the manner in which any land may be converted from one category to the other.

(59) Section 110 (2) of the Land Act introduces the concept of "Pre-Emptive Rights" over compulsorily acquired land. Where the purpose justifying the compulsory acquisition fails or ceases, then the original owners or their successors in title have the pre-emptive rights to re-acquire the land upon payment of the full amount received as compensation. In view of our analysis however, a pre-emptive right is not the same as "a reversionary interest." The former arises, consequent upon the failure or cessation of the purpose justifying the compulsory acquisition; while the latter reposes in the holder of a superior title and becomes exercisable upon the expiry of an estate.

60. By the same token, it cannot be said that the land over which the pre-emptive right of re-acquisition arises upon failure or cessation of the public purpose, is the same as un-utilized land or portion of land that remains once the public purpose becomes spent. In the former case, there is a total failure of the public purpose, meaning that the acquired land cannot be used as earlier envisaged. The wording of Section 110 (2) of the Land Act is permissive ("the Commission may offer") in the sense that the acquiring authority, is not necessarily barred from applying the land to another public purpose. However, should it decide to abandon the land to private purchase, then the original owners have the pre-emptive rights to re-acquire the land upon restitution of the full sum that was paid in



compensation. The land to be re-acquired in this case is the "whole" as opposed to "a portion thereof". This explains why the sum of money to be restituted by the original owners is "the full amount paid in compensation." In the latter case, the public purpose has been realized, but the acquired land has not been utilized in full, leaving a portion thereof. In this instance, neither the original owners, nor their successors in title have pre-emptive rights to re-acquire the un-utilized portions.

(61) On the basis of the foregoing analysis, we hereby issue the following guiding principles:

General Principles

1. Where the Government, pursuant to the relevant constitutional and legal provisions, compulsorily acquires land, such land, shall only be used for the purpose for which it was compulsorily acquired.
2. The allocation of compulsorily acquired land, to private individuals or entities, for their private benefit, in total disregard of the public purpose or interest for which it was compulsorily acquired, shall be incapable of conferring title to that land in favour of the allottees.
3. A person whose land has been compulsorily acquired in accordance with the relevant constitutional and legal provisions does not retain any reversionary interest in the said land.
4. Un-utilized portions of compulsorily acquired land may be used for a different public purpose, or in furtherance of a different public interest, including the allocation of such portions to private individuals or entities, at the market price, in furtherance of such public interest.

(62) Consequently, flowing from the above analysis and guiding principles, we find and hold as follows:

Gazette Notices Nos. 2996 and 3737 of 1976

1. Through the instrumentality of Gazette Notices Nos. 2996 and 3737 of 1976, all parcels of land whose land titles are listed therein respectively, were compulsorily acquired and vested in the Government of Kenya.
2. The Appellant herein (or its successor in title) holds that land in trust for the residents of the area, and as the Implementing Agency of the public purpose for which the land was compulsorily acquired.
3. The letter written by the Land Registrar, directing the Appellant to re-survey the land and allocate the same to the original owners or their successors in title had no legal basis.
4. The 1st and 13th Respondents have no reversionary interest in the parcels of land listed in the two Gazette Notices, since titles thereto were extinguished through the compulsory acquisition of the same.
5. The purpose for the acquisition of all those lands listed in Gazette Notice No. 3737 of 1976 (The Suit Lana) was for the expansion of Awendo Township in South Nyanza District. Such expansion, was necessitated by the establishment of South Nyanza Sugar Scheme, through Gazette Notice No. 2996.
6. The land comprised in Gazette Notice No. 3737 was not "un-utilized land", given the fact that the expansion of Awendo Township is an on-going process.



7. The allocation of various parcels of land comprised within Gazette Notice No.3737, at a price, to the Interested Parties, for the establishment of residential, commercial and other amenities such as churches, etc, was in furtherance of the expansion of Awendo Township.
8. By purchasing the said plots, and using them for residential, commercial and other purposes in consonance with the public interest, and in the absence of any proof of fraud on the part of the Interested Parties, the latter acquired valid title which cannot be defeated by the claims of the Respondents herein.

(63) These conclusions lead us to make the following Orders:

D. orders

(64)

- (i) The Petition of Appeal dated 10th December 2014 is hereby allowed.
- (ii) The Judgment of the Court of Appeal dated 18th October, 2013 is hereby overturned.
- (iii) The 7th Respondent herein shall be fully compensated by the Government of Kenya for the loss of his Land Title No. North Sakwa/Kamasonga/1193.
- (iv) Each Party shall bear its own costs of this Appeal.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL, 2019.

D. K. MARAGA

CHIEF JUSTICE & PRESIDENT OF THE SUPREME COURT

M. K. IBRAHIM

JUSTICE OF THE SUPREME COURT

S. C. WANJALA

JUSTICE OF THE SUPREME COURT

NJOKI NDUNGU

JUSTICE OF THE SUPREME COURT

I. LENAOLA

JUSTICE OF THE SUPREME COURT

I certify that this is a true copy of the original

REGISTRAR

SUPREME COURT OF KENYA





REPUBLIC OF KENYA

**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)**

CONVEYANCE OF PUBLIC PETITION

(No. 11 of 2023)

**REGARDING THE ILLEGAL ACQUISITION OF PRIVATE LAND BY THE
DEFUNCT AWENDO TOWN COUNCIL**

1. **Honourable Members**, Article 119 of the Constitution accords any person the right to petition Parliament to consider any matter within its authority. Further, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition other than those presented by a Member.
2. In this regard, **Honourable Members**, I wish to report to the House that my office has received a petition from one *Mr. Boniface Otieno Opere of Identification Number No. 4238636* and four others representing members of *Tim Kinda Self - Help Group* in Awendo Town, Migori County.
3. The Petitioners state that in 1988 the allocation of plots to various persons was halted by the then South Nyanza District Plot Allocation Committee on grounds that the government had not acquired the said pieces of land. The Petitioners claim to have lodged a complaint with the Ministry of Lands and were confirmed to be the legal owners of the said land.
4. The Petitioners further aver that, in 2003, the Awendo Township Council embarked on evicting land owners without any notice or orders from any court on grounds that the said parcels of land had been compulsorily acquired by government.

5. **Honourable Members**, the Petitioners consequently took legal action in 2005 by suing the Awendo Town Council at the High Court in Kisii, which ruled in their favour. Unfortunately, the Council failed to produce acquisition and compensation documents to the court as directed.
6. **Honourable Members**, further efforts by the petitioners to compel Awendo Town Council to produce acquisition and compensation documents were thwarted as the appeal was dismissed and directed to the District Land Registrar to issue title deeds to the original land owners.
7. **Honourable Members**, the petitioners further state that the Awendo Town Council having been dissatisfied by the judgement of Court of Appeal, applied for a certificate to appeal its decision at the Supreme Court which was dismissed by the Supreme Court.
8. **Honourable Members**, the Petitioners therefore pray that the National Assembly engages the Ministry of Lands, Housing & Urban Development to ensure that the Petitioners are duly compensated for the lands they lost due to illegal allocation by the defunct Awendo Town Council.
9. **Honourable Members**, having established that the matter raised in the Petition is well within the authority of this House; and further, that the matters raised are not pending before any court of law, constitutional or legal body, I hereby commit the Petition to the Public Petitions Committee for consideration pursuant to Standing Order 208A.
10. The Committee is required to consider the Petition and report its findings to the House and to the Petitioners in accordance with Standing Order 227(2).

I thank you.


THE RT. HON. MOSES WETANG'ULA, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Date