

PARLIAMENT  
OF KENYA  
LIBRARY

REPUBLIC OF KENYA

THE SENATE  
RECEIVED  
14 SEP 2021  
CLERK'S OFFICE



COS  
Recommended for approval  
for tabling.  
Eg 14/09/21

THE SENATE

TWELFTH PARLIAMENT

RT. Hon. Speaker  
You may approve for  
tabling.  
2002  
14/09/21  
ADP 10/09/21  
C.H. 12/09/21

THE REPORT OF THE SENATE STANDING COMMITTEE ON LAND,  
ENVIRONMENT AND NATURAL RESOURCES

ON

PETITION CONCERNING THE ALLEGED ILLEGAL ALIENATION OF  
LAND BELONGING TO KITALE SCHOOL PRIMARY BY A PRIVATE

DEVELOPER

PAPERS LAID

DATE	15/09/2021.
TABLED BY	Sen. Kasanga.
COMMITTEE	Land.
CLERK AT THE TABLE	Danny

2021

DC-ES  
Forwarded or recommended for processing  
for approval  
14/09/2021

## Contents

Contents.....	ii
List of Abbreviations/ Synonyms .....	iii
PREFACE.....	iv
Committee Membership.....	iv
ACKNOWLEDGEMENT.....	vi
CHAPTER I.....	7
INTRODUCTION .....	7
LEGAL BASIS FOR PETITIONS.....	14
CHAPTER 2 .....	15
CONSIDERATION OF THE PETITION.....	15
A. Petitioners Submissions.....	15
B. Responses by the Cabinet Secretary, Ministry of Lands and Physical Planning 15	
C. Responses by the National Land Commission .....	17
D. Responses by the private investor, Dr. Nathaniel Tum.....	19
CHAPTER 5 .....	27
COMMITTEE OBSERVATIONS .....	30
COMMITTEE RECOMMENDATIONS .....	32
APPENDICES .....	33
ANNEX I: MINUTES OF THE MEETINGS .....	33
ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS.....	34
ANNEX III: SUBMISSIONS BY THE PETITIONER .....	35

### **List of Abbreviations/ Synonyms**

BOG	- Board of Governors
CS	- Cabinet Secretary
EACC	- Ethics and Anti-Corruption Commission
MOLPP	- Ministry of Land & Physical Planning
NLC	- National Land Commission
ODPP	- Office of the Director of Public Prosecution
PTA	- Parents Teachers Association

## PREFACE

**Mr. Speaker sir,**

The Standing Committee on Land, Environment and Natural Resources is established pursuant to standing order 218(3) of the Standing Orders of the Senate. As set out in the Second Schedule, the Committee is mandated to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

### **Committee Membership**

The Committee comprises of the following Members.

- |                                    |                         |
|------------------------------------|-------------------------|
| 1. Sen. Paul Mwangi Githiomi, MP   | <b>Chairperson</b>      |
| 2. Sen. Philip Mpaayei, MP         | <b>Vice-Chairperson</b> |
| 3. Sen. George Khaniri, MGH, MP    |                         |
| 4. Sen. Gideon Moi, CBS, MP        |                         |
| 5. Sen. Njeru Ndwiga, EGH, MP      |                         |
| 6. Sen. (Dr.) Lelegwe Ltumbesi, MP |                         |
| 7. Sen. Issa Juma Boy, MP          |                         |
| 8. Sen. (Arch.) Sylvia Kasanga, MP |                         |
| 9. Sen. Johnes Mwaruma, MP         |                         |

At the sitting of the Senate held on 17<sup>th</sup> February, 2021, Sen. (Dr.) Michael Mbiti, MP, reported to the Senate that a Petition has been submitted through the Clerk, concerning the alleged illegal alienation of land belonging to Kitale School Primary by a private developer.

Pursuant to standing order 232(1) and the Second Schedule to the Standing Orders of the Senate, the Petition was committed to the Standing Committee on Land, Environment and Natural Resources.

Pursuant to Articles 37 and 119(1) of the Constitution, section 5(2) of the Petition to Parliament (Procedure) Act and standing order 232 of the Senate Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioner within

the prescribed period.

To enable a judicious disposal of the Petition, the Committee resolved to conduct an inquiry on the issues raised in the Petition. In this regard the Committee invited the Petitioner to a meeting of the Committee for the Petitioner to elaborate further on the issues raised in the Petition and to supply supporting evidence on the same.

The Committee proceeded to invite the Cabinet Secretary, Ministry of Lands and Physical Planning, the National Land Commission to address respective issues raised on the Petition.

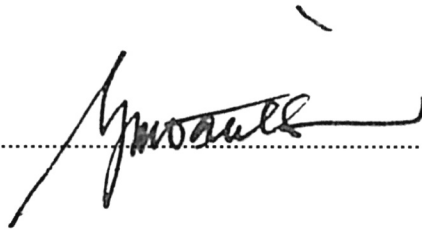
## ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Petitioners, Ms. Farida Karoney, EGH, Cabinet Secretary, Ministry of Lands and Physical Planning, Mr. Gershom Otachi, Chairperson, National Land Commission and the other stakeholders for their submissions and contribution to the resolution of this matter.

**Mr. Speaker Sir,**

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Standing Committee on Land, Environment and Natural Resources on the Petition concerning the alleged illegal alienation of land belonging to Kitale School Primary by a private developer.

Signed: .....



Date: 20/8/2021 .....

**SEN. MWANGI PAUL GITHIOMI, M.P.**  
**CHAIRPERSON, SENATE STANDING COMMITTEE ON LAND,**  
**ENVIRONMENT AND NATURAL RESOURCES**

## CHAPTER I

### INTRODUCTION

At the sitting of the Senate held on 17<sup>th</sup> February, 2021, Sen. (Dr.) Michael Mbiti, MP, reported to the Senate that a Petition has been submitted through the Clerk, concerning the alleged illegal alienation of land belonging to Kitale School Primary by a private developer.

#### *Underlying Constitutional and Statutory Provisions*

1. **Article 1(1) and (2)** of the constitution of Kenya, reposes all sovereign Power in the People of Kenya, exercised solely in accordance with the Constitution
2. **Article 1(3) (a) and 1(4)** of the Constitution of Kenya delegates sovereign power of the constitution to inter alia parliament and the legislative assemblies of the county governments and that the sovereign power of the people is exercised at the national and county level.
3. **Article 37** of the Constitution provides that every person has a right to present petitions to public authorities
4. **Article 43** of the Constitution provides for economic and social rights whereby under Article 1(f) every person has a right to education.
5. **Article 53** of the Constitution provides for the rights of children, wherein every child has a right to free and basic compulsory education and under Article 53(2), a child's best interests are of paramount importance in every matter concerning the child.
6. **Article 60(1)(b)** of the Constitution provides that land in Kenya shall be held, used and managed in a manner that is unequitable, efficient, productive and sustainable and according to the principle of security of land rights.

7. Under **Article 60(4)** of the Constitution, public land shall not be disposed or otherwise used except in terms of an Act of Parliament specifying the nature and terms of that disposal or use.
8. Under **Article 62(1) (c)** of the Constitution, land transferred to the state by way of sale, reversion or surrender is public land.
9. Under **Article 62(2)** of the Constitution, public land shall vest and be held by the county government in trust for the people resident in the county and shall be administered by the National Land Commission.
10. Under **Article 67(2)** of the Constitution, the National Land Commission is mandated to manage public land on behalf of the national and county governments.
11. Under **Article 94(2)** of the Constitution, Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty.
12. Under **Article 96(1)**, the Senate is mandated to represent the counties, and to protect the interests of the counties and their governments.
13. **Article 119** of the constitution provided that any person has a right to petition parliament to consider any matter within its authority.
14. Section 12 of the Land Act, 2012 provides for the procedure for allocation of Public Land.

**The complaint**

15. This complaint before the Senate concerns the illegal alienation of land belonging to Kitale School Primary by a private developer, one Nathaniel Tum, who conspired with the Commissioner of Lands to alienate 10 acres of the school land.

### **Background Facts of the Complaint**

16. Originally, Kitale School Primary occupied about 55 hectares of land from 1929, during the colonial period.
17. The land in which the Kitale School primary is situated was allocated to the school through a letter of reservation LR 24719. The said reservation was designated for an education institution; specifically, Kitale Primary School. The School has changed names over time and has also been identified as Kitale School and Kitale Academy for the last 91 years.
18. The Part Development Plan (PDP) of 1973, was approved by the Kitale Department of Urban Planning and the Commissioner of Lands; which reserved the said 55 hectares to the school, including all the land so grabbed by Mr. Nathaniel Tum.
19. The School has reserved 30 acres of its land for Kitale School Secondary that was commissioned in 1994.
20. There is no PDP that shows that a new PDP was generated to replace the PDP issued to the school in 1973 to legitimize the title issued to Mr. Tum.
21. There is no evidence to demonstrate that the Ministry of Education approved that the land allotted to the school for educational purposes was partly excised for private use by Mr. Tum.
22. Between 1974 and 1978, part of the land, being public land, was surrendered for public use. In particular, 2 hectares of the school land was surrendered to KENHA to improve the turn-off to the Kitale-Webuye Road.
23. In 1983, the School applied for allotment of land and title deed.

24. During this period of applying for an allotment letter, the private developer Mr. Nathaniel Tum was the Chairman of the PTA at Kitale School Primary and a member of the BOG. He offered to help in the process of acquiring the title.
25. The private developer, Mr. Nathaniel Tum, was at the time a trustee of the school, the school PTA and BOG.
26. The District Survey Department surveyed the land and after all statutory requirements were completed, the school was allotted 41.28 hectares and a title deed issued in 2010.
27. Mr. Nathaniel Tum in breach of trust for the school clandestinely applied for a private title from the land reserved as public land and was allotted about 4 hectares and issued with a title deed in 1994. The COL indicated that the land was unalienated and was government land in issuing the title deed Block 12/132 to Tum.
28. Mr. Tum commenced his illegal alienation of the school property in 1998 whereby he fenced off part of the school farm that hosted the 4K club demonstration plots and the environmental club.
29. The Survey Plan that illegally grants Mr. Nathaniel Tum the disputed land has a land hook which indicates that the ownership of the school and Mr. Tum is the same. The said hook is illegal as it is not legally possible to have a land hook between private and public land.
30. At the time of filing this Petition, Mr. Tum is adamant to alienate land belonging to the school and was on the school land with surveyors ostensibly erecting beacons and expressing his intention to fence off land grabbed from the school.
31. The Principal of the School, the School PTA, BOG, the local church leadership, the Kitale School Alumni Society and the school community at large, are seeking redress

on the matter and threat of encroachment on more land.

32. This Honorable Senate has the mandate to exercise its authority to protect the interests of county governments and in particular land vesting in county governments.
33. The illegal alienation of the land prejudices the rights of the children pursuing their education in the school and will deny them the right to study.
34. The Senate has the right under its authority as the legislative house representing counties and county governments to intervene in cases where public land vesting in county governments is alienated by private developers to private land.
35. The Senate has the delegated authority from the people in exercise of its authority under Article 96(1) to require the National Land Commission, the body vested with the mandate to administer public land on behalf of county governments to take action and recover stolen public land vested in counties. In exercising this power, the Senate may summon members of the NLC, take evidence and inquire into the actions taken by the NLC in protecting and administering public land, including actions taken on petition filed before the NLC.

**THAT**

36. The school filed a complaint to the District Survey Department against Mr. Tum's infringement on its land; which housed the girls' dormitory, sewage system near the boys' dormitory and site for the tree nursery where Mr. Tum erected a petrol station, which is on site to date and a resurvey was done. Mr. Tum was issued with a new title deed Block 12/ 236 to exclude the school facilities, but the sewage pits remained on the land Mr. Tum had grabbed.
37. The school BOG wrote to the Commissioner of Lands complaining that public land which they required for expansion for a Secondary School and Tertiary institution had

been transferred to Mr. Nathaniel Tum. The NLC visited the school in September 2019 and February 2020 but have not taken any substantive action to investigate the matter.

38. The Kitale School Primary's complaint was *inter-alia* premised on the fact that Mr. Nathaniel Tum had breached his fiduciary duty as a trustee, being the Chairman of PTA and member of the BOG of the school.
39. In the year 2010, Hon. James Orengo, the then Minister for Lands, directed that the land owned by Tum reverts to the Kitale School vide a ministerial order. The Commissioner of Lands cancelled the title deed earlier issued to Mr. Tum on 10<sup>th</sup> May 2010 by gazette notice.
40. The Ndungu Land Report also reported the matter and recommended that the land to revert to the school and public use.
41. In or around 2013 Tum, once again surreptitiously managed to get another title 12/236 to exclude the area encroaching the dormitories. The school went to court challenging the title deed by way of Judicial Review and the High Court Judge Justice J Karanja ruled that the propriety rights of Mr. Tum on the land cannot be taken away by judicial review and that the pleadings before court were fatal to the suit. He noted that "the remedy lies elsewhere."
42. The school, dissatisfied with the decision of the High Court, appealed the ruling and the Court of Appeal agreed with the High Court that judicial review was not the remedy whether the title was acquired legally or illegally.
43. In February 2020, the school filed a complaint for the second time to the National Land Commission. The National Land Commission from Trans-Nzoia County visited the school in October, 2020 for a fact finding mission but no feedback yet.

**THAT**

44. This matter is not pending before any court of law for determination on an issue concerning the complaint. The only court case filed was *Judicial Review, Vide Kitale – HC JR No. 38 of 2011* matter was decided by the High at Kitale and proceeded to the Court of Appeal at Eldoret and is fully determined, though on a technicality and the school is dissatisfied with the decision. No second appeal had been filed in the Supreme Court.
45. Owing to the Public outcry, EACC visited the school in October, 2020 on a fact finding mission and have embarked on interrogating the key persons.
46. There is no other complaint filed before any other court, constitutional or legal body save for the above mentioned.

**The Petitioners prayed that:**

- a) **THAT**, the senate investigates into the matter and provides a solution on how the said land can be recovered.
- b) Any other recommendation that the Senate may deem necessary on this matter.

Pursuant to standing order 232(1) of the Senate Standing Orders, the Petition was committed to the Land, Environment and Natural Resources Committee.

## **LEGAL BASIS FOR PETITIONS**

1. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the Senate Standing Orders.
2. Article 37 of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while Article 119(1) 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.*”
3. Section 5(2) of the Petition to Parliament (Procedure) Act, provides that *a petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House.* In this regard, standing order 232 of the Senate Standing Orders provides as follows-
  232. *Committal of Petitions*
    - (1) *Every Petition presented or reported pursuant to this Part, shall stand committed to the relevant Standing Committee.*
    - (2) *Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes.*
4. Standing order 233 requires the Clerk to, within fifteen days of tabling of the report on a petition under Standing Order 232 (Committal of Petitions), submit a copy of the report to the petitioner or petitioners.

## CHAPTER 2

### CONSIDERATION OF THE PETITION

#### **Approach taken by the Committee**

1. In considering the Petition, the Committee observed that it would be important to verify the facts alleged by the Petitioners. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.
2. In this regard, the Committee received the Petition from the Petitioner through the House and further met with the Petitioners on several occasions as it met with stakeholders.
3. Thereafter the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning, the Chairperson of the National Land Commission, and the private investor accused of alienating the parcel of land, Dr. Nathaniel Tum who appeared virtually before the Committee.
4. The Committee then conducted a site visit at the school in Kitale, Trans Nzoia County on 10<sup>th</sup> August, 2021.

#### **A. Petitioners Submissions**

Vide a letter REF: SEN/DCS/LENR/2/2021/(10) dated 11<sup>th</sup> March, 2021, the Committee invited the Petitioners to virtually appear before the Committee on Friday, 26<sup>th</sup> March, 2021 who thereafter appeared and defended their Petition.

#### **B. Responses by the Cabinet Secretary, Ministry of Lands and Physical Planning**

Prior to 1990, the Government reserved land for public institutions through letters of reservation. A letter of reservation was issued for un-surveyed plot. Later, the Government began reserving land for public institutions by issuing letters of allotment.

We have not been able to trace the letter of reservation issued to Kitale Primary School. A letter Ref. DURP/10/1/161 dated September 14, 1973 signed by the then Director of Urban and Rural Physical Planning addressed to the school indicates that approximately 55 Hectares was reserved for the school (*Annexe 2*). The Kitale Town Development Plan (DP) of 1973 shows the reservation for Kitale Primary School marked as 2<sub>7</sub> (*Annexe 3*).

From our records, the School applied for processing of the title vide a letter dated October 7, 1993. They also applied for allocation of an adjacent land, which they claimed to have been utilising for at least 10 years (*Annexe 4*).

A Part Development Plan (PDP), Departmental Reference No. KTL.10/96/100 was prepared for the school and approved in 1998 with Approval No. 294 (*Annexe 5*).

A comparison between the Development Plan of 1973 and the PDP of 1998 shows a variance in orientation of the parcel.

On July 2, 1999, the Commissioner of Lands issued an allotment letter Ref. 20089/XXXIV/106 of July 2, 1999 for the un-surveyed school plot measuring 43.33 hectares. Survey was done and a Lease prepared for a total area of 41.28 Ha (102 acres).

On June 14, 2010, the parcel was registered as Kitale Municipality Block 12/229 in favour of The Permanent Secretary to the Treasury of Kenya as Trustee to Kitale School (**annexure 6**). As per the title, the school land measures approximately 41.28 Hectares.

#### **Kitale Municipality Block 12/236 (formerly 132)**

According to our records, Nathaniel K. Tum was allocated Uns. Hotel Site-Kitale Municipality measuring approximately 4 Hectares for a 99-year term commencing September 1, 1994, vide letter of allotment Ref. 20089/XXXIV/1 of September 29, 1994 (**annexure 7**). A certificate of lease was issued on December 6, 1994 for Kitale Municipality Block 12/132.

In 2007, the District Surveyor discovered that the land parcel Kitale Municipality Block 12/132 had encroached into Kitale Primary School Land (Kitale Municipality Block

12/229) and thereby requested the Commissioner of Land to compel the owner of Kitale Municipality Block 12/132 to surrender the title for necessary corrections (**annexure 8**).

The Ministry therefore requested Mr. Tum to surrender his Certificate of Lease for cancellation and issuance of a new lease bearing the correct survey area (**annexure 9**). The Certificate of Lease Kitale Municipality Block 12/132 was cancelled vide gazette notice No. 5560 of May 21, 2010 (**annexure 10**).

The land allocated to Mr. Tum was re-surveyed and the Registry Index Map amended. The area reduced from 4 Hectares to 3.560 Hectares and a new parcel No. Kitale Municipality Block 12/236 was issued (*Annexe 12*). On March 1, 2013 Nathaniel K. Tum was registered as the proprietor of Kitale Municipality Block 12/236 and a certificate of lease issued (*Annexe 12*).

According to the petitioners, the dispute between the school and Mr. Nathaniel Tum is before the National Land Commission. According to our records, the Ethics and Anti-Corruption Commission is also handling the matter. The Ministry will liaise with the respective agencies with a view to resolving the matter.

### **C. Responses by the National Land Commission**

1. Kitale primary (also referred to as either Kitale School or Kitale Academy) was established in 1929 as per the documentation provided by the School.
2. In a letter dated 14/9/1973 signed by the Director of Urban Rural Physical Planning indicated that Kitale Primary land as 55 Ha and proposed a public road reserve and open space of 2.44 Ha.
3. Planning: The site for Kitale School in Kitale Municipality was provided for in approved Development Plan Ref.10/72/7 on 17-1-1974. However, the acreage is not indicated.
4. Government subsequently re-planned the site resulting in the following Part Development Plans (PDPs)

- a) PDP Ref. No. KTL.10.92.15 approved on 20-8-1992 for proposed primary school with an acreage of 2.09 Ha. .- *Refer to attached Approved Plan Number 174.*
  - b) PDP Ref. KTL. 10.94.111 approved in 23-12-1994 for proposed hotel use. (The acreage is not indicated) .- *Refer to attached Approved Plan Number 229.*
  - c) PDP Ref. No. KTL. 10.96.100 approved in 23.11.1998 for existing Kitale Academy measuring approximately 43.33 Ha.- *Refer to attached Approved Plan Number 294.*
  - d) It appears that one of the above subdivisions created Kitale Municipality Block 12/132 which was registered in favour of Dr. Nathaniel Tum.
5. Kitale primary states that it applied for allotment letter in a letter dated 7<sup>th</sup> June, 1983 and a reminder on 15<sup>th</sup> July, 1985.
  6. On 27<sup>th</sup> September, 2007, the Commissioner of Lands wrote to Nathaniel K. Tum asking him to return the title. The title was being recalled for "cancellation and replacement with a new certificate" since it had encroached into Kitale Academy. It seems the re-survey was done to exclude the school dormitory and the title corrected. A preliminary ground report by NLC shows that the school's septic tank is still on the private parcel. The basis of the request by the Commissioner of Lands to Tum was a complaint by the Kitale School that the School land had been encroached by a private developer and that the school developments were comprised in Tum's title.
  7. The Minister for Lands vide Gazette Notice 5560 of 21<sup>st</sup> May 2010 revoked Nathaniel Tum's title. The Gazette Notice stated that the land had been reserved for public purpose. We did not find any evidence that the title for Kitale Municipality Block 12/132 was cancelled.
  8. **Kitale High Court JR No 38 of 2011:** The School went to Court seeking an order to the commissioner of lands to allocate the land parcel which had been revoked. The court declined to determine the allocation validity issues but held that the gazette notice revocation procedure was un-procedural. The application by Kitale primary

was dismissed and the court advised the school to seek lawful and procedural remedy in an appropriate forum. This led to Kitale primary filing a case at the National Land Commission on 24<sup>th</sup> February 2020 to relook into the matter.

9. They state that the subject land was school land all along and it had been fenced. They state that they cultivated agricultural crops on the land to feed pupils and students. They allege that unknown to them Tum applied for allocation of part of the school land of 10 acres and got registered via parcel no Kitale Municipal Block 12/132.

### **Way Forward**

- a) The Ministry of Lands and Physical Planning may provide more information on the re-planning that became the basis for survey and subsequent registration of the school land and the land held by private developers.
- b) NLC can relook at this matter.

### **D. Responses by the private investor, Dr. Nathaniel Tum**

Vide a letter Ref: SEN/DCS/LENR/2/2021/(19) dated 31<sup>st</sup> April, 2021, the Committee invited the accused, Dr. Nathaniel Tum who made the following submission -

1. THAT I received the above Petition dated 31/3/2021 by email on 1<sup>st</sup> of April 2021 and wish to address the complaints raised in the petition as follows: -
2. THAT I vehemently deny the allegation by the petitioner that there was an illegal alienation of land belonging to Kitale School and that I conspired with the Commissioner of Lands to alienate 1 acres of the school land.
3. THAT I obtained L. R. NO. KITALE MUNICIPALITY BLOCK 12/236 (formerly BLOCK 12/132) legally having followed all the due processes of land ownership in Kenya.
4. THAT I applied for the land referred to above which was Government land together with other applicants being Ms. Halima Kokita of Kapenguria, Messrs Ken Kiptoo and Josephine Kerubo. I am also aware that the Anglican Church where Bishop Emmanuel Chemengich is overseeing and the AIC Church were also applicants for the said land.

5. THAT I am aware that the four of us Kiptoo & Kerubo, Halima and myself were successful each being allotted 1.357, 0.40 and 3.56 hectares respectively.
6. THAT pursuant to my application to be allocated L.R. NO> KITALE MUNICIPALITY BLOCK 12/236, I was issued with a letter of Allotment dated 29<sup>th</sup> September, 1994. (Annexed herein as NKT1).
7. THAT the letter of allotment was specific that the property was unsurveyed.
8. THAT I have been paying rates to Trans Nzoia County for the property since 1994. (Annexed herein as NKT2 is a copy of receipt dated 6<sup>th</sup> December, 1994).
9. THAT I am aware that the Government has a right to allot land belonging to it and thus there was no illegality as I applied as an ordinary citizen and was allotted and fulfilled the requirements pertaining to the allotment including the payments of fees to the government and all the necessary rates and rents to the relevant authorities.
10. THAT I was issued with the Certificate of Lease on 6<sup>th</sup> December, 1994 with annual rent of Kshs.70,000. (Annexed herein as NKT3.)
11. THAT upon obtaining the above parcel and after of developing the same, Kitale School complained through a letter to the Ministry of Lands that I have encroached into L.R. NO. KITALE MUNICIPALITY BLOCK 12/229.
12. THAT vide a letter dated 27<sup>th</sup> September 2007, I was requested to surrender the Certificate of Lease to the Commissioner of Lands for cancellation and replacement of a new certificate bearing the correct survey area. (Annexed herein as NKT4).
13. THAT I obliged to the request and vide a letter dated 24<sup>th</sup> February 2010, I was further requested by the Ministry of Lands to facilitate excision of the part touching Kitale school. (Annexed herein as NKT5).
14. THAT to honour the request, I visited the lands office where I met Mr. Kariuki J.K and voluntarily surrendered the certificate of lease for L.R. NO. KITALE MUNICIPALITY BLOCK 12/132.
15. THAT I was issued with a Surrender Certificate of lease dated 9<sup>th</sup> March 2010. (Annexed herein as NKT6 is a copy of the certificate.)

16. THAT vide a letter dated 23<sup>rd</sup> March 2010 the Commissioner of Lands was notified of the new certificate of lease from the Director of Survey. (Annexed herein as NKT7 is a copy of the letter.)
17. THAT I was thus issued with a new number being L.R. NO. KITALE MUNICIPALITY BLOCK12/236. (Annexed herein as NKT8 is a copy of the Title.)
18. THAT the Petitioners have been shifting goal posts from encroachment issues to grabbing of their alleged land which forced the Commissioner of Lands to direct the Districts lands office vide a letter dated 8<sup>th</sup> June, 2011 to solve the matter amicably between the Kitale school and myself. (Annexed herein as NKT9 is a copy of the letter.)
19. THAT a Technical Team was formed by the Chief Land Administration office to investigate the matter, which report found that; -
- a) *Both Tum and the school knew that the disputed land was government land.*
  - b) *The school applied to be allocated the land.*
  - c) *Tum also applied to be allocated the same land.*
  - d) *Tum was allocated the site and developed the same.*
  - e) *The site in dispute was formally the area which had encroached on the school compound.*
  - f) *Tum has surrendered the land which was in dispute and PIA NO.132 has been resurveyed as Block 12/229.*
20. **THAT** the recommendation of the Technical Team referred to in paragraph 19, was that I retain the site block 12/236 that I have developed, and the boundaries be maintained as they are on the ground as per the fencing. (Annexed herein as **NKT 10** is a copy of the Report dated 9<sup>th</sup> October 2012.)
21. **THAT** having being dissatisfied with the above report, Kitale School abandoned the negotiations and filed judicial Review No. 35 of 2011 where the court dismissed their application with costs. (Attached herein as **NKT11** is a copy of the ruling.)
22. **THAT** in its *Orbiter Dictum*, on page 14 of the ruling the court stated that there was undisputed documentary evidence by myself in the application to the Government to be

allocated the vacant land.

23. **THAT** the Applicant in Judicial Review No. 38 of 2011 being Kitale school were dissatisfied with the decision and appealed to the Court of Appeal vide C.A No.1 of 2013 which appeal was dismissed with costs.
24. **THAT** I have since developed my parcel of land where there is a large extensive service station, service by, supermarket and cafeteria. Other developments include a water plant, car wash and residential units at a total cost of Kshs.250 million.
25. **THAT** I am the lawful allottee and thus the legal owner of L.R. NO. KITALE MUNICIPALITY BLOCK12/236 measuring 3.56 ha.
26. **THAT** in reply to **paragraph 16 of the Petition**, Kitale school is being economical with the truth since when they started applying for the school title on 7/6/1993 to the Town Clerk, they were advised to forward their application to the Commissioner of Lands. The question of the school having 55 hectares did not arise. This is captured in the Report of Land Technical Team Trans Nzoia dated 9/10/2012 annexed as NKT10.
27. In **reply to paragraph 17 of the Petition**, the petitioners have not attached evidence of reservation and further the details of the said reservation be it the acreage and the extent of the reservation.
28. In **reply to paragraph 18 of the Petition**, the allegation of grabbing is malicious. The mentioned Part Development Plan (PDP) can only be viewed against subsequent applications and allocation processes for the land in question. I have followed all due processes in the application and the significance of this document was not raised by the relevant government departments. I am only aware that the school applied and obtained a letter of allotment in 2<sup>nd</sup> July 1999 for 43.33 Ha as per the approved PDP KTL/10/96/100. **(NKT 10)**
29. In reply to paragraph 19 of the Petition on 13/9/93 during the School Executive Board Meeting, Minute No. EB/93/26 AOB School Land – it was agreed.
30. In **reply to paragraph 20 of the Petition**, the statement is inconsistent as on 2<sup>nd</sup> July, 1999, the Commissioner of Lands issued a letter of allotment for the un-surveyed

school plot measuring 43.33 ha as per the approved PDP No. KTL/10/96/100. In addition, the school accepted the offer by paying the lessor fee of Kshs.6,122/=. A survey was done and a lease prepared for a total area of 41.28 ha (102 acres). The exact size was established after the survey.

31. In **reply to paragraph 21 of the petition**, the Ministry of Education was in no position to excise private property under LR. No. Block 12/132 now Block 12/236.
32. In **reply to paragraph 23, 24, and 25 of the Petition**, I was chairman of the PTA of Kitale School in the 1980s and I am not aware of any time that I was requested to assist in acquiring to help in processing a title. I did not offer to assist as I was not an officer in the Ministry of Lands. My role at the time was that of the development of the school technical laboratory and the classrooms. This is a task I executed with excellence resulting in construction of the present lab and modern classrooms. I did fundraising and solicited funds from KPA, Railways, Kenya Seed Co etc. for purposes of the said buildings.

From the reports of Lands, Kitale School applied for the allotment for the school land on 15/7/1993 (Technical Report Page 2). The issue of trusteeship could not have arisen.

33. In **reply to paragraph 27 of the Petition** it is true that I was issued with a Title Deed in 1994, however, it is totally misleading to allege that I clandestinely applied for a private title from the land reserved as public land. There was nothing clandestine about the land as all legitimate procedures were followed.
34. In **reply to paragraph 28 of the Petition**, the allegation is not true. Following the issuance of the title in 1994, the Government surveyors beacons the land and I fenced the land following the survey beacons and consistent with the title issued. There was no encroachment. (Annexed herewith is the Beacon Certificate **NKT 13**).
35. In **reply to paragraph 29 and 30 of the Petition**, the survey and the beaconing of the land was done many years back and not in March 2021 when this petition was done. I welcome any inspections to confirm the beacons and where they were fixed by the Government surveyors. I confirm that the fencing is within my boundary and I have no

desire to encroach on school land.

36. In **reply to paragraph 31 of the Petition** I have no intention to encroach on school land as I am satisfied with my allotted portion.
37. In **reply to paragraph 33 of the Petition**, the statement in itself is prejudicial as I am the lawful owner of the above said parcel LR. No. Block 12/236.
38. In **reply to paragraph 36 of the Petition**, I confirm that my property has never housed a girl's dormitory. It is evident from a physical inspection that the sewer and the girl's dormitory are intact and within the school land. I have no intention of encroaching on the disused school sewer after a new sewer line was put up by the County Government which is now in use.
39. In **reply to paragraph 37 of the Petition**, I was not made party to this complaint.
40. In **reply to paragraph 38 of the Petition** I confirm that I left the chairmanship of Kitale School in the late 80s and I had no fiduciary duty as a trustee of the school during my allotment of the parcel of land in 1994. There was no conflict of interest.

The boundaries were clear and government surveyors were involved and the title issued by Commissioner of Lands following their rectification.

41. In **reply to paragraph 39 and 40 of the Petition** the title can never be cancelled by gazette notice or a ministerial order as indicated on page 22 of the court ruling in JR No.38 of 2011. The cancellation of title 12/132 was because of an incorrect survey and not as a result of encroachment of a ministerial order. It is for this reason that I was issued with a new title L.R. No. Block 12/236. As a result of this process, I lost one acre of land which formed part of LR No. Block 12/229 (Kitale School).

Note that the approvals for the re-survey were conducted in Trans Nzoia to obtain the consents from the various Heads of Departments

Thereafter the Director of Survey wrote to the Commissioner of Lands following the completion of the re-survey of the said land indicating that the Registry Index map had

been amended to reflect parcel No.236.

42. In reply to paragraph 41 of the Petition it is not true that I surreptitiously managed to get another title. It is true that due process was followed that a triangle which encroached the Kitale school and which was not fenced was not part of my property. It was not an encroachment by me but it was a survey error. Refer to Letter dated 27/9/2007 (Ref 160742) from the Ministry of Lands (**NKT 4**).
43. In **reply to paragraph 42 and 43 of the Petition** it is true that the matter went to the High Court in Kitale and the court confirmed that the property rights of Dr. Nathaniel Tum cannot be taken away by Judicial Review. The matter went further to the Court of Appeal which upheld the High Court decisions that the property belongs to Dr. Tum.
44. **THAT** my proprietary rights should be protected by the government since my title to LR. NO. KITALE MUNICIPALITY BLOCK 12/236 is a sacrosanct and indefeasible as provided in Article 40 of the Constitution.
45. **THAT** I was allocated LR. NO. KITALE MUNICIPALITY BLOCK 12/236 and lawfully acquired it as indicated in page 20 of the High Court ruling attached as NKT 7.
46. **THAT** I thus pray that the petition be dismissed as LR. No. KITALE MUNICIPALITY BLOCK 12/236 is distinct from LR. No. KITALE MUNICIPALITY BLOCK 12/229 which belongs to the school.

**E. Site Visit to the contested area of the school and that of the private investor, Dr. Nathaniel Tum**

The Committee undertook a Site Visit to Kitale School Primary on 10<sup>th</sup> August, 2021.

The Committee began its visit by paying a courtesy call to the County Commissioner's Office, where a short briefing session was held. During the session, the County

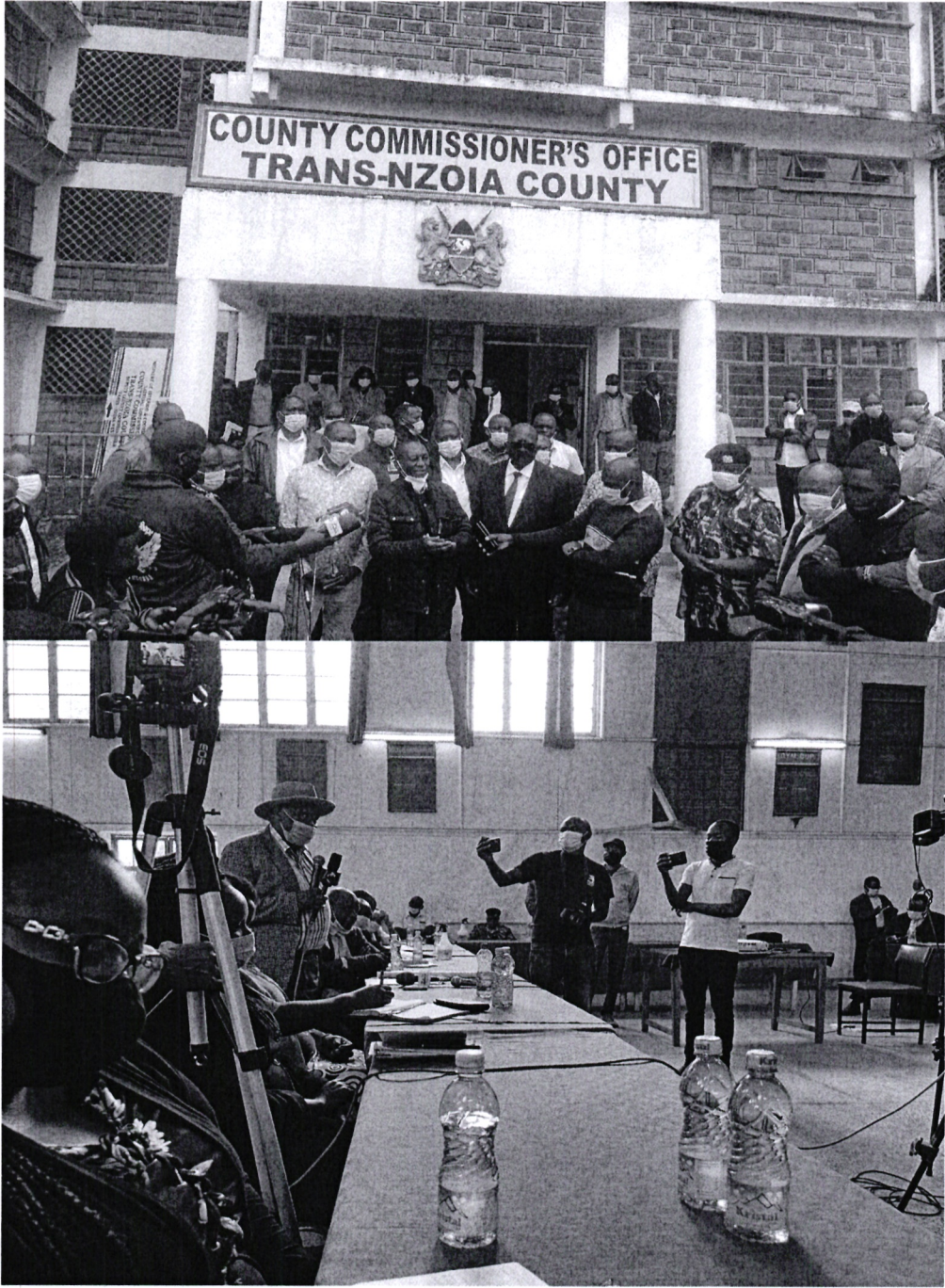
Commissioner informed the Committee that there were numerous land challenges within Trans Nzoia County which included;

- Grabbing of public land;
- Lack of title deeds;
- Court cases and succession matters;
- Inadequate land for the expansion of Kitale town due to ownership challenges of urban land.

On land grabbing, the County Commissioner brought to the attention of the Committee the KARI land problem and informed members that a section of land belonging to the institution had been grabbed in the 1990s. In a bid to resolve the land titling problems, the County Commissioner informed the Committee that the government had issued 25,000 title deeds out of the supposed 80,000. The Committee urged the people of Trans Nzoia to forward more petitions to Senate to resolve the numerous issues.

The Committee then proceeded to meet the Kitale School stakeholders at the Kitale School to verify the matters contained in the petition and those expressed in submissions during the numerous virtual meetings held. During the meeting, some of the key issues raised included conflict of interest where the petitioner informed the Committee Dr. Tum was privy to the titling issue of the School land, being the School's PTA Chair.

The Committee concluded the visit by touring the disputed ground accompanied by the stakeholders and the respondent of the petition, Dr. Tum. While surveying the disputed area, the respondent informed members that he did not own part of the land in dispute. The Committee resolved that the portion be resurveyed by the Ministry of Lands, Department of Survey and a title deed be issued in favor of the schools.







*(Attached above are photos taken during the Committees courtesy call to the County Commissioner, Trans Nzoia County, the Petitioners at Kitale School Primary and to the contested area where the Committee met the Private Investor, Dr. Nathaniel Tum.)*

## **CHAPTER 5**

### **COMMITTEE OBSERVATIONS**

**In accordance with the Prayers of the Petitioner the Committee observes that:**

- 1. A letter Ref. DURP/10/1/161 dated September 14, 1973, signed by the then Director of Urban and Rural Physical Planning addressed to the school indicates that approximately 55 Hectares was reserved for the school. The Kitale Town Development Plan (DP) of 1973 shows the reservation for Kitale Primary School.**
- 2. In 1983, during the period when the school applied for allotment of land and title deed, Dr. Nathaniel Tum was the Chairman of the PTA at Kitale School Primary and a member of the BOG. He offered to help in the process of acquiring the title.**
- 3. A comparison between the Development Plan of 1973 and the PDP of 1998 shows a variance in orientation of the parcel.**
- 4. Following the District Survey Department and after all statutory requirements were completed, the school was allotted 41.28 hectares and a title deed issued in 2010 less 4 hectares of land.**
- 5. The then Minister for Lands Hon. James Orengo vide Gazette Notice 5560 of 21<sup>st</sup> May 2010 revoked Nathaniel Tum's title. The Gazette Notice stated that the land had been reserved for public purpose.**
- 6. In 2013, Mr. Nathaniel Tum managed to get another title 12/236 to exclude the area encroaching the dormitories.**
- 7. The School went to Court but the application by Kitale Primary was dismissed and the court advised the school to seek lawful and procedural remedy in an appropriate forum. This led to Kitale primary filing a case at the National Land Commission on 24<sup>th</sup> February, 2020 to relook into the matter.**

- 8. The presence of a land hook on the same parcel of land between Kitale School Primary and Nathaniel Tum shows the presence of an illegality because a land hook is a method of indicating on a survey map the existence of contiguous parcels with the same ownership.**
- 9. During the site visit the Committee observed that, there was an area that the private investor showed the Committee that didn't belong to him and the School appeared not to be aware that it belonged to them.**

## CHAPTER 6

### COMMITTEE RECOMMENDATIONS

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders recommends as follows -

- 1. That the entire 55HA as indicated in the letter Ref. DURP/10/1/161 dated September 14, 1973, signed by the then Director of Urban and Rural Physical Planning addressed to the school be reverted back to the school with immediate effect;**
- 2. That the uncontested land that the Private investor showed the Committee during the site visit be reverted to the School as was directed during the visit in the presence of representatives from the Ministry of Lands and Physical Planning (MoLPP) and the National Land Commission (NLC). The MoLPP and the NLC should ensure that a proper survey is done and a Title deed issued to Kitale School Primary; and**
- 3. That the Ministry of Lands and Physical Planning cancels the title deed, Title Number LR. NO. KITALE MUNICIPALITY BLOCK 12/236 currently allocated to Mr. Nathaniel Tum and a new title be issued in favour of Kitale School Primary.**

## APPENDICES

### ANNEX I: MINUTES OF THE MEETINGS

*(Attached separately)*

**ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS**

*(Attached separately)*

**ANNEX III: SUBMISSIONS BY THE PETITIONER**

*(Attached separately)*

**ANNEX I: MINUTES OF THE MEETINGS**

**MINUTES OF THE 54<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 18<sup>TH</sup> AUGUST, 2021 AT SAROVA WHITESANDS HOTEL, MOMBASA AT 2.00 PM.**

**MEMBERS**

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. Mwaruma Johnes, MP
4. Sen. Ndwiaga Peter Njeru, EGH, MP
5. Sen. Boy Issa Juma, MP
6. Sen. (Dr.) Lelegwe Ltumbesi, MP

**PRESENT**

- Chairperson
- Vice Chairperson
- Member
- Member
- Member
- Member

**ABSENT WITH APOLOGY**

1. Sen. George Khaniri, MGH, MP - Member
2. Sen. Gideon Moi, CBS, MP - Member
3. Sen. Sylvia Kasanga, MP - Member

**IN ATTENDANCE**

1. Mr. Victor Bett
2. Mr. Crispus Njogu
3. Ms. Mitchell Otoro
4. Ms. Lucianne Limo
5. Ms. Farida Kinyua
6. Mr. Erick Njogu
7. Mr. John Pere
8. Mr. James Kimiti
9. Mr. Naftali Ondiba

**SECRETARIAT**

- Clerk Assistant
- Clerk Assistant
- Legal Counsel
- Media Relations Officer
- Personal Secretary
- Clerk Assistant
- Sergeant-At-Arms
- Audio Recording
- Finance Officer

**MINUTE SEN/SCLENR/309/2021: PRELIMINARIES**

The meeting was called to order at 2:00 pm by the Chairperson followed by a word of prayer.

**MINUTE SEN/SCLENR/310/2021: ADOPTION OF AGENDA**

The agenda of the meeting was adopted after being proposed by Sen. Mwaruma Johnes, MP and seconded by Sen. Philip Mpaayei, MP as follows –

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. **Adoption of the following Petition Reports;**

- (a) Draft Report of the Committee on the Petition regarding the illegal alienation of land belonging to Kitale Primary School by a private developer
  - (b) Draft Report of the Committee on the Petition regarding the illegal encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County
5. Any other Business;
  6. Date of the next meeting;
  7. Adjournment.

**MINUTE SEN/SCLNR/311/2021: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

The Committee differed the confirmation of Minutes.

**MINUTE SEN/SCLNR/312/2021: ADOPTION OF THE FOLLOWING PETITION REPORTS;**

- (a) **Draft Report of the Committee on the Petition regarding the illegal alienation of land belonging to Kitale Primary School by a private developer**

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders, hereby **adopted its report** with the following recommendations in accordance with the Prayers of the Petitioner—

**The Committee there recommends as follows:**

1. **That the entire 55HA as indicated in the letter Ref. DURP/10/1/161 dated September 14, 1973, signed by the then Director of Urban and Rural Physical Planning addressed to the school be reverted back to the school with immediate effect;**
2. **That the uncontested land that the Private investor showed the Committee during the site visit be reverted to the School as was directed during the visit in the presence of representatives from the Ministry of Lands and Physical Planning (MoLPP) and the National Land Commission (NLC). The MoLPP and the NLC should ensure that a proper survey is done and a Title deed issued to Kitale School Primary; and**

3. That the Ministry of Lands and Physical Planning cancels title deed, Title number LR. NO. KITALE MUNICIPALITY BLOCK 12/236 currently allocated to Mr. Nathaniel Tum and a new title to be issued in favour of Kitale School Primary.

The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Philip Mpaayei, MP, and Sen. Boy Issa Juma, MP respectively.

- (b) Draft Report of the Committee on the Petition regarding the illegal encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County

The Committee considered the draft report and resolved to defer its adoption to allow the Directorate of Criminal Investigations (DCI) to conclude their ongoing investigations into the matter and submit a report of their findings to the Committee by early October.

MINUTE SEN/SCLNR/313/2021: ANY OTHER BUSINESS;

There was no other business discussed.

MINUTE SEN/SCLNR/314/2021: DATE OF NEXT MEETING;

The meeting was adjourned at 4.00 pm and the next meeting was scheduled for 19<sup>th</sup> August, 2021 at 9:00 am

Signed:  .....

Date: 20/08/2021 .....

SEN. MWANGI PAUL GITHIOMI, MP

CHAIRPERSON, STANDING COMMITTEE ON LAND, ENVIRONMENT  
AND NATURAL RESOURCES

**MINUTES OF THE 28<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 27<sup>TH</sup> MAY, 2021 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.**

**MEMBERS**

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Gideon Moi, CBS, MP
3. Sen. Boy Issa Juma, MP
4. Sen. Mwaruma Johnes, MP
5. Sen. George Khaniri, MGH, MP
6. Sen. (Dr.) Lelegwe Ltumbesi, MP

**PRESENT**

- **Chairperson**
- Member
- Member
- Member
- Member
- Member

**ABSENT WITH APOLOGY**

1. Sen. Philip Mpaayei, MP
2. Sen. Ndwiga Peter Njeru, EGH, MP
3. Sen. Sylvia Kasanga, MP

- **Vice Chairperson**
- Member
- Member

**IN ATTENDANCE**

**A. SENATORS**

1. Sen. Michael Mbiti, MP - Senator, Trans Nzoia County
2. Sen. Mohamed Faki, MP - Senator, Mombasa County

**B. MINISTRY OF LANDS AND PHYSICAL PLANNING (MoLPP)**

1. Ms. Farida Karoney, EGH - CS, MoLPP
2. Hon. Alex Mbiu - CAS, MoLPP
3. Mr. Kamau Maina - Lands Administrator
4. Ms. Caroline Menin - MoLPP
5. Mr. Robert Nayankeruma - MoLPP
6. Mr. Mark Ewoi - Planning, MoLPP

**C. NATIONAL LAND COMMISSION**

1. Mr. Gerishom Otachi - Chair, NLC
2. Ms. Esther Murugi - Commissioner, NLC
3. Prof. J. Tuitoek - Commissioner, NLC
4. Hezron Alela

**D. PETITIONERS**

1. Mr. Emel Sitienei - Principal of the School
2. Mr. Stephen Mainga - Dep. Principal
3. Mr. Peter Kebati - Chair, Alumni Association
4. Salim Mwidadi - Jomvu
5. Ahmed Kombo - Jomvu
6. Mwinyiusi Mzee Mwidadi - Jomvu
7. Issa Mwidadi Salim - Jomvu
8. Joyce Rhai - Jomvu
9. Ochieng' Githinji - Jomvu

#### **E. RESPONDENTS**

- |                           |                                    |
|---------------------------|------------------------------------|
| 1. Dr. Nathaniel Tum      | - Private Developer, Kitale        |
| 2. Bishop Joseph Ntombura | - Kenya Methodist Church           |
| 3. Mr. Sonny Mwenda       | - Advocate, Kenya Methodist Church |

#### **F. SECRETARIAT**

- |                        |                      |
|------------------------|----------------------|
| 1. Mr. Veronica Kibati | - P. Clerk Assistant |
| 2. Mr. Victor Bett     | - Clerk Assistant    |
| 3. Mr. Mitchell Otoro  | - Legal Counsel      |
| 4. Mr. James Kimiti    | - Audio Recording    |

#### **MINUTE SEN/SCLNENR/160/2021: PRELIMINARIES**

The meeting was called to order at 11.13 am by the Chairperson followed by a word of prayer.

#### **MINUTE SEN/SCLNENR/161/2021: ADOPTION OF AGENDA**

The agenda of the meeting was adopted after being proposed by Sen. Boy Issa Juma, MP and seconded by Sen. Gideon Moi, CBS, MP as follows –

1. Preliminaries – *Prayer and Introductions*
2. Adoption of the Agenda
3. **Petition concerning the alleged historical land injustices involving Plot No. 162/V/M.N.CR 1070, in Mombasa County;**
  - Submissions by Ministry of Lands and Physical Planning
  - Submissions by National Land Commission
  - Submissions by Kenya Methodist Church
4. **Petition concerning the alleged illegal alienation of land belonging to Kitale School Primary by a private developer;**
  - Submissions by National Land Commission
  - Submissions by Ministry of Lands and Physical Planning
  - Submissions by Dr. Nathaniel Tum
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

#### **MINUTE SEN/SCLNENR/162/2021: PETITION CONCERNING THE ALLEGED ILLEGAL ALIENATION OF LAND BELONGING TO KITALE SCHOOL PRIMARY BY A PRIVATE DEVELOPER;**

- **Submissions by Ministry of Lands and Physical Planning**

The Cabinet Secretary made reference to the presentation made by the CAS during the previous engagement with MoLPP on the matter.

- **Submissions by National Land Commission**

The Chair NLC submitted as follows;

1. Kitale primary (also referred to as either Kitale School or Kitale Academy) was established in 1929 as per the documentation provided by the School.
2. In a letter dated 14.9.1973 signed by the Director of Urban Rural Physical Planning indicated that Kitale Primary land as 55 Ha and proposed a public road reserve and open space of 2.44 Ha.
3. Planning: The site for Kitale School in Kitale Municipality was provided for in approved Development Plan Ref.10/72/7 on 17-1-1974. However, the acreage is not indicated.
4. Government subsequently re-planned the site resulting in the following Part Development Plans (PDPs)
  - a) PDP Ref. No. KTL.10.92.15 approved on 20-8-1992 for proposed primary school with an acreage of 2.09 Ha. - *Refer to attached Approved Plan Number 174.*
  - b) PDP Ref. KTL. 10.94.111 approved in 23-12-1994 for proposed hotel use. (The acreage is not indicated) - *Refer to attached Approved Plan Number 229.*
  - c) PDP Ref. No. KTL. 10.96.100 approved in 23.11.1998 for existing Kitale Academy measuring approximately 43.33 Ha.- *Refer to attached Approved Plan Number 294.*
  - d) It appears that one of the above subdivisions created Kitale Municipality Block 12/132 which was registered in favour of Nathaniel Tum.
5. Kitale primary states that it applied for allotment letter in a letter dated 7th June 1983 and a reminder on 15<sup>th</sup> July 1985.
6. On 27th September 2007, the Commissioner of Lands wrote to Nathaniel K Tum asking him to return the title. The title was being recalled for "cancellation and replacement with a new certificate" since it had encroached into Kitale Academy. It seems the a re-survey was done to exclude school dormitory and the title corrected. A preliminary ground report by NLC shows that the School's septic tank is still on the private parcel. The basis of the request by the Commissioner of Lands to Tum was a complaint by the Kitale School that the School land had been encroached by a private developer and that the school developments were comprised in Tum's title.
7. The Minister for Lands vide gazette notice 5566 of 21<sup>st</sup> May 2010 revoked Nathaniel Tum's title. The gazette notice stated that the land had been reserved for public purpose. We did not find any evidence that the title for Kitale Municipality Block 12/132 was cancelled.
8. **Kitale High Court JR No 38 of 2011:** The School went to Court seeking an order to the commissioner of lands to allocate the land parcel which had been revoked. The court declined to determine the allocation validity issues but held that the gazette notice revocation procedure was un-procedural. The application by Kitale primary was dismissed and the court advised the school to seek lawful and procedural remedy in an appropriate forum. This led to Kitale

primary filing a case at the National Land Commission on 24<sup>th</sup> February 2020 to relook into the matter.

9. They state that the subject land was school land all along and it had been fenced. They state that they cultivated agricultural crops on the land to feed pupils and students. They allege that unknown to them Tum applied for allocation of part of the school land of 10 acres and got registered via parcel no Kitale Municipal Block 12/132.

#### **Way Forward**

- a) The Ministry of Lands and Physical Planning may provide more information on the re-planning that became the basis for survey and subsequent registration of the school land and the land held by private developers.
- b) NLC can relook at this matter.

- **Submissions by Dr. Nathaniel Tum**

Dr. Tum, reiterated the same as was raised during the previous meeting.

*The Committee noted the following interventions:*

- *The Senator, Trans Nzoia County gave his disappointment with reference to the submissions made by the CAS, MoLPP in that it did not provide any way forward for the School; the Senator further noted that the school lost the cause as a result of technicalities of representation at court.*
- *The Representative from the School Alumni informed the Committee that following the Dr. Nathaniel Tum's presentation that the school had begun the process of registration back in 1983 when he was the Chair of PTA at the school yet he claims not to be aware; he then excised part of the land for his own interests and later built a petrol station; further the Committee was informed that the court in the ruling advised that the remedy was not by way of judicial review and that only NLC and the Land and Environment court can review the matter.*
- *Dr. Tum informed the Committee that he left the school in the 1980's and later applied for a title deed in 1994.*
- *The CAS further assured the Committee that it will restrict the Title deed of the parcel of land until when the Committee completes its investigation onto the matter and a way forward provided by the NLC.*
- *The Committee further ruled that the next meeting on the agenda be held in the presence of NLC on 27<sup>th</sup> May, 2021.*

**MINUTE SEN/SCLENR/163/2021: PETITION CONCERNING THE ALLEGED HISTORICAL LAND INJUSTICES INVOLVING PLOT NO. 162/V/M.N.CR 1070, IN MOMBASA COUNTY;**

- **Submissions by Ministry of Lands and Physical Planning**

The Cabinet Secretary made reference to the presentation made by the CAS during the previous engagement with MoLPP on the matter.

- **Submissions by National Land Commission**

The Chair, NLC submitted as follows;

The National Land Commission has received an HLI claim no. NLC/HLI/565/2019 for the above and has admitted it for investigation, hearing and determination. The Commission is in touch with the parties on the matter. The Chairman also engaged with the claimants together with the Senate Standing Committee on Land, Environment and Natural Resources on 20th February 2021. During visit, the Chairman of NLC accompanied by the County Coordinator, took note of and recorded the detailed statements and submissions by the Claimants.

Hon Chair the Commission has officially communicated to the Methodist Church seeking their position on the petition by Wajomvu Community (*copy of the letter attached*).

In addition to the other HLI cases, this claim has also been prioritized for hearing and determination and particularly the National Land Commission has scheduled to consider the Wajomvu claim within the next 8 weeks

- **Submissions by Kenya Methodist Church**

They submitted as follows;

#### **HISTORICAL BACKGROUND**

The establishment of the mission station at Jomvu was initiated in 1878 by the then United Methodist Free Churches, the precursors of the present Methodist Church in Kenya. The Church then acquired a sizable piece of land not only for evangelistic purpose but also for the settlement of slaves who were either running away from their masters and some that were rescued from the high seas. This was not the only settlement by the Methodist Church but there were other settlements in Ribe and Mazeras (Ganjoni). The C.M.S, (Anglican) had another in Frere Town (Kisauni).

In order to ensure that this humanitarian mission was sustained for a long haul the pioneers Thomas Wakefield and Thomas Carthew, bought land in these places as no land was given for free. The administrator of Jomvu settlement was Thomas Carthew who ensured that the ex-slaves, some of who had ran away from their masters. They were well treated and offered means of livelihood for them and their families by being allocated a piece of land to cultivate. This did not please their masters who tried to claim them back as part of their property. As a compromise the missionaries decided to compensate their masters for the loss.

In 1888, the Methodist mission had paid 3,500 sterling pounds for the land a huge amount of money at the time. The British consul in Zanzibar encouraged the missionaries to purchase land in order that they would be safe from the land owners

who acted under authority of the sultan. The imperial British east Africa company who administered the territory for Britain oversaw the process was done legally and land titles were processed. The titles were later issued under the colony and protectorate of Kenya mandate.

By 1888, Thomas Carthew who was, the pastor and administrator of Jomvu community had more than 200 people who were residing in the Church land. Apart from the Church and his residence he built a school, for the children and a clinic for the community. Those who settled there were well aware they were living in the Church, land. In 1923 a title was issued for PLOT NO. LR. 162/V/MN.

In the year 2003 the Methodist Church in Kenya Registered Trustees conference office on its own volition decided to subdivide their land at Jomvu Mission amongst its fellowship. The leadership at Jomvu M.C.K/Mombasa synod was mandated with planning on how the land would be shared. In a meeting held on 26<sup>th</sup> February, 2011.

The Committee agreed that all households would stand on a quarter acre while all those of 18 years whether female or male would each get an 1/8. The distribution was therefore done as parties had agreed.

The agreement, however, escalated into civil suits particularly when the Plaintiffs were called upon, vide a letter dated 5<sup>th</sup> November, 2011 to contribute money towards subdivision of the parcel. It should not be lost to this Honourable committee that the agreement between the church was mutually reached and was never repudiated.

#### **Transaction on the Original Title**

That after the Plaintiffs failed to deposit the stated security by court, the Defendants (Methodist Church in Kenya) executed the orders of the court hence 456 Sub-divisions. Most of the residents on the property already have their independent titles. The church sold extra plots to willing buyers who have already done their transfers. As things stand plot No. 162 is non-existent.

#### **Litigation**

Vide a plaint dated 8<sup>th</sup> November, 2011, one, Akseli Lameck and 121 others filed suit in High court at Mombasa, being **HCC No. 589 of 2011**, which was later transferred to the Environment and Land division of the said court to become Mombasa High Court ELC No.589 of 2011. **A copy of the plaint and the defence is attached hereto and marked as M-1.**

The Plaintiffs in the suit sought for orders, *inter alia*:

- a) *That a declaration that Methodist Church in Kenya's contractual agreement with them (Plaintiffs) be recognized to constitute a valid and enforceable contractual agreement in law and that the church be compelled to execute transfer documents in favour of the plaintiffs and/or the Registrar of the High court Mombasa to execute the relevant documents upon failure of the church to do so;*

b) *An order against the Municipal Council of Mombasa to approve the proposed subdivision date 10<sup>th</sup> July, 2008 and an order directing the Registrar of titles Mombasa to register and issue titles to the plaintiffs*

c) *A declaration that the Jomvu Mission Non-Residents and in particular Changamwe brethren are not beneficiaries of the entire scheme and that any money collected from them by any of the defendants purportedly for allotment of land in Jomvu Mission be refunded to them by the defendants.*

**On 16<sup>th</sup> December, 2019**, the Honourable court, delivered its judgement dismissing the Plaintiffs suit and with costs. **A copy of the relevant judgement is annexed hereto and marked as "M-2."**

Without prejudice to the foregoing, the Honourable learned Judge decreed that the said Plaintiffs be assigned the respective sub-divisions as per the approved plans but pegged the allocation on the plaintiff's relationship with the church, having found that indeed the L.R. No.162/V/Mn was indeed lawfully owned by the church. (A copy of the relevant Decree is attached hereto and marked as M-3. It is noteworthy stating that the decree has never been set aside by any court of Law.

From the said decision, the plaintiffs sought for a variation foregoing orders more specifically on the aspect of the security payable, hereafter the Honourable learned ELC judge, Justice S. Munyao directed the Plaintiffs to have a stay of execution upon payment of Kenya Shillings one Hundred Thousand (Kshs.100,000/=) each in court within Forty-five (45) days of 23<sup>rd</sup> April, 2020. **A copy of the relevant ruling is annexed hereto and marked as "M-4"**

None of the Plaintiffs complied with the foregoing orders but they instead, opted to move this court again, in ELC CASE No.78 of 2021 seeking, inter alia, orders for a further stay of the orders of 23<sup>rd</sup> April, 2020. In the current suit no orders exist as the same were never extended therefore lapsing.

The Sub-divisions and/or ownership

The Church then, on 14<sup>th</sup> July, 1937 appointed The Methodist Missionary Trust Association, to be the sole Trustee in place of the then governing body, **Methodist Church Missions Kenya Trustees Registered.**

The church equally has, over the years acquired various properties in Kenya salient amongst them, (within the Coastal Region) being: -

- i. **MOMBASA/BLOCK XVII/1027**
- ii. **MOMBASA/BLOCK/XII/194**
- iii. **KWALE/MNAZINI/792**
- iv. **JOMVU/654/PLOT II**
- v. **KWALE/MNAZINI/935**
- vi. **MOMBASA/BLOCK XVII/1031**
- vii. **MOMBASA/TONONOKA/PLOT.IV/I**
- viii. **UPEONI/12064**
- ix. **KWALE/5007/19**

- x. KONGOWEA/MOMBASA/1494
- xi. MALINDI CR. NO.13171 (ORIGINAL NO.81)
- xii. GRON NO.CR 50035 REF 29163/XII-CI
- xiii. MAZERAS – LR. NO.1270
- xiv. MSONGETIFU LR. NO.1278
- xv. LR.161/MIKINDANI-216 ACRES
- xvi. LR.654 – MAGWANDA -163 ACRES
- xvii. LR.12085 – RIBE
- xviii. PLOT NO.208 KIKOMANI/MAKOBENI
- xix. PLOT NO.1314 MAANDANI/NYALENI
- xx. PLOT NO.693 – PONGARI
- xxi. PLOT NO.857 – CHONYI (MWARAKAYA – PINGILI)
- xxii. PLOT NO.208 – NYALONI – JIBANA – TSUNONI
- xxiii. PLOT NO. 24 – MWAKULIO ADJ.SEC
- xxiv. LR. NO.1001/2 – MAZERAS
- xxv. KILIFI/MTWAPA/4240
- xxvi. KILIFI/CHIKUU/542
- xxvii. MALINDI – LR.NO.1924
- xxviii. LAMU/4691/24/11
- xxix. LAMU/LAKE KENYATTA/1/246
- xxx. LAMU/LAKE KENYATTA/1/251
- xxxii. PLOT NO.62/11/2 -MTOPIANGA
- xxxiii. PLOT LR. NO.5007/19 – KWALE
- xxxiv. HONGERA RD (HOUSE LR/NO.134)
- xxxv. MOMBASA/BLOCK XVII/1027
- xxxvi. KWALE LUKUNDU S.S/196

So far as things stand parcel LR. No.162/V/MN does not exist anymore as 456 subdivisions have been done and titles are already out in members and private purchase own names.

The petitioners have miserably failed to allege anywhere in the petition whether the church fraudulently acquired the parcel and have failed to inform the Commission of the effect of the foregoing litigation. The rule of equity is settled that he who seeks equity must do equity.

The salient question the petitioners have further failed to address, is whether the right for the church to own property anywhere within the Republic of Kenya under article 40 of the Constitution has been removed from the Constitution overnight. For almost TEN (10) YEARS this case dragged in court, where were the Petitioners to join the suit.

We note with dismay that one of the complainants to the National Land Commission (NLC) is a former retired Reverend of the Methodist Church in 2020 (as per the 2020 minutes of the Methodist Church in Kenya) after joining a splinter group. They have formed an amorphous group calling itself Methodist Church in Kenya Coast Region Conference Mombasa Synod. This group is not registered under any legal regime and out to create trouble to the mainstream church.

Before the sub-divisions, the church set aside enough land for social amenities e.g., land was set aside for a dispensary, police station, forestry, school and riparian land comprising of 13.75 acres. The total acreage left for sub-division was 50.8 acres.

Contrary to what is alleged in the petition there is no blockage to fishing grounds or the jetty. No graveyard was touched by the Sub-division. The Petition as a whole is a fallacy which is designed to taste the waters. It has bi clear grounds to allege historical injustice. What currently forms JOMVU (Wajomvu) comprises of an entire sub-County. If what is claimed in the Petition is to true, then all those land owners within JOMVU must leave.

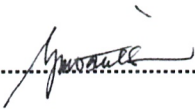
Their humble opinion is that the petition is designed to drive a particular political agenda and should be dismissed henceforth.

**MINUTE SEN/SCLNR/164/2021: ANY OTHER BUSINESS**

There was no other business discussed.

**MINUTE SEN/SCLNR/165/2021: DATE OF NEXT MEETING**

The meeting was adjourned at 1.49 pm and the date of the next meeting was to be held on thereafter.

Signed:..........

Date:.....29/6/2021.....

**SEN. MWANGI PAUL GITHIOMI, MP**  
**CHAIRPERSON**  
**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL**  
**RESOURCES**

**MINUTES OF THE 26<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 20<sup>TH</sup> MAY, 2021 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.**

**MEMBERS**

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. George Khaniri, MGH, MP
4. Sen. (Dr.) Lelegwe Ltumbesi, MP

**PRESENT**

- **Chairperson**
- **Vice Chairperson**
- Member
- Member

**ABSENT WITH APOLOGY**

1. Sen. Gideon Moi, CBS, MP
2. Sen. Ndwiga Peter Njeru, EGH, MP
3. Sen. Boy Issa Juma, MP
4. Sen. Sylvia Kasanga, MP
5. Sen. Mwaruma Johnes, MP

- Member
- Member
- Member
- Member
- Member

**IN ATTENDANCE**

**A. SENATORS**

1. Sen. Michael Mbito, MP - Senator, Trans Nzoia County

**B. MINISTRY OF LANDS AND PHYSICAL PLANNING (MoLPP)**

1. Hon. Alex Mbiu - CAS, MoLPP
2. Mr. Kamau Maina - Lands Administrator
3. Mr. Chacha Maroa - Lands Registrar

**C. PETITIONERS**

1. Mr. Emel Sitienei - Principal of the School
2. Mr. Stephen Mainga - Dep. Principal
3. Mr. Peter Kebati - Chair, Alumni Association
4. Mr. Otsula Robert - PA, Principal Kitale School
5. Salim Mwidadi - Jomvu
6. Ahmed Kombo - Jomvu
7. Mwinyiusi Mzee Mwidadi - Jomvu
8. Issa Mwidadi Salim - Jomvu
9. Patience Muhambwa - Jomvu
10. Joyce Rhai - Jomvu
11. Ochieng' Githinji - Jomvu

**D. RESPONDENTS**

1. Dr. Nathaniel Tum - Private Developer, Kitale

**E. SECRETARIAT**

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Lucianne Limo - Media Relations
3. Mr. James Kimiti - Audio Recording

**MINUTE SEN/SCLNDR/148/2021: PRELIMINARIES**

The meeting was called to order at 11.22 am by the Chairperson followed by a word of prayer.

**MINUTE SEN/SCLNDR/149/2021: ADOPTION OF AGENDA**

The agenda of the meeting was adopted after being proposed by Sen. (Dr.) Lelegwe Ltumbesi, MP and seconded by Sen. Mwaruma Johnes, MP as follows –

1. Preliminaries – *Prayer and Introductions*
2. Adoption of the Agenda
3. **Petition concerning the alleged historical land injustices involving Plot No. 162/V/M.N.CR 1070, in Mombasa County;**
  - Submissions by Ministry of Lands and Physical Planning
4. **Petition concerning the alleged illegal alienation of land belonging to Kitale School Primary by a private developer;**
  - Submissions by Ministry of Lands and Physical Planning
  - Submissions by Dr. Nathaniel Tum
5. **Petition on the alleged illegal encroachment of land covering the villages of Pangani, Nyatha, Kaisari, Mavuno, Promoko and Widho in Lamu County by Witu Livestock Cooperative Society.**
  - Submissions by Ministry of Lands and Physical Planning
6. Any other Business;
7. Date of the next meeting;
8. Adjournment.

**MINUTE SEN/SCLNDR/150/2021: PETITION CONCERNING THE ALLEGED ILLEGAL ALIENATION OF LAND BELONGING TO KITALE SCHOOL PRIMARY BY A PRIVATE DEVELOPER;**

- **Submissions by Ministry of Lands and Physical Planning**

Prior to 1990, the Government reserved land for public institutions through letters of reservation. A letter of reservation was issued for unsurveyed plot.

Later on, the Government began reserving land for public institutions by issuing letters of allotment.

We have not been able to trace the letter of reservation issued to Kitale Primary School. A letter Ref. DURP/10/1/161 dated September 14, 1973 signed by the then Director of Urban and Rural Physical Planning addressed to the school indicates that approximately 55 Hectares was reserved for the school (**annexure 2**). The Kitale Town Development Plan (DP) of 1973 shows the reservation for Kitale Primary School marked as 2<sub>7</sub> (**annexure 3**).

From our records, the School applied for processing of the title vide a letter dated October 7, 1993. They also applied for allocation of an adjacent land, which they claimed to have been utilising for at least 10 years (**annexures 4**).

A Part Development Plan (PDP), Departmental Reference No. KTL.10/96/100 was prepared for the school and approved in 1998 with Approval No. 294 (**Annexure 5**).

A comparison between the Development Plan of 1973 and the PDP of 1998 shows a variance in orientation of the parcel.

On July 2, 1999, the Commissioner of Lands issued an allotment letter Ref. 20089/XXXIV/106 of July 2, 1999 for the un-surveyed school plot measuring 43.33 hectares. Survey was done and a Lease prepared for a total area of 41.28 Ha (102 acres).

On June 14, 2010, the parcel was registered as Kitale Municipality Block 12/229 in favour of The Permanent Secretary to the Treasury of Kenya as Trustee to Kitale School (**annexure 6**). As per the title, the school land measures approximately 41.28 Hectares.

#### **Kitale Municipality Block 12/236 (formerly 132)**

According to our records, Nathaniel K. Tum was allocated Uns. Hotel Site-Kitale Municipality measuring approximately 4 Hectares for a 99-year term commencing September 1, 1994, vide letter of allotment Ref. 20089/XXXIV/1 of September 29, 1994 (**annexure 7**). A certificate of lease was issued on December 6, 1994 for Kitale Municipality Block 12/132.

In 2007, the District Surveyor discovered that the land parcel Kitale Municipality Block 12/132 had encroached into Kitale Primary School Land (Kitale Municipality Block 12/229) and thereby requested the Commissioner of Land to compel the owner of Kitale Municipality Block 12/132 to surrender the title for necessary corrections (**annexure 8**).

The Ministry therefore requested Mr. Tum to surrender his Certificate of Lease for cancellation and issuance of a new lease bearing the correct survey area (**annexure 9**). The Certificate of Lease Kitale Municipality Block 12/132 was cancelled vide gazette notice No. 5560 of May 21, 2010 (**annexure 10**).

The land allocated to Mr. Tum was re-surveyed and the Registry Index Map amended. The area reduced from 4 Hectares to 3.560 Hectares and a new parcel No. Kitale Municipality Block 12/236 was issued (**annexure 11**). On March 1, 2013 Nathaniel K. Tum was registered as the proprietor of Kitale Municipality Block 12/236 and a certificate of lease issued (**annexure 12**).

#### **Honourable Chair,**

According to the petitioners, the dispute between the school and Mr. Nathaniel Tum is before National Land Commission. According to our records, the Ethics and Anti-Corruption Commission is also handling the matter. The Ministry will liaise with the respective agencies with a view to resolving the matter.

- **Submissions by Dr. Nathaniel Tum**

Vide a letter Ref: SEN/DCS/LENR/2/2021/(19) dated 31<sup>st</sup> April, 2021, the Committee invited the accused, Dr. Nathaniel Tum who made the following submission -

1. THAT I received the above Petition dated 31/3/2021 by email on 1<sup>st</sup> of April 2021 and wish to address the complaints raised in the petition as follows: -
2. THAT I vehemently deny the allegation by the petitioner that here was an illegal alienation of land belonging to Kitale School and that I conspired with the Commissioner of Lands to alienate 1 acres of the school land.
3. THAT I obtained L. R. NO. KITALE MUNICIPALITY BLOCK 12/236 (formerly BLOCK 12/132) legally having followed all the due process of land ownership in Kenya.
4. THAT I applied for the land referred to above which was Government land together with other applicants being Ms. Halima Kokita of Kapenguria, Messrs Ken Kiptoo and Josephine Kerubo. I am also aware that the Anglican Church where Bishop Emmanuel Chemengich is overseeing and the AIC Church were also applicants for the said land.
5. THAT I am aware that the four of us Kiptoo & Kerubo, Halima and myself were successful each being allotted 1.357, 0.40 and 3.56 hectares respectively.
6. THAT pursuant to my application to be allocated L.R. NO> KITALE MUNICIPALITY BLOCK 12/236, I was issued with a letter of Allotment dated 29<sup>th</sup> September, 1994. (Annexed herein as NKT1).
7. THAT the letter of allotment was specific that the property was unsurveyed.
8. THAT I have been paying rates to Trans Nzoia County for the property since 1994. (Annexed herein as NKT2 is a copy of receipt dated 6<sup>th</sup> December, 1994).
9. THAT I am aware that the Government has a right to allot land belonging to it and thus there was no illegality as I applied as an ordinary citizen and was allotted and fulfilled the requirements pertaining to the allotment including the payments of fees to the government and all the necessary rates and rents to the relevant authorities.
10. THAT I was issued with the Certificate of Lease on 6<sup>th</sup> December, 1994 with annual rent of Kshs.70,000. (Annexed herein as NKT3.)
11. THAT upon obtaining the above parcel and after of developing the same, Kitale

School complained through a letter to the ministry of lands that I have encroached into L.R. NO. KITALE MUNICIPALITY BLOCK 12/229.

12. THAT vide a letter dated 27<sup>th</sup> September 2007, I was requested to surrender the Certificate of Lease to the Commissioner of Lands for cancellation and replacement of a new certificate bearing the correct survey area. (Annexed herein as NKT4).
13. THAT I obliged to the request and vide a letter dated 24<sup>th</sup> February 2010, I was further requested by the Ministry of Lands to facilitate excision of the part touching Kitale school. (Annexed herein as NKT5).
14. THAT to honour the request, I visited the lands office where I met Mr. Kariuki J.K and voluntarily surrendered the certificate of lease for L.R. NO. KITALE MUNICIPALITY BLOCK 12/132.
15. THAT I was issued with a Surrender Certificate of lease dated 9<sup>th</sup> March 2010. (Annexed herein as NKT6 is a copy of the certificate.)
16. THAT vide a letter dated 23<sup>rd</sup> March 2010 the Commissioner of Lands was notified of the new certificate of lease from the Director of Survey. (Annexed herein as NKT7 is copy of the letter.)
17. THAT I was thus issued with a new number being L.R. NO. KITALE MUNICIPALITY BLOCK 12/236. (Annexed herein as NKT8 is a copy of the Title.)
18. THAT the Petitioners have been shifting goal posts from encroachment issues to grabbing of their alleged land which forced the Commissioner of Lands to direct the Districts lands office vide a letter dated 8<sup>th</sup> June 2011 to solve the matter amicably between the Kitale school and myself. (Annexed herein as NKT9 is a copy of the letter.)
19. THAT a Technical Team was formed by the Chief Land Administration office to investigate the matter, which report found that; -
  - a) *Both Tum and the school knew that the disputed land was government land.*
  - b) *The school applied to be allocated the land.*
  - c) *Tum also applied to be allocated the same land.*
  - d) *Tum was allocated the site and developed the same.*
  - e) *The site in dispute was formally the area which had encroached on the school compound.*

- f) *Tum has surrendered the land which was in dispute and PIA NO.132 has been resurveyed as Block 12/229.*
20. **THAT** the recommendation of the Technical Team referred to in paragraph 19, was that I retain the site block 12/236 that I have developed and the boundaries be maintained as they are on the ground as per the fencing. (Annexed herein as **NKT 10** is a copy of the Report dated 9<sup>th</sup> October 2012.)
21. **THAT** having being dissatisfied with the above report, Kitale School abandoned the negotiations and filed judicial Review No. 35 of 2011 where the court dismissed their application with costs. (Attached herein as **NKT11** is a copy of the ruling.)
22. **THAT** in its *Orbiter Dictum*, on page 14 of the ruling the court stated that there was undisputed documentary evidence by myself in the application to the Government to be allocated the vacant land.
23. **THAT** the Applicant in Judicial Review No. 38 of 2011 being Kitale school were dissatisfied with the decision and appealed to the Court of Appeal vide C.A No. 1 of 2013 which appeal was dismissed with costs.
24. **THAT** I have since developed my parcel of land where there is a large extensive service station, service by, supermarket and cafeteria. Other developments include a water plant, car wash and residential units at a total cost of Kshs.250 million.
25. **THAT** I am the lawful allottee and thus the legal owner of L.R. NO. KITALE MUNICIPALITY BLOCK12/236 measuring 3.56 ha.
26. **THAT** in reply to **paragraph 16 of the Petition**, Kitale school is being economical with the truth since when they started applying for the school title on 7/6/1993 to the Town Clerk, they were advised to forward their application to the Commissioner of Lands. The question of the school having 55 hectares did not arise. This is captured in the Report of Land Technical Team Trans Nzoia dated 9/10/2012 annexed as NKT10.
27. In **reply to paragraph 17 of the Petition**, the petitioners have not attached evidence of reservation and further the details of the said reservation be it the acreage and the extent of the reservation.
28. In **reply to paragraph 18 of the Petition**, the allegation of grabbing is malicious. The mentioned Part Development Plan (PDP) can only be viewed against subsequent applications and allocation processes for the land in question. I have

followed all due processes in the application and the significance of this document was not raised by the relevant government departments. I am only aware that the school applied and obtained a letter of allotment in 2<sup>nd</sup> July 1999 for 43.33 Ha as per the approved PDP KTL/10/96/100. **(NKT 10)**

29. In reply to paragraph 19 of the Petition on 13/9/93 during the School Executive Board Meeting, Minute No. EB/93/26 AOB School Land – it was agreed

30. In **reply to paragraph 20 of the** Petition, the statement is inconsistent as on 2<sup>nd</sup> July, 1999, the Commissioner of Lands issued a letter of allotment for the un-surveyed school plot measuring 43.33 ha as per the approved PDP No. KTL/10/96/100. In addition, the school accepted the offer by paying the lessor fee of Kshs.6,122/=. A survey was done and a lease prepared for a total area of 41.28 ha (102 acres). The exact size was established after the survey.

31. In **reply to paragraph 21 of the** petition, the Ministry of Education was in no position to excise private property under LR. No. Block 12/132 now Block 12/236.

32. In **reply to paragraph 23, 24, and 25 of the Petition**, I was chairman of the PTA of Kitale School in the 1980s and I am not aware of any time that I was requested to assist in acquiring to help in processing a title. I did not offer to assist as I was not an officer in the Ministry of Lands. My role at the time was that of the development of the school technical laboratory and the classrooms. This is a task I executed with excellence resulting in construction of the present lab and modern classrooms. I did fundraising and solicited funds from KPA, Railways, Kenya Seed Co etc. for purposes of the said buildings.

From the reports of Lands, Kitale School applied for the allotment for the school land on 15/7/1993 (Technical Report Page 2). The issue of trusteeship could not have arisen.

33. In **reply to paragraph 27 of the Petition** it is true that I was issued with a Title Deed in 1994, however, it is totally misleading to allege that I clandestinely applied for a private title from the land reserved as public land. There was nothing clandestine about the land as all legitimate procedures were followed.

34. In **reply to paragraph 28 of the Petition**, the allegation is not true. Following the issuance of the title in 1994, the Government surveyors beaconed the land and I fenced the land following the survey beacons and consistent with the title issued. There was no encroachment. (Annexed herewith is the Beacon Certificate **NKT**

13).

35. In **reply to paragraph 29 and 30 of the Petition**, the survey and the beaconing of the land was done many years back and not in March 2021 when this petition was done. I welcome any inspections to confirm the beacons and where they were fixed by the Government surveyors. I confirm that the fencing is within my boundary and I have no desire to encroach on school land.

36. In **reply to paragraph 31 of the Petition** I have no intention to encroach on school land as I am satisfied with my allotted portion.

37. In **reply to paragraph 33 of the Petition**, the statement in itself is prejudicial as I am the lawful owner of the above said parcel LR. No. Block 12/236.

38. In **reply to paragraph 36 of the Petition**, I confirm that my property has never housed a girl's dormitory. It is evident from a physical inspection that the sewer and the girl's dormitory are intact and within the school land. I have no intention of encroaching on the disused school sewer after a new sewer line was put up by the County Government which is now in use.

39. In **reply to paragraph 37 of the Petition**, I was not made party to this complaint.

40. In **reply to paragraph 38 of the Petition** I confirm that I left the chairmanship of Kitale School in the late 80s and I had no fiduciary duty as a trustee of the school during my allotment of the parcel of land in 1994. There was no conflict of interest.

The boundaries were clear and government surveyors were involved and the title issued by Commissioner of Lands following their rectification.

41. In **reply to paragraph 39 and 40 of the Petition** the title can never be cancelled by gazette notice or a ministerial order as indicated on page 22 of the court ruling in JR No.38 of 2011. The cancellation of title 12/132 was as a result of an incorrect survey and not as a result of encroachment of a ministerial order. It is for this reason that I was issued with a new title L.R. No. Block 12/236. As a result of this process, I lost one acre of land which formed part of LR No. Block 12/229 (Kitale School)

Note that the approvals for the re-survey were conducted in Trans Nzoia to obtain the consents from the various Heads of Departments

Thereafter the Director of Survey wrote to the Commissioner of Lands following the

completion of the re-survey of the said land indicating that the Registry Index map had been amended to reflect parcel No.236.

42. In reply to paragraph 41 of the Petition it is not true that I surreptitiously managed to get another title. It is true that due process was followed that a triangle which encroached the Kitale school and which was not fenced was not part of my property. It was not an encroachment by me but it was a survey error. Refer to Letter dated 27/9/2007 (Ref 160742) from the Ministry of Lands (**NKT 4**)

43. In **reply to paragraph 42 and 43 of the Petition** it is true that the matter went to the High Court in Kitale and the court confirmed that the property rights of Dr. Nathaniel Tum cannot be taken away by Judicial Review. The matter went further to the Court of Appeal which upheld the High Court decisions that the property belongs to Dr. Tum.

44. **THAT** my proprietary rights should be protected by the government since my title to LR. NO. KITALE MUNICIPALITY BLOCK 12/236 is a sacrosanct and indefeasible as provided in Article 40 of the Constitution.

45. **THAT** I was allocated LR. NO. KITALE MUNICIPALITY BLOCK 12/236 and lawfully acquired it as indicated in page 20 of the High Court ruling attached as NKT 7.

46. **THAT** I thus pray that the petition be dismissed as LR. No. KITALE MUNICIPALITY BLOCK 12/236 is distinct from LR. NO. KITALE MUNICIPALITY BLOCK 12/229 which belongs to the school.

*The Committee noted the following interventions:*

- *The Senator, Trans Nzoia County gave his disappointment with reference to the submissions made by the CAS, MoLPP in that it did not provide any way forward for the School; the Senator further noted that the school lost the cause as a result of technicalities of representation at court.*
- *The Representative from the School Alumni informed the Committee that following the Dr. Nathaniel Tum's presentation that the school had begun the process of registration back in 1983 when he was the Chair of PTA at the school yet he claims not to be aware; he then excised part of the land for his own interests and later built a petrol station; further the Committee was informed that the court in the ruling advised that the remedy was not by way of judicial review and that only NLC and the Land and Environment court can review the matter.*
- *Dr. Tum informed the Committee that he left the school in the 1980's and later applied for a title deed in 1994.*

- *The CAS further assured the Committee that it will restrict the Title deed of the parcel of land until when the Committee completes its investigation onto the matter and a way forward provided by the NLC.*
- *The Committee further ruled that the next meeting on the agenda be held in the presence of NLC on 27<sup>th</sup> May, 2021.*

**MINUTE SEN/SCLNR/151/2021: PETITION CONCERNING THE ALLEGED HISTORICAL LAND INJUSTICES INVOLVING PLOT NO. 162/V/M.N.CR 1070, IN MOMBASA COUNTY;**

- **Submissions by Ministry of Lands and Physical Planning**

According to records held by the Ministry, Plot No.162/V/M. N. CR 1070 was registered on October 27, 1923 in the name of the United Methodist Church Mission. The certificate of ownership No. 7540 was registered under title No. CR.6348 for the area measuring 151 acres. The registered proprietor later changed their name to Methodist Church Missions Kenya trustees registered in 1958 and later to Methodist Church in Kenya Trustees Registered.

On June 14, 1973, the Methodist Church in Kenya Trustees Registered transferred a portion of land to Municipal Council of Mombasa. The said subdivision MN/V/505 measuring 15.28 acres was registered on July 11, 1973 and assigned title No. CR 14323. The remainder thereof measuring 135.72 acres is held by the Methodist Church in Kenya Trustees Registered. A copy of the official search is marked **Annexure 6.**

**Honourable Chair**, the case presented by the petition is an historical injustice claim The National Land Commission is seized of the matter recorded as Historical Case No. NLC/HLI/565/2019. We invite the Committee to engage the Commission for appropriate redress.

*The Committee noted the following interventions:*

- *The Committee directed that the CAS further stops further transactions on the contested parcel of Land until the Committee concludes its investigations into the Petition.*
- *That as alleged by the Petitioners that there is an appeal process, yet the Methodist Church has continued selling the Land;*

**MINUTE SEN/SCLNR/152/2021: PETITION ON THE ALLEGED ILLEGAL ENCROACHMENT OF LAND COVERING THE VILLAGES OF PANGANI, NYATHA, KAISARI, MAVUNO, PROMOKO AND WIDHO IN LAMU COUNTY BY WITU LIVESTOCK COOPERATIVE SOCIETY;**

- **Submissions by Ministry of Lands and Physical Planning**

The Committee admitted written Responses on the following Petition as submitted by the Ministry as follows:

According to our records, the subject land is registered as L.R.No.1405/1 measuring approximately 639.783 Acres. The land was registered as M.I. Folio 72/17 in favour of Henry Eric Burnier on February 28, 1966 as shown in **annexure 15**.

Mr. Henry Eric Burnier surrendered the land to the Government as a gift and the transfer was registered as M.I. Folio 72/18 on May 12, 1966 in favour of the President of the Republic of Kenya as shown in **annexure 16**.

From our records, the land is reserved for settlement of squatters. In 1983, the Ministry received an application for allocation of the land from Witu Livestock Development Centre but the request was declined for this reason (**annexures 17**)

The Ministry will embark on plot demarcation survey and squatter verification programme for settlement of ground occupants during the 2021/2022 financial year.

**MINUTE SEN/SCLNDR/153/2021: ANY OTHER BUSINESS**

There was no other business discussed.

**MINUTE SEN/SCLNDR/154/2021: DATE OF NEXT MEETING**

The meeting was adjourned at 1.00 pm and the date of the next meeting was to be held on thereafter.

Signed:.....

Date: 29/6/2021

**SEN. MWANGI PAUL GITHIOMI, MP**  
**CHAIRPERSON**  
**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL**  
**RESOURCES**

**MINUTES OF THE 10<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 17<sup>TH</sup> MARCH, 2021 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.**

**MEMBERS**

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. George Khaniri, MGH, MP
4. Sen. Mwaruma Johnes, MP
5. Sen. Boy Issa Juma, MP

**PRESENT**

- **Chairperson**
- **Vice Chairperson**
- Member
- Member
- Member

**ABSENT WITH APOLOGY**

1. Sen. Ndwiga Peter Njeru, EGH, MP - Member
2. Sen. Gideon Moi, CBS, MP - Member
3. Sen. (Dr.) Lelegwe Ltumbesi, MP - Member
4. Sen. Sylvia Kasanga, MP - Member

**IN ATTENDANCE**

**A. PETITIONERS – KITALE SCHOOL**

1. Mr. Emanuel Chemengich - Chair Board of Management
2. Mr. Emel Sitienei - Principal of the School
3. Mr. Peter Kebati - Chair, Alumni Association

**B. SECRETARIAT**

1. Ms. Veronica Kibati - Clerk Assistant
2. Mr. Victor Bett - Clerk Assistant
3. Mr. Mitchell Otoro - Legal Counsel
4. Ms. Clare Kidombo - Research Officer

**MINUTE SEN/SCLNDR/51/2021: PRELIMINARIES**

The meeting was called to order at 11.13 am by the Chairperson followed by a word of prayer.

**MINUTE SEN/SCLNDR/52/2021: ADOPTION OF AGENDA**

The agenda of the meeting was adopted after being proposed by Sen. Mwaruma Johnes, MP and seconded by Sen. Philip Mpaayei, MP as follows –

1. Preliminaries - *Prayer*
2. Confirmation of Minutes of Previous Sittings;
3. Matters Arising;
4. **Meeting on the Petition concerning the alleged illegal alienation of land belonging to Kitale School Primary by a private developer;**
  - **Presentation by Petitioners**
5. Any other Business;

6. Date of the next meeting;
7. Adjournment.

**MINUTE SEN/SCLNR/53/2021: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS**

The confirmation of Minutes was deferred to the next housekeeping meeting.

**MINUTE SEN/SCLNR/54/2021: MEETING ON THE PETITION CONCERNING THE ALLEGED ILLEGAL ALIENATION OF LAND BELONGING TO KITALE SCHOOL PRIMARY BY A PRIVATE DEVELOPER;**

**Presentation by Petitioners**

The Petitioner took the Committee through the Petition as submitted that read as follows;

I, **RT. REV. DR. EMMANUEL CHEMENGICH** a citizen of the Republic of Kenya with National Identity Registration 9763078 of P.O. Box 1155-30200, Kitale. In the capacity of the Chairperson of Kitale School Primary Board of Management (BOM) and the Anglican Bishop, Kitale Diocese, lodge this Petition pursuant to Section 3 of the Petitions to Parliament Act, on my behalf, on behalf of the Kitale School Primary School Alumni Association, the School PTA and BOG, and the School Community.

**WE HUMBLY DRAW THE ATTENTION OF THE SENATE TO THE FOLLOWING:**

**Underlying Constitutional and Statutory Provisions**

1. **Article 1(1) and (2)** of the constitution of Kenya, reposes all sovereign Power in the People of Kenya, exercised solely in accordance to the Constitution.
2. **Article 1(3) (a) and 1(4)** of and Constitution of Kenya delegates sovereign power of the constitution to inter alia parliament and the legislative assemblies of the county governments and that the sovereign power of the people is exercised at the national and county level.
3. **Article 37** of the Constitution provides that every person has a right to present petitions to public authorities
4. **Article 43** of the constitution provides for economic and social rights whereby under Article 1(f) every person has a right to education.
5. **Article 53** of the Constitution provides for the rights of children, wherein every child has a right to free and basic compulsory education and under Article 53(2), a child's best interests are of paramount importance in every matter concerning the child.
6. **Article 60(1)(b)** of the provides that land in Kenya shall be held, used and managed in a manner that is unequitable, efficient, productive and sustainable and accord to the principle of security of land rights.

7. Under **Article 60(4)** of the Constitution, public land shall not be disposed on or otherwise used except in terms of an act of parliament specifying the nature and terms of that disposal or sue.
8. Under **Article 62(1) (c)** of the Constitution, land transferred to the state by way sale, reversion or surrender is public land.
9. Under **Article 62(2)** of the Constitution, public land shall vest and be held by the county government in trust for the people resident in the county and shall be administered by the National Land Commission.
10. Under **Article 67(2)** of the constitution, the national land commission is mandated to manage public land on behalf of the national and county governments.
11. Under **Article 94(2)** of the Constitution, Parliament manifests the diversity of the nation, represents the will of the people, and exercises their sovereignty.
12. Under **Article 96(1)** the senate is mandated to represents the counties, and to protect the interests of the counties and their governments.
13. **Article 119** of the constitution provided that any person has a right to petition parliament to consider any matter within its authority.
14. Section 12 of the Land Act, 2012 provides for the procedure for allocation of Public Land.

#### **The complaint**

15. This complaint before the senate concerns the illegal alienation of land belonging to Kitale School Primary by a private developer, one Nathaniel Tum, who conspired with the Commissioner of Lands to alienate 10 acres of the school land.

#### **Background Facts of the Complaint**

16. Originally, Kitale School Primary occupied about 55 hectares of land from 1929, during the colonial period.
17. The land in which the Kitale School primary is situated was allocated to the school through a letter of reservation LR 24719. The said reservation was designated for an education institution; specifically, Kitale Primary School. The School has changed names over time and has also been identified as Kitale School and Kitale Academy for the last 91 years.
18. The Part Development Plan (PDP) of 1973, was approved by the Kitale Department of Urban Planning and the Commissioner of Lands; which reserved the said 55 hectares to the school, including all the land so grabbed by Mr. Nathaniel Tum.

19. The School has reserved 30 acres of its land for Kitale School-Secondary that was commissioned in 1994.
20. There is no PDP that shows that a new PDP was generated to replace the PDP issued to the school in 1973 so as to legitimize the title issued to Mr. Tum
21. There is no evidence to demonstrate that Ministry of Education approved that the land allotted to the school for educational purposes was partly excised for private use by Mr. Tum.
22. Between 1974 and 1978, part of the land, being public land, was surrendered for public use. In particular, 2 hectares of the school land was surrendered to KENHA to improve the turn-off to the Kitale-Webuye Road.
23. In 1983, the School applied for allotment of land and title deed.
24. During this period of applying for an allotment letter, the private developer Mr. Nathaniel Tum was the Chairman of the PTA at Kitale School Primary and a member of the BOG. He offered to help in the process of acquiring the title.
25. The private developer, Mr. Nathaniel Tum, was at this time a trustee of the school, the school PTA and BOG.
26. The District Survey Department Surveyed the land and after all statutory requirements were completed, the school was allotted 41.28 hectares and a title deed issued in 2010.
27. Mr. Nathaniel Tum in breach of trust for the school clandestinely applied for a private title from the land reserved as public land and was allotted about 4 hectares and issued with a title deed in 1994. The COL indicated that the land was unalienated and was government land in issuing the title deed Block 12/132 to Tum.
28. Mr. Tum commenced his illegal alienation of the school property in 1998 whereby he fenced off part of the school farm that hosted the 4K club demonstration plots and the environmental club.
29. The Survey Plan that illegally grants Mr. Nathaniel Tum the disputed land has a land hook which indicates that the ownership of the school and Mr. Tum is the same! The said hook is illegal as it is not legally possible to have a land hook between private and public land.
30. At the time of filing this Petition, Mr. Tum is adamant to alienate land belonging to the school and was on the school land with surveyors ostensibly erecting beacons and expressing his intention to fence off land grabbed from the school.
31. The Principal of the School, the School PTA, BOG, the local church leadership, the Kitale School Alumni Society and the school community at

large, are seeking redress on the matter and threat of encroachment on more land.

- 32. This Honorable Senate has the mandate to exercise its authority to protect the interest of county government and in particular land vesting in county governments.**
- 33. The illegal alienation of the land prejudices the rights of the children pursuing their education in the school and will deny them the right to study.**
- 34. The Senate has the right under its authority as the legislative house representing counties and county governments to intervene in cases where public land vesting in county governments is alienated by private developers to private land.**
- 35. The Senate has the delegated authority from the people in exercise of its authority under Article 96(1) to require the National Land Commission, the body vested with the mandate to administer public land on behalf of county governments to take action and recover stolen public land vested in counties. In exercising this power, the Senate may summon members of the NLC, take evidence and inquire into the actions taken by the NLC in protecting and administering public land, including actions taken on petition filed before the NLC.**

**THAT**

36. The school filed a complaint to the District Survey Department against Mr. Tum's infringement on its land; which housed the girls' dormitory, sewage system near the boys' dormitory and site for the tree nursery where Mr. Tum erected a petrol station, which is on site to date and a resurvey was done. Mr. Tum was issued with a new title deed Block 12/ 236 to exclude the school facilities, but the sewage pits remained on the land Mr. Tum had grabbed.
37. The school BOG wrote to the Commissioner of Lands complaining that public land which they required for expansion for a Secondary School and Tertiary institution had been transferred to Mr. Nathaniel Tum. The NLC visited the school in September 2019 and February 2020 but have not taken any substantive action to investigate the matter.
38. The Kitale School Primary's complaint was *inter-alia* premised on the fact that Mr. Nathaniel Tum had breached his fiduciary duty as a trustee, being the Chairman of PTA and member of the BOG of the school.
39. In the year 2010, Hon. James Orengo, the then Minister for Lands, directed that the land owned by Tum revert back to the Kitale School vide a ministerial order. The Commissioner of Lands cancelled the title deed of earlier issued to Mr. Tum on 10<sup>th</sup> May 2010 by gazette notice.
40. The Ndungu Land Report also reported the matter and recommended that the land to revert back to the school and public use.

41. In or around 2013 Tum, once again surreptitiously managed to get another title 12/236 to exclude the area encroaching the dormitories. The school went to court challenging the title deed by way of Judicial Review and the High Court Judge Justice J Karanja ruled that the propriety rights of Mr. Tum on the land cannot be taken away by judicial review and that the pleadings before court were fatal to the suit. He noted that “the remedy lies elsewhere.”
42. The school, dissatisfied with the decision of the High Court, appealed the ruling and the Court of Appeal agreed with the High Court that judicial review was not the remedy whether the title was acquired legally or illegally.
43. In February 2020, the school filed a complaint for the second time to the National Land Commission. The National Land Commission from Trans-Nzoia County visited the school in October, 2020 for a fact finding mission but no feedback yet.

**THAT**

44. This matter is not pending before any court of law for determination on an issue concerning the complaint. The only court case filed was **Judicial Review, Vide Kitale – HC JR No. 38 of 2011** matter was decided by the High at Kitale and proceeded to the Court of Appeal at Eldoret and is fully determined, though on a technicality and the school is dissatisfied with the decision. No second appeal had been filed in the Supreme Court.
45. Owing to the Public outcry, EACC visited the school in October, 2020 on a fact finding mission and have embarked on interrogating the key persons.
46. There is no other complaint filed before any other court, constitutional or legal body save for the above mentioned.

**HEREFORE, YOUR HUMBLE PETITIONER PRAY:**

- a) **THAT**, the senate investigate into the matter and provide solution on how the said land can be recovered.
- b) Any other recommendation that the senate may deem necessary on this matter.

**The Committee made the following resolutions;**

- **To invite the CS, Ministry of Lands and Physical Planning, National Land Commission.**
- **Invite Dr. Nathaniel Tum, the accused person.**

**MINUTE SEN/SCLNR/55/2021: ANY OTHER BUSINESS**

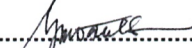
The Committee made the following resolutions regarding the earlier scheduled site visits –

1. **County Visit to Taita Taveta to be scheduled for 8<sup>th</sup> – 11<sup>th</sup> March, 2021;**
2. **County Visit to Makueni County on 26<sup>th</sup> March, 2021; and**
3. **Report Writing Retreat on 15<sup>th</sup> – 18<sup>th</sup> April, 2021**

**The Committee further resolved that response being sought by the Committee henceforth be done via oral meetings and not via written responses.**

**MINUTE SEN/SCLNLR/56/2021: DATE OF NEXT MEETING**

The meeting was adjourned at 12.40 pm and the date of the next meeting was to be called on notice.

Signed:..........

Date:..... **31/3/2021**.....

**SEN. MWANGI PAUL GITHIOMI, MP**  
**CHAIRPERSON**  
**STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL**  
**RESOURCES**

**ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS**



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING

---

**RESPONSES TO THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES**

**Honourable Chair,**

Pursuant to your letters Ref. SEN/DCS/LENR/2/2021/ (17) dated March 23, 2021 and Ref. SEN/DCS/LENR/2/2021 (23a) dated April 30, 2021, the Committee invited the Cabinet Secretary Ministry of Lands and Physical Planning to respond to the following:

1. Petition submitted by the Wajomvu Community, Mombasa County, concerning the alleged historical injustices involving Plot. No. 162/V/M.N, C.R. 1070 in Mombasa County
2. Petition concerning the alleged illegal alienation of land belonging to Kitale Primary School by a private developer
3. Petition on the alleged delayed adjudication and the settlement of squatters on Machungwani land in Taita Taveta County after expiry of the lease
4. Petition on the alleged illegal encroachment of land covering the villages of Pangani, Nyatha, Kaisari, Mavuno, Promoko and Widho in Lamu County by Witu Livestock Cooperative Society
5. Petition submitted by the residents of Msambweni Village in Voi Sub-County of Taita Taveta County concerning the alleged impending evictions of Msambweni residents by a private company
6. Petition submitted by the residents of Mkamenyi Village in Voi sub-county of Taita Taveta County on the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County

**Honourable Chair,** I wish to respond as follows:

1. **Petition submitted by the Wajomvu Community, Mombasa County, concerning the alleged historical injustices involving Plot. No. 162/V/M.N, C.R. 1070 in Mombasa County.**

**Honourable Chair,**

A response to the petition was presented to the Committee in the meeting held on February 24, 2021. The Petitioners were absent and the Committee deferred consideration of their petition. The response is listed as item no. 3 in our report dated February 24, 2021 attached marked **annexure 1**.

## **2. Petition concerning the alleged illegal alienation of land belonging to Kitale Primary School by a private developer**

**Honourable Chair,**

Rt. Rev. Dr. Emmanuel Chemengich on behalf of the Kitale Primary School Alumni Association, the school Parents and Teachers' Association (PTA) and the Board of Management presented the petition concerning the alleged illegal alienation of public land belonging to Kitale Primary School.

According to the Petitioner, the school was allocated 55 Hectares of land reserved vide an approved Development Plan of 1973. Two (2) Hectares were surrendered to improve the turn-off to the Kitale-Webuye road between 1974 and 1978. The school applied for the title in 1983 and Mr. Nathaniel Tum who was the then chairperson of the school's PTA and a member of the Board of Management offered to assist in processing the same. The title deed was issued in 2010 for a parcel of land measuring 41.28 Hectares.

The Petitioner claims that Mr. Tum fraudulently acquired title in his name for a portion of the land belonging to the school which was registered in 1994 as Block 12/132 measuring 4 Hectares where he has constructed a petrol station.

The matter was reported to the Commissioner of Lands and the title was cancelled vide a Gazette Notice published on May 10, 2010. The case is also featured in the Report of the Commission of Inquiry into the Illegal/ Irregular Allocation of Public Land (the Ndungu Commission report) which recommended that the land be reverted to the school.

However, the Petitioner claims that Mr. Tum obtained a new title for the parcel of land in 2013 registered as Block 12/236. The case was also lodged with the National Land Commission. The Commission visited the school in September 2019 and in February 2020 but the matter has not been resolved. The petitioner therefore requests the Committee to investigate the matter with a view to providing a solution on how the said public land can be recovered.

**Honourable Chair,** I wish to respond as follows:

Prior to 1990, the Government reserved land for public institutions through letters of reservation. A letter of reservation was issued for unsurveyed plot.

Later on, the Government began reserving land for public institutions by issuing letters of allotment.

We have not been able to trace the letter of reservation issued to Kitale Primary School. A letter Ref. DURP/10/1/161 dated September 14, 1973 signed by the then Director of Urban and Rural Physical Planning addressed to the school indicates that approximately 55 Hectares was reserved for the school (**annexure 2**). The Kitale Town Development Plan (DP) of 1973 shows the reservation for Kitale Primary School marked as 27 (**annexure 3**).

From our records, the School applied for processing of the title vide a letter dated October 7, 1993. They also applied for allocation of an adjacent land, which they claimed to have been utilising for at least 10 years (**annexures 4**).

A Part Development Plan (PDP), Departmental Reference No. KTL.10/96/100 was prepared for the school and approved in 1998 with Approval No. 294 (**Annexure 5**). A comparison between the Development Plan of 1973 and the PDP of 1998 shows a variance in orientation of the parcel.

On July 2, 1999, the Commissioner of Lands issued an allotment letter Ref. 20089/XXXIV/106 of July 2, 1999 for the un-surveyed school plot measuring 43.33 hectares. Survey was done and a Lease prepared for a total area of 41.28 Ha (102 acres).

On June 14, 2010, the parcel was registered as Kitale Municipality Block 12/229 in favour of The Permanent Secretary to the Treasury of Kenya as Trustee to Kitale School (**annexure 6**). As per the title, the school land measures approximately 41.28 Hectares.

#### **Kitale Municipality Block 12/236 (formerly 132)**

According to our records, Nathaniel K. Tum was allocated Uns. Hotel Site-Kitale Municipality measuring approximately 4 Hectares for a 99-year term commencing September 1, 1994, vide letter of allotment Ref. 20089/XXXIV/1 of September 29, 1994 (**annexure 7**). A certificate of lease was issued on December 6, 1994 for Kitale Municipality Block 12/132.

In 2007, the District Surveyor discovered that the land parcel Kitale Municipality Block 12/132 had encroached into Kitale Primary School Land (Kitale Municipality Block 12/229) and thereby requested the Commissioner of Land to compel the owner of Kitale Municipality Block 12/132 to surrender the title for necessary corrections (**annexure 8**).

The Ministry therefore requested Mr. Tum to surrender his Certificate of Lease for cancellation and issuance of a new lease bearing the correct survey area (**annexure 9**). The Certificate of Lease Kitale Municipality Block 12/132 was cancelled vide gazette notice No. 5560 of May 21, 2010 (**annexure 10**).

The land allocated to Mr. Tum was re-surveyed and the Registry Index Map amended. The area reduced from 4 Hectares to 3.560 Hectares and a new parcel No. Kitale Municipality Block 12/236 was issued (**annexure 11**). On March 1, 2013 Nathaniel K. Tum was registered as the proprietor of Kitale Municipality Block 12/236 and a certificate of lease issued (**annexure 12**).

**Honourable Chair,**

According to the petitioners, the dispute between the school and Mr. Nathaniel Tum is before National Land Commission. According to our records, the Ethics and Anti-Corruption Commission is also handling the matter. The Ministry will liaise with the respective agencies with a view to resolving the matter.

**3. Petition on the alleged delayed adjudication and settlement of squatters on Machungwani land in Taita Taveta County after expiry of the lease**

- i) Explanation and relevant documentation on the current status of the lease for Machungwani Farm and whether there have been efforts by the previous lessee to renew the lease**
- ii) Status of the persons currently farming and residing in the aforementioned parcels of land.**

**Honourable Chair,**

The Petition dated February 12, 2020 was presented by representatives of Machungwani Squatters residing on Machungwani land (measuring 2970 acres) situated in Mboghoni Ward in Taveta Constituency of Taita Taveta County, claimed to be their ancestral land.

The Petitioners claim that the community bequeathed the land to a British soldier, one Captain Morgan in 1914. They claim that the lease was thereafter transferred to George Criticos who later transferred the land to his son, Bazil Criticos. The Petitioners allege that the Criticos family utilise a small portion of the land and that the area residents with the consent of the owner occupy the remaining portion. According to the Petitioners, Bazil Criticos in his campaign for election as Member of Parliament, allowed the residents to occupy the land.

The Petitioners are aggrieved that whereas subject lease expired in January 2012, both the National and County Governments have been reluctant to adjudicate the land in favour of the residents who have invested heavily on the land. They have therefore filed the Petition to seek appropriate redress from the Committee.

**Honourable Chair**, I wish to respond as follows:

According to our records, the land is registered as L.R No.5827 (I.R 1056). It is situated in Taveta Sub-County in Taita Taveta County and measures approximately 2970 Acres.

The parcel was first registered in the name of East African Estates Limited on February 26, 1925 on a 99-year lease with effect from January 1, 1914. The parcel has been transferred severally overtime. It was last transferred to Basil Criticos on February 23, 2010. The lease expired on January 1, 2013. A copy of the title is marked **annexure 13**.

**Honourable Chair**,

The Ministry is aware an application for the renewal of lease has been lodged with the National Land Commission (**annexure 14**). In light of the foregoing, the issues raised by the Petitioners are best handled by the National Land Commission and the Taita Taveta County Government in line with the provisions of Section 13 of the Land Act, 2021 and the Land Regulations, 2017.

**4. Petition on the alleged illegal encroachment of land covering the villages of Pangani, Nyatha, Kaisari, Mavuno, Promoko and Widho in Lamu County by Witu Livestock Cooperative Society**

**Honourable Chair**,

The Petition dated February 15, 2021 was presented by representatives of White House Progressive CBO comprising squatters residing in various portions of land within Pangani, Nyatha, Kaisari, Mavuno, Poromko and Widho villages of Mavuno Sub-Location in Lamu County.

The Petitioners claim that the squatters have been residing on the subject land parcels from 2011. They have established a school thereon and the Government has since posted teachers. They claim that Witu Co-operative Society Ranch has encroached on the land causing conflict with the squatters. Efforts to have the issue resolved by the County Government of Lamu have failed. They have therefore filed the Petition to request the Committee to:

- i) Investigate the matter to ascertain ownership of the parcels of land in the area
- ii) Compel the County Government of Lamu to demarcate the said land and issue titles to the squatters
- iii) Prohibit Witu Co-operative Society Ranch from making further demands to the squatters residing on the land

iv) Visit the County to understand the land issues therein

**Honourable Chair**, I wish to respond as follows:

According to our records, the subject land is registered as L.R.No.1405/1 measuring approximately 639.783 Acres. The land was registered as M.I. Folio 72/17 in favour of Henry Eric Burnier on February 28, 1966 as shown in **annexure 15**.

Mr. Henry Eric Burnier surrendered the land to the Government as a gift and the transfer was registered as M.I. Folio 72/18 on May 12, 1966 in favour of the President of the Republic of Kenya as shown in **annexure 16**.

From our records, the land is reserved for settlement of squatters. In 1983, the Ministry received an application for allocation of the land from Witu Livestock Development Centre but the request was declined for this reason (**annexures 17**)

The Ministry will embark on plot demarcation survey and squatter verification programme for settlement of ground occupants during the 2021/2022 financial year.

**5. Petition submitted by the residents of Msambweni Village in Voi Sub-County of Taita Taveta County concerning the alleged impending evictions of Msambweni residents by a private company**

- i) **Explanation on the circumstances that led the Commissioner of Lands into changing the conditions of the lease**
- ii) **Submit relevant documentation and evidence of correspondence that led to the change of the lease conditions**
- iii) **Proposals on the best way of assisting the people of Msambweni to get back their land**

**Honourable Chair**,

A response to the petition was presented to the Committee in the meeting held on February 24, 2021. The response is listed as item no. 5 on Page 11 in our report dated February 24, 2021 marked **annexure 1**.

**Honourable Chair**,

In response to Questions **(i) and (ii)** I wish to respond as follows;

The subject parcel was originally Government land. The Commissioner of Lands allocated it to Bata Shoe Company Limited and was registered on April 30, 1993 as CR 23979. A copy of the Grant is marked **annexure 18**.

The conditions for the lease are contained in the Grant. The relevant conditions of the lease are the Special Conditions; No. 2 on development of the property within 24 months of registration of the Grant; No. 5 on the user for the property and Nos. 9 & 10 restricting transfer of the property unless Special Condition No. 2 is fulfilled.

The Commissioner of Lands gave consent for the transfer of the property to Sparkle Properties Limited despite Special Condition No. 2 being unfulfilled. Bata Shoe Company transferred the property to Sparkle Properties Limited vide a transfer lodged on March 21, 2011.

The question of the propriety of the title held by Sparkle Properties Limited has been subject of litigation in Environment and Land Court, Mombasa, Civil Case No. 265 of 2013. The Court considered the circumstances of the transfer with regard to the Special Conditions Nos. 2, 9 and 10 and upheld title as per the judgment marked **annexure 19**.

**Honourable Chair**, in response to **Question (iii)**, I wish to submit as follows;

The Ministry has noted the plight of the Petitioners who are facing imminent evictions. We shall engage the Land Settlement Fund Board of Trustees to consider their case for resettlement.

**6. Petition submitted by the residents of Mkamenyi Village in Voi sub-county of Taita Taveta County on the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County**

- i) **Explanation on the current status of the lease for Voi Point Limited, given the ongoing subdivision of the land into small parcels implying change of use for the land**
- ii) **Relevant documentation with attachments on the approval of the change of user from agricultural land to commercial land**
- iii) **Provide the transfer documents and correspondence between the Ministry of Lands and Physical Planning, the County Government of Taita Taveta and Voi Point Limited**
- iv) **Proposals on how to assist the Petitioners in obtaining more land noting that twenty-eight (28) families living within Voi Point Limited were allocated thirty-five (35) acres of land**

**Honourable Chair**,

A response to the petition was presented to the Committee in the meeting held on February 24, 2021. The response is listed as item no. 4 on page 8 in our report dated February 24, 2021 marked **annexure 1**.

In response to Questions (i), (ii) (iii) and (iv) I wish to respond as follows;

**i) Explanation on the current status of the lease for Voi Point Limited, given the ongoing subdivision of the land into small parcels implying change of use for the land**

In the report submitted on February 24, 2021, the Ministry reported that the County Government of Taita Taveta approved the subdivision of the land L.R. No. 28683 into 28 portions of various sizes for agricultural use on February 6, 2020. The subdivision was approved on the condition that Voi Point Limited was to surrender Plot No. 25 (L.R. No. 28683/27) measuring approximately 13.68 Hectares for Mkamenyi Squatter Settlement. Voi Point Limited accepted the conditions of the provisional approval. New Certificates of Title were issued for L.R. Nos. 28683/4 to 28683/31 the resultant subdivisions of L.R. No. 28683 On February 27, 2020.

It was also reported that on June 25, 2020, the County Government of Taita Taveta approved the subdivision of L.R. No. 28683/9 into 52 subplots. The subdivision was conditional upon surrender of 10% of the total acreage for public utility and use.

**Honourable Chair**

I wish to add that the County Government of Taita Taveta also approved the subdivision of L.R. No. 28683/12 (22 subplots) and L.R. No. 28683/20 (147 subplots) on June 25, 2020. The subdivisions were conditional upon surrender of 10% of the total acreage for public utility and use.

Copies of the PPA 2 forms, Land Control Board consents, approvals by the Ministry and other relevant correspondence for the subdivisions are marked **annexures 20**.

Voi Point Limited is yet to present to the Ministry the deed plans for all the subplots to facilitate preparation of the title documents.

**ii) Relevant documentation with attachments on the approval of the change of user from agricultural land to commercial land**

**Honourable Chair,**

The approvals obtained from the County Government were for the subdivisions only. The County Government has not given approval for change of user on any of the sub plots. We had erroneously reported that an approval for change of user had been granted for L.R No. 28683/9.

**iii) Provide the transfer documents and correspondence between the Ministry of Lands and Physical Planning, the County Government of Taita Taveta and Voi Point Limited**

**Honourable Chair,**

As earlier indicated, Voi Point Limited is yet to present to the Ministry the deed plans for the sub plots to facilitate preparation of the title documents for the transfers, if any.

- iv) **Proposals on how to assist the Petitioners in obtaining more land noting that twenty-eight (28) families living within Voi Point Limited were allocated thirty-five (35) acres of land**

**Honourable Chair,**

In the meeting with the Committee on February 24, 2021, the Ministry undertook to refer the matter to the Land Settlement Fund Board of Trustees for consideration of acquisition of additional alternative land for settlement of the squatters. We shall report on the progress once the Board convenes.

**Honourable Chair,** I submit.



Farida Karoney, EGH  
**CABINET SECRETARY**

**May 11, 2021**



**NATIONAL LAND COMMISSION**

**RESPONSE TO PETITIONS AND STATEMENTS REFERRED TO THE  
SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND  
NATURAL RESOURCES**

**REPORT  
BY:**

**GERSHOM OTACHI BW'OMANWA**

**CHAIRMAN**

**26<sup>th</sup> May, 2021**

## **RESPONSES TO THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES ON STATEMENTS REQUESTED BY MEMBERS**

### **1. Petition submitted by the Wajomvu community, Mombasa County, concerning the alleged historical land injustices involving plot no.162/V/MN CR 1070 in Mombasa County**

#### **Hon Chair, the Commission responds as follows:**

The Commission is in receipt of a Historical Land Injustices Petition whose contents can be summarized as follows:

- i. That Wajomvu people made their entry into Mombasa around 800 years ago;
- ii. That they settled in three villages i.e in Jomvu kuu, Maunguja and Kwa Shee;
- iii. That during the Mazurui period from 1735 and 1837 and Busaidi rule (1837 - 1895) they were in the same villages;
- iv. That in 1844 Sultan Sayyid Said gave Dr. Krapf permit to start a missionary station in Mombasa. In 1878 he established a mission station at Jomvu kuu;
- v. That in 1908 a title was issued to the Methodist Church Mission at Jomvu
- vi. against the will of Wajomvu;
- vii. That the title had an acreage of 151 acres which included the Wajomvu farms, graves, shrines and fish landing sites;
- viii. That the Wajomvu came to realize later that their land now belonged to the Methodist Church and that they were now being referred to as trespassers;
- ix. That the Methodist Church around 2008 started to subdivide the land; and
- x. That the Wajomvu claim that powerful people are using the police to harass them with the aim of silencing them.

#### **Action**

The National Land Commission has received an HLI claim no. NLC/HLI/565/2019 for the above and has admitted it for investigation, and, possibly hearing and determination depending on the preliminary findings. The Chairman also engaged with the claimants together with the Senate Standing Committee on Land, Environment and Natural Resources on 20th February 2021. During visit, the Chairman of NLC accompanied by the County Coordinator, took note of and recorded the detailed statements and submissions by the Claimants.

Hon Chair the Commission has officially communicated to the Methodist Church seeking their position on the petition by Wajomvu Community (*copy of the letter and attachments annexed*).

In addition to the other HLI cases, this claim has also been prioritized for investigation, subject to direction or recommendation by the Senate.

## **2. Illegal alienation of land belonging to Kitale Primary School by a private developer.**

Hon. Chairman, on the matter relating to Kitale School land, the Commission wish to submit as follows:

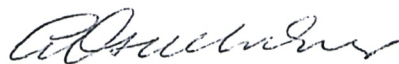
- i. Kitale primary (also referred to as either Kitale School or Kitale Academy) was established in 1929 as per the documentation provided by the School.
- ii. In a letter dated 14.9.1973 signed by the Director of Urban Rural Physical Planning indicated that Kitale Primary land has 55 Ha and proposed a public road reserve and open space of 2.44 Ha.
- iii. Planning: The site for Kitale School in Kitale Municipality was provided for in approved Development Plan Ref.10/72/7 on 17-1-1974. However, the acreage is not indicated.
- iv. Government subsequently re-planned the site resulting in the following Part Development Plans (PDPs)
  - a) PDP Ref. No. KTL.10.92.15 approved on 20-8-1992 for proposed primary school with an acreage of 2.09 Ha. - *Refer to attached Approved Plan Number 174.*
  - b) PDP Ref. KTL. 10.94.111 approved in 23-12-1994 for proposed hotel use. (The acreage is not indicated)- *Refer to attached Approved Plan Number 229.*
  - c) PDP Ref. No. KTL. 10.96.100 approved in 23.11.1998 for existing Kitale Academy measuring approximately 43.33 Ha.-*Refer to attached Approved Plan Number 294.*
  - d) It appears that one of the above subdivisions created Kitale Municipality Block 12/132 which was registered in favour of Nathaniel Tum.
- v. Kitale primary states that it applied for allotment letter in a letter dated 7th June 1983 and a reminder on 15<sup>th</sup> July 1985.
- vi. On 27th September 2007, the Commissioner of Lands wrote to Nathaniel K Tum asking him to return the title. The title was being recalled for "cancellation and replacement with a new certificate" since it had encroached into Kitale Academy. It seems a re-survey was done to exclude school dormitory and the title corrected. A preliminary ground report by National Land Commission shows that the School's septic tank is still on the private parcel. The basis of the request by the Commissioner of Lands to Tum was a complaint by the Kitale School that the School land had been encroached by a private developer and that the school developments were comprised in Tum's title.

- vii. The Minister for Lands vide gazette notice 5566 of 21<sup>st</sup> May 2010 revoked Nathaniel Tum's title. The gazette notice stated that the land had been reserved for public purpose. We did not find any evidence that the title for Kitale Municipality Block 12/132 was cancelled.
- viii. **Kitale High Court JR No 38 of 2011:** The School went to Court seeking an order to the commissioner of lands to allocate the land parcel which had been revoked. The court declined to determine the allocation validity issues but held that the gazette notice revocation procedure was un-procedural. The application by Kitale primary was dismissed and the court advised the school to seek lawful and procedural remedy in an appropriate forum.
- ix. Kitale primary has sought the intervention of the National Land Commission into the matter.
- x. The Schools's management states that the subject land was school land all along and it had been fenced. It further states that the school cultivated agricultural crops on the land to feed pupils and students. It alleges that unknown to them Tum applied for allocation of part of the school land of 10 acres and got registered via parcel no Kitale Municipal Block 12/132.

### **Way Forward**

- a) The matter at hand has a long history and the NLC is in the process of piecing together all the information.
- b) The Ministry of Lands and Physical Planning may provide more information on the re-planning that became the basis for survey and subsequent registration of the school land and the land held by private developers as well as the rationale behind the gazette notice that sought to revoke the title in Mr. Tum's name.
- c) NLC will continue to collect the evidence, with the assistance of MoLPP, and provide necessary advice and Direction in due course, as may be guided by the Senate.

**Honourable Chair, I submit;**



**GERSHOM OTACHI BW'OMANWA  
CHAIRMAN**

**Dated May 26, 2021**

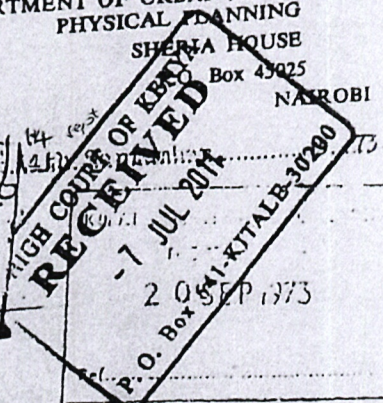
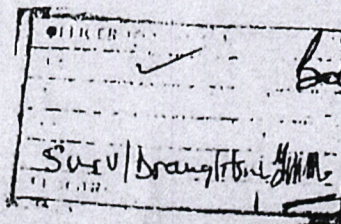
MINISTRY OF LANDS AND SETTLEMENT



DEPARTMENT OF URBAN AND RURAL  
PHYSICAL PLANNING  
SHERIA HOUSE  
Box 43925  
NAIROBI

Ref: "URBANPLAN", Nairobi  
Phone: Nairobi 27461 Ext.  
In replying please quote  
Ref. No. BURP/10/1/161  
and date

Kitale Primary School,  
Private Bag,  
KITALE.



KITALE: Revised development plan.

The revised short term development plan for Kitale, of which a slice in scale 1:5000 is enclosed, was sent to the Ministry of Education for comments 11th of January 1973. The Ministry's planning officer, Mr. J.T. arap-Leting has informed me, that comments could not be expected before the plan proposal affecting Kitale primary school was dealt with by the governing body of the school.

The plan proposal in question is to reserve an area for a new and better junction between School Road and Mumia Highway, (as shown in blue on the map). It is furthermore a question, if the school wants to keep and maintain the acute angled triangular area, which is shown green?

Considering the extreme size of the total school plot (approximately 55 hectares) and also that the areas in question (approximately 2.44 hectare) are not suitable for urban development I would propose the school to surrender the areas to the Municipality of Kitale on the assumption, that the areas will be used for a road and an open space (park).

Yours sincerely,

(Bo Jain)  
for: DIRECTOR OF URBAN AND  
RURAL PHYSICAL PLANNING

C.C./  
✓ The Municipality of Kitale,  
P.O. Box 260,  
KITALE (Attention Arch. Kurt Petersen)

The Ministry of Education,  
P.O. Box 30040,  
NAIROBI. (Attention Mr. J. T. arap-Leting).

This is the Exhibit marked EC 4 referred to in the  
Annexed affidavit of EMMANUEL CHEWENGICH  
Sworn/Declared before me this 17th  
Day of JULY 2014 at ELDORET

Commissioner for Oaths

KITALE PRIMARY SCHOOL  
PRIVATE BAG, KITALE

21st June 1983

HIGH COURT OF KENYA  
RECEIVED  
- 1 JUL 2011  
P.O. Box 641-KITALE-30200

KITALE MUNICIPAL COUNCIL  
TOWN CLERK'S DEPT.  
- 8 JUN 1983  
RECEIVED

LETTER OF ALLOTMENT - KITALE PRIMARY SCHOOL

You are advised by the Permanent Secretary, Ministry of Basic Education, to apply to you for a letter of allotment or Title Deed of the School as it is needed in the exercise of vesting school property in the Public Trustee.

Please issue an Allotment Letter or a Title Deed as soon as possible and ensure a surveyed piece of land has been earmarked for the school.

*[Signature]*  
HEADMASTER

D T.C.  
\* Letter of Allotment  
to be issued by the  
Commissioner of Land

Dale  
8/6/83

1. The Provincial Basic Education Officer  
Mt. Valley Province  
P.O. Box 380,  
NAIROBI.

2. The District Basic Education Officer  
Trans Nzoia District  
P.O. Box 659  
KITALE.

3. The Chairman  
Senate of Governors  
P.O. Box 184  
KITALE.

This is the Exhibit marked EC 5 referred to in the  
Annexed affidavit of FRANCOIS CHEMENGICH  
Sworn/Declared before me this 8th day of JULY 1983 at ELDORET  
Commissioner for Oaths

ME  
Please advise  
8/6/83

*[Handwritten notes and signatures]*  
12/6/83

Kitale 87

reflying please quote

No. KPS/ALA/L/85

and date



KITALE PRIMARY SCHOOL

PRIVATE BAG, KITALE.

15th July 1985

The Commissioner of Lands

P.O Box  
NAIROBI

Thro'

The Town Clerk  
Kitale Municipality

MUNICIPAL COUNCIL OF KITALE  
TOWN CLERKS DEPT.  
16 JUL 1985  
**RECEIVED**

OFFICER TO SEE/ACTION	INITIAL
T.C.	
T.T.	
T.E.	
REGISTRY	

Dear Sir

RE: REQUEST FOR ADDITIONAL LAND TO CATER FOR SECONDARY  
EDUCATION

This is to remind you of our request we made for an additional land area marked X in the photostat copy earlier send to you refer to our correspondence KPS/ALA/1/85 dated 9th April, 1985.

We are waiting for your kind consideration.

Yours faithfully

*[Signature]*  
E. K. KENICH  
HEADMASTER

C.C.O.

The Permanent Secretary  
Ministry of Education Scie. & Tech.

The Provincial Education Officer  
Rift Valley Province

The District Commissioner  
Trans Nzoia District

The District Education Officer  
Trans Nzoia District

The Chairman BOG  
Kitale Primary School

This is the Exhibit marked Ex. B referred to in the  
Annexed affidavit of EMMANUEL CHENYICH  
Sworn/Declared before me this 6th  
Day of JULY 2011 at Kitale

*[Signature]*  
Commissioner for Oaths

file copy



PROPOSED SITE FOR A HOTEL PLOT

141000

GOLF COURSE

OPEN SPACE

MUMIA ROAD

1690

KITALE ACADEMY

1680

723000

MINISTRY OF LANDS AND SETTLEMENT  
PHYSICAL PLANNING DEPARTMENT

KITALE

PART DEVELOPMENT PLAN



SCALE	1:5000
DATE	08.11.1994
PREPARED BY	G. Nyoro
DRAWN BY	K. M. de

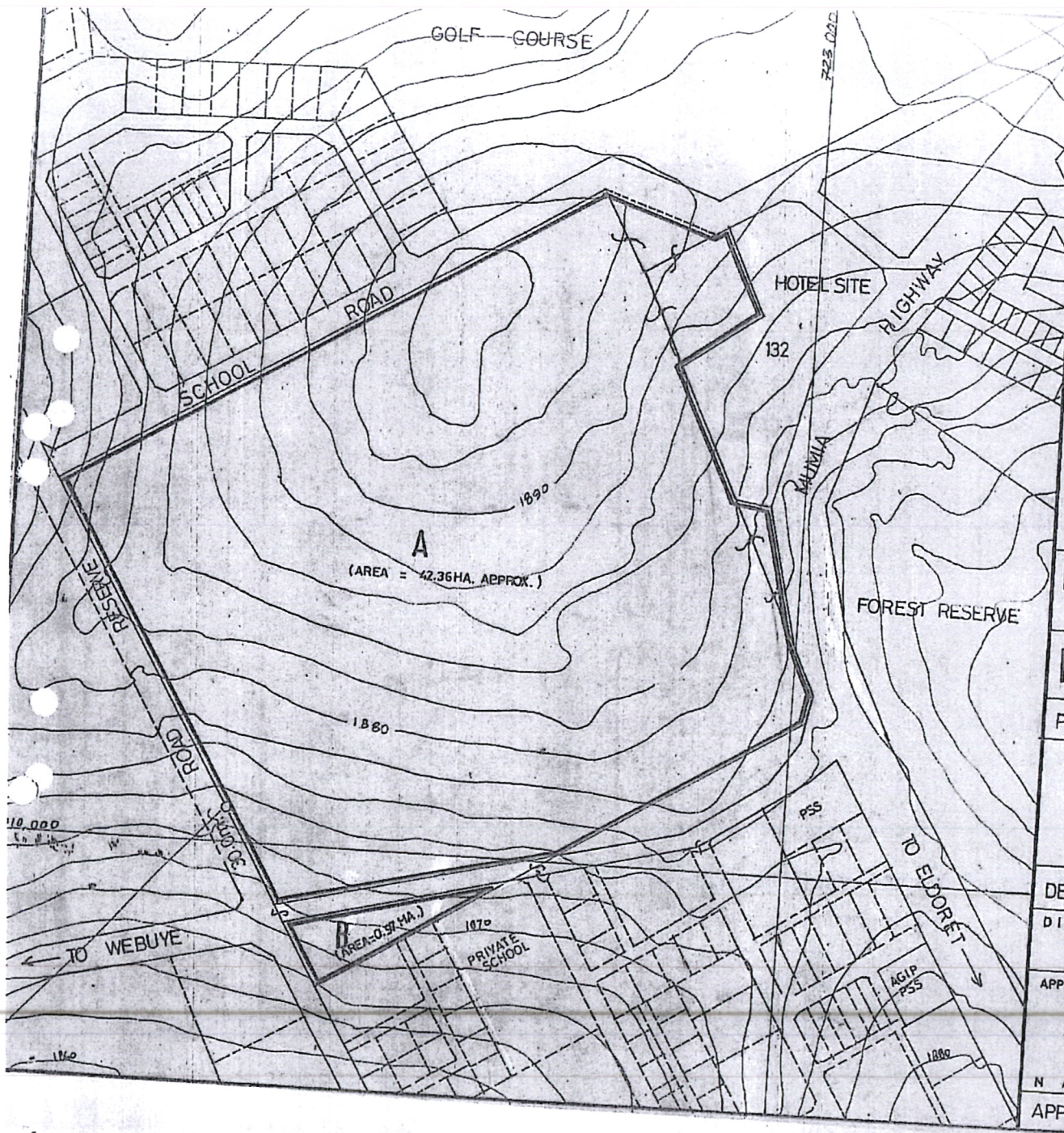
DEPARTMENTAL REFERENCE NOKTL/0.94/111

DIRECTOR

APPROVED

*[Signature]*  
*[Signature]*  
 COMMISSIONER OF LANDS

APPROVED DEVELOPMENT PLAN N<sup>o</sup> 228



EXISTING KITALE ACADEMY  
(AREA OF THE PLOT = 43.33HA. APPROX.)

MINISTRY OF LANDS & SETTLEMENT  
DEPARTMENT OF PHYSICAL PLANNING

K I T A L E

PART DEVELOPMENT PLAN



SCALE - 1 : 5,000

DATE - 24th JULY, 1996

PREPARED BY - *[Signature]*

DRAWN BY - J. W. SIMIYU *[Signature]*

DEPARTMENTAL REFERENCE No. KTL/10/96/100

DIRECTOR *[Signature]* 19.2.97

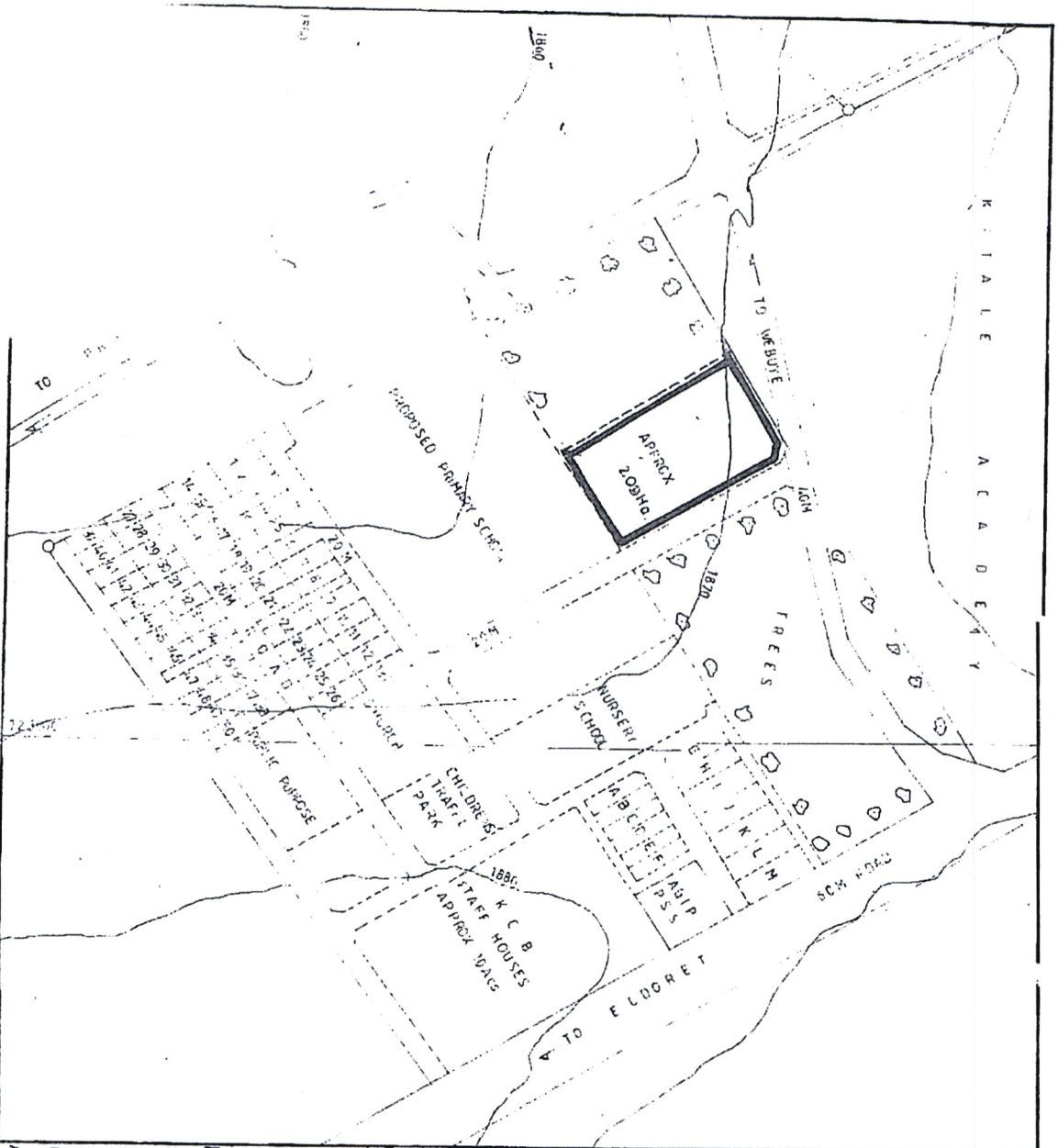
APPROVED BY *[Signature]* DATE  
COMMISSIONER OF LANDS

NAIROBI DATE 29/1/98

APPROVED PLAN NUMBER 294

*filed*

PROPOSED SITE FOR A PRIMARY SCHOOL



MINISTRY OF LANDS & HOUSING  
PHYSICAL PLANNING DEPARTMENT

# KITALLE

## PART DEVELOPMENT PLAN

SCALE 1:5000  
DATE 11/3/92  
PREPARED BY *[Signature]*  
DRAWN BY U B ODUOR

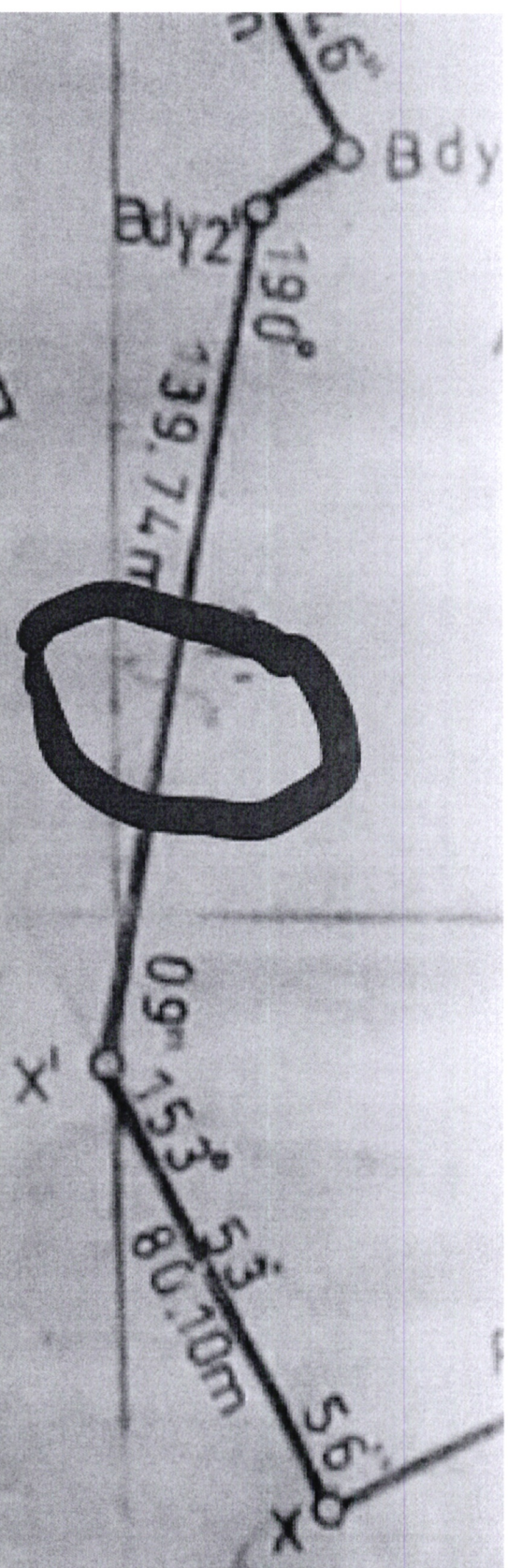
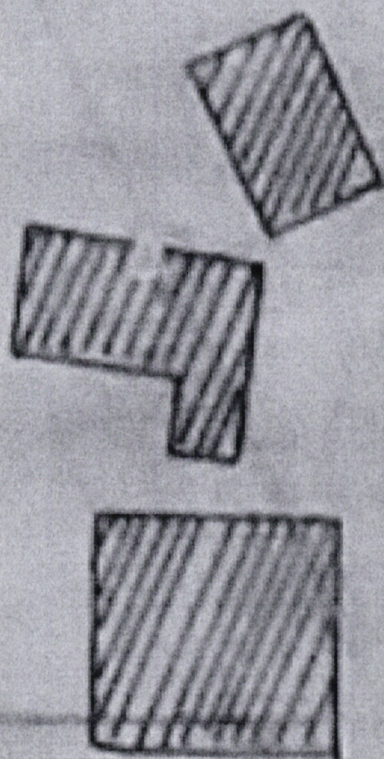
DEPARTMENTAL REFERENCE NUMBER KTL.10.92.15.

DIRECTOR APPROVED *[Signature]* 20/8/92

COMMISSIONER OF LANDS *[Signature]*

APPROVED DEVELOPMENT PLAN NUMBER *[Signature]*

DATE 2/9/92



View more photos

VITALE  
PRIMARY  
SCHOOL

27

BENTLY AVENUE

SCHOOL ROAD

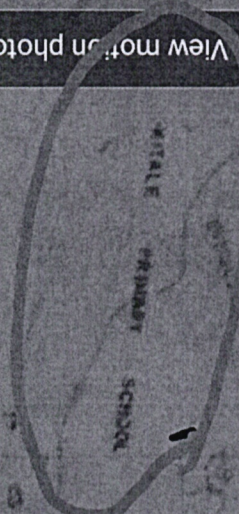
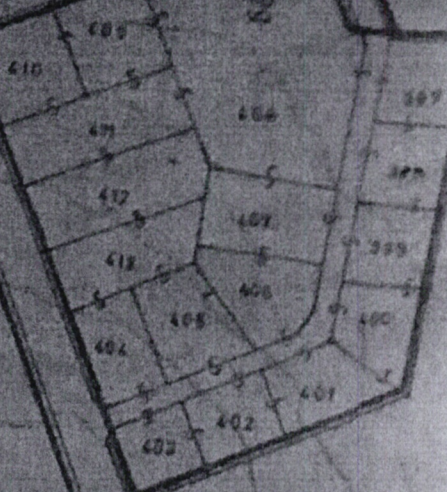
ANGLIA HIGHWAY

S.O.

C.

313

0



5

35



Folio No. 510  
 Register No. 189

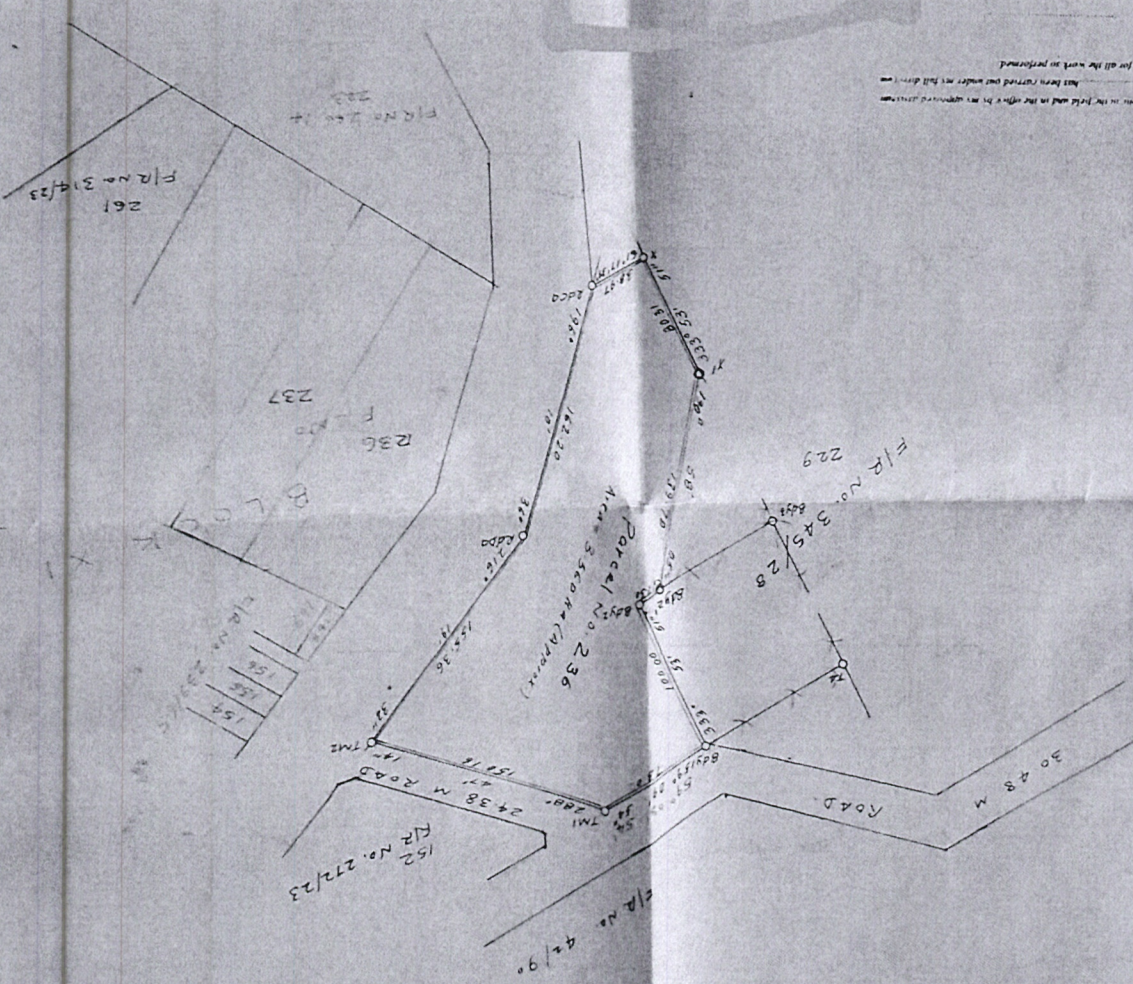
Field Book No. V.C.	Computations 59955	Date Received 10-2-2011	Registration
File Reference No. C573/80/61	Final Approval	Transactions	Authentication
Planned by	Examined by	Date	Records
Checked by	Approved by	Date	Records
Authorised by	Approved by	Date	Records

Parcel No. 236  
 (Cancelled No. 192)  
 Registration Block  
 Registration District  
 Localty KITALB MUNICIPALITY

SCALE 1:2500  
 F/R 268/14 272/23 314/23

Surveyor  
 MDOLOM MWAZI  
 51 G1  
 Vol 50 17 Dec 2010  
 CT 73

OWNER  
 NATHANIEL K. TUMU



Station	Bearing	Distance	Remarks
14	110 411 02	157.60	A.P.C. OLD
15	110 321 23	201.62	1 AC
16	110 155 26	282.21	
17	110 73 98	317.11	
18	110 329 75	342.50	
19	110 463 39	245.20	
20	110 373 58	289.20	
21	110 503 25	312.17	
22	110 454 92	454.33	
23	110 364 52	274.58	
24	110 222 58	247.68	
25	110 345 28	274.58	F/R 345/28
26	110 454 92	454.33	
27	110 373 58	289.20	
28	110 503 25	312.17	
29	110 463 39	245.20	
30	110 329 75	342.50	
31	110 73 98	317.11	
32	110 155 26	282.21	
33	110 321 23	201.62	
34	110 411 02	157.60	

FORM NO. 2  
 17.50

RF/10/1/161  
and date

Kitale Primary School,  
Private Bag,  
KITALE.

SEARCHED  
SERIALIZED  
INDEXED  
FILED  
SUN 11/11/73  
KITALE

HIGH COURT OF KENYA  
**RECEIVED**  
- 7 JUL 2011  
P.O. Box 30280  
KITALE  
20 SEP 1973

KITALE: Revised development plan.

The revised short term development plan for Kitale, of which a slice in scale 1:5000 is enclosed, was sent to the Ministry of Education for comments 11th of January 1973. The Ministry's planning officer, Mr. J.T. arap-Leting has informed me, that comments could not be expected before the planproposal affecting Kitale primary school was dealt with by the governing body of the school.

The planproposal in question is to reserve an area for a new and better junction between School Road and Mumia Highway, (as shown in blue on the map). It is furthermore a question, if the school wants to keep and maintain the acute angled triangular area, which is shown green?

Considering the extreme size of the total schoolplot (approximately 55 hectares) and also that the areas in question (approximately 2.44 hectare) are not suitable for urban development I would propose the school to surrender the areas to the Municipality of Kitale on the assumption, that the areas will be used for a road and an open space (park).

Yours sincerely,

(Bo Jain)  
For: DIRECTOR OF URBAN AND  
RURAL PHYSICAL PLANNING

- c.c. ✓ The Municipality of Kitale,  
P.O. Box 260,  
KITALE (Attention Arch. Kurt Petersen)
- The Ministry of Education,  
P.O. Box 30040,  
NAIROBI. (Attention Mr. J. T. arap-Leting).

This is the Exhibit marked EC 4 referred to in the  
Annexed affidavit of EMMANUEL CHEWENGICH  
Declared before me this 8th

(3)

KITALA PRIMARY SCHOOL

MINUTES OF THE FULL BOARD OF GOVERNORS MEETING HELD ON FRIDAY  
5TH OCTOBER 1984 AT 11.00 a.m. IN THE SCHOOL SANATORIUM

Members Present:

- Mr. G.W. Kepten - Chairman
- Mr. W. Koech
- Mrs J. Imbuye
- Mr. N.K. Tum - Chairman of Parents' Association (by invitation)
- Mr. E. M. Wambari, Deputy Provincial Education Officer (Rift Valley)
- Mrs. E. C. Bore Ag. District Education Officer
- Mr. O.G.N. Njongwa
- Senior Chief Noah Kutto
- Mr. P. Kinyanjui
- Mr. Z.B. Shimechero
- Rev. G. Koomu
- Mr. C.K. Rotich - Secretary

Absent with apology

Mrs R. Mwangi

Absent

- Mr. P. Musungu
- Dr. K.M. Sheh
- Rev. Fr. Tom Smith

MIN BOG/1/84 CONFIRMATION OF PREVIOUS MINUTES

The minutes of the meeting held on 11th May 1984 were confirmed and signed by the Chairman after being proposed by Senior Chief Kutto and seconded by Mr. Kepten.

MIN BOG/2/84 MATTERS ARISING

a) Min BOG/5/84 (b) (ii) Opening of 2nd Dining Hall/Kitchen: The Secretary reported to have ordered for two wood boiling pans similar to the ones supplied by SIDA Project for Kitale Technical School. The Secretary was also given a go ahead to order and supply hardwood timber to G.K. Main Prison to be made into tables and benches for the Dining Hall.

b) Min BOG/6/84 Staff Matters - Bursar's Post: The members resolved that the incumbent Bursar be issued with a letter of appointment.

MIN BOG/3/84 ESTABLISHMENT OF SECONDARY SECTION

The members endorsed the Ministry's directive to establish a secondary wing in the school. It was also resolved that the secondary section would be triple stream consisting of both day and boarding. The compound would be separate from that of the Primary section. It was consequently agreed that Kitale Municipal be approached to surrender part of the land adjacent to the school for this purpose. The Chairman and the District Education Officer were requested to take up the matter.

.../2  
SULTAN...  
...

GAZETTE NOTICE No. 5558

THE CONSTITUTION OF KENYA  
THE GOVERNMENT LANDS ACT

(Cap. 280)

THE TRUST LAND ACT

(Cap. 288)

REVOCATION OF LAND TITLES

WHEREAS the parcels of land whose details are described under the schedule herein below were allocated and titles issued to private developers, it has come to the notice of the Government that the said parcels of land were reserved for public purposes under the relevant provisions of the Constitution of Kenya, the Government Lands Act (Cap. 280) and the Trust Land Act (Cap. 288). The allocations were therefore illegal and unconstitutional.

Under the circumstances and in view of the public need and interest, the Government revokes all the said titles.

SCHEDULE

Nairobi:

Nairobi L.R. No. 9094/1  
Nairobi L.R. No. 9094/2

G. G. GACHIHI,  
Registrar of Titles, Nairobi.

GAZETTE NOTICE No. 5559

THE CONSTITUTION OF KENYA  
THE GOVERNMENT LANDS ACT

(Cap. 280)

THE TRUST LAND ACT

(Cap. 288)

REVOCATION OF LAND TITLES

WHEREAS the parcels of land whose details are described under the schedule herein below were allocated and titles issued to private developers, it has come to the notice of the Government that the said parcels of land were reserved for public purposes under the relevant provisions of the Constitution of Kenya, the Government Lands Act (Cap. 280) and the Trust Land Act (Cap. 288). The allocations were therefore illegal and unconstitutional.

Under the circumstances and in view of the public need and interest, the Government revokes all the said titles.

SCHEDULE

Mombasa:

Ukwala Township/16

P. A. QWEYA,  
District Land Registrar, Mombasa.

GAZETTE NOTICE No. 5560

THE CONSTITUTION OF KENYA  
THE GOVERNMENT LANDS ACT

(Cap. 280)

THE TRUST LAND ACT

(Cap. 288)

REVOCATION OF LAND TITLES

WHEREAS the parcels of land whose details are described under the schedule herein below were allocated and titles issued to private developers, it has come to the notice of the Government that the said parcels of land were reserved for public purposes under the relevant provisions of the Constitution of Kenya, the Government Lands Act (Cap. 280) and the Trust Land Act (Cap. 288). The allocations were therefore illegal and unconstitutional.

Under the circumstances and in view of the public need and interest, the Government revokes all the said titles.

SCHEDULE

Kitale

Kitale Block 12/132

HELLEN MUTAI,  
District Land Registrar, Kitale.

GAZETTE NOTICE No. 5561

THE CONSTITUTION OF KENYA  
THE GOVERNMENT LANDS ACT

(Cap. 280)

THE TRUST LAND ACT

(Cap. 288)

REVOCATION OF LAND TITLES

WHEREAS the parcels of land whose details are described under the Schedule herein below were allocated and titles issued to private developers, it has come to the notice of the Government that the said parcels of land were reserved for public purposes under the relevant provisions of the Constitution of Kenya, the Government Lands Act (Cap. 280) and the Trust Land Act (Cap. 288). The allocations were therefore illegal and unconstitutional.

Under the circumstances and in view of the public need and interest, the Government revokes all the said titles.

SCHEDULE

Wundanyi

Bura/Nyolo 2524  
Bura/Nyolo 2525  
Bura/Nyolo 2526

M. JEMBE,  
District Land Registrar, Wundanyi.

GAZETTE NOTICE No. 5562

THE CONSTITUTION OF KENYA  
THE GOVERNMENT LANDS ACT

(Cap. 280)

THE TRUST LAND ACT

(Cap. 288)

REVOCATION OF LAND TITLES

WHEREAS the parcels of land whose details are described under the Schedule herein below were allocated and titles issued to private developers, it has come to the notice of the Government that the said parcels of land were reserved for public purposes under the relevant provisions of the Constitution of Kenya, the Government Lands Act (Cap. 280) and the Trust Land Act (Cap. 288). The allocations were therefore illegal and unconstitutional.

Under the circumstances and in view of the public need and interest, the Government revokes all the said titles.

SCHEDULE

Mombasa

Mombasa Block /XXVI/MI/ 1011 and 1013  
Mombasa Block /XXVI/MI/ 1012  
Mombasa Block /XIX/MI/299  
Malindi Portion 10395

GEOFFREY BIRUNDU,  
Senior Registrar of Titles, Mombasa.

LEGEND

EXISTING		PROPOSED
0	RESIDENTIAL	
1	INDUSTRIAL	
2	EDUCATIONAL	
3	RECREATIONAL	
4	PUBLIC PURPOSES	
5	COMMERCIAL	
6	PUBLIC UTILITY	
7	TRANSPORTATION	
8	AGRICULTURAL	
9	UNDEVELOPED	

——— ZONE BOUNDARIES  
 ——— AREA ADMINISTERED BY  
 K.E.A. RAILWAYS CORPORATION  
 ——— MUNICIPAL BOUNDARIES  
 CONTOURS ARE SHOWN WITH A VERTICAL  
 INTERVAL OF 10 FEET  
 GRID DATA: UTM GRID ZONES 36 AND 37

NOTE  
 THE APPROVAL OF THE COMMISSIONER OF  
 LANDS TO THIS PLAN IS ACCORDED SUBJECT  
 TO THE SATISFACTORY COMPLETION OF THE  
 SETTING APART OF THE LAND INCLUDED IN THE  
 PLAN

MINISTRY OF LANDS & SETTLEMENTS  
 DEPARTMENT OF URBAN & RURAL DEVELOPMENT

KITALÉ  
 DEVELOPMENT PLAN

SCALE 1:5000  
 DATE 1st JANUARY 1973  
 PREPARED BY BO JEIN  
 DRAWN BY JOSEPH MWANGI

DEPARTMENTAL REFERENCE 10/17/73

DIRECTOR *Chitkala*

APPROVED J.A. OLUOKHUR  
 COMMISSIONER OF LANDS  
 NAIROBI 17th JANUARY 1973

APPROVED DEVELOPMENT PLAN NO.

**ANNEX III: SUBMISSIONS BY THE PRIVATE DEVELOPER**

**Dr. NATHANIEL K. TUM EBS. CBS.,**

*LLB (Hons.) London, Dip. Law (KSL), CPS (K), Dip. Ed., D. Litt, MBA, MSc. MBIM, FJKIM*  
ADVOCATE/COMMISSIONER FOR OATHS & NOTARY PUBLIC

Soet House, 1<sup>st</sup> Floor,  
Kitale-Eldoret Road,  
P.O. Box 2275, KITALE 30200

Cell: 0720-838767 or 0735610555

Email: [drnkjum48@gmail.com](mailto:drnkjum48@gmail.com)  
[tum@soet.co.ke](mailto:tum@soet.co.ke)

Your Ref: SEN/DCS/LENR/2/21/(19)

6<sup>th</sup> April 2021

Parliament  
Office of the Clerk of the Senate  
Clerk's Chambers  
Parliament Buildings  
NAIROBI

Dear Sirs,

**RE: REPLY TO PETITION CONCERNING THE ALLEGED ILLEGAL ALIENATION OF LAND BELONGING TO KITALE SCHOOL PRIMARY BY A PRIVATE DEVELOPER**

**DR. NATHANIEL KIPKORIR TUM ID/NO 0712890** and of P.O BOX 2275-30200 KITALE hereby wish to respond to the petition by as follows:-

1. **THAT** I received the above Petition dated 31/3/2021 by email on 1<sup>st</sup> of April 2021 and wish to address the complaints raised in the petition as follows:-
2. **THAT** I vehemently deny the allegation by the petitioner that there was an illegal alienation of land belonging to Kitale School and that I conspired with the Commissioner of Lands to alienate 10 acres of the school land.
3. **THAT** I obtained L.R NO. KITALE MUNICIPALITY BLOCK 12/236 (formerly BLOCK 12/132) legally having followed all the due process of land ownership in Kenya.
4. **THAT** I applied for the land referred to above which was Government land together with other applicants being Ms. Halima Kokita of Kapenguria, Messrs Ken Kiptoo and Josephine Kerubo. I am also aware that the Anglican Church where Bishop Emmanuel Chemengich is overseeing and the AIC Church were also applicants for the said land.
5. **THAT** I am aware that the four of us Kiptoo & Kerubo, Halima and myself were successful each being allotted 1.357, 0.40 and 3.56 hectares respectively.

6. **THAT** pursuant to my application to be allocated L.R NO. KITALE MUNICIPALITY BLOCK12/236, I was issued with a letter of Allotment dated 29<sup>th</sup> September 1994. (Annexed herein as **NKT1**)
7. **THAT** the letter of allotment was specific that the property was unsurveyed.
8. **THAT** I have been paying rates to Trans Nzoia County for the property since 1994. (Annexed herein as **NKT2** is a copy of receipt dated 6<sup>th</sup> December 1994)
9. **THAT** I am aware that the Government has a right to allot land belonging to it and thus there was no illegality as I applied as an ordinary citizen and was allotted and fulfilled the requirements pertaining to the allotment including the payments of fees to the government and all the necessary rates and rents to the relevant authorities.
10. **THAT** I was issued with the Certificate of Lease on 6<sup>th</sup> December 1994 with annual rent of Ksh.70,000. (Annexed herein as **NKT3**.)
11. **THAT** upon obtaining the above parcel and after of developing the same, Kitale School complained through a letter to the ministry of lands that I have encroached into L.R NO. KITALE MUNICIPALITY BLOCK 12/229.
12. **THAT** vide a letter dated 27<sup>th</sup> September 2007, I was requested to surrender the Certificate of Lease to the Commissioner of Lands for cancellation and replacement of a new certificate bearing the correct survey area. (Annexed herein as **NKT4**.)
13. **THAT** I obliged to the request and vide a letter dated 24<sup>th</sup> February 2010, I was further requested by the Ministry of Lands to facilitate excision of the part touching Kitale school. (Annexed herein as **NKT5**.)
14. **THAT** to honour the request, I visited the lands office where I met Mr. Kariuki J.K and voluntarily surrendered the certificate of lease for L.R NO. KITALE MUNICIPALITY BLOCK12/132.
15. **THAT** I was issued with a Surrender Certificate of lease dated 9<sup>th</sup> March 2010. (Annexed herein as **NKT6** is a copy of the certificate.)
16. **THAT** vide a letter dated 23<sup>rd</sup> March 2010 the Commissioner of Lands was notified of the new certificate of lease from the Director of Survey. (Annexed herein as **NKT7** is copy of the letter.)
17. **THAT** I was thus issued with a new number being L.R NO. KITALE MUNICIPALITY BLOCK12/236. (Annexed herein as **NKT8** is a copy of the Title.)
18. **THAT** the Petitioners have been shifting goal posts from encroachment issues to grabbing of their alleged land which forced the Commissioner of Lands to direct the Districts lands office vide a letter dated 8<sup>th</sup> June 2011 to solve the matter amicably between the Kitale school and myself. (Annexed herein as **NKT9** is a copy of the letter)
19. **THAT** a Technical Team was formed by the Chief Land Administration office to investigate the matter, which report found that ;-
  - a) *Both Tum and the school knew that the disputed land was government land.*
  - b) *The school applied to be allocated the land.*

- c) *Tum also applied to be allocated the same land.*
- d) *Tum was allocated the site and developed the same.*
- e) *The site in dispute was formally the area which had encroached on the school compound.*
- f) *Tum has surrendered the land which was in dispute and PIA NO.132 has been resurveyed as Block 12/229.*
20. **THAT** the recommendation of the Technical Team referred to in paragraph 19, was that I retain the site block 12/236 that I have developed and the boundaries be maintained as they are on the ground as per the fencing. (Annexed herein as **NKT 10** is a copy of the Report dated 9<sup>th</sup> October 2012.)
21. **THAT** having being dissatisfied with the above report, Kitale School abandoned the negotiations and filed Judicial Review No. 35 of 2011 where the court dismissed their application with costs. (Attached herein as **NKT11** is a copy of the ruling)
22. **THAT** in its *Orbiter Dictum*, on page 14 of the ruling the court stated that there was undisputed documentary evidence by myself in the application to the Government to be allocated the vacant land.
23. **THAT** the Applicant in Judicial Review No. 38 of 2011 being Kitale school were dissatisfied with the decision and appealed to the Court of Appeal vide C.A No. 1 of 2013 which appeal was dismissed with costs.
24. **THAT** I have since developed my parcel of land where there is a large extensive service station, service bay, supermarket and cafeteria. Other developments include a water plant, car wash and residential units at a total cost of K.Shs. 250 million.
25. **THAT** I am the lawful allottee and thus the legal owner of L.R NO. KITALE MUNICIPALITY BLOCK12/236 measuring 3.56 ha.
26. **THAT** in reply to **paragraph 16 of the Petition**, Kitale school is being economical with the truth since when they started applying for the school title on 7/6/1993 to the Town Clerk, they were advised to forward their application to the Commissioner of Lands. The question of the school having 55 hectares did not arise. This is captured in the Report of Land Technical Team Trans Nzoia dated 9/10/2012 annexed as **NKT10**.
27. In **reply to paragraph 17 of the Petition**, the petitioners have not attached evidence of reservation and further the details of the said reservation be it the acreage and the extent of the reservation.
28. In **reply to paragraph 18 of the Petition**, the allegation of grabbing is malicious. The mentioned Part Development Plan (PDP) can only be viewed against subsequent applications and allocation processes for the land in question. I have followed all due processes in the application and the significance of this document was not raised by the relevant government departments. I am only aware that the school applied and obtained a letter of allotment on 2<sup>nd</sup> July 1999 for 43.33 Ha as per the approved PDP KTL/10/96/100.(**NKT 10**)

---

29. In **reply to paragraph 19 of the Petition** on 13/9/93 during the School Executive Board Meeting, Minute No. EB/93/26 AOB School Land - it was agreed

- a) To apply to acquire all land currently in use by the school but owned by the Government
- b) Apply for the title deed for the school
- c) Apply for more land for use by the secondary school

Further on 7/10/93, the Headmaster applied for allocation of land to include unclaimed space adjacent to the school.

30. In **reply to paragraph 20 of the** Petition, the statement is inconsistent as on 2<sup>nd</sup> July, 1999, the Commissioner of Lands issued a letter of allotment for the un-surveyed school plot measuring 43.33 ha as per the approved PDP No. KTL/10/96/100. In addition, the school accepted the offer by paying the lessor fee of K.Shs. 6,122/=. A survey was done and a lease prepared for a total area of 41.28 ha (102 acres). The exact size was established after the survey.

31. In **reply to paragraph 21 of the** petition, the Ministry of Education was in no position to excise private property under LR. No. Block 12/132 now Block 12/236.

32. In **reply to paragraph 23, 24 and 25 of the Petition**, I was chairman of the PTA of Kitale School in the 1980s and I am not aware of any time that I was requested to assist in acquiring to help in processing a title. I did not offer to assist as I was not an officer in the Ministry of Lands. My role at the time was that of the development of the school technical laboratory and the classrooms. This is a task I executed with excellence resulting in construction of the present lab and modern classrooms. I did fundraising and solicited funds from KPA, Railways, Kenya Seed Co etc for purposes of the said buildings.

From the reports of Lands, Kitale School applied for the allotment for the school land on 15/7/1993 (Technical Report Page 2). The issue of trusteeship could not have arisen.

33. In **reply to paragraph 27 of the Petition** it is true that I was issued with a Title Deed in 1994, however, it is totally misleading to allege that I clandestinely applied for a private title from the land reserved as public land. There was nothing clandestine about the land as all legitimate procedures were followed.

34. In **reply to paragraph 28 of the Petition**, the allegation is not true. Following the issuance of the title in 1994, the Government surveyors beacons the land and I fenced the land following the survey beacons and consistent with the title issued. There was no encroachment. (Annexed herewith is the Beacon Certificate **NKT 13**).

35. In **reply to paragraph 29 and 30 of the Petition**, the survey and the beaconing of the land was done many years back and not in March 2021 when this petition

was done. I welcome any inspections to confirm the beacons and where they were fixed by the Government surveyors. I confirm that the fencing is within my boundary and I have no desire to encroach on school land.

36. In reply to paragraph 31 of the Petition I have no intention to encroach on school land as I am satisfied with my allotted portion.
37. In reply to paragraph 33 of the Petition, the statement in itself is prejudicial as I am the lawful owner of the above said parcel LR No. Block 12/236.
38. In reply to paragraph 36 of the Petition, I confirm that my property has never housed a girls' dormitory. It is evident from a physical inspection that the sewer and the girl's dormitory are intact and within the school land. I have no intention of encroaching on the disused school sewer after a new sewer line was put up by the County Government which is now in use.
39. In reply to paragraph 37 of the Petition, I was not made party to this complaint.
40. In reply to paragraph 38 of the Petition I confirm that I left the chairmanship of Kitale School in the late 80s and I had no fiduciary duty as a trustee of the school during my allotment of the parcel of land in 1994. There was no conflict of interest.

The boundaries were clear and government surveyors were involved and the title issued by Commissioner of Lands following their rectification.

41. In reply to paragraph 39 and 40 of the Petition the title can never be cancelled by gazette notice or a ministerial order as indicated on page 22 of the court ruling in JR No. 38 of 2011. The cancellation of title 12/132 was as a result of an incorrect survey and not as a result of encroachment or a ministerial order. It is for this reason that I was issued with a new title LR. No Block 12/236. As a result of this process, I lost one acre of land which formed part of LR No. Block 12/229 (Kitale School)

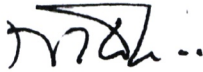
Note that the approvals for the re-survey were conducted in Trans Nzoia to obtain the consents from the various Heads of Departments

Thereafter the Director of Survey wrote to the Commissioner of Lands following the completion of the re-survey of the said land indicating that the Registry Index map had been amended to reflect parcel No. 236.

42. In reply to paragraph 41 of the Petition it is not true that I surreptitiously managed to get another title. It is true that due process was followed that a triangle which encroached the Kitale school and which was not fenced was not

part of my property. It was not an encroachment by me but it was a survey error. Refer to Letter dated 27/9/2007 (Ref 160742) from the Ministry of Lands(NKT 4)

43. In reply to paragraph 42 and 43 of the Petition it is true that the matter went to the High Court in Kitale and the court confirmed that the property rights of Dr. Nathaniel Tum cannot be taken away by Judicial Review. The matter went further to the Court of Appeal which upheld the High Court decisions that the property belongs to Dr. Tum.
44. **THAT** my proprietary rights should be protected by the government since my title to L.R NO. KITALE MUNICIPALITY BLOCK12/236 is sacrosanct and indefeasible as provided in Article 40 of the Constitution.
45. **THAT** I was allocated L.R NO. KITALE MUNICIPALITY BLOCK 12/236 and lawfully acquired it as indicated in page 20 of the High Court ruling attached as NKT 7.
46. **THAT** I thus pray that the petition be dismissed as L.R No. KITALE MUNICIPALITY BLOCK 12/236 is disntict from L.R NO. KITALE MUNICIPALITY BLOCK 12/229 which belongs to the school.



Dr. Nathaniel K. Tum EBS CBS

CONFIDENTIAL

KITALE PRIMARY SCHOOL

MINUTES OF THE BOARD OF GOVERNORS MEETING HELD IN THE SCHOOL  
SANATORIUM BOARD ROOM ON THURSDAY, 9th SEPTEMBER, 1982 AT 10.55 a.m.

MEMBERS PRESENT :

Mr. A. Oyler -- Chairman.  
Mr. P. N. Sifuma - Vice-Chairman.  
Mr. E. R. Mpengu - D.B.E.O. - Trans Nzoia District.  
His worship the Mayor, Mr. E. W. Okul.  
Mr. G. W. Kapten.  
Mr. G. J. K. Masika.  
Mr. Peter Kinyanjui.  
Mrs. Judith Imbuye.  
Mrs. J. M. Morara.  
Mr. F. A. de Silva - Secretary.

APOLOGY :

Mr. R. K. A. Towett, P.B.E.O. - Rift Valley Province.  
Mrs. E. O. Jonathan.

MIN. BOG/1/82 : CONFIRMATION OF PREVIOUS MINUTES.

The Minutes of the Board of Governors meeting held on 24th June, 1981, were approved and signed by the Chairman after being proposed by Mrs. J. Imbuye and seconded by Mr. G. J. K. Masika.

MIN. BOG/2/82 : MATTERS ARISING.

1) Min. 20/81 (ii) 15/81 (b) - School Development Fund.

In response to queries, the Secretary listed the projects carried out by the Parents' Association - reviving, renovating and fencing of the Swimming Pool, renovating and painting of the Headmaster's house, purchasing of a Duplicating Machine, purchasing of 40 desks and 40 chairs for Std 5Z, wire-meshing and surfacing of Tennis Courts, purchasing of Tennis equipment and Swimming Pool sucker, building of 5-classroom Tuition Block, renovating and enlarging of Day Scholars' Shelter and the building of two classrooms which is now nearing completion. The current project is building of an Ablution Block.

The Secretary said because of lack of personnel, he was unable to submit an upto date list of those who have not paid the Development Fund but referred to the list of 31st March, 1982, in which Sh. 31 780/- was still outstanding. He also reported that the School Fund of Sh. 50/- per child per term which used to be collected prior to 1981 was not handed over to the Parents' Association. The Chairman commented that the Auditors will have to clear that issue.

The Treasurer of the Parents' Association, Mr. P. Kinyanjui, promised to table a detailed Financial Report at the next meeting. The Secretary was also to submit up-to-date list of Development Fund defaulters.

The Board thanked the Parents' Association and expressed its gratitude and appreciation of the good management and good work the Parents' Association have done and are currently doing.

The Chairman informed the Members that following P. A. request, he had taken up the matter and forwarded the request to have H.E.

Permanent Secretary, Ministry of Basic Education, regarding all the items in the proposed Estimates but press for the essential items like equipping the new Std. 7 stream in 1983 and the sewage works needed to connect the School sewage with that of the Municipality. H.W. the Mayor E.Okul, promised to help and also obtain the estimate of the full cost.

N. BOG 8/82. SCHOOL FARM.

The Board noted the progress of the Farm and thanked the donors of the title. It was agreed to hold a small ceremony when handing over the title.

N. BOG 9/82. VESTING OF SCHOOL PROPERTY.

The Board was informed that the Chairman and Secretary were sorting out the related legal requirements. It appears that according to Cap.211 the Education Act and Orders under Section 10 and Para.13 (1) (a) all schools specified in the First Schedule and governed by a Board of Governors which is not a corporate body should have their movable and immovable school property vested in Public Trustee (as custodian trustee) or in such trustee or Trustees as the Minister, in consultation with the Board, appoint.

The question of appointing Trustees was deferred until the next meeting and the Secretary was asked to follow up the matter with the Ministry of Basic Education for more details.

N. BOG 10/82- NURSERY SCHOOL.

The Chairman of the Nursery School Sub-committee, Mr. P.N. Sifuma, tabled its Report and Recommendations on the Nursery School.

The Board thanked the Sub-committee for its detailed Report but deferred adoption and implementation until the next Meeting as the members wanted time to study the Report.


N. BOG 11/82 A.O.B.

1) SWIMMING GALA: The Headmaster reported that a Swimming Gala was proposed to be held at the commencement of Mid-Term holidays. It was unanimously agreed that His Worship the Mayor of Kitale, Mr. H.W.Okul should be the guest of Honour for the occasion.

2) AUDITING BOOKS OF ACCOUNT: One member re-emphasized the need for the P.B.E.O. to put pressure to do the audit quickly as the auditing was taking too long.

There being no further business, the Meeting ended at 2.23 p.m. with a vote of thanks to the Chair.

Minutes confirmed this..... & 11 ..... day of February 1982.



(3)

KITALE PRIMARY SCHOOL

MINUTES OF THE FULL BOARD OF GOVERNORS MEETING HELD ON FRIDAY  
5TH OCTOBER 1984 AT 11.00 a.m. IN THE SCHOOL SANATORIUM

Members Present:

Mr. G.W. Kapten - Chairman  
Mr. W. Koech  
Mrs J. Imbuye  
Mr. N.K. Tum - Chairman of Parents' Association (by invitation)  
Mr. E. M. Wambari, Deputy Provincial Education Officer (Rift Valley)  
Mrs. E. C. Bore Ag. District Education Officer  
Mr. O.G.M. Njongwa  
Senior Chief Noah Kutto  
Mr. P. Kinyanjui  
Mr. Z.B. Shimecharo  
Rev. G. Koomu  
Mr. S.K. Rotich - Secretary

Absent with apology

Mrs R. Mwangi

Absent

Mr. P. Musungu  
Dr. K.M. Shah  
Rev. Fr. Tom Smith

MIN BOG/1/84 CONFIRMATION OF PREVIOUS MINUTES

The minutes of the meeting held on 11th May 1984 were confirmed and signed by the Chairman after being proposed by Senior Chief Kutto and seconded by Mr. Kapten.

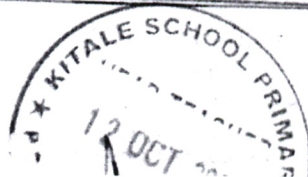
MIN BOG/2/84 MATTERS ARISING

a) Min BOG/5/84 (b) (ii) Opening of 2nd Dining Hall/Kitchen: The Secretary reported to have ordered for two wood boiling pans similar to the ones supplied by SIDA Project for Kitale Technical School. The Secretary was also given a go a head to order and supply hardwood timber to G.K. Main Prison to be made into tables and benches for the Dining Hall.

b) Min BOG/6/84 Staff Matters - Bursar's Post: The members resolved that the incumbent Bursar be issued with a letter of appointment.

MIN BOG/3/84 ESTABLISHMENT OF SECONDARY SECTION

The members endorsed the Ministry's directive to establish a secondary wing in the school. It was also resolved that the secondary section would be triple stream consisting of both day and boarding. The wing would be separate from that of the Primary section. It was consequently agreed that Kitale Municipal be approached to surrender part of the land adjacent to the school for this purpose. The Chairman and the District Education Officer were requested to take up the matter.



The chairman of the Nursery school Committee entrusted with the task of reporting into all aspects of the Nursery school presented a detailed report which had earlier been issued to the members. The recommendations were unanimously adapted. Out of 99 places the percentage for Kitale Primary Nursery School has consequently risen from 50% to 66%. The twenty one places would be reserved for standard two intake the following year. The Nursery Sub-Committee was subsequently requested to short list the pre-primary pupils based on entry and continuous assessment records. The list should then be forwarded to the Admission Committee for notification. Applicants from other Nursery Schools would be interviewed as usual due to limited places. The results would be presented to the Admission Committee for final selection. In all cases parents of Kitale Primary School would be given special consideration.

The membership of Admission Committee was reviewed. The Deputy PEO, Mr Wambari referred to the Ministry of Education Science and Technology directed by the Director of Primary Education which stipulates the constitution of the Admission Committee as below:-

- 1) The PEO
- 2) 2 Board members. The following were chosen:- Mr G. Kapten and Mrs Judith Imbuye
- 3) Headmaster

Members resolved to add the following:-

- 1) The DEO
- 2) Two members of Parents Association:- Mr N. K. Arap Tum and Mr Peter Kinyanjui

MIN BOG/5/84 JA OB

a) AMENITY FEES

The chairman of Parents Association raised the issue of the need to transfer the Amenity Funds to PA's Account. The members, however, thought this to be unnecessary for either way the funds would be accounted for in accordance with the normal government financial regulation. It was also resolved that any reserve funds from this account would be channelled to major projects.

The need to pay this fee was also discussed at length noting this to have been a unanimous parents resolution to raise this fee with the purpose to maintain the standard of the school. It was, however, not clear why Mr Tuei, one of the parents had not yet paid the fee. The Deputy Headmaster in responding to Mr Tuei's letter agreed to convey the BOG's sentiments and the need for the parent to meet his obligation.

b) 1980 AND PART OF 1981 ACCOUNTS BOOKS

The Deputy PEO advised that the accounts books for 1980 and part of 1981 be written up by a private accountant for a minimal charge and the school to meet the cost.

c) SWIMMING POOL RENOVATION

The secretary was asked to obtain various quotations for swimming pool renovations. Mr. Peter Kinyanjui and the chairman to assist on choice of the tender.



) THE INTEREST ON AFC LOAN

It was resolved that the interest on AFC loan should be paid.

) DISMISSAL OF JOHN SIMIYU PER NO. BOG/062 AND CHARLES WEKESA PER NO. BOG/020

It was resolved that both John Simiyu and Charles Wekesa be dismissed forthwith for having stolen school property.


) 74 EXTRA BOARDERS

The extra boarders would be absorbed as soon as additional facilities are provided.

There being no other business the meeting ended at 1 P. M. with a vote of thanks to the chair.

Secretary

Date 22/5/85

  
.....  
Chairman

Date 22/5/85



KKITALA PRIMARY SCHOOL

MINUTES OF MEETING OF PARENTS ASSOCIATION COMMITTEE  
HELD ON 22ND NOVEMBER 1984 AT 11.00 A.M AT THE SANATORIUM  
BOARD ROOM.

MEMBERS PRESENT

Mr. N. K. arap Tum      Chairman  
Mr J. K. Kalunde      Vice Chairman  
Mr B. K. Sang  
Mrs E. J. Lebo  
Mr E. G. Asubwa  
Mr M.W. Hendrix  
Mr Michael Seroney  
Mr S. E. W. Anderson  
Mr S. K. Rotich      Secretary

APOLOGY

Mr W. G. *Abincha*

PA/1/84 CONFIRMATION OF PREVIOUS MINUTES

The minutes of 23rd July 1984 were adapted and confirmed by Mr Andersen and endorsed by Mr Asubwa as being true record of the proceedings.

PA/2/84 MATTERS ARISING

MIN PA/3/84 POINT 3

The Chairman of the building committee reported to have trasacted an agreement between the sub-contractor and the PA.

AMENITY FEES

It was unanimously agreed that Amenity fees be continued to be levied for purpose of maintaining the standard of the school.

PA/3/84 HOME SCIENCE/WORKSHOP

The secretary reported the balance of PA's account to be Sh. 7,000. The members consequently agreed to approach the BOC to allocate Sh. 100,000 to the Amenity fund to be spend on the completion and furnishing of a home science/workshop. The Building Committee was given a go ahead to provide tables and electrification. Standard eight classroom roofs are to be painted instead of the workshop/Home science.

PA/4/84 SECONDARY SECTION

The members responded positively to the presidential directive on the need to provide a secondary section in the school. The secretary subsequently informed the BOC's Kitale Municipality for more land to cater for this expansion.

KITALE PRIMARY SCHOOL PARENTS' ASSOCIATION  
RECEIPTS AND PAYMENTS FOR THE YEAR ENDED 31ST DECEMBER, 1983

	<u>Kshs</u>	<u>Kshs</u>	<u>Kshs</u>
<b>RECEIPT:-</b>			
Development Fund Contribution			54,655.00
Harambee Contribution			127,613.00
Savings Account Interest			8,778.70
Miscellaneous			5.00
			191,051.70

**CAPITAL EXPENDITURE:**

5 Classroom Tutition Block	102,960.70		
2 Classroom Ablution Block	53,608.85		
Tennis Court and Equipment	60.00		
Nursery School	691.00		
Partitioning Common Room	1,382.90		
			165,703.45

**REVENUE EXPENDITURE:-**

Stationery	1,010.50		
Travelling and Entertainment	2,355.95		
Audit Fees	2,000.00		
			5,366.45

**EXCESS OF RECEIPT OVER PAYMENTS**

171,069.90  
Kshs. 19,981.80

MIN PA/5/84 AOB STANDARD I INTAKE

e) The secretary informed that the Admission Committee meeting would be on 30th November 1984 to carry out selection. The members decided that the short, listed children from Kitale Primary School Nursery should be scrutinized before handing over the list to the Admission Committee. The members' view was that children from all Nursery Schools should be given an equal interview in future. The following were consequently assigned to cross-check the nursery list: Mrs Hendrix, Mr Kalunde, Mr Seroney and Mr Tum.

There being no other business the meeting ended at 12.50 a.m.

S. K. Rotich

Signed Confirmed .....  .....

MEMBERS OF THE COMMITTEE OF PARENTS  
A SOCIATION HELD ON WEDNESDAY 24TH JULY 1985 IN THE  
SCHOOL SANATORIUM

Members Present

Mr. W.K. Tum  
Mrs P. Marimi  
Mrs M. W. Hendrix  
Mr. F.M. Kinyanjui  
Mr. S.E.W. Andersen  
Mr. S.K. Rotich

Absent with Apology

Mr. E. Asubwa

Absent

Mr. R.C. Shah  
Mr. W. Abincha  
Mr. B.K. Song  
Mr. M. Seroney  
Mr. P.N. Sifuma  
Mr. E. Koske  
Mr. J. Kalunde  
Mr. J. Murei (His Worship the Mayor)

MIN PA/1/ CONFIRMATION OF PREVIOUS MINUTES

The minutes of the previous meeting held on 20th December 1984 were confirmed as true record after being proposed by Mr. Krishnan and seconded by Mr. S.E. Andersen.

MIN PA/2/ MATTERS ARISING

The Secretary and Treasurer were requested to table updated contributions from Parents so far in the next meeting.

MIN PA/3/ GESTURE OF RESPECT FOR MR. SEMBI

The Chairman of the Building Committee requested the members to observe one minute silence in memory of late Mr. Sembu, a contractor who had just completed the school's Home Science/Workshop Block, who passed away in a road accident.

MIN PA/4/ ESTABLISHMENT OF SECONDARY SECTION

The Chairman of the Building Committee reported to have located the current construction at its present site due to inadequacy of funds. The site had also been approved by the Board of Governors for a similar reason. The members however, expressed their strong sentiments to have the Secondary Section be situated at a separate compound from the Primary Section due to age differences of the pupils. It was consequently resolved that the need for additional land from Commissioner of Lands for this purpose be relentlessly pursued.

V.O.B. (a) Mr. Andersen and Mrs Hendrix reported to have had a surprise inspection of the school during which they made a number recommendations for the secretary's attention amongst others are repairs of sanitation unit and second kitchen.

(b) The following issues were noted for discussion in the next meeting:- (i) Housing for teachers (ii) Std I intake (iii) Parents/Teachers Relationships.

J. MRS Hendrix was elected unanimously as vice chairman.

S.K. Rotich  
SECRETARY

Confirmed

'NKT 1'

REPUBLIC OF KENYA

DEPARTMENT OF LANDS

REGISTERED

P.O. Box 30089

NAIROBI

29TH SEPTEMBER, 1994

Telegrams: "LANDS", Nairobi

Telephone: Nairobi 718050/9

NATHANIEL K. TUM

BOX 2275

KITALE

Ref. No. 20089/XXIV/1

SIR(S)/MADAM,

UNS. HOTEL SITE - KITALE MUNICIPALITY

LETTER OF ALLOTMENT

I have the honour to inform you that the Government, on behalf of County Council, hereby offers you a grant of the above plot shown edged red on the attached plan No. subject to your formal written acceptance of the following conditions and to the payment of the charges as prescribed hereunder:

AREA: 4 hectares (approximately).
TERM: 99 years from the 1-9-94
STAND PREMIUM: Sh. 540,000/=
ANNUAL RENT: Sh. 128,000
Subject to adjustment on survey, but there is no claim for reduction in area on survey.

GENERAL: This Letter of Allotment is subject to, and the grant will be made under the provisions of, the Government Lands Act (Cap. 280 of the Revised Edition the Laws of Kenya) and title will be issued under the Registration of Titles Act (Cap. 281) or the Registered Land Act (Cap. 300).

SPECIAL CONDITIONS: See attached.

2. I should be glad to receive your acceptance of the attached conditions together with banker's cheque for the amount as set out below within thirty (30) days of the postmark:

Table with 2 columns: Description and Amount (Sh.). Rows include Stand Premium (540,000/=), Rent from 1-9-1994 to 31-12-94 (42,667/=), Conveyancing Fees (1,250/=), Registration Fees (252/=), Rates On demand, Stamp Duty (33,960/=), Survey Fees On demand, Road and Road Drains On demand, Others, Applied fees (2,000/=). Total: 620,127/=

Receipt No. Less Deposit TOTAL Sh. 620,127/=

[P.T.O.]

\*Delete as appropriate.

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


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

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

Your full name(s) in BLOCK LETTERS should be given for the purpose of the grant which will be submitted later to you. The attached special conditions form part of the offer which should be accepted in writing.

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

Authority: 102749/21/DA

  
P. AMIANI

for Commissioner of Lands

ENCL. ---

COPY TO: P/S Ministry of Lands and Settlement, Nairobi

The Director of Surveys, Nairobi.

The Town Clerk. - KITALE

The Clerk to the Council, County Council of

The District Commissioner. - KITALE

The Director of Physical Planning, Nairobi

District Land Officer. - KITALE

O/C Land Rents.

Rates Assistant.

The Accountant.

O/C Records.

Senior Plan Record Officer.

Plot File.

} All to note.



MINISTRY OF LANDS & HOUSING

Telegrams: "LANDS", Nairobi

Telephone: Nairobi 718050-9

or 719010

When replying please quote

Ref. No. .... 160742/14

and date



DEPARTMENT OF LANDS

P.O. Box 30089

NAIROBI

2nd December, 19 94

District Land Registrar  
P.O. Box 11  
KITALE

RE: LEASE DOCUMENT FOR L.R. BLOCK XII/132 -  
KITALE MUNICIPALITY

Forwarded herewith, please find the above lease  
in triplicate duly signed and stamped for  
distribution in the usual manner.

Registration fees of Ksh:250/- has been paid  
vide receipt No. DO49013 of 18th October, 1994.

  
P. AMIANI (MRS)  
for COMMISSIONER OF LANDS

c.c.

Mr. Nathaniel K. Tum

P.O. Box 2275

KITALE - please call on the above execution and collection  
of your lease.

/mwm



REPUBLIC OF KENYA

# MINISTRY OF LANDS

Telegrams "Lands", Nairobi  
Telephone: Nairobi 02718050  
When replying please quote

Ref: Ref: 160742/42

Nathaniel Kipkorir Tum  
P.O BOX 2275 - 30200  
KITALE.



DEPARTMENT OF LANDS  
1<sup>ST</sup> NGONG AVENUE  
OFF NGONG ROAD  
P.O. Box 30089  
NAIROBI

20<sup>th</sup> December, 2012

**RE: KITALE MUNICIPALITY BLOCK 12/236 (EXCISION FROM BLOCK 12/132)**

I refer to your letter dated 8<sup>th</sup> November, 2012 in respect of the above subject and wish to inform you that valuation of the subplot after excision is now complete and the annual rent has been assessed at Kshs. 62,300/= payable with effect from 1<sup>st</sup> May, 2011.

Kindly make arrangements to remit to this office the following legal fees to facilitate processing of the lease document;

Conveyancing fees	Kshs. 1,250.00
Registration fees	Kshs. 500.00
Stamp duty	Kshs. 1,270.00
Annual rent 1.5.2011 to 31.12.2011	Kshs. 41,230.00
<b>TOTAL</b>	<b>Kshs. 44,250.00</b>

  
Mwangi G. K.  
For: COMMISSIONER OF LANDS





**Kenya Revenue Authority**

**DOMESTIC TAXES DEPARTMENT**

P.O. BOX 30165 NAIROBI (00100), TEL: 310900 FAX: 253532

**Pay-in Slip**

**LAND RENT - MINISTRY OF LANDS**

(Please use this payment slip for Rent Demand Note(s))

**PART I: DETAILS OF THE land owner & PROPERTY (If more than one please attach a list with details below)**

**PARTICULARS OF LAND OWNER**

(1) Full Names of Individual/ Company	NATHANIEL KIPKORIR TUM	
(2) PIN	A000209797H	ID/Registration No. 160742
(3) Postal Address & Code	Tel. No. 0735610555	

**(4) PROPERTY DESCRIPTION & RENT DEMAND DETAILS**

	L/R NO/Plot NO. OR Block No. ....	Location: /Town / City	Annual Rent (Kshs)	Demand Notice No & Date	Year (s) of Demand	Total Amount Payable as per Demand Notice (Kshs.)
(a)	12/236 KITALE	MUNICIPALITY KITALE				132,700
(b)						
(c)						
(d)						
(e)						
(f)						
(g)						
N.B: (Attach additional list if space provided is not sufficient)						Total amount (Kshs)

**PART II: PAYMENT DETAILS**

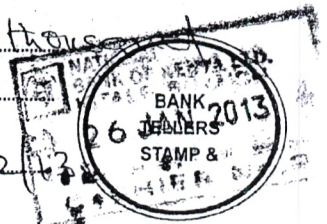
	Cash/Banker's Cheque	Number	Drawer's Bank Name & Branch	Amount (Kshs.)
(5) Rent Paid/ Penalty (if any)				132,700
(6) Bank Charges				100 =
(7) Total Amount Paid				132,800

(8) AMOUNT PAID IN WORDS: One hundred and thirty two thousand Eight hundred Only

(AMOUNT PAID BY)

(SIGNATURE)

(DATE)



Pay-in-Slip to be filled in Quadruplicate & Distributed as follows: White, Land Owner (Original), Blue - Ministry of Lands (Copy) Green - Commissioner of Domestic Taxes. (Copy) Yellow - Bank (Copy)

(Please turn overleaf for Instructions)

8888

# CUSTOMER TRANSACTION VOUCHER



REVENUE STAMP

0000

BRANCH: DELHI Teller ID: 102

ACCOUNT: LAND RENT - CASH PMT

ACCOUNT NAME: OFFICE OF DIRECTOR GENERAL

ACCOUNT NO: 01001009775000

Serial/EN No: 0291535-000207777H

Date: 12/20/12

Individual/Comp Name: MATHANIEL SIMONIAN TUN

Location: KETALE

AMOUNT (KES):

EXPRESSION MADE IN THE PRESENCE OF TWO BANK WITNESSES

SIGNATURE OR IMPRESSION

\* ONE HUNDRED SIX THIRTY TWO THOUSAND FOUR HUNDRED HUNDRED ONE

K 23892

26 JAN 2013  
CASHIER NO. 109

'NKT3'



REPUBLIC OF KENYA

THE REGISTERED LAND ACT  
(Chapter 300)

# Certificate of Lease

TITLE No. KITALE MUNICIPALITY BLOCK 12/132

LESSOR THE GOVERNMENT OF KENYA

RENT 70,000/- (REV)

TERM 99 YEARS FROM 1.9.94

*This is to certify that* NATHANIEL KIPKORIR TUM

ID/NO. 0712890/63

P.O BOX 2275

K I T A L E

is (are) now registered as the proprietor(s) of the leasehold interest above referred to, subject to the agreements and other matters contained in the registered lease, to the entries in the register relating to the lease and to such of the overriding interests set out in section 30 of the Registered Land Act as may for the time being subsist and affect the land comprised in the lease.

GIVEN under my hand and the seal of the

K I T A L E

District Registry

this 6<sup>TH</sup> day of DECEMBER, 19 94



CNKTH

13



REPUBLIC OF KENYA

## MINISTRY OF LANDS

Telegrams "Lands", Nairobi  
Telephone: Nairobi 02718050  
When replying please quote

DEPARTMENT OF LANDS  
1<sup>st</sup> NGONG AVENUE  
OFF NGONG ROAD  
P.O. Box 3008  
**NAIROBI**

Ref. 160742/2

27<sup>th</sup> September, 2007

The Nathaniel Kipkorir Tum,  
P.O. BOX 2275,  
**KITALE.**

**RE: KITALE MUNICIPALITY/BLOCK 12/132**

Please refer to the above.

Please note that the above plot encroaches on the land belonging to Kitale Academy. In view of the above you are requested to surrender the Certificate of Lease to the undersigned office for cancellation and replacement with a new certificate of lease bearing the correct survey area.

**OTIENO APPIDA**  
OTIENO APPIDA  
**FOR: COMMISSIONER OF LANDS**

C.C.  
Chief Land Registrar  
P.O. BOX 30089,  
**NAIROBI**  
(for information)

The District Land Registrar,  
P.O. BOX 205,  
**KITALE**  
(Please put a restriction on the above).

'NKT5'



REPUBLIC OF KENYA

**MINISTRY OF LANDS**

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

DEPARTMENT OF LANDS  
P.O. BOX 30089  
NAIROBI

160742/14

24<sup>TH</sup> February, 2010

Nathaniel Kipkorir Tum,  
P.O. Box 2275,  
KITALE

**ENCROACHMENT INTO KITALE ACADEMY BLOCK 12/132 – KITALE**

Please refer to my earlier letter ref. 160742 of 27<sup>th</sup> September, 2007 and comply with the request therein to facilitate excision of the part belonging to Kitale academy (containing Dining Hall, Senior Boys Dormitory and Teacher's Houses) and to enable me prepare a title for the institution.

  
**KARUKI J.K**  
**For: COMMISSIONER OF LANDS**

c.c.

Principal,  
Kitale academy  
Private bag

**KITALE** I will revert back to you as soon as I hear from the above.

Received  
26/2/2010

Hand delivered  
by Penrose Namoi

Date received for Registration: 17/05/10  
 KENYA Preservation Book No. 00020  
 Registration Fee: Ksh. 508/-  
 Paid Receipt No. 17136238  
 No. 115/2010

REPUBLIC OF KENYA

R.L. 11

THE REGISTERED LAND ACT  
(Cap. 300)

SURRENDER OF LEASE


TITLE No. **Kitale Municipality - Block 12/132**


I/WE **Nathaniel Kipkorir Tum**

in consideration of\* **Surrender**

(the receipt whereof is hereby acknowledged)\* HEREBY SURRENDER the lease comprised in the above-mentioned title and the Lessor HEREBY ACCEPTS the said surrender.

Dated this **25<sup>th</sup>** day of **May**, 20**10**

Signed by the Lessee in the presence of: 

Signed by the Lessor in the presence of: **Commissioner of Lands**   
on behalf of: -

*P.M. N...*

I CERTIFY that the above-named \_\_\_\_\_

appeared before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and, being identified by \_\_\_\_\_ (or being known to me), acknowledged the above signatures or marks to be his (theirs) and that he (they) had freely and voluntarily executed this instrument and understood its contents.

Signature and Designation of Person Certifying

REGISTERED this **17<sup>th</sup>** day of **JUNE**, 20**10**

**DRAWN BY: -**  
**F.I. LUBULELLAH**  
**LAND REGISTRAR**  
**P O BOX 30089**  
**NAIROBI**

**H. C. M...**  
Land Registrar

\*Delete if no monetary consideration

CNKT 7 ?



REPUBLIC OF KENYA  
MINISTRY OF LANDS

Telegrams: "LANDS, Nairobi.  
Telephone: Nairobi 718050  
When replying please quote.

DEPARTMENT OF LANDS  
ARDHI HOUSE  
1<sup>ST</sup> NGONG AVENUE  
P. O. BOX 30029  
NAIROBI

RE: 160742/15

DATE: 23<sup>rd</sup> March 2010

The District Land Registrar  
KITALE

THRO'

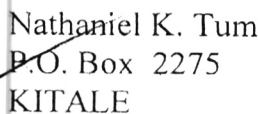
The Chief Land Registrar  
NAIROBI

RE: SURRENDER OF BLOCK 12/132 KITALE

Attached herewith please find the original certificate of lease and a surrender document duly signed by the lessee for registration purposes. You may prepare the surrender on Government account and inform ~~the office~~ this office accordingly.

  
KARIUKI J.K.  
FOR: COMMISSIONER OF LANDS

C.C.

  
Nathaniel K. Tum  
P.O. Box 2275  
KITALE

(NKT8)



REPUBLIC OF KENYA

THE REGISTERED LAND ACT  
(Chapter 300)

# Certificate of Lease

TITLE No. KITALE MUNICIPALITY BLOCK 12/236

LESSOR THE GOVERNMENT OF KENYA

RENT KSH.62,300/=(REV. W.E.F. 1.3.11)

TERM 99 YEARS FROM 1.9.1994

*This is to certify that* NATHANIEL KIPKORIR TUM ID/0712890

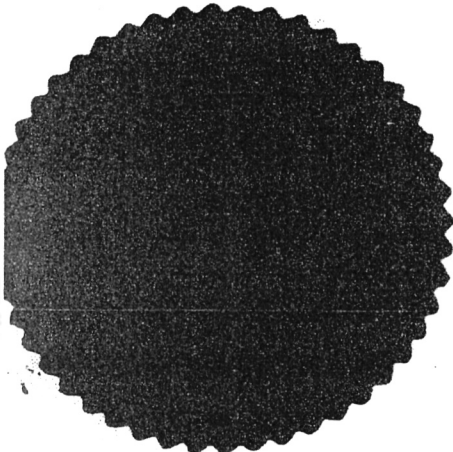
P.O. BOX 2275-30200, KITALE

is (are) now registered as the proprietor(s) of the leasehold interest above referred to, subject to the agreements and other matters contained in the registered lease, to the entries in the register relating to the lease and to such of the overriding interests set out in section 30 of the Registered Land Act as may for the time being subsist and affect the land comprised in the lease.

GIVEN under my hand and the seal of the

TRANS NZOIA District Registry

this 1ST day of MARCH, ~~19~~ 2013



*[Signature]*  
Land Registrar  
040

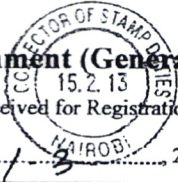


ORM 13 (RLA-Government (General))

Presentation Book:

Date Received for Registration:

No: 427/20/13



Registration Fees: KShs.

Paid

500/2

**REPUBLIC OF KENYA**

**THE REGISTERED LAND ACT, 1963**

(Cap 300)

**LEASE**

REGISTRATION DISTRICT: TRANS NZOIA

TITLE No.: KITALE MUNICIPALITY  
BLOCK 12/236

THE PRESIDENT OF THE REPUBLIC OF KENYA on behalf of the Government of the Republic of Kenya in pursuance of a surrender

HEREBY LEASES to NATHANIEL KIPKORIR TUM of KITALE (Post Office Box Number 2275-30200)

hereinafter called "the lessee"

ALL THAT piece of land comprised in the above mentioned title containing by measurement three decimal five six ( 3.56 ) hectares or thereabouts;

for the term of ninety nine ( 99 ) years;

from the first day of September 1994;

at the annual rent of shillings sixty two thousand three hundred ( KShs.62,300/= ) (revisable) w.e.f. 1/5/2011;

payable in advance on the first day of January in each year, and subject to the provisions the Government Lands Act (Chapter 280) and the following conditions:

**SPECIAL CONDITIONS**

1. No further buildings shall be erected on the land nor shall additions or external alterations be made to any buildings otherwise than in conformity with plans and specifications previously approved in writing by the Commissioner of Lands and the Local Authority. The Commissioner of Lands shall not give his approval unless he is satisfied that the proposals are such as to develop the land adequately and satisfactorily.

2. The Lessee shall maintain in good and substantial repair and condition all buildings at any time erected on the land.
3. The land and buildings shall only be used for Hotel purposes.
4. The building shall not cover a greater area than that prescribed by the Local Authority in its by-laws.
5. The land shall not be used for any purpose which the Commissioner of Lands considers to be dangerous or offensive.
6. The Lessee shall not sub-divide the land without prior written consent of the Commissioner of Lands.
7. The Lessee shall not sell, transfer, sublet, charge or part with the possession of the land or any part thereof or any building thereon except with prior consent in writing of the Commissioner of Lands.
8. The Lessee shall pay to the Commissioner of Lands on demand such sum as the Commissioner may estimate to be proportionate cost of constructing all roads and drains and sewers serving or adjoining the land and shall on completion of such construction and the ascertainment of the actual proportionate cost either pay (within seven days of demand) or be refunded the amount by which proportionate cost exceeds or falls short of the amount paid as aforesaid.

9. The Lessee shall from time to time pay to the Commissioner of Lands on demand such proportion of the cost of maintaining all roads and drains serving or adjoining the land as the Commissioner of Lands may assess.

10. Should the Commissioner of Lands require the said roads to be constructed to a standard the Lessee shall pay to the Commissioner on demand such proportion of the cost of such construction as the Commissioner may assess.

11. The Lessee shall pay such rates, taxes, charges, duties, assessments or outgoings of whatever descriptions as may be imposed charged or assessed by any Government or Local Authority upon the land or the buildings erected thereon, including any contribution or other sum paid by the President of the Republic of Kenya in lieu thereof.

12. The President of Kenya or such person or authority as may be appointed for the purpose shall have the right to enter upon the land and lay and have access to water mains service pipes and drains telephone or telegraph wire and electric mains of all descriptions whether overhead or underground and the Lessee shall not erect any buildings in such a way as to cover or interfere with any existing alignments of main or services pipes or telephone or telegraph wires and electric mains.

13. The Commissioner of Lands reserves the right to revise the annual ground rent payable hereunder at the expiration of every ten years of the term. Such rental shall be at a rate to be determined by the Commissioner of Lands of the unimproved value of the land as at the end of every tenth year of the term.

CNKTA9

REPUBLIC OF KENYA



MINISTRY OF LANDS

Telegrams: "LANDS, Nairobi.  
Telephone: Nairobi 718050  
When replying please quote.

Department Of Lands  
Ardhi House  
1<sup>st</sup> Ngong Avenue  
P. O. Box 30089  
NAIROBI

RE: 217190/18

8<sup>th</sup> June 2011

The District Lands Officer  
**KITALE**

**RE: LAND FOR KITALE SCHOOL – KITALE MUNICIPALITY BOCK 12/229**

We have received a complaint from BOG Chairman, Kitale School regarding grabbing of their land.

You are hereby requested to initiate a forum to resolve the matter amicably. The forum should include the District Commissioner, the District Physical Planning Officer, the District Surveyor, the Town Clerk and any other public officer who may assist in solving the matter.

Kindly treat the matter as urgent and advise this office accordingly.

**E.M. Omagwa**  
**FOR: COMMISSIONER OF LANDS**



**C.C.** The District Commissioner  
**TRANS NZOIA**

The District Physical Planning Officer  
**TRANS NZOIA**

The District Surveyor  
**TRANS NZOIA**

The Town Clerk  
**KITALE**

BOG Chairman, Kitale School  
**KITALE**

Nathaniel Tum  
P O Box 2275 – 30200  
**KITALE**

Delivered by Evans Mugerwa

(NKT 10)

MINISTRY OF LANDS

REPORT OF LAND TECHNICAL TEAM- TRANS NZOIA

PRESENT:

1. District Land Officer
2. District Land Registrar
3. Chief Land Administration Officer
4. Senior Land Administration Officer
5. District Surveyor
6. District Planning Officer

**RE: LAND FOR KITALE SCHOOL BLOCK 12/229 -VS- BLOCK 12/236**

**BLOCK 12/229**

Before 1980s, the Government used to reserve land for public institutions through letters of reservation. The letter of reservation was normally issued on unsurveyed plot and thus the exact area was not known but there were general boundaries.

For Kitale Academy, they occupied LR No. 24719 whose letter of reservation we are not able to trace. We do not know whether the school has a copy of the letter which reserved the land for the school. There are various correspondences between the school, the Commissioner of Lands, District Commissioner and the Municipal Council of Kitale and in all the correspondences, the size of the school-land has been approximated as all the letters have been giving different acreages.

The first correspondence on the size of the school land was a letter from the Director of Urban Planning in 1973 who mentioned that the school was 55 Hectares (135 Acres).

In early 1990s the Government changed the policy of reserving land for public institutions and started issuing letters of allotment and leases.

Kitale School started applying for allotment of the school plot LR No. 24719 in 1993.

The first application was made on 7<sup>th</sup> June, 1993 to the Town Clerk who on 8<sup>th</sup> July 1993 advised the school to forward their application to the Commissioner of Lands. On 15<sup>th</sup> July 1993, the School applied through the Town Clerk for additional land to cater for a secondary school.

On 13<sup>th</sup> September 1993, during the school Executive Board Meeting Minute No. EB/93/26 AOB School Land, it was agreed:

- a) To apply to acquire all land currently in use by the school but owned by the Government
- b) Apply for title deed for the school
- c) Apply for more land for use by the secondary school





**Commissioner of Lands Letter Ref. 217190 dated 8<sup>th</sup> June, 2011.**

On receiving a letter from the Commissioner of Lands, the Technical Departments, Lands, Physical Planning, Municipal Council and Survey met with the District Commissioner and it agreed to visit the site first.

On 22<sup>nd</sup> June, 2011, the above team visited the school and the following were our observations.

The school is made up of three sections:-

- 1) The nursery school
- 2) 4-streams primary school – Standard 1-5 day and 6-8 boarding.
- 3) 2-streams girls' boarding school. The school has staff quarters for both primary and secondary school teachers and for subordinate staff; dormitories and dining halls for both primary and secondary school. There are two playing fields, one for primary school and another for the secondary school.

The school has planted many trees within the compound and at the edges of the compound. The undeveloped area is under maize plantation and the rest is used for grazing (school cows).

Although informally, we established that out of about 102 acres the secondary school occupies about 30 acres including the site across the Kitale-Webuye road where they have planted maize.

After the visit to the school, the team visited the disputed area and this is what we observed:-

The plot is extensively developed with the following:-

- a) Large petrol station for diesel, super, regular and kerosene, a shop for auto products, a wash bay and a tyre center. There is also a supermarket and a canteen leased to M/s Kenya Oil Company (Kenol) for 20 years. The lease is registered in Lands Office. This alone employs over 30 people.
- b) Residential area where there are 24 2-bedrooms leased to various people.

*Checked by the  
constable  
1/2/2011*

- c) Two storey office block with 2 godowns on the ground floor with a Yoghurt processing plant and an agrovet products shop. On the first and second floor, there are offices and a conference room.
- d) A godown for drinking water processing and bottling plant. This is leased to M/s Cherangani Hills Limited. The company produces about 400 crates (with 24 bottles per crate) of ½ litre bottles per day. It also bottles 1L, 5L and 10L of water. The plant employs several people directly and several others indirectly on casual and agency basis. The total number of people employed is 60.
- e) Borehole – we were informed that the borehole is 300 feet deep. The borehole is with complete piping system to the buildings and to the processing plant.

The approximate value of these developments is K.Shs. 150 million.

At least 70% of the area in dispute is developed. Being commercial where the site coverage is not supposed to exceed 75% of the area, we can say that the site is fully developed.

In view of the above, the following are the observations of the Technical Team:-

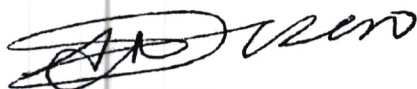
- 1) Both Tum and the School knew that the disputed land was Government Land.
- 2) The School applied to be allocated the land.
- 3) Tum also applied to be allocated the same land.
- 4) Tum was allocated the site and developed the same.
- 5) The site in dispute was formally the area which had encroached on the school compound.

C. DISTRICT OFFICE - The  
 9/11/2012  
 TRANS  
 9/11/2012

6) Tum has surrendered the land which was in dispute and PIA No. 132 has been resurveyed as Block 12/229.

**RECOMMENDATION**

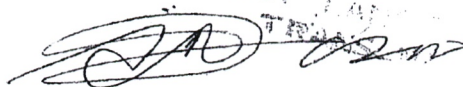
Tum retains the site Block 12/236 that he has developed and the boundaries be maintained as they are on the ground as per the fencing.



**J.N.OSORO  
CHIEF LAND ADMINISTRATION OFFICER  
FOR: TECHNICAL TEAM**

7 C.F.C. of the

CRISTIAN DISTRICT



9/10/2012

(NKT11)

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE.

JUDICIAL REVIEW APPLICATION NO. 38 OF 2011.

IN THE MATTER OF AN APPLICATION FOR ORDERS OF  
JUDICIAL REVIEW UNDER THE PROVISIONS OF SECTION 8 & 9  
OF THE LAW BEFORE ACT AND O. 53 OF THE CIVIL PROCEDURE  
RULES.

BETWEEN

REPUBLIC ..... APPLICANT.

AND

THE COMMISSIONER OF LANDS ..... 1ST RESPONDENT.  
THE CHIEF LAND REGISTRAR ..... 2ND RESPONDENT.  
THE TRANS-NZOIA DISTRICT LAND REGISTRAR:: 3RD RESPDT.

AND

NATHANIEL K. TUM ..... INTERESTED PARTY.

R U L I N G .

The Notice of Motion by the ex-parte applicant, Board of Governors  
Kitale School, dated 19th July, 2011 seeks orders that the respondents,  
Commissioner of Lands, Chief Land Registrar and Trans Nzoia

... (to) Land Registrar, be prohibited either jointly or severally, from  
suing a letter of allotment, lease, certificate of lease and/or otherwise  
alienating any part of what was formerly known as land Parcel No. Kitale  
Municipality Block 12/132 but which has now been re-surveyed and re-  
named land parcel No. Kitale Municipality Block 12/236 to the interested  
party or any other third party/and be compelled to issue a letter of allotment,  
lease and a certificate of lease over the said suit property to the applicant.  
The interested party in this matter is one Nathaniel K. Tum. The  
application is grounded on the facts that the applicant is a public school  
established under the Education Act (Cap 211 LOK) whose affairs are  
managed by a Board of Governors. The school was established in 1929 and  
has been in existence for a period of over 82 years. It has a population of  
1800 students and 63 teachers and has over the years occupied 55 hectares  
of land on which it has erected a tuition and administration block,  
dormitories, a dining hall, a water and sewages system among other  
developments.

In or about the year 1994, the respondents in collusion with the  
interested party hived off part of the school's land and issued a certificate of  
lease over parcel No. Kitale Municipality Block 12/132 at a time when the  
applicant was using the land as a demonstration farm for its students and on  
which it has over the years grown maize and beans.

On or about 21st May, 2010 and in appreciation of the fact that the subject  
land was later set aside and required for public purposes, the Government of  
Kenya cancelled the certificate of lease issued over the land vide Gazette

*a registered proprietor's title under section 23 of the Act, it would be the court to certify the rectification of title to effect the cancellation of the registered proprietor's title on ground of fraud or misrepresentation pursuant to section 64 of the Act. The Gazette Notice No. 15570 attempts to justify the Government's decision by a declaration that as the parcels of land which had been allocated to private developers "were reversed for public purposes under the relevant provisions of the Constitution, the Government Lands Act (Cap 280) and the Trust Land Act (Cap 288) the allocations were therefore illegal and unconstitutional".*

*Such a declaration is the constitutional province of the courts and to use it to justify the otherwise unauthorised revocation of titles is an unconstitutional infringement of the doctrine of separation of powers by the lands department of the executive government. While the government may take the constitutional view of things, it is only the courts that can make authoritative and binding decisions on constitutional interpretation and the executive cannot*

*person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed.”*

In this present case, ample and undisputed documentary evidence has been presented by the interested party that in 1994, he made an application to the Government to be allocated a vacant plot of land belonging to the Government. The application was made to the Commissioner of Lands who was mandated to allocate Government land. It was a successful application. A letter of allotment dated 29th September, 1994 (Annexure marked “NKT 1” in the interested party's supporting affidavit) was issued. The letter was specific that the grant was for a period of 99 years and that a title was to issue under the Registration of Titles Act (Cap 281 LOK) or the Registered Land Act (Cap 300 LOK). The letter was also specific that the plot was an unsurveyed hotel site within Kitale Municipality. It was later followed by a lease (Annexure marked “NKT 3”) which was effectively executed and registered on 6th December, 1994 between the Commissioner of Lands and the interested party.

A lease certificate dated 6th December, 1994 (annexure marked “NKT 4”) was issued thereby identifying the plot as Kitale Municipality Block 12/132 measuring 4.0 hectares. This was a first registration for a term of 99 years from 1st September, 1994. It is therefore established that the Commissioner of Lands allocated an unsurveyed plot of land reserved for a hotel site to the interested party in the year 1994 month of September. The certificate of lease was subsequently issued in December, 1994. The interested party

entire system of registration of titles and ownership of property necessary to ensure certainty in land transactions. (see, Ocean View Plaza Ltd. vs. AG (2002) 2KLR 277 and R. VS. Kisumu District Lands Officer & Another (2010) E KLR.)

Having carefully considered the facts and evidence availed herein by the applicant and the interested party in the light of their respective submissions and case law pertaining to principles for grant and refusal of judicial review remedies such as prohibition and mandamus, this court must arrive at the inevitable decision that the applicant would not be entitled to the orders sought against the respondents as these would invariably violate the interested party's constitutional rights acquired with the full blessings of the respondent. It has been established that the former plot No. 132 is now plot No. 236 and that the new number came as a result of the surrender of the previous lease certificate to facilitate rectification of the survey area and replacement of the old certificate with a new certificate. The interested party's proprietary interest in the plot remained intact and could not be interfered with without following the laid down legal mechanism. Any purported interference with that proprietary right by the applicant or the respondent was a gross violation of the interested party's constitutional rights. It was undisputed that the interested party regularly and procedurally acquired the right in 1994 when the plot had not been designated as public land for usage by the applicant school. Article 40 of the Constitution guarantees proprietary interests and/or rights. Besides, prohibition does not lie where a decision has already been made. The

decision to allocate the suit plot to the interested party was made in 1994. In the circumstances, prohibition would not only be inappropriate but also powerless.

Similarly, mandamus cannot quash a decision already made which decision was at the discretion of the Government through the Commissioner of Lands as by law established.

It is obvious that the applicant was aggrieved by the decision of the Commissioner of Lands in as much as it favoured the applicant. However, the remedy lies elsewhere but not by way of judicial review. Even where property is acquired unlawfully, Article 40 (6) of the Constitution contemplates a finding to that effect through legally established process and not by whim or revocation by gazette notice or ministerial order (see, Power Technics Ltd. vs. A.G. & others (2012) e KLR).

In sum, the application by the applicant dated 19th July, 2011 is devoid of merit. It must and is hereby dismissed with costs to the interested party.

Ordered accordingly.

[Read and signed this ..... 29<sup>th</sup> ..... day of OCT ..... 2012 in the presence of Mr. Onyiah<sup>HB</sup> for applicant, Mr. Chelashaw<sup>HB</sup> for respondent and Mr. Tano for interested party.]

J.R. KARANJA.

JUDGE

KTL HC. JUD. REV. APP. NO. 38 OF 2011.

I CERTIFY THIS IS A TRUE COPY OF THE ORIGINAL.

DEPUTY REGISTRAR - KITALE

Date: 29/12/12

25 of 25.

CNKT 12

SURVEY FORM C/3

REPUBLIC OF KENYA

SURVEY OF KENYA

BEACON CERTIFICATE

I, the undersigned, certify that I have inspected in person the beacons placed by Mr. H. M. LUMASAYI, Surveyor. I have full knowledge of the positions of the said beacons, and I am satisfied that such define the boundaries of Parcel 132 BLOCK 12 KITALE MUNICIPALITY

(Signature) [Signature]
(Name in BLOCK Capitals) NATHANIEL K. TOM
(Address) BOX 2275
KITALE

Designation (e.g. Owner, Manager or post held) of signatory OWNER
Date 26/10/2001

The beacons referred to above were pointed out to ANTHONY MAX LUCAS by me, and they have been placed in accordance with instructions.

[Signature]
H. M. LUMASAYI Surveyor.
Date 26.10.2001

FOR OFFICE USE—COMPS No.