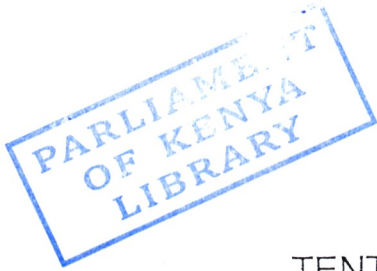


REPUBLIC OF KENYA



NATIONAL ASSEMBLY



TENTH PARLIAMENT, FOURTH SESSION

THE JOINT RECOMMENDATIONS

OF THE REPORTS OF THE

LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE

&

THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES

ON THE

PURCHASE OF LAND FOR CEMETERY

BY THE CITY COUNCIL OF NAIROBI

CLERK'S CHAMBERS

PARLIAMENT BUILDINGS

NAIROBI

OCTOBER 2010

Table of Contents

Harmonized Report Preface	i-xiii
Summary of Findings and Joint Harmonized Recommendations	iv-xii
Analysis of Joint Recommendations on the individuals involved	vii-xii
Local Authorities & Funds Accounts Committee Report	1-81
Preface	i-iii
Report of the Controller & Auditor General	1-7
Evidence taken by the Committee	8-42
The officer who requested the valuation of the land	9-11
The officer who did the valuation	11
The officers who objected to the suitability of the land	11-13
The Technical Evaluation Committee	13-20
The Tender Committee	20-24
The officers who executed the sale agreement	24-26
The officers involved in the payment process	26-28
The bank that facilitated the funds	28
Officers of the Kenya Anti-Corruption Commission	28-30
The Accounting Officer of the funds	30-31
The Minister	31-32
Chronology of Findings.....	33-41
Conclusion.....	42
Minutes	43-81
Departmental Committee on Local Authorities Report	82-159
Preface	83-84
Background	85-86
Evidence taken by the Committee	86-104

Various witnesses on the land.....	86-88
Mavoko Municipal Council	89-90
Ministry of Local Government	90-93
Ministry of Lands	93-94
City Council of Nairobi.....	93-99
Edward Omotii Advocates	99-100
Alphonse Mutinda Advocates.....	100-101
Maina Chege.....	101-102
Bank of Africa.....	102
Kenya Anti-Corruption Commission.....	102-104
Executive Summary.....	104-106
General Observations.....	106-108
Specific Observations	108-111
City Council of Nairobi.....	108-109
Ministry of Local Government	109-111
Committee Recommendations	111-120
Ministry of Local Government Officials	111-112
City Council of Nairobi Officials	113, 117-119
Mavoko Municipal Council & Kenya Wildlife Service	113
Henry Kilonzi.....	113-114, 119
Maina Chege.....	114
Cephas K. Mwaura	114, 119
The various advocates	115-116, 119-120
Ministry of Lands	116-117
Maina Chege, Cephas Mwaura & Henry Kilonzi.....	6
Committee Minutes.....	121-159
Joint Committee Minutes	160-174
Appendices.....	175

HARMONIZED RECOMMENDATIONS OF THE REPORTS OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE AND THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES ON THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI

PREFACE

Mr. Speaker Sir,

On behalf of the members of the Local Authorities and Funds Accounts Committee and the Departmental Committee on Local Authorities pursuant to the provisions of the Standing Order No. 181(3), it is our great pleasure and privilege to present to the House the **Harmonized Recommendations of the Reports** of the Committees on the **Purchase of Land for Cemetery by the City Council of Nairobi**.

a) Committees' Mandates and Membership

(i) The Local Authorities and Funds Accounts Committee

The Local Authorities and Funds Accounts Committee was constituted in June 2009, just after the commencement of the Third Session of the Tenth Parliament pursuant to the provisions of the Standing Order No. 189 which states that:-

"There shall be a select committee to be designated the Local Authorities and Funds Accounts Committee for the examination of the accounts showing the appropriation of the sum voted by the House to meet the public expenditure in local authorities and all other funds and of such other accounts laid before the House as the committee may think fit".

The Committee was formed to strengthen parliamentary oversight in local authorities and the emerging devolved funds voted by the House, so as to:-

- (i) Detect, stop and prevent abuse, arbitrary, illegal or unconstitutional application of public funds;
- (ii) Hold government to account, in respect of resources and authority exercised on behalf of the public, specifically stop waste and abuse, improve efficiency, effectiveness and impacts;
- (iii) Ensure government expenditure as approved by Parliament are expended and delivered;
- (iv) Improve transparency of Government operations to enhance public trust and confidence.

The Committee, being an Investigatory Committee therefore relies on the annual or special reports of the Controller and Auditor General.

The Committee consisted of the following Members:-

- (i) The Hon Thomas L. Mwachugu, MP (Chairperson)

- (ii) The Hon. Benjamin Langat, MP (Vice - Chairperson)
- (iii) The Hon. Charles M. Nyamai, MP
- (iv) The Hon. Peter Mwathi, MP
- (v) The Hon. Abdul Bahari, MP
- (vi) The Hon. Pollyins O. Anyango, MP
- (vii) The Hon. Nemesyus Warugongo, MP
- (viii) The Hon. Wilson Litole, MP
- (ix) The Hon. Musa Sirma, MP
- (x) The Hon. Ferdinand Waititu, MP
- (xi) The Hon. Simon Mbugua MP

(ii) The Departmental Committee on Local Authorities

The Departmental Committee on Local Authorities was also constituted in June 2009 under Standing Order No.198 (1). Its mandate pursuant to Standing Order 198(3) is:-

- a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) to study the programme and policy objectives of the Ministries (and Local Authorities) and departments and the effectiveness for implementation;
- c) to study and review all legislation referred to it;
- d) to study, assess and analyze the relative success of Ministries and departments as measured by the results obtained as compared with its stated objective;
- e) to investigate and inquire into all matters relating to all assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister and;
- f) to make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

This Departmental Committee focuses mainly on policy matters of and related to local authorities, and also investigates current issues related to the local authorities.

The Committee consisted of the following Members:-

- (i) Hon. Mohammed H. Gabow, M.P. (**Chairperson**)

- (ii) Hon. David Ngugi, M.P. (Vice-Chairperson)
- (iii) Hon. Ahmed Shakeel Shabbir, M.P.
- (iv) Hon. Mwalimu Mwahima, M.P.
- (v) Hon. Joshua Kutuny, M.P.
- (vi) Hon. Stanley Githunguri, M.P.
- (vii) Hon. Gideon Konchella, M.P.
- (viii) Hon. Fahim Twaha, M.P.
- (ix) Hon. Maitha Gideon Mungaro, M.P.

b) Background of the Matter

On 4th June 2009, a question was raised in the House to the Deputy Prime Minister and Minister for Local Government regarding the propriety of funds spent on the purchase of land for cemetery by the City Council of Nairobi. The Speaker referred the matter to the Departmental Committee on Local Authorities to investigate and report back to the House.

From then onwards, the matter attracted considerable public attention. In the course of its inspection tours in Nairobi, particularly while visiting projects undertaken by the Urban Development Department (UDD) in the Ministry of Local Government, the Local Authorities and Funds Accounts Committee also inspected the land in question. Arising from the observations made during the inspection, and also noting the attention the matter was receiving in the public domain, the Committee, on 23 November 2009, requested the Controller & Auditor General to conduct special audit on the matter and provide a report to the House within two weeks. On 2nd March 2010 the special audit report of the Controller & Auditor General was laid on the Table of the House. The Departmental Committee on Local Authorities which had also conducted investigations prepared a report and tabled it on 4th March 2010.

Once the special audit report was laid on the table of the House, it automatically became the duty of the Local Authorities and Funds Accounts Committee, to examine it and report to the House as soon as possible. The Local Authorities and Funds Accounts Committee examined the special audit report, undertook investigations and prepared a report.

c) Reason for Joint sittings

Mr. Speaker Sir,

After extensive consultations with your office and the Liaison Committee, recognizing the need for providing a common position on the reports to the House, joint sittings of the two committees became of paramount importance.

The two Committees therefore joined together and held joint sittings in accordance with Standing Order No. 184 and 185. A workshop was organized and undertaken by the Joint Committee; a total of five (5) sittings were held. During the workshop the Joint Committee unanimously agreed to harmonize the recommendations of the two Committees based on the evidence gathered during the investigations.

The Joint Committee recommended that the earlier report presented to the House on 4th March 2010 by the Departmental Committee on Local Authorities should be withdrawn and replaced by this harmonized document.

d) Summary of Findings and Joint Harmonized Recommendations

- (i) The Joint Committee noted that during 2007/2008 and 2008/2009 financial years, out of Kshs. 347 Million indicated in the printed estimates, Treasury allocated Kshs. 283,200,000 in the approved estimates under Vote D12 – Office of the Deputy Prime Minister and Ministry of Local Government for acquisition of land for cemetery. Interestingly, the winning bidder quoted the cost of his land equivalent to the amount of the approved estimate up to the exact cent. It implies that the exact amount approved in the budget was used to cost the land, so as to utilize the whole amount provided. This portrays a likelihood of manipulation and collusion.
- (ii) Since the matter falls squarely in the domain of the City Council of Nairobi, the council was tasked to undertake the procurement process.
- (iii) The advertisement of the tender for Purchase of Land for Cemetery was placed in two local dailies on 18th and 22nd September 2008.
- (iv) The Council came up with the following selection criteria: -
 - The location was to be in the Nairobi Metropolitan Region;
 - The soil depth reaches a minimum of 1.8 metres (6 ft);
 - The minimum parcel size was to be 50 acres, under one title deed and free from encumbrances;
 - The parcel was to be accessible from an all weather road; and,
 - Water, electricity and telephone services were available.
- (v) The land that was eventually procured did not meet the above set criteria.
- (vi) The Municipal Council of Mavoko had not granted approval for change of use of the land in question from agricultural use to cemetery.
- (vii) The National Environmental Management Authority (NEMA) had not granted clearance on the environmental impact, once use of the land is changed.
- (viii) The Chairperson (Ms. Mary Ng'ethe) and the Secretary (Mr. Alex Musee) of the Technical Evaluation Committee falsified the Evaluation Report and also forged the land valuation report. The Joint Committee noted that their

action led to loss of public funds as their reports were solely relied upon by the Tender Committee in awarding the tender. All the members of the Technical Evaluation Committee who appeared before the Committee (with the exception of Mr. Musee) disowned the scores awarded to Naen Rech Ltd (the winning bidder) against the selection criteria, and also disowned the minutes that indicated approval of the Evaluation Report.

- (ix) Arising from the above, the Joint Committee could not rule out possibility of collusion between the Chairperson and the Secretary of the Technical Evaluation Committee together with other officers to manipulate the minutes and the evaluation report (which was subsequently forwarded to the Tender Committee) in favour of Naen Rech Ltd. The Joint Committee could not also rule out the possibility that the Chairperson and the Secretary of the Technical Evaluation Committee were architects and masterminds of the whole saga.
- (x) The Joint Committee noted that the two officers (Ms. Ng'ethe and Mr. Musee) deliberately breached sections 42, 66 and 82 of the Public Procurement and Disposal Act, 2005.
- (xi) The Joint Committee also noted that the actions of Ms. Ng'ethe and Mr. Musee contravened sections 44, 45 and 46 of the Kenya Anti-corruption and Economic Crimes Act, 2003 (on bid rigging and abuse of office). The Committee recommends that the Chairperson of the Technical Evaluation Committee Ms. Mary Ng'ethe and the Secretary Mr. Alex Musee should be barred from holding public office conferred by the Republic of Kenya.
- (xii) The Tender Committee entirely relied on the faulty report of the Technical Evaluation Committee and the forged land valuation report, which were manipulated by a few Members of the Technical Evaluation Committee.
- (xiii) Notwithstanding the weaknesses noted in the Technical Evaluation Committee report, the officers in the Tender Committee responsible for undertaking due diligence deliberately ignored such an essential duty. The result of such negligence led to the loss of public funds.
- (xiv) It was further noted that the winning bidder (Naen Rech Ltd) did not own the land. According to the documents provided, the land was owned by Mr. Henry Musyoki Kilonzi who was not among the bidders. The executed sale agreement indicated that the transaction was entered between the council and Mr. Kilonzi and not Naen Rech that had won the tender. In contravention of section 68 of the Public Procurement and Disposal Act, 2005, the council awarded tender to a land seller who did not bid.
- (xv) Despite serious issues raised by the Planning Department in time, the Tender Committee did not advise the Town Clerk to halt the process of

award pending further investigations (in accordance with section 11(b) and 11(3) of the Public Procurement and Disposal Regulations, 2006).

- (xvi) While noting that the actions of the Members of the Tender Committee (with the exception of Mr. Kibinda – who objected on the suitability of the land and Mr. Maritim – whose advice was ignored) were questionable and wanting, the Joint Committee could not rule out the possibility that those members of the Tender Committee were the architects and masterminds of the whole saga. The level of negligence and ignorance portrayed by those officers during the tender process could only be interpreted to suit a well calculated scheme aimed at misappropriation and fraud.
- (xvii) The poor and inadequate manner in which the procurement process of land for cemetery use was handled has resulted in Government not obtaining any meaningful value for money against the expenditure of Kshs.290,694,250.00 so far incurred on the land. In addition, and on the basis of the matters discussed above, the City Council may have to search for an alternative site at extra cost should the relevant authorities and stakeholders declare L.R.14759 as inappropriate and unsuitable for use as cemetery.
- (xviii) The Joint Committee commends the Kenya Anti-Corruption Commission for the swift action taken, because the main suspects have so far been taken to court on criminal charges over the loss of Kshs.281,300,000 in respect of the cemetery land. However, the Joint Committee noted that some of the members of the Tender Committee (such as Mr. G.K. Njamura – Director of Procurement and Mr. Jacob Munge, City Treasurer) together with Mr. Dennis G. Akotha – City Council Chief Valuer / member of the Technical Evaluation Committee were not in the list of the officers charged in court and recommends that the Kenya Anti-Corruption Commission should investigate them with a view to ascertaining their culpability. In addition, the Joint Committee further commends the Kenya Anti-Corruption Commission for having commenced recovery process and issued demand letters on 26th April 2010 to the suspects for recovery of the said Kshs.281,300,000.
- (xix) The Joint Committee further recommends that the officers established to be culpable in this saga should be barred from holding public office conferred by the Republic of Kenya.
- (xx) According to forensic investigator of the Kenya Anti-Corruption Commission, the scandal was a conspiracy between the lawyers, officials of the City Council and Ministry of Local Government, and since conspiracy is done in private, most of the information is not recorded. The officers of the Kenya Anti-Corruption Commission said that they relied on circumstantial evidence to put up the bigger picture. The circumstantial

evidence linked the conspirators to the money that was withdrawn in cash, collected by proxies, received by various lawyers or transferred to offshore accounts. As indicated in page 39-41 of this report that some of the suspects have confirmed having received the money through proxies, the Joint Committee could not rule out possibility that prominent personalities used proxies to obtain the money and recommends that the Commissioner of police, the Attorney General and the Kenya Anti-Corruption Commission should investigate such possibility.

(xxi) Table: Analysis of Joint Recommendations on the individuals involved

No	Page Reference No.	Witness	Joint recommendations
1	10, 24-25, 37-38, 40, 99-100, 103-105, 107, 115, 119	Edward N. Omotii (Omotii & Co. Advocates)	He should be investigated by KACC, LSK and KRA. He should also refund the interest amount of Kshs.1,898,082.03 (earned by the transaction account) to the Ministry of Local Government.
2	38-39, 41, 103, 114-115, 119	Alphonse Mutinda (Alphonse Mutinda Advocates)	<p>The Committees noted with concern the presence of three law firms (Alphonse Mutinda Advocate, P.C. Onduso Advocate and Odero Osiemo and Co. Advocates) that purported to represent the interests of the land seller. From the findings of the Committees, it was noted that:</p> <p>-</p> <p>(i) Alphonse Mutinda Advocate represented the interests of Henry Musyoki Kilonzi;</p> <p>(ii) P.C. Onduso Advocate and Odero Osiemo and Co. Advocates represented the interests of Maina Chege and his associates (the council officials and the officials of the Ministry of Local Government). It was interesting to understand the reason for two law firms in representing Maina Chege. It was highly likely that one of the firms (P.C. Onduso Advocate) represented the interests of the officers from City Council while the second firm (Odero Osiemo and Co. Advocates) represented the interests of the Ministry of Local Government.</p> <p>The Committee noted the possibility that the three firms of advocates that represented Naen Rech Ltd knew the ill intentions and motives of the clients they were representing.</p>
3	39, 41, 105, 121	P.C Onduso, (P.C. Onduso)	The Committee recommends that the law firms

		Advocates)	should be thoroughly investigated by KACC and KRA with a view to ascertaining the purpose of the money received and on whose behalf they received the money from this transaction. The Law Society of Kenya (LSK) and the Advocates Disciplinary Committee should take appropriate action against the three law firms (and the lawyers) for deliberately abetting crime. Further, they should be investigated for money laundering in accordance with the Proceeds of Crime and Anti-Money Laundering Act.
4	39-41, 103, 119-120	Mr. Odero Osiemo (Odero Osiemo & Co. Advocates)	
5	19, 22, 35-39, 41, 88-89, 91, 101-103	Mr. Henry Kilonzi	It is clear from the evidence that he got the land irregularly and illegally, and defrauded the family of the late Marinie Ole Tiranti Makaita. He should be investigated for fraud.
6	34-35, 38-39, 41, 102-104, 116, 121	Mr. Maina Chege (Director, Naen Rech Co. Ltd)	<p>The Committee noted that Maina Chege is a registered auctioneer with the City Council of Nairobi. It cannot therefore be ruled out that his business relationship with the council is enormous. It is highly likely that such relationship played an integral role in this saga and he may have been used as a conduit to defraud the government. It is very clear (from the ownership documents, execution of sale agreement and the way the money was paid) that Maina Chege did not own the land. The land is illegally/irregularly owned by Mr. Henry Kilonzi. Due to his business influence, Maina Chege was used by the officers to bid for the tender.</p> <p>From the evidence adduced and the documents provided, the purported owner of the land (Henry Kilonzi) was paid Kshs. 110 million (as cost of the land), while the balance of Kshs. 171.3 million was the amount brokered and siphoned through Maina Chege.</p> <p>The Committee recommends that Maina Chege should be investigated for obtaining money by false pretence and fraud; his assets should be seized to recover public funds. Furthermore, he or any company associated with him should be precluded from award of future government contracts.</p>

7	39, 102, 116, 121	Mr. Cephas K. Mwaura (Introduced Henry Kilonzi to Alphonse Mutinda)	Should be investigated for receiving Kshs.9,300,000 and charged with the appropriate offence.
8	9, 20, 28, 36, 41, 97-98, 110, 118	Mary Ng'ethe (then Director Legal Affairs, City Council of Nairobi)	She should be interdicted and thorough investigations undertaken to establish her culpability and hold her responsible. The Kshs.13 million she received from this transaction (through Edward N. Omotii) should be recovered immediately. She should also be barred from holding public office.
9	25, 100, 110, 119	Karisa Iha (then Deputy Director of Legal Affairs, City Council of Nairobi)	He should be interdicted and investigated for his involvement in the matter. He should also not hold public office.
10	19, 23, 40, 105, 111, 114-115	Dr. Daniel Nguku (then Medical Officer of Health, City Council of Nairobi)	Dr. Nguku was the MOH (User Department) and a member of the Tender Committee. Kshs.8 million was paid through proxies including his wife whose shares at Mwalimu Sacco were boosted by Kshs.1million. He should be interdicted, arrested and charged. He and his wife should also be investigated and held accountable for any money received from this transaction. Any assets found to be proceeds of this transaction should also be recovered. He should be barred from holding public office.
11	22-23, 115	G.K. Njamura (then Director of Procurement, City Council of Nairobi)	The Committees noted with grave concern the casual manner in which the Director handled the transaction, noting that the matter, being "procurement" of a cemetery, was entirely in the purview of his department and he should have exercised due diligence. He should be interdicted, investigated for his possible culpability in the saga, and charged in a court of law. Any assets/money found to be proceeds of this transaction should also be recovered. He should be barred from holding public office.

12	19-20, 36, 40, 105, 120-121	Alexander Musee (then Deputy Director Procurement, City Council of Nairobi)	He should be interdicted, investigated and charged for receiving Kshs. 8 million from the transaction. He should be held responsible for falsifying the Evaluation Committee minutes and report. Any assets found to be proceeds of this transaction should be recovered. He should also be barred from holding public office.
13	13-14	Dennis G. Akotha, then Chief Valuer & Member of Evaluation Committee, City Council of Nairobi	He should be investigated to ascertain any culpability in the saga.
14	21	Jacob Munge, then City Treasurer & Member-Tender Committee, City Council of Nairobi	He should be investigated to ascertain any culpability in the saga.
15	21, 24, 33, 37, 94, 100-101, 114	Nelson Otido (Deputy Town Clerk/Chairman -Tender Committee, City Council of Nairobi)	Though retired, he should be investigated to determine his culpability and charged with the appropriate offence.
16	27-28, 37, 97-98	John Gakuo (The then Town Clerk, City Council of Nairobi)	There is substantial documentary evidence showing his deep involvement in the transaction. Thorough investigations should be undertaken by KACC to establish his culpability and hold him responsible. He should also not be allowed to hold any public office.
17	28, 40, 114	H.S. Chavera (then Chief Finance Officer, Ministry of Local Government)	There is substantial documentary evidence showing his deep involvement in the transaction. Investigations should be undertaken to establish his culpability, hold him responsible and charge him for receiving Kshs. 8.6 million from the transaction
18	26-27, 30, 40, 105, 112, 120	Boniface Misera (Director of Procurement,	He should be interdicted, investigated and charged for receiving Kshs.1.3 million from the transaction. He should also be prosecuted for

		Ministry of Local Government)	breaching Section 23(g) of the National Assembly Powers and Privileges Act. Any money and assets he has acquired from this transaction should be seized to recover public funds lost.
19	26-27, 99, 112-113	Reuben K. Rotich (then Senior Deputy Secretary, Ministry of Local Government)	It was observed that the witness did not exercise due diligence in safeguarding public funds by verifying all documents before releasing the payment. The failure to exercise due diligence, the failure to adhere to regulations and procedures and the casual manner in which the funds were released implied that the witness was driven by possible urge to misappropriate the funds. He should be interdicted and investigated.
20	25-26, 38, 98-99, 110, 121	Godfrey Majiwa (His Worship the Mayor, City Council of Nairobi)	When he was asked whether he knew Owino Kojwando and Co. Advocates, he said that he had earlier worked with the firm as a court server. It was noted that the Advocate received Ksh. 10 Million from the transaction on behalf of a client whom he was unwilling to reveal. The Committees recommend that thorough investigations should be carried out to establish any possible link between the Mayor, Owino Kojwando and Co. Advocates and the amount of Ksh. 10 Million. If established he should be prosecuted; and if found guilty, he should take political responsibility and be barred from holding public office. Any funds and assets established to have been acquired from this transaction should be seized to recover public funds lost.
21	30-31, 91-93, 112-113	Sammy Kirui (then Permanent Secretary, Ministry of Local Government)	As the Accounting Officer, the fact that he failed to exercise due diligence and the casual manner in which he facilitated the transaction cannot be overlooked. His actions portrayed a deliberate scheme calculated to defraud government funds. There is substantial documentary evidence indicating that the Permanent Secretary was deeply involved in the transaction of the land. He should be investigated by KACC and charged; if convicted by court, he should be barred from

			holding public office conferred by the Republic of Kenya.
22	31-32, 93, 112, 114	Hon. Musalia Mudavadi, MP (Minister for Local Government)	<p>The Committees noted that considering the evidence adduced, and in the absence of documentary evidence implicating the Minister to the saga, his possible culpability could not be established and leaves it to the investigatory agencies.</p> <p>Though the PS mentioned that he briefed the Minister, the Minister denied this claim, and the Committee was unable to establish this assertion as there was no documentary evidence.</p> <p>The Committee noted that the Minister was aware of the matter, but was not adequately briefed. No action is recommended against him. However, investigations should continue to determine his possible culpability in the saga.</p>
23		All the people listed on Appendix W25 of the report of the Departmental Committee should be investigated, with a view to prosecuting them for receiving public funds irregularly. The amount of money received by each of them should be recovered in full.	
24		KRA should investigate all cases of properties bought to ensure stamp duty and other taxes are collected.	
25		Shell Kenya Ltd (Appendix W25 – Departmental Committee report) should be investigated to establish the reason for it receiving Kshs.4 million; these public funds should be recovered.	

(xxii) All other recommendations included in the individual committee reports also form part of the Joint Committee's recommendations.

(xxiii) All other persons who will be proved to have received money after the fraudulent procurement of the cemetery land and all those proved to be involved should be investigated and charged with the appropriate offences.

e) Adoption

Mr. Speaker Sir, all the recommendations contained in these reports were arrived at by consensus and after exhaustive and constructive deliberations, taking due regard to ensure that there is adequate machinery within the Public Service to implement these recommendations. The Committees urge the House to adopt this report.

f) Appreciation

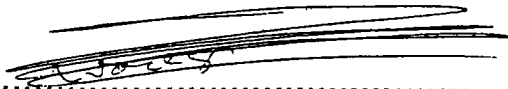
Mr. Speaker Sir, allow me to thank the Members of the Joint Committee for their efforts, commitment and exemplary performance in ensuring the successful production of this harmonized document.

The Committee also wishes to commend the Member(s) of Parliament who brought the matter to the attention of the House, thereby leading to unearthing of the saga.

Finally Mr. Speaker Sir, the Committees would wish to record their appreciation for the exemplary services rendered by the officers from the Kenya National Audit Office and the Office of the Clerk of the National Assembly. Indeed, their cooperation has made the work of the Committees and production of this document possible.

HON. THOMAS L. MWADEGHU, MP

SIGNED



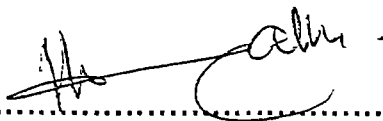
(CHAIRPERSON – LOCAL AUTHORITIES & FUNDS ACCOUNTS COMMITTEE)

DATE

26/10/2010

HON. MOHAMMED H. GABOW, MP

SIGNED



(CHAIRPERSON – DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES)

DATE

26/10/2010

SPECIAL AUDIT REPORT

OF THE

LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE

ON THE

PURCHASE OF LAND FOR CEMETERY
BY THE CITY COUNCIL OF NAIROBI

SPECIAL AUDIT REPORT OF THE CONTROLLER AND AUDITOR GENERAL ON THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI

1.0 INTRODUCTION

1.1 Background

(i) In a meeting held in May 2005, the City Council of Nairobi approved an outright purchase of land within Nairobi for use as cemetery. Langata cemetery was fast getting close to exhaustion and hence the critical and urgent need to search for an alternative site.

(ii) Following successive efforts to search and identify land within Nairobi through open tender and direct procurement which did not yield positive results, the City Council decided to advertise for Purchase of Land for Cemetery within the Nairobi Metropolitan Region. The advertisement was placed in two local dailies on 18th and 22nd September 2008. At the same time, a provision of Kshs.347 million was secured for acquisition of the land under Vote D12 - Office of the Deputy Prime Minister and Ministry of Local Government, in the Printed Estimates for 2007/2008 and 2008/2009.

1.2 Audit Objective

The audit of Purchase of Land for Cemetery was carried out with a view to establishing that:

(a) The Public Procurement and Disposal Act, 2005 and the Public Procurement and Disposal Regulations, 2006 were adhered to;

(b) Value for money was obtained in the procurement; and,

(c) Applicable laws were complied with during the procurement process.

1.3 Audit Scope and Coverage

The scope of audit covered the entire period of the procurement process, i.e from 2004/2005 to 2008/2009. Subsequent events after purchase of the land were also taken into consideration.

1.4 Limitation of Scope

The audit was limited to:

- Examination of available records and documentation at the Office of the Deputy Prime Minister and Ministry of Local Government, Ministry of Lands, City Council of Nairobi and other sources.
- Interviews with key personnel at the two Ministries, the City Council and the Municipal Council of Mavoko.

- Actual physical verification of the land.

2.0 TENDERING PROCESS

2.1 Location

As indicated above, the tender for Purchase of Land for Cemetery was placed in the newspapers in September 2008. According to information available, the City Council targeted land in the Nairobi Metropolitan Region, which includes:-

- (a) City Council of Nairobi
- (b) Municipal Council of Kiambu
- (c) Municipal Council of Limuru
- (d) Municipal Council of Machakos
- (e) Municipal Council of Mavoko
- (f) Municipal Council of Ruiru
- (g) Municipal Council of Thika
- (h) Town Council of Kajiado
- (i) Town Council of Karuri
- (j) Town Council of Kikuyu
- (k) Town Council of Kangundo
- (l) County Council of Masaku
- (m) County Council of Thika
- (n) County Council of Olkejuado
- (o) County Council of Kiambu

Additional information seen revealed that the following requirements for the land were necessary and mandatory:-

- (i) *The location was to be in the Nairobi Metropolitan Region;***
- (ii) *The soil depth reaches a minimum of 1.8 metres (6 ft);***

(iii) The minimum parcel size was to be 50 acres, under one title deed and free from encumbrances;

(iv) The parcel was to be accessible from an all weather road; and,

(v) Water, electricity and telephone services were available.

2.2 Bids

The tender attracted 12 bids as shown below:-

Name of bidder	Size (Acres)	Location	Price Per Acre (Kshs.)	Total Price (Kshs.)
(i) Acres and Homes Ltd.	219.90	Kajiado	1,500,000.00	329,850,000.00
(ii) Naen Rech Ltd.	120	Athi River	2,360,000.00	283,200,000.00
(iii) Stannly Enterprises Ltd	87	Thika	2,800,000.00	243,000,000.00
"	100	Thika	2,800,000.00	280,000,000.00
(iv) Impuls Developers (K) Ltd	52.50	Limuru	5,000,000.00	262,500,000.00
(v) Amusement Gardens	40.67	Lang'ata	5,000,000.00	203,363,300.00
"	15.20	Langata	5,000,000.00	75,995,605.00
(vi) Three Steps Investments 1	49.90	Kamiti Rd	1,214,809.00	182,100,000.00
(vii) Triton (K) Ltd	55	Kiambu	3,000,000.00	167,400,000.00
(viii) Busam Holdings Ltd.	45.60	Nairobi	3,000,000.00	136,900,000.00
(ix) Gitonga Wambugu Kariuki	240	Kajiado	375,000.00	90,000,000.00
(x) Zinger Enterprises Ltd.	200	Kajiado	375,000.00	75,000,000.00
(xi) Kalove Advocates	100	Kangundo	228,000.00	22,800,000.00
(xii) Mary Njeri Muchai	100	Kajiado	100,000.00	10,000,000.00

2.3 Tender Evaluation and Award

2.3.1 The Tender Committee deliberated on the matter and observed the following two key aspects amongst others:

(i) None of the bidders had offered land with a soil depth of 6 feet; and,

(ii) None of the land offered was 1 Kilometre from a classified road although all the parcels were within the Metropolitan Region.

2.3.2 Separately, and in a letter dated 11 November 2008 and a memo dated 19 December 2008 both addressed to the Town Clerk, the Director of the City Planning Department had observed that the tender documents used in the procurement process lacked the competence to sufficiently facilitate identification of appropriate locations and suitable sites for cemetery use. Additional information in the letter indicated that all respondents to the tender had offered land which was not suitable and appropriate for cemetery use, due to its location, soil profile, accessibility status and environmental conditions.

Notwithstanding the above observations, the Committee proceeded and awarded the tender to M/s Naen Rech Ltd of P.O. Box 5018 – 0056 Nairobi, the sixth lowest bidder, who had offered 120 acres in Athi River area at a price of Kshs.283,200,000.00.

2.3.3 (i) According to further records available at the Ministry of Lands however, and specifically a valuation report dated 30 January 2009 from the Deputy Commissioner of Lands (Valuation), the fair current market value of the 120 acres parcel offered by M/s Naen Rech Ltd was Kshs.24,000,000.00 only. At the price of Kshs.283,200,000.00 accepted and approved by the City Council therefore, the parcel was over-priced by a significant amount of Kshs.259,200,000.00.

(ii) In arriving at the decision to award the tender to the company at a price of Kshs.283,200,000.00, the Tender Committee appears to have based its decision on a valuation report purportedly issued by Ministry of Lands and Settlement on 10 November 2008, by a Mr. A. Otieno. Mr. Otieno had placed a value of Kshs.325,150,000.00 on the parcel.

(iii) In a letter Ref No.VAL:1360/(19) dated 10 March 2009 however, the Ministry of Lands dismissed the valuation report by Mr. Otieno as a forgery as evidenced by various omissions and commissions, as summarized below:-

(a) The reference number on the report was not from the Valuation Division of Ministry of Lands;

(b) The Letter Head used for the valuation report, i.e “Ministry of Lands and Settlement” was no longer in use;

(c) The Valuation Division does not have a Valuation Officer by the name of “A. Otieno”, either at the Headquarters or in the Districts;

(d) A standard form of communication of the valuation would have had attached to it a comprehensive valuation report and not just a letter bearing a figure;

(e) There is no designation in the style of “Deputy Commissioner Lands Valuation” at the Ministry of Land on whose behalf Mr. Otieno signed the report; and,

(f) A letter Ref VAL.1360/6 of 13 November 2008 by the Ministry to the City Council in which the latter was requested to facilitate inspection of the parcel had not been responded to.

Further, there was no evidence to confirm that Mr. Otieno himself was a valuer.

From the foregoing therefore, it is clear that due diligence was not exercised by the City Council in considering, accepting and approving the price of Kshs.283,200,000.00 for the parcel of land offered by M/s Naen Rech Ltd.

2.4 Notification of Award

(i) On 13 November 2008, the Town Clerk notified M/s Naen Rech Ltd that the City Council had accepted and approved the acquisition of parcel ref. L.R. 14759 measuring 120 acres, situated at the South West of Athi River Township in Machakos District, at a price of Kshs.283,200,000.00. The notification further indicated that the parcel was registered in the name of one Henry Musyoki Kilonzi of P.O. Box 19022-00500 Nairobi.

(ii) According to other records available, the approval was also subject to the parcel being free from all encumbrances and the vendor furnishing the City Council with a written acceptance of the award. In addition, a performance bond of Kshs.14,160,000.00 was required from the company with fourteen days from 13 November 2008.

(iii) The extracts of Tender Committee proceedings and a copy of the letter of notification were formally submitted to the Permanent Secretary, Office of the Deputy Prime Minister and Ministry of Local Government on 14 November 2008.

2.5 Sale Agreement

On 19 December 2008, and in a letter Ref No. MLG/402-01(18), the Permanent Secretary, Office of the Deputy Prime Minister and Ministry of Local Government asked the Town Clerk to execute an agreement for sale between the City Council and the Vendor and also required the Clerk to ensure that the interests of the Council were safeguarded.

On the same day, an Agreement for Sale between the City Council and Mr. Henry Musyoki Kilonzi in respect of 120 acres of land at a purchase price of Kshs.283,200,000.00 was signed, with the Mayor and Town Clerk signing for the purchaser. It has not however been explained why the Agreement for Sale was signed by Mr. Henry Musyoki Kilonzi while the tender had been awarded to M/S Naen Rech Ltd. In the circumstances therefore, and in the absence of such explanation, the Agreement contravened Section 68(1) of the Public Procurement and Disposal Act, 2005 which requires inter alia that "..... the successful tenderer and the procuring entity shall enter into a written contract based on the tender documents and the successful tender".

3.0 PAYMENT

3.1 According to records available, a payment of Kshs.283,000,000.00 for the land by the Office of the Deputy Prime Minister and Ministry of Local Government was made to the Vendor through a firm of Advocates acting on behalf of the City Council. The payment to the Advocates was made as follows:-

Cheque No.	Date	Amount in Kshs.
005643	30.06.2008	175,000,000.00
005915	15.01.2009	<u>108,000,000.00</u>
	Total	283,000,000.00

A further sum of Kshs.7,694,000.00 comprising of Kshs.5,664,000.00 relating to Kenya Revenue Authority Domestic Taxes and Kshs.2,030,000.00 representing Advocates' professional fees, was also paid by the Ministry on behalf of the City Council. The Council on its part paid an amount of Kshs.250.00 for transfer fees on registration.

Subsequently, Title number 115561 was processed and issued to the Council by the Registrar of Titles Nairobi on 17 March 2009.

3.2 Additional records seen appear to indicate that Mr. Musyoki Kilonzi received through his Advocates an amount of Kshs.107,500,000.00 out of the entire transaction of Kshs.283,000,000.00, while the balance of Kshs.175,500,000.00 was disbursed and paid to other parties.

4.0 OTHER AUDIT FINDINGS

The purchase of land Ref. L.R.14759 raises a number of other issues as summarized below, which have not been explained:-

(i) The advice of the Director of City Planning on the tender documents and search for land for use as cemetery, pertinent as it was, was not considered during the entire process of the procurement;

(ii) The Council does not appear to have established existence or otherwise, of a contractual relationship between M/s Naen Rech Ltd and Mr. Musyoki Kilonzi before awarding the tender to the company or how such a relationship, if it indeed existed, would have influenced the pricing of the land;

(iii) There was no evidence of a due diligence test having been carried out on the company before awarding of the tender;

(iv) No performance bond of Kshs.14,160,000.00 appeared to have been secured before the award was given;

(v) The Municipal Council of Mavoko does not appear to have granted approval for change of use of the land in question from agricultural use to cemetery;

(vi) The National Environmental Management Authority (NEMA) does not appear to have granted clearance on the environmental impact, once use of the land is changed;

(vii) Apart from a restriction which may have been placed on the land by Ministry of Lands, no measures appear to have been put in place by the Council to ensure that the land is not encroached into by unauthorized parties;

(viii) Although the area with its dry grassland and rocky patches has been variously referred to as a wildlife migratory corridor, there is no evidence that this fact was considered and taken into account during the procurement process.

5.0 SITE INSPECTION

A site visit to the land in question revealed the following additional observations:-

- (i) The land is situated at approximately 7.2 Kilometres West of Kitengela Township and borders Merciful Redeemer Children's Home. The access to the land is a rough road which is not all weather usable and may be impassable during wet seasons;
- (ii) Although the land is of a fairly level gradient, the soils are shallow with a rocky base, and as indicated elsewhere in this report, such soils cannot attain a depth of 6 feet
- (iii) The land has not been clearly marked with beacons thereby making it susceptible to illegal encroachment; and,
- (iv) There is no water supply or telephone on the land.

6.0 CONCLUSION / RECOMMENDATION

- (i) The poor and inadequate manner in which the procurement process of land for cemetery use was handled has resulted in Government not obtaining any meaningful value for money against the expenditure of Kshs.290,694,250.00 so far incurred on the land. In addition, and on the basis of the matters discussed above, the City Council may have to search for an alternative site at extra cost should the relevant authorities and stakeholders declare L.R.14759 as inappropriate and unsuitable for use as cemetery.
- (ii) Appropriate measures should be taken by the Office of the Deputy Prime Minister and Ministry of Local Government and the City Council of Nairobi to recover the over-payment of Kshs.259,000,000.00 from the concerned parties. Further, disciplinary action should be considered and taken against officers who administered the procurement and perpetuated the over-payment.

7.0 EVIDENCE TAKEN BY THE COMMITTEE

The Committee deliberated on the special audit report alongside the report of the Departmental Committee on Local Authorities. It then resolved to focus mainly on the witnesses involved in the procurement and payment process. To avoid duplication of work done by the Departmental Committee and to ensure that no information was left out, the Committee also resolved to corroborate the evidence given to the Departmental Committee (since it had been recorded) and that of the selected witnesses who were established to be necessary to appear before the Committee. The Committee therefore resolved that in order to address the audit findings, the following witnesses were necessary to appear before it:

- (i) The officer who requested for the valuation of the land
- (ii) The officer who did the valuation
- (iii) The officers who objected on the suitability of the land
- (iv) The Technical Evaluation Committee
- (v) The Tender Committee
- (vi) The officers who executed the sale agreement
- (vii) The officers who authorized and processed the payments
- (viii) The bank that facilitated the funds
- (ix) Officers of the Kenya Anti-Corruption Commission
- (x) The Accounting Officer of the funds
- (xi) The Minister

When the Committee commenced hearings, it was noted that the Government had just suspended all those officers involved in the saga pending further investigations by the Kenya Anti-Corruption Commission and other government investigatory agencies. It was therefore realized that most of the officials involved (and who were possible witnesses of the Committee) were either suspended, transferred, retired or still in service in their initial stations. It was also noted that during the course of the hearings, some of the officers involved were arrested and arraigned in court.

The Committee received substantial information from the witnesses who turned up to give evidence. However, some witnesses declined to appear before the Committee claiming that the matter was before court and therefore *sub judice*.

During evidence sessions, the Committee reminded witnesses of the following sections of the National Assembly (Powers and Privileges) Act: -

- 18(3) Except upon the direction of the President, no public officer shall refuse—**
- (a) to produce before the Assembly or a committee any paper, book, record or document,**
 - or**
 - (b) give evidence before the Assembly or a committee, relating to the correspondence of any civil department or to any matter affecting the public service;**

23. Any person who -

(a) disobeys any order made by the Assembly or a committee for attendance or for production of papers, books, documents or records, unless his attendance or production is excused under section 17; or

(b) refuses to be examined before, or to answer any lawful and relevant question put by, the Assembly or a committee, unless refusal is excused under section 17;

(g) presents to the Assembly or a committee any false, untrue, fabricated or falsified document with intent to deceive the Assembly or committee;

shall be guilty of an offence and liable, on conviction before a subordinate court of the first class, to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment.

This was necessitated by the realization that some of the witnesses wanted to refuse to give evidence or even attempted to provide false information. In fact it was later noted that some witnesses had deliberately presented false evidence.

7.1.0 SUMMARY OF EVIDENCE FROM THE WITNESSES

7.1.1 The officers who requested for the valuation of the land

7.1.1.1 Ms. Mary Ng'ethe, Director of Legal Affairs

The Committee scheduled the appearance of Ms. Ng'ethe for Thursday 29th April 2010. However, the officer failed to appear for evidence and the Committee learned that she had been arraigned in court on that day for the same matter. The following information relates to the witness: -

- (i) As an officer in charge of the Legal department in the Council, Ms. Mary Ng'ethe was responsible for providing legal advice to the council.
- (ii) She was appointed to chair the Technical Evaluation Committee and had the responsibility to deliver what was expected of her in that regard. Therefore, as the chair of the Evaluation Committee, she had the responsibility to ensure that the Evaluation Committee did the following: -
 - Ascertain the value of the land.
 - Set out clear selection criteria
 - Evaluate the bidders
 - Exercise due diligence on the recommended land
 - Prepare reliable report for consideration by the Tender Committee

- (iii) A letter written by the Deputy Town Clerk to the Chief Valuer requesting for valuation of the land, was first made on 7th August 2008. On 26th September 2008, an officer (M.W. Wanjohi) of the Ministry of Lands made a response to the letter after receiving a follow up call from Ms. Ng'ethe. According to the evidence provided to the Committee, the follow up call sought to shelve the matter until further notice. So, the response written by Wanjohi to Ms. Ng'ethe confirmed the position taken by the council.
- (iv) It was not until 4th November 2008 that another request letter was made by the Director-Legal Affairs to the Chief Valuer. However, the letter was not dispatched until 13th November 2008 when it was delivered on hand. The response to the letter was done on the same day by the Chief Valuer and collected on hand by a Mr. Julius Nkubu of the City Council. **It was interesting to note that the request was made a day after the award of the tender (i.e. tender awarded on 12 November 2008).** The purpose of such valuation requested after the award of the tender, left a lot to be desired and was wanting. It raised questions on whether it was intended to achieve its genuine purpose or it was just meant to defeat the whole purpose of valuation of the land.
- (v) Available records and evidence adduced to the Committee by the Ministry of Lands officials indicated that the council (through Ms. Ng'ethe) forged a valuation report in early November 2008 (possibly after the request made vide the letter dated 4th November 2008).
- (vi) From the evidence adduced and the documents availed, she ignored the objections raised by the planning department regarding the suitability of the land.
- (vii) She also appointed Mr. E.N. Omotii, the lawyer that represented the council in the transaction of the land on 26 November 2008. Interestingly, the cheque for the transaction had been irregularly drawn in the name of E.N. Omotii by 30th June 2008.
- (viii) The Committee was also informed that an amount of Kshs. 13 million that Mr. E.N. Omotii obtained from the transaction and forwarded to his account belonged to Ms. Ng'ethe, following her instructions to do so. Mr Omotii confirmed having forwarded the whole amount to her just after obtaining it.
- (ix) **By obtaining the money, Ms. Ng'ethe breached sections 44, 45 and 46 of the Anti-Corruption and Economic Crimes Act, 2003. She also contravened the following sections of the Public Officer Ethics Act, 2003: - Section 9 (on professionalism), section 11 (improper enrichment), 18 (failure to give honest advice) and 19 (providing misleading information).**

(x) Since she was member of the Technical Evaluation Committee, the recommendations concerning her have been incorporated in those of the Technical Evaluation Committee.

7.1.2 The officer who did the valuation (Deputy Commissioner of Lands, Valuation, formerly known as the Government Chief Valuer - Mr. Anthony Itui)

The witness appeared before the Committee on 29th April 2010. He confirmed that his office did not do the valuation of the land prior to the award of the tender. He also confirmed that the valuation report (available in records) purported to have been done by his office for the purpose of awarding the tender was forged. He explained that the valuation of 30 January 2009 available in the records of the council was done by his office only for payment of stamp duty. He recalled having received the valuation request that was hand-delivered on 13 November 2008 from Ms. Ng'ethe. He also stated that the officer who delivered the request by hand also waited for the response so as to deliver it by hand on the same day. The response letter requested the council to arrange for site visit for the valuers, but the council failed to arrange for the visit. The council only arranged the visit in January 2009, only for purposes of the valuation for payment of stamp duty.

The Committee noted that the letter sent to the Deputy Commissioner from the Director of Legal Affairs at the Council requesting for valuation of the land was dated 4 November 2008, but was only sent to and received by the Chief Valuer on 13 November 2008. The Deputy Commissioner replied to the letter on the same day requesting council officials to facilitate and accompany the valuers to the land. The City Council did not follow up on this request, as the tender was actually awarded on 12 November 2008 with a forged valuation report (dated 10 November 2008). The Committee could not therefore rule out the possibility that Ms. Ng'ethe was aware that the valuation report that the Tender Committee relied on during the award of the tender was forged.

No action is recommended against him since Council officials forged a land valuation report to award the tender.

7.1.3.0 The officers who objected on the suitability of the land

7.1.3.1 The then Director of City Planning at the CCN, Mr. Peter Mburu Kibinda

He is presently serving as Director of Planning in the Ministry of Nairobi Metropolitan Development. The witness appeared for evidence on 27th April 2010.

He explained that as an officer in charge of City Planning department, his duties were as follows: -

- Managing urban growth and development
- Issues of forward planning or strategic planning i.e. how the city will develop
- Matters of development control
- Advising the council on policy matters pertaining to planning
- The department also serves as link between the Council and other agencies that are concerned with urban development like the Ministry of Lands, the Ministry of Local Government and other infrastructure and service Ministries whose development impact on urban development.

He has served in the council since 14th August 1978. He was involved in the preparation of the selection criteria for the cemetery in the earlier stages, i.e. in 2007-2008 during the initial search for cemetery land. He was also a member of the Tender Committee during the procurement process. His deputy, Mr. Odongo, represented the Planning Department in the Evaluation Committee, and was able to conduct a physical verification of the site.

He informed the Committee that, on realization that the Tender Committee was preparing to award the tender for the land in question, he instructed his deputy, Mr. Odongo, to communicate (through a memo) the position of the Planning Department to the Evaluation Committee Chairperson on 11 November 2008, raising serious objections on the suitability of the land. Mr. Kibinda stated that he briefly attended the Tender Committee meeting that adjudicated the tender award on 12 November 2008, but excused himself and left before the award was given, so as to attend to private matters. He testified that while he was in the meeting, he lodged his objections on the suitability of the land, based on the memo dated 11 November 2008 to the Town Clerk and copied to the relevant officers.

Mr. Kibinda confirmed that from November 2008 onwards, he was not apprised of any further transactions of the land and claimed that no other meetings to discuss the matter were arranged. He claimed that he only discovered later from media reports that the tender had been awarded and the land purchased.

The Committee noted with concern how the memo, which was dated 11 November 2008 was stamped as "RECEIVED ON 14 NOVEMBER 2008", two days after the Tender Committee met and awarded the tender, yet the sender and the recipients were located in one building.

The Committee commends this officer for a job well done in raising objections on the suitability of the land.

7.1.3.2 The then Deputy Director of City Planning, who is currently the Acting Director of City Planning, CCN - **Mr. Tom Odongo**

He stated that he represented the Planning Department in the Evaluation Committee. He was appointed to join the Evaluation Committee for a very good reason, that the planning department had to provide important advice to the committee. He said that, fundamentally, the issue of acquiring a cemetery is a planning issue. It is not an activity that the market can just resolve.

He explained that after the tenders were opened, the Evaluation Committee met on 14 October 2008 to award points based on the documents submitted, and scheduled a date for site visit.

He was emphatic that the Evaluation Committee did not hold any other meeting again after 14 October 2008 to finalize its recommendations on the bidders based on the selection criteria and site inspection. This confirmation contradicted the information available in some records. In the records, there were minutes showing that the bidder selection process took place in a meeting of 10 November 2008; the minutes were signed by the Chairperson and Secretary of the Evaluation Committee. Mr Odongo alleged that the recommendations listed in those minutes were forged since the Evaluation Committee did not meet again after 14 October 2008.

Mr. Odongo also showed proof indicated in a delivery book confirming that his memo on the objection for the suitability of the land was delivered on 11 November 2008 to the offices of the Town Clerk and Director of Legal Affairs, but surprisingly stamped as received on 14 November 2008.

The Committee commends this officer for a job well done in raising objections on the suitability of the land.

7.1.3 The Technical Evaluation Committee

The Technical Evaluation Committee comprised the following officers:

- (i) Ms. Mary Ng'ethe - Director, Legal Affairs (Chairperson)
- (ii) Mr. Gitonga Akotha - Chief Valuer (Member)
- (iii) Mr. David Wanjohi - Senior Funeral Superintendent (Member)
- (iv) Mr. Tom Odongo - Deputy Director, City Planning (Member)
- (v) Mr. Alex M. Musee - Deputy Director, Procurement (Secretary)
- (vi) Mr. I.N. Ngacha - Chief Internal Auditor (Member)

The Technical Evaluation Committee was accompanied by Mr. Matthew Ouko - Procurement Officer who was indicated in the minutes of the Committee as part of the secretariat.

Out of the six members of the Technical Evaluation Committee, four appeared before the Committee and gave evidence on 28 April 2010. However, Ms. Ng'ethe and Mr. Akotha failed to turn up for evidence. Their whereabouts were unknown, and no official communication was received pertaining to their absence.

According to records availed to the Committee, the Technical Evaluation Committee came up with the following evaluation criteria (with scores assigned): -

a) Mandatory requirements

(i) Land is within Nairobi Metropolitan Region	10 Points
(ii) The soil depth reaches a minimum of 1.8 meters deep	10 Points
(iii) Preferably is under one title deed and is of freehold Parcel size must be 50 acres under one Title deed and free from encumbrances and no encroachment on the ground.	5 Points
(iv) Accessible from all weather road and preferably not more than 1km from a classified road	5 Points
(v) The land should be in close proximity to Water, Electricity and Telephone.	2 Points
(vi) Registration Certificate/or Copy of National Identity Card for individual	2 Points
(vii) Personal Identification Number (PIN)	2 Points
(viii) Value Added Tax Certificate (VAT) for-business entities only	2 Points
(ix) Single business Permit (for business entities only)	2 Points
Sub-total	40 Points

b) Other requirements

(i) Provision of Authenticated Survey Plan	15 Points
(ii) Provision of Certified Copy of title deed	15 Points
(iii) Certified Copy of deed Plan	15 Points
(iv) Recent official search Certificate from Ministry of lands	15 Points
Sub-total	60 Points
Total	100 Points

The bidders were numbered in the following order:

1. Impals Developers (K) Ltd
2. Acres and Homes Ltd
3. Triton (K) Ltd
4. Kalove Advocates
5. Zinger Enterprises
6. Busam Holdings Ltd

7. Naen Rech Ltd
8. Gitonga Wambugu Kariuki
9. Three Steps Investment
10. Mary Njeri Muchai
11. Amusement Gurdens
12. Stanny Enterprises Ltd

7.1.3.1 The Evaluation Committee examined responsiveness of each tender document, and scored as reflected in the following matrix. (Table 1)

S/No.	Evaluation Criteria		Max Score	Bidders Number											
				1	2	3	4	5	6	7	8	9	10	11	12
1.	Mandatory	3.19.1.2	40												
a	Land is within Nairobi Metropolitan Region		10	10	10	10	10	10	10	10	10	10	10	10	10
b	The soil depth reaches a minimum of 1.8 meters deep		10	10	10	10	10	10	10	10	10	10	10	10	10
c	Preferably is under one title deed and is of freehold Parcel size must be 50 acres under one Title deed and free from encumbrances and no encroachment on the ground.		5	0	-	-	5	5	-	5	5	-	-	-	-
d	Accessible from all weather road and preferably not more Than 1km from a classified road		5	-	-	-	-	-	-	-	-	-	-	-	-
e	The land should be in close proximity to Water, Electricity and Telephone.		2	-	-	-	-	-	-	-	-	-	-	-	-
f	Registration Certificate/or Copy of National Identity Card for individual		2	2	-	-	2	-	-	2	2	-	2	2	-
g	Personal Identification Number (PIN)		2	2	-	-	2	2	-	2	2	-	2	-	-
h	Value Added Tax Certificate (VAT) for-business entities only		2	2	-	-	2	2	-	2	2	-	2	-	-
i	Single business Permit (for business entities only)		2	2	-	-	2	2	-	2	2	-	2	-	-

2.	Provision of Authenticated Survey Plan	2.22.3b	15	0	-	-	15	15	-	15	15	-	15	-	-
a	Provision of Certified Copy of title deed		15	0	-	-	15	15	-	15	15	-	-	-	-
b	Certified Copy of deed Plan		15	0	-	-	15	15	-	15	15	-	15	-	-
c	Recent official search Certificate from Ministry of lands		15	0	-	-	15	15	-	15	15	15	-	-	-

7.1.3.2 The tenders that were substantially responsive were recorded as shown below: (Table 2)

S/No.	Evaluation Criteria	Tender	Maxi Score	Bidders Number				
				4	5	7	8	10
1.	Mandatory Requirements	3.19.1.2.	40					
a	Land is within Nairobi Metropolitan Region		10	2ft Black Cotton Soil then soft brown rock, trial holes 4ft deep done only Two trial holes done SCORE-0	5ft Black Cotton Soil. trial holes 6ft deep done Only One trial hole SCORE-0	2½ft Black Cotton Soil 2½ft Soft rock Four trial holes done SCORE-0	2ft-Black Cotton Soil then/murm/ Grey rock. Trial holes 3ft Deep done Two trial holes done	Secimentary soil. Trial holes 4ft deep done Two trial holes Done mainly Soft rock
b	Accessible from all weather road and preferably not more Than 1km from a classified road		5	2km from Nairobi-Kangundo Rd. 47km away from Nairobi SCORE - 2	20km from Mombasa-Konza junction. 81km away from Nairobi SCORE - 0	8km from Kitengela Namanga junction 38km away from Nairobi SCORE - 2 ½	4.6km from Nairobi Namanga Rd. junction (Isinya) 88km away from SCORE-1 ½	3km from Nairobi-Magadi Rd. through track path on private land. 79km away from Nairobi. SCORE - 0
c	The land should be in close proximity to Water, Electricity and Telephone.		2	Infrastructure available (Water, Electricity) 1.5km away from KBC booster Station. GMS coverage Available Score-1	Infrastructure available 6km (Water) away (Electricity) 8km away and GMS coverage available Score-1	Infrastructure available (Bore hole) on site, (Electricity) 6km away, GMS (has a permanent house) Score-1	Infrastructure available (Bore hole) onsite (Electricity) 4.6km from Isinya-Namanga Rd. coverage available Score-1	Infrastructure available, (water, Electricity and Telephone) 3km from Nairobi-Magadi Rd. GMS coverage available Score-1

7.1.3.3 The Evaluation Committee combined the first matrix and the second matrix as follows: (Table 3)

COMBINED-MATRIX BASED ON EVALUATION SCORES ON BID DOCUMENTS AND SITE VISITS								
S/No.	Evaluation Criteria	Tender	Maxi Score	Bidders Number				
				4	5	7	8	10

	Mandatory Requirements	3.19.1.2	40					
1.	Land is within Nairobi Metropolitan Region		10	10	10	10	10	10
b	The soil depth reaches a minimum of 1.8 meters deep		10	2ft Black Cotton Soil then soft brown rock, trial holes 4ft deep done only Two trial holes done SCORE-0	5ft Black Cotton Soil. trial holes 6ft deep done Only One trial hole SCORE-0	2½ft Black Cotton Soil 2½ft Soft rock Four trial holes done SCORE-0	2ft-Black Cotton Soil then/murm/Gr ey rock. Trial holes 3ft Deep done Two trial holes done SCORE-0	Sedimentary soil Trial holes 4ft deep done Two trial holes Done mainly Soft rock
c	Preferably is under one title deed and is of freehold Parcel size must be 50 acres under one Title deed and free from encumbrances and no encroachment on the ground.		5	5	5	5	5	
d	Free hold but where several parcels of land are offered the minimum parcel size must be 50 acres under one title deed and free from encumbrances and no encroachment on the ground.							
e	Accessible from all weather road and preferably not more Than 1km from a classified road		5	2km from Nairobi-Kangundo Rd. 47km away from Nairobi SCORE - 2	20km from Mombasa-Konza junction 81km away from Nairobi SCORE - 0	8km from Kitengela Namanga junction 38km away from Nairobi SCORE - 2 ½	4.6km from Nairobi Namanga Rd. junction (Isinya) 88km away from SCORE-1 ½	3km from Nairobi-Magadi Rd through track path on private land 79km away from Nairobi. SCORE- 0
f	Registration Certificate/or Copy of National Identity Card for individual		2	2	2	2	2	2
g	Value Added Tax Certificate (VAT) for-business entities only		2	2	-	-	-	
h	Single business Permit (for business entities only)		2	2	-	-	-	
2.	Provision of Authenticated Survey Plan	2.22.3b	15	15	15	15	15	
b	Provision of Certified Copy of title deed		15	15	15	15	15	
c	Certified Copy of deed Plan		15	15	15	15	15	
d	Recent official search Certificate from Ministry of lands		15	15	15	15	15	
	SUB-TOTAL	60	60	60	60	60	60	30
	TOTAL	100	86	84	86½	86½	85½	54

7.1.3.4 Committee observations on the award of the scores by the Technical Evaluation Committee (TEC)

- (i) The marks awarded to the winning bidder (i.e. bidder No. 7) were not deserved. The Technical Evaluation Committee awarded 2½ marks on the evaluation criteria in 1(e) in Table 3 - "*accessibility from all weather road and preferably not more than 1km from a classified road*". The Committee noted that the score awarded on this criterion was wanting since it should have been zero. So, the total marks for bidder No.7 on mandatory requirements should have been less by 2½ (i.e. 19½ - 2½ = 17 out of 40). Implying that the winning bidder got far below average on mandatory requirements.
- (ii) The rationale of awarding 40 marks on mandatory requirements and 60 marks on the other non-mandatory requirements (i.e. awarding less marks on serious issues and more marks on less serious issues) raises serious fundamental questions. In fact it should have been the opposite. The Committee abhorred the casual manner in which the TEC treated the word "mandatory" to look as if it was just mere word put in the document, without serious regard to the spirit and principle of the use of the word in the document.
- (iii) Due diligence was not taken on the ownership documents since the Technical Evaluation Committee does not appear to have convinced the Committee on the existence or otherwise, of a contractual relationship between M/s Naen Rech Ltd and Mr. Musyoki Kilonzi or how such a relationship, if it indeed existed, would have influenced the pricing of the land. So, the marks awarded on the other requirements should have been less than what was actually awarded.

7.1.3.5 The Committee obtained evidence from individual members of the Technical Evaluation Committee as follows:-

(i) **Mr. Tom Odongo** reiterated his earlier information that the meeting held on 14 October 2008 by the Evaluation Committee was to decide on a program for the site visits. Contrary to the minutes recorded, the observations noted in those minutes were wrong since the site visit had not yet been undertaken. He alleged that whoever wrote the minutes doctored the scores because according to his own personal records, Naen Rech Ltd scored "0" and not the indicated "2 ½" under the accessibility criteria. He also disowned the other scores indicated.

(ii) **Mr. I.N. Ngacha** claimed that he was invited to the 14 October 2008 meeting over the phone by Ms. Ng'ethe. He also said that it was the only Evaluation Committee meeting he ever attended. He also claimed that he had not seen the tender documents. He denied together with Mr. Odongo, that they did not attend the site visit yet their names were indicated as having attended. Mr. Ngacha expressed his concerns

regarding flow of information on this particular transaction despite being the internal auditor. He only learnt of the purchase of the land when the Controller & Auditor General and the Internal Audit Committee of CCN began probing the matter in March 2009.

(iii) **Mr. David Wanjohi** said he was appointed to the Committee by the Medical Officer of Health (MOH), Dr. Nguku, who gave him verbal instructions on the type of land to be accepted as suitable for cemetery, i.e. with red soil, and a soil depth of at least six feet. He did not find the land in Mavoko as suitable since the soil was black, and not deep enough. He therefore did not recommend the land to the Tender Committee; he only learnt later that the land had been bought. He also confirmed that the Evaluation Committee did not conclude the exercise of evaluation and recommendations on the bidders, and termed the evidence recorded in the evaluation report as incorrect or falsified.

(iv) **Mr. Matthew Ouko** testified that as an officer in the secretariat, he only typed the minutes as given to him by Mr. Musee who was the secretary of the Technical Evaluation Committee. He claimed that he did not sit in any of the meetings of the Technical Evaluation Committee since he was not a member. He only assisted in administrative and logistical duties.

All the members of the Technical Evaluation Committee, with the exception of Mr. Musee, disowned the scores awarded to Naen Rech Ltd against the selection criteria, and also disowned the minutes signed on 10 November 2008.

(v) **Mr. Alexander M. Musee** was the Deputy Director of Procurement, and also **Secretary of the Evaluation Committee** at the City Council of Nairobi.

He confirmed that he took part in the evaluation of the bidders.

He stated that he attended the Evaluation Committee meeting on 14 October 2008 and participated in the award of scores. He said that in his personal view, he would have awarded zero to Naen Rech Ltd on the accessibility criteria. He claimed that the score of 2 ½ Naen Rech Ltd on the criteria was a collective decision of the Evaluation Committee. He also claimed that he saw all the main documents required from Naen Rech Ltd, i.e. the authenticated survey plan, search certificate from Ministry of Lands, certified copy of deed plan and the title deed. He confirmed that the title was in Mr. Henry Kilonzi's name, and was accompanied by a letter from Mr. Kilonzi's advocate giving permission to Naen Rech Ltd to use his land to bid. He also prepared the report that was forwarded to the Tender Committee for consideration of the tender award.

The Committee noted a number of issues of concern that were observed from the evidence of the Secretary of the Technical Evaluation Committee:

- a) He did not confirm with the relevant departments/ministries that all documents presented were authentic.
- b) He did not exercise due diligence in ascertaining land suitability, and whether it had no encumbrances. The excuse he gave was that he was not well-versed in land matters. He admitted professional negligence in this respect.
- c) He could not provide minutes of the Evaluation Committee indicating presence of a meeting on 10 November 2008 where the recommendations and conclusions of the Committee were made.
- d) He did not see the valuation report for the land.
- e) He did not provide documentary proof of Mr. Kilonzi authorizing Naen Rech Ltd to bid using his land.

The Committee could not rule out possibility of collusion between the Chairperson and the Secretary of the Technical Evaluation Committee together with other officers to doctor the minutes and the evaluation report (which was subsequently forwarded to the Tender Committee) in favour of Naen Rech Ltd. The Committee could not also rule out the possibility that the Chairperson and the Secretary of the Technical Evaluation Committee were part of the architects and masterminds of the whole saga.

The Committee recommends that the Secretary and the Chairperson of the Technical Evaluation Committee should be held responsible for falsifying the Evaluation Report. The Committee noted that their action led to loss of public funds as their report was relied upon by the Tender Committee in awarding the tender.

The Committee also noted that their actions contravened sections 44, 45 and 46 of the Kenya Anti-corruption and Economic Crimes Act, 2003 (on bid rigging and abuse of office).

The Committee recommends that the Chairperson of the Technical Evaluation Committee Ms. Mary Ng'ethe and the Secretary Mr. Alex Musee should be interdicted, investigated and charged, with a view to holding them responsible.

The Committee also recommends that they should be barred from holding public office conferred by the Republic of Kenya.

7.1.4 The Tender Committee

The Tender Committee comprised the following officers:

- (i) Mr. N.W. Otido – Deputy Town Clerk (Chairman)

- (ii) Eng. K. Wamugunda - Deputy City Engineer (Deputy Chairman)
- (iii) Mr. Jacob Munge - City Treasurer (Member)
- (iv) Dr. Daniel M. Nguku - MOH (Member)
- (v) Mr. W.K. Maritim - Deputy Director, Environment (Alternate Member)
- (vi) Mr. J.W. Kang'ethe - Deputy Town Clerk (Reforms) (Member)
- (vii) Mr. P.M. Kibinda - Director, City Planning (Member)
- (viii) Mr. G.K. Njamura - Director, Procurement (Secretary)

Out of the eight members of the Tender Committee, six appeared before the Committee and gave evidence on 28 April 2010. However, Mr. Nelson W. Otido and Mr. Jacob Munge failed to turn up for evidence. Information availed to the Committee indicated that Mr. Otido had retired, and was therefore living away from Nairobi. It was later reported that he had been arraigned in court on the matter. Mr. Munge did not respond to the summons to appear before the Committee.

The Committee took individual evidence from the members of the Tender Committee who appeared. The evidence given is as follows: -

i) Mr. Nelson. W. Otido, Former Deputy Town Clerk

Mr. Nelson W. Otido was the Chairman of the Tender Committee. He failed to turn up for evidence scheduled for 27th April 2010. It was later reported that he had been arraigned in court on the matter. The Committee therefore relied on the documentary evidence availed to it which indicates the deep involvement of the witness in the matter.

As the Chairman of the Tender Committee and as the Deputy Town Clerk, Mr. Otido failed to do the following: -

- He failed to ascertain the authenticity of the land valuation.
- He failed to advise the Permanent Secretary to ensure that the interests of the council were safeguarded.
- Contrary to procurement regulations, he allowed the Tender Committee to wrongly award the tender to M/s Naen Rech Ltd while the land was registered in the name of Mr. Henry Musyoki Kilonzi. In fact, he allowed the sale agreement to be signed by Mr. Henry Kilonzi while the tender was awarded to M/s Naen Rech Ltd.
- He failed to properly advise His Worship the Mayor and duped him to enter into contractual agreement on behalf of the council.

- He did not exercise due diligence in the whole process.

The Committee **abhorred the casual manner in which the Deputy Town Clerk handled his responsibilities and recommends that though retired, he should be investigated to determine his culpability and charged with the appropriate offence.**

(ii) **Mr. W.K. Maritim** testified that he was invited to the Tender Committee meeting (for the award of tender on the land) to give a quorum via a phone call from Mr. Njamura. He claimed that he attempted to object to the award (during the meeting) but his input (on the unsuitability of the land) was ignored. He said he was advised that he should have raised the matter with the Technical Evaluation Committee during the earlier stages, and hence the opportunity to do so had since been overtaken.

(iii) **Eng. K. Wamugunda** said that he had no information on the market price or land suitability. He claimed that his decision and action was based on the recommendations of the Technical Evaluation Committee.

(iv) It was noted that **Mr. J.W. Kang'ethe** and **Eng. K. Wamugunda** claimed to have solely relied on the Evaluation Committee report without verifying the actual tender documents, or valuation report.

(v) **Mr. G.K. Njamura** was the Director of Procurement (CCN) and **Secretary of the Tender Committee**. He has worked in CCN for three and half years.

He was in charge of receiving and opening the tenders. He explained how the tendering process was carried out. He said that the tender Committee sat, adjudicated and awarded the tender to the winning firm on 12 November 2008.

He claimed to have seen the valuation report and all the tender documents, and was satisfied with the information received regarding the winning bidder.

He explained that his committee expected the Evaluation Committee, under the guidance of the legal department of the City Council of Nairobi and the Chief Valuer (who is a technical expert in that line), to confirm the ownership of the land. He also claimed that he relied fully on the report of the Evaluation Committee, the basis of which his recommendations to the Tender Committee subsequently led to the award of the tender.

He said he was aware that the land belonged to Mr. Henry Kilonzi, and not Naen Rech Ltd, the company that won the tender. He also said that according to him, the requirements for the land to have a title did not imply being in the name of the bidder.

Mr. Njamura claimed that he was not informed about the objections raised by the Planning Department prior to the award of the tender.

Mr. Njamura could not explain why and how the sale agreement was done between Mr. Henry Kilonzi and the council yet he was not a bidder. He further explained that had he been provided with the information that later emerged pertaining to the land, he would not have proceeded to award the tender to the winning bidder.

The Committee noted with grave concern the casual manner in which the Director handled the transaction, noting that the matter, being "procurement" of a cemetery, was entirely in the purview of his department and he should have exercised due diligence.

(vi) **Dr. Daniel Nguku** was the then Medical Officer of Health (MOH) – CCN, and a member of the Tender Committee. His department was the user department of the cemetery. He stated that from the information he received, he was satisfied with the land, even though upon review of documents available, the land did not meet the specifications.

The Committee noted the hostility of the witness as he evaded questions and tried to mislead the Committee in the initial stages of evidence.

After intensive interrogation by the Committee Dr. Nguku revealed that within the last two years he was able to acquire land, purchase a vehicle, and was also building a house in his rural home. He also acquired a house in Mlolongo worth about Ksh. 3 million and registered in the name of his spouse. He also confirmed that an amount of Ksh. 1 million was deposited in the account of his wife in Mwalimu SACCO in early 2009. He claimed that he did not know the source of the money and that also he did not bother to return it to the sender. **The Committee expressed concern on how the officer acquired several assets within a very short time and could therefore not rule out possibility of his obtaining money, not only from this transaction but also from questionable deals.**

The Committee recommends that Dr. Nguku and his wife should be investigated with a view to holding them accountable for any money relating to the purchase of cemetery land. Dr. Nguku should be interdicted, arrested and charged, and any assets owned by him, his family members or his associates established to be proceeds of this transaction should also be recovered.

The Committee also recommends that Dr. Daniel Nguku should be barred from holding public office conferred by the Republic of Kenya.

The Committee noted the following issues about the Tender Committee:

- (i) During the award of the tender, the Committee was not properly constituted, as it was noted that Mr. Maritim (who attended the meeting during the award) was not an appointed or alternate member of the Tender Committee, and since he claimed that he was called to give quorum to the meeting, he did not qualify to do so.

- (ii) The Tender Committee entirely relied on the report of the Evaluation Committee which has since been noted that it was a faulty report, doctored by a few Members of the Evaluation Committee.
- (iii) Notwithstanding the weaknesses noted in the Evaluation Committee report, the officers in the Tender Committee responsible for undertaking due diligence deliberately ignored such an essential duty. The result of such negligence cost the public.
- (iv) Despite the serious issues raised by the Planning Department in time, the Tender Committee did not advise the Town Clerk to halt the process of award pending further investigations.

While noting that the actions of the Members of the Tender Committee (with the exception of Mr. Kibinda and Mr. Maritim) were questionable and wanting, the Committee could not rule out the possibility that those members of the Tender Committee were part of the architects and masterminds of the whole saga. The level of negligence and ignorance portrayed by those officers during the tender process could only be interpreted to suit a well calculated scheme aimed at misappropriation and fraud.

7.1.5 The officers who executed the sale agreement

(i) Mr. Nelson. W. Otido, Deputy Town Clerk.

As indicated above, he failed to turn up for evidence scheduled for 27th April 2010. Documentary evidence revealed that he signed the sale agreement.

(ii) Mr. Edward N. Omotii, an advocate in Omotii & Company Advocates was the lawyer for the CCN in the transaction.

Mr. Omotii explained that he was one of the pre-qualified legal service providers for the CCN, and had worked with the Council since 1999. He told the Committee that he was appointed to represent the council on the matter by Ms. Mary Ng'ethe on 26 November 2008.

He said that once the sale agreement was signed on 19 December 2008, a cheque dated 30 June 2008 from the Council with a forwarding letter from a Mr. Karisa Iha, Deputy Director of Legal Affairs, was sent to him on 18 December 2008. He confirmed having noticed that the cheque was dated far as back as five months earlier and he did not bother to ask for the reasons behind it. The Committee noted the presence of a second letter from the Ministry to the Town Clerk dated 22 December 2008 forwarding the same cheque no. 005643 for Kshs.175million and dated 30 June 2008. The presence of the two forwarding letters left a lot to be desired.

Mr. Omotii stated that he only released the money when the title came out in the Council's name. It was interesting to note that since the process of transferring the title took some time, the money kept in the lawyer's account attracted an interest of Kshs.1,898,082.03. Interestingly, Mr. Omotii took the amount of Kshs.1,898,082.03 interest earned on the account in addition to the Kshs. 2.03 million paid by the council in form of legal fees. The witness said that at the end of the transaction, the seller's lawyers, Mr. Mutinda, Mr. Osiemo and Mr Onduso, instructed him on how to transfer the money. He claimed that he never actually met Mr. Henry Kilonzi, the seller.

The Committee was also informed that an amount of Kshs. 13 million that he forwarded to his account belonged to Ms. Ng'ethe following her instructions. He confirmed having forwarded the whole amount to her just after obtaining it.

The Committee recommends that Mr. Edward N. Omotii should be investigated by the Kenya Anti-Corruption Commission (KACC), Law Society of Kenya (LSK) and Kenya Revenue Authority (KRA). He should also refund the interest amount of Kshs.1,898,082.03 (earned by the transaction account) to the Ministry of Local Government.

(iii) **Mr. Godfrey Majiwa**, His Worship the Mayor, City Council of Nairobi (CCN) said he was aware of the council's need for cemetery land from 2004, before he became the Mayor. He testified that since he's a political leader, he was not involved at all in the procurement process, as the executive side of the Council, headed by the Town Clerk, handles such issues. He also said that he was never involved at any point, except when he was called to sign the sale agreement. He only learnt later from press reports that the sale was fraudulent.

He believed that he was a signatory to the Council, hence the reason he signed the sale agreement and said that this was a tradition he found ongoing from earlier times. He had been made to believe that section 46(2) of the Third Schedule of the Local Government Act (Cap. 265 laws of Kenya) gives him powers to execute council documents. The section states as follows: **(On sealing of documents)**

"The seal shall be attested by at least one of the following present at the sealing, namely, the Chairman or Vice-Chairman, or the clerk or deputy clerk, and an entry of every sealing of a document shall be made and consecutively membered in a book to be provided for the purpose and shall be signed by the person or by persons who attest the seal".

The Committee while considering the above mentioned section noted that the section did not allow the Mayor to execute council documents.

The Committee noted that the Mayor, while signing the sale agreement did not just witness a signature of the Town Clerk but he was indeed executing the document on behalf of the CCN.

The Mayor later conceded that he may have been misinformed and should not have signed the contract.

When the Committee asked the Mayor whether he knew Owino Kojwando and Co. Advocates, he said that he had earlier worked with the firm as a court server. The Committee noted that the Advocate received Ksh. 10 Million from the transaction on behalf of a client whom he was unwilling to reveal. The Committee recommends that thorough investigations should be carried out to establish any possible link between the Mayor, Owino Kojwando and Co. Advocates and the amount of Ksh. 10 Million. If established he should be prosecuted; and if found guilty, he should take political responsibility and be barred from holding public office. Any funds and assets established to have been acquired from this transaction should be seized to recover public funds lost.

The Committee noted that the Mayor had been irregularly signing similar documents/contracts on behalf of the Council without legal authority to do so. Such action could be an avenue by the Chief Officers of councils to dupe civic leaders to engage in questionable deals so as to share blame in the likely event that the deals backfire.

7.1.6 The officers involved in the payment process

(i) **Mr. Boniface Misera** was the Chief Procurement Officer in the Ministry of Local Government. He informed the Committee that he was never involved in the transaction because Councils are procuring entities and handle their transactions independently. He claimed to have heard about the cemetery saga from media reports. He later admitted that he was involved in an ad hoc meeting held on 5 June 2008 at the Ministry, where discussions on the funds for the purchase of land for cemetery took place. The meeting was chaired by Mr. Reuben Rotich and was attended by Ms. Ng'ethe, Mr. Kibinda, Dr. Nguku and Mr. Njamura from the City Council. Mr. Misera said that he was asked to explain the procurement methods applicable for such transaction.

He stated that he never saw the letter dated 17 December 2008 from the Town Clerk to the Permanent Secretary (PS) with notes from the PS requesting a review of defective documents by the Chief Procurement Officer. He claimed that the letter was never forwarded to him for his action.

Mr. Misera also informed the Committee that he did not receive any money from the transaction. However, the Committee later established documentary proof that he received some funds from the purchase.

The Committee noted with concern that this officer deliberately misled it by claiming he did not receive any money from the sale, and hence presented false evidence contrary to section 23(g) of the National Assembly (Powers and Privileges) Act, Cap. 6, Laws of Kenya. The Committee recommends that he should be interdicted, investigated and charged, and also prosecuted for breaching section 23(g) of the National Assembly (Powers and Privileges) Act, Cap. 6, Laws of Kenya. Any money and assets he has acquired from this transaction should be seized to recover public funds lost.

(ii) **Mr. Reuben Rotich**, Senior Deputy Secretary in the Ministry of Local Government appeared for evidence on 5th May 2010. He explained that before the money was released, the following documents had to be provided: valuation report from Ministry of Lands, sale agreement and title in the name of City Council of Nairobi. He also said that the Chief Finance Officer (CFO) at the Ministry of Local Government confirmed that the documents were physically verified. He said that he was verbally informed about the verification. He further explained that the reason he forwarded a cheque that was almost getting stale (dated 30 June 2008) instead of issuing a fresh cheque, was to avoid returning the funds back to Treasury. Mr. Rotich claimed that the former Town Clerk, Mr. Gakuo, gave verbal instructions to the Chief Finance Officer in the Ministry to write the cheque in the name of E.N. Omotii Advocate in 30 June 2008, long before the commencement of the transaction, and before the appointment of the lawyer for the transaction on 26 November 2008. This was in total contravention of government regulations and procedures.

Mr. Rotich blamed the Medical Officer of Health (MOH) at CCN because he was the head of the user department and should have exercised due diligence on the kind of land to be purchased.

The Committee observed that the witness did not exercise due diligence in safeguarding public funds by verifying all documents before releasing the payment. The failure to exercise due diligence, the failure to adhere to regulations and procedures and the casual manner in which the funds were released implied that the witness was driven by possible urge to misappropriate the funds.

The Committee recommends that he should be interdicted, investigated and charged.

(iii) **Ms. Edith Torome** was the then State Counsel in the Ministry of Local Government. She testified that she was not involved in the actual procurement process. She was aware that CCN needed land since she was part of the team that requested funds from Treasury for that purpose back in the year 2000. She claimed that she was left out of the transaction and the matter was never referred to her attention by the Permanent Secretary. Her legal opinion was not sought, notwithstanding the fact that it was a large transaction and her input would have been very useful.

No action is recommended against her as the Committee did not find any information on her involvement in the process.

(iv) **Other Officers:** It is worth noting that some of the officers scheduled to appear before the Committee and who were involved in the process, i.e. Ms. Mary Ng'ethe, Mr. John Gakuo (former Town Clerk) and Mr. Herman Chavera, were arrested and arraigned in court during the course of the Committee hearing sessions. As a result, the report was compiled without their input. However, there is substantial documentary evidence that they were deeply involved in the transaction. Since the officers were involved in the process, the possibility that they may have benefited from the transaction could not be ruled out.

The Committee recommends that thorough investigations should be undertaken with a view to ascertaining their culpability and holding them responsible.

7.1.7 The bank that facilitated the funds

Mr. James Gichuki, the Head of Operations, Bank of Africa appeared before the Committee on 5 May 2010. He gave an overview of how the three lawyers opened a joint account on 12 February 2009 in the names of their firms; the signing instructions were that all the three lawyers were signatories to the account. He said that the lawyers used a banker's cheque for Kshs.281 million from Bank of Africa to transfer the funds to their joint account.

He provided the details of the transactions made from the joint account. He said that all the transactions on the account took place in a span of a record one month despite involving a whopping amount of Kshs.281 million. He noted that the last transaction was made on 23 March 2009, leaving the account with a zero balance before being closed.

The lawyers' instructions on how to transfer the money were all in writing. The lawyers later transferred the money into different individual accounts within the bank. After transferring the money, the lawyers would withdraw in cash, through banker's cheques or direct transfers to other accounts.

The Joint Committee recommends that the bank should be held responsible for failing to exercise due diligence contrary to the Central Bank of Kenya Act.

7.1.8 Officers of the Kenya Anti-Corruption Commission

Dr. John P. Mutonyi, Acting Director of the Kenya Anti-Corruption Commission (KACC) appeared before the Committee on 4th May 2010. He briefed the Committee on the progress made so far by KACC in its investigations on the matter. He explained the status of investigations as follows:

- a) The matter was reported to the Commission on **21 January 2009** and investigations commenced on 23rd March 2009. Documentary exhibits in respect of the procurement process and transmission of funds related to the purchase were collected. Several persons who in one way or the other participated in the sale of the Land Reference Number 14759/2 measuring 48.3 hectares (120 acres) situated in the South of Athi River in Machakos District were interviewed and their statements recorded.
- b) Upon Completion of the investigations, the Commission forwarded the case file to the Attorney General on 1st April 2010 with two major recommendations that the Commission institutes recovery proceedings against all the beneficiaries of the scam pursuant to sections 46 and 47 as read with section 48 of the Anti-Corruption and Economic Crimes Act, 2003 and that, criminal proceedings be instituted against all persons found culpable in the matter pursuant to the Anti-Corruption and Economic Crimes Act No 3 of 2003 and the Penal Code.
- c) The Honourable Attorney General concurred with the recommendations and gave consent for immediate prosecution of the following 14 suspects:
- | | | | |
|-------|------------------------|---|--|
| i. | Sammy K. Kirui | - | PS MoLG |
| ii. | Mary N. Ng'ethe | - | Dir Legal Affairs CCN |
| iii. | Alexander M. Musee | - | D/Dir Procurement CN |
| iv. | Maina Chege | - | Dir Naen Rech Ltd |
| v. | Naen Rech Limited | | |
| vi. | Newton O. Osiemo | - | Director, Cibiya Worldwide Ltd and
Cibiya Farm Holdings |
| vii. | Alphonse Mutinda | - | Lawyer to Henry Kilonzi |
| viii. | Pius C. Onduso | - | Lawyer to Maina Chege |
| ix. | Davies O. Osiemo | - | Lawyer to Naen Rech Ltd |
| x. | Nelson W. Otido | - | D/Town Clerk CCN |
| xi. | Joseph O. Kojwando | - | Lawyer |
| xii. | Daniel M. Nguku | - | MOH, CNN |
| xiii. | Herman Stevens Chavera | - | CFO MoLG |
| xiv. | Willaim Peter Mayaka | - | Former PS/Chairman Nyayo Tea Zone |
- d) On 28th April 2010, the Commission arrested nine of the suspects and arraigned them in Court on 29th April 2010 vide Court Case No. ACC/19/2010 and ACC/20/2010. Court summonses have been issued in respect of five of the other suspects who are required to appear in Court on 12th May 2010 and plead to the charges.
- e) The Attorney General further directed the Commission to complete any outstanding aspects of the investigations within thirty days.

- f) Suspects have already been taken to court on criminal charges over the loss of Kshs.281,300,000 in respect of the cemetery land. In addition, the Commission has commenced recovery process and issued demand letters on 26th April 2010 to the suspects for recovery of the said Kshs.281,300,000. The defendants include a Permanent Secretary (DPM), City Council employees, Naen Rech Company Limited and its directors, advocates, business persons.
- g) The Commission has secured other properties which were purchased with money emanating from this fraudulent transaction. It registered a caveat on 9th Feb. 2010 upon IR 31227 LR NO 12296 measuring 2.071 situated in Karen. This land was purchased by Cibiya Worldwide Limited and its director Newton Osiemo and part of the purchase money totaling to Kshs.38,660,000 came from the cemetery land purchase price.
- h) The Commission has received Kshs.100,000 from one Mr. Peterson Gichana on 11th March 2010 being what he had received when his account was used to transmit part of the money.
- i) The Commission has accepted request by some of the suspects to pay the money but this is received without prejudice to the criminal cases in court. One Mr. Boniface Misera has written to the Commission and the Attorney General on 26th April 2010 proposing to pay Kshs.1,300,000 which he received.
- j) Once the time for the demand expires on 15th May 2010, the Commission shall file recovery suits.

7.1.9 The Accounting Officer of the funds

Mr. Sammy Kirui, EBS was the then Permanent Secretary (PS), Ministry of Local Government. He informed the Committee that the Ministry was not the procuring entity, and thus did not have all the details about the transaction. He claimed that the council handled the matter. He said that he approved the purchase because there were no queries raised concerning the transactions prior to his approval. He assumed that the Tender Committee and the Technical Evaluation Committee in the Council had evaluated the bidders appropriately and awarded the best bidder. The PS also claimed that he verbally briefed the Minister throughout the whole procurement process. However, the Committee noted that the PS had no documentary evidence to back up his claim.

As the Accounting Officer, the fact that he failed to exercise due diligence and the casual manner in which he facilitated the transaction can not be overlooked. His actions portrayed a deliberate scheme calculated to defraud government funds.

The Committee noted that there is substantial documentary evidence indicating that the PS was deeply involved in the transaction of the land. The Committee

while noting that action had since been taken against the Permanent Secretary, recommends that he should be interdicted to allow investigations and prosecution. If convicted by court, he should be barred from holding public office conferred by the Republic of Kenya.

7.2.0 The Minister

The Deputy Prime Minister and Minister for Local Government appeared before the Committee on 6 May 2010. He informed the Committee that the amount of Kshs. 175 million, being part of the Ministry's vote was passed during the supplementary estimates of the 2007/2008 financial year. The Minister confirmed that he was aware of the need for land for another cemetery, through the PS when the procurement process began and that the Permanent Secretary also informed him when the process was completed confirming that everything was alright. He said that he was not informed of any issues raised during the procurement process on the matter, and no issues were raised until a question was asked on the floor of the House in June 2009. As far as he was concerned, he prepared his response to the House based on the facts availed to him at that time. He only realized later that there was more than he knew about it. He said that he then left it with the relevant parliamentary committee, as well as other investigatory agencies to unravel.

The Minister claimed that the Permanent Secretary and other officers deliberately kept him in the dark for reasons only known to the officers. He only became aware of land having been purchased in Mavoko when he had to answer the parliamentary question, as he had not followed up on the issue.

The Minister said that he was not adequately briefed by the Permanent Secretary in the Ministry during the procurement process, and that there was no documentary evidence to prove otherwise. No documents were either forwarded or copied to him during the procurement process so as to keep him apprised. All correspondence from the council ended at the Permanent Secretary's office, while those from the Ministry were never copied to him.

He informed the Committee that in his view, the Government will have to resort to compulsory acquisition to get suitable cemetery land in the future.

The Committee noted that considering the evidence adduced, and in the absence of documentary evidence implicating the Minister to the saga, the Committee could not establish his possible culpability and leaves it to the investigatory agencies.

Though the Permanent Secretary mentioned that he briefed the Minister, the Minister denied this claim, and the Committee was unable to establish this assertion as there was no documentary evidence.

The Committee noted that the Minister was aware of the matter, but was not adequately briefed. No action is recommended against him. However, investigations should continue to determine his possible culpability in the saga.

7.3 CHRONOLOGY OF COMMITTEE FINDINGS AND OBSERVATIONS FROM THE EVIDENCE ADDUCED

- 7.3.0.1 The Langata Cemetery acquired in 1956 and measuring 177.6 acres, reached its full capacity in the year 2000. Since then, the Council has been using pathways within the Cemetery for burial purposes. These are now fully exhausted.
- 7.3.0.2 Due to the above, the City Council of Nairobi sought financial assistance from Treasury through the Ministry of Local Government to be assisted to procure an alternative land for cemetery purposes.
- 7.3.0.3 The Deputy Town Clerk then, Mr. Nelson Otido set up a team to prepare the tender documents for use in procuring a cemetery land. The team comprised the following Departmental Heads:
- | | | |
|------------------------|---|-----------------------------------|
| a. Dr. Daniel M. Nguku | - | Medical Officer of Health (M.O.H) |
| b. Peter M. Kibinda | - | Director City Planning |
| c. Gitonga Akotha | - | Chief Valuer |
| d. Gibson K. Njamura | - | Director Procurement |
- 7.3.0.4 The City Council of Nairobi advertised the Tender number CCN/MOH/T/020/08/09 for the procurement of land for the Cemetery purposes in the print media as follows; The Standard and Daily Nation of 18th and 22nd September 2008 respectively. The tender closed on 6th November 2008 with Twelve (12) bidders responding.
- 7.3.0.5 On 07th October 2008 the Deputy Town Clerk, Mr. N.W. Otido, appointed an **“Opening and Evaluation of Bids Team” or the Technical Evaluation Committee** which comprised of the following City Council of Nairobi Officials:
- | | | |
|---------------------|---|--|
| a. Ms. M.N. Ng’ethe | - | Legal Affairs Department – Chairperson |
| b. Mr. A. Gitonga | - | Valuation Section – Member |
| c. Mr. I. Ngacha | - | Internal Auditor Department – Member |
| d. Mr. T. Odongo | - | City Planning Department – Member |
| e. Mr. J. Wanjohi | - | City Mortuary Department – Member |
| f. Mr. A. Musee | - | Procurement Department – Secretary |
- 7.3.0.6 The tender opening and evaluation team conducted technical evaluation of the 12 bids received. The bidders included:
- i. Impals Developers (k) Ltd
 - ii. Acres and Homes Ltd
 - iii. Triton (k) Ltd

- iv. Kalove advocates
- v. Zinger Enterprises
- vi. Busam Holdings Ltd
- vii. Naen Rech Limited
- viii. Gitonga Wambugu Kariuki
- ix. Three steps Investments
- x. Mary Njeri Muchai
- xi. Amusement Gurdens
- xii. Stannly Enterprises Limited

7.3.0.7 The tender opening and evaluation team upon concluding the evaluation, recommended award of tender to M/S Naen Rech Limited at a consideration of Ksh283,200,000 (Kshs. Two Hundred and Eighty Three Million, Two Hundred Thousand only). The bidder offered 120 acres of land in Athi River.

7.3.0.8 The Confidential Business Questionnaire filled by the recommended bidder provided details of the Directors of the Company (Naen Rech Limited) as follows:

Name	Citizenship Details	Shares %
Maina Chege	Kenyan	60
Henry Kilonzi	Kenyan	10
Winnie Maina	Kenya	30

However a search at the Company Registry indicates that the Directors of Naen Rech Limited are as follows:

Directors	Address
Winnie Wanjiru Mwangi	P.O. Box 72309 Nairobi
Maina Chage	P.O. Box 72309 Nairobi

Notice that Mr. Henry Kilonzi does not appear as a Director of the Company as per the records at the Registrar of Companies.

The Committee noted that Maina Chege is a registered auctioneer with the City Council of Nairobi. It can not therefore be ruled out that his business relationship with the council is enormous. It is highly likely that such relationship played an integral role in this saga and he may have been used as a conduit to defraud the government. It is very clear (from the ownership documents, execution of sale agreement and the way the money was paid) that Maina Chege did not own the land. The land was owned by Mr. Henry Kilonzi. Due to his business influence, Maina Chege was used by the officers to bid for the tender.

From the evidence adduced and the documents provided, the owner of the land (Henry Kilonzi) was paid Kshs. 110 million (as cost of the land), while the balance of Kshs. 171.3 million was the amount brokered and siphoned through Maina Chege.

The Committee recommends that Maina Chege should be investigated for obtaining money by false pretence and fraud; his assets should be seized to recover public funds. Furthermore, he or any company associated with him should be precluded from award of future government contracts.

7.3.0.9 On 11th November 2008 the Deputy Director of City Planning Mr. Patrick Tom Odongo jointly with a member of the Technical Evaluation Team, the Assistant Director in-charge of Forward Planning Section Mr. John Koyier Barreh, wrote a memo addressed to the Chairman Tender Opening and Evaluation Team (Ms Mary Ng'ethe) and copied the following city council officials:

- | | | | |
|----|--------------------|---|--------------------------------|
| a. | Mr. John Gakuo | - | Town Clerk |
| b. | Mr. Alex M. Musee | - | Deputy Director of Procurement |
| c. | Mr. David Wanjohi | - | Public Health Dept. |
| d. | Mr. Gitonga Akotha | - | Chief Valuer |
| e. | Mr. John Kich | - | Valuation Section |
| f. | Mr. Ouko | - | Procurement Department |
| g. | Mr. Isaack Ngacha | - | Chief Internal Auditor |
| h. | Mr. Jacob Munge | - | City Treasurer |

7.3.1.0 The memo raised the following issues:

- i. That the Tender Document was defective and insufficient to assist in procuring suitable land for Cemetery use.
- ii. That the said Document was used to evaluate the five sites that were substantially responsive and that at the end of the evaluation process, it was categorical that none of the five sites had met the suitability criteria for land for Cemetery use.
- iii. That in the event that a report was made to the Tender Committee that was contrary to the facts of the findings of the evaluation process, then they would disassociate themselves from such a report.

7.3.1.1 According to the City Council of Nairobi Senior Funeral Superintendent Mr. David Mukuri Wanjohi, a suitable burial site should possess the following characteristics:

- Red soil – is soft and facilitates faster decomposition of bodies
- Soil depth of a minimum 1.8 meters (6 feet)

Mr. David Mukuri Wanjohi participated in the technical evaluation and specifically examined the trial pits dug on land parcel number 14759/2 Athi River in Machakos District, and formed the opinion that the soil profile of the subject land was not suitable for burial purposes. He finally never signed the evaluation report.

- 7.3.1.2 The tender opening and evaluation report was only signed by the Chairperson (Ms. Mary Ng'ethe) and the Secretary (Mr. Alex Musee).

It is apparent that the Chairperson and the Town Clerk ignored fundamental issues raised by the Professionals within the City Council namely: Mr. Patrick Tom Odongo, Deputy Director of City Planning, Mr. John Koyier Barreh, the Assistant Director in-charge of Forward Planning Section and Mr. David Wanjohi, Senior Funeral Superintendent and a member of the Tender Opening and Evaluation Team.

- 7.3.1.3 The Tender Committees chaired by the Deputy Town Clerk Mr. N.W. Otido met on 12th November 2008 and awarded the tender number CCN/MOH/T/020/08-09 Expression of interest for sale of Land for Cemetery use to **M/S Naen Rech Limited** (parcel No. L.R.14759) (part) situated South of Athi River Township in Machakos District measuring 120 acres and registered in the name of Henry Musyoki Kilonzi) at a unit price of Kshs.2,360,000 and a total cost of Kshs.283,200,000 (**which was interestingly the whole amount provided in the estimates**) on grounds that:

- i. Naen Rech attained the highest combined score of **86.5%**.
- ii. That a valuation from Commissioner of Lands provided a market valuation for the land offered by **M/S Naen Rech Limited** at a total of Kshs.325,150,000 which translated to Kshs.2,709,583.35 per acre.

The purported valuation report conveying a value of Kshs.325,150,000 in respect of the Land which formed part of the basis upon which the Tender was awarded to Naen Rech limited was a forgery as it has been disowned by Mr. Anthony Matenge Itui, the Deputy Commissioner of Lands in-charge of valuations.

The subject land was inspected and valued by the Commission's Valuer Mr. Pius N. Maithya at Kshs.30,000,000 (Kshs. Thirty Million only) on 7th May 2009 yet the City Council of Nairobi purchased the said land at a consideration of Kshs.283,200,000.

iii. That the land offered cost Kshs.2,360,000 per acre and a total of Kshs.283,200, which compared well with their purported Commissioner of Lands estimate of Kshs.2,709,583.35 per acre.

7.3.1.4 Following the award of the Tender to M/S Naen Rech Limited. Notification of award was done to M/S Naen Rech Limited through a letter dated 13th November 2008 signed by N.W. Otido on behalf of the Town Clerk.

7.3.1.5 On 4th December 2008, the Permanent Secretary, Office of the Deputy Prime Minister and Ministry of Local Government did a letter to Mr. John Gakuo, Town Clerk City Council of Nairobi which forwarded Memoranda that contained the technical issues raised by the professional at CCN regarding the tender process and suitability of the subject land. The Permanent Secretary asked the Town Clerk to attend to the issues raised and revert back to him.

The Town Clerk's response was surprising. He forwarded the Permanent Secretary's letter to both Mr. Odongo and Mr. Kibinda of Physical Planning Department and requested for their comments to enable him take the necessary action. On 17th December 2008, the Town Clerk through his letter reference number TC/JG/9/3889/2008 forwarded Mr. Kibinda's memo dated 17th December 2008 reference number CPD/ADMIN/008020/PMK/mmg to the Permanent Secretary without addressing the issues raised.

On receipt of Mr. Gakuo's letter the Permanent Secretary commented that there were no serious issues raised and therefore the Chief Finance Officer (CFO) should release the funds. The CFO however commented that the issues of defective Tender Documents had not been addressed and suggested that the Chief Procurement Officer should urgently examine them and that a state Counsel should peruse the draft sale agreement.

The Permanent Secretary dismissed the CFO's comments as mere bureaucratic hurdles. On 19 December 2008 the Town Clerk forwarded Mr. Odongo's memo reference number CPD/ADMIN/7543 to the Permanent Secretary through a letter reference number TC/JG/9/3890/2008 without addressing the weighty issues raised.

Upon receipt of the above letter/memo, the Permanent Secretary curiously commented that he was satisfied that the Tender process was above board.

7.3.1.6 A Sale Agreement in respect of the Land was prepared by the City Council Lawyer Mr. Omotii of Omotii and Company Advocates. The Sale Agreement

was between Mr. Henry Musyoki Kilonzi as the Vendor and the City Council of Nairobi the Purchaser. The Purchase Price was indicated as Kshs.283,200,000.

The Sale Agreement was purportedly signed by Henry Musyoki Kilonzi and witnessed by Alphonse Mutinda of Alphonse Mutinda & Co. Advocates on one hand and executed by His Worship the Mayor Godfrey Majiwa and the Deputy Town Clerk on behalf of the City Council of Nairobi on the other hand. The same was witnessed by Edward N. Omotii.

- 7.3.1.7 Mr. Henry Musyoki Kilonzi has since denied ever selling his land to the City Council of Nairobi. He stated that he sold his land L.R. No. 14759/2 to an Israeli Company by the name of Naen Rech Limited for consideration of Kshs.110,000,000 and executed a Sale Agreement over the same. He further stated that the Israeli Company was interested in farming and it was represented by one Mr. Maina Chege.

It appears Mr. Kilonzi was either duped by his lawyer (Alphonse Mutinda) to sign a Sale Agreement and Transfer Documents in respect of L.R. No. 14759/2 for a consideration of Kshs.283,200,000, or his signature was forged.

Mr. Kilonzi further denies ever instructing Mr. Alphonse Mutinda to write to the Town Clerk City Council of Nairobi a letter dated 7th October 2008 which appointed Naen Rech Limited as his agent in the Sale of the Land.

- 7.3.1.8 Upon execution of the Sale Agreement, the Ministry of Local Government released the payments in two installments to the Town Clerk, City Council of Nairobi for onward transmission to the Council Lawyer, Mr. Edward Omotii, of E.N. Omotii and Company Advocates as follows:

- Cheque No. 005643 dated 30th June 2008 for Kshs.175,000,000 (Kenya Shillings One Hundred and Seventy Five million only) released on 22nd December 2008.
- Cheque No. 005915 dated 15th January 2009 for Kshs.108,000,000 (Kenya Shillings One Hundred and Eight Million only) released on 16th January 2009.

- 7.3.1.9 Mr. Omotii deposited the above funds in a deposit account which attracted interest amounting to **Kshs.1,898,082.03** which he utilized.

On 11th February 2009, Mr. Omotii issued a cheque for Kshs.281,300,000 in favour of an escrow account domiciled at Bank of Africa, Reinsurance Branch, operated by three firms of lawyers, namely, Odero Osiemo and Co.

Advocates, P.C. Onduso and Co. Advocates, and Alphonse Mutinda and Co. Advocates.

From the said escrow account, the following payments were made:

S/No.	Name of Payee	Amount (Kshs)	Remarks
1.	Alphonse Mutinda (16 th Feb. 2009)	135.9M	<ul style="list-style-type: none"> ➤ The Lawyer to Mr. Henry Kilonzi, the owner of the subject land. (Mr. Henry Kilonzi received Kshs.110M) ➤ One of the signatories to the escrow account.
2.	P.C. Onduso (16 th Feb. 2009)	9.6M	<ul style="list-style-type: none"> ➤ The Lawyer to Maina Chege, the Director of Naen Rech Ltd ➤ One of the signatories to the escrow account
3.	Odero Osiemo and Co. Advocates (13 th Feb. 2009)	117M	<ul style="list-style-type: none"> ➤ Lawyer representing Naen Rech Ltd. ➤ One of the signatories to the escrow account
4.	Naen Rech Limited (16 th Feb. 2009)	9.45M	The company that was awarded the tender by the City Council of Nairobi
5.	Cephas Kamande Mwaura (16 th Feb. 2009)	9.3M	A private land surveyor who purportedly identified the subject parcel of land for Maina Chege.
	Total	281.3M	

Out of the Kshs.117,000,000 transmitted to Odero Osiemo and Co. Advocates at National Bank of Kenya, Harambee Avenue, the following payments were made:

S/No.	Name of Payee	Amount (Kshs)	Remarks
1.	Cibiya Worldwide Limited	8.2M	The company is an offshore whose directors are Newton Omondi Osiemo (Brother to Davis Osiemo) and one Alex James.
2.	James Mwangi Gacheru	20M	Paid on behalf of Cibiya Worldwide Ltd in respect of a land transaction, land reference number 12296 Karen, Nairobi measuring 2.071 hectares from Mr. James Mwangi Gacheru
3.	Cibiya Farm Holdings Ltd.	1.2M	The company directors are Newton Omondi Osiemo and Margaret Omondi.

4.	James Mithamo Kamau	1.66M	Money paid in respect of a vehicle purchased by Newton Omondi Osiemo on behalf of Cibiya Farm Holdings Ltd.
5.	Owino Kojwando and Co Advocates	10M	Lawyer who received the money on behalf of a client whom he is unwilling to reveal.
6.	Dr. Daniel Nguku	8M	Dr. Nguku was the MOH (User Department) and a member of the Tender Committee. The money was paid through proxies including his wife whose shares at Mwalimu Sacco were boosted by Kshs.1million.
7.	Alex Musee	8M	Mr. Musee was the Deputy Director of Procurement CCN and the Secretary to the Tender Evaluation Committee
8.	William Mayaka	2M	Mr. Mayaka (former Permanent Secretary) received the money which was paid through a lawyer, Onyinkwa and Company Advocates.
9.	Alice Kemunto Mayaka	2M	Wife to Mr. Mayaka and former Permanent Secretary received the money from lawyer Onyinkwa and Co. Advocates, being part of Kshs.4million paid to the lawyers following instructions by Mr. Mayaka.
10.	M/S Moeckings General Contractors	2M	The two partners in the company, Mercy Kinyanjui and Martin Nganga Kanyingi, received the money as a front to some unknown person(s).
11.	Herman Steven Chavera	8.6M	The Chief Finance Officer in the Office of the Deputy Prime Minister and Ministry of Local Government received the money through a proxy, one Peterson Gichana who is a businessman. Mr. Gichana was in return given Kshs.100,000/= but has since returned back the money through KACC upon realizing the money was part of the cemetery scam.
12.	Boniface Misera	1.3M	A Senior Procurement Officer in the Office of the Deputy Prime Minister and

			Ministry of Local Government received the money through a proxy, one Peterson Gichana.
13.	Edward N. Omotii	13M	City Council lawyer who received the money over and above his legal fees of Kshs.2,030,000. He informed the Committee that he forwarded the money to Mary Ng'ethe upon instructions.
14.	Unknown	31.73M	Various cash withdrawals from the said account.
	TOTAL	117.59M	

The Committee was not convinced that there was reason for money to be paid to M/s Cibiya Worldwide Limited, and recommends that the company should be investigated for receipt of Kshs.29,860,000 from the transaction. The Government should use all the avenues at its disposal to recover the money and bring the culprits to book.

The Committee noted with concern the presence of three law firms (Alphonse Mutinda Advocate, P.C. Onduso Advocate and Odero Osiemo and Co. Advocates) that purported to represent the interests of the land seller. From the findings of the Committee, it was noted that: -

- (i) Alphonse Mutinda Advocate represented the interests of Henry Musyoki Kilonzi;
- (ii) P.C. Onduso Advocate and Odero Osiemo and Co. Advocates represented the interests of Maina Chege and his associates (the council officials and the officials of the Ministry of Local Government). It was interesting to understand the reason for two law firms in representing Maina Chege. It was highly likely that one of the firms (P.C. Onduso Advocate) represented the interests of the officers from City Council while the second firm (Odero Osiemo and Co. Advocates) represented the interests of the Ministry of Local Government.

The Committee noted the possibility that the three firms of advocates that represented Naen Rech Ltd knew the ill intentions and motives of the clients they were representing.

The Committee recommends that the law firms should be thoroughly investigated by KACC and KRA with a view to ascertaining the purpose of the money received and on whose behalf they received the money from this transaction. The Law Society of Kenya (LSK) and the Advocates Disciplinary Committee should take appropriate action against the three law firms (and the lawyers) for deliberately abetting crime. Further, they should be investigated for money laundering in accordance with the Proceeds of Crime and Anti-Money Laundering Act.

7.4 CONCLUSION

The manner in which the transaction was handled was a strong indicator that the City Council of Nairobi and the Ministry of Local Government have been engaging in and perpetuating similar behavior over the years. Common logic could only tell that the officers involved were in business as usual and doing what they knew best.

The above scenario was likely attributed to the lack of Parliamentary examination of financial accountability of local authorities since inception. As a result, the Committee could not rule out possibility of similar transactions undertaken (even within the last five years by the City Council). It has therefore requested the Controller and Auditor General to undertake special audit of contracts awarded (costing Ksh. 10Million and above) by the City Council of Nairobi.

The Committee recommends that to avoid repeat scenario, the Government should resort to compulsory acquisition in order to get suitable land for cemetery.

MINUTES OF THE COMMITTEE SITTINGS

MINUTES OF THE FIRST SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON THURSDAY 8TH APRIL 2010 IN THE FUNCTION ROOM, CONTINENTAL RESORT, MOMBASA AT 10.00 AM.

PRESENT

Hon. Thomas Mwadeghu, MP (Chairperson)

Hon. Benjamin Langat, MP (Vice-Chairperson)

Hon. Peter Mwathi, MP

Hon. Pollyins O. Anyango, MP

Hon. Musa Sirma, MP

Hon. Nemesys Warugongo, MP

Hon. Abdul Bahari, MP

ABSENT WITH APOLOGY

Hon. Charles Nyamai, MP

Hon. Wilson Litole, MP

IN ATTENDANCE

NATIONAL ASSEMBLY

Mr. Julius Ariwomoi

- Clerk Assistant II

Ms. Wanjiru Ndindiri

- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. B.F.N. Kiguongo

- Director of Audit

MIN. NO.01/2010

CONFIRMATION OF MINUTES

The minutes of the 31st sitting held on Thursday 25th March 2010 were confirmed by the Members present and signed by the Chairperson.

MIN. NO. 02/2010

MATTERS ARISING

Under Min. No. 113/2010 (ii), the Chairperson noted with appreciation the cooperation and assistance offered by Hon. Peter Mwathi, MP in relation to the preparations of the foreign study tour. The Committee further requested the Chairperson and Hon. Mwathi to continue following up on the progress of the trip until arrangements are complete.

MIN. NO. 03/2010

CONSIDERATION OF THE SPECIAL AUDIT REPORT ON
THE PURCHASE OF LAND FOR CEMETERY BY THE
CITY COUNCIL OF NAIROBI

The Director of Audit guided the Committee through the report and explained the contents in-depth. The Committee discussed the report on the same issue by the Departmental Committee on Local Authorities that was laid on the table of the House in March 2010.

After extensive deliberations, the Committee resolved to undertake hearings so as to obtain substantial evidence and prepare a report on the matter as soon as possible. The Committee agreed that the witnesses be summoned in the following order :

- (i) The City Council lawyer who requested for the land valuation
- (ii) The Officer who did the valuation
- (iii) The Officer who objected to the suitability of the land
- (iv) The Officer who prepared the tender documents
- (v) The Tender Committee that approved the land
- (vi) The Deputy Town Clerk who signed the sale agreement.
- (vii) The Mayor
- (viii) The Permanent Secretary
- (ix) The Minister

MIN. NO. 04/2010

ANY OTHER BUSINESS

The Committee discussed on the recently released report by the National Taxpayers ' Association alleging mismanagement of CDF in various constituencies. After scrutinizing the credibility of the contents of the report, the Committee may consider requesting for special audit from the Controller and Auditor-General on the issues or summon the Association.

MIN. NO. 05/2010

ADJOURNMENT

And the time being fifteen minutes past one o'clock, the meeting was adjourned until later in the afternoon.

Signed HON. THOMAS MWADEGHU, MP

(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE SECOND SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON WEDNESDAY 21ST APRIL 2010 IN COMMITTEE RM. NO.9, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

Hon. Thomas Mwadeghu, MP (Chairperson)
Hon. Benjamin Langat, MP (Vice-Chairperson)
Hon. Peter Mwathi, MP
Hon. Charles M. Nyamai, MP
Hon. Wilson Litole, MP

ABSENT WITH APOLOGY

Hon. Pollyins O. Anyango, MP
Hon. Nemesys Warugongo, MP
Hon. Musa Sirma, MP
Hon. Abdul Bahari, MP

IN ATTENDANCE

Mr. Julius Ariwomoi

NATIONAL ASSEMBLY

- Clerk Assistant II

KENYA NATIONAL AUDIT OFFICE

Mr. B.F.N. Kiguongo

- Director of Audit

Mr. Nashon Otieno

- Assistant Director of Audit

MIN. NO. 06/2010

CONSIDERATION OF PROGRAMME FOR HEARINGS ON THE SPECIAL AUDIT REPORT ON THE PURCHASE OF CEMETERY LAND BY NAIROBI CITY COUNCIL

The Committee discussed the order in which the witnesses would appear before it within the next two weeks. This was to ensure that the matter was covered exhaustively, though without duplicating the work already done by the Departmental Committee on Local Authorities.

The Committee also requested the Chairperson to secure an informal meeting with the Director of the Kenya Anti-Corruption Commission (KACC), so as to get a brief on the progress made so far, before commencing hearings from the witnesses on the matter.

The Committee also approved its sitting programme for the months of May and June 2010.

MIN. NO. 07/2010

ANY OTHER BUSINESS

The Committee was informed that the study visits to Turkey and Brazil were still on course. Communication was being awaited from the Kenyan embassies in the respective countries for confirmation of the exact dates of the visits.

MIN. NO. 08/2010

ADJOURNMENT

And the time being eleven o'clock, the meeting was adjourned until Tuesday April 27th 2010 at 9.30am.

Signed HON. THOMAS MWADEGHU, MP
(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE THIRD SITTING OF THE LOCAL AUTHORITIES AND FUNDS
ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE
OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON
TUESDAY 27TH APRIL 2010 IN THE OLD CHAMBERS, PARLIAMENT BUILDINGS
AT 9.30 AM.

PRESENT

Hon. Thomas Mwachugu, MP (Chairperson)

Hon. Benjamin Langat, MP (Vice-Chairperson)

Hon. Peter Mwathi, MP

Hon. Charles M. Nyamai, MP

Hon. Wilson Litole, MP

Hon. Pollyins O. Anyango, MP

Hon. Nemesyus Warugongo, MP

Hon. Musa Sirma, MP

Hon. Abdul Bahari, MP

IN ATTENDANCE

Mr. Julius Ariwomoi

Ms. Wanjiru Ndindiri

NATIONAL ASSEMBLY

- Clerk Assistant II

- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. B.F.N. Kiguongo

Mrs. Tabitha Waweru

Mr. Nashon Otieno

- Director of Audit

- Deputy Director of Audit

- Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Mr. P.M.G. Waweru

- Deputy Director, Local Authorities
Inspectorate

MIN. NO. 09/2010

CHAIRPERSON'S REMARKS

The Chairperson commenced the meeting with prayers and introductions. He also explained, for the benefit of the witness, the mandate of the Committee, and quoted sections 18 and 23 (d) of the National Assembly (Powers and Privileges) Act, on the powers of the Committee.

MIN. NO. 10/2010

EVIDENCE : THE THEN DIRECTOR OF PROCUREMENT,
CITY COUNCIL OF NAIROBI (CCN)

Mr. G.K. Njamura, the then Director of Procurement, and Secretary of the Tender Committee appeared before the Committee to give evidence.

The Committee was informed by the auditors that the City Council of Nairobi (CCN) had not provided the complete set of tender documents for audit verification to date.

The Tender Committee Secretary was subjected to thorough interrogation and examination of his evidence, by the Committee. Usefull information was obtained. However, in many instances, the witness appeared to hide information and even wanted to provide inaccurate or misleading information. Infact it could not be ruled out that the witness was deeply involved in the whole process of the transaction.

MIN. NO. 11/2010

OUTSTANDING INFORMATION

The Committee directed Mr. Njamura to later provide a copy of the Evaluation Committee report for perusal and consideration.

The Committee also requested the Controller & Auditor General to review all other tenders of over Kshs.10 million awarded by the then Director of Procurement during his tenure at CCN so to ascertain the correctness or otherwise of his decisions.

MIN. NO. 12/2010

EVIDENCE : THE THEN DIRECTOR OF CITY PLANNING,
CITY COUNCIL OF NAIROBI (CCN)

Mr. Peter M. Kibinda, former Director of City Planning, and Mr. Tom Odongo, current Acting Director of City Planning/ former Deputy Director of City Planning, CCN, appeared before the Committee to shed light on the matter. Mr. Kibinda was a member of the Tender Committee while Mr. Odongo was a member of the Technical Evaluation Committee.

These two officers were very useful and cooperative in providing true and accurate information. The Committee did not doubt the evidence provided by by the two officers.

MIN. NO. 13/2010

ADJOURNMENT

And the time being fifty minutes past one o'clock, the meeting was adjourned until later in the afternoon.

Signed HON. THOMAS MWADEGHU, MP

(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE FOURTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON TUESDAY 27TH APRIL 2010 IN THE OLD CHAMBERS, PARLIAMENT BUILDINGS AT 2.30 PM.

PRESENT

Hon. Thomas Mwachugu, MP (Chairperson)

Hon. Benjamin Langat, MP (Vice-Chairperson)

Hon. Peter Mwathi, MP

Hon. Charles M. Nyamai, MP

Hon. Wilson Litole, MP

Hon. Pollyins O. Anyango, MP

Hon. Nemesyus Warugongo, MP

Hon. Abdul Bahari, MP

ABSENT WITH APOLOGY

Hon. Musa Sirma, MP

IN ATTENDANCE

Mr. Julius Ariwomoi

Ms. Wanjiru Ndindiri

KENYA NATIONAL AUDIT OFFICE

Mr. B.F.N. Kiguongo

Mrs. Tabitha Waweru

Mr. Nashon Otieno

MINISTRY OF LOCAL GOVERNMENT

Mr. P.M.G. Waweru

NATIONAL ASSEMBLY

- Clerk Assistant II

- Clerk Assistant III

- Director of Audit

- Assistant Director of Audit

- Assistant Director of Audit

- Deputy Director, Local Authorities
Inspectorate

MIN. NO. 14/2010

CHAIRPERSON'S REMARKS

The Chairperson commenced the meeting with prayers and introductions. He also explained, for the benefit of the witness, the mandate of the Committee, and quoted sections 18 and 23 (d) of the National Assembly (Powers and Privileges) Act, on the powers of the Committee.

MIN. NO. 15/2010

EVIDENCE : THE THEN MEDICAL OFFICER OF HEALTH (MOH), CITY COUNCIL OF NAIROBI (CCN)

Dr. Daniel Nguku, the then Medical Officer of Health and Member of the Tender Committee appeared before the Committee to give evidence.

In the initial stages of giving evidence, the witness attempted to be evasive and wanted to avoid answering questions directly. When the Committee became firm on him, he provided very useful information.

Overall, the Committee found the witness uncooperative, but he however provided substantial evidence. It could not be ruled out that the witness was deeply involved in the whole process of the transaction.

MIN. NO. 16/2010

OUTSTANDING INFORMATION

The Committee directed Dr. Nguku to provide proof of ownership and details of any properties purchased in 2009 and 2010 by himself, his wife and company once his documents are returned by the Kenya Anti-Corruption Commission (KACC).

MIN. NO. 17/2010

ANY OTHER BUSINESS

The Committee was informed that the other witness, Mr. Nelson Otido, former Deputy Town Clerk, was not able to appear before the Committee as he was at a family funeral.

MIN. NO. 18/2010

ADJOURNMENT

And the time being thirty minutes past five o'clock, the meeting was adjourned until Wednesday April 28th 2010 at 9.30am.

Signed HON. THOMAS MWADEGHU, MP

(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE FIFTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON WEDNESDAY 28TH APRIL 2010 IN THE OLD CHAMBERS, PARLIAMENT BUILDINGS AT 9.30 AM.

PRESENT

Hon. Thomas Mwachugu, MP (Chairperson)

Hon. Benjamin Langat, MP (Vice-Chairperson)

Hon. Peter Mwathi, MP

Hon. Charles M. Nyamai, MP

Hon. Wilson Litole, MP

Hon. Pollyins O. Anyango, MP

Hon. Nemesyus Warugongo, MP

Hon. Abdul Bahari, MP

ABSENT WITH APOLOGY

Hon. Musa Sirma, MP

IN ATTENDANCE

Mr. Julius Ariwomoi

Ms. Wanjiru Ndindiri

KENYA NATIONAL AUDIT OFFICE

Mr. B.F.N. Kiguongo

Mrs. Tabitha Waweru

Mr. Nashon Otieno

MINISTRY OF LOCAL GOVERNMENT

Mr. Peter K. Ng'ang'a

NATIONAL ASSEMBLY

- Clerk Assistant II

- Clerk Assistant III

- Director of Audit

- Assistant Director of Audit

- Assistant Director of Audit

- Deputy Director, Local Authorities
Inspectorate

MIN. NO. 19/2010

CHAIRPERSON'S REMARKS

The Chairperson began the meeting with prayers and introductions. He also explained, for the benefit of the witness, the mandate of the Committee, and quoted sections 18 and 23 (d) of the National Assembly (Powers and Privileges) Act, on the powers of the Committee.

MIN. NO. 20/2010

EVIDENCE : THE THEN TENDER COMMITTEE, CITY COUNCIL OF NAIROBI (CCN)

The following members of the Tender Committee appeared before the Committee to give evidence:

- (i) Mr. Kinyua Wamugunda - Ag. Assistant City Engineer/then Deputy Chair of the Tender Committee
- (ii) Mr. G.K. Njamura - Director of Procurement/Secretary to the Committee
- (iii) Mr. Wilson Maritim - Ag. Deputy Director of Environment
- (iv) Dr. Daniel Nguku - the then MOH
- (v) Mr. J. W. Kangethe - Ag. Deputy Town Clerk (Reforms)

The following members of the Tender Committee were absent :

- (i) Mr. Nelson Otido - former Deputy Town Clerk/Chair of the Committee
- (ii) Mr Jacob Munge - City Treasurer
- (iii) Mr. Peter Kibinda - then Director of City Planning

The members of the Tender Committee were subjected to thorough questioning and provided substantial evidence on the matter.

MIN. NO. 21/2010

EVIDENCE : THE THEN SECRETARY TO THE TECHNICAL EVALUATION COMMITTEE, CITY COUNCIL OF NAIROBI

Mr. Alex Musee, the Ag. Deputy Director of Procurement and Secretary to the Technical Evaluation Committee, appeared before the Committee to give evidence. The Committee found it necessary to obtain his personal evidence because, being the secretary of the Evaluation Committee, he was deeply involved in the preparation of the evaluation report that was later disowned by the Technical evaluation Committee.

MIN. NO. 22/2010

OUTSTANDING INFORMATION

The Committee directed Mr. Njamura and Mr. Musee to later provide the complete set of tender documents, and any document from Mr. Kilonzi showing that he allowed M/s Naen Rech Ltd to bid using his land.

MIN. NO. 23/2010

ANY OTHER BUSINESS

Since most of the witnesses had been prosecuted and arraigned in court, the Committee sought to confirm whether the matter is *sub judice*. It was resolved that since the court had not set dates for hearings, the matter was therefore not active in court and the Committee could continue with evidence from witnesses.

And the time being fifty minutes past one o'clock, the meeting was adjourned until 2.30pm.

Signed HON. THOMAS MWADEGHU, MP

(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE SIXTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON WEDNESDAY 28TH APRIL 2010 IN THE OLD CHAMBERS, PARLIAMENT BUILDINGS AT 2.30 PM.

PRESENT

Hon. Thomas Mwadeghu, MP (Chairperson)

Hon. Benjamin Langat, MP (Vice-Chairperson)

Hon. Peter Mwathi, MP

Hon. Wilson Litole, MP

Hon. Pollyins O. Anyango, MP

Hon. Nemesys Warugongo, MP

Hon. Abdul Bahari, MP

ABSENT WITH APOLOGY

Hon. Musa Sirma, MP

Hon. Charles M. Nyamai, MP

IN ATTENDANCE

Mr. Julius Ariwomoi

Ms. Wanjiru Ndindiri

NATIONAL ASSEMBLY

- Clerk Assistant II

- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. B.F.N. Kiguongo

Mrs. Tabitha Waweru

Mr. Nashon Otieno

- Director of Audit

- Assistant Director of Audit

- Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Mr. Peter K. Ng'ang'a

- Deputy Director, Local Authorities
Inspectorate (LAI)

MIN. NO. 25/2010

CHAIRPERSON'S REMARKS

The Chairperson began the meeting with prayers and introductions. He also explained, for the benefit of the witnesses, the mandate of the Committee, and quoted sections 18 and 23 (d) of the National Assembly (Powers and Privileges) Act, on the powers of the Committee.

MIN. NO. 26/2010

EVIDENCE : THE THEN EVALUATION COMMITTEE, CITY COUNCIL OF NAIROBI (CCN)

The following members of the Technical Evaluation Committee appeared before the Committee to give evidence:

- | | | |
|------------------------|---|--|
| (i) Mr. P.T. Odongo | - | then Deputy Director of City Planning |
| (ii) Mr. Alex Musee | - | then Deputy Director of Procurement/Secretary to the Committee |
| (iii) Mr. I.N. Ngacha | - | Ag. Chief Internal Auditor |
| (iv) Mr. David Wanjohi | - | Senior Funeral Superintendent |
| (v) Mr. Matthew Ouko | - | Ag. Senior Procurement Officer |

Those who were absent were :

- | | | |
|------------------------|---|---|
| (i) Ms. Mary Ng'ethe | - | then Director of Legal Affairs/Chair of the Committee |
| (ii) Mr. Dennis Akothe | - | then Chief Valuer |

The Technical Evaluation Committee provided substantial evidence.

MIN. NO. 27/2010

OUTSTANDING INFORMATION

The Committee directed the secretary of the Technical Evaluation Committee to later provide the following documents:

- (a) A copy of the power of attorney signed by Mr. Kilonzi allowing Naen Rech Ltd permission to bid using Kilonzi's land.
- (b) Copy of the title deed that was used by the winning bidder.
- (c) Copy of the tender documents.

MIN. NO. 28/2010

EVIDENCE : THE THEN STATE COUNSEL, MINISTRY OF LOCAL GOVERNMENT

Ms. Edith Torome, current State Counsel in the Ministry of Higher Education, (then State Counsel in the Ministry of Local Government) appeared before the Committee to give evidence.

She informed the Committee that the matter was never brought to her attention and her legal opinion was not sought. She claimed that she was sidelined out of the transaction.

MIN. NO. 29/2010

ANY OTHER BUSINESS

The Committee resolved to issue summons to Ms. Ng'ethe and Mr. Akotha as they had ignored the letters inviting them to give evidence.

The Committee also resolved that Mr. Reuben Rotich, the then Senior Deputy Secretary in the Ministry of Local Government be invited to appear before it to give evidence in the following week.

MIN. NO. 30/2010

ADJOURNMENT

And the time being forty five minutes past five o'clock, the meeting was adjourned until Thursday April 29th 2010 at 9.30am.

Signed HON. THOMAS MWADEGHU, MP

(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE SEVENTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON THURSDAY 29TH APRIL 2010 IN THE OLD CHAMBERS, PARLIAMENT BUILDINGS AT 9.30 AM.

PRESENT

Hon. Thomas Mwachugu, MP (Chairperson)
Hon. Benjamin Langat, MP (Vice-Chairperson)
Hon. Charles M. Nyamai, MP
Hon. Wilson Litole, MP
Hon. Pollyins O. Anyango, MP
Hon. Abdul Bahari, MP
Hon. Musa Sirma, MP

ABSENT WITH APOLOGY

Hon. Peter Mwathi, MP
Hon. Nemesys Warugongo, MP

IN ATTENDANCE

Mr. Julius Ariwomoi - Clerk Assistant II
Ms. Wanjiru Ndindiri - Clerk Assistant III

NATIONAL ASSEMBLY

KENYA NATIONAL AUDIT OFFICE

Mr. B.F.N. Kiguongo - Director of Audit
Mrs. Tabitha Waweru - Deputy Director of Audit
Mr. Nashon Otieno - Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Mr. Peter Ng'ang'a - Deputy Director, LAI

MIN. NO. 31/2010

CHAIRPERSON'S REMARKS

The Chairperson began the meeting with prayers and introductions. He also explained, for the benefit of the witnesses, the mandate of the Committee, and quoted sections 18 and 23 (d) of the National Assembly Powers and Privileges Act, on the powers of the Committee.

MIN. NO. 32/2010

EVIDENCE: THE THEN TENDER COMMITTEE, CITY COUNCIL OF NAIROBI (CCN)

The following members of the Tender Committee appeared to give evidence to the Committee :

- (i) Mr. Kinyua Wamugunda - Ag. Assistant City Engineer/Deputy Chair of the Tender Committee
- (ii) Mr. G.K. Njamura - Director of Procurement/Secretary to the Committee
- (iii) Mr. Wilson Maritim - Ag. Deputy Director of Environment
- (iv) Mr. J. W. Kangethe - Ag. Deputy Town Clerk (Reforms)

The following were absent:

- (i) Mr. Nelson Otido - former Deputy Town Clerk/Chair of the Committee
- (ii) Mr Jacob Munge - then City Treasurer
- (iii) Mr. Peter Kibinda - then Director of City Planning
- (iv) Dr. Daniel Nguku - then Medical Officer of Health (MOH)

The Members of the Tender Committee present provided substantial evidence, however the Secretary of the Tender Committee: -

- (i) could not confirm that all the documents required for the tender were available.
- (ii) also confirmed that the Tender Committee proceeded to award the contract despite being aware of the memo from the Planning Department dated 11/11/2008 raising objections on the suitability of the land.
- (iii) said that he was unable to provide the tender documents because the Kenya Anti-Corruption Commission had confiscated them and that no copies of the said documents were available.

MIN. NO. 33/2010

EVIDENCE: THE THEN CHIEF PROCUREMENT OFFICER, MINISTRY OF LOCAL GOVERNMENT

Mr. Boniface Misera, Chief Supply Chain Manager (previously Chief Procurement Officer), Ministry of Local Government, also appeared before the Committee and gave evidence on the matter.

The officer provided useful information to the Committee, though he was not very cooperative in answering questions.

MIN. NO. 34/2010

ADJOURNMENT

And the time being fifty five minutes past twelve o'clock, the meeting was adjourned until 2.30pm.

Signed HON. THOMAS MWADEGHU, MP

(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE EIGHTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON THURSDAY 29TH APRIL 2010 IN THE OLD CHAMBERS, PARLIAMENT BUILDINGS AT 2.30 PM.

PRESENT

Hon. Thomas Mwachugu, MP (Chairperson)
Hon. Benjamin Langat, MP (Vice-Chairperson)
Hon. Charles M. Nyamai, MP
Hon. Wilson Litole, MP
Hon. Pollyins O. Anyango, MP
Hon. Abdul Bahari, MP
Hon. Musa Sirma, MP

ABSENT WITH APOLOGY

Hon. Peter Mwathi, MP
Hon. Nemesys Warugongo, MP

ATTENDANCE BY NON - MEMBER OF THE COMMITTEE

Hon. Shakeel Shabbir, MP (Chair, Departmental Committee on Local Authorities)

IN ATTENDANCE

Mr. Julius Ariwomoi
Ms. Wanjiru Ndindiri

NATIONAL ASSEMBLY

- Clerk Assistant II
- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. B.F.N. Kiguongo
Mrs. Tabitha Waweru
Mr. Nashon Otieno

- Director of Audit
- Assistant Director of Audit
- Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Mr. Peter K. Ng'ang'a

- Deputy Director, Local Authorities
Inspectorate

MIN. NO. 35/2010

CHAIRPERSON'S REMARKS

The Chairperson began the meeting with prayers and introductions. He also explained, for the benefit of the witness, the mandate of the Committee, and quoted sections 18(3) and 23(g) of the National Assembly Powers and Privileges Act, on the powers of the Committee.

MIN. NO. 36/2010

EVIDENCE : THE DEPUTY COMMISSIONER OF LANDS (VALUATION), MINISTRY OF LANDS

The Committee was informed that the first witness scheduled to appear during the afternoon session, Mr. Herman Chavera, had been arrested earlier in the day in relation to the cemetery land saga, and would not be available.

The second witness, Mr. Anthony Itui, the Deputy Commissioner of Lands (Valuation), formerly known as the Chief Government Valuer, appeared before the Committee to give evidence.

He provided very substantial information to the Committee on the matter.

MIN. NO. 37/2010

ADJOURNMENT

And the time being forty minutes past four o'clock, the meeting was adjourned until Tuesday, 4th May 2010 at 9.30am.

Signed HON. THOMAS MWADEGHU, MP

(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE NINTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON TUESDAY 4TH MAY 2010 IN THE CONFERENCE HALL, 1ST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.30 AM.

PRESENT

Hon. Thomas Mwadeghu, MP (Chairperson)

Hon. Benjamin Langat, MP (Vice-Chairperson)

Hon. Wilson Litole, MP

Hon. Pollyins O. Anyango, MP

Hon. Abdul Bahari, MP

Hon. Musa Sirma, MP

Hon. Nemesyus Warugongo, MP

ABSENT WITH APOLOGY

Hon. Peter Mwathi, MP

Hon. Charles M. Nyamai, MP

IN ATTENDANCE

Mr. Julius Ariwomoi

Ms. Wanjiru Ndindiri

KENYA NATIONAL AUDIT OFFICE

Mr. Anderson Kariuki

Mrs. Tabitha Waweru

Mr. Nashon Otieno

NATIONAL ASSEMBLY

Clerk Assistant II

Clerk Assistant III

Deputy Director of Audit

Assistant Director of Audit

Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Mrs. Ruth Kiiru

Director, Local Authorities
Inspectorate

MIN. NO. 38/2010

CHAIRPERSON'S REMARKS

The Chairperson began the meeting with prayers and introductions. He also explained the need for accountability institutions (such as LAFAC and KACC) to be holding joint meetings, share information and complement each other, for public interest and the interest of the country.

MIN. NO. 39/2010

EVIDENCE : THE DIRECTOR, KENYA ANTI-CORRUPTION COMMISSION (KACC)

Dr. John P. Mutonyi, Ag. Director/Chief Executive Officer, KACC, accompanied by:

- (i) Mr. Kennedy Bosire - Principal Forensic Investigator
- (ii) Mr. Enoch Otiko - Forensic Investigator

appeared before the Committee and gave evidence on their findings in the cemetery land saga and the progress so far made.

He gave a brief background of how KACC was alerted on the matter and how the investigations progressed.

He also provided information on the present status of the matter.

MIN. NO. 40/2010

ADJOURNMENT

And the time being fifteen minutes past twelve o'clock, the meeting was adjourned until 2.30pm.

Signed HON. THOMAS MWADEGHU, MP

(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE TENTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON TUESDAY 4TH MAY 2010 IN THE CONFERENCE HALL, 1ST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 2.30 PM.

PRESENT

Hon. Thomas Mwachugu, MP (Chairperson)

Hon. Benjamin Langat, MP (Vice-Chairperson)

Hon. Wilson Litole, MP

Hon. Pollyins O. Anyango, MP

Hon. Abdul Bahari, MP

Hon. Musa Sirma, MP

Hon. Nemesyus Warugongo, MP

ABSENT WITH APOLOGY

Hon. Peter Mwathi, MP

Hon. Charles M. Nyamai, MP

IN ATTENDANCE

Mr. Julius Ariwomoi

Ms. Wanjiru Ndindiri

KENYA NATIONAL AUDIT OFFICE

Mr. Anderson Kariuki

Mrs. Tabitha Waweru

Mr. Nashon Otieno

MINISTRY OF LOCAL GOVERNMENT

Mrs. Ruth Kiiru

NATIONAL ASSEMBLY

- Clerk Assistant II

- Clerk Assistant III

- Deputy Director of Audit

- Assistant Director of Audit

- Assistant Director of Audit

- Director, Local Authorities

Inspectorate

MIN. NO. 41/2010

CHAIRPERSON'S REMARKS

The Chairperson began the meeting with prayers and introductions. He also explained, for the benefit of the witness, the mandate of the Committee, and quoted sections 18(3) and 23(g) of the National Assembly Powers and Privileges Act, on the powers of the Committee.

MIN. NO. 42/2010

EVIDENCE : EDWARD N. OMOTII - ADVOCATE

Mr. Edward N. Omotii, E.N. Omotii & Advocates, the lawyer appointed by the City Council of Nairobi to transact for the purchase of the land, appeared before the Committee to give evidence.

Initially, he wanted to decline to give evidence claiming that the matter was in court and therefore sub judice. However, he was informed that the matter was not yet active in court and that it was the wish of the Committee and in the interest of witnesses to be accorded an opportunity to defend themselves on the matter as demanded by the rules of natural justice.

He then proceeded to provide useful information to the Committee.

MIN. NO. 43/2010

PAPERS LAID

The witness laid on the table the following documents:

- (i) The two charge sheets indicating those arrested arraigned in court.*
- (ii) Certified copy of the title deed he received from CCN on 26/11/2008.*
- (iii) Copies of the two cheques totalling Kshs. 283million.*
- (iv) His statement to KACC on the issue of money transfer.*
- (v) Copy of the sale agreement that was signed.*

MIN. NO. 44/2010

ADDITIONAL INFORMATION

The advocate was directed to refund the interest of about Ksh. 1.8million that accrued in the account of the transaction to the Ministry of Local Government.

MIN. NO. 45/2010

ADJOURNMENT

And the time being forty five minutes past four o'clock, the meeting was adjourned until Wednesday, 5th May 2010 at 9.30am.

Signed HON. THOMAS MWADEGHU, MP

(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE ELEVENTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON WEDNESDAY 5TH MAY 2010 IN THE CONFERENCE HALL, 1ST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.30 AM.

PRESENT

Hon. Thomas Mwadeghu, MP (Chairperson)
Hon. Benjamin Langat, MP (Vice-Chairperson)
Hon. Wilson Litole, MP
Hon. Musa Sirma, MP

ABSENT WITH APOLOGY

Hon. Peter Mwathi, MP
Hon. Charles M. Nyamai, MP
Hon. Pollyins O. Anyango, MP
Hon. Abdul Bahari, MP
Hon. Nemesyus Warugongo, MP

IN ATTENDANCE

Mr. Julius Ariwomoi
Ms. Wanjiru Ndindiri

NATIONAL ASSEMBLY

- Clerk Assistant II
- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. Anderson Kariuki
Mr. Nashon Otieno

- Deputy Director of Audit
- Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Mrs. Ruth Kiiru

- Director, Local Authorities
Inspectorate

MIN. NO. 46/2010

CHAIRPERSON'S REMARKS

The Chairperson began the meeting with prayers and introductions. He also explained, for the benefit of the witness, the mandate of the Committee, and quoted sections 18(3) and 23(g) of the National Assembly (Powers and Privileges) Act, on the powers of the Committee.

MIN. NO. 47/2010

EVIDENCE : THE THEN PERMANENT SECRETARY,
MINISTRY OF LOCAL GOVERNMENT

Mr. Sammy Kirui, the then Accounting Officer, Ministry of Local Government appeared before the Committee to give evidence.

The witness provided substantial evidence on the matter. The Permanent Secretary (PS) informed the Committee that the Ministry was not the procuring entity, and thus did not have all the details about the transaction. He claimed that the Council handled the matter and said that he approved the purchase because there were no queries raised concerning the transactions prior to his approval. However, the PS could not disprove substantial documentary evidence indicating that he was deeply involved in the transaction of the land.

The Permanent Secretary (PS) also claimed that he verbally briefed the Minister throughout the whole procurement process. However, the Committee noted that the PS had no documentary evidence to back up his claim.

MIN. NO. 48/2010

PAPER LAID

The witness laid the following paper before the Committee:

The memo from Mr. Kibinda to the Permanent Secretary that led him to approve the purchase.

MIN. NO. 49/2010

ANY OTHER BUSINESS

The Committee was informed that M/s P.C. Onduso Advocates & M/s Davis Osiemo Advocates had declined to appear before it to give evidence, citing sub judice rule. After extensive deliberations, the Committee resolved that since the matter is not active in court, they should be summoned. The witnesses who deliberately misled the Committee regarding receipt of money for the transaction, i.e. Mr. Misera, Dr. Nguku and Mr. Musee should also be summoned.

The Committee also requested that the Controller & Auditor General undertakes special audits for all the major procurements (i.e. involving huge sums) at the Nairobi City Council for the last five years.

MIN. NO. 50/2010

ADJOURNMENT

And the time being five minutes past one o'clock, the meeting was adjourned until 2.30pm.

Signed HON. THOMAS MWADEGHU, MP

(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE TWELFTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON WEDNESDAY 5TH MAY 2010 IN THE CONFERENCE HALL, 1ST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 2.30 PM.

PRESENT

Hon. Thomas Mwadeghu, MP (Chairperson)

Hon. Benjamin Langat, MP (Vice-Chairperson)

Hon. Wilson Litole, MP

Hon. Musa Sirma, MP

Hon. Abdul Bahari, MP

ABSENT WITH APOLOGY

Hon. Peter Mwathi, MP

Hon. Charles M. Nyamai, MP

Hon. Pollyins O. Anyango, MP

Hon. Nemesyus Warugongo, MP

IN ATTENDANCE

Mr. Julius Ariwomoi

Ms. Wanjiru Ndindiri

NATIONAL ASSEMBLY

- Clerk Assistant II

- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. Anderson Kariuki

Mr. Nashon Otieno

- Deputy Director of Audit

- Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Mrs. Ruth Kiiru

- Director, Local Authorities

Inspectorate

MIN. NO. 51/2010

CHAIRPERSON'S REMARKS

The Chairperson began the meeting with prayers and introductions. He also explained, for the benefit of the witness, the mandate of the Committee, and quoted section 18(3) and 23(g) of the National Assembly Powers and Privileges Act, on the powers of the Committee.

MIN. NO. 52/2010

EVIDENCE : THE THEN SENIOR DEPUTY SECRETARY,
MINISTRY OF LOCAL GOVERNMENT

Mr. Reuben Rotich, the then Senior Deputy Secretary, Ministry of Local Government appeared to give evidence before the Committee.

The witness provided substantial evidence.

The Committee noted that the witness did not exercise due diligence in verifying the necessary information and documents before releasing the funds.

MIN. NO. 53/2010

EVIDENCE : THE HEAD OF OPERATIONS, BANK OF
AFRICA

Mr. James Gichuki, Head of Operations, Bank of Africa, accompanied by Ms. Anne Kahindi, Assistant Manager, Legal Department appeared before the Committee to give evidence.

He provided detailed information on the transactions of the funds in the bank.

MIN. NO. 54/2010

OUTSTANDING INFORMATION

The Committee requested the Head of Operations to later provide copies of the lawyers' instructions regarding the bank transactions. He was also requested to provide the names of the payees and drawees of the personal or banker's cheques that were issued from the account of the funds.

MIN. NO. 55/2010

ADJOURNMENT

And the time being ten minutes past five o'clock, the meeting was adjourned until Thursday, 6th May 2010 at 9.30am.

Signed HON. THOMAS MWADEGHU, MP

(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE THIRTEENTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON THURSDAY 6TH MAY 2010 IN THE CONFERENCE HALL, 1ST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 9.30 AM.

PRESENT

Hon. Thomas Mwachugu, MP (Chairperson)

Hon. Benjamin Langat, MP (Vice-Chairperson)

Hon. Wilson Litole, MP

Hon. Musa Sirma, MP

Hon. Nemesyus Warugongo, MP

ABSENT WITH APOLOGY

Hon. Peter Mwachugu, MP

Hon. Charles M. Nyamai, MP

Hon. Pollyins O. Anyango, MP

Hon. Abdul Bahari, MP

IN ATTENDANCE

Mr. Julius Ariwomoi

Ms. Wanjiru Ndindiri

KENYA NATIONAL AUDIT OFFICE

Mr. Anderson Kariuki

Mrs. Tabitha Waweru

Mr. Nashon Otieno

MINISTRY OF LOCAL GOVERNMENT

Mrs. Ruth Kiiru

NATIONAL ASSEMBLY

- Clerk Assistant II

- Clerk Assistant III

- Deputy Director of Audit

- Assistant Director of Audit

- Assistant Director of Audit

- Director, Local Authorities

Inspectorate

MIN. NO. 56/2010

CHAIRPERSON'S REMARKS

The Chairperson began the meeting with prayers and introductions. He also explained, for the benefit of the witness, the mandate of the Committee, and quoted section 18(3) and 23(g) of the National Assembly Powers and Privileges Act, on the powers of the Committee.

MIN. NO. 57/2010

**EVIDENCE : THE MAYOR, CITY COUNCIL OF NAIROBI
(CCN)**

Mr. Godfrey Majiwa, His Worship the Mayor, City Council of Nairobi, appeared before the Committee and gave evidence.

The Mayor provided useful information to the Committee. The Committee established that the Mayor was once an employee of Owino Kojwando & Co. Advocates, a law firm that was a recipient of Kshs. 10 million from this transaction.

He testified that since he's a political leader, he was not involved at all in the procurement process, as the executive side of the Council, headed by the Town Clerk, handles such issues. He also said that he was never involved at any point, except when he was called to sign the sale agreement. He only learnt later from press reports that the sale was fraudulent.

He believed that he was a signatory to the Council, hence the reason he signed the sale agreement and said that this was a tradition he found ongoing from earlier times.

MIN. NO. 58/2010

**EVIDENCE : THE DEPUTY PRIME MINISTER & MINISTER
FOR LOCAL GOVERNMENT**

Hon. Musalia Mudavadi, EGH, MP, accompanied by :

- (i) Mr. Kibisu Kabatesi - Director of Communications
- (ii) Mr. Kenneth Onacha Mbeka - Principal Liaison Officer

appeared before the Committee and gave evidence on the matter.

The Minister confirmed that the money was part of the Ministry's vote in the financial year 2008/2009.

He also provided useful information to the Committee. The Minister confirmed that he was aware of the need for land for another cemetery through the PS when the procurement process began, and that the Permanent Secretary also informed him when the process was completed confirming that everything was alright. The Minister stated that he was not informed of any issues raised during the procurement process on the matter, and no issues were raised until a question was asked on the floor of the House in June 2009.

The Minister said that he was not adequately briefed by the Permanent Secretary in the Ministry during the procurement process, and that there was no documentary evidence to prove otherwise. No documents were either forwarded or copied to him during the procurement process so as to keep him apprised. All correspondence from the council ended at the Permanent Secretary's office, while those from the Ministry were never copied to him.

MIN. NO. 59/2010

ADJOURNMENT.

And the time being forty five minutes past one o'clock, the meeting was adjourned until 2.30pm.

Signed HON. THOMAS MWADEGHU, MP
(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE FOURTEENTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT FOR THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON THURSDAY 6TH MAY 2010 IN THE CONFERENCE HALL, 1ST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 2.30 PM.

PRESENT

Hon. Thomas Mwachugu, MP (Chairperson)

Hon. Benjamin Langat, MP (Vice-Chairperson)

Hon. Wilson Litole, MP

Hon. Nemesyus Warugongo, MP

ABSENT WITH APOLOGY

Hon. Peter Mwathi, MP

Hon. Charles M. Nyamai, MP

Hon. Pollyins O. Anyango, MP

Hon. Abdul Bahari, MP

Hon. Musa Sirma, MP

IN ATTENDANCE

Mr. Julius Ariwomoi

Ms. Wanjiru Ndindiri

NATIONAL ASSEMBLY

- Clerk Assistant II

- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. Anderson Kariuki

Mrs. Tabitha Waweru

Mr. Nashon Otieno

- Deputy Director of Audit

- Assistant Director of Audit

- Assistant Director of Audit

MINISTRY OF LOCAL GOVERNMENT

Mrs. Ruth Kiiru

- Director, Local Authorities

Inspectorate

MIN. NO. 60/2010

EVIDENCE : THE MAYOR, CITY COUNCIL OF NAIROBI

Mr. Godfrey Majiwa, His Worship the Mayor, City Council of Nairobi, appeared again before the Committee to give evidence.

He confirmed that Mr. Kilonzi's and Naen Rech Ltd's names were not jointly listed on the sale agreement ; they were on the tender resolutions of the Tender Committee. He only saw the tender resolutions, not the tender documents for the sale, and he did not retain any copies of the documents he signed.

He also could not produce the legal instrument giving him authority to sign contracts on behalf of the Council. The Local Government Act only authorized him to witness the seal of the Council but not to execute council documents.

MIN. NO. 61/2010

ADJOURNMENT

And the time being forty five minutes past three o'clock, the meeting was adjourned until Tuesday 11th May 2010 at 10.00am.

Signed HON. THOMAS MWADEGHU, MP.

(Chairperson)

Date 18 JUNE 2010

MINUTES OF THE FIFTEENTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT ON THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON FRIDAY 18TH JUNE 2010 IN THE BAOBAB ROOM, SERENA BEACH HOTEL, MOMBASA AT 9.00 AM.

PRESENT

Hon. Thomas Mwadeghu, MP (Chairperson)
Hon. Benjamin Langat, MP (Vice-Chairperson)
Hon. Wilson Litole, MP
Hon. Pollyins O. Anyango, MP
Hon. Abdul Bahari, MP

ABSENT WITH APOLOGY

Hon. Peter Mwathi, MP
Hon. Nemesyus Warugongo, MP
Hon. Charles M. Nyamai, MP
Hon. Musa Sirma, MP

IN ATTENDANCE

Mr. Julius Ariwomoi
Ms. Wanjiru Ndindiri

NATIONAL ASSEMBLY

- Clerk Assistant II
- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. Anderson Kariuki - Deputy Director of Audit

MIN. NO. 63/2010

CONSIDERATION OF SITTING PROGRAMME

The Committee considered and approved its programme for the report writing session.

MIN. NO. 64/2010

CONSIDERATION OF DRAFT ANNUAL REPORT

The Committee finalized its recommendations on the sections dealing with the CDF accounts and UDD projects.

MIN. NO. 65/2010

CONSIDERATION OF DRAFT REPORT ON SPECIAL AUDIT REPORT ON THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI

The Committee received a brief overview of the report's layout before commencing on deliberations and amendments.

MIN. NO. 66/2010

ADJOURNMENT

And the time being one o'clock, the meeting was adjourned until 2.30pm.

Signed HON. BENJAMIN LANG'AT, MP

(Chairperson)

Date 29 JUNE 2010

MINUTES OF THE SIXTEENTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT ON THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON FRIDAY 18TH JUNE 2010 IN THE BAOBAB ROOM, SERENA BEACH HOTEL, MOMBASA AT 2.30 PM.

PRESENT

Hon. Thomas Mwadeghu, MP (Chairperson)
Hon. Benjamin Langat, MP (Vice-Chairperson)
Hon. Wilson Litole, MP
Hon. Pollyins O. Anyango, MP
Hon. Abdul Bahari, MP

ABSENT WITH APOLOGY

Hon. Peter Mwathi, MP
Hon. Nemesyus Warugongo, MP
Hon. Charles M. Nyamai, MP
Hon. Musa Sirma, MP

IN ATTENDANCE

Mr. Julius Ariwomoi
Ms. Wanjiru Ndindiri

NATIONAL ASSEMBLY

- Clerk Assistant II
- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. Anderson Kariuki - Deputy Director of Audit

MIN. NO. 67/2010

CONFIRMATION OF MINUTES

The minutes of the following sittings were confirmed by the Members present and signed by the Chairperson:

- i) Minutes of the 1st sitting held on Thursday 8th April 2010 at 10.00am.
- ii) Minutes of the 2nd sitting held on Wednesday 21st April 2010 at 10.00am.
- iii) Minutes of the 3rd sitting held on Tuesday 27th April 2010 at 9.30am.
- iv) Minutes of the 4th sitting held on Tuesday 27th April 2010 at 2.30pm.
- v) Minutes of the 5th sitting held on Wednesday 28th April 2010 at 9.30am.
- vi) Minutes of the 6th sitting held on Wednesday 28th April 2010 at 2.30pm.
- vii) Minutes of the 7th sitting held on Thursday 29th April 2010 at 9.30am.
- viii) Minutes of the 8th sitting held on Thursday 29th April 2010 at 2.30pm.

- ix) Minutes of the 9th sitting held on Tuesday 4th May 2010 at 9.30am.
- x) Minutes of the 10th sitting held on Tuesday 4th May 2010 at 2.30pm.
- xi) Minutes of the 11th sitting held on Wednesday 5th May 2010 at 9.30am.
- xii) Minutes of the 12th sitting held on Wednesday 5th May 2010 at 2.30pm.
- xiii) Minutes of the 13th sitting held on Thursday 6th May 2010 at 9.30am.
- xiv) Minutes of the 14th sitting held on Thursday 6th May 2010 at 2.30pm.

MIN. NO. 68/2010

MATTERS ARISING

- i) Under Min. No. 11/2010, the Committee directed that a letter be written to the Controller and Auditor General as soon as possible requesting an audit for any tenders of over Kshs.10 million awarded by the then Director of Procurement, CCN, Mr. G.K. Njamura.
- ii) Under Min. No. 17/2010, the Committee resolved to meet with Mr. Nelson Otido, the former Deputy Town Clerk, to receive evidence before tabling its report.
- iii) Under Min. No. 29/2010 and Min. No. 49/2010, the Committee resolved that legal advice could be sought from the Parliamentary Legal Counsel to explore possibilities of summoning those individuals already charged in court e.g. Ms. Ng'ethe, and others.
- iv) Under Min. No. 44/2010, the Committee directed that a reminder letter be written to the Town Clerk to follow up on the refund of the amount of Kshs.1,898.082.03, being interest accrued from the money for the purchase of land and which was kept by the lawyer that transacted on the land on behalf of the council, Mr. E.N. Omotii.
- v) Under Min. No. 49/2010, the Committee resolved to request the Controller and Auditor General to conduct a special audit of all major procurements in the City Council of Nairobi, involving huge sums of money for the last five years.
- vi) Under Min. No. 54/2010, the Committee directed that reminder letter be sent to the Bank of Africa requesting for the documents sought in the last meeting with the officials of the bank.

MIN. NO. 69/2010

ADJOURNMENT

And the time being five minutes past four o'clock, the meeting was adjourned until Saturday 19th April 2010 at 9.00am.

Signed HON. BENJAMIN LANG'AT, MP

(Chairperson)

Date 29 JUNE 2010

MINUTES OF THE SEVENTEENTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT ON THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON SATURDAY 19TH JUNE 2010 IN THE BAOBAB ROOM, SERENA BEACH HOTEL, MOMBASA AT 9.00 AM.

PRESENT

Hon. Benjamin Langat, MP (Ag. Chairperson)

Hon. Wilson Litole, MP

Hon. Pollyins O. Anyango, MP

Hon. Abdul Bahari, MP

ABSENT WITH APOLOGY

Hon. Thomas Mwadeghu, MP

Hon. Peter Mwathi, MP

Hon. Nemesyus Warugongo, MP

Hon. Charles M. Nyamai, MP

Hon. Musa Sirma, MP

IN ATTENDANCE

Mr. Julius Ariwomoi

Ms. Wanjiru Ndindiri

NATIONAL ASSEMBLY

- Clerk Assistant II

- Clerk Assistant III

KENYA NATIONAL AUDIT OFFICE

Mr. Anderson Kariuki

- Deputy Director of Audit

MIN. NO. 70/2010

CONSIDERATION OF DRAFT REPORT ON SPECIAL AUDIT REPORT ON THE PURCHASE OF CEMETERY LAND BY THE CITY COUNCIL OF NAIROBI (CCN)

The Committee reviewed the draft recommendations and made amendments. Emphasis was put on the need to quote specific sections of the law which were flouted by the officers involved.

MIN. NO. 71/2010

OUTSTANDING ISSUES

Owing to the sensitivity of the matter, the Committee opted to defer finalization of recommendations touching on the Minister, the Permanent Secretary and the Mayor to a subsequent meeting in Nairobi when majority of the Committee Members are present.

The Committee could not ascertain the legitimacy of Cibiya Worldwide Ltd, the off-shore company, which is allegedly behind prominent personalities. The Committee therefore resolved to consider visiting China, especially the Registrar of Companies in China, where the company has its headquarters, to conduct further investigations.

MIN. NO. 72/2010

ADJOURNMENT

And the time being fifteen minutes past one o'clock, the meeting was adjourned until a date to be announced later.

Signed HON. BENJAMIN LANG'AT, MP

(Chairperson)

Date 29 JUNE 2010

MINUTES OF THE EIGHTEENTH SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE ON THE SPECIAL AUDIT REPORT ON THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI, HELD ON FRIDAY 25TH JUNE 2010 IN COMMITTEE ROOM NO. 9, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT

Hon. Thomas Mwadeghu, MP (Chairperson)

Hon. Wilson Litole, MP

Hon. Nemesyus Warugongo, MP

Hon. Abdul Bahari, MP

Hon. Peter Mwathi, MP

Hon. Musa Sirma, MP

ABSENT WITH APOLOGY

Hon. Benjamin Lang'at, MP

Hon. Pollyins O. Anyango, MP

Hon. Charles M. Nyamai, MP

IN ATTENDANCE

Ms. Wanjiru Ndindiri

NATIONAL ASSEMBLY

Clerk Assistant III

MIN. NO. 73/2010

ADOPTION OF THE SPECIAL AUDIT REPORT ON THE PURCHASE OF LAND FOR CEMETERY BY THE CITY COUNCIL OF NAIROBI (CCN)

The Committee reviewed the draft report and finalized its recommendations. Subsequently, the report was unanimously adopted by the Committee.

The Chairperson commended the Members for their commitment and dedication, which led to the production of the report.

MIN. NO. 74/2010

ADJOURNMENT

And the time being twenty minutes past twelve o'clock, the meeting was adjourned until Tuesday 29th June 2010 at 10am.

Signed HON. BENJAMIN LANG'AT, MP

(Chairperson)

Date 29 JUNE 2010

DEPARTMENTAL COMMITTEE

ON

LOCAL AUTHORITIES

**REPORT ON THE PROCUREMENT OF
CEMETERY LAND**

BY THE CITY COUNCIL OF NAIROBI

PREFACE

Mr. Speaker Sir,

Departmental Committee on Local Authorities is established under Standing Order No.198 (1); its mandate pursuant to Standing Order 198(3) is:-

- a) *to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;*
- b) *to study the programme and policy objectives of the Ministries (and Local Authorities) and departments and the effectiveness for implementation;*
- c) *to study and review all legislation referred to it;*
- d) *to study, assess and analyze the relative success of Ministries and departments as measured by the results obtained as compared with its stated objective;*
- e) *to investigate and inquire into all matters relating to all assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister and;*
- f) *to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.*

The Committee comprises of the following Members:

Hon. Ahmed Shakeel Shabbir, M.P. -----**Chairperson**

Hon. Mwalimu Mwahima, M.P.

Hon. Joshua Kutuny, M.P.

Hon. Stanley Githunguri, M.P.

Hon. Gideon Konchella, M.P.

Hon. Fahim Twaha, M.P.

Hon. Mohammed H. Gabbow, M.P.

Hon. David Ngugi, M.P.

Hon. Maitha Gideon Mungaro, M.P.

Mr. Speaker Sir,

Your office ordered the Committee to investigate and to file a report on the procurement of Cemetery Land by the City Council of Nairobi after a question by private notice was asked by Hon. Linturi to the Minister for Local Government.

Mr. Speaker Sir,

The Committee has carried out the investigations and has taken evidence from many witnesses and has now compiled the attached report.

Mr. Speaker Sir,

The Committee is grateful to you and to the Office of the Clerk for providing the requisite technical support.

Mr. Speaker Sir,

On behalf of the Committee, it is now my pleasant duty to lay on the Table of the House the report of the Committee pursuant to the provisions of Standing Order 181(3).

REPORT ON THE PROCUREMENT OF CEMETERY LAND BY NAIROBI CITY COUNCIL

BACKGROUND

Mr Tom Sipul of Kenya Wildlife Service provided the following information:-

The plot in question was formally part of L.R. No. 10029 which had a size of 8,912 acres registered in 1951 in favour of Kenya Meat Commission(KMC) for a term of 99 years.

KMC surrendered the land back to the Government on 31st December 1970 so that it could be reserved for the Ministry of Agriculture and Livestock Development for a holding ground.

In 1982, the Government sub-divided the plot into two portions namely:-

- i) L.R. No. 10029/1 measuring 6000 acres allocated to a group of squatters who were occupying it at the time.

From the evidence adduced it is clear that one of the squatters on L.R NO. 10029/1 by the name Marinie Ole Tiranti Makaita apparently allowed one Henry Kilonzi to lease his land for agricultural purposes.

After the death of Marinie Ole Tiranti Makaita in 2002, Henry Kilonzi obtained a title for the land which is now known as L R. No. 14759/1 in Athi River Township. It is the sale of this land to Nairobi City Council which is under investigations.

- ii) L.R. NO. 10029/II measuring 2912 acres (1,179) approximately reserved for the Ministry of Agriculture and Livestock Development for sheep and goat rearing-Reservation letter was dated 23rd March 1982.

On 7th May, 1996, the Permanent Secretary, Ministry of Agriculture and Livestock Development vide his letter Ref. MALD/LAND.1Vol./161 relinquished the Ministry's interest on 2,500 acres for allocation to KMC thus leaving a balance of 412 acres.

In the same letter it is stated that his Ministry had decided that decided that 250 acres be allocated to Masai Impex and the balance of 162 acres be left in the Ministry's name.

Consequently, 2500 acres were allocated to Kenya Meat Commission vide a letter of allotment Ref. No. 64408/233 of 9th July, 1998.

Another 250 acres (101.2 ha) were allocated to M/S Masai Impex Ltd who are the owner vide a letter of allotment Ref. No. 64408/230 of 25th June, 1996 at a stand premium of Ksh 3.6 million and annual rent of Ksh. 720,000/=p.a.

This plot is now surveyed as L.R No. 23139 and title No. I.R 70443/1 registered on 9th September, 1986.

On the remaining portion (after item c and d) there is a Mr. Francis Mayaka who was allowed to horticultural farming on a 125 acres plot on temporary basis by the ministry of Agriculture and Livestock Development.

The Kenya Wildlife Service has complained of the above developments stating that the land L.R 10029/II which is adjacent to the Nairobi National Park is used as a Wildlife Corridor.

He also stated that the area is not suitable for a cemetery because it is rocky and the soil is not six feet deep.

EVIDENCE ADDUCED BY VARIOUS WITNESSES

Richard Ngangi

This witness testified as follows:

My names are Richard Ngangi and I retired in 2002 from Portland Cement. I am a farmer in Mavoko area where I went in 1971. In 1970 the then President, Hon. Daniel Arap Moi gave a group of us about 6,000 acres. The land was planned in 1971 and thereafter subdivision ensued.

The land was divided into 64 plots and 62 people were allocated one plot each leaving one plot for a church and the other for public utility. Marinie Ole Tiranti Makaita also got his letter of allocation. I produce a copy of the allocation letter. It is marked W1. Each of us paid Kshs. 5,000 for the planning and processing of the titles.

In 1984 those of us who had paid got their titles. Our surveyor was Gikonyo Mwangi. All the plots were fully occupied.

I hear that someone is claiming to have been given land by President Moi in 1991 in the same area but this cannot be possible because all the plots had owners. I knew all the 62 allottees. There were 64 plots. One of these plots was given to the Church and the other for Shopping Centre. The material land was given to Marinie Ole Tiranti Makaita. It is number LR. 14759. I live near this shamba and I have never heard that the deceased sold this land to anybody.

Bishop William Nkaangi

This witness testified as follows:

I am a Bishop with Pentecostal Churches. The late Marinie Ole Tiranti Makaita was a husband to my sister Agnes Nenkao. Marinie and his family lived on the disputed land and I used to visit them there. My sister was cultivating part of the land and a friend of the family, Mr. Kilonzi was also cultivating part of the land. The remaining part was used for grazing their animals. In 2002 Marinie died and his family moved back to his father's land as his mother became mentally sick and needed assistance.

The land parcel that belonged to the late Marinie was LR.14759. On or about 2003, my sister came to my home and informed me that she had gone to their above land and had found that Kilonzi had pulled down her house and had used the iron sheets to build a shed for his animals. She was quite shaken but I assured her that all would be well as I would take her to the land office where the land issue would be sorted out.

When we visited the land office we found the file and the letters of allotment in the name of her late husband but my sister was told she must produce the letters of administration to enable the land officer to transfer the land to her name. I helped her to file a succession suit but before she got the letters of administration, a School was put up on the land by people who said they got the land from Kilonzi. When we asked Kilonzi how he sold the land he said we should not bother him as he had been given the land by the President Moi.

Buckson Semei

This witness testified as follows:

I was a member of the Committee dealing with the Shamba in question. A group of about 62 people were given land by President Moi. We had to pay Ksh. 5,000 to the surveyor so that we could get our title deeds. I was the treasurer and I used to receive this money and then I would forward it to the Surveyor. I know the land in question belonged to Marinie Ole Tiranti Makaita. He never informed me he was selling the land and I don't know how Kilonzi got the land. He was not one of the original beneficiaries.

Agnes Nenka Marinie

This witness testified as follows:

I married Marinie Ole Tiranti Makaita in 1982 and we got our first child in 1984. My husband died in 2002.

One day after the 1984 drought, my husband came home with three friends and we slaughtered a goat. Thereafter when it started raining one of these friends came and asked to be allowed to cultivate part of our land and my husband agreed on condition that he would cultivate 10 acres for himself and then plough three (3) acres for us.

In 2002, my husband contracted tuberculosis and he died. His mother became mentally ill soon thereafter and my father-in-law requested me to go and assist her. So I took the children and we moved to my father-in-law's land. Unfortunately, she also died after sometime.

I then came back to Mavoko to check on our land as I wanted to come back so that the children would start going to school. To my shock, I found our so called friend Kilonzi had taken possession of our land and had built a house thereon. He had brought down our small house and he had used the iron sheets to put a shed for his animals. I asked him what was going on and he told me that he had been given the land by the President and I should not go there again. He threatened to kill me if I dared set foot on that land.

I thereafter went to my brother's home to seek assistance. This was about 2003. My brother, Bishop Nkaangi, took me to the Lands office where a search showed that our land was intact and it had not changed hands. I was however, advised to get Letters of administration from court so that the land could be transferred to my name.

I was assisted to file a succession suit but before I obtained the letters, I noticed a school was being built on our land. I got information that the school owners had bought the land from Kilonzi. I went to the offices of FIDA to seek help which has not been forthcoming.

I now appeal to you Members to help my children and I to get back our land. My late husband never informed me that he had sold the land. I would also like Kilonzi to produce proof of payment of any money to my late husband. If he had truly bought the land, why did he lie to me that he had been given the same by the President? I need help and I want justice to be done.

Jeremiah Kaloi

This witness testified as follows:

I come from Embakasi village. I knew the deceased person who owned the land in question. I live next to Marinie Ole Tiranti's land. Kilonzi used to cultivate there and he then started building. He said that he got the land from the government.

I heard from the media that the land was going to be a Cemetery and when I asked the widow (marinie's) about it she informed me that Kilonzi had grabbed the land. When we approached Kilonzi as a community he said he didn't know anything about a Cemetery. The normal value of the land there is between ksh. 300,000 to ksh.500, 000 per acre.

MAVOKO MUNICIPAL COUNCIL

Mr. Patrick Makau

This witness testified as follows:

I am the Mayor of Mavoko Municipal Council. I heard about the material land being the proposed site for the City Council of Nairobi Cemetery from the media. As far as I am concerned the land is still agricultural as the Council has not approved change of user. The City Council of Nairobi officials never sought our opinion in respect of purchasing land within our area for a cemetery. If they had, my officers and I would have informed them that the area is not suitable for a cemetery.

Wisdom Mwamburi

This witness testified as follows:

I became the Town Clerk to Mavoko Municipal Council in June 2008. In Mavoko there is no red soil which is normally suitable for a cemetery. There was no planning brief brought to Mavoko Municipal Council. The area is mainly agricultural and no environmental assessment has been carried out to show whether the area is suitable for a cemetery.

Peter Mbatha

This witness testified as follows:

I was posted two weeks ago in Mavoko Municipal Council as a Town Planner but I am resident there. In the municipality there were no documents showing who the owner of the disputed land is. There is no registered use of the land but the area is mainly agricultural land. I have not seen any application for change of land use. As far as I know there is no approved master plan for the material area. The children's home on the land is illegally built because there was no change of user approved. Those buildings put up before 2007 without approval will be considered when owners apply for change of use.

Peter Mbatha

This witness testified as follows:

I am the Deputy Treasurer in Mavoko Municipal Council. I am the planner and I have given evidence here before. I understand I was recalled to confirm whether a clearance certificate produced to the Committee originated from Mavoko Municipal Council.
(*Document shown to him*)

The document looks genuine and the signature is that of former Town Clerk of Mavoko Municipal Council. So it is clear Mavoko Council had knowledge of the land in issue. At the time I testified earlier I did not know that Mavoko Municipal Council had issued the clearance certificate.

Samuel Makali

This witness testified as hereunder:

Henry Kilonzi started transactions with Mavoko Municipal Council on 22nd April 2008. He paid for 3 components in the council.

(a) He paid land rates of ksh. 45,099 and it was an agricultural land rate.

(b) He also paid debt clearance of ksh. 3,000.

(c) He paid for change of user of ksh. 6,000. He wanted to change from agriculture for plot development.

He had subdivided the land into 16 plots. You cannot apply for change of user on temporary numbers but this is what Henry Kilonzi did. The change of user has not yet been approved. He made the payments in April 2008 but he has not followed up the matter. Notification of approval has not been given to him. There is no approval for the buildings on his land.

On 26th November 2008 he applied for the subdivision of the land into two portions. This was approved and new numbers were to be given. The City Council of Nairobi has never contacted us in respect of this land. The initial size of the two plots was 8.9 hectares and 48.3 hectares.

LOCAL GOVERNMENT MINISTRY

Sammy Kirui-Permanent Secretary, Ministry of Local Government

This witness testified as hereunder:

The City Council of Nairobi wanted Cemetery land and the Town Clerk requested the Ministry of Local Government to assist as the Council had no funds. Lack of a burial ground being a National issue, the Ministry was obliged to help and asked the Council to procure the land and funds would be availed to them. As early as 5th June 2008 a meeting was held by the officers from my Ministry and officers from Nairobi City Council to deliberate on the issue. The meeting was chaired by Reuben Rotich, Senior Deputy Secretary and Mary Ngethe, the Director of Legal affairs in City Hall was taking minutes. Copy of minutes marked W2. We released the cheque when we were told the land was available.

This was a Nairobi City Council Project.

The cheque was issued to the lawyers acting for Nairobi City Council.

The letter the Ministry received from the Council is dated 28th June 2008 and another one is dated 28th September 2009. In April 2008 part of the money was available for purchase of the cemetery land.

Yes, there were tender Committee minutes from Nairobi city Council.

The Ministry got a draft agreement for the sale.

In September 2008, the tender was advertised in the newspapers.

There was no documentation to support the cheque issued on 30th June 2008 in the name of Omotii and company advocates. All the Ministry wanted was to safeguard the money and not to return it to the treasury. It is true we did not follow the government regulation of returning the money to treasury. There was no bad intention in issuing the cheque. It is not normal to ask for money in two installments.

On 11th November 2008 there was a Memo from the tender Committee stating the land was unsuitable.

There was no meeting in my office in respect of Cemetery land. I didn't see the need to involve our legal department because the Nairobi City Council has its own Lawyers. So I may have directed that the legal officer in the Ministry be left out of the transaction.

The officers in City Hall involved in this transaction that have caused a lot of public money to be misused are still in office but one has retired and one is on leave.

I agree that if the price is inflated then there is fraud. It seems that this is the case in respect of Nairobi Cemetery Land Procurement.

If some of my officers were involved I was not aware. I didn't collude with the Town Clerk.

There was no intention on my part as the Permanent Secretary to defraud the Government. I have never been corrupt and I have worked in various departments of the Government.

I will give all the support that this Committee may need.

The Deputy Prime Minister and Minister for Local Government

This witness testified as hereunder:

It is true there are issues surrounding this matter and I hope the Committee can unveil the grey areas.

Kombo Mwero

This witness testified as hereunder:

I was employed by the Government as a surveyor. I served for 28 years. In 2005 I was the Permanent Secretary in the Ministry of Local Government until 2007 when I was transferred to the Ministry of Wildlife.

The transaction of the proposed Cemetery land took place after I had moved from the Ministry of land. It is irregular to give a title deed to a member who was not originally given land after the original allottee has died.

Solomon Boit

This witness testified as hereunder:-

I am a retired civil servant. I was a Permanent Secretary in the Ministry of Local Government until April 2008. The Minister then directed that some senior officials from the Ministry should meet senior officials from Nairobi City Council so that the process of acquiring a cemetery land would be started. Apparently a delegation had seen the President and it had been agreed that there was need to assist the City Council of Nairobi to acquire another cemetery land.

The current cemetery was over used. I led a group of officers to Treasury to request for finances. At first, Treasury was reluctant but the matter was revisited after the post election violence and it was agreed that funds would be availed.

I know the Minister for Local Government is executive just like the Finance Minister. Minister had to be notified of what is going on before any transaction can be concluded. This may be done orally but also preferably in writing. Normally the Permanent Secretary will consult the in house counsel for legal matters e.g. land sale and if it is felt the Ministry has no capacity, the Attorney General is consulted.

Edith Torome

This witness testified as hereunder:

At present, I am a State Counsel in the Ministry of Higher Education. Before this, I was the State Counsel in the Ministry of Local Government. I am totally unaware of the procurement of cemetery land by the City Council of Nairobi although I attended the initial meeting in the Finance Ministry when we went to request that funds be availed for purchase of the cemetery. The Chief Finance Officer in the Ministry had noted that the tender documents were defective as they did not provide the required specification of land suitable for a cemetery and had requested that I give a legal opinion but the Permanent Secretary, Mr. Sammy Kirui said that the City Council had competent lawyers. Letter is marked W3.

As a State Counsel, I should give advice on all legal matters but in this particular case I was not involved. I saw the comment by the Permanent Secretary to keep me out of the transaction in the file. The procurement was completed in February 2009 and in March 2009 I was transferred to the Ministry of Higher Education.

THE MINISTRY OF LANDS

Mr Zablon Mabae

This witness made the following statement:-

I am the Commissioner of Lands in the Ministry. In respect of the land in question, I want to state the following:

- (i) The Ministry's main function is to keep records of all land transactions.
- (ii) On 7th August 2008 we received a letter to give a valuation for negotiation purposes. It was signed by N.W.Otido. It is marked W4. We didn't get a follow up but after talking to Mary Ngethe, she said the Council was not interested in the enquiry. Our letter to confirm this communication is dated 26th September 2008 and is marked W5.
- (iii) The Ministry again received a letter dated 4th November 2008 from Nairobi City Council (signed by Mary Ngethe) asking that a valuation be carried out on the same land parcel LR.NO. 14759 in Mavoko Township. The letter is marked W6.
- (iv) The Ministry wrote back on 13th November 2008 asking for an officer from Nairobi City Council to take the Ministries's officers to the Ground. The letter is marked W7.
- (v) No action was forthcoming from the City Council of Nairobi until we received the letter asking us to confirm that we had valued the land. This was the letter from Auditor General marked W8.
- (vi) We hadn't done any valuation and when we scrutinized the letter we confirmed it was a forgery. We didn't have any staff named A. Otieno and the letterhead on the letter was already abandoned by the Ministry. We wrote back to the Auditor General explaining all this in our letter of 10th March 2009. Same is marked W9. I don't know why Mary Ngethe, a lawyer would act on a one page valuation report (marked W10) without checking with the Ministry as to whether we had valued the land.

On 15th January 2009 subdivision of the material land was approved.

Our officer went to the land and valued the land at 200,000 per acre since it is agricultural land. This valuation is marked W11.

City Council is exempt from paying stamp duty but in this case they never applied to be exempted.

On 3rd February 2009 the City Council of Nairobi was issued with a title after the sale agreement (marked W12) transfer (marked W13) was submitted. Copy of title is marked W14.

Hon James Orengo – Minister for Lands

The Minister made the following remarks:-

The alterations on the transfer document were meant to correct an anomaly in the acreage. Embakasi Ranching Group was the initial owner of the land. The land was subdivided and shared among the 62 members of the group.

The transfer document is drawn by E.N. Omotii & Co. Advocates but the alteration is signed for by Alphonse Mutinda Advocate. This is illegal but my officers overlooked this fact. In a court of law the document would be found defective and the sale can be annulled.

We shall put a restriction on the land in question until the investigations are complete.

The City Council of Nairobi is a body corporate and has power to deal with its property as it pleases.

CITY COUNCIL OF NAIROBI

Peter Mburu Kabinda

This witness testified as follows:-

I deal with planning and especially future urban development. In 2003, I was transferred to Thika Municipality and was there until 2008 when I came back to work for Nairobi City Council. At this particular time, the council was worried because Langata cemetery was said to be full and the Council needed to buy another burial ground. Towards this end, the Local Government Ministry facilitated a meeting between Mary Ngethe, the legal officer and other Council officials with Mr. Kinyua, the Permanent Secretary in the Ministry of Finance. The purpose of the meeting was to request for funds to buy land for a cemetery. The Ministry of Finance agreed to provide funds to buy land for a cemetery.

The Council then started to look for land to purchase. In the first advertisement the Council only got three people interested in selling land for a cemetery.

When the Council officials visited these lands, it became clear that these lands did not qualify since they didn't have red soil which is more than 6 feet deep and they were not serviced by an all weather road. The land near Kapa industry would have been suitable but its title had encumbrances.

In 2008 we visited several sites in search of a suitable cemetery land. I was not in the technical team but my deputy Tom Odongo and Mr. J.Barreh were in it. The Chairperson of the Technical Committee was Mary Ngethe.

When the land in issue was identified I and my colleagues in the planning department wrote two memos, both dated 11th November 2008 (marked W15 and W16) to the Town Clerk stating that in our opinion the land was not suitable for a cemetery and we gave our reasons. I don't know how the contents of this memo leaked to the Ministry but the Permanent Secretary in the Ministry of Local Government wrote to the Town Clerk referring to the same. The Town Clerk did not take our objections kindly and he asked us to explain. We did this by our memo of 19th December 2008. The same is marked W17.)The Town Clerk called a meeting of the evaluation technical team. It was three days after I wrote the Memo. No minutes were taken in that meeting. I was asked to give the genesis of the contents of the above Memo and I wrote another memo to the Town Clerk to explain. I suggested that since the open tender was proving ineffective, we needed to either compulsorily acquire the land or negotiate with sellers with land having red soil.

The Clerk had some reservations and stated that the issue had taken too long and it needed to be finalized. A meeting was called at the Ministry of Local Government which was attended by the Finance Officer, Permanent Secretary, Procurement officer, Director of Legal Affairs from Ministry, Edith Torome and also the Funeral Superintendent. The meeting was to discuss a report of progress made on the issue of procuring the cemetery land. The Council had no budget to buy land and that is why we involved the Ministry of Local Government.

A meeting of the Tender Committee was called and I attended the meeting for a short period since I had other engagements. Before I left, however, I made it clear that the proposed land was not suitable and no tender should be awarded. The Town Clerk was aware of what was going on in respect of the purchase of cemetery land. There was no meeting in City Hall by Councillors to endorse the purchasing of cemetery land by the City Council of Nairobi.

The General Purpose Committee never met to deliberate on this matter. There was no Full Council meeting to approve the purchase of the Cemetery land.

The matter has not even been brought to the Council for ratification.

The Deputy Town Clerk signed the transfer documents and he was still the Chairman of the Tender Committee. This is irregular.

The Mayor or Councillors never attended any of the above meetings.

I know Maina Chege the Director of Naen Rech Ltd. He comes from Maragwa. He is the proprietor of Marchant Auctioneers.

John Gakuo

This witness testified as follows:

In 2004 – 2008 I was the Town Clerk of Nairobi City Council. As the Chief Executive Officer of the Council then, I referred the matter of the procurement of cemetery land to the Procurement Committee. In September 2008 the process of buying cemetery land started. The tender was open and was put in the media. The members of Procurement Committee are Deputy Clerk, Treasurer, Medical Officer of Health, Engineer, Director of City Education, Legal Officer and Director of Procurement.

The memo of 11th November 2008 questioning the suitability of the land to be procured for a cemetery came to me and I personally gave a response. The reply is in the office of the Clerk of the City Council of Nairobi. Permanent Secretary then in the ministry of Local Government was Mr. Sammy Kirui. The payment was made directly to a lawyer who was representing the City Council of Nairobi. There is a valuation department in the Council but for this transaction valuation was to be done by a government valuer.

I don't know whether the valuation department was requested to value the land.

I relied on the Technical Committee advice.

I was informed that the valuation was done by the Ministry of Lands.

John Gakuo

This witness was recalled as he had been very guarded the first time he appeared before the Committee and now he testified as follows:-

I am the Former Town Clerk of Nairobi City Council. I called a meeting after 11th November 2008 when I received a letter from the Permanent Secretary, Mr. Sammy Kirui. With procurement the buck does not stop with me. For any government land to be purchased, valuation had to be done. If not, the procurement is defective. That is all I have to say.

Godfrey Majiwa –His Worship the Mayor of the City Council of Nairobi

Takes the Oath by the Bible and then states as follows:-

I Godfrey Majiwa, swear by the Almighty God that the evidence I will give before this Committee, shall be the truth, the whole truth, so help me God.

I know that sometimes in the year 2004 Members of the Council had a resolution that the Council should acquire land for a Cemetery. We wanted the land next to the current Cemetery but this did not materialize. The Council then had to look for land elsewhere and we sought funds from the Local Government Ministry. Thereafter the Council was dissolved and we resumed again in 2008.

Individual lands were looked at in early 2008 but the earmarked lands were found not to be available. Later it was agreed that the land be identified by a team from the City Council.

On 30th October 2008 a letter from Mr. Sammy Kirui, the Permanent Secretary gave the Council 5 days to conclude the matter otherwise the Ministry would take over the procurement. I was aware that there were complaints about the land by some member of the Tender Committee stating that the land was unsuitable for a cemetery. However, when I was asked to sign the transfer for the land to Nairobi City Council, I agreed.

On 18th September 2008 advertisement was done, so I don't know why the Permanent Secretary was writing on 30th October 2008 giving 5 days for the Council to complete the transaction.

The Permanent secretary had said that only Government Valuer would give the valuation.

I was told the land is in Mavoko. I didn't talk to the Mayor of Mavoko to inform him that Nairobi City Council was buying cemetery land in Mavoko.

I don't handle cash transactions and so I don't know whether stamp duty was paid.

The Permanent Secretary had given instructions for the purchase of the Cemetery land. If there is anything that was done improperly, then it was behind my back.

On September 2008 officers were called for a meeting to deliberate on the procurement of the Cemetery Land.

The Council bought 120 acres. These changes on the transfer document were signed for by the lawyer.

If what is in these papers is the correct position of the purchase of Cemetery land, then I was misinformed when I signed.

The Deputy Town Clerk signed but on approval by the Clerk. The Chief Executive of the Council is the Town Clerk and the buck stops with him. There is micro-management by the Local Government in respect of Nairobi City Council.

Mary Ngethe

This witness testified as follows:-

I am the Director of Legal Affairs in the City Council of Nairobi. In 2007 the tender of Cemetery land was done and a sale agreement dated 13th January 2006 was drawn. Before the purchase could be completed, we realized there was a problem and the tender was cancelled. Ardhi developers Ltd and West End Butchery had a dispute in respect the land ownership.

In June 2008 we readvertised for land. The Permanent Secretary in the Local government called the officials from the City Council of Nairobi for a meeting on 16th June 2008 and Mr. Rotich advised us to go for a direct sale. We looked for land but were unable to get land in Nairobi. We identified several parcels of land and on 7-8-2008 we requested the government to do valuations.

One parcel was on Mombasa road but Kenya Railways warned us not to buy the land as it belonged to them. The Permanent Secretary again wrote to tell us to advertise. I was appointed as the Chair of the Tender Technical Committee. There were twelve bids. Seven of them responded but five did not. We made site visits on all the lands and the Committee settled on the land at Mavoko.

On 5-11-08 we wrote to the procurement Committee informing them of our decision.

The criteria agreed on earlier was that:-

- ❖ Land must be within Nairobi Metropolitan
- ❖ Easily accessible by public
- ❖ Soil must be preferably red and more than 6 feet deep

The land at Mavoko is not easily accessible and the soil is not red. The soil is only 4 feet deep. Tender Committee sat on 12-11-08 and officers in the Planning Department raised objections on 14-11-08. I did not object to the procurement because the Medical Officer of Health was present and confirmed the land was suitable for a cemetery. The Permanent Secretary of the Local Government had written to the Clerk on 30th October 2008 threatening that the Ministry would take over the process if we did not conclude it within 5 days. The letter is marked W18. The land was valued but I later learnt that the letter of valuation was a forgery. I have nothing more to say in respect of the sale.

Karisa Iha

This witness testified as follows:

I am a Deputy Director in Nairobi City Council. I was involved in the purchase of the proposed Cemetery land. The Council wrote to the Treasury through the Minister of Local Government for funds to buy Cemetery Land.

When the first cheque was forwarded it was in the name of Omotii Advocates who acts for Nairobi City Council. The advocate was instructed on 26th November 2008 (The appointment letter is marked W19) but the cheque in his name was done on 30th June 2008 (marked W20). I forwarded the first cheque of ksh.175,000,000 to Nairobi City Council on 22nd December 2008 (letter marked W21) and the second for ksh.108,000,000 on 16th January 2009 (My forwarding letter is marked W22)

I don't know why the cheque was done in June to the lawyer before he was instructed by Nairobi City Council to act in this particular transaction. The second cheque of Kshs.108, 000,000 was forwarded to the same lawyer by the Director.

I have no proof that the land was suitable for a Cemetery but it was reported by the Procurement Committee that the land was suitable. I was not a member of the Procurement Committee but I believe the procurement process was properly done. I can't remember any other property that was purchased by the City Council of Nairobi in this manner.

N. W. Otido

This witness testified as follows:

I was a Deputy Town Clerk in Nairobi City Council but now I am retired. I joined the Council in September 2006 as Deputy Town Clerk in Charge of Administration. By a letter dated 20th January 2007 I was appointed by the Town Clerk as the Chairman of the Tender Committee. I was also appointed as the Chief Land Registrar for Nairobi City Council. Some of my duties involved signing all land documents and I was also a bank signatory for the Council. There are four signatories, that is, the Town Clerk, his Deputy Clerk, the Treasurer and his Deputy.

I was the Chairman of the Tender Committee at the time of purchase of Cemetery land. I was not aware of the letter addressed to the Clerk stating the land was unsuitable for the land. On 13th November 2008 I wrote to Naen Rech Limited informing the Company that it had won the tender and requesting for a performance bond. Letter is marked W23. The bond was not given and this is against government regulations.

When I discovered there were complaints about the soil structure from the technical team I did nothing. I saw the memos a week after the tender was awarded. The Clerk never showed me the memos from the Planning Department. Even after seeing the memos I didn't take any action to stop the procurement. I had seen a letter from Mr. Sammy Kirui informing the Clerk the process had to be concluded because the first cheque was almost stale. This letter is marked W24.

On 19th December 2008 I signed the agreement for sale. I will share the blame if there was something wrong but the mistake started with the legal department. I have nothing to add that can help the Committee.

E.N. Omotii Advocate

This witness testified as follows:-

I am a practicing lawyer. On 26th November 2008 my law firm was instructed by the City Council of Nairobi to represent it in an intended purchase of land. The instructions were in writing and there attached was a notification of award of a tender. It was a public open tender. Henry Musyoki Kilonzi was the vendor and the land to be bought was 120 acres out of LR 14759. The purchase price for one acre was Kshs. 2,360,000. I had meetings with the head of the legal department, Mary Ngethe. I prepared a sale agreement between the vendor and the Nairobi City Council. Total amount released to my firm on 18th December 2008 was ksh.283, 000,000. The first cheque for ksh.175, 000,000 was drawn on 30th June 2008 and the second cheque for ksh. 108,000,000 was drawn on 15th January 2009. The cheques were drawn by the Ministry of Local Government. My firm of advocates was instructed to act in this matter on 26th November 2008 but I don't know why the cheque was drawn in the name of my firm in June 2008 before the firm was appointed to act in the matter. I released the money to the other lawyers after we got the title documents.

Alphonse Mutinda Advocate

I am a partner in Alphonse Mutinda & Co. Advocates and a lawyer by profession. I request to have my lawyer Mr. Mutisya present.

EVIDENCE

This witness then gave the following evidence:-

Henry Kilonzi is my client. I handle his business. He informed me in August 2008 that he wanted to sell his property. He told me he was selling part of his 140 acres. He wanted to keep 10 acres for himself and he had sold 10 acres to a school. He wanted me to look for a buyer.

Towards end of August 2008 I was introduced to one Maina Chege by Cephas K. Mwaura who is a surveyor. Maina Chege wanted to buy the 120 acres. I called Kilonzi and Maina to my office and they met and negotiated a price. Maina Chege is the Director of Naen Rech Company.

Kilonzi wanted to sell the land for Kshs. 800,000 per acre. Finally after negotiations we agreed at Kshs.110, 000,000 for 120 acres. Mr Maina Chege had his own advocates.

We wanted a deposit of 10% which is 11,000,000. We got a post dated cheque in two names.

In September 2008 he said he won a tender from the City Council of Nairobi to sell the land he wanted to buy from Henry Kilonzi.

The agreement was that Kilonzi would be paid after transfer to Nairobi City Council. The land had not been subdivided and there was need to have consent from Mavoko Municipal Council and a clearance certificate.

L.R NO. 14759 was the land being sold to the City Council of Nairobi.

The City Council of Nairobi lawyer, E.N. Omotii lawyer sent me a draft sale agreement. Mrs Mutua from lands did a valuation for the purpose of stamp duty.

The City Council of Nairobi had paid or issued a cheque for the stamp duty and so the title was issued to them.

Henry Kilonzi sold to the children's home 10 acres at 500,000 per acre.

Maina Chege

This witness testified as follows:-

I am a businessman and a director of Naen Rech Co. Ltd. This Company was incorporated in 1996. Share holders have changed. There were three directors, Maina Chege, John George Kamau and Winnie Wanjiku. The two have since left. They were replaced by Einswick Van Sen from Israel.

The company was incorporated to do business and horticulture farming. On 18th September 2009, there was an advertisement in the newspaper asking for suitable land for a Cemetery by the City Council of Nairobi.

As a businessman I wanted to tender. I had started negotiations with Henry Kilonzi for his land at Mavoko for I wanted to plant trees.

I bought the tender documents and since Kilonzi was selling the 120 acres at 110,000,000 I quoted 2,360,000 per acre. I engaged P.C. Onduso advocates to represent my interest in the transaction.

The other Director owns 15% in Naen Rech. By the time I tendered we had agreed that Henry Kilonzi was going to sell the land to me.

The lawyers I engaged have swindled me and have refused to release my money. I have therefore filed Milimani High Court No. 181/2009/05 Naen Rech Ltd versus Onduso & Co. Advocates where I am claiming 42,050,000 from them. The case is yet to be finalized.

I have also filed Civil Suit Case No.518/2009, Maina Chege versus Odero & Co. Advocates where I am claiming ksh.87, 000,000. Stephen Kibuya Advocate is acting for me.

About Kshs.9.2 Million was put in my account. A further 2 million was given to me. I expected Kshs. 273 million out of the transaction but Kshs. 133 million is still with the lawyers.

Bishop David M. Thagana

This witness stated as follows:-

In January 2008 Merciful Redeemer Children's Home and Henry Kilonzi entered into an agreement whereby he agreed to sell ten acres on LR.No.14759 Machakos to the Home. The purchase price was agreed at 400,000 per acre and so the ten acres cost 4,000,000.

On 14th January 2008 we paid Henry Kilonzi KSH.200, 000

On 18th January we paid him KSH. 1,000,000 vide cheque no.00743

On 27th March we paid him a further 1,200,000 vide cheque numbers 000059 (Kshs.200, 000) and 000060 (Kshs.1, 000,000).

We had intended to pay the balance on transfer of the property but Alphonse Mutinda Advocate wrote to us to clear the balance to enable him transfer the land to us. We referred this letter to our lawyers, M/s Maina Wachira Advocates who advised us to pay.

On 9th July 2008 we paid the balance of Kshs.1, 600,000 vide cheque number 001564.

We have built a children's home on the land although we haven't yet received approval of the buildings from Mavoko Municipal Council.

From July 2008 we have been asking our lawyer for the title to our land but we haven't received the same to date.

Bank of Africa

James Gichuki from the above bank stated as follows:-

The bank account was opened in February 2009 by three lawyers, namely, Mutinda, Onduso & Osiemo Advocates. We know that the money was from another account in our bank (from Omotii Advocates) account. We have come to produce these clear copies of the transactions in this account. (The statements are handed over to the Secretary of the Committee).

KENYA ANTI CORRUPTION COMMISSION

DR. J.P. MUTONYI, MBS - ACTING DIRECTOR, KENYA ANTI-CORRUPTION COMMISSION

This witness testified as follows:-

I am an acting director in the Kenya Anti-Corruption Commission. We have conducted investigations into the alleged procurement of Cemetery Land by Nairobi City Council.

From our investigations, we have established that Henry Kilonzi was approached by Maina Chege who was a Director of Naen Rech Ltd to sell the land in question to him. Naen Rech then purported to sell the land to Nairobi City Council even before the title passed to his Company. It is not legally possible to sell land that one does not own.

We have information showing that Maina Chege was used for furthering the whole fraud. This is best explained by Mr. Tabu Lwanga, the officer who has been gathering our evidence.

TABU LWANGA

The evidence by this witness was as hereunder:-

I have a chart here that illustrates the way the money from the Ministry of Local Government has been handled. It is marked W25.

That the Ministry of Local Government provided a total of Ksh. 290,694,000;

That E.N.Omotii & Co. Advocates received Ksh. 283, 000,000;

That the Commissioner of Domestic Taxes received ksh. 5, 664,000 for stamp duty;

That E.N.Omotii's legal fees were ksh. 2, 030,000;

That the interest generated by the amount received by E.N.Omotii was Kshs. 1, 800,000 and he retained the same.

That a joint account was opened and was operated by three advocates, namely, Odero Osiemo & Co. Advocates, P.C.Onduso & Co. Advocates and Alphonse Mutinda & Co. Advocates. A total of Ksh. 281, 300,000 was deposited in this account.

That Alphonse Mutinda received Ksh 135, 900,000 out of the above account.

That P.C.Onduso transferred ksh. 9, 600,000 to his KCB account.

That Naen Rech Limited received ksh. 9,450,000.

That Ksh. 9,300,000 went to Cephas Kamande Mwaura who is a surveyor.

That Odero Osiemo & Co Advocates received Ksh. 117, 000,000

Part of the Kshs. 117, 000,000 received by Odero Osiemo was distributed as follows:-

Cibiya World Wide Ltd whose director is Newton Osiemo, a brother to Odero advocate received a total of Ksh.29,860,000. He spent 20,000,000 in buying 5 acres of land from James Mwangi and 1,660,000 to buy a van from James Mithamo.

Janet Kabura Nguku who is the wife of Dr. Nguku, the Medical Officer of Health at Nairobi City Council received a total of Ksh.7, 000,000 out of which she used P.J. Kakad advocates to purchase a house at Mlolongo for ksh.4,000,000 and 2,000,000 to buy construction material for a house being built by Dr. Nguku at Mwingi.

Stephen Githinji Kamau received 8,000,000 on behalf of Alexander Musee who is the Deputy Director of Procurement in Nairobi City Council.

Peterson Gichana received ksh.10, 000,000 on behalf of Boniface Misera who is the Director of Procurement in the Ministry of Local Government.

Omotii Advocate was given ksh.13, 000,000.

Alice Mayaka, a former Permanent Secretary in the Ministry of National Heritage received Kshs.4,000,000 and it has not been established why she got the money.

Item 14 – It has not been established why Moeckings General Contractors took the Kshs. 2,000,000.

Item 19 – Likewise it is not yet known why or on whose behalf Doreen A.Oyugi received Kshs.3, 000,000.

The remaining money was withdrawn by cheques by Odero Advocate.

Conclusion

Kenya Anti-Corruption Commission is almost at the end of the investigations and it will recommend court charges in respect of all the people who were involved in this fraud.

The Commission further requests that it be given back the power to compel suspects to produce documents and to disclose all information to us.

EXECUTIVE SUMMARY

From the evidence adduced above, the Committee has ascertained the following pertinent issues:-

- The advice of the Director of City Planning on the tender documents and search for land for use as cemetery, important as it was, was not considered during the entire process of the procurement.

- The Council does not appear to have established the existence or otherwise of contractual relationship between M/S Naen Rech Ltd and Musyoki Kilonzo before awarding the tender to the company or how such a relationship if it existed would have influenced the pricing of the land.
- The Council was not diligent on establishing the status of the company before awarding the tender as required by law, no performance bond (14,160,000) appeared to have been secured before the award of the tender.
- The Municipal Council of Mavoko did not grant approval of change of user of the land in question from agricultural to cemetery.
- National Environmental Management Authority did not grant clearance on environmental impact once use of the land has changed.
- The fact that the area is dry grassland and is a wildlife migratory corridor was ignored during the procurement process.
- The site inspection showed that the land is situated at approximately 12kms west of Kitengela township and borders Merciful Redeemer Children's home.
- The access of the land is rough road which is not all weather usable and is impassible during wet seasons.
- That the soil is not red and its shallow with a rocky base and cannot attain a depth of 6 feet.
- The land has not been marked with beacons and can be encroached.
- There are no amenities on the land eg water, telephone etc.
- That Naen Rech Company Ltd purported to sell and pass a good title to the City Council of Nairobi when it indeed did not legally own the land.
- The transfer document was drawn by Omotii and Company Advocates and the alteration of the acreage from 48.63 hectares to 52.22 hectares was done by Alphonse Mutinda Advocates which is irregular. That this alteration was only a sham because the actual document of title actually reads 48.30 hectares.
- That Henry Kilonzi purports to have bought the land in question from Marinie ole Tianti Makaita but there is no evidence of a sale agreement and the payment of purchase price to the vendor.
- That the widow insists that Henry Kilonzi defrauded them of their land as it had only been leased to him.
- That for some unknown reasons the Town Clerk and the top officials in the Ministry of Local Government decided to ignore the objections in relation to soil unsuitability and went ahead with the procurement of the land.

- That there is evidence of corruption because the vendor only got Kshs.110,000,000 and the rest has been shared among the key players.
- There is no evidence to show that Henry Kilonzi had appointed Naen Rech as his agent. The verbal claim by Maina Chege should not have been relied upon by the officials of the City Council.
- There was clear evidence from the Mayor and the Clerk of Mavoko Municipal Council that the City Council of Nairobi did not apply for change of user of land for the land in question.
- The officials in the City Council of Nairobi accepted a suspect valuation report which was only one page.

GENERAL OBSERVATIONS

(1) ACQUISITION OF THE LAND

The Committee is in agreement that the evidence adduced by the first five witnesses, that is, Richard Ngangi, Bishop William Nkaangi, Buckson Semei, Agnes Nenka Marinie and Jeremiah Kaloi was credible.

These witnesses testified that they were not aware of any sale of the land in issue to Henry Kilonzi. In fact, they all stated that when confronted by them and asked why he was selling Marinie Ole Tianti Makaita's land, he told them that he was given the land by President Moi. When he appeared before the Committee, Henry Kilonzi said he had bought the land from Marinie Ole Tiranti Makaita but he did not produce any sale agreement or proof of payment of the purchase price.

Hence there is credible evidence that points to Kilonzi having fraudulently acquired the land from the deceased. The Committee believed the evidence adduced that as late as 2003, records at the Land Office Registry in Ardhi House showed that the land still belonged to Marinie Ole Tiranti Makaita.

(2) SUITABILITY OF LAND AS CEMETERY

From the evidence adduced by officers from the Kenya Wildlife Services and the above six witnesses, the land is not suitable for a cemetery as it does not have red soil that is six feet deep, it is not easily accessible and it is on the animal migratory corridor.

There is further evidence from the City Planning department from P.T. Odongo and J.K. Barreh that the land is not suitable for a cemetery.

The Maasai community living around the area is also opposed to the land being used as a cemetery.

National Environmental Management Authority did not do any impact assessment as required by the law.

(3) PROCESS OF PROCURING THE LAND

Although there was a genuine need for another cemetery, some people saw this as an opportunity to milk money from the Government. This was taken advantage of by some unscrupulous businessmen and corrupt government officials.

The Committee observed that there is overwhelming evidence that the process of obtaining the land was a well thought out, premeditated plan to defraud the government of the public funds which seem to have involved the City Council, Ministry officials, businessmen and advocates.

Only Kshs.110, 000,000 went to the purported owner and the rest was distributed to the perpetrators of the fraud.

The Committee also observed that the Ministry of Local Government was leading the process from the inception till the end.

The Committee also observed that the price of the land was inflated and the government procedure on procurement was not followed. This was meant to assist the fraudsters in their mission.

(4) ILLEGALITIES AND IRREGULARITIES

The Committee observed that there were a lot of illegalities and irregularities bordering on criminal acts. For example, instead of returning the Kshs. 175,000,000 to the Treasury because suitable land had not been identified, a cheque was drawn in favour of Omotii and Company Advocates for this amount in June 2008 without any supporting documents and the same was forwarded to the lawyers in December 2008. It is to be noted that the advocates had not been appointed to act in this transaction by the time the cheque was drawn in their favour.

(5) KENYA ANTI-CORRUPTION COMMISSION

The Committee observed that there is need to amend the law to give KACC more power to summon witnesses and compel them to give evidence.

(6) MINISTRY OF LOCAL GOVERNMENT

The Committee observed that the Ministry of Local Government seemed not to have taken any action to mitigate any future fraud unlike the Lands Ministry where the Minister undertook to make sure that any land transaction concerning Government or a Government agency and involving above Kshs.20,000.000 must be approved by him.

The Committee further noted that the Minister for Local Government has not even gone to see the land. Besides, despite the knowledge of the fraud and public outcry of the misuse of funds the Ministry has shown no real steps of trying to avoid a repetition. The Committee noted with concern that of the officers involved in the fraud are still in office. It is also to be observed that most of the Ministry officials who appeared before the Committee withheld vital evidence. In Parliament, the Minister's statement was aimed at covering and exonerating his office (*refer to the hansard attached*).

SPECIFIC OBSERVATIONS

PROCUREMENT COMMITTEES FOR CITY COUNCIL

The Committee noted that they played a critical role in implementation of the fraud and totally ignored all safeguard procedures in the Procurement Act.

The Deputy Clerk as the Chair of the Tender Committee confirmed that the Town Clerk withheld the memoranda from the Town Planner pointing to the fact that the land was not suitable for a cemetery but even after he got the information he took no action to arrest the situation.

The Committee noted that the Treasurer is part of the cover up as he is a member of the Committee that oversaw the fraud and never raised a finger.

The Committee noted that the Technical Evaluation Committee headed by Mary Ng'ethe chose to ignore the criteria set for a cemetery land and went further to clear the land as suitable when they clearly knew it was not. One of their own members (Mr. P.T. Odongo) raised the concern that the land was not suitable for a cemetery but they still gave it a clean bill of health. Besides, J.K. Barreh also raised the concern about the same but the Chairperson ignored both of them.

MAYOR GODFREY MAJIWA

The Committee noted that he was aware of the complaints by some members of the Committee but ignored their complaints. He claimed that he was misinformed. The Committee noted his claim was that he signed as a ceremonial mayor but the Committee knows he is an Executive Mayor, and should have questioned why so much money was being spent on a rocky land that is not suitable for a cemetery.

MARY NG'ETHE

The Committee noted that she failed totally as a legal adviser and is one of the major players in this fraud and her involvement was noted throughout the whole process.

It was noted that she had been working in cahoots with the Town Clerk and the Ministry of Local Government officials to the extent that the Local Government Ministry excluded Edith Torome, the Legal Counsel from the entire process.

It was also noted that she failed to look at all documents before the process was complete to ascertain that they were proper and above board.

It is to be noted that on 7th August 2008, N. W. Otido wrote a letter to the Chief Valuer in the Lands Ministry requesting for a valuation of L.R No. 14759 but she wrote another one on 4th November to the same valuer asking for a valuation of the same land. Thereafter, a forged valuation was received by the City Council of Nairobi.

The Committee believes she knew about this forged valuation and that is why she accepted it without raising any objections.

KARISA IHA

The Committee noted that he was obliged to highlight any anomalies he might have found but did not do so hence the Committee found him just as involved by negligence of duty.

DR. DANIEL NGUKU - MEDICAL OFFICER OF HEALTH

The Committee noted that he knew the requirements for a cemetery land but did not insist on them and further declared the land to be suitable knowing very well it was not. Obviously, he was compromised and the Committee has credible evidence that he was given Kshs. 8,000,000 after the fraudulent deal was concluded.

PETER M. KIBINDA

The Committee noted that this is one of the few officials in Nairobi City Council who objected to the procurement of the land in issue. He and two other officers, P.T. Odongo and J.K. Barreh wrote a memo to the Town Clerk stating the land was unsuitable for a cemetery.

EDITH TOROME - LEGAL COUNSEL, MINISTRY OF LOCAL GOVERNMENT

The Committee noted that initially she was involved in the meeting at the Ministry of Finance to request for the funds; thereafter she was specifically excluded from the transaction by the Permanent Secretary in the Ministry of Local Government.

Her legal advice on the procurement was not sought and soon thereafter she was transferred to another Ministry.

H.S. CHAVERA - CHIEF FINANCE OFFICER, MINISTRY OF LOCAL GOVERNMENT

The Committee noted that there is factual evidence that he raised an objection on a letter dated 18th December 2008 to the Permanent Secretary, Local Government, about the defective process and suggested to him that the State Counsel should peruse the documents before the procurement process was carried out. The Permanent Secretary in the Ministry of Local Government ignored his objections and specifically excluded the legal officer from the process.

It was noted that he wrote the cheque dated 30th June 2008 and there were no supporting documents for the same. This was not in tandem with his earlier objections.

The Committee noted that the Chief Finance Officer seemed to be under intense pressure to write and release the cheque.

BONIFACE MISERA - CHIEF PROCUREMENT OFFICER, MINISTRY OF LOCAL GOVERNMENT

The Committee noted that he failed in his duties of ensuring that the Government regulations are followed and there is evidence he was compromised.

R.K. ROTICH - SENIOR DEPUTY SECRETARY, MINISTRY OF LOCAL GOVERNMENT

There is factual evidence that he held meetings with the then Town Clerk and his officials and even after receipt of the defective tender documents and the unsuitability of the land, he still facilitated the procurement.

The Committee is convinced that he was involved in the fraud.

SAMMY KIRUI - PERMANENT SECRETARY, MINISTRY OF LOCAL GOVERNMENT

The Committee observed that he took direct action by pushing the officers in City Council of Nairobi to conclude the process within five days (see his letter dated). There is evidence that he was involved in the process from the beginning to the end.

The Committee noted that he admitted that the law was not followed as the cheque was written without supportive documents, which is contrary to the law and to government regulations.

It was also noted that to date he has not visited the land and that he deliberately sidelined the State Counsel whose responsibility was to advise the Ministry on legal issues such as land procurement.

HON. MUSALIA MUDAVADI, MP - DEPUTY PRIME MINISTER AND MINISTER FOR LOCAL GOVERNMENT

The Committee noted that the Minister is executive and is expected to be briefed or to have known about the current procurement of land for cemetery.

The Committee also noted that the Kshs. 108,000,000 sought by the Minister as the additional purchase price was exactly what was the balance required in the purchase. The Committee therefore wondered whether the officials involved knew exactly the amount they needed long before the tender was advertised. This is evidence enough that the fraud was hatched long before the land negotiations began.

RECOMMENDATIONS

From the evidence adduced before the Committee, it is clear that the process of the procurement of the cemetery land by the City Council of Nairobi is riddled with corruption and illegality and all officers involved should be relieved of their duties and charged in court for the appropriate offences.

MR. SAMMY KIRUI, PERMANENT SECRETARY IN THE MINISTRY OF LOCAL GOVERNMENT

As the Chief Executive Officer and Accounting Officer, he was shown to be personally involved in the process to the extent of ignoring the advice given by his officers.

He was informed that the tender documents were defective and the legal officer should examine them but he ignored this advice. (See his remarks on attached letter dated 17th Dec.2008 and marked W3).

He caused a cheque of Kshs. 175,000,000 to be drawn on 30th June 2008 to Omotii Advocates and this was irregular for the following reasons:

- a) He was supposed to return the money to the Treasury as the land to be purchased had not been identified.
- b) There were no supporting documents to warrant issuing the cheque as required by government regulations.
- c) The advocate had not been instructed to act for the City Council of Nairobi in respect of procurement of cemetery land.

On 30th October 2008 he wrote a letter to the Town Clerk asking him to conclude the procurement of the cemetery land within five days otherwise the Ministry would take over the process (see his attached letter dated 30th October 2008 and marked W18).

Evidently he had a lot of interest in the matter and the Committee recommends that he steps aside to allow Kenya Anti Corruption Commission to carry out thorough investigations into the fraud.

MR. R. K. ROTICH, THE SENIOR DEPUTY SECRETARY IN THE MINISTRY OF LOCAL GOVERNMENT

The Committee received enough evidence to show he played a major role in the fraud. He chaired the meeting of 5th June 2008 from which the procurement process started (see attachment W2). He forwarded the cheques of Kshs.175, 000.000 and of Kshs.108, 000,000 to Mary Ngethe (who in turn sent them to Omotii Advocate). Clearly, he was involved in the fraud and the Committee recommends he should be interdicted and investigated.

MR. H. S. CHAVERA, THE CHIEF FINANCE OFFICER

The Committee noted that he actually wrote to the Permanent Secretary, Ministry of Local Government, Mr. Sammy Kirui, raising his concerns in respect of the tender documents. His concerns were ignored and it is possible he was coerced into writing the cheque.

There is however, substantial documentary evidence showing his deep involvement in the transaction. Investigations should be undertaken to establish his culpability and hold him responsible for the receipt of Kshs. 8.6 million.

MS. EDITH TOROME, THE STATE COUNSEL

She was evidently precluded from the procurement transactions. She is therefore not responsible for the fraud and no action is recommended against her as the Committee did not find any information on her involvement in the process.

HON. MUSALIA MUDAVADI, MP, THE DEPUTY PRIME MINISTER AND MINISTER FOR LOCAL GOVERNMENT

The Committee finds his inaction inexcusable and if he was not truly involved in the fraud, he should have taken action against his Permanent Secretary and all those involved in defrauding the public. At the time of writing this report, there is evidence he has not even gone to visit the site to ascertain its suitability or otherwise.

The Committee noted that the Minister was aware of the matter, but was not adequately briefed. No action is recommended against him. However, investigations should continue to determine his possible culpability in the saga.

MR. N. OTIDO, THE DEPUTY TOWN CLERK

He was the Chairman of the Tender Committee and a signatory in all land transactions. The Tender Committee awarded the irregular tender and ignored the written correspondence dated 11th November 2008 which questioned the suitability of the land as a cemetery. Though he had power to cancel the process or put it into abeyance, he didn't do so and actually went ahead to sign the sale agreement. The Committee recommends that though retired, he should be investigated to determine his culpability and charged with the appropriate offence.

DR. DANIEL NGUKU, MEDICAL OFFICER OF HEALTH

He illegally and irregularly confirmed that he was satisfied by the suitability of the land in question.

This was false and fraudulent because there is factual evidence to show that the land has no red soil, it is rocky and is not easily accessible. Further evidence has shown he certified the land as suitable due to financial gain. It has been proven that he received Kshs.7, 000,000 after the conclusion of the fraudulent procurement of the land.

The Committee recommends that he should be interdicted, arrested and charged.

G. K. NJAMURA, DIRECTOR OF PROCUREMENT IN NAIROBI CITY COUNCIL

There is evidence to show he oversaw and facilitated the irregular and illegal process for financial gain.

The Committee recommends that he should be interdicted, arrested and charged.

MAVOKO MUNICIPAL COUNCIL AND KENYA WILDLIFE SERVICE

It appears to the Committee that Mavoko Municipal Council was not involved in the process of buying the cemetery land and there is evidence that if their opinion had been sought they would have guided and warned the City Council of Nairobi against buying the land (refer to the evidence of the Mayor, Town Clerk and the Town Planner of Mavoko Municipal Council). Kenya Wildlife Service officials were also clear in their evidence that the land is not suitable for a cemetery.

The Committee recommended no action against the officers of these organizations.

HENRY KILONZI

There is credible evidence to show that he illegally and fraudulently got the land from Marinie Ole Tiranti Makaita.

It is also clear that he was involved in the fraud and may have been used by the City Council of Nairobi officials and the Ministry of Local Government officials to perpetuate the fraud. This is proved by the fact that he had agreed to sell the land in question at Kshs. 800,000/=per acre totaling ksh.96, 000,000 but in the advocate's office the price was raised to Kshs. 110,000,000/=.

It is clear from the evidence that he got the land irregularly and illegally and defrauded the family of the late Marinie Ole Tiranti Makaita.

The Committee further noted that Kilonzi might have been used by the officials of the City Council to inflate the price of the land so as to further the fraud they had hatched.

The Committee recommends that Mr. Kilonzi be investigated for fraud.

MAINA CHEGE

The Committee observed that he played an intergral part in the whole scam. It noted that he is one of the registered auctioneers with the City Council of Nairobi. His tentacles appeared to have spread further to the Ministry of Local Government.

The Committee is convinced that he is one of the main architect and implementer of this cemetery land buying project. He had intended to defraud the public of a lot of money by inflating the purchase price but other players who wanted to have the same money outsmarted him. He instructed three lawyers to protect his interests but he still has not received the money he had hoped for. The Committee therefore questioned his motive of bringing on board two lawyers to watch over other lawyers he had contracted.

The Committee recommends that Maina Chege should be investigated for obtaining money by false pretence and fraud; his assets should be seized to recover public funds. Furthermore, he or any company associated with him should be precluded from award of future government contracts.

CEPHAS K. MWAURA

The Committee noted that Celphas Mwaura introduced Henry Kilonzi to Alphonce Mutinda Advocate. This Advocate then arranged for Mwaura, Maina Chege and Henry Kilonzi to meet in his office. The Committee has received credible evidence that Cephas Mwaura was paid Kshs. 8,000,000 after the procurement of the cemetery land. He was therefore directly involved in the fraud. Why else would he be receiving this money and he did not own the land?

The Committee recommends that he should be investigated for receiving a total of Kshs.9,300,000 and charged with the appropriate offence.

ALPHONSE MUTINDA ADVOCATES

The Committee has received actual evidence that this Advocate received Kshs. 135,000,000 after the procurement of the land in issue. Even assuming he was the lawyer for the vendor, he should only have received Kshs.110,000,000 for Henry Kilonzi and not Kshs.135,000,000. He should disclose who received the balance of the money. The Committee noted that he played more than the role of an advocate in respect of this transaction. He arranged a meeting of Maina Chege, Cephas Mwaura and Henry Kilonzi in his office. The Committee is convinced that he was a facilitator of the fraud and distributor of money fraudulently obtained.

E. N. OMOTII & CO. ADVOCATES

The Committee noted that this advocate has connections both in the City Council of Nairobi and the Ministry of Local Government. The Committee further observed that he did not question why Naen Rech Co. Ltd could win the tender when it had no land to sell. This was professional negligence. The Committee noted that he failed in his duty when he did not disclose that he was not dealing with the person who won the tender in this particular transaction. It is also questionable why he drew the agreement of sale between Henry Kilonzi and the City Council of Nairobi while there was no evidence to show that Naen Rech Co.Ltd was legally appointed as an agent of Henry Kilonzi.

The Committee also noted that he banked Kshs. 283,000,000 in his bank account and this money earned an interest of Kshs. 1,800,000 which he retained on top of the Kshs. 13,000,000 given back to him by Osiemo and Co. Advocates and the Kshs. 2,030,000 he had retained as legal fees.

The Committee noted that he was one of the advocates who opened a joint account into which Kshs. 281,300,000 was deposited. He thereafter received money he has not accounted for and was therefore clearly involved in the fraud.

ODERO OSIEMO & CO. ADVOCATES

The Committee observed that he is the distributor of money to various accomplices and also hides behind Cibiya world Wide Ltd whose director is his brother Newton Osiemo.

He was also one of the three lawyers who opened a joint account referred to above.

He should be investigated fully and be made to refund Kshs.117, 000,000 or disclose for what purpose he has retained the money.

The Committee recommends that the above law firms should be thoroughly investigated by KACC and KRA with a view to ascertaining the purpose of the money received and on whose behalf they received the money from this transaction. The Law Society of Kenya (LSK) and the Advocates Disciplinary Committee should take appropriate action against the three law firms (and the lawyers) for deliberately abetting crime. Further,

they should be investigated for money laundering in accordance with the Proceeds of Crime and Anti-Money Laundering Act.

MINISTRY OF LANDS

MINISTER

The Committee observed that Hon. James Orendo had no knowledge of the transaction. When the matter came to his attention, he ordered that all land transactions involving the government or a government agency of over Kshs. 20,000,000 must be approved by him. He also advised the Committee that the procurement may be nullified on account of the altered transfer document. He undertook to place a caveat.

The Committee recommends that the Minister should investigate the ownership and transaction of this land to recover it and if possible, revert it to the original rightful owner. He should also ensure the issue of land ownership and processing of documents is resolved. The Minister is advised to put caveats on all properties bought and sold as established during investigations.

COLLECTOR OF STAMP DUTY

The Committee observed that he collected stamp duty on the sale price in accordance with the law and therefore he did his work diligently. The Committee noted that the City Council of Nairobi could have asked for exemption but they did not apply for it.

No action is recommended by the Committee for this officer.

REGISTRAR OF LANDS

The Committee noted that she accepted the altered transfer document and also facilitated the process within a day.

The Committee wondered if she compared the sale agreement and the transfer document. The transfer originally read 48.562 hectares and it was altered to read 52.22 hectares and yet the title deed issued reads 48.30 hectares. She failed to explain these anomalies to the Committee and this led to the conclusion that she was compromised and assisted in the fraud.

The Committee recommends that the Registrar of Lands should investigate the land ownership, due to the presence of a questionable title, and establish the rightful owner of the land. She should also be investigated for her possible role in this matter as she did not exercise due diligence in transferring a questionable title.

COMMISSIONER OF LANDS

The Committee noted that he issued the title deed whose acreage was different from the transfer document and the sale agreement.

It was noted that he did not question the validity of the valuation document and seemed to give credibility to the fraudulent valuation by allowing his officers to accept the stamp duty.

It was also noted that he approved sub division of the land even after knowing the process was not above board.

The Joint Committee recommends that the then Commissioner of Lands should be held responsible for failing to exercise due diligence on the transaction.

CITY COUNCIL OF NAIROBI

JOHN GAKUO

The Committee noted that he did not cooperate with it at all during his two interviews and failed to answer any questions put to him, instead choosing to conveniently hide behind the Procurement and Tender Committee.

He feigned ignorance in the whole matter and wanted the Committee to believe his only guilt is incompetence and that he never participated. This is negated by the fact that he held onto the memorandum which advised the land was not suitable for a cemetery. He had also originally denied holding a meeting to discuss the procurement of the cemetery land and only admitted it in his second appearance before the Committee when he was confronted with the evidence adduced by one of his officers.

The Committee further noted that he failed to protect the City Council of Nairobi as its Chief Executive Officer. In fact, after the allegations of corruption in the process came to his attention he chose to do nothing about it.

The Committee noted and is convinced that he is part and parcel of the scandal.

As noted above, the former Town Clerk has been very obstructive and totally unhelpful to the Committee and is one of the architects of this fraud. He withheld the memo written to him by the Town Planner, Peter Kibinda which stated that the land was not suitable for a cemetery. The Committee finds him totally and directly involved in the fraud.

The Committee recommends that thorough investigations should be undertaken by KACC to establish his culpability and hold him responsible. He should also not be allowed to hold any public office.

EVALUATION TEAM

It was chaired by Mary Ngethe and endorsed a false report which was the basis of the whole fraud. This Committee was comprised of David Wanjohi, Tom Odongo, I. Ngacha, Akotha Gitonga, M. Ouko and Alex Musee.

The Committee recommends that this Committee should be disbanded. The individual Committee members have been held responsible elsewhere in these reports.

TOM ODONGO – DEPUTY DIRECTOR OF PLANNING, CITY COUNCIL OF NAIROBI

The Committee notes that he is one of the officers from the planning department that wrote a memo to the Town Clerk stating that the land proposed to be bought was not suitable for a cemetery. (See his memo dated 11th November 2008 and marked W16). The Committee commends this officer for a job well done in raising objections to the suitability of the land and recommends that no adverse action should be taken against him.

MR. BONIFACE MISERA - DIRECTOR OF PROCUREMENT, MINISTRY OF LOCAL GOVERNMENT

From the evidence the Committee received, it recommends that he should be interdicted, investigated and charged. He should also be prosecuted for breaching Section 23(g) of the National Assembly Powers and Privileges Act. Any money and assets he has acquired from this transaction should be seized to recover public funds lost.

MARY NGETHE - DIRECTOR OF LEGAL DEPARTMENT, CITY COUNCIL OF NAIROBI

She failed to protect the interests of the City Council of Nairobi. She was involved in the fraud from the beginning to the end in that she chaired the Technical Committee, appointed the lawyer (Omotii) and frustrated the inclusion of the State Counsel at the Ministry of Local Government. As Legal Director, she was to peruse all documents before processing but didn't identify the forged valuation report and did not ensure a proper valuation was carried out. It is also suspect why she wrote a second letter to the Chief Valuer after one had already been written by N. Otido.

The Committee is convinced she played a major role in perpetrating the fraud. The Committee recommends that she should be interdicted and thorough investigations undertaken to establish her culpability and hold her responsible. She should also be barred from holding public office.

MR. KARISA IHA - DEPUTY DIRECTOR, CITY COUNCIL OF NAIROBI

He should have acted when he realized there was impropriety but did nothing. Received the cheques from local Government and without due diligence forwarded the first cheque to the lawyer. This negligence of duty enabled the fraud to be perpetrated and he should be investigated.

MR. ALEXANDER MUSEE - DEPUTY DIRECTOR PROCUREMENT, CITY COUNCIL OF NAIROBI

There is evidence he was a member of the Committee that deliberately prepared defective tender documents thus facilitating the fraud. Further evidence reveal that he received Kshs. 8,000,000 after the process was concluded.

The Committee recommends that he should be interdicted, investigated and charged. He should be held responsible for falsifying the Evaluation Committee minutes and report. He should also be barred from holding public office.

COUNCILLOR G. MAJIWA - MAYOR, CITY COUNCIL OF NAIROBI

As a signatory, he signed the sale agreement and the transfer document. He claimed he was misinformed when he signed the documents but the Committee did not believe him. He further claimed the Permanent Secretary was micro-managing the whole process.

The Mayor should have shown more interest in a transaction of this magnitude. There are no other Mayors allowed to sign any agreements but the Mayor of Nairobi is allowed. So he has executive responsibility and investigations should be carried out to find out if he benefitted financially from this transaction.

MAINA CHEGE, CEPHAS MWAURA AND HENRY KILONZI

There is credible evidence to warrant them to be investigated for obtaining money under false pretense and fraud. Their assets should be seized to recover public funds.

Henry Kilonzi should be investigated for obtaining the land fraudulently and illegally and subsequently selling it fraudulently.

There is actual evidence that the surveyor of the land under investigations, Cephas Kamande Mwaura received Kshs. 9,300,000 after the fraudulent procurement and it is recommended that he should undergo investigations for receiving this money and be charged with the appropriate offence.

The lawyers have shown they have facilitated this fraud and illegal transaction in various capacities through collaboration with various government officials and should

be investigated by KACC LSK and KRA. These lawyers are E. N. Omotii, Odera Osiemo, P.C. Onduso and Alphonse Mutinda.

Osiemo Onduso & Advocates were the distribution of the money which was obtained illegally and should be investigated.

All those involved in this financial scandal should be reported to KRA so that the authority may wish to levy taxes.

There is need to amend and strength the law on restitution, Local Government Act, advocate client privilege and KACC with view to giving it teeth.

MINUTES OF THE COMMITTEE SITTINGS

MINUTES OF THE SIXTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON 4TH AUGUST 2009, IN COMMITTEE ROOM ON 4TH FLOOR CONTINENTAL BUILDING AT 10.30 A.M.

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairperson
2. Hon. Maitha Gideon Mungaro, MP
3. Hon. Mohammed H. Gabow, MP
4. Hon. Gideon Konchella, MP
5. Hon. Stanley Githunguri, M.P

ABSENT WITH APOLOGY

1. Hon. Fahim Twaha,MP

ABSENT

1. Hon.Mwalim Mwahima, MP
2. Hon. Joshua Kutuny, MP
3. Hon. David Ngugi, MP

IN ATTENDANCE

Mrs. N. Mukunya

KENYA NATIONAL ASSEMBLY

- Principal Clerk/Deputy Director

MIN. NO. 24/2009: ADOPTION OF THE AGENDA

The Chairperson called the meeting to order at eleven o'clock and a prayer was said by Nancy Mukunya. Thereafter the Chairperson took the Members through the agenda and they adopted the same without any amendments.

MIN.NO. 25/2009: CONFIRMATION OF MINUTES

The Members went over the minutes of the meeting held on 29th July 2009 and agreed that they represented the true record of the business transacted on that day. The minutes were then proposed by Hon. Mohammed Gabow and were seconded by Hon. Shakeel Shabbir, MP. They were then signed by the Chairperson.

MIN.NO.26/2009:

MATTERS ARISING

The Chairperson informed the Members that he was to lay the Budget Report in the House but he was distracted and failed to do so. He promised to lay the same in the afternoon when the House resumes. He also observed that the Mara Conservancy issue was in the main agenda and so it would be dealt with later.

MIN.NO.27/2009:

PROCUREMENT OF CEMETERY LAND

The Chairperson informed the Members that this matter was referred to the Committee by the House on 4th June 2009 and a report is expected to be laid at the end of August. There was need therefore, to gather all the requisite information to enable the Committee compile the report. The issues that the Committee was to consider were:-

- i) What was the amount that the government paid for the land?
- ii) How much did the vendor receive?
- iii) Who was the vendor?
- iv) Was the land inspected before sale and if so, was it ascertained to be suitable for a cemetery?
- v) Were the health officials involved in the inspection?

To enable the Committee determine the above issues, it was agreed that the Members had to meet the Clerk, the Mayor, the Procurement Officer, the Legal Officer and the Director of Planning, all from the Nairobi City Council. A meeting was scheduled for Thursday the 6th August 2009 at 10.00 a.m. and the Secretary to the Committee was directed to invite the aforementioned individuals to the meeting.

Another meeting would be held next week on Tuesday where the Officials from the Ministry of Local Government would be invited.

MIN.NO.28/2009:

MARA CONSERVANCY

The Chairperson informed the Members that several people including some directors of Mara Conservancy had been to his office seeking his assistance in resolving the existing dispute. He further stated that there is a court case dealing with the dispute. After some debate it was agreed that the Committee needed to see a copy of the plaint so that it could determine whether it was proper to investigate the dispute.

One Member wanted to know whether it was in order for some Members who may have interest in the Mara Conservancy to declare. Hon. Konchella stated that although his brother was a director in the Conservancy he needed to inform the Members why there were serious issues that should be investigated. He informed the Committee that some of the white directors were selling some endangered species to other conservancies and they were also soliciting funds through their websites and these funds are not used for the Conservancy.

The Members agreed that these were serious issues which needed further investigations.

MIN.NO.29/2009:

ADJOURNMENT

There being no other listed business, the meeting was adjourned at 12.20 p.m. until 6th August 2009 at 10.00 a.m.

Signed...HON.SHAKEEL SHABBIR, MP...

CHAIRPERSON

Date.....6th August 2009.....

MINUTES OF THE SEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON 6TH AUGUST 2009, IN COMMITTEE ROOM ON 4TH FLOOR CONTINENTAL BUILDING AT 10.30 A.M.

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairperson
2. Hon. Maitha Gideon Mungaro, MP
3. Hon. David Ngugi, MP
4. Hon. Gideon Konchella, MP

ABSENT WITH APOLOGY

1. Hon. Fahim Twaha, MP
2. Hon. Stanley Githunguri, MP

ABSENT

1. Hon.Mwalim Mwahima, MP
2. Hon. Joshua Kutuny, MP
3. Hon. Mohammed H. Gabow, MP

IN ATTENDANCE

Mrs. N. Mukunya

-

IN ATTENDANCE

1. G.Majiwa
2. J.Kisia
3. Kanyi Njamura
4. Karisa Isa
5. P.T.Odongo

-

-

-

-

-

KENYA NATIONAL ASSEMBLY

Principal Clerk/Deputy Director

NAIROBI CITY COUNCIL

Mayor
Clerk, Nairobi City Council
Director of Procurement
Ag. Director, Legal Affairs
Ag. Director, City Planning

MIN. NO. 30/2009: ADOPTION OF THE AGENDA

The Chairperson called the meeting to order at eleven o'clock and a prayer was said by Nancy Mukunya. Thereafter the Chairperson took the Members through the agenda and they agreed that all the other items would be suspended until the next meeting and only the procurement of cemetery land by Nairobi City Council would be considered.

MIN. NO.31/2009: GENERAL OBSERVATIONS

The Chairperson observed that as the Committee on Local Authorities was charged with the mandate of dealing with policy issues of Local Authorities there was need to have a joint meeting between the officials of Nairobi Metropolitan Ministry and the City Council

officials so as to chart the way forward. This would ensure that there is a policy that is cross-cutting and this will remove duplication of tasks.

MIN.NO.32/2009: PROCUREMENT OF CEMETERY LAND

The Chairperson thanked the Mayor and the other officials for attending the meeting. He informed them that the issue of the procurement of the cemetery land by Nairobi City Council had raised concern in the House as there were allegations that the land bought is not suitable for a cemetery and the actual cost of the land is lower than the one stated by the Council. The Members therefore wanted the officials to shed more light on the procurement.

The Mayor at this stage sought to know why he had been invited to the meeting, stating that he only signed the transfer and did not deal with any money. The Chairperson then informed him that he was the one in charge of the City and the buck stopped with him. In any case the Government was spending public money and the Mayor had a duty to ascertain that, the public got value for their money.

The other officials were also reluctant to offer any useful information and this made the Committee to end the meeting. The Chairperson, however, informed the Officials that they should be prepared to come back when summoned as they will then be expected to give evidence on oath and in full view of the media and the public.

MIN.NO.33/2009: MARA CONSERVANCY

The Chairperson informed the Members that there is a tentative plan to visit the Mara Game Reserve from 1st to 4th September 2009 but the details would be worked out. This will enable the Committee to meet the locals and the Councilors and gather information regarding their grievances, if any.

The Members welcomed this idea.

MIN.NO.34/2009: ADJOURNMENT

There being no other listed business, the meeting was adjourned at 12.30 p.m. until 10th August 2009 at 10.00 a.m.

Signed...**HON.SHAKEEL SHABBIR, MP**

CHAIRPERSON

Date.....**10th AUGUST 2009**.....

MINUTES OF THE EIGHTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON 10TH AUGUST 2009, IN COMMITTEE ROOM ON 2ND FLOOR CONTINENTAL BUILDING AT 10.00 A.M.

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairperson
2. Hon. Stanley Githunguri, MP
3. Hon. David Ngugi, MP
4. Hon. Gideon Konchella, MP
5. Hon. Mohammed H. Gabow, MP

ABSENT WITH APOLOGY

1. Hon. Fahim Twaha, MP
2. Hon. Maitha Gideon Mungaro, MP

ABSENT

1. Hon. Mwalim Mwahima, MP
2. Hon. Joshua Kutuny, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

- | | | |
|--------------------------|---|---------------------------------|
| 1. Mrs. N. Mukunya | - | Principal Clerk/Deputy Director |
| 2. M/s Vane A. Nyaboke | - | Legal Department |
| 3. M/s Daisy Wakoli | - | Parliamentary Intern |
| 4. M/s Dorothy A. Ombolo | - | " |

MIN. NO. 35/2009: ADOPTION OF THE AGENDA

The Chairperson called the meeting to order at half past ten o'clock and a prayer was said by Nancy Mukunya. Thereafter the Chairperson took the Members through the agenda and they adopted the same without any amendments.

MIN. NO. 36/2009: CONFIRMATION OF MINUTES

The Members went over the minutes of the meeting held on 4th August 2009 and agreed that they were in accordance with the business transacted on that day and the same were then proposed by Hon. Konchella and seconded by Hon. Gabow. They however requested the word white on paragraph 3 in page three be deleted.

The Members also went over the minutes of the meeting held on 6th August 2009 and concurred that they were in accordance with the business of that day and the same were then proposed by Hon. Konchella and seconded by Hon. Ngugi.

MIN. NO. 37/2009: PROCUREMENT OF CEMETERY LAND

The Chairperson thanked the officers from the Legal Department for attending the meeting and then invited the Legal Counsel to take the Members through the brief that had been circulated.

The Legal Counsel in her submission highlighted the following points:-

- i) That Nairobi City Council wrote to the Chief Valuer, Ardhi House requesting for a valuation for the land they intended to buy.
- ii) That on 10th November 2008 the Deputy Commissioner purportedly wrote back stating that the property is valued at ksh.325,150,000.
- iii) That the Ministry of Lands has since disowned the letter and has given convincing reasons to prove it is a forgery
- iv) That the Council advertised for an open tender for land and there were 12 applicants.
- v) That the Chairperson of the Technical team advised that the tender documents of Naen Rech Company were defective and insufficient and the Director of City Planning Department had also advised that the soil profile was not suitable and so it is not clear why the tender was awarded to this Company.
- vi) That there is no legal document to show that Naen Rech was appointed as the agent for the land owner.
- vii) That there are two agreements dated 19th December 2008 wherein the vendor Mr. Henry Musyoka Kilonzi is purporting to sell the same land reference number 14759 to both Naen Rech Company and to Nairobi City Council but for different prices.
- viii) That it appears that Naen Rech got the tender(september2008) for a land it had no mandate to transact on for otherwise why was it purporting to buy the land later.

MIN.NO.38/2009: MARA CONSERVANCY

The Chairperson informed the Members that there is a tentative plan to visit the Mara Game Reserve from 1st to 4th September 2009 but the details would be worked out. This will enable the Committee to meet the locals and and the Councilors and gather information regarding their grievances, if any.

The Members welcomed this idea.

MIN.NO.39/2009: ADJOURNMENT

There being no other listed business, the meeting was adjourned at 12.30 p.m. until 10th August 2009 at 10.00 a.m.

Signed HON. SHAKEEL SHABBIR, MP

CHAIRPERSON

Date 1st OCTOBER 2009

MINUTES OF THE ELEVENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON 1ST OCTOBER 2009, IN COMMITTEE ROOM ON 2ND FLOOR CONTINENTAL BUILDING AT 11.00 A.M.

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairperson
2. Hon. Maitha Gideon Mungaro, MP
3. Hon. Gideon Konchella, MP
4. Hon. Stanley Githunguri, M.P

ABSENT WITH APOLOGY

1. Hon. Fahim Twaha, MP
2. Hon. David Ngugi, MP
3. Hon. Joshua Kutuny, MP

ABSENT

1. Hon. Mwalim Mwahima, MP
2. Hon. Mohammed H. Gabow, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

1. Mrs. N. Mukunya - Principal Clerk/Deputy Director

PRELIMINARIES

The Secretary informed the Committee that the Minister for Lands had come to the meeting at 9.00 a.m. as he had been requested by the Committee to give information on the purchase of cemetery land by Nairobi city Council but he only found one member present. He and his officers waited for thirty minutes and then left.

MIN. NO. 48/2009: ADOPTION OF THE AGENDA

The Chairperson called the meeting to order at half past eleven o'clock and stated that he was of the opinion that the first meeting was to start at 10.00 a.m. and not 9.00 a.m. He regretted that the Minister left before the other Members arrived and hoped that the next meeting would be more fruitful. He then informed the Committee that the agenda was to receive evidence from the Deputy Prime Minister and Minister for Finance but then since the secretary had confirmed that the Minister was still out of the Country, the Committee needed to agree on another agenda for the meeting. After some discussions the Members agreed to deal with:

- a) setting down the names of the witnesses to the purchase of the Cemetery Land by Nairobi City Council and the timelines.

b) Study tours

MIN. NO.49/2009: PURCHASE OF CEMETERY LAND

The Committee agreed that the following persons will appear before it on the following dates to give evidence in respect of the purchase of the Cemetery Land by Nairobi City Council:

Thursday the 12th November 2009

1. The Minister for Lands and his officers at 10.30 a.m.
2. The Minister for Health and Sanitation and her officers at 11.30 a.m.
3. The Deputy Prime Minister and Minister for Finance and his Permanent Secretary at 12.00 noon
4. The Director of Kenya Wild life Services at 12.30 p.m.

Friday the 13th November 2009

1. The Deputy Prime Minister and Minister for Local Govt. at 10.30 a.m.
2. Mavoko Municipal Council Officials, the Clerk, Mr. Wisdom Mwamburi, the Mayor, Mr. Patrick Makau & Town Planner, Mr. Francis Ndereba at 11.30 a.m.
3. The alleged lady owner-Agnes Nenkao
4. Children's home director-Agnes Mugane
5. Richard Ngangi
6. Bishop William Ngangi
7. Jeremiah Kaloi
8. Hon.Wavinya Ndeti area Member of Parliament

Monday the 16th November 2009 at 10.00 a.m. (to be summoned)

1. Former Permanent Secretary in the Ministry of Local Government, Mr.Solomon.Boit
2. Former Legal Officer in the Ministry of Local Government, Mr. Torome
3. Former Permanent Secretary in the Ministry of Lands, Mr. Kombo Mwero
4. Former Commissioner of Lands, Mr.Mabae
5. Former Nairobi Town Clerk, Mr. John Gakuo

Monday the 16th November 2009 at 2.30 p.m. (to be summoned)

1. Henry Musyoki, the alleged owner
2. Naen Rech Company Limited
3. Mr. Alphonse Mutinda of Mutinda & Company Advocates
4. Mr. E.N.Omoth of Omoth & Company Advocates

Tuesday the 17th November 2009 at 10.00 a.m. (to be summoned)

1. Current mayor of Nairobi City Council, Mr.Godfrey Majiwa

2. Nairobi City Council Deputy Town Clerk, Mr. Nelson Otindo
3. Nairobi City Council Director of Planning, Mr. Peter Kabinda
4. Nairobi City Council Director of Legal Services, Karisa Iha

Thursday the 19th November 2009 at 10.00 a.m.

Members agreed to meet and plan on how to proceed to Mombasa to write the report.

REPORT WRITING

The Members propose to be in Mombasa from Friday the 20th, to Monday the 23rd November 2009 to compile the report on the purchase of Cemetery Land.

MIN.NO.50/2009: STUDY TOURS

The Members discussed and agreed that they will make three trips as follows:

1. Uganda, Rwanda, South Africa and Brazil
2. U.K., Germany and Turkey
3. Philippines, China and Malaysia

The first trip will be undertaken in early December 2009 or January 2010.

TRIP OBJECTIVES

- a) To meet and interact with the Minister for Local Governments and his officials in these Jurisdictions.
- b) To learn from the relevant Committees the best practices and how to be effective as a Committee
- c) To meet and interact with City Mayors

MIN.NO.51/2009: ADJOURNMENT

There being no other listed business, the meeting was adjourned at 12.40 p.m. until 12th November 2009 at 10.00 a.m.

Signed HON. SHAKEEL SHABBIR, MP
CHAIRPERSON

Date 12th NOVEMBER 2009

MINUTES OF THE TWELTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON 12TH NOVEMBER 2009, IN COMMITTEE ROOM ON 2ND FLOOR CONTINENTAL BUILDING AT 10.00 A.M.

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairperson
2. Hon. David Ngugi, MP
3. Hon. Gideon Konchella, MP
4. Hon. Fahim Twaha, MP

ABSENT WITH APOLOGY

1. Hon. Stanley Githunguri, M.P
2. Hon. Maitha Gideon Mungaro, MP
3. Hon Mwalim Mwahima, MP

ABSENT

1. Hon. Mohammed H. Gabow, MP
2. Hon. Joshua Kutuny, MP

IN ATTENDANCE

1. Mrs. N. Mukunya

KENYA NATIONAL ASSEMBLY

- Principal Clerk/Deputy Director

KENYA WILDLIFE SERVICES

1. Mr. Tom Sipul - Assistant Director
2. Michael Wanjau - Senior Warden

MIN. NO. 52/2009: ADOPTION OF THE AGENDA

The Chairperson called the meeting to order at half past ten o'clock and a prayer was said by Hon. David Ngugi.

MIN.NO.53/2009: CONFIRMATION OF MINUTES

The Committee went over the minutes of the meeting held on 1st October 2009 and agreed that they were in accordance with the business transacted on that day and the same were proposed by Hon.Konchella and seconded by Hon.Shakeel Shabbir. They were then signed by the Chairperson

MIN.NO.54/2009: MATTERS ARISING

On the issue of taking of evidence in respect the procurement of cemetery land by the Nairobi City Council it was noted that all the Ministers were unable to attend the meeting today because they had travelled to Mombasa.

The Minister for Finance had, however, confirmed he will appear before the Committee.

The date for report writing was changed to 27th to 30th November 2009 as There is a workshop in Mombasa on 20th November 2009 dealing with Land Reforms to which the Committee Members are invited.

MIN.NO.55/2009: STUDY TOURS

The Committee was informed that letters requesting for meetings in South Africa and Brazil had been sent by the clerk and both Countries had responded and have stated action is being taken.

The Committee then agreed that the Members to travel are Hon. Shakeel Shabbir, Hon. Fahim Twaha, Hon.David Ngugi and Hon.Gideon Konchella.

MIN. NO.56/2009: PURCHASE OF CEMETERY LAND

The Chairperson welcomed the Deputy Director and the senior Warden to the Meeting and introduced the Members of the Committee. He then requested the visitors to introduce themselves and to give their presentation to the Committee.

The following are the highlights from the presentation:

- a) That the proposed cemetery is on the migration corridor of the wildlife
- b) That the soil is too shallow and graves cannot be dug for more than three feet
- c) That there are many hyenas in the park near the proposed cemetery and these will definitely dig up any body that is not buried beyond six feet
- d) That if hyenas get used to eating human flesh they will start attacking people and especially children
- e) That the opinion of the officials of Kenya Wildlife officials was never sought by Nairobi City Council before purchasing the Land because if they had done that, they would have been discouraged from doing so
- f) That even the Livestock owners in the area believe that a cemetery is not compatible with animal rearing.
- g) That the Committee needs to establish who are the Directors of M/S Masai Impex Ltd
- h) That the Committee needs to find out why the complaints by Kenya Wildlife about land use in that area has not been acted on by the Government
- i) That the Ministry of Livestock needs to explain why they allowed their land to be taken over by prospectors
- j) The Ministry of Lands needs to enlighten the Committee on the proposed Master plan of Isinya-Kitengela
- k) NEMA should have been involved in assessing whether the land is suitable for a cemetery.

- l) The Committee needs to establish how the caveats registered by the Kenya Wildlife Service against the Lands were removed in the Lands Office.

MIN.NO.57/2009: ANY OTHER BUSINESS

The Committee agreed to deal with the issue of Mara Conservancy during the meetings to be held between 7th and 10th December 2009. The Committee would then travel to Mara between 17th and 19th December 2009 to take further evidence on the ground.

MIN.NO.58/2009: ADJOURNMENT

There being no other listed business, the meeting was adjourned at 1.20 p.m. until 13th November 2009 at 10.00 a.m.

Signed HON.SHAKEEL SHABBIR, MP
CHAIRPERSON

Date 31st NOVEMBER 2009

MINUTES OF THE THIRTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON 13TH NOVEMBER 2009, IN COMMITTEE ROOM ON 5TH FLOOR CONTINENTAL BUILDING AT 10.00 A.M.

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairperson
2. Hon. David Ngugi, MP
3. Hon. Gideon Konchella, MP
4. Hon. Fahim Twaha, MP

ABSENT WITH APOLOGY

1. Hon. Stanley Githunguri, M.P
2. Hon. Maitha Gideon Mungaro, MP

ABSENT

1. Hon. Mohammed H. Gabow, MP
2. Hon. Joshua Kutuny, MP
3. Hon. Mwalim Mwahima, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

1. Mrs. N. Mukunya - Principal Clerk/Deputy Director

MIN. NO. 59/2009: ADOPTION OF THE AGENDA

The Chairperson called the meeting to order at twenty minutes past ten o'clock and a prayer was said by Nancy Mukunya.

MIN.NO.60/2009: CONFIRMATION OF MINUTES

The Committee went over the minutes of the meeting held on 12th November 2009 and agreed that they were in accordance with the business transacted on that day and the same were proposed by Hon.Twaha and seconded by Hon.Gideon Konchella. They were then signed by the Chairperson.

MIN.NO.61/2009: MATTERS ARISING

There was a suggestion that if the Committee will have gathered all the Evidence, report writing dates be changed to 21st to 23rd November 2009 so that the Members who will have travelled to attend the Land Reform workshop in Mombasa can be joined by the others.

The Committee noted that witnesses had arrived and it was decided that Richard Ngangi be called in to adduce his evidence. After the Members present were introduced the witness was requested by the Chairperson to introduce himself and then to tell the Committee what he knew about the proposed cemetery land.

RICHARD NGANGI

My names are Richard Ngangi and I retired in 2002 from Portland Cement. I am farmer in Mavoko area where I went in 1971. In 1970 the then President, Hon. Daniel Arap Moi gave a group of us about 6,000 acres.

The land was planned in 1971 and thereafter subdivision ensued. There were 62 people but 64 plots were subdivided to cater for a church and a public utility area. Each of us paid 5,000 for the planning and processing of the titles.

In 1984 those of us who had paid got their titles. Our surveyor was Gikonyo Mwangi and other than the two plots I mentioned above there was no land other land that was left unoccupied.

I hear that someone is claiming to have been given land by President Mōi in 1991 but this cannot be possible. I knew all the 62 allottees. There were 64 plots. One of these plots was given to the Church and the other for Shopping Centre. The material land was given to Marinie Ole Tiranti. It is number LR. 1475/9. I live near this shamba and I have never heard that the deceased sold this land to anybody.

Mr. Patrick Makau

I am the Mayor of Mavoko Municipal Council. I heard about the material land being the proposed site for Nairobi City Council Cemetery from the media. As far as I am concerned the land is still agricultural as the Council has not approved change of user. Nairobi City Council officials never sought our opinion in respect of purchasing land within our area for a cemetery. If they had, I and my officers would have informed them that the area is not suitable for a cemetery.

Mr. Wisdom Mwamburi

I became the Clerk to Mavoko Municipal Council in June 2008. In Mavoko there is no red soil which is normally suitable for a cemetery. There was no planning brief brought to Mavoko Municipal Council. The area is mainly agricultural and no environmental assessment has been carried out to show whether the area is suitable for a cemetery.

Samuel Makali :

I am a new planner in Mavoko Municipal Council but I am resident there. In the municipality there are no documents showing who the owner of the disputed land is. There is no registered use of the land but the area is mainly agricultural land. I have not seen any application for change of land use. As far as I know there is no approved master plan for the material area. The children's home on the land is illegally built

because there was no change of user approved. Those buildings put up before 2007 will be regularized when owners apply.

Bishop William Nkaangi

I am a Bishop with Pental Costal Churches. The late Marinie Ole Tiranti was a husband to my sister Agnes Nenkao. Marinie and his family lived on the disputed land and I used to visit them there. My sister was cultivating part of the land and a friend of the family, Mr. Kilonzi was also cultivating part of the land. The remaining part was used for grazing their animals. In 2002 Marinie died and his family moved back to his father's land as his mother became mentally sick and needed assistance.

The land parcel that belonged to the late Marinie was LR.14759.

On or about 2003, my sister came to my home and informed me that she had gone to their above land and had found that Kilonzi had pulled down her house and had used the iron sheets to build a shed for his animals. She was quite shaken but I assured her that all would be well as I would take her to the land office where the land issue would be sorted out.

When we visited the land office we found the file and the letters of allotment in the name of her late husband but my sister was told she must produce the letters of administration to enable the land officer to transfer the land to her name. I helped her to file a succession suit but before she got the letters of administration, a School was put up on the land by people who said they got the land from Kilonzi. When we asked Kilonzi how he sold the land he said we should not bother him as he had been given the land by the President.

Buckson Semei

I was a member of the Committee dealing with the Shamba in question. A group of about 62 people were given land by President Moi. We had to pay Ksh. 5,000 to the surveyor so that we could get our title deeds. I was the treasurer and I used to receive this money and then I would forward it to the Surveyor. I know the land in question belonged to Marinie Ole Makaita. He never informed me he was selling the land and I don't know how Kilonzi got the land. He was not one of the original beneficiaries.

Agnes Nenka Marinie

I married Marinie Ole Makata in 1982 and we got our first child in 1984. The husband died in 2002.

One day after the 1984 drought, my husband came home with three friends and we slaughtered a goat. Thereafter when it started raining one of these friends came and asked to be allowed to cultivate part of our land and my husband agreed on condition that he would cultivate 10 acres for himself and then plough three (3) acres for us.

In 2002, my husband contracted tuberculosis and he died. His mother became mentally ill soon thereafter and my father-in-law requested me to go and assist her. So I took the children and we moved to my father-in-law's land. Unfortunately, she also died after sometime.

I then came back to Mavoko to check on our land as I wanted to come back so that the children would start going to school. To my shock, I found our so called friend Kilonzi had taken possession of our land and had built a house thereon. He had brought down our small house and he had used the iron sheets to put a shed for his animals. I asked him what was going on and he told me that he had been given the land by the President and I should not go there again. He threatened to kill me if I dared set foot on that land.

I thereafter went to my brother's home to seek assistance. This was about 2003. My brother, Bishop Nkaangi, took me to the Lands office where a search showed that our land was intact and it had not changed hands. I was however, advised to get Letters of administration from court so that the land could be transferred to my name.

I was assisted to file a succession suit but before I obtained the letters, I noticed a school was being built on our land. I got information that the school owners had bought the land from Kilonzi. I went to the offices of FIDA seek help which has not been forthcoming.

I now appeal to you Members to help my children and I to get back our land. My late husband never informed me that he had sold the land. I would also like Kilonzi to produce proof of payment of any money to my late husband. If he had truly bought the land, why did he lie to me that he had been given the same by the President? I need help and I want justice to be done.

Jeremiah Kaloi

I come from Embakasi village. I work with Mavoko Municipal Council. I knew the deceased person who owned the land in question. I live next to marinie Ole Tiranti's land. Kilonzi used to cultivate there and he then started building. He said that he got the land from the government.

I heard from the media that the land was going to be a Cemetery and when I asked the widow (marinie's) about it she informed me that Kilonzi had grabbed the land. When we approached Kilonzi as a community he said he didn't know anything about a Cemetery. The normal value of the land there is between Kshs. 300,000 to Kshs.500, 000 per acre.

PETER MBURU KABINDA

His evidence was as follows:-

I deal with planning and especially future urban development. In 2003, I was transferred to Thika Municipality and was there until 2008 when I came back to work for Nairobi City Council. At this particular time, the council was worried because Langata cemetery was said to be full and the Council needed to buy another burial ground. Towards this end, the Local Government Ministry facilitated a meeting between Mary Ngethe, the legal officer and other Council officials with Mr. Kinyua, the Permanent Secretary in the Ministry of Finance. The purpose of the meeting was to request for funds to buy land for a cemetery. The Ministry of Finance agreed to provide funds to buy land for a cemetery.

The Council then started to look for land to purchase. In the first advertisement the Council only got three people interested in selling land for a cemetery to it.

When the Council officials visited these lands, it became clear that these lands did not qualify since they didn't have red soil which is more than 6 fit deep and they were not serviced by an all weather road. The land near Kapa industry would have been suitable but its title had encumbrances.

In 2008 we visited several sites in search of a suitable cemetery land. I was not in the technical team but my deputy Tom Ondongo and Mr. Barren were in it. The Chairperson of the technical committee was Mary Ngethe.

When the land in issue was identified I and my colleagues wrote a memo to the town Clerk stating that in our opinion the land was not suitable for a cemetery and we gave our reasons. I don't know how the contents of this memo leaked to the Ministry but the Permanent Secretary in the Ministry of Local Government wrote to the Town Clerk referring to the same. The Town Clerk called a meeting of the evaluation technical team. It was three days after I wrote the Memo. No minutes were taken in that meeting. I was asked to give the genesis of the contents of the above Memo and I wrote another memo to the Town Clerk to explain. I suggested that since the open tender was proving ineffective, we needed to either compulsorily acquire the land or negotiate with sellers with land having red soil.

The Clerk had some reservations and stated that the issue had taken too long and needed to be finalized. A meeting was called at the Ministry of Local Government which was attended by the finance officer, Permanent Secretary, Procurement officer, Director of legal affairs from Ministry, Edith Torome and also the funeral superintendent. The meeting was to discuss a report of progress made on the issue of procuring the cemetery land. The Council had no budget to buy land and that is why we involved the Ministry of Local Government.

A meeting of the tender Committee was called and I attended the meeting for a short period since I had other engagements. Before I left, however, I made it clear that the proposed land was not suitable and no tender should be awarded. The Town Clerk was aware of what was going on in respect of the purchase of cemetery land. There was no meeting in City hall by Councillors to endorse the purchasing of cemetery land by Nairobi City Council.

ANSWERS TO QUESTIONS PUT BY THE COMMITTEE

The General Purpose Committee never met to deliberate on this matter. There was no Full Council meeting to approve the purchase of the Cemetery land.

The matter has not even been brought to the Council for ratification.

The Deputy Town Clerk signed the transfer documents and he was still the Chairman of the Tender Committee. This is irregular.

The Mayor or Councillors never attended any of the above meetings.

I know Maina Chege the Director of Naen Rech Ltd because he comes from Maragwa. He is the proprietor of merchant auctioneers.

CHAIRPERSON

On behalf of the Committee, the Chairperson thanked the witness and informed him that the Committee reserved the right to recall him to provide any clarification that the Committee may deem necessary.

MIN NO. 69/2009: ADJOURNMENT

There being no other listed business, the meeting was adjourned at 2.30 p.m. until 24th November 2009 at 10.00 a.m.

Signed HON.SHAKEEL SHABBIR, MP

CHAIRPERSON

Date 16th NOVEMBER 2009

MINUTES OF THE FOURTEEN SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON 16TH NOVEMBER 2009, IN MAIN CONFERENCE ROOM COUNTY HALL PARLIAMENT BUILDING AT 10.00 A.M.

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairperson
2. Hon. Fahim Twaha, MP
3. Hon. David Ngugi, MP
4. Hon. Gideon Konchella, MP
5. Hon. Franklin Linturi, MP

ABSENT

1. Hon.Gideon Mungaro, MP
2. Hon.Fahim Twaha, MP
3. Hon.Gabow
4. Hon.Lukas Kutuny

IN ATTENDANCE

1. Mrs. N. Mukunya

KENYA NATIONAL ASSEMBLY

- Deputy Director

MINISTRY OF LANDS

1. Zablon Mabae

- Commissioner of Lands

2. A.M.Itui

- Deputy Commissioner of Lands

3. Teresia Mburu

- Deputy Commissioner of
Lands (Registration)

MIN. NO.64 /2009:

ADOPTION OF THE AGENDA

The Chairperson called the meeting to order at half past ten o'clock and the agenda was adopted without amendments.

MIN. NO. 65/2009:

PROCUREMENT OF CEMETERY LAND

The Chairperson welcomed the above officials from the Ministry of Lands and introduced the Members of the Committee them. He then requested the officials to introduce themselves and to give their presentation to the Committee. The following are the highlights from their presentation:

Mr Zablon Mabae

This witness made the following statement:-

I am the Commissioner of Lands in the Ministry. In respect of the land in question, I want to state the following:

- i) The Ministry's main function is to keep records of all land transactions.
- (ii) The Ministry received a letter dated 4th November 2008 from Nairobi City Council asking that a valuation be carried out on land parcel LR.NO. 14759 in Mavoko Township.
- (iii) They wrote back on 13th November 2008 asking for an officer to take them to the Ground
- (iv) No action was forthcoming from Nairobi City Council until they received the letter asking them to confirm that they had valued the land. This was the letter from Auditor general.
- (v) They hadn't done any valuation and when they scrutinized the letter they confirmed it was a forgery. They didn't have any staff named A. Otieno and the letter head on the letter was already abandoned by the Ministry Land number transactions.
- (vi) Mr. Kilonzi applied to titles for L.R.

The issue came to his attention early this year when he received a letter from Auditor General asking for the authenticity of a letter of valuation. He referred the letter to my deputy to deal with.

On 7th November 2009 they receive a letter to give a valuation for negation purposes. We didn't get a follow up but after tackily to city of Nairobi they said they were not interested in the enquiry.

On 15th January 2009 is the date on which subdivision was approved.

Their officer went to the land and valued the land at 200,000 per are since it is agricultural land.

City Council is exempt from paying stamp duty but in this case they never applied to be exempted .

On 3rd February 2009 the Nairobi City Council was issued with a title after all the documents were found to be submitted.

John Gakuo

He stated as follows:-

In 2004 – 2008 I was the Town Clerk of Nairobi City Council. As the Chief Executive Officer of the Council then, I referred the matter to the Procurement Committee. In September 2008 the process of buying cemetery land started. The tender was open and was put in the media. The members of Procurement Committee are Deputy Clerk, Treasurer, Medical Officer of Health, Engineer, Director of City Planning, Education M.O.H.

The memo of 11th November 2008 came to me and I personally gave a response. The reply is in the office of Clerk in Nairobi City Council. Permanent Secretary then was Mr. Boit. The payment was made directly to a lawyer who was representing Nairobi city council. There is a valuation department in the council

I don't know whether the valuation department was requested to value the land.

I relied on the technical committee advice.

I was informed that the valuation was done by the Ministry of lands.

CHAIRPERSON

We are sad to note that you have refused and or failed to answer any question put to you and you seem to hide behind the tender and procurement Committees.

KOMBO MWERO

The evidence adduced by this witness was as follows:-

I was employed by Government as a surveyor. I served for 28 years.

In 2005 I was the Permanent Secretary in the Ministry of Local Government until 2007 when I was transferred to the Ministry of Wildlife.

The transaction of the proposed Cemetery land took place after I had moved from the Ministry of Lands. It is irregular to give a title deed to a member who was not originally given land after the original allottee died.

ALPHONCE MUTINDA

I am a partner in Alphonce Mutinda & Co. Advocates and a lawyer by profession. I requested to have my lawyer Mr. Mutisya present. Request granted by the Committee.

EVIDENCE

This witness then gave the following evidence:-

Henry Kilonzi is my client. I handle his business. He informed me in August 2008 that he wanted to sell his property. He told me he was selling part of his 140 acres. He wanted to keep 10 acres for himself and he had sold 10 acres to a school. He wanted me to look for a buyer.

Towards end of August 2008 I was introduced to one Maina Chege by Mr. Mwaura who is a surveyor. He wanted to buy the 120 acres. I called Kilonzi and Maina to my office

and they met and negotiated a price. Maina Chege is the Director of Naen Rech Company.

Kilonzi wanted to sell the land for 800,000 per acre. Finally after negotiations we agreed at 110,000,000 for 120 acres. Mr Maina Chege had his own advocates.

We wanted a deposit of 10% which is 11,000,000. We got a post dated cheque in two names.

In September 2008 he said he won a tender from Nairobi City Council to sell the land he wanted to buy from Kilonzi.

The agreement was that Kilonzi would be paid after transfer to Nairobi City Council. The land had not been subdivided and there was need to have consent from Mavoko Municipal Council and a clearance certificate.

14759/2 was the land being sold to Nairobi city council.

Nairobi City Council, E.N. Omotho lawyer sent me a draft sale agreement. Mrs Mutua from lands did a valuation for the purpose of stamp duty.

The Nairobi City Council had paid or issued a cheque for the stamp duty and so the title was issued to Nairobi City Council.

Kilonzi sold to the children's home 10 acres at 500,000 per acre.

Question by a Member

Did you attend the Land Control Board at Mavoko or who did.

My office got the consent

My office obtained a Clearance Certificate from Mavoko

I am Kilonzi's Lawyer in the sale of land to the children's home. I saw the sale agreement and the transfer of land from the masai man to Kilonzi. (there is no evidence of this)

MAINA CHEGE

This witness stated as hereunder:-

I am a business man and a director of Naen Rech Co. Ltd. This Company was incorporated in 1996. Share holders have changed. There were three directors, Maina Chege, John George Kamau and Winnie Wanjiku. The two have since left. They were replaced by Einswick Van Sen from Israel.

The company was incorporated to do business and horticulture farming. In 18th September 2009, there was an advert in the newspaper asking for suitable land for a Cemetery by Nairobi City Council.

As a business man I wanted to tender. I had started negotiation with Kilonzi for his land at Mavoko for I wanted to plant trees.

I bought the tender documents and since Kilonzi was selling the 120 acres at 110,000,000 I quoted 2,360,000 per acre. I engaged P.C. Onduso advocates to get the land transferred to Nairobi City Council from Kilonzi.

The other Director owns 15% in Naen Rech. By the time I tendered we had agreed that Kilonzi was going to sell the land to me.

The lawyers I engaged me have swindled me and have refused to release my money. I have therefore filed Milimani High 181/2009/05 Naen Rech Ltd versus Onduso & Co. Advocates where I am claiming 42,050,000 from them. The case is yet to be finalized.

I have also filed Civil Case No.518/2009

Maina Chege versus Odera & Co. Advocates where I am claiming ksh.87, 000,000. Stephen Kibuya advocate is acting for me.

About 9.2 Million was put in my account. A further 2 million was given to me. I expected 273 million out of the transaction but 133 million is still with the lawyers.

MIN. NO. 66 /2009: ADJOURNMENT

There being no other listed business, the meeting was adjourned at 4.10 p.m. until 17th November 2009 at 10.00 a.m.

Signed

HON.SHAKEEL SHABBIR, MP

CHAIRPERSON

Date

1st DECEMBER 2009

**MINUTES OF THE SEVENTEETH SITTING OF THE DEPARTMENTAL COMMITTEE
ON LOCAL AUTHORITIES HELD ON 1ST DECEMBER 2009, IN MAIN CONFERENCE
ROOM COUNTY HALL PARLIAMENT BUILDING AT 10.00 A.M**

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairperson
2. Hon. David Ngugi, MP
3. Hon. Fahim Twaha, MP
4. Hon. Mohammed H. Gabow, MP

ABSENT WITH APOLOGY

1. Hon. Stanley Githunguri

ABSENT

1. Hon.Gideon Konchella
2. Hon.Mwahima Mwalim
3. Hon. Joshua Kutuny
4. Hon. Gideon Mungaro

IN ATTENDANCE

1. Mrs. N. Mukunya

KENYA NATIONAL ASSEMBLY

Deputy Director

MINISTRY OF LOCAL GOVERNMENT

2. Hon. Wycliffe Musalia Mudavadi

Deputy Prime Minister and Minister for Local Government

3. Mr. Sammy Kirui

Permanent Secretary, Ministry of Local Government

4. Mr. H.S. Chavera

Chief Finance Officer, Ministry of Local Government

MIN. NO. 73/2009:

ADOPTION OF THE AGENDA

The Chairperson called the meeting to order at twenty minutes past ten o'clock and the same was opened with prayers led by Mrs. Nancy Mukunya. Thereafter the agenda was adopted without amendments.

The Chairperson welcomed the above official from Ministry of Local Government and expressed pleasure that the Minister found time to attend the meeting. He then introduced the Members of the Committee that were present. In turn the minister also introduced his team and stated that they had come to clarify all the issues in respect of the procurement of cemetery land by Nairobi City Council.

MR.SAMMY KIRUI

The Permanent Secretary made the following remarks:-

Nairobi City Council wanted Cemetery land and the Town Clerk requested the Ministry of Local Government to assist as the Council had no funds. Lack of a burial ground being a national issue, the Ministry was obliged to help and asked the Council to procure the land and funds would be availed to them. We released the cheque when we were told the land was available.

MR. KIRUI'S RESPONSE TO QUESTIONS FROM THE COMMITTEE

This was a Nairobi City Council Project.

The cheque was issued to the lawyers acting for Nairobi City Council.

The letter the Ministry received from the Council is dated 28th June 2008 and another one is dated 28th September 2009. In April 2008 part of the money was available for purchase of the cemetery land.

Yes, there were tender Committee minutes from Nairobi City Council.

The Ministry got a draft agreement for the sale.

In September 2008, the tender was advertised in the newspapers.

There was no documentation to support the cheque issued on 30th June 2008 in the name of Omotii and company advocates. All we wanted was to safeguard the money and not to return it to the treasury. It is true we did not follow the government regulation of returning the money to treasury. There was no bad intention in issuing the cheque. It is not normal to ask for money in two installments.

On 11th November 2008 there was a Memo from the Tender Committee stating the land was unsuitable.

There was no meeting in my office in respect of Cemetery land.

I didn't see the need to involve our legal department because the Nairobi City Council has its own Lawyers. So I may have directed that the legal officer in the Ministry be left out of the transaction.

The officers in City Hall involved in this transaction that have caused a lot of public money to be misused are still in office but one has retired and one is on leave.

I agree that if the price is inflated then there is fraud. It seems that this is the case in respect of Nairobi Cemetery Land Procurement.

If some of my officers were involved I was not aware.

I didn't collude with the Town Clerk.

There was no intention on my part as the Permanent Secretary to defraud the Government. I have never been corrupt and I have worked in various departments of the Government.

I will give all the support that this Committee may need.

MINISTER

It is true there are issues surrounding this matter and I hope the Committee can unveil the grey matters.

MR. GODFREY MAJIWA - HIS WORSHIP THE MAYOR OF NAIROBI CITY

Takes the Oath by the Bible and then states as follows:-

I Geoffrey Majiwa, swear by the Almighty God that the evidence I will give before this Committee, shall be the truth, the whole truth, so help me God.

I know that sometimes in the year 2004 Members of the Council had a resolution that the council should acquire land for a Cemetery. We wanted the land next to the current Cemetery but this did not materialize. The Council then had to look for land elsewhere and we sought funds from the Local Government Ministry. Thereafter the council was dissolved and we resumed again in 2008.

Individual lands were looked at in early 2008 but the earmarked lands were found not to be available. Later it was agreed that the land be identified by a team from the City Council.

On 30th October 2008 a letter from Mr. Kirui, the Permanent Secretary gave the Council 5 days to conclude the matter otherwise the Ministry would take over the procurement. I was aware that there were complaints about the land by some member of the tender committee stating that the land was unsuitable for a cemetery. However, when I was asked to sign the transfer for the land to Nairobi City Council, I agreed.

MR. MAJIWA'S RESPONSE TO QUESTIONS BY THE COMMITTEE

On 18th September 2008 advertisement was done, so I don't know why the Permanent Secretary was writing on 30th October 2008 giving 5 days for the Council to complete the transaction.

The Permanent Secretary had said that only Government valuer would give the valuation.

I was told the land is in Mavoko. I didn't talk to the Mayor of Mavoko to inform him that Nairobi City Council was buying cemetery land in Mavoko.

I don't handle cash transactions and so I don't know whether stamp duty was paid.

The Permanent Secretary had given instructions for the purchase of the Cemetery land. If there is anything that was done improperly, then it was behind my back.

On September 2008 officers were called for a meeting to deliberate on the procurement of the Cemetery Land.

The Council bought 120 acres. These changes on the transfer document were signed for by the lawyer. The title deed reads 110 acres instead of 120 acres.

If what is in these papers is the correct position of the purchase of Cemetery land, then I was misinformed when I signed.

The Deputy Town Clerk signed but on approval by the clerk. The Chief executive of the Council is the Town Clerk and the buck stops with him. There is micro-management by the Local Government in respect of Nairobi City Council.

BANK OF AFRICA

James Gichuki from the above bank stated as follows:-

The account Number was opened in February 2009 by three lawyers Mutinda, Onduso & Osiemo Advocates. We know that the money was from another account in our bank (from Omotii Advocates) account. We have come to produce these clear copies of the transactions in this account. (The statements are handed over to the secretary of the Committee).

JOHN GAKUO

This witness was recalled as he had been very guarded the first time he appeared before the Committee and this is what he stated:-

I am the Former Town Clerk of Nairobi City Council. I called a meeting after 11th November 2008 when I received a letter from the Permanent Secretary. With procurement the buck does not stop with me. For any government land to be purchased, valuation had to be done. If not the procurement is defective. That is all I have to say.

CHAIRPERSON

The Chairperson informed the Mr. Gakuo that the Committee noted with concern that when he first appeared before it, he had not disclosed that he had called a meeting to discuss the contents of the letter from the Permanent Secretary of the Ministry of Local Government. That the Committee also noted that it has taken a lot of probing before the former Clerk admitted that he had called the meeting and that the witness's general attitude was not to disclose anything.

MIN. NO. 75/2009:

ADJOURNMENT

There being no other listed business, the meeting was adjourned at 3.30 p.m. until further notice.

Signed

HON.SHAKEEL SHABBIR, MP

CHAIRPERSON

Date

16th February 2010

MINUTES OF THE EIGHTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON 16TH FEBRUARY 2010, IN COMMITTEE ROOM 2ND FLOOR CONTINENTAL BUILDING AT 10.00 A.M.

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairperson
2. Hon. Joshua Kutuny, MP
3. Hon. David Ngugi, MP
4. Hon. Mohammed H. Gabow, MP

ABSENT

1. Hon. Mwalimu Mwahima, MP
2. Hon. Gideon Konchella, MP
3. Hon. Fahim Twaha, MP
4. Hon. Maitha Gideon Mungaro, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

1. Mrs. Nancy Mukunya - Deputy Director

MIN. NO. 76/2010: ADOPTION OF THE AGENDA

The Chairperson called the meeting to order at half past ten o'clock and agenda was adopted without amendments.

MIN. NO. 77/2010: PROCUREMENT OF CEMETERY LAND

The Chairperson welcomed all the Members who are present and observed that it was important for the Committee to conclude the issue of the procurement of the cemetery land by Nairobi city Council. The Committee agreed to take evidence from the remaining witnesses and then to travel to Naivasha on Thursday to compose the report.

KARISA IHA

This witness testified as hereunder:-

I am a deputy director in Nairobi City Council. I was involved in the purchase of the proposed Cemetery land. The Council wrote to the treasury through the Minister of Local Government for funds to buy Cemetery Land.

When the first cheque was forwarded it was in the name of Omotii Advocates who acts for Nairobi City Council. The advocate was instructed on 26th November 2008 but the cheque in his name was done on 30th June 2008. I forwarded this cheque to the lawyer as the director was out of the office then.

I don't know why the cheque was done in June to the lawyer before he was instructed to act. The second cheque of Kshs.108, 000,000 was forwarded by the same lawyer by the Director.

I have no proof that the land was suitable for a Cemetery but it was reported by the procurement Committee that the land was suitable. I was not a member of the procurement Committee but I believe the procurement process was properly done. I can't remember any other property that was purchased by Nairobi City Council in this way.

N. W. OTIDO

The evidence of this witness was as hereunder:-

I was a Deputy Town Clerk in Nairobi City Council but now I am retired. I joined the Council in September 2006 as Deputy Town Clerk in charge of administration. By a letter dated 20th January 2007 I was appointed by the Town Clerk as the Chairman of the Tender Committee. I was also appointed as the chief land registrar for Nairobi City Council. Some of my duties involved signing all land documents and I was also a bank signatory for the Council. There are four signatories, that is, the Town Clerk, his Deputy Clerk, the Treasurer and his Deputy.

I was the Chairman of the tender Committee at the time of purchase of Cemetery land. I was not aware of the letter addressed to the Clerk stating the land was unsuitable for the land.

When I discovered there were complaints about the soil structure from the technical team I did nothing. I saw the memos a week after the tender was awarded. The clerk never showed me memos. Even after seeing the memos I didn't take any action to stop the sale.

On 19th December 2008 I signed the agreement for sale. I will share the blame if there was something wrong but the mistake started with the legal department. I have nothing to add that can help the Committee

CHAIRPERSON

I am disappointed that you have withheld information that might have helped the Committee.

Dr. J.P. MUTONYI, MBS

This witness testified as follows:-

I am an acting director in the Kenya Anti-Corruption Commission. We have conducted investigations into the alleged procurement of Cemetery Land by Nairobi City Council.

From our investigations, we have established that Henry Kilonzi was approached by Maina Chege who was a Director of Naen Rech Ltd to sell the land in question to him. Naen Rech then purported to sell the land to Nairobi City Council even before the title passed to his Company.

We have information showing that Maina Chege was used for furthering the whole. This is best explained by Mr. Tabu Lwanga, the officer who has been gathering our evidence.

TABU LWANGA

The evidence by this witness was as hereunder:-

That the Ministry of Local Government provided a total of Ksh. 290,694,000

- That E.N.Omotii & Co.Advocates received Ksh.283, 000,000
- That the Commissioner of Domestic Taxes received ksh.5, 664,000 for stamp duty
- That E.N.Omotii's legal fees was ksh.2, 030,000.
- That the interest generated by the amount received by E.N.Omotii was ksh.1, 800,000 and he retained the same.
- That a joint account was opened and was operated by three advocates, namely, Odero Osiemo & Co.Advocates, P.C.Onduso & Co advocates and Alphonse Mutinda & Co.Advocates. A total of Ksh.281,300,000 was deposited in this account.
- That Alphonse Mutinda received Ksh135, 900,000 out of the above account
- That P.C.Onduso transferred ksh.9, 600.000 to his KCB account
- That Naen Rech Limited received ksh.9,450,000
- That Ksh.9,300,000 went to Celhas Kamande Mwaura who surveyed the land
- That Odero Osiemo & Co Advocates received Ksh.117,000,000

Part of the Ksh.117, 000,000 received by Odero Osiemo was distributed as follows:-

- ❖ Cibiya World Wide Ltd whose director is Newton Osiemo, a brother to
- ❖ Odero advocate received a total of Ksh.29,860,000. He spent 20,000,000 in buying 5 acres of land from James Mwangi and 1,660,000 to buy a van from James Mithamo.
- ❖ Janet Kabura Nguku who is the wife of Dr. Nguku, the Medical Officer of Health at Nairobi City Council received a total of Ksh.7, 000,000 out of which she used P.J. Kakad advocates to purchase a house at Mlolongo and 2,000,000 to buy construction material for a house being built by Dr. Nguku at Mwingi.
- ❖ Stephen Githinji Kamau received 8,000,000 on behalf of Alexander Musee who is the Deputy Director of Procurement in Nairobi City Council.
- ❖ Peterson Gichana received ksh.10,000,000 on behalf of Boniface Misera who is the director of procurement in the Ministry of Local Government.
- ❖ Omotii advocate was given ksh.13, 000,000
- ❖ Alice Mayaka, a former permanent secretary in the ministry of National Heritage received ksh.4,000,000 and it has not been established why she got the money.
- ❖ Item 14 – It has not been established why Moeckings General Contractors took the 2,000,000
- ❖ Item 19 – Likewise it is not yet known why or on whose behalf Doreen A.Oyugi received ksh.3, 000,000.
- ❖ The remaining money was withdrawn by cheques by Odero advocate.

Conclusion

We are almost at the end of the investigations and we will recommend court charges in respect of all the people who were involved in this fraud.

We further request that we get back the power to compel suspects to produce documents and to disclose all information to us.

MARY NGETHE

This witness testified as follows:-

I am the Director of Legal Affairs in Nairobi City Council. In 2007 the tender of Cemetery land was done and a sale agreement dated 13th January 2006 was drawn. Before the purchase could be completed, we realized there was a problem and the tender was cancelled. Ardhi developers Ltd and West End Butchery had a dispute in respect the land ownership.

In June 2008 we readvertised for land. The PS called the officials from Nairobi City Council for a meeting on 16th June 2008 and Mr. Rotich advised us to go for a direct sale. We looked for land but were unable to get land in Nairobi. We identified several parcels of land and on 7-8-2008 we requested the Government to do valuations.

One parcel was on Mombasa road but Kenya Railways warned us not to buy the land as it belonged to them. The PS again wrote to tell us to advertise. I was appointed as the Chair of the Tender Technical Committee. There were twelve bids. Seven of them responded but five did not. We made site visits on all the lands and the Committee settled on the land at Mavoko.

On 5-11-08 we wrote to the Procurement Committee informing them of our decision.

The criteria agreed on earlier was that:-

- Land within Nairobi Metropolitan
- Easily accessible by public
- Soil must be preferably red and more than 6 inches deep

The land at Mavoko is not easily accessible and the soil is not red. The soil is only 4 inches deep. Tender Committee sat on 12-11-08 and raised the concern on 14-11-08. I did not object to the procurement because the Medical officer of health was present and confirmed the land was suitable for a cemetery. The land was valued but I later learnt that the letter of valuation was a forgery. I have nothing more to say in respect of the sale.

SOLOMON BOIT

This witness testified as hereunder:-

I am a retired civil servant. I was a PS until April 2008 in the Ministry of Local Government. The Minister then directed that some senior officials from the Ministry to meet senior officials from Nairobi City Council so that the process of acquiring a

cemetery land would be started. Apparently a delegation had seen the President and it had been agreed that there was need to assist Nairobi City Council to acquire another cemetery land.

The current cemetery was over-used and I led a group of officers to Treasury to request for finances. At first, Treasury was reluctant but the matter was revisited after the post election violence and it was agreed that funds would be availed.

I know the Minister for Local Government is executive just like the Finance Minister. Minister had to be notified of what is going on before any transaction can be concluded. This may be done orally but also preferably in writing. Normally the PS will consult the in-house counsel for legal matters e.g. land sale and if it is felt the Ministry has no capacity, the Attorney General is consulted.

BISHOP DAVID M.THAGANA

This witness stated as follows:-

In January 2008 Merciful Redeemer Children's Home and Henry Kilonzi entered into an agreement whereby he agreed to sell ten acres on LR.No.14759 Machakos to the Home. The purchase price was agreed at 400,000 per acre and so the ten acres cost 4,000,000.

On 14th January 2008 we paid Henry Kilonzi KSH.200,000

On 18th January we paid him KSH. 1,000,000 vide cheque no.00743

On 27th March we paid him a further 1,200,000 vide cheque numbers 000059(ksh.200,000) and 000060(ksh.1, 000,000)

We had intended to pay the balance on transfer of the property but Alphonse Mutinda advocate wrote to us to clear the balance to enable him transfer the land to us. We referred this letter to our lawyers who advised us to pay.

On 9th July 2008 we paid the balance of ksh.1, 000,000 vide cheque number 001564.

We have built children's home on the land although we haven't yet received approval of the buildings from Mavoko Municipal Council.

From July 2008 we have been asking our lawyer for the title to our land-but we haven't received the same to date.

MIN. NO 78/2010: ADJOURNMENT

There being no other listed business, the meeting was adjourned at 12.30 p.m. until further notice.

Signed

HON.SHAKEEL SHABBIR, MP

CHAIRPERSON

Date

25TH FEBRUARY 2010

**MINUTES OF THE NINETEENTH SITTING OF THE DEPARTMENTAL COMMITTEE
ON LOCAL AUTHORITIES HELD ON 25TH FEBRUARY 2010, IN THE DINING ROOM
7TH FLOOR CONTINENTAL BUILDING AT 10.00 A.M.**

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairperson
2. Hon. Joshua Kutuny, MP
3. Hon. David Ngugi, MP
4. Hon. Mohammed H. Gabow, MP
5. Hon. Gideon Konchella, MP

ABSENT

1. Hon. Mwalimu Mwahima,
2. Hon. Fahim Twaha, MP
3. Hon. Maitha Gideon Mungaro, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

- | | |
|-----------------------|-----------------------|
| 1. Mrs. Nancy Mukunya | Deputy Director |
| 2. Mr. George Otieno | Third Clerk Assistant |

MIN. NO. 79/2010: ADOPTION OF THE AGENDA

The Chairperson called the meeting to order at half past ten o'clock and the agenda was adopted without amendments. The Chairperson thanked the Members for their attendance and appreciated the fact that they would now be in a position to go through and adopt the report on the procurement of cemetery land by Nairobi City Council. The Committee would also consider and adopt the report of the trip by three Members of the Committee to South Africa.

MIN. NO.80/2010: CONFIRMATION OF MINUTES

The Minutes of the meeting held on 16th February 2010 were proposed by Hon. Joshua Kutuny and seconded by Hon. David Ngugi.

**MIN. NO. 81/2010: REPORT ON PROCUREMENT OF CEMETERY LAND BY
NAIROBI CITY COUNCIL**

The Committee was taken through the report by the Chairperson and corrections were made where necessary. Thereafter debate ensued and at the end, all the Members agreed that the report is prepared in line with the evidence received. There was also consensus that the recommendations are drawn as per the evidence and as agreed by the Members.

The Committee noted that the Chairperson seemed biased and exhibited partiality in respect of the involvement of the Deputy Prime Minister and Minister for Local government. Consequently, the Committee agreed that the report will be tabled on Wednesday the 3rd of March 2010 by the Vice-Chairperson.

MIN. NO. 82/2009: REPORT ON THE TRIP TO SOUTH AFRICA

The Committee went through the report and agreed that it is a true record of what transpired during the trip. The Members who had not travelled were impressed by what was covered during the trip.

They particularly noted that John Wesson, the Chairman of Conservancies in South Africa would be helpful in dealing with the Mara Conservancy matters. It was therefore resolved that he will be invited to the Country by the Committee at the appropriate time.

In the end, the report was adopted by the Committee and the Vice-Chairperson was requested to table the same in Parliament.

MIN. NO 83/2010: ADJOURNMENT

There being no other listed business, the meeting was adjourned at 12.30 p.m. until further notice.

Signed

HON.SHAKEEL SHABBIR, MP

CHAIRPERSON

Date

3RD MARCH 2010

MINUTES OF THE TWENTIETH SITTING OF THE DEPARTMENTAL COMMITTEE
ON LOCAL AUTHORITIES HELD ON 3RD MARCH 2010, IN THE COMMITTEE ROOM
2ND FLOOR CONTINENTAL BUILDING AT 4.30 P.M.

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairperson
2. Hon. Joshua Kutuny, MP
3. Hon. David Ngugi, MP
4. Hon. Gideon Konchella,MP

ABSENT

1. Hon. Mwalimu Mwahima,
2. Hon. Fahim Twaha, MP
3. Hon. Maitha Gideon Mungaro, MP
4. Hon. Mohammed H.Gabow

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

1. Mrs. Nancy Mukunya - Deputy Director

MIN. NO. 84/2010: ADOPTION OF THE AGENDA

The Chairperson called the meeting to order at half past four o'clock and informed the Committee that they needed to meet to correct an error on page 48 of the report on the procurement of the cemetery land by Nairobi City Council. The agenda was adopted.

MIN. NO.85/2010: CORRECTION OF THE ERROR ON THE REPORT ON
PROCUREMENT OF CEMETERY LAND BY NAIROBI
CITY COUNCIL

The Committee was informed that on page 48 of the report on the procurement of the cemetery land by the Nairobi City Council, the heading reads,

"the Deputy Prime Minister and the Minister for Local Government, Hon. Musalia Mudavadi" but the first line of the paragraph reads,

"the Prime Minister should take....."

The Committee agreed that this was a typing error and it should be corrected to read

"the Deputy Prime Minister and Minister for Local Government, Hon. Musalia Mudavadi should take....."

JOINT MEETING OF

**DEPARTMENTAL COMMITTEE ON
LOCAL AUTHORITIES**

AND

LOCAL AUTHORITIES AND FUNDS

ACCOUNTS COMMITTEE

MINUTES OF THE FIRST JOINT SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE & THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON MONDAY 23RD AUGUST 2010 IN THE JAMBO CONFERENCE ROOM, SUN N SAND BEACH HOTEL AT 9.00 AM

PRESENT

Hon. Thomas L. Mwadeghu, MP (Co-Chairperson)
Hon. Mohammed H. Gabow, MP (Co-Chairperson)
Hon. Benjamin Langat, MP
Hon. David Ngugi, MP
Hon. Musa Sirma, MP
Hon. Peter Mwathi, MP
Hon. Gideon Konchella, MP
Hon. Gideon Mung'aro, MP
Hon. Shakeel Shabbir, MP
Hon. Mwalimu Mwahima, MP

ABSENT WITH APOLOGY

Hon. Abdul Bahari, MP
Hon. Pollyins O. Anyango, MP
Hon. Wilson M. Litole, MP
Hon. Nemesyus Warugongo, MP
Hon. Charles M. Nyamai, MP
Hon. Simon Mbugua, MP
Hon. Ferdinand Waititu, MP
Hon. Joshua Kutuny, MP
Hon. Fahim Twaha, MP

IN – ATTENDANCE

Mrs. Nancy Mukunya -
Mr. Julius Ariwomoi -

NATIONAL ASSEMBLY

Assistant Director
Clerk Assistant II

Mr. George Otieno - Clerk Assistant III

Ms. Wanjiru Ndindiri - Clerk Assistant III

MIN. NO.01/2010

REMARKS BY THE CLERK

After an opening prayer, the Assistant Director welcomed the Members and cited apologies for the Clerk of the National Assembly who was unable to be at the meeting due to other official engagements. She communicated the Clerks sentiments that it is important for the joint Committees to deliberate and present a harmonized report to the House. This will clarify to the Executive what actions are expected of it once the report is tabled in the House and either adopted or rejected.

MIN. NO.02/2010

REMARKS

(a) Remarks by Chairperson, Local Authorities & Funds Accounts Committee

Hon. Thomas Mwadeghu, MP welcomed the Members and encouraged them to use the draft analysis and brief prepared by the secretariat indicating the recommendations made by both Committees on the various witnesses interviewed. He urged Members to focus on the areas of divergence in the two reports so as to reach harmonized conclusions.

(b) Remarks by Chairperson, Departmental Committee on Local Authorities

Hon. Mohammed Gabow, MP also welcomed the Members of the two Committees and thanked them for having resolved to hold a joint meeting to deliberate on the reports. He also appealed to the Members to use the facts and evidence received and documented in the two reports in arriving at the conclusions.

(c) Remarks by other Committee Members

The Members concurred with the Chairpersons in observing that most of the recommendations contained in both reports were similar. It was agreed that all the general observations and recommendations covered by each Committee separately should be included in the harmonized report. They were also of the opinion that other recommendations that do not on touch individuals should be included, for example, strengthening Kenya Anti-Corruption Commission to give it powers that will help it effectively discharge its mandate.

MIN. NO.03/2010

REVIEW OF RECOMMENDATIONS

The Committees analyzed the recommendations for each witness who testified, and resolved as follows:

NO	WITNESS/TITLE	JOINT RECOMMENDATIONS
1	Mavoko Municipal Council	No action should be taken against its officers
2	Kenya Wildlife Service	No action should be taken against its officers
3	Mr. Henry Kilonzi	Should be investigated for fraud
4	Mr. Maina Chege (Director, Naen Rech Co. Ltd)	The Committee recommends that Maina Chege should be investigated for obtaining money by false pretence and fraud; his assets should be seized to recover public funds. Furthermore, he or any company associated with him should be precluded from award of future government contracts.
5	Mr. Cephas K. Mwaura (Introduced Henry Kilonzi to Alphonse Mutinda)	Should be investigated for receiving Kshs.9,300,000 and charged with the appropriate offence.
6	Mary Ng'ethe (then Director Legal Affairs, City Council of Nairobi)	She should be interdicted and thorough investigations undertaken to establish her culpability and hold her responsible. The Kshs.13 million she received from this transaction should be recovered. She should also be barred from holding public office.
7	Karisa Iha (then Deputy Director of Legal Affairs, City Council of Nairobi)	He should be interdicted and investigated further. He should also not hold public office.
8	Dr. Daniel Nguku (then Medical Officer of Health, City Council of Nairobi)	He should be interdicted, arrested and charged. He and his wife should also be investigated and held accountable for any money received from this transaction. Any assets found to be proceeds of this transaction should also be recovered. He should be barred from holding public office.
9	Peter M. Kibinda (the then Director of City Planning, City Council of Nairobi)	The Committee commends this officer for a job well done in raising objections to the suitability of the land.
10	G.K. Njamura (then Director of	He should be interdicted, investigated for his possible culpability in the saga, and charged in a court of law. He

	Procurement, City Council of Nairobi)	should be barred from holding public office.
11	Tom Odongo (then Deputy Director, Planning Department, City Council of Nairobi)	The Committee commends this officer for a job well done in raising objections to the suitability of the land.
12	Alexander Musee (then Deputy Director Procurement, City Council of Nairobi)	He should be interdicted, investigated and charged for receipt of Kshs. 8 million. He should surrender this amount or else the Government should institute recovery immediately. He should be held responsible for falsifying the Evaluation Committee minutes and report. He should also be barred from holding public office.
13	<p>Technical Evaluation Committee:</p> <ul style="list-style-type: none"> i) Mary Ng'ethe - then Director of Legal Affairs & Chair of the Committee ii) Alex Musee - then Deputy Director of Procurement, Secretary iii) Dennis G. Akotha - then Chief Valuer iv) I.N. Ngacha - Chief Internal Auditor v) David Wanjohi, Sr Funeral Superintendent vi) Tom Odongo, then Deputy Director, Planning Dept 	The Committee recommends that this Committee should be disbanded. The individual Committee members have been held responsible elsewhere in these reports.

	vii) Matthew Ouko, Secretariat	
14	Dennis G. Akoth, then Chief Valuer & Member of Evaluation Committee, City Council of Nairobi	He should be investigated to ascertain any culpability in this cemetery land saga.
15	<p>Tender Committee – City Council of Nairobi:</p> <ul style="list-style-type: none"> i) Mr. Nelson Otido, then Deputy Town Clerk & Chair of Committee ii) Mr. Peter Kibinda, then Director of City Planning iii) G.K. Njamura, then Director of Procurement & Secretary iv) Eng. K. Wamugunda, Deputy City Engineer v) J.W. Kangeth'e, Deputy Town Clerk-Reforms vi) Dr. D. Nguku, then Medical Officer of Health vii) W. Maritim, Deputy Director, Environment 	<p>While noting that the actions of the Members of the Tender Committee (with the exception of Mr. Kibinda and Mr. Maritim) were questionable and wanting, the Committee could not rule out the possibility that those members of the Tender Committee were part of the architects and masterminds of the whole saga. The level of negligence and ignorance portrayed by these officers during the tender process could only be interpreted to suit a well calculated scheme aimed at misappropriation and fraud. The Committee has therefore requested the Controller & Auditor General to undertake a special audit of all contracts of Kshs.10 million and above awarded by the City Council.</p> <p>Actions against specific Committee members are recorded under their individual observations elsewhere in this analysis. No further action recommended against the other Committee members as no further information found on their involvement in the process.</p>

16	Jacob Munge, then City Treasurer & Member-Tender Committee, City Council of Nairobi	He should be investigated to ascertain any culpability in the saga.
17	Nelson Otido (Deputy Town Clerk/Chairman - Tender Committee, City Council of Nairobi)	Though retired, he should be investigated to determine his culpability and charged with the appropriate offence.
18	John Gakuo (The then Town Clerk, City Council of Nairobi)	Thorough investigations should be undertaken by KACC to establish his culpability and hold him responsible. He should also not be allowed to hold any public office.
19	Godfrey Majiwa (His Worship the Mayor, City Council of Nairobi)	The Committee recommends that thorough investigations should be carried out to establish any possible link between the Mayor, Owino Kojwando and Co. Advocates and the amount of Ksh. 10 Million. If established he should be prosecuted; and if found guilty, he should take political responsibility and be barred from holding public office. Any funds and assets established to have been acquired from this transaction should be seized to recover public funds lost.
20	Anthony Itui, (Deputy Commissioner of Lands - Valuation; then Chief Government Valuer, Ministry of Lands)	No action is recommended against him since Council officials forged a land valuation report to award the tender.
21	Edith Torome (the then Legal Counsel, Ministry of Local Government)	No action is recommended against her as the Committee did not find any information on her involvement in the process.
22	H.S. Chavera (then Chief Finance Officer, Ministry of Local Government)	There is substantial documentary evidence showing his deep involvement in the transaction. Investigations should be undertaken to establish his culpability and hold him responsible for the receipt of Kshs. 8.6 million. He should


		surrender this amount or else the Government should institute recovery immediately
23	Boniface Misera(Director of Procurement, Local Government Ministry)	He should be interdicted, investigated and charged. He should also be prosecuted for breaching Section 23(g) of the National Assembly Powers and Privileges Act. Any money and assets he has acquired from this transaction should be seized to recover public funds lost.
24	Reuben K. Rotich (then Senior Deputy Secretary, Ministry of Local Government)	He should be interdicted and investigated for failing to exercise due diligence in verifying all the documents in this transaction before releasing the funds to the Council for payment.
25	Sammy Kirui (then Permanent Secretary, Ministry of Local Government)	He should step aside to allow KACC to investigate. He should also be barred from holding public office if convicted by court.
26	Hon. Musalia Mudavadi, MP (Minister for Local Government)	The Minister was aware of the issue, but wasn't adequately briefed on the matter. No action is recommended against him. Investigations should continue to determine any possible link to the saga.

MIN. NO.04/2010

ADJOURNMENT

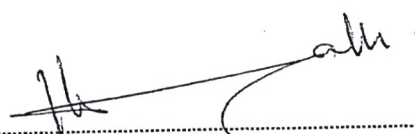
And the time being two o'clock, the Chairperson adjourned the sitting until 2.30pm.

Signed


.....

(Co-Chairperson)

Signed


.....

(Co-Chairperson)

Date

26/10/2010
.....

MINUTES OF THE SECOND JOINT SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE & THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON MONDAY 23RD AUGUST 2010 IN THE JAMBO CONFERENCE ROOM, SUN N SAND BEACH HOTEL AT 2.30 PM

PRESENT

Hon. Thomas L. Mwadeghu, MP (Co-Chairperson)
Hon. Mohammed H. Gabbow, MP (Co-Chairperson)
Hon. Benjamin Langat, MP
Hon. David Ngugi, MP
Hon. Musa Sirma, MP
Hon. Peter Mwathi, MP
Hon. Gideon Konchella, MP
Hon. Gideon Mung'aro, MP
Hon. Shakeel Shabbir, MP
Hon. Mwalimu Mwahima, MP

ABSENT WITH APOLOGY

Hon. Abdul Bahari, MP
Hon. Pollyins O. Anyango, MP
Hon. Wilson M. Litole, MP
Hon. Nemesyus Warugongo, MP
Hon. Charles M. Nyamai, MP
Hon. Simon Mbugua, MP
Hon. Ferdinand Waititu, MP
Hon. Joshua Kutuny, MP
Hon. Fahim Twaha, MP

IN – ATTENDANCE

Mrs. Nancy Mukunya -
Mr. Julius Ariwomoi -
Mr. George Otieno -

NATIONAL ASSEMBLY

Assistant Director
Clerk Assistant II
Clerk Assistant III

MIN. NO.05/2010**REVIEW OF RECOMMENDATIONS**

The Committees continued analyzing individual recommendations for each witness who testified, and resolved as follows:

NO	WITNESS/TITLE	JOINT RECOMMENDATIONS
27	Edward N. Omotii (Omotii & Co. Advocates)	He should be investigated by KACC, LSK and KRA. He should also refund the interest amount of Kshs.1,898,082.03 (earned by the transaction account) to the Ministry of Local Government.
28	Alphonse Mutinda (Alphonse Mutinda Advocates)	KACC, KRA, LSK and the Advocates Disciplinary Committee should investigate and take appropriate action against the law firm and lawyer for abetting crime. He should also disclose on whose behalf he received the extra Kshs.25 million. Any properties bought with this money should be sold to recover public funds. Further, he should be investigated for money laundering in accordance with the Proceeds of Crime and Anti-Money Laundering Act.
29	P.C Onduso, (P.C. Onduso Advocates)	He should be investigated by KACC, KRA, LSK and the Advocates Disciplinary Committee for receiving Kshs.9.6 million, and action taken against the law firm and lawyer for abetting crime. The Government should act fast to recover any funds received illegally from this transaction. Further, he should be investigated for money laundering in accordance with the Proceeds of Crime and Anti-Money Laundering Act.
30	Mr. Odero Osiemo (Odero Osiemo & Co. Advocates)	He should be investigated fully by KACC and KRA and disclose for what purpose he retained Kshs.117 million. LSK and the Advocates Disciplinary Committee should take appropriate action against the law firm and lawyer for abetting crime. The Government should act fast to recover any

		funds received illegally from this transaction. Further, he should be investigated for money laundering in accordance with the Proceeds of Crime and Anti-Money Laundering Act.
31	Hon. James Orengo, MP (Minister for Lands)	No action is recommended against him.
32	Collector of Stamp Duty	No action recommended
33	Registrar of Lands	She should investigate the land ownership, due to the presence of a questionable title, and establish the rightful owner of the land. She should also be investigated for her role in this matter as she did not exercise due diligence in transferring a questionable title.
34	Commissioner of Lands	No action recommended against him.
35	Alice Mayaka (wife of Former Permanent Secretary, Ministry of National Heritage)	She should be investigated and charged for receiving Kshs.2 million from this transaction. Any monies or properties obtained from this transaction should be recovered. She should also be barred from holding any public office.
36	Doreen A. Oyugi	She should be investigated and charged for receiving Kshs. 3 million from this transaction on behalf of unknown person(s). Any monies or properties obtained from this transaction should be recovered.
37	Moeckings General Contractors	The two partners in the company, Mercy Kinyanjui and Martin Nganga Kanyingi, received Kshs. 2 million as a front to some unknown person(s). This company should be investigated and charged. Any monies or properties obtained from this transaction should be recovered.
38	Cibiya World Wide Ltd	The company is an offshore whose directors are Newton Omondi Osiemo (Brother to Davis Odera Osiemo) and Alex James, and should be investigated for receipt of Kshs.29,860,000 from the transaction. The Government should use all

		its avenues to recover this money and bring the culprits to book.
39	James Gichuki, (Director of Operations, Bank of Africa)	The bank should be held responsible for failing to exercise due diligence contrary to the Central Bank of Kenya Act.
40	Dr. John Mutonyi, (Acting Director, Kenya Anti-Corruption Commission)	The Committee commends him for swiftly taking action to investigate and prosecute the persons involved in this transaction.
GENERAL RECOMMENDATIONS		
1	All the people listed on Appendix W25 of the report of the Departmental Committee should be investigated, with a view to prosecuting them for receiving public funds irregularly. The amount of money received by each of them should be recovered in full.	
2	KRA should investigate all cases of properties bought to ensure stamp duty and other taxes are collected.	
3	Shell Kenya Ltd (Appendix W25 – Departmental Committee report) should be investigated to establish the reason for it receiving Kshs.4 million; these public funds should be recovered.	

MIN. NO.06/2010

CLOSING REMARKS AND WAY FORWARD

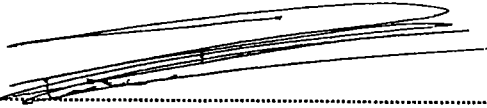
The Co-Chairpersons expressed their appreciation for the Members' commitment, participation and quality of deliberations, and encouraged them to maintain the team spirit reflected during the joint meeting. The Chairpersons expressed the need for all the Committee Members to be available and to support the joint report during its debate in the House.

The Members appreciated the joint session that led to the harmonized report whose recommendations were arrived at by consensus.

It was resolved that the report of the Departmental Committee earlier tabled in the House would be withdrawn, and the Co-Chairpersons will then table the joint reports containing the harmonized recommendations.

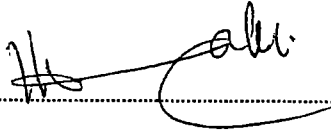
And the time being forty five minutes past four o'clock, the Chairperson adjourned the sitting until a date to be announced later.

Signed



(Co-Chairperson)

Signed



(Co-Chairperson)

Date

26/10/2010

MINUTES OF THE THIRD JOINT SITTING OF THE LOCAL AUTHORITIES AND FUNDS ACCOUNTS COMMITTEE & THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON THURSDAY 14TH OCTOBER 2010 IN THE MAIN CONFERENCE ROOM, 1ST FLOOR, COUNTY HALL, PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

Hon. Thomas L. Mwadeghu, MP (Co-Chairperson)
Hon. Mohammed H. Gabbow, MP (Co-Chairperson)
Hon. Benjamin Langat, MP
Hon. David Ngugi, MP
Hon. Gideon Konchella, MP
Hon. Pollyins O. Anyango, MP
Hon. Nemesys Warugongo, MP
Hon. Shakeel Shabbir, MP
Hon. Joshua Kutuny, MP

ABSENT WITH APOLOGY

Hon. Abdul Bahari, MP
Hon. Musa Sirma, MP
Hon. Gideon Mung'aro, MP
Hon. Mwalimu Mwahima, MP
Hon. Peter Mwathi, MP
Hon. Wilson M. Litole, MP
Hon. Charles M. Nyamai, MP
Hon. Fahim Twaha, MP

IN – ATTENDANCE

NATIONAL ASSEMBLY

Mrs. Nancy Mukunya	-	Assistant Director
Mr. Julius Ariwomoi	-	Clerk Assistant II
Ms. Wanjiru Ndindiri	-	Clerk Assistant III
Mr. Edwin Mbaya	-	Parliamentary Intern

KENYA NATIONAL AUDIT OFFICE

Mr. David Gichana - Deputy Director of Audit
Mr. Nashon Otieno - Assistant Director of Audit
Mr. Moses Libamba - Principal Auditor

MIN. NO. 8/2010 **CONFIRMATION OF MINUTES**

The following minutes were confirmed (with amendments) by the Members present and signed by the Co-Chairpersons:

- (i) Minutes of the 1st sitting held on Monday 23rd August 2010 at 9.00am.
- (ii) Minutes of the 2nd sitting held on Monday 23rd August 2010 at 2.30pm.

MIN. NO. 9/2010 **ADOPTION OF THE HARMONIZED REPORTS**

The Joint Committee deliberated extensively on the harmonized recommendations, proposed a few amendments of the recommendations and unanimously adopted the harmonized reports.

It was resolved that the Co-Chairpersons should sign the finalized copies of the reports upon inclusion of the proposed amendments on Monday 18th October 2010 in readiness for tabling on Tuesday 19th October 2010.

MIN. NO. 10/2010 **ANY OTHER BUSINESS**

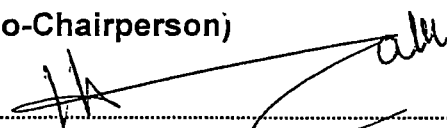
The Joint Committee expressed the need and importance of collaboration (between the two Committees) as their mandates are complementary. It was therefore resolved that the two Committees could undertake joint activities in future, which include workshops, foreign travel or investigations.

MIN.NO. 11/2010 **ADJOURNMENT**

And the time being twenty five minutes past one o'clock, the Co-Chairpersons adjourned the sitting until a date to be announced later.

Signed _____


(Co-Chairperson)

Signed _____


(Co-Chairperson)

Date _____
26/10/2010

2

REPUBLIC OF KENYA

Telegrams: "Lands", Nairobi
Telephone: Nairobi ~~747144~~ 728060
~~Kenya Office, Nairobi~~
c/o D. O. Central Division
P.O. Box 1, ~~NAIROBI~~
Ref. No. 118431/2

DEPARTMENT OF LANDS
P.O. Box 30089
NAIROBI

24th February, 19 57

REGISTERED

SIR(S)/MADAM, L.R. 10029/32 - KYTENGELA FARM

LETTER OF ALLOTMENT

I have the honour to inform you that the Government hereby offers you a grant of
the above mentioned plot shown edged red on the attached plan
No. 64408/185A subject to your formal written acceptance of the following
conditions and to the payment of the charges as prescribed hereunder:—

AREA: 53 hectares or acres (approximately)
TERM: Freehold years from the
STAND PREMIUM: Sh. } Subject to adjustment on survey.
ANNUAL RENT: Sh. }

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).

SPECIAL CONDITIONS: See attached.

2. I should be glad to receive your acceptance of the attached conditions together with your cheque for the amount as set out below:—

	Sh
Stand Premium	-
Rent from 10	-
Conveyancing Fees	350.00 + 150/-
Registration Fees	50.00 + 50/-
Rates, proportion of (provisional) on demand	20.00
Stamp Duty	-
Survey Fees on demand	-
Road and Road Drains	-
Sewers	-
Levy Deposit	-
TOTAL	520.00

If acceptance and payment respectively are not received within 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 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 for your acceptance.

~~This letter remains my letter ref. 4402/257 of 4/7/36.~~

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

~~Secretary - Government~~

W. J. M. M. M.
(J. M. M. M.)

for Commissioner of Lands

ENCL.

~~S.S. - M. I. & C. - Nairobi~~

COPY TO:—

The Director of Surveys, Nairobi.

~~Secretary~~
The Town Clerk,

The Clerk to the Council, County Council of

~~Director, P.O. 11, Nairobi~~

The District Commissioner,

~~P.O. 1, Nairobi~~

The Town Planning Adviser, Nairobi.

~~Secretary~~
The City Valuation Officer, City of Nairobi.

~~District Agricultural Officer, Nairobi~~

O/C Land Rents. *Ch. 5/3/37*

Rates Assistant.

The Accountant.

~~to call please.~~

O/C Records.

Senior Plan Record Officer.

3/3/37

Plot File.

MINUTES OF THE MEETING HELD ON FRIDAY THE 5TH JUNE 2008 IN THE BOARDROOM MINISTRY OF LOCAL GOVERNMENT.

PRESENT:

REUBEN ROTICH - SENIOR DEPUTY SECRETARY (CHAIRING)
B O MISERA - MOLG CHIEF PROCUREMENT OFFICER
E TOROME - MOLG COUNSEL
M N NG'ETHE - CCN DIRECTOR LEGAL AFFAIRS (TAKING MINUTES)
P KIBINDA - CCN DIRECTOR CITY PLANNING
DR. NGUKU - CCN MEDICAL OFFICER OF HEALTH
G K NJAMURA - CCN DIRECTOR OF PROCUREMENT

W2

The Chair informed the members that the meeting was urgently convened for the following reasons:

1) The Langata Cemetery was full. The Ministry of Local Government had approached the Central Government to finance acquisition of another parcel of land for cemetery. The Central Government undertook to finance the same to the tune of Kshs 350 M. Several meetings had been held and Treasury released Kshs 175M in the Financial Year 2007-2008. Ministry of Local Government informed the Council that the money was available but so far the Council had not yet procured the land. Since the Financial Year was ending, this money would be returned to the Central Government, and even the balance which was to be released in the Financial Year 2008-2009 would not be allocated since it was clear that the Council was not serious in acquiring land for cemetery. The meeting was convened to find out what was delaying the Council in acquiring the land. The Council officers informed the meeting that they had made efforts to acquire land. The Council had advertised for tenders for expression of interest. The offers were evaluated and land LR No 7149/10 (Original No. 7149/218) belonging to Ardhi Highway Developers Limited was awarded. The Company was informed and it brought a Performance Bond. A search was duly carried out at Land's office, and the registered owner was found to Arthi Developers Highway, who had bought it from West End Butchery Limited. A Sale Agreement was duly prepared between the Council and Ardhi Highway Developers Limited and the vendor signed its part and brought it to the Council. However before the Council could execute it, a lawyer claiming to represent

West End Butchery wrote to the Council informing it that the parcel of land was in dispute and the matter was in court alleging that Arthi Highway Developers had forged the transfer document. The Council investigated and established that indeed the matter was being investigated by the CID and there was a case HCCC NO 167 OF 2007, West End Butchery Limited vs Arthi Developers Limited, Solomon Mwinzi Mwau, John Micheni Musa, The Registrar General and the Commissioner of Lands which West End Butchery claimed fraudulent transfer of the said parcel of land. The Council could not therefore proceed with the procurement of this parcel of land and cancelled the transaction.

The Council then put another advertisement for expression of interests. The tenders were to be opened on 19th June 2008. However, the Ministry brought to the attention of the officers that the financial year was ending and the procurement process would not be completed in time to secure the money.

The Chief Procurement Officer from the Ministry advised that the best way to beat the deadline was for the Council to go for direct procurement, for the following reasons:-


- Land is not like any other commodity that one can buy in the market
- Evaluating land in different locations is very difficult since the cost cannot be the same
- Further, land for cemetery cannot be planned just anywhere.

The council should therefore identify an ideal area for cemetery, and then approach owners of the parcels of land for offers. Once the owner gave an offer, the Government Valuer should value the land. If the value given by the Government valuer is lower than the offer given, then the officers would negotiate with the owner. If the owner agreed to sell at the Government valuer's valuation, then the Council would table this in the Tender Committee for deliberations.

Thereafter, after the Tender Committee's deliberations, the Council would write to the Procurement Board to notify it

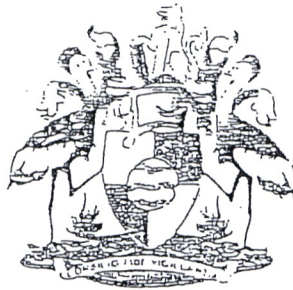
The Council was therefore advised to cancel the advertisement and proceed on direct procurement.

Signed: CHAIRMAN

SECRETARY 

W

CITY COUNCIL OF NAIROBI



TOWN CLERK
FAX 217704
TELEPHONE: 224281 / 221349

CITY HALL
P.O. BOX 30075 - C
NAIROBI
KENYA.

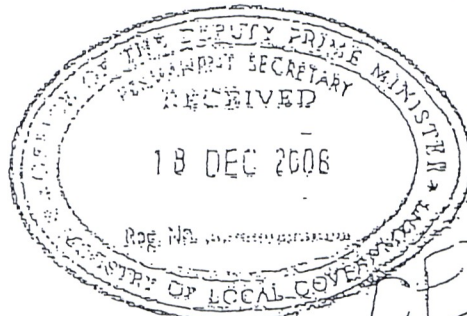
OFFICE OF THE TOWN CLERK

EXT.

Ref No TC/JG/9/3889/2008

17th December, 2008

Sammy Kirui, MBS.,
Permanent Secretary,
Office of the Deputy Prime Minister &
Ministry of Local Government,
P. O. Box 30004 - 00100,
NAIROBI



RE: PURCHASE OF CEMETERY LAND

Reference is made to your letter Ref. MLG/402-01/(17) dated 17th December, 2008 on the above subject matter.

Attached herewith please find a copy of a self-explanatory membership Ref. CPD/ADMIN/008020/PMK/mmg dated 17th December, 2008 from the Director City Planning on the above subject matter forwarded to you for your information and any further necessary action.

CFD
It looks like the
work not done
because of the
member
Completed
to be received
level
The presence
Money in our
to come from
each from
Here along
re least
I hope all the
should be
clear the
by

John Gakuo

JOHN GAKUO
TOWN CLERK

CFD
The issue of the state Council
pending the agreement is just
another administrative hurdle; I
believe the NCC lawyers
have suggested the matter of
their contract. Then the objective
document, the one which have
not raised all the same
issue to the PPA on the same
point. And we cannot let as
any other point to

PS
The issue of defective
under agreement was
not addressed I suggest
that we should

CITY COUNCIL OF NAIROBI

12



260

CITY HALL
P.O. BOX 300
NAIROBI
KENYA.

TOWN CLERK
FAX: 217704
TELEPHONE: 224281 / 221349

EXT.....

Ref No... DLA/MNN/670/E/08

22-28
22-28/2

7th August, 2008

The Chief Valuer,
Ardhi House,
P O Box 30089,
NAIROBI.

W4

Dear Sir,

RE: LR NO. 14759 - MAVOKO TOWNSHIP

The above matter refers.

The Council is desirous of purchasing land for purpose of a cemetery through Open Negotiation. The Council has been offered for sale the above mentioned land within Mavoko Township and the user Department has approved the same as suitable for use as a cemetery.

This is therefore to request you to carry out valuation for the said land to enable the Council start negotiations with the seller

Enclosed herewith please find a copy of the title attached to facilitate the valuation.

Yours Faithfully,

N. W. OTIDO
FOR: TOWN CLERK

Hand Delivered
22/8/2008

WS

14

Ref: VAL.40020/E/261

Date: 26th September, 2008

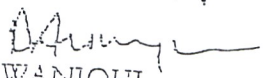
The Town Clerk,
City Council of Nairobi,
P.O. Box 30075,
Nairobi.

Att: Ms Ngethe

Re: PURCHASE OF L.R. NO. 44759 - MAVOKO TOWNSHIP

Reference is made to your undated letter Ref. No. DLA/MNN/L70/E/08 and our (Ms Ngethe/Mrs. Wanjohi) telephone conversation today regarding the above matter.

This is to acknowledge officially that the matter has been shelved from your end until further notice, and it so remains from this end also.


M. W. WANJOHI
FOR: COMMISSIONER OF LANDS

CITY COUNCIL OF NAIROBI

15

TOWN CLERK
FAX: 217704
TELEPHONE: 224281 / 221349



CITY HALL
P.O. BOX 30075-00100
NAIROBI
KENYA.

Director of Legal Affairs

EXT.....

Ref No. DLA/MNN/924/E/08

4th November, 2008

WG

The Chief Valuer,
Ardhi House,
P O Box 30089,
NAIROBI.

Dear Sir,

RE: L R NO. 14759 - MAVOKO TOWNSHIP

received
13/11/08
[Signature]

The above matter refers.

The Council is desirous of purchasing land for purpose of a cemetery through Open Negotiation. The Council has been offered for sale the above mentioned land within Mavoko Township and the user Department has approved the same as suitable for use as a cemetery.

This is therefore to request you to carry out valuation for the said land to enable the Council start negotiations with the seller

Enclosed herewith please find a copy of the title attached to facilitate the valuation.

Yours Faithfully,

~~_____~~
M N N G'ETHE
DIRECTOR LEGAL AFFAIRS

W 7

MINISTRY OF LANDS

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



DEPARTMENT OF LANDS
1st NGONG AVENUE
OFF NGONG ROAD
P.O. BOX 30089,
NAIROBI.

VAL:1360/6

13th November, 2008

The Director Legal Affairs
City Council of Nairobi
P.O. Box 30075-00100
NAIROBI

RE: LR NO.14759 – MAVOKO

Your letter Ref. DLA / MNN / 924/E / 08 of 4th November 2008 refers.

The matter is receiving our attention and you will be notified of the progress as soon as possible. Please note that our fees will be calculated and advised when the report is ready.

Meanwhile let your officer contact us to facilitate site inspection on an agreed date.

A handwritten signature in black ink, appearing to read 'A. M. Itur'.

A. M. ITUR
DEPUTY COMMISSIONER OF LANDS (VALUATION)

REPUBLIC OF KENYA

Telephone: +254-20-342330
Fax: +254-20-311482
E-mail: cag@kenyaweb.com



18

P.O Box 30084-00100
NAIROBI

KENYA NATIONAL AUDIT OFFICE



WS

6th March, 2009

DEVT./AA/2007/2008/12B

The Commissioner of Lands,

P.O. Box 30089,

NAIROBI.

*Did Valuation
Dept confirm
authenticity of
letter on
9/3/09*

PURCHASE OF LAND FOR CEMETERY

Reference is made to letter dated November, 10th. 2008 on the valuation report for LR No. 14759 - MAVOKO TOWNSHIP.

The letter is purported to have been written by an officer in your Ministry Valuation Department, a MR. A. OTIENO signed on behalf of Deputy Commissioner Land Valuation. The land was to be valued for purchase purpose by City Council of Nairobi which was given as Kshs. 325,150,000.00 as per the attached valuation report.

Please authenticate the same for audit purpose.

MR. S.B. MANGUCIA

FOR: CONTROLLER AND AUDITOR GENERAL

W9



REPUBLIC OF KENYA
MINISTRY OF LANDS

Telegrams: "LANDS", Nairobi
Telephone: Nairobi 718050-9

When replying please quote

DEPARTMENT OF LANDS
1st NGONG AVENUE
OFF NGONG ROAD
P. O. Box 30089
NAIROBI

VAL: 1360/(19)

10th March 2009

The Controller and Auditor general
P.O. Box 300840-00100
NAIROBI

(Attn. Mr. S. B. Mangucia)

RE: PURCHASE OF LAND FOR CEMENTERY
LR No. 14759 – MAVOKO TOWNSHIP
CITY COUNCIL OF NAIROBI

I refer to your letter Ref. DEVT./AA/2007/2008/12B dated 6th March 2009 attaching a letter Ref. 156708 of 10th November, 2008 purportedly from us for authentication.

The said letter was issued by one A. Otieno (purportedly for Deputy Commissioner of Lands valuation), It also purported to communicate a valuation figure of Kshs.325,150,000/= to the director, Legal Affairs, City Council Nairobi(one M.N. Ng'ethe).

My comments about the letter are as follows:-

(1) On the face of it the Letter is a forgery as evidenced by so many omissions/commissions

(a)The Reference Number on the letter is not from Valuation Division.

(b)The letter Ref. DLA/TFM/924/E/08 of 4th November 2008 mentioned therein was received here on 15th November 2008 by which

date the said letter in question was already written (10th November 2008) purportedly as our reply communicating the valuation figure back.

(c) We wrote on 13th November 2008 vide our letter Ref. VAL1360/6 to the Director, Legal Affairs, City Council of Nairobi, to contact us to facilitate inspection – The same is still outstanding as there has been no response since.

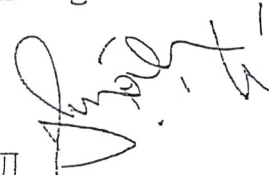
(d) Most importantly is the fact that Valuation Division does not have a Valuation Officer by the name 'A. Otieno' either in the Headquarters or in the District offices who has purported to sign 'for Deputy Commissioner Lands valuation'.

(e) In a Standard form of communication of the valuation figure we would have attached a comprehensive valuation report and NOT a 'Letter bearing a figure' as is the case with the Letter in question.

(f) You will note that the Ministry's Letter heads used for the Letter are no longer in use. The correct and applicable Letter heads for the Ministry are "Ministry of Lands", and NOT Ministry of Lands and Settlement.

(g) We do not have 'Deputy Commissioner Lands Valuation' but we sign as 'Deputy Commissioner of Lands (Valuation)'

In conclusion we wish to disown the Letter of Valuation Ref. 156708 of 10th November 2008 as a forgery and not emanating from this office.



A. M. ITUI
DEPUTY COMMISSIONER OF LANDS (VALUATION)
FOR: COMMISSIONER OF LANDS

CC. THE COMMISSIONER OF LANDS

Encl. Copy - Ref. DLA/MNN/924/E/08 OF 4TH NOV. 2008.
Copy - Ref. VAL 1360/6 OF 13TH NOV. 2008

MINISTRY OF LANDS AND SETTLEMENT

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

Ref. No. 156705
date



DEPARTMENT OF LANDS
P.O. Box 30089
NAIROBI

November, 10th 2008, 20.....

17

The Director
Legal affairs
City Council Nairobi
NAIROBI.

WIO

Att: M.N. NG'ETHE.

Dear Sir/ Madam,

RE: VALUATION REPORT FOR L.R. NO. 14759- MAVOKO
TOWN SHIP.

Reference is made to your letter Reference Number DLA /
MNN/924/E/08 dated 4th November 2008.

We have inspected the subject property with a view of advising on its
current market value for purchase purposes.

We now have the pleasure to state that the current market value for
the subject property is Kenya Shillings Three Hundred and
Twenty Five Million one Hundred and Fifty Thousand Only
(Kshs. 325,150,000/-)

Yours sincerely,


J. OTIEMO.

For: DEPUTY COMMISSIONER
LANDS VALUATION.

WINI

REPORT AND VALUATION

UPON

AN AGRICULTURAL PARCEL OF LAND

L.R. NO. 14759/2

ON THE KITENGELA - ONGATA ROAD

MACHAKOS DISTRICT

TERMS OF REFERENCE

Acting on instructions from the Collector of Stamp Duty, we inspected the referenced property with a view to advising on its fair current market value. Herebelow is the report and valuation:

REPORT AND VALUATION

LR. NO. 14759/2

SITUATION: The property is situated approximately 7.2 km from Kitengela on the Kitengela - Ongata road. It borders the Merciful Redeemer Childrens home, within Mavoko Municipality.

DATE OF INSPECTION: 29th January 2009

VENDOR: Henry Musyoki Kilonzi

PURCHASER: City Council of Nairobi

AREA: 48.653 Hectares or 120 Acres approximately

INTEREST PASSING: Freehold

USER: Agricultural

THE LAND: The land is of fairly level gradient. Soils are shallow black cotton with a rocky base.

RAINFALL: The exact amounts were not established but this area is under dry grassland and thorny bushes both of which are an indication of fairly low rainfall amounts.

AGRICULTURE: The most common activity in this area is cattle rearing. Sheep and goats also do well here.

SERVICES: The land is accessible via the Kitengela - Ongata earth road which may be almost impassable in the wet season. The road of access is used by lorries collecting building stones from the nearby quarries: hence rough. There is no water on this particular plot but water maybe obtained from boreholes nearby.

DEVELOPMENTS: The land is vacant, currently under grassland and thorny bushes.

REMARKS: The land has a low carrying capacity. Due to the little rainfall amounts received here and the shallow black cotton soils, crop husbandry is not a good option for this land.

The land is relatively far from Kitengela (7.2km) and therefore its subdivision and change of user potential is low. This area is variously referred to as a wildlife migratory corridor. Raising of livestock therefore may be presented with wildlife/human conflict.

VALUATION: Having considered all factors that may influence the value of this land, we return an open market value of Kshs. 24,000,000/=(Kenya shillings twenty four million) only.

COMMENTS: Declared figure of Kshs. 283,200,000/- may be accepted for Stamp Duty.

DATED: 30th January 2009.



JACINTA MUTUA
ASSISTANT COMMISSIONER OF LANDS (VALUATION)
FOR: COMMISSIONER OF LANDS

CLONK COPY

DATED THE 19TH DAY OF DECEMBER 2008

AGREEMENT FOR SALE

W12

HENRY MUSYOKI KILONZI

TO

CITY COUNCIL OF NAIROBI

in respect of 120 Acres of land comprised in
LAND REFERENCE NUMBER. 14759 MACHAKOS

E.N. OMOTII & COMPANY,
ADVOCATES
REINSURANCE PLAZA, 1ST FLOOR,
TAIFA ROAD,
P.O. BOX 3165-00200,
NAIROBI.

Henry Musyoki Kilonzi
Vendor

Henry W. The Mayor
Purchaser (H.W. The Mayor)

T. M. Mwangi
Purchaser (Town Clerk)

Handwritten notes:
Paper located by
Hon. Mutika Ngunjiri
in support of Auction
by private notice
12/18/08
Machakos

AGREEMENT FOR SALE

This Agreement is made the _____ day of _____ Two Thousand and Eight

BETWEEN:-

1. HENRY MUSYOKI KILONZI of Post Office Box Number 19022-00500 Nairobi, in the Republic of Kenya (hereinafter called "the Vendor") which expression shall where the context so admits include his personal representatives and assigns.

AND

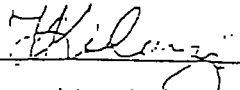
2. THE CITY COUNCIL OF NAIROBI, a local authority duly established under The Local Government Act, Cap 265 of The Laws of Kenya and of Post Office Box Number 30075-00100 Nairobi (hereinafter referred to as the "Council").

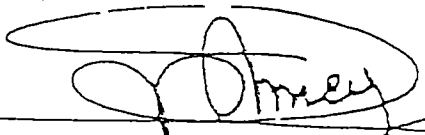
IT IS HEREBY AGREED AND CONFIRMED by and between the parties hereto as follows:-

1. DEFINITIONS AND INTERPRETATION:

1.1 In this agreement, unless the context otherwise requires, reference to:

(a) The "Vendor" and "the Purchaser" includes the Vendor's Purchaser's successors in title and their permitted assigns;

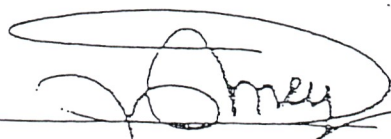

Vendor

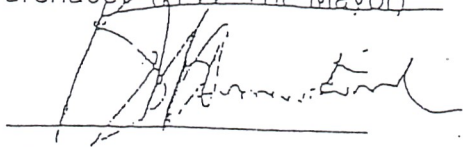

Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

- (b) Words importing the singular number only shall include the plural number also and vice versa and words importing the masculine gender includes the feminine gender and neuter and vice versa.
- (c) Clauses, Sub-clauses, Conditions and Sections shall be construed as references to Clause, Sub-clauses, Conditions and Sections of this Agreement;
- (d) "Encumbrance" includes any mortgage, charge (whether legal or equitable), lie, option, security interest, restrictive covenants, pledge, hypothecation, assignment, title retention, trust arrangement or other restriction or equity of any kind or other encumbrance securing or any right conferring a priority of payment in respect of any obligation of any person or any other rights over the property in favour of any person;
- (e) The expression "person" shall include any legal or natural person, partnership, trust, company, joint venture, agency, government or local authority department or other body (whether corporate or un-incorporate);
- (f) The expression "registration" means due and effective registration of the formal instrument of Transfer in the Central Land Registry Nairobi;
- (g) Any statute or any provision of any statute shall be deemed to refer to any statutory modification or re-enactment thereof and to any statutory instrument, order or regulation and thereunder or under any such re-enactment;


Vendor


Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

(h) Indemnifying any person against any circumstance includes indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses, made or incurred by that person as a consequence of or which would not have arisen but for that circumstance, and

- (i) The expression "month" means a calendar month.
- (j) "Business Day" shall mean a day (other than a Saturday, Sunday or Gazetted public holiday in Kenya) on which banking and financial institutions are generally open for the conduct of the banking business in Kenya

1.2 ~~Headings to Sections are for convenience only and shall not~~ affect the construction or interpretation of this Agreement.

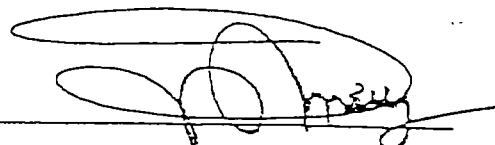
1.3 In this Agreement any reference to any document means that document as is supplemented, amended or varied from time to time between the parties thereto in accordance with the terms (if applicable) hereof and thereof.

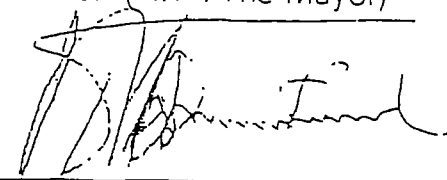
2. AGREEMENT FOR SALE

WHEREAS

2.1 The Vendor is registered as proprietor of all that piece of land situate in the South of Athi River Township in the Machakos District of the Republic of


Vendor


Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

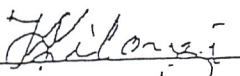
Kenya containing by measurement Five Seven Decimal Two Two (57.22) hectares or thereabouts that is to say Land Reference Number 14759 (hereinafter referred to as "the said piece of Land") which piece of land with dimensions abuttals and boundaries thereof is delineated and edged red on the plan Number 139382 deposited in the Survey Records office at Nairobi to hold in fee simple subject to the Government Lands Act (Cap 280) and the special conditions set forth therein.

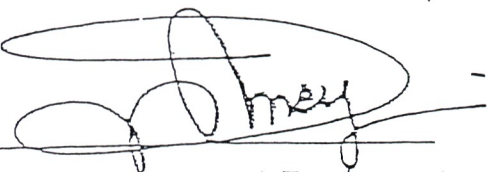
2.2 The Vendor has agreed with the Purchaser to sell and transfer to the Purchaser One Hundred And Twenty Acres (120 Acres) of the said piece of land at the price and on terms hereinafter provided.

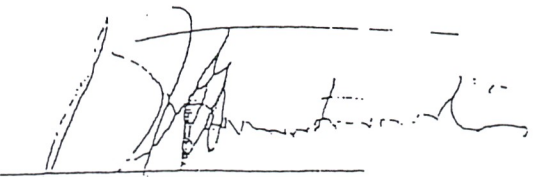
NOW THIS AGREEMENT WITNESSETH AS FOLLOWS.

3. PURCHASE PRICE

The purchase price for the sale and purchase of the property shall be Kenya Shillings Two Hundred And Eighty Three Million Two Hundred Thousand Only (Ksh.283,200,000/-) (hereinafter referred to as "the Purchase Price") which sum the Purchaser shall cause to be released to its Advocates (E.N. Omotii & Company Advocates) at the date of execution of this Agreement to hold as stakeholders in a reputable banking institution until the completion date.


Vendor


Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

4. COMPLETION DATE

The completion date shall be on the 30th day after the Vendor and/or his Advocates delivers to the Purchaser's Advocates the documents comprised at Clause J of this Agreement (hereinafter referred to as "the Completion Date") which period shall on mutual agreement of the Vendor and the Purchaser be extended for an agreed period at the expiry thereof.

4.1 Completion shall take place at the office of the Purchaser's Advocates.

5. PROFESSIONAL UNDERTAKING

The Vendor and/or his Advocates shall release the documents comprised at clause J of this Agreement to the Purchaser's Advocates on the latter's professional undertaking to hold the same to the order of the Vendor's Advocates and not release or deal with the same in any manner save for purposes of completing the sale herein.

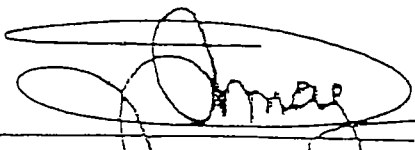
6. WARRANTY BY VENDOR

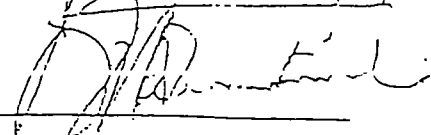
The Vendor warrants and it is a fundamental term of this Agreement that he has full legal capacity and authority to sell and transfer the piece of land to the Purchaser.

7. LAW SOCIETY CONDITIONS OF SALE

The sale of the property is subject to the Law Society Conditions of sale (1989 Edition) in so far as they are not inconsistent with the conditions contained in this Agreement.


Vendor


Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

8 RELEASE OF PURCHASE PRICE

8.1 The Stakeholders shall release the purchase price to the Vendor's Advocates upon the following terms.

8.2 On the completion date or upon successful registration of the Transfer of the piece of land in favour of the Purchaser (whichever occurs earlier)
AND:-

8.2.1 Upon the Vendor putting the Purchaser in actual physical possession and control of the property.

9 ADVOCATES FOR THE VENDOR

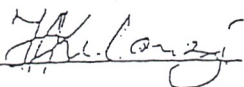
The Vendor's Advocates are Messrs Odero Osiemo & Company Advocates, Messrs PC Onduso Advocate and Messrs Alphonse Mutinda & Company Advocates, Queensway House, 4th Floor, P.O. Box 73098-00200, Nairobi.

10 ADVOCATES FOR THE PURCHASER

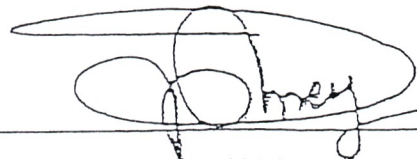
The Advocates for the Purchaser are E.N. Omotii & Company Advocates, Reinsurance Plaza, 1st Floor, Taifa Road, P.O. Box 3165-00200 Nairobi.

11 MATTERS AFFECTING THE PROPERTY

11.1 The property is sold subject to the rights, privileges, condition and covenants originally referred to in the title of Property but otherwise free from all liens, charges and mortgages (whether legal or equitable) and all other encumbrances.



Vendor



Purchaser (H.W. The Mayor)



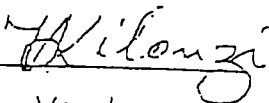
Purchaser (Town Clerk)


11.2 The property is sold with vacant possession, together with any developments and improvements thereon (if any).

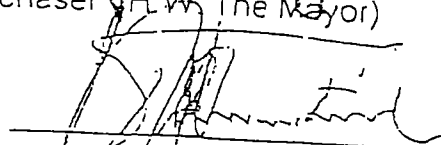
11.3 Both parties agree that this Agreement constitutes the whole and any agreement between the parties hereto relating to the sale and purchase of the property and supersedes and extinguishes any prior agreements, undertakings, representations warranties and arrangements of any nature whatsoever, between any parties, whether or not in writing, relating to the sale and purchase of the property.

12 SPECIAL CONDITIONS

- A The Vendor shall pay all the outstanding electricity, water and telephone charges (if any) and any other outgoings which may be charged upon the property unto the Completion Date.
- B The Vendor shall at his cost undertake any necessary sub-divisions and obtain requisite consents on that behalf.
- C The Vendor shall at his cost obtain all necessary consents, undertaken requisite sub-division and obtain a separate title for the 120 acre parcel of land to be sold.
- D The Purchaser shall obtain all necessary statutory and ministerial consents to purchase the property subject matter hereof.


Vendor


Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

E. Costs

Each of the Parties shall pay their respective Advocates' charges in connection with this transaction. The Vendor shall meet the costs of obtaining the Completion Documents and the Purchaser shall meet the costs of stamp duty and registration fees on the Transfer.

F. NOTICE

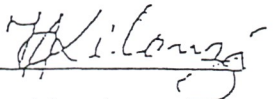
Any notice to be given to any party to this Agreement shall be in writing and may be delivered or sent by registered post or recorded delivery to the recipient at the address indicated above. Such notice shall be deemed to be received upon delivery or Seven (7) days after posting.

G. SURVIVAL

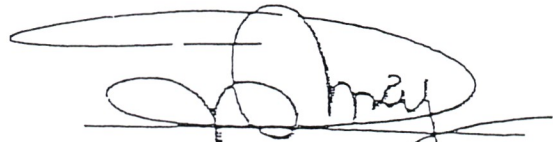
Save with regard to matters which require to be fulfilled and are in fact fulfilled prior to or at the Completion Date, the Agreement shall continue to be in full force and effect with regard to any provisions herein which are capable of being performed after but which will not have been performed at or before the Completion Date.

H. WAIVER

No failure or delay by the Vendor or the Purchaser in exercising any claim, remedy, right, power or privilege under this Agreement shall operate as a waiver nor shall any single or partial exercise of any claim, remedy, right, power or privilege preclude any further exercise thereof or the exercise of any other claim, right or power.



Vendor



Purchaser, (H.W. The Mayor)



Purchaser (Town Clerk)


i. REMEDIES CUMULATIVE

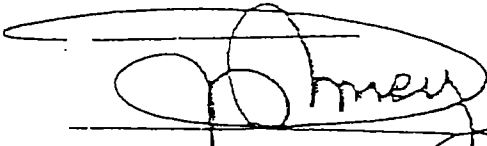
Any remedy or right conferred upon the Vendor or the Purchaser for breach of this Agreement including the right of rescission shall be in addition to and without prejudice to all other rights and remedies available to them

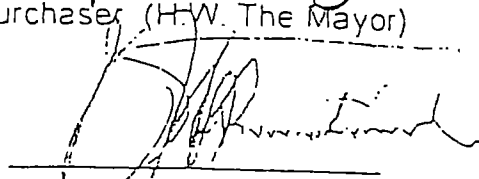
J On the Completion Date:-

The Vendor shall on the Completion Date deliver to the Purchaser's Advocates the following:-

- (i) Original title for the portion of 120 Acres (free from Encumbrances);
- (ii) Consent to Transfer;
- (iii) The Transfer to the piece of land (in triplicate) duly executed by the Vendor;
- (iv) A duly completed form of valuation for stamp duty;
- (v) Rates clearance certificate valid for at least 30 days after the Completion Date;
- (vi) Land rent clearance certificate valid for at least 30 days after the Completion Date;
- (vii) Certified copy of the vendor's Identity Card.
- (viii) Certified copy of the Vendor's PIN.

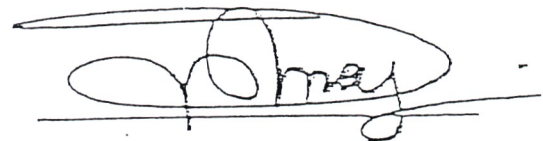

Vendor

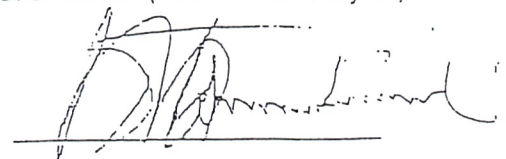

Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

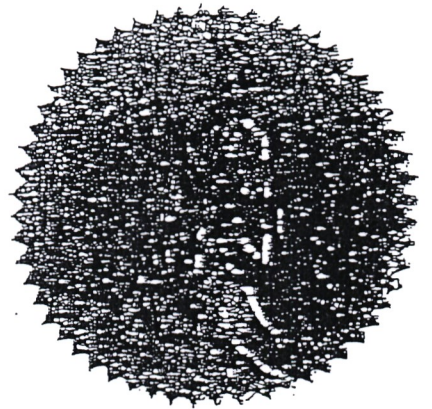
- (ix) Three colour passport size photographs of the Vendor
- F. (i) All payments due to be made by the Purchaser hereunder and all costs, charges, expenses or remuneration are inclusive of all taxes, any value added tax or similar tax charged or chargeable.
- (ii) If any term or condition of this Agreement shall to any extent be found or held to be invalid or unenforceable, the parties shall negotiate in good faith to amend such term or condition so as to be valid and enforceable and to be construed with the interest of the parties as contained herein.
- (iii) If any term or condition of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected and each other term and condition shall be valid and enforceable to the fullest extent permitted by law.
- (iv) No amendment, change or addition to this Agreement shall be effectual or binding on the parties hereto unless it is in writing and duly executed by or on behalf of the parties hereto.
- (v) Any commissions payable to any agent shall be paid for by the Vendor.
- (vi) No interest is payable on account of default or delay in completion of the sale.


Vendor


Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

SEALED with the Common Seal of
CITY COUNCIL OF NAIROBI



In the presence of:-

H.W. THE MAYOR

TOWN CLERK

I certify that the said JEFFREY MATHWA and
NELSON OTIBO being His Worship the Mayor and
Town Clerk of the Purchaser appeared before me on the 19th day
of 2008 and signed in my presence.

EDWARD N. OMOTII
ADVOCATE &
COMMISSIONER FOR OATHS
P.O. Box 11113, NAIROBI
ADVOCATE

DRAWN BY:

E.N. OMOTII & CO. ADVOCATES,
REINSURANCE PLAZA, 1ST FLOOR,
TAIFA ROAD,
P.O. BOX 3165-00200,
NAIROBI.

REPUBLIC OF KENYA

DISTRICT OF NAKURU

Land Reference No. 14759/2

Locality *South of Athi River*

(Orig No. ...)

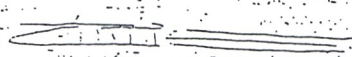
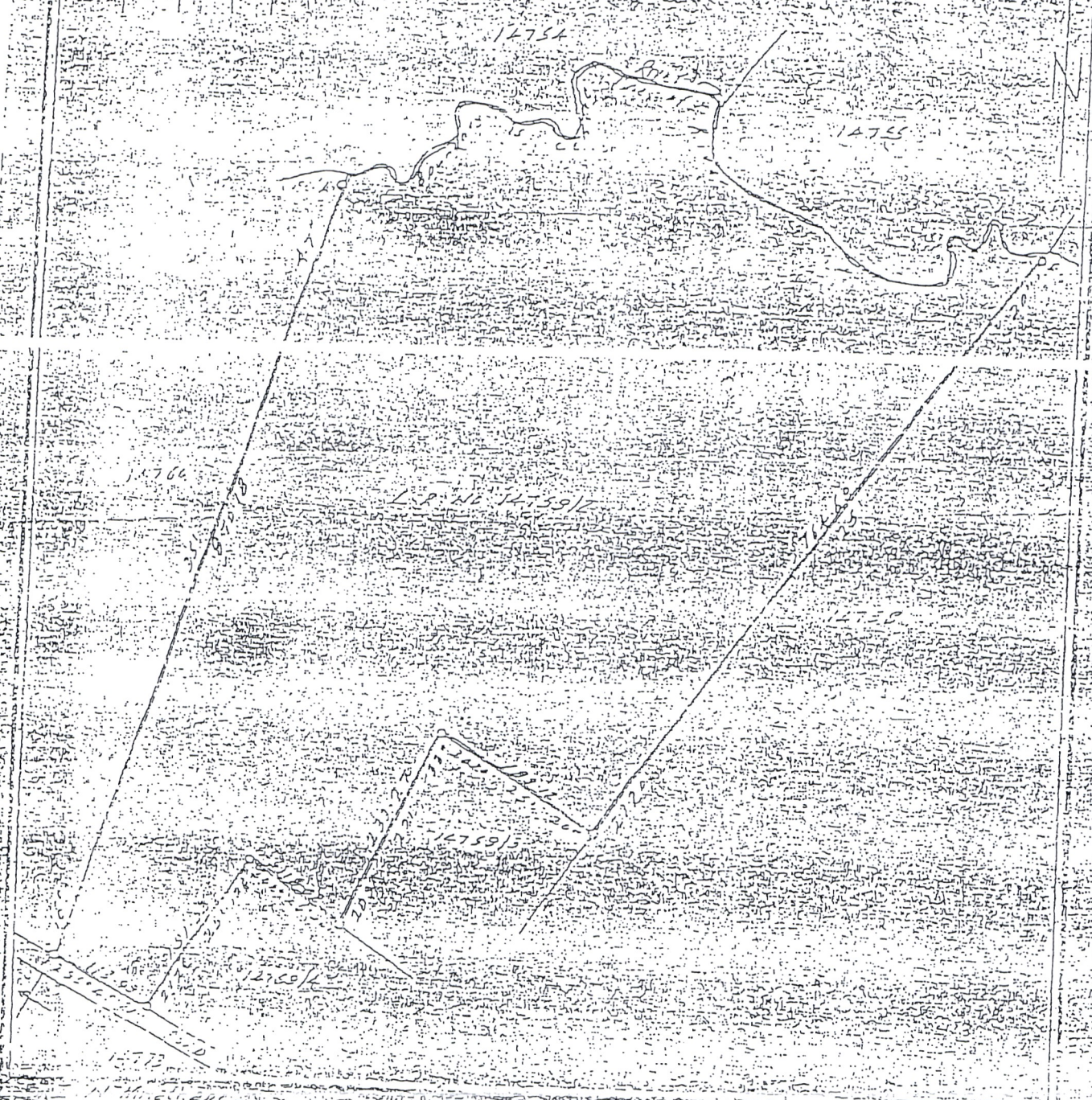
Reference Map *SOVER 2.25*

Sub-division No. ... (Orig No. ...)

of Section No. ...

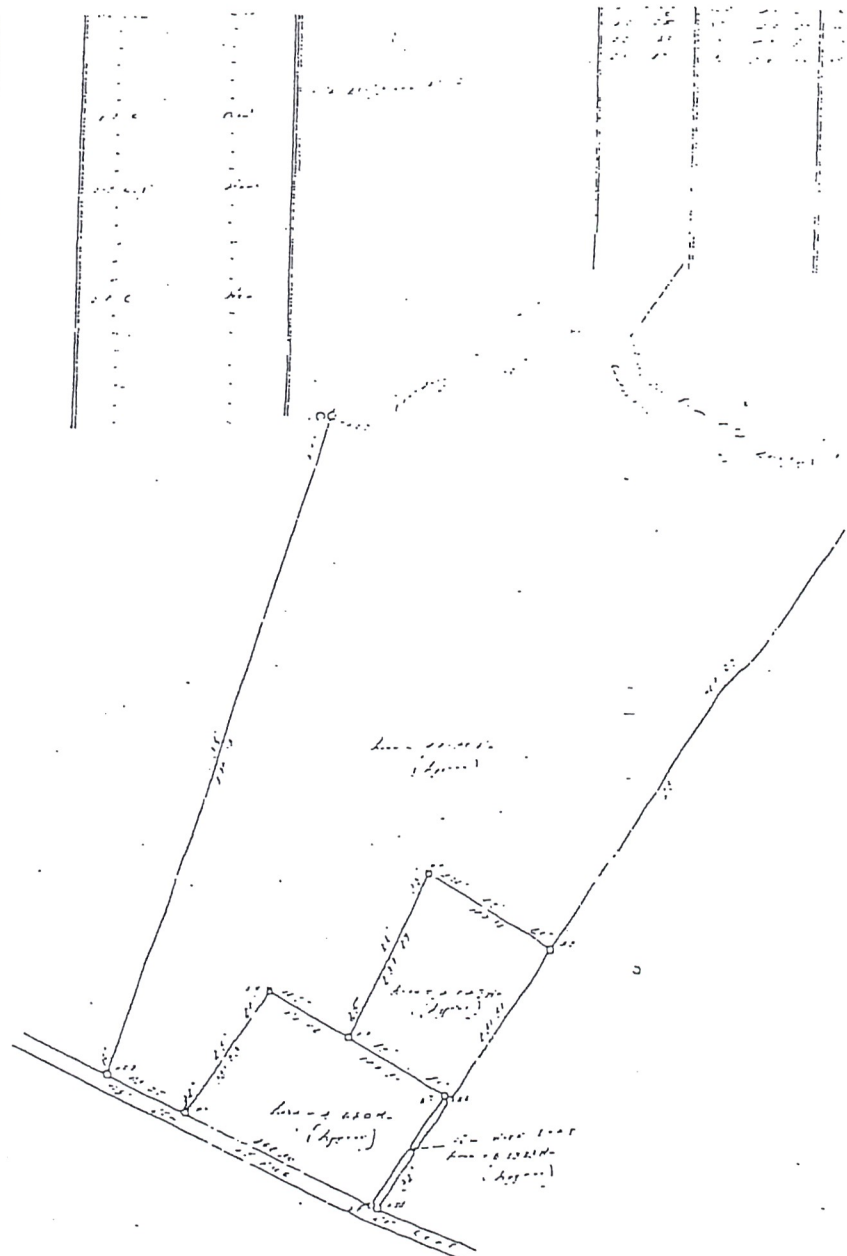
	Bearings		Distance in metres
	to	from	
A - B	178	351 47	100
B - C	272	351 36	190

AREA = 1830 H.A. (approx)



for ...

100	100	100	100	100
101	101	101	101	101
102	102	102	102	102
103	103	103	103	103
104	104	104	104	104
105	105	105	105	105
106	106	106	106	106
107	107	107	107	107
108	108	108	108	108
109	109	109	109	109
110	110	110	110	110
111	111	111	111	111
112	112	112	112	112
113	113	113	113	113
114	114	114	114	114
115	115	115	115	115
116	116	116	116	116
117	117	117	117	117
118	118	118	118	118
119	119	119	119	119
120	120	120	120	120
121	121	121	121	121
122	122	122	122	122
123	123	123	123	123
124	124	124	124	124
125	125	125	125	125



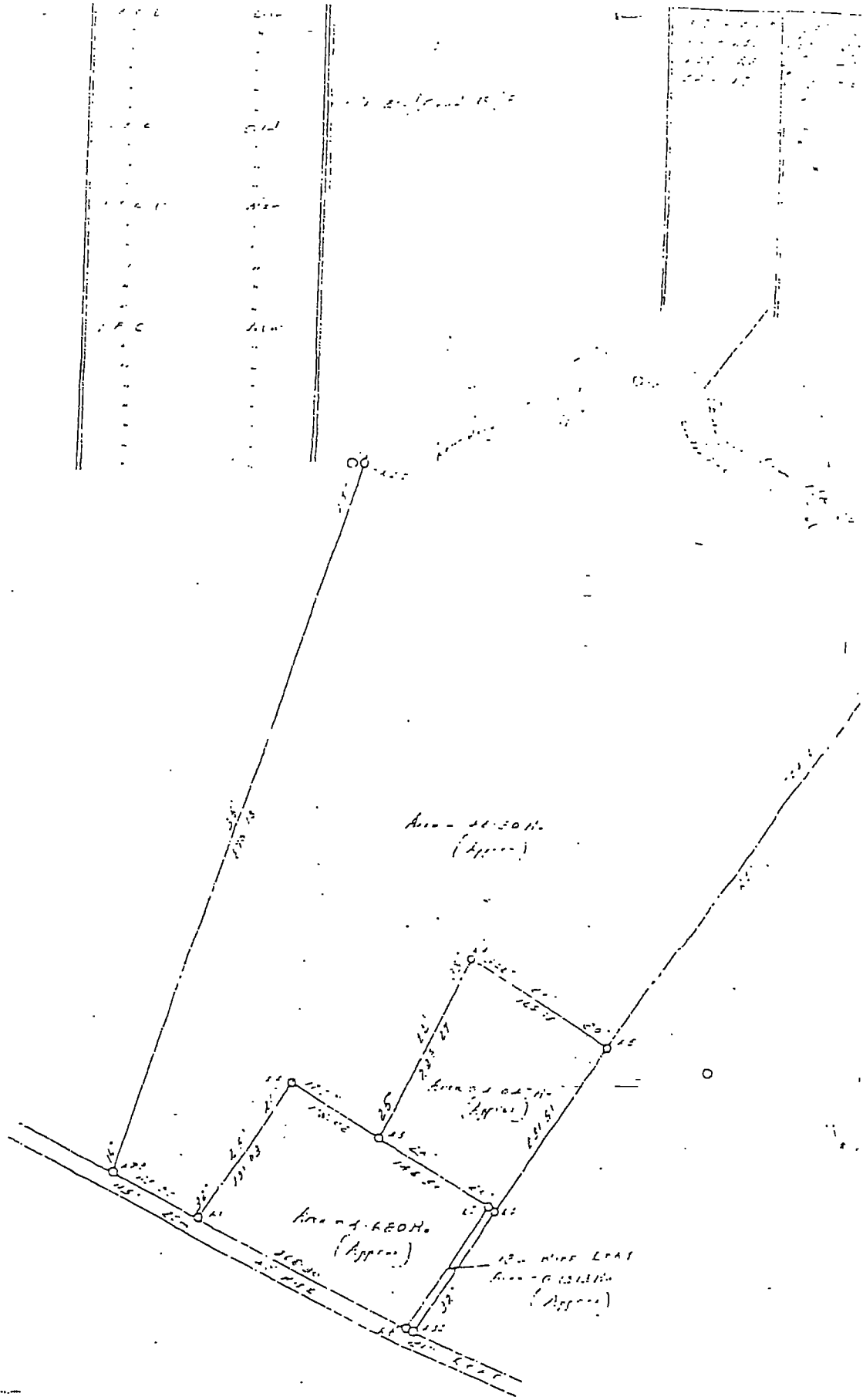
SCALE: 1:500

Plot/Parcel No.
Ref. Map/RI/MI
Registration Block
Registration District
Lot No.

Registration	Transaction	Authentication	Date	By	Date

101	208	20	10	208	20
102	210	22	10	210	22
103	212	24	10	212	24
104	214	26	10	214	26
105	216	28	10	216	28
106	218	30	10	218	30
107	220	32	10	220	32
108	222	34	10	222	34
109	224	36	10	224	36
110	226	38	10	226	38
111	228	40	10	228	40
112	230	42	10	230	42
113	232	44	10	232	44
114	234	46	10	234	46
115	236	48	10	236	48
116	238	50	10	238	50
117	240	52	10	240	52
118	242	54	10	242	54
119	244	56	10	244	56
120	246	58	10	246	58
121	248	60	10	248	60
122	250	62	10	250	62
123	252	64	10	252	64
124	254	66	10	254	66
125	256	68	10	256	68
126	258	70	10	258	70

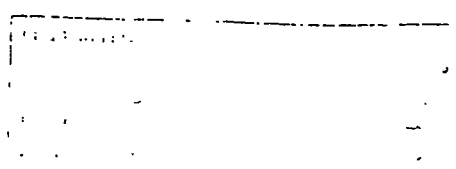
127	260	72	10	260	72
128	262	74	10	262	74
129	264	76	10	264	76
130	266	78	10	266	78
131	268	80	10	268	80
132	270	82	10	270	82
133	272	84	10	272	84
134	274	86	10	274	86
135	276	88	10	276	88
136	278	90	10	278	90
137	280	92	10	280	92
138	282	94	10	282	94
139	284	96	10	284	96
140	286	98	10	286	98
141	288	100	10	288	100



1. This map shows the first boundary of the property as shown in the plan.

2. The boundary shown in the plan is the boundary of the property as shown in the plan.

3. The boundary shown in the plan is the boundary of the property as shown in the plan.



Spec laid by
Kenya Milk Co
support of
private milk
L.P.
46

Bundle II

day of January 2009
Commissioner for Ombuds

DATED the 23RD "

WIS

BY **MUSYOKI KILONZI**

-TO-

CITY COUNCIL OF NAIROBI

TRANSFER

OF

L.R. NO. 14759/ 2 MAVOKO MUNICIPALITY, MACHAKOS

DRAWN BY:
E.N. OMOTH & CO.
ADVOCATES,
REINSURANCE PLAZA
1ST FLOOR
P.O. BOX 3165 - 0200,
NAIROBI.

REPUBLIC OF KENYA

REGISTRATION OF TITLES ACT

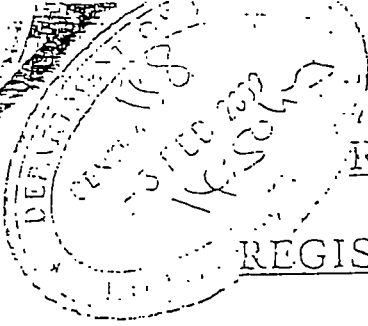
(CHAPTER 81)

TITLE NUMBER: I.R.

TERM: FREEHOLD

TRANSFER

I HENRY MUSYOKI KILONZI of Post Office Number 19022 00500, Nairobi in the Republic of Kenya being registered proprietor for an estate in fee simple ALL THAT piece of land situate in the South of Athi River Township in the Machakos District of the Republic of Kenya containing by measurement ^{Five Two} ~~Four~~ ^{Five} ~~Eight~~ decimal ^{Six} ~~Five~~ ^{Three} (~~48.565~~) ^{58.25} of a hectare or thereabouts and known as Land Reference Number 14759/2 (Original Number 14759) which said piece of land being the premises comprised in a Grant dated the Thirtieth day of December One Thousand Nine Hundred and Ninety One and registered in the Registry of Titles at Nairobi aforesaid as Number ~~1 R 54655/1~~ (Original I.R. 54655) is with the dimensions abuttals and boundaries thereof ^{Grant} delineated /and described on the plan annexed to said ~~certificate of title~~ registered as Number I.R. ~~54655/1~~ and more particularly on Land Survey Plan Number ~~2022/1~~ ^{1398/2} deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red SUBJECT however to special conditions, encumbrances and other matters written IN CONSIDERATION of the sum of Kenya Shillings Two Hundred and Eighty Three Million Two Hundred Thousand only (KShs 282,200,000/-) on or before the execution of these presents paid to me by CITY COUNCIL OF NAIROBI of Post Office Box Number 20075-00500 Nairobi aforesaid (hereinafter called



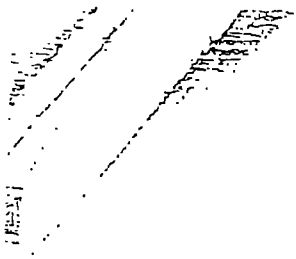
25.4.2010, 0700 p.m.
 3/2/09
 P. L. Mutinda

ADVOCATE
 MUTINDA
 Box 73098
 NAIROBI 00200

ADVOCATE
 MUTINDA
 Box 73098
 NAIROBI

MUTINDA
 ADVOCATE
 Box 73098
 NAIROBI

ADVOCATE
 MUTINDA
 Box 73098
 NAIROBI



1. 1. 1.

2. 2. 2.

3. 3. 3.

4. 4. 4.

5. 5. 5.

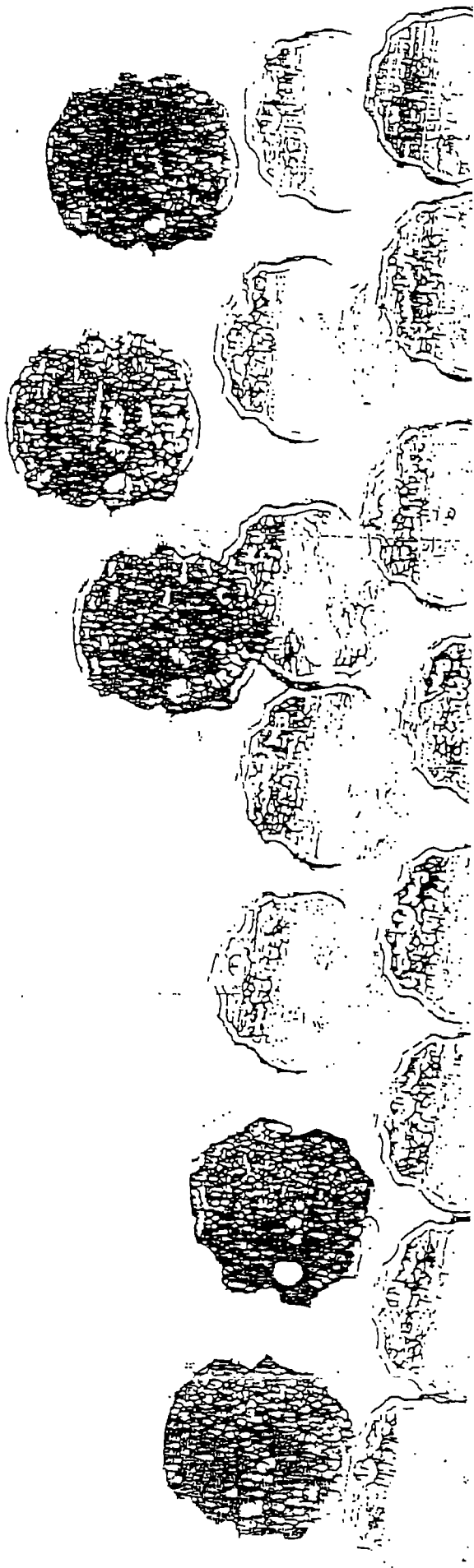
6. 6. 6.

7. 7. 7.

8. 8. 8.

9. 9. 9.

10. 10. 10.



Purchaser") (the receipt of which sum I do hereby acknowledge) DO HEREBY TRANSFER all my respective rights, titles and interests in the said piece of land to the Purchaser and TO HOLD the same unto the purchaser's use subject as aforesaid.

IN WITNESS whereof the Transferee and the Transferor have hereunto affixed their respective hands this 23rd day of January Two Thousand and Nine.

SIGNED by the TRANSFEROR

HENRY MUSYOKI KILONZI)

Henry Musyoki Kilonzi

in the presence of: -)

Alphonse Mutinda
ALPHONSE MUTINDA
ADVOCATE
P. O. Box 73098 - 00200.
NAIROBI.



ADVOCATE.

CERTIFICATE.

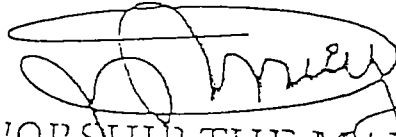
ID No : 1809524
PIN No : A-000115874 P

I certify that I was present and saw the Transferee HENRY MUSYOKI KILONZI sign this transfer on the...19th day of JANUARY.....2009.

Alphonse Mutinda
ALPHONSE MUTINDA
ADVOCATE
P. O. Box 73098 - 00200.
NAIROBI.

SEALED with the COMMON SEAL of
CITY COUNCIL OF NAIROBI

In the Presence of:



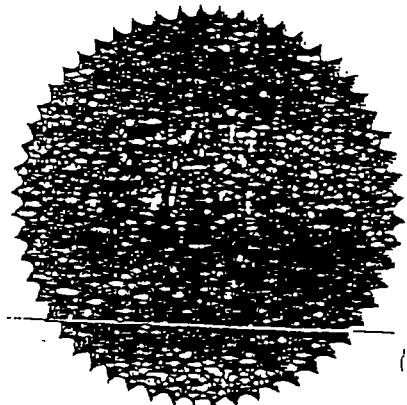
HIS WORSHIP THE MAYOR

TOWN CLERK



ADVOCATE

9772208



CERTIFICATE.

I certify that I was present and saw His Worship the Mayor
and Town Clerk of the Transferee sign this transfer on
the 23rd day of January 2009.

MR. P. K. ...

COMMISSIONER OF LANDS

ADVOCATE.

MEMORANDUM

1. The provisions of the Government Lands Act (Chapter 280).
2. Special Conditions contained in a Grant registered as aforesaid as Number 1 P 54655/1



REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT
(Chapter 281)

CERTIFICATE OF TITLE

TITLE No. IR 115561

I HEREBY CERTIFY that CITY COUNCIL OF NAIROBI

of Post Office Box Number 30075-00100 NAIROBI

in the Republic of Kenya pursuant to a Transfer registered as Number I.R. 54655/7
is/are now the registered proprietor(s) as owner(s) for an estate in fee simple

of ALL that piece of land situate in the South of Athi River

in the Machakos District containing by measurement Forty eight decimal three nought
(48.30Ha)

~~hectares/acres less road-reserve-of~~

hectares/acres) or thereabouts and being Land Reference Number 14759/2

(Original Number)

as delineated on Land Survey Plan Number 293535

annexed to the said Transfer

SUBJECT however to the Act Special Conditions Encumbrances and other matters specified
in the Memorandum hereunder written.

In WITNESS whereof I have hereunto set my hand and seal this 3rd
day of February Two thousand and nine

Registrar of Titles
G. S. Gachui O.P.

MEMORANDUM

Special conditions contained in a Grant registered as IR 115561

of title to

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

KARISA EFA
DEPUTY DIRECTOR LEGAL
CITY COUNCIL OF NAIROBI

17-02-09

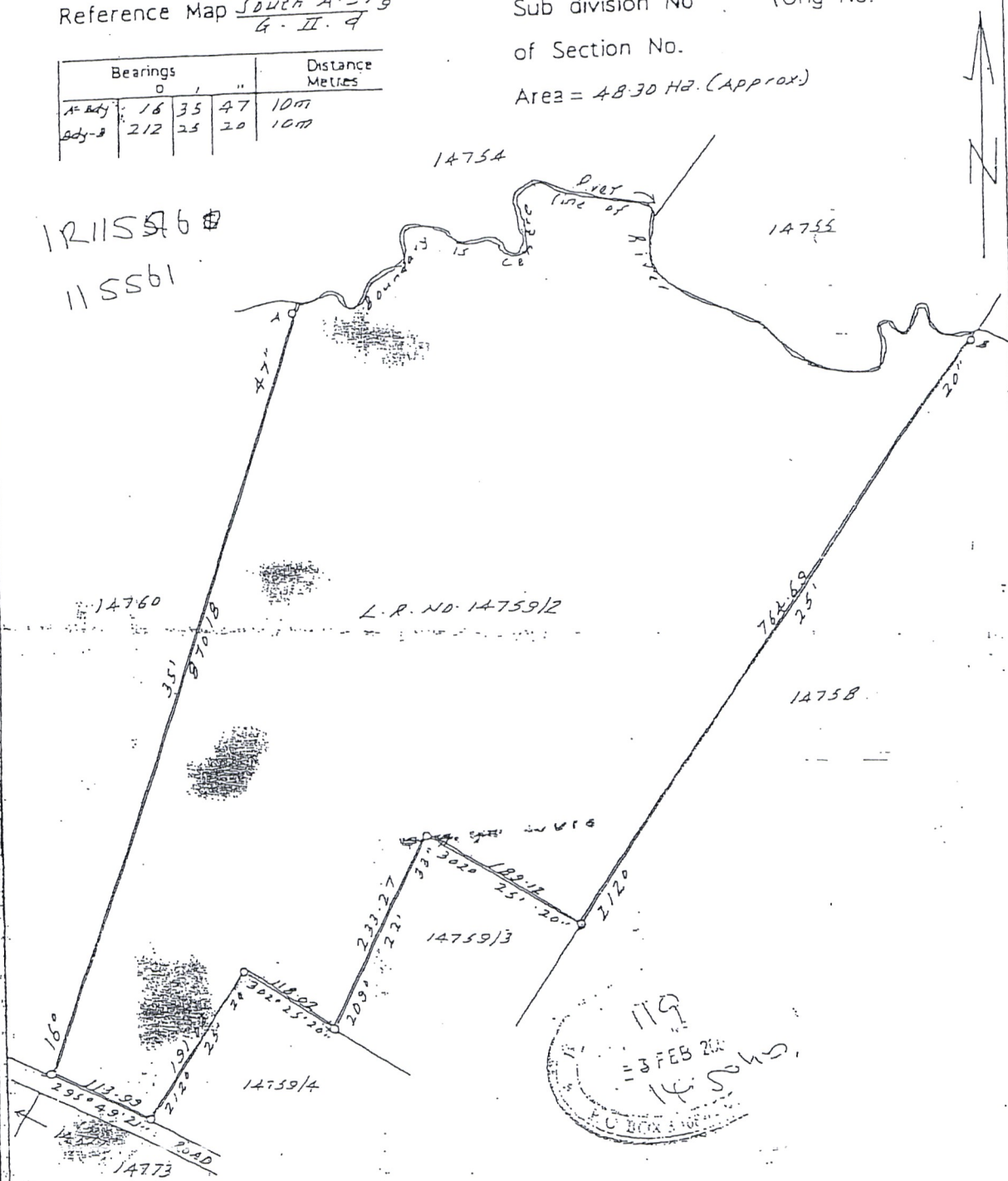
REPUBLIC OF KENYA

DISTRICT OF *MACHAKOS*
 Locality *South of Athi River*
 Reference Map *South A. 379*
G. II. 7

Land Reference No *14759/2*
 (Orig No. _____)
 Sub division No _____ (Orig No. _____)
 of Section No. _____
 Area = *48.30 Ha. (Approx)*

	Bearings			Distance Metres
	0	'	"	
<i>A. Body</i>	<i>18</i>	<i>35</i>	<i>47</i>	<i>10m</i>
<i>Body-B</i>	<i>212</i>	<i>23</i>	<i>20</i>	<i>10m</i>

1211556
115561



J. N. Mwalihani
 Licensed Surveyor.
 No. *284/S*
 COMPS NO. *58758*

[Signature]

for Director of Surveys
 Nairobi, Kenya

CITY OF



NAIROBI

CITY PLANNING DEPARTMENT

M E M O

TO : TOWN CLERK
FROM : DIRECTOR
CITY PLANNING DEPARTMENT
REF : CPD/ADMIN/6614
DATE : 11TH NOVEMBER, 2008

W 15

RE: PURCHASE OF LAND FOR CEMETERY

I refer to your memo ref. TC/JG/9/3804/2008 dated 30th October, 2008 and Permanent Secretary Ministry of Local Government letter ref. No. MLG/402-01(16) equal date on the above referenced.

This is to inform you that the tender for purchase of the land has been advertised. However, the open tender process is proving to be ineffective in regard to attracting bidders with suitable land for cemetery use. This is because availability of suitable land for this purpose is confined in fewer and specific locations due to environmental concerns requiring careful attention. Currently, all respondents to the recently advertised tender have offered lands that due to their locations, soil profile, accessibility status, and other environmental conditions are unsuitable and inappropriate for cemetery use.

Arising from the afore-going, it would appear that a method which directs procurement of land in preferred locations with suitable land in terms of soil profile, infrastructure and services, accessibility, size and acceptable environmental conditions and permits informed negotiations with selected land owners may yield better results than the open tender.

Consequently, I would advise that a legally acceptable alternative means be employed to acquire the land other than open tender which has proved ineffective in view of the aforementioned factors

P. M. FIENDA

P. M. FIENDA
DIRECTOR OF CITY PLANNING

Cc - Medical Officer of Health
- Director of Legal Affairs

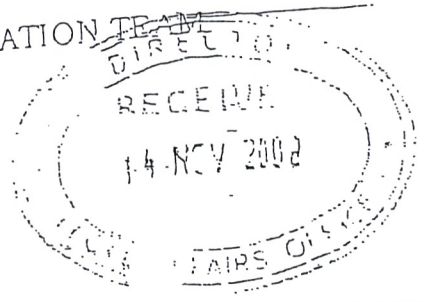
END/ask

CONFIDENTIAL CITY COUNCIL OF NAIROBI

CITY PLANNING DEPARTMENT

M E M O

TO : CHAIRMAN - TECHNICAL EVALUATION TEAM
FROM : MR. P.T. ODONGO
MR. J.K. BARREH
DATE : 11TH NOVEMBER, 2008



RE: TENDER FOR SALE OF CEMETERY LAND

We have been available to offer technical advice regarding the above referenced matter.

It needs to be appreciated that the undersigned pointed out from the outset of the referred evaluation that the tender document(s) are defective and insufficient to assist in procuring the suitable land for cemetery use.

Nevertheless, we agreed to proceed with the above evaluation based on the said document(s) as the procurement process had already commenced on the basis of the same document(s)

Based on administrative requirements and other documentation five sites were selected for further evaluation while others were eliminated.

We would like to reiterate the importance of the second phase of the above evaluation whereby the suitability of the land and location are being examined on the basis of the referred tender document.

The defectiveness of the said document notwithstanding; we applied this to examine the remaining five sites. At the end of this phase of the evaluation process, it is categorical that none of the five sites met the suitability criteria for land for cemetery use.

This matter being very sensitive needed to be carefully handled to conclusion of evaluation of the tender but if ever the evaluation was done we were not represented made aware of

2/19

CITY COUNCIL OF NAIROBI



NAIROBI CITY COUNCIL
 RECEIVED
 19 DEC 2008
 TOWN CLERK
 P.O. BOX 30575, NAIROBI

CITY PLANNING DEPARTMENT

M E M O

TO : TOWN CLERK
 FROM : DEPUTY DIRECTOR
 CITY PLANNING DEPARTMENT
 REF : CPD/ADMIN/7543
 DATE : 19TH DECEMBER, 2008

RE: PURCHASE OF LAND FOR CEMETERY

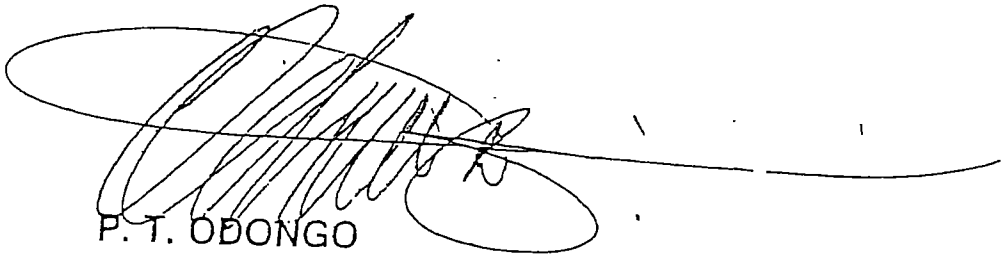
Your memo reference TC/JG/9/3887/2008 of 16th December, 2008 and the forwarded letter reference MLG/402-01/ (17) of 4th December, 2008 from the Permanent Secretary, Office of the Deputy Prime Minister and Ministry of Local Government concerning the above refers.

I regret the fact that my well intended memo of 11th November, 2008 to the Chair person of the Evaluation Team found its way outside the designated offices unintended. Land that is suitable for a cemetery from the point of view of city planning, public health and environmental considerations is evidently in short supply and its supply is also restricted to fewer locations in the city and its environs. This fact mitigates that a mode of acquisition that is heavily dependent on market processes to locate a cemetery is severely incompetent.

The referred memo was precipitated by two main concerns both of which are connected to the aforementioned.

Firstly, it was a fact that the tender document that was guiding the evaluation process was severely inadequate in terms of criteria of determining appropriateness of locations and suitability of sites for cemetery use. It is noted that suitability of site for cemetery is principally a function of the soil profile/type and the level of services and infrastructure provision while appropriateness of location is about physical accessibility in terms of distance in relation to the location of the targeted population catchments as well as the obtaining social and environmental characteristics of the surroundings. The referred tender document lacked the competence to sufficiently address the above mentioned fundamental considerations

Secondly, the open tender obviously failed to attract competitive bids in terms of suitable locations and sites as majority of the bids were off the mark by the measure of the tender document that was in use. I took the position that, much as there could be pressure to utilize the allocated funds on time, the duty to ensure that such utilization is aligned to securing suitable site in appropriate location is at the heart of the evaluation exercises. My memo was intended to reiterate the significance of the technical considerations relating to suitability of site and appropriateness of location for the proposed cemetery and to caution on the consequences of over-weighting the issue of utilizing the allocated funds on time.



P. T. ODONGO

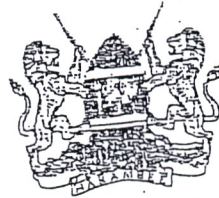
DEPUTY DIRECTOR OF CITY PLANNING

W 18

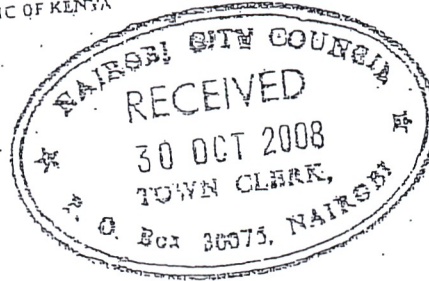
OFFICE OF THE DEPUTY PRIME MINISTER
AND MINISTRY OF LOCAL GOVERNMENT

OFFICE OF THE PERMANENT SECRETARY

JOGOO HOUSE "A"
TAIFA ROAD
P.O. Box 30004-00100
NAIROBI



REPUBLIC OF KENYA



PS

1. Name "Authority"
2. Telephone: Nairobi 2217475
3. Fax: 2217809
4. Email: ps@localgovernment.go.ke
5. When replying please quote
MLG/402-01/(16)
6. Date: 20.....
and date

30th October, 2008

Mr John Gakuo
Town Clerk
City Council of Nairobi
NAIROBI

Dear Mr Gakuo

RE: PURCHASE OF LAND FOR CEMETERY

Refer to my letters Ref No. C/1142.111/ (39) dated 25th June, 2008 and MLG/402-01/(15) dated 8th September, 2008.

It is now 5 months since you initiated action on this matter and yet you have not concluded and advised the Ministry to effect payment. The continued holding of this payment is adversely affecting other financial transactions in the Ministry. From the date of this letter I want to get this matter concluded within a period of 5 days. At the expiry of this period the Ministry will take over the procurement process and proceed with the advertisement for the purchase of the land for the cemetery.

Yours sincerely


Samia Jirani, MBS
PERMANENT SECRETARY

CITY COUNCIL OF NAIROBI

W 19



TOWN CLERK
FAX: 217704
TELEPHONE: 224281 / 221349

CITY HALL
P.O. BOX 30075-0010
NAIROBI
KENYA.

Director of Legal Affairs

EXT.....

Ref No..... DLA/MNN/992/E/2008

26TH November, 2008

E N Omotii & Company
Advocates,
NAIROBI.

Dear Sir,


RE: PURCHASE OF LAND FOR CEMETERY USE - L.R NO. 14759

I hereby appoint you to represent the Council in the purchase of the above referenced property.

I hereby forward a copy of the letter of award and the tender document for your reference.

Yours faithfully,


M N NG'ETHE
DIRECTOR LEGAL AFFAIRS.

RECEIVED
26/11/08
1:30


W 20

GOVERNMENT OF KENYA
CENTRAL BANK OF KENYA
BANKI KUU YA KENYA



Date 30/06/2008

NAIROBI
Schedule No 396195
Item No 6

09-001

Pay: E N O M O T I I C O A D V O C A T E S Or Order KSh *****175,000,000.00

Kenya Shillings One Hundred Seventy-Five Thousand And Centa Zero

Not Negotiable
A/C Payee Only

MINISTRY OF LOCAL GOVERNMENT -
DEVELOPMENT - 12

Authorised Signatory

VALID FOR SIX MONTHS FROM DATE OF ISSUE

MINISTRY OF LOCAL GOVERNMENT -
DEVELOPMENT - 12
17/11/05

Cheque Number 5643

Bank Code

01-010-D012
Account Number

Authorised Signatory

⑈005643⑈090017⑈11⑈010102012⑈

OFFICE OF THE DEPUTY PRIME MINISTER
AND
MINISTRY OF LOCAL GOVERNMENT

W 21

JOGOO HOUSE "A"
TAIFA ROAD
P.O. Box 30604-00100

NAIROBI

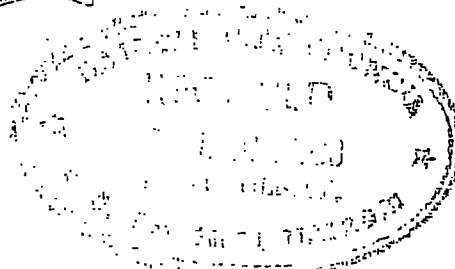
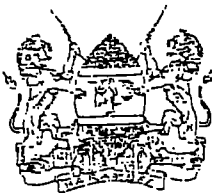
22ND DECEMBER, 2008

20.....

Telegrams: "AMBODI"
Telephone: Nairobi 217475
Fax: 217369

E-mail: molg@mnet.co.ke
When replying please quote

Reference: MOLG/402-01/(23)
and date




Town Clerk
City Council of Nairobi
City Hall
P. o. Box 30075
NAIROBI.

RE: PURCHASE OF CEMETERY LAND
RELEASE OF CHEQUE NO. 005643
DATED 30TH JUNE, 2008 FOR KSHS. 175,000,000.00

Herein enclosed please find our cheque No. 005643 dated 30th June, 2008 for Kshs.175, 000,000.00 (Kenya Shillings One hundred and seventy five million only) being payment in respect of purchase of land for use as cemetery.

You may in turn release the cheque to your Advocates but with due attention to all necessary details to ensure that these public funds are fully secured and best Government and public interest achieved as envisaged with full accountability.

Please ensure that you forward to this office copy of the new Title Deed on registration and that all relevant documentation are recorded and securely stored for audit purposes.

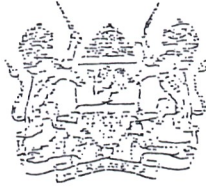

R. K. ROTICH, MBS
FOR: PERMANENT SECRETARY

AND
MINISTRY OF LOCAL GOVERNMENT

Telegrams: "MILGOBURA"
Telephone: Nairobi 217475
Fax: 217869

E-mail: molg@nairobi.go.ke
When replying please quote

Ref. No. MOLG/402-01(27)
and date



JOCGO HOUSE "A"
TAIFA ROAD
P.O. Box 30004-00100
NAIROBI

January 16, 2009

The Town clerk
City Council of Nairobi
City Hall
P.O. Box 30075
NAIROBI

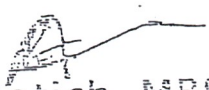
W 22

**RE: PURCHASE OF CEMETERY LAND RELEASE OF
CHEQUE NO 005915 DATED 15TH JANUARY 2009
FOR KSH 108,000,000**

Enclosed herewith please find our cheque No. 005915 dated 15th January 2009 for Kshs 108,000,000 (Kenya shilling One Hundred and Eighty Million only) being payment in respect of purchase of land for use as Cemetery.

You may in turn release the cheque to your Advocates but with due attention to all necessary details to ensure that these public funds are fully secured and best Government and Public Interest achieved as envisaged with full accountability.

Please ensure that you forward to this office copy of the new Title Deed on Registration and that all relevant documentation are recorded and securely stored for audit purposes.


R.K. Rotich, MBS
FOR: PERMANENT SECRETARY

ENCLS

W 23

2412

DOP/GKN/Min.3-07/sm/4805/08

13th November, 2008

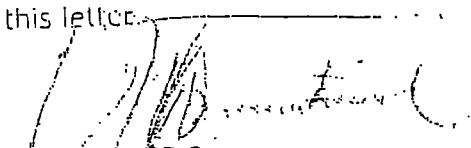
M/s Naen Rech Limited,
P. O. Box 5018-00506
NAIROBI

RE: TENDER NO. CCN/MOH/T/020/08-09 – EXPRESSION OF
INTEREST FOR SALE OF LAND FOR CEMETERY USE

NOTIFICATION OF AWARD

I write to inform you that the City Council of Nairobi has accepted your bid for Tender No. CCN/MOH/T/020/08-09– Expression of Interest for Sale of Land for Cemetery Use and approved the acquisition of Parcel of Land No. L.R. 14759 situated in the South of Athi River Township in Machakos District measuring 120 acres (57.22 hectares) and registered in the name of Henry Musyoki Kilonzi at a cost of Kshs. 2,360,000/= (Two million three hundred sixty thousand) only per acre and a total cost of Kshs. 283,200,000/= (Two hundred and Eighty three million two hundred thousand) only, when the parcel is confirmed to be 120 acres and subject to the piece of land being free from all encumbrances.

You are required to furnish your written acceptance and provide a Performance Bond of Kshs. 14,160,000/= within 14 days from the date of this letter.


N. W. OTIDO

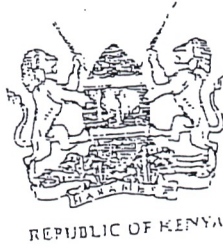
FOU. TOWN CLERK

c.c: Director of Legal Affairs

OFFICE OF THE DEPUTY PRIME MINISTER
AND MINISTRY OF LOCAL GOVERNMENT
OFFICE OF THE PERMANENT SECRETARY



JOGOO HO
TAIFA ROAD
P.O. Box 30004-00100
NAIROBI



REPUBLIC OF KENYA

December 19, 2008

Priority
Nairobi 2017475
www.localgovernment.go.ke
Applying please quote
MLG/402-01(18)

Mr. John Gakuo
Town Clerk
City Council of Nairobi
P.O. Box 30075
NAIROBI

W. Kirui

RECEIVED BY
DEPUTY TOWN CLERK

Date: 19/12/08/19

TE
19/12/08

Dear Mr. Gakuo,

RE: PURCHASE OF LAND FOR CEMENTARY

Your letter Ref. No. DTC/NOW/789/E/08 dated 28th
November 2008 and TC/JG/9/3889/2008 dated 17th
December 2008.

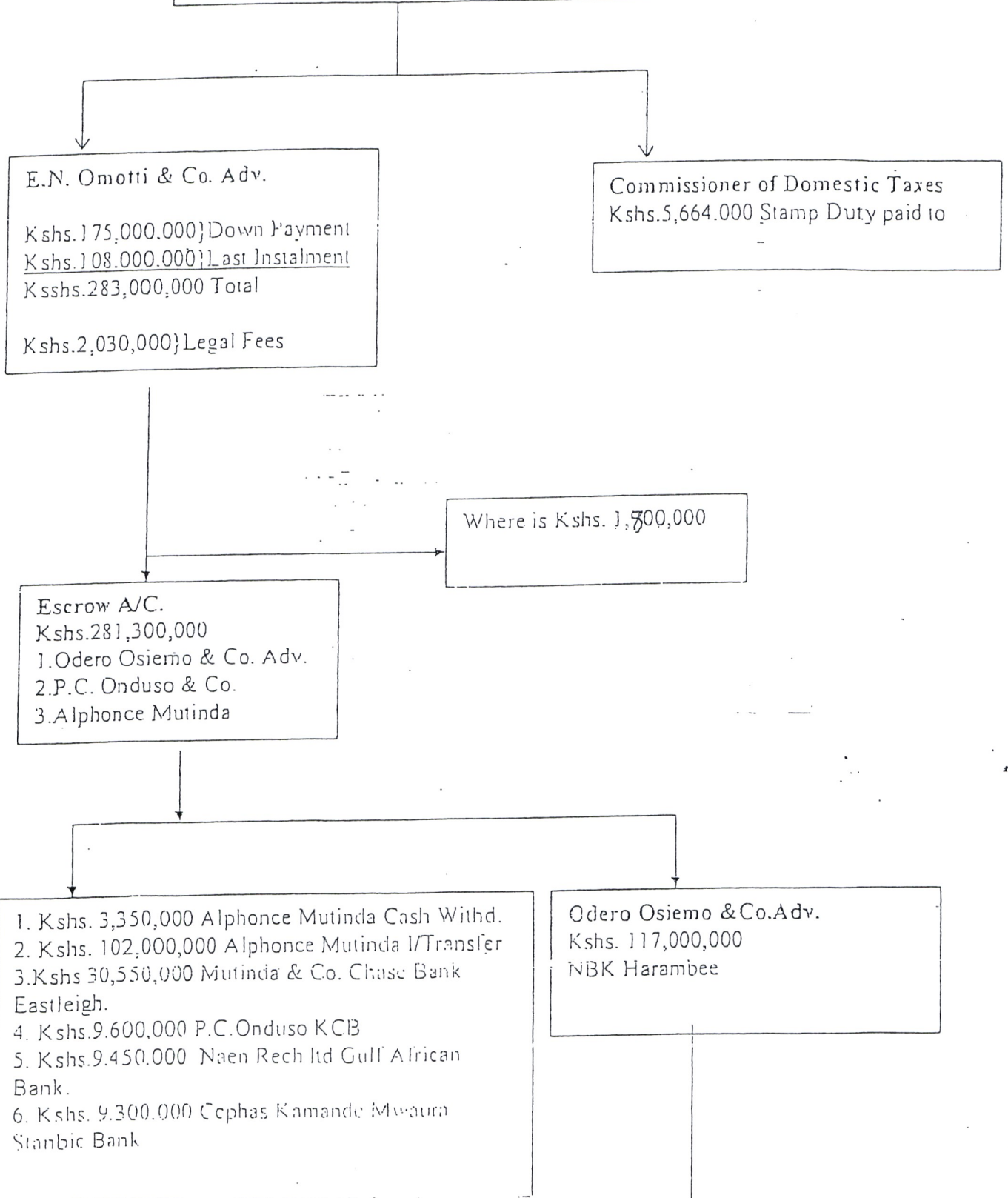
Kindly execute the agreement and ensure the interests of
the Nairobi City Council are safeguarded. In view of the fact
that we are nearing Christmas season and the cheque is
almost becoming stale, I will appreciate your quick
response.

Yours, *Sincerely*

Sammy Kirui MBS
PERMANENT SECRETARY

W 25

MINISTRY OF LOCAL GOVERNMENT
Ksh.288.664.000



↓

FROM ODERO OSIEMO AND CO. ADVOCATES

↓

1. Kshs. 2,000,000 - Cibiya Worldwide Ltd CFC Stanbic Harambee Avenue.
2. Kshs. 5,000,000 - Cibiya Worldwide Ltd CFC Stanbic Harambee Avenue.
3. Kshs. 20,000,000 - James Mwangi Gacheru BBK Thika
4. Kshs. 1,660,000 - James Mithamo Kamau Coop Bank Nairobi Bussiness Centre Ngong.
5. Kshs. 6,000,000 - Owino Kojwando Co. Adv. STD bank Harambee Ave.
6. Kshs. 1,200,000 - Cibiya Farm Holdings Ltd CFC Stanbic Harambee Ave.
7. Kshs. 1,000,000 - Mwalimu SACCO Coop bank Cooperative house Nairobi.
8. Kshs. 1,000,000 - Billy Mbuvi Muumbo Chase Bank Eastleigh.
9. Kshs. 4,000,000 - Shell Kenya Ltd STD bank.
10. Kshs. 4,000,000 - P.J. Kakad Advocates Fidelity Commercial bank Kimathi-street.
11. Kshs. 4,000,000 - Stiff Enterprises BBK Queensway.
12. Kshs. 2,000,000 - Mwalimu Hardware KCB Mwingi.
13. Kshs. 4,000,000 - Onyinkwa & Co. Advocates STD bank Eldoret.
14. Kshs. 2,000,000 - Moeckings General Contractors- Chase bank Landmark plaza.
15. Kshs. 4,000,000 - Owino Kojwando & Co. Advocates STD bank Harambee Ave.
15. Kshs. 10,000,000 - Peterson O. Gichana BBK Plaza, Premier branch.
16. Kshs. 13,000,000 - E.N. Omoti & Co. Advocates Bank of Africa Taifa Road branch.
17. Kshs. 14,000,000 - Cash cheque drawn on 14th February 2009.
18. Kshs. 5,000,000 - Cash cheque drawn on 16th February 2009.
19. Kshs. 3,000,000 - Cheque paid to Doreen Aribeta Oyugi on 17th February 2009.
20. Kshs. 2,230,000 - Cash cheque drawn on 27th February 2009.
21. Kshs. 1,000,000 - Cash cheque drawn on 26th February 2009.
22. Kshs. 1,000,000 - Cash cheque drawn on 5th March 2009.
23. Kshs. 1,000,000 - Cash cheque drawn on 30th March 2009.
24. Kshs. 1,500,000 - Cash cheque drawn on 2nd April 2009.
25. Kshs. 2,000,000 - Cash cheque drawn on 21st March 2009.
26. Kshs. 1,000,000 - Cash cheque drawn on 17th March 2009.

W 26

JOINT PARLIAMENTARY ASSEMBLY

Prof. Kamar: Mr. Temporary Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Reports of the 14th 15th and 16th Sessions of the ACP-EU Parliamentary Assembly and the 16th and 17th ACP-EU Joint Parliament Assembly meetings held in November, 2008, in Port Moresby, Papua New Guinea; February, 2009, Brussels Belgium and April, 2009 in Prague, Czech Republic laid on the Table of the House on Thursday, 4th June, 2009.

OFFICIAL RECOGNITION OF KENYAN CHAPTER OF AMANI FORUM :

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I wish to give notice of the following Motion:-

THAT, appreciating the role played by the Great Lakes Parliamentary Forum, Amani Forum, in building the capacities of Members of Parliament in peace building and conflict management in Kenya and within the Great Lakes Region and the Horn of Africa; considering that the participation of Members of Parliament in regional and national Amani Forum activities have significantly enriched debate in the House, informed Committee deliberations and created strategic linkages between Parliament and other actors in the society; convinced of the need to mainstream peace building and conflict management aspects with the National Assembly of Kenya as the country emerges from post-election violence and its undertaking deliberate measures to promote reconciliation and national healing; aware that this is the only legislature in the region that has not given due recognition to that strategic regional organization; this House resolves that Amani Forum, Kenya Chapter, be officially recognized as a parliamentary organization within the national Assembly of the Republic of Kenya.

QUESTIONS BY PRIVATE NOTICE

PROCUREMENT OF CEMETERY LAND BY
NAIROBI CITY COUNCIL

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Local Government the following Question by Private Notice.

(a) Could the Minister confirm that the Treasury, through his Ministry, allocated Kshs283,200,000 to the Nairobi City Council for the purchase of land for a cemetery in the Financial Year 2008/2009?

(b) Could the Minister inform the House who the vendor was, the size, cost and the location of the land?

(c) Could the Minister clarify whether, in procuring the said land, the relevant Government procurement regulations were followed and if so, whether he could table the valuation report, sale agreement and inform the House which firm was involved in the conveyancing of the said land?

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. I have looked at this Question and our Standing Orders. Standing Order No.43(9) says:-

~~"A Question shall not be asked which makes or implies any allegation of a personal nature--"~~

I am rising on this point of order because this is a very weighty issue dealing with the possibility of corruption involving Kshs283 million.

The Temporary Deputy Speaker (Mr. Imanyara): We do not know that! The Question has not been answered!

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, let me raise my point of order! In view of the fact that we are aware that the major player in this case is the City Council of Nairobi, what will be the impression on the integrity of this House if the Question is being fronted by hon. Linturi, my colleague in the Grand Opposition, whom we know has taken the City Council of Nairobi to court, claiming that he be paid over Kshs26 million?

I have no interest in this matter, but I would just like to be guided. Would it not be inviting what forced hon. ole Kaparo to make a ruling in this House that we should not raise Questions that attempt either to advance our personal interests or attempts to use this supreme House as a debt collecting institution?

The Temporary Deputy Speaker (Mr. Imanyara): Order! Dr. Khalwale, do you have the ruling by the former Speaker, hon. ole Kaparo?

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, that ruling by hon. ole Kaparo is in the HANSARD. I was in this House when he made that ruling. But I also happen to know - and it is a fact - that the City Council of Nairobi has been taken to court by hon. Linturi.

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Midiwo, is it in relation to the same issue?

Mr. Midiwo: Yes, Mr. Temporary Deputy Speaker, Sir. Further to Dr. Khalwale's concern, this Question was before this House just about three weeks ago and it was dropped. How has it found its way back to the Order Paper?

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, it is very important for me to put this issue clearly to this House and to my brothers, Dr. Khalwale and hon. Midiwo. It is true that this Question came before the House when the Public Investments Committee (PIC) was in Mombasa compiling its report. For that reason, I was not here to ask this Question.

The Temporary Deputy Speaker (Mr. Imanyara): Order! I have been informed that the Question is on the Order Paper on the direction of Mr. Speaker. That is to answer hon. Midiwo's question. In relation to the issue raised by Dr. Khalwale, this is dealt with under Standing Order No.81. Mr. Linturi, if you have a personal interest in this matter, you need to disclose it to the House before asking the Question!

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, maybe, I need to explain to the House something. The issue about personal interest is so relative.

The Temporary Deputy Speaker (Mr. Imanyara): No! No! I think you need to clear the air!

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, I have no personal interest in this matter. The matter that Dr. Khalwale is alluding to is as a result of a contract entered into in July, 2004, between a company in which I have shares and the City Council of Nairobi. That is even before I became a Member of Parliament!

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I think it is only fair that you defer this Question and make a ruling. In the light of what the Member is saying, I, personally, have information that he has interest in this Question. A public officer at the Nairobi City Council has called me to explain. It would be unfair for me not to bring up those issues if this Question was to continue.

Mr. Waititu: On a point of order, Mr. Temporary Deputy Speaker, Sir. This issue is of corruption in nature. Very many Kenyans are concerned about the issue of the cemetery. It is supposed to benefit Kenyans in Nairobi. We need to get to the bottom of the matter in order to understand the truth. This Question should proceed so that we can debate the matter and know exactly what happened.

Mr. C. Kilonzo: On a point of order, Mr. Temporary Deputy Speaker, Sir. It is very unfortunate that when a Question becomes the property of the House, some Members are called by people who have some interest in the Question. That is what hon. Midiwo has stated, so that the Question cannot proceed.

This Question is before the House. The procedure is very clear. The hon. Member has said that he has no personal interest in this Question. So, I beg you to rule that this Question continues.

Mr. Mungatana: On a point of order, Mr. Temporary Deputy Speaker, Sir. In terms of assisting the House to move forward, just the day before yesterday, the Chair gave a ruling that is relevant to this. I had made an application that there

were some documents that we needed to use for purposes of supporting an application in this House. The Chair ruled that because that was hearsay, we could not delay the business of the House. That is a fresh ruling. We should also say that hon. Midiwo is also alluding to matters that are purely hearsay. The Question is before the House. Please, let the Question be answered.

The Temporary Deputy Speaker (Mr. Manyara): Order! Mr. Minister, you have heard the concerns of the hon. Members. In your answer to the Question, if there are any areas that you feel would unfairly prejudice officials of Nairobi City Council who are not in the House, you can indicate that before giving the reply. However, it is up to you, Mr. Minister, to tell us whether you are ready to answer the Question or not, or whether the issues that hon. Members have raised have any bearing on the answer that you will give.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I am not aware of anything other than what I have heard about at this point and time. I am ready to answer the Question.

The Temporary Deputy Speaker (Mr. Manyara): Please, go ahead and answer!

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) It is true that the Treasury, through my Ministry, had allocated Kshs283,200,000 to the Nairobi City Council for the purchase of land for a cemetery. Out of this amount, Kshs175 million was provided in the 2007/2008 Financial Year and Kshs108,200,000 was provided in the 2008/2009 Financial Year.

(b) The vendor was Mr. Henry Musyoki Kilonzi who put a bid into this matter through his agent namely Naem Rech Limited. The size of the land in question is 120 acres. The land is located in the Municipal Council of Mavoko, Athi River, which is adjacent to Nairobi. The land was purchased at Kshs283 million.

(c) According to the documentation I have from the Nairobi City Council, it would appear that they followed the procurement regulations. The council advocate was Messrs. E. N. Omothii and Company Advocates while the vendor's advocates were Messrs. Alphonse Mutinda, Odero Osiemo and P.C Onduso Advocates. The Questioner also requested me to lay certain documents on the Table. I would like to lay the following documents on the Table:

The newspaper advertisement, minutes of the Opening and Evaluation Committee, minutes of the Tender Committee, a valuation report, the Sale Agreement, the title issued to the Nairobi City Council and the transfer from Henry Musyoki to the Council and also a letter from the vendor's advocate, Alphonse

Mutinda, authorizing Naem Rech Limited to bid on behalf of Henry Musyoki Kilonzi. All these documents are available and I will lay them on the Table.

(Mr. Mudavadi laid the documents on the Table)

Mr. Linturi: Thank you, Mr. Temporary Deputy Speaker, Sir. I beg the indulgence of the Chair that I may be able to present this matter properly before the House so that it can be well understood by hon. Members, so that in their opinion, they can as well determine whether I have any interests in this matter or not. I want to start by thanking the Deputy Prime Minister and Minister for Local Government for giving a very good answer, especially to parts "a" and "b". I want to seriously look at his answer to part "c". In my view, proper procurement procedures were not followed in this matter. ~~What was followed is a proper scheme between council officers and the Ministry to defraud and to steal money from the public.~~ I am saying this because when the advertisement for the purchase of this land was published---

The Assistant Minister for Roads (Dr. Machage): On point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to introduce a Motion in this House when he is supposed to ask a specific question to the Deputy Prime Minister and Minister for Local Government?

The Temporary Deputy Speaker (Mr. Imanyara): I think he made it clear that he wanted to lay down the basis of the matter and I allowed him to do so.

Mr. Linturi: Thank you for your protection, Mr. Temporary Deputy Speaker, Sir. When the advertisement was placed in the newspapers, a number of bidders bid for this plot. According to my documents, 12 people bid for this plot. Out of that, the Legal Officer wrote a letter to the Ministry of Lands requesting a valuation report which was supposed to form a valuation basis for this plot. I will be laying all these documents on the Table. After the valuation report was given, the report that came from the Ministry of Lands, and went to Ms. N. Ng'ethe, gave a valuation figure of Kshs3,515,000. This is the valuation report, to me, is a letter and does not qualify to be a valuation report. During the valuation process, a Mr. Odindo and Mr. Mbarere, who were the members of the valuation team through a memo dated 11th November, wrote to the chairman of this committee that was doing the valuation. The chairman of this committee was the Legal Officer. In this memo, which I want to zero in on one paragraph, the Director of City Planning is saying that according to his opinion and that of the people serving in his department, the land they were buying was not suitable for cemetery use.

He goes further and says---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Linturi, you need to ask a question arising from the answer that has been given.

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, how do I ask a question before the matter is understood? I am trying to lay down the basis of this and demonstrate how corruption has taken root here!

Mr. Yinda: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Linturi introducing a Motion or asking a question or seeking clarification?

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Linturi, the answer has been given by the Deputy Prime Minister. You need to ask a question arising from the answer that has been given.

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, if that is the case, then I will ask one question that I merit. If the Ministry of Lands did a letter to disown the valuation report that was purported to have been given by the Nairobi City Council itself, is this transaction valid or not? There are two sets of agreements that are contradictory. One is between Henry Kilonzi and Rech Naem at Kshs110 million and another one between Nairobi City Council and Henry Kilonzi at Kshs282 million. The land in question was bought at Kshs110 million and a Mr. Alphonse Mutinda did a letter when they were compromised by Henry Musyoki who purportedly learnt later that his land was sold at Kshs283 million.

Hon. Members: Ask a question!

Mr. Linturi: The truth must be known!

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Linturi! Address the Chair in the first place!

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, I am asking the last question! Among the documents I have is a transfer of land that was signed between Henry Musyoki Kilonzi at a cost of Kshs110 Million which I want to lay on the Table.

Finally, I want to table a document where Henry Musyoki, who was the owner of the land, acknowledged receipt of only Kshs107 million which was payment for the purchase of the land. The last one is a document from the Ministry of Lands disowning the valuation.

The Temporary Deputy Speaker (Mr. Imanyara): Very well! You have put your point across!

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, finally, there is an agreement that was entered, one between Henry Kilonzi and Rech Naem and the other one between the Nairobi City Council and Henry Kilonzi for Kshs283 million which was even signed by the Mayor of the Nairobi City Council and a Mr. Odindo who was then a councillor.

(Mr Linturi laid the documents on the Table)

Mr. Mudavadi: Mr. Temporary Deputy Speaker, Sir, some of the documents he is referring to are also in the bundle that I have submitted and tabled in this House. The sale agreement and the minutes of the tender committee are all in the bundle that I have tabled here.

I am not aware of the other communication between Kilonzi and the other advocates. That information is not within City Hall. However, I have availed to this Parliament the documents from City Hall. These documents are very clear. They are composed of the agreements, transfer and valuation report. If, indeed, there is any document---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Deputy Prime Minister and Minister for Local Government! Would you like to have a look at the documents that you say are not part of the ones you have?

~~Mr. Mudavadi:~~ Mr. Temporary Deputy Speaker, Sir, I would be very happy to look at the documents I have said are not part of the documents that I have and make a comment. However, I have laid on the Table the official documents from City Hall.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. As I said at the beginning, this is a lot of money and the amount of details is such that we cannot---

The Temporary Deputy Speaker (Mr. Imanyara): Are you asking a supplementary question or revisiting the order which I ruled upon?

Dr. Khalwale: No, Mr. Temporary Deputy Speaker, Sir. Mine is a point of order.

Mr. Temporary Deputy Speaker, Sir, my scrutiny shows that there was a payment of Kshs175 million in June, long before the advertisement in September. Because this is very convoluted and we need to get to the bottom of the matter, I request that as you rule that the Deputy Prime Minister and Minister for Local Government be given an opportunity to look at this matter, we refer it to the relevant Departmental Committee so that it can inform us properly. We want to get to the bottom of this matter.

The Temporary Deputy Speaker (Mr. Imanyara): Let me hear more views on this before I make a ruling on this matter.

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, a cemetery is a very important facility in Nairobi. If you visit Langata Cemetery right now you will find that bodies are being buried in graves where others were previously buried. The issue of buying land for a cemetery was in City Hall even when I was there as the Deputy Mayor. One specification of land for a cemetery was that it had to be a red-soil piece of land. However, the land that was bought, through corruption, is rocky. Could the Deputy Prime Minister and Minister for Local Government clarify why

the Council left out bidders with red soil land along Kamiti Road and went all the way to Athi River to buy rocky land? Bodies cannot be covered with rocks!.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Mr. Deputy Prime Minister and Minister for Local Government, could you answer that question?

Mr. Mudavadi: Mr. Temporary Deputy Speaker, Sir, in the documentation that we have, which shows how the tender committee operated and the evaluation process, there is a criteria for determining the kind of land they were looking for. Some of the issues that the hon. Member has raised are, indeed, tabulated in that particular document. I do not want to enumerate the criteria, because I was not in the tender committee. All that was done by this committee and the details are given. The 12 bidders and the prices are all tabulated in the tender document.

Mr. Linturi: On a point of order, Mr. Temporary Deputy Speaker, Sir, I am very uncomfortable when the Deputy Prime Minister and Minister for Local Government rises here to mislead the House! I agree that there was a criteria but---

The Temporary Deputy Speaker (Mr. Imanyara): What is your point of order?

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, is the Deputy Prime Minister and Minister for Local Government in order to say that there was a set criteria which was the basis for the award of this tender, when the Technical Department in charge of City Planning wrote a memorandum which is signed by Mr. F.D. Odongo saying clearly that the land was not suitable for a cemetery?

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, you have heard the Deputy Prime Minister and Minister for Local Government admit that he was not the tenderer and does not have the details of this transaction. You have also heard the hon. Member say that, in fact, the seller in the agreement acknowledged receipt of Kshs110 million while the Deputy Prime Minister and Minister for Local Government has told us that he paid Kshs283 million.

Mr. Temporary Deputy Speaker, Sir, while in support of your consideration to have this matter investigated further, the variance is too big for us to leave it casually. The Deputy Prime Minister and Minister for Local Government should take time and look at the documents. The matter should be referred to the relevant Departmental Committee of this House.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Deputy Prime Minister and Minister for Local Government, what do you have to say in your own admission that you have not seen a number of these documents?

Mr. Mudavadi: Mr. Temporary Deputy Speaker, Sir, I have said that the documents I have not seen are those that relate to the transaction or communication between the lawyer and the vendor. I have no qualms over the matter being

referred to the relevant Departmental Committee. However, I will be very happy if this matter is investigated thoroughly so that we can get to the bottom of it.

Mr. Temporary Deputy Speaker, Sir, as I speak here, I know that this matter has also been taken over by the Kenya Anti-Corruption Commission (KACC) for investigation. Therefore, it is perfectly in order for Parliament to scrutinise the documents further as the other agency also undertakes its investigations.

(Applause)

The Temporary Deputy Speaker (Mr. Imanyara): Very well! Indeed, these are serious issues which have been raised in the documents, and because the Deputy Prime Minister and Minister for Local Government has agreed with the hon. Members' proposal, I order that the matter be referred to the Departmental Committee on Local Authorities for it to investigate and report back to the House within three months. If the Committee completes the investigations before the three months are over, the Clerk's Office can be informed and the issue brought forward. Let the Committee investigate the matter and report to the House within three months.

Mr. Waititu: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Unless it is a point of order not related to that issue! If it is related to that issue, you can appear before the Committee when it starts sitting.

What is it, Mr. Waititu?

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, the Nairobi City Council offices are located just on the road opposite and the land we will investigate is about 10 kilometres away. Why should the Committee take three months to complete its investigation? I do not want to contradict your ruling, but three months is too long!

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Waititu! That is up to the Departmental Committee. If it can finish the work within two days or one week, well and good, but I have given it three months within which to complete its investigation.

Next Question by the Member for Bura!

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, I have not been supplied with a copy of the written answer.

GOVERNMENT POLICY ON DISASTER PREPAREDNESS

