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REPUBLIC OF KENYA




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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION – 2018

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF A PETITION BY MEMBERS OF MT. KENYA FOREST SQUATTERS AND RESIDENTS OF MERU REGARDING EXCISION OF THE MT. KENYA FOREST PURSUANT TO LEGAL NOTICES NO. 68/75 AND 107/1977 MEASURING 384 HECTARES FOR SETTLEMENT OF SQUATTERS

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 06 DEC 2018	DAY: THURSDAY
TABLED BY:	Chair, D/Committee on Lands
CLERK-AT THE-TABLE:	Moses Lemu

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

DECEMBER, 2018

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Chairperson's foreword

The petition regarding excision of Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for the settlement of squatters was tabled on Tuesday 20th February 2018 pursuant to Article 119 (1) of the Constitution and Standing Order No. 225 (1) (a) by the Hon. Speaker on behalf members of Mt. Kenya Forest Squatters and residents of Meru.

The House, pursuant to Standing Order 227 referred the petition to the Departmental Committee on Lands Tuesday 20th February 2018 for preparation of the Report. The Committee received the petition on Tuesday 20th February 2018 and set out a procedure for its consideration and to report to the House as set out in Standing Order No 227(2).

In considering the petition the Committee undertook a field visit to Buuri Constituency, Meru County on 22nd to 24th March 2018 and held meetings with the Petitioners and other stakeholders. The Committee also held meetings with the Chairperson, National Land Commission and the Chief Administrative Secretary, Ministry of Lands & Physical Planning on Thursday 26th July 2018 and representatives of the family of the late Jackson Harvester Angaine on Thursday 9th August 2018.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee is also thankful to the Chairperson, National Land Commission, the Chief Administrative Secretary, Ministry of Lands and Physical Planning, the Petitioners and the representatives of the family of the late Jackson Harvester Angaine for the submissions they made to the Committee.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my pleasant duty to table the Report of the Departmental Committee on Land on its consideration of the petition by members of Mt. Kenya Forest Squatters and residents of Meru regarding excision of the Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters.

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

EXECUTIVE SUMMARY

The purpose of this report is to respond to prayers made by members of Mt. Kenya Forest Squatters and residents of Meru in a petition regarding excision of the Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters.

The Committee noted that Article 67 (2)(e) of Constitution mandates the National Land Commission to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices and recommend appropriate redress. The issues raised in the petition merits admission as an historical land injustice claim. Further the Petitioners had filed a historical injustice claim with the National Land Commission on the same matters raised in the petition. Therefore, there is need for the Commission determine the case with a view to address the plight of genuine squatters.

The Committee observed that the Petitioners allege that they were promised by H. E. President Jomo Kenyatta, in the early 1970s, that part of Mt Kenya forest in Ontilili forest station would be excised for their settlement. The family of Jackson H. Angaine also argued that the contested land was hived off from the forest following an application made by the late Jackson Harvester Angaine and the land was lawfully allocated to the Angaine family. However, the two gazette notices No. 68 of 1975 and No. 107 of 1977 which allowed for the excision of part of Mt Kenya Forest did not expressly indicate who the intended beneficiaries of the excised land were. Therefore, apart from the assertion made by both parties the Committee did not find any evidence to indicate that the excision of the forest of was meant to benefit either party.

The Committee also noted that the late Jackson Harvester Angaine took possession of the contested land and was issued with ownership documents while serving as the Minister of Lands and Settlement. This clearly indicated a possible case of conflict of interest.

The Committee observed that the Petitioners through Lucy Mirigo and 550 others had filed and lost a case in court on the matter. They later appealed in the High Court in Nyeri in CA No. 227 of 2011 seeking an order of review of the allocation of the land to the Angaine family and Home-Grown Kenya Ltd. They also lost the appeal.

The Committee also noted that the Petitioners had filed a historical injustice claim with the National Land Commission on the same matters raised in the petition. Therefore, there is need for the Commission to expedite the determination of the case with a view of addressing the plight of genuine squatters.

In response to the prayers by the Petitioners, the Committee recommended that the National Land Commission should determine the historical injustice case HS 085/2017 lodged by the Petitioners within three months with a view to settling the genuine squatters.

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 with the following terms of reference:

- (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- (ii) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- (iii) study the programmes and policy objectives of Ministries and departments and the effectiveness of the implementation;
- (iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- (v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister.
- (vi) study and review all legislation referred to it

1.2 Committee subjects

The Committee is mandated to consider the following subjects:

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

1.3 Oversight

The Committee oversights:

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

1.4 Committee Membership

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

Committee Secretariat

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

1.5 Recommendations

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

2.0 INTRODUCTION

- 2.1 The petition was conveyed to the House pursuant to Standing Order 225 (2) (b) by the Honorable Speaker and was signed by Patrick Muriuki Kirigia, Robert Wanjau Gichohi and Joseph Mwangi Maina on behalf of members of Mt. Kenya Forest Squatters and residents of Meru County.
- 2.2 Pursuant to the House rules, the petition was referred to the Committee on Tuesday 20th February 2018 for consideration and preparation of a report. The Committee considered the petition pursuant to the provisions of Standing Order 227.
- 2.3 The Petitioners wished to draw to the attention of the House to the following, that: -
- a. Mt. Kenya Forest was originally gazetted as per proclamation No. 48 of 1943, which indicated that the forest covered an area of 277236 Hectares. Over the years various alternations to the boundaries of the said forest were made mainly for the settlement of the growing number of squatters owing to the social dynamic structure since many Mau Mau members had been displaced. The forest was also exercised to create Mount Kenya National Park;
 - b. The Petitioners' parents settled in Mt. Kenya Forest at Ontulili Forest station with their families in the early 1950s and in 1970 s. They worked at the station as employees of the Forest Department;
 - c. On or about August/September 1970 the squatters appointed six representatives, namely: Gichohi Gikandi, Githaiga, Williet Mwangi, John Kahuthu and Mwai Kanja to lead a delegation to H. E President Jomo Kenyatta at his Gatundu home to request him to facilitate the allocation of part of Mt Kenya forest at Ontulili forest station for the settlement of the squatters, who were related to the Petitioners this petition;
 - d. H.E. the president reportedly directed the then Minister for Environment and Natural Resources Hon. William Odongo Omamo and the then Minister of Lands and Settlement Hon Jackson H. Angaine to identify a suitable portion of Mt Kenya Forest at Ontulili Forest Station for excision and allocation to the landless squatters;
 - e. On 10th September 1970, the two Ministers visited Ontulili forest station within Mt Kenya Forest and the event was reported in the Daily Nation Newspaper of 10th September 1970;
 - f. Two gazette notices were issued No. 68 of 1975 and No. 107 of 1977 which allowed for the excision of 384.1 and 564.2 hectares of land from Mt. Kenya Forest

respectively. Thereafter the land was surveyed and given land reference numbers No. 13269 and No. 12234 respectively

- g. A total area of 930 Hectares was excised in Ontulili block of Mt Kenya forest for the settlement of squatters who leaved in the same area at the time. However, after the degazement of a portion of the forest as per gazette notices No. 68 and 107 of 1975 and 1977 respectively and the subsequently upon completion of the conveyance process the title deed for the said parcels of land was issued to the late Jackson H. Angaine, the then Minister for Lands and Settlement and was registered as L.R. No. 13269 and 12234;
- h. Subsequently the then Minister of Lands and Settlement, Jackson H. Angaine took possession of the land and started cultivating on it and thereafter the title deed was issued in the favour of a company incorporated by the Minister and his sons known as J. H. Angaine & Sons, who have since transferred ownership of part of the land to a third part known as Home- Grown K Ltd, among others;
- i. The squatters having been aggrieved by the action of the said Minister moved to court to seek redress through a judicial review against the Minister, the Permanent Secretary, the Commissioner of Lands, Home- Grown Kenya Ltd and J. H. Angaine & Sons and sought an order of mandamus to compel the respondents to settle the appellants on the land excised from Mt Kenya forest or elsewhere in an alternative the respondent to be compelled to settle the Petitioners in land of equivalent size and quality; However the Petitioners lost the case and the subsequent appeal.
- j. The Petitioners lodged a Historical injustice petition with the National Land Commission on the same matter on 9th July 2014 but had not received a response since;
- k. The issues in respect of the petition is made were not pending before any court of law or constitutional body

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

- I. Investigates the allocation and ownership of the gazetted land to the Late Minister J.H. Angaine and whether the action of the said Minister to take away land meant for the settlement of squatters was just and constitutional.
- II. Inquire into the matter of Ontilili forest squatters with a view of having the 1,435 families currently living in deplorable and inhuman conditions, settled in LR. No. 13269 and LR. No. 12234 as gazetted in legal notices No. 68 of 1975 and No. 107 of 1977.

3.0 SUBMISSIONS

3.1 Submissions by the Petitioners

The Committee held a meeting with the Petitioners during a field visit to Buuri Constituency, Meru County held on 22nd to 24th March 2018. During the meeting the Committee was informed that the Petitioners' parents resided in Ontulili Forest Station in Mt. Kenya Forest during the colonial period. Where they worked for the colonial government Forest Department and that after independence they continued to reside in the forest as squatters.

The Committee was further informed that the Ontilili squatters sent a delegation of six individuals namely: Gichohi Gikandi, Githaiga, Williet Mwangi, John Kahuthu and Mwai Kanja, who were forest officers by then, to H.E. President Jomo Kenyatta in or about August/ September 1970 to request the president to authorize the excising of part of Mt. Kenya Forest around Ontilili Forest station for the settlement of the squatters.

The President reportedly agreed to the request and sent the then Minister in charge of Environment and Natural Resources Willam Odongo Omamo and the then Lands Minister of Lands Jackson Havester Angaine to visit Ontulili Forest Station within Mt. Kenya Forest on 10th September 1970 to identify a suitable part of Mt Kenya Forest at Ontilili Forest Station to settle the Petitioners. There after two gazette notices No. 68 of 1975 and No 107 of 1977 which allowed the boundaries of Mt Kenya Forest to be varied by 394.1 Hectares and 564.2 Hectares respectively were issued. The size of parcels of land excised from Mt. Kenya forest as captured in the Legal Notices was 384 hectares and 546.2 hectares respectively. The land was then surveyed and given Land Reference Nos. 13269 and 12234 respectively

The Petitioners indicated that although the land was excised in two parcels LR No.13269 through gazette notice No. 68 of 1975 and LR. No.12234 through gazette notice No. 107 of 1977 for their resettlement. They came to realise that the land was registered in the name of Jackson H. Angaine & Sons and part of the land was currently leased out to different firms that included Home Gown Kenya Ltd and Kenya Tea Development Authority.

The Petitioners stated that they never settled on the two parcels of land and were evicted from Ontulili block of Mt. Kenya forest in 1989 and were currently residing in Meru, Laikipia and Nyeri Counties although a few of the Petitioners had been resettled by the government.

Petitioners through Lucy Mirigo and 550 others had filed a judicial review case in court against the Angaine family, Home – Grown Kenya Ltd and lost the case. They later appealed in the High Court in Nyeri in CA No. 227 of 2011 seeking an order of review of the allocation of the land to the Angaine family and Home-Grown Kenya Ltd. They also lost the appeal.

The Petitioners had lodged a historical injustice petition with the National Land Commission on the same matter on 9th July 2014 but had not received a response since.

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

The Committee held a meeting with the Chief Administrative Secretary, Ministry of Lands and Physical Planning on Thursday 26th July 2018. The Committee also received a brief from officers from the Ministry during a field visit to Meru County on 23rd 2018. During the meeting and the field visit the Committee was informed that the two parcels of land that were the subject of the petition were registered at the Lands registry in Nairobi under the Registration of Titles Act (repealed). Thus, the lands registry in Meru did not have any record on the contested land.

Registration

The Committee was informed that LR No. 13269 was granted to J. H. Angaine and Sons Ltd for a consideration of Kenya shillings fifteen million two hundred and ten thousand (Kshs. 15,210,000). The parcel measures 3384.1 Ha. as delineated on Deed Plan Number 194969. The title was issued on 6th June 1995 by the Commissioner of Lands by order of the President and was registered on 21st June 1995 at the Nairobi Central Registry as IR 66177. Land parcel file number IR 66177 was surrendered and later amalgamated with an unidentified parcel of land to form IR 74257 and registered under the name of Mark Arap Too. The amalgamated parcel of land was later transferred to Homegrown Kenya Ltd.

LR. No. 122234 which measures 540.2 and delineated in Deed Plan 19468 was granted to Homegrown Kenya Limited for a consideration of Kshs. 18,324,000 being capital value paid to the Government. The title was also issued on 21st June 1995 by the Commissioner of Lands by order of the President and registered as LR. 66178. On the same day the land was transferred to J.H. Angaine and Sons Limited for a sum of Kshs. 2,500,000.

LR No. 13191 registered as IR 25667 and LR No. 13176 register as IR 25956 were amalgamated to form LR No. 20737 and issued with a new IR 66259 on 28th June 1995. This parcel measures 1745.3 Ha as delineated on Deed Plan No. 196658 and was held by J. h. Angaine and Son Limited.

On 28th June 1995 11.70 Ha (LR. No. 20737 /1) were surrendered to the Government. On the same day 466.7 Ha on LR No. 20737 /3 was transferred to Home - Grown K Ltd for a term of free hold and 240.3 HA. (LR No. 20737/2 was transferred to J.M Angaine and Saons Ltd while 201 Ha. (LR. No. 20737/4) was transferred to Elizabeth Kaliuntu Angaine.

Court cases: The Committee was also informed that the Petitioners through Lucy Mirigo and 550 others had filed and lost a case in court on the matter. They later appealed in the High Court in

Nyeri in CA No. 227 of 2011 seeking an order of review of the allocation of the land to the Angaine family and Home-Grown Kenya Ltd. They also lost the appeal.

In the said court cases the Petitioners claimed that they had made a request to then President H. E Jomo Kenyatta in the 1970s to excise part of Mt Kenya forest near Ontulili Forest Station for their settlement. The President sent the then Minister in charge of Environment William Odongo Omamo and the then Lands Minister of Lands Jackson H. Angaine with a view of exercising part of Mt Kenya at Ontulili Forest Station to settle the Petitioners. The Petitioners indicated that although the Land was excised in two parcels they were never settled there instead it was registered and occupied by the Angaine family and the Petitioners' attempts to seek redress had been in vain.

3.3 Submissions by the Chairperson National Land Commission

The Committee held a meeting with the Chairperson, National Lands Commission on Thursday 26th July 2018. The Committee also received a brief from officers from the Commission during a field visit to Meru County on 23rd 2018. During the meeting the Chairperson informed the Committee as follows:

- i. The Petitioners had lodged a historical injustice claim 085/2017 over the two parcels of land and that the commission was in the process of collecting the facts of the case. The facts provided by the Petitioners in the Historical Injustices claim lodged with the Commission were the same as those contained in the petition before the National Assembly;
- ii. The Petitioners in the said historical injustice claim allege that they were promised by the H. E President Jomo Kenyatta, in the early 1970s, that part of Mt. Kenya forest in Ontulili forest station would be excised for their settlement. However, after the excision/ the land was registered in the name of the then Minister of Lands Harvester Angaine;
- iii. The Commission had invited both parties for a meeting but the Angaine family did not send a representative. The Chairperson indicated that the Commission would determine the case in the next three months; and
- iv. Lack of a legal framework on historical injustice claims had contributed to the delay in addressing the claim and that although the law was now in place the regulations on the same had not been enacted

3.4 Submissions by the Representatives of the Angaine Family

The Committee held a meeting with Mr. John Angaine and Muthuma Angaine on Thursday 9th August 2018. The two who, represented the family of the late Hon. Jackson Angaine informed the

Committee that they were the administrators of the estate of the late Hon. Jackson H. Angaine having been issued with letters of Administration by the High Court of Kenya at Meru vide Succession Case No. 379 of 2003.

That one Mr. Lucy Mirigo and 590 others had filed a case at the High Court of Kenya vide Judicial Review No. 71 of 2003 on the same issues raised in the petition but lost the case and subsequently the lost appeal. The Attorney General and Home grown Ltd were parties to the above case.

They also stated that they did not know who the Petitioners were and had no idea of the interests they represented and that the matter before the Committee was substantively dealt with at the High Court and the Court of the Appeal hence should not be entertained by the Committee.

The representatives of the Angaine family also informed the Committee that the land was not the squatters' ancestral land as it was hived off from the forest following an application made by their father, the late Jackson Harvester Angaine and the land was allocated to the late Hon. Angaine through a gazette notice. They also stated that late Minister paid an application fee to effect the excision of the land. Further the said squatters had never occupied the land hence could not lay any claim of interest in the said land.

4.0 COMMITTEE OBSERVATIONS AND FINDINGS


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

1. Article 67 (2)(e) of Constitution mandates the National Land Commission to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices and recommend appropriate redress. The issues raised in the petition merits admission as an historical land injustice claim.
2. The Petitioners had filed a historical injustice claim with the National Land Commission on the same matters raised in the petition. Therefore, there is need for the Commission to determine the case with a view of addressing the plight of genuine squatters.
3. The Petitioners allege that they were promised by H. E. President Jomo Kenyatta, in the early 1970s, that part of Mt Kenya forest in Ontilili forest station would be excised for their settlement. The family of Jackson H. Angaine also argued that the contested land was hived off from the forest following an application made by the late Jackson Harvester Angaine and the land was lawfully allocated to the Angaine family. However, the two gazette notices No. 68 of 1975 and No. 107 of 1977 which allowed the excision of part of Mt Kenya Forest did not expressly indicate who the intended beneficiaries of the excised land were. Therefore, apart from the assertions made by both parties, the Committee did not find any evidence to indicate that the excision of the forest was meant to benefit either party.
4. The late Jackson Harvester Angaine took possession of the contested land and was issued with ownership documents while serving as the Minister for Lands and Settlement. This clearly indicated a possible case of conflict of interest.
5. The Petitioners through Lucy Mirigo and 550 others had filed and lost a case in court on the matter. They later appealed in the High Court in Nyeri in CA No. 227 of 2011 seeking an order of review of the allocation of the land to the Angaine family and Home-Grown Kenya Ltd. They also lost the appeal.

5.0 COMMITTEE RECOMMENDATIONS

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

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

Signed..........Date.....29/11/2018.....

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

ANNEXURES



NATIONAL ASSEMBLY

CLERK'S CHAMBERS

DEPARTMENTAL COMMITTEE ON LANDS

Adoption list of the report on the consideration of a petition by members of Mt. Kenya Forest squatters and residents of Meru regarding excision of the Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters

DATE:

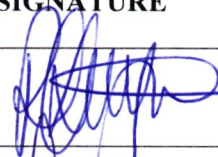
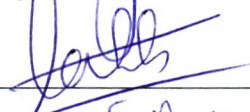


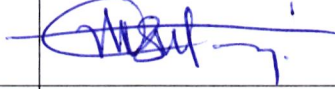
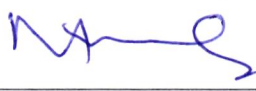
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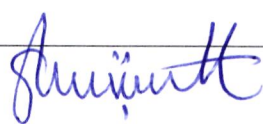
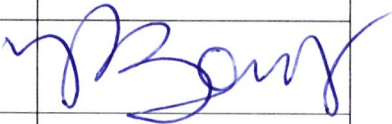


TIME:

10:00 a.m.

VENUE

11th floor Protection House

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

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

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

PRESENT

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

APOLOGIES

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

IN ATTENDANCE

THE NATIONAL ASSEMBLY SECRETARIAT

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

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

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

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

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

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

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

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

The Committee recommended that:

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

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

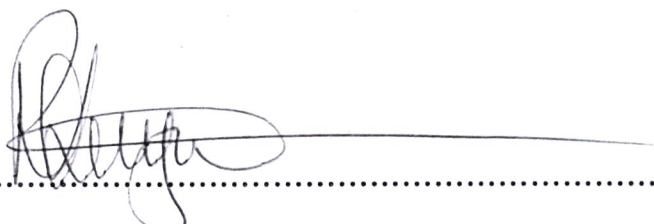
MIN. NO. NA/DCS/LANDS/2018/332: ANY OTHER BUSINESS (A.O.B)

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

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

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

Signature



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

(Chairperson)

Date.....

04/12/2018

MINUTES OF THE 68TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON THURSDAY 9TH AUGUST 2018 IN THE COMMITTEE ROOM 4TH FLOOR, CONTINENTAL HOUSE PARLIAMENT BUILDINGS, AT 10.00 A.M

PRESENT

1. Hon. Caleb Kositany, M.P - **Session Chairperson**
2. Hon. Jayne Kihara, M.P
3. Hon. Joshua Kutuny, M.P
4. Hon. Kimani Ngunjiri, M.P
5. Hon. Mishi Mboko, M.P
6. Hon. Ali Mbogo, M.P
7. Hon. George Risa Sunkuyia, M.P
8. Hon. Owen Yaa Baya, M.P
9. Hon. Samuel Kinuthia Gachobe, M.P
10. Hon. Simon Nganga Kingara, M.P
11. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Omar Mwinyi Shimbwa, M.P
4. Hon. Babu Owino, M.P
5. Hon. Catherine Waruguru, M.P
6. Hon. George Aladwa, M.P
7. Hon. Jane Wanjuki Njiru, M.P
8. Hon. Josphat Gichunge Kabeabea, M.P

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

1. Hon. Rindikiri Muagambi, M.P
2. Hon. Gabriel Tongoyo, M.P
3. Hon. Gideon Keter, MP
4. Hon. Liza Chelule, MP
5. Hon. Brighton Yegon, MP

REPRESENTATIVES OF THE ANGAINE FAMILY

1. Mr. Mutuma Angaine - Angaine family
2. Mr. Mugambi Angaine - Angaine family
3. Mr. Onesmus Kinoti - Friend of the Angaine family
- 6.

KENYA NATIONAL ASSEMBLY SECRETARIAT

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

MIN. NO. NA/DCS/LANDS/2018/250: PRELIMINARIES

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

In the absence of the substantive Chairperson and Vice Chairperson, the Committee unanimously elected Hon. Caleb Kositany, M.P to be the session Chairperson after he was proposed and seconded by Hon. Jane Kihara, M.P and Hon. Joshua Kutuny, M.P

MIN. NO. NA/DCS/LANDS/2018/251: MEETING WITH REPRESENTATIVES OF THE ANGAINE FAMILY ON A PETITION BY MT. KENYA FOREST SQUATTERS ON EXICISION OF PART OF MT. KENYA FOREST TO ALLEGEDLY SETTLE SQUATTERS

The representatives of the late Hon. Jackson Angaine family appeared before the Committee and adduced the following;

- i. They were the administrators of the estate of the late Hon. Jackson H. Angaine having been issued with letters of Administration by the High Court of Kenya at Meru vide Succession Case No. 379 of 2003;
- ii. That one Mr. Lucy Mirigo and others filed a case at the High Court of Kenya vide Judicial Review No. 71 of 2003 but lost the case and subsequently lost an appeal afterwards. The Attorney General and Home grown Ltd were parties to the above case.

- iii. They did not know the petitioners and had no idea of the interests they represented.
- iv. The matter before the Committee was substantively dealt with at the High Court and the Court of the Appeal hence should be entertained by the Committee.
- v. The land was not ancestral land to the squatters as it was hived off from the forest.
- vi. The land was allocated to the late Hon. Angaine through a gazette notice.
- vii. The late Hon. Angaine applied for the land and paid application fee to that effect.

Committee resolution

After interacting with the representatives of the late Hon. Angaine family, the Committee asked the representative of the Angaine family to submit the following documents within a period of seven days;

- a. Copy of the degazettement notice of the forest
- b. Copy of the gazette notice allocating the land to the late Hon. Jackson Angaine
- c. Copy of payment receipts for application of the land

MIN. NO. NA/DCS/LANDS/2018/252: MEETING WITH THE HON. GIDEON KETER, MP ON BEHALF OF THE PETITIONERS IN A PETITION ON LIFTING OF CAVEAT IMPOSED ON LAND IN THE FORMAL SETTLEMENT OF THE ENTIRE MAU FOREST COMPLEX

The Hon. Gideon keter, MP informed the Committee of the following in respect of the above petition;

- i. The residents of the Mau complex of Baringo, Bomet, Nakuru, Narok, Kericho and Uasin Gishu counties faced challenges regarding the developing their land as they could not secure loans from financial institutions because of the caveats placed on their land ;
- ii. The residents had resorted to borrowing money from unscrupulous money lenders who in turn levy hefty interest which was disadvantageous to the citizens.
- iii. Efforts to resolve the matter with the Ministry of Lands and the National Land Commission bore no fruits.
- iv. The issues raised in the petition were not pending in any Court of Law or any other legal body.
- v. The petitioners prayed that the National Assembly through the Departmental Committee of Lands;
 - a. Recommends the Cabinet Secretary for Lands in conjunction with the National Land Commission to urgently address the land question in the Mau Complex with

a view of establishing ownership and consider lifting of the caveats imposed on all those who are genuine land owners

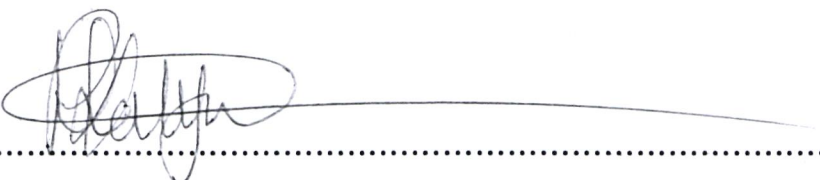
- b. Makes any other order or direction that it deems fit in the circumstances of this petition.

Committee resolution:-

- i. The Committee resolved to visit the site that is in question later and directed the petitioner to supply the following documents to the Committee;
 - a. The gazette notice that imposed the said caveat.
 - b. List of the genuine owners and the LR numbers of the affected parcels.
- I. The Committee also resolved to invite the Ministry of Lands and Physical Planning and the Ministry of Environment and Forestry to respond to the petition beforehand.

MIN. NO. NA/DCS/LANDS/2018/253: ADJOURNMENT

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

Signature 

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

(Chairperson)

Date..... 13/11/2018

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

PRESENT

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

APOLOGIES

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

IN ATTENDANCE

NATIONAL ASSEMBLY

Hon. George Theuri, MP

MINISTRY OF LANDS AND PHYSICAL PLANNING

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

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

NATIONAL LAND COMMISSION

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

NATIONAL ASSEMBLY SECRETARIAT

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

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

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

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

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

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

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

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

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

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

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

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

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

The Committee was informed as follows: -

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

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

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

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

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

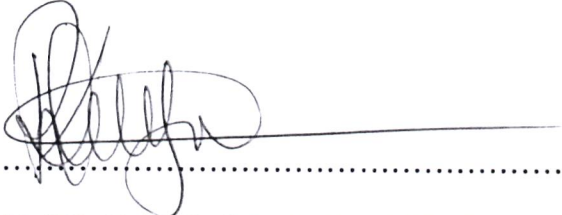
with the company with a view to resolving the matter out of court and the parties executed a settlement agreement that allowed Kiambu Dandora Farmers Company to reclaim parts of their land that remained vacant. Also, the Commission undertook to regularize the occupation of members of Kiambu Dandora Farmers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

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

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

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

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

Signature 

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

(Chairperson)

Date..... 04/10/2018

**MINUTES OF THE 21TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON SATURDAY 24TH MARCH 2018, IN THE ANGAINE PRIMARY
SCHOOL BUURI SUB COUNTY 9.30 A.M**

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Omar Mwinyi Shimbwa, M.P
3. Hon. George Risa Sunkuyia, M.P
4. Hon. Josphat Gichunge Kabeabea, M.P
5. Hon. Samuel Kinuthia Gachobe, M.P
6. Hon. Simon Nganga Kingara, M.P

IN ATTENDANCE

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

Ms. Aisha Kiiva -Deputy County Commissioner Buuri Sub County

MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Mr. Owino Jacob Catwright - Senior Land Registrar
2. Mr. Bernard Kamwaro - Land Registrar Meru
3. Mr. Onesmus Kinoti - Land Office Meru

NATIONAL LAND

1. Mrs. Mercy Njamwia - Director Administration
1. Mr. Samuel Odari - Deputy Director in charge of Historical Injustice Claims
2. Mrs. Susan Kidemi - Deputy Director

PETITIONERS

1. Mr. John Wanjohi
2. Mr. Patrick Muiruri Karigia
3. Mr. Robert Gichohi
4. Mr. Joseph Mwangi Maina
5. Mr. John Kahuto
6. Robert Wataki

7. Mr. Kimani Gitonga
3. Mr. John Kahuthu
4. Mr. Nicholas Wathegana
5. Mr. Peter Njogu
6. Mr. Robert Mathagu
7. Mr. Patrick Muriuki
8. Mr. Robert Wanjahi
9. Mrs. Sarah Kananu
10. Mr. James Mungiri
11. Mrs. Gladys Nderitu

NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|-------------------------|
| 1. Mr. Leonard Machira | - | Clerk Assistant I |
| 2. Mr. Joshua Ondari | - | Clerk Assistant III |
| 3. Ms. Peris Kaburi | - | Serjeant At Arms |
| 4. Mr. John Mungai | - | Audio Officer |
| 5. Ms. Winnie Kiziah | - | Media Relations Officer |

MIN. DCL079//2018: PRELIMINARIES

The meeting was called at twelve minutes past ten o'clock and prayers were said. Thereafter, introductions were made.

MIN. DCL080//2018: PRESENTATION FROM MT. KENYA FOREST SQUATTERS ON THE PETITION BY MEMBERS OF MT. KENYA FOREST SQUATTERS AND RESIDENTS OF MERU ON EXCISION OF THE MT. KENYA FOREST PURSUANT TO LEGAL NOTICES NO. 68/75 AND 107/1977 MEASURING 384 HECTARES FOR SETTLEMENT OF SQUATTERS.

During the meeting the Committee was informed as follows:

- i. The petitioners stated that their parents used work and reside in Ontulili Forest station in Mt. Kenya forest during the colonial period under the *blue agreement* that forced them to work for the colonial government and that after independence they continued to reside in the forest as squatters;
- ii. The Ontilili squatters sent a delegation to H.E President Jomo Kenyatta in 1970 to request the president to authorize the excising of part of Mt. Kenya Forest around Ontilili Forest station for their settlement;
- iii. The delegation petitioned the then President stating that they were squatters and landless persons working in the Forset Department and about to retire. They requested the

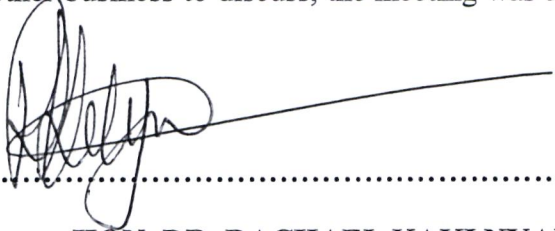
president excise part of Ontulili forest within Mt. Kenya Forest in Meru and allot them land for settlement. He promised them that was to consult the ministers responsible and look into the request;

- iv. The president agreed to their request for settlement and sent the then Minister in charge of Environment Willam Odongo Omamo and the then Lands Minister of Lands Jackson Havester Angaine with a view of exercising part of Mt Kenya at Ontilili Forest Station to settle the petitioners. The petitioners indicated that although the Land was excised in two parcels LR No.13269 through gazettee notice No. 68 of 1975 and LR. No.12234 through gazettee notice No. 107 of 1977 they were never settled on the two parcels of land instead the land was registered and occupied by the Angaine family and the petitioners attempt to seek redress had been in vain;
- v. The size of parcels of land excised from Mt. Kenya forest as captured in the Legal Notice is 384 hectares and 546.2 hectares respectively measuring in total of 930 hectares. The land which was excised through the legal notices were surveyed and given Land Reference Nos. 13269 and 12234 respectively;
- vi. The land was currently leased out to different firms that included Home Grown Kenya Ltd and Kenya Tea Development Authority;
- vii. The petitioners were evicted from Ontulili block of Mt. Kenya forest in 1989 and were currently residing in Meru, Laikipia and Nyeri Counties
- viii. Petitioners through Lucy Mirigo and 550 others had filed and lost a case in court on the matter. They later appealed in the High Court in Nyeri in C.A. No. 227 of 2011 seeking an order of review of the allocation of the land to the Angaine family and Home Grown Kenya Ltd. They also lost the appeal.
- ix. They prayed to the Committee to intervene so that they can get their land back since parcel of land excised were meant to settle them as late president had directed;

MIN. DCL081//2018: ADJOURNMENT

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

Signature



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

(Chairperson)

Date.....

5/6/2018

MINUTES OF THE 20TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON FRIDAY 23RD MARCH 2018, IN THE BOARD ROOM, DEPUTY COUNTY COMMISSIONER'S OFFICE BUURI SUB COUNTY 2.00 P.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Omar Mwinyi Shimbwa, M.P
3. Hon. George Risa Sunkuyia, M.P
4. Hon. Josphat Gichunge Kabeabea, M.P
5. Hon. Samuel Kinuthia Gachobe, M.P
6. Hon. Simon Nganga Kingara, M.P

IN ATTENDANCE

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

Ms. Aisha Kiiva -Deputy County Commissioner Buuri Sub County

MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Mr. Owino Jacob Catwright - Senior Land Registrar
2. Mr. Bernard Kamwaro - Land Registrar Meru
3. Mr. Onesmus Kinoti - Land Office Meru

NATIONAL LAND COMMISSION

1. Mrs. Mercy Njamwia - Director Administration
1. Mr. Samuel Odari - Deputy Director - Historical Injustice Claims
2. Mrs. Susan Kidemi - Deputy Director

PETITIONERS

1. Mr. John Wanjohi
2. Mr. Patrick Muiruri Karigia
3. Mr. Robert Gichohi
4. Mr. Joseph Mwangi Maina
5. Mr. John Kahuto
6. Robert Wataki

7. Mr. Kimani Gitonga

NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira	-	Clerk Assistant I
2. Mr. Joshua Ondari	-	Clerk Assistant III
3. Ms. Peris Kaburi	-	Serjeant At Arms
4. Mr. John Mungai	-	Audio Officer
5. Ms. Winnie Kiziah	-	Media Relations Officer

MIN. DCL076//2018: PRELIMINARIES

The meeting was called at twelve minutes past two o'clock and prayers were said. Thereafter, introductions were made.

MIN. DCL077//2018: MEETING WITH PETITIONERS IN A PETITION BY MT. KENYA FOREST SQUATTERS AND RESIDENTS OF MERU REGARDING EXCISION OF THE MT. KENYA FOREST PURSUANT TO LEGAL NOTICES NO. 68/75 AND 107/1977 MEASURING 384 HECTARES FOR SETTLEMENT OF SQUATTERS

The petitioners informed the meeting as follows:

- i. The petitioners stated that their parents used work and reside in Ontulili Forest station in Mt. Kenya forest and worked for the colonial government and that after independence they continued to reside in the forest as squatters;
- ii. The Ontilili squatters sent a delegation to H.E President Jomo Kenyatta in 1970 to request the president to authorize the excising of part of Mt. Kenya Forest around Ontilili Forest station for their settlement;
- iii. The president agreed to their request for settlement and sent the The President sent the then Minister in charge of Environment Willam Odongo Omamo and the then Lands Minister of Lands Jackson Havester Angaine with a view of exercising part of Mt Kenya at Ontilili Forest Station to settle the petitioners. The petitioners indicated that although the Land was excised in two parcels LR No.13269 through gazettee notice No. 68 of 1975 and LR. No.12234 through gazettee notice No. 107 of 1977;
- iv. After excision and degazettement of the said land they came to realise that the land was registered in the by the then Minister for Lands and Settlement Hon. Jackson Angaine and the petitioners attempt to seek redress had been in vain;

- vi. The land was currently leased out to different firms that included Home Grown Kenya Ltd and Kenya Tea Development Authority;
- vii. The petitioners were evicted from Ontulili block of Mt. Kenya forest in 1989 and were currently residing in Meru, Laikipia and Nyeri Counties;
- viii. A few of the petitioners had been resettled by the government; and
- ix. Petitioners through Lucy Mirigo and 550 others had filed and lost a case in court on the matter. They later appealed in the High Court in Nyeri in CA No. 227 of 2011 seeking an order of review of the allocation of the land to the Angaine family and Home Grown Kenya Ltd. They also lost the appeal.

Prayers

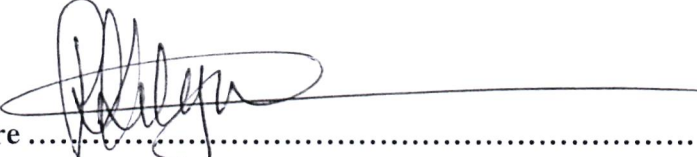
The petitioners prayed that the Committee intervenes to have the petitioners settled on the two parcels of land.

Committee resolution

The Chairperson promised the petitioners that the Committee would respond to their prayers after meeting with other stakeholders including the Cabinet Secretary, Ministry of Lands & Physical Planning and the Chairperson National Land Commission.

;MIN. DCL078//2018: ADJOURNMENT

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

Signature 

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

(Chairperson)

Date..... 5/6/2018

MINUTES OF THE 19TH SITTING OF THE DEPARTMENTAL COMMITTEE (SUB COMMITTEE) ON LANDS HELD ON FRIDAY 23RD MARCH 2018, IN THE BOARD ROOM, DEPUTY COUNTY COMMISSIONER'S OFFICE BUURI SUB COUNTY 9.30 A.M

PRESENT

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Omar Mwinyi Shimbwa, M.P
3. Hon. George Risa Sunkuyia, M.P
4. Hon. Josphat Gichunge Kabeabea, M.P
5. Hon. Samuel Kinuthia Gachobe, M.P
6. Hon. Simon Nganga Kingara, M.P

IN ATTENDANCE

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

Ms. Aisha Kiiva - Deputy County Commissioner Buuri Sub County

MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Mr. Owino Jacob Catwright - Senior Land Registrar
2. Mr. Bernard Kamwaro - Land Registrar Meru
3. Mr. Onesmus Kinoti - Land Office Meru

NATIONAL LAND COMMISSION

1. Mrs. Mercy Njamwia - Director Administration
1. Mr. Samuel Odari - Deputy Director - Historical Injustice Claims
2. Mrs. Susan Kidemi - Deputy Director

NATIONAL ASSEMBLY SECRETARIAT

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

MIN. DCL/073/2018: PRELIMINARIES

The meeting was called to order at twelve minutes past ten o'clock and prayers were said. Thereafter, introductions were made.

Opening remarks

The Deputy County Commissioner in her opening remarks welcomed the subcommittee to Buuri Sub County and indicated that her office had no records of any dispute over land between the petitioners and the Angaine family. She also informed the meeting that the Sub County was cosmopolitan and was mainly a rural settlement scheme.

The Chairperson in her introductory remarks outlined the purpose of the field visit by the subcommittee and highlighted the prayers sought by the petitioners in the petition lodged in the National Assembly by Mt. Kenya Squatters regarding excision of the Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters

MIN. DCL/074/2018: BRIEF BY RELEVANT GOVERNMENT DEPARTMENTS AND AGENCIES ON THE PETITION BY MT. KENYA SQUATTERS ON EXCISION OF THE MT. KENYA FOREST PURSUANT TO LEGAL NOTICES NO. 68/75 AND 107/1977 MEASURING 384 HECTARES FOR SETTLEMENT OF SQUATTERS

Brief by the Ministry of Lands and Physical Planning officials

The meeting was informed that the two parcels of land that were the subject of the petition were registered at the Lands registry in Nairobi under the Registration of Titles Act(repealed). Thus, the lands registry in Meru did not have any record on the contested land. The representative of the Ministry also gave the following brief on the matter:

Registration

- i. The contested land comprised two parcels LR No. 11334 and LR No. 13269;
- ii. LR No. 11334 was registered as file number IR 66178 in the name of Jackson. Harvester Angaine;
- iii. LR No. 113269 was registered as file number IR 66177 in the name of Mark Arap Too; and
- iv. Land parcel file number IR 66177 was surrender and later amalgamated with an unidentified parcel of land to form IR 74257 and registered under the name of Mark Arap Too. The amalgamated parcel of land was later transferred to Homegrown Kenya Ltd.

Court cases : The Committee was also informed that the petitioners through Lucy Mirigo and 550 others had filed and lost a case in court on the matter. They later appealed in the High Court in Nyeri in CA No. 227 of 2011 seeking an order of review of the allocation of the land to the Angaine family and Home-Grown Kenya Ltd. They also lost the appeal.

In the court cases the petitioners claimed that they had made a request to then President H. E Jomo Kenyatta in the 1970s to excise part of Mt Kenya forest near Ontulili Forest Station for their settlement. The President sent the then Minister in charge of Environment William Odongo Omamo and the then Lands Minister of Lands Jackson H. Angaine with a view of exercising part of Mt Kenya at Ontulili Forest Station to settle the petitioners. The petitioners indicated that although the Land was excised in two parcels they were never settled there instead it was registered and occupied by the Angaine family and the petitioners' attempts to seek redress had been in vain.

The registrar promised to provide more information on the matter after carrying out further investigations on the issue.

Brief by the National Land Commission officials

The Director, Land Administration and the Officer in Charge of Historical Claims at the National Lands Commission informed the Committee as follows:

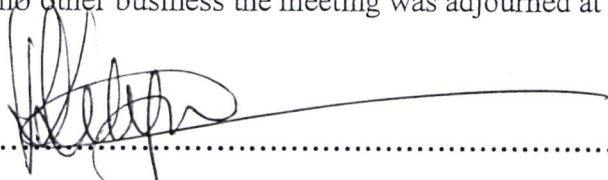
- i. The petitioners had lodged a historical-injustice claim (HS 085/2017 over the two parcels of land and that the commission was in the process of collecting the facts of the case;
- ii. The facts provided by the petitioners in the Historical Injustices claim lodged with the National Land Commission were the same as contained in the petition before the National Assembly;
- iii. The two officials also informed the meeting that the lack of a legal framework on historical injustice claims had contributed to the delay in addressing the claim and that although the law was now in place the regulations on the same had not been enacted; and
- iv. They also observed that the petitioners had never settled on the two parcels of land and had been squatters in Ontulili Forest station before they were evicted from the forest in 1989.

Committee resolution

The Committee resolved that the representatives of the Ministry of Lands and Physical Planning and the National Land Commission should submit written briefs based on the submission they made during the meeting to the Committee within seven days.

MIN. DCL075 //2018: ADJOURNMENT

There being no other business the meeting was adjourned at five minutes past twelve o'clock.

Signature 

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

(Chairperson)

Date..... 5/6/2018



THE NATIONAL ASSEMBLY
TWELFTH PARLIAMENT
(SECOND SESSION)

PETITION

(No.004 of 2018)

CONVEYANCE OF A PETITION REGARDING EXCISION OF THE MT.
KENYA FOREST PURSUANT TO LEGAL NOTICES NO.68/75 AND
107/1977 MEASURING 384 HECTARES FOR SETTLEMENT OF
SQUATTERS

Honourable Members,

Pursuant to the provisions of Standing Order 225 (2) (b), I wish to convey to the House that my office is in receipt of a Petition, signed by three persons namely Patrick Muriuki Kirigia, Robert Wanjau Gichohi and Joseph Mwangi Maina on behalf of members of Mt. Kenya Forest Squatters and residents of Meru County. The Petitioners alleges that there have been instances of irregular allocation of land set aside for settlement of Squatters in Meru County.

Honourable Members,

The Petitioners contend that a total of nine hundred and thirty hectares (930 Ha) of land was excised from the Mt. Kenya Forest in Ontilili area in Meru for settlement of squatters. Further, the Petitioners allege that after the conveyance process the title deed of the Ontulili Block of Mt. Kenya was irregularly issued to an individual instead being issued in favour of the squatters.

29/11/17
2017
11/11/17


Honourable Members,

The Petitioners are therefore praying that the National Assembly investigates the allocation and ownership of Ontulili Block of Mount Kenya L.R. No.1:2234 and inquires into the matter of Ontulili Squatters with a view of having the over one thousand four hundred and thirty five thousand (1,435) families currently living in deplorable and inhuman conditions settled on excisions in Ontulili Block of Mount Kenya L.R. 12234 gazetted as Legal Notices No.68/1975 and 107/1977.

Honourable Members,

Pursuant to the provisions of Standing Order 227, the Petition stands committed to the Departmental Committee on Lands for consideration. In considering the Petition, the Committee is encouraged to engage the Petitioners.

I thank you!


THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

TUESDAY, 20TH FEBRUARY, 2018

MEMO

TO : THE CLERK, NATIONAL ASSEMBLY

DLSP
w/ process.
cut
6/2/18

THRO' : THE DIRECTOR LEGAL SERVICES, N-A

forwarded. The petition may be tabled in the House for consideration.

DLSP 02/02/18

THRO' : THE PRINCIPAL LEGAL COUNSEL

Forwarded. The petition is in order and may be forwarded to the Speaker for tabling in the House under S.O 220

FROM : LEGAL COUNSEL II

(5)
DLSP
2/2/18

DATE : 2ND FEBRUARY 2018

RE: PETITION TO PARLIAMENT UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, PETITION TO PARLIAMENT (PROCEDURE) ACT AND STANDING ORDERS 219, 223 OF THE NATIONAL ASSEMBLY

1. The Petitioners represent squatters living in Mount Kenya Forest in Meru Ontulili area and the substance of their Petition is on alleged irregular allocation of land meant for their resettlement on land excised from Mt. Kenya Forest vide Legal Notice No. 68 of 1975 and 107 of 1977.
2. After perusing the Petitions Tracker of the National Assembly, it is true that the Petition had been tabled and conveyed by the Speaker on 13th June 2017 and that it was pending before the Departmental Committee on Lands before the last House adjourned *sine die*. The due date for the Petition was Tuesday, 15th August 2017.

RE: PETITION TO PARLIAMENT UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, PETITION TO PARLIAMENT (PROCEDURE) ACT/AND STANDING ORDERS 219,223 OF THE NATIONAL ASSEMBLY

TO: NATIONAL ASSEMBLY OF KENYA
C/O THE CLERK

KENYA NATIONAL ASSEMBLY

PARLIAMENT BUILDINGS,

P.O BOX 41842 – 10100

NAIROBI – KENYA

ONTULILI BLOCK

MT. KENYA FOREST SQUATTERS

MERU COUNTY

DATE: 25th JANUARY, 2018

RE: PETITION TO PARLIAMENT UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, PETITION TO PARLIAMENT (PROCEDURE) ACT/AND STANDING ORDERS 219,223 OF THE NATIONAL ASSEMBLY

WE, THE UNDERSIGNED,

CITIZENS OF KENYA, REPRESENTING VARIOUS INDIVIDUALS WISH TO STATE THAT IT IS IN THE PUBLIC INTEREST THAT WE FORMALLY LODGE THIS PETITION CONCERNING EXCISION OF THE MT. KENYA FOREST PURSUANT TO LEGAL NOTICES NO. 68/75 AND 107/1977 MEASURING 41 H.A RESPECTIVELY TO SETTLE SQUATTERS

we humbly draw the attention of the following

1. Mt. Kenya forest was originally gazetted as per proclamation No. 48 of 1943 which covered an area of 277,236 Hectares. Over the years various alterations to its boundary were altered mainly for settlement purposes to the growing number of squatters owing to the social dynamic structure due to the fact that many Mau Mau members had been displaced as well as the excised for the purposes of creating Mount Kenya National Park and further subsequent excision thereafter followed.
 2. A TOTAL AREA OF 930.3 Hectares was excised in Ontulili block of Mt. Kenya forest for the settlement of squatters leaving in the same area. However, subsequently after completion of the conveyance process the title deed to the same parcel of land it was issued in favour of the late Jackson H. Angaine same registered as L.R No. 13269 and 12234 and this was in respect of degazettement as per legal notices No. 68 and 107 of 1975 and 1977 respectively.
 3. That we the squatters living in Mount Kenya forest in Meru Ontulili area settled in the said excised portion of land as squatters with their families from early 1950s up to late 1970s after the same was gazetted and subsequent clearance so as to resettle them by government.
- Therefore, on or about August/September 1970 we appointed some individuals namely Gichohi Gikandi, Githaiga, Williet Mwangi, John Kahuthu and Mwai Kanja who were forest by then, at Ontulili in Mount Kenya a forest within Meru County. The six lead a delegation to the foundation president of the

RE: PETITION TO PARLIAMENT UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, PETITION TO PARLIAMENT (PROCEDURE) ACT/AND STANDING ORDERS 219,223 OF THE NATIONAL ASSEMBLY

Republic of Kenya H.E Mzee Jomo Kenyatta at his Gatundu home to have them allocated to settle them as squatters.

5. The plea before the then president Mzee Jomo Kenyatta was to have an excision of Ontulili forest in Mt. Kenya forest and allot the same parcel of land for settlement of the squatters who we are petitioners herein.
6. The president indeed directed the then Minister for Environment and natural resources the late Ho. William Odongo Omamo to liaise with the then Minister of Lands and settlement, the late Hon. Jackson Harvester Angaine to identify the suitable part of Ontulili forest for excision and allocation to the landless squatters.
7. On 10th September 1970, the two minister, visited the Ontulili forest which was reported in the Daily Nation Newspaper of 10th September 1970 with the headline running as "LANDLESS MAY GET FOREST AREA LAND" Meru squatters may be settled on forest land! A fact which gave hope to us that eventually we would have some where to call home. As the same seemed to bear fruits.
8. Thereafter, indeed there was gazette notice No. 68 of 1975 which allowed the boundaries of Mt. Kenya forest measuring 384.1 Hectares and Gazette Notice No. 107 of 1977 dated 13th May 1977 excised another parcel of Land measuring 564.2 hectares, whereby, the to excision were surveyed and given land reference No. 13269 and had reference No. 12234 respectively which was pursuance of affecting the presidential directive to the mentioned minister for the purposes of resettling the squatters.
9. Consequently, the then Late Minister Jackson Angaine, took possessions of the land and started to cultivate the same, and thereafter the title deed was issued in the favour of a company incorporated by the late Minister and sons and the said company J.H. ANGAINE & SONS, who have since then transferred ownership of part of the said parcel of land to a third party known as HOMEGROWN (K) LTD.
10. That we (squatters of Ontulili forest) having been aggrieved by the action of the said Minister moved to court for redress through a judicial review against the minister for lands the permanent secretary of the same Minister, Commissioner for lands, homegrown Kenya Limited as J.H. ANGAINE & SONS seeking for orders of mandamus to compel the respondents to settle the appellants on land excised from Mt. Kenya forest vide legal notice No. 68 of 1975 and 107 of 1977 same being land reference no. 13269 and 12234 or else in an alternative the respondent be compelled to settle the petitioners in land of equivalent size and quality.

RE: PETITION TO PARLIAMENT UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA. PETITION TO PARLIAMENT (PROCEDURE) ACT/AND STANDING ORDERS 219,223 OF THE NATIONAL ASSEMBLY

11. That we were aggrieved by the said decision of the High Court, by Ho. Justice Mary Kasango we preferred an appeal on the same which cited 6 grounds of appeal; the same was heard before honourable Justice M.K Koome, P. Mwilu and JJ Otieno –Odek JJA.
12. On the ruling of the court of appeal, it came to a consideration that they are alive to the legal reasoning of the learned judges why they did not issue the writs as prayed, However, it was the technicality of the cause as how the ex-prte applicant invoked the jurisdiction of the court technically, 'tied' the hands of the courts as the same could not issue to private persons and that although the fact in issue regarding inordinate delay was very well explained to the court, the court was of the opinion the same could not be curable, hence the application failed to its entirety instead. If they invoked the court via a constitutional petition therefore in that circumstance, the remedies could be availed to them under article 23 of the constitution, 2010.
13. We lodged the petition with the National Land Commission on 9th July 2014 which was dually stamped and received for action. It is almost two year since the same was lodge, but awfully and unfortunately, the able commission has never communicated to us either to acknowledge receipt of the same, or a reply on the same as to the working on the investigating on the historical land injustices of the matter. Instead in any event we appear in their offices and instead adduced that, since the parliament select committee did a report; therefore it would be prudent to have the same forwarded to them so as to facilitate investigation.
14. To the best of our knowledge this matter has been initiated by the national assembly through the former minister of Lands and Housing Hon. J.O Orengo and has already gone through the 1st reading on 10th January 2013.
15. We do solemnly confirm that the issues in respect of which this humble petition is made are not pending before any court of law or constitutional or legal body.

HEREFORE your humble petitioners pray that parliament;

To investigate the allocation and ownership of the gazetted land to the Late Minister Hon. J.H Angaine and whether the action of the said Late Minister Angaine to take away the land ment for the squatters was right justice and constitutional. To cooperate with the National Land Commission and inquires into the matter of Ontulili forest squatters with a view of having 1,435 families currently living in deplorable and inhuman conditions settled on excisions L.R No 13269 and L.R No. 12234 gazetted as legal Notices No. 68 of 1975 and 107 of 1977.

And your petitioners will ever pray.

RE: PETITION TO PARLIAMENT UNDER ARTICLES 37 AND 119 OF THE CONSTITUTION OF KENYA, PETITION TO PARLIAMENT (PROCEDURE) ACT/AND STANDING ORDERS 219,223 OF THE NATIONAL ASSEMBLY

<u>NAME</u>	<u>ADDRESS</u>	<u>NATIONAL ID</u>	<u>SIGN</u>
PATRICK MURIUKI KIRIGIA	1257 NANYUKI	5501169	<i>PK</i>
ROBERT WANJAU GICHOHI	1257 NANYUKI	2460229	<i>Robert</i>
JOSEPH MWANGI MAINA	610 NANYUKI	2467820	<i>Mwangi</i>

Petition concerning the settlement of Ontulili Block of Mt. Kenya Squatters and the excisions of Mt. Kenya pursuant Legal Notices No. 68 of 1975 and 107 of 1977

NAME OF THE PETITIONERS

<u>NAME</u>	<u>SIGN</u>
PATRICK MURIUKI KIRIGIA	<i>PK</i>
ROBERT WANJAU GICHOHI	<i>Robert</i>
JOSEPH MWANGI MAINA	<i>Mwangi</i>



MINISTRY OF LANDS AND PHYSICAL PLANNING

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

PETITION NO: 1

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

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

Hon Chair and members of the committee,

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

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

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

SPAX
Kiambu Dandora
Farmers Company

S -
225 - Dandora Housing
Scheme

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

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

HCCC NO 1348 of 1972

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

b) The real Owners of the said Land

Hon chair,

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

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

c) Provide a Copy of the Original title deed

Hon Chair,

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

d) If the Ministry is aware of the Dispute.

Hon Chair,

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

The committee ruled as follows:

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

The Ministry has subsequently made the following observations and recommendations:

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

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

We propose the following as the way forward: -

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

PETITION NO.2

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

Hon chair,

I wish to respond as follows:

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

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

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

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

PETITION NO.3

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

Hon. Chair,

I wish to respond as follows:

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

Hon. Chair,

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

Hon Chair,

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

Hon Chair,

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

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

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

✓ PETITION NO.4

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

Hon. Chair,

I wish to respond as follows:-

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

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

Hon Chair,

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

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

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

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

LR No. 20737 (IR 66259)

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

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

PETITION NO.5

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

Hon chair,

I wish to respond as follows: -

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

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

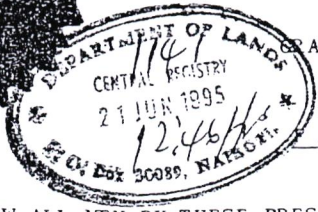
The Ministry of Lands and Physical Planning value guide recommends a market value of Ksh. 700,000 per acre for this area.

Thank you.

Farida Karoney, OGW
CABINET SECRETARY

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

SD/15210
6th June 1995



GRANT NUMBER I.R. 66177

27 JUN 2012

FREEHOLD

DEPARTMENT OF LANDS
DOCUMENT SCANNED

KNOW ALL MEN BY THESE PRESENTS that in consideration of the sum shillings fifteen million two hundred and ten thousand (Shs.15,210,00/-) being capital value paid on or before the execution hereof THE PRESIDENT OF THE REPUBLIC OF KENYA on behalf of the Government of Kenya hereby GRANTS Unto J.H. ANGAINE AND SONS LIMITED a limited liability company incorporated in the Republic of Kenya and having its registered office at NAIROBI (Post Office Box Number 67638) (hereinafter called "the Grantee) ALL THAT piece of land situate in East of Nanyuki in the MERU District of the Republic of Kenya containing by measurement 384.1 ha (three eight four decimal one) hectares or thereabouts that is to say Land Reference Number 13269 which said piece of land with dimensions abuttals and boundaries thereof is delineated and edged red on the plan Number 194969 deposited in the Survey Records Office at Nairobi TO HOLD the same in fee simple SUBJECT to (a) the Government Lands Act (Chapter 280) (b) the following special conditions (Namely):-

SPECIAL CONDITIONS

1. The land shall be used for Agricultural purposes and residence for the Grantee.
2. The land shall be used and managed in good husbandry manner and maintaining of the soil to the satisfaction of the Commissioner of Lands and the Director of Agriculture.
3. The Grantee shall not sell, transfer, sublet, charge or subdivide the land or any part thereof without prior written consent of the Commissioner of Land (Land Control Board)
4. The Grantee shall develop the land to the satisfaction of the Commissioner of Lands and the Director of Agriculture.
5. The grantee shall pay such rates, taxes, charges, duties, assessments or outgoings of whatever descriptions as may be imposed, charged, or assessed by any government or Local Authority upon the land or the buildings erected there upon including any contributions or any other such paid by the President in lieu thereof.
6. The President or such person or authority as may be appointed for the purpose shall have the right to enter upon the land hereby leased and have access to water, mains, service pipes and drains, telephone wires and electric mains of all description whether overhead or underground and the grantee shall not erect any building in such a way as to cover or interfere with any existing alignments of mains or service pipes or telephone or telegraph wires and electric mains.

IN WITNESS WHEREOF I, WILSON GACANJA
the Commissioner of Lands have by order of
the President hereunto set my hand this
6TH day of JUNE
One thousand nine hundred and ninety five
in the presence of:-

Wilson Gacanja

Wilson Gacanja
REGISTRAR OF TITLES

LANDS TITLES REGISTRY - NAIROBI, KENYA
REGISTRATION OF TITLES ACT
REGISTERED AS No. LR 66177/1
Processed 21st June 1995
1246/95
Wilson Gacanja
Registrar of Titles

2. under sec. 70. (with other cards) LE NO 20137

1650 Date of ~~...~~ 28-6-95 ~~...~~ Quintero
Receipt

18th July, 2018 FOGA

~~A...~~
S. C. Mirage*294

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE
Transfer to J. H. Angina and Sons Limited

2

Volume No 1143 Date of Registration 21-6-95 Registrar [Signature]

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE
CERTIFICATE OF TITLE 1266259
Area 1745.3 Ha U2 No 20737
Amalgamation under sec. 70 (with other
lands)

3

Volume No 1650 Date of Registration 28-6-95 Registrar [Signature]

EDGA

18th July, 2018

[Signature]
S. C. Miorose*294



REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT
(Chapter 281)

CERTIFICATE OF TITLE

TITLE NO: I.R. 66259

I HEREBY CERTIFY that J. H. ANGAINE AND SONS LIMITED a limited liability Company incorporated in Kenya

of Nairobi Post Office Box Number 42815

27 JUN 2012

in the Republic of Kenya pursuant to a Transfer registered as Number I.R. is ~~now~~ now the registered proprietor(s) as owner(s) for an estate in fee simple

of ALL that piece of land situate East of Nanyuki Municipality

in the Meru District containing by measurement

~~XXXXXXXXXXXXXXXXXXXX~~ One seven four five decimal three (1745.3)

hectares/~~acres~~ or thereabouts and being Land Reference Number 20737

(Original Number

as delineated on Land Survey Plan Number 196658

annexed to ~~the said Transfer~~ hereto

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 twenty eighth

day of June One thousand nine hundred and ninety-five

[Signature]
Registrar of Titles

MEMORANDUM

THIS CERTIFICATE OF TITLE IS ISSUED UNDER SECTION 70 OF THE REGISTRATION OF TITLES ACT AND IS IN PART SUBSTITUTION OF GRANTS REGISTERED AS I.R. 25667/1, 25956/1, I.R. 66178/1. and I.R. 66177/1.

GPK (L)

LAND AND TITLES DEPARTMENT - NAIROBI
REGISTRATION OF TITLES

AS No. I.R. 66259/1

28th June 95

15:10 Hrs *[Signature]*

[Signature]

DEPARTMENT OF LANDS
DOCUMENT SCANNED

Surrender to the Government
1 - respect of 11.70 Ha
2. LR no. 20737/1

Volume No. 1651 Date of Registration 28-6-95 *Qucheho*

FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE
Transfer to Home Growers (Kenya) Limited.
466.7 Ha LR NO. 20737/3. Term freehold
VIDE CTIR 66260

3. Volume No. 1652 Date of Registration 28-6-95 *Qucheho*

FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE
Transfer to J. M. Angaine and
sons Limited. 240.3 Ha LR NO.
20737/2. Term freehold
VIDE CTIR 66261

4. Volume No. 1653 Date of Registration 28-6-95 *Qucheho*

FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE
CERTIFICATE OF TITLE IR 66265
825.7 Ha LR NO. 20737/5. Issued under
Sec 70 of R.T.A. and is a part substitution
of the writs-writer's land.

5. Volume No. 1654 Date of Registration 28-6-95 *Qucheho*

1204
-377

6

Transfer to Elizabeth Kalinzu Angaine
201.5 Ha L.R 20737/4. Term Freehold
For KShs 2,500,000/-
VIDE CT IR 66661

1204

24-8-1995

W. J. J.

FOGA

18th July, 2018

A. J. J.
S. C. Mwangi *294

REPUBLIC OF KENYA
REGISTRAR OF TITLES

66260/3
Annex 10



REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT
(Chapter 281)

CERTIFICATE OF TITLE

TITLE NO: I.R. 66260

7.7 JUN 2012

I HEREBY CERTIFY that HOME GROWN (KENYA) LIMITED a limited liability Company incorporated in Kenya

of Nairobi Post Office Box Number 10222

in the Republic of Kenya pursuant to a Transfer registered as Number I.R. ~~66259/3~~ ^{66259/3} is now the registered proprietor(s) as owner(s) for an estate in fee simple

of ALL that piece of land situate East of Nanyuki Municipality

in the Meru District containing by measurement

~~hectares/area (less road reserve of)~~ Four six six decimal one (466.1)

hectares/area) or thereabouts and being Land Reference Number 20737/3

(Original Number

as delineated on Land Survey Plan Number 194666

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 twenty eighth

day of June

One thousand nine hundred and ninety-five

Michelle
Registrar of Titles

MEMORANDUM

~~THIS CERTIFICATE OF TITLE IS ISSUED UNDER SECTION 100 OF THE REGISTRATION OF TITLES ACT AND IS VALID FOR SUBSTITUTION OF THE ORIGINAL REGISTERED DOCUMENTS.~~

GP (L)

FDGA
18th July, 2018

REGISTRATION OF TITLES ACT
66260/3
28th June 1995
In Witness
Michelle

Proog B
Nairobi 294

8

106-245 LR 20737/25 LR 20737/18/11
issued under Section 7a of the
RTA

885

20-11-2003

Registrar of Titles

G. G. Gachachi O.P.P.

CERTIFICATE OF TITLE LR 93539 Area 22.531
LR 20737/26 (orig 20737/18/13) issued
under Section 7a of the RTA

9

886

20-11-2003

Registrar of Titles

G. G. Gachachi O.P.P.

FOGA

18th July, 2018

S. C. Miarage*294

7/11/12 X 12



REPUBLIC OF KENYA

27 JUN 2012

THE REGISTRATION OF TITLES ACT
(Chapter 281)

CERTIFICATE OF TITLE

TITLE NO: I.R. 66265

I HEREBY CERTIFY that J. H. ANGAINE AND SONS LIMITED a limited liability Company incorporated in Kenya

of Nairobi Post Office Box Number 42815

in the Republic of Kenya pursuant to a Transfer registered as Number I.R. 66259/5 is ~~now~~ the registered proprietor(s) as owner(s) for an estate in fee simple

of ALL that piece of land situate East of Nanyuki Municipality

in the MERU District containing by measurement

~~hectares~~ Eight two five decimal seven two (825.72)

hectares) or thereabouts and being Land Reference Number 20737/5

(Original Number

as delineated on Land Survey Plan Number 194568

annexed ~~to the said Transfer~~ hereto

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 twenty eighth

day of June One thousand nine hundred and ninety five.

Bwchelo
Registrar of Titles

MEMORANDUM

THIS CERTIFICATE OF TITLE IS ISSUED UNDER SECTION 70 OF THE REGISTRATION OF TITLES ACT AND IS IN PART SUBSTITUTION OF A CERTIFICATE OF TITLE REGISTERED AS I.R. 66259/1.

GPB (L)

APPROVED FOR REGISTRATION OF TITLE
66265/1
28th June 95
Bwchelo



Republic of Kenya LRNO 20737/5/1

393

8-9-98

File

3 Transfer to Elizabeth Kaliuntu Angaine
Area 164.43ha. LRNO 20737/7 (orig. 20737/5/2).
for K.shs 2,000,000 vide C.T. I.R 77912

394

8-9-1998

File

4 Transfer to MUTUMA ANGAINE LRNO 20737/8
Area ~~43.18ha~~ for Shs 2,500,000 vide AREA 239.99 ha
Certificate of title I.R 77913

395

8-9-98

File
1617199
File

5 Transfer to Jennifer Kamwitu Angaine
Area 165.02ha. LRNO 20737/9 (orig. 20737/5/4)
for Shs 2,000,000 vide Certificate of title I.R 77914

396

8-9-1998

File

6 Transfer to JOHN MUGAMBI ANGAINE
LRNO 20737/10 (orig. 20737/5/5). Area
164.61ha. vide Certificate of title I.R 77915

397

8-9-98

File

7 Transfer to VIOLET NGATA ANGAINE and
Stephen Mutehia LRNO 20737/11 (orig. 20737/5/6)
Area 43.18ha. vide Certificate of title I.R 77916

398

8-9-98

File



REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT
(Chapter 281)

CERTIFICATE OF TITLE

TITLE NO: I.R. 66661

I HEREBY CERTIFY that ELIZABETH KALIUNTU ANGAINE

of TIMAU (POST OFFICE BOX NUMBER 16

in the Republic of Kenya pursuant to a Transfer registered as Number I.R. ^{6625976 is} ~~66661~~ now the registered proprietor(s) as owner(s) for an estate in fee simple

of ALL that piece of land situate EAST OF NANYUKI MUNICIPALITY

in the MERU District containing by measurement TWO NOUGHT ONE DECIMAL FIVE (201.5)

hectares/acres/ (~~1656/1000/1656/100~~) of

~~hectares/acres~~ or thereabouts and being Land Reference Number 20737/4

(Original Number

as delineated on Land Survey Plan Number 194667

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 24TH

day of AUGUST

One thousand nine hundred and NINETY-FIVE

Registrar of Titles

MEMORANDUM

(1) THE GOVERNMENT LANDS ACT (CHAPTER 280.)

GPk (L)

DEPARTMENT OF LANDS
REGISTRATION OF TITLES

27 JUN 2012

TITLES REGISTRY - NAIROBI
REGISTRATION OF TITLES ACT
REGISTERED AS No. I.R. 66661
Registered 24th August 1995
16/10/95

2 Agreement of Lease dated 1st January 1999 annexed thereto. Quene absolutely (with other lands) Quene Registrar of Titles Presentation No. 42 Date of Registration 2-3-99

23
13
12
10000

Withdrawal of Causal No 2 above. Ukoko Registrar of Titles Presentation No. 23 Date of registration 2-5-2000

1257
Ukoko

Surrender to the Republic of Kenya in Exchange of a New Grant IR 83888. Ukoko Registrar of Titles Presentation No. 1257 Date of registration 29-6-2000

18th July, 2018
FOGA
- Surrendered.
S. C. Mwarage*294

Anney 14



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NYERI

(CORAM: KOOME, MWILU & OTIENO-ODEK, JJ.A)

CIVIL APPEAL NO. 277 OF 2011

BETWEEN

LUCY MIRIGO & 550 OTHERSAPPELLANT

AND

MINISTER FOR LANDS..... 1ST RESPONDENT

PERMANENT SECRETARY

MINISTRY FOR LANDS..... 2ND RESPONDENT

THE COMMISSIONER FOR LANDS..... 3RD RESPONDENT

HOME GROWN KENYA LIMITED 4TH RESPONDENT

J. H. ANGAINE & CO. LTD. 5TH RESPONDENT

*(Appeal against the Judgment and Decree of the High Court of Kenya at Meru (Kasango, J.)
dated 30th June 2011*

in

Meru HC Misc. App No.218 of 2004 consolidated with Meru HC Misc. App.

No. 71 of 2003)

JUDGMENT OF THE COURT

1. This is a judicial review appeal for an order of mandamus to issue and in the alternative an order for compensation for land. The appeal has a historical perspective. By Notice of Motion dated 18th November 2004, the appellants describe themselves as public servants in the Ministry of

Lands and Settlement. The pertinent facts are that on or about August/September 1970, six individuals namely Gichohi Gikaandi, Gitahiga Kabuya, Williet Mwangi, John Kahuthu and Mawi Kanja being forest officers at Ontulili within Mt. Kenya Forest in Meru County visited the then First President of Kenya H.E. Mzee Jomo Kenyatta at his Gatundu Home. The appellants petitioned the then President stating that they were squatters and landless persons working in the Forest Department and about to retire. They requested the President to hear their cries and have mercy upon them and excise part of Ontulili Forest within Mt. Kenya Forest in Meru and allot them land for settlement. It is the appellants' contention that the late President Kenyatta promised to consult the Ministers responsible and to look into the request. The appellants state that they gave their request to the late President by way of a written memorandum and the President upon reading the same directed the then Minister for Natural Resources the late Hon. William Odongo Omamo to liaise with the then Minister for Lands and Settlements the late Hon. Jackson Harvester Angaine with a view to identifying and earmarking a suitable part of Ontulili Forest for excision and allocation to the landless employees of Ontulili Forest.

2. The appellants state that pursuant to the Presidential directive, on 9th September 1970, the then Minister for Lands and Settlement, the late Hon. Jackson Harvester Angaine accompanied by the Minister for Natural Resources the late William Odongo Omamo visited Ontulili Forest with a view to identifying suitable land for excision. That the ministerial visit was reported in the Daily Nation Newspaper of 10th September, 1970.
3. The appellants state that to their positive surprise, Legal Notice No. 68 of 1975 was published in the Kenya Gazette dated 16th May, 1975 altering the boundaries of Mt. Kenya Forest. In addition, a further Legal Notice No. 107 of 1977 was published altering the boundaries of Mt. Kenya Forest. These two legal notices excised and curved out parcels of land from Ontulili Forest which was part of the Mt. Kenya Forest. The appellants contend that the parcels of land excised from Mt. Kenya Forest were meant to settle them pursuant to the promise by the late President Jomo Kenyatta. The size of parcels of land excised from Mt. Kenya Forest pursuant to the Legal Notices is 384 Hectares and 546.2 Hectares respectively measuring in total about 973 Hectares of land. The land which was excised through the Legal Notices were surveyed and given Land Reference Nos. 13269 and 12234 respectively.
4. The appellants contend that upon the land parcels being demarcated and excised from the forest, they were instructed by the late Hon. Angaine to cut trees and clear the site on the understanding and assurance from Minister Angaine that the clearing of site would pave way for further demarcation and sub-division of the land to be allocated to individual squatters. That on completion of the site clearance, the appellants were dismayed that the late Hon. Angaine started to cultivate the land for his personal use. The appellants inquired of the late Minister what was happening and he responded that the land at Ontulili belonged to people of the Meru tribe and the squatters who were of Kikuyu tribe should seek land in the Rift Valley Province where other Kikuyu were being settled.
5. The appellants grievance is that the land excised from Mt. Kenya Forest was not used to settle them but instead, the land was allocated and title issued in the name of a company formed by the then Minister for Lands and Settlement Hon. Jackson Harvester Angaine. That the late Minister incorporated a company known as J.H. Angaine & Sons, the 5th respondent, which company was allocated the land and title issued to it. That the 5th respondent then sold the land to the 4th respondent, Home Grown Kenya Limited.
6. The appellants claim is that the Government of Kenya through the 1st, 2nd and 3rd respondents' excised land from Mt. Kenya Forest vides Legal Notices No. 68/75 and 107/77 for purposes of settling the appellants. That the land meant for the appellants was diverted and the 1st, 2nd and 3rd respondents instead of settling the appellants gave the land to Hon. Jackson Angaine, a non-needy person who by all definitions was not a squatter and who was then Minister for Lands and Settlement.

7. In line with their grievance, the appellants by Notice of Motion dated 18th November 2004 moved the High Court for the following orders and relief:-

(i) An Order of Mandamus to compel the respondents to settle the appellants on land excised from Mt. Kenya Forest vide Legal Notices Nos. 68 of 1975 and 107 of 1977 being Land Reference Nos. 13269 and 12234.

(ii) That in the alternative, the Respondents be compelled to settle the appellants in land of equivalent size and quality.

8. The appellants claim that failure by the respondents to allot and allocate them the degazetted land as earlier intended was illegal and unconstitutional. That the appellants had been promised land by the late H.E. Mzee Jomo Kenyatta, the late Minister C.M.G Argwings Kodhek, the late Minister Hon. William Odongo Omamo and other Senior Government Officials. In support of their claim, the appellants tendered in evidence a letter dated 18th May 1977 from the Chief Conservator of Forest addressed to the Forester Ontulili. The letter is captioned MOUNT KENYA FOREST EXCISION and it states that the excision was to allocate land to the squatters. The appellants contend that the Government of Kenya through the Commissioner of Lands has not implemented its own decision and promise to demarcate and settle the appellants and other squatters at Ontulili Forest in individual portions of Land Reference No. 13269 and 12234 excised from the said forest specifically for that purposes. That the Commissioner of Lands subverted the government's intention by failing to carry out the intention and instead allowed one Jackson Harvester Angaine to use the land contrary to the purpose for which it was intended.
9. Upon hearing the parties to this suit, Kasango, J. by a judgment dated 30th June, 2011 dismissed the Notice of Motion seeking an Order for Mandamus. The Judge held that there had been inordinate delay in bringing the action. The Honourable Judge observed that the claim had been brought 50 years after the land was allocated to a company associated with J.H. Angaine. That some of the land had also changed hands to third parties and part had been sold to Home Grown Kenya Limited. The Honourable Judge stated that the suit was allegedly brought by 550 people but the heading of the suit only reveals the name of Lucy Mirigo Munyi. The other 549 people had their names in a hand written paper attached to the application and there was no clarity that these other persons had authorized Lucy Mirigo Munyi to represent them in the action. The Judge observed that only Six persons visited the late President Kenyatta at Gatundu and wondered whether it can be said that the Six persons are the 550 persons who were now before the Court. The Honourable Judge stated that the application for Mandamus failed the more so because there was no document indicating that the appellants were entitled to the land that was excised out of Mt. Kenya Forest.
10. Aggrieved by the decision of the Honourable Judge, the appellant lodged this appeal citing six grounds *to wit*:
- ***The learned Judge erred in law and fact in dismissing the matter without giving due consideration to the materials supporting the motion.***
 - ***The learned Judge failed to analyze the material before her to find that the same was sufficient for the grant of the orders sought.***
 - ***The learned Judge failed to appreciate the previous proceedings and the historical background of the matter in holding that there was inordinate delay in instituting the matter.***

- *The learned Judge failed to appreciate that the identifying parties was valid and unchallenged by the respondents and therefore went into error in rejecting the matter on the issue of uncertainty of the parties.*
 - *The learned Judge erred in law and fact in holding that there were no documents entitling the appellants to the suit land yet there were legal notices and correspondences from the respondent's office indicating the purposes of the degazettement of the forest land.*
 - *The entire ruling is unfair and against the spirit of Sections 1 A and 1 B of the Civil Procedure Act and Articles 1 and 10 of the Bill of Rights and Article 159 of the Constitution of Kenya.*
11. At the hearing of the appeal, the appellants were represented by learned counsel **Mr. Charles Kariuki** while the 1st, 2nd and 3rd respondents were represented by the learned State Counsel **M/s Teresia Gathagu**. The 4th respondent was represented by learned counsel **Mr. A.G. Riungu** while learned counsel **Kiogora Arithi** is on record for the 5th respondent.
 12. Counsel for the appellant elaborated on the grounds of appeal. He pointed out that the appeal arose from a decree issued by the High Court in two consolidated Miscellaneous Civil Applications being Meru HCC Misc. App. No 71 of 2003 and Meru HCC Misc. App. No. 218 of 2004. Counsel pointed out that during the hearing of the cases before the High Court, it was agreed that the judgment delivered shall apply to both cases. Counsel submitted that although there was no formal record consolidating the two cases, the judgment and decree is one and the learned Judge erred in stating that there was a pending suit before the High Court. It was submitted that the correct position is that the two miscellaneous applications should be consolidated and the appeals be likewise consolidated.
 13. On the substantive grounds of appeal, counsel for the appellant submitted that the appellants' case is premised on the fact that the government failed to implement its own directive to settle the squatters on the land parcels that had been excised from Ontulili Forest. That the government allowed the then Minister for Lands and Settlement Hon. Angaine to dispose the appellants off the land. It was submitted that the land was excised for the benefit of the squatters and this position was confirmed by the letter dated 18th May 1977 from the Chief Conservator of Forests. Counsel submitted that the learned Judge erred in finding that only six people visited the late President Kenyatta at Gatundu; that the Judge erred in failing to appreciate that the six people who visited the late President were representatives of other squatters. The said six people were the 1st to 6th appellants. Counsel submitted that even if the Judge was correct in finding that only six people visited the late President, the Judge erred in failing to find that the land was to be allocated to the six people who were squatters to hold the same as representatives of other squatters whom they represented. Counsel submitted that the Judge erred in invoking the limitation period and stating that the appellants claim was filed 50 years after the land was allocated to a company associated with the late Minister Angaine. It was submitted that the 50 years came out of the blues and it is not clear how the Judge computed the 50 years. Counsel submitted that there was no way the government could have excised 3,000 acres of land for one individual. Counsel submitted that the land was meant for squatters and by no imagination or definition was the late Hon. Jackson Angaine a squatter.
 14. Counsel for the appellants cited the case of ***Mureithi & 2 others - v- Attorney General & 4 Others KLR (E & L) 1*** to support the submission on limitation of time. The appellant submitted that it was the legal and statutory duty of the respondents to allocate/settle the appellants on the land available. That the respondents are in breach and continue to breach the statutory

obligation. It was submitted that it is a constitutional duty and a right of the appellants to be allocated land set aside for purposes of their settlement and to be provided with proper housing. The appellants contend that they live as squatters and are internally displaced persons in their own country. In support of this submission, learned counsel cited the case of ***Modderklip Boerdery - v - President Van Die RSA en Endere 2003 (6) BC LR 638 (T) cited in Nai PET. No. 66/10 Francis Kabiru - v - Minister for Lands & Another.***

15. Counsel for the appellant submitted that the Kenya ***Constitution*** must be upheld in relation to human rights, equality, freedom, democracy, social justice and the rule of law which provides the appellants with a right to provision of housing and land. The appellant cited ***Article 28*** of the ***Constitution*** wherein it is provided that every person has the inherent dignity and the right to have that dignity respected and protected. The appellants invoked ***Article 259 (1)*** of the ***Constitution*** and urged this Court to interpret the ***Constitution*** in a manner that promotes its purposes, values and principles and advances the rule of law and human rights. It was submitted that although the appellants were not registered proprietors of the suit property, they had a claim against the respondents. Counsel cited the case of ***Commissioner of Lands - v - Kunste Hotel Limited-Civil Appeal No. 234 of 1995*** where this Court stated that:

“The appellant was exercising his statutory powers under the Government Lands Act, when he decided to allot the subject plot to the interested party. The exercise of that discretion clearly affected the legal rights of Kunste Hotel Ltd. The exercise of that power was therefore judicial in nature and he was therefore obliged to hear all those who were likely to be affected by his decision... It does not lie in the appellant's or anybody else's mouth to argue that in absence of registration the interest Kunste Hotel seeks to protect was non-existent.”

16. Counsel for the appellant submitted that the respondents acquired title to the suit property illegally and pursuant to ***Article 40 (B)*** of the ***Constitution***, the right to protection of private property does not extend to any property that has been acquired unlawfully. It was submitted that to grab land set aside for squatters/appellants was unlawful and unconstitutional and the acquisition by the 4th and 5th respondents was null and void. Counsel submitted in the alternative that if an order for mandamus cannot issue, then the appellants should be allocated or compensated with land of equivalent size and quality.
17. The respondents vehemently opposed the appeal. ***Mr. A.G. Riungu*** learned counsel for the 4th and 5th respondents urged this Court to find that the appeal had no merit. He submitted that the 5th respondent J. H. Angaine & Sons have never been parties to the suit before the High Court in both Miscellaneous Applications Nos. 218 of 2004 and 71 of 2004. He urged this court to find that there can be no claim and no order can be enforced against the 5th respondent who was not a party before the High Court. He further submitted that there was no evidence on record to show that J.H. Angaine & Co. Limited was incorporated as a legal entity. We have considered this submission and it is appropriate to dispose of it at this stage. The suit property is registered in the name of the 5th respondent and the name on the title reads J.H. Angaine & Sons Ltd. Under the court rules, a party who is likely to be affected by any court order or judgment is entitled to be heard. The record reveals that the 5th respondent participated in the trial before the High Court and even filed a replying affidavit. We are satisfied that the submission by the 5th respondent has no merit and fails.
18. Counsel for the 5th respondent supported the judgment by the High Court in finding that the 550 appellants did not have any locus to claim interest in the suit property. He submitted that there is no mention of Lucy Mirigo and 550 others in any correspondence pertaining to the excision of the Ontulili Forest; that there is no tangible evidence that the said Lucy Mirigo and 550 others were supposed to benefit from excision of the forest. Counsel further submitted that in the Misc. Application No. 218 of 2004, the number of applicants/squatters is given as 550 while in Misc.

App. No. 71 of 2004; the number of applicants/squatters is given as 138 people. He posed the question that in the two cases as consolidated in this appeal is the number of appellants 550 plus 138 or what number"

19. In relation to the finding by the Judge that the appellants had inordinately delayed for 50 years in bringing the suit, Counsel for the 5th respondent submitted that in the Mureithi case (*supra*) cited by the appellants, the delay was for 40 years which was found to be inordinate. In the present case, learned counsel submitted that the gazette notices were published in 1975 and 1977 and as at 2011 when the case was heard before the learned Judge of the High Court there was inordinate delay.
20. Counsel for the respondent further submitted that the 4th and 5th respondents were private persons and not public bodies. He submitted that the order of mandamus sought by the appellants was not available and enforceable against private individuals. That the 4th and 5th respondents do not owe the appellants any statutory duty and as such, the remedy sought against them cannot issue. Counsel submitted that the 4th and 5th respondents have no power to allocate any land to any person and consequently the alternative prayer to be compensated land of equivalent size and quality cannot issue against the 4th and 5th respondents. In any event, counsel urged this court to find that an order for compensation cannot issue or be made in a judicial review application.
21. Counsel for the 4th and 5th respondents further submitted that the Notice of Motion that moved this Court did not disclose the provisions of law upon which it is founded. That the appellants have not cited any Act of Parliament that has been violated nor do they cite any land related legislation that gives them the right to claim any interest in the suit property. No specific statutory provision which is alleged to have been breached has been cited.
22. Learned State Counsel, **Ms Teresa Gathagu** for the 1st, 2nd and 3rd respondents in opposing the appeal submitted that the appellants should have filed an ordinary suit by way of plaint seeking compensation for loss, if any, that they can prove to have suffered. While associating with the submissions of the 4th and 5th respondents, Counsel observed that the appellants are seeking an order of mandamus but have not demonstrated that any specific legal right to land had been violated. Counsel submitted that the 550 persons making the appeal are not known as some of the names on the list attached to the supporting affidavit have been canceled while others have no signatures. Referring to the appellant's reference of the letter dated 18th May 1977 from the Chief Conservator of Forests, Counsel submitted that the letter does not indicate the names of the alleged squatters. It was further submitted that there has been inordinate delay in bringing the suit which is caught up not only with limitation period for judicial review orders but any other suit for recovery of land. Counsel urged this court to note that the suit property had changed hands and the remedy, if any, for the appellants is to institute an ordinary civil action and not judicial review. Counsel submitted that the legal authorities cited by the appellants were distinguishable and in support of the respondents' case.
23. As this is a first appeal, it is our duty to analyze and re-assess the evidence on record and reach our own conclusions in the matter. It was put more appropriately in **Selle -vs- Associated Motor Boat Co., [1968] EA 123**, thus:

"An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case

generally (Abdul Hameed Saif vs. Ali Mohamed Sholan (1955), 22 E. A. C. A. 270).”

24. This Court further stated in Jabane – vs- Olenja, [1986] KLR 661, 664 thus:

“More recently, however, this Court has held that it will not lightly differ from the findings of fact of a trial judge who had had the benefit of seeing and hearing all the witnesses and will only interfere with them if they are based on no evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching the findings he did – see in particular Ephantus Mwangi -vs- Duncan Mwangi Wambugu (1982-88) 1 KAR 278 and Mwanasokoni vs. Kenya Bus Services (1982-88) 1 KAR 870.”

25. In evaluating the evidence on record, this Court is mandated not to give undue regard to technicalities through the overriding objectives as enshrined in **Sections 3A and 3B** of the **Appellate Jurisdiction Act** and as stated in Douglas Mbugua Mungai -vs- Harrison Munyi – Civil Application No. Nai. 167 of 2010

“We are as a matter of statute law required to take a broad view of justice and take into account all the necessary circumstances, factors, and principles and be satisfied at the end of the exercise that we have acted justly” As was stated in Stephen Boro Gitiha- vs- Family Finance Building Society & 3 Others, Civil Application No. Nai. 263 of 2009. “The overriding objective overshadows all technicalities, precedents, rules and actions ... and whatever is in conflict with it must give way.”

26. We have evaluated the evidence on record and analyzed the judgment of the High Court. It is our considered view that the following questions are pertinent to the determination of this appeal.

- Do the appellants have any interest in the suit property capable of being enforced”
- Is the letter dated 18th May 1977 from the Chief Conservator of Forest addressed to the Forester Ontulili capable of conveying or conferring an interest in land to the appellants”
- Is a non-vested and promissory interest in land enforceable”
- Is a promise by the President to alienate or allocate land enforceable”
- The appellants describe themselves as squatters, on which land are they squatters and what are the rights of squatters”
- Is the doctrine of *rights in alieno solo* applicable in this case”
- Can an order of mandamus be issued against the 4th and 5th respondents who are private citizens and not public persons or body”
- Is any cause of action disclosed by the appellants against the 4th and 5th respondents”
- When does time for purposes of limitation begin to run in respect to an order for mandamus.
- Is the alternative prayer for compensation for equivalent land available in judicial review proceedings”

- Is tracing of land a remedy available under judicial review proceedings"
 - What statutory duty has been breached by the 1st, 2nd and 3rd respondents as against the appellants"
 - Have the appellants disclosed any contingent, executory or future interest recognizable in law over the suit property"
27. The appellants are seeking an order of mandamus against the 1st to 5th respondents. The 4th and 5th respondents are not public bodies but are private citizens. An order for mandamus compels a public body to exercise a duty bestowed upon it by law or to judiciously exercise a discretionary power. (*See Transouth Conveyors Ltd. & another – v – Kenya Revenue Authority & 3219 others, (2008) KLR 216*). In the present case, the 4th and 5th respondents are not public bodies and it is our considered view that an order of mandamus cannot issue against them. In the case of *District Commissioner, Kiambu – v- R and Others Ex Parte Ethan Njau, 1960 EA 109*, it was held that an order of mandamus could not be issued against a person if it would not be within his power to comply with it. To this extent, the order sought by the appellant for mandamus against the 4th and 5th respondents must of necessity fail as they are incapable of complying with it and they are not a public entity.
28. The 1st, 2nd and 3rd respondents are a public body. Mandamus can issue against a public body to perform a specific act where statute imposes a clear and qualified duty to do that act. (*See Manyasi – v- Gicheru & 3 others, (2009) KLR 687*). In the case of *R – v- Barnet London Borough Council Ex parte Shah (1983) 2 AC 309*, it was held that if an individual is challenging a decision that he has no entitlement, the appropriate remedy will be a quashing order to quash the decision and not an order compelling the authority to provide the benefit sought. We have analyzed the evidence on record and the submissions by counsel for the appellant. The appellant has not demonstrated or pointed out any specific statutory obligation that is vested upon the 1st, 2nd and 3rd respondents that has been violated. Mandamus compels performance of a statutory public duty. The evidence does not disclose any statutory public duty owed to the appellants by the 1st, 2nd and 3rd respondents. No constitutional or statutory provision has been cited that impose an obligation to be exercised in favour of the appellants. The failure by the appellants to point at any statutory duty on the part of the respondents is fatal and an order of mandamus cannot issue in the absence of a specific statutory obligation that can be enforced.
29. The suit property that the appellants claim was excised from Mt. Kenya Forest vide Legal Notice No. 68/75 and 107/77. The land was surveyed and given Land Reference Nos. 13269 and 12234 respectively. These two parcels of land were registered in the name of the 5th respondent who transferred the same to the 4th respondent. The evidence on record shows that the appellants never took physical possession of the land. They have never occupied the land. The failure to take possession and occupy the land means that the appellants are not squatters on this land. We find that it is misleading for the appellants to create an impression that they are squatters on the suit property. The defacto position is that the appellants are not squatters on the disputed parcels of land. The legal issue is what right does a third party (appellants) have over land belonging to another (4th & 5th respondents) when the said third party has never occupied that other's" The doctrine of rights in *alieno solo* recognizes various categories of rights or interests that a third party may have over the land of another. These are easements, licenses, profits, restrictive covenants, overriding interests and mortgages. These are interests conferring rights enforceable against the land of another. The evidence on record shows that the appellants do not have any easement, licenses, profit, restrictive covenants, overriding interests or mortgage over the suit property which is registered in the names of the 4th & 5th respondents. The appellants also do not have any registerable interest or beneficial trusteeship in the suit property.

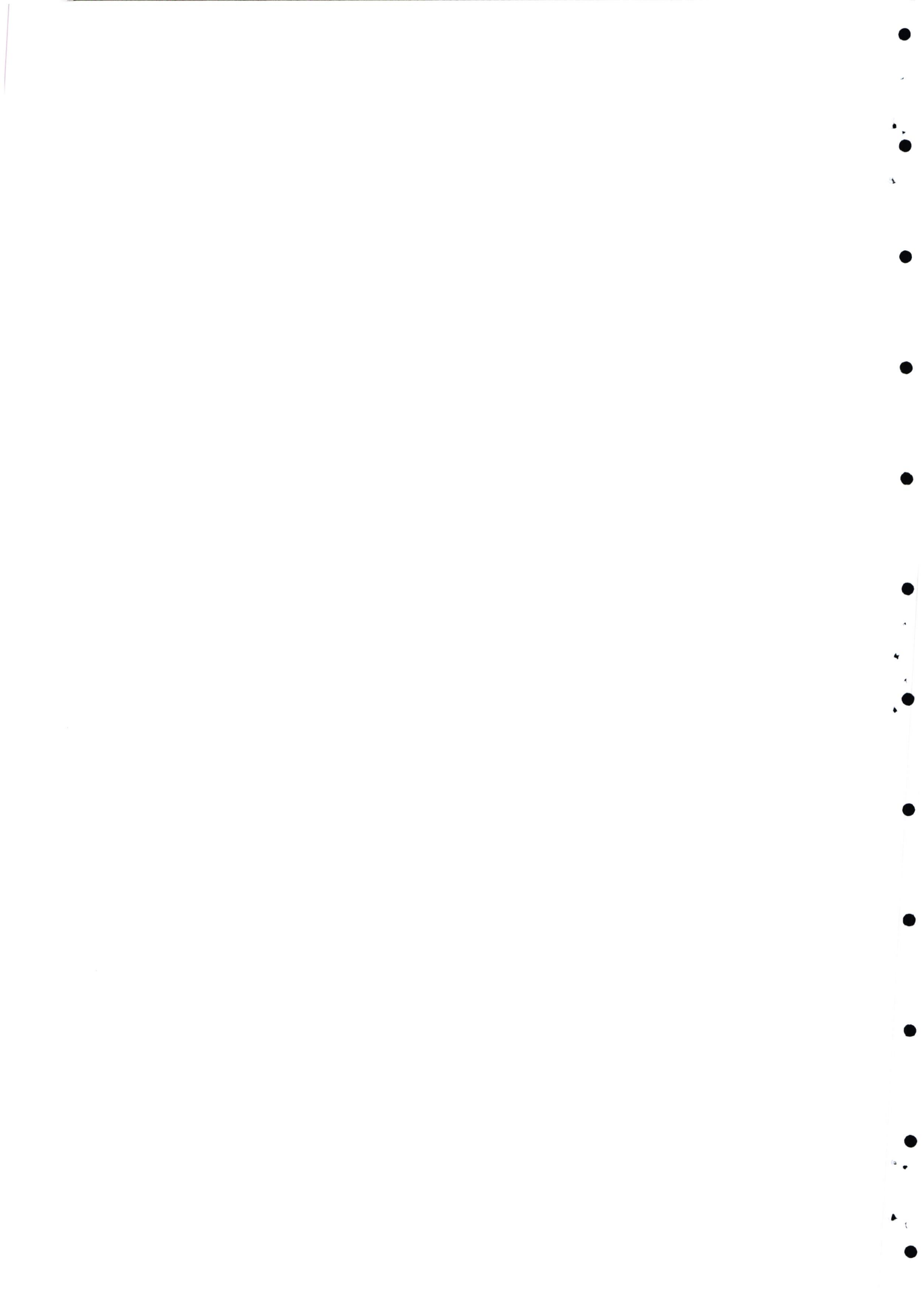
- To this end, we are satisfied that the doctrine of rights *alieno solo* is inapplicable to this case and the appellants have no enforceable third party rights over the suit property.
30. The appellants allege that the late President Jomo Kenyatta promised to allocate them land from the excised forest. This was a promise to allocate land in the future. Can a promise to allocate land create any interest in land and is such a promise enforceable" The appellants in the prayer for mandamus are seeking a court order to enforce a promise. Can mandamus issue to enforce a promise" It is our considered view that mandamus cannot issue to enforce a promise to do something in future; neither can mandamus issue to enforce a promise not underpinned by a statutory provision. A promise can neither create nor convey an interest in land.
 31. The **Law of Contract Act** clearly stipulates the requirements for a valid instrument to convey an interest in land. **Section 3 (3)** of the **Law of Contract Act** (Cap 23 of the Laws of Kenya) stipulates that no suit shall be brought upon a contract for the disposition of an interest in land unless some memorandum or note thereof is in writing and signed by the party to be charged. (**See Morgan – v- Stubenitisky 1977 KLR 188; Wagichiengo – v- Gerald (1988) KLR 406**). In the present case, all that is on record is an averment by the appellants that the late President Kenya promised to allocate them land. There is no privity of contract and no privity of estate between the appellants and all the respondents in relation to the suit property. A squatter has no privity of estate that runs with the land (**See Tichborne -v – Weir (1892) 67 LT 735**). There is no government instrument such as a letter of allotment that expresses the intention to allot any land to the appellants. We are of the considered view that in the absence of privity of contract between the appellant and all the respondents and the absence of a letter of allotment from the government to the appellants in relation to the suit property, and the absence of part performance by way of possession or occupation of the suit property by the appellants, the averred promise to give land by the late President is unenforceable by way of mandamus. It is trite law that a promise to enter into a contract is not enforceable; in other words a contract to enter into a contract is not enforceable.
 32. A further issue for our consideration is whether the appellants have a vested interest in the suit property. John Chipman Gray, stated "No interest is good unless it must vest, if at all, not later than twenty one years after some life in being at the creation of the interest" (**See Re Stern (1962) Ch. 732**). To comply with this rule, the interest created must be of such a nature that if it does vest, it must do so within 21 years. This rule is concerned with contingent interests and such an interest may never vest at all. In the present case, when the legal gazette notices were issued and land excised from the forest, the parcels of land that were created were vested in the 4th respondent and not upon the appellants. The promise by the late President to allot land to the appellants was a future or contingent promise which did not vest any interest in the suit property to the appellants. It is our considered view that if the government had the intention to allot or allocate any land to the appellants, such intention was to create a future interest in land that has never vested upon the appellants. It is trite law that a future interest in land is void if it does not vest within the stipulated time frame.
 33. The next issue for our consideration relates to limitation period. There are two aspects of the Limitation Period that we have to consider. The first is limitation period for instituting judicial review proceedings under Order 53 of the Civil Procedure Act and the second is the limitation period for recovery of land under the **Limitation of Actions Act** (Cap 22 of the Laws of Kenya).
 34. Under **Section 9** as read with **Section 7** of the **Limitation of Actions Act**, a suit for recovery of land has a limitation period of twelve years. In the instant case, the appellants seek an order for mandamus which *ipso jure* is an application for an order to recover the land parcels excised from Mt. Kenya Forest through Legal Notice No. 68 of 1975 and Legal Notice No. 107 of 1977 being Land Reference Nos.13269 and 12234 respectively. The evidence shows that the land parcels were excised in 1975 and 1977 and the grant of title to the 4th respondent was made in 1995. Whatever the year from which computation is done, the twelve year period under the **Limitation**

of Actions Act is a factor to be considered. The Judge did not consider the limitation period under the **Limitation of Actions Act** and we decline to address the issue beyond this point.

35. We now consider the limitation period for initiating action on judicial review. The appellants are seeking a judicial review order for mandamus. The learned judge on the issue of limitation expressed herself as follows:

"This claim is made more than 50 years after the land was allocated to a company associated with J. H. Angaine.... In considering the period of time it has taken the applicants to come before the court, I am persuaded by the cases relied upon by the advocate representing the company Homegrown (K) Limited. This is the case of Mureithi & 2 others – v- Attorney General & 4 Others (KLR) (E&L) 1 at page 707 where the court held "judicial review matters have to be filed promptly and heard with the expedition and a delay of 40 years was hopelessly outside any reasonable limit for mandamus and prohibition". I echo those words in respect of this case. There has been inordinate delay in bringing this action. The land has also changed hands."

36. During the hearing of this appeal, learned counsel for the appellant submitted that the Judge erred in finding that the appellant's claim had been caught up by limitation. It was submitted that the 50 years that the Judge referred to is not supported by evidence on record. Counsel for the respondent in support of the findings by the Judge submitted that if in the *Mureithi & 2 Others – v- Attorney General & 4 Others (KLR) (E&L) 1* 40 years was deemed to be a hopelessly inordinate delay, then 50 years is a much more hopeless inordinate delay for an order of mandamus.
37. On our part, we have examined the provisions of **Order 53** of the **Civil Procedure Act** which is the juridical basis for an application for mandamus. **Rule 2** of **Order 53** provides a six month limitation period for an order of *Certiorari*. There is no limitation period to institute an action for mandamus. Limitation for purposes of mandamus is to be determined by the reasonableness and length of time between the cause of action and time for filing suit. From the facts of the present appeal, it is arguable when the cause of action alleged by the appellants did arise for purposes of computation of time. Did the cause of action arise in 1970 when the late President Kenyatta made the promise, or did it arise in 1975 and 1977 when the legal gazette notices were issued, or did it arise in 1995 when a grant of title was made to the 4th respondent" Whatever the time when the cause of action arose, we have stated that an order for mandamus is not an appropriate remedy to issue under the new constitutional dispensation. We have also found that the appellants have no registered, possessory or future enforceable interest in relation to the suit property. The appellants have also not pointed out any statutory obligation owed to them that has been breached. Consequently, we decline to pronounce ourselves on the issue of limitation period for purposes of an order for mandamus. It suffices to state that the learned judge erred in arriving at 50 years without indicating the event or facts from which the 50 years was computed.
38. The appellants' further contention is that the respondents are under a constitutional obligation to provide them land. The appellants cited **Article 28** which stipulates that every person has inherent dignity and the right to have that dignity respected and protected. It is our considered view that the purpose of **Article 28** of the **Constitution** is not to impose a constitutional duty on the Government to allocate land to any squatter or person. Likewise, the provisions on social justice, equality, equity and prevention of inhuman, cruel and degrading treatment are not meant to be used to demand land allocation from the government. The appellants also referred to **Article 40 (B)** of the **Constitution** wherein the protection of private property does not extend to any property that has been acquired unlawfully. It is our considered view that the issue before the High Court and before this Court is not whether the suit property was acquired unlawfully by the 4th and 5th respondents but whether an order for mandamus can issue in favour of the appellants based on the facts disclosed in the case. In any event, under **Article 67 (1) (e)** of the



Constitution, it is the mandate of the National Land Commission to investigate issues of historical land injustices and to recommend appropriate redress.

39. An issue for our consideration is what is the legal effect of the promise made by the late President Kenyatta to the appellants noting that a visit by the then Minister for Lands & Settlement thereafter ensued and subsequently excision of forest land was made. Is there any principle of law that can give legal effect to the promise and excision of forest that ensued" The 1st, 2nd and 3rd respondents are part of the government; are they bound by the promise and ensuing excision to allocate land to the appellants or provide them with an alternative land in size and quality" Is the doctrine of estoppel applicable against the 1st, 2nd and 3rd respondent's to the effect that they cannot refuse or renege from the promise by the late President to allot land to the appellants" Can the concept of legitimate expectation be used to confer an interest in land" Can mandamus issue to enforce legitimate expectations" Neither the appellants nor the respondents addressed the High Court or this Court on these issues and we offer no determination on the same. The appellant asked for an alternative remedy namely a claim to be compensated with land of equivalent size and quality. In the case of R – v- Lancashire County Council Ex p Gayer (1980) 1 WLR 1024 it was stated that courts should be acutely conscious that they do not usurp the role of the administrator by assuming the task of deciding how resources are to be allocated as between competing claims. We adopt the above dicta in R –v- Lachashire County Council Ex p Gayer (supra) and observe that it is not the duty of the courts to allocate land and decide how national resources are to be allocated between competing claims. The appellants by seeking an order for mandamus are in fact asserting a claim to ownership or interest in the suit property. The judicial remedy of mandamus was neither created nor established to settle ownership disputes nor to create nor confer title to land.
40. The final issue for our consideration is the case of The Commissioner of Lands – v- Kunste Hotel Limited (Nai Civil Appeal No. 234 of 1995). The pertinent facts of this case are that in 1976, upon application by one Stephen Kungu Kagiri, a majority shareholder in Kunste Hotel Ltd., the Hotel was allotted an unsurveyed plot of land known as Nakuru Municipality Plot No. 451, which plot was later renumbered as Block 16/3 by the appellant. The said Stephen Kungu Kagiri had indicated in his application for a plot that if allotted one he intended to put up a tourist hotel thereon. The plot which had been allocated to him abutted the Nakuru-Solai road but not the Nakuru-Nairobi Highway road although the road was nearby. The subject plot was between his plot and that highway. After viewing the general area, Mr. Kagiri thought that it would be desirable that his intended hotel should be clearly visible from the Nakuru-Nairobi highway. To obviate the plot between his and the highway being allotted to somebody else and fearing that whoever would be allocated the same would develop it so as to obstruct the view of the hotel from the highway, he addressed a letter to the appellant dated 26th August 1976, which in pertinent part read as follows:

I would like to request you that site "C" be left a road reserve and not for any future alienation or if that is not possible then "A", "B" and "C" be amalgamated into one plot and if it is felt very necessary the hotel boundary may leave out "B" so that, the hotel covers "A" and "C" only.

A revised letter of allotment was issued by the appellant to Mr. Kagiri which showed an enhanced acreage of the plot allotted. Mr. Kagiri built the hotel and the plot between the hotel and the Nakuru-Nairobi Highway remained unalienated until 3rd May 1993 when the appellant allotted the plot to the interested party. Kunste Hotel moved to the High Court seeking an order of Certiorari to quash the allotment to the interested party. The gist of Kunste's complaint was that the appellant decided to allot the subject plot to the interested party without giving it a hearing and in flagrant disregard of an earlier assurance that the plot would be a road reserve. This Court in confirming an Order for Certiorari quashing the decision of the appellant to allot the plot to the interested party held that the Commissioner

of Lands was under duty to give a hearing to Kunste Hotel.

41. We have considered the facts and reasoning in *The Commissioner of Lands – v- Kunste Hotel Limited (supra)*. It is our considered view that the present appeal is distinguishable from the Kunste Hotel case. First, Kunste Hotel had sought an order for certiorari and not mandamus. Second, the issue in the Kunste Hotel case related to a right to be heard and not whether Kunste Hotel had a proprietary interest in the disputed plot; third, there was no issue of limitation or inordinate delay. In the present appeal, the order sought is for mandamus, there is no letter of allotment in favour of the appellants and the appellants are claiming a proprietary interest in the suit property and not a right to be heard; then there is the issue of inordinate delay.
42. The overall re-evaluation of the facts of this case leads us to examine the extent to which mandamus can issue against a public officer. Lord Goddard C.J in *R – v- Dunsheath, ex parte Meredith (1950) 2 All ER 741, 743* stated that mandamus is neither a writ of course nor a writ of right. In *Re Bristol and North Somerset Railway Co. (1877) 3 QBD 10, 13*, the court refused to enforce by mandamus an order imposed on a virtually defunct company, a duty that was impossible for the company to discharge. Besides in the instant case, the 2010 **Constitution** in Chapter 5 has come into force with new values and provisions relating to land. **Article 61** classifies all land in Kenya into public, private or community land. **Article 76** establishes the National Land Commission with distinct functions. The 1st to 3rd respondents no longer have the discretion to allocate land to individuals under the new Constitution and this Court should consider whether an order for mandamus is an appropriate remedy in this present case in view of the new constitutional dispensation. It is trite law that if circumstances have rendered performance of something impossible, mandamus will not issue.
43. In the case of *Republic – v- Director-General of East African Railways Corporation Ex Parte Kaggwa, 1977 KLR 194*, it was correctly stated that an order for mandamus did not lie as a matter of course against a public officer and the court's discretion would be exercised before such an order can issue and if the exercise of discretion to grant mandamus would constitute judicial interference with the executive arm of government, the same cannot issue. It is our considered view that in the present case, an order for mandamus if granted would be contrary to the spirit of Chapter Five of the **Constitution** relating to management of land as a resource in this country and will also interfere with the executive arm of government in resource allocation. In the case of *Shah – v- Attorney General (NO. 3) (1970) E.A 543, 549*, it was stated:

“Mandamus does not lie against a public officer as a matter of course. The courts are reluctant to direct a writ of mandamus against executive officers of a government unless some specific act or thing which the law requires to be done has been omitted. Courts will proceed with extreme caution for the granting of the writ which would result in interference by the judicial department with the management of the executive department of government.”

44. From the analysis conducted here above, we are of the considered view that for reasons entirely different from the Honourable Judge, the Judge did not err in refusing to grant the order of mandamus. The totality of our re-evaluation of the evidence on record and application of law to the facts of the case while taking into account submissions by all learned counsel leads us to the conclusion that this appeal has no merit and is hereby dismissed with costs. For avoidance of doubt, we hereby state that this Judgment in Appeal applies to the two consolidated Miscellaneous Civil Applications being Meru HCC Misc. App. No 71 of 2003 and Meru HCC Misc. App. No. 218 of 2004.

Dated and delivered at Nyeri this 22nd day of January, 2014

MARTHA KOOME

.....

JUDGE OF APPEAL

P. MWILU

.....

JUDGE OF APPEAL

J.OTIENO-ODEK

.....

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR



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NATIONAL LAND COMMISSION

PRESENTED BY
PROF MUHAMMAD A. SWAZURI PhD, OGW

CHAIRMAN

RESPONSE TO PETITIONS
TO

PARLIAMENTARY COMMITTEE ON LANDS

THURSDAY 7th JUNE 2018

Introduction

The National Land Commission (NLC) is an Independent Constitutional Commission established under Article 67 of the Constitution of Kenya, 2010. It was operationalized through Acts of Parliament that gave effect to Article 67 of the Constitution, namely; the National Land Commission Act, 2012; the Land Act, 2012 and the Land Registration Act, 2012, to carry out its mandate as outlined both in the Constitution and in the aforementioned legislations.

PETITION NO. 1

HON. GEORGE THEURI, MP ON BEHALF OF RESIDENTS OF MOWLEM WARD
REGARDING ALLEGED IRREGULAR ALLOCATION OF LAND LR NO. 11379/3.

- The chronological history of ownership of the said land.
- The real owners of the said land are Kiambu Dandora farmers company
- Provide a copy of the title deed. The ministry to provide official search
- If the ministry is aware of dispute in the said land. the ministry to answer
- Any other information relevant to solving the petition.

HISTORY OF LR.NO.11379/3

- The above captioned parcel of land is registered in the name of Kiambu Dandora Farmers Company Limited and it comprises around 818 acres lying between Umoja Estate, Kayole from East to West and between Jacaranda Estate and Dandora Estate from North to South.
- The same was purchased by the Trustees of Kiambu Dandora Farmers Company from M/s Khan Nawaz, Khan Abbas and Mehdi Khan on or around 1970.
- A Notice of intention to acquire the said land under the Land Acquisition Act was made in 15th March 1974 vide Gazette Notice No.840 and 841 for purposes of future urban development.

4. Pursuant to the said gazette, a litany of cases was filed to challenge the ownership of the Land by Kiambu Dandora and some of the cases include;

- a) High Court Civil Case No.1348 of 1972
- b) High Court Civil Case No.1088 of 2000
- c) High Court Civil Case No. 3250 of 1995
- d) High Court Civil Suit Number 447 of 2008(OS)

5. The cases were determined in favour of Kiambu Dandora Farmers Company and the claims by Dandora Housing and other groups associated with splinter factions and ousted officials to the land dismissed.

6. The compensation award of Kshs.1, 316,980 was deposited in court by the Ministry of Lands on 24th July 1974 for onward transmission to the owner upon determination of the case by a Mr.C.Pandya who was the Chief Valuer. The case was determined in favour of Kiambu Dandora Farmers Company Limited as stated earlier.

Handwritten note:
Dandora
Housing
Company
for
Dandora

7. On 20th July 1993, the High Court returned the aforementioned money to the Commissioner of Lands.

8. During this period of uncertainty occasioned by the said Court cases and an pending compulsory acquisition process, some unlawful allocations were done on the larger LR.NO.11379/3. Our investigations established that the allocations were done in the mistaken belief that the land had now vested in the Government pursuant to the compulsory acquisition and hence available for allocation.

9. Initially the unlawful allocations would be done by government officials but with time the situation degenerated and cartels, provincial administration, City Council of Nairobi, politicians, private individuals and outlawed gangs and sects started selling land to unsuspecting Kenyans

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Dandora housing scheme
Fed.
List of 225
Kiambu housing
- are

giving all manner of documentation and using force and violence to give vacant possession of the land.

10. It is on record that the Government intended to compulsorily acquire LR 11379/3 belonging to Kiambu Dandora Farmers Company Limited for public purpose. Out of the original 818 acres, the Government unlawfully committed approximately 657 acres by way of allocations to Nairobi City Council, public bodies, companies and individuals for residential, industrial and public purposes. Leaving a balance of 161 acres intact. Out of the remaining approximately 161 acres, squatters occupy substantial amount of land. However, the good news is that Kiambu Dandora Farmers Company Ltd and all the twelve groups of squatters have been willing to negotiate.

EXAMPLES OF THE EARLIER UNLAWFUL ALLOCATIONS

LR.NO.11379/3 was subdivided into portions and allocated to various people as unsurveyed plots. Some of the earlier allocations include.

- a) LR.No 12633 (File 99038) was allocated to Vijay Tanks and Vessels Private Limited of P.o.Box 14085 Nairobi at Folio(1) vide letter of allotment Ref:98486/159 dated 12th January 1979 and a Grant prepared and issued. The land was later transferred to Solatec Limited. The deed file cannot however be traced at the strong room.
- b) The second subplot, LR.No.12562 which is committed to File number 95015 was converted from the Registration of Titles Act to Registration of Land Act and it is now known as Block 96/2-13.records at the Liason Office however indicate that the current registered owner is the Civil Servants Housing

Company Limited and the subplots have been transferred to various people.

- c) **LR.No.12504 (File 98479)** was allocated to M/S Steel Billet Casting Limited of P.o.Box 41733 Nairobi vide Letter of Allotment Ref 98486/5 dated 15th September 1978 for industrial purposes. The Suitland measuring 10.1175 Hectares was allocated for a term of 99 years. Upon accepting the offer, the allottees paid the stand premium on 26th February 1979 and a receipt number A178985 was issued as proof of payment. Survey was done and instructions to prepare a new Grant issued on 27th April 1979. A stamp duty amount of Kenya shillings 23,040 was paid and a receipt Number 29079 issued to the allottees.

ANALYSIS OF THE LEGALITY OF SOME OF THE ALLOCATIONS ABOVE

LR.No.12504

- a) Plans and Records held at our offices and more Particularly FR No.113/29 and FR No.146/84(*copies attached herein*) clearly show that LR.No.12504 lies within LR.No.11379/3 and has never ceased to be part of the larger LR.No.11379/3 as the process used to allocate the same remains largely unclear.
- b) As the allocation process for LR.No.12504 was going on, the Senior Land Officer in-charge of Nairobi wrote in 16th November 1979 (*copy of letter attached*) stating that the proposed sites fell within the area which had been allocated to union of Kenya Civil Servants for residential development and also within an area which was planned for allocation to

members of Kiambu Dandora Farmers Company. He reiterated that the land was not available for allocation. This sentiments were later echoed in a letter dated 5th December 1979 by the Commissioner of Lands.(copy attached)

c) This communications reveal that the allocating authorities then knew that LR.No.12504 fell on land planned for Kiambu Dandora Farmers Company.

- 11.The above examples are perfect examples and samples of how the allocations in the area were done in a clandestine manner and subdivisions approvals granted over parts of the greater LR.No.11379/3.It is important to note that Kiambu Dandora still hold the Grant to the entire land and no subdivision would be lawfully done over their land without a surrender of the said Grant.In essence what we have is a classical case of double allocation and double titling.
- 12.226 Hectares of the land was planned and alienated and allocated to several institutions among them Nairobi City Council (Umoja 11 Estate),Kariobangi Civil Servants Quarters,Wayleave for Kenya Power Lightining Company,Amboseli Court,Kawama Investment Company Limited,NijayTandi,Post Office Bank, Ministry of Water among others.
- 13.A portion of the land-65 hectares remained unutilized and was thus planned and reallocated to 225 members of Kiambu Dandora Co.Ltd. This is Block 157 and covers zone 12.
- 14.Kiambu Dandora members are already in occupation and possession of some parts of the land including Nasra area.
- 15.Available records indicate that Kiambu Dandora Farmers Company was never paid the compensation award money and they are now demanding through *Constitutional Petition No.47 of 2011(Abdulahi Muiruri Muigai& Others Vs. National Land Commission)*, the payment of the

market value of the land by the Government which they now place at Kenya Shillings 17,035,200,000/= (seventeen billion, thirty five million two hundred thousand) or in the alternative their land is reverted to them. There are also other numerous cases over the land but they have gradually been consolidated with the said *Petition 47 of 2011*

16. The Commission has held several consultative meetings with Kiambu Dandora Farmers Company and other interested parties including Dandora Housing Limited, Provincial Administration, Ministry of Land, Nairobi City County Government *et al* with a view of resolving the outstanding dispute out of Court and the Parties executed a settlement agreement that will allow Kiambu Dandora Farmers Company repossess parts of their land that are unoccupied.
17. It was also agreed that the Commission should facilitate the regularization of the subdivision of LR No. 11379/3 in favour of Kiambu Dandora Farmers Company to allow their members some of whom are in occupation of this parcels of land and some of which are vacant have ownership documents on the same.
18. Some key elements of compulsory acquisition under the repealed Land Acquisition Act include compensation, vesting of the land and finally surrender of the Title to the Government. Vesting of the land to the Government was never done and title to the land is still in the hands and name of Kiambu Dandora Farmers Company and it is apparent that the process of compulsory acquisition was never completed and the vesting was not done and the land can only be said to be private land and not government land as stated in various forums.
19. The Nairobi County Government in realization of the fact that this is private land has in consultation with the National Land Commission and the Ministry of Land approved the regularization of the land to members of Kiambu Dandora Farmers Company.

20. The County Government is engaging the Kiambu Dandora Farmers Company on compensation over the land in Umoja 11 Estate and Kariobangi civil servants scheme and negotiations are at an advanced stage.
21. The Molem Ward falls partly on LR No. 11379/3 and partly on Lr.No.11344. For the area falling on LR No. 11379/3, the residents there will have to engage Kiambu Dandora Farmers Company, National Land Commission and the County Government to regularize their occupation and development on the land on terms to be agreed on.
22. There are very many people who are occupying the subject land as squatters or holding unlawful title documents over the land and as stated many are already negotiating with Kiambu Dandora for the regularization of the land they occupy to allow them have title documents to the land they occupy or have developed.
23. Upon investigations we established that the initial membership of Kiambu Dandora and Dandora Housing is the same and it was our resolve to accommodate both factions in the regularization process.
24. There is a lot of double allocation and superimposed titles on top of LR No. 11379/3 and the Commission has advertised most of these Grants and titles for Review of grants and dispositions to establish their legality under Section 14 of the National Land Commission Act. The Commission via written notices and public notices in the national dailies dated 2nd December 2015, invited any interested/affected parties to the listed properties to appear before it to inspect documents and further file written representations and submissions on how they acquired or came to occupy the affected properties and a decision already made by the Commission.
25. Searches are available at the Ministry of Land who are custodians of the register

PETITION NO. 2 : PETITION BY HON. JOSEPH MANJE ON BEHALF OF RESIDENTS OF KAJAIDO REGARDING ALLEGED DISCREPANCY IN COMPENSATION OFFERED TO LAND OWNERS BY THE NATIONAL LAND COMMISSISON

Submission

Hon Chairman, as per your letter dated 8th June 2018 inviting the Commission to present, i wish to state as follows;

- 1) Your letter referred to the Commission using land rates which were provided by the Ministry of Land and Physical Planning. It is true the Commission has been using the same in the valuation of land within the Standard Gauge Railway Phase 2. It is therefore the Ministry with other stakeholders to process the petition.
- 2) The Commission therefore submits that the Ministry of Land and Physical Planning being a major stakeholder in this process should be tasked to explain the basis of the value survey.
- 3) Attached (**Appendix 1**) is the Land Value Survey which was provided by the Ministry of Lands and Physical Planning.
- 4) Attached (**Appendix 2**) is the Commission rationalised Land Value Rates which has been harmonised with the Ministry of Lands and Physical Planning Land value survey for your information.

We thank the Committee for the continuous support and positive engagement to the Commission.

PETITION NO.3 PETITION BY IDEGINOUS PEOPLE OF VIPINGO OF VIPINGO LANDS COMMUNITY IN KILIFI COUNTY REGARDING ALLEGED IRREGULAR ACQUISITION OF LAND BELONGING TO INDEGINOUS PEOPLE OF VIPINGO LANDS COMMUNITY IN KILIFI COUMTY

Due to the short notice it may not be possible to give a comprehensive response to this matter, however it on record that vipingo has been private land since 1904. The land has changed hands to the extent of Rea vipingo being listed at the stock exchange with share holders . Squarters were given land and majority of them had titles issued in different settlement schemes surrendered by Vipingo . Vipinga land owners are in court with community members.

The petitioners should be advised to pursue the matter one forum, the Courts or petitions to other constitutional bodies - parliament or NLC as a historical injustice claim

PETITION NO. 4: PETITION BY BY MT. KENYA FOREST SQUARTERS AND RESIDENTS OF MERU REGARDING EXCISION OF OF THE MT. KENYS FOREST PURSUSNT TO LEGAL NOTICE NO. 68/75 AND 107/1977 MEASURING 384 HECTARES FOE SETTLEMENT OF SQRTERS

This mater was filed by petioioners to the commission as a historical land inji=ustice claim NLC/HLI/025/207 by one patric kirigia from mt. Kemya ontillili squarters .

Nature of the claim:

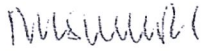
The squattersrs claim they were living in Mt. Kenya forest and some worked as forest guards . They appointed six representatives whoi visited the first President of the Republic and requested to be settled. They allege that the first President directed the then minister for lands the late J H Angaine and the minister for environment and natural resources to excise part of the forest for purposes of settlement of the squarters . They further cliam the excision was done vide the two legal notices cited above for 384 hectares approximately 948.6 acres. survey was done and the squatters directed to clear the land for allocation. They claim that Instead of allocation, they were evicted and came to learn that the land was taken over by J H Angaine. In 1995 the squaters filed A High Court case which was dismissed on technicalities. They proceeded to file a civil appeal no. 277 of 2011 in Nyeri which was again dismissed on technicalities. Citing from the proceedings of the court of appeal the squarters filed a historical land injustice claim to the Commission - the court of appeal Judges had

argued that the matter could best be addressed as a historical land injustice claim

The current position

From inception the commission did receive claims on historical land injustices but could not immediately address the same for lack of a legal framework. The substantive law to address historical land injustices was passed by the National Assembly on 29th August 2016. The commission therefore embarked on processing the claims in 2017.

The Commission has admitted the matter as a historical land injustice claim and invited both parties on 3rd May 2018 and 6th June 2018. However in both instances the Angaine family failed to attend despite having been properly notified through the legal counsel for the squatters. In both cases the squatters appeared. The Commission has decided to proceed with investigations and will make a determination on the matter in the next three months



Prof Muhammad A. Swazuri PhD, OGW

Chairman

NATIONAL LAND COMMISSION

14TH JUNE 2018

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
MISC. CIVIL APPLICATION NO.218 OF 2004

IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL
REVIEW
AND

LUCY MIRIGO MUNYI & 550 OTHERSAPPLICANTS

VERSUS

MINISTER FOR LANDS & HOUSING
PERMANENT SECRETARY MINISTRY OF LANDS & HOUSING
THE COMMISSIONER OF LANDS RESPONDENT

HOMEGROWN (K) LTD INTERESTED PARTY

WRITTEN RESPONSE BY ANGAINE AND FAMILY TO THE PETITION
DATED 25/1/2018

WE,

1. **MUTUMA ANGAINE**
2. **JOHN MUGAMBI ANGAINE**
3. **JENNIFER KAMWITU ANGAINE**
4. **ELIZABETH KALIUNTU ANGAINE** do humbly respond to the said petition as follows:-

That we are the administrators of the estate of the late **HON. JACKSON H. ANGAINE** having been issued with the letters of Administration by the High Court of Kenya at Meru vide Succession Cause NO.379 of 2003(A copy of the certificate of confirmation of grant is annexed hereto).

That some of the applicants led by one LUCY MIRIGO filed a case at the High Court of Kenya at Meru vide Judicial Review NO.71 OF 2003.

The said Judicial Review NO.71 OF 2003 was heard by the Court and the Court dismissed the same vide the judgment dated 30th June, 2011(Copy annexed hereto for records).

That the applicants were not satisfied and they filed an appeal at The Court of Appeal at Nyeri vide Civil Appeal NO.277 OF 2011. The Appeal was heard and dismissed by The Court of Appeal on 22nd day of June, 2014(A copy of the judgment is annexed hereto for records).

That during the hearing of the cases in court, The Attorney General and Home grown Ltd participated during the proceedings as evidenced by the judgment above.

That Angaine & Sons Ltd does not exist.

That we are not aware of the persons who have filed the petition since their identities have not been disclosed to us and would request to know if the applicants do exist and whom they represent in this petition.

We are of the considered view that the matter having been dealt with by the High Court and The Court of Appeal, the matter is now resjudicata and that the petitioners are estopped from burdening us with further proceedings and costs since the subject matter was dealt with and was concluded lawfully by the Courts as stated above.

We humbly request the Honourable members to investigate the matter and let us know whether you require further particulars from us

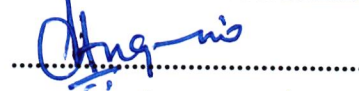
DATED AT MERU THIS 15th DAY OF August 2018

SIGNED BY

1. MUTUMA ANGAINE



2. JOHN MUGAMBI ANGAINE



3. JENNIFER KAMWITU ANGAINE



4. ELIZABETH KALIUNTU ANGAINE

.....

AMENDED.

FORM P & A 54



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 379 of 2003

IN THE MATTER OF THE ESTATE OF THE LATE JACKSON N. ANGAINE (DECEASED).

CERTIFICATE OF CONFIRMATION OF A GRANT

I HEREBY certify that the above written Grant of representation to the estate of the late JACKSON N. ANGAINE issued to MUTUMA ANGAINE AND 8 OTHERS therein named has this MUGAMBI AGAINE, ELIZABETH J. H. ANGAINE ALIAS JACKSON HARVESTER 22ND MAY 20 06 been confirmed by the Court pursuant to the provisions of section 71(1) and (3) of the Law of Succession Act.

Dated at MERU this 26TH day of MAY 2006

..... W. OUKO
Judge of the High Court
RESIDENT JUDGE
MERU

SCHEDULE

<u>Name</u>	<u>Description of Property</u>	<u>Share of Heirs</u>	
MUTUMA ANGAINE	L.P.NO.NKUENE/MITUNGUU/KITHINO/569)	EQUAL SHRES	
JOHN MUGAMBI AGAINE	")		
STEPHEN MUTETHIA AGAINE	")		
ELIZABETH KALUNTU ANGAINE	")		
VIOLET N. ANGAINE	")		
JENNIFFER KAMWITU ANGAINE	")		
MUTUMA ANGAINE	L.R.NO.NKUENE MITUNGUU/KITHINO/650)		EQUAL SHARES.
JOHN MUGAMBI AGAINE	")		
STEPHEN MUTETHIA ANGAINE	")		
FLORENCE NTHIORI ANGAINE	")		

P.T.O. CERTIFY THIS IS A TRUE COPY OF ORIGINAL

Date 19/5/16
DEPUTY REGISTRAR

Mugambi
13/3/05

ELIZABETH KALIUNTU ANGAINE	L.R.NO.NKUENEMITUNGUU-KITHINO/650)	EQUAL SHARES
VIOLET N. ANGAINE	")	
JENNIFER KAMWITU ANGAINE	")	
SAMSON M'MBWIRIA M'ANGAINE	")	
GEMMA KARURU KIRIGIA	L.P.NO.NTIMA/IGOKI/1296	PLOT NO.35) SACRED HOUSE ONLY
STEPHEN MUTETHIA ANGAINE	" "	PLOT NOT 1893
VERONICA MPINDA MUGAMBI	" "	PLOT NO. 1896
ELIZABETH KALIUNTU ANGAINE	")	EQUAL SHARES
SAMSON M'MBWIRIA M'ANGAINE	")	
MUTUMA ANGAINE	L.R.NO.NTIMA/IGOKI/678	WHOLE
STEPHEN MUTETHIA ANGAINE	L.R.NO.NTIMA/IGOKI/178	P.NO.A.3.61.HA
MUTUMA ANGAINE	" "	P.NO.B.3.18.HA
VIOLET N. ANGAINE	" "	P.NO.C.2.46 HA.
VERONICA MPINDA MUGAMBI	" "	P.NO.B.0.40 HA
MARGARET GATIMBA GUANTAI	" "	P.NO.E.0.40HA.
MOSES MURIUNGI	" "	P.NO.F. 1/4
SAMUEL MURANGIRI MANYARA	" "	P.NO.F.1/4
EVANGELINE KANYIRI M'MANYARA	" "	P.NO.F.1/4
JOEL KINYUA KINOTI)	BALANCE OF P.NO.
JOSPHAT KIMATHI KINOTI)	F EQUAL SHARES
ELIJAH KAAI KINOTI)	
SHADRACK KAIMENYI KINOTI)	
JENNIFER KAMWITU ANGAINE	L.R.NO.MERU/TIMAU/553	WHOLE
JOHN MUGAMBI ANGAINE	L.R. NO.MERU/TIMAU/554	WHOLE
JOHN MUGAMBI ANGAINE	L.R. NO.MERU/TIMAU/555	WHOLE
JOHN MUGAMBI ANGAINE	PLOT.NO.8 KIENDERU MARKET	WHOLE
FLORENCE NTHIORI ANGAINE	UNSURVEYED COMMERCIAL PLOT NO.P TIMAU	WHOLE
JENNIFER KAMWITU ANGAINE	MOTOR VEHICLE REGISTRATION NO.KAG-887 B	
JENNIFER KAMWITU ANGAINE	MOTOR VEHICLE REGISTRATION NO. KXX 450 MERCEDES BENZ	
MUTUMA ANGAINE	SHARES IN ICDC ACCOUNT NO.136)	
JOHN MUGAMBI ANGAINE	")	EQUAL SHARES
STEPHEN MUTETHIA ANGAINE	")	
ELIZABETH KALIUNTU ANGAINE	")	
VIOLET N. ANGAINE	")	
JENNIFFER KAMWITU ANGAINE	")	
ELIJAH IMATHIU	MONEY IN CURRENT ACCOUNT NO.01020 -584755-00	
	STANDARD CHARTERED BANK NANYUKI BRANCH -50,000/-	
MUTUMA ANGAINE	MONEY IN CURRENT ACCOUNT NO.)	
JOHN MUGAMBI ANGAINE	01020-584755-00 STANDARD CHARGERED)	
STEPHEN MUTETHIA ANGAINE	BANK NANYUKI BRANCH)	
ELIZABETH KALIUNTU ANGAINE		
VIOLET N. ANGAINE		
JENNIFER KAMWITU ANGAINE		
MWENDA M'MUGWIKA	TRACTOR KEB 450 UNDER HIS NAME	

W.OUKO

JUDGE RESIDENT JUDGE
MERU



REPUBLIC OF KENYA

HIGH
MERU

IN THE COURT OF KENYA
AT

SUCCESSION CAUSE NO. H.C./R.M. 379 of 20...03

In the matter of the Estate of J.H. ANGAINÉ ALIAS JACKSON HARVESTER ANGAINÉ Deceased.

BE IT KNOWN that on the 15TH OCTOBER 2004 letters of

Administration intestate of all the estate of J.H. ANGAINÉ

(also known as JACKSON HARVESTER ANGAINÉ

deceased late of TIMAU - MERU CENTRAL DISTRICT

KENYA who died domiciled in

TELESWANI FARM on the 23RD FEB. 2003

at which by law devolves to and vests in his/her personal representatives

were granted by this Court to 1. MUTUMA ANGAINÉ, 2. JOHN MUGAMBI ANGAINÉ, 3. ELIZABETH K. ANGAINÉ,

(and 4. VIOLET N. ANGAINÉ, 5. JENNIFER ANGAINÉ

of P.O. BOX 1534, NANYUKI) he/they having undertaken faithfully to administer such estate

according to law and to render a just and true account thereof whenever required by law so to do.

ISSUED by the High Court/Resident Magistrate's Court through the registry at

MERU 18TH OCTOBER 2004 this

RESIDENT JUDGE
MERU

Signature

Judge of the High Court/
Resident Magistrate

CERTIFIED THIS IS A TRUE
COPY OF ORIGINAL
19/10/04
REGISTRAR,
HIGH COURT OF KENYA

JUDICIAL REVIEW

- Can parties seek orders of mandamus 50 years after the act?
- Parties who are represented by one of them should file notice that they have authorized such one to act.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
MISC. CIVIL APPLICATION NO. 218 OF 2004

LUCY MIRIGO MUNYI & 550 OTHERS APPLICANTS

VERSUS

MINISTER FOR LANDS & HOUSING 1ST RESPONDENT
PERMANENT SECRETARY MINISTRY
OF LANDS & HOUSING 2ND RESPONDENT
THE COMMISSIONER OF LANDS 3RD RESPONDENT
HOMEGROWN (K) LTD INTERESTED PARTY

JUDGMENT

The *ex parte* applicants, all 550 of them, are seeking an order of *mandamus* to compel the respondents to settle them on land excised from Mt. Kenya Forest through legal notice No. 68 of 1975 and 107 of 1977. The information one gets from this matter from the verifying affidavit and from the statement of facts does not assist to understand the back ground of this matter. Infact, there is more information which is in the annexed documents to the verifying affidavit. Those documents relate to previous suit over the same subject matter but it is not clear

if the parties in the previous case are the parties here. The previous case is High Court Meru Misc. Civil Application No. 24 of 1995. That case was a judicial review matter where the applicants sought orders of *mandamus*. It was filed by six persons. The respondents were the minister of Lands and Housing and Homegrown (K) Ltd in that case. There is yet another matter, that is, High Court Misc. Application No. 71 of 2003. This latter case was filed by 138 persons. It is also a judicial review matter seeking orders of *mandamus* which was filed against the Minister for Lands and Settlement alongside the Commissioner of Lands. I am unable to know the status of the case number 24 of 1995. The title in the case No. 71 of 2003 is attached with this file and that suit is still subsisting. The claim in all of those cases is one and the same. The background of this matter is well captured in the applicant's statements of facts where they stated:-

3. *In the years 1975 and 1977 the Chief Conservator of forests digazetted (sic) Mt. Kenya forest vide legal notices 68/1975 and 107/1977 for the purposes of settling/allocating same land to the applicants who were and still are landless and squatters.*
4. *The same land was being (sic) availed for the settling the applicants after the Government heard the applicants' cries.*

5. *The Ministry of Natural Resources and land and settlement agreed to avail the land to settle the applicants.*
6. *The land which was meant to go to the applicants was however diverted to other people who were not landless including the former Minister for Lands and Settlement late Jackson Angaine.*
7. *The applicants filed HC. Misc. 24/95 over the same subject matter but same was fatally defective.*
8. *The applicants are still landless squatters at the fringes of Mt. Kenya awaiting the implementation of legal notices No. 68/75 and 107/77 or alternatively being settled as promised by the various Government officials.*
9. *The applicants aver that the failure by the respondents to allocate applicants the degazetted land as earlier intended is illegal and unconstitutional.*
10. *The applicants had been promised by Mzee Jomo Kenyatta, then president, Minister Kodhek, Omamo (Natural Resources Ministers at the time) Jackson Angaine (Lands and Settlement then, and other Government officials that they were to be settled and the degazetted was done to fulfill the same promise.*
11. *The applicants claim is for the Respondent to settle them in the line of the Government Policy and promise which rendered the issuance of L.N. 68/75 & L.N 107/77.*

The applicants annexed the legal notice which de-gazetted Mt. Kenya forest.

There is no mention in that legal notice that the excise of that forest was for purpose of settling squatters let alone the applicants in this case. Apart from the gazette notice, the applicants annexed a letters exchanged between forest officers and the then Minister for Lands and settlement. Those letters were written between 1966 and 1979. The nearest that those letters get to discuss

the settlement of squatters on the land excised from Mt. Kenya forest is the letter dated 19th May 1997 which stated:-

*"The Forester,
Ontulili.*

*Thro
The Divisional Forest Officer
Nyeri.*

*Thro'
The Conservator of Forests (E)s
Nairobi.*

MOUNT KENYA FOREST EXCISION

When I visited Ontulili last week I think you indicated that you were not sure whether the excision to allocate the squatters had been finalized and I was unable to enlighten you.

I believe you were referring to the second excision.

- 2. I have now had opportunity to check and I am able to confirm that it has been finalized. It was effected by legal Notice No. 107 of 1977 which was published in the Gazette Supplement of 13th May 1977. The boundary plan is No. 175/187.*
- 3. The first excision was effected by legal Notice No. 68 of 1975. The boundary plan for this is No. 175/166.*
- 4. If you do not have the boundary plans the Divisional Forrest Officer can obtain for you from the Survey Branch, if he has no extra copies.*

**(O.M. MBURU)
CHIEF CONSERVATOR OF FORESTS"**

Apart from those letters, there is no tangible evidence that the applicants before court were the persons whom, if at all, a promise was made to settle them in the

land excised from Mt. Kenya forest. Case No. 24 of 1995 as stated before was filed by only 6 people who are as follows:-

- *Gichohi Gikandi*
- *Miano Weru*
- *Githaiga Kabuya*
- *Williet Mwangi*
- *John Kahuthu and*
- *Mwai Kanja*

The affidavit sworn by them in support of that case No. 24 of 1995 seems to have set in motion the subsequent claims in Case No. 71 of 2003 and in this case. It is therefore prudent to reproduce the statement of facts made by those applicants filed in Case No. 24 of 1995. They stated as follows:-

3. *That a good number of us were also nearing retirement and were concerned of our means of survival on such retirement.*
4. *That with the above in mind, we and our fellow forest workers decided to organize ourselves to make approach to the then president of the Republic of Kenya, His Excellency Mzee Kenyatta to request him to consider us for land allocation within the forest where we were working.*
5. *That we had previously approached the then Minister for Lands and Settlement, Honourable Jackson Angaine with a similar request which he declined saying that as we were members of the Kikuyu tribe, we should seek for land in the Rift Valley Province where other Kikuyu were being settled as any available land within Meru District was for members of the Meru tribe.*
6. *That sometime in 1970, we approached the then member of Parliament for Tharaka, Mr. James Njeru to arrange for an audience for us with the then President aforesaid where we would forward our request.*

7. That the said Mr. James Njeru duly agreed and was able to organize a delegation to see the said President at his Gatundu home sometime in August/September 1970.
8. That we the six applicants were in that delegation.
9. That at the said President's Gatundu Home, we forwarded our request to the President in form of a written memorandum which he duly read.
10. That on reading the memorandum, the said President assured us that our request would be considered and that he would direct the then Minister for Natural Resources, Mr. Odongo Omamo to liaise with the then Minister for Lands and Settlement aforesaid with a view to indentifying and earmarking a suitable part of Ontulili forest for excision for the forest for allocation and permanent settlement by landless employees of Ontulili Forest.
11. That on 9th September 1970, or thereabouts and pursuant to the direction of the president aforesaid, the then Ministers Odongo Omamo and Jackson Angaine visited Ontulili Forest where we ourselves among other squatters welcomed him and accompanied them for a tour of the forest with a view to indentifying a suitable and sufficient area for excising for granting to the squatters.
12. That the said visit and tour of the forest and the speech by the two then ministers were published in the print media and annexed hereto is a photocopy of the Daily Nation of Thursday, September 10th 1970 containing a report of the aforesaid events.
13. That during the visit the squatters and the said then ministers indentified from Ontulili forest a portion of land within the forest on which the squatters would be settled once the necessary formalities of survey were completed.
14. That immediately after the said visit government appointed surveyors demarcated the area so identified in two portions consisting of 384 hectares and 546.2 Hectares.
15. That on the said demarcation the squatters at the direction of Mr. Jackson Angaine embarked on the exercise of clearing the site of trees and other forest vegetation on the understanding and assurance of Mr. Angaine that this exercise would pave the way for further demarcation into subdivisions to be allotted to individuals squatters.
16. That on completion of exercise of clearing the site, the squatters approached the said Mr. Angaine with a view to requesting him to initiate the process of subdivision of aforesaid upon which eh told us to wait.

17. *That while waiting as requested by Mr. Angane and to our dismay Mr. Angaine through his workmen started collecting the charcoal we had prepared from the stumps of trees we had uprooted and started cultivating the land himself*
18. *That on raising the complaint with Mr. Angaine over this turn of events Mr. Angaine said that he would put the land under his own use and that we should raise no questions about it.*
19. *That in the meantime and by Kenya Gazette Supplement number 26 of 16th May 1975, the excision of part of the land from Ontulili forest earmarked for our settlement was gazette under legal Notice Number 68 of 1975 under the hand of the then minister for Natural Resources dated 29th day of April 1975. A photocopy of the said legal Notice is appended herewith and marked as Annexure 1.*
20. *That as early as January 1973, the excision of the area and eventual settlement by squatters appeared to be well on the way and modalities of the same agreed as shown by a letter from the Chief Conservator of Forests to the Divisional Forestry Officer Nyeri dated 19th January 1973 and another letter from the latter to the Forester of Ontulili dated 25th January 1973 both of which are annexed hereto and marked as annexure 2.*
21. *That on suspicion that the President's directive as regards allocation of land to us was manipulated to suit individual interests, we made attempts to organize another delegation to appraise him of this state of affairs but we were unsuccessful as our moves were believably blocked by the same vested interests and the president had then started ailing and in little control of affairs.*
22. *That excision of the second area meant for our settlement was gazette through legal Notice number 107 of 1977 vide the Kenya Gazette of 13th May 1977 by the hand of the then minister for Natural Resources on 29th April 1977 exactly two years after the first Gazette Notice. A copy of the notice is appended herewith and marked as annexure 3.*
23. *That the two areas earmarked for the squatters settlement and gazetted as excised through the aforesaid legal notices were surveyed as Land Reference Number 13269 and Land Reference Number 12234 consisting of 384 and 546.2 Hectares respectively. A survey map is appended herewith and marked as annexure 4.*

24. That we sincerely believe from our visit to the President aforesaid and subsequent events leading to gazettment of the portions aforesaid that the government of the Republic of Kenya intended the excised portion of land to be for the benefit of the then squatters of Ontulili forest which intention there has been attempts to subvert by private interests.

25. That we and the other squatters sincerely believe that the said portions of land are yet to be registered in favour of any other person and it is still possible to have the land allotted to us.

From the above and bearing in mind that the letters referred to earlier, it does become clear that the squatters who visited the 1st president of this country and were promised that their "request would be considered" cannot be said to be the persons before this court. From the statement of facts reproduced above, in case No. 24 of 1995, it would be seen that initially it was a group of foresters who on realizing that their retirement was getting closer and they were without land approached the 1st president to be given land. Can it then be said that those 6 persons are the 550 persons who are now before this court? A large portion of the land that was excised from the Mt. Kenya forest was allocated by the Government to a company associated with the then Minister for Lands and Settlement, J.H. Angaine. That company in turn sold some of that land to a company known as Homegrown (K) Ltd. The order sought by the 550 people who are before this court is that an order of *mandamus* do issue to compel the

respondent to settle those applicants on land that was excised from Mt. Kenya forest. This claim is made more than 50 years after the land was allocated to a company associated with J.H. Angaine. Further, it is after some of that land was sold to Homegrown (K) Ltd. In considering the period of time it has taken the applicants to come before the court, I am persuaded by the case relied upon by the advocate representing the company Homegrown (K) Ltd. This is the case **Mureithi & 2 Others vs. Attorney General & 4 others** [KLR] (E&L) 1 page 707

when the court held:-

“Judicial review matters have to be filed promptly and heard with the expedition and a delay of 40 years was hopelessly outside any reasonable limit for mandamus and prohibition.”

I echo those words in respect of this case. There has been inordinate delay in bringing this action. The land has also changed hands to third parties. This matter is allegedly brought by 550 people but the heading of the suit only reveals the name of Lucy Mirigo Muñyi. The other 549 people have their names contained in a hand written paper attached to the application and that paper contains those persons' names, national identity card number, address and signatures or some print. Invariably, those names are cancelled whilst some do

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not bear the signature of the named persons. In a matter where parties seek that they be awarded land, there is need of there to be clarity of who those parties are. More than that, if such parties file a list of their names as they have done here, they should also have indicated that they authorized one of them to bring such an action. Otherwise the list could contain imposters. Clarity is required because in this country it is not unheard of where people are included in a list of persons to be awarded land, when those people themselves do not qualify to be given such land. It is with that in mind that I emphasize there was need for clarity of claimants and those claimants also needed to have indicated that they authorized Lucy Mirigo Munyi to represent them in this action. I find that the application fails more so because there is no document in this matter indicating that the applicants are entitled to the land that was excised out of Mt. Kenya forest. It may well be that the applicants are people who are trying to exploit a situation of the exercise of excising of that land in order to obtain land for themselves. Before concluding on this judgment, I wish to state that the facts of this case are distinguishable from the cases relied upon by counsel of the

applicants. In the case Susan Waithera Kariuki & 4 others vs. The Town Clerk Nairobi City Council & 2 others Petition Case No. 66 of 2010, the applicants were resident on a portion of land which the Nairobi City Council stated was a road reserve. Without notice to them, agents of Nairobi City Council descended upon the applicants and brutally evicted them from that land. The facts of that case and the present case are very distinguishable and the applicants cannot rely on that case. Similarly, the facts in the case Modderklip Boerdery vs. President Van Die Rsa en Endere (2003) 6 Bc LR 638 (T) are distinguishable from this case. I find that there is no merit in this judicial review matter and it is dismissed with costs being awarded to the respondents and the interested parties.

Dated, signed and delivered at Meru this 30th day of June 2011.



MARY KASANGO
JUDGE

IN THE COURT OF APPEAL
AT NYERI

(CORAM: KOOME, MWILU & OTIENO-ODEK, J.J.A)

CIVIL APPEAL NO. 277 of 2011

BETWEEN

LUCY MIRIGO & 550 OTHERS APPELLANT

AND

MINISTER FOR LANDS..... 1ST RESPONDENT

PERMANENT SECRETARY
MINISTRY FOR LANDS..... 2ND RESPONDENT

THE COMMISSIONER FOR LANDS..... 3RD RESPONDENT

HOME GROWN KENYA LIMITED 4TH RESPONDENT

J. H. ANGAINE & CO. LTD. 5TH RESPONDENT

*(Appeal against the Judgment and Decree of the High Court of Kenya at
Meru (Kasango, J.) dated 30th June 2011*

in

Meru HC Misc. App No.218 of 2004 consolidated with Meru HC Misc. App.
No. 71 of 2003)

JUDGMENT OF THE COURT

1. This is a judicial review appeal for an order of mandamus to issue and in the alternative an order for compensation for land. The appeal has a historical perspective. By Notice of Motion dated 18th November 2004, the appellants describe themselves as public servants in the Ministry of Lands and Settlement. The pertinent facts are that

on or about August/September 1970, six individuals namely Gichohi Gikaandi, Gitahiga Kabuya, Williet Mwangi, John Kahuthu and Mawi Kanja being forest officers at Ontulili within Mt. Kenya Forest in Meru County visited the then First President of Kenya H.E. Mzee Jomo Kenyatta at his Gatundu Home. The appellants petitioned the then President stating that they were squatters and landless persons working in the Forest Department and about to retire. They requested the President to hear their cries and have mercy upon them and excise part of Ontulili Forest within Mt. Kenya Forest in Meru and allot them land for settlement. It is the appellants' contention that the late President Kenyatta promised to consult the Ministers responsible and to look into the request. The appellants state that they made the request to the late President by way of a written memorandum and the President upon reading the same directed the then Minister for Natural Resources the late Hon. William Odongo Omamo to liaise with the then Minister for Lands and Settlements the late Hon. Jackson Harvester Angaine with a view to identifying and earmarking a suitable part of Ontulili Forest for excision and allocation to the landless employees of Ontulili Forest.

2. The appellants state that pursuant to the Presidential directive, on 9th September 1970, the then Minister for Lands and Settlement, the late Hon. Jackson Harvester Angaine accompanied by the Minister for Natural Resources the late William Odongo Omamo

visited Ontulili Forest with a view to identifying suitable land for excision. That the ministerial visit was reported in the Daily Nation Newspaper of 10th September, 1970.

3. The appellants state that to their positive surprise, Legal Notice No. 68 of 1975 was published in the Kenya Gazette dated 16th May, 1975 altering the boundaries of Mt. Kenya Forest. In addition, a further Legal Notice No. 107 of 1977 was published altering the boundaries of Mt. Kenya Forest. These two legal notices excised and curved out parcels of land from Ontulili Forest which was part of the Mt. Kenya Forest. The appellants contend that the parcels of land excised from Mt. Kenya Forest were meant to settle them pursuant to the promise by the late President Jomo Kenyatta. The size of parcels of land excised from Mt. Kenya Forest pursuant to the Legal Notices is 384 Hectares and 546.2 Hectares respectively measuring in total about 973 Hectares of land. The land which was excised through the Legal Notices were surveyed and given Land Reference Nos. 13269 and 12234 respectively.
4. The appellants contend that upon the land parcels being demarcated and excised from the forest, they were instructed by the late Hon. Angaine to cut trees and clear the site on the understanding and assurance from Minister Angaine that the clearing of site would pave way for further demarcation and sub-division of the land to be allocated to individual squatters. That on completion of the site clearance, the appellants were dismayed that the late Hon. Angaine started to cultivate the land for his personal use. The appellants inquired of the late Minister what was happening and he responded that

the land at Ontulili belonged to people of the Meru tribe and the squatters who were of Kikuyu tribe should seek land in the Rift Valley Province where other Kikuyu were being settled.

5. The appellants grievance is that the land excised from Mt. Kenya Forest was not used to settle them but instead, the land was allocated and title issued in the name of a company formed by the then Minister for Lands and Settlement Hon. Jackson Harvester Angaine. That the late Minister incorporated a company known as J.H. Angaine & Sons, the 5th respondent, which company was allocated the land and title issued to it. That the 5th respondent then sold the land to the 4th respondent. Home Grown Kenya Limited.
6. The appellants claim is that the Government of Kenya through the 1st, 2nd and 3rd respondents' excised land from Mt. Kenya Forest vide Legal Notices No. 68/75 and 107/77 for purposes of settling the appellants. That the land meant for the appellants was diverted and the 1st, 2nd and 3rd respondents instead of settling the appellants gave the land to Hon. Jackson Angaine, a non-needy person who by all definitions was not a squatter and who was then Minister for Lands and Settlement.
7. In line with their grievance, the appellants by Notice of Motion dated 18th November 2004 moved the High Court for the following orders and relief:-

(i) An Order of Mandamus to compel the respondents to settle the appellants on land excised from Mt. Kenya Forest vide Legal Notices Nos. 68 of 1975 and 107 of 1977 being Land Reference Nos. 13269 and 12234.

(ii) That in the alternative, the Respondents be compelled to settle the appellants in land of equivalent size and quality.

8. The appellants claim that failure by the respondents to allot and allocate them the degazetted land as earlier intended was illegal and unconstitutional. That the appellants had been promised land by the late H.E. Mzee Jomo Kenyatta, the late Minister C.M.G Argwings Kodhek, the late Minister Hon. William Odongo Omamo and other Senior Government Officials. In support of their claim, the appellants tendered in evidence a letter dated 18th May 1977 from the Chief Conservator of Forest addressed to the Forester Ontulili. The letter is captioned MOUNT KENYA FOREST EXCISION and it states that the excision was to allocate land to the squatters. The appellants contend that the Government of Kenya through the Commissioner of Lands has not implemented its own decision and promise to demarcate and settle the appellants and other squatters at Ontulili Forest in individual portions of Land Reference No. 13269 and 12234 excised from the said forest specifically for that purposes. That the Commissioner of Lands subverted the government's intention by failing to carry out the intention and instead allowed one Jackson Harvester Angaine to use the land contrary to the purpose for which it was intended.
9. Upon hearing the parties to this suit, Kasango, J. by a judgment dated 30th June, 2011 dismissed the Notice of Motion seeking an Order for Mandamus. The Judge held that there had been inordinate delay in bringing the action. The Honourable Judge observed that the claim had been brought 50 years after the land was allocated to a company

associated with J.H. Angaine. That some of the land had also changed hands to third parties and part had been sold to Home Grown Kenya Limited. The Honourable Judge stated that the suit was allegedly brought by 550 people but the heading of the suit only reveals the name of Lucy Mirigo Munyi. The other 549 people had their names in a hand written paper attached to the application and there was no clarity that these other persons had authorized Lucy Mirigo Munyi to represent them in the action. The Judge observed that only Six persons visited the late President Kenyatta at Gatundu and wondered whether it can be said that the Six persons are the 550 persons who were now before the Court. The Honourable Judge stated that the application for Mandamus failed the more so because there was no document indicating that the appellants were entitled to the land that was excised out of Mt. Kenya Forest.

10. Aggrieved by the decision of the Honourable Judge, the appellant lodged this appeal citing six grounds to wit:

- *The learned Judge erred in law and fact in dismissing the matter without giving due consideration to the materials supporting the motion.*
- *The learned Judge failed to analyze the material before her to find that the same was sufficient for the grant of the orders sought.*
- *The learned Judge failed to appreciate the previous proceedings and the historical background of the matter in holding that there was inordinate delay in instituting the matter.*

- *The learned Judge failed to appreciate that the list identifying parties was valid and unchallenged by the respondents and therefore went into error in rejecting the matter on the issue of uncertainty of the parties.*
- *The learned Judge erred in law and fact in holding that there were no documents entitling the appellants to the suit land yet there were legal notices and correspondences from the respondent's office indicating the purposes of the degazettement of the forest land.*
- *The entire ruling is unfair and against the spirit of Sections 1 A and 1 B of the Civil Procedure Act and Articles 1 and 10 of the Bill of Rights and Article 159 of the Constitution of Kenya.*

11. At the hearing of the appeal, the appellants were represented by learned counsel Mr. **Charles Kariuki** while the 1st, 2nd and 3rd respondents were represented by the learned State Counsel M/s **Teresia Gathagu**. The 4th respondent was represented by learned counsel **Mr. A.G. Riungu** while learned counsel **Kiogora Arithi** is on record for the 5th respondent.

12. Counsel for the appellant elaborated on the grounds of appeal. He pointed out that the appeal arose from a decree issued by the High Court in two consolidated Miscellaneous Civil Applications being Meru HCC Misc. App. No 71 of 2003 and Meru HCC Misc. App. No. 218 of 2004. Counsel pointed out that during the hearing of the cases before the High Court, it was agreed that the judgment delivered shall apply to both cases. Counsel submitted that although there was no formal record consolidating the two cases, the judgment and decree is one and the learned Judge

erred in stating that there was a pending suit before the High Court. It was submitted that the correct position is that the two miscellaneous applications should be consolidated and the appeals be likewise consolidated.

13. On the substantive grounds of appeal, counsel for the appellant submitted that the appellants' case is premised on the fact that the government failed to implement its own directive to settle the squatters on the land parcels that had been excised from Ontulili Forest. That the government allowed the then Minister for Lands and Settlement Hon. Angaine to dispose the appellants off the land. It was submitted that the land was excised for the benefit of the squatters and this position was confirmed by the letter dated 18th May 1977 from the Chief Conservator of Forests. Counsel submitted that the learned Judge erred in finding that only six people visited the late President Kenyatta at Gatundu; that the Judge erred in failing to appreciate that the six people who visited the late President were representatives of other squatters. The said six people were the 1st to 6th appellants. Counsel submitted that even if the Judge was correct in finding that only six people visited the late President, the Judge erred in failing to find that the land was to be allocated to the six people who were squatters to hold the same as representatives of other squatters whom they represented. Counsel submitted that the Judge erred in invoking the limitation period and stating that the appellants claim was filed 50 years after the land was allocated to a company associated with the late Minister Angaine. It was submitted that the 50 years came out

of the blues and it is not clear how the Judge computed the 50 years. Counsel submitted that there was no way the government could have excised 3,000 acres of land for one individual. Counsel submitted that the land was meant for squatters and by no imagination or definition was the late Hon. Jackson Angaine a squatter.

14. Counsel for the appellants cited the case of Mureithi & 2 others - v- Attorney General & 4 Others KLR (E & L) 1 to support the submission on limitation of time. The appellant submitted that it was the legal and statutory duty of the respondents to allocate/settle the appellants on the land available. That the respondents are in breach and continue to breach the statutory obligation. It was submitted that it is a constitutional duty and a right of the appellants to be allocated land set aside for purposes of their settlement and to be provided with proper housing. The appellants contend that they live as squatters and are internally displaced persons in their own country. In support of this submission, learned counsel cited the case of Modderklip Boerdery - v - President Van Die RSA en Endere 2003 (6) BC LR 638 (T) cited in Nai PET. No. 66/10 Francis Kabiru - v - Minister for Lands & Another.

15. Counsel for the appellant submitted that the Kenya *Constitution* must be upheld in relation to human rights, equality, freedom, democracy, social justice and the rule of law which provides the appellants with a right to provision of housing and land. The appellant cited *Article 28* of the *Constitution* wherein it is provided that every person has the inherent dignity and the right to have that dignity respected and protected. The

appellants invoked *Article 259 (1)* of the *Constitution* and urged this Court to interpret the *Constitution* in a manner that promotes its purposes, values and principles and advances the rule of law and human rights. It was submitted that although the appellants were not registered proprietors of the suit property, they had a claim against the respondents. Counsel cited the case of *Commissioner of Lands - v - Kunste Hotel Limited-Civil Appeal No. 234 of 1995* where this Court stated that:

“The appellant was exercising his statutory powers under the Government Lands Act, when he decided to allot the subject plot to the interested party. The exercise of that discretion clearly affected the legal rights of Kunste Hotel Ltd. The exercise of that power was therefore judicial in nature and he was therefore obliged to hear all those who were likely to be affected by his decision... It does not lie in the appellant's or anybody else's mouth to argue that in absence of registration the interest Kunste Hotel seeks to protect was non-existent.”

16. Counsel for the appellant submitted that the respondents acquired title to the suit property illegally and pursuant to *Article 40 (B)* of the *Constitution*, the right to protection of private property does not extend to any property that has been acquired unlawfully. It was submitted that to grab land set aside for squatters/appellants was unlawful and unconstitutional and the acquisition by the 4th and 5th respondents was null and void. Counsel submitted in the alternative that if an order for mandamus cannot issue, then the appellants should be allocated or compensated with land of equivalent size and quality.

The respondents vehemently opposed the appeal. **Mr. A.G. Riungu** learned counsel for the 4th and 5th respondents urged this Court to find that the appeal had no merit. He submitted that the 5th respondent J. H. Angaine & Sons have never been parties to the suit before the High Court in both Miscellaneous Applications Nos. 218 of 2004 and 71 of 2004. He urged this court to find that there can be no claim and no order can be enforced against the 5th respondent who was not a party before the High Court. He further submitted that there was no evidence on record to show that J.H. Angaine & Co. Limited was incorporated as a legal entity. We have considered this submission and it is appropriate to dispose of it at this stage. The suit property is registered in the name of the 5th respondent and the name on the title reads J.H. Angaine & Sons Ltd. Under the court rules, a party who is likely to be affected by any court order or judgment is entitled to be heard. The record reveals that the 5th respondent participated in the trial before the High Court and even filed a replying affidavit. We are satisfied that the submission by the 5th respondent has no merit and fails.

18. Counsel for the 5th respondent supported the judgment by the High Court in finding that the 550 appellants did not have any locus to claim interest in the suit property. He submitted that there is no mention of Lucy Mirigo and 550 others in any correspondence pertaining to the excision of the Ontulili Forest; that there is no tangible evidence that the said Lucy Mirigo and 550 others were supposed to benefit from excision of the forest. Counsel further submitted that in the Misc. Application

No. 218 of 2004, the number of applicants/squatters is given as 550 while in Misc. App. No. 71 of 2004; the number of applicants/squatters is given as 138 people. He posed the question that in the two cases as consolidated in this appeal is the number of appellants 550 plus 138 or what number?

19. In relation to the finding by the Judge that the appellants had inordinately delayed for 50 years in bringing the suit, Counsel for the 5th respondent submitted that in the Mureithi case (*supra*) cited by the appellants, the delay was for 40 years which was found to be inordinate. In the present case, learned counsel submitted that the gazette notices were published in 1975 and 1977 and as at 2011 when the case was heard before the learned Judge of the High Court there was inordinate delay.

20. Counsel for the respondent further submitted that the 4th and 5th respondents were private persons and not public bodies. He submitted that the order of mandamus sought by the appellants was not available and enforceable against private individuals. That the 4th and 5th respondents do not owe the appellants any statutory duty and as such, the remedy sought against them cannot issue. Counsel submitted that the 4th and 5th respondents have no power to allocate any land to any person and consequently the alternative prayer to be compensated land of equivalent size and quality cannot issue against the 4th and 5th respondents. In any event, counsel urged this court to find that an order for compensation cannot issue or be made in a judicial review application.



21. Counsel for the 4th and 5th respondents further submitted that the Notice of Motion that moved this Court did not disclose the provisions of law upon which it is founded. That the appellants have not cited any Act of Parliament that has been violated nor do they cite any land related legislation that gives them the right to claim any interest in the suit property. No specific statutory provision which is alleged to have been breached has been cited.

22. Learned State Counsel, **Ms Teresia Gathagu** for the 1st, 2nd and 3rd respondents in opposing the appeal submitted that the appellants should have filed an ordinary suit by way of plaint seeking compensation for loss, if any, that they can prove to have suffered. While associating with the submissions of the 4th and 5th respondents, Counsel observed that the appellants are seeking an order of mandamus but have not demonstrated that any specific legal right to land had been violated. Counsel submitted that the 550 persons making the appeal are not known as some of the names on the list attached to the supporting affidavit have been canceled while others have no signatures. Referring to the appellant's reference of the letter dated 18th May 1977 from the Chief Conservator of Forests, Counsel submitted that the letter does not indicate the names of the alleged squatters. It was further submitted that there has been inordinate delay in bringing the suit which is caught up not only with limitation period for judicial review orders but any other suit for recovery of land. Counsel urged this court to note that the suit property had changed hands and the remedy, if any, for the

appellants is to institute an ordinary civil action and not judicial review. Counsels submitted that the legal authorities cited by the appellants were distinguishable and in support the respondents' case.

23. As this is a first appeal, it is our duty to analyze and re-assess the evidence on record and reach our own conclusions in the matter. It was put more appropriately in Selle.

-vs- Associated Motor Boat Co., [1968] EA 123, thus:

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this Court is not bound necessarily to follow the trial judge’s findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (Abdul Hameed Saif vs. Ali Mohamed Sholan (1955), 22 E. A. C. A. 270).”

24. This Court further stated in Jabane – vs- Olenja, [1986] KLR 661, 664 thus:

“More recently, however, this Court has held that it will not lightly differ from the findings of fact of a trial judge who had had the benefit of seeing and hearing all the witnesses and will only interfere with them if they are based on no evidence, or the judge is shown demonstrably to have acted on wrong principles in reaching the findings he did – see in particular Ephantus Mwangi -vs- Duncan Mwangi Wambugu (1982-88) 1 KAR 278 and Mwanasokoni vs. Kenya Bus Services (1982-88) 1 KAR 870.”

25. In evaluating the evidence on record, this Court is mandated not to give undue regard to technicalities through the overriding objectives as enshrined in Sections 3A and 3B

of the *Appellate Jurisdiction Act* and as stated in Douglas Mbugua Mungai -vs- Harrison Munyi – Civil Application No. Nai. 167 of 2010

“We are as a matter of statute law required to take a broad view of justice and take into account all the necessary circumstances, factors, and principles and be satisfied at the end of the exercise that we have acted justly” As was stated in Stephen Boro Gitiha-vs- Family Finance Building Society & 3 Others, Civil Application No. Nai. 263 of 2009. “The overriding objective overshadows all technicalities, precedents, rules and actions ... and whatever is in conflict with it must give way.”

26. We have evaluated the evidence on record and analyzed the judgment of the High Court. It is our considered view that the following questions are pertinent to the determination of this appeal.

- Do the appellants have any interest in the suit property capable of being enforced?
- Is the letter dated 18th May 1977 from the Chief Conservator of Forest addressed to the Forester Ontulili capable of conveying or conferring an interest in land to the appellants?
- Is a non-vested and promissory interest in land enforceable?
- Is a promise by the President to alienate or allocate land enforceable?
- The appellants describe themselves as squatters, on which land are they squatters and what are the rights of squatters?
- Is the doctrine of *rights in alieno solo* applicable in this case?
- Can an order of mandamus be issued against the 4th and 5th respondents who are private citizens and not public persons or body?

- Is any cause of action disclosed by the appellants against the 4th and 5th respondents?
- When does time for purposes of limitation begin to run in respect to an order for mandamus.
- Is the alternative prayer for compensation for equivalent land available in judicial review proceedings?
- Is tracing of land a remedy available under judicial review proceedings?
- What statutory duty has been breached by the 1st, 2nd and 3rd respondents as against the appellants?
- Have the appellants disclosed any contingent, executory or future interest recognizable in law over the suit property?

27. The appellants are seeking an order of mandamus against the 1st to 5th respondents. The 4th and 5th respondents are not public bodies but are private citizens. An order of mandamus compels a public body to exercise a duty bestowed upon it by law or to judiciously exercise a discretionary power. (See Transouth Conveyors Ltd. & another – v – Kenya Revenue Authority & 3219 others, (2008) KLR 216). In the present case, the 4th and 5th respondents are not public bodies and it is our considered view that an order of mandamus cannot issue against them. In the case of District Commissioner, Kiambu – v- R and Others Ex Parte Ethan Njau, 1960 EA 109, it was held that an order of mandamus could not be issued against a person if it would not be within his power to comply with it. To this extent, the order sought by the appellant for

mandamus against the 4th and 5th respondents must of necessity fail as they are incapable of complying with it and they are not a public entity.

28. The 1st, 2nd and 3rd respondents are a public body. Mandamus can issue against a public body to perform a specific act where statute imposes a clear and qualified duty to do that act. (See Manyasi – v- Gicheru & 3 others, (2009) KLR 687). In the case of R – v- Barnet London Borough Council Ex parte Shah (1983) 2 AC 309, it was held that if an individual is challenging a decision that he has no entitlement, the appropriate remedy will be a quashing order to quash the decision and not an order compelling the authority to provide the benefit sought. We have analyzed the evidence on record and the submissions by counsel for the appellant. The appellant has not demonstrated or pointed out any specific statutory obligation that is vested upon the 1st, 2nd and 3rd respondents that has been violated. Mandamus compels performance of a statutory public duty. The evidence does not disclose any statutory public duty owed to the appellants by the 1st, 2nd and 3rd respondents. No constitutional or statutory provision has been cited that impose an obligation to be exercised in favour of the appellants. The failure by the appellants to point at any statutory duty on the part of the respondents is fatal and an order of mandamus cannot issue in the absence of a specific statutory obligation that can be enforced.

29. The suit property that the appellants claim was excised from Mt. Kenya Forest vide Legal Notice No. 68/75 and 107/77. The land was surveyed and given Land Reference

Nos. 13269 and 12234 respectively. These two parcels of land were registered in the name of the 5th respondent who transferred the same to the 4th respondent. The evidence on record shows that the appellants never took physical possession of the land. They have never occupied the land. The failure to take possession and occupy the land means that the appellants are not squatters on this land. We find that it is misleading for the appellants to create an impression that they are squatters on the suit property. The defacto position is that the appellants are not squatters on the disputed parcels of land. The legal issue is what right does a third party (appellants) have over land belonging to another (4th & 5th respondents) when the said third party has never occupied that other's? The doctrine of rights in *alieno solo* recognizes various categories of rights or interests that a third party may have over the land of another. These are easements, licenses, profits, restrictive covenants, overriding interests and mortgages. These are interests conferring rights enforceable against the land of another. The evidence on record shows that the appellants do not have any easement, licenses, profit, restrictive covenants, overriding interests or mortgage over the suit property which is registered in the names of the 4th & 5th respondents. The appellants also do not have any registerable interest or beneficial trusteeship in the suit property. To this end, we are satisfied that the doctrine of rights *alieno solo* is inapplicable to this case and the appellants have no enforceable third party rights over the suit property.

30. The appellants allege that the late President Jomo Kenyatta promised to allocate them land from the excised forest. This was a promise to allocate land in the future. Can a promise to allocate land create any interest in land and is such a promise enforceable? The appellants in the prayer for mandamus are seeking a court order to enforce a promise. Can mandamus issue to enforce a promise? It is our considered view that mandamus cannot issue to enforce a promise to do something in future; neither can mandamus issue to enforce a promise not underpinned by a statutory provision. A promise can neither create nor convey an interest in land.

31. The *Law of Contract Act* clearly stipulates the requirements for a valid instrument to convey an interest in land. *Section 3 (3)* of the *Law of Contract Act* (Part II of the Laws of Kenya) stipulates that no suit shall be brought upon a contract for the disposition of an interest in land unless some memorandum or note thereof is in writing and signed by the party to be charged. (See *Morgan - v- Stubenitsky* 1977 *KLR* 188; *Wagichiengo - v- Gerald* (1988) *KLR* 406). In the present case, all that is on record is an averment by the appellants that the late President Kenya promised to allocate them land. There is no privity of contract and no privity of estate between the appellants and all the respondents in relation to the suit property. A squatter has no privity of estate that runs with the land (See *Tichborne -v- Weir* (1892) 67 *LT* 735). There is no government instrument such as a letter of allotment that expresses the intention to allot any land to the appellants. We are of the considered view that in the

absence of privity of contract between the appellant and all the respondents and the absence of a letter of allotment from the government to the appellants in relation to the suit property, and the absence of part performance by way of possession or occupation of the suit property by the appellants, the averred promise to give land by the late President is unenforceable by way of mandamus. It is trite law that a promise to enter into a contract is not enforceable; in other words a contract to enter into a contract is not enforceable.

32. A further issue for our consideration is whether the appellants have a vested interest in the suit property. John Chipman Gray, stated "No interest is good unless it must vest, if at all, not later than twenty one years after some life in being at the creation of the interest" (See Re Stern (1962) Ch. 732). To comply with this rule, the interest must be of such a nature that if it does vest, it must do so within 21 years. This rule is concerned with contingent interests and such an interest may never vest at all. In the present case, when the legal gazette notices were issued and land excised from the forest, the parcels of land that were created were vested in the 4th respondent and not upon the appellants. The promise by the late President to allot land to the appellants was a future or contingent promise which did not vest any interest in the suit property to the appellants. It is our considered view that if the government had the intention to allot or allocate any land to the appellants, such intention was to create a future interest

in land that has never vested upon the appellants. It is trite law that a future interest in land is void if it does not vest within the stipulated time frame.

33. The next issue for our consideration relates to limitation period. There are two aspects of the Limitation Period that we have to consider. The first is limitation period for instituting judicial review proceedings under Order 53 of the Civil Procedure Act and the second is the limitation period for recovery of land under the *Limitation of Actions Act* (Cap 22 of the Laws of Kenya).

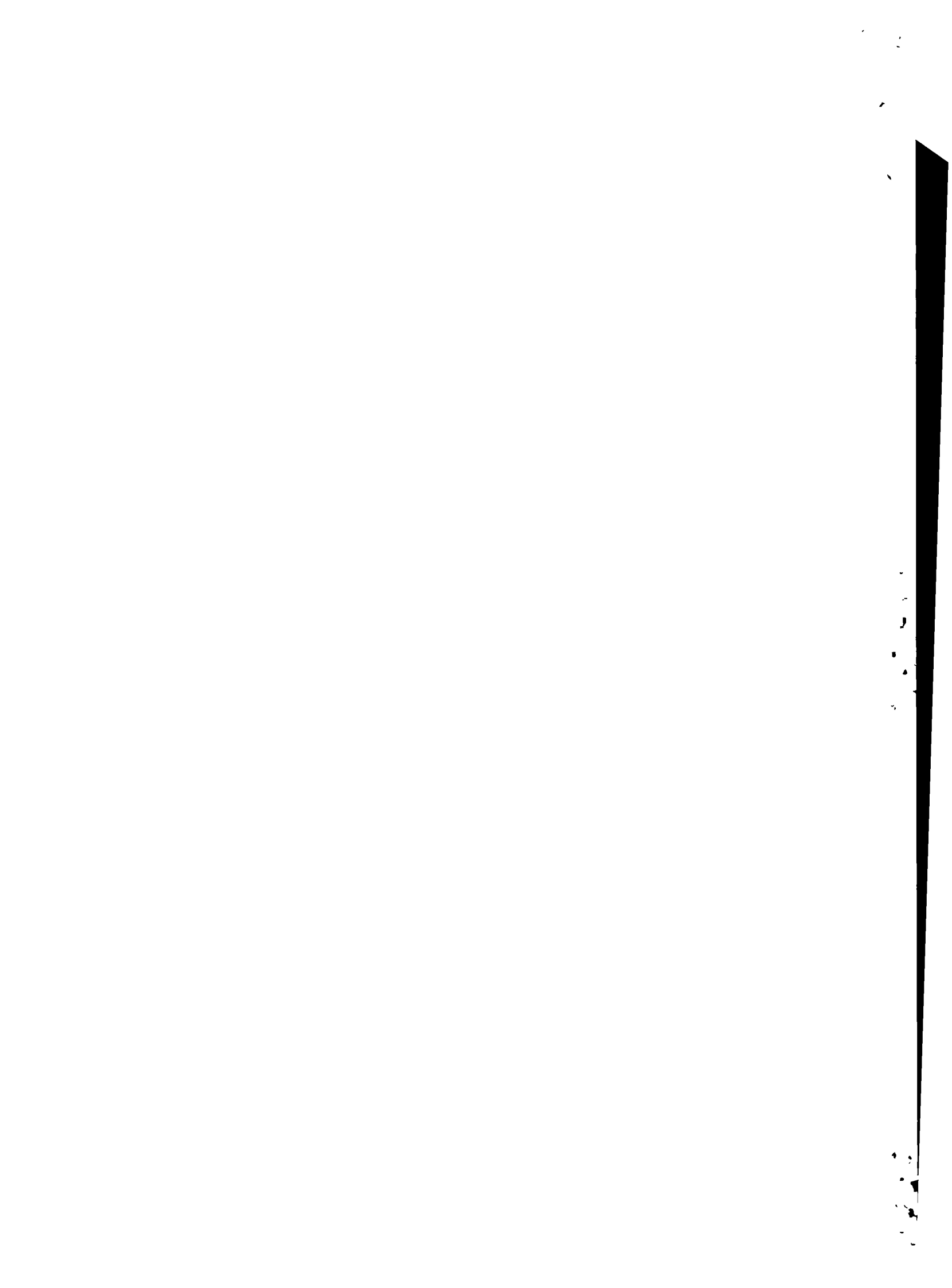
34. Under *Section 9* as read with *Section 7* of the *Limitation of Actions Act*, a suit for recovery of land has a limitation period of twelve years. In the instant case the appellants seek an order for mandamus which *ipso jure* is an application for an order to recover the land parcels excised from Mt. Kenya Forest through Legal Notice No. 68 of 1975 and Legal Notice No. 107 of 1977 being Land Reference Nos. 13269 and 12234 respectively. The evidence shows that the land parcels were excised in 1975 and 1977 and the grant of title to the 4th respondent was made in 1995. Whatever the year from which computation is done, the twelve year period under the *Limitation of Actions Act* is a factor to be considered. The Judge did not consider the limitation period under the *Limitation of Actions Act* and we decline to address the issue beyond this point.

35. We now consider the limitation period for initiating action on judicial review. The appellants are seeking a judicial review order for mandamus. The learned judge on the issue of limitation expressed herself as follows:

“This claim is made more than 50 years after the land was allocated to a company associated with J. H. Angaine.... In considering the period of time it has taken the applicants to come before the court, I am persuaded by the cases relied upon by the advocate representing the company Homegrown (K) Limited. This is the case of Mureithi & 2 others – v- Attorney General & 4 Others (KLR) (E&L) 1 at page 707 where the court held “judicial review matters have to be filed promptly and heard with the expedition and a delay of 40 years was hopelessly outside any reasonable limit for mandamus and prohibition”. I echo those words in respect of this case. There has been inordinate delay in bringing this action. The land has also changed hands.”

36. During the hearing of this appeal, learned counsel for the appellant submitted that the Judge erred in finding that the appellant's claim had been caught up by limitation. It was submitted that the 50 years that the Judge referred to is not supported by evidence on record. Counsel for the respondent in support of the findings by the Judge submitted that if in the *Mureithi & 2 Others – v- Attorney General & 4 Others (KLR) (E&L) 1* 40 years was deemed to be a hopelessly inordinate delay, then 50 years is a much more hopeless inordinate delay for an order of mandamus.

37. On our part, we have examined the provisions of *Order 53* of the *Civil Procedure Act* which is the juridical basis for an application for mandamus. *Rule 2* of *Order 53* provides a six month limitation period for an order of *Certiorari*. There is no limitation



period to institute an action for mandamus. Limitation for purposes of mandamus is to be determined by the reasonableness and length of time between the cause of action and time for filing suit. From the facts of the present appeal, it is arguable when the cause of action alleged by the appellants did arise for purposes of computation of time. Did the cause of action arise in 1970 when the late President Kenyatta made the promise, or did it arise in 1975 and 1977 when the legal gazette notices were issued, or did it arise in 1995 when a grant of title was made to the 4th respondent? Whatever the time when the cause of action arose, we have stated that an order for mandamus is not an appropriate remedy to issue under the new constitutional dispensation. We have also found that the appellants have no registered, possessory or future enforceable interest in relation to the suit property. The appellants have also not pointed out any statutory obligation owed to them that has been breached. Consequently, we decline to pronounce ourselves on the issue of limitation period for purposes of an order for mandamus. It suffices to state that the learned judge erred in arriving at 50 years without indicating the event or facts from which the 50 years was computed.

38. The appellants' further contention is that the respondents are under a constitutional obligation to provide them land. The appellants cited *Article 28* which stipulates that every person has inherent dignity and the right to have that dignity respected and protected. It is our considered view that the purpose of *Article 28* of the *Constitution* is not to impose a constitutional duty on the Government to allocate land to any

squatter or person. Likewise, the provisions on social justice, equality, equity and prevention of inhuman, cruel and degrading treatment are not meant to be used to demand land allocation from the government. The appellants also referred to Article 40 (B) of the Constitution wherein the protection of private property does not extend to any property that has been acquired unlawfully. It is our considered view that the issue before the High Court and before this Court is not whether the suit property was acquired unlawfully by the 4th and 5th respondents but whether an order for mandamus can issue in favour of the appellants based on the facts disclosed in the case. In any event, under Article 67 (1) (e) of the Constitution, it is the mandate of the National Land Commission to investigate issues of historical land injustices and to recommend appropriate redress.

39. An issue for our consideration is what is the legal effect of the promise made by the late President Kenyatta to the appellants noting that a visit by the then Minister for Lands & Settlement thereafter ensued and subsequently excision of forest land was made. Is there any principle of law that can give legal effect to the promise and excision of forest that ensued? The 1st, 2nd and 3rd respondents are part of the government; are they bound by the promise and ensuing excision to allocate land to the appellants or provide them with an alternative land in size and quality? Is the doctrine of estoppel applicable against the 1st, 2nd and 3rd respondent's to the effect that they cannot refuse or renege from the promise by the late President to allot land to the

appellants? Can the concept of legitimate expectation be used to confer an interest in land? Can mandamus issue to enforce legitimate expectations? Neither the appellants nor the respondents addressed the High Court or this Court on these issues and we offer no determination on the same. The appellant asked for an alternative remedy namely a claim to be compensated with land of equivalent size and quality. In the case of R – v- Lancashire County Council Ex p Gayer (1980) 1 WLR 1024 it was stated that courts should be acutely conscious that they do not usurp the role of the administrator by assuming the task of deciding how resources are to be allocated as between competing claims. We adopt the above dicta in R –v- Lancashire County Council Ex p Gayer (supra) and observe that it is not the duty of the courts to allocate land and decide how national resources are to be allocated between competing claims. The appellants by seeking an order for mandamus are in fact asserting a claim to ownership or interest in the suit property. The judicial remedy of mandamus was neither created nor established to settle ownership disputes nor to create nor confer title to land.

40. The final issue for our consideration is the case of The Commissioner of Lands – v- Kunste Hotel Limited (Nai Civil Appeal No. 234 of 1995). The pertinent facts of this case are that in 1976, upon application by one Stephen Kungu Kagiri, a majority shareholder in Kunste Hotel Ltd., the Hotel was allotted an unsurveyed plot of land known as Nakuru Municipality Plot No. 451, which plot was later renumbered as

would be a road reserve. This Court in confirming an Order for Certiorari quashing the decision of the appellant to allot the plot to the interested party held that the Commissioner of Lands was under duty to give a hearing to Kunste Hotel.

41. We have considered the facts and reasoning in The Commissioner of Lands – v- Kunste Hotel Limited (supra). It is our considered view that the present appeal is distinguishable from the Kunste Hotel case. First, Kunste Hotel had sought an order for certiorari and not mandamus. Second, the issue in the Kunste Hotel case related to a right to be heard and not whether Kunste Hotel had a proprietary interest in the disputed plot; third, there was no issue of limitation or inordinate delay. In the present appeal, the order sought is for mandamus, there is no letter of allotment in favour of the appellants and the appellants are claiming a proprietary interest in the suit property and not a right to be heard; then there is the issue of inordinate delay.

42. The overall re-evaluation of the facts of this case leads us to examine the extent to which mandamus can issue against a public officer. Lord Goddard C.J in R – v- Dunsheath, ex parte Meredith (1950) 2 All ER 741, 743 stated that mandamus is neither a writ of course nor a writ of right. In Re Bristol and North Somerset Railway Co. (1877) 3 QBD 10, 13, the court refused to enforce by mandamus an order imposed on a virtually defunct company, a duty that was impossible for the company to discharge. Besides in the instant case, the 2010 Constitution in Chapter 5 has come into force with new values and provisions relating to land. *Article 61* classifies all land

in Kenya into public, private or community land. *Article 76* establishes the National Land Commission with distinct functions. The 1st to 3rd respondents no longer have the discretion to allocate land to individuals under the new Constitution and this Court should consider whether an order for mandamus is an appropriate remedy in this present case in view of the new constitutional dispensation. It is trite law that if circumstances have rendered performance of something impossible, mandamus will not issue.

43. In the case of *Republic – v- Director-General of East African Railways Corporation Ex Parte Kaggwa*, 1977 KLR 194, it was correctly stated that an order for mandamus did not lie as a matter of course against a public officer and the court's discretion would be exercised before such an order can issue and if the exercise of discretion to grant mandamus would constitute judicial interference with the executive arm of government, the same cannot issue. It is our considered view that in the present case, an order for mandamus if granted would be contrary to the spirit of Chapter Five of the *Constitution* relating to management of land as a resource in this country and will also interfere with the executive arm of government in resource allocation. In the case of *Shah – v- Attorney General (NO. 3) (1970) E.A 543, 549*, it was stated:

“Mandamus does not lie against a public officer as a matter of course. The courts are reluctant to direct a writ of mandamus against executive officers of a government unless some specific act or thing which the law requires to be done has been omitted. Courts will proceed with extreme caution for the granting of the writ which would result in interference by the judicial department

with the management of the executive department of government.”

44. From the analysis conducted here above, we are of the considered view that for reasons entirely different from the Honourable Judge, the Judge did not err in refusing to grant the order of mandamus. The totality of our re-evaluation of the evidence on record and application of law to the facts of the case while taking into account submissions by all learned counsel leads us to the conclusion that this appeal has no merit and is hereby dismissed with costs. For avoidance of doubt, we hereby state that this Judgment in Appeal applies to the two consolidated Miscellaneous Civil Applications being Meru HCC Misc. App. No 71 of 2003 and Meru HCC Misc. App. No. 218 of 2004.

Dated and delivered at Nyeri this 22nd day of January, 2014

MARTHA KOOME

.....
JUDGE OF APPEAL

P. MWILU

.....
JUDGE OF APPEAL

J. OTIENO-ODEK

.....
JUDGE OF APPEAL

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



DEPUTY REGISTRAR

KA/JNA/2503'B'/2008

TBA

19/7/2018

MUTUMA ANGAINE,
JOHN MUGAMBI ANGAINE,
JENNIFER KAMWITU ANGAINE,
ELIZABETH KALIUNTU ANGAINE,
P O BOX 76,
TIMAU.

THE CLERK,
THE NATIONAL ASSEMBLY OF KENYA,
TWELFTH PARLIAMENT,
PARLIAMENT BUILDING,
P O BOX 41842-00100,
NAIROBI.

Dear Sirs,

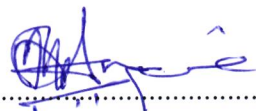
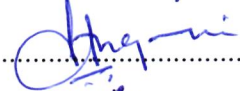
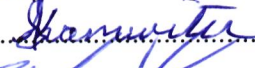

RE: CONVEYANCE OF A PETITION REGARDING EXCISION OF THE MT. KENYA FOREST
PURSUANT TO LEGAL NOTICES NO. 68/75 AND 107/1977 MEASURING 384 HECTARES
FOR SETTLEMENT OF SQUATTERS

We,

1. MUTUMA ANGAINE.
2. JOHN MUGAMBI ANGAINE
3. JENNIFER KAMWITU ANGAINE
4. ELIZABETH KALIUNTU ANGAINE do hereby authorize MUTUMA ANGAINE and JOHN MUGAMBI ANGAINE to sign on behalf the responses and affidavits on our behalf and respond to the petition By ONTULILI BLOCK MT KENYA FOREST SQUATTERS dated 25th January, 2018.

Signed by:

1. MUTUMA ANGAINE
2. JOHN MUGAMBI ANGAINE
3. JENNIFER KAMWITU ANGAINE
4. ELIZABETH KALIUNTU ANGAINE


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