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By the chairperson of
the Departmental
Committee on Education,
Research & Technology
Approved
on Wednesday 15/06/11

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REPUBLIC OF KENYA

KENYA NATIONAL ASSEMBLY



TENTH PARLIAMENT – FOURTH SESSION, 2011

REPORT OF
THE DEPARTMENTAL COMMITTEE

ON

EDUCATION, RESEARCH AND TECHNOLOGY

ON

THE PETITION ON THE OWNERSHIP STATUS OF THE AGA KHAN PRIMARY
SCHOOL, NAIROBI

JUNE 2011

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PREFACE

Mr. Speaker, Sir,

On Thursday 24th March, 2011 the Hon. Jeremiah Kioni M.P tabled a petition signed by 442 parents of the Aga Khan Primary School in Nairobi seeking affirmation on the ownership and management of Aga Khan primary school, Nairobi as a public school.

The petition cited that Aga Khan Primary School is a public school located in Parklands on LR No.2093576, Title No.8620 and that the land was granted by the Commissioner of Lands in 1951 to the Right Honourable Sir Sultan Muhamed Shah to hold in trust for three years for the community for education purposes and public use only. In 1979, the lease was extended for 96 years.

That Aga Khan Primary School was established in 1954 at a cost of Kshs.32, 000 which was a grant from the City Council. Since then, the Government has been responsible for the posting and payment of teachers, subordinate staff and provision of all other learning materials.

In a letter dated 14th January, 2011, the Town Clerk directed the head teacher to hand over the Aga Khan Primary School to Aga Khan Education Services (AKES). The petitioners considered this illegal and hence the basis of the petition in the House.

The petitioners explained that, Aga Khan Education Services has consistently interfered with the day-to-day running of the school by posing as the sole owners and managers of the school. This has severely affected the administration and the management of the school. The parents have sought redress on the matter from Ministry of Education, the City Council and the High Court of Kenya since 2002 on the matter in vain.

Mr. Speaker Sir,

The petitioners' prayer is;

- (i) THAT Within twenty (21) calendar days of the Petition, the Government, through the Minister for Education, affirms that Aga Khan Primary School is a public primary school under the City Council.**
- (ii) THAT The Government through the Minister for Lands affirms that the land on which the school is built was and still is public land held in trust by the Aga Khan, as is clear in its original title No. 8620 indicated in the title and the special conditions for its grant.**
- (iii) THAT the Government, through the Minister for Education and the Minister for Lands, takes immediate and urgent action to protect and safeguard Aga Khan Primary school, its land and its assets and protect and support the Parents Teachers Association, the School Management Committee, the teachers and pupils of the school from undue interference from the Aga Khan Education Services.**
- (iv) THAT the Government, through the Minister for Education and the Minister for Lands, directs Aga Khan Education Service to play its role as a sponsor and refrain from interfering with the day-to-day management of the administration of the school.**
- (v) THAT the Government, through the Minister for Education, restrains the Town Clerk from handing over the school for private use as the school is a public institution.**

Following the tabling of the petition and in line with the Standing Order No. 210 (1), the temporary Deputy Speaker gave the following direction;

“The Chair directs that the Petition be committed to the Departmental Committee on Education, Research and Technology which shall respond to the petitioners within 21 days.”

Subsequent to this ruling, the Departmental Committee on Education, Research and Technology, during its sitting on 11th May 2011 resolved to meet with;

- (i) The School Management Committee, Aga Khan Primary School;
- (ii) The Parents Teachers Association (PTA), Aga Khan Primary School;
- (iii) The Town Clerk of Nairobi City Council;
- (iv) Aga Khan Education Services (AKES); and
- (v) The Minister for Education

Mr. Speaker Sir,

The Committee then sent invitations to the Stakeholders to hold hearings on the matter. However, in response to the Committee’s invitation to appear before it, AKES wrote to the Committee claiming that if the Committee continued with the hearings, it would amount to *subjudice* as the matter had not been concluded in court.

The Committee sought the opinion of the Parliamentary legal department and was advised to proceed with the hearings as it was not *subjudice*.

Due to the foregoing, the twenty one (21) days given to the Committee for consideration of the petition lapsed before the Committee could commence its proceedings. On 18th May 2011, the Committee sought an extension of time to enable it finalize its report for tabling in the House.

The Speaker granted the Committee an extension up to 14th June, 2011.

The Committee comprises the following Members:

The Hon. David K. Koech, MP	-	Chairperson
The Hon. Francis Thombe Nyammo, MP	-	Vice-Chairperson
The Hon. B.C. Muturi Mwangi, MP	-	Member
The Hon. David Mwaura Kiburi, MP	-	Member
The Hon. Dr. Joyce Laboso, MP	-	Member
The Hon. Mohamed Sirat, MP	-	Member
The Hon. Dr. Wilber Ottichilo Khasilwa, MP	-	Member
The Hon. D.M. Mwakulegwa, MP	-	Member
The Hon. Alfred Odhiambo, MP	-	Member
The Hon. Dache John Pesa, MP	-	Member
The Hon. Shakilla Abdalla, MP	-	Member

The Committee held a total of nine sittings and received oral and written memoranda from the **Parents of Aga Khan Primary School, Town Clerk, Aga Khan Education Services and the Minister for Education.**

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support and services extended to the Members to enable the Committee execute its work.

As Chairperson, I must thank Members of the Committee for their patience, sacrifice, endurance and hard work despite their other commitments and tight schedules in their endeavor to deliberate on this petition.

I must further thank the staff of the National Assembly for their steadfast support, and without whose dedication, the work of the Committee would have been impossible.

Mr. Speaker, Sir,

On behalf of the Departmental Committee, I now have the honour and pleasure to present its Report and Recommendations to the House.

Thank You,



Signed

CHAIRPERSON

(HON. DAVID KOECH, MP)

Date: 14/06/2011

LIST OF ACRONYMS

AGM	Annual General Meeting
AKES	Aga Khan Education Services
AKF	Aga Khan Foundation
FPE	Free Primary Education
FSE	Free Secondary Education
PTA	Parents Teachers Association
SMC	School Management Committee

EXECUTIVE SUMMARY

1. The Departmental Committee on Education, Research and Technology is one of the twelve (12) Departmental Committees; which is established and operates in accordance with the Standing Order No. 198 (3) which states *inter alia*:-
 - (i) ***to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;***
 - (ii) ***to study the programme and policy objectives of the Ministries and departments and the effectiveness for the implementation;***
 - (iii) ***to study and review all legislation referred to it;***
 - (iv) ***to study, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with its stated objectives;***
 - (v) ***to 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; and***
 - (vi) ***to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.***
2. On Thursday, 24 March 2011, the Temporary Deputy Speaker directed that a petition by the parents of Aga Khan Primary School, Nairobi be committed to the Committee. Subsequently, the Committee commenced its work and held a total of nine (9) sittings with the parents from Aga Khan Primary School Nairobi, Town Clerk, Aga Khan Education Services and Minister for Education.
3. The major highlights of the conclusions made by the Committee include that the AG failed the Ministry by failing to represent them in court, the Minister has failed to take a clear policy position on the dispute and has not taken the necessary

steps to appeal against the court's ruling, the school continued to receive FPE funds and the school has 36 TSC teachers and the City Council was not taking it's oversight role over the schools under it's jurisdiction seriously.

4. The summary of major recommendations based on the findings include that since the law should be upheld the Minister should take appropriate action to ensure the school runs smoothly, the AG as the Governments chief legal advisor should take up his responsibility of representing the Ministry in legal matters and the City Council should take up their oversight role on the schools under their jurisdiction seriously as provided for under the Education Act.
5. The Committee's recommendations are as presented in Chapter Four.

CHAPTER ONE

1.0 INTRODUCTION

1. Before independence, there were three categories of schools namely, the European schools exclusively for the white population, the Asian schools for the Asian population and Africa Schools for the Africans. The government allocated land and issued titles to various community groups on the understanding that such land would be used for educational purposes only. The construction of the physical facilities would be the joint efforts of the government and the concerned community. As a result, a number of community schools were started in the city of Nairobi, Mombasa and Kisumu. The community organizations were to be registered as owners of the land and as trustees for the community intended to benefit from such allocation.
2. The provision of teachers, support staff, teaching and learning materials was the sole responsibility of the government through the local councils. The community however was to play the role of sponsors and was allowed to levy fees to be used for the day to day running of the school under the supervision of the Ministry of Education and Local Authorities. The schools therefore operated as public institutions.
3. At independence, the schools continued to operate within the same framework and received government support. However, they had to open up to all Kenyan children regardless of their race. In terms of ownership, the trusteeship remained under special grant conditions which were spelt out in the titles.
4. The "*Asian community schools*" are managed through the Asian Education Management boards in conjunction with the Parents Teachers Association (PTA) and are under the supervision of the City Council of Nairobi as public institutions. They are located on parcels of land owned by the *Asian community*. The *Asian Community schools* in Nairobi include:-

(i) Visa Oshwal Primary School

- (ii) Bohra Road Primary School
- (iii) Khalsa Racecourse Primary School
- (iv) Khalsa South Primary School
- (v) Arya Primary School
- (vi) C.G.H.U Primary School
- (vii) Muslim Girls Primary School
- (viii) Islamia Primary School
- (ix) Aga Khan Primary School
- (x) S.S.D Primary School

5. The clamour to privatize these schools began in the late 1990s when a board of one school (Visa Oshwal Primary School Board) applied for conversion of the school from a public community school to a private school. Their request was temporarily granted but was cancelled by the then Minister for Education. The parents went to court to block it in 2000. Several other cases are pending in court such as the Khalsa Racecourse, Muslim Girls and Aga Khan Nairobi Primary schools.
6. The Aga Khan Primary School Nairobi is one of the Asian Community schools situated on plot LR No. 209/3516 and registered under His Highness the Rt. Hon. Sir, Sultan Mohamed Shah the Aga Khan. The school is managed by H.H. Aga Khan Provincial Education Board. The move to privatize the school has been the subject of a long standing dispute between the Aga Khan Education Services of Kenya (AESK) and the parents of Aga Khan Primary School Nairobi.
7. The dispute dates back to December 2001 when the then Minister for Education gave instructions for de-aiding of the school and handing over of the management to AKES. The PTA however opposed this directive and took the matter to court. Two suits have been filed in respect of the ownership/ and or management of the school.

The first one in 2002 was a judicial review motion to quash the decision by the then Minister for Education to de-aid the school but it was dismissed by the judge. In a judgment delivered on 11th July 2008, the judge ruled that;

- (i) Ownership is a matter of land law and that based on the facts AKF owns the land, buildings and fixtures.
- (ii) Aga Khan Primary School does not fall within the category of public schools as defined by the Education Act.
- (iii) Assignment of teachers to an un-aided school does not make it a public school.
- (iv) The Minister has powers under the Education Act to deny teachers to any un-aided school. **(See Appendix ii)**

8. On 22nd September, 2008 the applicants in the judicial review (parents) filed an application for several reliefs directed to the AKES. The judge also dismissed this and allowed the injunction that had been filed by the AKES. On 14th January, 2011 the Town Clerk of the Nairobi City Council wrote to the Headmaster of Aga Khan Primary School directing him to hand over the management of the school to AKES but the headmaster delayed in doing so and was arrested for contempt of court for failing to adhere to the injunctions and therefore committed to civil jail. The Chairman of the PTA was also cited for contempt of court but the parents association appealed against the ruling and the appeal is scheduled for hearing on 15th June, 2011.
9. Aga Khan Primary School, Nairobi has been receiving FPE funds since 2003 and has received a total of Ksh.5, 000, 614 to date. The parents operate their own account while the AKES also operates an account making it difficult to account for funds received, a situation worsened by having a bursar employed by AKES who can only manage the account of the employer.
10. The main issue of contention is that the parents are opposed to the move to privatize the school under the management of the AKES and they are seeking to have the school declared a public school since the parents and the Government have contributed a lot of resources to the development of the school.

CHAPTER TWO

THE PROCEEDINGS WITH THE STAKEHOLDERS

2.0 INTRODUCTION

11. The Committee met with various stakeholders including the Parents Teachers Association (PTA), The Town Clerk, The Aga Khan Education services and the Minister for Education. A synopsis of the deliberations that ensued at the sittings are presented here below.

2.1 MEETING WITH THE PARENTS TEACHERS ASSOCIATION (PTA)

12. On 19th May, 2011 the Committee held a meeting with the PTA of Aga Khan Primary school who are against handing over the school to the Aga Khan Education Services (AKES). The PTA representatives gave the following submission and tabled supporting documents;

- (i) In 1954, the Government granted land to Sultan Hussein Shah for Education purposes to hold in trust for three (3) years. The grant was extended after expiry of the trust on special conditions that the land should not be transferred, leased out, sold or mortgaged without consent from the Commissioner of Lands. In case of violation of these conditions, the land would be reverted back to the Government.
- (ii) The land has two title deeds, one for the land on which the school is built and the other for the land on which the principal's house is located. The PTA are in possession of the title deed where the school was built but have not been able to access the second title relating to the land on which the Principal's house is located. They explained that the search at the Lands office was not possible as the land reference number is not known. The PTA alleged that there had been encroachment on the second land.
- (iii) The initial budget for the construction of the school in 1954 was Kshs.32, 000 of which the Government gave Khsh.16, 000/=. According to the PTA, the

Government continued providing funds to the school for construction of classrooms, lavatories and administration block and that by 1960 the Government had given a total of Kshs.700, 000/=. Funding and resources on behalf of the Aga Khan came from the community that lived around parklands area. Other infrastructure such as the swimming pool, gallery and 8-4-4 block had all been put up by the parents.

- (iv) The parents continued to explain that in 1978, the land was transferred to the Aga Khan Education Services (AKES) by the Commissioner of lands thus the "*Asian Community*" assumed ownership of the school. The PTA alleged that the transfer of land was un-procedurally done though it was through the Commissioner of lands.
- (v) Out of the overall enrollment of 980 pupils in the school, 21 are Hindu and 25 from the Ismaili community. The school has a total of thirty six (36) teachers employed by the TSC, eight (8) teachers employed by the sponsor-Aga Khan Education Services (AKES) and one teacher employed by the School Management Committee (SMC). The salary of the teachers is catered for by their respective employers. The bursar is employed by the AKES and is therefore answerable to the AKES. According to the PTA, the Deputy head teacher is not aware of the salary of the bursar and the staff employed by AKES since they do not report to the head teacher which makes it difficult for her to supervise them.
- (vi) The PTA continued to explain that in an Annual General Meeting (AGM), the parents introduced payment of child support fund, which was to cater for payment of workers employed by the parents. They also agreed that a representative of the parents and the head teacher be signatories to the school's accounts. This however was not agreeable to the sponsor, the AKES, thus causing a major rift with the Management.
- (vii) The Bursar collects funds from the parents and decides whether to deposit in the PTA or sponsor's Account. At the AGM, parents were informed to be paying into the PTA's Account and bring the deposit slip to the bursar. This is

however yet to be fully realized as some parents still pay to the bursar in cash making it difficult to ascertain the exact amount the parents have paid. The bursar on the other hand can only deposit the funds into the account but he cannot access the funds. The PTA could not make any further communication to the parents on mode of fee payment as they feared if they did so they would be cited for contempt as that was one of the reasons that the former head teacher had been jailed for contempt of court.

- (viii) Most of the parents of the *Asian community* prefer to pay their fees to the AKES account. In 2007, the parents opened an account as they felt that they needed their own account. Due to the confusion in terms of funds and accounts, the school had requested the Nairobi City Council to give them an accounting officer. This was done but the officer was withdrawn when the Court in 2010 directed that parents should pay their funds to the AKES. The PTA has however appealed against the ruling.
- (ix) The Parents representatives informed the Committee that the school benefits from FPE funds. The first batch of Ksh two (2) million FPE funds was channeled to the account operated by AKES but a 2007 assessment by the Ministry of Education, showed that the amount had been returned back to the Ministry. The FPE funds are currently being channeled via the PTA's account. The account has currently over Ksh.1, 000,000. However, no development has been done using the funds since 2007 as any attempt to utilize the money is taken as contempt of court as the signatories are not allowed to undertake any transactions. City Hall does not give funds to the school but only provides services such as auditing, administration and some support staff.
- (x) The school instructional material committee ratifies suppliers and the approved suppliers then provide services but agree to be paid at a later date as they have a cordial relationship with the school. The school however desperately needs to fully run and to purchase supplies urgently, and they were hopeful that after the meeting with the Permanent Secretary Ministry of Education, scheduled for 31st

May 2011, a solution to the problem will be found.

- (xi) The former head teacher gave his account of the situation and informed the Committee that he received the letter from the Director of City Education directing him to hand over the school to AKES about two weeks after it had been verbally communicated to him and that is why he had delayed in following the instructions. He recounted that he had been summoned to the Director City Education's office on the 21st of January 2011 and was accompanied by the Chairman of the PTA. The said letter of handing over was read and shown to them but they were not given a copy of it, which appeared strange to the head teacher. Present at the meeting were: Madam Tabitha Kamau, who was then the acting Director City Education, Councillor Bukachi in charge of Education at the Nairobi City Council and a Mr. Kisiang'a, a representative of the TSC.
- (xii) After the letter was withdrawn, the acting Director City Education instructed the Head teacher to await further instructions but the head teacher only received the letter after the Director had left office, which was about two weeks later. Before long, the head teacher was arrested for contempt of court and jailed for four months. After his release, he was posted as a head teacher to Kahawa Garrison Primary School.
- (xiii) The acting head teacher informed the Committee that the issues revolving around the school had not affected the school's performance but it was difficult for her to supervise staffers employed by AKES and also to monitor fund usage in the school. The PTA stated that the Ministry had refused to represent them in court and that the Ministry of Education should provide a clear position as to whether the school was public or private. They also requested that the ministry should implement their policies in the correct manner.

2.2 MEETING WITH THE AGA KHAN EDUCATION SERVICE AND AGA KHAN FOUNDATION

13. On 25th May, 2011 the Committee held a meeting with the Aga Khan Education Services and the Aga Khan Foundation. They gave the following submissions and

tabled supporting documents;

- (i) The Chairman AKES, commenced by informing the Committee that the Aga Khan Primary School, Nairobi was established on land granted to His Highness the Aga Khan for purposes of building a school by funds donated by him. The Government of Kenya also made contributions towards building of the School. In 1961, the Nairobi City Council issued a registration Certificate to the School, showing that the management of the School belonged to AKES. The Government however decided to aid the school by providing teachers but the management of the School remained with AKES while enrollment of teachers was on the basis of merit and not on racial grounds.
- (ii) The Committee heard that the PTA did not have any managerial role but there was a cordial relationship with the AKES who had appointed a Board of Directors charged with the responsibility of managing the School. The School's head teacher was paid by both Teachers Service Commission (TSC) and AKES. AKES catered for housing, utilities, security and gave a top up of Kshs.25,000/= over and above the salary paid by the TSC to the Head teacher. In addition, AKES paid for the additional teachers where the TSC could not provide, such as the swim teacher, Information Technology (IT) teacher, administrative support staff and security for the school through funds collected from the fees.
- (iii) In 2001, the Government wrote to AKES stating that it wished to withdraw from aiding the School and as such AKES should engage with TSC on how to handle the exit of their teachers (**see Appendix iii**). This, in his opinion, was the beginning of the long standing dispute as the PTA did not want the school to be fully owned by AKES. The PTA on its own accord exerted its influence which AKES felt was not right and instituted a case in Court with the Minister for Education as the respondent and AKES joined in the suit as an interested party. However, as AKES awaited due process, the parents association influenced parents to open an account to deposit fees which it does not account to AKES. The school has a bursar whose salary is paid by the AKES but he does not

manage the parents' account which is managed by self appointed parents. The Chairman AKES, questioned the legality of the PTA collecting funds and added that the situation is currently complicated in that it is not even clear who is currently running the school.

- (iv) The Chairman AKES, informed the Committee that AKES does not receive any fees from the parents but supports the school to the tune of Ksh. 8 to 10 Million annually courtesy of His Highness the Aga Khan. The amount is used to pay for utilities, AKES teachers' salaries, security and support services. AKES further does maintenance of the school though to a very limited extent. The chair added that it was not within their knowledge whether the parents association does any maintenance or not.
- (v) The Regional CEO of the Aga Khan Foundation (AKF) while shedding more light on the issue informed the Committee that the AKF supports 800 public Schools and over 200 pre- schools, in Kenya, Uganda and Tanzania and has over 20 years experience in school management. He stated that all other Aga Khan Schools within the country were run by AKES as private Schools and were charging reasonable fees in comparison to other private Schools such as the Kshs. 12,500 fees per term being charged at the Aga Khan Primary School Mombasa. The teachers provide extra tuition to the pupils at no extra cost and the exercise and text books are included in the fees. He informed the Committee that the performance of the school is remarkable.
- (vi) The Committee heard that there is no racial discrimination in Aga Khan schools as only 5% of the entire student population in the schools were Ismaili Muslims, while nine of the eleven Schools in the country have fully Kenyan Staff with the total number of expatriate staff amounting to only 5%.
- (vii) He added that the Aga Khan Foundation (AKF) is the owner of the school property and thus maintains the structures while AKES have only been authorized to manage the school. He concluded by saying that the Foundation is a respected partner and has often hosted the donor round table and that the

interest of the child is the Foundation's passion. He finally appealed to the Committee to uphold the rule of law.

(viii) The AKES Counsel outlined the pending court matters as follows:

- Notice of Appeal on Miscellaneous Civil Application No. 13 of 2002, being an appeal by the Parents Association.
- ELC Civil Case No. 455 Of 2008, filed by the Parents Association against the Aga Khan Foundation and AKES, claiming among other things, the trust concept. This was filed after the loss of Miscellaneous Civil Application No. 13 of 2002, where the Minister for Education had been sued for directing the management of the School to AKES.
- Suit against the Chairman of the Parents Association for contempt, which has been appealed and is set for hearing on the 15th of June 2011.

14. In conclusion, the AKES made an appeal that;

- (i) The Judiciary concludes all pending matters and especially those relating to the Trust land;
- (ii) The Committee as a watchdog of public funds investigates the usage of funds collected by the Parents Association;
- (iii) The Ministry, which has a supervisory role over all the Schools in the country, looks into the running of the Aga Khan Primary Nairobi and especially the composition of the Parents Association and who they are accountable to in the expenditure of funds collected.

2.3 MEETING WITH THE TOWN CLERK, NAIROBI CITY COUNCIL

15. On 26th May, 2011 the Committee held a meeting with the Deputy Town Clerk accompanied by the Director, Legal Services. They gave the following submission and tabled supporting documents;

- (i) The Director Legal Services informed the Committee that between 1953 and 1961, the Aga Khan Primary School was constructed, with a total cost of Kshs.631,500, being a grant from the Government of Kenya. On 19th April, 1978 the Aga Khan Foundation, who were the owners of the land on which the school was built leased the property to AKES and to run the school. On 25th March 2009, the Parents passed a resolution to run the school. The Aga Khan institutions in Mombasa and Kisumu are private and managed by the AKES.
- (ii) The Committee heard that the school currently has 36 teachers employed by the TSC, ten (10) teachers employed by the AKES, four (4) support staff employed by AKES, one (1) teacher employed by the parents, one (1) support staff employed by the parents and two (2) support staff employed by the Nairobi City Council, though one of the City Council employees passed on and has not been replaced. The School has an enrollment of 980 pupils with 453 girls and 527 boys.
- (iii) Due to the pending court matters and actions of the former head teacher of Aga Khan Primary School, he was found to be in contempt of Court and committed to civil jail. On 4th March 2011, Mrs. Mary Njung'e was appointed as acting Head teacher so that operations of the school could continue smoothly. However on 14th April 2011, a letter revoked the appointment, to save the said Mary Njunge from suffering the same fate as her predecessor.
- (iv) The Deputy Town Clerk informed the Committee that the City Council had been experiencing internal problems as regards the running of the City Education Department including poor coordination and a high staff turnover. While giving his own personal opinion, the Deputy Town Clerk stated that AKES should continue running the School as per the court orders having knowledge of how AKES runs the Aga Khan School in Kisumu.
- (v) The acting Director of Education informed the Committee that the election of the School Management Committee had not taken place in 2011 because of the court ruling. The School however had three accounts which are the General Purpose Account (GPA), Simba Account and Parents Teachers Association (PTA) Account

which have not been audited. When the School was de-aided, it was supported by the Ministry of Education and the Nairobi City Council did not play any role.

2.4 MEETING WITH THE MINISTER FOR EDUCATION

16. On 9th June, 2011 the Committee invited the Minister for education to give the Ministry's position on the issue.

- (i) The Minister commenced by giving a historical perspective of the community assisted schools. He stated that the Government allocated land and issued titles to various community groupings on the understanding that such land would be used for educational purposes only and the construction of the physical facilities would be the joint efforts of the Government and the concerned community organizations.
- (ii) The community organizations were to be registered as owners of the land but hold the same as trustees. The provision of teachers, support staff, teaching and learning materials and other necessities to facilitate education was the sole responsibility of the Government through the local councils. The schools operated as public institutions but the communities acted as sponsors.
- (iii) At independence, nothing much changed. It was only that the Schools were to stop discrimination of enrollment on grounds of race or colour. The schools were now recognized as *community assisted schools*. The Minister cited the definitions of the public school, aided school, unaided school, assisted school and maintained school as cited in the Education Act, Cap 211 as follows:-
 - A '**public school**' is "a school maintained or assisted out of public funds" and public funds means "the public funds of the government or the public funds of a local authority".
 - An '**aided school**' is a school which receives public funds from the local authority or Government.

- An '**un-aided school**' is a school which does not receive any grants out of public funds.
- An '**assisted school**' means a school other than a maintained school which receives financial assistance from the Ministry or assistance from the TSC established by the TSC Act.
- A '**maintained school**' is a school in respect of which the Ministry or a local authority accepts general financial responsibility for maintenance.

(iv.) He stated that private schools were not defined in the Act and the only two categories recognized under the first schedule of the Education Act Cap 211 were public schools and sponsored schools.

(v.) The Minister then stated that according to the definitions in the Education Act:-

- An assisted school is a public school
- A maintained school is a public school
- An un-aided school is a private school

(vi.) Part IV of the Education Act, Sections 13 to 17 enumerates the process of registration. When the Aga Khan Primary School started, they ran the GCSE Programme, which was contrary to the purpose of its registration. The then Minister for Education wrote a letter to the effect that the School risked deregistration.

(vii.) With regard to the Aga Khan school Nairobi, the Minister informed the Committee that the land where Aga Khan Primary Nairobi is built was given to His Highness the Right Honorable Sultan Mohamed Shah P.C, G.CV.C. the Aga Khan on 1st April, 1951 for three (3) years in trust for the people of Kenya. There were special conditions for granting the land and they included that the land be used for

educational purposes only and it was not transferable without consent of the governor (the President). The teachers and support staff were the sole responsibility of the Government through the local council.

- (viii.) On 9th October 2001, the then Education Permanent Secretary, Prof. J.C. Kiptoon , informed the AKES that all Aga Khan Schools had been de-aided. This according to the Minister was a wrong move and this is why the TSC continued providing teachers to the School. The de-aiding process was however never concluded and this led the parents to file a suit in Court. The Court ruled in favour of AKES. The Minister was however of the opinion that, if the legal premise had been followed properly, i.e if the Attorney General would have entered appearance on behalf of the Ministry of Education and if the Nairobi City Council would have been enjoined in the Suit or served to appear in court, the ruling may have been different. The Minister explained that he has no mandate to go to court other than through the Attorney General's office.
- (ix.) The Minister claimed that the courts were being used to intimidate him but he was on the parents' side. The Ministry has however tried to solve the impending disputes through dialogue by holding meetings with AKES and the parents and chaired by the Ministry's Permanent Secretary. The two groups are still consulting in order to come up with an amicable solution as the Minister felt that there was need to strengthen the partnership that existed with the sponsors. He informed the Committee that a team had been formed to consider the matter and come up with a way forward.
- (x.) The Minister stated that he was not aware how much fees is charged by the Aga Khan but he would find out and inform the Committee. He however informed the Committee that the fear of the parents was the anticipation of an increment in fees if the school was privatized therefore implying that most children would miss out on their right to education. The Minister stated that the school had received Ksh.3,565,420 for the Simba Account and Ksh.1,435,194 for the General

Purpose Account as FPE funds since 2003.

17. The Minister informed the Committee that the Mitigation Counsel in the AGs chambers, advised him the Education Act does not concern itself much with who owns the land on which the institution stands but rather who makes it function as a school. If it is the state regardless of who owns the land, it makes it a public school.
18. The counsel further advised him to give directions as to the ownership, management and control of the school (**see Appendix iv**).
19. The Minister stated that he;-
 - (i) will order an immediate stop to FPE funding to Aga Khan as he doesn't see the justification for the capitation.
 - (ii) Will ensure the Director of Legal Services in the Ministry for Education and the AG are enjoined in the case by the PTA. The Ministry will appeal against the ruling to privatize Aga Khan Primary School.
 - (iii) Will ensure that a quality inspection of the school is carried out to determine if it is operating normally despite the lack of a substantive head teacher.

CHAPTER THREE

3.0 OBSERVATIONS OF THE COMMITTEE

The Committee made the following observations:-

- (i) The Committee noted with concern that the ruling by the courts that the management of the school be handed over to Aga Khan Education Services was not being upheld.
- (ii) It is not clear who is managing the school at the moment as there is no School Management Committee (SMC) as per the Education Act, Cap 211. Both the parents and AKES had separate accounts and were collecting school fees. Further, the school was receiving FPE funds.
- (iii) There are pending cases in court regarding the dispute over the management and ownership of the school.
- (iv) The Attorney General failed in his role as the chief Government advisor in representing the Ministry during the Court cases.
- (v) The Minister has not given a clear policy direction on the matter including taking the necessary steps to appeal against the ruling of the court despite the Ministry's position that Aga Khan Primary School is a public school.
- (vi) Apart from other grants from the Government, Aga Khan Primary School, Nairobi has continued to receive FPE funds since 2003 to date despite the courts' ruling granting management to AKES. The school has to date received a total of Ksh. 5,000,614 that is Ksh.3,565,420 for the Simba Account and Ksh. 1,435, 194 for the General Purpose Account as FPE funds.
- (vii) The parents of Aga Khan Primary School, Nairobi operate an account while the AKES also operates a separate account and the school bursar is employed by AKES to manage the account of AKES only. The Committee noted with concern that

no audit of the school accounts had been done to ensure accountability for tax payers money.

- (viii) Aga Khan Primary school, Nairobi has thirty six (36) TSC teachers but has continued to operate without a head teacher. The Committee notes that lack of a head teacher will negatively affect the smooth running and performance of the school.
- (ix) The Directorate of City Education is not conversant with the on-going issues in the school despite its key role in supervising such schools. The Committee noted with concern that the Directorate's oversight role was poorly being implemented.
- (x) The Quality Assurance and Standards Office has not carried out any quality inspection in the school since 2007 to ascertain whether operations in the school were running normally despite the on-going tussles.
- (xi) The pupils are the main victims of the dispute over ownership and management between the AKES and the parents which could negatively affect their performance.

Therefore concerning the prayer of the petitioners;

- i) THAT within twenty (21) calendar days of the Petition, the Government, through the Minister for Education, affirms that Aga Khan Primary School is a public primary school under the City Council.*
- ii) THAT The Government through the Minister for Lands affirms that the land on which the school is built was and still is public land held in trust by the Aga Khan, as is clear in its original title no 8620 indicated in the title and the special conditions for its grant.*
- iii) THAT the Government, through the Minister for Education and the Minister for Lands, takes immediate and urgent action to protect and safeguard Aga Khan Primary school, its land and its assets and protect and support the Parents Teachers Association, the School Management*

Committee, the teachers and pupils of the school from undue interference from the Aga Khan Education Service.

iv) THAT the Government, through the Minister for Education and the Minister for Lands, directs Aga Khan Education Service to play its role as a sponsor and refrain from interfering with the day-to-day management of the administration of the school.

v) THAT the Government, through the Minister for Education, restrains the Town Clerk from handing over the school for private use as the school is a public institution.

The Committee observed that;

- (i) The Government through the Minister for Education has affirmed that Aga Khan Primary School, Nairobi is a public school under the City Council of Nairobi. The Committee is however of the view that the Ministry has not taken the necessary steps to affirm the same.
- (ii) The land in which the school is built was leased to H. H. Sultan Mohamed Shah to hold in trust for education purposes, as is clear in its original title No. 8620 on land **L.R. 209/3576**. Under the special conditions of the title, the Government shall have a right to resume possession of all or any part of the land in this grant if required for development or for public purposes without paying compensation except in respect of approved buildings.
- (iii) Under the prevailing circumstances, the Minister cannot stop the Aga Khan Education Services from interference in the school management as the court's ruling is in favour of AKES managing the school. Further, a temporary injunction prevents the parents from managing the Aga Khan Primary school, Nairobi and from holding any meetings where the agenda impacts the running and management of Aga Khan Primary School, Nairobi pending the hearing and determination of the suit.

(iv) The Ministry should uphold the rule of law and take appropriate action.

CHAPTER FOUR

4.0 RECOMMENDATIONS AND CONCLUSIONS

From the submissions, the Committee made the following major recommendations:-

1. The Minister for Education and stakeholders must uphold and respect the rule of law. The Minister for Education should further do the following:
 - Take urgent and appropriate action to ensure that the school runs smoothly.
 - Order a quality inspection of the school to ascertain whether the quality of education in the school has been compromised and take the necessary remedial measures.
 - Immediately carry out an audit of the school accounts.
 - Determine whether the special conditions under the lease to the Aga Khan Foundation have been breached and take the necessary action.
 - Take a clear position and gives direction on all other "*community assisted*" schools to avoid similar disputes in future.
2. That the Attorney General as the Government's chief legal advisor takes the responsibility of representing the Ministry in legal matters. In this case, the AG failed to represent the Ministry in the suit.
3. That the Directorate of City Education at the City Council of Nairobi takes up its supervisory role of schools under it's jurisdiction as per the Education Act.

MINUTES OF THE FIFTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD ON TUESDAY, 10TH MAY 2011 IN THE SMALL DINING HALL, PARLIAMENT BUILDINGS AT 10.00 AM.

PRESENT: The following Members of the Committee were present:-

The Hon. (Dr.) Wilbur Ottichilo, M.P. - **Acting Chairperson**

The Hon. John Pesa Dache, M.P.

The Hon. B.C. Muturi Mwangi, M.P.

The Hon. Alfred B. Odhiambo, M.P.

The Hon. Danson Mwazo Mwakulegwa, M.P.

The Hon. David Njuguna, M.P.

ABSENT WITH APOLOGY

The Hon. David Koech, M.P - **Chairperson**

The Hon. F.T. Nyammo, M.P- **Vice-Chairperson**

The Hon. Shakila Abdalla, M.P.

The Hon. (DR.) Joyce Laboso, M.P.

The Hon. Muhamed Sirat, M.P.

IN ATTENDANCE - **NATIONAL ASSEMBLY**

M. J. Chesire - Clerk Assistant

MIN. NO.95/2011 - **REMARKS OF THE CHAIRMAN**

The Acting Chairperson called the meeting to order at 10.30 a.m. and opened with a word of prayer. He informed the Committee that he was holding brief for the Chairperson who was attending a sub-Committee of the Liaison Committee at Kenyatta International Conference Centre.

MIN. NO.96/2011 - **ADOPTION OF THE AGENDA**

The Committee adopted the Agenda of the sitting as follows:

- i. Apology
- ii. Confirmation of previous Minutes
- iii. Matters Arising
- iv. Consideration of Legal Opinion on the Aga Khan Primary School Petition
- v. Any Other Business
- vi. Date of Next Meeting

MIN. NO.97/2011 - **CONFIRMATION OF PREVIOUS MINUTES**

Minutes of the Fourteenth Sitting held on Thursday, 5th May 2011 were confirmed by the Members present and signed by the Chairperson after being proposed by Hon. Pesa, MP and seconded by Hon. Odhiambo, MP.

MIN. NO.98/2011 - **MATTERS ARISING**

The following matters arose:

- i) Under Min. No. 91/2011 the Committee was informed that confirmation is being awaited on the proposed visit to China. Efforts to contact the Kenya Mission in Beijing, through telephone calls and emails, have been unsuccessful. The Secretariat was asked to continue trying and advise the Committee on the way forward.
- ii) Under MIN. 92/2011 the Committee was informed plans were underway on the proposed workshop in Naivasha between 16th and 19th June 2011. A letter to SUNY to request for facilitation of the said workshop has been approved by the Clerk and was awaiting his signature before dispatch.

Members discussed on the timing of the workshop and unanimously agreed to reschedule it to 23rd to 26th June 2011. This will be after the reading of the National Budget and Members and other stakeholders attending the workshop will have scrutinized provisions in the national budget relating to the education sector.

- iii) Under MIN. 93/2011 the Hon. Ottichilo, MP informed the Committee that during the 4th Annual Science and Technology Dissemination Conference and Exhibition at the Kenyatta International Conference Centre between 3rd and 6th of May 2011, the National Council for Science and Technology (NCST) launched its first strategic Plan. NCST, also during the conference, undertook to present the TIVET Bill before the Committee in due course. The Secretariat was asked to liaise with the NCST to provide a copy of their Strategic Plan to the Committee.

The Committee considered a legal opinion given to the Committee by the Legal Department of Parliament on the petition on the ownership of the Aga Khan Primary School and in reference to a letter from Messrs Njoroge Regeru and Company Advocates dated 20th April 2011. The letter was contending that the petition should not be considered by the Committee because the matter was *sub-judice* and Parliament had no constitutional mandate to determine dispute between parties.

The legal opinion from the Legal Department stated as follows:

- i) That Standing Order 80(4) was clear that the onus of showing that a matter is *sub-judice* lies on the member alleging it. In this case Messrs Njoroge and Company Advocates should prove that.
- ii) That court documents regarding the case were more than four months old and that nothing produced by the Advocates provided any evidence that the case has never been set down for hearing this year.
- iii) That the Standing order does not envisage it to be the role of the Speaker to make inquiries at court registries to establish the status of matters before them.
- iv) That since no evidence has been produced to the Chair that there are any active criminal or civil proceedings in the High Court ELC Civil Case Number 455 of 200, Albert Ekirapa and 9 others Vs Aga Khan Foundation and Aga Khan Education Services, Kenya. Under such circumstance the Chair should direct that debate on the petition thereon is not *sub-judice* and may be proceeded with by the Committee immediately at the conclusion of that directive. The reasons behind this are

- (a) The legislative and deliberative authority of the National Assembly is derived from the people and cannot be obstructed by any person or authority
- (b) The National Assembly has a constitutional oversight role and this mandate must not be curtailed where there are no justifying circumstances.
- (c) That when the House and its committees exercise its powers, it is not at the level of the courts of law and thus cannot conclusively determine disputes and lacks the authority to overturn a decision of the High Court.
- (d) That considering that the National Assembly draws its mandate directly from the people, there may be instances when there is a pressing need for debate on the policy matters connected to an ongoing inquest.
- (e) That the Chair will retain the right to exercise discretion and waive the *sub-judice* rule where a need for public debate can be demonstrated. In such instances a clear distinction must be maintained between policy matters and the details of a case.
- (f) That this matter appears to have been concluded by the trial court and therefore, there is no likely prejudice at all as the deliberations by the Committee and the House is not an Appeal against the decision of the High Court.

After lengthy discussions, it was the opinion of the Committee that the Legal Department needs to reconsider all issues and documents relating the issue in question, before giving its considered advise on the way forward to the Committee.

In view of the above, the Committee agreed that after scrutiny of the documents the Legal Counsel to meet with Committee on **Wednesday, 11th May 2011 at 11.00 a.m.**

MIN. NO.100/2011 - ANY OTHER BUSINESS

The Committee was informed on the visit to non-formal schools in Nairobi

on Thursday, 12th May 2011 and that the Ministry of Education has been informed. As advised by the Director, City Education the schools to be visited are Palm Olive Academy, St. Cecilia Self Help Academy and Joowi School, all in Kibera, Langata Constituency. The schools have been informed of the visit and are waiting the Committee. Transport will leave Parliament at 8.30 a.m.

The Committee will visit other non-formal schools in other areas before compiling its report for presentation to the House.

MIN. NO.101/2011 - DATE OF NEXT MEETING

The Chairperson adjourned the sitting at 11.05 a.m. until Wednesday, 11th May 2011 at 11.00 a.m.

SIGNED: HON. DAVID K. KOECH, MP

DATE: 11TH MAY 2011

MINUTES OF THE SIXTEENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD ON WEDNESDAY, 11TH MAY 2011 IN THE COMMITTEE ROOM 9, PARLIAMENT BUILDINGS AT 11.00 AM.

PRESENT: The following Members of the Committee were present:-

The Hon. David Koech, M.P - **Chairperson**

The Hon. (Dr.) Wilbur Ottichilo, M.P.

The Hon. John Pesa Dache, M.P.

The Hon. B.C. Muturi Mwangi, M.P.

The Hon. Alfred B. Odhiambo, M.P.

The Hon. Shakila Abdalla, M.P.

ABSENT WITH APLOGY

The Hon. F.T. Nyammo, M.P- **Vice-Chairperson**

The Hon. (DR.) Joyce Laboso, M.P.

The Hon. Muhamed Sirat, M.P.

The Hon. Danson Mwazo Mwakulegwa, M.P.

The Hon. David Njuguna, M.P.

IN ATTENDANCE

M. J. Chesire

- NATIONAL ASSEMBLY

Clerk Assistant

MIN. NO.102/2011

- REMARKS OF THE CHAIRMAN

The Chairperson called the meeting to order at 11.30 a.m. and opened with a word of prayer. He informed the Committee that the investigation into the Petition on the Aga Khan Primary School was long overdue and that it was high time that Committee finalized and compile a report on the same. In the mean time the Chair should request for extension of time for the House since the stipulated period of 21 days had lapsed.

MIN. NO.103/2011

- ADOPTION OF THE AGENDA

The Committee adopted the Agenda of the sitting as follows:

- vii. Apology
- viii. Confirmation of previous Minutes
- ix. Matters Arising
- x. Consideration of Legal Opinion on the Aga Khan Primary School Petition

- xi. Any Other Business
- xii. Date of Next Meeting

MIN. NO.104/2011 - CONFIRMATION OF PREVIOUS MINUTES

Minutes of the Fifteenth Sitting held on Tuesday, 10th May 2011 were confirmed by the Members present and signed by the Chairperson after being proposed by Hon. Muturi, MP and seconded by Hon. Odhiambo, MP.

MIN. NO.105/2011 - MATTERS ARISING

The following matters arose:

Under Min. No. 98/2011 the Committee was informed as follows:

- iv) Under Min. No. 98/2011 (i) the Kenya Embassy in China had advised that the visit be postponed because China was preparing to host the Kenya Parliamentary Service Commission which is scheduled to visit between 22nd and 26th May 2011. The Committee therefore proposed to undertake the visit between 19th and 25th June 2011.
- v) Under Min. No. 98/2011 (ii) the Committee agreed to meet with the National Council for Science and Technology (NCST) to discuss its strategic plan on a date to be agreed later.
- vi) Under MIN. No.100/2011 the visit to non-formal schools (Palm Olive Academy, St. Cecilia Self Help Academy and Joowi School) in Kibera on 12th May 2011 had been finalized. The Chairperson requested the Members to confirm attendance to ensure that the visit takes place as planned.

**MIN. NO.106/2011 - PETITION ON THE AGA KHAN
PRIMARY SCHOOL**

The Committee considered a legal opinion given to the Committee on the petition on the ownership of the Aga Khan Primary School.

The legal opinion advised the Committee that the issue regarding the ownership of the school was not *sub-judice* because the case in the High Court on the same school had been dormant for the last four months. After all it was the onus of the claimant, and not the Committee, to prove that the case was in fact *sub-judice*. The Committee was therefore advised to

proceed with its investigation on the management and operations at the school and not the ownership.

After lengthy discussions the Committee agreed to summon the following persons:

- i) The Town Clerk on Wednesday, 18th May 2011 at 10.00a.m.
- ii) Parents/Teachers Association on Thursday, 19th May 2011 at 10.00am.m. and Aga Khan Education Services at 12.00 O'clock
- iii) Hon. Jeremiah Kioni, MP on Wednesday 25th May at 11.00a.m.
- iv) Minister for Education on Thursday, 26th May 2011 at 10.00a.m.

The Committee agreed to compile its report on the Petition on 31st May 2011.

MIN. NO.107/2011 - DATE OF NEXT MEETING

The Chairperson adjourned the sitting at 1.10 p.m. until Thursday, 12th May 2011 at 9.00 a.m.

**SIGNED: HON. DAVID K. KOECH, MP
(CHAIRPERSON)**

DATE: 18TH MAY 2011

MINUTES OF THE NINETEENTH SITTING OF THE DEPARTMENTAL
COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD
ON WEDNESDAY 18TH MAY 2011, IN ROOM 7, MAIN PARLIAMENT
BUILDINGS AT 11:00AM.

PRESENT

The Hon. David Koech, M.P. – Chairperson
The Hon. F.T.Nyammo, M.P. – Vice Chairperson
The Hon. B.C. Muturi Mwangi, MP.
The Hon. (Dr.) Wilbur Otichilo, M.P.
The Hon. Alfred Bwire Odhiambo, M.P.
The Hon. John Dache Pesa, M.P.
The Hon. Danson Mwazo Mwakulegwa, M.P.

ABSENT WITH APOLOGIES

The Hon. Shakila Abdalla, M.P.
The Hon. David Njuguna, M.P.
The Hon. (Dr.) Joyce Laboso, M.P.
The Hon. Mohammed Sirat, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Ms. Josephine Kusinyi - Clerk Assistant
Ms. Veronica Kibati - Research Assistant

IN ATTENDANCE

Mr. Omar Abdi - Deputy Town Clerk
Mr. Aduma Owuor - Director, Legal Affairs
Mr. Andrew Mwanthi - Acting Director, City Education
Mr. Peter Eregae - Deputy Secretary, Ministry of Local Government

MIN. NO. 117/2011 PRELIMINARY

The meeting began with a word of prayer.

MIN. NO. 118/2011 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting.

MIN. NO. 119/2011 CONFIRMATION OF MINUTES

Minutes of the Sixteenth Sitting held on 11th May 2011, were confirmed as a true record.

MIN. NO. 120/2011 MATTERS ARISING

- i) Under Min. 102/2011, the Chair informed members that the Chair had requested the Speaker for extension of time, to table the report on the Petition in June. The Speaker agreed that the same should be tabled by 14th June 2010. However the Chair was to make this request formally on the floor of the House during the afternoon sitting.
- ii) Under Min 105/2011(i), Members resolved to undertake the Korea visit from 26th – 30th June 2011.
- iii) Under Min 105/2011(ii), Members resolved to meet the NCST on 8th June 2011, to deliberate on the progress of upcoming bills i.e TIVET and the Science & Technology Innovation Bill, the progress on the construction of their headquarters and a run down on their strategic plan.
- iv) Under Min 105/2011(iii), the Chair informed members that the visit to non formal schools was successful; however the Committee could not visit Joowi School because of lack of time.

MIN. NO. 121/2011 MEETING WITH THE TOWN CLERK, NAIROBI CITY COUNCIL

The Deputy Town Clerk presented the Town Clerk's apologies as he was in Korea on official duty and welcomed members of his team to introduce themselves.

After introductions, the Director, Legal Affairs informed the Committee that there had been a long outstanding battle on the ownership of Aga Khan Primary, leading to Court proceedings and specifically High Court Case number 13 of 2002 and 455 of 2008. The matter is still in Court and in fact

last year, the Head Teacher was charged with Contempt of Court.

The Acting Director City Education on his part, informed members that the School had teachers employed by TSC, the school's PTA and the Aga Khan Education Service. He however did not have the exact number of teachers employed by each of the parties but he would avail this information to the Committee the next day. He further stated that he had complied with the Court orders by instructing the Head teacher to hand over the school to the Education service and this did not in any way affect the School's performance.

A short while after commencement of the meeting with the officers from the Council, the Committee was of the opinion that the team was not well prepared for the meeting, as most questions were not answered to the satisfaction of members and no documents were availed to the committee to support information given to the Committee.

The Chair informed the team that it was crucial for their input to be included in the Committee's report to the House and as such, they needed to give the Committee as much information as possible.

The officers indeed confirmed that they were not well prepared for the meeting as the invitation letters had been received very late.

As the team before the Committee was not well prepared, the Chair rescheduled the meeting to 26th May 2011 at 10:00am. In the said meeting, the team should address the following;

- Who pays teachers and support staff?
- Whether there is a formal committee that runs the School?
- Whether the parents contribute to the running of the School

MIN. NO. 122/2011 ANY OTHER BUSINESS

The meeting with the Minister for Education which had earlier been scheduled to take place on the 26th May 2011, to be rescheduled to 7th June 2011.

MIN. NO. 123/2011 DATE OF NEXT SITTING

The next meeting would be held on 19th May 2011, at 10:00 am.

MIN. NO. 124/2011 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the meeting was adjourned at 12:10

**SIGNED: HON. DAVID K. KOECH, M P
(CHAIRPERSON)**

DATE: 7TH JUN E 2011

MINUTES OF THE TWENTIETH SITTING OF THE DEPARTMENTAL
COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD
ON THURSDAY 19TH MAY 2011, IN ROOM 9, MAIN PARLIAMENT
BUILDINGS AT 10:00AM.

PRESENT

The Hon. David Koech, M.P. – **Chairperson**
The Hon. F.T.Nyammo, M.P. – Vice Chairperson
The Hon. B.C. Muturi Mwangi, MP.
The Hon. (Dr.) Wilbur Otichilo, M.P.
The Hon. John Dache Pesa, M.P.
The Hon. David Njuguna, M.P

ABSENT WITH APOLOGIES

The Hon. Shakila Abdalla, M.P.
The Hon. (Dr.) Joyce Laboso, M.P.
The Hon. Mohammed Sirat , M.P
The Hon. Alfred Bwire Odhiambo, M.P.
The Hon. Danson Mwazo Mwakulegwa, M.P.

IN ATTENDANCE

Ms. Mary Chesire
Ms. Josephine Kusinyi
Ms. Veronica Kibati

NATIONAL ASSEMBLY

-Clerk Assistant
- Clerk Assistant
-Research Assistant

IN ATTENDANCE

Mr. Anthony Kimuri
Ms. Mary Joseck
Mr. David Njoroge
Wanja Njage
Maureen Kabosi
Mugo Kamau
Mary Njunge
Amos Muiruri

AGA KHAN PRIMARY SCHOOL

-Chairman, PTA
-Treasurer
-Class 7 Parents representative
-Class 4 Parents Representative
-Class 1 Parents Representative
-Class 6 Parents Representative
- Acting Head teacher
-Former Head teacher

MIN. NO. 125/2011 PRELIMINARY

The meeting began with a word of prayer.

MIN. NO. 126/2011 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting.

MIN. NO. 127/2011 CONFIRMATION OF MINUTES

Minutes of the 17th and 18th Sittings held on 11th and 12th May 2011 respectively, were confirmed as a true record.

MIN. NO. 128/2011 MATTERS ARISING

Members noted that the following matters had not been captured by Minutes of the 19th Sitting:

- i. The issue of Corporate Social responsibility.
- ii. Drilling of students.
- iii. Current curricula review.

MIN. NO. 129/2011 MEETING WITH THE PTA AGA KHAN PRIMARY SCHOOL

- i. After introductions, the meeting commenced. The Chairman of the Aga Khan PTA informed the meeting as follows:
- ii. In 1954, the Government granted land to Sultan Hussein Shah to hold in trust for 3years, for Education purposes. The grant was to be extended on special conditions that the land shouldn't be transferred, leased out, sold or mortgaged without consent from the Commissioner of Lands.
- iii. The land had two title deeds, one for the land on which the School stands and the other for the land on which the principal's house stands. However the 2nd title, the land on which the Principal's house stands cannot be traced and a search at the Lands office is not possible as the land reference number is not known. However, apartments have been erected on that piece of land and it is feared that there

could be possible encroachment on the land. (*A copy of title deed covering the area on which the school stands was tabled before the Committee*)

- iv. Initially in 1954, Kshs.32, 000 was needed for development on the land and the Government of Kenya gave Khsh.16, 000/= for that. In subsequent years and by 1960, the Government had given a total of Kshs.700, 000/= for construction of classrooms, lavatories and administration block. The input from Aga Khan was basically from the community that lived around parklands area. The other infrastructure like swimming pool, gallery and 8-4-4 block have been put up by the parents.(A document showing that government funds were used was tabled before the committee, but the Chair ruled that the same was inadmissible as it did not bear any signature. An authenticated document was to be forwarded to the Secretariat in due course.)
- v. In 1978, the land was transferred to Aga Khan Foundation Services. This was a transaction effected through the commissioner of lands.
- vi. The School has a total of 36 teachers employed by the TSC, 8 teachers employed the Sponsor and one teacher employed by the School Management Committee. Each party pays its own teacher. The School Bursar is also an employee of the Sponsor. The Head teacher is not privy to the amount of salaries paid by the Sponsor and sometimes enforcing assignment on these employees is difficult.
- vii. Parents during their AGM sometime back, introduced payment of child support funds, which were to cater for payment of workers employed by the parents. The same meeting also agreed that a representative of the parent and the head teacher be signatories to the School's accounts. This did not go down well with the Sponsor and a major rift with the Management and the Sponsor ensued. The Bursar would collect funds from the parents and decide whether to deposit it in PTA or Sponsor's Account. Parents were informed to be paying into the PTA's Account and bring the deposit slip to the Bursar but this has yet to be fully realized. The Bursar can only deposit the funds into the Account but he cannot access the funds. In terms of ascertaining how much has been fully paid by parents is difficult. Any further

communication to the parents to insist on the issue of accounts was no longer possible for fear of being cited for contempt.

- viii. Most of the parents of the Asian community prefer to pay their fees to the AKES account. Out of the 980 pupils in the School, 21 are Hindu and 25 Ismaili. (*The Acting Head teacher tabled a document in respect of these numbers.*)
- ix. Due to the confusion in terms of funds and accounts, the School requested the Nairobi City Council to give them an accounting officer. This was done but the officer was withdrawn when the Court ruled in 2007 that parents should pay their funds to the Aga Khan Education Service. The PTA has made an appeal to set aside the ruling.
- x. During the financial year 2003/2004 when the 1st batch of 2 Million was released as FPE funds to the account operated by AKES, the amount was returned. The FPE funds are now received in the PTA Account. The account has over Ksh.1,000,000 however no development has been done in the School since 2007, since any attempt to utilize the money is taken as contempt of Court and the signatories are not allowed to meet anywhere. The Ministry of Education gives GPA and money for textbooks. The books have been bought as guided by the Ministry. City Hall does not give funds but offers services such as auditing and workers. However in December 2008, the AKES supplied the School with IRE books and a few story books.
- xi. The School Instructional Material Committee ratifies Suppliers. The Orange book gives guidance on what is to be bought by FPE funds. The approved Suppliers with a cordial relationship with the School then provide services, to be paid at a later date. The School however desperately needs to fully run and purchase supplies urgently. It is hoped that after the meeting with the Permanent Secretary for the Ministry of Education scheduled for 31st May 2011, this matter will be sorted out.
- xii. As to why the Head teacher never handed over the School to AKES as directed by the Director City Education, he stated that he received the

letter much letter. However, together with the PTA Chairman, they had been summoned to the Director City Education's office on the 21st of January 2011. The said letter of handing over was read and shown to them and then withdrawn from them. The Head teacher found it strange but just waited. Those present during the meeting were: Madam Tabitha Kamau, who was then the acting Director City Education, Councillor Bukachi in charge of Education at Nairobi City of Nairobi and Mr. Kisiang'a, a representative of the TSC.

- xiii. After the letter was withdrawn, the acting Director City Education instructed the Head teacher to await further instructions. The Head Teacher never received the letter until after the Director had left office, which was about two weeks later. Before long he was arrested for Contempt and after his release, he was posted as Head teacher to Kahawa Garrison Primary School.
- xiv. The Acting head teacher informed the Committee that the issues revolving around the School had not affected the School's performance. *(She tabled the School's performance record before the Committee.)*

MIN. NO. 131/2011 DELIBERATIONS

The Chair of the PTA informed the Committee that all that the parents wanted is for the Minister of Education to:

- i. Ensure smooth running of the School.
- ii. Implement the policies already in book.
- iii. Advise the Ministry of Local Government to have the land reverted back to its rightful owners.

MIN. NO. 132/2011 ANY OTHER BUSINESS

- i. The terms of reference for the Education Task force should be placed as an agenda for the next meeting.
- ii. The Chair informed Members that the non formal schools' visit to Mombasa had been cancelled.

MIN. NO. 133/2011 DATE OF NEXT SITTING

The next meeting would be held on 25th May 2011, at 11:00 am.

MIN. NO. 134/2011 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the meeting was adjourned at 12:20

**SIGNED: HON. DAVID K. KOECH, M P
(CHAIRPERSON)**

DATE: 7TH JUNE 2011

MINUTES OF THE TWENTY FIRST SITTING OF THE DEPARTMENTAL
COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD
ON WEDNESDAY 25TH MAY 2011, IN ROOM 9, MAIN PARLIAMENT
BUILDINGS AT 11:20AM.

PRESENT

The Hon. David Koech, M.P. – Chairperson
The Hon. (Dr.) Wilbur Otichilo, M.P.
The Hon. John Dache Pesa, M.P.
The Hon. David Njuguna, M.P.
The Hon. Danson Mwazo Mwakulegwa, M.P.

ABSENT WITH APOLOGIES

The Hon. F.T.Nyammo, M.P. – Vice Chairperson
The Hon. B.C. Muturi Mwangi, MP.
The Hon. Shakila Abdalla, M.P.
The Hon. (Dr.) Joyce Laboso, M.P.
The Hon. Mohammed Sirat , M.P.
The Hon. Alfred Bwire Odhiambo, M.P.

IN ATTENDANCE

The Hon. Shakeel Shabbir, M.P.

IN ATTENDANCE

NATIONAL ASSEMBLY

Ms. Mary Chesire	-Clerk Assistant
Ms. Josephine Kusinyi	- Clerk Assistant
Ms. Rebecca Tonkei	-Research Assistant
Mr. Sherrifsam Mwendwa	-Legal Counsel

IN ATTENDANCE

Mr. Arif Neki	-Regional CEO, Aga Khan Foundation
Mr. Moez Jamal	-Chairman, Aga Khan Education Services (AKES)Mr.

Njoroge Regeru -Counsel, AKES
Mr. G.N.Thuo -Counsel, AKES

MIN. NO. 135/2011 PRELIMINARY

The meeting began with a word of prayer.

MIN. NO. 136/2011 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting.

MIN. NO. 137/2011 INTRODUCTION

The meeting began by the Chair introducing the Members present. He then went ahead to give a back ground of the matter before the Committee and made it clear that the matter pending before the Court will not be discussed in the forum. He informed the meeting that disclosure on matters of policy would be important.

**MIN. NO. 138/2011 MEETING WITH THE AGA KHAN EDUCATION
SERVICE AND AGA KHAN FOUNDATION**

The Chairman, AKES informed the Committee that:

- i. The Aga Khan Primary School was established on land granted to His Highness the Aga Khan for purposes of building a School by funds donated by him. The Government of Kenya likewise made contributions towards building of the School.
- ii. In 1961, the Nairobi City Council issued a registration Certificate to the School, showing that the management of the School was by AKES. The Government decided to aid by providing teachers to the School; however the management of the School remained with AKES. Students were admitted to the School on merit and not on any racial background.
- iii. The PTA engaged very well with AKES and did not have any management role. An executive team appointed by AKES was charged

with the responsibility of running the School.

- iv. The School's head teacher was paid by both TSC and AKES. AKES catered for housing, utilities, Security and gave a top up of Kshs. 25,000/= over and above what TSC paid the Head teacher. In addition to this, AKES paid for the additional teachers where the TSC could not provide, such as the Swim teacher, IT teacher, Administrative support staff and Security for the School, through funding collected from the fees.
- v. In 2001, the Government wrote to AKES stating that it wished to withdraw from aiding the School and as such, AKES should engage with TSC on how to deal with the teachers. (*This letter is to be forwarded to the Secretariat at a later date*). This was to mark the beginning of the never ending tussles.
- vi. The Parents Association on its own accord exerted its influence, which AKES felt was not right and even instituted a case in Court, with the Minister for Education as the respondent. AKES joined in the suit as an interested party.
- vii. However, as AKES awaited due process, the Parents Association started influencing parents. It opened an account to deposit fees, which it does not account to AKES. Currently, it is not even clear who runs the School.
- viii. Currently, AKES does not receive any fees but supports the School to the tune of 8 to 10 Million per year, through the generosity of His Highness the Aga Khan. This amount is used to pay utilities, AKES teachers, security and support service. Maintenance is done by AKES but to a very limited extent. Whether the Parents Association does any maintenance is not within AKES's knowledge.

The Regional CEO of the Aga Khan Foundation then took over and informed the Committee as follows:

- ix. That the Foundation is the owner of the property and maintains the structures for integrity purposes. AKES have only been authorized to

run the School.

- x. The Foundation supports 800 public Schools and over 200 pre-schools, in Kenya, Uganda and Tanzania, and has over 20 years experience in School Management.
- xi. The Foundation is a respected partner and has often hosted the donor round table .The interest of the child is the Foundation's passion. It was therefore the Foundation's appeal to the Committee that the rule of law be upheld.

MIN. NO. 139/2011 PENDING COURT MATTERS

Mr. Njoroge Regeru, AKES Counsel then took the Members through pending Court Matters as follows:

- i. Notice of Appeal on Miscellaneous Civil Application No. 13 of 2002, being an appeal by the Parents Association.
- ii. ELC Civil Case No. 455 Of 2008, filed by the Parents Association against the Aga Khan Foundation and AKES, claiming among other things, the trust concept. This was filed after the loss of Miscellaneous Civil Application No. 13 of 2002, where the Minister for Education had been sued for directing the management of the School to AKES.
- iii. Suit against the Chairman of the Parents Association for contempt, which has been set down for hearing on the 15th of June 2011.

MIN. NO. 140/2011 DELIBERATIONS

- i. Members then requested to know how other Aga Khan Schools are run within the Country.
- ii. The Meeting was informed by the Regional CEO of the Aga Khan Foundation that all other Aga Khan Schools within the Country were run by AKES as private Schools, charging reasonable fees in comparison to other private Schools. An example was a fee of Kshs. 12,500 per term, being paid at the Aga Khan Primary School

Mombasa. Teachers provide extra tuition to the pupils at no extra cost and exercise and text books are inclusive in the fees.

- iii. The performance of the Schools is remarkable, for example in the national examinations, since 2003 to date, the Aga Khan Primary School Kisumu has shuttled between positions 1 and 3 in the Municipality.
- iv. Through Professional Development Centres, several head teachers have been trained, in terms of capacity building and the Government through the Kenya Institute of Education has selected and sent teachers every year to the Aga Khan University, at a subsidized rate.
- v. The issue of racial discrimination does not arise as only 5% of the entire student population in the Schools is Ismaili Muslims, while nine of the eleven Schools in the Country have fully Kenyan Staff and the total number of expatriate staff amount to only 5%.
- vi. Finally, the AKES would appeal to:
 - a) The Judiciary to conclude all pending matters and especially those relating to the Trust land
 - b) The Committee as a watchdog of public funds to look into the use of funds collected by the Parents Association
 - c) The Ministry that has a supervisory role over all the Schools in the Country, to look into the running of the Aga Khan Primary Nairobi and especially the composition of the Parents Association and who they are accountable to the expenditure of funds collected.

MIN. NO. 141/2011 AOB

The Chair thanked and appreciated the Aga Khan Foundation and the Aga Khan Education Service on the work they were doing within the Country and assured them that the Committee will uphold the Rule of law.

MIN. NO. 142/2011 DATE OF NEXT SITTING

The next meeting would be held on 26th May 2011, at 10:00 am.

MIN. NO. 143/2011 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the meeting was adjourned at 1:00 pm.

**SIGNED: HON. DAVID K. KOECH, M P
(CHAIRPERSON)**

DATE: 7TH JUNE 2011

MINUTES OF THE TWENTY SECOND SITTING OF THE DEPARTMENTAL
COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD
ON THURSDAY 26TH MAY 2011, IN THE COMMITTEE ROOM ON 2ND
FLOOR, CONTINENTAL HOUSE, AT 10:30AM.

PRESENT

The Hon. David Koech, M.P. – Chairperson
The Hon. F.T.Nyammo, M.P. – Vice Chairperson
The Hon. B.C. Muturi Mwangi, MP.
The Hon. (Dr.) Wilbur Otichilo, M.P.

ABSENT WITH APOLOGIES

The Hon. John Dache Pesa, M.P
The Hon. David Njuguna, M.P
The Hon. Danson Mwazo Mwakulegwa, M.P
The Hon. Shakila Abdalla, M.P.
The Hon. (Dr.) Joyce Laboso, M.P.
The Hon. Mohammed Sirat , M.P
The Hon. Alfred Bwire Odhiambo, M.P.

IN ATTENDANCE

Ms. Mary Chesire
Ms. Josephine Kusinyi
Ms. Rebecca Tonkei

NATIONAL ASSEMBLY

-Clerk Assistant
- Clerk Assistant
-Research Assistant

IN ATTENDANCE

Mr. Omar Abdi
Mr. Joshua Aduma
Mr. Andrew Mwathi

NAIROBI CITY COUNCIL

-Deputy Town Clerk
-Director, Legal Services
-Acting Director City Education

MIN. NO. 144/2011 PRELIMINARY

The meeting began with a word of prayer.

MIN. NO. 145/2011 ADOPTION OF THE AGENDA

Members adopted the agenda of the meeting.

MIN. NO. 146/2011 INTRODUCTION

The meeting began by the Chair introducing the Members present. He then welcomed the Deputy Town Clerk to introduce his team.

**MIN. NO. 147/2011 MEETING WITH THE DEPUTY TOWN CLERK,
NAIROBI CITY COUNCIL**

The Director Legal Services informed the Committee that:

- i. Between 1953 and 1961, the Aga Khan Primary School was constructed, with a total cost of Kshs. 631,500, being a grant from the Government of Kenya.
- ii. On 19th April 1978, the Aga Khan Foundation, who were the owner of the land on which the School stood, leased the property to Aga Khan Education Services, to run the School.
- iii. On 25th March 2009, the Parents passed a resolution to run the School. The Aga Khan institutions in Mombasa and Kisumu are private and run by the AKES.
- iv. Currently the School has 36 teachers employed by the TSC, 10 teachers employed by the AKES, 4 support staff employed by AKES, 1 teacher employed by the parents, 1 support staff employed by the parents and 2 support staff employed by the Nairobi City Council, though one of the City Council employees passed on and has not been replaced. The School has a population of 980 pupils, 453 girls and 527 boys.
- v. Due to the pending Court matters and actions of the former head teacher, he was found to be in contempt of Court and detained in civil jail. On 4th March 2011, Mary Njunge was appointed as acting Head teacher, so that affairs of the School are not interrupted. However on 14th April 2011, a letter was done, revoking the

appointment, to save the said Mary Njunge from suffering the same fate as her predecessor.

The Deputy Town Clerk then informed the Committee that the Council had its own internal problems as regards the running of the Education Department, with poor coordination and a high staff turnover. In his own opinion, he felt that AKES should continue running the School as per the Court Orders, having knowledge of how AKES run the Aga Khan Schools in Kisumu.

The Acting Director of Education then informed the meeting that the election of the School Management Committee had not taken place this year, because of the Court Ruling. The School had three accounts i.e the GPA Account, Simba Account and PTA Account, which have been audited and no audit certificate issued.

When the School was de aided, it was supported by the Ministry of Education and the Nairobi City Council did not played any role.

MIN. NO. 148/2011 AOB

The Chair noted with great concern that the Director, City Education should take its Schools oversight role very seriously.

MIN. NO. 149/2011 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the meeting was adjourned at 11:50 am.

**SIGNED: HON. DAVID K. KOECH, M P
(CHAIRPERSON)**

DATE: 7TH JUN E 2011

**MINUTES OF THE TWENTY SEVENTH SITTING OF THE DEPARTMENTAL
COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD
ON THURSDAY 9TH JUNE 2011, IN COMMITTEE ROOM 9, MAIN
PARLIAMENT BUILDINGS, AT 3:30PM.**

PRESENT: The following Members of the Committee were present

The Hon. David Koech, M.P. – **Chairperson**
The Hon. F.T.Nyammo, M.P. – Vice Chairperson
The Hon. John Dache Pesa, M.P.
The Hon. (Dr.) Joyce Laboso, M.P.

ABSENT WITH APOLOGIES

The Hon. David Njuguna, M.P.
The Hon. Danson Mwazo Mwakulegwa, M.P.
The Hon. Shakila Abdalla, M.P.
The Hon. Mohammed Sirat , M.P.
The Hon. Alfred Bwire Odhiambo, M.P.
The Hon. B.C. Muturi Mwangi, MP.
The Hon. (Dr.) Wilbur Otichilo, M.P.

IN ATTENDANCE - **NATIONAL ASSEMBLY**

Ms. M. J. Chesire - Clerk Assistant
Ms. Josephine Kusinyi - Clerk Assistant
Ms. Veronica Kibati - Research Assistant

IN ATTENDANCE - **MINISTRY OF EDUCATION**

Hon. Sam Ongeru, MP - Minister
Prof. George Godia - Education Secretary
Mr. William Mwita -
Ms. Martha Odundo
Mr. Paul Mungai
Ms. Margaret Thiongo
Mr. Mbarak Said Twahir

MIN. NO. 176/2011 REMARKS BY THE CHAIRPERSON

The Chairperson called the meeting to order at 3.45pm and opened with a word of prayer. He welcomed the Minister for Education to the meeting and thanked him for honouring the Committee's invitation. He informed him on the agenda of the meeting which was to discuss the petition on the ownership of Aga Khan Primary school.

He further informed him that the Committee has already met with the Aga Khan Education Services (AKES), Parents/Teachers Association (PTA) and Inspectorate of City Education in the Nairobi City Council and it was his opportunity to give his views and official position on the matter as well as policy and management of schools in the country facing similar challenges.

MIN. NO. 177/2011 MEETING WITH THE MINISTER FOR EDUCATION

The Minister for Education informed the Meeting as follows:

- i. Before independence, there were three categories of Schools, namely, European, Asian and African Schools. The Government allocated land and issued titles to various community groupings on the understanding that such land would be used for educational purposes only and the construction of the physical facilities would be the joint efforts of the Government and the concerned community organizations.
- ii. The community organizations were to be registered as owners of the land but hold the same as trustees. The provision of teachers, support staff, teaching and learning materials and other necessities to facilitate education was the sole responsibility of the Government through the local councils. The Schools operated as public institutions but the communities acted as Sponsors.
- iii. At independence, nothing much changed, only that the Schools were not to discriminate enrollment on grounds of race/colour. They were recognized as community assisted Schools. An assisted School is a public School and so is a maintained School. Aga Khan Primary School Nairobi is a Public School for purposes of the Education Act.
- iv. Part IV of the Education Act, Sections 13 to 17, enumerates the process

of registration on unaided schools. When the Aga Khan Primary School started, they run the GCSE Programme, which was contrary to the purpose of its registration. The then Minister for Education wrote a letter to the effect that the School risked deregistration.

- v. On 9th October 2001, the then Education Permanent Secretary, Prof. J.C. Kiptoon, informed the AKES that all Aga Khan Schools had been de aided. This was a wrong move and this is why the TSC continued providing teachers to the School. The de aiding process was however never concluded and this led the parents to file a suit in Court. The Court ruled in favour of AKES. If the legal premise had been followed properly, i.e. if the Attorney General would have entered appearance on behalf of the Ministry of Education and if the Nairobi City Council would have been enjoined in the Suit or served to appear in Court, the ruling may have been different. The Ministry has no mandate to go to Court other than through the Attorney General's office.
- vi. The Court's decision is being used to intimidate the Ministry but the Minister is clearly on the Parents side. The Ministry has been forced to swallow a bitter pill. The Ministry has however tried to solve the impending disputes through dialogue. The meetings between AKES and the parents have been called and chaired by the Ministry's Permanent Secretary. It is evident that the School has received a lot of support from the Government. The two groups are to consult and agree on the way forward. A committee was formed to look into this.
- vii. On being asked by Members whether he was aware how much fees the AKES charged in the Schools in Kisumu and Mombasa and what the Aga Khan Primary Nairobi parents paid in terms of child support, the Minister stated that he was not aware but he would find out and submit the information to the committee.
- viii. Support of the Aga Khan School *vis-a-vis* the Court ruling is a decision that needs to be done. However, the Minister directed that a quality assurance inspection be carried out in the School and that the director of legal services in the Ministry to work closely with the Attorney General office, to chart a way forward with the pending Court matters.

- ix. On the way forward the minister stated as follows:
- a) that there was need to maintain the status quo as envisaged in the pre-independence period and at the same time enhance partnership that existed where the community was to continue as sponsors and ministry maintains the oversight role and control to ensure maintenance of standards.
 - b) That it may be necessary to have an inter-ministerial committee set up comprising of Education, Local Government, Lands and Office of the Attorney General to address the issue of ownership whose grant conditions may require review.
 - c) Explore the possibility of the public private partnership (PPP) with these community schools that have continued to enjoy government support even after independence. He also noted that public property cannot convert to private use but private property can revert to public use through surrender or repossession.

MIN. NO. 178/2011 ANY OTHER BUSINESS

- i. The Chair thanked the Minister for the outcome of the 2011/2012 budget and especially with regard to ECD funds. He however reminded the Minister that the issue of non-formal Schools needed to be critically looked into.
- ii. The Minister was equally pleased with the budget outcome and informed Members that other highlights of the budget included Kshs.680 Million put in ICT for Schools, Kshs.20,000/= for 200 students per constituency for bursary, money for infrastructure for national schools and money for the contract teachers.

MIN. NO. 179/2011 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the meeting was adjourned at 5:45 pm.

**SIGNED: HON. DAVID K. KOECH, MP
(CHAIRPERSON)**

DATE: 14TH JUNE 2011

MINUTES OF THE TWENTY EIGHTH SITTING OF THE DEPARTMENTAL COMMITTEE ON EDUCATION, RESEARCH AND TECHNOLOGY HELD ON TUESDAY 14TH JUNE 2011, IN THE MEMBER'S LOUNGE, MAIN PARLIAMENT BUILDINGS, AT 9.30 AM.

PRESENT: The following Members of the Committee were present

The Hon. David Koech, M.P. – **Chairperson**
The Hon. F.T.Nyammo, M.P. – **Vice Chairperson**
The Hon. John Dache Pesa, M.P.
The Hon. David Njuguna, M.P.
The Hon. Shakila Abdalla, M.P.
The Hon. (Dr.) Wilbur Otichilo, M.P.

ABSENT WITH APOLOGIES

The Hon. Danson Mwazo Mwakulegwa, M.P.
The Hon. Mohammed Sirat, M.P.
The Hon. Alfred Odhiambo Bwire, MP
The Hon. Danson M. Mwakulegwa, MP
Hon. (Dr) Joyce Laboso, MP

IN ATTENDANCE - **NATIONAL ASSEMBLY**

Ms. M. J. Chesire - Clerk Assistant
Ms. Veronica Kibati - Research Assistant

MIN. NO. 181/2011 - **REMARKS BY THE CHAIRPERSON**

The Chairperson called the meeting to order at 9.30am and opened with a word of prayer. He informed the Members that the main agenda of the meeting to consider and adopt the report on the petition of ownership of the Aga Khan Primary School. The report is expected to be tabled today at 2.30pm

MIN. NO. 182/2011 - **ADOPTION PREVIOUS MINUTES**

Minutes of the Twenty Seventh Sitting held on 9th June were confirmed.

MIN. NO. 182/2011 - ADOPTION OF THE REPORT OF THE
PETITION ON THE OWNERSHIP OF THE
AGA KHAN PRIMARY SCHOOL, NAIROBI

The Committee considered the report of the petition of ownership of the Aga Khan Primary School, Nairobi and adopted with it amendments. It was proposed by Hon. John Pesa, MP and seconded by Hon. F. T Nyammo, MP.

The Secretariat was asked to finalize the report so that it is tabled in the House today at 2.30pm.

MIN. NO. 183/2011 ADJOURNMENT OF THE MEETING

There being no other business for consideration, the meeting was adjourned at 10.50am.

SIGNED.....
(CHAIRPERSON)

DATE.....

APPENDICES

APPENDIX I

PETITION

Presented by the Member
for Ndaragwa (Hon. Kibui)
on Thursday 23.03.2011.

PETITION SEEKING AFFIRMATION ON THE OWNERSHIP AND MANAGEMENT OF THE AGA KHAN PRIMARY SCHOOL, NAIROBI AS A PUBLIC SCHOOL

PUBLIC PETITION

Standing Order 202 of the Standing Orders

TO: THE NATIONAL ASSEMBLY

We, the undersigned persons, being parents of the Aga Khan Primary School, Nairobi,

DRAW the attention of the House to the following:

1. **THAT** Aga Khan Primary School is a public primary school under the City Council of Nairobi and is located in Parklands, Nairobi.
2. **THAT** land on which the school is built was granted by the **Commissioner of Lands** -Title no 8620 and **L.R 209 /3576** to His Highness the Rt. Hon. Sir Sultan Mohammed Shah, P. C, G.C.V.O, The Aga Khan, to **HOLD IN TRUST for the Community** for a term of three years starting 1-4-1951 to 1-4-1954. The grant was on the firm provision that the land would be used solely for education purposes for the public (community) use and not private.
3. **THAT**, upon construction of buildings, tenure was extended to 96 years with effect from 1-4-1951, subject to the ordinances and special conditions referred to or contained in the said grant herewith reproduced (enclosed). Among the special condition given was the fact that the same land would revert to the government if ever need arose.
4. **THAT** based on this understanding, the Aga Khan Primary School was established on Land Title No. 8620 in 1954. The school has never been and was never meant to be private but public under the Asian Communities and the Government of Kenya. The provision of teachers, subordinate staff, learning material and other necessities to facilitate education has always been the sole responsibility of the government of Kenya and parents through the City Council of Nairobi
5. **THAT** the cost of the school including the Assembly hall in a double story building was then estimated at **Ksh 32,000** (including 6 storey building).
6. **THAT** the Aga Khan Education Board through its secretary requested for funding under capital grant to aided schools under the auspices of the Asian Foundation

**PETITION SEEKING AFFIRMATION ON THE OWNERSHIP AND MANAGEMENT OF
THE AGA KHAN PRIMARY SCHOOL, NAIROBI AS A PUBLIC SCHOOL**

8. THAT the Director of Education approved a provision of a 50% grant of Ksh 16,000 on 20th September 1951; however, the amount was availed in the 1952 financial year. Construction of the school began in 1951 and the school was up and operation by 1953;
9. THAT currently, the School boasts of enrollment of over 850 pupils in classes One to Eight. Each Class has at least four streams. The children attending the school are mainly resident in the wider Westlands, Starehe and Kasarani Constituencies as well as neighbouring Kiambu County among others zones. At present the School has **thirty-six (36) teachers**, including the Head Teacher, all posted by the Teachers Service Commission. Since the inception of Free Primary Education programme in 2003, the school has so far received over **Ksh. 5.2million**, this financial year included.
10. THAT over the years the School has recorded exemplary performance with a good number of its candidates in each year joining national secondary schools. In the year 2010, out of a total number of 95 candidates, 5 scored 400 marks and above, 27 scored between 350 - 399 and , 27 scored 300 – 349, 21 scored between 250 - 299 and the others scored between 138 to 248. Many of the pupils have, over the years, gone ahead to excel in various professions.
11. THAT the parents have learnt, that the School is now to be taken over by the Aga Khan Education Service as a private entity. In a letter referenced **DLA/AJO/1619/E**, dated **14th January 2011** by the Town Clerk, City Council of Nairobi, directed the Head Teacher to hand over the Aga Khan Primary School Nairobi to Aga Khan Education Service, a move that we consider illegal.
12. THAT Aga Khan Education Services has consistently interfered with the day-to-day running of the school by posing as the sole owners and managers of the school despite the school being a public primary school. This has severely interfered with the administration and management of the School and has further negatively impacted the morale of the teachers, parents and pupils.
13. THAT the parents have sought redress with City Council and courts since 2002 but in vain

**PETITION SEEKING AFFIRMATION ON THE OWNERSHIP AND MANAGEMENT OF
THE AGA KHAN PRIMARY SCHOOL, NAIROBI AS A PUBLIC SCHOOL**

herefore your humble petitioners pray-

THAT within twenty-one (21) calendar days of this Petition, the Government, through the Minister for Education, affirms that Aga Khan Primary School is a public primary school under the City Council of Nairobi.

THAT the Government, through the Minister for Lands, affirms that the land on which on which the school is built was and still is public land held in trust by the Aga Khan, as is clear in its original title no 8620 on land **L.R. 209 /3576** and the special conditions for its grants.

THAT the Government, through the Minister for Education and the Minister for Lands, takes immediate and urgent action to protect and safeguard Aga Khan Primary School, its land and its assets and to protect and support its Parents Teachers Association, the School Management Committee, the teachers and pupils of the school from undue interference from the Aga Khan Education Service.

THAT the Government, through the Minister for Education and the Minister for Lands, directs Aga Khan Education Service to play its rightful role as a sponsor and refrain from interfering with the day-to-day management of the administration of the school.

THAT the Government, through the Minister for Education, restrains the Town Clerk of the City Council of Nairobi from handing over the school for private use, as the school is a public institution.

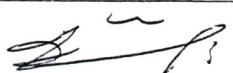
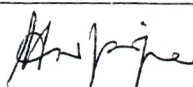
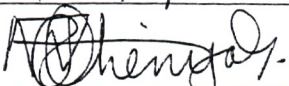

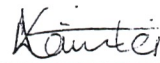
AND your PETITIONERS will ever Pray

~~_____~~
Hon. Jeremiah N. Kioni
M.P. Ndangwa.
23/02/2011.

PETITION SEEKING CLARIFICATION AND AFFIRMATION OF THE OWNERSHIP AND MANAGEMENT OF THE AGA KHAN P SCHOOL, NAIROBI AS A PUBLIC SCHOOL

	Name of petitioner	Full address	National ID or Passport No.	Signature/Thumb Impression
1.	DAVID NJORGE	P.O. BOX 75961-00200	10551682	
2	PATRICK K KIAMA	P.O. BOX 5836-00100 NAIROBI	9075776	
3	SAMUEL N. NJUGUNA	Box 100221 00101 NAIROBI	10152726	
4	PHILIP KIMUTHIA K.	P.O. BOX 39863-00623	11594399	
5	ABDUL KAZIM PARPIA	P.O. BOX 45833 00100	10496007	
6	ABDUL SAMAD	-	21219823	
7	Anne Njancira	Box 22323-00400	14687297	
8	Ben 1115570	Box 28-00300 NBS	10554493	
9	Jennifer Kimani	00400-22323	22148312	
10	DOWER ABEN	.1369 1400	20106380	
11	Susan Kibe	3753-00200	11644741	
12	Habtatu gemane	77898	229079	
13	Charles Chepkorir	61749-00200	0881694	
14	Musuf haji Abdi	CITY PARK	07206	
15	DAVID ALOGO	P.O BOX 752 00100 NAIROBI	5496756	

**PETITION SEEKING CLARIFICATION AND AFFIRMATION OF THE
OWNERSHIP AND MANAGEMENT OF THE AGA KHAN P SCHOOL,
NAIROBI AS A PUBLIC SCHOOL**

	Name of petitioner	Full address	National ID or Passport No.	Signature/Thumb Impression
16	JACOB OTHIGO	Box 389- 00606-NBI	11500546	
17	HENRY NJAGE	Box 50490- 00200 NAIROBI	1188360	
18	VINCENT AGAL	Box 49252 0000 NAIROBI	13299626	
19	EMMANUEL MWANGI	Box 34991 00100 NRB	28493141	
20	ANNE M. KARIUK	Box 22120 00400 NRB	13539268	

Vii Petition concerning

The ownership and management of Aga Khan Primary School Nairobi

Aga Khan Primary School Nairobi

NAME OF PETITIONER	ADDRESS	NATIONAL ID NO. OR PASSPORT	SIGNATURE
JEREMIAH NZUKI	2397-00100	10041728	
PAMELA ANYANGO		13386120	
YUSRA Mohammed	10488-00100	23043378	
Shukri Jama		0722462077	
Fatuma -I. Mahmood	16041 NBI	0722-864501	
NASIM Raza	45832	0721988632	
Keila Ndula	7780 0100	0721847558	
Lydia A. Magare	26660-00504	0722-664739	
Ann Muechui	30344-uon	0725-552641	
VALENTINE BIENGO	972677	5967454	
ALICE GIKONDO	61925-0020	NBI	
ALICE GIKONDO	48081-00100	NRB/20232203	
Winnie Njoroge	44308	21459017	
Sophia A. Wintshur		0721511225	
Penina George	53023-00200	0723 55535	
DAMARIS ALEX		0715 102 892	
MARIAM RASHID	0733924033	14686742	
Angela Mwangi	0722602119	13828617	
GODWIN ISANOLA	0718911781	26422220	
Haji Sidi	0122200175	1124780	

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Aga Khan Primary School Nairobi

NAME OF PETITIONER	ADDRESS	NATIONAL ID NO. OR PASSPORT	SIGNATURE
Joy AKOYI	31382 NRB	10862106	
Ali SWADEH MLATSO	13161 NBI	8232540	
Zahir, Admani	22807 00400 ¹⁹⁹¹	13163876	
MUSUP Alsalih	63400-100	16021102	
ASTA MOHAMMED	20028-100	1261368	
Najma Rawat	76380 MBI	9775555	
ABDIKLY ILLAH ALI	62839-0200 NBI	6826488	
Anne Kanyuira	32669-00600	20891590	
Mrs. Hussein	0100 44943	14495437	
Zainab Akbas	32986-00600	23155309	
Rizwana Mohd Nohi	00600-143	21848879	
Elizabeth Mwakuna	3317-00100	10863549	
Sueyngob Cobay	0722491043		
Julius KIAMBA	33463-00600	7947604	
Nadeen Dawre	11283-00400	1114305274	
Isneen Dawre	11283 00400		
17. THOMAS MAENGA	44600-00100	1660742	

Aga Khan Primary School Nairobi

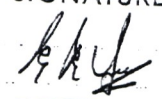


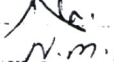






NAME OF PETITIONER	ADDRESS	NATIONAL ID NO. OR PASSPORT	SIGNATURE
JACQUELINE SHINDGA	(/ /)	13349194	
MUHMUDU ICASSON	—	0565651	
GEORGE KAMAU	—	20521055	
ABDI HAKIM HASSAN	78789	22366081	
Safia. Mubarak Ali	116117	—	
SALMA ABNUL SHAKUR.	0722 714314	—	
ALICE B. OMBU	0722 451592	11295142	
SHEIKHA A. MOHAMMED	0750318064	—	
GEORGE MACHARIA	0720 740 917	1155081	
Bethuel Ndumu	0723136164	3601376	
FRANCIS MUMBI	0722 689 430	9323581	
JOHN GITONGA	0722852080	7862413	
LUCY KATHERA KARONGO	0720 298 703	20242384	
NAOMI MUTA	0721973009	8642312	
SUSAN MBIHE	0722 986350	9846160	
MERCY WANG'OE	07228608221	21939113	
MURUGU AMAY	0722 0106	8122880	
Robert Mburhia	41869-0000	10089526	
Saumy Ismael Sirgo	0722 10401	25040726	
GITONGA JOHN	0722 706 799	12839192	
MARY JOSECK	0723340672	11281182	

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Aga Khan Primary School Nairobi

NAME OF PETITIONER	ADDRESS	NATIONAL ID NO. OR PASSPORT	SIGNATURE
ESSAK ALMAM	22907 NBI	8453798	<i>[Signature]</i>
WIMCO SALED FARAH JEEJEPAD		0717138778	
LAMLESH PARCHAL	38450, 00623	27136702	<i>[Signature]</i>
KINNARE A. PATA	P.O Box 42930	298575	K.A. Patel
MUNIRN J MICHAMF	P.O Box 71920	20123459	Munirah
Fazra S. Khaja	-	-	<i>[Signature]</i>
Sabira Asif KANA	-	21867517	<i>[Signature]</i>
Caroline Okumu	Box 10246	1133056	Caroline
Zoujan Ishag	# 69871	1364899	<i>[Signature]</i>
Jean N. N. N.	7057	11777744	<i>[Signature]</i>
Yasmin. Hadi.	631900619		<i>[Signature]</i>
Kulume Nganga	21829406	0722220960	<i>[Signature]</i>
JOSEPH M. AJWA	30099NA	0722926939	<i>[Signature]</i>
KAMUKHWA ABDI	24315924	0722229927	<i>[Signature]</i>
ZIMAZO NGAKO	9847456	0722818790	<i>[Signature]</i>
16. ALLAN K. KOSKE	22779 00400 NBI	01129670	<i>[Signature]</i>

Aga Khan Primary School Nairobi

NAME OF PETITIONER	ADDRESS	NATIONAL ID NO. OR PASSPORT	SIGNATURE
AZIZ SAMAL	12074	1813155	
BRIDGET TILORA	0726412803	9046375	
Nick M. Rottel	0721602019	13311009	
Nimisha M. Patel	072282 5946	-	
Lydia Makena Kinyua	0728-932251	21747422	
Leonard Kinyua Akanda	0722-372114	-	
Mercy Fisse	0722158938	8365787	
Mohamed Ali Mohamed	0722571166	24866769	
Mary W. Mwangi	63500-00619	16060230	
10 Grace Wanjiku	0725603584	137	

Aga Khan Primary School Nairobi

NAME OF PETITIONER	ADDRESS	NATIONAL ID NO. OR PASSPORT	SIGNATURE
Habteab Yeman	77898	219079	
ABOULKARIM A PARFA	45883	10496007	
Rahema Muhamud Juma	6950	351366	
Alex Mwangi	07012-00200	9196442	
Anne Nganga	22323-00400	14687297	
ANTHONY SIAMEIO	20212903	20012903	
ANTHONY SIAMEIO	31652	20012903	
DAVIS MUNENE	5192-00100	16226448	
Sharifa Ali		6410265	
DAVID NJOROLIE	75961-00200	10551682	
Wanjika Kabara	75961-00200	11316020	
Andotania Odus Lugana	46546-00100	11663841	
AISHA RAZIK SAID	69850-00400	7560732	
Zenab RAZIK SAID	69850-00400	14681166	
Mrs Mutun	56959-00200	3351379	
KIMANI ZACKARY	40081-0100	9813147	
SEIF BINAD	5368-00100	8466666	
WILLIAM S NDWIGA	1724-00021	671241759	
KERIA NDWIGA	"	30582753	
HELLEN KAMALI	23006 00604	7816951	
Peter Khayambe	18690-00100	10034653	
SHAMIR MOHAMMED	1060x43185-00100	10977512	
NILAN ODAWO	103333	22263880	
FATIHA AHMED	21211890	21211890	
PETRONILA NDUKU	12567		
PETRONILA NDUKU	06002	22367464	
IRENE MUSEMBI	942 NRB	12409269	
SAMUEL M. ONYAMBI	588431 3009-NRB 588431		
TONY ENYAMBO	57007-0100 NRB	8416665	
SYED AJAZ KAZI	38968	9831387	
MR & MRS MOHAMED AYUB	46757, 00100	8460948	
MR. SALIM AHI	00200-13032	13826077	
NIMIRA . H. AYUB	39969-00623	2248635	
AMINA SALIM	00624 V.M.M.NRB	12484255	
ROSE MGATIARI	67468 00200	1843391	
Shajahan N. Parambil	23505-00100	23602810	
Mohamed Ahmed Hundusy	276-0066	13867074	
GALI HUSSEIN	0721588 0011	23452507	
KULSUM SALEHMOHD	0720922855	22643513	
Faiqa . th. Gulleid	0120 019097	21462043	
MOHAMMED JAMUHEED	0700 223372		

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Aga Khan Primary School Nairobi

NAME OF PETITIONER	ADDRESS	NATIONAL ID NO. OR PASSPORT	SIGNATURE
David Aloo	752-00100 Mb	5496756	<i>[Signature]</i>
Khanan HENRY NJAGE	69837 50490-00200	5362676 1188360	<i>[Signature]</i>
WIANJA NJAGE	P.O. Box 8884-	48078	<i>[Signature]</i>
FATUMA YACOBIN (MUM)	70718081	7422613	<i>[Signature]</i>
Ruhan Sheikh	33152-00600	11228163	<i>[Signature]</i>
Muhammed Anwar	30105-00400	1790081	<i>[Signature]</i>
GULAMABDUS HABIB	32585-00600	-	<i>[Signature]</i>
Latifa Nizandi	0721310475	8707428	<i>[Signature]</i>
Peter K. Kemai	0702752656	5515669	<i>[Signature]</i>
Zulfikar	0751228786	28360786	<i>[Signature]</i>
ZULEIKHA KADERMANI	0733817911	22957368	<i>[Signature]</i>
ERICUS MUILO	0724647349	22588154	<i>[Signature]</i>
RUKIA YASIN	0725419260	7345347	<i>[Signature]</i>
ZAHRA KARIUKI	0733776645	0526223	<i>[Signature]</i>
SWALHA ABUBAKAR	0721838700	24215032	<i>[Signature]</i>
Jane Kimani	0722672291	13406124	<i>[Signature]</i>
Shabnam YAKUB	0725772555	11223784	Shabnam
AGNES WALTULA	0722-7261538	11432993	<i>[Signature]</i>
Kulsum Siwani	0722-55116	-	K. A. Siwani
FATUMA KARIYE	0722-455872	0624035	<i>[Signature]</i>
Nimo collard			<i>[Signature]</i>
23 A.S. GUTTAJ	city park street	302103400	<i>[Signature]</i>

Aga Khan Primary School Nairobi

NAME OF PETITIONER	ADDRESS	NATIONAL ID NO. OR PASSPORT	SIGNATURE
ZEHRA IBRAHIM OSMAN	0720723266	21982902	<i>[Signature]</i>
FEROZ M. HANIF	0722899729	—	<i>[Signature]</i>
EVALINE OWANO	07232411232	22584422	<i>[Signature]</i>
CATHERINE M. GITU	0721512651	11675536	<i>[Signature]</i>
SAUDA KIMPAYE	0722734936	06191272	<i>[Signature]</i>
Benim MYKTAH	0728623588	249154	<i>[Signature]</i>
Simon Thiengo Kaman	0722607575	10642760	<i>[Signature]</i>
Sarah Ombija 3944 GPO	NRB 0722735668	0720735668	<i>[Signature]</i>
Leila Mohammed	0727580582	108934362	<i>[Signature]</i>
Charles Chopkonga	0729299595	08294917	<i>[Signature]</i>
Abdulkadir Mohammed	0722776770	—	<i>[Signature]</i>
AGDAS CHAUDHRY	0722739745	—	<i>[Signature]</i>
SALIM ALI	0722515551	—	<i>[Signature]</i>
DELPHIN KANYIMBU	0714404090	—	<i>[Signature]</i>
ALHAMED SALIM	0722520255	—	<i>[Signature]</i>
Evans Mwanzi	0733265355	—	<i>[Signature]</i>
Lyelien Mutloni	0720579810	13056547	<i>[Signature]</i>
DAVID MUKAME	0724504788	—	<i>[Signature]</i>
ANNAH NTHUKA	0726002247	—	<i>[Signature]</i>
Halima SH. AHMED	0718649662	0722241798	<i>[Signature]</i>
CHAUDIA O. MWaura		0722-828454	<i>[Signature]</i>
BONIFACE M. MWaura	07228284	0724566704	<i>[Signature]</i>
Joseph Nyaga			<i>[Signature]</i>
Halima ABDULLHI	072313939	302100610	<i>[Signature]</i>
25 Mohamed Abu	0721274050	—	<i>[Signature]</i>

Aga Khan Primary School Nairobi

NAME OF PETITIONER	ADDRESS	NATIONAL ID NO. OR PASSPORT	SIGNATURE
ABDURAHMAN FARAH IBRAHIM	68837-00622	ID: 2624034	
Catherine M. Muchugie	44700	ID: 4860145	
Eddah L. Khamala	8961-00300	ID: 8965903	
IDEHE LI NGIGI		ID: 27021974	
IFTIKAR . VARVANI	12061-00400	ID: 13683492	
SHARIFA . I. VARVANI.	12061-00400.		
ABBAS AHMED	-18856	21219823	
Lilian . Wamuciu Iguta	3379-	21893704	
BL70X - NSANGA		0722662428	
HABIBA MAALIM	10116405	0722504068	
HAWA MOHAMED	12427656	0722242181	
Winfred Mbuvi	7046926 52455	0722791568	
A Sheikh Ali		07227672777	
Rum Abdullahi Sh.	16089	0722333859	
Sahwa	13868008	0722856011	
NASRA ABDINUR	23421701	0722116409	
Abdi Geelone		0722722075	
ERIC O. OMANU	44600-00100	5818702	
19. ESTHER MBOGO	-	28436938	

Aga Khan Primary School Nairobi

NAME OF PETITIONER	ADDRESS	NATIONAL ID NO. OR PASSPORT	SIGNATURE
Suhail Kaur	0722831435	-	
Rehana Anif	0727746435	-	
Mulhat Naushad	0721813971	-	
Samira Farooq	0726900016	-	
Sherbanu	0712678617	-	
Hassan ABU	Box 68971-00622	21662644	
Sichana Jalela	0725750494	13163651	
Joseph njenga	0721-921684	22422060	
SYLVIA WAIYAKI	50033-00200	13843890	
Grace Thuo	0722333071	20039531	
Alma	0722756354	13474767	
Victoria Ndeto	0721588	22936860	
14. HODAN S. ALI	0728464051	22777635	
Farah Hussein	0722756735	0425122	

Aga Khan Primary School Nairobi




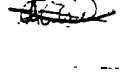
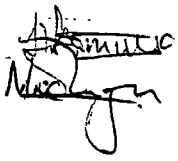
NAME OF PETITIONER	ADDRESS	NATIONAL ID NO. OR PASSPORT	SIGNATURE
Ushmata S. Kumbharana Mubeez Mungu	Box 1 Mephu 63966- 933 00200	0733984475 3962377	Ushmata
DONALD WAFILA	7812	10839933	Donald
Fatima Hassan YUSEEN KHAN	72289	2240211 13040840	Fatima
JOEL KIBENI	41545 00100	13500976	Joel
SIYAD SARHATE	22078-00100	24318826	Siyaad
Fair huya MOHAMMAD	46754-00100	24646211	Fair huya
Antony Mwendesi	46784-00100	22679139	Antony
VICTOR MTANGAS	10843 00400	9661563	Victor
JOSEPH D. MENDES	P.O. Box 39785-00600	11183557	Joseph
MARY KABURA	PO RAV 33426	16119700	Mary
NOOR AHMADI	11677-00800	0726229135	Noor
HASIB ABDI	2786 4449	0722 914996	Hasib
PATRICK K. LIAMPA	9025776	072275	Patrick
PATRICK K. LIAMPA	Box 826, 00100 NAIROBI	9025776	Patrick
Susan Kiragu	Box 53053-00100	1426224	Susan
Cherrie Rubaidia	Box 20623 GLORI		Cherrie
JONES O. OCHANA	Box 2028 KISI	21828959	Jones

18

Aga Khan Primary School Nairobi

NAME OF PETITIONER	ADDRESS	NATIONAL ID NO. OR PASSPORT	SIGNATURE
Kadijo Hassan		0725908454	
Batula GURE ALI		0722505627	
Joyce KIMULIHA		0721-360390	
MUSA ABSHIRAH		0715 240076	
Amour Astur		0721421152	
RETHEMA ISHA	0020067761		Rehema
JUVEX MUGABI			Mugabi
ISAH MUKETI	-	22649439	
ROSE MUKUGI	2390-00200	13844868	Rose
AMINA AHMED	5220-00100	25141306	
CAISPI IBRAHIM	25104795	63729	
SACDIYO ADAN			
EDWARDS WABANJA	0726747083	29	
Abdulatif KIZAN		0722426539	
Grace KEMINI	0724378838	22225776	
RICHARD LINDA	0713776785	2750546	

Aga Khan Primary School Nairobi

NAME OF PETITIONER	ADDRESS	NATIONAL ID NO. OR PASSPORT	SIGNATURE
Susan Muthoni	0720555251		
PENINAH MANGI	07029759021		
SAADA AH	11688004		
Ann Biy	0722237532		
Suzanne Cabale	0722491043		
7.	Hesbon Kamulla	0721792798	5304789
	MIRIAM ODUNGU	0720-255222	10730061
			

APPENDIX II

JUDICIAL REVIEW

1. Ministers directive to withdraw teachers from an assisted school where the managers are ready and willing to fill the gap - whether unreasonable
2. WEDNESBURY unreasonableness meaning of applied
3. Right to hear the other side not a requirement in every situation. It can be excluded by the grant of unfettered discretion
4. Reliefs denied.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

MISC CIVIL APPLICATION NO. 13 OF 2002

IN THE MATTER OF AN APPLICATION BY ALI SELE, BENSON
WAIRAGU, JOSEPH NG'ETHE GITU

AND

IN THE MATTER OF AGAPHAN PRIMARY SCHOOL NAIROBI

AND

IN THE MATTER OF AGA KHAN EDUCATION SERVICE KENYA

AND

IN THE MATTER OF THE MINISTER FOR EDUCATION

AND

IN THE MATTER OF THE EDUCATION ACT (CHAPTER 211 OF THE
LAWS OF KENYA)

JUDGMENT

By an application dated 23rd January 2002 the Applicants who described themselves as Chairman, and Treasurer respectively of the School Parents Association of the Aga Khan Primary School in Nairobi, seek a quashing order of the directive by Minister for Education to the effect that the Aga Khan Primary School be managed by the Aga Khan Education Service Kenya (AKESK).

The grounds upon which the relief is sought are that the Minister's directive/order is:

- (a) ultra vires and/or offensive of the Education Act.

(b) oppressive, draconian and high handed

(c) unreasonable

(d) offensive of the rules of natural justice

(e) devoid of justification in a democratic society

(f) offensive of the rule of the right to legitimate expectation to consultation.

The application is opposed and parties have filed written submissions which I have taken into account in my judgment. I have also taken into account all the affidavits filed by the parties.

At the outset, the court is of the view that the application is incompetent in that in the statement no substantive judicial review orders have been sought contrary to O 53 rule 4 and therefore, the relief sought in the statement - namely leave, does not tally with the relief sought in the Notice of Motion. According to Order 53 rule 4, relief not sought in the statement cannot be relied on at the hearing.

O 53 rule 4(1) reads:-

"Copies of the statement accompanying the application for leave, shall be served with the

accompanying the application for leave shall be supported on demand and no grounds shall, subject as hereinafter in this rule provided be relied upon or any relief sought at the hearing of the motion except the grounds and relief set out in the said statement."

In addition there is now available a wealth of case law on the point for example *R v MINISTRY OF PLANNING AND NATURAL DEVELOPMENT ex-parte NON GOVERNMENTAL ORGANISATION Misc Civil Application No. 1769 of 2004* where this Court held that failure to seek substantive judicial review orders in the statement is fatal.

However, in view of the time, this matter has taken to reach finality I would wish to adjudicate on the other points raised.

The Interested Party (I.P.) Aga Khan Education Service Kenya (*AKESM*) K has been described as a company limited by guarantee and duly incorporated under the provisions of the Companies Act Cap 486 of *LOK* and it is a non profit making

organization whose principal objective is the provision of quality education in various schools that it manages since 1953. The land upon which the school which is the subject matter of these proceedings, is owned by Aga Khan Foundation "AKF" and leased to **AKESK**. AKF is said I have put up the vast majority of the buildings and facilities on the land. However, it is common ground that the parents have over the years chipped in. According to the applicants they have contributed Kshs 40 million for the school to put up various facilities but the IP has contended that this was exaggerated and the contribution is not more than 9 million.

It is against this factual background that the applicants contend that the Minister should have consulted them and given them a hearing before making the directive. They further contend that the absence of an identifiable decision/directive is not fatal to their application and that the Parent Association has locus to bring the matter to Court. The other principal ground is that the applicants claim that the school is a public school under the provisions of the Education Act.

As expected, the IP has denied all this. The Respondent was represented by the Attorney General who did not turn up but had opposed the application and had filed written submissions.

LOCUS

On the issue of locus my finding is that for purposes of judicial review, provided an applicant can demonstrate sufficient interest in the subject matter he should have the recognition of the court. Granted as argued by the IP that two of the Applicants have no kids in the school and only one has kids at the school at the time of the hearing of this application, I find that this is no ground to hold that the remaining parent has no locus. Since on the ground the school itself did recognize the existence, role and contribution of the Parent Association. I find that the Applicants do have standing to bring the proceedings. In judicial review unlike in Constitutional matters this court has been liberal on matters of standing so as to allow the fullest articulation of public law rights without unnecessary inhibition. In this case no right

thinking person in Kenya would regard the Parent Association as a busybody.

IDENTIFIABLE DECISION

I agree with the applicants that the absence of an identifiable decision is not fatal to their application for the following reasons:-

(1) The Respondents and Interested Parties or affected parties have an obligation to fully respond to the challenge concerning the decision. They owe this duty to the court when the matter is filed. The court agrees with the reasoning of *Sir John Donaldson Mr* in *R v LANCAESHIRE COUNTY COUNCIL ex parte HUDDLESTON* [1986] 2 ALLER 941 at 945 observed:-

“Judicial review is a process which falls to be conducted with all the cards face upwards on the table and where the vast majority of the cards will start in the public authority’s hands ... the defendants should set out fully what they did and why so far as necessary, fully fairly to meet the challenge.”

Again in the case of *R v LONDON BOROUGH OF LAMBETH*
ex parte CAMBELL 26 HLR618 at pg 622 Law J, observed:-

"the council had given the court very little assistance towards the performance of its task of deciding whether there are here good grounds for judicial review. This is lamentable, since it is the duty of a local authority to place before the court the reasons for its decision under challenge so as to enable the court to ascertain whether there is a *Wednesbury* error."

A sufficient act is capable of sustaining an application for judicial review. Thus in the case of *R v SECRETARY OF STATE FOR TRANSPORT ex-parte LONDON BOROUGH OF RICHMOND UPON THAME S (No 3)* [1995] Ex LR at pg 413 No 3 SEDLE J held - "*the want of an identifiable decision is not fatal to an application for judicial review.*" As held above I find and hold that this represents good law taking into account that many aggrieved applicants would have no means sometimes of identifying the decision in the absence of any

discovery provisions upfront. Order 53 rule 7 only applies to the formal orders set out therein.

LEGITIMATE EXPECTATION

On the point that the applicants expected the Minister to consult the *Parents Association* although I agree with the learned Commissioner of *Assize Hon Birech* in the case of *Aga Khan Education Service Kenya v Ouma John Mark Onyango & 3 others HCCC No 283 of 2001* at Kisumu that the Parents Association has no recognition in the Education Act, on the ground the Ministry of Education and all those involved in the management of education are aware of the existence of the Association in many schools. Since legitimate expectation is a principle of fairness and it is pegged on practices and promises it was expected that the parents of the school would be alerted concerning the intended move. I do not agree with the IP argument that because the Education Act does not provide for the right to consult such a right cannot arise in law. I hold that it can arise from past dealings between the parties. Whether or not the PAs are part of the Education Act, their existence has been recognised in the

Education system in Kenya. I do depart from the Commissioner of Assize on this point. In the case of *CCSU v MINISTER OF CIVIL SERVICE (HL)(E)[1985] IAC at page 401*

Lord Fraser observed:-

“But even where a person claiming some benefit or privilege has no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so, the courts will protect his expectation by judicial review as a matter of public law.”

It is not therefore unreasonable for the PA to have been consulted as regards the affairs for which they exist. However they do not in my view exist to manage schools. On the facts it is common ground that the body charged with the management of the school is AK E S (K), and it appears to have been aware of the decision by the Minister and they have in turn agreed to fill the gap left after the withdrawal of the additional teachers from the school. It is for this reason the court fails to see what benefit or advantage the applicants (PA) are losing or better still what bargain is being thwarted? If

there is any bargain it was to the disadvantage of AKES (K) and not the PA and the AKES (K) does not take the withdrawal as a disadvantage. There is no benefit or disadvantage to the applicant since the applicant cannot show any promise to consult them directly, or past practice by the Ministry to consult them instead of consulting the management of the school. The PA does not deny having been informed of the decision by the school management. They have not established a claim based on legitimate expectation. I set out the requirements for the establishment of legitimate expectation, in the case of *R v KENYA REVENUE AUTHORITY ex-parte ABERDARE FREIGHT SERVICES LTD Misc Civil Application No. 946 of 2004* and I wish to reiterate those holdings here. The PA has clearly not satisfied the requirements set in that case.

Under s 4 of the Teachers Service Commission (TSC) the TSC may assign any teacher employed by TSC for service in any public school or any unaided school. The assignment of teachers to an unaided school does not make the school a public school. In other words the involvement of the

Government in the school was the provision of teachers by **TSC**. The challenged directive which was issued in late 2001 was to the effect that the Government would not continue giving assistance, by way of additional teachers through **TSC** to this particular school and to the other schools founded by **AKF** and run and managed by **AKES** (K). Upon receipt of the directive the **AKES** (K) did on a point of information send out a notice to the parents and teachers of the school informing them of the directive. This was sufficient notice.

ILLEGALITY & ULTRA VIRES ALLEGATIONS

The contention that the Minister acted ultra vires the Education Act cannot be sustained in that under s 6(b) of the Education Act, the Ministers powers are stipulated as under:-

“Every maintained or assisted school shall be managed by a board of governors or as the Minister may otherwise direct, in accordance with this Act and any regulations made under the Act.”

Moreover, section 4(3) of the Teachers Service Commission Act, provides that the **TSC** may, with the consent of the

Minister and subject to such conditions as he may impose, assign any teacher employed by the TSC for service in an unaided school. It is therefore quite evident, that the Minister's power to deny teachers to the school is within his general powers. If he has power to consent to the assignment it is incidental to those powers to decline to assign or withdraw the assignment.

In this regard I accept as good law the citation by the IP's Counsel of the *JUDICIAL REVIEW OF ADMINISTRATIVE ACTION 3rd Edn by SA de SMITH PP 10-11* where the learned author states:-

“The House of Lords has laid down the principle that “whatever may fairly be regarded as incidental to, or contingent upon those things which the Legislature has authorized, ought not (unless expressly prohibited) to be held by judicial construction to be ultra vires.”

Is the Directive oppressive, draconian and high handed

I find no basis for this. It is within the discretion of the Minister through TSC to withdraw provision of teachers and it

has not been suggested that the managers of the school are not able to fill the gap. Judicial review does not review the merit of a decision but the decision making process. In this case, the attack is directed on the merit of the decision and this is not the court's role.

Unreasonableness of directive

I find the suggestion that the Minister's directive could be unreasonable, as a misdirection in law on the part of the applicants. The decision not to provide teachers to the school in a situation where the Manager, namely, the **AKES** (K) has declared that it has the ability to provide the withdrawn teachers and is also fully managing four other schools on the same basis, can never even be regarded as unreasonable, using all the tests set out in the unrivalled case on the point, namely *ASSOCIATED PROVINCIAL PICTURE HOUSE LTD v WEDNESBURY COPORATION (1947) 2 ALL ER 680* where Lord Greene set out the principle and the tests as follows:-

"In the present case we have heard a great deal about the meaning of the word 'unreasonable'.

Lawyers familiar with the phraseology commonly

used in relation to the exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must direct himself properly in law ... you may have something so *absurd that no sensible person could ever dream that it lay within the powers of the authority* (emphasis provided) ... That is unreasonable in one sense. Theoretically it is true to say - and in practice it may operate in some cases - that if a decision on a competent matter is *so unreasonable that no authority could ever have come to it* (emphasis provides) then the courts can interfere. That I think is right, *but that would require overwhelming proof* (emphasis provides), and in this case the facts do not come anywhere near such a thing."

I find that the Minister's directive cannot by any stretch of imagination be said to be Wednesbury unreasonable. I decline to intervene on the facts as outlined.

Were the Rules of Natural justice violated

The principle underlying the Rule are two-fold:-

- (1) The rule against bias (non judex in causa sua)
- (2) Hear the other side (audi alteram partem)

The applicants have not shown any bias by the Minister. Indeed the Minister had acted the same way in respect of the Aga Khan Schools before. It has not been shown that the Minister had direct or any interest in the directive. It has also not been demonstrated that there is reasonable suspicion appearance or likelihood of bias. In this respect and for the meaning of bias, the Court wishes to refer to the recent decision of a constitutional court of two judges in the case of *R v ATTORNEY GENERAL ex-parte HOME PARK CATERERS* *Petition No. 671 of 2006.*

As regards the second meaning namely "*hear the other side*", I have already held that the duty to consult the PA, if any, could only have arisen in respect of the matters

ordinarily handled by PA's and since the FA was not involved in the management of the school, that duty cannot reasonably arise in their favour, if anything, it is the management who should be complaining for non consultation (but they are not) because the burden to provide the additional teachers now falls on them.

The court holds the view that as regards the assignment of teachers the Minister has unfettered discretion through the TSC and the audi alteram partem (hear the other side) is excluded - see *HALSBURY LAWS OF ENGLAND 4th Edition Vol 1 para 74 pages 20-21* where the learned authors state:

"The rule that no man shall be condemned unless he has been given prior notice of the allegations against him and a fair opportunity to be heard is a cardinal principle of justice ... In a given context, the presumption in favour of importing the rule may be partly or wholly displaced ... where Parliament has evinced an intention to exclude the operation of the rule ...

by conferring on the competent authority unfettered discretionary power."

On the facts, I find no such breach of the audi alteram partem rule.

On the allegation that there was breach of the rules of natural justice, it is not in every situation that the other side must be heard. There are situations where hearing would be unnecessary and even in some cases obstructive. Each case must be put on the scales by the Court and there cannot be a general requirement for hearing in all situations. There will be for example situations where the need for expedition in decision making far outweighs the need to hear the other side and in such situations, the court has to strike a balance.

I respectfully agree with what was expressed by Turker LJ concerning the requirements of natural justice in the case of *RUSSELL v DUKE OF NORFOLK* [1949] 1 ALL ER at 118:-

"There are in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on

circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being deal with and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted one essential is that the person concerned should have a reasonable opportunity presenting his case.

As the PA is not even mentioned in the Act, its legitimate expectations to be heard, could only have arisen on matters which it deals with and one of the matters is not management of the school or the assignment or withdrawal of teachers. The Act gives the TSC and the Minister unfettered discretion to act as appropriate which is what they have done without the school managers being prejudiced otherwise they should have been the aggrieved party. I find no need of prior hearing in the circumstances. And I further ~~find that the applicants~~ have miserably failed to establish or prove the

requirements necessary in all legitimate expectation claims.

Is the School Public and who owns it

Section 2 of the Education Act provides that only schools managed and maintained by a local authority are defined as public schools. This is not one of them and cannot be since the land on which the school is built and the buildings are owned by the AKF (not made party to these proceedings) since 1951 and the school has always been managed by the **AKES**, K since its inception. Surely the applicants and each generation of parents cannot be allowed to claim ownership by virtue of voluntary (harambee) contributions. Ownership is a matter of land law and on the facts, the **AKF** owns both the land, buildings and fixtures. I find that the PA contribution is exaggerated, in that the evidence exhibited shows that school fees constitutes the main source of revenue for the school.

Whether directive is devoid of justification in a
democratic society

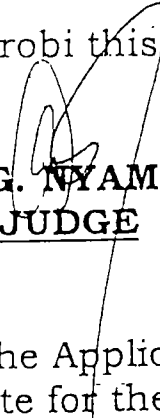
The applicants contention based on this ground is a stranger to the judicial review jurisdiction. There is no such ground for intervention in judicial review.

CONCLUSION

As is apparent from the above analysis, the applicants have in addition to the first ground of fatal incompetency in not seeking any judicial review orders in the statement, failed to establish any of the grounds upon which the application is based.

For this reason the application is dismissed with the costs to the Interested Party (IP) only since the Respondent through the Attorney General did not attend the hearing.

DATED and delivered at Nairobi this 11th day of July 2008.


J.G. NYAMU
JUDGE

Advocates

Miss Githui - Advocate for the Applicant
Mr Njoroge Regeru - Advocate for the IP

APPENDIX III

THE STATE LAW OFFICE

Telephone: Nairobi 22 37461/22 31355
Telefax: Nairobi 22 37461/22 31355
When replying please quote

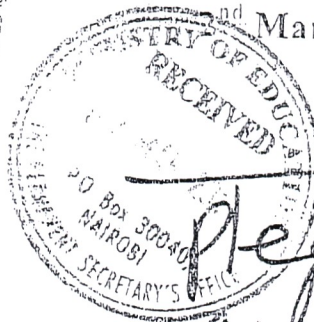
REF: AG/EDU/75/08



ATTORNEY-GENERAL'S CHAMBERS
P.O. Box 40112-00100
NAIROBI, KENYA

10th March, 2011

Prof. James L. Ole Kiyiapi, CBS
Permanent Secretary
Ministry of Education
Jogoo House
NAIROBI



DLS

Please review and advise.

JULIUS

9/3/11

NAIROBI ELC NO. 455 OF 2008
ALBERT EKIRAPA -VS- AGA KHAN FOUNDATION & OTHERS

We refer to your letter dated 1st February, 2011 addressed to the Hon. Attorney General in relation to one Albert M. Muiruri the Headmaster Aga Khan Primary School who had been cited for contempt of court.

We attended to the same on 8th February, 2011 before Hon. Muchelule J. It was coming for hearing of an application by Kinoti and Kibe Advocates on behalf of the Headmaster which sought to stay the contempt orders pending appeal.

The court in its ruling delivered on 15/2/2010 allowed the application on terms, namely; that the appeal should be filed within 30 days and that the contemnor be released on a bond of 2 Million shillings with a surety of a similar amount.

The History

It would be imperative to understand the background of this matter to enable your office appreciate the circumstances under which the High Court issued orders citing Mr. Muiruri for contempt.

There are two suits which have been filed in respect of the ownership and/or management of Aga Khan primary school. The first one was filed as

NRB HC MISC. NO. 13 OF 2002. This was a Judicial Review motion for orders of certiorari to quash a decision by the then Minister for Education to de-aid the school. It was heard by Nyamu J. and ultimately dismissed it. Crucially, the Learned Judge found in the judgment delivered on 11/7/08 that;-

- a) Ownership is a matter of land law and that on the facts Aga Khan Foundation owns the land, buildings and fixtures situated thereon.
- b) Aga Khan Primary School does not fall within the category of those defined by the Education Act as being public schools.
- c) The assignment of teachers to an unaided school does not make the school a public school
- d) The Minister had the powers under the Education Act to deny teachers to any unaided school

On the 22nd September, 2008 the Applicants in the Judicial Review matter (now different parents association) filed the suit herein in the High Court and contemporaneous with the plaint, filed an application for several injunctive reliefs directed at the Aga Khan Educational Services. The Defendants filed their defences with counterclaims and also filed their respective applications for injunctions. Aroni J. considered both applications and in the end dismissed the application by the Plaintiffs (the schools parents association) and allowed that which had been filed by the 2nd Defendant (Aga Khan Educational Services). It is the alleged breaches of the injunctions that gave rise to the committal of the head teacher of the school.

The Issues

a) A public school/private school?
This is perhaps the central issue in this dispute. While Aroni J. took note of this fact while delivering her ruling on the summonses for injunction, she nonetheless granted an injunction whose effect was to divest the management of the school from the head teacher appointed and paid by the T.S.C

The Defendants assert that they own the school on the basis of a certificate of lease issued by the Commissioner of Lands in 1951. They indeed have a title but the evidence available reveals the conditions attached to the lease have been breached.

Under the Education Act a public school has been defined as “a school maintained or assisted out of public funds” and “public funds means the public funds of the government or the public funds of a local authority”.

Unaided school’ on the other hand means “a school which is not receiving grants out of public funds”.

The phrase ‘private school’ has not been defined in the Act, neither is there any reference to a private school anywhere in the main sections of the Act. It is also imperative to note that the usage of the words “maintained” and “assisted” in the definition of a public school have themselves been defined in the Act. An “assisted school” means “a school other than a maintained school which receives financial assistance from the Ministry or assistance from the Teachers Service Commission established by the TSC Act”. On the other hand, “a maintained school” means “a school in respect of which the Ministry or a local authority accepts general financial responsibility for maintenance”.

A close reading of the said clauses leads in summary to the following conclusion;

- An assisted school is a public school
- A maintained school is a public school
- An unaided school is a private school

It should be noted that the Act establishes a separate mechanism for registration of unaided schools under part IV (sections 14 – 17 of the Act).

With respect to Aga Khan Primary School there is evidence that;-

- A majority of its teachers are employees of the TSC
- Some of the fixed assets were developed by the City Council of Nairobi
- The school has consistently received funding from the Ministry for its recurrent expenditure including FPE Funds.

* With these facts in mind, it follows that Aga Khan Primary School is a public school for purposes of the Education Act.

704

What triggered this entire dispute is a letter dated 20th August, 2001 by Prof. J.C. Kiptoon the then Permanent Secretary in your Ministry responding to a letter of the same date from Aga Khan Educational Services which supposedly had requested for the de-aiding of the school. Some conditions were attached by the Permanent Secretary to the question of de-aiding. There is no evidence of those conditions having been fulfilled and there is no confirmation that indeed the school was ever de-aided. That perhaps explains why the school still has TSC employees and still receives FPE funds. It is still a public school within the meaning of the Act. There is an affidavit sworn by Prof. Karega Mutahi in Judicial Review No. 13 of 2002 where your the Ministry denies ever making a decision to privatize the school though at paragraph 6 avers to a decision to de-aid the school. The school has however continued to enjoy TSC teachers.

The Question of Ownership

It is not denied that the Aga Khan was allocated the land on which the school stands way back in 1952.

The land was allocated to His Highness the Right Honourable Sultan Mohamed Shah P.C, G.C.V.C, the Aga Khan on 1.4.1951 for a team of 3 years. The land under Special Condition No. 5 was reserved for use for educational purposes. Under special condition 9 the land was not transferable without consent of the Governor, (for purposes of Government Lands Act, this power is exercisable by the President). Lastly, the land was not to be subdivided. Your Ministry needs to satisfy itself that these conditions have not been breached and if they have been breached take remedial measures.

ACT (PS)

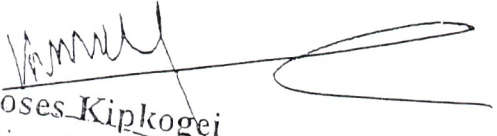
Way Forward → let The Ps Act instead of taking sides

It is our considered view that your Ministry needs to give directions as to the ownership, management and control of this school. There is need to confirm whether the school is aided or unaided, whether its private or public and inform the stake holders of your decision.

You need to relook at the question of de-aiding as had been intended by Prof. J. Kiptoon in 2001 and if satisfied that it was a prudent policy move complete the same. If it was not, rescind the same and inform the stakeholders.

It is not advisable that this state of affairs continues to fester. Simply because any teacher posted by Teachers Service Commission to manage the school would technically be in contempt of court. But the issue in court is simply one of who owns the school and who should manage it. That is one issue which your ministry can easily determine. The Education Act deliberately, does not concern itself much with who owns the land on which the institution stands but rather who makes it function as a school. If it is the state, regardless of who owns the land, it makes it a public school.

Enclosed are copies of the pleadings, judgments, rulings and other documents which will assist you make a determination one way or the other.


Moses Kipkoge
Litigation Counsel
FOR: ATTORNEY GENERAL

COLONY AND PROTECTORATE OF KENYA

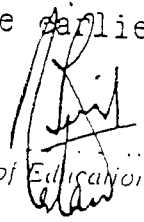
ED/R/2

EDUCATION DEPARTMENT

CERTIFICATE OF REGISTRATION OF SCHOOLS

1. Name of School: H. H. THE AGA KHAN PRIMARY SCHOOL,
2. Classification of School : PRIMARY.
3. Town or Location : L. R. 209, PLOTS 3576 & 5849, NAIROBI,
4. District : NAIROBI.
5. Manager : H. H. THE AGA KHAN PROVINCIAL EDUC. BOARD,
6. Address of Manager : P. O. BOX 1440,
- NAIROBI.
7. Registration Number : 2292.
8. Date of Registration : 4th DECEMBER, 1961.
9. Instruction may be given in this School up to STD. VII (7), DOUBLE STREAMS (BOYS)
DOUBLE STREAMS (GIRLS).
Max. no. of pupils to be accommodated: 1,000.

This Certificate cancels the earlier
Certificate No. 2248 of 12-8-1960.


for Director of Education.



APPENDIX IV

MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY

Telegrams: "EDUCATION", Nairobi

Telephone: Nairobi 334411

When replying please quote

Ref. No. **PE9/12/1(86)**

and date

THE PERMANENT SECRETARY

JOGOO HOUSE "B"

HARAMBEE AVENUE

P.O. Box 30040

NAIROBI

9th October 2001

01
20

Farid R. Hamir
Chairman,
Aga Khan Education, Service
P O Box 41440
NAIROBI

Dear *Farid*,

DE-AIDING OF AGA KHAN SCHOOLS

This is to acknowledge receipt of your letter Ref. fh.375.01/ed.moe dated October 3, 2001 stating that you need further explanation on the implication of the Kenya Government having no objection to de-aiding your five schools.

This letter is therefore to authorize you to proceed on the preparation to be completely in charge of these institutions with effect from 1st January 2002. In the Transition between now and that date, you should liaise with the Teachers Service Commission on procedures to assume full responsibility for the Teachers and Staff in these institutions.

You should also have all the parents, guardians and students understand the significance of this move on the basis of the conditions agreed to earlier. The Kenya Government has the full confidence in the Aga Khan Education Service Board that it will continue to offer the highest Standard of Education to Kenyan children at affordable cost.

2001.12.14

May I therefore wish you success in your future endeavour in Education.

Yours Sincerely,



PROF. J.C. KIPTOON, EBS, PH.D.,
PERMANENT SECRETARY

C.C.

1. Hon. Henry K Kosgey, EGH, MP
Minister for Education
NAIROBI
2. Director of Education
3. Mr Benjamin Sogomo
Secretary
Teachers Service Commission
NAIROBI



Appendix VI B

MINISTRY OF EDUCATION, SCIENCE AND TECHNOLOGY

Telegrams: "EDUCATION", Nairobi

Telephone: Nairobi 334411

When replying please quote

Ref. No. **PE9/12/1(86)**
and date

THE PERMANENT SECRETARY

JOGOO HOUSE "B"

HARAMBEE AVENUE

P.O. Box 30040

NAIROBI

9th October 2001

Farid R. Hamir
Chairman,
Aga Khan Education, Service
P O Box 41440
NAIROBI

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Yours *Sincerely,*



PROF. J.C. KIPTOON, EBS, Ph.D.,
PERMANENT SECRETARY

C.C.

1. Hon. Henry K Kosgey, EGH, MP
Minister for Education
NAIROBI
2. Director of Education
3. Mr Benjamin Sogomo
Secretary
Teachers Service Commission
NAIROBI

SPECIAL CONDITIONS

1. The Grantee shall erect and complete for use and occupation within Three years of the date of commencement of the term of the Grant buildings of approved design on proper foundations constructed of stone burnt brick or concrete with roofing of tiles or such other permanent materials as may be approved by the Commissioner of Lands and by the Public Works Department and shall maintain the same including the external paintwork in good and substantial tenable repair and condition during the continuance of the term of the Grant.

2. No building shall be erected on the said land unless plans (including block plans showing the position of the buildings clearly defined and showing a system of drainage for the disposal of sewage sillage and surface water on the said land) drawings elevations and specifications thereof shall have been previously approved by the Local Authority and by the Commissioner of Lands or such other person as he may appoint. Such plans drawings elevations and specifications shall be submitted in duplicate to the Local Authority within three months of the date of the commencement of the term of the Grant.

3. The Grantee shall at his own expense suitably connect the said drainage system and also the water supply system with any town drainage and/or town water supply system when in the opinion of the Local Authority the latter systems are so far completed as to enable the Grantee to do so.

4. The Government shall have the right to resume possession of all or any of the land comprised in this Grant if required for development or public purposes without paying compensation except in respect of approved buildings.

5. The Grantee shall use the said land and the buildings erected thereon only for educational purposes for both sexes and a house for a

principal.

6. The education shall be such as to reach the standard prescribed by the Education Ordinance 1951 and all other ordinances supplemental to or amending the same to the satisfaction of the Director of Education.

7. The Grantee shall not at any time subdivide the land.

8. The buildings shall conform to a building line prescribed by the Local Authority.

9. The Grantee shall not at any time during the term sell or transfer the land nor enter into any mortgage charge (other than with the consent of the Commissioner of Lands for the raising of a loan for building purposes) or agreement of sale in respect thereof without the previous written consent of the Governor.

10. The Grantee shall not at any time during the term of the Grant erect any buildings to cover more than fifty per centum of the area of the plot.

11. The Grantee shall pay such taxes charges duties assessments or outgoings of whatsoever description as may be imposed charged or assessed by any government or local authority upon the land or the buildings erected thereon including any contribution or other sum paid by the Governor in lieu thereof.

12. The Governor or such person or authority as may be appointed for the purpose shall have the right to enter upon the land and lay and have access to water mains service pipes and drains telegraph or telephone wires and electric mains of all descriptions whether overhead or underground and the Grantee shall not interfere with any existing alignments of mains or pipes or the telegraph or telephone wires and electric mains aforementioned.

13. The Grantee shall pay to the Commissioner of Lands on demand such sum as the Commissioner may estimate to be the proportionate cost of constructing all roads and drains serving or adjoining the said land.

14. If at any time during the term the Grantee shall have erected on the said land buildings of approved design constructed of stone burnt brick or concrete on proper foundations the Governor will grant at the Grantee's expense an extension of the said term to Ninety-nine years from the First day of April One thousand nine hundred and fifty-one PROVIDED that this Grant shall not have been determined in the meantime.

IN WITNESS WHEREOF I, JOHN STEVENSON BALLENTINE, C.B., C.I.E., the Acting Commissioner of Lands have by Order of the Governor hereunto set my hand and seal this 12th day of February One thousand nine hundred and fifty-two in the presence of:

W. S. ...

[Signature]
REGISTRAR OF TITLES

LAND TITLE REGISTRY—COLONY OF KENYA	Stamp Duty ...	Rs. //
ISLAND DISTRICT, NAIROBI—REGISTERED No. 11123	do Counterpart	Sh.
Executed... 15/02/52	Penalty	Sh.
Time... 9/15/52	Registration Fee	Sh. 20/-
	Copying Fees	Sh.

REGISTRAR OF TITLES

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THIS TITLE
Probate of Will of Sultan Sir Mahomed Shah Aga Khan deceased
to James Frederick ^{Hamilton} as representative
and Abop Pirbhai as representative

(3)
3944

Registration No. 11123 Date of Registration 4/12/52
[Signature]
Registrar of Titles

COLONY & PROTECTORATE OF KENYA

DISTRICT OF NAIROBI

Locality *Nairobi Municipality (Townlands)*

Meridional District *South 1 37 / 0. II. 0.*

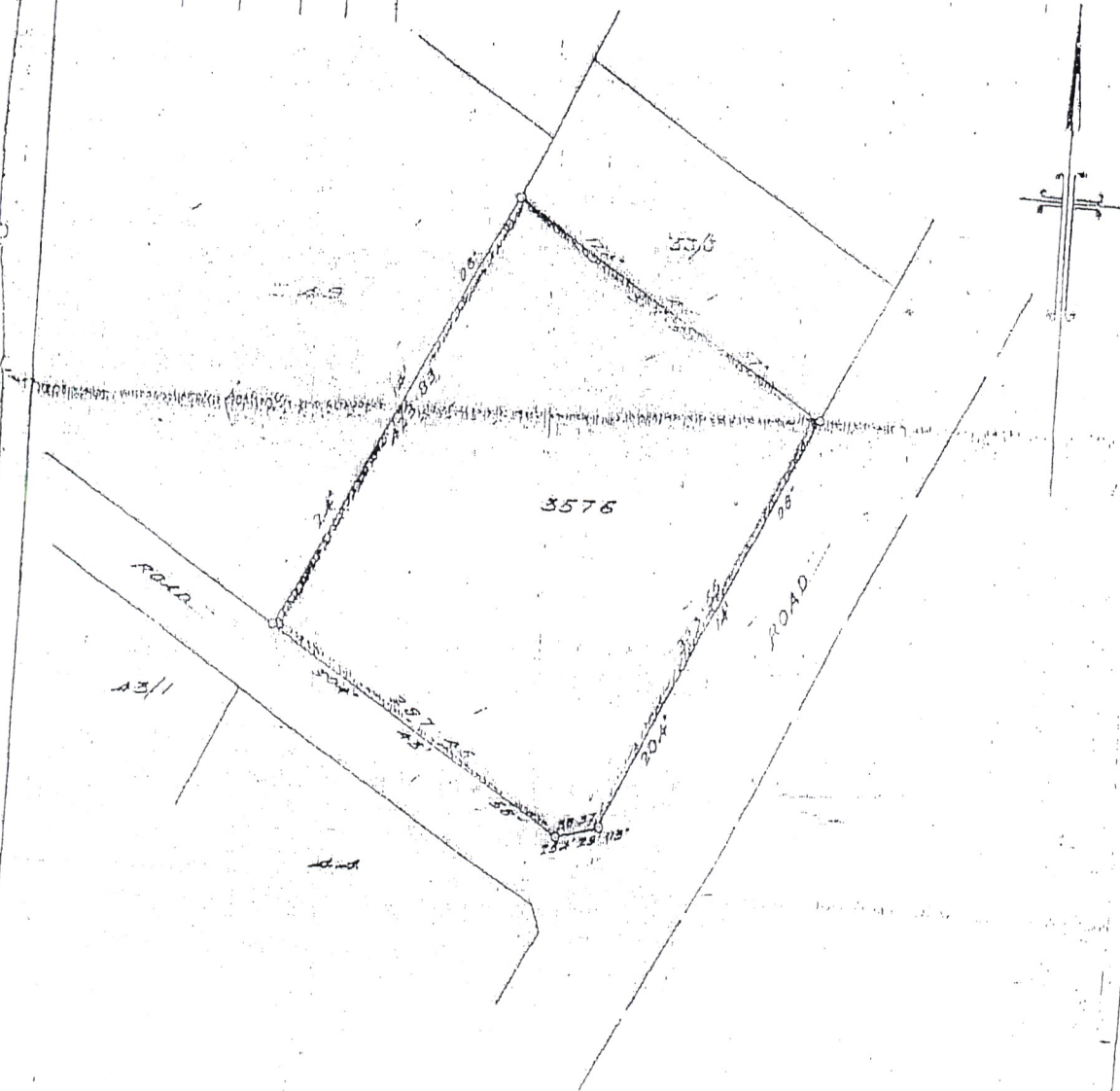
Land Reference No. 209/3576
(Orig. No. _____)

Subdivision No. _____ (Orig. No. _____)
of Section No. _____

Scale: 1 in. 1250 or 100.16 Feet to 1 Inch

Area 3.03 Acres (Approx)

Bearing	Distance



W. Kelland
of Director of Survey

The Chief Executive Manager
H. H. The Aga Khan Estate
Department for Africa,
P. O. Box 878,
Nairobi

2. 4. 54.
9.35



14 x 11
43

~~1/1/54~~
1/1/54
1/1/54

2033

KNOW ALL MEN BY THESE PRESENTS that in pursuance of Special Condition Number 14 of the within-written Grant the GOVERNOR AND COMMANDER-IN-CHIEF OF THE COLONY AND PROTECTORATE OF KENYA on behalf of HER MOST GRACIOUS MAJESTY QUEEN ELIZABETH THE SECOND hereby GRANTS unto the within-named HIS HIGHNESS THE RIGHT HONOURABLE SIR BULFAN MOHAMED SHAH, P.C., G.C.V.O., THE AGA KHAN ALL that piece of land comprised in the within-written Grant TO HOLD for a term of ninety-six years from the first day of April One thousand nine hundred and fifty-four SUBJECT to the Ordinances and Special Conditions referred to or contained in the said Grant excepting Special Condition Number 14 aforesaid.

IN WITNESS the Acting Commissioner of Lands has by Order of the Governor hereunto set his hand this second day of April One thousand nine hundred and fifty-four.

SIGNED by John Steventon Ballantine, C.B., C.I.E., the Acting Commissioner of Lands in the presence of :-

M. J. Stearn
REGISTRAR OF TITLES

LAND TITLES DEPARTMENT - COLONY OF KENYA

INDEXED
FILED 2/4/54
BY S.S. [unclear]

5620/2
[Signature]
Registrar of Titles

2

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE
Transfer to His Highness, Shah Karim Al-Hussaini Aga Khan
(with other family)

4
(1965)

187 7.6.1965
THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE
Transfer to Aga Khan Foundation

5

839
No. 525
19-4-1978
Instrument of rectification
No. 5 above to read as
Aga Khan Foundation
with other lands
669
25.8.79

6

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE
Lease to The Aga Khan Education Service
Nairobi
Term 9 years from 1st January 1979
Annual Rent Sh. 12,000 (Bensabab)

7

THE FOLLOWING INSTRUMENT HAS BEEN REGISTERED AGAINST THE TITLE
Lease to The Aga Khan Education
Service Nairobi
Term 9 years from 1st January 1979
Annual Rent 12,000 (Bensabab)

7

1055

