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28/4/16*



REPUBLIC OF KENYA



*Paper laid on
28/4/2016 Afternoon
sitting by Hon.
Moses Ob. Sakuda, MP*

KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION - 2016

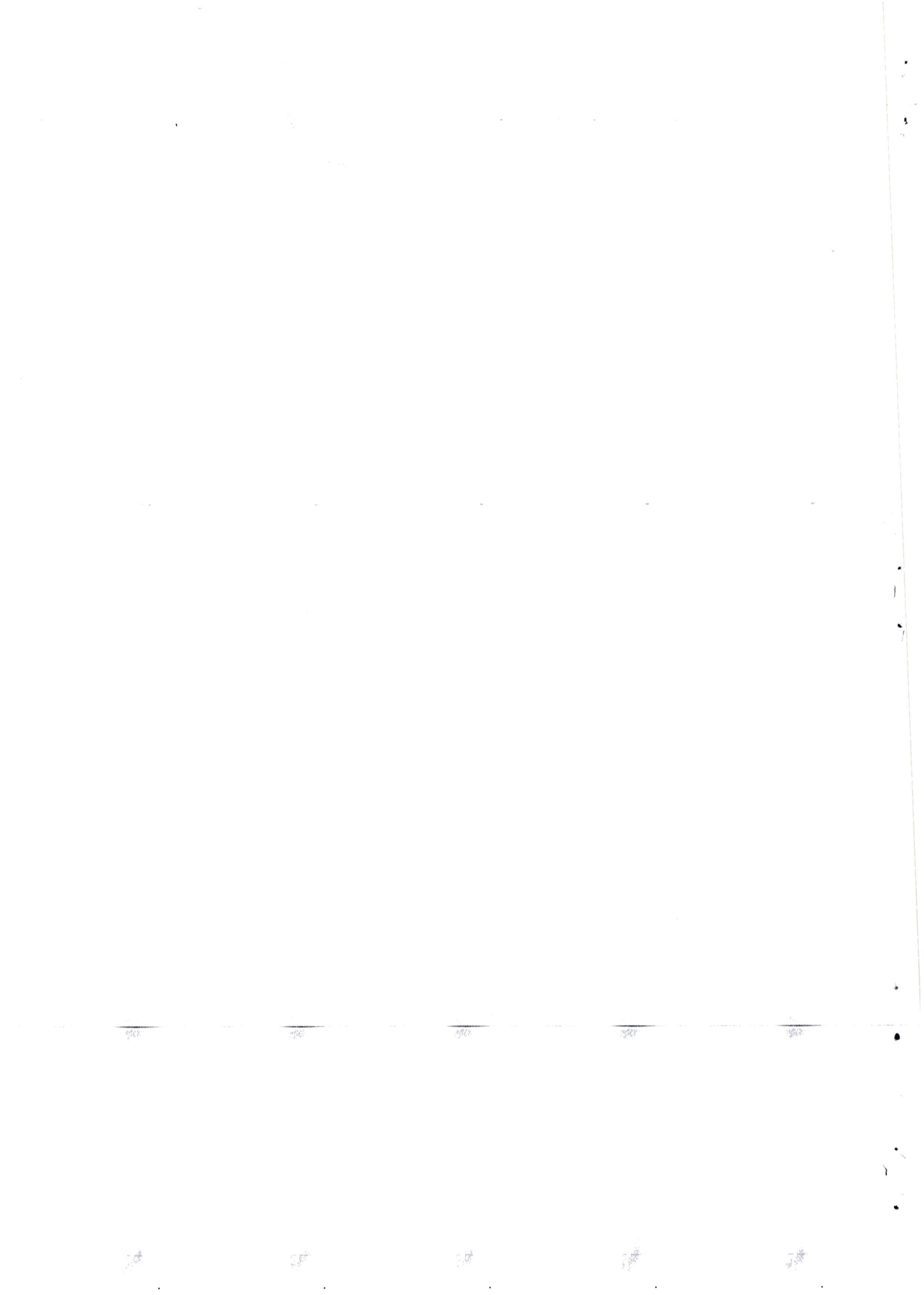
REPORT OF THE DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON LAND DISPUTES BETWEEN PWANI UNIVERSITY AND
MTAANI/KISUMU NDOGO/GTZ RESIDENTS

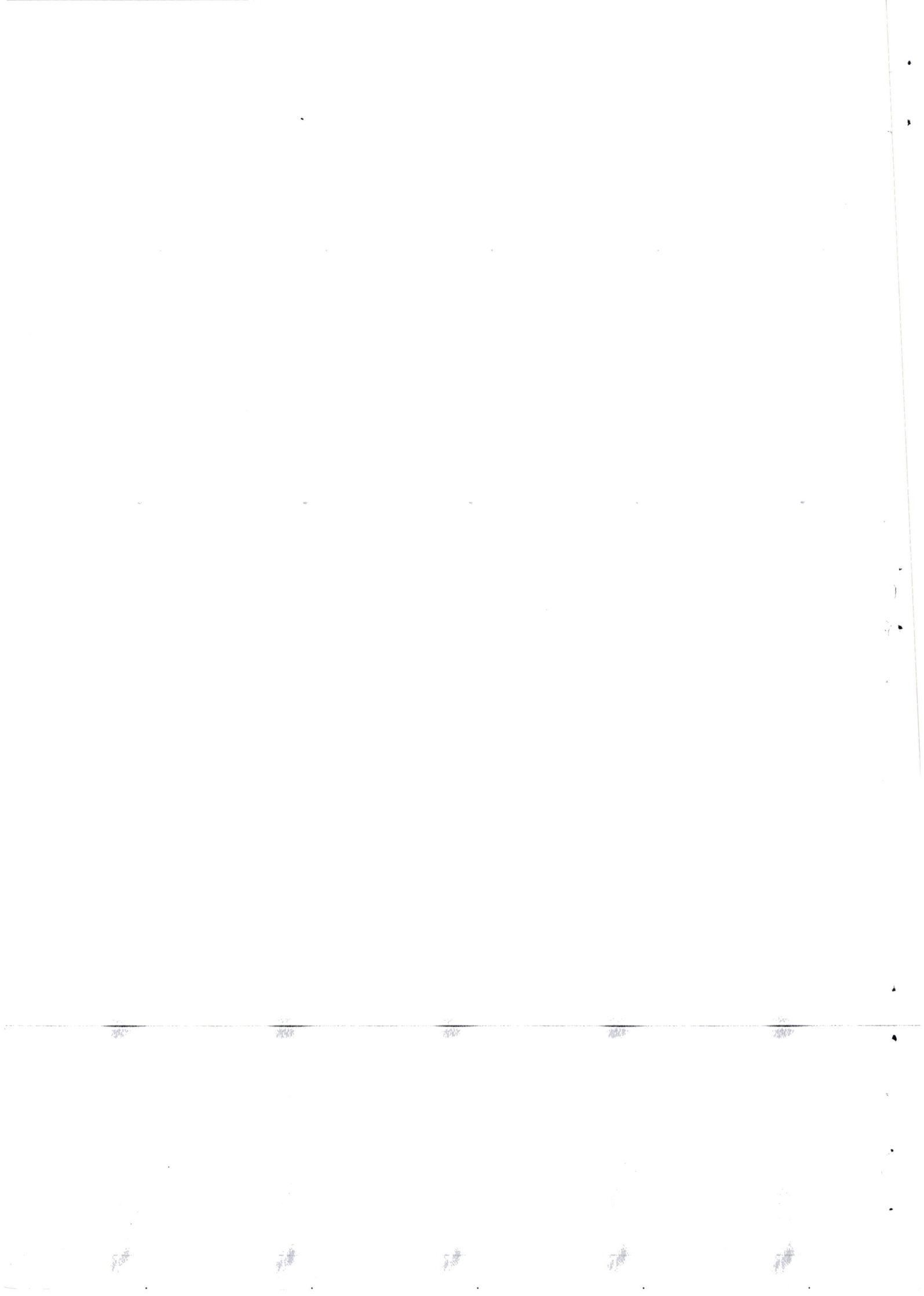
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CLERK'S CHAMBERS,
DIRECTORATE OF COMMITTEE SERVICES,
KENYA NATIONAL ASSEMBLY,
PARLIAMENT BUILDINGS,
NAIROBI.

APRIL 2016



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2. ABBREVIATIONS/ACRONYMS

- C.E.O – Chief Executive Officer
- M.C.A – Member of the County Assembly
- M.O.L.H.U.D – Ministry of Lands, Housing and Urban Development
- N.L.C – National Land Commission
- S.F.T – Settlement Funds Trust

2.1 Annexures

- A. Various Correspondences
- B. Committee Minutes
- C. Submission from the Ministry of Lands, Housing and Urban Development
- D. Submission from the National Land Commission
- E. Submission from the Ministry of Interior and Coordination of National Government



3. CHAIRMAN'S FOREWORD

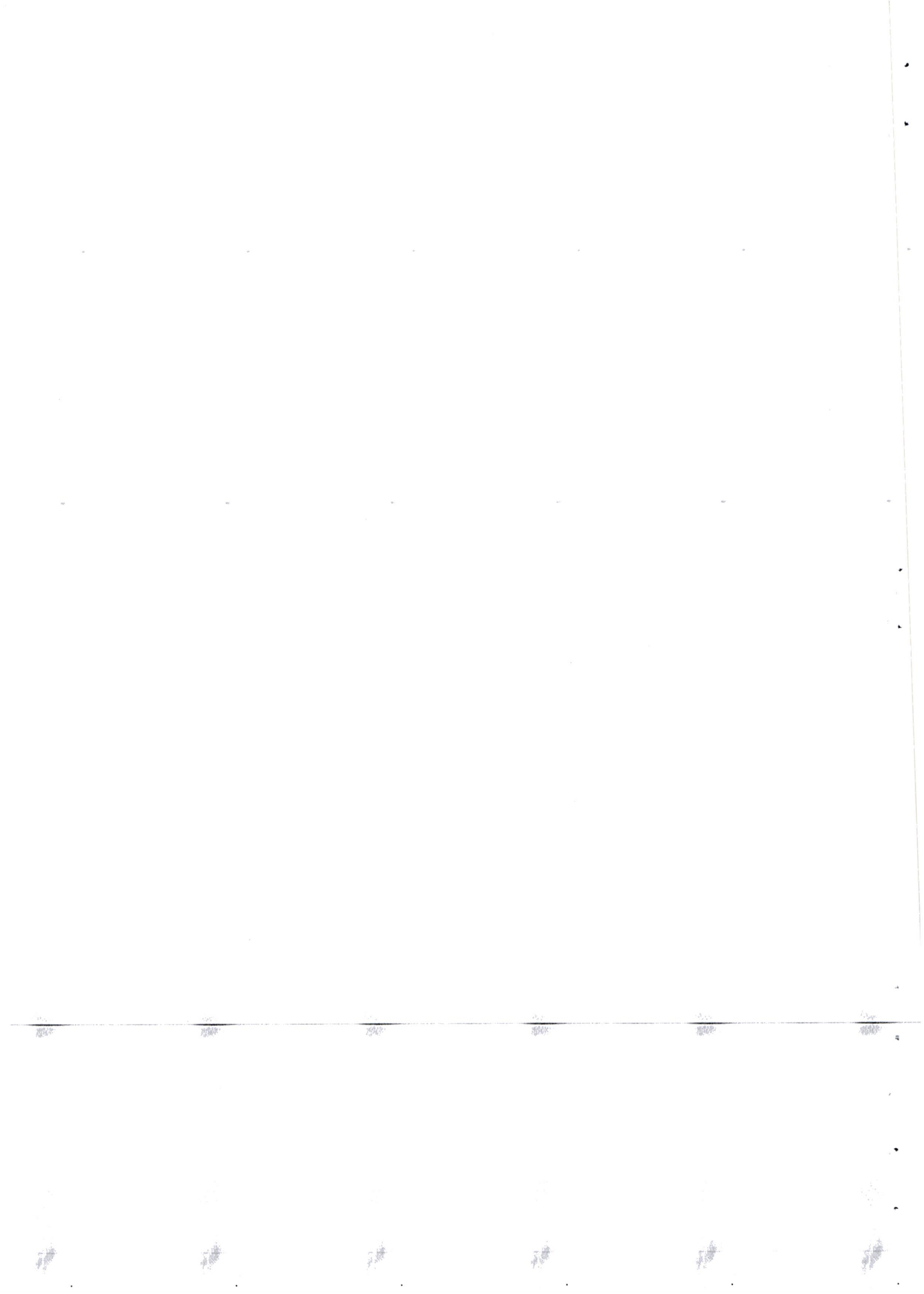
The Committee conducted an inquiry in order to determine the pertinent issues. It held meetings with the member for Kilifi North Constituency, Hon. Gedion Mungaro M.P, who requested for the inquiry by the Committee. In addition, Ms. Mariam El. Maawy Principal Secretary State Department for Lands, Mr. Albert Kobia Wakamau, Kilifi County Commissioner, Hon. Amason Kingi, Kilifi County Governor, Prof. Mohamed S. Rajab – Vice Chancellor and Prof. Muniru Khamis Tsanuo - Deputy Vice Chancellor (Research and Extension), briefed the Committee. The Committee further received representations from Residents of Mtaani/Kisumu Ndogo/GTZ Area. In addition, the Committee undertook a fact finding visit to Kilifi County in order to assess the situation on the ground and collect views of the residents of Mavoko Constituency.

On my own behalf, I wish to commend Members of the Committee for their patience, endurance and hard work during the long sitting hours under tight schedules, which enabled us to complete the tasks within the stipulated period. Furthermore, the assistance received from the offices of the Speaker and the Clerk of the National Assembly was invaluable. The Committee acknowledges the contribution of witnesses in the preparation of this report by way of submissions and presentations.

Finally, it is my pleasant duty, on behalf of the Departmental Committee on Lands, to present this report in accordance with the provisions of Standing Order 199 which requires that the committee to report to the House on a regular basis in response to its activities.

HON. ALEX M. MWIRU, MP

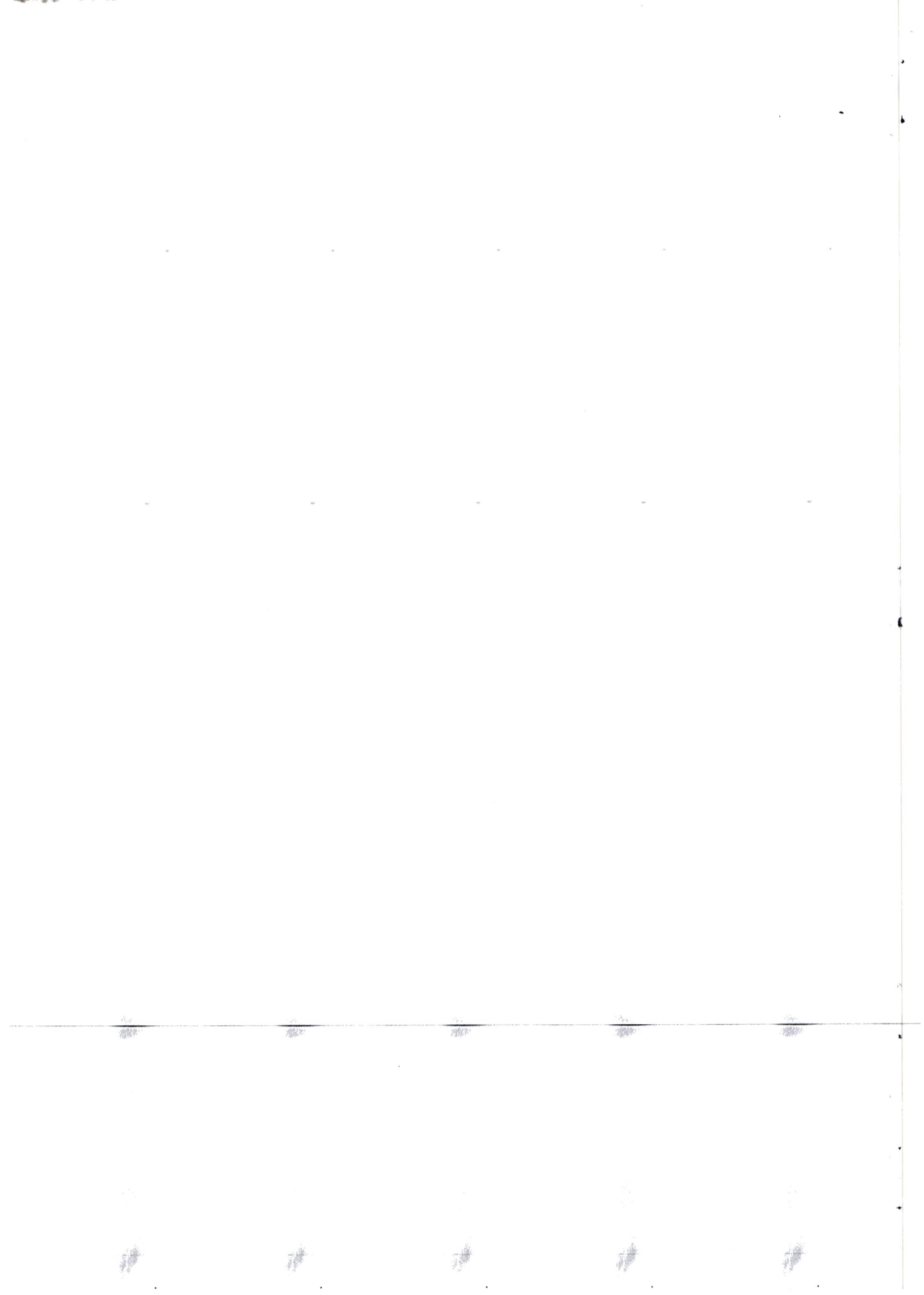
- **CHAIRPERSON**



4. EXECUTIVE SUMMARY

In 1989, the Government, through the Ministry of local government in conjunction with the German Technical Development Corporation (GTZ), directed the upgrading of the Mtaani and Kisumu Ndogo slums in Kilifi. The project involved urban planning of the settlement by providing road reserves, public amenities, utility wayleaves and distinct registered plots for the residents on property known as Kilifi township block 3. In 1996 the government authorized the relocation of these displaced people on LR 5046/1 and LR 5024/1 now known as Kinaoni extension of Mtaani Kisumu ndogo Upgrading Scheme. Since 1996 to 2009,

The issue had been pending in a Malindi Court and the University won the cases and given eviction orders and on 4th February 2015, the Chancellor of the University accompanied with the County Commissioner and police were ready to enforce the Court Order however the residents pleaded with them and they reluctantly retreated. The position now is that the residents of Mtaani and Kisumu Ndogo slums stand evicted, to pay court bills and cost of demolitions. It is against this backdrop that the Committee commenced the investigation



5. MANDATE OF THE COMMITTEE

The Departmental Committee No. K on Lands is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference:-

- a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations, and estimates of the assigned ministries and departments;
- b) Study the Programme and policy objectives of Ministries and Departments and effectiveness of the implementation;
- c) Study and review all legislation referred to it;
- d) Study, assess and analyze the relative success of the Ministries and Departments as measured by the results obtained as compared with their stated objectives;
- e) Investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as they may be referred to them by the House;
- f) Vet and report on all appointments where the Constitution or any Law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);
- g) Make reports and recommendations to the House as often as possible, including recommendations on proposed legislation.

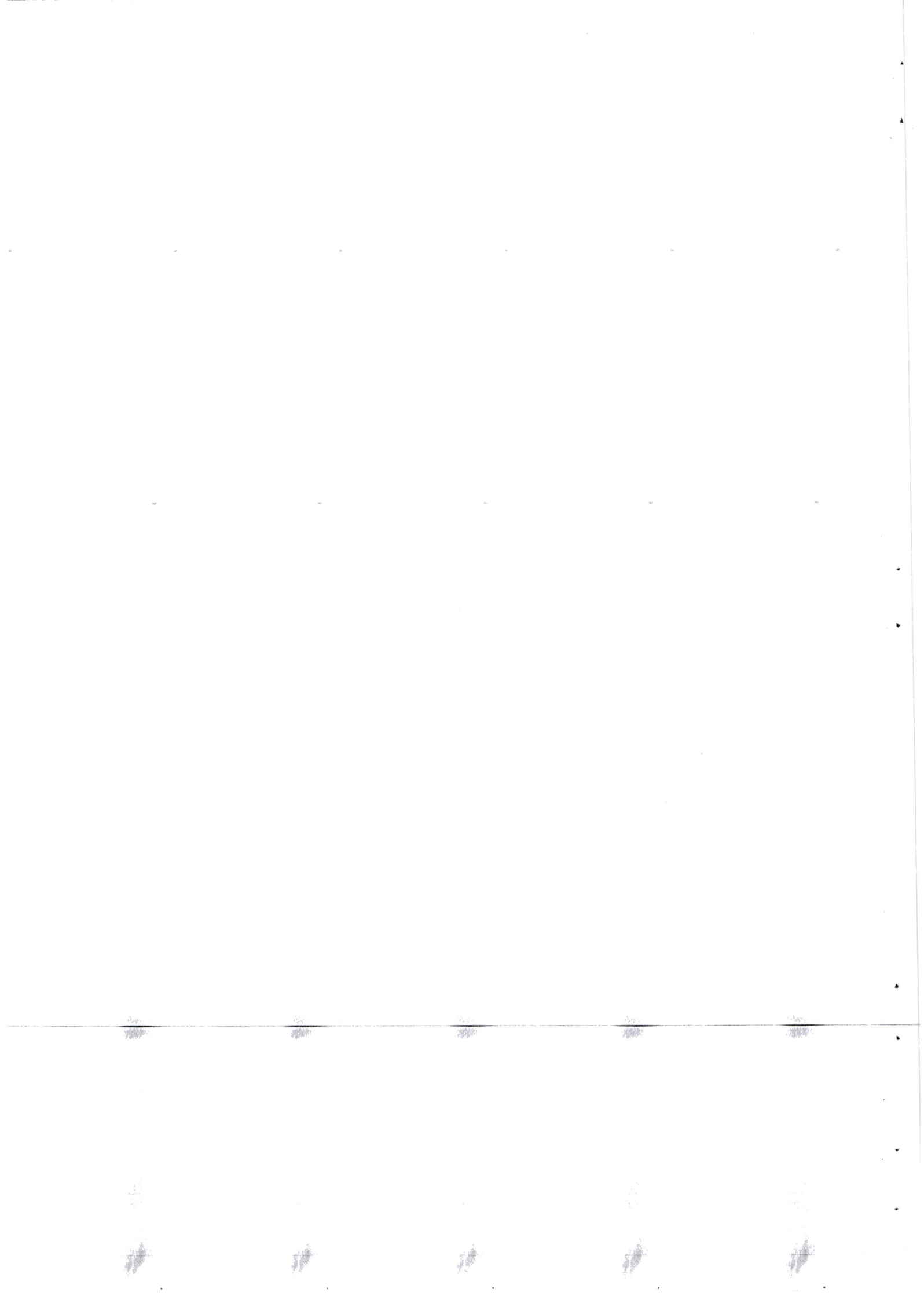
The Committee is mandated to Consider the following subjects:-

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

5.1 Oversight

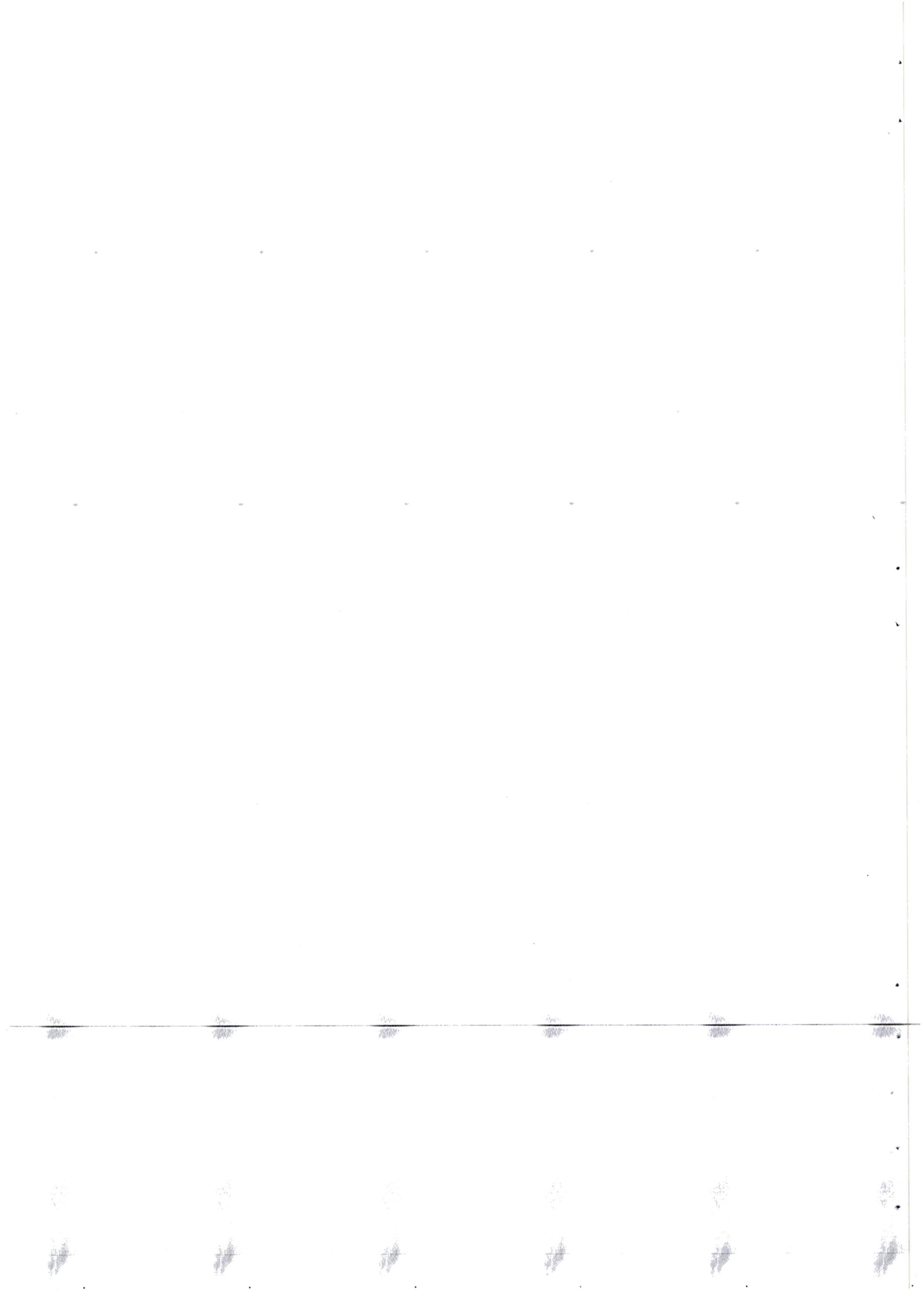
In executing its Mandate, The Committee oversees the following Government Departments, Namely:-

- i. The State Department for Lands
- ii. The National Lands Commission



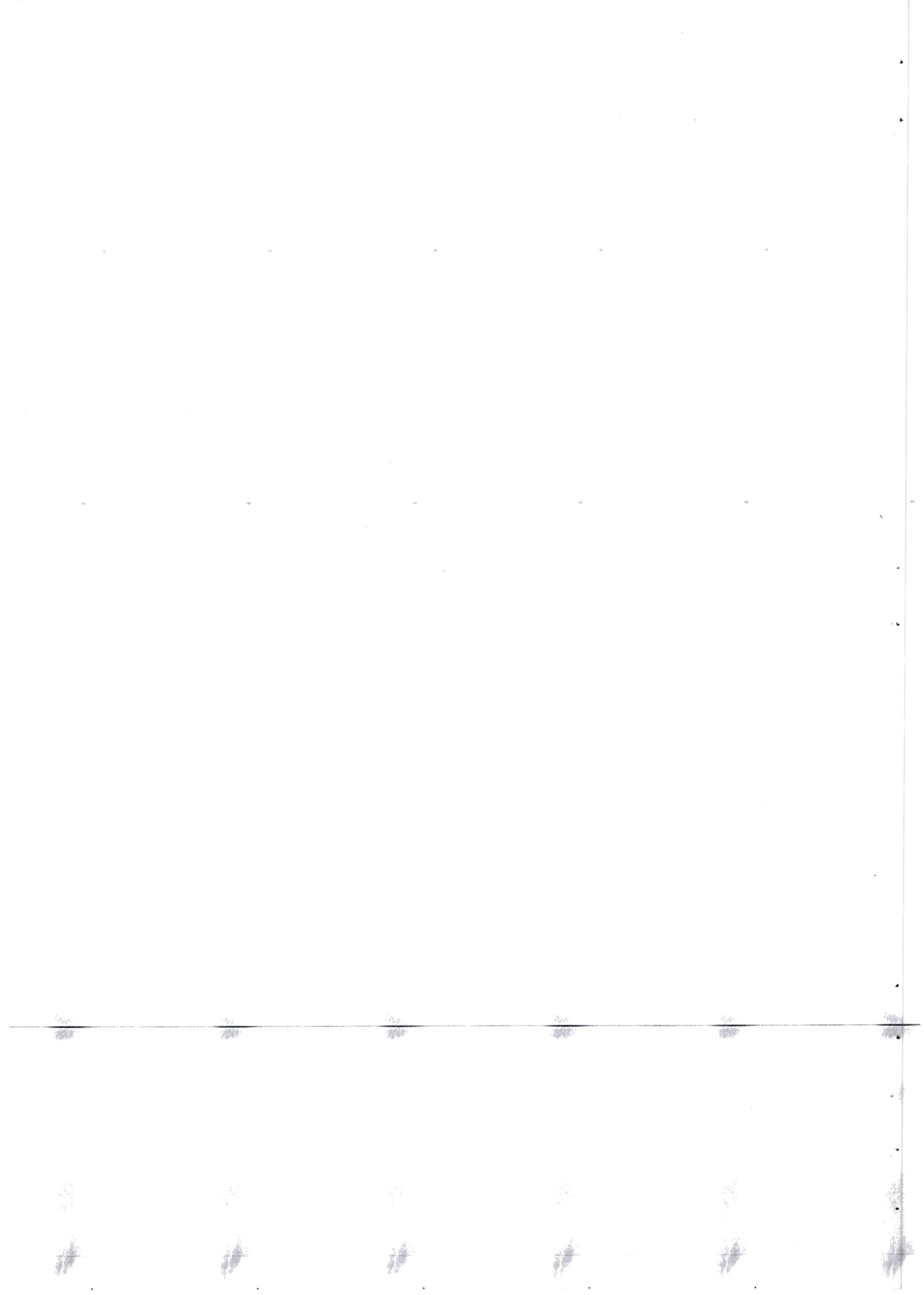
5.2 MEMBERS OF THE COMMITTEE

Chairperson	The Hon. Alex Mwiru, M.P.
Vice Chairperson	The Hon. Moses Ole Sakuda, M.P.
Members	The Hon. Mutava Musyimi, M.P.
	The Hon. John Kihagi, M.P.
	The Hon. Francis W. Nderitu, M.P.
	The Hon. KiprutoMoi, M.P.
	The Hon. Hellen Chepkwony, M.P.
	The Hon. Sarah Korere, M.P.
	The Hon. Benson Mbai, M.P.
	The Hon. Suleiman Dori, M.P.
	The Hon. George Oner, M.P.
	The Hon. Mathew L. Lempurkel, M.P.
	The Hon. Shakila Abdallah, M.P.
	The Hon. Dr. Paul Otuoma, M.P.
	The Hon. Thomas Mwadeghu, M.P.
	The Hon. Joseph Magwanga, M.P.
	The Hon. Ali ShariffAthman, M.P.
	The Hon. Francis Njenga, M.P.
	The Hon. HezronAwitiBollo, M.P.
	The Hon. BenardBett, M.P.
	The Hon. Esther Murugi, M.P.
	The Hon. Oscar Sudi, M.P.
	The Hon. OnesmusNgunjiri, M.P.
	The Hon. Julius Ndegwa, M.P.
	The Hon. Patrick Kingola, M.P.
	The Hon. KaniniKega, M.P.
	The Hon. EusilahNgeny, M.P.
	The Hon. Lawrence Aburi, M.P.



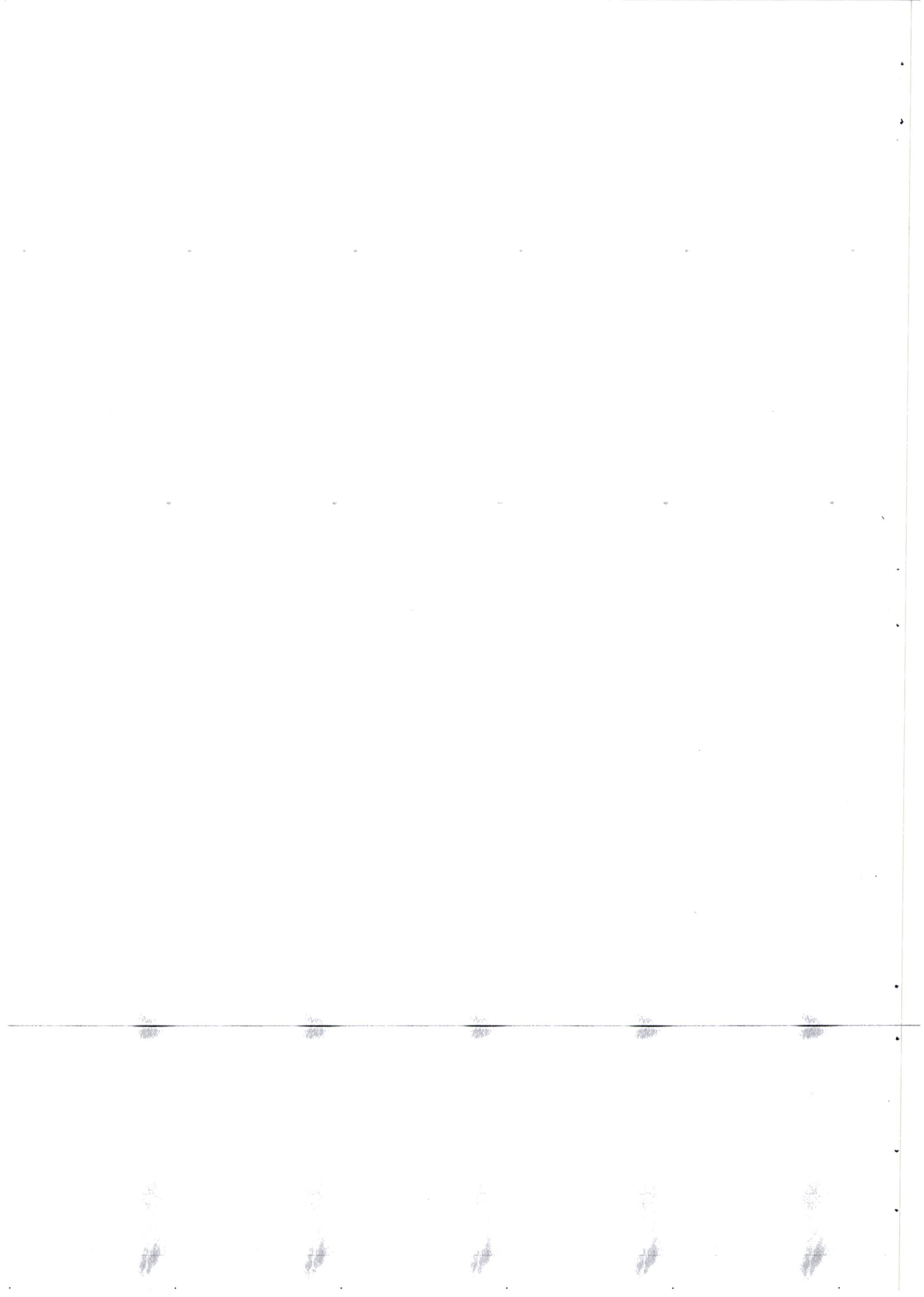
5.3 SECRETARIAT

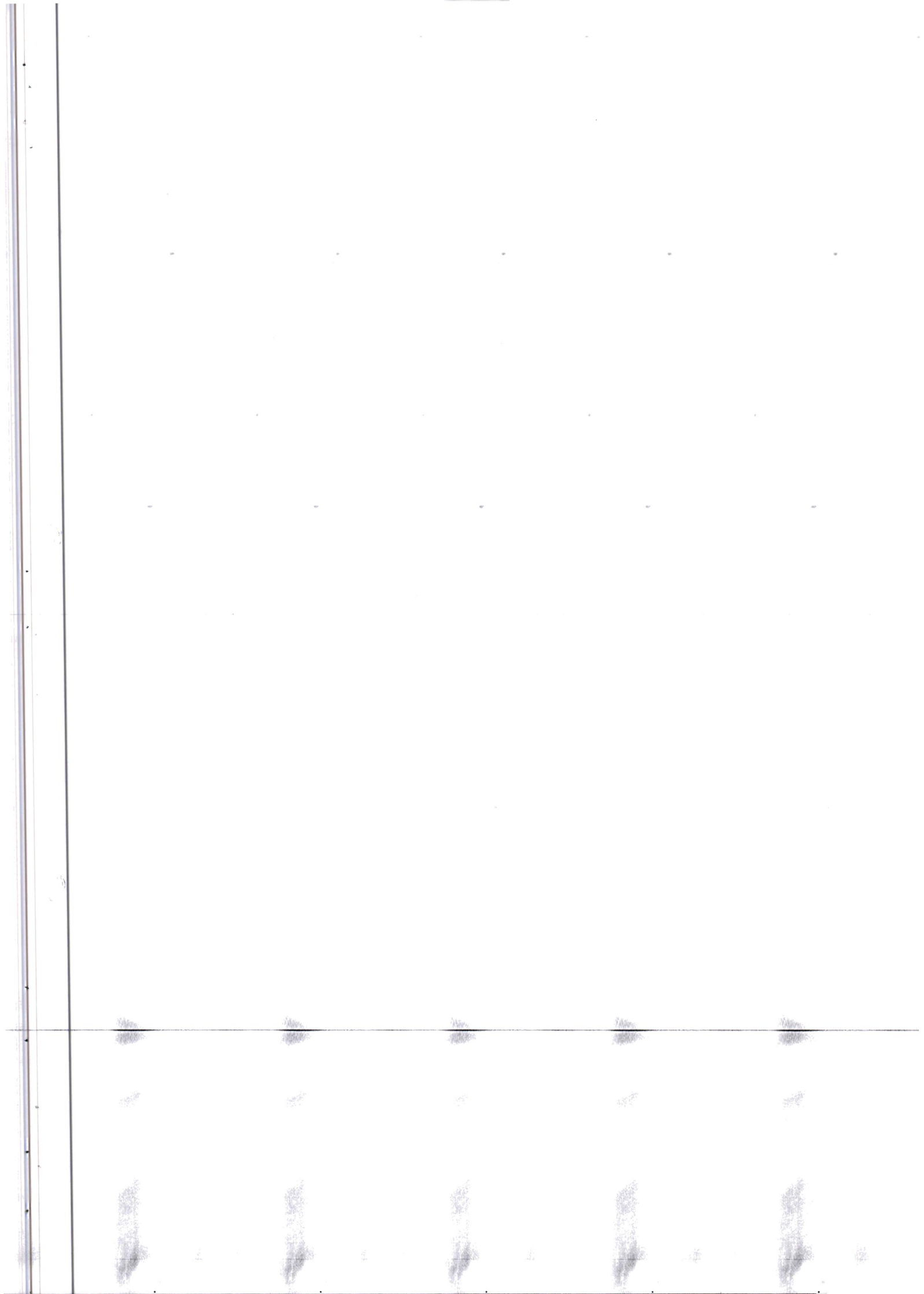
First Clerk Assistant:-	Mr. James Ginono
Third Clerk Assistant:-	Ms. Ruth Mwihaki
Third Clerk Assistant:-	Mr. Emmanuel Muyodi

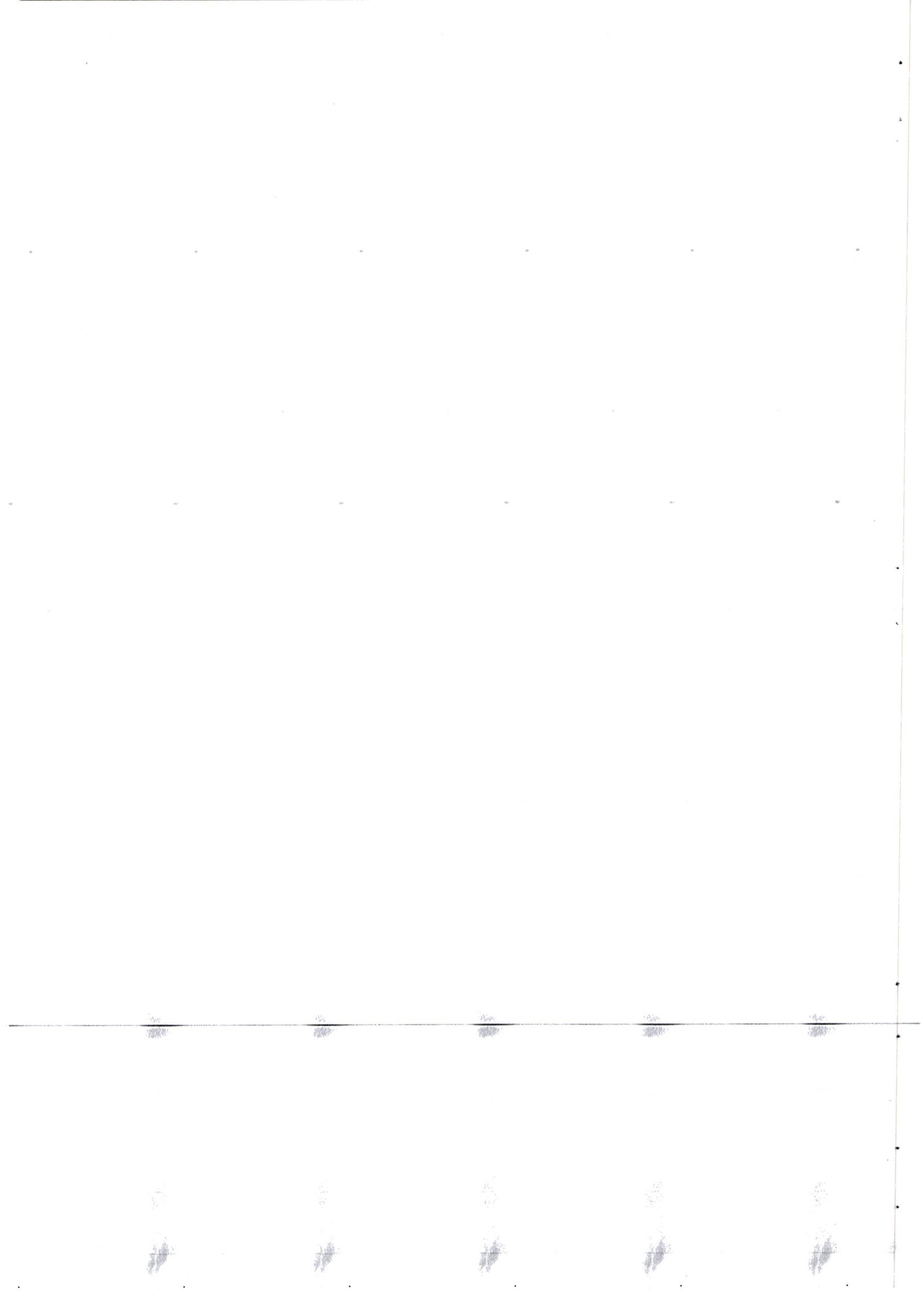


5.4 LIST OF RECOMMENDATIONS

- 5.4.1 The Government through the Ministry of Interior and Coordination of National Government implements the Decree and the Court Order delivered in Malindi on 11/12/14 and 9/12/14 respectively.
- 5.4.2 The Government through the State Department for special programmes and local Leaders should address the squatter problems in Kilifi County arising as a result of Historical land Injustices.







6.0 INTRODUCTION

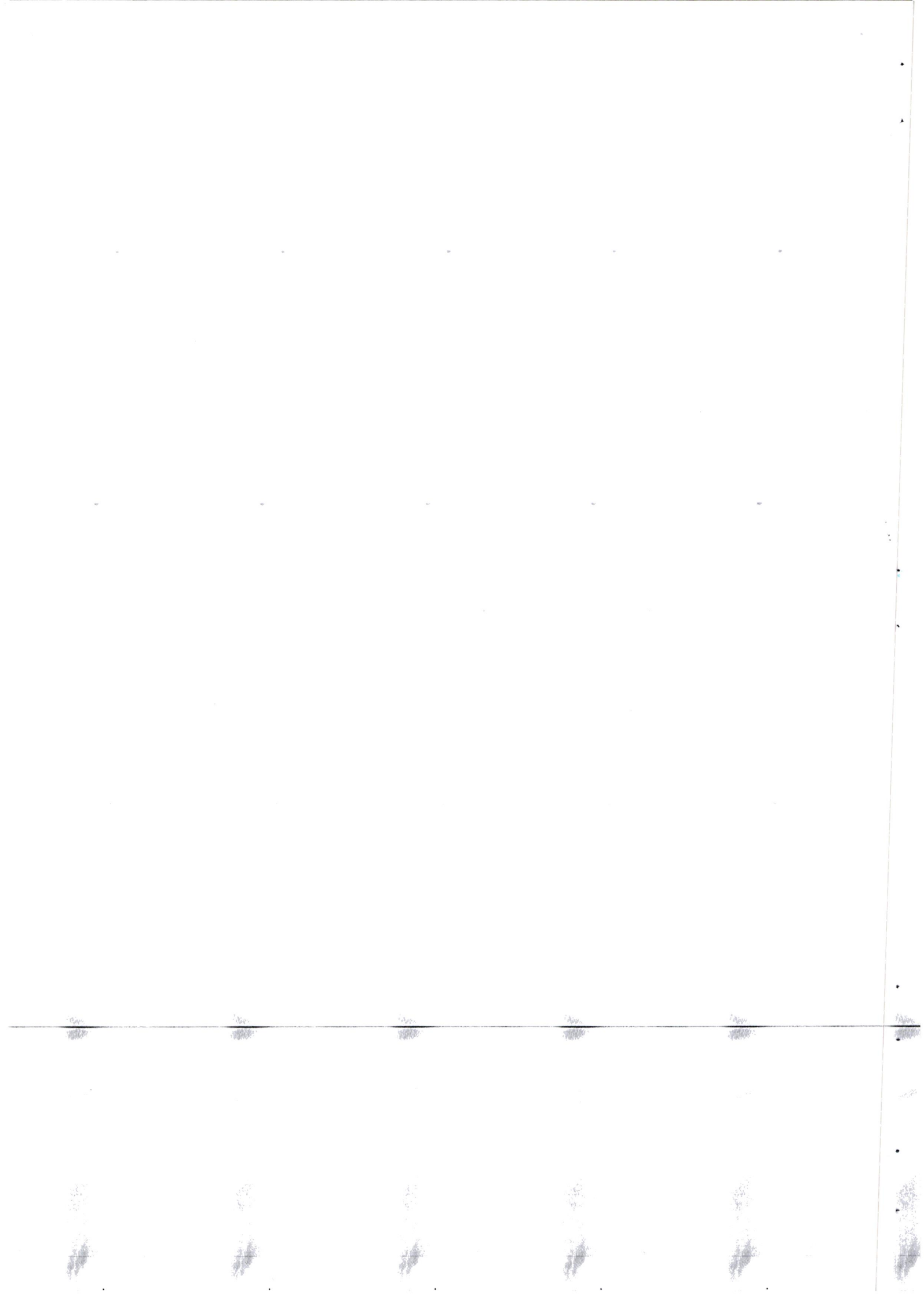
- 6.0.1 On 24th November 2014 the Hon. Gideon Mungaro, M.P a Member of the Departmental Committee on Lands tabled documents which included letters from Members of the public from his Constituency claiming that Pwani University has expanded its land and encroached into private Land in the Mtaani and Kisumu Ndogo slums in Kilifi.
- 6.0.2 The Committee having been seized of the Matter in question and pursuant to the provisions of Standing Order No. 216 (a) resolved to conduct an inquiry into the circumstances in question;
- 6.0.3 The Committee commenced the inquiry in February 2015 and set out a procedure for the consideration the inquiry and agreed to report to the House within 90 days.

6.1 Evidence

6.1.1 Evidence from Hon. Gideon Mungaro, MP.

The Member of Parliament for Kilifi North Constituency, informed the Committee as follows:-

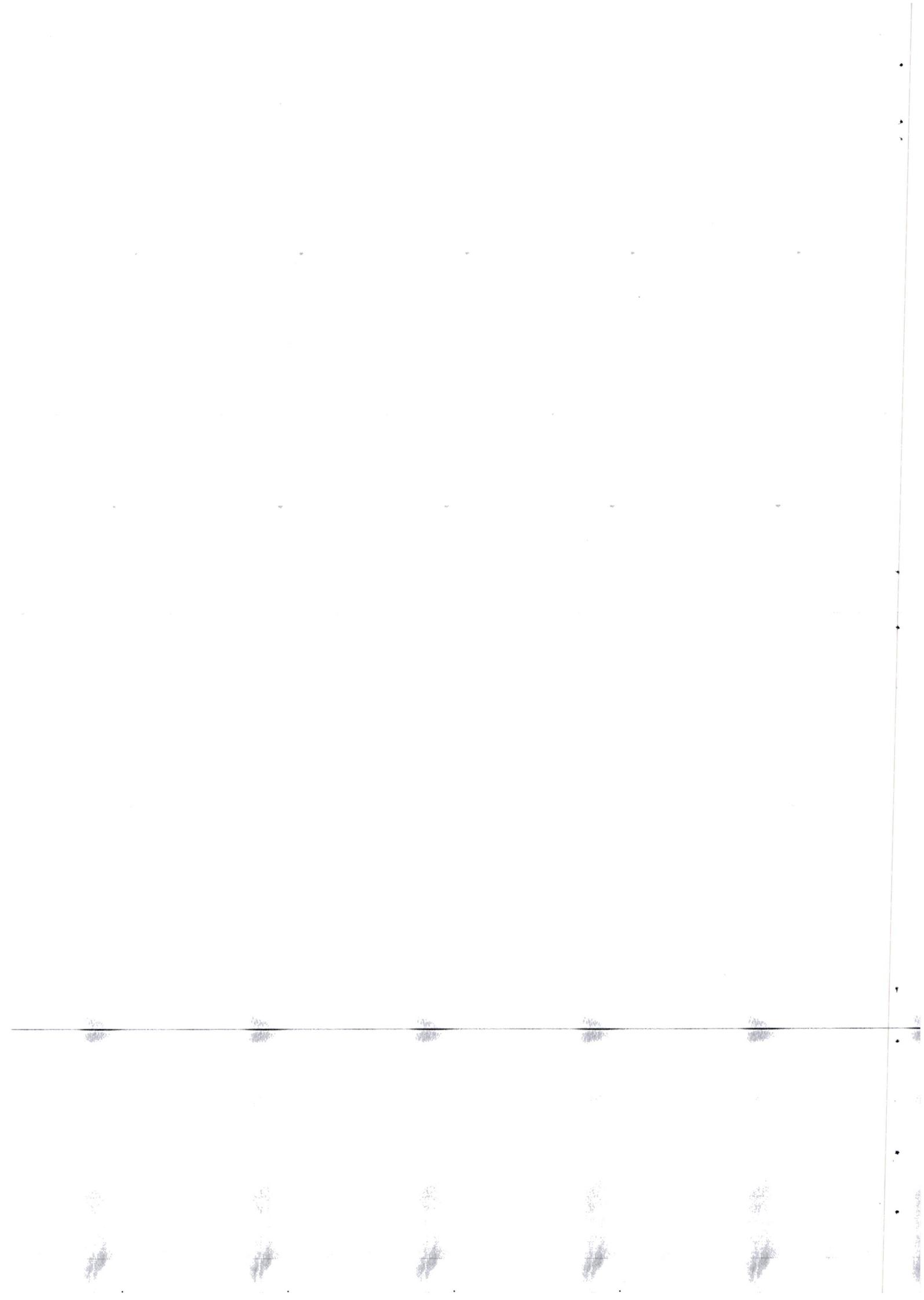
- a) In 1989, the Government, through the Ministry of local government in conjunction with the German Technical Development Corporation (GTZ), directed the upgrading of the Mtaani and Kisumu Ndogo slums in Kilifi;
- b) Since 1996 to 2009, Mtaani/Kisumu Ndogo/GTZ residents have been developing the land and were clueless about the official goings-on, they were shocked when they learnt that their settlement had been revoked since the land belongs to Pwani University;
- c) Chancellor of the University accompanied with the County Commissioner with the police pounced on the property and ordered residents to vacate or they be forcefully evicted. The residents pleaded with them and the Chancellor of the University accompanied with the County Commissioner with the police reluctantly retreated. The position now is that the residents of Mtaani and Kisumu Ndogo slums stand evicted, to pay court bills and cost of demolitions;
- d) The area Member of Parliament requested the Committee to intervene in the dispute with a view to come up with an amicable solution.



6.1.2 Evidence from the Principal Secretary State Department for Lands

The Principal Secretary for the State Department for Lands Ms. Mariamu El- maawy informed the Committee as follows: -

- a) LR No. 5046/1 and 5024/1 are located about 2.6 kilometers West of the Indian Ocean coastline;
- b) The land is adjacent to Kilifi County and measures approximately 300 acres;
- c) The history of the land dates back to 1934 when the Colonial Government reserved it for Coast Experimentation Station and Seed farm;
- d) The Ministry of Agriculture for the purpose of establishing the Coast Agricultural Institute later acquired the land. In addition to the original 300 acres, the Institute acquired a further 385 acres thus computing to a total area of 685 acres approximately;
- e) Kilifi Institute for Agriculture in its effort to secure its land from grabbers was issued with a letter of allotment Ref: 31279/241 of 10th April 2006 for 590 acres. The Institute is yet to acquire the title deed for the same;
- f) Approximately 83.5 acres was reserved for public utilities namely:-
 - a. Primary School 4.2ha.
 - b. School for the deaf 2.5ha.
 - c. Children Home 1.3ha.
 - d. Extension Secondary School 3.06ha.
 - e. Extension Secondary School 3.06ha.
 - f. Extension Secondary School 3.7 ha.
 - g. Proposed Vocational School of Deaf 16.0ha.
- g) The following commitments / allocations or reservations have been made on the land;
 - i. Approximate 4 acres was excised and amalgamated to LR No. – Group XI/4 to create a road of access for the public.
 - ii. 3.9 acres was allocated to J.R Kangwana on 25th July 1989 vide letter of allotment ref: 31279/224. The user was agricultural to M/S Soso Investment Ltd for Hotel Development vide letter of allotment ref: 31279/230.
 - iii. On 23rd November 1998, 34 acres were planned and allocated by the Town Clerk, Town Council of Kilifi to about 205 beneficiaries. This area was named Mtaani / Kisumu Ndogo / Kibaoni extension. However she stated that she has no records to confirm whether the Commissioner of lands issued letters of allotment for this allocation or whether the director of Physical Planning approved the P.D.P she attached a list of beneficiaries.



6.1.3 Evidence from the Kilifi County Commissioner

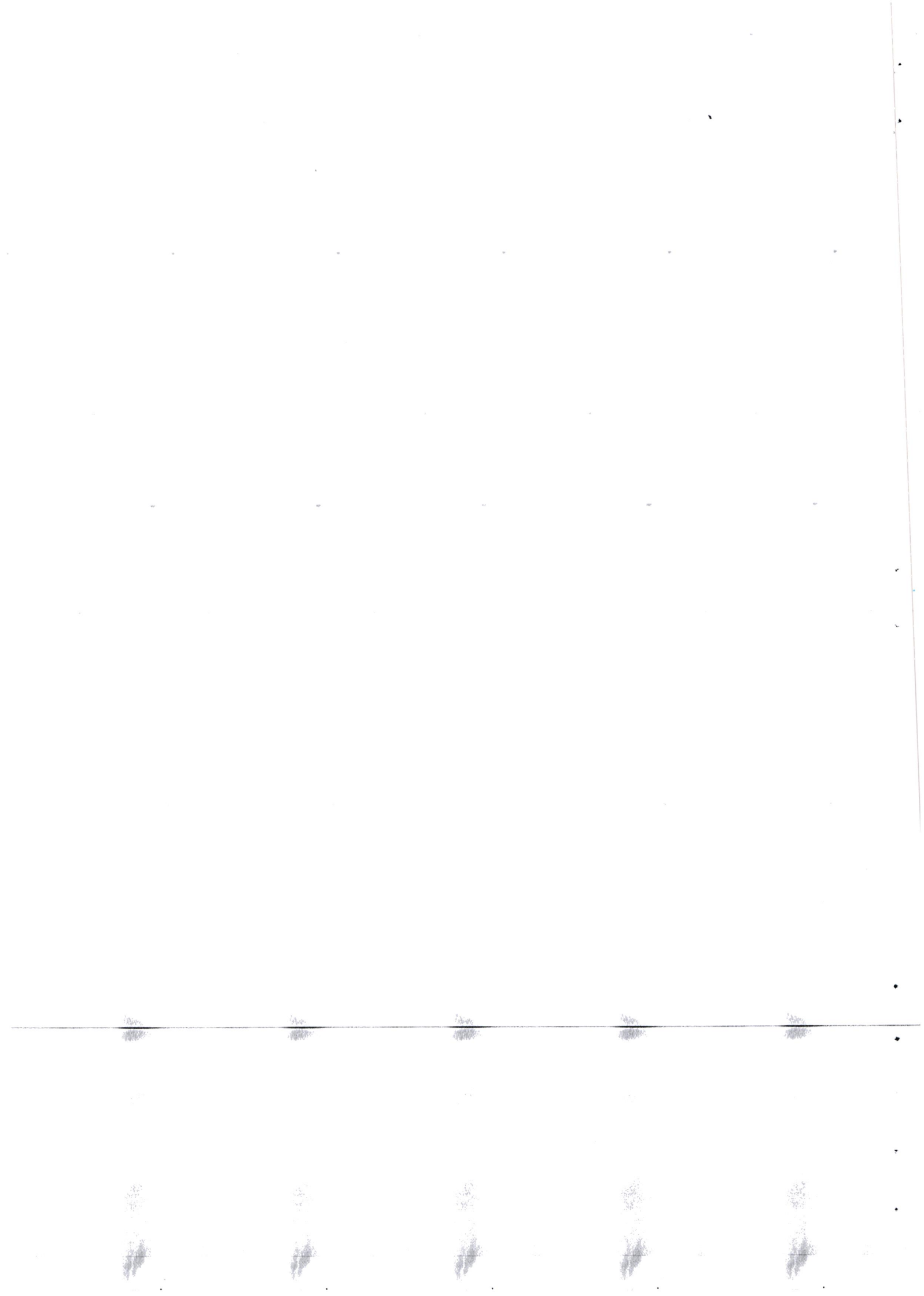
Mr. Albert KobiaWakamau, The Kilifi County Commissioner who was accompanied by Hon. Gertrude Mbeyu, Kilifi County Assembly, M.C.A, Hon. Lawrence K. Kilabo, Kilifi County Assembly M.C.A, and Michael Kinyua informed the Committee as follows: -

- a) Kilifi area was adjudicated under Mazemia land in 1908, making it one of the areas with the oldest titles in the Country;
- b) Kilifi County is the most affected County with cases of land disputes. It is the County with the most squatters;
- c) There are extremely serious cases of land disputes in both public and private land. The Committee was informed of a case in Kikampala/ Mtwapa, LR No. 1308-registered as MN (Mainland North) MN/14/1B/150. Where brokers sold the private land to unsuspecting people and even attempted to sell the land to a Government Agency, the Kenya Bureau of Standards (KBS) in an attempt to cover up their tracks.

6.1.4 Evidence from the Kilifi County Governor

Hon. AmasonKingi, Kilifi County Governor, who was accompanied by Mr. Owen - Beye, Mr. John Mazuri - Chief Executive Officer, Mr. Albert KobiaWakamau - Kilifi County Commissioner, Mr. John Mbeca-CIC, Hon. Gertrude Mbeyu-Kilifi County Assembly, M.C.A, Hon. Lawrence K. Kilabo-Kilifi County Assembly M.C.A, Hon. Kalindi G. Mhambi M.C.A, Mr. John Nguzo-Chief Officer Lands and Michael Kinyua-Lands and Settlement Officer informed the Committee as follows: -

- a) The Land problems in Kilifi County have persisted since independence;
- b) Several reports on land grabbing in Kilifi County have been written, but no tangible results have been seen; the Committee to look into all the reports concerning Kilifi County, land problems and generate solutions;
- c) Concerning Mr. John Keen's land, Kilifi County Government together with Hon. GedionMungaro, M.P, met with the Deputy President over the matter;
- d) Concerning Mombasa Cement, Kilifi County Government, wrote to the National Land Commission to investigate the said parcel of land. Although the National Land Commission reported that they have finalised the investigations. However Kilifi County Government has not received the report by the National Land Commission;

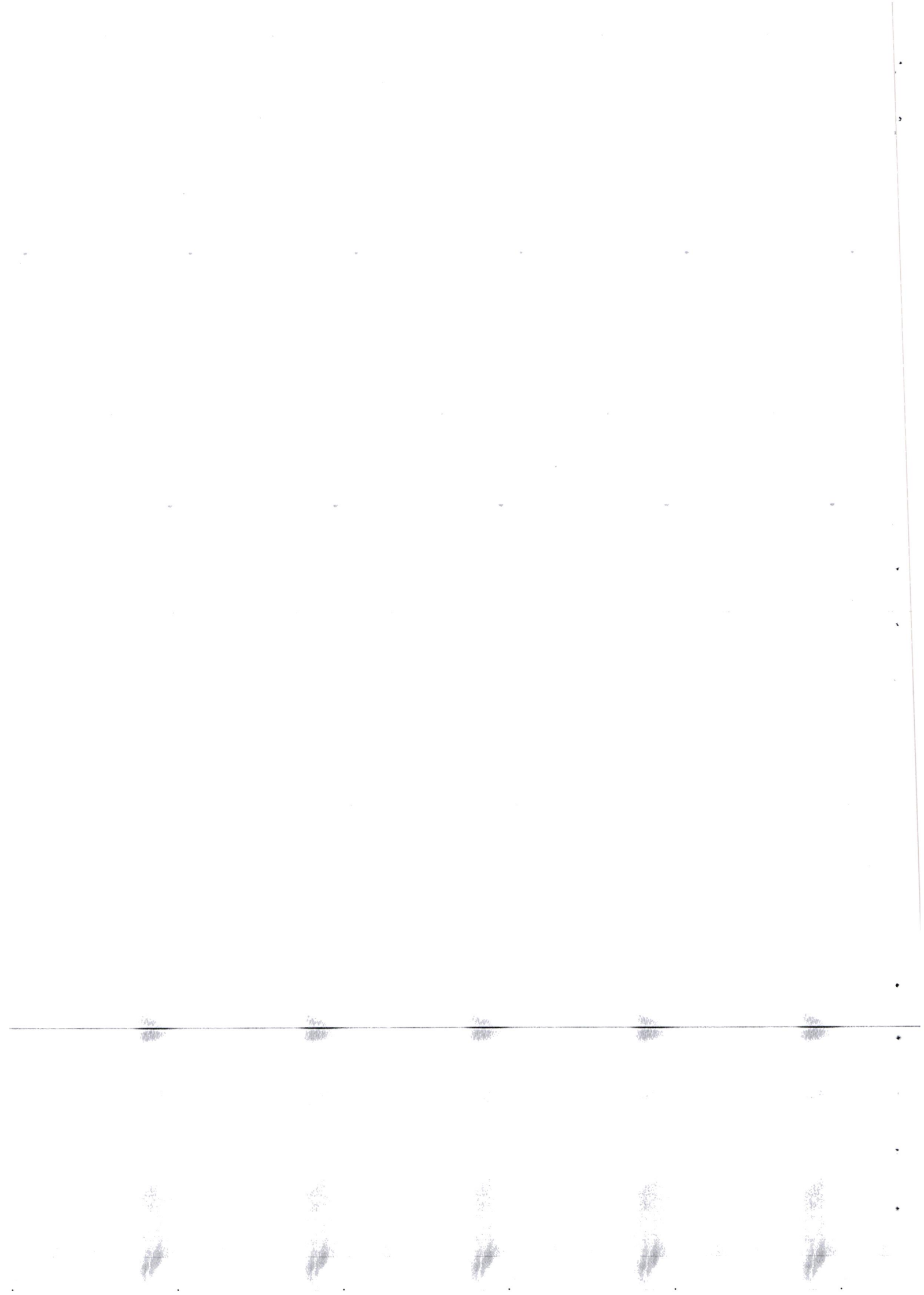


- e) A number of schemes have been started, but devilled by management problems. For example Mavueni B, where prime areas were grabbed by prominent people in the Ministry of Lands leaving squatters landless;
- f) When President Uhuru Kenyatta was in Mombasa issuing title deeds, the issuing of Makike scheme titles was halted, because over two hundred plots were missing in the list of beneficiaries and no proper explanation was given;
- g) The schemes near the ocean have been allocated in total disregard of the procedure.

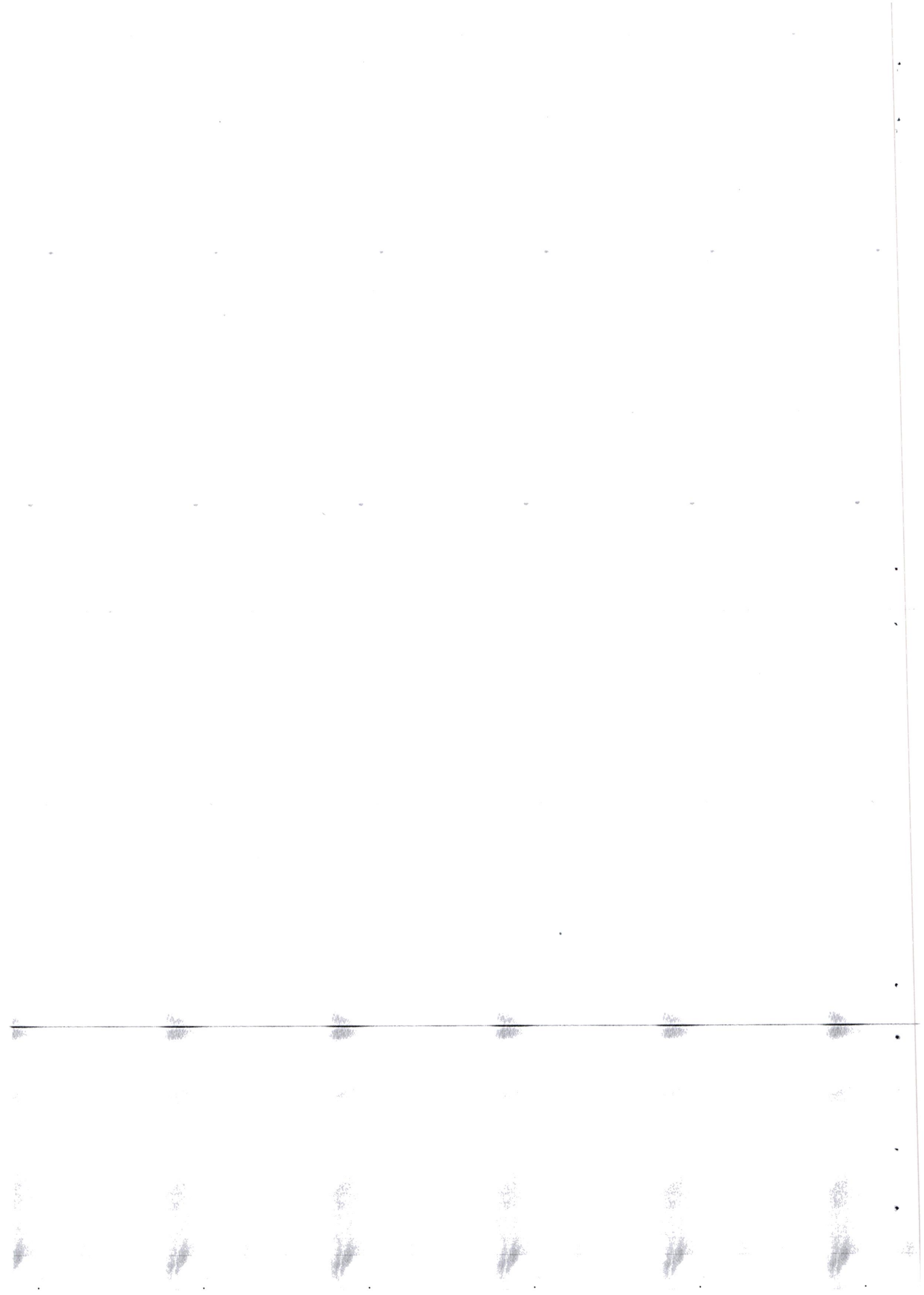
6.1.5 Evidence from Residents of Mtaani/Kisumu Ndogo/GTZ Area

The Committee Visited Mtaani/ Kisumu Ndogo / GTZ and Mr. Chai Nelson, representing the residents informed the Committee as follows:-

- a) In 1989, the Government, through the Ministry of local government in conjunction with the German Technical Development Corporation (GTZ), A non - Profit making NGO, directed the upgrading of the Mtaani and Kisumu Ndogo slums in Kilifi;
- b) The project involved the urban planning of the settlement by providing for road reserves, public amenities, utility wayleaves and distinct registered plots for the residents on property known as Kilifi Township Block 3;
- c) Through the then Ministry of Local Government, the then Ministry of Lands and the then Kilifi Town Council, the German Technical Corporation (GTZ), which is a non-governmental organisation was requested to fund the upgrading of parts of Kilifi town in what was known as the Mtaani Kisumu Ndogo upgrading scheme;
- d) The Upgrading scheme of Mtaani and Kisumu Ndogo informal settlements was used as a pilot project for the purpose of informing the Town Council on how to upgrade the other slums within the town;
- e) The project commenced in 1990 by the mapping and surveying of the area that was to be upgraded;
- f) The people living in the area that was to be upgraded (the beneficiaries) were identified. The infrastructure that was to be put in place like water, roads, waste collection points and toilets amongst others were also identified during the process of mapping and surveying of Mtaani and Kisumu Ndogo informal settlements;
- g) The cadastral survey for the two areas that were to be upgraded commenced in 1993 whereupon it was discovered that there were a myriad of problems which included some



- of the beneficiaries being on areas reserved for roads while others were congested on one plot which was not supposed to be the case; other residents of the two areas were found to be staying on what had been set aside during the surveying process for public utilities like open spaces, churches, nursery schools, mosques, among others;
- h) There was uproar and demonstrations by the displaced residents who by reason of the project were rendered destitute as they were not given alternative land;
 - i) The then Coast Provincial Commissioner instructed the Kilifi District Commissioner and the Town Clerk to look for alternative land for people who had been displaced from Mtaani and Kisumu Ndogo informal settlement schemes during the upgrading process;
 - j) The alternative land was found, and the displaced people were relocated to land known as LR 5046/1 and LR 5024/1 otherwise known as the Kibaoni extension;
 - k) The then District Commissioner, Provincial Commissioners, the Town Clerk, the Minister of Agriculture and the Minister for Lands were involved in this process of relocating residents;
 - l) The residents, who are over 300, were allowed to occupy the suit property by the then Minister of Land, Darius Mbela with the approval of the Kilifi Institute of Agriculture, the Ministry of Lands and the Provincial Administration;
 - m) Additionally, the Commissioner of Lands and the Ministry of Planning through the Director of Physical planning were also involved in the relocation exercise with the former issuing letters of allotments to the residents and the latter drawing up the PDP;
 - n) The conduct and involvement of Government in this process gave the residents legitimate belief that the land was theirs and the residents proceeded to develop it openly and without demand;
 - o) It is pertinent that even Pwani University is a holder of a Letter of allotment (not a title) just like the residents;
 - p) In a suit filed in Malindi High Court Case No. 70 of 2009, residents saw for the first time old correspondence between various Government departments involved which were converting the land into University land; allegedly turning around their settlement on the present land;
 - q) Between 1996 to 2009, residents continued to develop the land oblivious of the ongoing within government departments and were shocked when they learnt of a decision to revoke their settlement on the present land which they occupy;

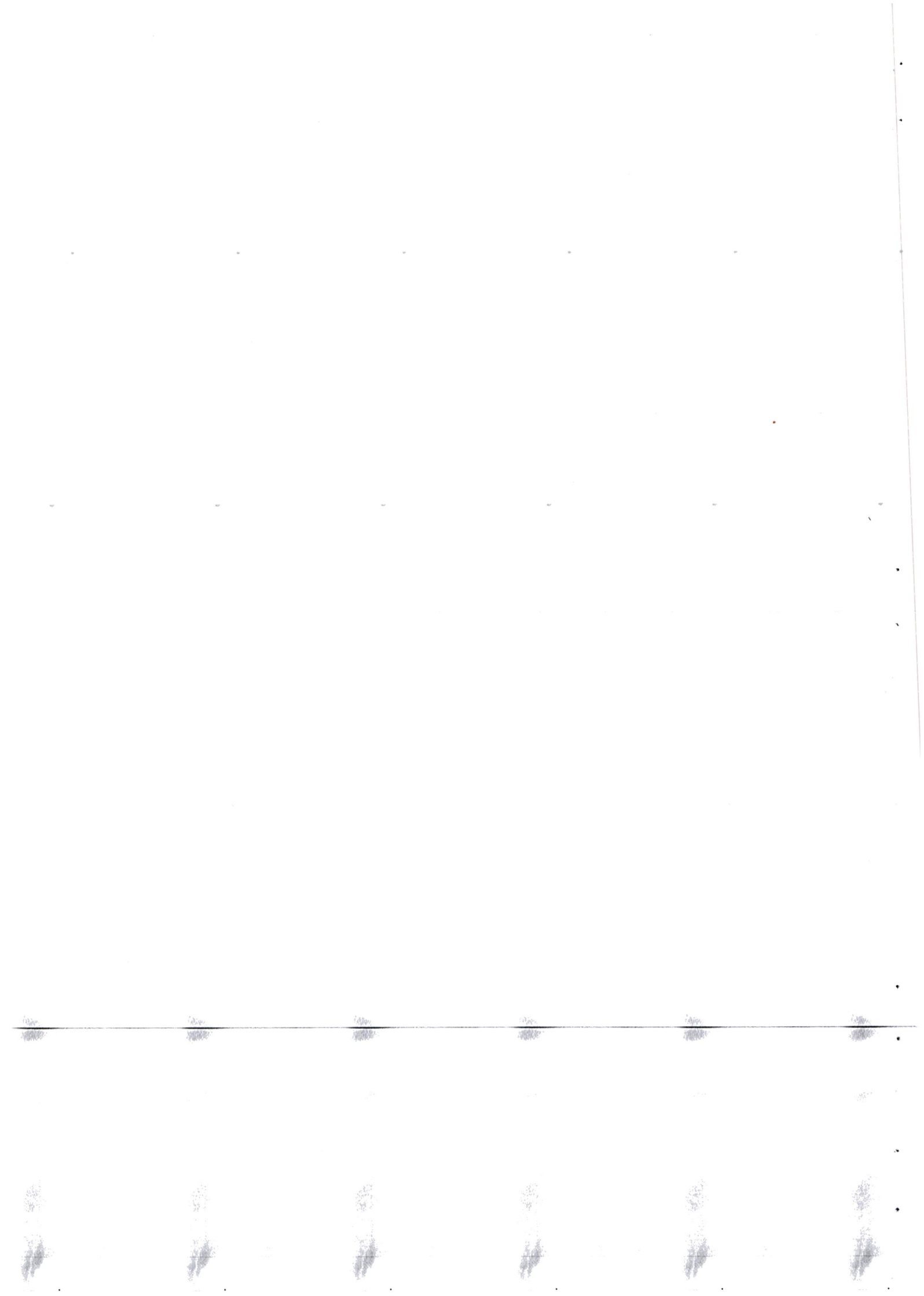


- r) On LR 5046/1 and LR 5024/1 residents occupy and claim only 50 acres whereas the University occupies 623 acres;
- s) The judgement in Malindi HCC No. 70 of 2009, the Court compared the residents as land grabbers which is not a fair description given the history of the settlement on the land;
- t) The Court has issued the University with Orders directing the Evictions of residents;
- u) On 4th February 2015, the Chancellor of the University accompanied by the County Commissioner and the police pounced on the property and declared to residents to vacate or they forcefully evict them;
- v) They pleaded with them and they reluctantly retreated. The position now is that they stand evicted, to meet Court bills and cost of demolitions.

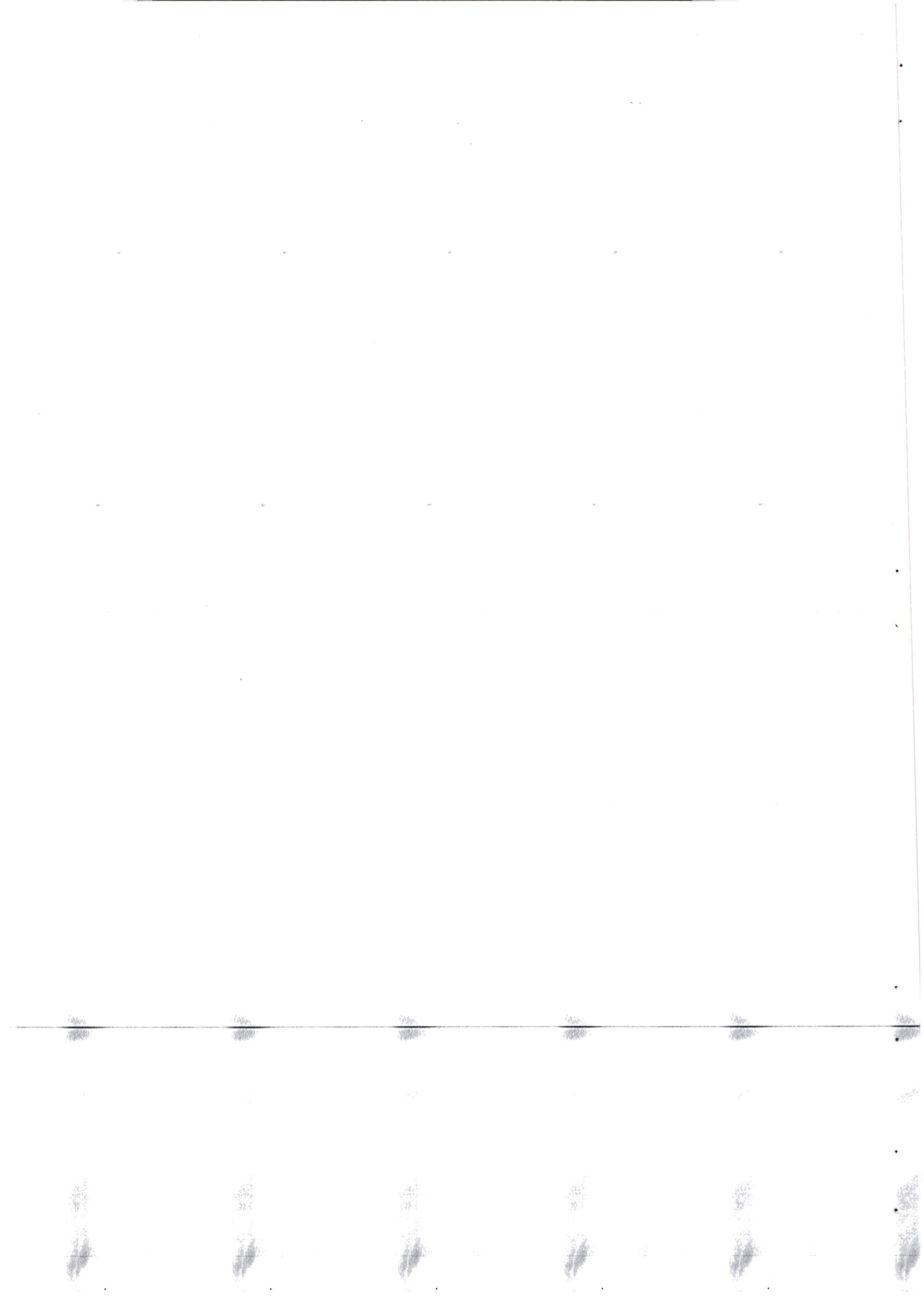
6.1.6 Evidence from Pwani University

Prof. Mohamed S. Rajab – Vice Chancellor and Prof. Muniru Khamis Tsanuao - Deputy Vice Chancellor (Research and Extension) Informed the Committee as follows:-

- a) Kilifi Institute of Agriculture acquired the land in question in 1981. Part of the institute's land was compulsorily acquired by the Government for experimental development and allocated to the Institute while the other part of the land was purchased by the Government from Coastal Development Limited and allocated to the institute for the same purpose;
- b) Pwani University land was earmarked for the purpose of establishing the Institute and not for any other purpose. In particular the University land comprises of the following parcels:-
 - a. L.R NO. 5046/1
 - b. L.R NO. 5046/2
 - c. L.R NO. 5024/1
 - d. L.R NO. 5024/2
- c) The Institute's land was in five portions and it measured 622 acres. At the time of the acquisition of the land by the Institute, there were already three institutions that were existing on the land, which, which were Kibarani Primary School for the deaf and Kilifi Township Secondary School. The three institutions occupied 30 acres;
- d) In 1998 there was a directive from the Ministry of Agriculture to the effect that the Institute should formally allocate the three schools 30 acres of the land reserved for it, leaving an area of 590 acres for the Institute;



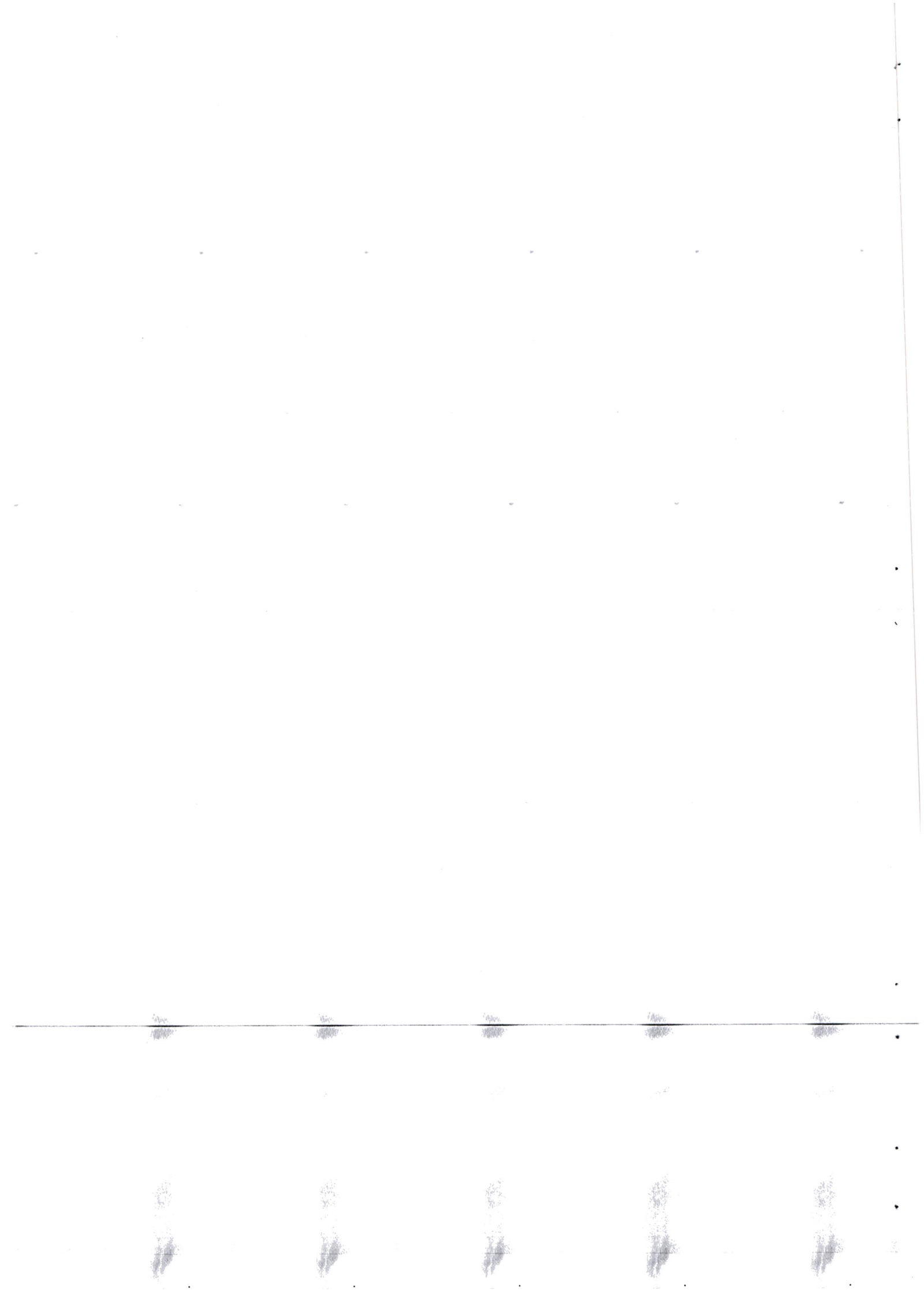
- e) The Institute informed the Permanent Secretary that all the land allocated to the institute had been planned for and there was no land for excision;
- f) The residents renewed their application to have the suit property allocated to them vide a letter dated 24th September 1997. However the institute didn't authorize the allocation of the suit property to the local residents;
- g) The institute gave 12 acres of its land to the Primary School and 18 acres to Kibarani School for the deaf and Kilifi Secondary School; The residents made numerous attempts to have the Institute's land set aside for the purpose of settlement and putting up jua kali shades, but the institute and the Ministry of Agriculture were against;
- h) In 2002, the Ministry of Lands declared the Part Development Plan in respect to the land that the local residents are claiming as invalid. The Institute said that PDP was never approved. The District Physical Planner disowned the PDP that was in possession of the local residents by way of a letter dated 19th February 2003;
- i) By the time the Institute was informing the Director of Agriculture about the illegal PDP vide a letter dated 21st February 2003, some residents had already moved on the disputed land;
- j) The Principal of Pwani University College discussed the issue of encroachment by the local residents on the institute's land with the District Commissioner and the PS Ministry of Agriculture. By way of a letter dated 13th May, 2005 addressed to Mr. Nelson Kazungu Chai, the District Commissioner asked the local residents to vacate;
- k) By the year 2005, there was no house on the suit property and that the encroachment by the local residents was by way of fencing and subdividing the suit property;
- l) In 2005 vide a letter dated 20th May 2005, the PS Ministry of Agriculture directed that the invasion of the institute's land should stop;
- m) The Institute was issued with a letter of allotment for land measuring 239 Ha (approximately 590 acres) on 10th April 2006 leaving the other land for the three schools;
- n) In 2007 the Institute started fencing the 239 Ha piece but stopped when the suit was filed.



7. FINDINGS

The Committee made the following observations from evidence adduced in meetings and the field visit, that:

- 7.1 There are people squatting in the University Land which comprises of the following parcels; L.R NO. 5046/1, L.R NO. 5046/2, L.R NO. 5024/1 and L.R NO. 5024/2 and an early Court Ruling had directed that they be forcefully evicted. However the Court Ruling has not been implemented;
- 7.2 On 23rd November 1998, 34 acres were planned and allocated by the Town Clerk, Town Council of Kilifi to about 205 beneficiaries who were identified as having suffered as a result of the evictions to pave way for the UPZ upgrading project.
- 7.3 Pwani University is the legal owner of the said plot of land and it received approval from the Public Private Partnership (PPP) Secretariat to undertake a feasibility study on the proposed teaching and referral hospital on the said land with a view of actualizing the same.
- 7.4 A Subsequent decree was issued dated 9th December 2014 and was published in the daily Nation on 11th December, 2014;
- 7.5 There are many families living in informal settlements in the University Land;
- 7.6 That the continuous stay of squatters in the said lands has significantly hampered the developments and expansion of the University in accordance with the University master plan 2010-2020;
- 7.7 The dispute between Pwani University and the Squatter was the subject of a Court Case No. Malindi ELC Civil case No. 70 of 2009 where the learned Hon. O.A Angote ruled as follows:
 - a. The 308 plaintiff and any other trespassers in occupation of the defendants land being L.R No. 5046/1, 5024/1, 5024/2, 5046/2 and 5046/5 be and hereby evicted.
 - b. A permanent mandatory injunction be and is hereby issued restraining the 308 plaintiffs or any other person acting under them from continuing being in occupation and or trespassing on the defendants land mentioned above either by themselves, their agents, servants and or any person drawing title from them.
 - c. The plaintiff to pay the defendant the cost of the counter claim.



8. LIST OF RECOMMENDATIONS

- 8.1 The Government through the Ministry of Interior and Coordination of National Government implements the Decree and the Court Order delivered in Malindi on 11/12/14 and 9/12/14 respectively.
- 8.2 The Government through the State Department for special programmes and local Leaders should address the squatter problems in Kilifi County arising as a result of Historical land Injustices.

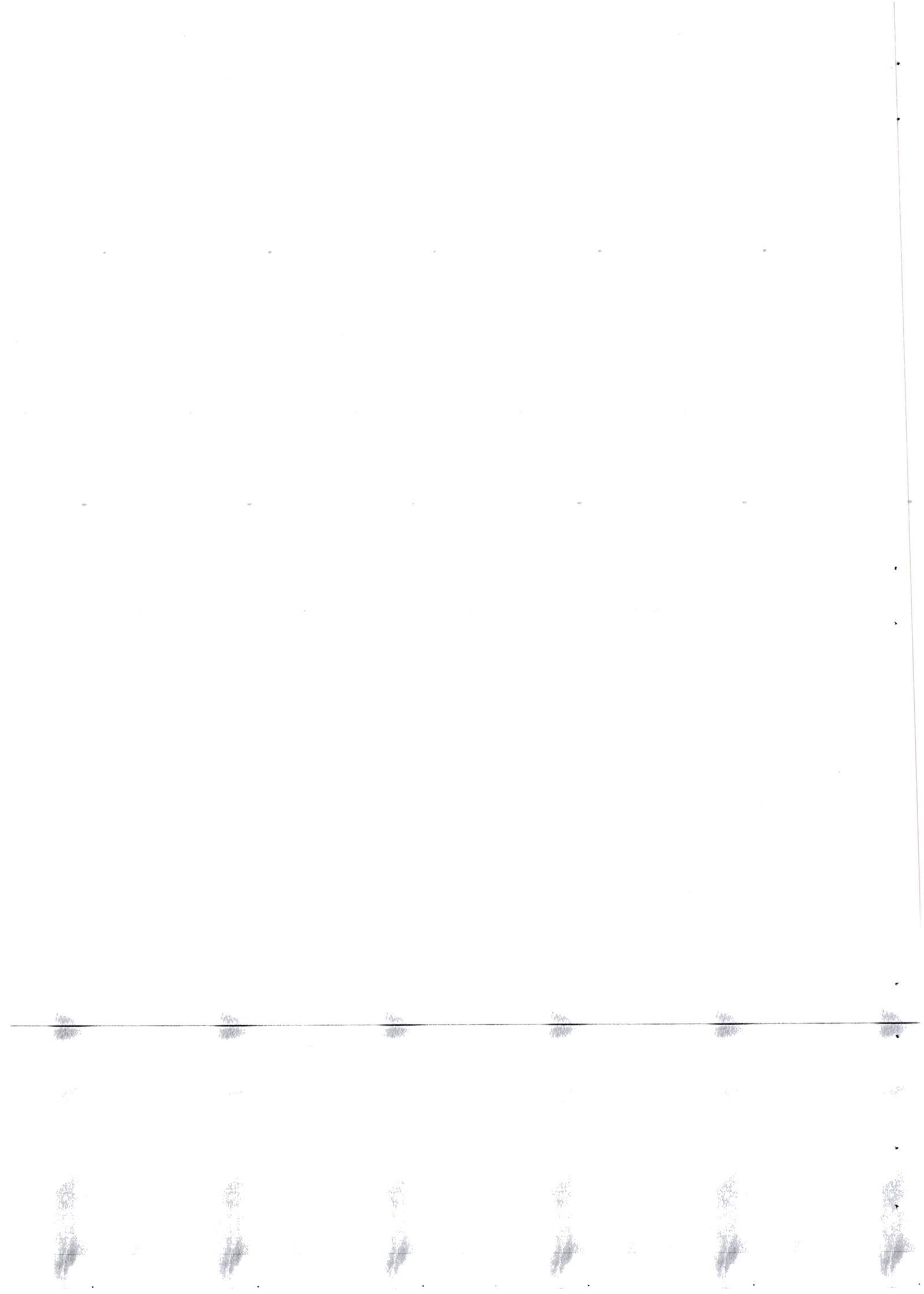
SIGNED:

DATE: 28/4/2016

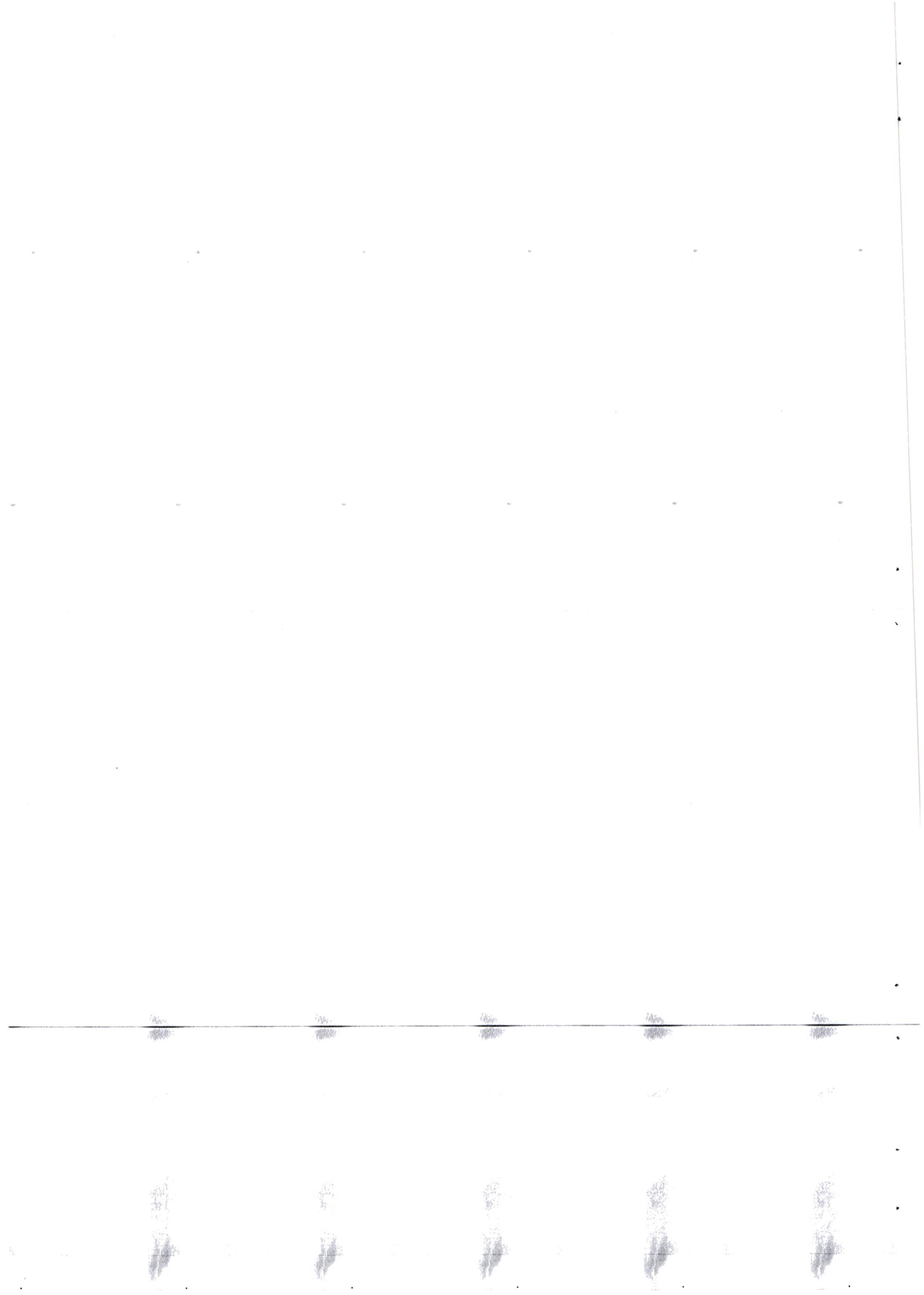
(HON. ALEX M. MWIRU, MP)

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON LANDS



MINUTES



MINUTES OF THE 32ND SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON THURSDAY 7TH APRIL, 2016 IN THE TRAVELERS HOTEL AND SPA MOMBASA AT 9.00 A.M.

PRESENT:

1. The Hon. Alex Mwiru, M.P.
2. The Hon. Moses Ole Sakuda, M.P.
3. The Hon. Patrick Makau, M.P.
4. The Hon. Benson Mbai, M.P.
5. The Hon. Thomas Mwadeghu, M.P.
6. The Hon. Francis W. Nderitu, M.P.
7. The Hon. KiprutoMoi, M.P.
8. The Hon. Hellen Chepkwony, M.P.
9. The Hon. EusilahNgeny, M.P.
10. The Hon. Joseph OyugiMagwanga, M.P.
11. The Hon. OnesmusNgunjiri, M.P.
12. The Hon. Dr. Paul Otuoma, M.P.
13. The Hon. John Kihagi, M.P.
14. The Hon. KaniniKega, M.P.

- Chairperson
Vice Chairperson

ABSENT WITH APOLOGIES

1. The Hon. MutavaMusyimi, M.P.
2. The Hon. MpuruAburi, M.P.
3. The Hon. HezronAwitiBollo, M.P.
4. The Hon. Sarah Korere, M.P.
5. The Hon. Suleiman Dori, M.P.
6. The Hon. Mathew L. Lempurkel, M.P.
7. The Hon. Bernard Bett, M.P.
8. The Hon. Esther Murugi, M.P.
9. The Hon. Francis KigoNjenga, M.P.
10. The Hon. A. Shariff, M.P.
11. The Hon. Shakila Abdallah, M.P.
12. The Hon. Julius Ndegwa, M.P.
13. The Hon. George Oner, M.P.

ABSENT WITHOUT APOLOGY

1. The Hon. Oscar Sudi, M.P.

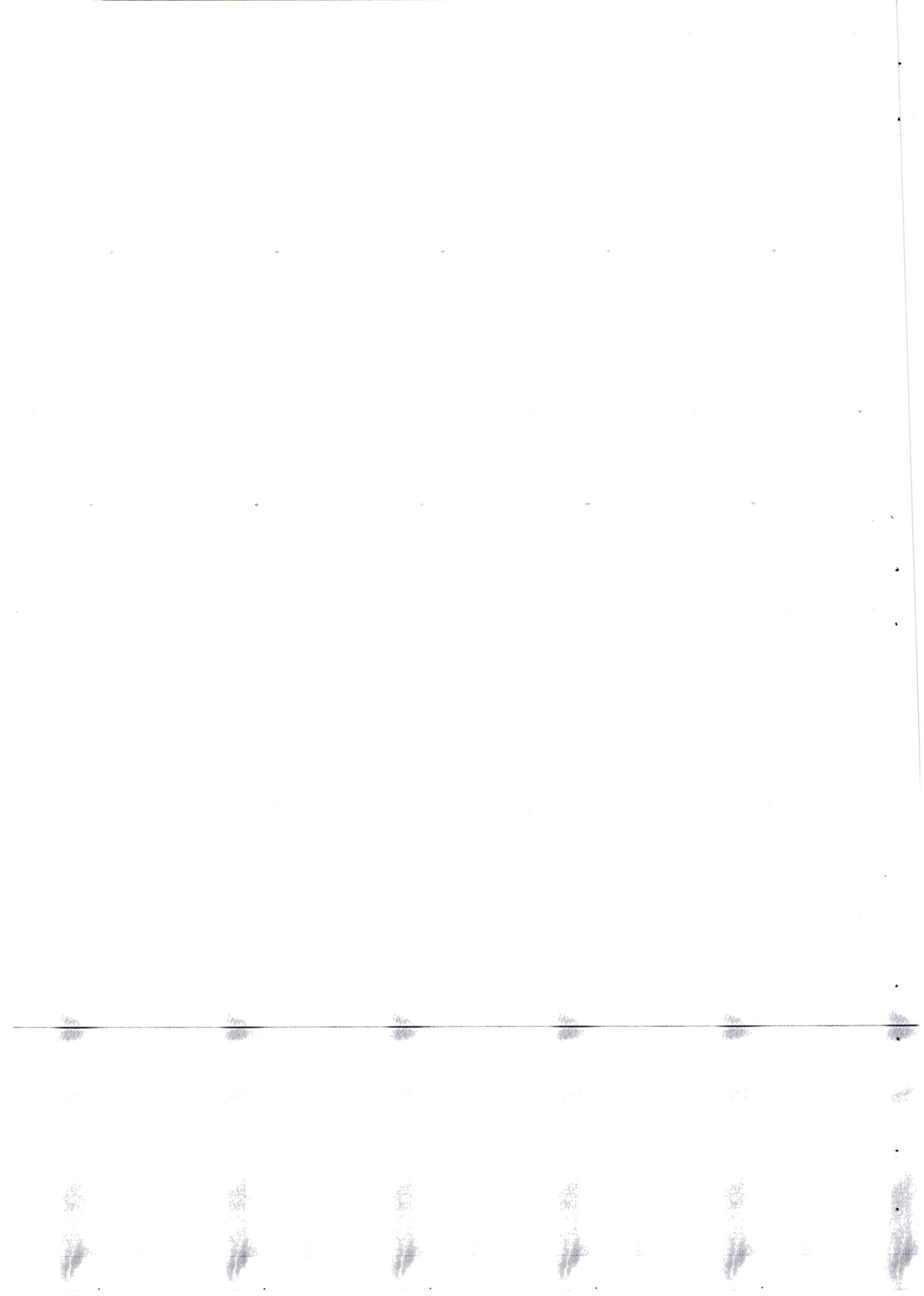
IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

1. The Hon. Richard Moitalel Ole Kenta, M.P.
2. The Hon. KamotiMwamkali, M.P.

KENYA NATIONAL ASSEMBLY

1. Mr. James Ginono Clerk Assistant I
2. Ms. Joshua Ondari Clerk Assistant III



3. Mr. Muyodi Emmanuel Clerk Assistant III
4. Mr. Jonathan Lemurt Budget Officer

MINUTE NO. DCL/LN/2016/139 **PRELIMINARIES**

The Chairman called the meeting to order at 9.15 a.m. with a word of prayer.

MINUTE NO. DCL/LN/2016/140 **ADOPTION OF THE PROGRAMME**

The programme was adopted after being proposed by the Hon. John Kihagi, M.P. and seconded by the Hon. KaniniKega, M.P. as annexed in the minutes.

MINUTE NO. DCL/LN/2016/141 **CONSIDERATION OF THE REPORT ON LAND
DISPUTE BETWEEN PWANI UNIVERSITY AND
MTAANI/KISUMU NDOGO/ GTZ RESIDENTS**

The Committee considered the report and come up with the following observation and recommendations:

Observations

1. There are some people squatting on the University Land which comprises of the following parcels; L.R. No. 5046/1, L.R. No. 5046/2, L.R. No. 5024/1 and L.R. No. 5024/2 and an early Court Ruling had directed they be forcefully evicted. However the Court Ruling has not been implemented.
2. On 23rd November, 1988, 34 acres were planned and allocated by the town Clerk, Town Council of Kilifi to about 250 beneficiaries who were identified as having suffered as a result of the evictions to pave way for the UPZ upgrading project.

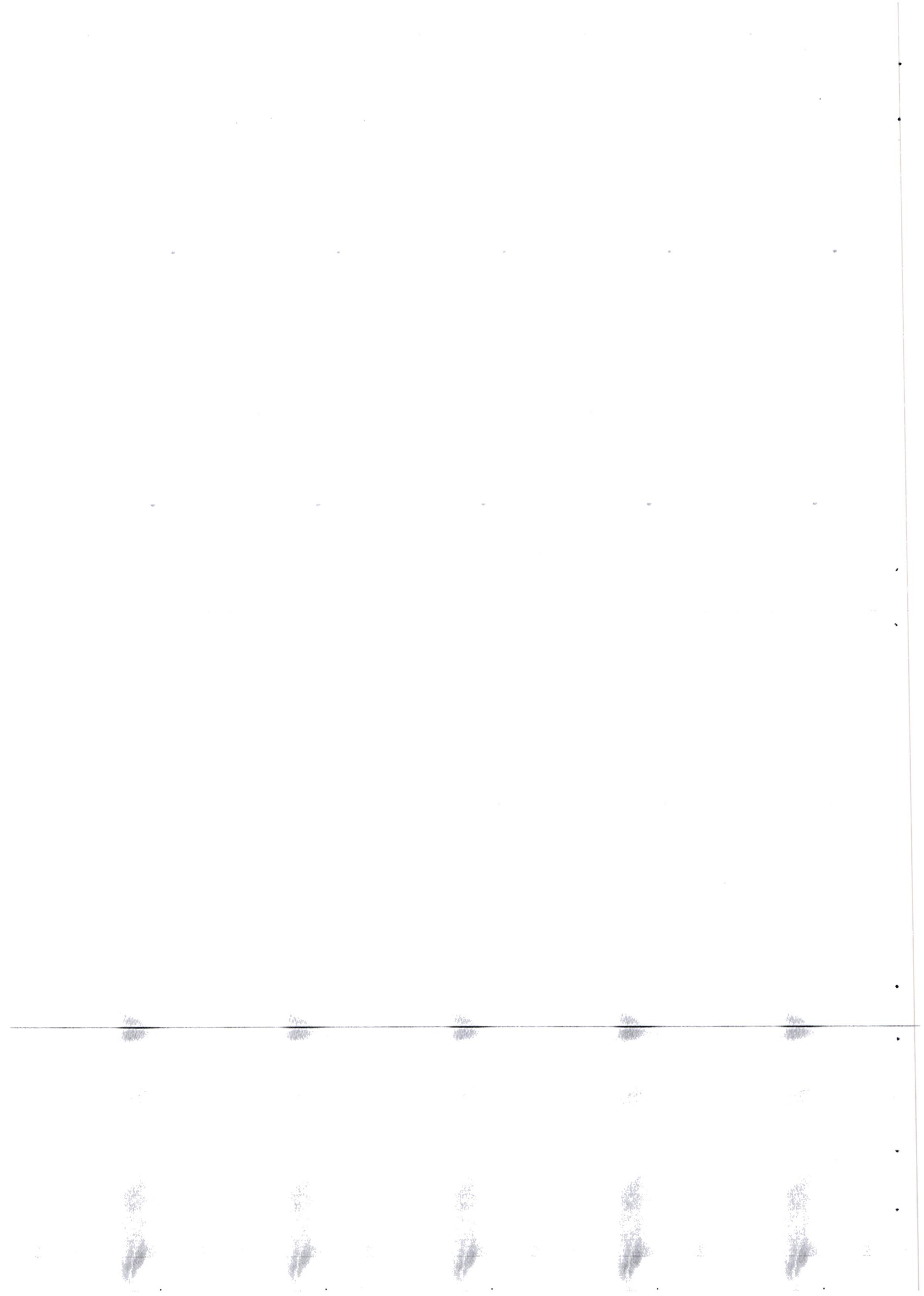
Recommendations

1. The Government through the Ministry of Interior and Coordination of National Government implement the Decree and the Order No. 70 of 2009 delivered in Malindi on 11/12/2014 and 9/12/14 respectively.
2. The Government through the State Department for Special programmes and local Leaders should address the squatter problems in Kilifi County arising as a result of Historical injustices.


After the proposal of the above changes, the report was unanimously adopted after being proposed by the Hon. Moses Ole Sakuda, M.P. and seconded by the Hon. KiprutoMoi, M.P.

MINUTE NO. DCL/LN/2016/142 **ADJOURNMENT**

There being no any other business, and the time being 1.00 p.m. the meeting was adjourned.



SIGNED:

 uoses

(CHAIRPERSON)

DATE:

5/4/2016



**MINUTES OF THE 130TH SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS
HELD ON THURSDAY, 5TH MARCH, 2015 IN THE MEDIA CENTER, MAIN PARLIAMENT
BUILDINGS, AT 10.00 A.M**

PRESENT:

1. The Hon. Alex Mwiru, M.P. - **Chairperson**
2. The Hon. Moses Ole Sakuda, M.P. - **Vice Chairperson**
3. The Hon. Joseph Oyugi Magwanga, M.P.
4. The Hon. John Kihagi, M.P.
5. The Hon. Mathew L. Lempurkel, M.P.
6. The Hon. Benson Mbai, M.P.
7. The Hon. Francis W. Nderitu, M.P.
8. The Hon. Julius Ndegwa, M.P.
9. The Hon. Eusilah Ngeny, M.P.
10. The Hon. Bernard Bett, M.P.
11. The Hon. Kipruto Moi, M.P.
12. The Hon. George Oner, M.P.
13. The Hon. Dr. Paul Otuoma, M.P.
14. The Hon. Thomas Mwadeghu, M.P.

ABSENT WITH APOLOGIES

1. The Hon. Hellen Chepkwony, M.P.
2. The Hon. Shakila Abdallah, M.P.
3. The Hon. Francis Kigo Njenga, M.P.
4. The Hon. Mpuru Aburi, M.P.
5. The Hon. Hezron Awiti Bollo, M.P.
6. The Hon. Mutava Musyimi, M.P.
7. The Hon. Kanini Kega, M.P.
8. The Hon. Suleiman Dori, M.P.
9. The Hon. Gideon Mung'aro, M.P.
10. The Hon. Onesmus Ngunjiri, M.P.
11. The Hon. A. Shariff, M.P.
12. The Hon. Sarah Korere, M.P.
13. The Hon. Esther Murugi, M.P.
14. The Hon. Patrick Makau, M.P.

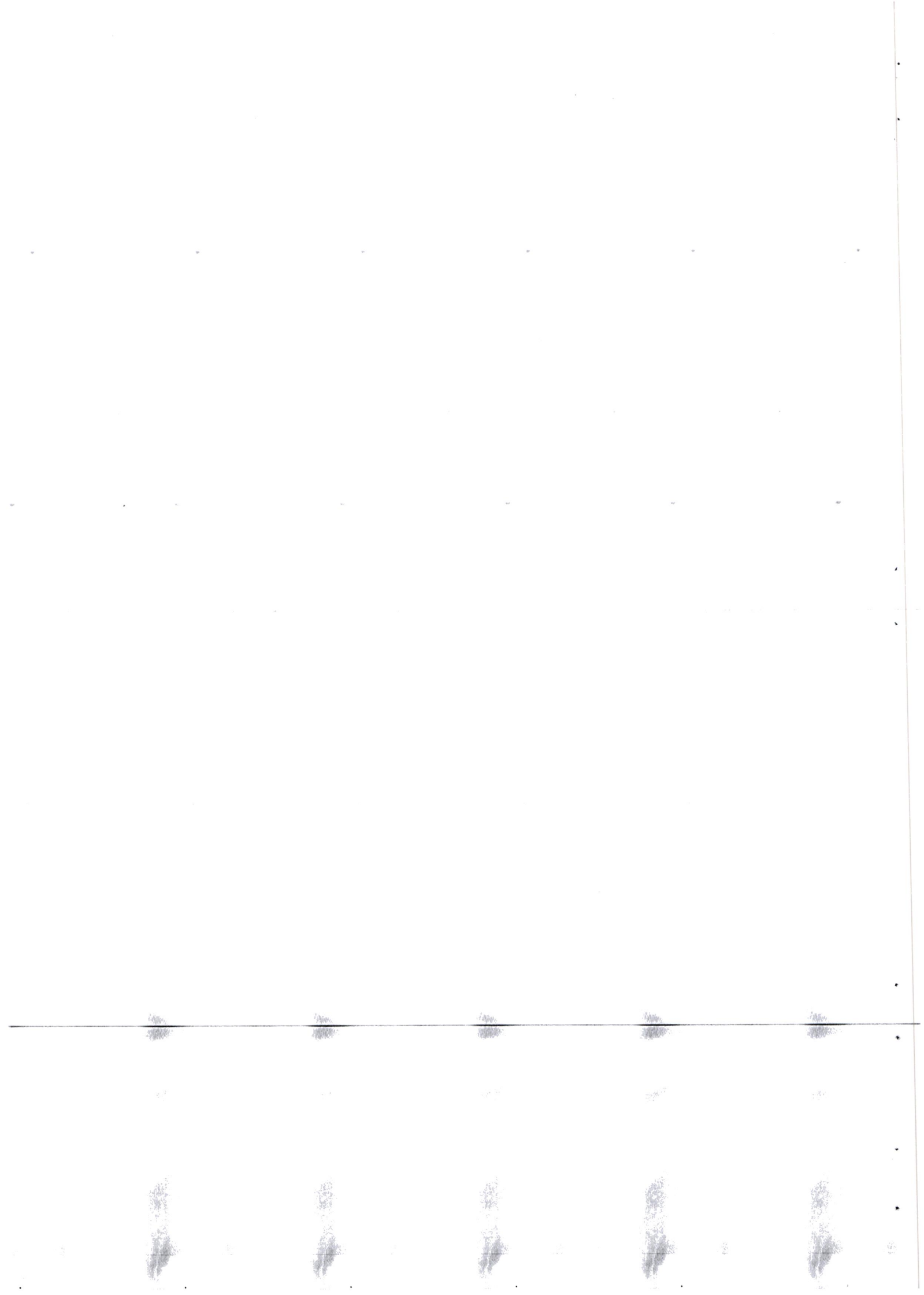
ABSENT WITHOUT APOLOGY

1. The Hon. Oscar Sudi, M.P.

IN ATTENDANCE

MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT

1. Ms. Mariamu El Maawy Principal Secretary, State Department of Lands
2. Mr. Peter Kahuho Ag. Secretary-Lands



NATIONAL LAND COMMISSION

- | | |
|---------------------------|-------------------------------------|
| 1. Mr. Tom Aziz Chavangi | Chief Executive Officer |
| 2. Mrs. Edith S.L. Olando | Deputy Director Land Administration |

KENYA NATIONAL ASSEMBLY

- | | |
|------------------------|-------------------------------|
| 1. Mr. James Ginono | - Clerk Assistant I |
| 2. Ms. Ruth Mwihaki | - Clerk Assistant III |
| 3. Mr. Muyodi Emmanuel | - Clerk Assistant III |
| 4. Mr. Noah Arap Too | - Research and Policy Analyst |
| 5. Mr. Lynnette Atieno | - Legal Counsel |
| 6. Mr. Ahmed Yakub | - Media Officer |

MINUTE NO. DCL/LN/2015/402 PRELIMINARIES

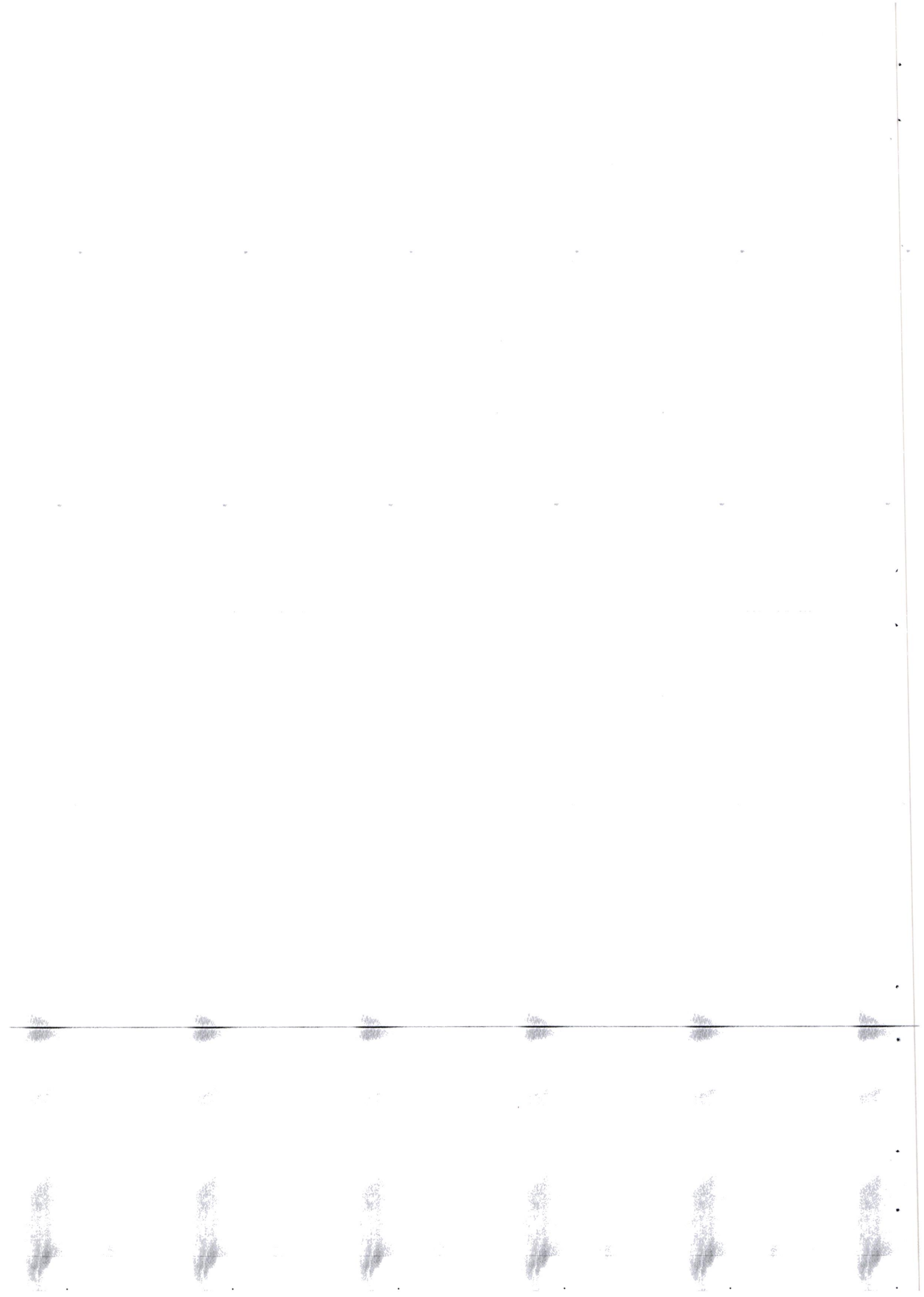
The Chairman called the meeting to order at 10.10 a. m with a word of prayer.

MINUTE NO. DCL/LN/2015/403 SUBMISSIONS FROM THE PERMANENT SECRETARY LAND ON MTAANI /KISUMU NDOGO /KIBAONI EXTENSION/GTZ UPGRADING PROJECT

i. Mtaani /Kisumu Ndogo /Kibaoni Extension/GTZ upgrading Project.

The Committee was informed as follows, that:-

- a) LR No. 5046/1 and 5024/1 is located about 2.6 kilometers West of the Indian Ocean coastline.
- b) It is adjacent to Kilifi County and measures approximately 300 acres;
- c) The history of this land dates back to 1934 when the Colonial Government reserved it for Coast Experimentation Station and Seed farm. It was later acquired by the Ministry of Agriculture for the purpose of the establishing Coast Agricultural Institute. In addition to the original 300 acres, the Institute acquired a further 385 acres thus computing to a total area of 685 acres approximately;
- d) The following commitments / allocations or reservations have been made on the land;
 - Approximate 4 acres was excised and amalgamated to LR No. – Group XI/4 to create a road of access for the public.
 - 3.9 acres was allocated to J.R Kangwana on 25th July 1989 vide letter of allotment ref: 31279/224. The user was agricultural to M/S Soso Investment Ltd for Hotel Development vide letter of allotment ref: 31279/230.
 - On 23rd November 1998, 34 acres were planned and allocated by the Town Clerk, Town Council of Kilifi to about 205 beneficiaries. This area was named Mtaani / Kisumu Ndogo / Kibaoni extension. I have no records to confirm whether the Commissioner of lands issued letters of allotment for this allocation or whether the P.D.P was approved by the director of Physical Planning. A list of beneficiaries is hereby attached for your perusal.
- e) Approximately 83.5 acres was reserved for public utilities namely:-
 - Primary School 4.2ha.
 - School for the deaf 2.5ha.
 - Children Home 1.3ha.
 - Extension Secondary School 3.06ha.



- Extension Secondary School 3.06ha.
 - Extension Secondary School 3.7 ha.
 - Proposed Vocational School of Deaf- 16.0ha.
- f) Kilifi Institute for Agriculture in its effort to secure its land from grabbing was issued with a letter of allotment Ref: 31279/241 of 10th April 2006 for 590 acres. The Institute is yet to acquire the title deed for the same.

MINUTE NO. DCL/LN/2015/405

**ADJOURNMENT & DATE OF THE NEXT
SITTING**

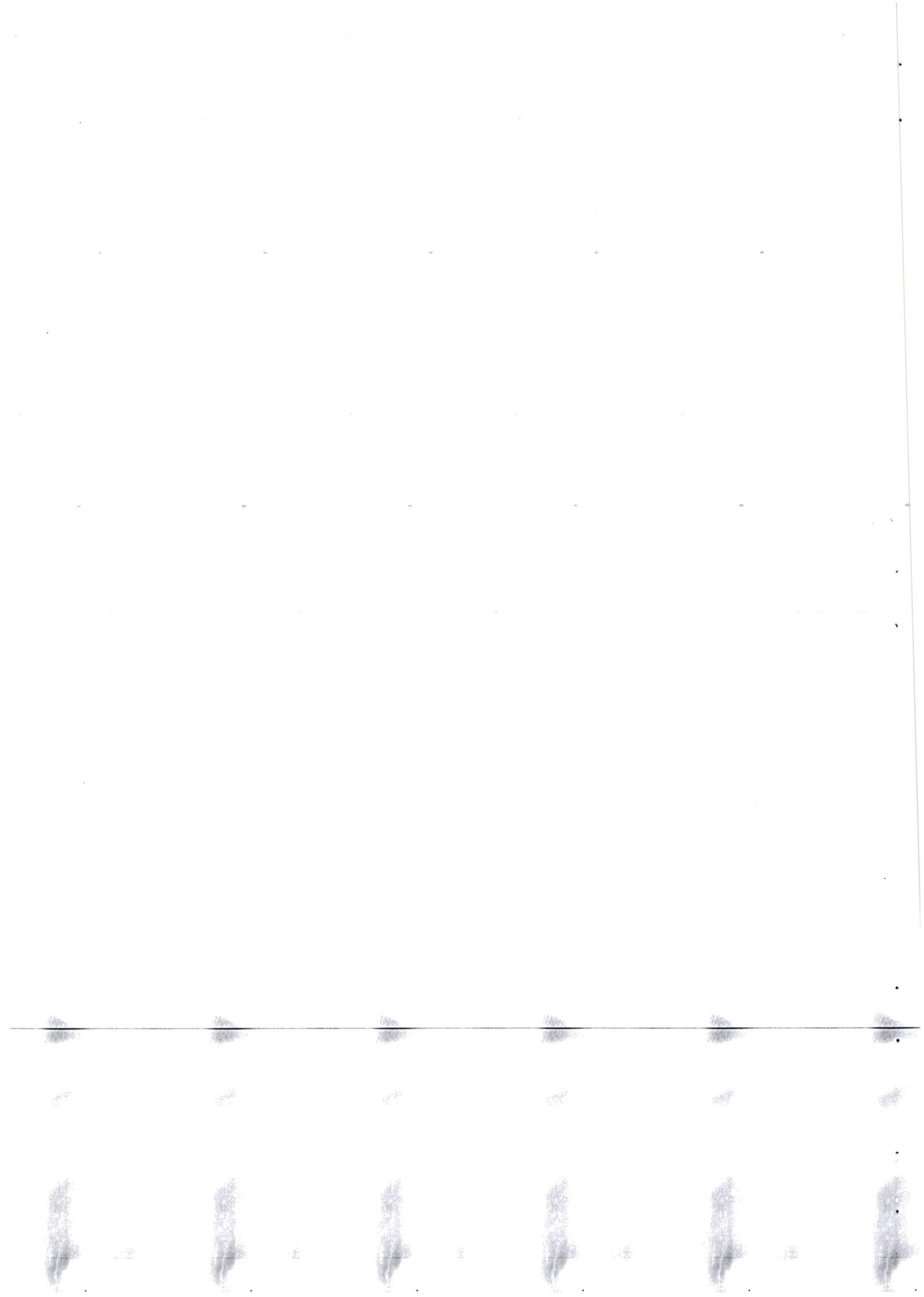
And the time being thirty six Minutes past one O'clock, the Chairperson adjourned the Sitting to Friday 6th March 2015.

SIGNED


.....
(CHAIRPERSON)

DATE

..... 12/3/2015



MINUTES OF THE 138TH SITTING OF THE DEPARTMENTAL COMMITTEE (K) ON LANDS HELD ON THURSDAY, 24TH MARCH, 2015 IN THE BOARD ROOM, 4TH FLOOR, PROTECTION HOUSE, AT 10.00 A.M

PRESENT:

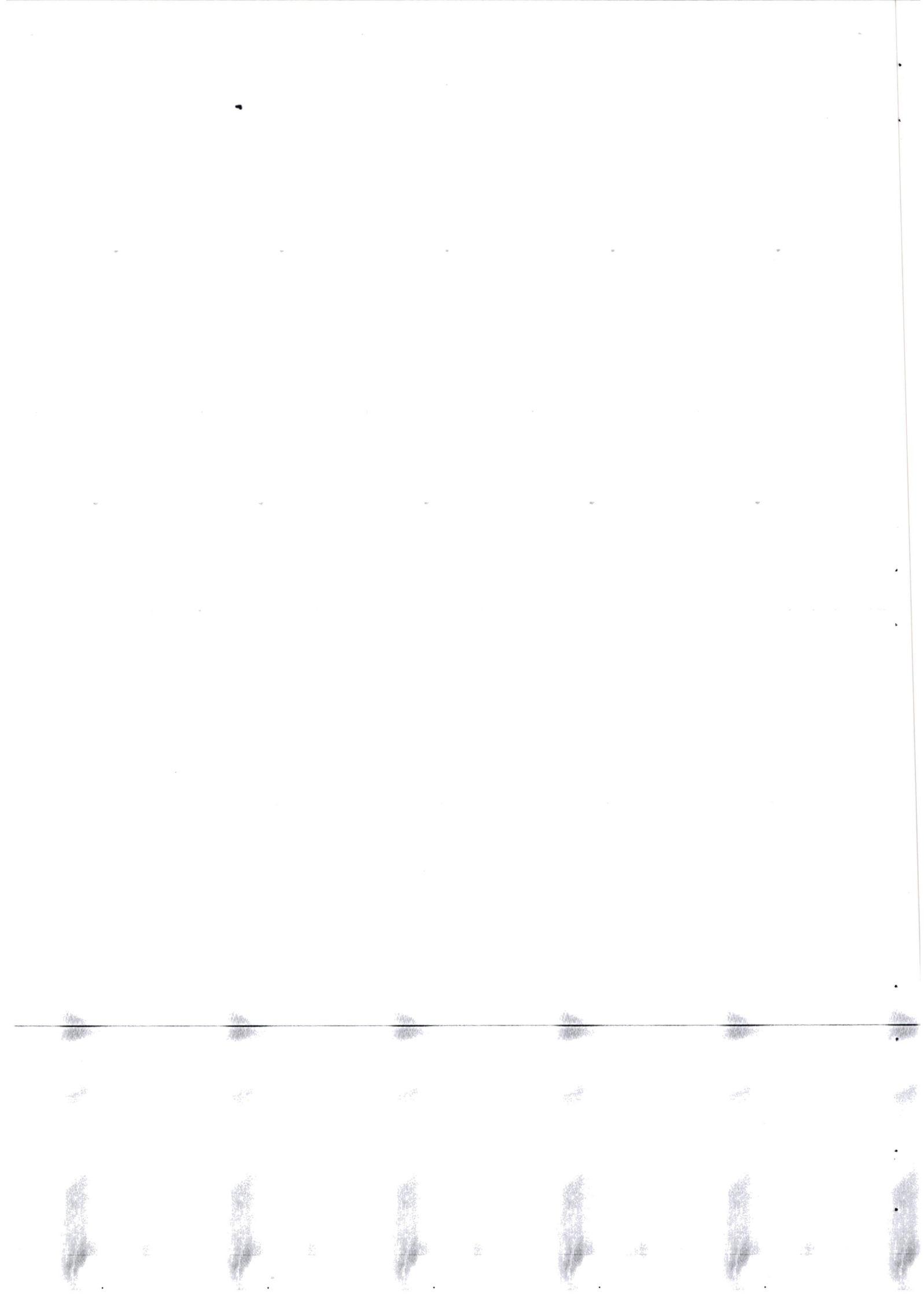
1. The Hon. Alex Mwiru, M.P. - **Chairperson**
2. The Hon. Moses Ole Sakuda, M.P. - **Vice Chairperson**
3. The Hon. Kipruto Moi, M.P.
4. The Hon. Benson Mbai, M.P.
5. The Hon. Shakila Abdallah, M.P.
6. The Hon. Julius Ndegwa, M.P.
7. The Hon. Suleiman Dori, M.P.
8. The Hon. Patrick Makau, M.P.
9. The Hon. Francis Kigo Njenga, M.P.
10. The Hon. Esther Murugi, M.P.
11. The Hon. Thomas Mwadeghu, M.P.
12. The Hon. Dr. Paul Otuoma, M.P.
13. The Hon. Athman Shariff, M.P.
14. The Hon. Kanini Kega, M.P.
15. The Hon. Gideon Mung'aro, M.P.
16. The Hon. Sarah Korere, M.P.
17. The Hon. Mathew L. Lempurkel, M.P.

ABSENT WITH APOLOGIES

1. The Hon. Onesmus Ngunjiri, M.P.
2. The Hon. John Kihagi, M.P.
3. The Hon. Mutava Musyimi, M.P.
4. The Hon. Bernard Bett, M.P.
5. The Hon. Joseph Oyugi Magwanga, M.P.
6. The Hon. Mpuru Aburi, M.P.
7. The Hon. Francis W. Nderitu, M.P.
8. The Hon. Hellen Chepkwony, M.P.
9. The Hon. George Oner, M.P.
10. The Hon. Eusilah Ngeny, M.P.
11. The Hon. Hezron Awiti Bollo, M.P.

ABSENT WITHOUT APOLOGY

1. The Hon. Oscar Sudi, M.P.



IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

- | | |
|------------------------|-------------------------------|
| 1. Mr. James Ginono | Clerk Assistant I |
| 2. Mr. Muyodi Emmanuel | Clerk Assistant III |
| 3. Mr. Noah Too | Research and Policy Analyst I |
| 4. Christine Odhiambo | Legal Counsel II |
| 5. Ahmed Yakub | Media Relation Officer |
| 6. Richard Sang | Serjeant-at-Arm |

IN ATTENDANCE

KILIFI AIRCHATTERS

- | | |
|---------------------------|-------------------------------|
| 1. Dr. Timothy Mtana Lewa | Chairman – Kilifi AirChatters |
|---------------------------|-------------------------------|

IN ATTENDANCE

KILIFI PLANTATIONS

- | | |
|---------------------------|----------------------------|
| 1. Mr. Christopher Wilson | Chairman-Kilifi Plantation |
|---------------------------|----------------------------|

IN ATTENDANCE

BAMBANI KILIO GROUP

- | | |
|----------------------------|--------------------------------|
| 1. Mr. Charles Munga Janji | Chairman Bambani Kilio Group |
| 2. Mr. Wycliffe Tembo | Vice Chair Bambani Kilio Group |

IN ATTENDANCE

PWANI UNIVERSITY

- | | |
|-------------------------------|---|
| 1. Prof. Mohamed S. Rajab | Vice Chancellor |
| 2. Prof. Muniru Khamis Tsanua | Deputy Vice Chancellor (Research and Extension) |

MINUTE NO. DCL/LN/2015/438

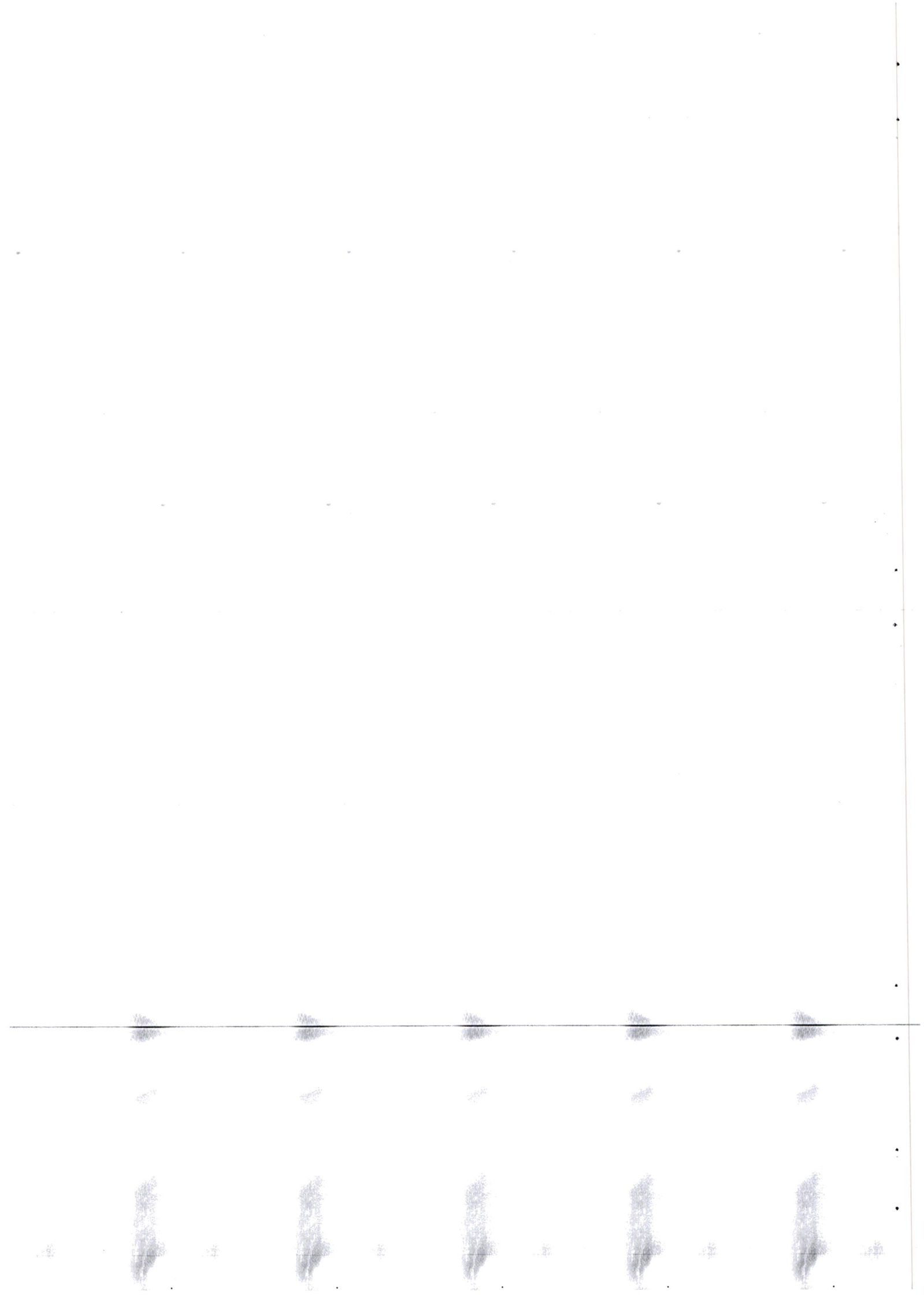
PRELIMINARIES

The Chairman called the meeting to order at 10.10 a. m with a word of prayer.

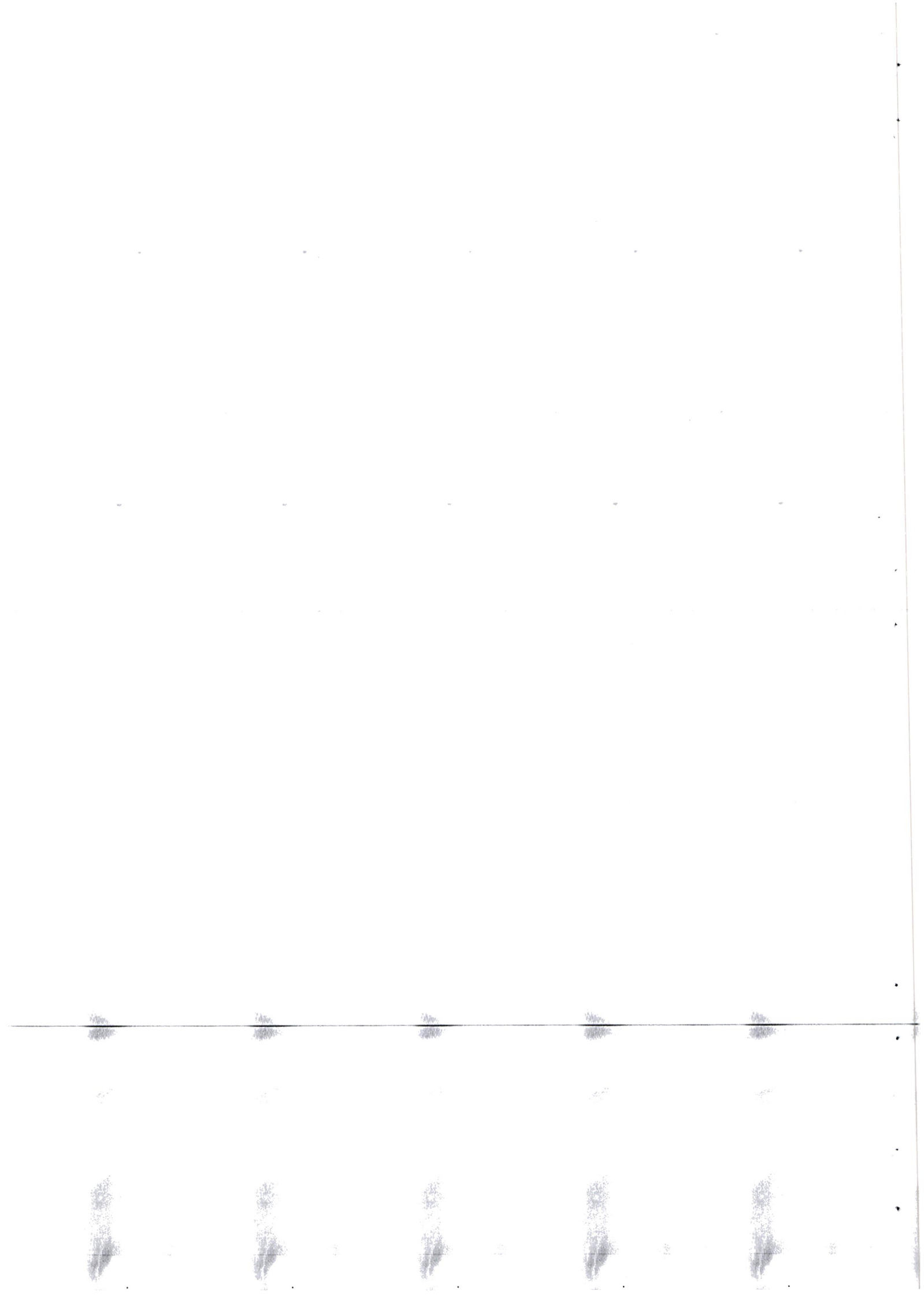
MINUTE NO. DCL/LN/2015/439 SUBMISSION FROM PWANI UNIVERSITY

While appearing before the Committee Prof. Mohamed S. Rajab – Vice Chancellor and Prof. Muniru Khamis Tsanua - Deputy Vice Chancellor (Research and Extension) Informed the Committee as understated:

1. Kilifi Institute of Agriculture acquired the land in question in 1981. Part of the institute's land was compulsorily acquired by the Government for experimental development and allocated to the Institute while the other part of the land was purchased by the Government from Coastal Development Limited and allocated to the institute for the same purpose;



2. Pwani University land was earmarked for the purpose of establishing the Institute and not for any other purpose. In particular the University land comprises of the following parcels:-
 - a. L.R NO. 5046/1
 - b. L.R NO. 5046/2
 - c. L.R NO. 5024/1
 - d. L.R NO. 5024/2
3. The Institute's land was in five portions and it measured 622 acres. At the time of the acquisition of the land by the Institute, there were already three institutions that were existing on the land, which, which were Kibarani Primary School for the deaf and Kilifi Township Secondary School. The three institutions occupied 30 acres;
4. In 1998 there was a directive from the Ministry of Agriculture to the effect that the Institute should formally allocate the three schools 30 acres of the land reserved for it, leaving an area of 590 acres for the Institute;
5. The Institute informed the Permanent Secretary that all the land allocated to the institute had been planned for and there was no land for excision;
6. The residents renewed their application to have the suit property allocated to them vide a letter dated 24th September 1997. However the institute didn't authorize the allocation of the suit property to the local residents;
7. The institute gave 12 acres of its land to the Primary School and 18 acres to Kibarani School for the deaf and Kilifi Secondary School;
8. The residents made numerous attempts to have the Institute's land set aside for the purpose of settlement and putting up jua kali shades, but the institute and the Ministry of Agriculture were against;
9. In 2002, the Ministry of Lands declared the Part Development Plan in respect to the land that the local residents are claiming as invalid. The Institute said that PDP was never approved. The District Physical Planner disowned the PDP that was in possession of the local residents by way of a letter dated 19th February 2003;
10. By the time the Institute was informing the Director of Agriculture about the illegal PDP vide a letter dated 21st February 2003, some residents had already moved on the disputed land;
11. ~~The Principal of Pwani University College discussed the issue of encroachment by the local residents on the institute's land with the District Commissioner and the PS Ministry of~~



Agriculture. By way of a letter dated 13th May, 2005 addressed to Mr. Nelson Kazungu Chai, the District Commissioner asked the local residents to vacate;

12. By the year 2005, there was no house on the suit property and that the encroachment by the local residents was by way of fencing and subdividing the suit property;
13. In 2005 vide a letter dated 20th May 2005, the PS Ministry of Agriculture directed that the invasion of the institute's land should stop;
14. The Institute was issued with a letter of allotment for land measuring 239 Ha (approximately 590 acres) on 10th April 2006 leaving the other land for the three schools;
15. In 2007 the Institute started fencing the 239 Ha piece but stopped when the suit was filed.

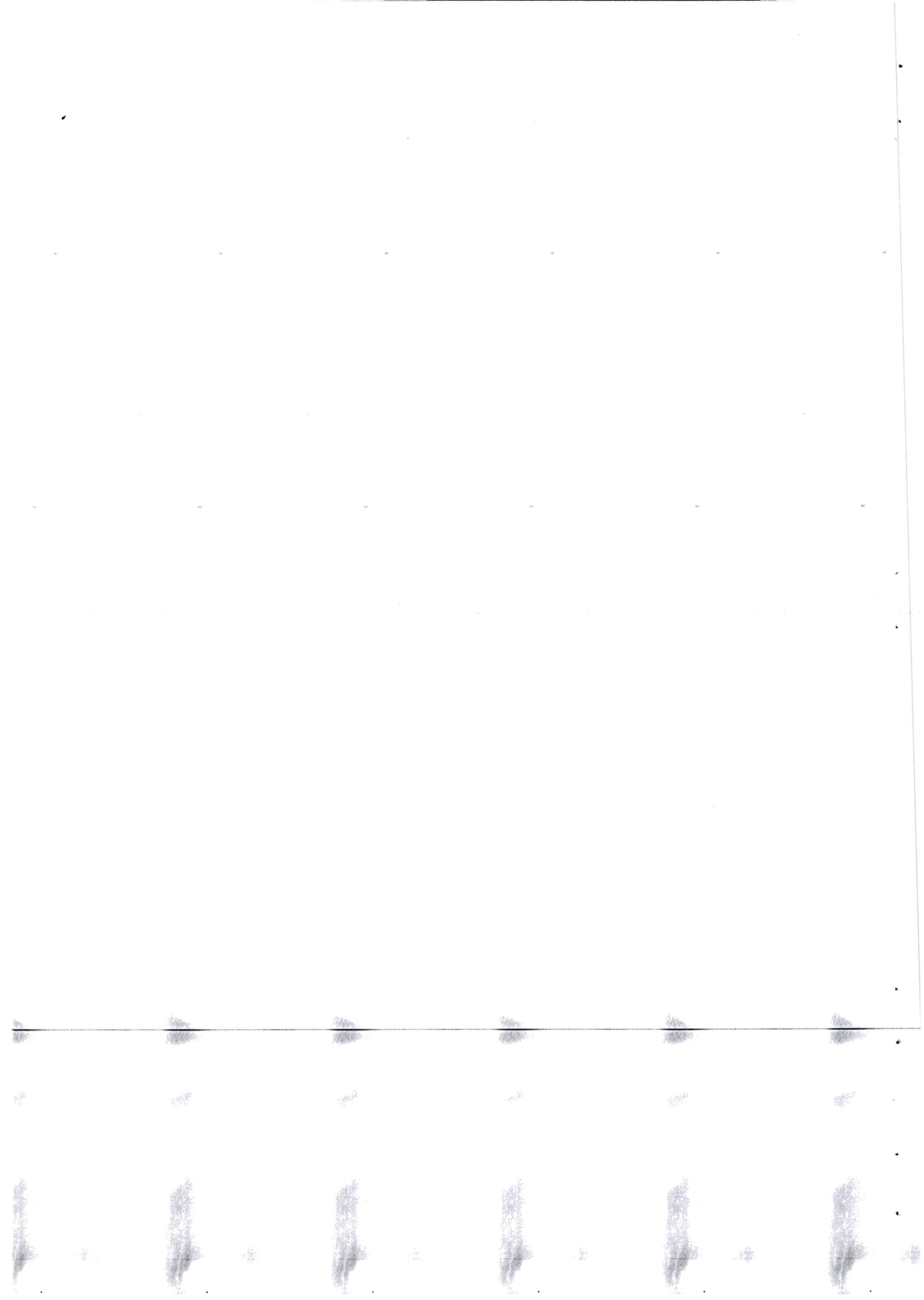
Pwani University Prayer to the Departmental Committee on Lands

1. The Committee assist and allow Pwani University to protect its land for Public good for which it was established;
2. The Committee supports Pwani University to actualize a Teaching and Referral Hospital on the said parcel of land as per the Pwani University Master Plan 2010-2020;
3. The Committee notes that Pwani University have received approval from the Public Private Partnership (PPP) Secretariat to undertake a feasibility study on the proposed teaching and referral hospital on the said land with a view of actualizing the same.

The Committee thereafter made the following observations, that:-

Pwani University

- i. There are squatters residing in the land, they have built permanent and semi-permanent houses;
- ii. The squatters brought down the fence that the University had erected;
- iii. Pwani University had put a caveat on the property to caution people that the land belongs to the University;
- iv. The squatters took the matter to Court, but the Court ruled in favor of the University and got order of eviction; squatters field an appeal and given stay;
- v. There are no document to support that Kilifi County Council gave land to the squatters;



- vi. There are people who own upto 6 parcels of land in the area, and they claim that they were sold at Ksh 50,000 per plots.

The Committee resolved as follows:

The following to be invited to appear before the Committee to shed more light on the above mentioned issues:

- i. The Cabinet Secretary Ministry of Lands, Housing and Urban Development;
- ii. The National Land Commission.

**MINUTE NO. DCL/LN/2015/440 ADJOURNMENT & DATE OF THE
NEXT SITTING**

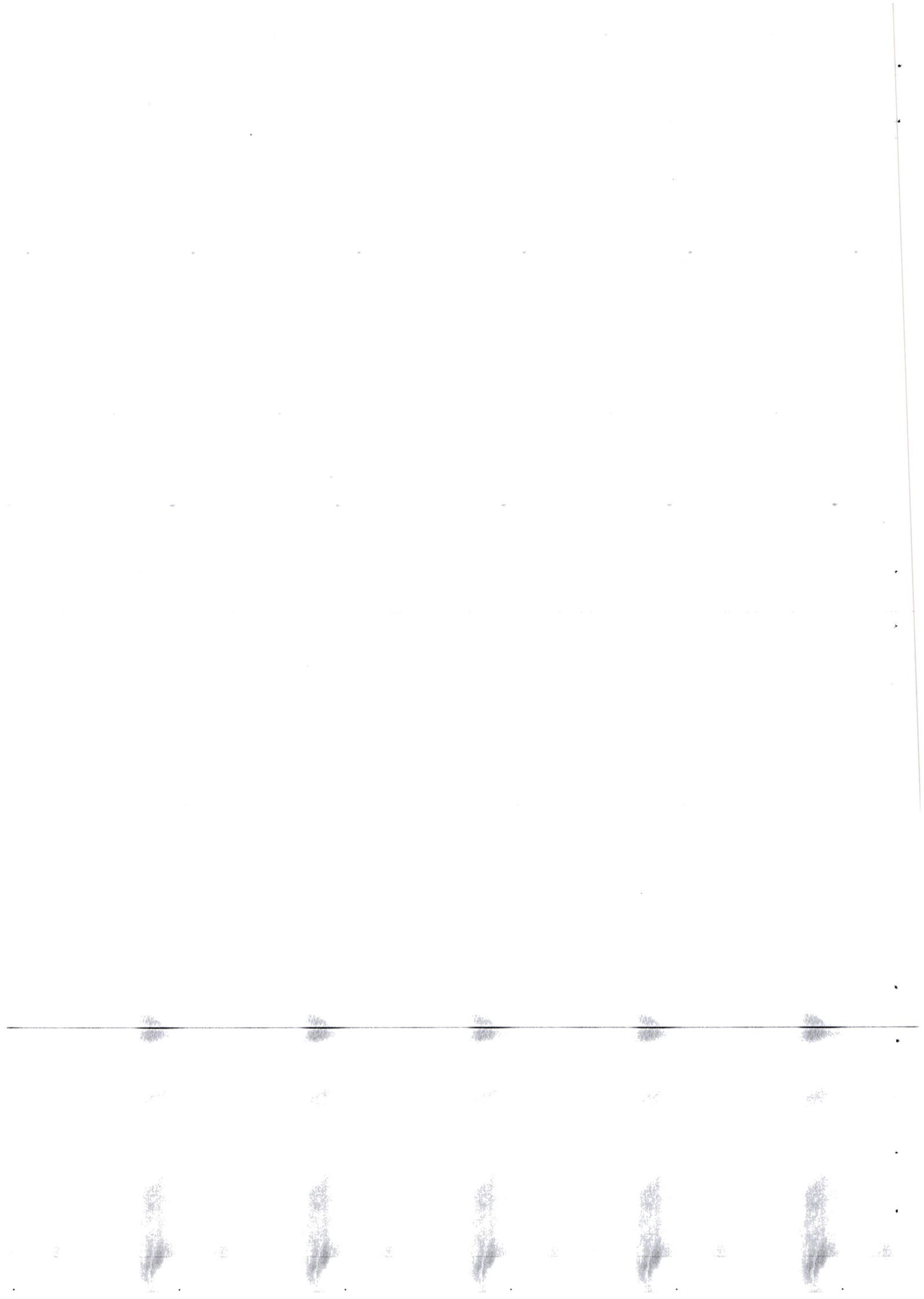
There being no any other business, and the time being 2:45 pm; The Meeting was adjourned until 27th March 2015.

SIGNED


.....
(CHAIRPERSON)

DATE

..... 31st / 3 / 2015



ADOPTION LIST

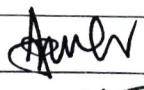


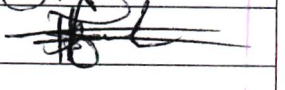
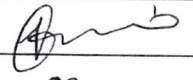
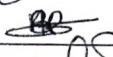
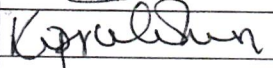

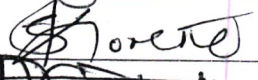
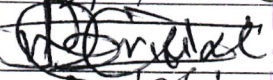

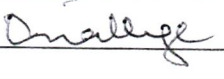

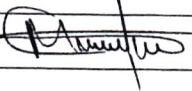
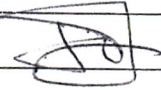
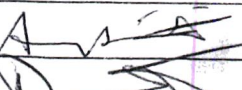



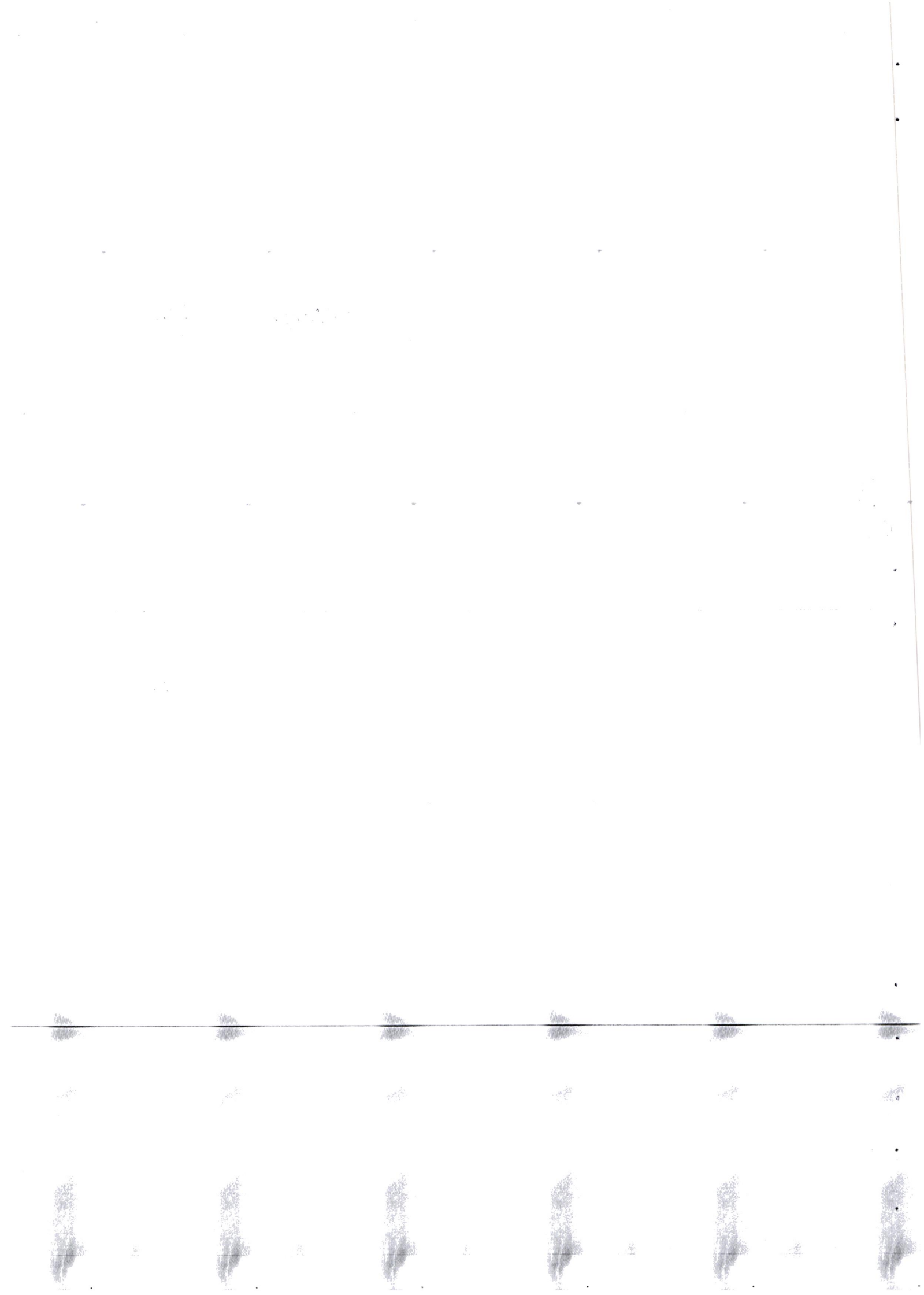
DEPARTMENTAL COMMITTEE ON LANDS
ADOPTION LIST

REPORT ON THE LAND DISPUTE BETWEEN PWANI UNIVERSITY AND MTAANI/KISUMU NDOGO/GTZ
RESIDENTS

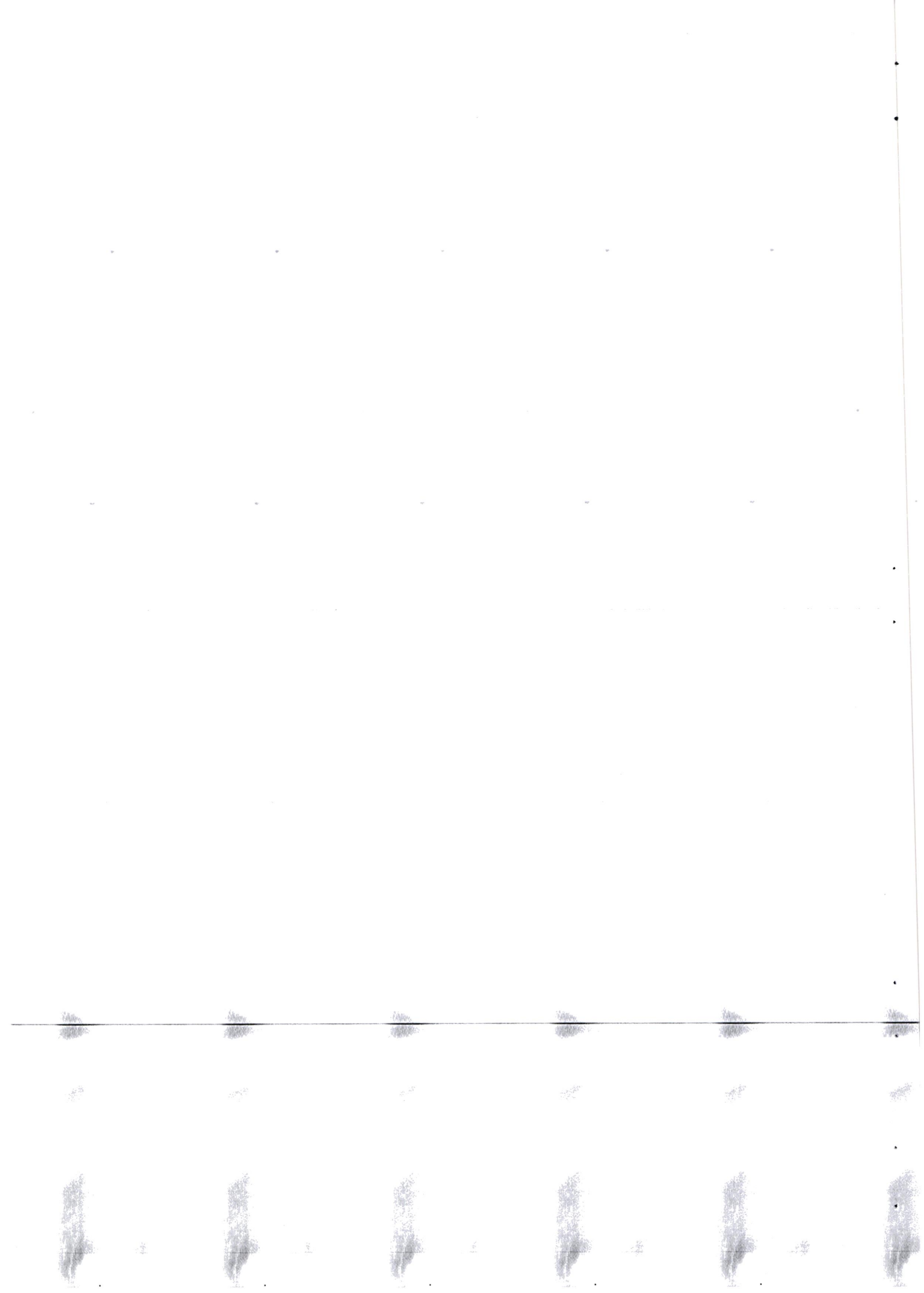
DATE: 1st December 2015

VENUE: Main Chambers, Main Parliament Buildings

NO.	NAME	TITLE	SIGNATURE
1.	The Hon. Alex Mwiru, M.P. (Chairperson)	Chairman	
2.	The Hon. Moses Ole Sakuda, M.P (Vice-Chairperson)	Vice-Chairman	
3.	The Hon. Onesmas Ngunjiri, M.P.		
4.	The Hon. Mutava Musyimi, M.P.		
5.	The Hon. John Kihagi, M.P.	Member	
6.	The Hon. Francis W. Nderitu, M.P.	Member	
7.	The Hon. Francis Njenga, M.P.		
8.	The Hon. A. Shariff, M.P.		
9.	The Hon. Eusilah Jepkosgei, M.P.	Member	
10.	The Hon. Benard Bett, M.P.	Member	
11.	The Hon. Kipruto Moi, M.P.	Member	
12.	The Hon. Oscar Sudi, M.P.		
13.	The Hon. Hellen Chepkwony, M.P.	Member	
14.	The Hon. Sarah Korere, M.P.	Member	
15.	The Hon. Julius Ndegwa, M.P.	Member	
16.	The Hon. Benson Mbai, M.P.	Member	
17.	The Hon. Kanini Kega, M.P.		
18.	The Hon. Esther Murugi, M.P.	Member	
19.	The Hon. Gideon M. Mung'aro, M.P.		
20.	The Hon. Hezron Awiti Bollo, M.P.	Member	
21.	The Hon. Suleiman Dori Ramadhani, M.P.		
22.	The Hon. George Oner Ogalo, M.P.		
23.	The Hon. Lekidime L. Mathew, M.P.	"	
24.	The Hon. Shakila Abdallah, M.P.		
25.	The Hon. Paul Otuoma, M.P.	"	
26.	The Hon. Thomas Mwadeghu, M.P.		
27.	The Hon. Magwanga Joseph Oyugi, M.P.		
28.	The Hon. Aburi Lawrence Mpuru, M.P.	Member	
29.	The Hon. King'ola Patrick Makau, M.P.	Member	



SUBMISSIONS





MINISTRY OF LAND, HOUSING & URBAN DEVELOPMENT

DEPARTMENTAL COMMITTEE ON LANDS – SUBMISSION OF INFORMATION ON VARIOUS ISSUES PENDING BEFORE THE COMMITTEE

Questions

1. Petition by Twiga Farm Evictees regarding the alleged eviction of over six hundred families from their land

- a. The registered owners of LR. No.9312, LR No.9313 and LR No.3760
- b. Information relating to ownership, sale and or transfer of the said land
- c. Any other Information as may be relevant to the matter.

Answers

LR 9312 which measures 108.54 Hectares (268 Acres) was originally registered in the name of Robert Grahame Bell as IR 15114. as (Trustee for **Graham Bell Limited and Twiga Limited**). The property which is located within the former was transferred to Twiga Coffee Estates Limited together with LR 9313 and LR 252.

By a transfer document dated 28th June 1974, L.R 9312 was transferred from Twiga Coffee Estates Limited to **Karume Investments Limited** and the last transfer was done on 8th August 2003 which the property was transferred to **MBO-IN-KAMITI FARMERS COMPANY LIMITED**.

A Prohibitory Order dated 13th December 2004 issued by the High Court in Nairobi – **Civil Suit No. 564 of 1998** prohibiting and restraining further

dealings on the land until further orders of the court. This Order was registered on 17th December 2004.

i. LR. 9313

LR measures 137.29 Hectares (339 Acres) and was originally registered in the name of **Twiga Limited** as **I.R 15113**. The property is held on freehold tenure.

On November 1963, LR 9313 was transferred to **Karume Investment Limited**. Later, on 8th August 2003, LR 9313 was transferred to **MBO-I-KAMITI FARMERS COMPANY LIMITED**.

A Prohibitory Order was issued by the High Court – **Nairobi Civil Suit No 564** of 1998 dated 15th December 2004 Prohibiting and Restraining any transaction until further Orders from the Court.

ii. LR 3760

LR 3760 was originally registered in the names of **Twiga Limited** and it measures 148.52 Hectares (367 Acres).

On 21st November 1963, LR 3760 was transferred to **Twiga Coffee Estates Limited** together with other lands.

The property was later transferred to **Karume Investments Limited** in **1974**. Ultimately, LR 3460 was transferred from Karume Investments Limited to MBO-I-KAMITI FARMERS COMPANY LIMITED.

A Prohibitory Order was issued in the High Court in Nairobi – **Civil Suit No. 564** of **1998** dated 15th December 2004 prohibiting and restraining any dealings until further Orders of the Court.

It is adjacent to Kilifi Township of Kilifi County and measures approximately 300 acres.

ORIGINAL OWNERSHIP STATUS

The history of this land dates back to 1934 when the Colonial Government reserved it for Coast Experimentation Station and Seed farm. It was later acquired by the Ministry of Agriculture for the purpose of the establishing Coast Agricultural Institute. In addition to the original 300 acres, the Institute acquired a further 385 acres thus computing to a total area of 685 acres approximately.

COMMITMENTS/ALLOCATIONS OR RESERVATIONS

- Approximate 4 acres was excised and amalgamated to LR No. – Group XI/4 to create a road of access for the public.
- 3.9 acres was allocated to J. R Kangwana on 25th July 1989 vide letter of allotment ref: 31279/224. The user was agricultural purposes.
- On 6th September 1995, a further 10 acres was allocated to M/S Soso Investment Ltd for Hotel Development vide letter of allotment ref: 31279/230.
- On 23rd November 1998, 34 acres were planned and allocated by the Town Clerk, Town Council of Kilifi to about 205 beneficiaries. This area was named Mtaani/Kisumu Ndogo/Kibaoni extension. I have no records to confirm whether the Commissioner of Lands issued letters of allotment for this allocation or whether the P.D.P was approved by the Director of Physical Planning. A list of beneficiaries is hereby attached for your perusal.

RESERVATIONS

Approximately 83.5 acres was reserved for public utilities namely:-

- Primary school 4.2 ha.
- School for the deaf 2.5 ha.

occupying government land. It covers an area of approximately 3717 Ha. Plot demarcation and survey came to a halt on discovering that the demarcation exercise encroached on private properties.

In October, 2011, plot demarcation and survey commenced again after identification of perimeter boundary and isolation of private properties. A total of 2254 parcels of various sizes were demarcated including eight (8) public utility plots. This was done through the participation of a local land committee consisting of stakeholders.

The plot allocation exercise was formalized by the District Settler selection committee in a meeting held on 16th April, 2012 at Kilifi District Commissioner's office.

In 2013, the beneficiaries totaling two thousand, two hundred and fifty four (2,254) were issued with titles. However, there are 40 plots bordering the creek whose allocation has been contested by the county government which they want repossessed for public use. Consultations are on-going to finalize the matter.

7. Mtaani/Kisumu Ndogo/Kibaoni Extension GTZ Upgrading Project

- a. The registered owner and current status of L.R. No.5046/1 and LR 5024/1
- b. Any other information as it relates to the transfer and /or ownership of the said parcels of land.

LOCATION

LR No. 5046/I and 5024/I is located about 2.6 Kilometers West of the Indian Ocean coastline.

- Children Home 1.3 ha.
- Extension Secondary School 3.06 ha
- Extension Secondary School 3.06 ha.
- Extension Secondary School 3.7 ha.
- Proposed Vocational school of Deaf – 16.0 ha.

➤ Kilifi Institute for Agriculture in its effort to secure its land from grabbing was issued with a letter of allotment **ref: 31279/241 of 10th April 2006 for 590 acres**. The Institute is yet to acquire the title deed for the same.

8. Kiwandani/Kibaoni/Boyani/Kibarani

- a. Ownership and current status of Plot no.1705/44 (CR 26743/2/3)
- b. Ownership and current status of Plot no.5054/1210 and LR No.1510/4.
- c. Ownership and current status of plot no. MN/III/290,291/2/III/MN/MN/III/289 and 4391/MN/III.
- d. Ownership and current status of plot no. L.R. No. 5046/5.
- e. Ownership and current status of MN/IV/150 (CR 13080 in Kikambala)
- f. Details regarding the acreage, allocation, charges, transfers and/ or subdivision of the aforementioned parcels of land
- g. Any other information as it relates to the aforementioned parcels and as may be relevant to the committee.

Answers

LR 1705/44

LR. 1705/44 originally formed part of **LR 1705/42** and belonged to one **Mary Morril Lillywhite on freehold**.

In 1968, Mary Morril LillyWhite caused **LR 1705/42** to be subdivided into eight portions which upon survey, became **LR 1705/43-1705/49**. Out

of this subdivision, LR 1705/44 was created and it measured 76.55 Hectares (189 Acres) and is what was known as Kilifi Airstrip.

Although there is no evidence of surrender of this plot (LR. 1705/44) to the Government nevertheless a letter of allotment was issued allocating it to M/S Kilifi Air Charters Limited for a term of 99 years with effect from 1st September 1994. A Grant was later processed and registered at the Coast Land Registry as CR 26743 on 23rd January 1995.

A sub-division of LR 1705/44 was carried out around 1955, 33 plots as follows:-

<u>LR</u>	<u>AREA (Ha)</u>	<u>USER</u>
21640/2 -	3.285 -	School
21640/4 -	3.282 -	Health Centre
21640/5 -	18.88 -	Residential
21640/5 - 34-	Various -	"
21640-35 -	15.53 -	Airstrip

LR 1510/4

LR 1510/4 originally measured 323.35 Hectares and was registered in the names of the Administrator of the Estate of the late Soud bin Ali (deceased).

In 1952, LR 1510/4 was transferred to Salim bin Soud, Abdalla bin Soud, Aisha binti Said, Shariffa binti Soud, Mohamed Bin Soud and Abbas bin Soud.

In 1965, part of LR. 1510/4 was acquired by the Government under the Land Acquisition Act (1894) of INDIA vide Gazette Notice No. 2730 of 27th July 1965. The Hectares (10.26 Acres). The acquisition was for purposes of construction of a road.

In 1976, the Government purchased the entire LR. 1510/4 from the registered owners after paying the purchase price of Kshs.800,000/=.

6th Nov, 2014

**MTAANI KISUMU NDOGO/ KIBAONI EXT. MINUTES OF
THE MEETING HELD ON 16TH NOV, 2014 AT BAOBAB
LODGE.**

Introduction

The meeting started with prayers, which ~~was~~^{were} led by Halima Hassan.

Members present

- | | | |
|---------------------------|---|---------------------------------------|
| ✓ 1. Hon. Gideon Mung'aro | - | M.P Kilifi North constituency |
| 2. Hon. Lawrence Kilabu | - | Ward Representative – Sokoni Ward |
| 3. Mr. Athman Matano | - | Area Chief – Kilifi Township location |
| 4. Mr. Nelson Chai | - | Chairman – Residents Committee (RC) |
| 5. Mr. Shadrack Nduli | - | Secretary |
| 6. Mr. Lawrence Kazani | - | Treasurer |
| 7. Halima Hassan | - | Vice chairperson |
| 8. Rabii Swareh | - | Member RC |
| 9. Prudence Mapenzi | - | Member RC |
| 10. Zenah Mwaka | - | Member RC |
| 11. Sharine Pendo | - | Member RC |
| 12. Nzigo Golu | - | Member RC |
| 13. Timohty Kariuki | - | Member RC |
| 14. Joseph Mwakamsha | - | Member RC |
| 15. Gladys Ndoró | - | Member RC |
| 16. Jacob Saleri | - | Member RC |

Absent with Apology

1. Salim Gwaru

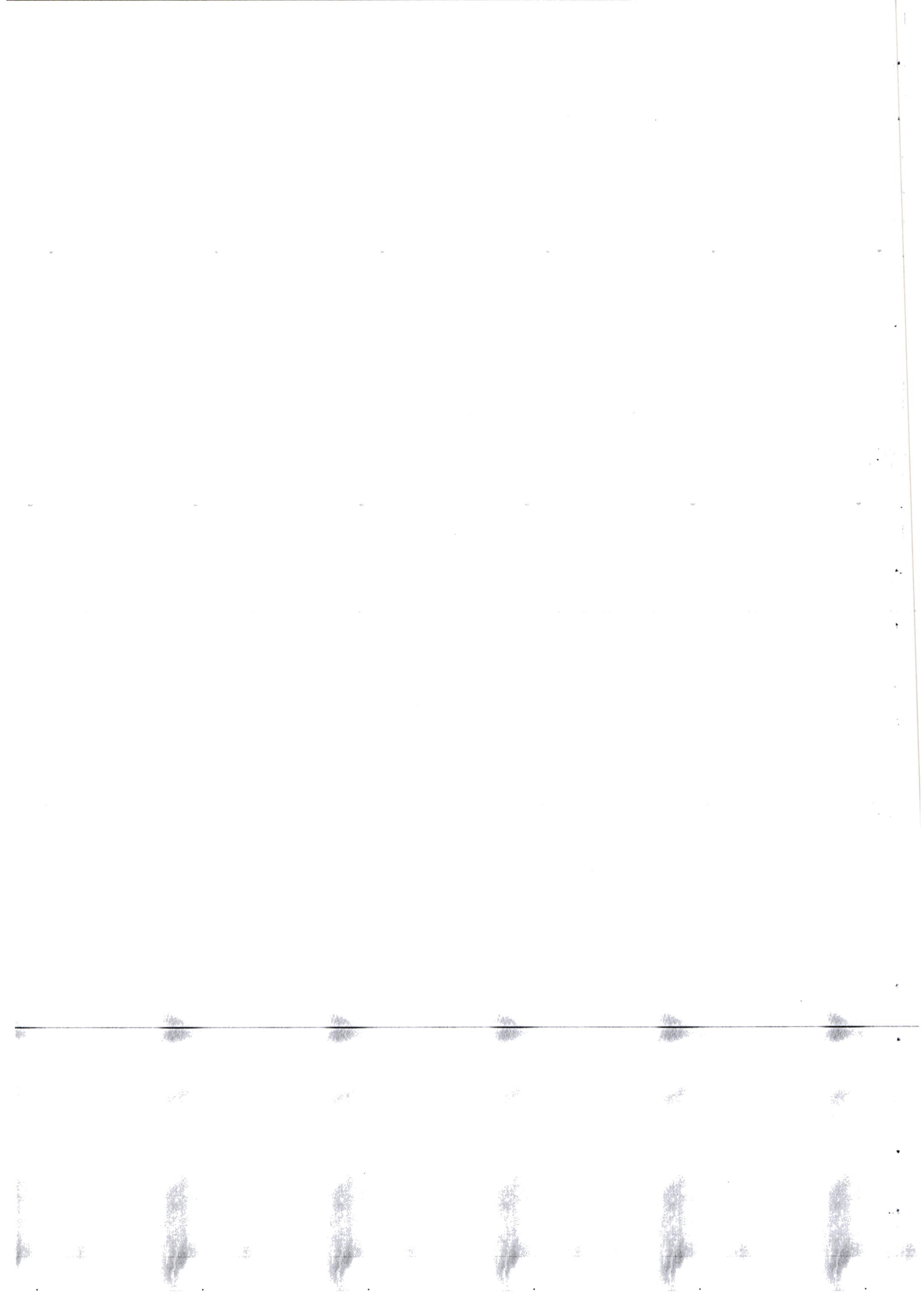
Apology

1. Jones Msau

AGENDA

The agenda of the meeting was about the conflict of the land between Pwani University and GTZ – Mtaani/ Kisumu Ndogo/ Kibaoni EXT Up grading project.

Min 01/ 2014 : The Ward Representative Hon. Lawrence Kilabu gave a brief history about the plots at Kibaoni EXT which is under conflict between Pwani University and the GTZ. Thereby the Ward Rep. welcomed the M.P for introduction, thus the members too.



- Min 02/ 2014 : The Chairman Mr. Nelson Chai had to narrate the whole history about how they owned the land. Hon Gideon Mung'aro said that according to chairman's report, the land which they are managing was not grabbed since there were some certain steps which were made before the squatters were allowed to settle on the area they are in today. Hence no corruption was made. Mr. Athman the area chief seconded the chairman's report to be a true story.
- Min 03/ 2014 : The chairman issued the documents which indicated that they had the right to own that portion of land.

Preliminaries

According to the report, the M.P ordered the Ward Rep. to make sure that he protects his peoples buildings from being demolished until further notice.

Conclusion

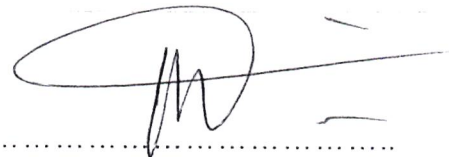
The M.P concluded that the chairman should give out all the report by writing the history of the area and attach all the supporting documents.

Drawn and written by:



Shadrack Ndhuli

SECRETARY



Nelson K. G... **CHAIRMAN**
RESIDENTS COMMITTEE
KILIFI TOWN
CHAIRMAN



91

**MEMORANDUM TO THE PARLIAMENTARY COMMITTEE OF LANDS AND
NATURAL RESOURCES**

FROM RESIDENTS OF MTAANI/KISUMU NDOGO UPGRADING PROJECT.

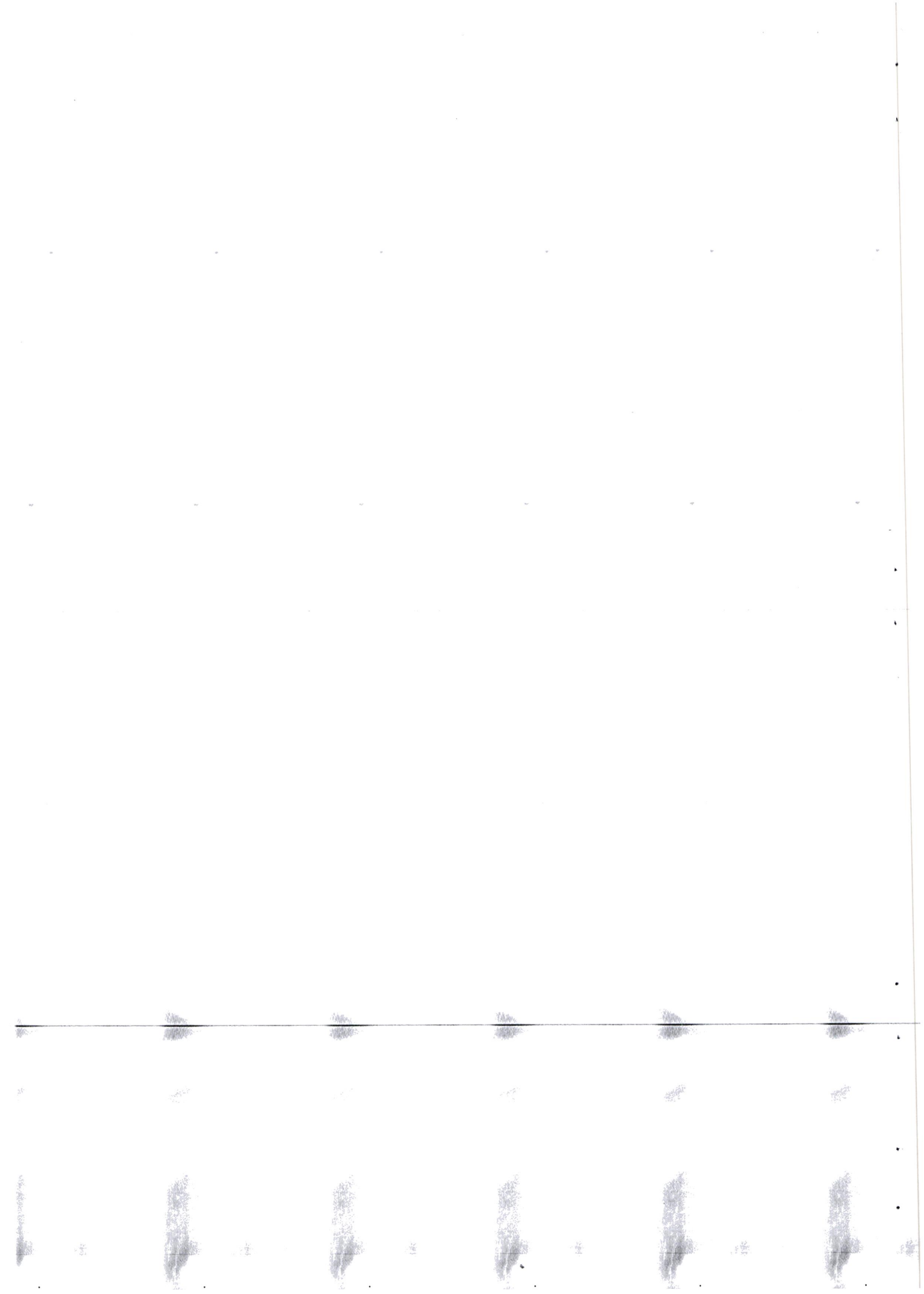
WE the residents of Mtaani/Kisumu Ndogo prevail upon the Parliamentary Committee on Lands and Natural Resources, to convey our plea to Parliament against the impending eviction and destruction of our homes and developments on portions of land comprised in L.R. 5046/1 and L.R. 5024/1 Kilifi where we live and were settled on by the Government, openly.

BACKGROUND

1. In 1989, the Government, through the Ministry of Local Government in conjunction with the German Technical Development Corporation (Gtz) Non Profit, directed the upgrading of the Mtaani and Kisumu Ndogo Slums in Kilifi.
2. The Project involved the urban planning of the settlement by providing for road reserves, amenities, utility wayleaves and distinct registered plots for the residents on property known as KILIFI TOWNSHIP BLOCK 3.
3. Owing to the Planning providing for more space for road reserves, amenities, utility wayleaves many residents were unable to be settled in that area.
4. There was uproar and demonstrations by the displaced residents who by reason of the Project were now rendered destitute.
5. The Government therefore in 1996 authorized the relocation of these displaced people on L.R. 5046/1 and L.R. 5024/1 now known as Kibaoni Extension of Mtaani Kisumu Ndogo Upgrading Scheme.
6. The then District Commissioner, Provincial Commissioners, the Town Clerk, the Minister of Agriculture and the Minister for Lands were deeply involved in this process.
7. Additionally, the Commissioner of Lands and the Ministry of Planning through the Director of Physical Planning were also heavily involved in



- the relocation exercise with the former issuing letters of allotment to the Residents and the latter drawing up the Part Development Plan (PDP).
8. The conduct and involvement of Government in this process gave the Residents legitimate belief that the land was theirs and the residents proceeded to develop it openly and without demand. The residents have lived and resided thereon since the year 1996.
 9. It is pertinent that even the University is a holder of a Letter of Allotment (not a title) just like us.
 10. We are not land grabbers but were meant to be the beneficiaries of a Government Project that displaced us from our original land and thereafter settled us on our current location.
 11. In a suit filed in Malindi High Court being No. 70 of 2009, we saw for the first time aged correspondence passing between the same Government Departments and Ministries involved here and the University, allegedly turning around on our settlement on the present land.
 12. Since 1996 to around 2009, way after we had developed and settled on the subject property, no one Government Ministry or Department or the University notified us of this turn-around or even shared or copied any of their passing correspondence to us.
 13. We were completely clueless about these official goings-on despite the fact that we were the subject of the correspondence and any actions they were resolving to take on the matter. We were not heard when the decision was made revoking our settlement on the present land.
 14. L.R. 5046/1 and L.R. 5024/1 measure approximately 100 acres. We only occupy and claim only 50 Acres of this land. On the other hand, the University occupies 623 Acres.
 15. In a Judgment in Malindi HCC No 70 of 2009, the Court compared us to land grabbers which reference is not at all a fair description given the history of our settlement on the land.

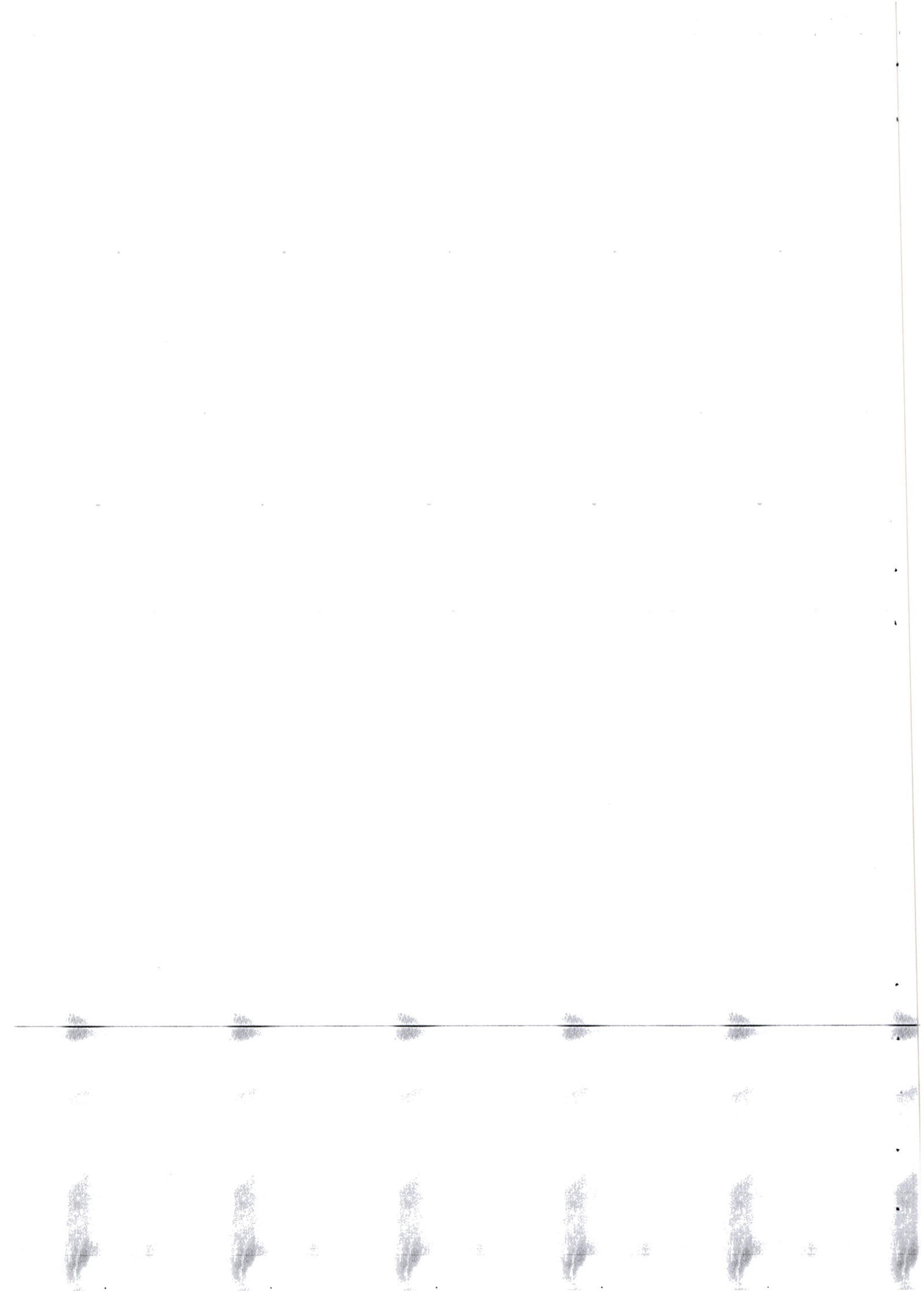


16. The Court has issued the University with Orders directing our Eviction and the University promptly filed an Application seeking the issue of the Order and seeking the assistance of the Police to effect the same.
17. On the 4th February 2015, the Chancellor of the University accompanied with the County Commissioner in the company of lorry loads of armed police officers pounced on the property, and declared that we should vacate lest they forcefully destruct our homes and developments.
18. We pleaded with them and they reluctantly retreated. The position as of now is that we stand evicted and to meet court bills and cost of the demolitions.
19. In our opinion, we never grabbed this. Officers and leaders directed us and gave us this land. If at any stage one officer e.g. the Principal, the Town Clerk, the D.C, the P.C, the Ministers for both Agriculture and Lands and Settlement, the Commissioner of Land would have told us 'No' this land cannot be occupied by us – surely we wouldn't have come to this land.
20. Why are we being punished? Which mistake did we commit?

RECOMMENDATIONS

We seek for the following Parliamentary recommendations;

21. That it be recommended that the portion we occupy be registered in our names; or
22. That payment of full compensation be made, for land and development, to the residents.
23. That forceful eviction is a drastic measure to mete to us given that our occupation and possession of the subject land was open and through the inertia of Government by action and conduct.



Copy to:

The Chairman, National Land Commission.

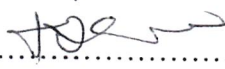
The Cabinet Secretary, Ministry of Lands and Natural Resources.

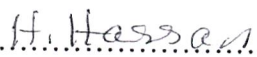
The Governor, Kilifi County.

Signed on behalf of the Residents:

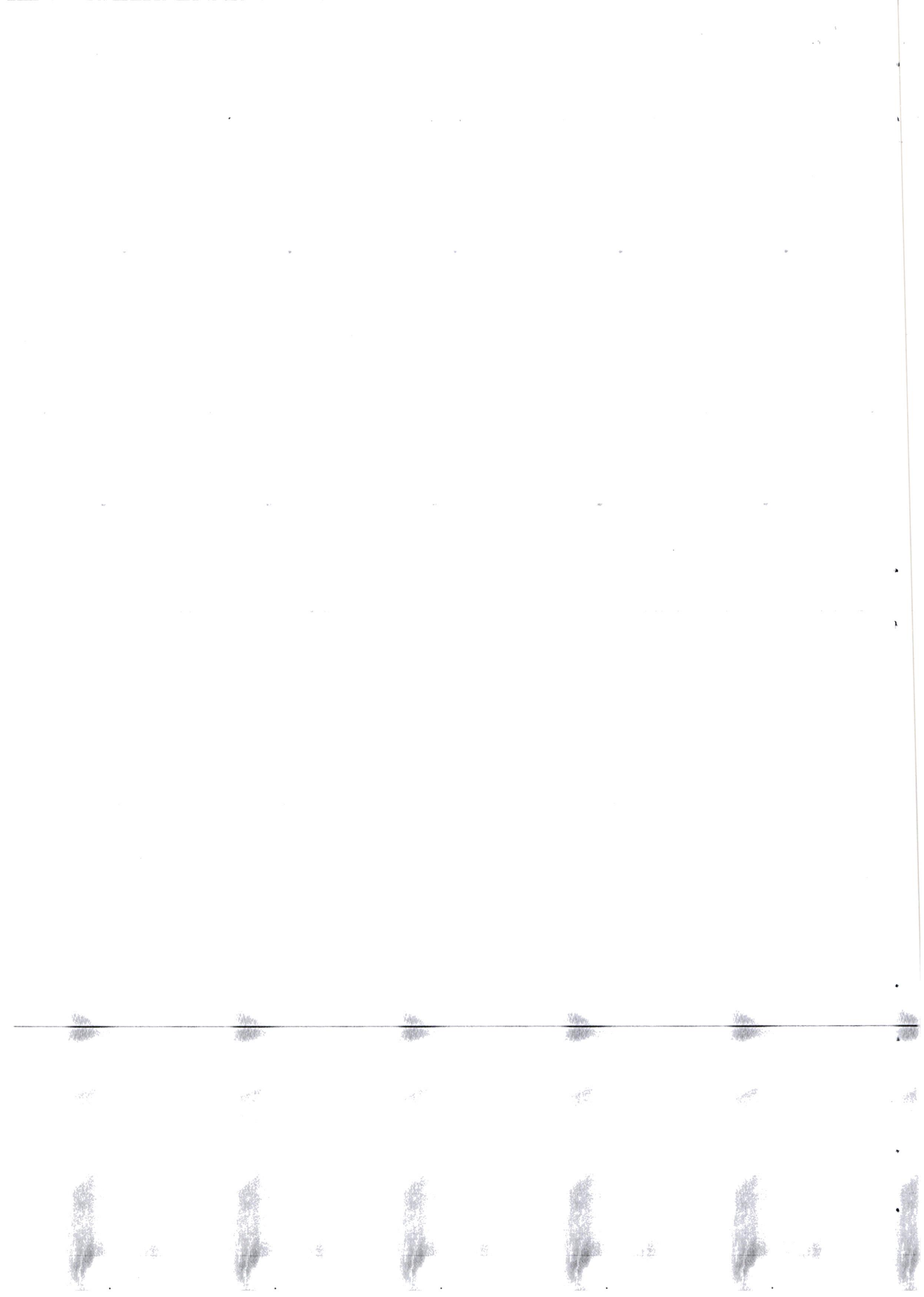
The Mtaani/Kisumu Ndogo Upgrading Project Self Help Group

Chairman: Nelson Chai 

Secretary: Eric Muramba 

Treasurer: Abdulatif Mohammed 

DATED at Kilifi this 6th February 2015



**BRIEF ON PWANI UNIVERSITY LAND LR NO 5046/1 AND 5024/1
PRESENTED TO THE DEPARTMENTAL COMMITTEE ON LANDS
ON 26TH MARCH 2015**

**BASIS OF THE MEETING WITH THE DEPARTMENTAL COMMITTEE ON
LANDS**

This refers to the letter from the clerk of the National Assembly dated 25th March 2015 referenced KNA/DCL/CORR/2015(136).

I. To Note

During the Departmental Committee on lands visit on 6th February 2015, the committee received information from the local residents regarding the parcels of land known as LR No. 5046/1 and 5024/1 (also called GTZ Land). The residents raised concerns over an impending eviction and destruction of their homes by Pwani University on portions of land they were settled by the Government.

II. To Note further

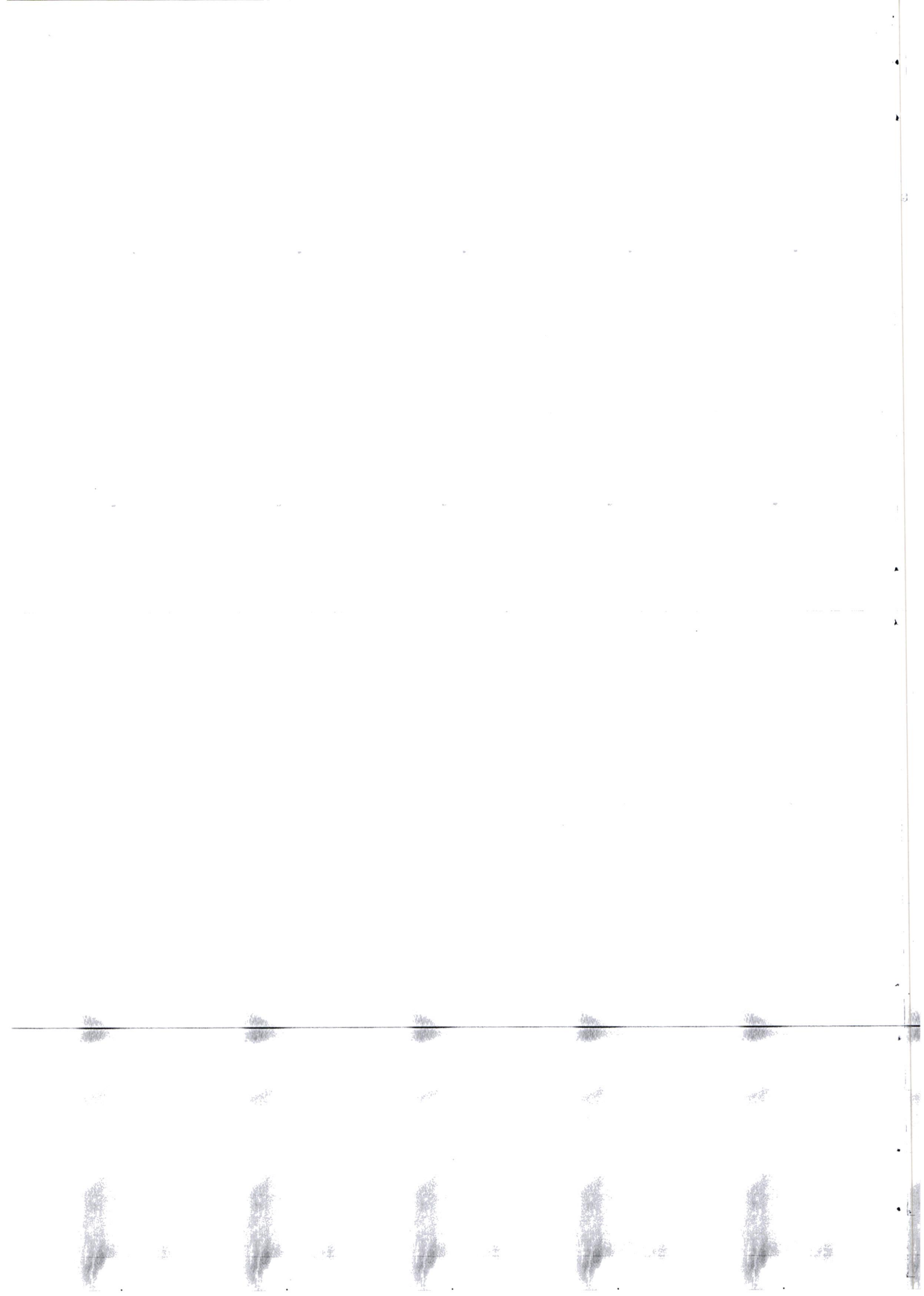
The committee requested Pwani University to shed light on the matter touching on Pwani University Land LR No. 5046/1 and 5024/1 which is currently the subject matter in ELC Civil Case No. 70 of 2009. The particular issues concerned are:

- (i) The History of the disputed parcels of land;
- (ii) The Information regarding the ownership, allocation or transfer of the said land to the University
- (iii) The current status of Kibaoni Extension of Mtaani Kisumu Ndogo Upgrading Scheme and GTZ Land;
- (iv) Any other information that may be relevant to the subject matter

CLARIFICATIONS FROM THE UNIVERSITY

I. To Note

1. **That** Pwani University was established through a Presidential Order on 23rd August 2007 by invoking the powers conferred to him by **Section 5** of the **Kenyatta University Act Chapter 210 C**.
2. **That** through the said Presidential Order in 2007 under Section 3 (3) and (4) the Defendant became the Successor to Kilifi Agriculture Training Institute and all rights, liabilities and assets held by or by anybody on behalf of the Kilifi Agriculture Training Institute, existing at the commencement of the Order automatically and fully transferred to the University.
3. **That** in January 2013, Pwani University became a fully fledged Public University.



4. **That** the subject land belonged to Kilifi Agriculture Training Institute, which land had been compulsorily acquired by the Government of Kenya from Coast Development Company in the year 1981 for the purposes of establishing the Institute.

5. **That** Pwani University land was earmarked for the purposes of establishing the Institute and not for any other purpose. In Particular the University land comprises of the following parcels:-
 - a) L.R. NO. 5046/1
 - b) L.R. NO. 5046/2
 - c) L.R. NO. 5024/1
 - d) L.R. NO. 5024/2

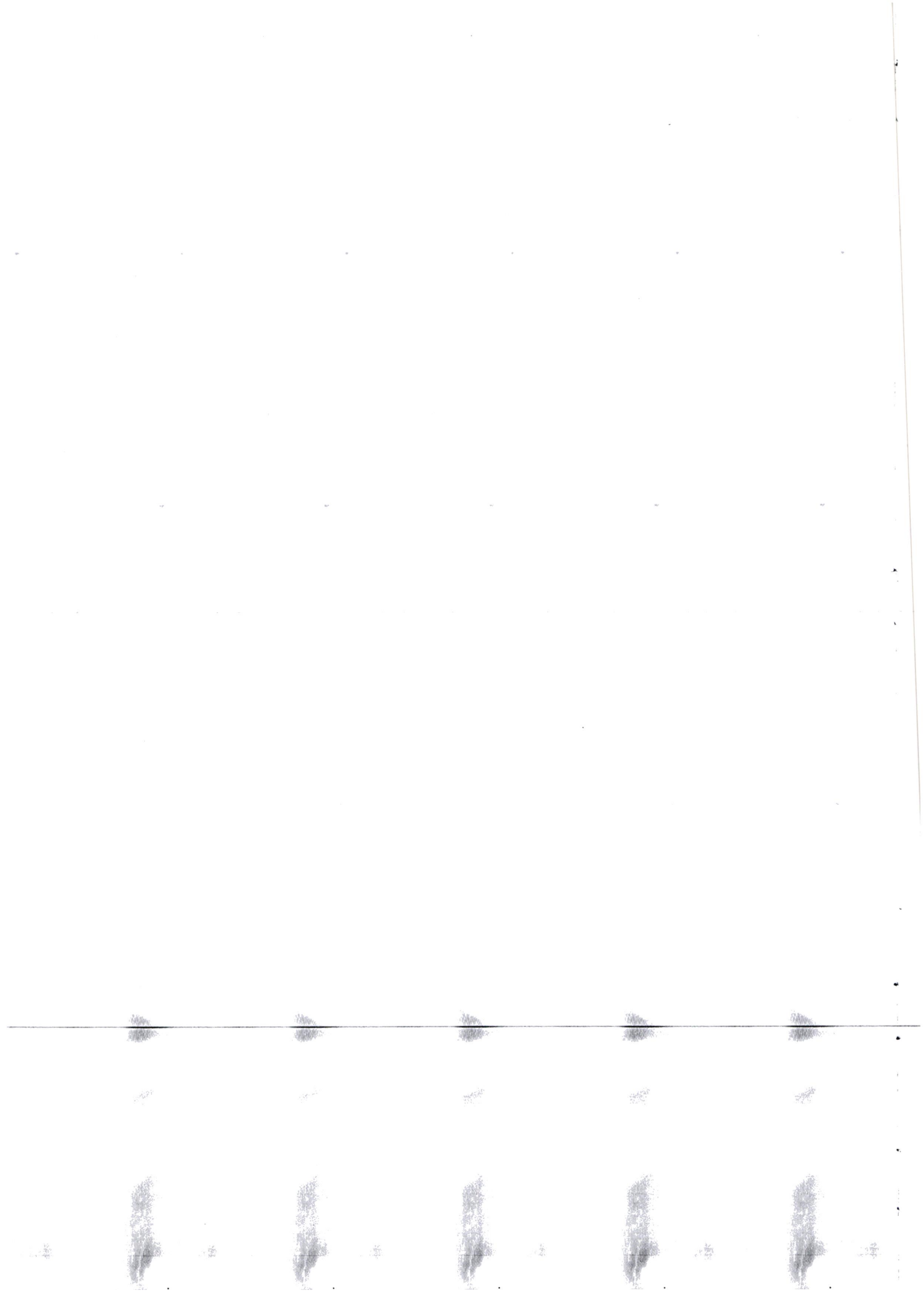
6. **That** when I was appointed as the Principal of Pwani University College, my predecessor, Mr Jonathan Sulubu duly informed me that there was a strict directive from the Permanent Secretary, Ministry of Agriculture to reinstate and reinforce the perimeter fence marking the Institute's Land.

7. **That** it was also brought to my attention that the process of registration and issuance of Title Deed had commenced and to this end, an allotment letter and a receipt for payment of fees thereof were handed over to me for further action and safe keeping. In the Year 2007, the Commissioner for Lands did confirm that the land occupied by Pwani University was formally allocated to it and it measures approximately 239 hectares. See **Document A**

8. **That** when I realized that the trespassers on the University land were attempting to construct and /or erect buildings and structures on the subject land, I caused a ***Caveat Emptor*** to be placed in one of the local dailies to warn the Public that the land was not available for occupation and that it belongs to the University.

9. **That** I also learnt from my Predecessor and through the records held by the University regarding the subject land that there has never been any approval consent and/or authority for anybody to occupy the subject land except for 30 acres given to two schools. See **Document B**.

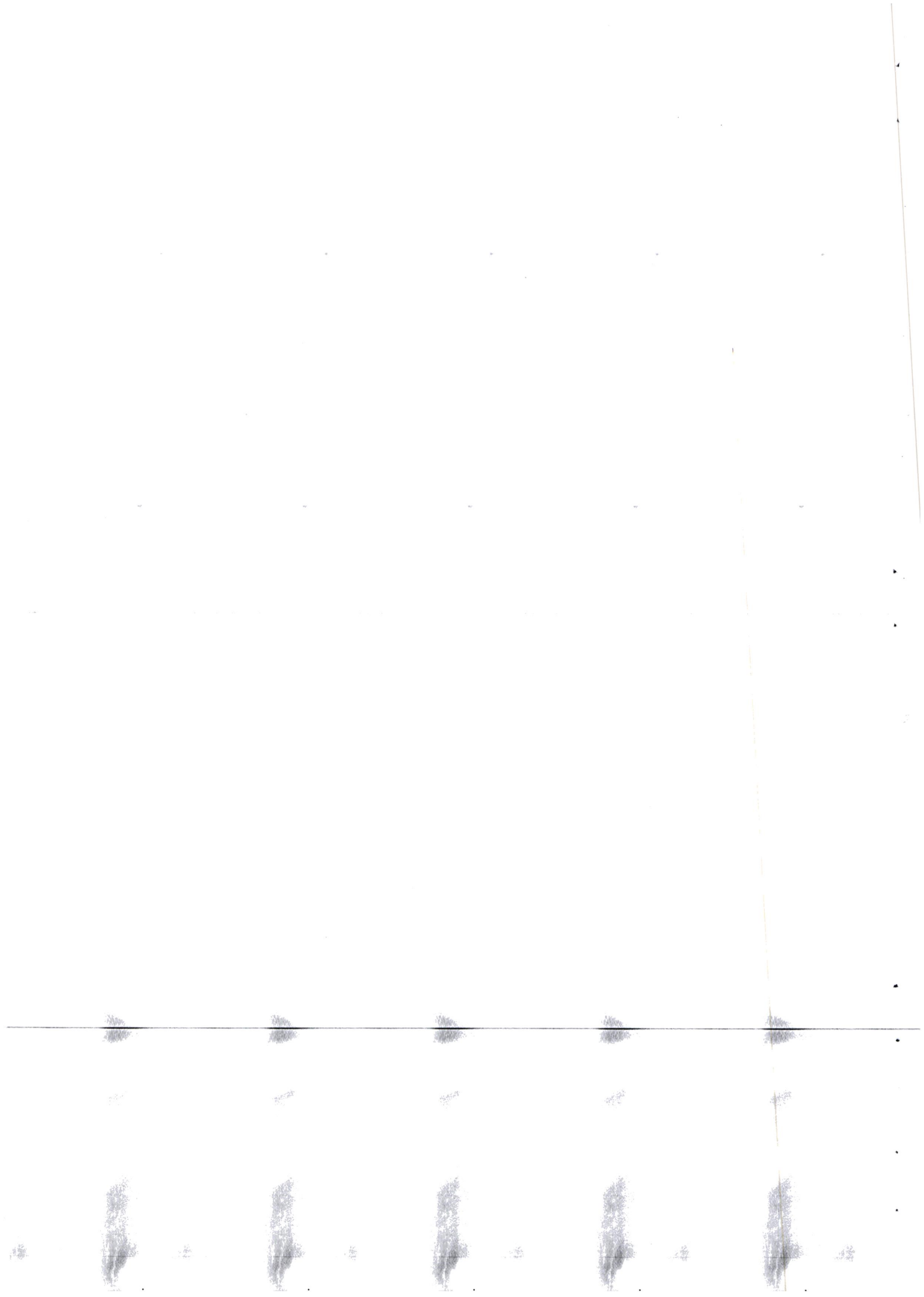
10. **That** the alleged claimants had sought to be allocated land by the relevant Ministry which request was declined since there was no land available for their intended purpose. See **Document C**.
The alleged Claimants include the following:-
 - i) Part of a group calling themselves MTAANI/KISUMU NDOGO/KIBAONI extension upgrading squatters project, purporting to be formed by G.T.Z, A Germany Technical Corporation which supposedly worked under the Ministry of Lands, provincial administration and local government who now purport to have been allocated part of L.R NO 5046/1 and 5924/1 by the Commissioner of Lands, as part of small town upgrading project. Noted that they do not specify how much land they were allocated.



- ii) Unidentified Claimant for the alleged purpose of putting up a hotel on part of the above cited parcels.
11. **That** the alleged claimants have been exhibiting the requests made to the Ministry of Agriculture but no approval or authorization has been tendered or shown from the said Ministry allowing them to occupy the suit property.
 12. **That** it follows therefore that the alleged claimants were aware that the subject land belongs to Kilifi Institute of Agriculture – hence their application for allocation of land through the Ministry of Agriculture under which the Institute had been established.
 13. **That** the illegal encroachment onto the University land was categorically condemned by all Government Agencies and Officers concerned. See **Document D**.
 14. **That** That illegal Part Development Plans were nullified and revoked by the Director of Physical Planning on the grounds that the land belonged to the Institute and was not available for further allocation. See **Document E**.
 15. **That** the allegation of the alleged claimants being squatters are far fetched in that some of the them are Public Officers in Kilifi County Council, businessmen and women who are not destitute at all as some of the Plaintiffs have constructed rental premises and do not stay on the subject land. See list of Planintiffs in the Judgment attached as **Document F**. (Refer to Paragraph 42 on Page 13 of the ruling).
 16. **That** The alleged claimants have already been in Court on the same subject matter with the same facts since 2009 and the court gave a Judgment in favor of Pwani University. Copy of the Judgment is attached as **Document F**.
 17. **That** the alleged claimants have given notice to appeal and have been granted a stay pending the disposal of the appeal. Therefore, it is important to note that the subject matter is pending in court.

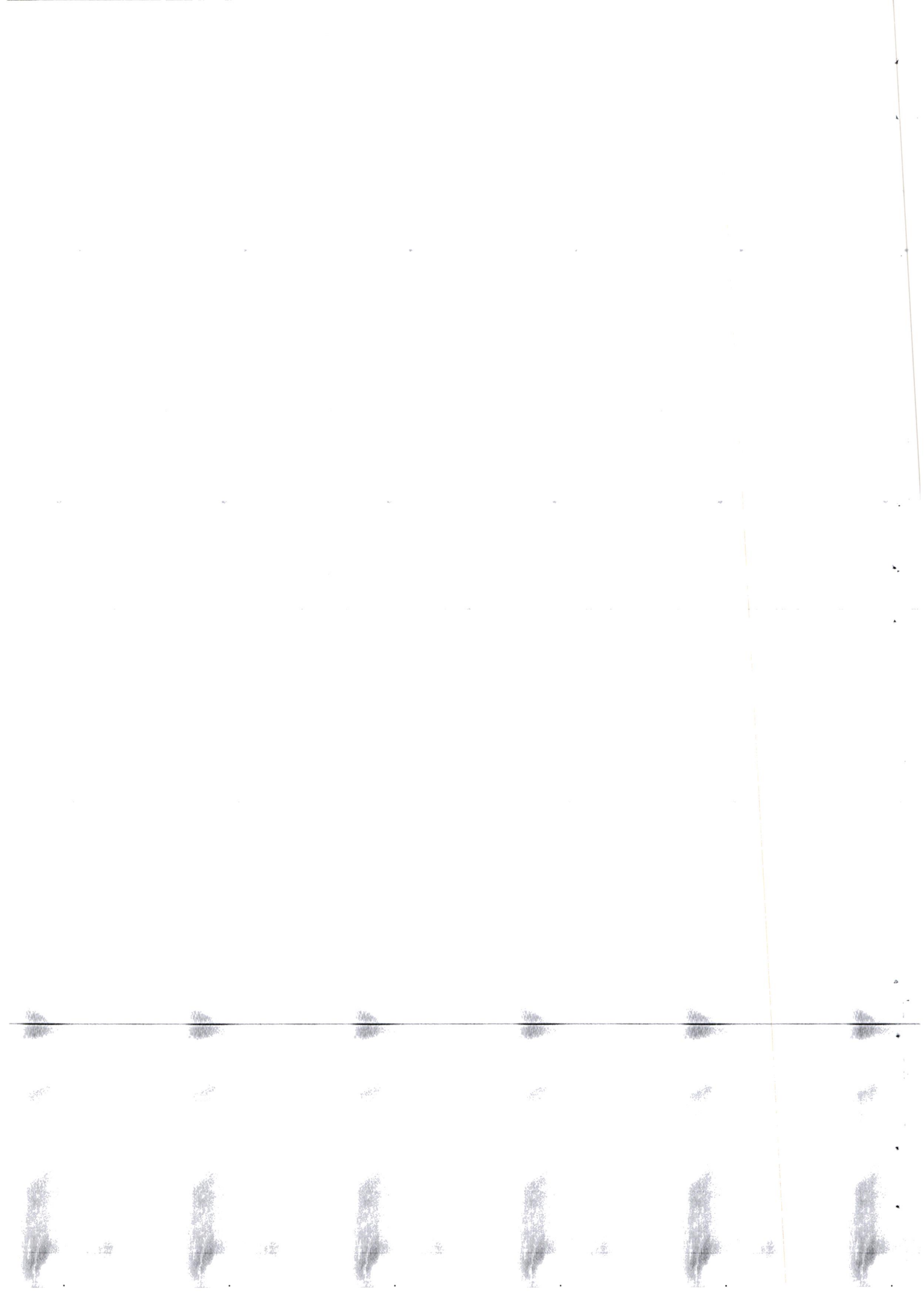
II. Pwani University Prayer to the Departmental Committee on Lands

1. The Committee assist and allow Pwani University to protect its land for Public good for which it was established.
2. The Committee supports Pwani University to actualize a Teaching and Referral Hospital on the said parcel of land as per the Pwani University Master Plan 2010-2020 (relevant pages attached as **Document G**).
3. The Committee notes that Pwani University have received approval from the Public Private Partnership (PPP) Secretariat to undertake a feasibility study on the proposed teaching and referral hospital on the said land with a view of actualizing the same. A copy of the letter is attached as **Document H**.



DOCUMENT A

- 1. AN ALLOTMENT LETTER IN FAVOR OF PWANI UNIVERSITY DATED 10TH APRIL 2006**
 - 2. RECEIPT FOR PAYMENT OF FEES FOR THE ALLOTMENT LETTER**
 - 3. LETTER DATED 30TH NOVEMBER 2007 FROM COMMISSIONER FOR LANDS CONFIRMING OWNERSHIP OF LAND**
-
-



F. 256823

REPUBLIC OF KENYA

Telegrams: "LANDS", Nairobi
Telephone: Nairobi 718050/9
Permanent Secretary to the Treasury
P.O. Box 30007
NAIROBI

REGISTERED

DEPARTMENT OF LANDS
P.O. Box 30089
NAIROBI

10th April 2006

Ref. No. 31279/241

SIR(S)/MADAM,
KILIFI UNS: SITE FOR KILIFI INSTITUTE FOR AGRICULTURE

LETTER OF ALLOTMENT

I have the honour to inform you that the Government, on behalf of
County Council, hereby offers you a grant of the above plot shown edged red on the
attached plan No. 134 KILIFI 15/65 subject to your formal written acceptance of the
following conditions and to the payment of the charges as prescribed hereunder:

AREA: 239 hectares (approximately).
TERM: 99 years from the 1.4.2004
STAND PREMIUM: Sh. Nil } Subject to adjustment on survey, but
ANNUAL RENT: Sh. Peppercorn } there is no claim for reduction in area on
survey.

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

SPECIAL CONDITIONS: See attached.

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

Stand Premium	This is the exhibit Marked 'MSR (a)' referred to in the affidavit of	Sh. -
Rent from	Mohammed S. Kejaib	-
Conveyancing Fees	sworn before me at Nairobi	1,250/=
Registration Fees	this 24th day of Sept. 2009	250/=
Rates		-
Stamp Duty	Commissioner of Oaths	100/=
Survey Fees		-
Road and Road Drains	Approval fee	-
Others		2,000/=
Receipt No.	Less Deposit	
TOTAL Sh.		3,600/=

[P.T.O.]

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

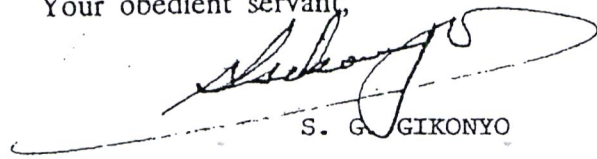
If the above plot is still unsurveyed at the time you commence building you should exercise the greatest care to ensure that any building or other works are contained within the boundaries of the plot for should you inadvertently overstep the aforesaid boundaries the cost of removal and reconstruction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

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

Your full name(s) in BLOCK LETTERS should be given for the purpose of the grant which will be submitted later to you. The attached special conditions form part of the offer which should be accepted in writing. The Government shall not accept any liability whatsoever in the event of prior comments or otherwise.

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

Authority: GOVT.



S. G. GIKONYO

for Commissioner of Lands

ENCL.

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

The Director of Surveys, Nairobi.

The Town Clerk: KILIFI

~~The Clerk to the County Council of~~

cc: PS Ministry of Agriculture

The District Commissioner. KILIFI

The Director of Physical Planning, Nairobi.

District Land Officer. KILIFI

O/C Land Rents.

Rates Assistant.

The Accountant.

O/C Records.

Senior Plan Record Officer.

Plot File.

} All to note.

GPk (L)

SPECIAL CONDITIONS

1. No further buildings shall be erected on the land nor shall additions or external alterations be made to any building otherwise than in conformity with plans and specification previously approved in writing by Commissioner of Lands and Local Authority. The Commissioner of Lands shall not give his approval unless he is satisfied that the proposals are such as to develop the land adequately and satisfactorily.
2. The grantee shall maintain in good and substantial repair and conditions all buildings at any time erected on the land.
3. The land and buildings shall only be used for *Agricultural Institute*
4. The building shall not cover of the area of the area of the land or such lesser area as may be laid down by the Local Authority in its by-laws.
5. The grantee shall not sell, transfer, sublet, charge of part with the possession of the land or any part thereof, without the prior written consent of the Commissioner of Lands.
6. The grantee shall not subdivide the land without the prior written consent of the Commissioner of Lands.
7. The grantee shall pay such rates, taxes, charges, duties, assessment or outgoings of whatever description as may be imposed charged or assessed by any Government or Local Authority upon the land or the buildings erected thereon including any contributions or other sum paid by the Commissioner of Lands in lieu thereof.
8. The Commissioner of Lands or such persons or authority as may be appointed for the purpose shall have the right to enter upon the land and lay access to water mains, service pipes and drains, telephone or telegraph wires and electric mains or all descriptions whether overhead or underground. The grantee shall not erect any buildings in such a way as to cover or interfere with any existing alignments or mains or service pipes or telephone or telegraph wires and electric mains.

9. If the land or any part thereof should cease to be used for Agriculture

Institutethe
land or any part thereof shall be deemed to have automatically reverted to the
Government of Kenya without the necessity of any formal surrender thereof
and the term hereby created shall de-factor determined in respect of the land or
the part thereof as the case may be.

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

11. Notwithstanding anything to the contrary contained herein or implied by the said Government Land Act (Cap. 280) the Grantee shall on receipt of six months' notice in writing in that behalf surrender all or any part of the land required for public purposes without any payment or any compensation save in respect of such approved buildings as may have to be evacuated or demolished. No compensation shall be payable in respect of severance of the land by reason of such surrender.





MINISTRY OF LANDS

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

DEPARTMENT OF LANDS
1st NGONG AVENUE
OFF NGONG ROAD
P.O. BOX 30089,
NAIROBI.

RE: NO. 256823/8

DATE: 30th November, 2007

RYDEN INTERNATIONAL
P.O. BOX 40827-00100
NAIROBI

CONFIRMATION OF ALLOTTEE - KILIFI UNSURVEYED SITE FOR KILIFI INSTITUTE OF AGRICULTURE

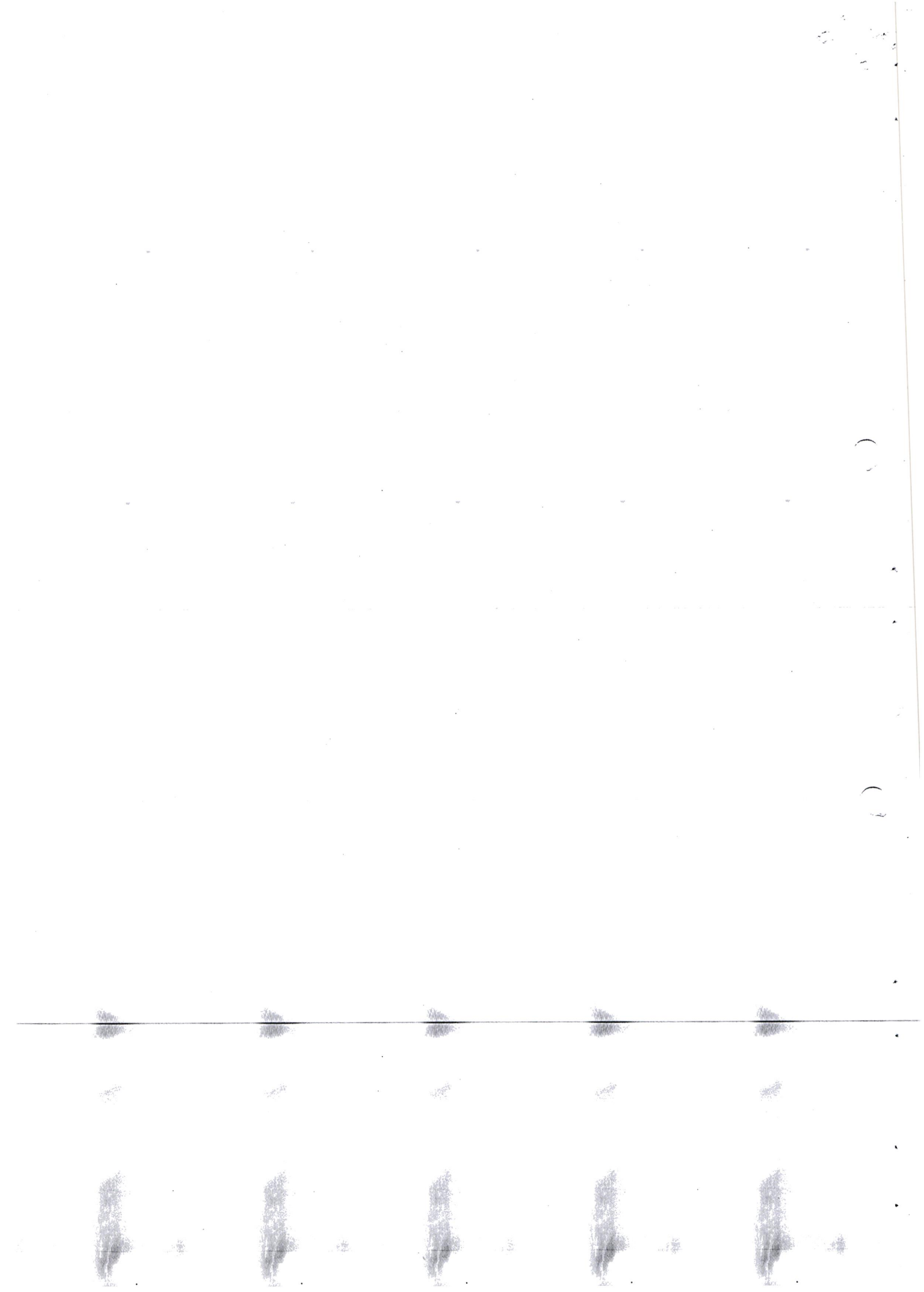
Reference is made to your letter Ref. No. CO-2309-A dated 28th November, 2007 in respect of the above.

According to my records the plot was allocated to Kilifi Institute for Agriculture vide letter of allotment Ref. No 31279/241 dated 10th April, 2006 bearing 239 hectares (approximately). Therefore, the copy of allotment letter you sent to this office reflects the one in my records.

S.M. OSODO
FOR: COMMISSIONER OF LANDS

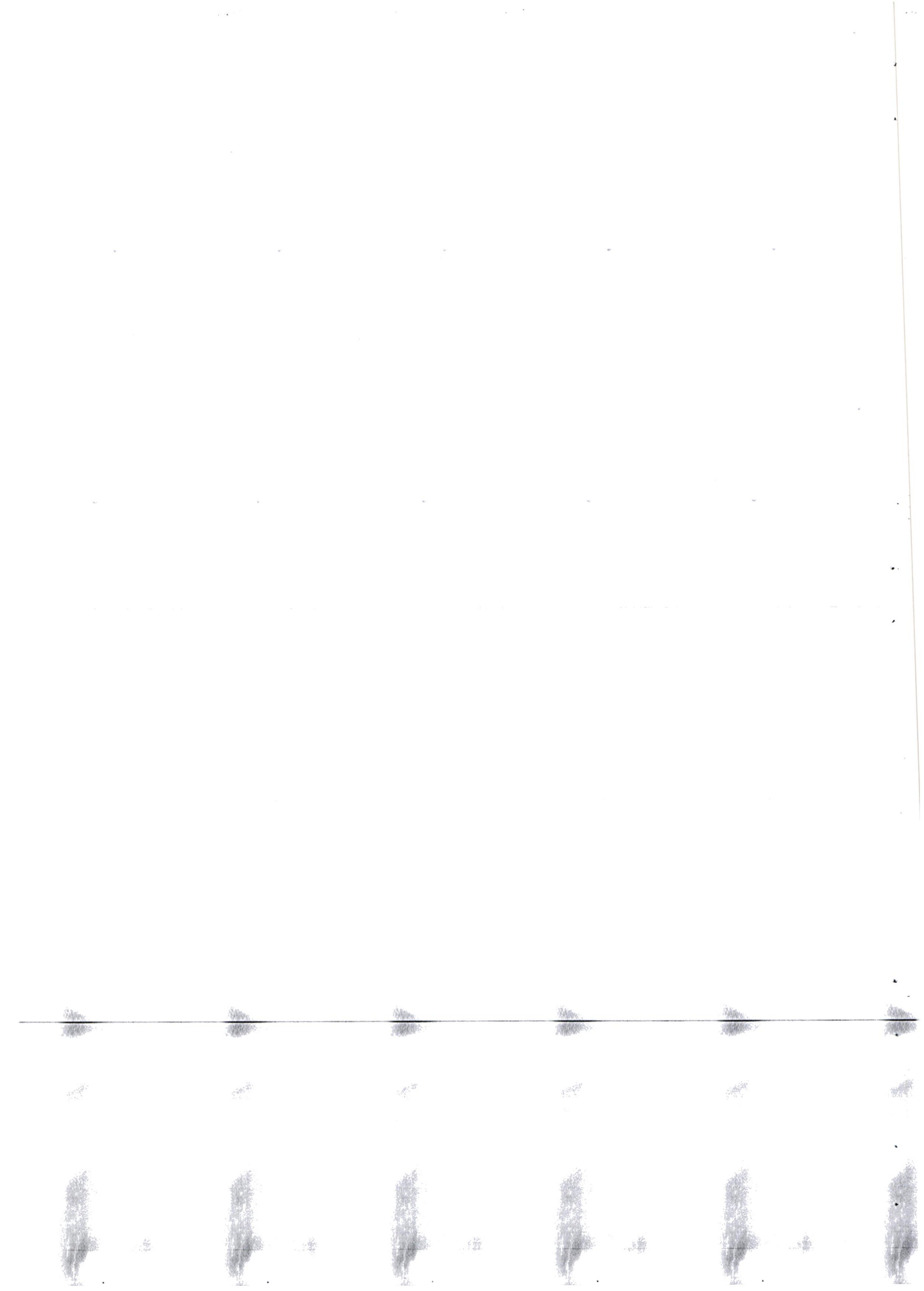
C.C.

Permanent Secretary to the Treasury
P.O. Box 3007
NAIROBI



DOCUMENT B

**LETTER DATED 18TH SEPTEMBER 1989
FROM THE OFFICE OF THE PRESIDENT
GRANTING 30 ACRES
TO TWO SCHOOLS ONLY**



LS

OFFICE OF THE PRESIDENT

Telegraphic address: "Rais"
Telephone: Nairobi 27411
When replying please quote

PERMANENT SECRETARY, SECRETARY TO THE CABINET
AND HEAD OF PUBLIC SERVICE

P.O. Box 30510
Nairobi

Ref. No. OP. 29/8/57

18th September, 1989

CONFIDENTIAL

and date

Mr. P.N. Nanyo,
Permanent Secretary,
Ministry of Agriculture,
NAIROBI.

Dear David,

RE: REQUEST TO EXCISE 30 ACRES FROM
KILIFI INSTITUTE OF AGRICULTURE LAND

Your letter Ref. No. ALD/E.1/19A Vol.1/21 dated
4th September, 1989 refers.

It is agreed that Kilifi District Development Committee
may go ahead with plans to excise thirty (30) acres of
the Kilifi Institute of Agriculture Land for
utilisation of twelve (12) and eighteen (18) acres
by a Primary School and an Institute for Disabled
respectively.

Please advise the respective authorities to formalise
the land acquisition with the Ministry of Lands and
Housing accordingly. It has been noted that the
remaining 570 acres will all be utilised by the Institute
of Agriculture.

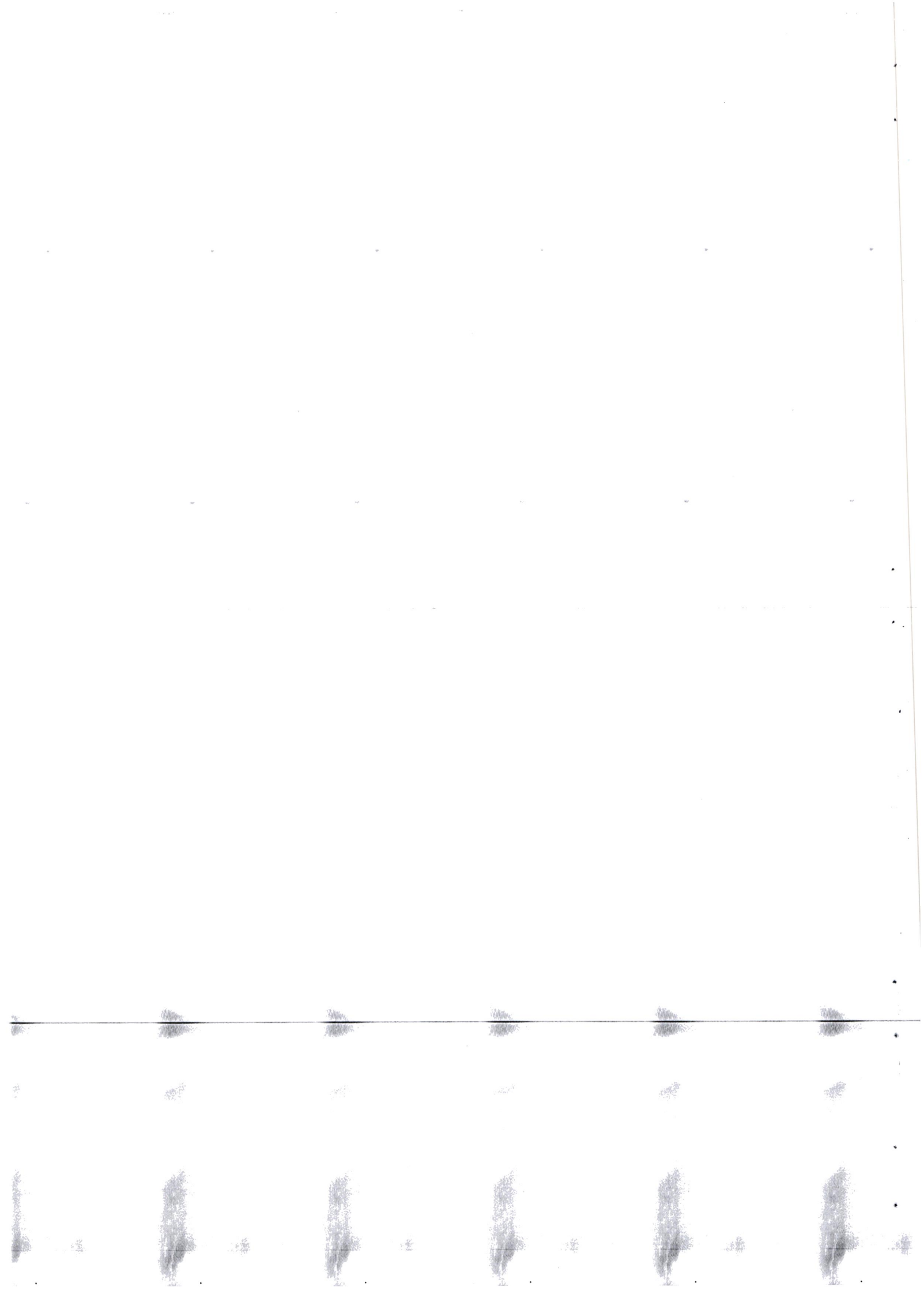
Yours sincerely,

J.T. arap-LETING
PERMANENT SECRETARY, SECRETARY TO THE CABINET
AND HEAD OF PUBLIC SERVICE

c.c.

Mr. J.K. Sang,
Permanent Secretary,
Ministry of Lands and Housing,
NAIROBI.

Mr. S. Mung'ala,
Provincial Commissioner,
Coast Province.



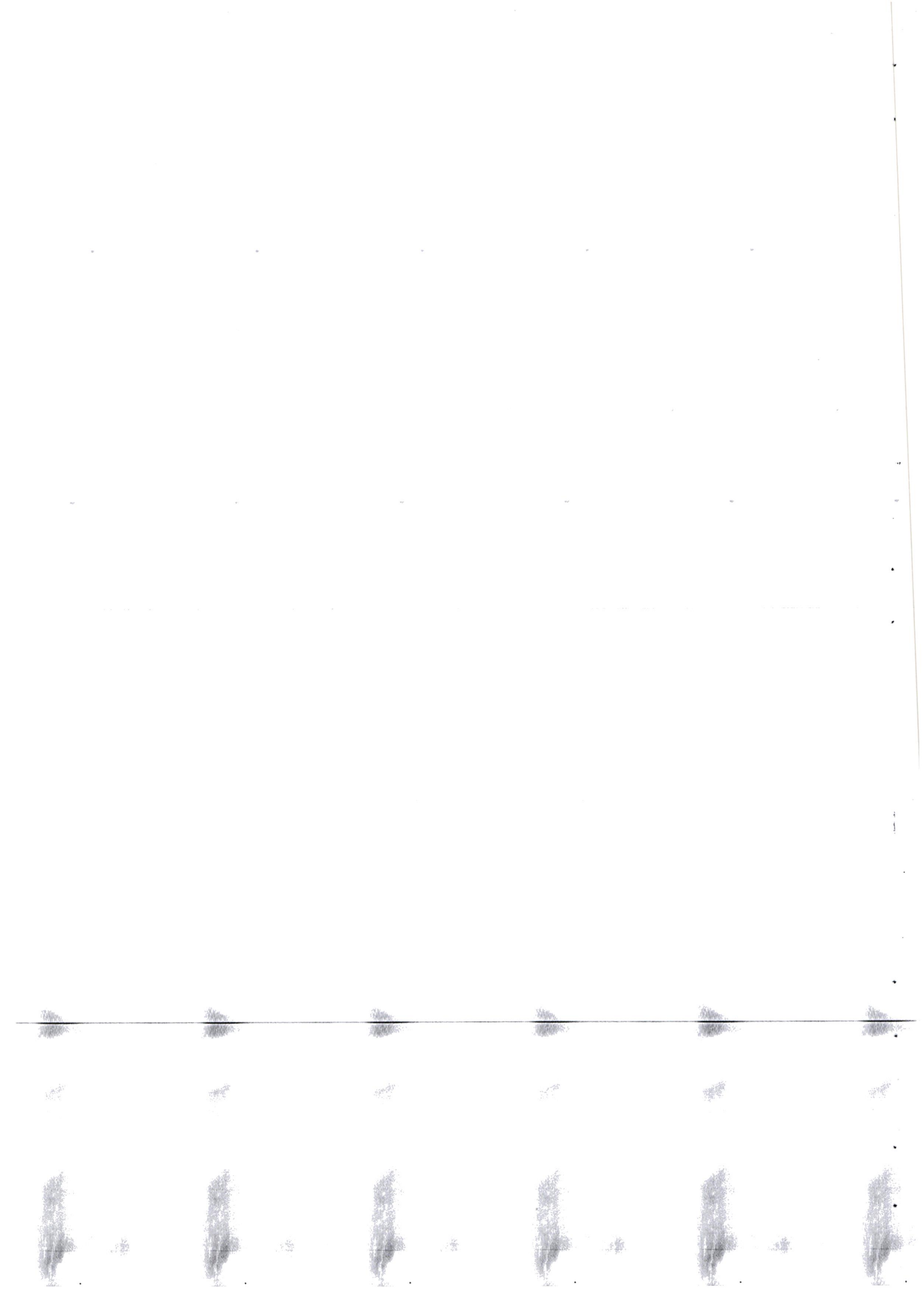
DOCUMENT C

1. **LETTER DATED 24TH SEPTEMBER 1997 FROM JUA KALI SECTOR REQUESTING FOR PLOTS**

 2. **LETTER DATED 4TH NOVEMBER 1997 FROM THE PERMANENT SECRETARY MINISTRY OF AGRICULTURE INFORMING CLAIMANTS THAT LAND WAS NOT AVAILABLE**

 3. **LETTER DATED 16TH NOVEMBER 2004 FROM THE PRINCIPAL, KILIFI INSTITUTE OF AGRICULTURE OBJECTING TO ANY ENCROACHMENT OF INSTITUTE LAND**

 4. **LETTER DATED 20TH MAY 2005 FROM PERMANENT SECRETARY, MINISTRY OF AGRICULTURE OBJECTING TO THE ILLEGAL ENCROACHMENT OF SUBJECT LAND**
-



OFFICE OF THE PRESIDENT

(SF)

Telephone: (0125) 22727

Fax: (0125) 22474

When replying please quote

SF/LND/8 VOL III/91

Ref. No.
and date



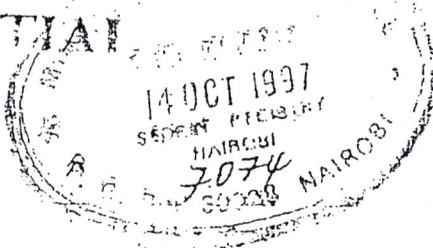
DISTRICT COMMISSIONER

P.O. Box 29

KILIFI

24th September 1997

CONFIDENTIAL



PS

The Provincial Commissioner
Coast Province
MOHADA - (Att. C.M. Katee (Miss))

PLOTS FOR JUA KALI SECTOR

Please refer to your letter Ref.No.SF/CD/5 VOL.III/60 of 4th September, 1997.

Currently there is no suitable plot of the size required in Kilifi Town. However, Kilifi Institute of Agriculture has over 600 acres of land and because of the importance of the Jua Kali Sector, it would be appreciated if the Permanent Secretary, Ministry of Agriculture Livestock Development and Marketing could assist us with the 12.5 acres required for the project.

By copy of this letter I am therefore requesting the Permanent Secretary to give a small portion to Jua Kali Sector.

~~DA~~
~~DA~~
B. K. KOSILBET

D. K. KOSILBET
DISTRICT COMMISSIONER
KILIFI DISTRICT

C.C.

Principal
Kilifi Institute of Agriculture
P O Box 195
KILIFI

- NOO

You are one of us.

This is land not available for allocation. Draft & reply as is.

(57/11)

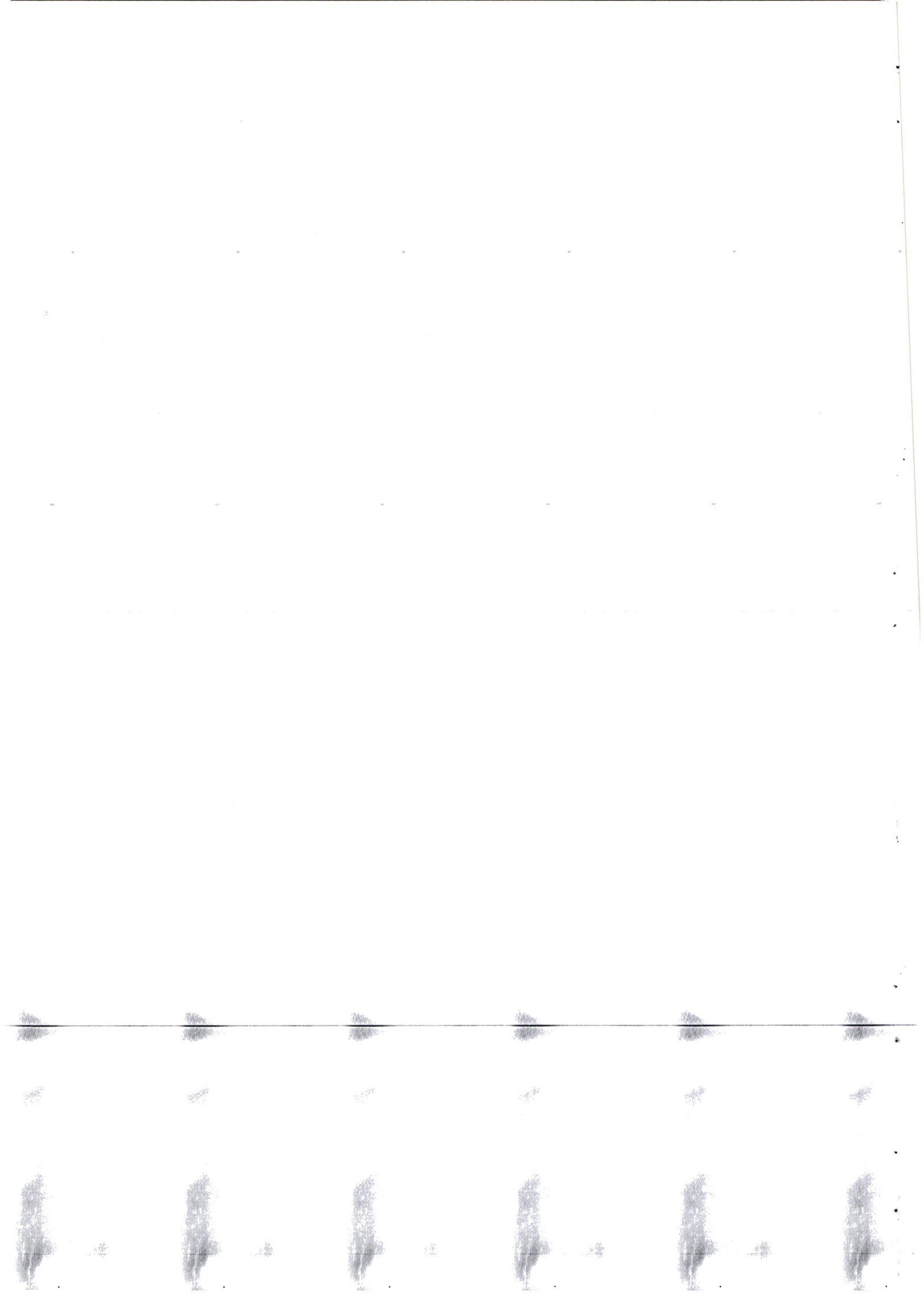
23/10

CONFIDENTIAL DA/A

P/ce draft & reply

DA/A

29/10



CONFIDENTIAL

MOA/LDM/L.I/1A Vol.IV/58

4/11/1997

The District Commissioner,
Kilifi District, Schools
P.O. Box 29,
KILIFI.

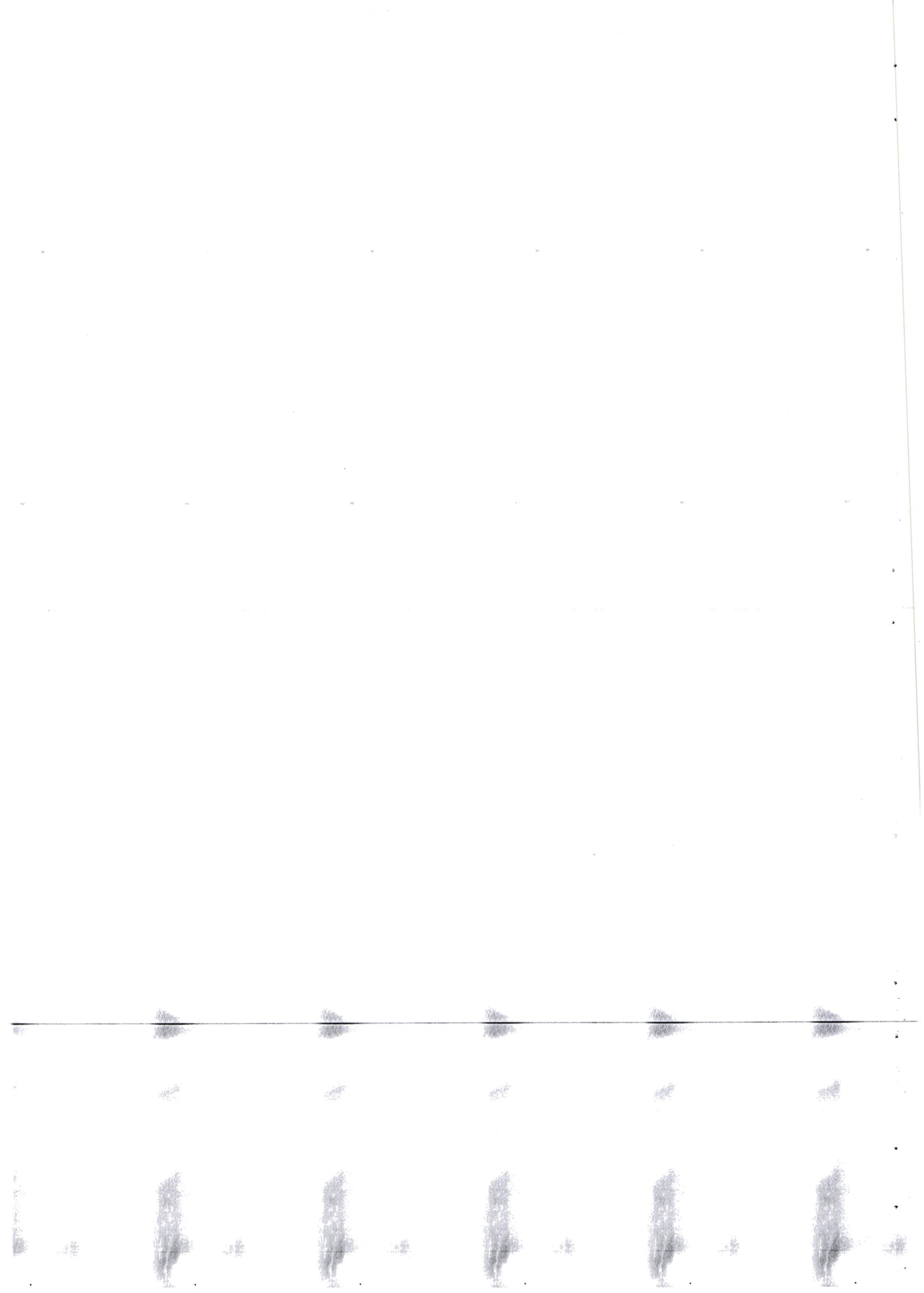
PLOTS FOR JUA KALI SECTOR

Reference is made to your letter ref.SF/LND/8 Vol.III/91 dated 27/9/1997 to the Provincial Commissioner, Coast and copied to this office among others, which I acknowledge with thanks.

Vide the said letter, you requested the Ministry of Agriculture, Livestock Development and Marketing to avail some 12.5 acres out of the land that forms the K.I.A. for the development of the Jua Kali shades. Based on that letter, I have the following comments to make:-

Agricultural Training at the certificate level, is an operation that requires "a critical mass" of farm land to ensure effective theoretical and practical teaching. It may be remembered that, when it was decided to locate the Training facility at Kilifi in 1981 the government farm available at Kibarani then, was considered as inadequate. It was thus found necessary for the Ministry to purchase an additional land from Mr. John Keen to increase the size to the critical acreage that would be ideal as a teaching area for the intended students capacity of 400.

You may be aware that Kilifi Institute Agriculture is the only CoK institution now training the Agricultural Assistants for the whole country, both for the public and private sector, after the conversion of the other two; Bukura to Diploma College and Embu to a Staff Training College.



CONFIDENTIAL

During the short period that the institute has been in operation since 1987, the ministry has made every effort to develop all the farm land and utilize it fully for teaching while generating substantial revenue for the Exchequer. It would therefore be a mistaken notion to suppose that there is unutilized or under utilized land that can be given away for other uses. All land that would currently appear to the public, to be unutilized is in fact either under fallow or earmarked for necessary development in accordance with the master plan of the institute. The part targeted for the projects referred in your correspondence is in fact earmarked for additional tuition buildings and staff housing in support of an on-going project for introducing a client-based training programme.

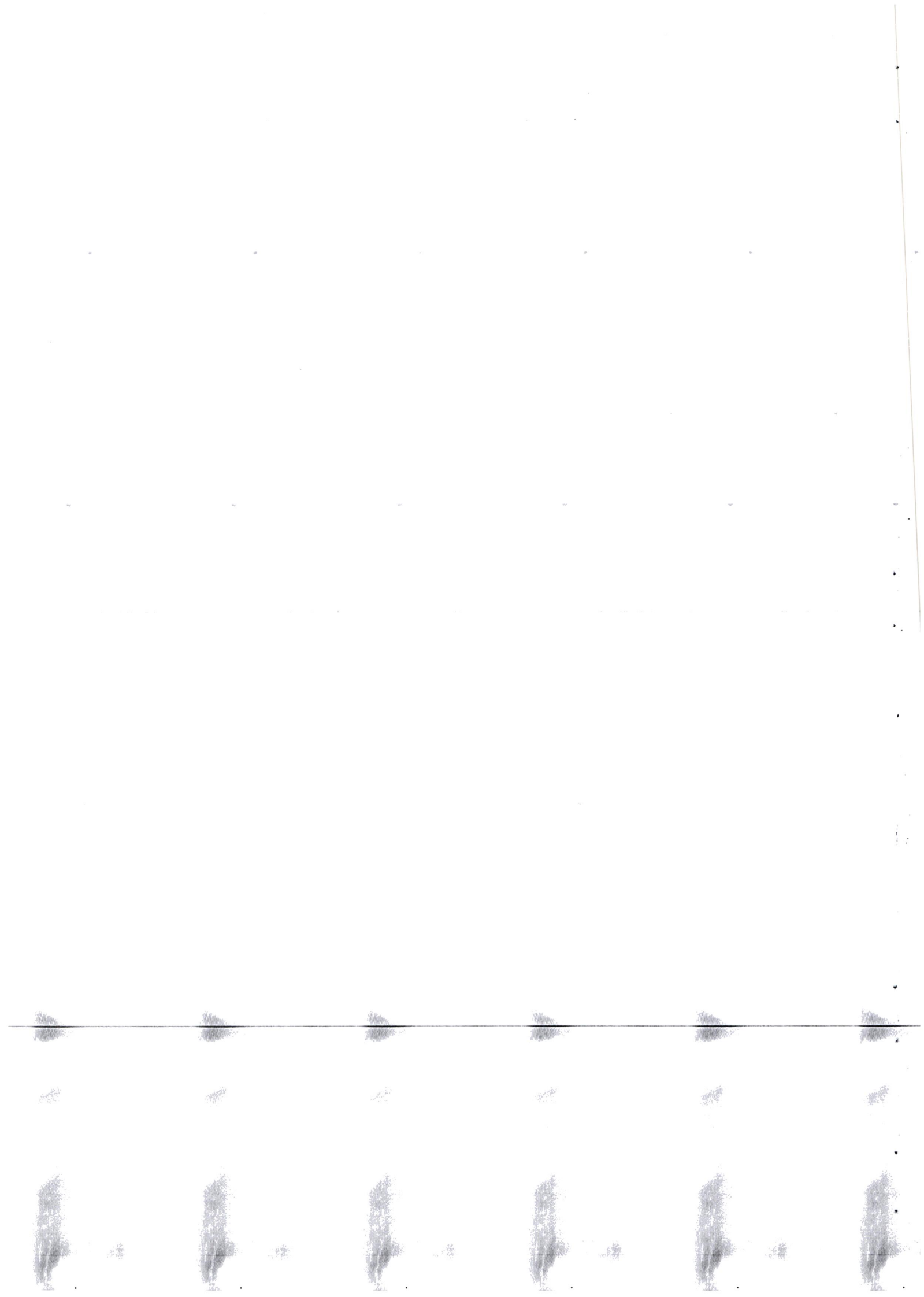
It is also clear to you that part of the K.I.A. land was given to the neighbouring schools (vocational school for the deaf and secondary expansion) by the government way back in 1986 on request from your office.

This Ministry currently has a request from the Kilifi Town Council for some land from the same institution to supplement the GTZ settlement project. This issue we have discussed with you and had indicated to you that, since the land identified had been given to the schools, your DDC decides on whether it should go to the schools or to GTZ settlement programme.

You may also wish to reflect on the role of agriculture in the country's economy; 60% of foreign exchange earning, 60% of the rural employment, 30% of GDP; 70% of rural earnings etc, and more relevant to industrial sector, provides 70% of the raw material for the agro-industry.

As you are aware, the government has developed session paper No. 2 of 1995 on Industrial Transformation to the year 2020. The paper, in section 3.4 stresses the greatest importance of the industrialization process is the assurance of the supply of well trained managers and skilled technicians. Agricultural sector has not only been identified in section 4.3 as the main "Phase One Industry", but will also for a long time to come have to develop and provide the economic base for the industrialization.

As a coordinator of the government development programmes in your district, it will be more prudent for you to strengthen the already established institutions and develop others, rather than destroy or mutilate the current established ones and replace them with new ones. This, in itself, may not be development.



CONFIDENTIAL

We may also be soon coming to your DDC to request for extra land to expand the Institute. As already mentioned, this is the only one of its kind in the country which should be the pride of, not only your district, but the province as a whole.

It is on these grounds that the Ministry is not in a position to accede to the request. Any excision is bound to severely disrupt the planned development of the Institute and compromise the effectiveness of teaching. It is therefore strongly suggested that the Administration endeavours to seek alternative land sites for the project mentioned while assisting the Ministry of Agriculture in protecting the Institute's land from claims that may run counter to the intended national objectives for its establishment.

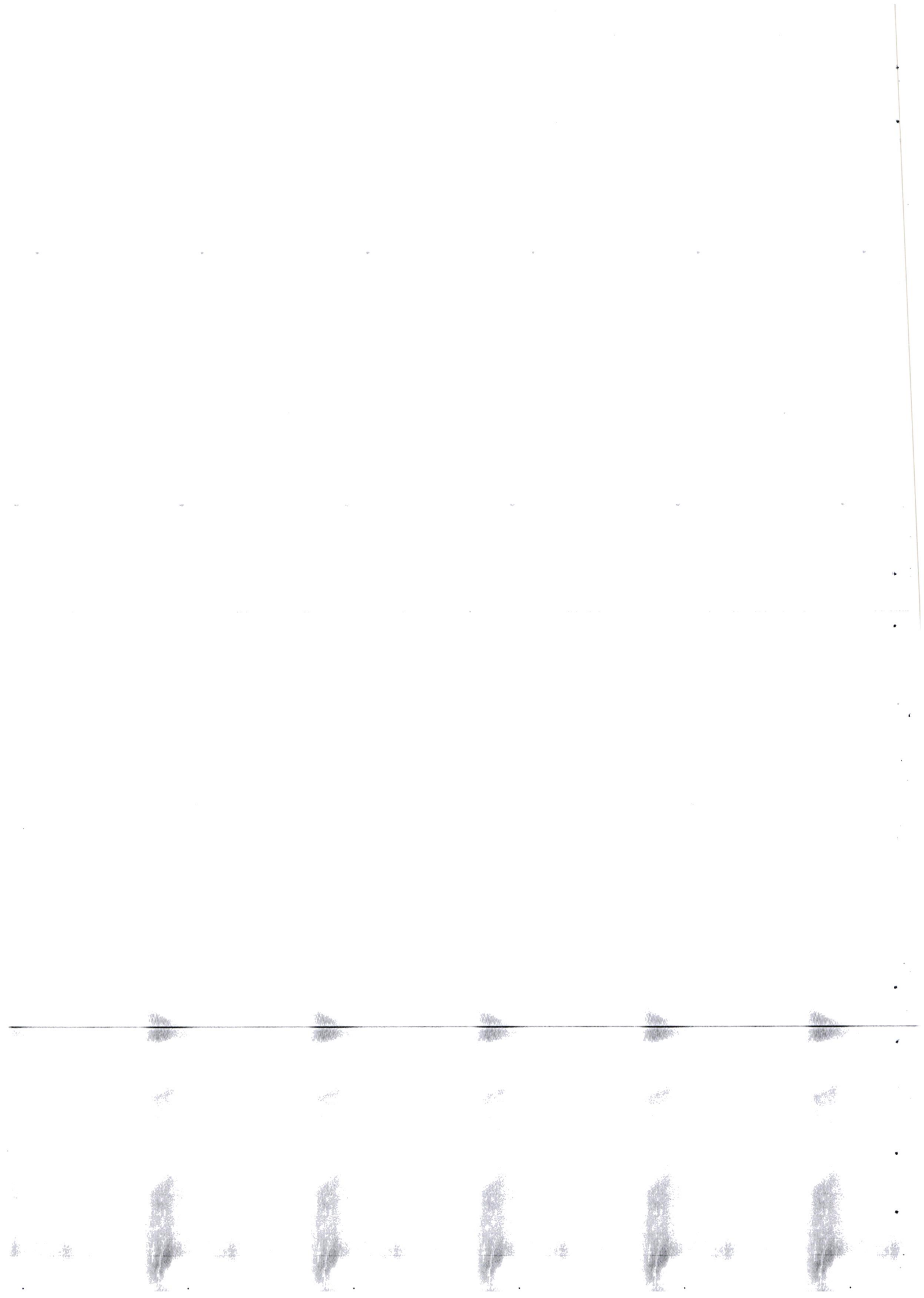
Having said that, let me also take this opportunity to thank you for your concern about the establishment of the Jua Kali sector. As you may know, I was for along time associated with the establishment of that sector, having been the Permanent Secretary responsible for the sector.

PROF. KAREGA MUTAHI

Prof. Karega Mutahi, EBS
PERMANENT SECRETARY

c.c. Provincial Commissioner,
Coast Province,
MOMBASA.

Principal,
Kilifi Institute of Agriculture,
KILIFI.





MINISTRY OF AGRICULTURE
KILIFI INSTITUTE OF AGRICULTURE
P.O. BOX 19
KILIFI

TEL.NO.(041) 5 22259/522498/522645 FAX 52212

KIA/LAND/6 VOL.I/105

16TH NOVEMBER, 2004

THE PERMANENT SECRETARY
MINISTRY OF AGRICULTURE
P. O. BOX 30028
NAIROBI

THRO'

THE DIRECTOR OF AGRICULTURE
MINISTRY OF AGRICULTURE
KILIMO HOUSE
CATHEDRAL ROAD
P. O. BOX 30028
NAIROBI

RE: KILIFI INSTITUTE OF AGRICULTURE LAND

On Monday 8th November, 2004 I noticed that some people had encroached into the institute land. There was a fence being put up at an area adjacent to the Mombasa-Malindi Road beyond the quarry area. I found out that it was a private surveyor operating in Kilifi town.

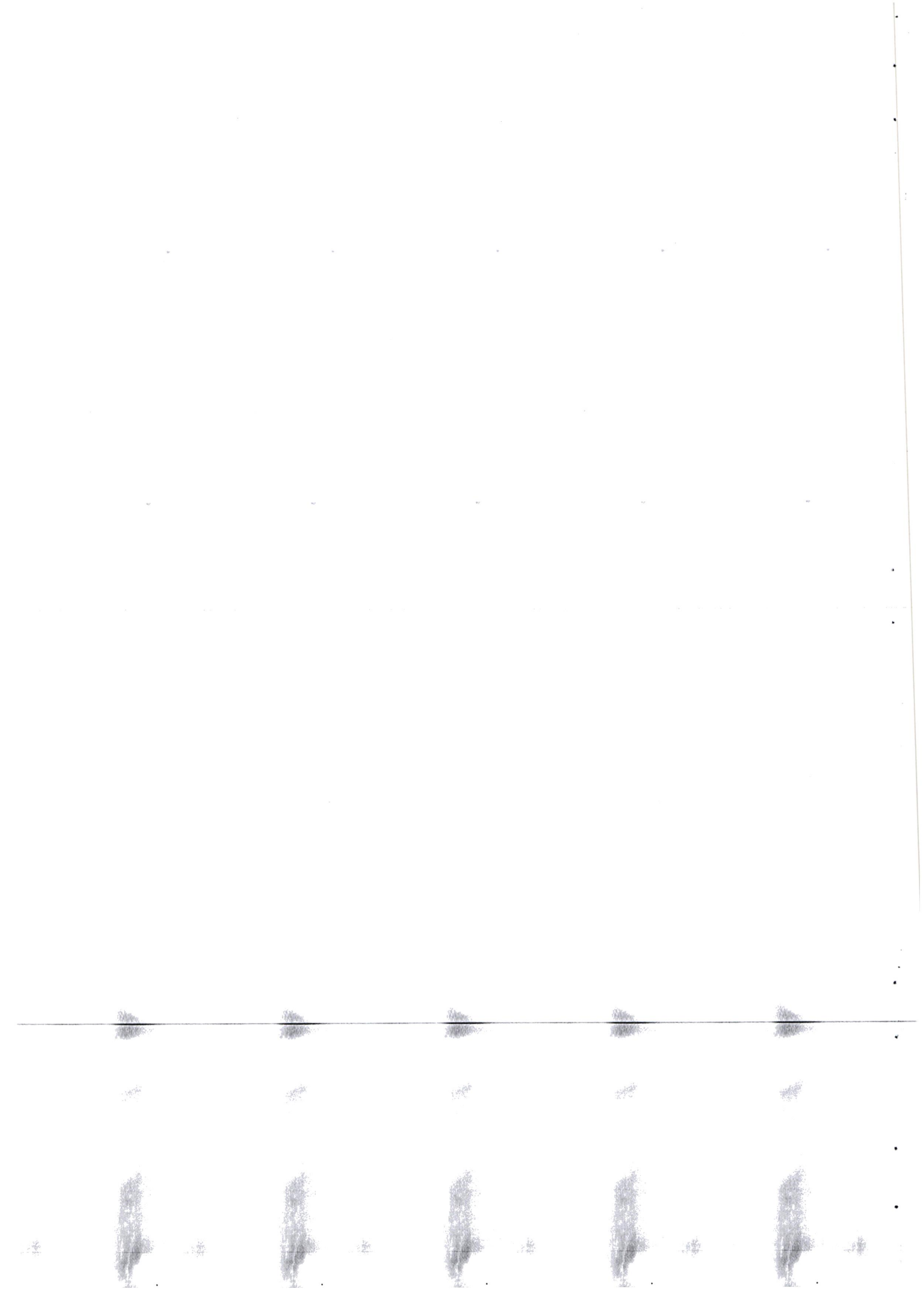
On 10th November, 2004 I discussed the matter with the District commissioner. Later on the same day discussed with the District Planning Officer who informed me that he would meet with the District Commissioner to inform him that the encroachment activities on the institute land should be stopped as the Provincial Physical Planning Officer was aware and had advised that the encroachment be stopped.

However I have observed that the fencing had continued and there is now a sign post reading

**"KILIFI TEACHERS
BENEVOLENT SCHEME
SITE FOR PROPOSED FUNERAL HOME/HOSPITAL
P. O. BOX 169 KILIFI"**

Which has been erected on the site.


These developments do not augur well with our current and future programmes especially now that collaboration preparations with one of the local universities are at an advanced stage and there will be expanded programmes beneficial locally, regionally and nationally.



Should the programmes proceed as agreed during our meeting between the University, Ministry task force, Kilifi institute of agriculture, Bukura agricultural college held from 4th to 5th November 2004. the launching ceremony is scheduled for 3rd December, 2004. Land was one of the major determining resources for the collaboration.

I would strongly recommend that the institute land be left intact for the intended purposes. Enclosed herein please find copies of our earlier correspondence on this matter for ease of reference and further necessary action.

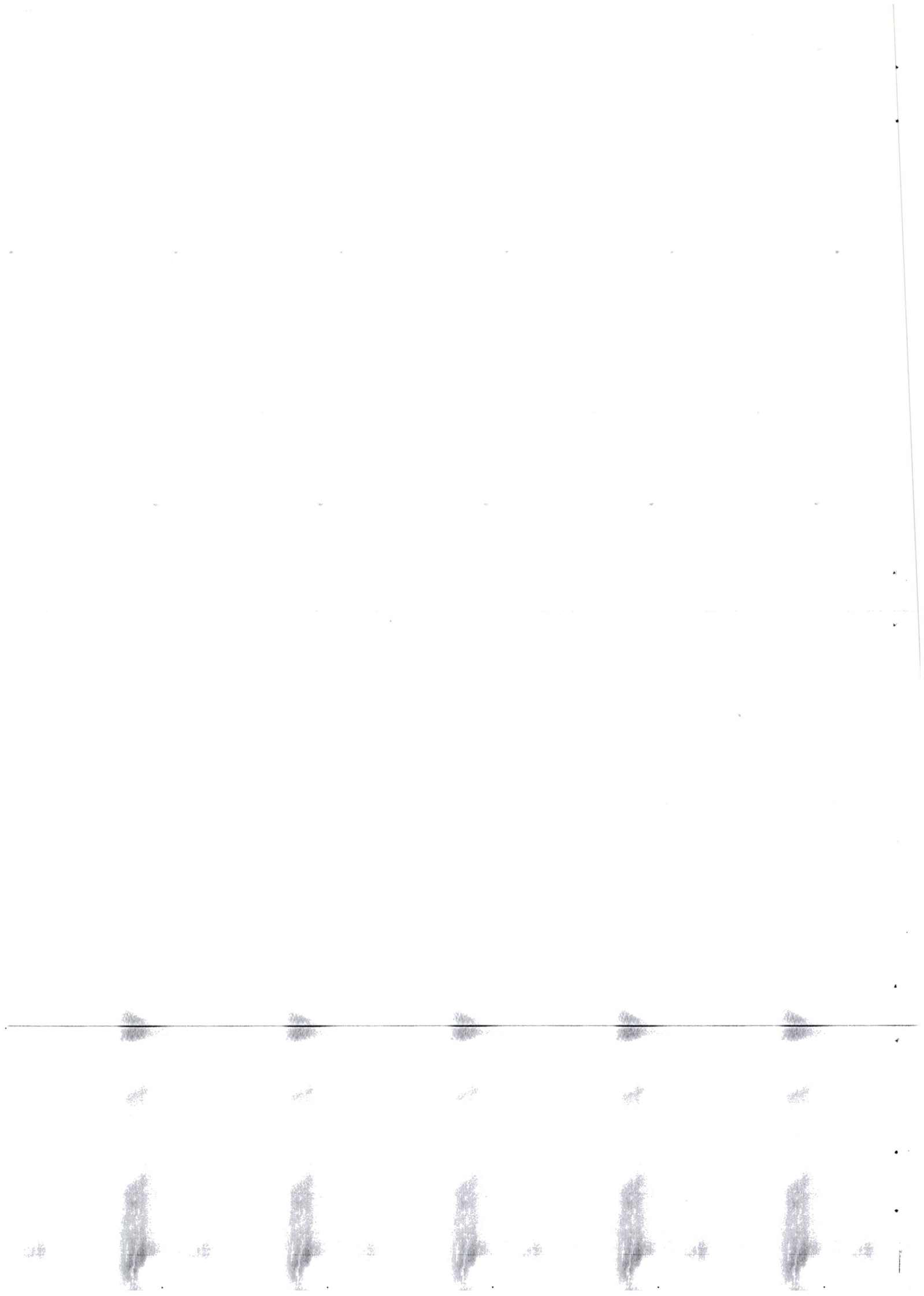
I request for your support and intervention on this matter.


J. W. SULUBU
PRINCIPAL

C.C. Provincial Director of Agriculture
Coast province
P. O. Box 90290
MOMBASA

District Commissioner
Kilifi District
P. O. Box 29
KILIFI

District Physical Planning Officer
P. O. Box 133
KILIFI





CONFIDENTIAL

MINISTRY OF AGRICULTURE

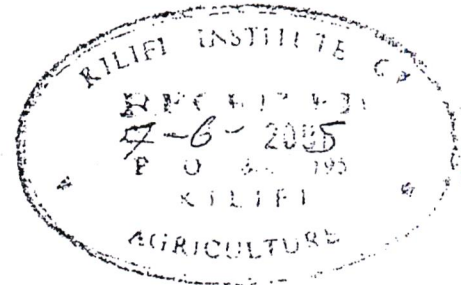
Telegraphic Address "MINAG" NAIROBI
 Telex: 22766
 Telephone: 718870/9
 Fax: 718318
 When replying please quote;

KILIMO HOUSE
 CATHEDRAL ROAD
 P.O. Box 30028
 NAIROBI

Ref: MOA/L.1/1A VOL. IX/ (16)

Date: 20th May, 2005

Mr. Cyrus Maina, EBS,
 The Provincial Commissioner,
 Coast Province,
 P.O. Box 90424,
MOMBASA.



Dear *Cyrus,*

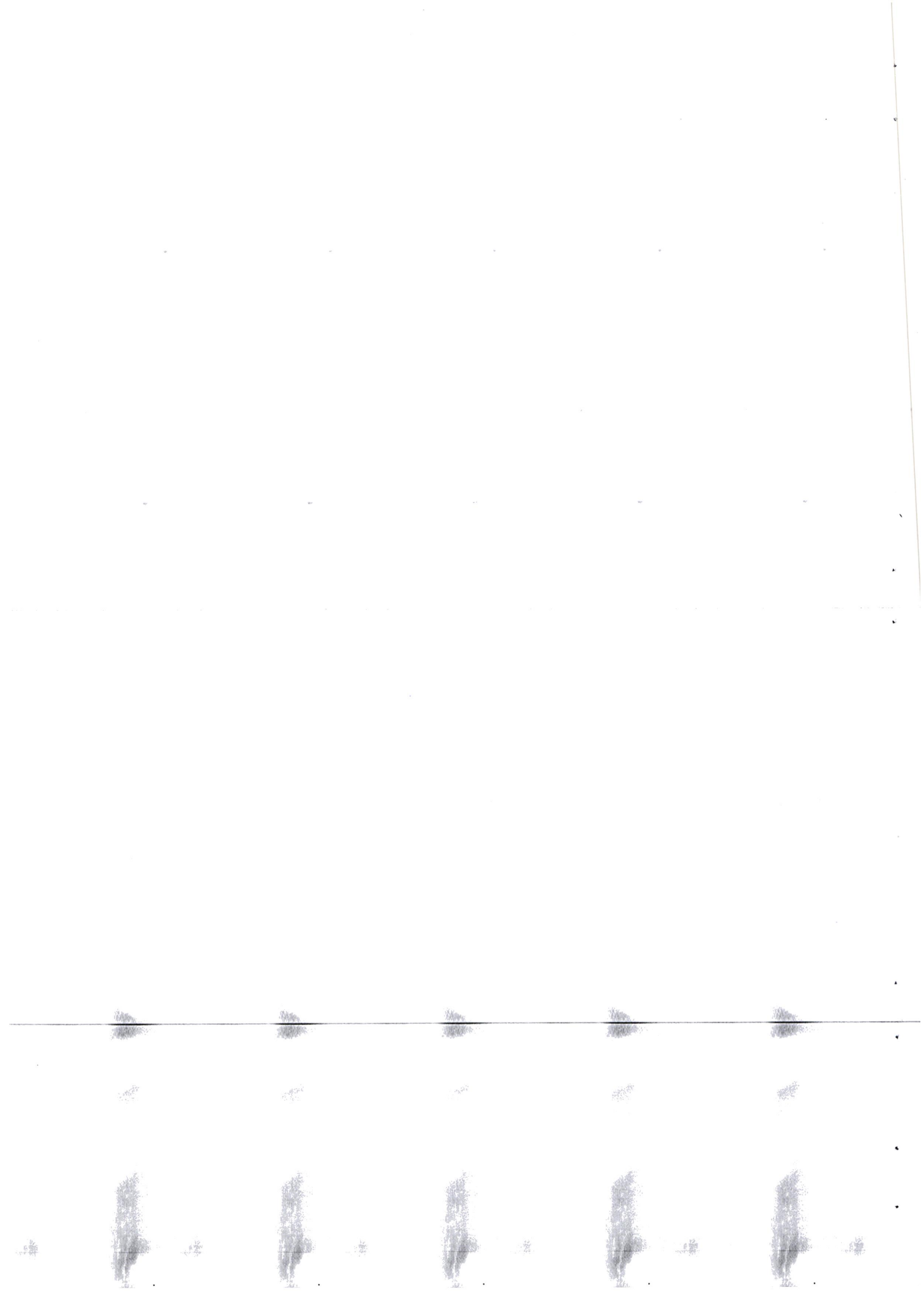
ILLEGAL ENCROACHMENT OF THE KILIFI INSTITUTE OF AGRICULTURE LAND

For quite some time now, this office has received some disturbing reports of individuals or groups of people, who over time, have variously attempted to encroach and occupy land belonging to the Kilifi Institute of Agriculture.

The first attempt was made in 1997 by a group of residents in Kilifi Township purportedly wanting to put up "Jua Kali" Shades. This was communicated to us through letter SF/LND/8 Vol.III/91 dated 27th September, 1997 by the District Commissioner, Kilifi. The response from this office was communicated through letter Ref. MOA/LMD/L.1.1A Vol.IV/58 dated 4th November, 1997. I attach copies of the two letters for ease of reference.

More recently another group in the name "Kilifi Teachers Burial and Benevolent Fund" has (this time physically) moved and fenced off a large chunk of land within the Institute's perimeter and erected a sign post for the purported construction of a Funeral Home/Hospital. The original perimeter fence of the Institute has been destroyed and instead foundation trenches dug towards the development of these unknown and illegal structures. The said project is itself suspect as I am reliably informed that individual plots have already been marked.

CONFIDENTIAL



CONFIDENTIAL

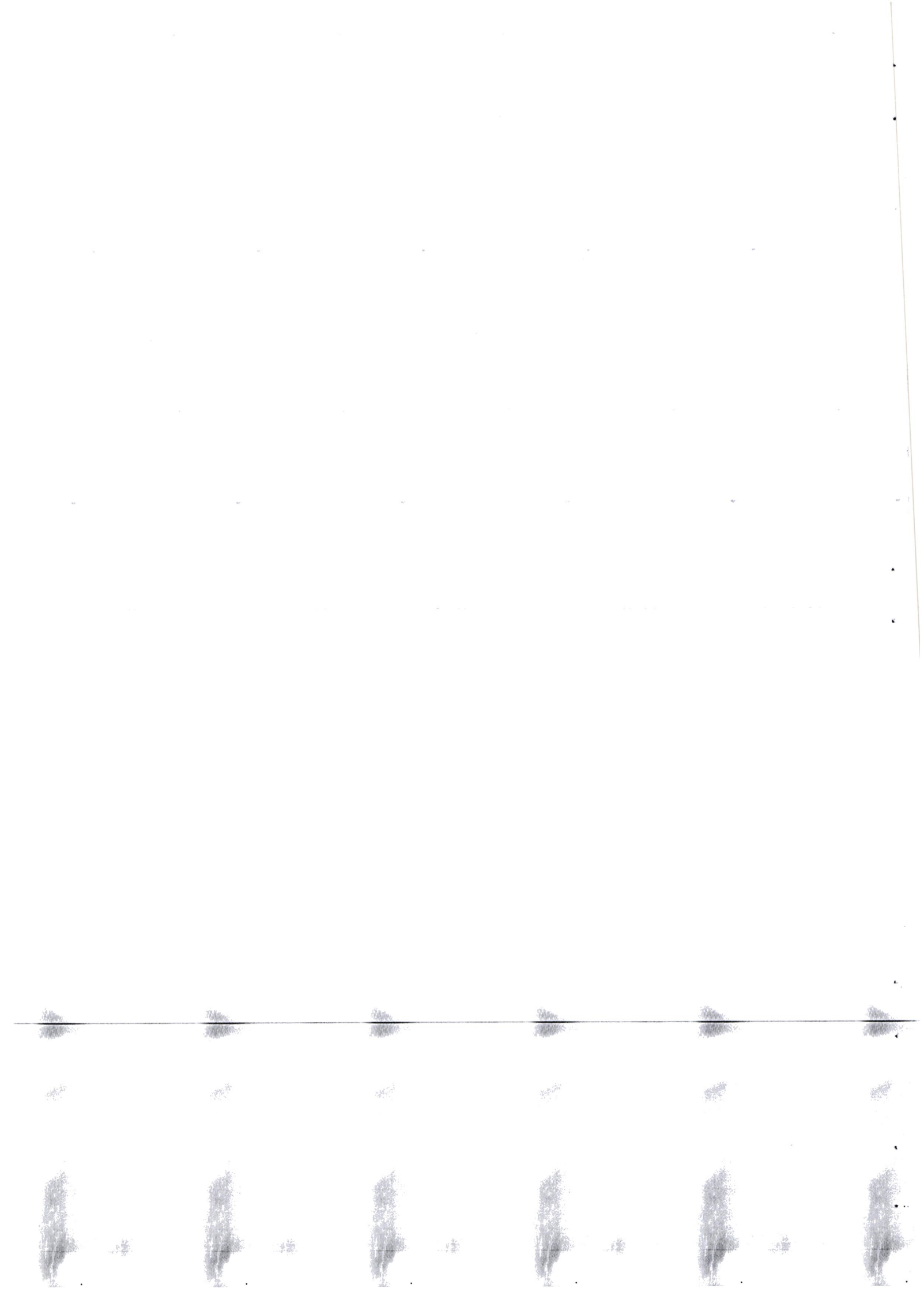
Under the circumstances, I wish to point out the following:

1. The stand of this Ministry as contained in my letter dated 4th November, 1997 is still valid.
2. Recently the Ministry of Agriculture signed a binding Memorandum of Understanding (MoU) with Egerton University to facilitate Killifi Institute of Agriculture expand its physical and scholarly capacity for the development and issuance of degree and diploma programmes. Activities in this area have started and the Institute requires space for expansion in the areas of farm, tuition facilities, Laboratories, demonstration units and expanded staff accommodation.
3. The Ministry has developed, for implementation a comprehensive Policy "Strategy for Revitalizing Agriculture (SRA)" which provides the roadmap to the revival of Agricultural activities as the main catalyst for the revival of the country's economic development. One of the key recommendation made during the SRA National Conference (where you participated) was the urgent need for the development and transfer of appropriate technologies to the country's farming community. This can only be achieved through a well trained Manpower; a role aptly assigned to Killifi Institute among others.
4. Coast Province is a net importer of most basic food commodities and most of its residents are perpetual dependants of relief handouts in a region otherwise potential enough to produce enough for its people and surplus for distribution elsewhere. To reverse this trend we must jealously protect and strengthen all Institutions that make contribution towards the development of the Agriculture Sector in the region.

When the Hon. Minister for Agriculture visited and held discussion with you, he reiterated these issues and underscored the Ministry's commitment to playing its role in achieving the set goals.

It is therefore disheartening to continuously receive reports of individuals and groups inclined on disrupting these priority development plans and policies and who are bend to threaten peaceful learning atmosphere and security to one of our key training institution in the Province. There has to be a clear choice between national development and individual (selfish) gains.

CONFIDENTIAL




CONFIDENTIAL

As Chairman of Security and development coordination in the Province and also as Chairman of the Provincial Agricultural Board (PAB) I urge that you move with speed and check the situation on the ground. At the moment there is constant disruption of peace and a state of insecurity to both staff and students alike; an environment not conducive for teaching and learning. The situation must be arrested immediately.

I am liaising with the Ministry of Lands and Housing to speed up the registration and issuance of the Title Deed to the Institute.

In the meantime I am hereby directing the Principal to immediately seek ways to reinstate and reinforce the perimeter fence making the Institute land. To enable perform this task he will require security. Kindly assist.

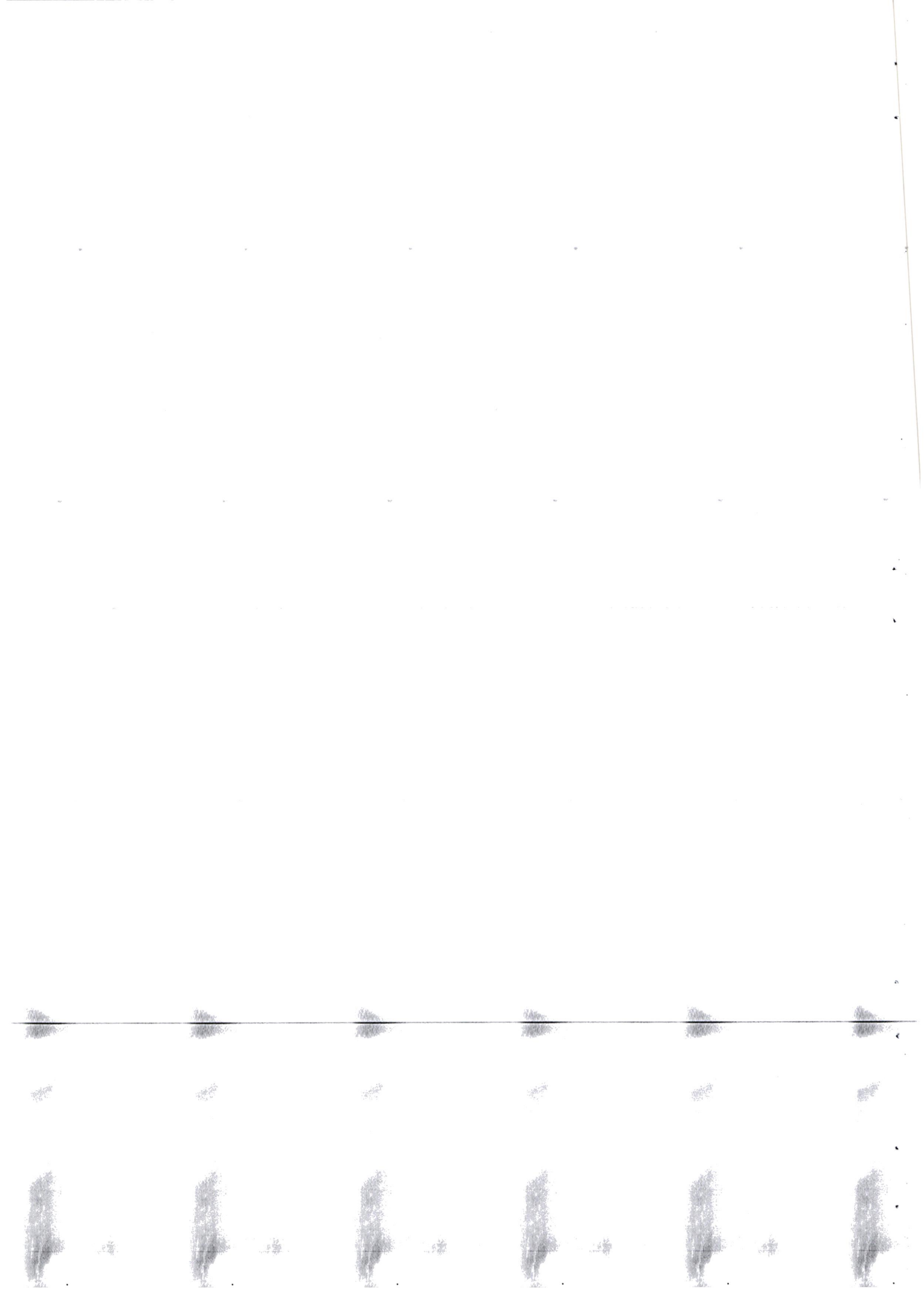
Sincerely,



JAMES E. O. ONGWAE, CBS.,
PERMANENT SECRETARY

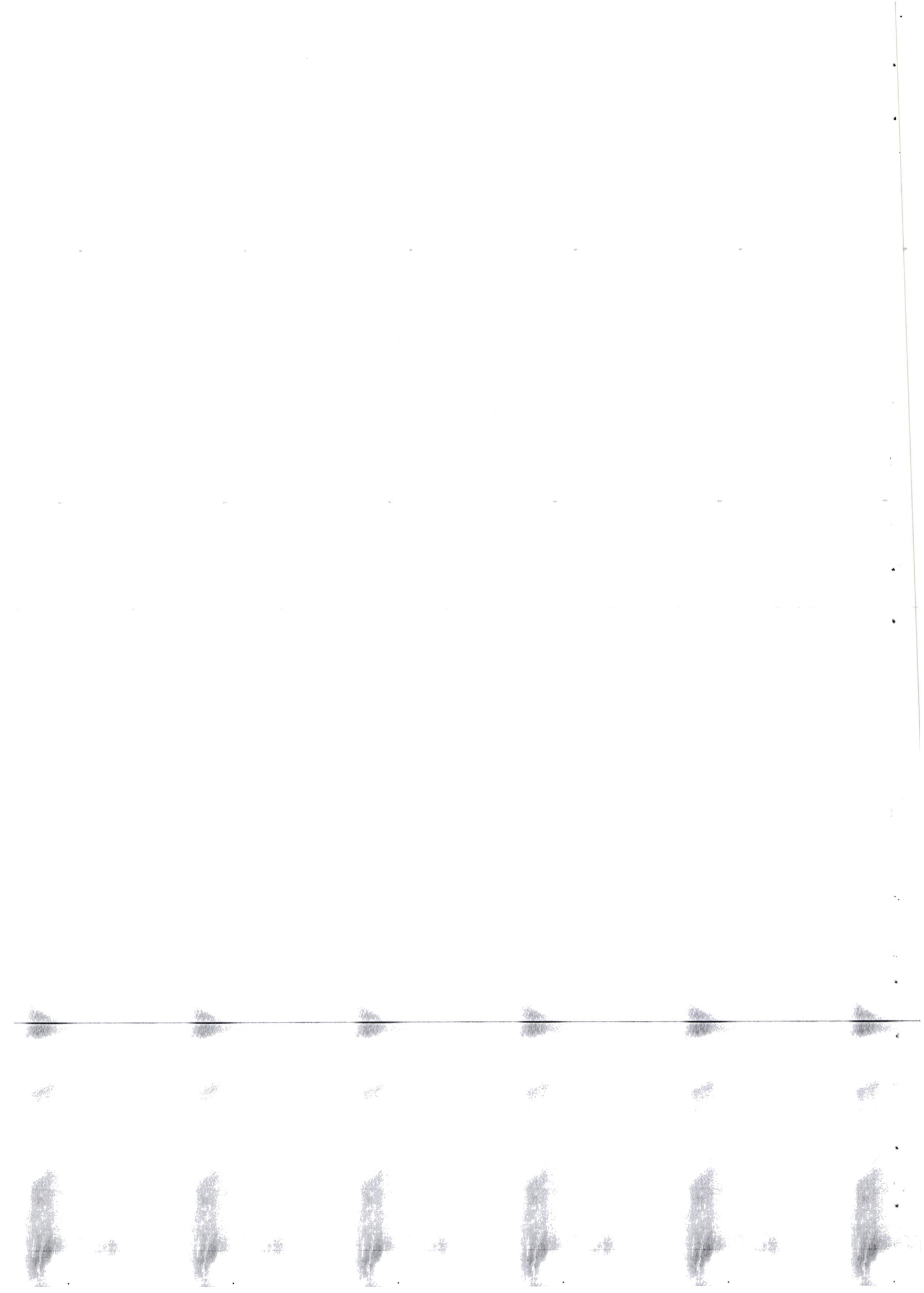
Hon. Minister for Agriculture
Director of Agriculture
Chief Finance Officer
✓ Principal, Kilifi Institute of Agriculture

CONFIDENTIAL



DOCUMENT D

- 1. BARN ON ALL LAND ALLOCATIONS DATED 8TH MAY 2002 BY COMMISSIONER OF LANDS, MINISTRY OF LANDS AND SETTLEMENT**
 - 2. LETTER DATED 13TH MAY 2005 BY DISTRICT COMMISSIONER INSTRUCTING THE ALLEGED CLAIMANTS NOT TO ENCROACH THE SUBJECT LAND**
-
-



Telegrams: "LANDS", Nairobi

Telephone: Nairobi 775030-9

When replying please quote

Ref. No. _____
and date _____

Provincial Commissioner's Office

Central Province

MINISTRY OF LANDS AND SETTLEMENT



16 MAY 2002

RECEIVED
0009/PV

DEPARTMENT OF LANDS

P.O. Box 30689

NAIROBI

8th May, 2002

105

PC

ALL PROVINCIAL COMMISSIONERS

ALL DISTRICT LAND OFFICERS

ALL TOWN CLERKS

ALL CLERKS TO COUNTY COUNCILS

RE: BAN ON ALL LAND ALLOCATIONS

This is to draw your attention to His Excellency the President's order, issued on the 21st February, 2002 banning allocation of all Government and Trust Lands, including land reserved for public purposes or owned by public bodies in all areas, including urban centres.

In the statement, His Excellency reiterated that the Government is aware of the existing land problems, which necessitated the appointment of a Commission of Inquiry into the land law system in Kenya in November, 1999.

The Commission is continuing with its work and consequently the embargo or ban will remain in force until the Government has received and taken appropriate decisions based on the final report of the Commission of Inquiry.

You are therefore expected to comply with the order and ensure that no Plot Allocation Committees or recommendations relating to land allocation are made during the currency of the Government embargo. The Director of Physical Planning is by a copy of this letter requested to suspend the preparation of Part Development Plans or advertisement thereof for allocation purposes.


S.K. MWAITA
COMMISSIONER OF LANDS

c.c.

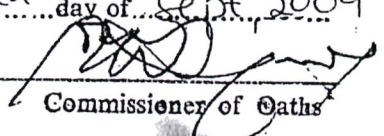
Dr. Sally J. Kosgei, CBS
Permanent Secretary/Secretary to the Cabinet &
Head of the Public Service
Office of the President
NAIROBI

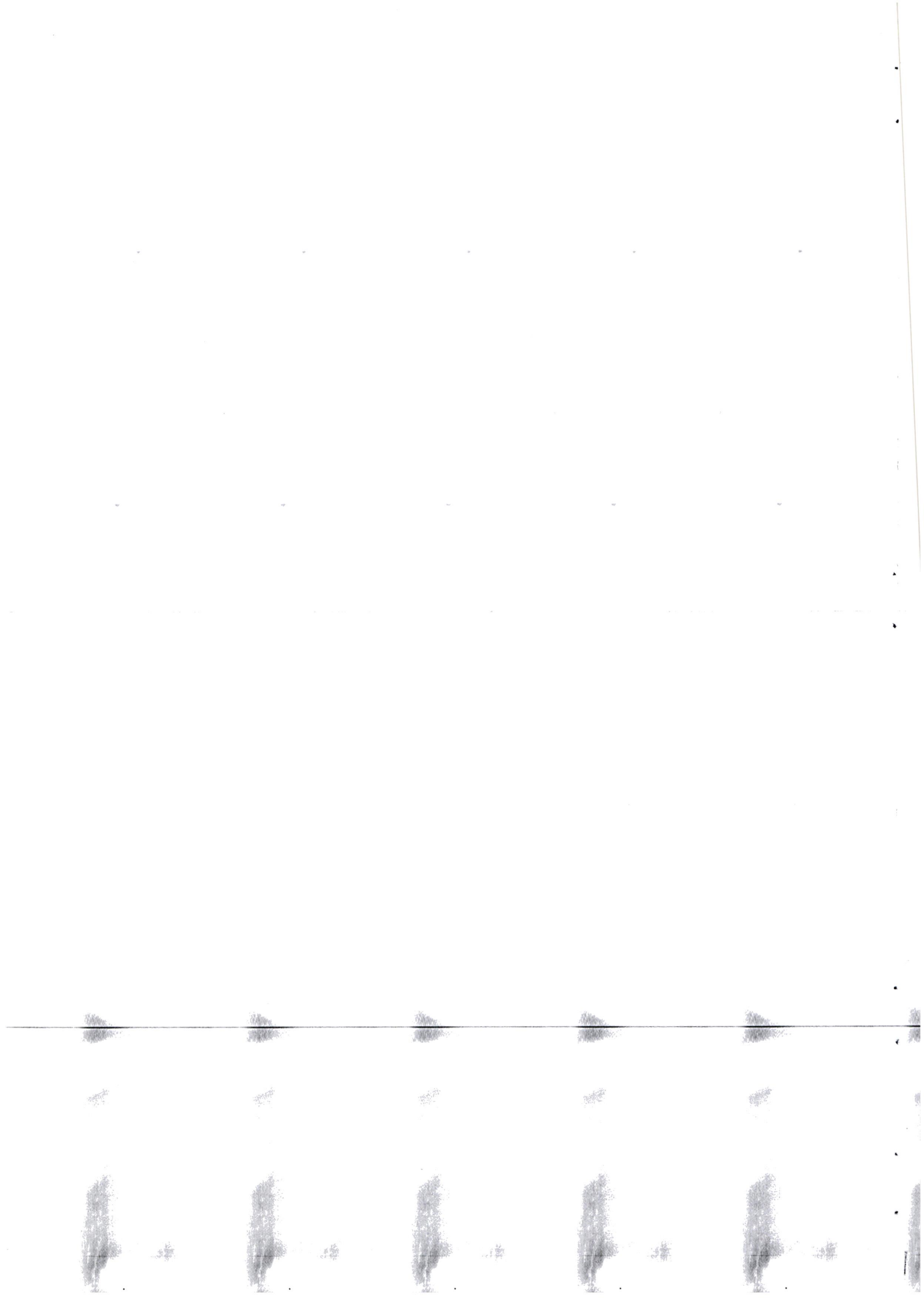
This is the exhibit Marked 'MSR 3'
referred to in the affidavit of

Mohammed S. Rajab

sworn before me at Nairobi

this 24th day of Sept, 2009


Commissioner of Oaths



Cheruiyot, MGH, SS
Permanent Secretary Provincial Administration &
internal Security
Office of the President
NAIROBI

Mr. Mark K. Bor, MBS
Permanent Secretary
Ministry of Local Government
NAIROBI

Mr. F.K. Bayah, CBS
Permanent Secretary
Ministry of Lands & Settlement
P.O. Box 30450
NAIROBI

Mr. R.K. Mbwagwa
Director
Physical Planning Department
NAIROBI

Mr. H. Nyapola
Director of Surveys
NAIROBI

/twm

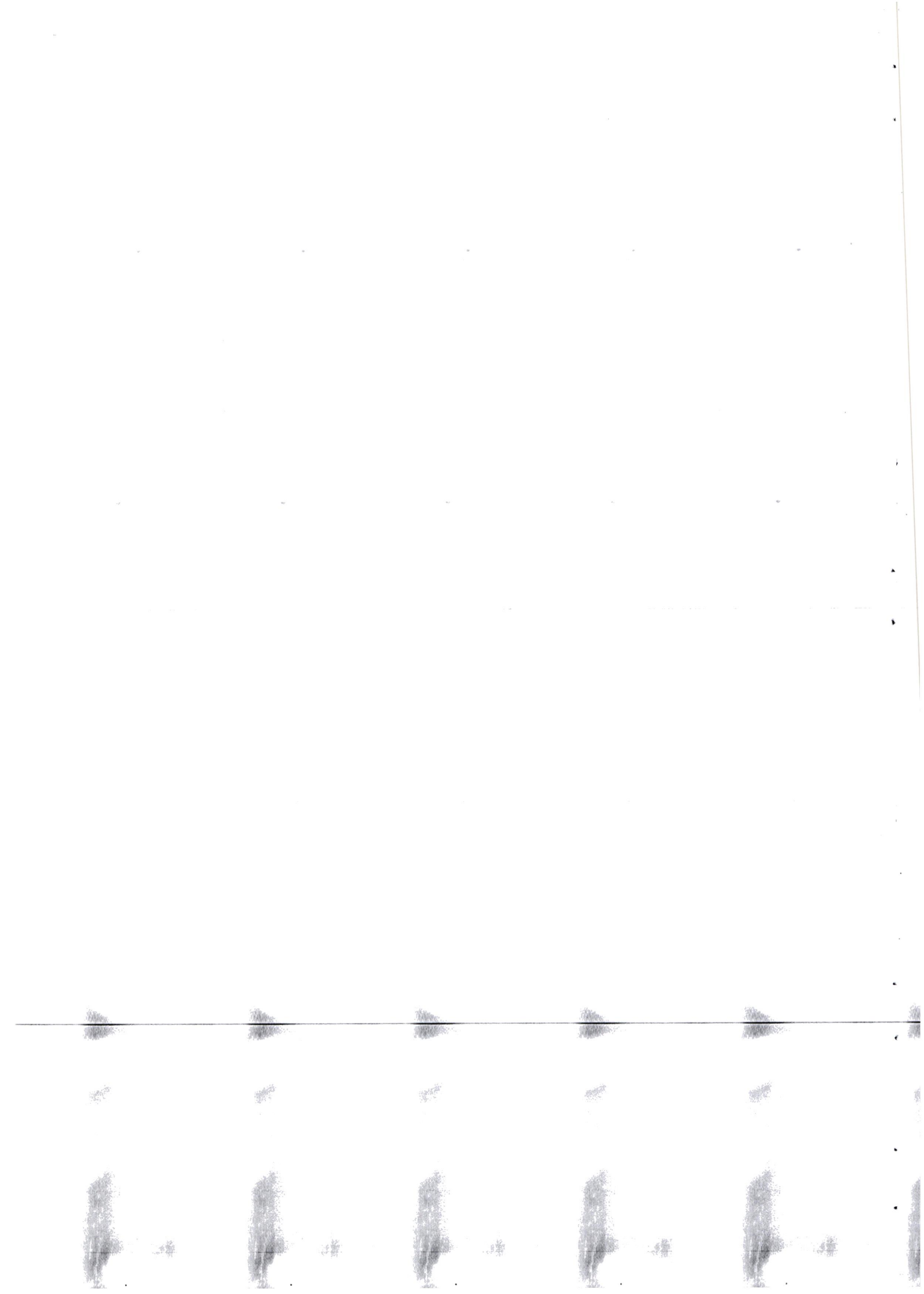
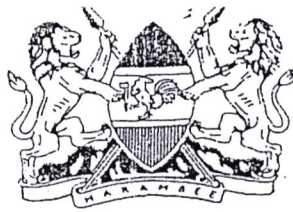


Exhibit VIII



OFFICE OF THE PRESIDENT

Telephone: (041) 522103
Fax: (041) 522474
When replying/telephoning
Quote: - ED.12/21 VOL.I/122

DISTRICT COMMISSIONER
P. O. Box 29
KILIFI

And date: 13TH May 2005



The Chairman
Resident Committee
Mtaani-Kisumu Ndogo Project
P O Box 808
Kilifi

The Chairman
Kilifi Teachers Benevolent Scheme
P O Box 169
Kilifi

108

RE: ENCROACHMENT ON KILIFI INSTITUTE OF AGRICULTURE LAND

I have received information that you have illegally encroached on Kilifi Institute land and purportedly allocated plots to your landless members and started construction of a funeral home respectively.

You are asked to stop further development and vacate the land immediately, or else legal action will be taken against you.

Confirm Compliance.


CHELIMO CHEBOI
DISTRICT COMMISSIONER
KILIFI DISTRICT

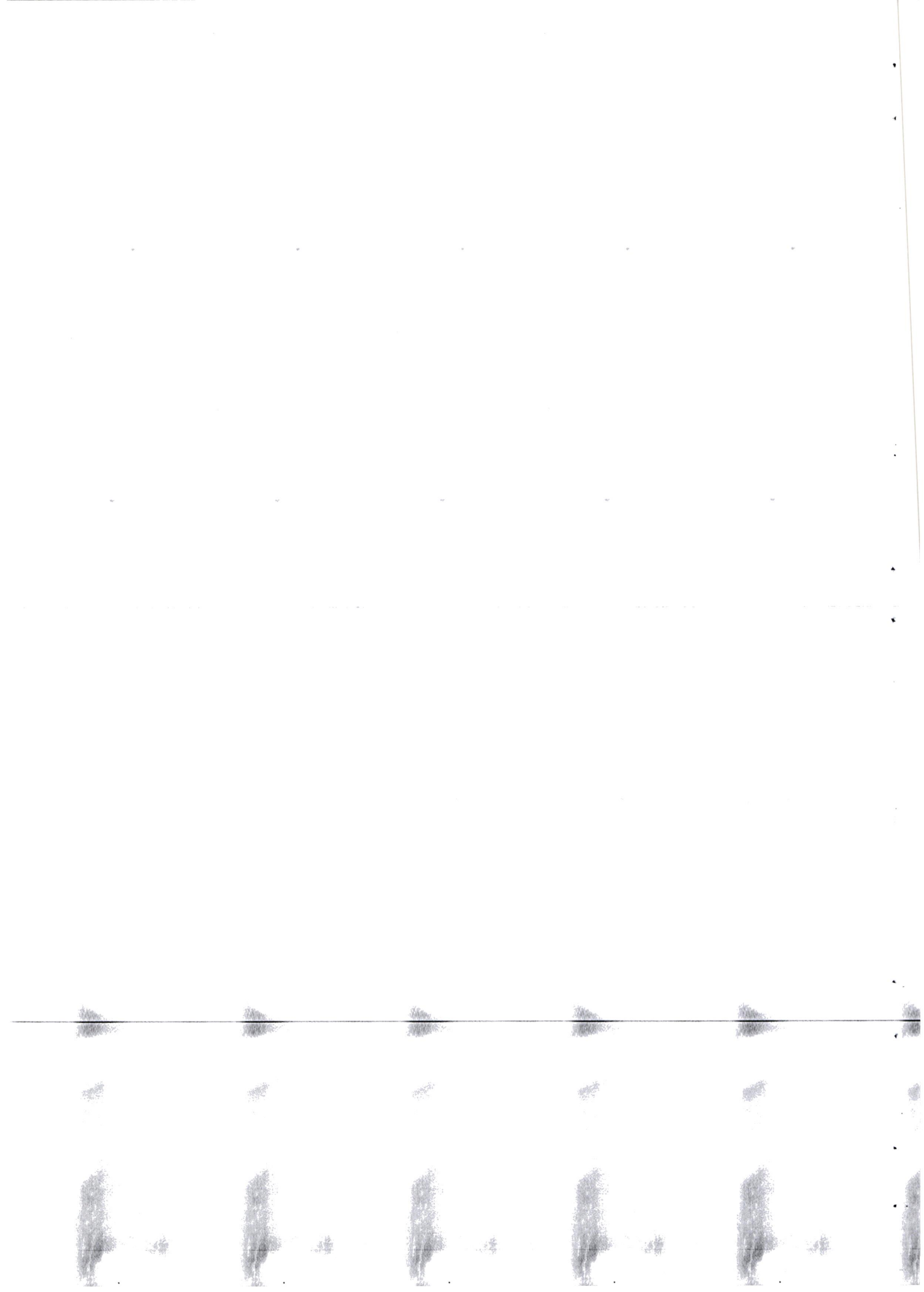
C.C.

Principal
Kilifi Institute of Agriculture

District Physical Planning Officer
Kilifi

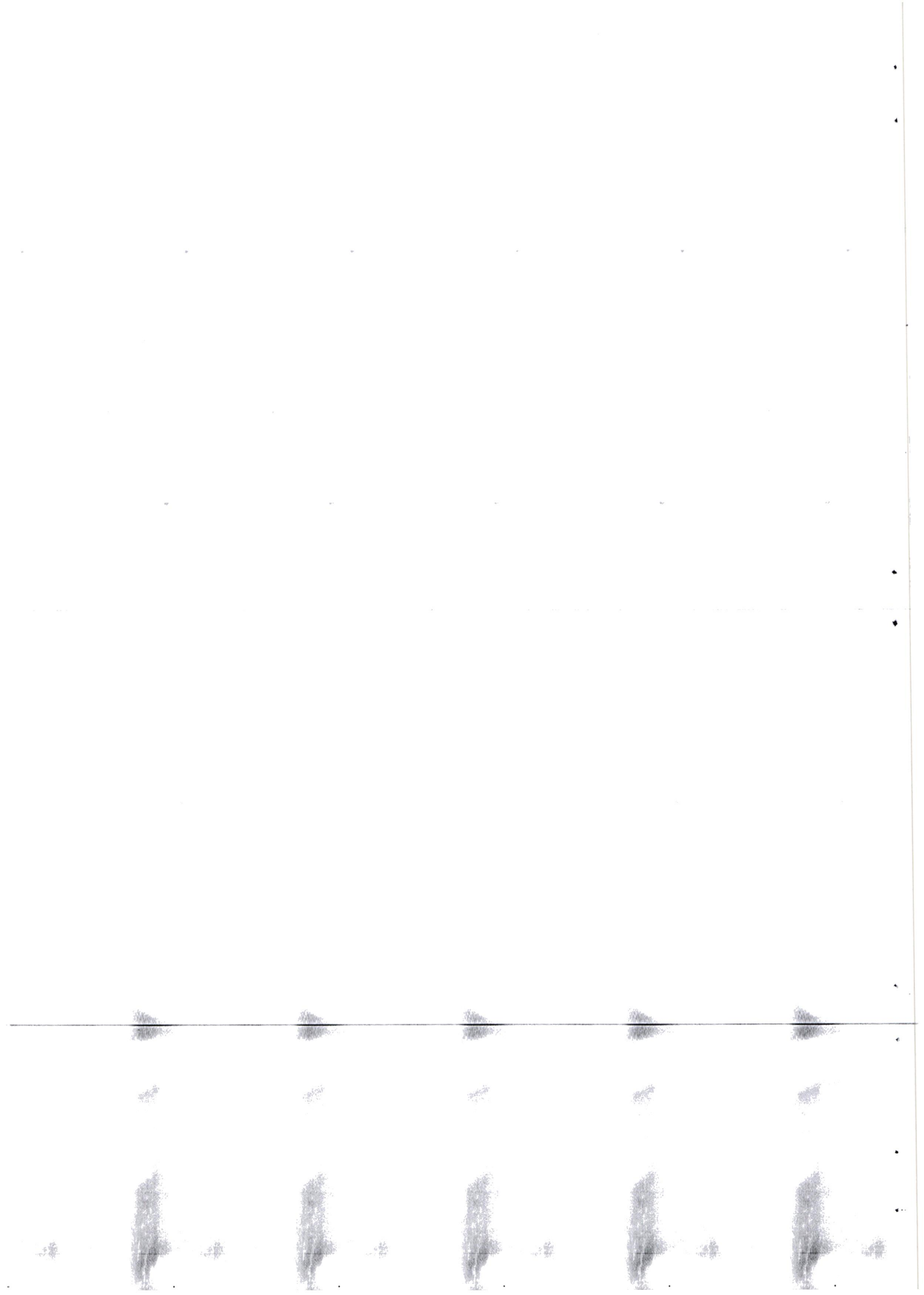
Clerk, Kilifi Town Council

OCPD, Kilifi



DOCUMENT E

**LETTER DATED 20TH SEPTEMBER 2002
CANCELLING THE ILLEGAL PART
DEVELOPMENT PLAN AFFECTING THE
SUBJECT LAND**



W2 (2)

MINISTRY OF LANDS AND HOUSING

Telegrams: "URBANPLAN", Nairobi
Telephone: Nairobi 718050
When replying please quote



DEPARTMENT OF PHYSICAL PLANNING
ARDHI HOUSE
1st NGONG AVE
P.O. Box 450
NAIROBI

Ref. No. PPD/14/CONF/II/62

~~CONFIDENTIAL~~

20th September 2002

Mr. Sammy K. Mwaita
Commissioner of Lands
P.O. Box 30089 NAIROBI

RE: CANCELLATION OF PART DEVELOPMENT PLAN AFFECTING KILIFI
AGRICULTURAL INSTITUTE LAND - APPROVED BY THE
HON. MINISTER FOR LANDS AND SETTLEMENT ON 11TH JULY 2002

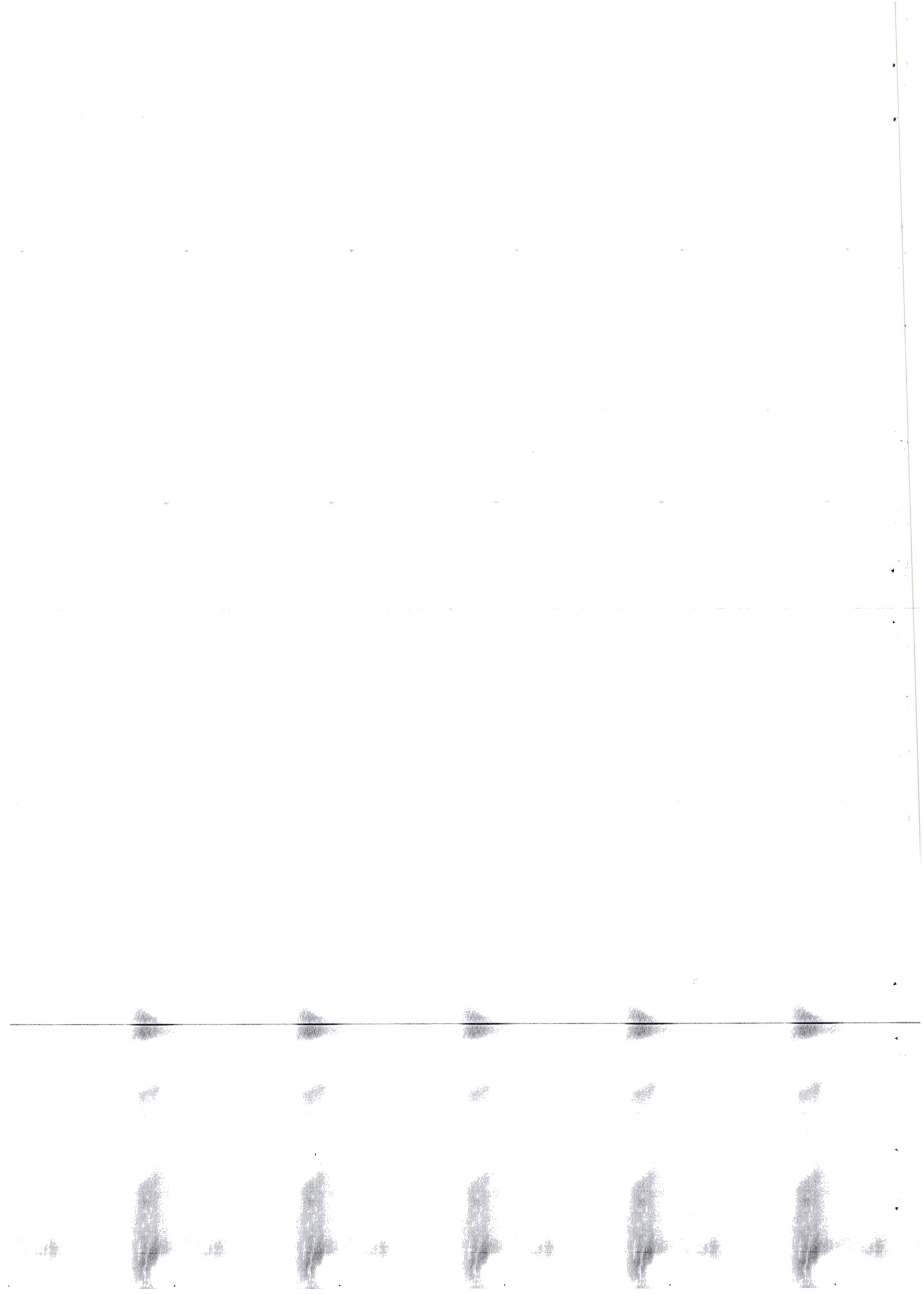
I wish to draw to your attention to the approval of the above mentioned part development plans and the subsequent allocation of the resulting sub-plots. At the time the Part Development Plan was presented to me, I was assured that the site was falling within Government land and I assumed that your office was aware of the request by the applicants.

I have since discovered that this particular site forms part of land owned by the Agricultural Institute, Kilifi and I wish to officially withdraw the said Part Development Plan. On approval by the Hon. Minister, the part development plan ought to have been returned back to this office for further vetting and documentation which would have included issuance of approved plan number. However this was not done and this renders the approval of the same null and void. You should therefore consider the same as cancelled. I sincerely regret any inconvenience created by the withdrawal of this plan.

R. K. MBWAGWA

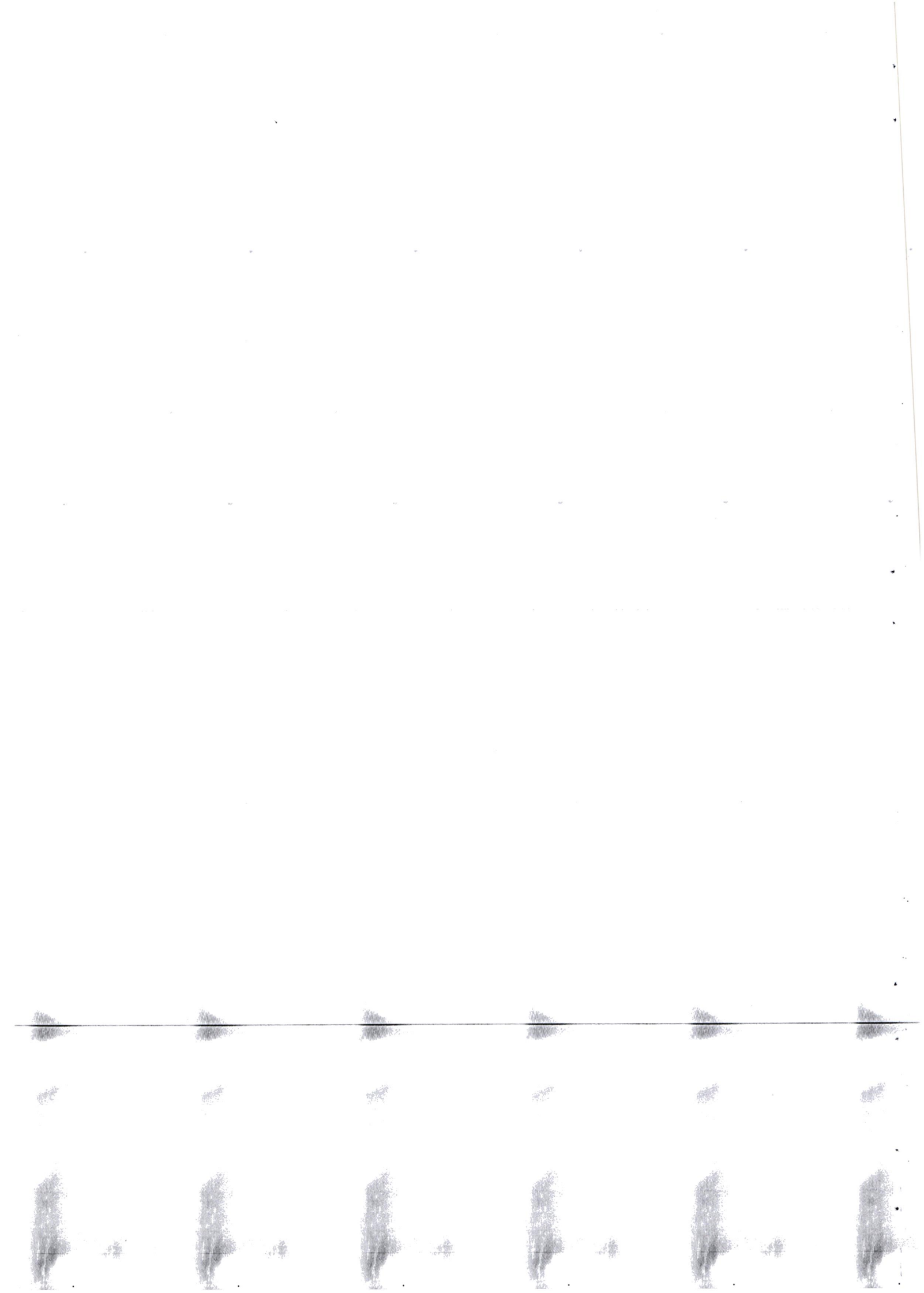
R. K. Mbwagwa
DIRECTOR OF PHYSICAL PLANNING

CONFIDENTIAL



DOCUMENT F

- 1. COPY OF THE JUDGEMENT IN ELC CIVIL CASE NO 70 OF 2009**
 - 2. COPY OF DECREE ISSUED ON 9TH DECEMBER 2014 ON THE SUBJECT LAND**
 - 3. COPY OF THE DECREE PUBLISHED IN THE DAILY NATION OF 11TH DECEMBER 2014**
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REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
ELC CIVIL CASE NO.70 OF 2009

NELSON KAZUNGU CHAI.....1ST PLAINTIFF
LAWRENCE KAZANI GOHU.....2ND PLAINTIFF
WYCLIFFE TEMBO MWANGOME.....3RD PLAINTIFF
SAID HASSAN HEMED.....4TH PLAINTIFF
IBRAHIM ABDI.....5TH PLAINTIFF
FESTUS MWARERE LENGA.....6TH PLAINTIFF
KENGA KILUMO CHARI.....7TH PLAINTIFF
LEONNOX MKUTANO NGALA.....8TH PLAINTIFF
SHADRACK NDHULI.....9TH PLAINTIFF
PRUDENCE MAPENZI MWANGORI.....10TH PLAINTIFF

=VERSUS=

PWANI UNIVERSITY.....DEFENDANT

J U D G M E N T

Introduction:

1. On 22nd July 2009, the Plaintiffs, on behalf of themselves and 298 others,

commenced this suit by way of a Plaint.

2. The Plaintiffs have averred in the Plaint that in or around 1995, they settled on a portion of land known as L.R. NO.5046/1 and part of L.R. NO. 5024/1 Kilifi (the suit property) and subdivided the said portions lawfully and with the knowledge of the Defendant and the Government.
3. The Plaintiffs have averred that they were allocated the suit property by the Government with the consent, approval and knowledge of the Ministry of Agriculture, Kilifi Institute of Agriculture, the Provincial Administration, the then Ministry of Local Government and the then Kilifi Town Council.
4. According to the Plaint, the Plaintiffs carried out improvements and developments of great value awaiting the issuance of Certificates of Title and that they have not interfered with the other parts of L.R. Nos 5046/1, 5046/2, 5046/5, 5024/1 and 5024/2.
5. In the Plaint, the Plaintiffs are praying for an order of permanent injunction restraining the Defendants from fencing, occupying, taking possession or interfering with their use, possession and occupation of the

suit property.

6. The Plaintiffs are also praying for a declaration that parts of land known as L.R. Nos 5046/1 and 5024/1 occupied by them belong to them and for general damages for trespass and wrongful interference by the Defendant.
7. In the Defence, the Defendant has averred that it has never consented to the illegal occupation of its land by strangers; that by a presidential order of 21st February 2002, the Government banned allocation of all Government and Trust land including land reserved for public purpose and that if there are any developments on the suit property, then the same are illegal.
8. It is the Defendant's averment that any purported occupation of its land by the Plaintiffs is fraudulent.
9. In the counterclaim, the Defendant has prayed for the eviction of the Plaintiffs and for a permanent mandatory injunction restraining the Plaintiffs from being in occupation of the suit property.

The Plaintiffs' case:

10. The 1st Plaintiff, PW1, informed the court the Defendant is claiming for land measuring 623 acres. On their part, that they are claiming three parcels of land which they have already occupied. It was the evidence of PW1 that the Defendant was not in existence in 1995 when they were allocated the suit property.
11. It was the evidence of PW1 that through the then Ministry of Local Government, the then Ministry of Lands and the then Kilifi Town Council, the Germany Technical Corporation (GTZ), which is a non-governmental organisation, was requested to fund the upgrading of parts of Kilifi town in what was known as the Mtaani Kisumu Ndogo upgrading scheme. The upgrading scheme of Mtaani and Kisumu Ndogo informal settlements was used as a pilot project for the purpose of informing the Town Council on how to upgrade the other slums within the town.
12. According to PW1, the project commenced in 1990 by the mapping and surveying of the area that was to be upgraded.
13. The people living in the area that was to be upgraded (the beneficiaries) were identified. The infrastructure that was to be put in place like water,

roads, waste collection points and toilets amongst others were also identified during the process of mapping and surveying of Mtaani and Kisumu Ndogo informal settlements.

14. PW1 informed the court that after the survey and planning of the area that was to be upgraded, GTZ demanded that a Residence Committee to represent the beneficiaries in the area should be formed. The committee that was formed came to be known as the Mtaani Kisumu Ndogo Residence Committee (the Committee). The other committees that were formed were the "Task Force Committee" and the "Project Promotion Committee".
15. PW1 was elected by the residents of Mtaani and Kisumu Ndogo as the chairman of the Residence Committee on 14th August 1992. The chairman of the "Task Force Committee" was the then Town Clerk, who is also among the 308 Plaintiffs, while the chairman of the "Project Promotion Committee" was the then Deputy Commissioner of Lands.
16. It was the evidence of PW1 that the mandate of the Residence Committee was to identify the genuine squatters in Mtaani and Kisumu Ndogo while the Task Force Committee was to deal with the technical issues of the

project. On the other hand, the Project Promotion Committee was to deal with the issue of the allocation of the land within the upgraded scheme.

17. According to PW1, the cadastral survey for the two areas that were to be upgraded commenced in 1993 whereupon it was discovered that there were a myriad of problems which included some of the beneficiaries being on areas reserved for roads while others were congested on one plot which was not supposed to be the case. Other residents of the two areas were found to be staying on what had been set aside during the surveying process for public utilities like open spaces, churches, nursery schools, mosques, among others.

18. The squatters who were found to be staying on the areas earmarked for the public utilities during the mapping and surveying process had to be moved. The squatters who had constructed houses to completion were the ones who were given priority during the allocation process in the upgraded areas. PW 1 informed the court that there was resistance from those who were asked to move out. There was violence and in the process some houses were burnt down.

19. It was the evidence of PW1 that the then Coast Provincial Commissioner

instructed the Kilifi District Commissioner and the Town Clerk to look for alternative land for people who had been displaced from Mtaani and Kisumu Ndogo informal settlement schemes during the upgrading process. According to PW 1, the alternative land was found, otherwise known as the Kibaoni extension, which is the suit property.

20. PW1 stated that people were told to pay for the alternative land for the purpose of surveying because GTZ had ran out of funds and was not to be involved in resettling people on the alternative land that had been identified. Each squatter was required to pay Kshs.15,000 to the Resident's Committee, which they did and receipts were issued to them.
21. It was the evidence of PW1 that it was the Residence Committee and the Town Council of Kilifi that was required to apportion the suit property to the squatters who had been displaced from Mtaani and Kisumu Ndogo.
22. As the chairman of the Residents Committee, it was the evidence of PW1 that he applied on behalf of the Plaintiffs, to be allocated land by way of a letter addressed to the District Commissioner, through the Town Clerk. It was the evidence of PW1 that he also met the Principal of the then Kilifi Institute of Agriculture who showed him the land that he was to apply

for.

23. According to PW1, he was informed that the alternative land that he was to apply for on behalf of himself and the other people that had been displaced did not belong to then Kilifi Institute of Agriculture, the Defendant's predecessor, because that land had been allocated to Kibaoni Primary School, Kibaoni School for the deaf and Kilifi Township Secondary School and that the remaining parcel of land was available for allocation to people.

24. It was the evidence of PW1 that he was shown an area of 100 acres which had been set aside for the three institutions, a part of which he was to apply for on behalf of the squatters that had been displaced from Mtaani Kisumu Ndogo.

25. It was the evidence of PW 1 that out of the 100 acres that he was shown, a substantive part of it had already been donated to schools and that they were to apply for the remaining portion of land, which was approximately 50 acres.

~~26. After making his application to the Kilifi District Commissioner, PW1~~

informed the court that the District Commissioner sent a letter to the Ministry of Agriculture requesting for the land that he had been shown. It was the evidence of PW1 that indeed the Ministry of Agriculture gave its approval for the allocation of its land to the squatters as requested.

27. The evidence of PW1 was that the Plaintiffs, who are over 300, were allowed to occupy the suit property by the then Minister of Land, Darius Mbela with the approval of the Kilifi Institute of Agriculture, the Ministry of Lands and the Provincial Administration. It was his evidence that they are only claiming for 50 acres, which is 1/10th of what the Defendant is claiming to be its land.
28. A survey report was produced in evidence showing the way the Plaintiffs apportioned the suit property amongst themselves and the developments that they have made on the land. The witness also produced in evidence a bundle of correspondences in respect of the suit property which I shall refer to at a later stage.
29. It was the evidence of PW1 that a Part Development Plan (PDP) for the 50 acres that was allocated to the Plaintiffs was prepared and sent to Ministry of Lands for approval. However, when the PDP was returned to

them, it was discovered that someone had allocated to himself 20 acres. After the discovery of the grabbing of 20 acres out of the 30 acres that they had applied for, it was the evidence of PW1 that the Town Council of Kilifi held a meeting and resolved that the Ministry of Lands should nullify the allocation of the 20 acres to the "grabber" and issue fresh letters of allotment to the genuine squatters.

30. PW1 produced in evidence the PDP that was later on prepared and sent to the Ministry of Lands and the list of the people who are supposed to benefit from the allocation of the suit property, amongst other documents. It was the evidence of PW 1 that the suit property was surveyed and about 308 people (the Plaintiffs) were allocated the land in dispute and have since taken possession.

31. PW1 reiterated the fact that the Principal of Kilifi Institute of Agriculture had confirmed in writing that initially, the Institute's land measured 623 acres. However, after donating 100 acres to the existing primary school, the school for the deaf and the secondary school, the Institute remained with 476.05 acres. It was the evidence of PW1 that the Plaintiffs are claiming part of the 100 acres and not the 476.05 acres

owned by the Institute which was later on taken over by the Defendant.

32. According to PW1, when he visited the Ministry of Lands, he saw a letter by the Ministry approving the allocation of the land to them. PW1 informed the court that the allocation of the suit property to the squatters was later on muddled up by some politicians who attempted to grab 20 acres of the property.
33. PW1 stated that after the approval of the allocation of the land to the squatters, the letters of allotment were prepared and signed although they were never issued due the grabbing of the 20 acres.
34. It was the evidence of PW1 that the Plaintiffs had settled in Mtaani Kisumu Ndogo since 1975 and that the Plaintiffs used to work for the then Kenya Cashewnut Factory and that they were resettled on the suit property in 1995 after the upgrading of Mtaani Kisumu Ndogo area, Kilifi.
35. It was the evidence of PW1 that the Defendant was allocated the whole land vide a letter of allotment dated 10th April 2006 due to pressure from people in Nairobi who had no idea as to what was happening on the

ground.

36. In cross-examination, PW1 stated that the report by Mr. Okoth, the valuer, does not tally with the situation on the ground. It was his evidence that there are about 100 plots on the ground.
37. It was the evidence of PW1 that he did not have the records to show when the schools occupying the 100 acres were established or the exact acreage that was set aside for those institutions. However, it was his evidence that the Plaintiffs were shown the land that was vacant and not what is occupied by those institutions.
38. PW1 stated that the suit property is Government land having been compulsorily acquired by the Government. It was his evidence that the land being occupied by the Plaintiffs is approximately 45.50 acres and that they only have two letters of allotment in favour of two Plaintiffs.
39. It was his evidence that as per the proposed PDP, each squatter was to be allocated half an acre of land in the suit property.
40. As they were pursuing the letters of allotment for the 308 squatters, it was the evidence of PW1 that the Defendant interfered with that process

and that only 47 squatters had already obtained their letters of allotment.

41. Although the Plaintiffs moved to the suit property in 1995, it was the evidence of PW1 that the letter seeking approval for the allocation of land was done on 9th May 1997 as a formality because the Institution had already allowed them to occupy the land; that by the time the PC made his speech on 27th September 1995, they had not occupied the suit property and that the land belonged to the Government.
42. The then Town Clerk of Kilifi Town Council, PW2, informed the court that he worked at the Council as a Town Clerk between 1988 until 1998.
43. It was the evidence of PW2 that the Mtaani Kisumu Ndogo upgrading project started in 1992. The project was meant to improve the lives of the many people who had settled in the Mtaani and Kisumu Ndogo area and had put up houses in an unplanned manner. The Council was assisted in the implementation of the project by the Ministry of Local Government and GTZ.
44. According to PW 2, the two areas were to be re planned and each structure was to be on one plot. After re-planning, it was found that some

of the people who were residing in the two estates had missed out on plots and they refused to move out. The Residents Committee was therefore mandated to find an alternative plot for the squatters who could not fit in the planned area.

45. Due to the chaos that ensued, it was the evidence of PW2 that the Residents Committee with the District Commissioner identified the suit property which is Government land. It was the evidence of PW2 that PW1 had a meeting with the Principal of Kilifi Institute of Agriculture who gave his approval.

46. According to PW2, PW1 did an application through the Council to the Ministry of Agriculture who agreed to release the land to the squatters. According to PW2, it is the District Commissioner who advised the squatters to move to the suit property after the plans to resettle them on the land were approved and that the Plaintiffs moved on the land in 1995.

47. In cross-examination, PW2 stated that when PW1 authored the letter requesting to be allocated the suit property on 2nd April 1996, he was just formalising the process of the allocation. PW2 admitted that he also did a letter dated 9th May 1997 requesting for land for the extension of

upgrading Mtaani Kisumu Ndogo project.

48. According to PW2, the genuine squatters who missed out on land in Mtaani Kisumu Ndogo upgrading project were 100. However, the number went up to 300 people.
49. PW2 admitted that his name is on the list of the people who were to be allocated land in the suit property. It was his evidence that he was affected by the upgrading project in Mtaani/Kisumu Ndogo.
50. PW3 is a land surveyor. It was the evidence of PW3 that he went on the suit property on instructions of the Plaintiffs' advocate and prepared a grounds report which he produced in court.
51. It was the evidence of PW3 that he identified the extent of the boundary of the land in dispute and that the land had been subdivided into smaller portions.
52. According to PW3, the main parcel of land was about 100 acres and had institutions. The Plaintiffs, according to PW3, were occupying a portion of the 100 acres parcel of land. PW3 took the court through the report and pointed out the developments that the Plaintiffs have made on the

suit property.

53. Other than the report detailing the structures on the suit property, PW3 also produced in evidence a locational plan showing the disputed land and how it was subdivided.
54. In cross-examination, PW3 stated that the suit property is Government land that was compulsorily acquired from Coastal Development Group. However, PW3 stated that he was not aware the purpose for which the Government acquired the land.
55. It was the evidence of PW3 that he did not indicate all the structures that are on the suit land in his report and that he picked 300 plots after establishing the boundaries. It was his evidence that the 300 plots had already been surveyed and they had beacons.
56. According to PW3, for one to acquire Government land, a PDP must be prepared and letters of allotment issued in accordance with the PDP. A surveyor then prepares the survey plan whereafter a certificate of lease is issued to the allottee. It was the evidence of PW3 that the displaced residents of Mtaani Kisumu Ndogo followed the correct procedure to have

the suit property allocated to them.

57. PW3 stated that he obtained the maps for L.R.No.5024/1 and L.R.No.5046/1 from the Director of Surveys and established the boundaries of the disputed land. However, it was the evidence of PW 3 that the surveyor who had been retained by the Plaintiffs to carry out the survey work on the disputed land had not submitted his work to the Director of Surveys by the time he (PW 3) prepared his report.
58. PW4, a valuer, informed the court that he valued parcel of land number 5024/1 and 5046/1 and prepared a report. It was the evidence of PW4 that he identified the structures that were on the suit property and gave the value of each structure. The report by PW4 was produced as PEXB3.

The Defence case:

59. The former Principal of Kilifi Institute of Agriculture, DW1, informed the court that he was in charge of the Institute between 1989 until 1999 and that the Defendant is the successor of the Institute.
60. DW1 stated that the Institute acquired the land in question in 1981. Part of the Institute's land, according to DW 1, was compulsorily acquired by

the Government for experimental development and allocated to the Institute while the other part of the land was purchased by the Government from Coastal Development Limited and allocated to the Institute for the same purpose.

61. According to DW1, the Institute's land was in five portions and it measured 622 acres. At the time of the acquisition of the land by the Institute, there were already three institutions that were existing on the land, which were Kibarani Primary School, Kibarani School for the deaf and Kilifi Township Secondary School. The three institutions occupied 30 acres.
62. It was the evidence of DW 1 that in 1989, there was a directive from the Ministry of Agriculture to the effect that the Institute should formally allocate the three schools 30 acres of the land reserved for it, leaving an area of 590 acres for the Institute. DW1 produced a letter dated 18th September, 1989 to support this chronology of events.
63. DW1 stated that he was aware that PW1 had written to the PS, Ministry of Agriculture requesting to be allocated land owned by the Institute. The said letter was sent to him for comments. It was his evidence that he

made his comments on 17th April 1997 and informed the Permanent Secretary that all the land allocated to the Institute had been planned for and there was no land for excision.

64. DW1 denied that he authorised the allocation of the suit property to the Plaintiffs as alleged.
65. It was the evidence of DW1 that the Plaintiffs renewed their application to have the suit property allocated to them vide a letter dated 24th September 1997. However, DW1 stated that after that, nobody authorised the allocation of the suit property to the Plaintiffs during his tenure as the Principal of the Institute.
66. In cross-examination, DW1 stated that the Institute's land was 590 acres although the Institute did not have a title for it.
67. It was the evidence of DW1 that the Institute gave 12 acres of its land to the Primary School and 18 acres to the other two schools, that is the Kibarani School for the deaf and Kilifi Secondary School.
68. It was the evidence of DW1 that his opinion was sought on whether the land the Plaintiffs had applied to be allocated was available for allocation.

It was his evidence that he opposed the allocation of the Institute's land and instead explained how the said land should be utilised. According to DW1, the land that the Plaintiffs wanted allocated to them had already been planned for by the Institute.

69. DW2 was the Principal of the Defendant's predecessor, Kilifi Institute of Agriculture between 1999 until 2007.
70. It was the evidence of DW2 that while taking over as the Principal of the Institute, DW1 informed him of the numerous attempts by people to have the institute's land set aside for the purpose of settlement and putting up jua kali shades, which attempts the Institute and the Ministry of Agriculture were against.
71. It was the evidence of DW2 that in the year 2002, the Ministry of Lands declared the Part Development Plan in respect to the land that the Plaintiffs are claiming as invalid. According to DW2, the said PDP was never approved. It was the evidence of DW2 that when he went to see the then District Physical Planner on the issue of the PDP that was circulating in town, the District Physical Planner disowned the PDP that was in possession of the Plaintiffs by way of a letter dated 19th February

2003.

72. It was after the District Physical Planner disowned the PDP that the Plaintiffs were relying on that DW2 informed the Director of Agriculture that the alleged PDP in respect to part of the Institute's parcel of land was illegal. According to DW2, by the time he was informing the Director of Agriculture about the illegal PDP vide a letter dated 21st February 2003, some of the claimants had already moved on the disputed land.
73. DW2 informed the court that he discussed the issue of the encroachment by the claimants on the institute's land with the District Commissioner. He also informed the PS Ministry of Agriculture of the encroachment. By way of a letter dated 13th May, 2005 addressed to PW 1, the District Commissioner asked the Plaintiffs and anybody else who had encroached on the suit property to vacate.
74. According to the witness, by the year 2005, there was no house on the suit property and that the encroachment by the claimants was by way of fencing and subdividing the suit property.
75. The evidence of DW2 was that by a letter dated 20th May 2005, the PS

Ministry of Agriculture directed that the invasion of the Institute's land should stop.

76. DW2 finalised his evidence in chief by stating that the Plaintiffs have never been allocated the suit property by the Kilifi Institute of Agriculture. It was his evidence that all the concerned Government offices have resisted the Plaintiffs' invasion of the Defendant's land and that the Defendant was issued with a letter of allotment for land measuring 239 Ha (approximately 590 acres) on 10th April 2006 leaving the other land for the three schools.
77. In cross-examination, DW2 stated there were no structures at all on the suit property in 1999 and that the PS, Ministry of Agriculture never agreed to the encroachment of the Institute's land.
78. The Defendant's Vice-Chancellor, DW3, informed the court that he was appointed to head the Defendant, which is the successor of Kilifi Institute of Agriculture, in 2007. It was his evidence that he started fencing the 239 Ha piece of land that had been allocated to the Defendant but stopped when this suit was filed.

79. It was the evidence of DW3 that the Commissioner of Lands confirmed by his letter dated 30th November 2007 that the suit property belonged to the Defendant.

The Plaintiff's submissions:

80. The Plaintiffs' counsel summarised the evidence adduced by the witnesses in his written submissions.

81. The Plaintiffs' counsel submitted that the suit property was allocated to the Plaintiffs and that they moved on the property in 1995. Counsel submitted that the land in question never belonged to Kilifi Institute of Agriculture; that under the Land Acquisition Act, the Government has powers to compulsorily acquire any land for use by itself or for any public use and that the letter of allotment issued to the Defendant is null and void.

82. Counsel submitted that the Plaintiffs have since been issued with the letters of allotment in respect to the suit property. Counsel relied on the legal Maxim "*Ominia prarasumuntur legititime fact denec probature in contatium*" to buttress his evidence. Counsel also relied on the provisions

of Section 119 of the Evidence Act.

83. The Plaintiffs' counsel submitted that the developments by the Plaintiffs were authorised by the Defendant and that indeed it is the Defendant's former Principal, together with the then District Commissioner who showed the squatters the suit property in 1992. Consequently, it was submitted, the Defendant is estopped from going back on the permission they gave to the Plaintiffs to occupy the suit property. Counsel relied on the provisions of Section 120 of the Evidence Act and the **case of Centuary Automobiles Ltd Vs Housing Blamer Ltd, Civil Appeal No. 68 of 1964.**

84. The Plaintiffs' counsel further submitted that even if the Plaintiffs do not have a Certificate of Title in respect to the suit property, the Plaintiffs cannot be said to be trespassers having been allowed on the land by the Government.

85. In his oral submissions, Dr. Khaminwa, counsel for the Plaintiffs, submitted that in a situation where a party has acquired land, the precautionary principle should be invoked by the court to minimise the

risk that is likely to arise if people were to be evicted.

86. Counsel submitted that both the Plaintiffs and the Defendant do not have a title to the suit land and that it is the Plaintiffs who have usufructuary rights over the suit land as opposed to the Defendant.

87. Counsel submitted that possession of land is as good as ownership and that in any event the Defendant has vast land at its disposal. Counsel availed to the court four sets of books in land law to buttress his arguments. The court has considered the pronouncements that were made by the authors of the said books.

The Defendant's submissions:

83. The Defendant's counsel submitted that some of the Plaintiffs illegally stated entering the suit property from the year 2004; that the Plaintiffs' application for the suit property was never allowed and that the suit property has always been owned by the Ministry of Agriculture.

89. The Defendant's counsel further submitted that other than the two Plaintiffs whose letters of allotment were produced in evidence, no other Plaintiff has a letter of allotment and that there was no proof that the

said two letters of allotment were ever paid for.

90. Counsel submitted that the PDP which was allegedly used to allocate the Defendant's land to the two Plaintiffs was found to have been irregularly approved and was subsequently cancelled by the Director of Physical Planning.
91. The Defendant's counsel further submitted that the list of the Plaintiffs was manipulated for purposes of this case. Counsel pointed out the names of people on the list who share identity card numbers thus showing the unclear identity of the Plaintiffs in this matter. Counsel relied on the cases of **R Vs Commissioner of Lands and Another Nairobi Misc. Application No. 395 of 2012** and **Kipsioro Community Self Help Group Vs the AG, Eldoret E& L Petition Number 10 of 2013**.

Analysis and findings:

92. This is a representative suit in which about 308 Plaintiffs are praying for a declaration that part of the land known as L.R. No. 5046/1 and 5024/1 belong to them. The Defendant, which is the successor in law of Kilifi

Institute of Agriculture, is also claiming the same land.

93. The issues that this court has been called upon to determine is whether the suit property was allocated to the Plaintiffs; whether the Plaintiffs are entitled to the suit property and whether the Defendant is the owner of the suit property.
94. According to the evidence of the 1st Plaintiff, PW 1, and the then Town Clerk of Kilifi Town Council, PW2, the initiative to upgrade the informal settlements within Kilifi, that is Mtaani and Kisumu Ndogo, commenced in 1990 with the actors being the Ministry of Local Government, the Town Council of Kilifi, the Ministry of Lands and Settlement, the Provincial administration and the Residents of Mtaani and Kisumu Ndogo. The upgrading of the two informal settlements, otherwise known as Mtaani Kisumu Ndogo upgrading scheme, was funded by a German affiliated NGO known as the Germany Technical Corporation (GTZ).
95. To facilitate the upgrade of Mtaani and Kisumu Ndogo estates, three committees were established. The first one was the Residents Committee chaired by PW1. The second committee was the Task Force Committee chaired by the then Town Clerk, PW2, while the third one was known as

the Project Promotion Committee chaired by the Deputy Commissioner of Lands.

96. The role of the Residents Committee was to safeguard the interests of the Residents in Mtaani and Kisumu Ndogo informal settlement schemes during the implementation of the upgrading project. The Task Force Committee was to deal with the technical issues that were to arise during the upgrading of the two areas while the Project Promotion Committee was to deal with the issue of the allocation of the land within the upgraded scheme.
97. The implementation of the project involved preparation of the scheme plan for the two areas, picking of existing structures within the two areas, drawing up of plans to show the plots and the existing structures, open spaces, roads, streets and other public utilities.
98. The plan that was drawn showed that many structures in Mtaani and Kisumu Ndogo had been affected by roads, open spaces and overcrowded structures in one plot. In a nut shell, the available plots in the upgraded Mtaani and Kisumu Ndogo areas were fewer than the people who had settled there. According to the evidence of PW 1 and PW 2, the affected

people had to move out of the two informal settlements and the process to identify land to accommodate them started.

99. According to the evidence of PW1, the then Coast Provincial Commissioner instructed the then Kilifi District Commissioner to lead the process of identifying land for people who had been displaced from Mtaani and Kisumu Ndogo areas.

100. According to the evidence of PW1, the Residents Committee, in collaboration with the District Commissioner, identified the suit property which was reserved for the then Kilifi Institute of Agriculture, the predecessor of the Defendant and three public schools, as an ideal place to resettle the people displaced from Mtaani and Kisumu Ndogo. This was done sometimes in the year 1995.

101. It was the evidence of PW1 that after identifying the suit property, he approached the then principal of Kilifi Institute of Agriculture, DW 1, who showed him the area that the Plaintiffs would be allocated.

102. It was the evidence of PW1 that the area that he was shown by the Principal of the Institute, DW1, was part of 100 acres which was partly

being used by three schools, that is, Kibarani Primary School, Kibarani School for the Deaf and Kilifi Township Secondary School.

103. On his part, the then Principal of the Institute, DW1, denied that he ever agreed to have the land which was reserved for the Institute and the then three existing schools allocated to the Plaintiffs as alleged.
104. Having identified the ideal land for resettling the squatters who had missed out on plots in Mtaani Kisumu Ndogo estates, it was the evidence of PW1 and PW2 that the issue of formally applying for the land began in earnest.
105. The first letter that PW1 produced in evidence is dated 2nd April 1996 authored by himself, the chairman of the Residents Committee, and addressed to the District Commissioner. In the letter, PW1 was reminding the District Commissioner (DC) of the need to acquire land measuring about 33 acres so as to settle over 80 genuine people that had been displaced from Mtaani Kisumu Ndogo areas. The last paragraph of the said letter reads as follows:

“My hope therefore is for you to take immediate action and identify the site before things go out of hand and we lose the donor support for this

very important project in Kilifi.” (emphasis mine).

106. That letter was copied to the Provincial Commissioner, Coast Province and the Team Leader, GTZ.

107. The letter of 2nd April 1996 does not mention if indeed PW1 had met the Principal of Kilifi Institute of Agriculture or identified the suit property for the purpose of settling the over 80 squatters. Indeed, the letter clearly shows that as at 2nd April 1996, the Residents Committee or the District Commissioner had not identified land for the purpose of settling the displaced people.

108. The Plaintiffs produced in evidence a letter dated 25th October 1996 which was authored by the District Commissioner, Kilifi and addressed to then Minister for Agriculture. In the letter, the DC stated as follows:

“We would like to apply for the piece of land marked A in the sketch attached to assist us to solve the problem of upgrading of Mtaani and Kisumu Ndogo estate of Kilifi Town....”

109. On the face of the letter, it would appear that the then Minister of Agriculture received the letter and marked it to his Permanent Secretary

on 19th February, 1997 with the following comments.

“I know the project. I approve their request”.

110. The sketch which was supposedly attached on the letter dated 25th October 1996 was not annexed on the copy that the PW 1 produced in court. It is therefore not clear what or which portion of land was approved for allocation by the Minister for Agriculture on 19th February 1997.

111. On 9th May 1997, the then Town Clerk of Kilifi Town Council, PW 2, wrote a letter to the Permanent Secretary, Ministry of Agriculture and made reference to the letter I have referred to above. The penultimate paragraph of the letter by the Town Clerk to the PS, Ministry of Agriculture reads as follows:

“While we greatly appreciate the Minister's response towards our request we are yet to receive an official communication from your end which we shall forward to the Commissioner of Lands for formal allocation of the land subject of this matter.”

~~112. The letter by the Town Clerk confirmed that the Plaintiffs had not received official communication from the Ministry of Agriculture to have~~

its land allocated to the squatters who had been displaced from Mtaani and Kisumu Ndogo estates. The letter also confirmed that the Clerk was aware that even after the Ministry of Agriculture formally accedes to the allocation of its land, it is only the Ministry of Lands that could formally allocate to the Plaintiffs the land.

113. The letter by the Town Clerk to the PS was copied to the Minister of Agriculture, the D C and the Residents Committee.

114. It would appear that the Town Council of Kilifi wrote another letter dated 10th March 1998 to the PS, Ministry of Agriculture and copied it to the Commissioner of Lands over the issue of being allocated part of the land reserved for the Kilifi Institute of Agriculture.

115. I say so because by way of a letter dated 3rd April 1998 produced by PW1, the Commissioner of Lands sought the approval of the Ministry of Agriculture to have the suit property allocated to the Plaintiffs. The letter states as follows:-

“...In this regard, Kindly favour me with your comments and or recommendations in respect of the same as the land involved is part of Kilifi Institute of Agriculture.”

116. The Commissioner of Lands in that letter, just like the Town Council, appreciated the fact that the land in question was already reserved for the Kilifi Institute of Agriculture and could not be allocated without the approval of the parent Ministry.

117. Separately, the then Kilifi District Commissioner vide a letter dated 27th September, 1997 had made another request to the Permanent Secretary in the Ministry of Agriculture to have 12.5 acres of land belonging to the Institute allocated to the Jua Kali sector. It would appear that the PS, Ministry of Agriculture, was receiving quite a number of requests to have the Institute's land allocated to people and organisations. In his response of 4th November 1997 addressed to the D.C, the PS, Ministry of Agriculture wrote as follows:

".....It is therefore strongly suggested that the administration endeavours to seek alternative land sites for the project mentioned while assisting the Ministry of Agriculture in protecting the Institute's land from claims that may run counter to the intended national objectives for its establishment."

118. In the same letter, the PS made reference to the request that had been

made by the DC and the Town Council on behalf of the Plaintiffs as follows.

“This Ministry currently has a request from the Kilifi Town Council for some land from the same institution to supplement the GTZ settlement project. This issue we have discussed with you (*sic*) and I had indicated to you that since the land identified had been given to the schools, your DDC decides on whether it should go to the schools or to GTZ settlement programme.”

119. The schools referred to in the letter by the PS, Ministry of Agriculture were Kibarani Primary School, Kibarani School for the Deaf and Kilifi Township Secondary which had been allocated part of the land that had been acquired by the Government for the Defendant's predecessor's use.

120. The three schools had been allocated approximately 30 acres out of the 629 acres of land that had been acquired by the Government by partly compulsorily acquiring it and by buying the other part from Coastal Development Limited.

121. The evidence on record shows that the three schools were only allowed to utilize 30 acres of the entire land measuring approximately 623 acres

reserved for the then Kilifi Institute of Agriculture. DW1 produced in evidence a letter dated 18th September 1989 from the Office of the President, authored by the Permanent Secretary, Office of the President addressed to the Permanent Secretary, Ministry of Agriculture which stated as follows.

“It is agreed that Kilifi District Development Committee may go ahead with plans to excise thirty (30) acres of the Kilifi Institute of Agriculture land for utilization of twelve (12) and eighteen (18) acres by a primary school and an institute for disabled respectively....it has been noted that the remaining 570 acres will all be utilised by the institute of agriculture”.

122. The land which was reserved for use by the Institute, which was the Defendant's predecessor, was therefore approximately 570 acres while the two schools were only entitled to 30 acres, according to the letter of 18th September, 1989.

123. Indeed, the entire land that was acquired by the Government for the Institute was already surveyed although the title document had not been issued. According to the letter dated 22nd June 1995 by the then principal

of the Institute, DW 1, to the District Surveyor, the parcels of land belonging to the Institute had been registered as L.R. No. 9402/R, measuring 50.01 Ha, L.R. No. 5024/2 measuring 71.23 Ha and L.R. No.5024/1 and 5046/1 measuring 103.94 ha.

124. The land reserved for the Institute measuring a total of 256.62 Ha (approximately 649.05) was therefore identifiable by way of survey maps, the lack of a title notwithstanding.

125. The letter by the PS, Ministry of Agriculture dated 4th November 1997 and addressed to the DC, Kilifi district, which I have reproduced above, shows that the Ministry of Agriculture never conceded to the allocation of its land to the Plaintiffs.

126. It is also not true that DW1, the then Principal of the Defendant's predecessor, acceded to the allocation of part of the Institute's land to the Plaintiffs as alleged by PW1 and PW 2. I have arrived at this conclusion based on the oral evidence of DW1 and the letter dated 17th April 1997 authored by DW1 and addressed to the PS, Ministry of Agriculture. In the letter, DW1 stated as follows:

"Recently the Kilifi Town Council applied for allocation of 30 acres of land to settle squatters under the GTZ sponsored programme.....after keen study and observation of the on goings, the Kilifi Town council is not sincere on the purpose of the project and is only using GTZ as a cover. The actual truth of the matter is that individual needs (greed) for plot allocation is more than community consideration. The office of the physical planning is very much concerned that if such allocation is allowed, then a disturbing slum of structures will spring up next to such elite surrounding institutions like the Kilifi Institute of Agriculture, Kilifi Secondary and others. This will not conform well to the environmental harmony expected in Town Planning. Already, a strange sketch has been drawn from unknown sources and is widely circulating in Town perhaps with ulterior motive."

127. The other reasons that made the Principal, DW 1, to strongly oppose the allocation of the land that the Plaintiffs had applied for, according to his letter of 17th April, 1997, were as follows:

- (a) Part of the area applied for had earlier been officially excised from the Institute's farm land and allocated to the existing

neighbouring institutions.

(b) The area had been fenced off for the purpose of grazing and browsing of the Institutes livestock.

(c) The institute needed space for the staff housing.

128. PW1 informed the court that they disowned the Part Development Plan dated 23rd November 1998 which he produced in evidence because the land they had applied for was reduced by 20 acres by people who wanted to grab the 20 acres.

129. It was the evidence of PW1 that pursuant to the said PDP, two letters of allotment were issued, one to himself and the other one to the 2nd Plaintiff. However, according to PW 2, they informed the Commissioner of Lands to stop the issuance of the other letters of allotment because a proper and valid PDP had to be drawn first.

130. It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for lands before any unalienated Government land could be allocated. After a Part Development Plan (PDP) has been

drawn, a letter of allotment based on the approved PDP is then issued to the allottees.

131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a certificate of lease. This procedural requirement was confirmed by the surveyor, PW3. The process was also reinstated in the case of **African Line Transport Co. Ltd Vs The Hon .AG, Mombasa HCCC No.276 of 2013** where Njagi J held as follows:

“Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot.”

132. A part development plan (PDP) can only be prepared in respect to Government land that has not been alienated or surveyed. As I have stated above, the land that the Plaintiffs had applied for was already surveyed, having been acquired by the Government from juristic persons

and reserved for the Kilifi Institute of Agriculture and three other schools.

133. Indeed, it was with the realization that the land in question had been reserved for public use that the Plaintiffs, through the District Commissioner, the Town Council and the Commissioner of Lands did seek in writing for the consent of the Ministry of Agriculture to have the suit property allocated to the Plaintiffs.

134. It was also with the realization that the suit property had been reserved for public use that the Director of Physical Planning informed the then Commissioner of Lands vide a letter dated 20th September 2002 of the cancellation of the PDP that had been prepared in respect to the suit property. The Director of Physical Planning stated as follows:

“At the time the Part Development Plan was presented to me, I was assured that the site was falling within Government land and I assumed that your office was aware of the request by the applicants.....i have since discovered that this particular site forms part of land owned by the Agriculture Institute, Kilifi and I wish to officially withdraw the said Part Development Plan...You should

therefore consider the same as cancelled.”

135. In a nut shell, the Director of Physical Planning confirmed that the land in question was not unalienated Government land and was not therefore available for alienation.

136. The cancellation of the PDP in respect to the land that had been allocated to the Plaintiffs was further confirmed by the Kilifi District Physical Planning Officer's letter dated 27th May 2005 and addressed to the District Commissioner and the Principal of Kilifi Institute of Agriculture.

137. The District Commissioner also abandoned his earlier pursuit to have the suit property issued to the Plaintiff vide his letter dated 13th May, 2005 addressed to the Residents Committee in which he stated as follows:

“ I have information that you have illegally encroached on Kilifi Institute land...You are asked to stop further development and vacate the land immediately or else legal action will be taken against you.”

138. On 10th April 2006, a letter of allotment was issued to the Permanent Secretary, Treasury, in respect to the suit in favour of Kilifi Institute of

Agriculture for an area of 239 Ha (approximately 597.5 acres). The letter of allotment was issued on the basis of the already existing survey plans considering that the land was initially private land before it was compulsorily acquired by the Government and handed over to the Institute and the three public schools. The Defendant's predecessor paid the requisite fees of Kshs.3,600 for the said letter of allotment.

139. Vide a letter dated 30th November 2007, the Commissioner of Lands confirmed that indeed the 239 hectares belonged to the Kilifi Institute of Agriculture.

140. To prove that they are entitled to the suit property, the Plaintiffs produced in evidence the Minutes of the Town Council of Kilifi. The Minutes shows that the Council resolved that the Ministry of Lands & Housing should nullify the allocation of the land it had earlier made contrary to the list of the chairman of the Residents Committee and that the Commissioner of Lands be requested to issue fresh letters of allotment to the rightful owners whose houses were affected during the upgrading of Mtaani/Kisumu Ndogo.

141. The Minutes from the Council resolving that the people on the list

prepared by the Mtaani/Kisumu Ndogo Residents Committee should be allocated the suit property is inconsequential in law because the land in question was not Trust land as defined under the repealed Constitution and the Trust Land Act. The Council did not therefore have the legal mandate to dictate to the Commissioner of Lands on how and to whom he should allocate the suit property, considering that the suit property is Government land.

142. A draft PDP for the proposed extension of Mtaani Kisumu Ndogo dated 5th March 1997 together with a list of 308 beneficiaries, who are the Plaintiffs in this case, was produced by the Plaintiffs in this court.
143. The draft PDP has no evidential value considering that it does not have a PDP number and the same was never approved. Its origin is unknown and it was neither authenticated by the District Physical Planner nor by the Director of Physical Planning. Indeed, not a single letter of allotment was issued by the Commissioner of Lands to the Plaintiffs pursuant to the said PDP.

144. As I have already indicated above, land reserved for public institutions or for any other public purpose cannot be said to be unalienated

Government land as defined under the repealed Government Lands Act and the Physical Planning Act.

145. Evidence has been placed before this court to show that the Government acquired the suit property by purchasing part of it from the Coast Development Company and by acquiring another portion compulsorily. The entire land, which was already surveyed, was then allocated to the Kilifi Institute for Agriculture for educational purpose. Later on, 30 acres of this land was hived off and allocated to three other public schools for public purpose.

146. The reasons for the acquisition of the land in dispute by the Government is captured in the letter dated 4th November 1997 by the then PS in the Ministry of Agriculture as follows:

“Agricultural Training at the certificate level is an operation that requires a critical mass of farm land to ensure effective theoretical and practical teaching. It may be remembered that when it was decided to locate the Training facility at Kilifi, the Government farm available at Kibarani then, was considered to be inadequate. It was thus found necessary for the ministry to purchase an additional land

from Mr. Keen to increase the acreage that would be ideal as a teaching tool for the intended students capacity of 400.....As a coordinator of the Government development programmer in your district, it will me more prudent for you to strengthen the already established institution and develop others, rather than destroy or mutilate the current established one and replace them with new ones. This, in itself, may not be development.”

147. The former Kilifi Institute of Agriculture is now a fully-fledged university, pursuant to legal notice number 164 of 23rd August, 2007. How can it be said that they do not require the entire land that was previously reserved for the Institute when the population of the students and the number of courses being offered has increased? The Defendant indeed requires more land considering that it does not only now offer agricultural courses but other disciplines too.

148. Even if the Defendant does not utilize the entire land previously reserved for Kilifi Institute of Agriculture, the law provides that the Commissioner of Lands, under the repealed Government Lands Act, could not allocate Government land reserved for public purpose to individuals for their private use.

149. Section 3 of the repealed Government Lands Act, which is the applicable law in this case, provides that the President may, subject to any other law, make grants and dispositions of any estates, interests or rights in or over unalienated Government land.

150. Section 9 of the same Act provides that the Commissioner of Lands may cause any portion of a township which is not required for public purpose to be divided into plots and may be disposed of in the prescribed manner.

151. The above two sections clearly shows that land reserved for public purpose cannot be allocated to individuals. This position has been reinstated at Article 62 (1) (b) of the Constitution. The Article has defined "public land" to include land lawfully held, used or occupied by any State organ. Such land cannot be disposed of or otherwise used except in terms of an Act of Parliament.

152. The issue of land which has been set aside for public purpose not been available for allocation by the President or the Commissioner of Lands has been up held in numerous decisions.

153. In the case of **Lalitchandra Dugarshankar Padya & Another Vs**

Saled Awale & Another, Mombasa HCCC No. 87 of 2001, Justice Maraga , as he was then held as follows:

“ I am also satisfied and I find that at all material times the suit piece of land was to the knowledge of the Plaintiffs as it is clear from the letters EX 25 and 26, public land vested in the second Defendant (Kenya Railways) for its use as a marshaling yard. At no time did the second defendant surrender it to the Government. It was therefore by virtue of section 9 of the Government Land Act, not available for allocation by the Commissioner of Lands. Its allocation to the people who later transferred it to the Plaintiffs was therefore null and void.”

154. In **African line transport Co. Ltd Vs the AG, Mombasa HCCC No. 276 of 2003**, Njagi J. held as follows:

“Finally, there is nothing on record to suggest that the site was ever surrendered back to the Government. Having been allotted to the NYS as a public utility, there was nothing left to be re-allocated to Mr. Omari and the subsequent grant to him was therefore irregular.”

155. In the case of **H.H. DR. Syedna Mohammed Burhennuddin Saheb & Others Vs Benja Properties Ltd, Nairobi HCCC NO. 73 of 2000**,

Visram J, as he was then, held as follows;

“In any event the letter of allotment purchased by the Defendant had expired, and was subject to a disclaimer. In any event, that letter was worthless because it purported to allot land under the Government Land Act that was not available for allotment.”

156. In **James Joram Nyaga & another Vs The AG and Others**, Nyamu J, as he was then, and Wendo J held as follow:

“We therefore hold that the suit land having been acquired for public purpose, that is construction of road, is held in trust of the public and could not have been allocated to the Applicants who are private individuals for their private use.”

157. While discussing the concept of public trust and public interest, Nyamu J, as he was then, in the case of **Kenya Guards Allied Workers Union Vs Security Guards Services & 38 Others Nairobi HC Misc 1159 of 2003**, stated as follows;

“How for instance are the courts going to deal with the land grabbers who stare at your face and wave to you a title of the grabbed land and loudly plead the principle of the indefeasibility of title. Are the

courts going to stay away and refuse to rise to the greater call of unraveling the indefeasibility by holding that such a title perhaps issued in order to grab a public plot such as a hospital by an individual violates the public or national interest and therefore a violation of the constitution. I venture to suggest that such titles ought to be nullified on this ground and thrown into the dustbins”.

158. I am in agreement with the sentiments of the Judges in the above cases.

159. The Plaintiffs, as acknowledged by PW1, PW2 and PW3, were aware that the land in question was reserved by the Defendant's predecessor and three other public schools. Indeed, they did apply for the consent of the Defendant's predecessor to be allocated the said land but that consent was never given. The Commissioner for Lands also asked for the consent of the Defendant's predecessor to allow him to allocate to the Plaintiffs the suit property which consent was also denied.

160. No evidence was placed before me to show that the Commissioner of Lands allocated the said land to the Plaintiffs, which would have been illegal in any event.

161. The PDP that was prepared in respect to part of the land that the

Plaintiffs were claiming was rightfully cancelled by the Director of Surveys. With the cancellation of the PDP, the two letters of allotments dated 8th august 2002 in the name of Nelson K. Chai, the 1st Plaintiff, for a plot measuring 0.2 ha and the other one in the name of Lawrence Gohu, the 2nd Plaintiff, of the same date and acreage cannot stand. In any event, the said two letters of allotment lapsed after 30 days from the date of issuance because the said two individuals did not pay the requisite fees.

162. I agree with the sentiments expressed by the Principal of Kilifi Institute of Agriculture, DW 1, in his letter dated 17th April, 1997 that the Kilifi Town Council was not sincere, together with the Residents committee, when they applied to be allocated the Defendant's land.

163. I say so because although the Plaintiffs claim that they were displaced from Mtaani and Kisumu Ndogo informal settlements, no evidence was placed before me to indicate that an exercise was conducted either by the GTZ or the Town Council to ascertain the number of the people or households that were staying in the two estates before the upgrading project commenced.

164. There is also no empirical evidence to show the exact number of the people within the two estates who were displaced due to the re-planning and upgrading of the two estates.

165. The practical thing that should have happened during the so called upgrading scheme in the two estates was to ascertain the number of the people that were going to be affected before proceeding any further with the project. It was only after establishing where the people who were to be displaced would be re-located to that such an exercise should have commenced.

166. The insincerity in the Plaintiffs' claim to be settled on land reserved for the Defendant and the three other public schools is further shown by the fact that initially, it was said that approximately 80 people had been displaced from Mtaani/Kisumu Ndogo estates. However, that number, without any plausible explanation, swelled to 308.

167. Some of the people in the list of the claimants share identity card numbers thus compromising the authenticity of the claimants.

168. What is even more intriguing about the list of the 308 Plaintiffs, who are

said to have been displaced from Mtaani and Kisumu Ndogo informal settlements, is that one of them is the then Town clerk, PW 2, who was on the fore front, on behalf of the Town Council of Kilifi, in pushing for the allocation of the Defendant's land to the Plaintiffs.

169. The said former Town Clerk testified in this court as PW2. When asked why he was on the list of the people that were meant to be allocated the Defendant's land, he stated that he was amongst the people who were displaced from the two informal settlement schemes!

170. That in my view cannot be true. The fact that then Town Clerk, PW2, was also supposed to benefit from the allocation of the suit property shows that the interests of the Plaintiffs to be allocated the suit property was more than resettling people who are said to have been displaced from Mtaani and Kisumu Ndogo estates.

171. If the Town Council indeed wanted to settle genuine people who had been displaced, the Council, in consultation with the national Government, should have set apart Trust land pursuant to the provisions of sections 117 and 118 of the repealed Constitution to resettle such people and not to encourage the Plaintiffs to encroach on land reserved for public

purpose.

172. The Plaintiffs in this matter informed the court that they took possession of the property in 1995 even before applying for it. That, if it is true, can only amount to an act of trespass on the Defendant's land or Government land.

173. It does not matter whether the land in question was or was not alienated Government land. However genuine the Plaintiffs' plight was, they could not occupy the suit property before the mechanism of allocating to them the land had been followed and the letters of allotment issued to them. Any other mode of possession or occupation of land, be it Government or private land can only amount to an act of lawlessness and hooliganism and should be frowned upon by the court.

174. What is more disturbing in this case is that the Plaintiffs, even before being formally allocated with the suit property, engaged a private surveyor who carried out survey work, subdivided the land and started developing their respective plots.

175. This in my view was an ill-advised move by the Plaintiffs and they shall

suffer the consequences of their actions considering that the land in question was not available to them in the first place. It is inconsequential, although sad, that the Residents Committee collected money from the Plaintiffs to subdivide the suit property and that the Plaintiffs have heavily invested in the development of the land.

176. In a recent decision that was delivered on 19th June 2014 in **Mombasa Technical & Training Institute Vs Agnes Nyevu Charo & 106 others, Mombasa Civil Appeal Number 282 of 2010**, the Court of Appeal held as follows.

“Regardless of the length of time the respondents remained on the suit property, their status remained that of illegal squatters. In considering the legitimacy of the respondents’ expectation, we cannot fail to take note of the fact that the issue of land and squatters in this country is a sensitive and emotive issue in view of the number of people who are landless. To create a precedent that a legitimate expectation for allocation of Government land can arise out of an occupation declared illegal by statute would be opening a pandoras box which would compound the problem of land by encouraging squatters invasion of Government land. Further, it would be

tantamount to introducing the doctrine of adverse possession in Government land. This would be inimical to the public policy of maintaining law and order.... Finally it is not lost on us that the allocation of the suit property to the appellant was an allocation for public purposes to wit a public school/college. In the circumstances, we come to the conclusion that the process resulting to the decision of the 108th Respondent to allocate the suit property to the appellant cannot be faulted....”

177. I am bound by the above decision. Indeed, the sentiments by the Court of Appeal in the above decision apply in this case, word for word. The Defendant and its predecessor, together with Kibarani Primary School and Kibarani school for the deaf were set up by the Government for public purpose. The suit property was set aside for them and a letter of allotment has since been issued to the Defendant in respect to the suit property. This court cannot fault the Commissioner of Lands for issuing to the Defendant a letter of allotment for the entire land.

178. Where land has been reserved for public purpose, like in this case, any allocation of such land to private persons cannot be recognised by the court. Public interest in land will always outweigh an individual's right

to own the same property. It therefore does not matter that the Plaintiffs had a legitimate expectation to be allocated the suit property.

179. Even if it was to be argued that the suit property is unalienated Government land, which is not the position, any attempt by this court to allow the Plaintiffs to own the suit property would be an usurpation of the powers conferred to the President and the Commissioner of Lands under the repealed Government Lands Act and the National Land Commission under the current Constitution. That was the position that was taken by the **Court of Appeal in the case of Emfil Limited Vs The Registrar of Titles Mombasa & others, Mombasa Civil Appeal Number 312 of 2012** and in the **Mombasa Technical & Training Institute case (*supra*)**.

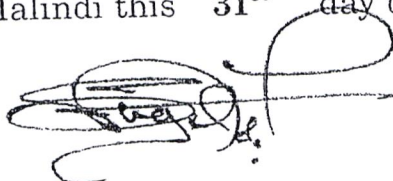
180. In the circumstances, I find that the Plaintiffs have not proved their case on a balance of probabilities. On the other hand, the Defendants have proved its case.

181. For the reasons I have given above, I dismiss the Plaintiffs Plaint dated ~~22nd July 2009~~ with costs and allow the Defendant's counterclaim dated

15th October 2010 in the following terms.

- (a) The 308 Plaintiffs and any other trespassers in occupation of the Defendant's land being L.R. No.5046/1, 5024/1, 5024/2 5046/2 and 5046/5 be and are hereby evicted.
- (b) A permanent mandatory injunction be and is hereby issued restraining the 308 Plaintiffs or any other person acting under them from continuing being in occupation and or trespassing on the Defendant's land mentioned above either by themselves, their agents, servants, and or any person(s) drawing title from them.
- (c) The Plaintiffs to pay to the Defendant the costs of the Counter claim.

Dated and delivered in Malindi this 31st day of October, 2014.



O. A. Angote

Judge

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC CIVIL CASE NO. 70 OF 2009

NELSON KAZUNGU CHAI.....	1 ST PLAINTIFF
LAWRENCE KAZANI GOHU.....	2 ND PLAINTIFF
WYCLIFFE TEMBO MWANGOMBE.....	3 RD PLAINTIFF
SAID HASSAN HEMED.....	4 TH PLAINTIFF
IBRAHIM ABDI.....	5 TH PLAINTIFF
FESTUS MWARERE LENGA.....	6 TH PLAINTIFF
KENGA KILUMO CHARI.....	7 TH PLAINTIFF
LEONNOX MKUTANO NGALA.....	8 TH PLAINTIFF
SHADRACK NDHULI.....	9 TH PLAINTIFF
PRUDENCE MAPENZI MWANGORI.....	10 TH PLAINTIFF

VERSUS

PWANI UNIVERSITYDEFENDANT

DECREE

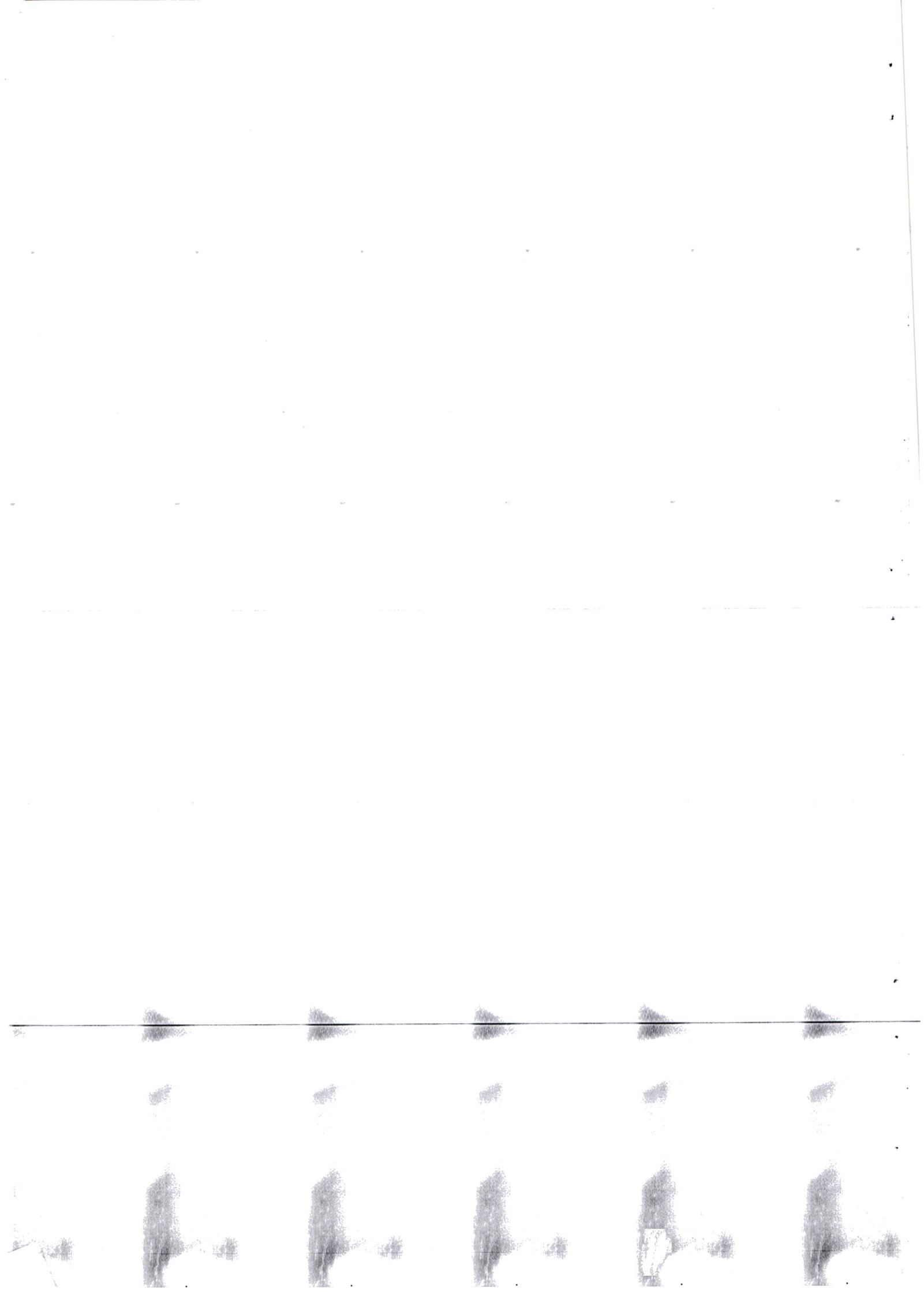
CLAIM FOR:-

1. An order of Permanent injunction restraining the Defendant by itself, its agents, servants or through other person from fencing, occupying, taking possession or interfering in any manner with the Plaintiffs use, possession and occupation of parts of land known as LR NO 5046/1 and 5024/1 Kihifi occupied by the Plaintiffs.
2. General damages for trespass and wrongful interference with property.
3. A declaration that parts of land parcels known as LR NO 5046/1 and 5024/1 occupied by the Plaintiffs belong to the Plaintiffs
4. Costs of the suit.

This suit coming up for hearing on 5.12.2012, 20.2.2013, 23.5.2013, 19.12.2013, 10.6.2013, 25.3.2014 and 8.9.2014 and for judgment on 31.10.2014 before Hon. Justice O.A. Angote and UPON HEARING counsel for the Plaintiffs and counsel for the Defendant,

IT IS HEREBY ORDERED:-

1. The Plaintiffs' Plaint dated 22nd July, 2009 is hereby dismissed with costs.
2. The Defendant's Counterclaim dated 15th October 2010 is allowed in the following terms:

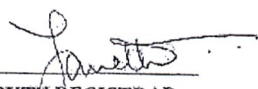


- a) The 308 Plaintiffs and any other trespassers in occupation of the Defendant's land being LR NO. 5046/1, 5024/1, 5024/2, 5046/2 and 5046/5 be and is hereby evicted.
- b) A permanent mandatory injunction be and is hereby issued restraining the 308 Plaintiffs or any other person acting under them from continuing being in occupation and/or trespassing on the Defendants land mentioned above either by themselves, their agents, servants, and or any person(s) drawing title from them.
- c) The Plaintiffs to pay to the Defendant the costs of the Counterclaim.

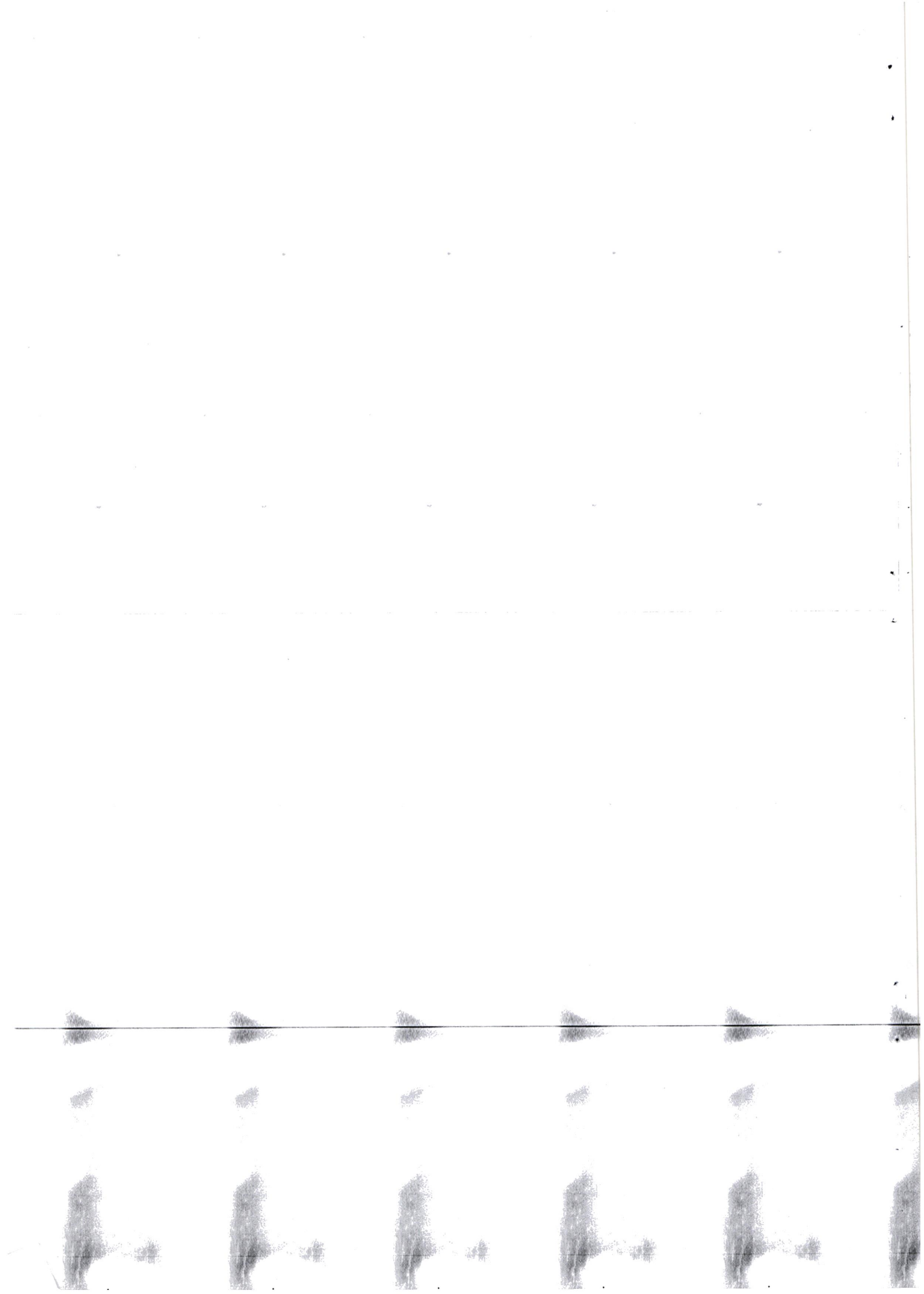
GIVEN under my hand and seal of the Court at Mombasa this 31st day October, 2014.

ISSUED at MALINDI 9th day of December 2014.




DEPUTY REGISTRAR
HIGH COURT OF KENYA, MOMBASA

DEPUTY REGISTRAR
HIGH COURT OF KENYA
MALINDI



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELC CIVIL CASE NO. 70 OF 2009

NELSON KAZUNGU CHAI 1ST PLAINTIFF
LAWRENCE KAZANI GOHU 2ND PLAINTIFF
WYCLIFFE TEMBO MWANGOMBE 3RD PLAINTIFF
SAID HASSAN HEMED 4TH PLAINTIFF
IBRAHIM ABDI 5TH PLAINTIFF
FESTUS MWARERU LENGA 6TH PLAINTIFF
KENGA KIEUMO CHARI 7TH PLAINTIFF
IFONNOX MKUTANO NGALA 8TH PLAINTIFF
SHADRACK NDHUTHI 9TH PLAINTIFF
PRUDENCE MAPENZI MWANGORI 10TH PLAINTIFF

VERSUS:

PWANI UNIVERSITY DEFENDANT

DECREE

CLAIM FOR:-

1. An order of permanent injunction restraining the Defendant by itself, its agents, servants or through other person from fencing, occupying, taking possession or interfering in any manner with the Plaintiffs use, possession and occupation of parts of land known as LR No 5046/1 and 5024/1 and 5024/1 and 5024/1 occupied by the Plaintiffs.
2. General damages for trespass and wrongful interference with property.
3. A declaration that parts of land parcels known as LR No 5046/1 and 5024/1 occupied by the Plaintiffs belong to the Plaintiffs.
4. Costs of the suit.

This suit coming up for hearing on 5.12.2012, 20.2.2013, 23.5.2013, 19.12.2013, 10.6.2013, 25.3.2014 and 8.9.2014 and for judgment on 31.10.2014 before Hon. Justice O.A. Adigole and UPON HEARING counsel of Plaintiffs and counsel for the Defendant.

IT IS HEREBY ORDERED:-

1. The Plaintiffs' Plea filed dated 22nd July, 2009 is hereby dismissed with costs.
2. The Defendant's Counterclaim dated 15th October 2010 is allowed in the following terms:
 - a. The 308 Plaintiffs and any other trespassers in occupation of the Defendant's land being LR No. 5046/1, 5024/1, 5024/2, 5046/2 and 5046/5 be and is hereby evicted.
 - b. A permanent mandatory injunction be and is hereby issued restraining the 308 Plaintiffs or any other person acting under them from continuing being in occupation and/or trespassing on the Defendant's land mentioned above either by themselves, their agents, servants and/or any person(s) drawing title from them.
 - c. The Plaintiffs to pay to the Defendant the cost of the Counterclaim.

GIVEN under my hand and seal of the Court at Mombasa this 31st Day October, 2014.

ISSUED at Malindi, 9th day of December, 2014



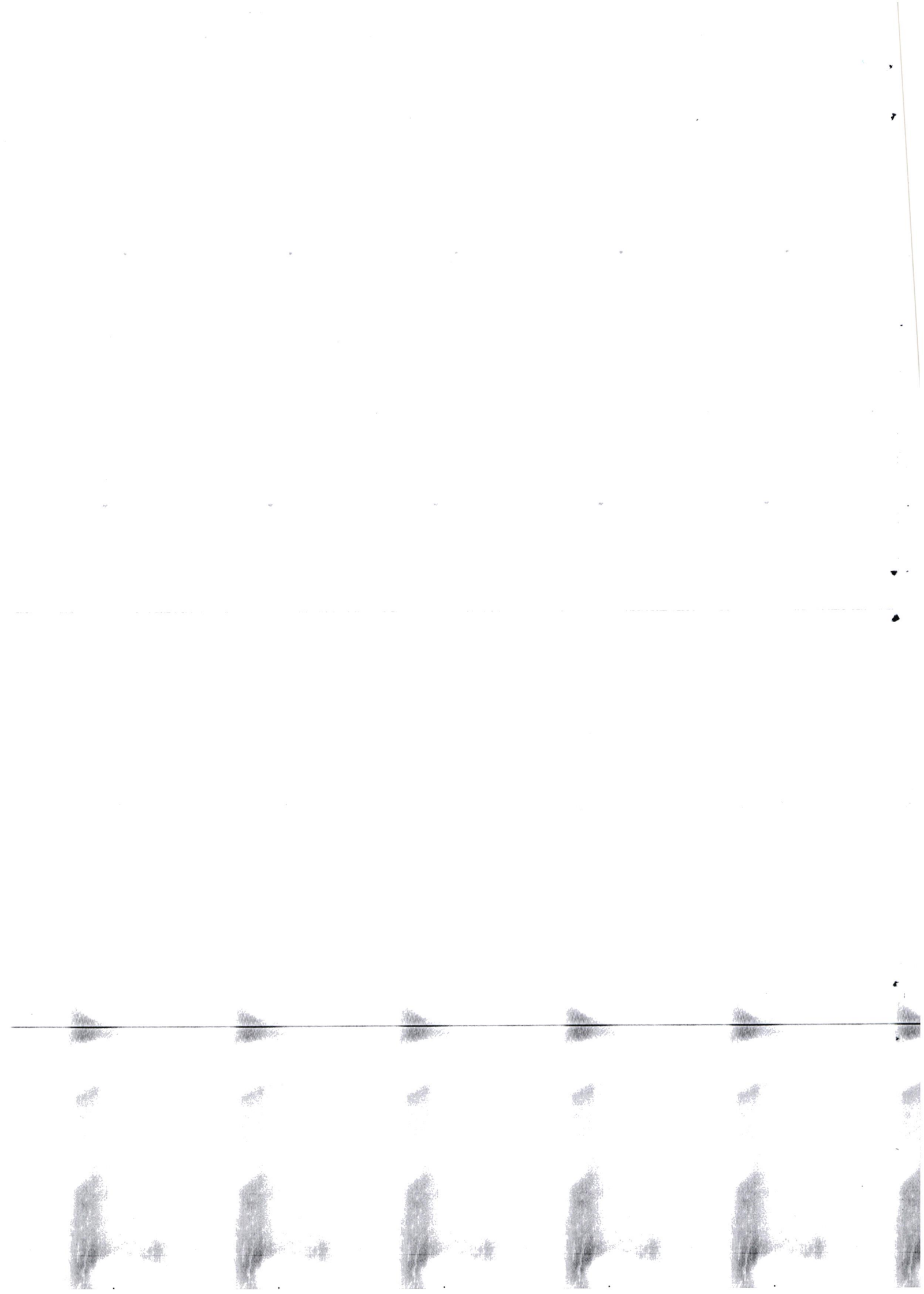
DEPUTY REGISTRAR
HIGH COURT OF KENYA, MOMBASA

DEPUTY REGISTRAR
HIGH COURT OF KENYA
MALINDI



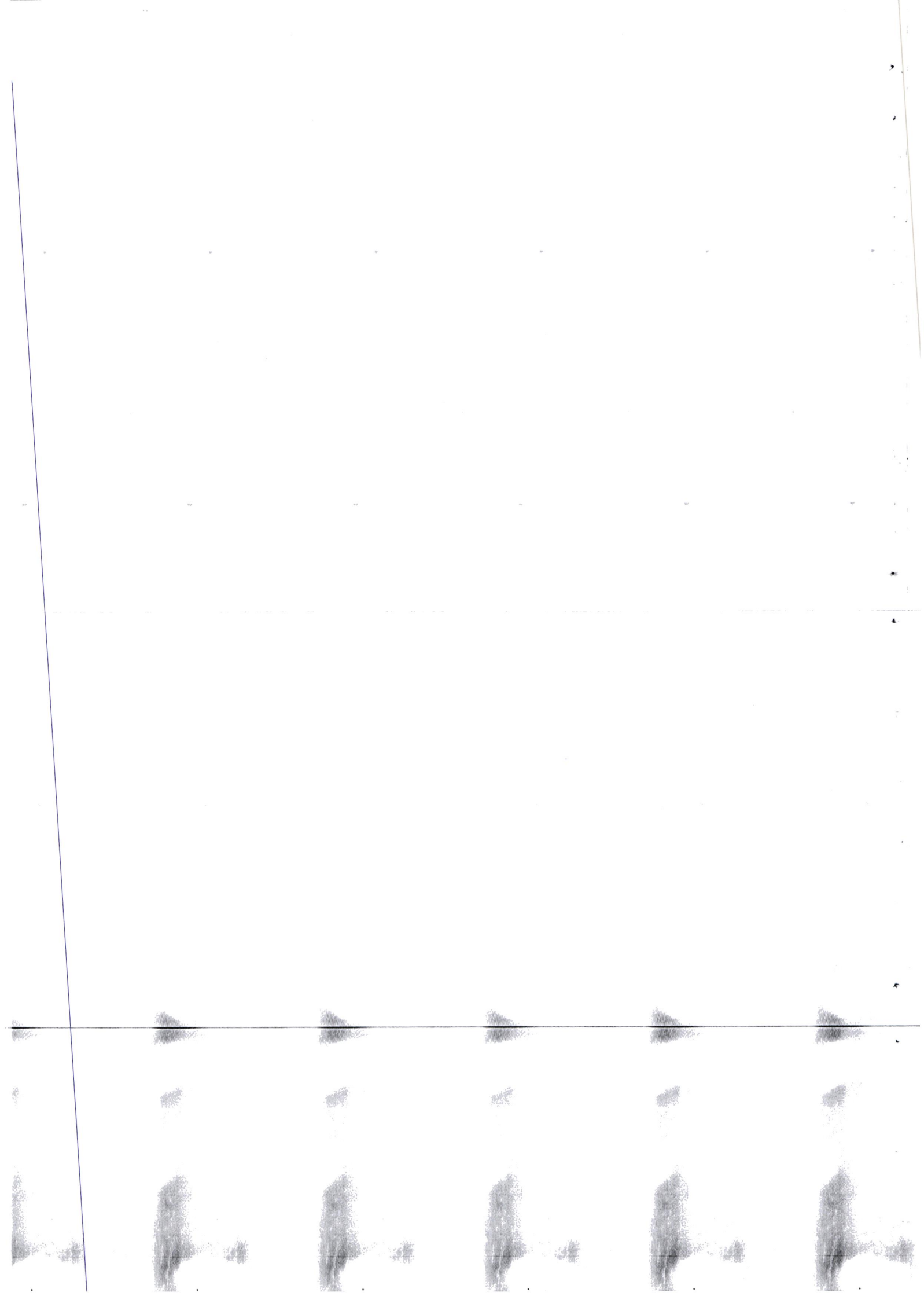
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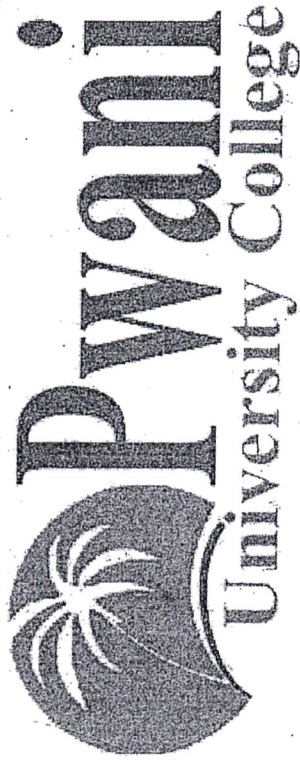
The Nation Media Group



DOCUMENT G

**COPIES OF SOME PAGES OF PWANI
UNIVERSITY MASTER PLAN 2010-2020**

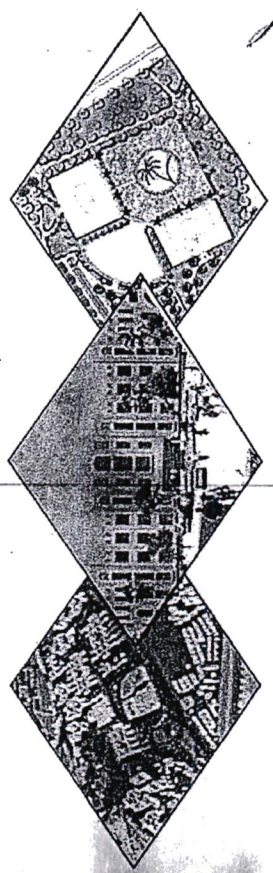




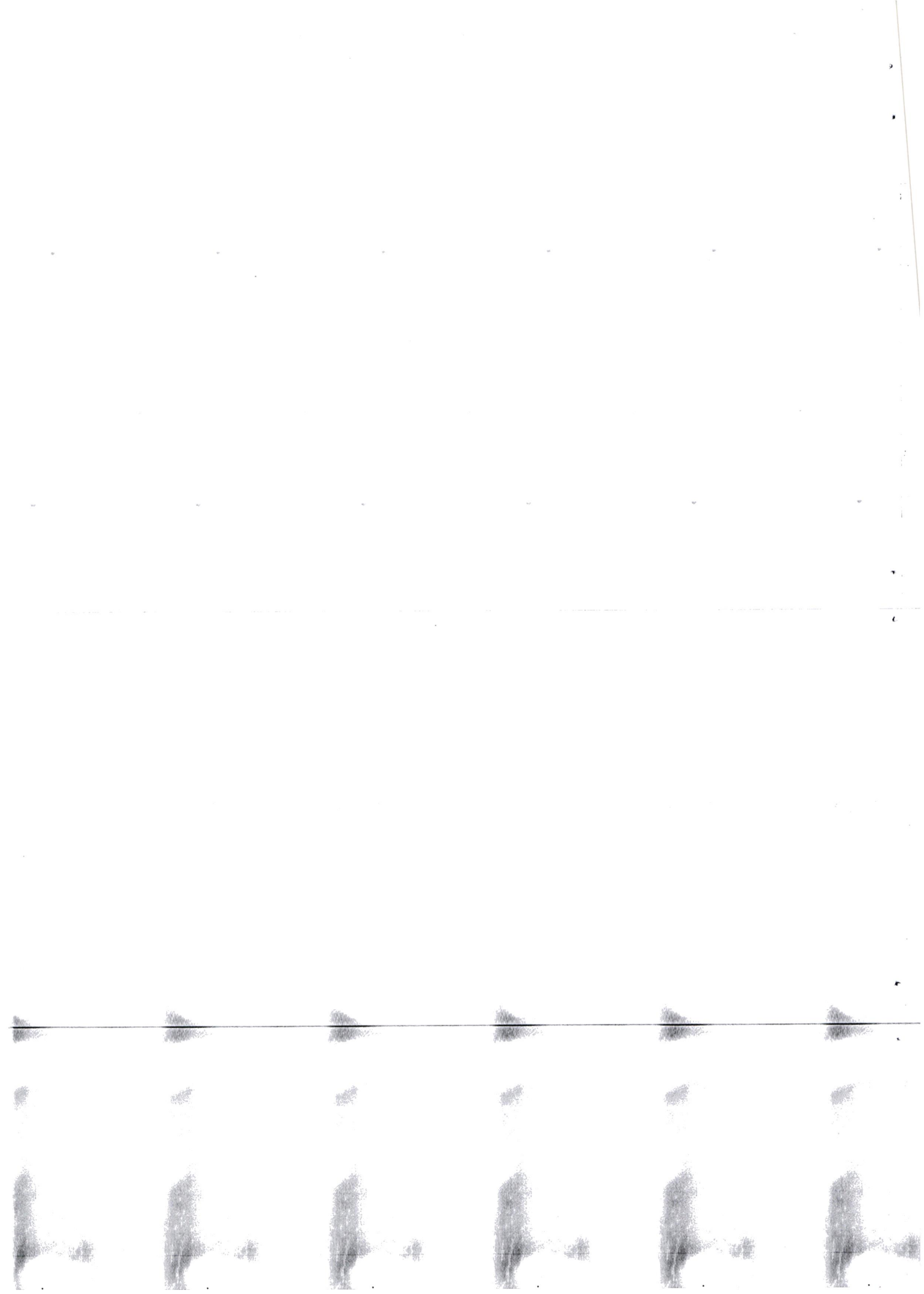
MASTER PLAN 2010-2020

www.pwaniuniversity.ac.ke
info@pwaniuniversity.ac.ke

Submitted to Pwani University Reference Team in December, 2011



M. Njoroge
C.O.M



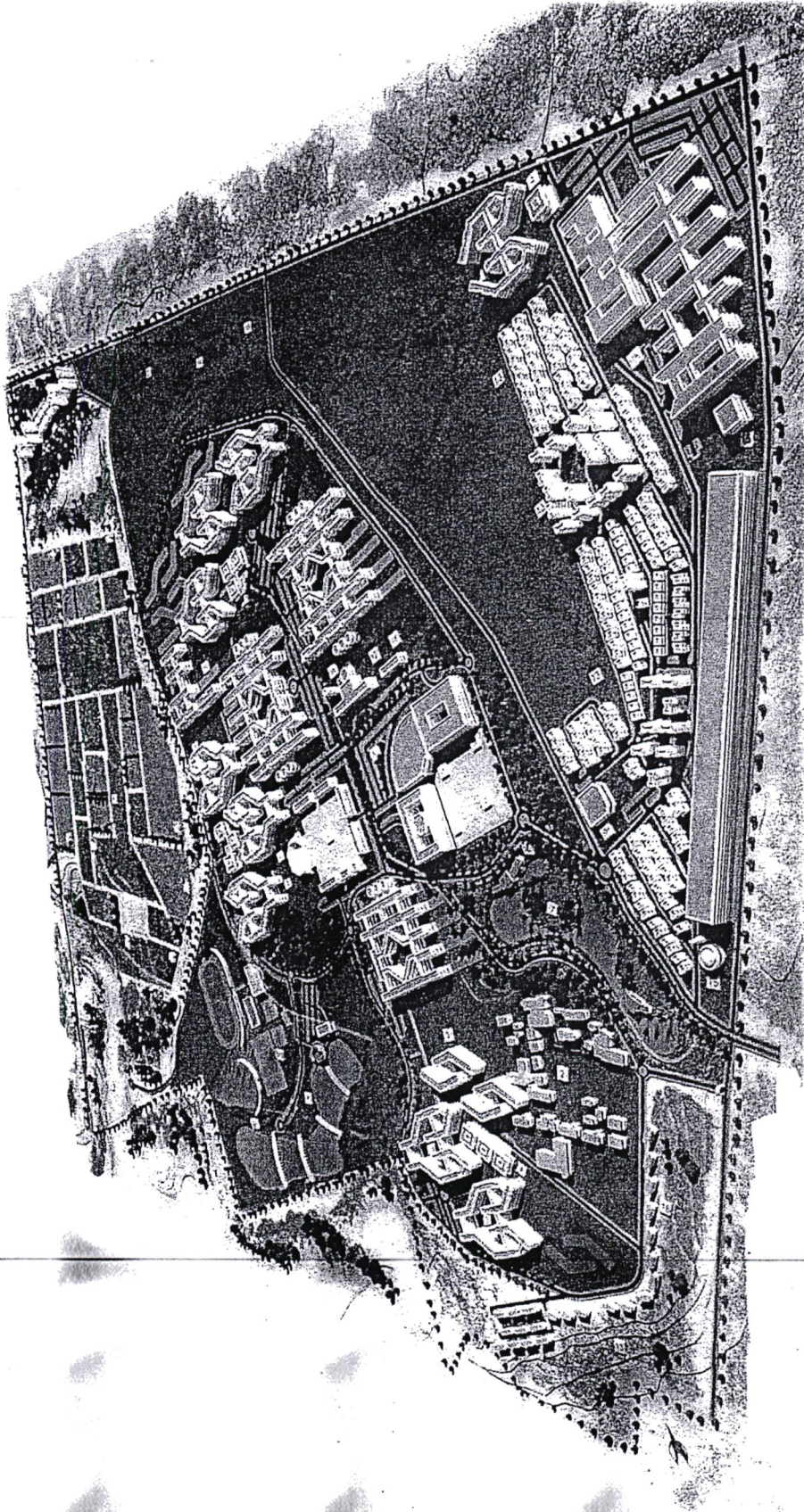
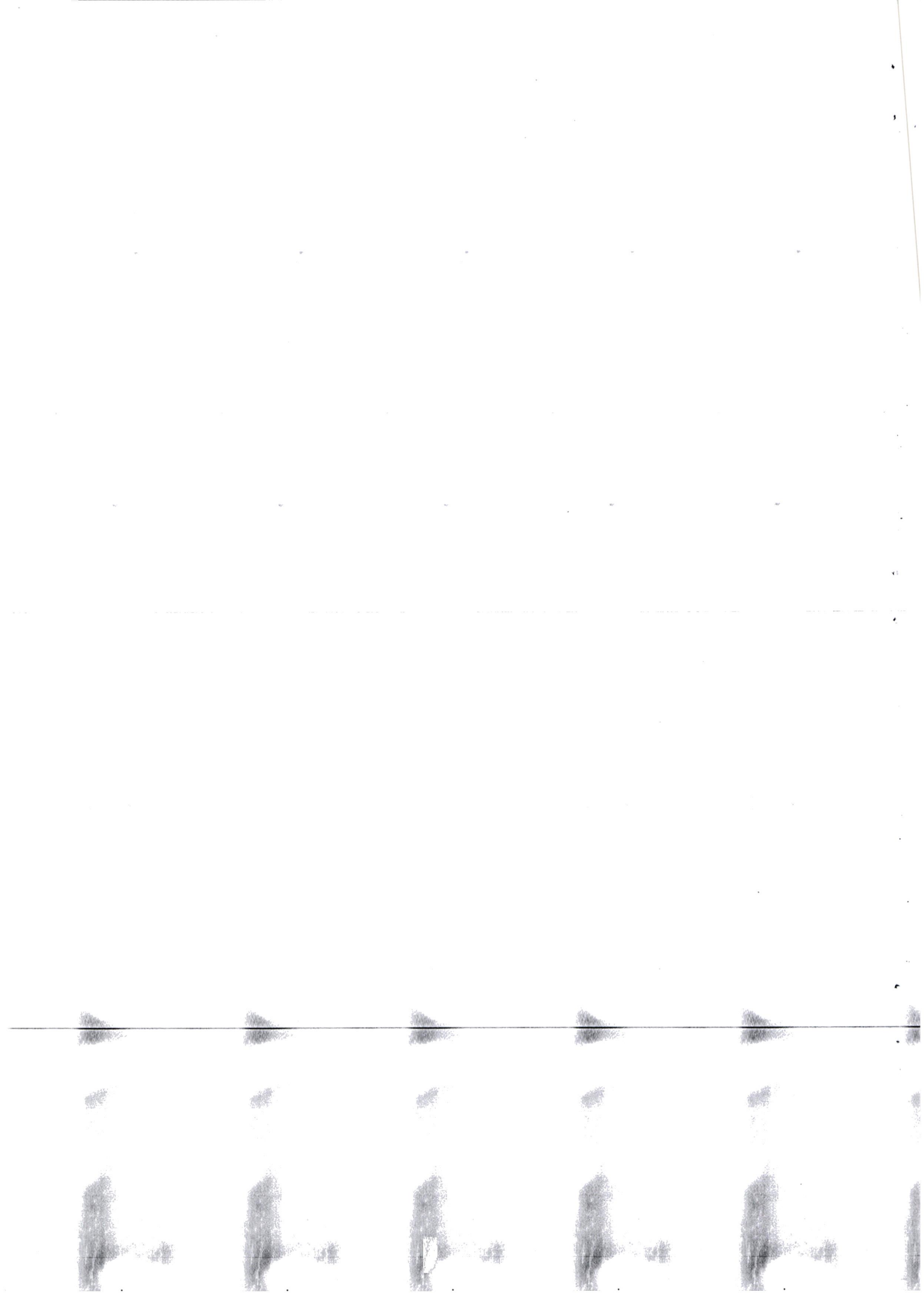


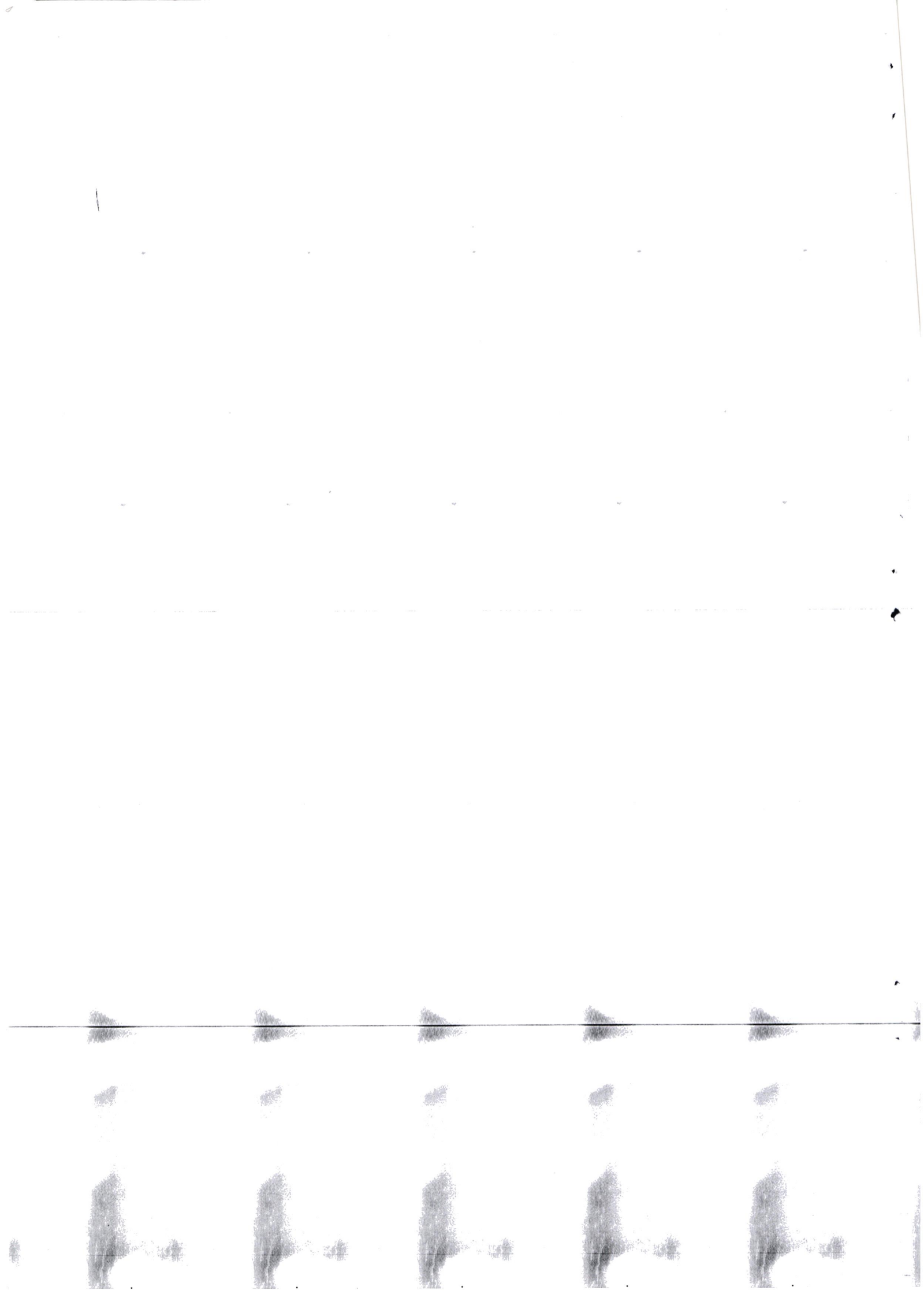
Fig 4.19: 3-D modeling of the Master Plan, An aerial view from the South East, showing the main entrance to the institution from Mombasa Malindi Highway

4.5 CONCLUSION

We have presented and discussed the proposed character and facilities of the University at the many formal committee meetings held at the University. Most members agreed that this is what they wanted their University to be: that the University's prime reason is furthering knowledge through research and study and the teaching of young people to be useful and prepared members of society, but it was also agreed that there is much more to a University than just that, and we have strived that this Master Plan has included spaces, buildings and a character where all these additional benefits of University life can be easily realized.

We thank the University for allowing these discussions and thank our team of Consultants who participated in the details of the Master Plan, which will contribute to the growth, and development of Pwani University.





8.4 PHASE III IMPLEMENTATION

The balance of facilities, services and infrastructure development during Phase III would allow the University achieve full implementation as envisaged by 2020 (Layout 8.1). Development during this phase would include:-

- i. The Hospital
- ii. The Medical School
- iii. One Cluster of Student Hostels as well as Kitchen and Dining Facilities for this School
- iv. Balance of University Staff Housing
- v. Senior Staff Club
- vi. Religious Buildings – Church and Mosque
- vii. Commercial Developments along Mombasa - Malindi Highway
- viii. The University Science Technology Park
- ix. Subordinate Staff Housing.

8.4.1 ROAD WORKS

The balance of ring-roads, link and service roads, as well as parking areas would be concluded during this phase of development. All the remaining gates will also be put up during this stage of development (Layout 8.12).

8.4.2 WATER SERVICES.

The last ring mains to allow for reticulation of water into this phase will be set out as highlighted on the pages overleaf (Layout 8.13).

8.4.3 SEWERAGE WORKS.

During this phase of development, pumping station 2 and the full development of pumping station 1 as well as the sewer treatment works would be completed. The last ring mains as shown in the diagram overleaf would be developed to link this phase to the existing sewer (Layout 8.14).

Kilifi County Council are expected to develop a full sewerage system for the entire town in Kilifi should this system be available by the time this phase of work happens, then pumping station 2 will not be required to be developed as planned.

8.4.4 POWER, LIGHTING AND ICT INFRASTRUCTURE

This infrastructure would be completed with the setting up of substations S5 and S6 as shown and the distribution of these services in Phase three as indicated in layout overleaf (Layout x) and (Layout 8.15 and 8.16).

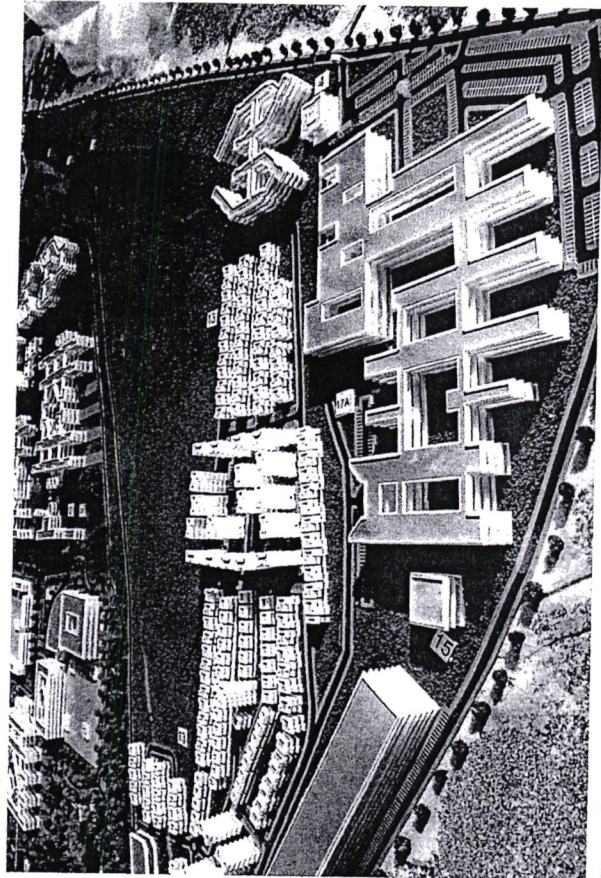


Figure 8.4: showing the Phase Three of the Development – Teaching Hospital, and Senior Staff Housing

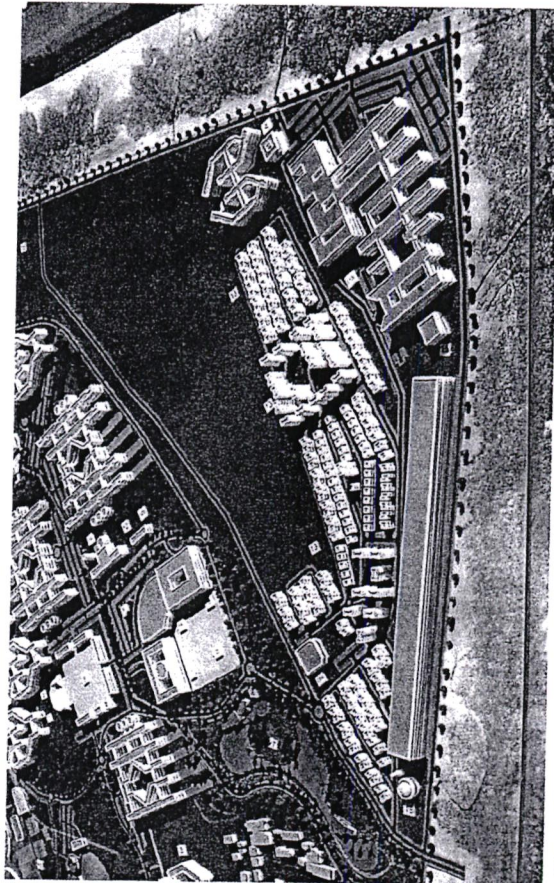
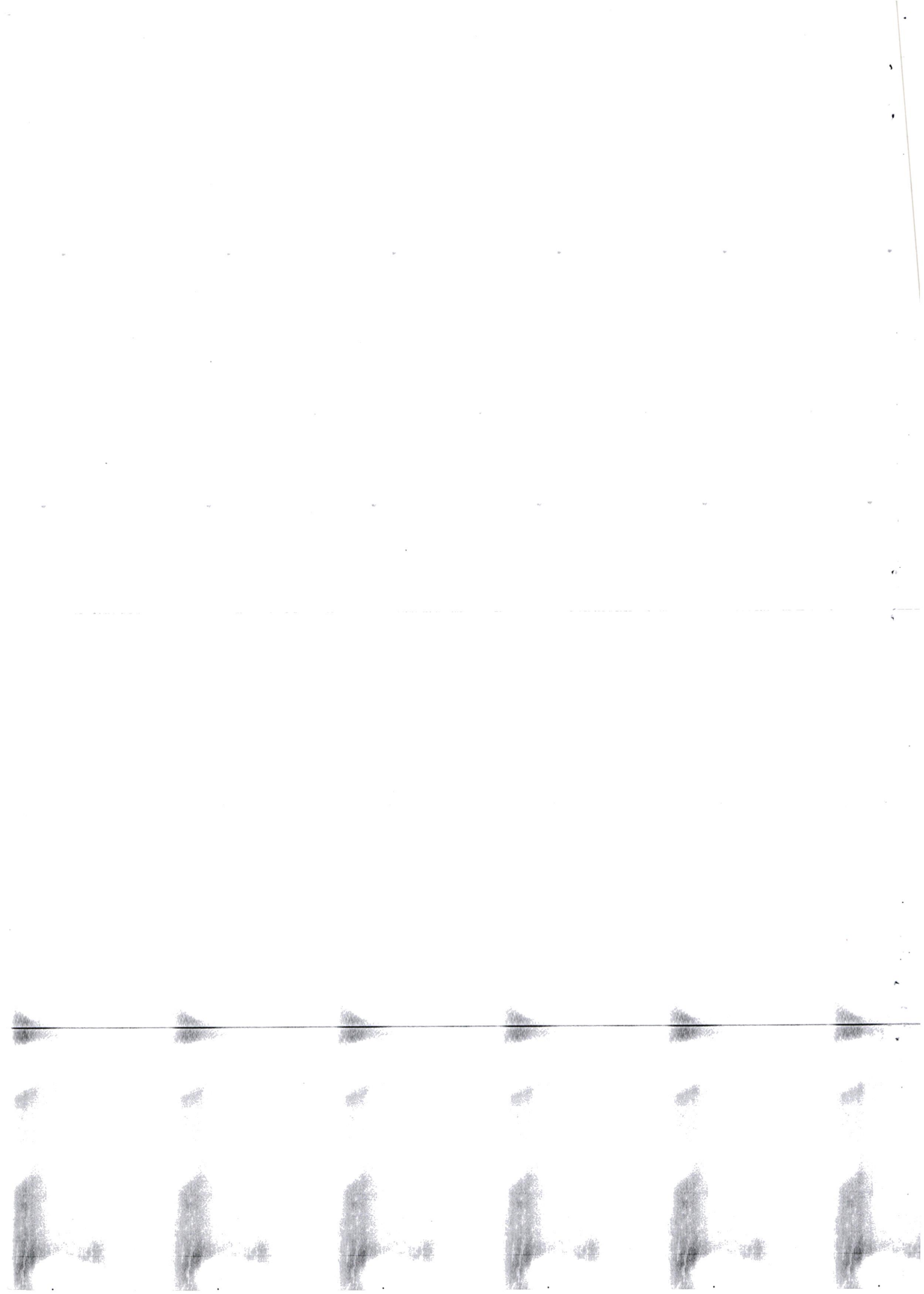
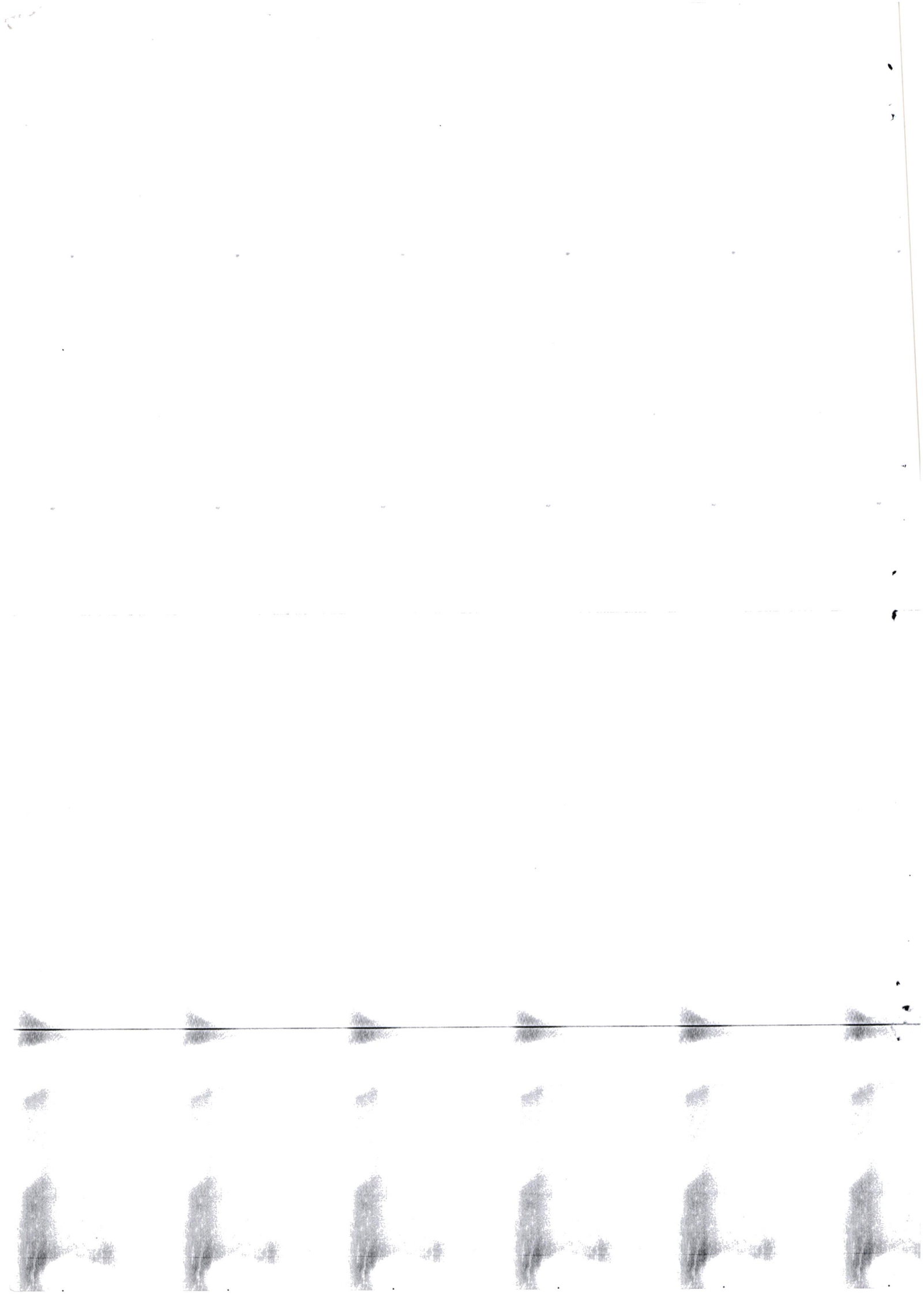


Figure 8.5: showing the Phase Three of the Development on the foreground



DOCUMENT H

**A COPY OF THE LETTER FROM
PUBLIC PRIVATE PARTNERSHIP
SECRETARIATE, NATIONAL TREASURY
APPROVING A FEASIBILITY STUDY ON THE
PROPOSED TEACHING AND REFERRAL
HOSPITAL ON THE SUBJECT LAND**



PO
Please note and initiate
necessary action
Amshah 05/01/15



REPUBLIC OF KENYA
THE NATIONAL TREASURY

Telegraphic Address: 22921
Finance - Nairobi
FAX NO. 310833
Telephone: 2252299
When Replying Please Quote

THE NATIONAL TREASURY
P O BOX 30007 - 00100
NAIROBI

Ref: DGIPE/PPP/22/21 'A'

Date: 19th December 2014

Prof. M.S. Rajab, PhD, EBS
Vice-Chancellor
Pwani University
P.O. Box 195-80108
Kilifi

Dear Prof Rajab,

**SUBJECT: PROPOSAL TO DEVELOP PWANI UNIVESRITY PROJECTS UNDER
THE PPP FRAMEWORK**

Reference is made to your various letters of 18 September 2014, reference PU/VC/PRJCT/61 VOL.II submitting the below project proposals for consideration and approval by the Public Private Partnerships (PPP) Committee:-

- a) School of Medicine and Referral Hospital;
- b) Student Hostels Project

Your above project proposals, intended to adopt the PPP model, were considered by the PPP Committee at its sixth meeting held on 16th December 2014.

It is my pleasure to inform you that at that meeting, the PPP Committee, acting under section 7(d) of the PPP Act 2013, approved your proposed projects for development under the PPP framework.

Following on this approval, and in accordance with section 33 of the PPP Act, the project concepts should now be subjected to full feasibility study assessment. Each

05 JAN 2015



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project should be separately assessed in this regard, and the recommendations of the feasibility studies, particularly on the proposed projects' affordability, value for money and risk allocation principles, as well as the associated legal and technical due diligences (complete with output specifications and performance standards), will need to be approved by the PPP Committee before tender processes are initiated on either project.

The PPP Unit is available to support your efforts at this stage, so do not hesitate to contact my office in that regard.

Yours

Sincerely

SK

Eng. Stanley K. Kamau

SECRETARY - PUBLIC PRIVATE PARTNERSHIP (PPP) COMMITTEE



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