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REPUBLIC OF KENYA

THE SENATE

2ND SESSION

THIRTEENTH PARLIAMENT

Rt. Hon. Speaker
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date: 02/11/23
[Signature]

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

ON

**THE PETITION BY SQUATTERS OF THE MAUTUMA CENTRAL
SETTLEMENT SCHEME REGARDING THE DEGAZETEMENT OF
1577.86 HA OF LUGARI/TURBO FOREST IN KAKAMEGA COUNTY**

2023



PAPERS AID	
DATE	14/11/2023
TABLED BY	Sen. Kamahya
COMMITTEE	lands
CLERK AT THE TABLE	Kenya M.

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LIST OF ABBREVIATIONS/ ACRONYMS

COK	-Constitution of Kenya
CS	- Cabinet Secretary
EIA	-Environmental Impact Assessment
FCMA	-Forest Conservation and Management Act
Ha	-Hectares of land
KFS	- Kenya Forest Service
LR	- Land Reference
MECCF	-Ministry of Environment Climate Change & Forestry
MLPWHUD	- Ministry of Lands Public Works Housing & Urban Development
NEMA	- National Environment Management Authority
NLC	- National Land Commission

PREFACE

Mr. Speaker sir,

The Standing Committee on Land, Environment and Natural Resources is established pursuant to standing order 228(3) of the Standing Orders of the Senate. As set out in the Fourth Schedule, the Committee is mandated to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

Committee Membership

The Committee comprises of the following Members.

1. Sen. John Muhia Methu, MP - **Chairperson**
2. Sen. (Dr) Steve Lelegwe Ltumbesi, MP - **Vice-Chairperson**
3. Sen. William Cheptumo Kipkiror CBS, MP
4. Sen. Johnes Mwashushe Mwaruma, MP
5. Sen. Issa Juma Boy, MP
6. Sen. Agnes Kavindu Muthama, MP
7. Sen. Wamatinga Wahome, MP
8. Sen. Mariam Sheikh Omar MP
9. Sen. Beatrice Akinyi Ogola, MP

At a sitting of the Senate, held on 20th June, 2023, the Rt. Hon Speaker reported to the Senate a Petition that was submitted by three Petitioners from the Lugari East Africa Tanin Extract company, on behalf of the residents of the Mautuma settlement scheme, concerning the delayed degazettement of 1577.86 Ha in Kakamega County.

Pursuant to standing order 238(1) and the Fourth Schedule to the Standing Orders of the Senate, the Petition was committed to the Standing Committee on Land, Environment and Natural Resources.

Pursuant to Articles 37 and 119(1) of the Constitution, section 5(2) of the Petition to Parliament (Procedure) Act and standing order 238(2) of the Senate Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioners

within the prescribed period.

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

The Committee proceeded to seek responses from the Cabinet Secretaries of the MLPWHUD and MECCF and the Chairperson, National Land Commission, to address the issues raised in the Petition.

ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Petitioners, National Land Commission, Ministry of Environment Climate Change & Forestry and the Ministry of Lands Public Works Housing & Urban Development for their submissions and contribution to the resolution of this matter.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Standing Committee on Land, Environment and Natural Resources on the Petition concerning delayed degazettement of 1577.86 of land in Lugari/Turbo.

Signed:  Date: **31/10/2023**

SEN. JOHN MUHIA METHU, M.P.

**CHAIRPERSON, SENATE STANDING COMMITTEE ON LAND,
ENVIRONMENT AND NATURAL RESOURCES**

CHAPTER I

1.1 INTRODUCTION

1. At the sitting of the Senate held on 20th June, 2023, the Rt. Hon Speaker, reported to the Senate a Petition on behalf of the residents of the Mautuma settlement scheme, concerning the delayed degazettement of 1577.86 Ha of Lugari/Turbo forest area situated in Lugari Kakamega County.

1.11 Underlying Constitutional and Statutory Provisions

2. **Article 1(1) and (2)** of the Constitution, vests all sovereign power in the people of Kenya and shall be exercised only in accordance with the Constitution.
3. **Article 1(3) (a)** of the Constitution delegates sovereign power of the Constitution to, *inter alia*, Parliament and the legislative assemblies in the county governments.
4. **Article 37** of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while **Article 119(1)** of the Constitution provides that “*every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.*”
5. **Article 40 (3)(b)(i)** of the Constitution provides that the state shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation- is for a public purpose or in the public interest and is carried out in accordance with the Constitution and an Act of Parliament that requires prompt payment in full or just compensation to the person.
6. **Article 60(1)(b)** of the Constitution further provides that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable

and according to the principle of security of land rights.

7. Under **Article 62(1)(g) & (3)** of the Constitution, public land including government forests and shall vest in and be held by the national government in trust for the people of Kenya and shall be administered on their behalf by the National Land Commission.
8. Under **Article 67(2)** of the Constitution, the National Land Commission is mandated to manage public land on behalf of the national and county governments.
9. The Forest Conservation and Management Act, No. 34 of 2016 currently enforces Article 69 of the Constitution concerning forest resources. Under section 8(m) of this Act, the Kenya Forest Service has the authority to consider and recommend to the Cabinet Secretary the determination and alteration of boundaries of public forests.
10. Section 34 of the Act further provides that any person may submit a petition to the National Assembly, to recommend a proposal to vary the boundary or revoke the registration of a public forest.
11. A petition submitted under section 34 of the Forest Conservation and Management Act shall—
 - (a) be forwarded to the National Assembly on the recommendation of the Kenya Forest Service;
 - (b) be in accordance with the provisions of the Petitions to Parliament (Procedure) Act and the Standing Orders of the National Assembly;
 - (c) within thirty days of being committed to the relevant Committee, the Cabinet Secretary responsible for matters relating to forestry shall submit a recommendation on whether the petition should be approved, subject to the petition being subjected to an Independent Environmental Impact Assessment and public consultation being undertaken in accordance with the Forest

Conservation and Management Act;

12. Section 34(6) provides that if the resolution of the relevant committee disclosing a ground for variation of the boundaries of a public forest, is supported by a majority of the members of the National Assembly, the Cabinet Secretary shall publish a notice in the *Gazette*.

The Petition

13. The Petition before the Senate concerns the delayed degazettement of Lugari/Turbo forest land measuring 1577.86 Ha belonging to residents of the Mautuma Central Settlement scheme. The petitioners allege that they were settled in the land comprising the Lugari/Turbo forest way back in the year 1992 by the former President the late Daniel Arap Moi and further claim that they are the legitimate occupiers of about 1,577.86 Hectares in Lugari/Turbo Forest.

14. Despite their occupation, the petitioners who are squatters of the Mautuma Central Settlement Scheme, do not have the legal title for the said land which in effect exposes them to various risks such as, land grabbing, alien occupation and eviction. Further the squatters of the settlement scheme have also been denied their right to property as enshrined in the Constitution of Kenya and the benefits that come with ownership of title to land.

15. The petitioners claim that the due process was followed including public participation, environmental impact assessment and approval by Cabinet. The Cabinet Memorandum was forwarded to the Kenya Forest Service for further processing.

16. The number of squatters and their families in the scheme has been rising at an alarming rate since the first allotment of 1,577.86 Hectares causing perennial problems of overcrowding.

17. A further 2,428.12 Hectares has since been identified to settle the growing number of squatters once and for all; it is therefore the wish of the squatters to have 2,428.12 Hectares of Lugari/Turbo be de-gazetted to accommodate them.