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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON-

(PUBLIC PETITION No 24 OF 2021)

BY RESIDENTS OF MTO MWAGODI, RONGE WARD IN MWATATE
CONSTITUENCY REGARDING COMPLAINTS AGAINST IRREGULAR
ESTABLISHMENT OF DIASPORA UNIVERSITY

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER 2021



 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 OCT 2021	
DAY: TUESDAY	
TABLED BY:	CHAIR, DDC - LANDS HON. (DR). RACHAEL NYAMAI, CBS, MP
CLERK-AT THE-TABLE:	BENSON INZOLU



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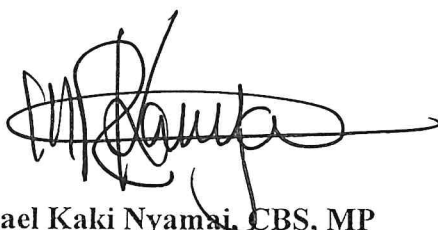
CHAIRPERSON'S FOREWORD

Public Petition No 24 of 2021 by residents of Mto Mwagodi Mgeno area, Ronge Ward in Mwatate Constituency regarding complaints against irregular establishment of Diaspora University was conveyed to the House on 23rd June 2021 by the Hon. Andrew Mwadime MP on behalf of the residents.

In considering the Petition, the Committee met the representatives of the Petitioners on 5th August 2021 and during a field visit to Mwatate Sub County on 20th August 2021. During the field visit the Committee also received submissions from officers of the relevant government departments in the County, representatives Ndara B group ranch and Diaspora University. The Committee also met the Cabinet Secretary, Ministry of Lands and Physical Planning on 22nd September 2021 in Parliament Buildings. Finally, the Committee received written submissions from the County Government of Taita Taveta signed by the County Executive Committee Member for Lands, Physical Planning, Mining, Energy and Municipal Administration dated 3rd September 2021.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee is also thankful to the Cabinet Secretary, Ministry of Lands and Physical Planning, the Petitioners, , representatives Ndara B Group Ranch & Diaspora University, the County Government of Taita Taveta and National Government officers stationed in Mwatate Sub - County for the submissions they made to the Committee.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my pleasant duty to table the Report of the Departmental Committee on Land on its consideration of Public Petition No 24 of 2021 by residents of Mto Mwagodi Mgeno area, Ronge Ward in Mwatate Constituency regarding complaints against irregular establishment of Diaspora University



Hon. Dr. Rachael Kaki Nyamai, CBS, MP
Chairperson, Departmental

EXECUTIVE SUMMARY

The purpose of this report is to respond to the prayers made by Petitioners in Public Petition No 24 of 2021 by residents of Mto Mwagodi Mgeno area, Ronge Ward in Mwatate Constituency regarding complaints against irregular establishment of Diaspora University.

The Petitioners prayed that the National Assembly through the Departmental Committee on Lands intervenes to:

- i. Intervenes with a view to securing the restoration of the land encroached upon by Diaspora University proprietors to the residents who are the rightful owners of the land;
- ii. Secures the timely resolution of the matter to restore peace and tranquility in the area; and
- iii. Makes any other recommendation that it deems fit in the circumstances of the petition.

Regarding the prayer seeking the restoration of the land encroached upon by Diaspora University proprietors to the residents who are the rightful owners of the land, the Committee observed that:

- a. The land in question was originally part of LR No SAGALLA NDARA B/1. measuring 2115 registered under the repealed Group Representative Act on 20th January 1982.
- b. The said parcel of land was subdivided into two portions: LR. SAGALLA NDARA B/14 and LR NO SAGALLA NDARA B/15 on 26th October 2016. Subsequently land parcel LR No. Sagalla Ndara B/14 was subdivided into three portions LR NO SAGALLA NDARA B/16, LR NO. SAGALLA NDARA B/17 and SAGALLA NDARA B/18 on 26th October 2016.
- c. On 18th August 2017, Ndara B Group Ranch registered a five-year lease to Kenya University Project Institution Township Ltd for LR No. LR SAGALLA NDARA B/17 measuring 600 Ha.
- d. Kenya University Project Institution Township Ltd held the said five-year lease in trust for Diaspora University with the intention of establishing a university on the said parcel of land.
- e. The Voi Land Control Board rejected an application made by KUP Institution Town Limited for consent to transfer parcel SAGALLA/NDARA "B"/ 17 to Diaspora University Trust due to the following reasons:

- i. The application submitted indicated parcel no. SAGALLA/NDARA B/ 19 as the subject parcel whereas the accompanying documents namely certificate of lease was for a different parcel SAGALLA/NDARA B/17;
 - ii. The application sought to transfer land belonging to a group ranch whereas the Community Land Act under Section 47 (3) clearly indicates that land held by group representatives shall not be sold, leased or converted to private land before it is registered under the Act;
 - iii. The minutes accompanying the application do not indicate the transaction submitted to the board;
 - iv. The submissions by the applicant to the board that parcel no. SAGALLA/NDARA "B"/ 17 belonging to KUP Institution Town Limited is unfounded as Section 54(5) of the Land Registration Act indicates that only long-term leases have the effect of conferring ownership; and
 - v. The County Government of Taita Taveta through a letter dated July 12, 2019, to the board objected to the application citing Section 47 of the Community Land Act, 2016.
- f. The Chief Land Registrar authorized the cancellation and surrender of the five-year lease issued to Kenya University Project Institution Township Ltd due to the following reasons:
- i. The lease held by Kenya University Project Institution Township Ltd was for a term of five years contrary to section 7 (h) of the Land Act. The five-year lease period did not guarantee issuance of certificate of lease; and
 - ii. The land in question belonged to a group ranch and could not be transferred before transition of the group ranch into a community land in accordance with the provisions of the Community Land Act 2016 regime.
- g. The land parcels registered as Ndara B group Ranch transitioned into Ndara B Community land in accordance with the Community Land Act 2016 having held elections of the community land management committee in February 2021.
- h. Under Section 15 (5) of the Act, any decision of a registered community to dispose or otherwise alienate community land shall be binding if it is supported by at least two thirds of the registered adult members of the community.

Regarding encroachment on Ndara B group ranch land by Diaspora University as alluded to in the petition. The Committee concluded that the said encroachment was nonexistent as the five-year lease held by Kenya University Project Institution Township Ltd was surrendered on 2nd November, 2019 and cancelled accordingly.

On the second prayer, the Committee observed that the County Government of Taita Taveta submitted that it opposed the Diaspora university project through a motion passed by the Taita Taveta County Assembly on owing to the unviability of the project as well as unsolved historical land ownership issues related to the land in question and further denied granting consent to facilitate commencement of the construction of the university.

The Committee also observed that the Petitioners in their oral submissions also stated that the land in question was registered to Ndara group Ranch in 1982 through political influence without the involvement of the Petitioners. Therefore, the matter would be classified as an historical land injustice issue as the petitioners also stated that they occupied part of the land, but Ndara B Group Ranch acquired a title and extended its boundaries to include the land held by the petitioners without their participation.

The land parcels registered as Ndara B group Ranch transitioned into Ndara B Community land in accordance with the Community Land Act 2016 having held elections of the community land management committee in February 2021 and received a certificate of registration on 17th June 2021. The Petitioners however submitted that they had not been involved in the election and registration process.

Based on the field visit undertaken by the Committee, it did observe that the Petitioners are currently residing on part of the land in question and concluded that there is need for the National Land Commission to address historical land injustice claims made by the petitioners and the Ministry of Lands and Physical Planning to address the reported nonregistration of the residents of Mto Mwangodi in Ndara B Community land.

Finally, the Committee noted that there have been cases of insecurity in the area evidenced by the demolition of houses belonging to the petitioners.

On the third prayer the Committee observed that based on the submissions made to the Committee, the nature of activities undertaken by Diaspora University was not clear, save for the Trust registered by the Ministry of Lands and Physical Planning.

The Committee concluded that the circumstances under which a lease for five years was issued to Diaspora University, the feasibility of the Diaspora University noting the lease was to be only for five years and the registration of the university as a trust by the Ministry of Lands was suspicious.

The Committee recommends that the Directorate of Criminal Investigations does investigate the circumstances under which a lease for five years was issued to Kenya University Project Institution Township Ltd, noting the lease was only for five years against the provisions of

the Land Act 2012 and therefore not feasible of a university project within six months of the tabling of this report.

The Committee also recommends that the National Land Commission investigate the historical land injustice claim of the Petitioners having been in occupation of L.R NO. SAGALLA NDARA B/1 prior to its registration to Ndara B Group Ranch in 1982 within six months of tabling this Report.

The Committee further recommends that the Cabinet Secretary, Ministry of Lands and Physical Planning through alternative dispute resolution mechanism review the membership register of Ndara B Community to ensure inclusion of the residents Mto Mwagodi residing in Ndara B Community land within six months of the tabling of this report.

Finally, the Committee recommends that the Cabinet Secretary, Ministry of Interior and Coordination of National Government does maintain law and order in the area to restore peace.

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference: -
 - (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - (ii) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
 - (iii) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
 - (iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - (v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister.
 - (vi) study and review all legislation referred to it.

1.2 Committee subjects

2. The Committee is mandated to consider the following subjects:
 - a) Lands
 - b) Settlement

1.3 Oversight

3. The Committee oversees the Ministry of Lands and Physical Planning, and the National Land Commission.

1.4 Committee Membership

2. The Committee membership comprises:

Chairperson

Hon. Dr. Rachael Nyamai, CBS, MP

Kitui South Constituency

Jubilee Party

Vice Chairperson

Hon. Khatib Mwashetani, MP

MP for Lunga Lungu Constituency

Jubilee Party

Hon. Benjamin Washiali, CBS, MP
Mumias East Constituency

Jubilee Party

Hon Joshua Kutuny Serem, MP
Cherangany Constituency

Jubilee Party

Hon. Mishi Mboko, MP
Likoni Constituency

Orange Democratic Movement (ODM)

Hon. Omar Mwinyi, MP
Changamwe Constituency

Orange Democratic Movement (ODM)

Hon. Ahmed Kolosh, MP
Wajir West Constituency

Jubilee Party

Hon. Ali Mbogo, MP
Kisauni Constituency

Wiper Democratic Movement (WDM)

Hon. Babu Owino, MP
Embakasi East Constituency

Orange Democratic Movement (ODM)

Hon. Caleb Kipkemei Kositany, MP
Soy Constituency

Jubilee Party

Hon George Aladwa, MP
Makadara Constituency

Orange Democratic Movement (ODM)

Hon George Risa Sunkuyia, MP
Kajiado West Constituency

Jubilee Party

Hon. John Muchiri Nyaga, MP
Manyatta Constituency

Jubilee Party

Hon. Josphat Gichunge Kabeabea, MP
Tigania East Constituency

Party of National Unity (PNU)

Hon. Lilian Tomitom, MP
West Pokot County

Jubilee Party

Hon. Owen Yaa Baya, MP
Kilifi North Constituency

Orange Democratic Movement (ODM)

Hon. Patrick Munene Ntwiga, MP
Chuka/Igambangombe Constituency

Jubilee Party

Hon. Samuel Kinuthia Gachobe, MP
Subukia Constituency

Jubilee Party

Hon. Teddy Mwambire, MP
Ganze Constituency

Orange Democratic Movement (ODM)

1.5 Committee Secretariat

3. The Committee secretariat comprises:

Lead Clerk

Mr. Leonard Machira

Senior Clerk Assistant

Mr. Ahmad Guliye

Clerk Assistant II

Dr. Kefa Omoti

Principal Researcher Officer

Ms. Jemimah Waigwa

Legal Counsel I

Mr. Joseph Okongo

Media Relations Officer

Mr. Adan Abdi

Fiscal Analyst II

2.0 INTRODUCTION

4. Public Petition No 24 of 2021 by residents of Mto Mwagodi Mgeno area, Ronge Ward in Mwatate Constituency regarding complaints against irregular establishment of Diaspora University was conveyed to the House on 23rd June 2021 by the Hon. Andrew Mwadime, MP on behalf of the Petitioners.
5. The Petitioners wished to draw to the attention of the House to the following, that –
 - a. 664 residents of Mgeno area of Ronge Ward in Mwatate Constituency have lived in the area since time immemorial: and dependent on the land for their livelihood.
 - b. Several proprietors have encroached into disputed parcels of land located between Ndara B Community land and Mgeno Reserve and have commenced the construction of an institution known as Diaspora University.
 - c. The County Government of Taita Taveta opposed the project owing to lack of transparency, accountability and viability of the project as well as unsolved land ownership issues and further denied granting the Diaspora university ‘s proprietors’ consent to commence construction of a university.
 - d. Contrary to the law, Diaspora University proprietors have commenced the development of the project without public participation, acting with impunity and overseeing the demolition of residents’ houses and employment the services of security guards who regularly harass and threaten the residents with violence.
 - e. Efforts to have the matter addressed by the local authorities including reporting to the local police station under occurrence Book Number 2117 /03/2021 have been futile.
 - f. The matter raised in the Petition was not pending before any court of law, constitutional or legal body.
6. The Petitioners prayed that the National Assembly through the Departmental Committee on Lands:
 - i. Intervenes with a view to securing the restoration of the land encroached upon by Diaspora University proprietors to the residents who are the rightful owners of the land;

- ii. Secures the timely resolution of the matter to restore peace and tranquility in the area;
and
- iii. Makes any other recommendation that it deems fit in the circumstances of the petition.

3.0 SUBMISSIONS

Submissions by the Petitioners

7. The Committee met the Petitioners on 5th August 2021 in Parliament Buildings and 20th August 2021 during a field visit to Mwatate Sub County. The Petitioners informed the Committee as follows:
8. The Petitioners live on the land question SAGALLA /NDARA B/17 and considered it their ancestral home as evidenced by houses constructed in the 1960s and the graves of relatives.
9. The land in question was registered to Ndara group Ranch in 1982 through political influence without the involvement of the rightful occupants of the land. Therefore, the matter would be classified as an historical land injustice issue as the petitioners were in occupation of the land, but Ndara B Group Ranch acquired a title and extended its boundaries to include the land held by the petitioners without their participation.
10. Although the petitioners reside in Mto Mwagodi within Ndara B Community land they were not registered members of the Community land with the membership limited to other persons who are not residents of the Mwatate Constituency.
11. The land in question is in Mengo location, Mwatate Sub County/ Mwatate Location and not in Voi Constituency. Therefore, Ndara Branch Group ranch boundaries ought to be convened to Voi Constituency and the Petitioners be issued with ownership documents for the portion in Mwatate Constituency.
12. Diaspora University does not hold any lease related to the land in question SAGALLA NDARA B/17 as the Ministry of Lands and Physical Planning cancelled a lease issued to Diaspora University as it was issued contrary to section 30(2) b of the land Registration Act 2021 which provides that no certificate of title or certificate of lease shall be issued unless the lease is for a certain period exceeding 25 years.
13. The Diaspora University deployed security guards on the contested parcel of land. The guards harass the petitioners and prevent them from conducting any activity on the land in question.
14. Houses belonging to the Petitioners residents of Mto Mwagodi were demolished by members of Ndara B group without any court order.
15. The County Assembly of Taita Taveta County in a Special Sitting held on 14th March 2019 rejected the proposal seeking to establish Diaspora University on Ndara B Group Ranch.

16. The residents of Mto Mwangondi wrote several letters to various national and County government offices seeking the resolution of the matter but no action had been taken to address the matter.

3.2 Submissions by relevant government officials during a field visit to Mwatate Sub County

17. The Committee undertook a field visit to Mwatate Sub County on 20th August 2021. During the visit, the relevant government officials briefed the Committee as follows:
 18. The Land Registrar Mwatate County informed the Committee that the land in question, LR No SAGALLA NDARA B/1., measuring 2115 Ha. was first registered under the repealed Group Representative Act on 20th January 1982.
 19. On 26th October 2016, the said parcel of land was subdivided into two portions: LR. No. SAGALLA NDARA B/14 and LR No SAGALLA NDARA B/15. Ndara Group Ranch subdivided land parcel LR No. SAGALLA NDARA B/14 into three portions LR No SAGALLA NDARA B/16, LR No. SAGALLA NDARA B/17 and LR. No. SAGALLA NDARA B/18 on 26th October 2016.
 20. On 18th August 2017, Ndara B group ranch registered a five-year lease to Kenya University Project Institution Township Ltd for LR No. LR SAGALLA NDARA B/17 measuring 600 Ha. Kenya University Project Institution Township Ltd held the in trust of Diaspora University with the intention of establishing a university on the said parcel of land.
 21. However, the Chief Land Registrar authorized the cancellation of the said lease on 19th October 2020 and the said lease was surrendered to the Land Registrar Taita Taveta County on 2nd November 2020 due to the following reasons:
 - i. The lease held by Kenya University Project Institution Township Ltd was for a term of five years contrary to section 7 (h) of the Land Act. The five-year lease period did not guarantee issuance of certificate of lease; and
 - ii. The land in question belonged to a group ranch and could not be transferred before the transition of the group ranch into a community land in accordance with the provisions of the Community Land Act 2016 regime

22. Kenya University Project Institution Township Ltd made an application to the Land Control Board seeking consent to transfer the parcel of land to Diaspora University on a freehold tenure. The land Control Board rejected the application on 4th September 2019 for the following reasons, among others:
- i. The application indicated the parcel as LR. No. SAGALLA NDARA B /19 but the certificate of lease showed the parcel as LR. No. SAGALLA NDARA B /17;
 - ii. The land in question belonged to a group ranch and could not be transferred before the transition of the group ranch into a community land in accordance with the provisions of the Community Land Act 2016 regime: and
 - iii. The lease held by Kenya University Project Institution Township Ltd was for a term of five years contrary to section 7 (h) of the Land Act.
 - iv.
23. The County Government of Taita Taveta objected to the said transfer and lodged a suit in court. The County obtained orders restraining Ndara B Group Ranch from transferring the parcel of land to Diaspora University pending the transition of the group ranch into a Community Land in accordance with the Community Land Act 2016.
24. The Ndara B group ranch transited to Ndara B community land having held the Community land management Committee elections on 24th February 2021 and received a registration certificate on 17th June 2021.
25. A sizable portion of the Ndara B Community land is in Voi Constituency while part of the land including the portion intended for transfer to Diaspora University is in Mwatate Constituency. Mto Mwagondi is also located within Ndara B community land. Adjacent is an unregistered community land known as Mgeno Community Trust Land. The County land office had not received any case on encroachment related to the two parcels of land.
26. During the transition of the Ndara B group ranch to community land, the County land office undertook civil education and sensitization awareness and encouraged the absorption of all persons residing in the group ranch and did not receive any complaint regarding the registration of Members. However, the officers requested for time to peruse the register to determine if the petitioners are members of the group ranch.

27. The County Land Registrar stated that the inclusion of new members in the Ndara B community land membership register could be based on the following:

- Through family relation to registered members.
- The resolution of the community assembly.
- Through a court order.

28. On the alleged encroachment by Diaspora University on Ndara B group ranch land alluded to in the petition The Registrar stated that the lease was nonexistent as the lease held by Kenya University Project Institution Township Ltd was cancelled. Consequently, Diaspora university does not hold any document indicating that it had leased any portion of the land in question.

29. Regarding the alleged demolition of houses belonging to the petitioners, the Deputy County Commissioner said that a report on one incident was received by the police. Subsequently one suspect was arrested. The case was pending in court.

30. The National Land Commission Taita Taveta County Coordinator stated that the commission had not received any historical Land injustice claim related to the Ndara B community land and the commission was not involved in the transfer of a portion of the land to Diaspora University as the intended transaction was between private entities.

3.3 Submissions by representatives of Ndara B Community and Diaspora University

31. The Committed received written submissions from representatives of Ndara B Community and Diaspora University dated 14th August 2021 and 20th August 2021. The two groups also made oral submissions to the Committee on 20th August 2021 during a field visit to Mwatate Sub County. They informed the Committee that:

32. Ndara B Community owns the land in question, SAGALLA /NDARA B /17 in accordance with Articles 40, 61 and 63 of the Constitution of Kenya 2010.

33. Ndara B Community were founders and investors in the Diaspora Town Development together with Kenyans in the diaspora.

34. Regarding the ownership of the land in question LR. No. SAGALLA /NDARA B /17 they stated that:

- a. Ndara B Community owns the land in question in accordance with Articles 40, 61 and 63 of the Constitution of Kenya 2010.
- b. The land was initially registered 1982 as LR. No. SAGALLA / NDARA B 1 under the Group Ranch Representative Act.
- c. The Ndara B community subdivided Land parcel LR. No. SAGALLA / NDARA B 1 into SAGALLA / NDARA B/15, SAGALLA / NDARA B/16, SAGALLA / NDARA B/17, and SAGALLA / NDARA B 18 to facilitate different economic and social community plans
- d. The land parcels registered as Ndara B group Ranch transitioned into Ndara B Community land in accordance with the Community Land Act 2016 having held elections of the community land management committee in February 2021 and received a certificate of registration on 17th June 2021.
- e. Ndara B Community surrendered the titles, registered under the Group Ranch Respective Act to the land Registrar Taita Taveta County to facilitate the issuance of new titles in accordance with the Community Land Act 2016.

35. Regarding the establishment of Diaspora University, the Ndara B Community representatives informed the Committee as follows:

- a. In 2016 a group known as Diaspora Kenyans presented a development plan for the establishment of a university town to the Taita Taveta County Assembly for approval.
- b. Ndara B Community invited the Diaspora Kenyans to consider establishing the university on part of the community land as this would benefit the community through job creation, e education opportunities housing and enhanced health care.
- c. In August 2016, the Ndara Group Ranch through an Annual General Meeting (AGM) agreed to allocate land to Diaspora University. Thereafter the implementation of the university project commenced with the survey, Physical Planning of the parcel of land earmarked for the project and the presentation of an application for the transfer of the land presented to the Land Control Board.

- d. However, the project faced opposition from among others the Governor Taita Taveta County, the County Assembly of Taita Taveta, the Deputy County Commissioner Mwatate Sub County on the pretext of security and historical land injustice.

36. The Ndara B Community representatives also informed the Committee that other cases of illegal settlement on land owned by the group included the following:

- a. A company known as Nanak limestone claimed to have been allocated a portion of land belonging to the Ndara B Community and commenced mining activities on the land. The company brought workers who had illegally settled on the said land. Nanak Limestone company has not availed documents to confirm that it was legally allocated the land.
- b. An investor had established a camp known as Sasha camp on part of Ndara B Community land without permission from the Community. However, the Ndara B Community later entered into a lease agreement with the said Shasa Camp.

3. 4 Submissions by the County Government of Taita Taveta

37. The Committee received written submissions from the County Government of Taita Taveta signed by the County Executive Committee Member for Lands, Physical Planning, Mining, Energy and Municipal Administration dated 3rd September 2021. The County Executive Committee Member stated as follows:

38. The County Government of Taita Taveta never approved or consented the allocation of land or transfer of land to the Diaspora University by the Ndara B Group Ranch and the county government opposed the establishment of the university owing to lack of transparency, accountability, and unsolved land ownership on the land in question located between Ndara B Group Ranch and Mgeno Reserve.

39. It was also not viable to establish another university in Ronge Ward as there exists a chartered public university in the area, Taita Taveta University, which has been in operation since 2017.

40. The County Government of Taita Taveta concluded that the establishment of Diaspora University be halted until the issue of historical land injustice related to the land in question was resolved

3.5 Submissions by the Cabinet Secretary, Ministry of Lands and Physical Planning

41. The Committee met the Cabinet Secretary, Ministry of Lands and Physical Planning on 22nd September, 2021. the Cabinet Secretary informed the Committee as follows:
42. The subject land was registered on 20th January 1982 as Parcel no. SAGALLA/NDARA (B)/ 1 (measuring 2215.0 Hectares) in the name of NDARA B Group Ranch, under the Land (Group Representatives) Act, Cap. 287 (repealed by the Community Land Act, 2016).
43. On October 26, 2016, the group ranch subdivided the parcel into two (2) portions namely SAGALLA/NDARA 'B'/ 14 & SAGALLA/NDARA 'B'/ 15 and on August 18, 2017, the group Ranch further subdivided parcel SAGALLA/NDARA 'B'/ 14 into three (3) portions, creating parcels SAGALLA/NDARA B/ 16, SAGALLA/NDARA B/ 17 & SAGALLA/NDARA B/ 18.
44. On the same day August 18, 2017, the group ranch registered a five (5) year lease in favour of KUP Institution Town Limited for parcel SAGALLA/NDARA "B"/ 17 measuring 600 Hectares. A Certificate of Lease dated 18th August 2017 was issued to KUP Institution Town Limited.
45. KUP Institution Town Limited sought consent from the Voi Land Control Board via an application dated July 10, 2019, to transfer parcel SAGALLA/NDARA "B"/ 17 to Diaspora University Trust. The application was rejected and reasons for the same communicated vide a letter dated September 11, 2019, as follows:
 - i. The application submitted indicated parcel no. SAGALLA/NDARA "B / 19 as the subject parcel whereas the accompanying documents namely certificate of lease was for a different parcel SAGALLA/NDARA/B/17;
 - ii. The application sought to transfer land belonging to a group ranch whereas the Community Land Act under Section 47 (3) clearly indicates that land held by group representatives shall not be sold, leased or converted to private land before it is registered under the Act;
 - iii. The minutes accompanying the application do not indicate the transaction submitted to the board;
 - iv. The submissions by the applicant to the board that parcel no. SAGALLA/NDARA "B"/ 17 belonging to KUP Institution Town Limited is unfounded as Section 54(5) of the Land Registration Act indicates that only long-term leases have the effect of conferring ownership; and

- v. The County Government of Taita Taveta through a letter dated 12th July, 2019 to the board objected to the application citing Section 47 of the Community Land Act, 2016.
46. The matters raised in the petition were a subject of litigation before the Principal Magistrate's Court in Voi, Civil Suit No. 161 of 2018. The court delivered judgement on the case on 18th July, 2019 and issued an injunction restraining the group representatives of the NDARA B Group Ranch from making any new resolutions pending conversion of the group ranch as contemplated under the Community Land Act, 2016.
47. Consequently, the Ministry recalled the Certificate of Lease issued to KUP Institution Limited for cancellation. The lease was surrendered on 2nd November 2019 and cancelled accordingly.
48. The Community Land Act, 2016 repealed the Land (Group Representatives) Act, Cap. 287. Section 47 (1) of the Act provides that the respective group representatives together with their communities they represent shall be registered as a community in accordance with the provisions of the Act. In relation to land held under the repealed Act, Section 47 (3) of the Act provides that it shall not be sold, leased or converted to private land before it has been registered under the Act.
49. The Community Land Registrar conducted elections of the Community Land Management Committee on February 24, 2021, in accordance with the provisions of Section 7 (5) of the Community Land Act, 2021.
50. Under Section 15 (5) of the Act, any decision of a registered community to dispose or otherwise alienate community land shall be binding if it is supported by at least two thirds of the registered adult members of the community.

4.0 ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION

- a. That the National Assembly through the Departmental Committee on Lands intervenes with a view to securing the restoration of the land encroached upon by Diaspora University proprietors to the residents who are the rightful owners of the land:**

Regarding the prayer seeking the restoration of the land encroached upon by Diaspora University proprietors to the residents who are the rightful owners of the land, the Committee observed that:

- i. The land in question was originally part of LR No SAGALLA NDARA B/1. measuring 2115 registered under the repealed Group Representative Act on 20th January 1982;
- ii. The said parcel of land was subdivided into two portions: LR. SAGALLA NDARA B/14 and LR NO SAGALLA NDARA B/15 on 26th October 2016. Subsequently land parcel LR No. Sagalla Ndara B/14 was subdivided into three portions LR NO SAGALLA NDARA B/16, LR NO. SAGALLA NDARA B/17 and SAGALLA NDARA B/18 on 26th October 2016.
- iii. On 18th August 2017, Ndara B Group Ranch registered a five-year lease to Kenya University Project Institution Township Ltd for LR No. LR SAGALLA NDARA B/17 measuring 600 Ha.
- iv. Kenya University Project Institution Township Ltd held the said five-year lease in trust for Diaspora University with the intention of establishing a university on the said parcel of land.
- v. The Voi Land Control Board rejected an application made by KUP Institution Town Limited for consent to transfer parcel SAGALLA/NDARA "B"/ 17 to Diaspora University Trust due to the following reasons:
 - a. The application submitted indicated parcel no. SAGALLA/NDARA B/ 19 as the subject parcel whereas the accompanying documents namely certificate of lease was for a different parcel SAGALLA/NDARA B/17.
 - b. The application sought to transfer land belonging to a group ranch whereas the Community Land Act under Section 47 (3) clearly indicates

that land held by group representatives shall not be sold, leased or converted to private land before it is registered under the Act.

- c. The minutes accompanying the application do not indicate the transaction submitted to the board.
 - d. The submissions by the applicant to the board that parcel no. SAGALLA/NDARA "B"/ 17 belonging to KUP Institution Town Limited is unfounded as Section 54(5) of the Land Registration Act indicates that only long-term leases have the effect of conferring ownership.
 - e. The County Government of Taita Taveta through a letter dated July 12, 2019, to the board objected to the application citing Section 47 of the Community Land Act, 2016.
- vi. The Chief Land Registrar authorized the cancellation and surrender of the five-year lease issued to Kenya University Project Institution Township Ltd because the lease held by Kenya University Project Institution Township Ltd was for a term of five years contrary to section 7 (h) of the Land Act. The five-year lease period did not guarantee issuance of certificate of lease.

The land in question belonged to a group ranch and could not be transferred before transition of the group ranch into a community land in accordance with the provisions of the Community Land Act 2016 regime.

- vii. The land parcels registered as Ndara B group Ranch transitioned into Ndara B Community land in accordance with the Community Land Act 2016 having held elections of the community land management committee in February 2021.
- viii. Under Section 15 (5) of the Act, any decision of a registered community to dispose or otherwise alienate community land shall be binding if it is supported by at least two thirds of the registered adult members of the community.

Regarding encroachment by Diaspora University on Ndara B group ranch land alluded to in the petition. The Committee concluded that the said encroachment was nonexistent as the five-year lease held by Kenya University Project Institution Township Ltd was surrendered on 2nd November, 2019 and cancelled accordingly.

b. Secures the timely resolution of the matter to restore peace and tranquility in the area

On the second prayer the Committee observed that the County Government of Taita Taveta submitted that it opposed the Diaspora university project through a motion passed by the Taita Taveta County Assembly on owing to the unviability of the project as well as unsolved historical land ownership issues related to the land in question and further denied granting consent to facilitate commencement of the construction of the university.

The land parcels registered as Ndara B group Ranch transitioned into Ndara B Community land in accordance with the Community Land Act 2016 having held elections of the community land management committee in February 2021 and received a certificate of registration on 17th June 2021. The Petitioners however submitted that they had not been involved in the election and registration process.

The Committee also observed that the Petitioners in their oral submissions also stated that the land in question was registered to Ndara group Ranch in 1982 through political influence without the involvement of the Petitioners. Therefore, the matter would be classified as an historical land injustice issue as the petitioners also stated that they occupied part of the land, but Ndara B Group Ranch acquired a title and extended its boundaries to include the land held by the petitioners without their participation.

Based on the field visit undertaken by the Committee, it did observe that the Petitioners are currently residing on part of the land in question and concluded that that there is need for the National Land Commission to address historical land injustice claims made by the Petitioners and the Ministry of Lands and Physical Planning to address the reported non registration of the residents of Mto Mwagodi in Ndara B Community land.

Finally, the Committee noted that there have been cases of insecurity in the area evidenced by the demolition of houses belonging to the petitioners.

c. Makes any other recommendation that it deems fit in the circumstances of the petition

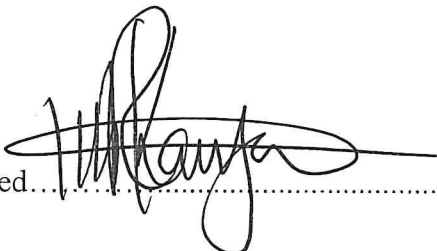
On the third prayer the Committee observed that based on the submissions made to the Committee, the nature of activities undertaken by Diaspora University was not clear, save for the Trust registered by the Ministry of Lands and Physical Planning.

The Committee also observed that the circumstances under which a lease for five years was issued to Diaspora University, the feasibility of the Diaspora University noting the lease was to be only for five years and the registration of the university as a trust by the Ministry of Lands was suspicious.

5.0 COMMITTEE RECOMMENDATIONS

Pursuant to Standing Order 227, the Committee recommends as follows:

1. **THAT** the Directorate of Criminal Investigations does investigate the circumstances under which a lease for five years was issued to Kenya University Project Institution Township Ltd, noting the lease was only for five years against the provisions of the Land Act and not feasible of the implementation of a university project within six months of the tabling of this report.
2. **THAT** the National Land Commission investigates the historical land injustice claim of the Petitioners having been in occupation of L.R NO. SAGALLA NDARA B/1 prior to its registration to Ndara B Group Ranch in 1982 within six months of tabling this Report
3. **THAT** the Cabinet Secretary, Ministry of Lands and Physical Planning through alternative dispute resolution mechanism does review the membership register of Ndara B Community to ensure inclusion of the residents Mto Mwagodi residing in Ndara B Community land within six months of the tabling of this report.
4. **THAT** the Cabinet Secretary, Ministry of Interior and Coordination of National Government does maintain law and order in the area to restore peace

Signed..........Date.....05/10/2021.....

The Hon. Dr. Rachael Kaki Nyamai, CBS, MP.

Chairperson, Departmental Committee on Lands



REPUBLIC OF KENYA
KENYA NATIONAL ASSEMBLY
TWELFTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON LANDS

Adoption List

Report on the Petition regarding complaints from residents of Mto Mwagodi against the irregular establishment of Diaspora University by the Member for Mwatate Constituency

Date: 24/09/2021

	NAMES	SIGNATURE
1.	Hon. Dr. Rachael Nyamai, CBS, MP - Chairperson	
2.	Hon. Khatib Mwashetani, MP V/Chairperson	
3.	Hon. Benjamin Washiali, CBS MP	
4.	Hon. Joshua Kutuny Serem, MP	
5.	Hon. Mishi Mboko, MP	
6.	Hon. Omar Mwinyi Shimbwa, MP	
7.	Hon. Ahmed Kolosh, MP	
8.	Hon. Ali Mbogo, MP	
9.	Hon. Babu Owino, MP	
10.	Hon. Caleb Kipkemei Kositany, MP	
11.	Hon. George Aladwa, MP	
12.	Hon. George Risa Sunkuyia, MP	
13.	Hon. John Muchiri Nyaga, MP	
14.	Hon. Josphat Gichunge Kabeabea, MP	
15.	Hon. Lilian Tomitom, MP	
16.	Hon. Owen Yaa Baya, MP	
17.	Hon. Patrick Munene Ntwiga MP	
18.	Hon. Samuel Kinuthia Gachobe, MP	
19.	Hon. Teddy Mwambire, MP	

**MINUTES OF THE 47TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON FRIDAY 24TH SEPTEMBER 2021 AT TAMARIND HOTEL,
MOMBASA AT 10.00 A.M.**

PRESENT

- | | |
|--------------------------------------|--------------------|
| 1. Hon. Dr. Rachael Nyamai, CBS, M.P | - Chairperson |
| 2. Hon. Khatib Mwashetani, M. P | - Vice Chairperson |
| 3. Hon. Benjamin Washiali, CBS, MP | |
| 4. Hon. Joshua Kutuny, MP | |
| 5. Hon. Omar Mwinyi, MP | |
| 6. Hon. Ahmed Kolosh, MP | |
| 7. Hon. Ali Mbogo, M.P | |
| 8. Hon. Caleb Kositany, MP | |
| 9. Hon. George Risa Sunkuyia, M.P | |
| 10. Hon. John Muchiri Nyaga, MP | |
| 11. Hon. Owen Yaa Baya, M.P | |
| 12. Hon. Patrick Munene Ntwiga, MP | |
| 13. Hon. Samuel Kinuthia Gachobe, MP | |
| 14. Hon. Teddy Mwambire, MP | |

APOLOGIES

1. Hon. Mishi Mboko, M.P
2. Hon. Babu Owino, MP
3. Hon. George Aladwa, M.P
4. Hon. Josphat Gichunge Kabeabea, M.P
5. Hon. Lilian Tomitom, MP

THE NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|---------------------------|
| 1. Mr. Daniel Mutunga | - | Principal Clerk Assistant |
| 2. Mr. Leonard Machira | - | Senior Clerk Assistant |
| 3. Mr. Ahmad Guliye | - | Second Clerk Assistant |
| 4. Dr. Kefa Omoti | - | Research Officer |
| 5. Ms. Jemimah Waigwa | - | Legal Counsel |
| 6. Ms. Maureen Kweyu | - | Audio Officer |
| 7. Ms. Peris Kaburi | - | Serjeant At Arms |
| 8. Ms. Mercy Mutuku | - | Intern |

MIN. NO. NA/DDC/LANDS/2021/166: PRELIMINARIES

The meeting was called to order at four minutes past ten o'clock with a word of prayer.

MIN. NO. NA/DDC/LANDS/2021/167: ADOPTION OF THE REPORT ON A PETITION REGARDING COMPLAINTS FROM RESIDENTS OF MTO – MWAGODI AGAINST THE IRREGULAR ESTABLISHMENT OF DIASPORA UNIVERSITY

The Committee considered the report on a Petition regarding complaints from residents of Mto-Mwagodi against the irregular establishment of Diaspora University and adopted it with the following observations and recommendations after it was proposed and seconded by Hon. Teddy Mwambire, MP and Hon. Samuel Gachobe MP, respectively;

Observations

1. The land in question was originally part of as LR No SAGALLA NDARA B/1. measuring 2115 registered under the repealed Group Representative Act on 20th January 1982.
2. The said parcel of land was subdivided into two portions: LR. SAGALLA NDARA B/14 and LR NO SAGALLA NDARA B/15 on 26th October 2016. Subsequently land parcel LR No. Sagalla Ndara B/14 was subdivided into three portions LR NO SAGALLA NDARA B/16, LR NO. SAGALLA NDARA B/17 and SAGALLA NDARA B/18 on 26th October 2016.
3. On 18th August 2017, Ndara B Group Ranch registered a five-year lease to Kenya University Project Institution Township Ltd for LR No. LR SAGALLA NDARA B/17 measuring 600 Ha.
4. Kenya University Project Institution Township Ltd held the said five-year lease in trust for Diaspora University with the intention of establishing a university on the said parcel of land.
5. The Voi Land Control Board rejected an application made by KUP Institution Town Limited for consent to transfer parcel SAGALLA/NDARA "B"/ 17 to Diaspora University Trust due to the following reasons:
 - i. The application submitted indicated parcel no. SAGALLA/NDARA B/ 19 as the subject parcel whereas the accompanying documents namely certificate of lease was for a different parcel SAGALLA/NDARA.
 - ii. The application sought to transfer land belonging to a group ranch whereas the Community Land Act under Section 47 (3) clearly indicates that land held by group representatives shall not be sold, leased or converted to private land before it is registered under the Act.
 - iii. The minutes accompanying the application do not indicate the transaction submitted to the board.
 - iv. The submissions by the applicant to the board that parcel no. SAGALLA/NDARA "B"/ 17 belongs to KUP Institution Town Limited is unfounded as Section 54(5) of

- the Land Registration Act indicates that only long-term leases have the effect of conferring ownership.
- v. The County Government of Taita Taveta through a letter dated July 12, 2019, to the board objected to the application citing Section 47 of the Community Land Act, 2016.
6. The Chief Land Registrar authorized the cancellation and surrender of the five year lease issued to Kenya University Project Institution Township Ltd due to the following reasons:
 - i. The lease held by Kenya University Project Institution Township Ltd was for a term of five years contrary to section 7 (h) of the Land Act. The five-year lease period did not guarantee issuance of certificate of lease; and
 - ii. The land in question belonged to a group ranch and could not be transferred before transition of the group ranch into a community land in accordance with the provisions of the Community Land Act 2016 regime.
 7. Regarding encroachment by Diaspora University on Ndara B group ranch land alluded to in the petition. The Committee noted that the said encroachment was nonexistent as the five-year lease held by Kenya University Project Institution Township Ltd was surrendered on 2nd November, 2019 and cancelled accordingly.
 8. The Committee did not receive any evidence indicating that Diaspora university was allocated any portion of the land in question LR No. Sagala Ndara B/17.
 9. Under Section 15 (5) of the Act, any decision of a registered community to dispose or otherwise alienate community land shall be binding if it is supported by at least two thirds of the registered adult members of the community.
 10. The County Government of Taita Taveta submitted that it opposed the Diaspora university project through a motion passed by the Taita Taveta County Assembly on owing to the unviability of the project as well as unsolved historical land ownership issues related to the land in question and further denied granting consent to facilitate commencement of the construction of the university.
 11. There have been cases of insecurity in the area evidenced by the demolition of houses belonging to the petitioners.
 12. Based on the field visit undertaken by the Committee, it did observe that the Petitioners are currently residing on the land in question.
 13. The land parcels registered as Ndara B group Ranch transitioned into Ndara B Community land in accordance with the Community Land Act 2016 having held elections of the community land management committee in February 2021 and received a certificate of registration was issued to on 17th June 2021. The Petitioners however submitted that they had not been involved in the election and registration process.
 14. Based on the submissions made to the Committee, the nature of activities undertaken by Diaspora University was not clear, save for the Trust registered by the Ministry of Lands and Physical Planning.
 15. The circumstances under which a lease for five years was issued to Diaspora University, the feasibility of the Diaspora University noting the lease was to be only for five years and the registration of the university as a trust by the Ministry of Lands was suspicious.

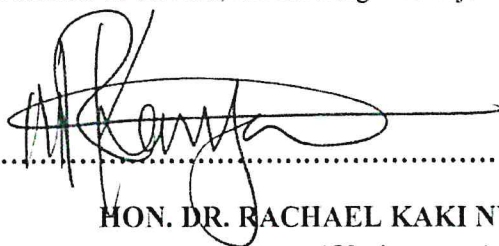
Recommendations

1. **THAT** the Ethics and Anti-Corruption Commission does investigate the circumstances under which a lease for five years was issued to Kenya University Project Institution Township Ltd, noting the lease was to be only for five years against the provisions of the Land Act and unfeasibility of a university project being implemented for only five years.
2. **THAT** the National Land Commissioner investigates the historical land injustice claim of the Petitioners having been in occupation of L.R NO. SAGALLA NDARA B/1 prior to its registration to Ndara B Group Ranch in 1982 within six months of tabling this Report
3. **THAT** the Cabinet Secretary, Ministry of Lands and Physical Planning through alternative dispute resolution mechanism does review the membership register of Ndara B Community to ensure inclusion of the residents Mto Mwangodi residing in Ndara B Community land with six months of the tabling of this report.
4. **THAT** the Cabinet Secretary, Ministry of Interior and Coordination of National Government does maintain law and order in the area to restore peace.

MIN. NO. NA/DDC/LANDS/2021/168: ADJOURNMENT

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

Signature



HON. DR. RACHAEL KAKI NYAMAI, CBS, M.P.
(Chairperson)

30/9/2021

Date.....	
 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 OCT 2021	DAY:
TABLED BY:	
CLERK-AT THE-TABLE:	

4

Approved.



SNA REPUBLIC OF KENYA
TWELFTH PARLIAMENT (FIFTH SESSION)

23/6/2021

THE NATIONAL ASSEMBLY

PUBLIC PETITION

(No. 024 of 2021)

**REGARDING COMPLAINTS FROM RESIDENTS OF MTO MWAGODI
AGAINST THE IRREGULAR ESTABLISHMENT OF DIASPORA UNIVERSITY**

I, the UNDERSIGNED, on behalf of residents of Mto Mwagodi, Mgeno area, Rong'e Ward in Mwatate Constituency;

DRAW the attention of the House to the following: -

- 1) THAT, over 664 residents have lived in Mgeno area of Rong'e Ward in Mwatate Constituency for time immemorial, and are fully dependent on the land for their livelihood;
- 2) THAT, to the dismay of the residents, several proprietors have encroached onto the disputed parcels of land located between Ndara B and Mgeno Reserve and have commenced the construction of an institution known as Diaspora University;
- 3) THAT, the County Government of Taita Taveta is on record having opposed the project owing to lack of transparency, accountability and viability of the project as well as unresolved land ownership issues, and has further denied granting the University's proprietors consent to commence construction of Diaspora University;
- 4) THAT, contrary to the law, the Diaspora University proprietors have commenced the development of the project without public participation, acting with impunity and overseeing the demolition of residents' houses, and employing the services of security guards who regularly harass and threaten the residents with violence;
- 5) THAT, efforts to have the matter addressed by local authorities, including reporting to the local police station under Occurrence Book Number 2117/03/2021, have been futile;
- 6) AND THAT, the matters raised in this Petition are not pending in any court of law in Kenya.

PUBLIC PETITION

REGARDING COMPLAINTS FROM RESIDENTS OF MTO MWAGODI
AGAINST THE IRREGULAR ESTABLISHMENT OF DIASPORA UNIVERSITY

NOW THEREFORE, your humble petitioners pray that the National Assembly through the Departmental Committee on Lands:

- ✓ (i) intervenes with a view to securing the restoration of the land encroached upon by Diaspora University proprietors to the residents who are the rightful owners of the land;
- ✓ (ii) secures the timely resolution of the matter so as to restore peace and tranquility in the area, and
- ✓ (iii) makes any other recommendation that it deems fit in the circumstances of the Petition

And your PETITIONERS will ever pray.

PRESENTED BY



HON. ANDREW MWADIME, MP
MEMBER FOR MWATATE CONSTITUENCY

Date: 23/06/2021

MTO MWAGODI RESIDENTS MGENO,
P.O BOX 272-80300,
VOI.

14TH MAY 2021.

THE GOVERNOR,
TAITA- TAVETA COUNTY,
P.O BOX 1066,
WUNDANYI.

THE MEMBER OF PARLIAMENT,
MWATATE CONSTITUENCY,
P.O BOX 75-80305,
MWATATE.

THE MEMBER OF COUNTY ASSEMBLY,
RONG'E WARD,
TAITA- TAVETA COUNTY,
P.O BOX 1066,
WUNDANYI.

REF: PETITION AGAINST DIASPORA UNIVERSITY BY THE PEOPLE OF
MTO MWAGODI/MLAMBENYI, MGENO RESIDENTS.

We the residents of Mto Mwagodi Rong'e Ward, Mwatate Constituency wish to draw your attention on the above matter as follows:-

That ,we are 664 residents living on the above mentioned land which we depend on for our daily livelihood activities such as cattle grazing ,farming, bee keeping and other income generating activities.

That, we were born and raised on this land and some of us are senior citizens aged 60yrs and above. We are now wondering how some people can claim ownership of the land and our forefathers have been living here for decades and they were buried here (proof attached).

That, the ownership and the bounders of the land on which Diaspora University is building is in disputed between Ndara B and Mgeno Reserve and the issue have not been resolved.

That, the County Government has always denied giving any consent to the Diaspora University for the construction of the project.

That, the County Assembly of Taita Taveta also was opposed to the construction of the project citing lack of transparency, accountability and validity of the project. No public participation was done before they started the project.

That, on 17TH March 2021 Diaspora University started demolishing our houses without any prior notifications.

That, Diaspora University are operating with a lot of impunity and total disregard of the law and the rules of the land. They have deployed Askaris who are now threatening everyone around here and we the residents feel that our lives are in danger. Efforts to get assistance from the local administration have been futile because the matter was reported to the police OB.No. 2117/03/2021 but nothing has been done.

That ,we are asking both the National and the County Governments why Diaspora University has continued harassing the residents of Mto Mwagodi despite numerous letters , notices from senior officers and complaints from our leaders .

OUR PRAYER is that due diligence shall be done on this project and its Directors so that your humble Petitioners receive Peace and Justice, and Security restored.

Yours faithfully,

Attached is the list of the representatives of the petitioners:-

MTO MWAGODI/MLAMBENYI OFFICIALS

<u>TITLE</u>	<u>NAME</u>	<u>ID. NUMBER</u>	<u>SIGNATURE</u>
CHAIRMAN	RICHARD MWARINDA	5406317	<u>Mrinda</u>
V/CHAIRPERSON	EUNICE WAMWANDU	4662165	<u>E.W.</u>
SECRETARY	DIANAH MGHOI	30146629	<u>Diana</u>
TREASURER	GLADNESS MWAKIMA	5405793	<u>Gladness</u>
MEMBER	CHRISTOPHER MGOMA		<u>Nkomo</u>



MINISTRY OF LANDS AND PHYSICAL PLANNING

Telephone: WUNDANYI 015-42653
If calling or telephoning, please ask for
Email: wundanyilandregistry@gmail.com

DISTRICT LANDS OFFICER,
TAITA TAVETA DISTRICT,
P.O. BOX 1061
WUNDANYI

When replying please quote ref

Ref: No.11 ADME416'8

Date: 27th October, 2020

TO
NDARA 'B' GROUP RANCH
KENYA UNIVERSITY PROJECT (KUP)

RE: REGISTRATION OF LEASE FOR L.R NO. SAGALLA/NDARA 'B'/17

Reference is made to the above matter and a letter by the Senior Assistant Chief Land Registrar addressed to your advocates, "copy attached".

You are hereby directed to surrender the certificate of Lease issued to 'KUP' Kenya University Project on 18th August, 2017 for cancellation within 14 days, failure to which the same shall be deemed cancelled and of no effect.

M. S. Manyariki
LAND REGISTRAR

TAITA/TAVETA COUNTY

LAND REGISTRAR
TAITA TAVETA
COUNTY

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-ZC-

0161 39111111

MTO MWAGODI RESIDENTS MGENO,
P.O BOX 272-80300,
VOI.

14TH MAY 2021.

THE MEMBER OF PARLIAMENT,
MWATATE CONSTITUENCY,
P.O BOX 75-80305,
MWATATE.

REF: PETITION AGAINST DIASPORA UNIVERSITY BY THE PEOPLE OF
MTO MWAGODI/MLAMBENYI, MGENO RESIDENTS.

We the residents of Mto Mwagodi Rong'e Ward, Mwatate Constituency wish to draw your attention on the above matter as follows:-

That, we are 664 residents living on the above mentioned land which we depend on for our daily livelihood activities such as cattle grazing, farming, bee keeping and other income generating activities.

That, we were born and raised on this land and some of us are senior citizens aged 60yrs and above. We are now wondering how some people can claim ownership of the land and our forefathers have been living here for decades and they were buried here (proof attached).

That, the ownership and the bounders of the land on which Diaspora University is building is in disputed between Ndara B and Mgeno Reserve and the issue have not been resolved.

That, the County Government has always denied giving any consent to the Diaspora University for the construction of the project.

That, the County Assembly of Taita Taveta also was opposed to the construction of the project citing lack of transparency, accountability and validity of the project. No public participation was done before they started the project.

That, on 17TH March 2021 Diaspora University started demolishing our houses without any prior notifications.

That, Diaspora University are operating with a lot of impunity and total disregard of the law and the rules of the land. They have deployed Askaris who are now threatening everyone around here and we the residents feel that our lives are in danger. Efforts to get assistance from the local administration have been futile because the matter was reported to the police OB.No. 2117/03/2021 but nothing has been done.

That, we are asking both the National and the County Governments why Diaspora University has continued harassing the residents of Mto Mwagodi despite numerous letters, notices from senior officers and complaints from our leaders.

OUR PRAYER is that due diligence shall be done on this project and its Directors so that your humble Petitioners receive Peace and Justice, and Security restored.

Yours faithfully,

Attached is the list of the representatives of the petitioners:-

NDARA B COMMUNITY

P. O. Box 133-80300

Voi, Kenya

Email: ndarabcommunity@gmail.com

14th August 2021

THE NATIONAL ASSEMBLY – PARLIAMENT DEPARTMENTAL COMMITTEE ON LANDS

P. O. Box 41842-0010

Nairobi.

Dear Honorable Members,

RE: NDARA B COMMUNITY LAND

We, the Ndara B Community Land Management Committee, have seen your letter dated 11th August 2021, that is circulating in the social media and the petition by Hon Andrew Mwadime. The letter informed us on your 20th August 2021 visit to our land based on the Petition made on behalf of residents of Mto Mwangoti regarding the irregular establishment of Diaspora University on Community land.

We herewith inform the Committee that the Community Land Hon. Mwadime made the petition on is Ndara B Community Land title Sagala/Ndara 'B' / 17 that is held by our registered community in accordance with Kenya Constitution land laws 40, 61 and 63.

As we welcome your committee to visit our land, we note that the petition is based on Kenya Constitution article 119. We ask that the Members of Parliament during the field visits adhere to Kenya Constitution article 40.

As we thank Parliament for sharing the petition with our community, we state we have seen the contents and petitioners. We further inform the committee that this is part of illegal activities supposed by some political leaders. We state that the Directorate of Criminal Investigations (DCI) and Director of Public Prosecution (DPP) are informed.

Regarding Diaspora University Town development, we wish to inform the Committee that Ndara B Community are founders and investors alongside Diaspora Kenyans.

Since the honourable members will be touching on matters relating to Ndara B Community registered land our land committee with the consideration of Kenya Constitution 19 and 40 requests that a meeting with Ndara B Community Land Management Committee be incorporated as the first meeting and thereafter the following:

11.00 – 12.30 meetings at Government Offices.

1. Ndara B Community Land Management Committee members to be present in all government offices meetings
2. Any information given be recorded and open to the media.

Ndara 'B' 17 (Diaspora University Town) Visit and Meetings

1. Ndara B Community Land Security Team and police assigned will facilitate the visit.
2. All Mto Mwangoti resident', meetings be at their individual houses.
3. A meeting held with Ndara B Community members inside their land.
4. Trespass of Ndara B Community land shall not allowed.

To further enable your committee to get the correct information and do not just come to facilitate illegal activity, below is information from Ndara B Community as follows:

- A. Ndara B Community Land Ownership.
- B. Illegal Settlements on our Land.
- C. Diaspora University Land Allocation and Founding.
- D. Illegal Interference by Government.

A. NDARA B COMMUNITY LAND OWNERSHIP

The summary points below highlight our ancestral land ownership and progressive usage.

1. Ndara B Community is an ancestral community that speaks the Sagalla dialect, one of the Taita languages.
2. The Community ancestors settled on the northern side of the hill that they called Sagalla and grazed their animals in what they called the Sagalla/Ndara plains.
3. In 1978, demarcation of our land was done. Ndara A and Ndara B created.
4. Ndara A land, between the Hill and Voi River, was subdivided to families. 14 villages created. Today they are called: Pii, Kilabu, Kalambe, Mwangea, Ongoni, Mandiri, Mngarisoni, Uvoro, Kabomu, Mnaoni, Majengo, Msambweni, Mwingoni, Kaloleni
5. Ndara B land that followed the river to the railway line and to Voi – Taveta Road was allocated to grazing. The land registered as Ndara B Group Ranch to a Register of Ndara B Group Ranch members in 1982. Title Sagalla/Ndara 'B' 1 was issued and held in accordance with Kenya Constitution, Ndara B Group Ranch Constitution, and the Land Group Representations Act.
6. In 2010, Ndara B Community members were part of the Kenyans who enacted Kenya Constitution that classified all land in Kenya as Public, Community and Individual in article 61. Ndara B Group Ranch became classified as Community land. In article 63 the land became held under article 63 (2) (d) (i). The property rights in Kenya Constitution 40 on protection of right of property became applicable
7. In 2016, Parliament as required by Kenya Constitution 63 (4) enacted the Community Land Act. The act repealed the Land Group Representatives Act. Ndara B Group Ranch registered documents transitioned to the Act through the Transitions Provisions.
8. In 2016 – 2017, when making our land productive and sustainable in accordance with Kenya Constitution 60 we sub-divided our land and created titles 15, 16, 17 and 18 for different economic and social plans to meet our constitutional rights article 43.
9. On February 2021, the Ministry of Lands after completion of setting up the requirements availed a returning officer for elections that we held on 24th February 2021.
10. On 17th June 2021 Ndara B Community Certificate of registration was issued.

11. In accordance with the Community Land Act 47, (4) we gave back the titles to be issued new titles. The Registrar has established the new titles and is holding them awaiting further instructions.

B. ILLEGAL ACTIVITIES AND ILLEGAL SETTLEMENTS ON OUR LAND

There have been illegal settlements and activities on our land over the years as per below points.

1. The illegal settlements on our land started after draughts led us from grazing to other economic activities.
2. A Company Nanak Limestone previously mining across the Voi river would enter the land and have since claimed it was allocated the land by the then President Daniel Arap Moi. The company brought workers and the Mto Mwagoti illegal settlement emerged. The community has been writing to the Company asking they proof the legality of the activity.
3. The other illegal activity was a European who came and set-up Shasha Camp. Ndara B Community on finding out about the camp formalized the lease with Shasha Camp.

C. DIASPORA UNIVERSITY TOWN LAND ALLOCATION, FOUNDING AND DEVELOPMENT

The below points are a summary of how Ndara B Community, Diaspora Kenyans and Mto Mwagoti residents joined together and are developing Diaspora University Town.

1. In 2015 Diaspora Kenyans would bring a plan for approval by the County Assembly in accordance with Kenya Kenya Constitution 185 (4).
2. In April 2016, Ndara B Community would be informed of a University and Town Development Plan looking for land.
3. Ndara B Community as holders of Ndara B Community land in accordance with Kenya Constitution 63 (2) (d) (i) and registered as Ndara B Group Ranch in accordance with the Land Group Representatives Act invited the Diaspora Kenyans to consider their community land for development of the plan.
4. The community considered the plan and understood it as one that would create jobs for the community and advance their constitution rights in Kenya Constitution 43 of education, housing, healthcare, and others. The Community chose to become founders and developers of the plan with the Diaspora Kenyans.
5. In August 2016 our community held an AGM and granted the land to incorporate Diaspora University Trust. The process done in accordance with Kenya Constitution, Ndara B Group Ranch Constitution, and the then Land Group Representatives Act.

6. In 2016 – 2017 Ndara B Community and Diaspora Kenyans progressed the development plan through Survey, Physical Planning Approval, Land Board Control approval, and Land Grant to incorporate a Trust.
7. In 2018 as the Strategic Environment Assessment (SEA) was done a humanitarian plan to incorporate the 21 families (Mto Mwagoti residents living inside our land) was established. 18 families of the 21 families living inside the land established the plan.
8. The Trust was incorporated, and the development plan continues to progress as it creates jobs and income for Ndara B Community members, Mto Mwagoti residents and other Kenyans.
9. The plan is further contributing toward the tax budget that funds the government..

D. ILLEGAL INTERFERENCE BY GOVERNMENT

It is unfortunately that taxpayer money continues to be used to deny our rights. Below the illegal processes so far done using public resources allocated to state offices and officers.

1. In 2017, the Deputy County Commissioner – Voi used his office to intimidate our community and derail our project from progressing forward.
2. In May 2018, the Deputy County Commissioner – Mwatate using his office stopped activity on our land citing security concerns. We are yet to be officially given the security concerns.
3. In June 2018, two members of our community opened a Court case, and the Magistrate became the facilitator of denying our community our constitutional rights. The community has since made complainants to the Judicial Service Commission in accordance with Kenya Constitution 172.
4. On 9th October 2018, the Governor of Taita Taveta when offered security by the then Deputy County Commissioner – Mwatate when using public offices trespassed our land and made remarks that people enter the land as their property. Ndara B Community established a security plan.
5. In March 2019 when the Strategic Environment Assessment (SEA) public participation advertisements were placed in the newspapers, a few members of the County Assembly of Taita Taveta after meeting at the Chambers wrote to NEMA saying they had rejected the project. NEMA, enabled the Community to complete the SEA so the clean and healthy environmental right can be incorporated.
6. After 6th July 2020 COVID 19 restrictions were lifted, the Community and Diaspora Kenyans reopened the site only for the following to happen.
 - a. The Ward Administrator. Ronge Ward, and the County Assembly Majority Leader, Harris Keke, came to our land uninvited, to peddle lies and intimidate the Community.


- b. When the Community refused to be intimidated, they went ahead to call the police lying on a security concern. The police asked a meeting between the persons, the Community and County Commissioner.
- c. On 21st July 2020, the day of meeting, the County Commissioner who was supposed to host the meeting did not show up. The County Assembly Majority leader and Governor office had established case ELC 20 of 2020 and gotten a Court Order dated 17th July 2020. The police were supposed to ensure that the site remains closed based on security. When Ndara B Community Chairman, a former police officer, said he shall reopen the site, the Court Order that was withheld was issued by Fredrick Mwambili (who said he was the County Assembly lawyer,) and was in the company of the Majority Leader.
- d. Our committee on review of the case ELC 20 of 2020 that Magistrate F.N Nyakundi issued a court order on found that in the rush to open the case the Magistrate did not consider that the legal advisor of Government is the Attorney General in Kenya Constitution 156 (4) and a County Assembly as a Government body is advised by the Attorney General. This constitutional requirement established to protect the public who shall suffer the costs of a case established by Government in case the Government loses. The amount paid through taxing Kenyans by Parliament.


7. In July 2021, parliament became the next government body to be invited to use public resources to interfere with our development.


In giving this information, we are giving you the honourable members the basic facts. We look forward to your visit.

Yours faithfully

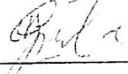
Ndara B Community Land Management Committee



Benjamin Mwanda



Asina Kidoki

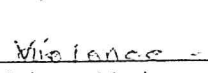

George Mwadeghu

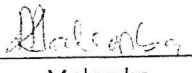

Hamisi Kalela

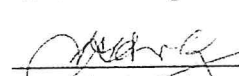

Anderson Mwaumba

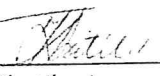

Raphael Ngao

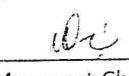

Ronald Mwangombe


Violence Mashengu

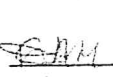

Lucy Malemba



Bwanaheri Kalela


Khatibu Jumaa


Margaret Chaka


Sabastian Zenge


Esther Mwakandu

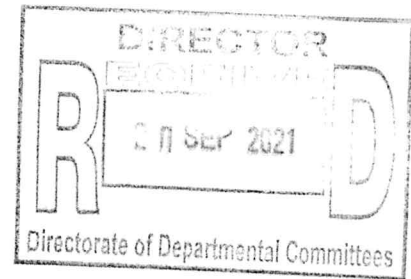

Elizabeth Mwacharo



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING
Office of the Principal Secretary

Tel: +254(0)20 2718050
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Ardhi House
1st Ngong Avenue
P.O. BOX 30450-00100
Nairobi, KENYA

When replying please quote:

Ref. No. MOLPP/ADMIN/21/8 (77)

September 16, 2021

Mr. Michael Sialai, EBC
The Clerk
National Assembly
Parliament Buildings
P.O Box 41842-00100
NAIROBI

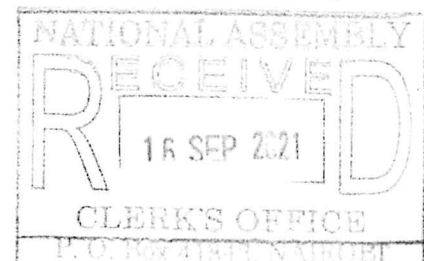
Leonard Madiro
pls facilitate consideration
20/9/21
17/9/2021
DC

Dear Sir,

RE: RESPONSES TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE
ON LANDS

Reference is made to your letter Ref. NA/DDC/LANDS/2021 (091) dated August 10, 2021. Please find our responses to the following petitions:

1. Petition by Hon. Andrew Mwadime, MP on behalf of residents of Mto Mwagodi, Mgeno Area, Rong'e Ward in Mwatate Constituency regarding the irregular establishment of Diaspora University on community land
2. Petition by East Mau Forest evictees regarding resettlement of East Mau Forest evictees
3. Petition by Hon. Joshua Kutuny, MP on behalf of the family of the late Hon. Arthur Kinyanjui Magugu regarding fraudulent subdivision of land registered as L.R No. 12422/9
4. Petition by Hon. Tandaza Kassim Sawa, MP on behalf of registered landowners in Tiwi Shimba North Kunditsi B regarding irregular annexation of private land in Tiwi, Shimba North Kunditsi B in Matuga Constituency by Greatcom Limited.



We hope that the information is sufficient.

Yours Sincerely,



Dr, Nicholas Muraguri
PRINCIPAL SECRETARY

Encl



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING

RESPONSES TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON LANDS

Honourable Chair,

Pursuant to a letter Ref. NA/DDC/LANDS/2021 (091) dated August 10, 2021, the Committee invited the Cabinet Secretary Ministry of Lands and Physical Planning to respond to:

1. Petition by Hon. Andrew Mwadime, MP on behalf of residents of Mto Mwagodi, Mgeno Area, Rong'e Ward in Mwatate Constituency regarding the irregular establishment of Diaspora University on community land
2. Petition by East Mau Forest evictees regarding resettlement of East Mau Forest evictees
3. Petition by Hon. Joshua Kutuny, MP on behalf of the family of the late Hon. Arthur Kinyanjui Magugu regarding fraudulent subdivision of land registered as L.R No. 12422/9
4. Petition by Hon. Tandaza Kassim Sawa, MP on behalf of registered landowners in Tiwi Shimba North Kunditsi B regarding irregular annexation of private land in Tiwi, Shimba North Kunditsi B in Matuga Constituency by Greatcom Limited.

Honourable Chair, I wish to respond as follows:

1. PETITION BY HON. ANDREW MWADIME, MP ON BEHALF OF RESIDENTS OF MTO MWAGODI, MGENO AREA, RONG'E WARD IN MWATATE CONSTITUENCY REGARDING THE IRREGULAR ESTABLISHMENT OF DIASPORA UNIVERSITY ON COMMUNITY LAND

Honourable Chair,

The Petitioners presented the petition seeking to stop construction of a university known as Diaspora University on a community land, which they claim to have been in occupation since time immemorial.

They claim that there was no public participation on the project. Additionally, the Petitioners claim that the County Government of Voi is opposed to the project owing to the lack of transparency, accountability and viability of the project as well as unresolved land ownership issues.

They allege that efforts to have the matter addressed by local authorities including the police have been futile. They therefore request the Committee to:

- i) Intervene with a view to securing restoration of the land encroached upon by the proprietors of Diaspora University to the residents who are the rightful owners of the land
- ii) Secure the timely resolution of the matter so as to restore peace and tranquility in the area
- iii) Make any other recommendation that it deems fit in the circumstances of the petition.

Response

Honourable Chair, I wish to respond as follows-

The subject land was registered on January 20, 1982 as Parcel no. SAGALLA/NDARA (B)/1 (measuring approximately 2215.0 Hectares) in the name of NDARA B Group Ranch, under the Land (Group Representatives) Act, Cap. 287 (repealed by the Community Land Act, 2016).

On October 26, 2016 the group ranch subdivided the parcel into two (2) portions namely SAGALLA/NDARA 'B'/14 & SAGALLA/NDARA 'B'/15. On August 18, 2017, the group Ranch further subdivided parcel SAGALLA/NDARA 'B'/14 into three (3) portions, creating parcels SAGALLA/NDARA B/16, SAGALLA/NDARA B/17 & SAGALLA/NDARA B/18. On the same day August 18, 2017 the group ranch registered a five (5) year lease in favour of KUP Institution Town Limited for

parcel SAGALLA/NDARA "B"/17 measuring approximately 600 Hectares. A Certificate of Lease dated August 18, 2017 was issued.

Vide an application to the Voi Land Control Board dated July 10, 2019, KUP Institution Town Limited sought consent from the board to transfer parcel p SAGALLA/NDARA "B"/17 to Diaspora University Trust.

The application was rejected and reasons for the same communicated vide a letter dated September 11, 2019 (**annexure 1**) as follows-

- i) The application submitted indicated parcel no. SAGALLA/NDARA "B"/19 as the subject parcel whereas the accompanying documents namely certificate of lease is for a different parcel SAGALLA/NDARA "B"/17
- ii) The application sought to transfer land belonging to a group ranch whereas the Community Land Act under Section 47 (3) clearly indicates that land held by group representatives shall not be sold, leased or converted to private land before it is registered under the Act
- iii) The minutes accompanying the application do not indicate the transaction submitted to the board
- iv) The submissions by the applicant to the board that parcel no. SAGALLA/NDARA "B"/17 belongs to KUP institution limited is unfounded as Section 54(5) of the Land Registration Act indicates that only long term leases have the effect of conferring ownership. These are leases exceeding 21 years. KUP institution Limited has a 5 year lease which is short term
- v) The County Government of Taita Taveta through a letter dated July 12, 2019 to the board objected to the application citing Section 47 of the Community Land Act, 2016
- vi) The failure of the entire executive of the group ranch to appear before the land control board.

The letter by County Government of Taita Taveta objecting the transfer of parcel SAGALLA/NDARA "B"/17 to Diaspora University Trust is marked **annexure 2**.

Honourable Chair,

The matter has been the subject of litigation before the Principal Magistrate's Court in Voi, Civil Suit No. 161 of 2018. The court delivered judgement on the case on July 18, 2019 where it issued an injunction restraining the group representatives of the NDARA B Group Ranch from making any new resolutions pending conversion of the group ranch as contemplated under the Community Land Act, 2016. A copy of the judgment is marked **annexure 3**.

Consequently, the Ministry recalled the Certificate of Lease issued to KUP Institution Limited for cancellation. The lease was surrendered on November 2, 2019 and cancelled accordingly (**annexures 4**).

Honourable Chair,

The Community Land Act, 2016 repealed the Land (Group Representatives) Act, Cap. 287. Section 47 (1) of the Act provides that the respective group representatives together with their communities they represent shall be registered as a community in accordance with the provisions of the Act. In relation to land held under the repealed Act, Section 47 (3) of the Act provides that it shall not be sold, leased or converted to private land before it has been registered under the Act. Part VIII of the Community Land Regulations, 2017 prescribes the process of conversion of group ranches and it entails the following:

- i) Preparation by the Cabinet Secretary of an inventory of all land held under the repealed Land (Group Representatives) Act, (Cap. 287)
- ii) Issuance of a notice by the Registrar to group representatives of the requirement to convert into a community
- iii) Application by the groups to register as a community
- iv) Issuance of a Certificate of Registration and thereafter a certificate of title or lease is issued upon surrender of the existing title document and certificate of incorporation issued under the Land (Group Representatives) Act (now repealed) for cancellation. Upon registration, the respective group representatives shall cease to hold office.

The inventory of all land held under the repealed Land (Group Representatives) Act, (Cap. 287) has been prepared (**annexures 5a -5c**). Steps (ii) - (iv) have been undertaken as far as NDARA B Group Ranch is concerned. The Community Land Registrar conducted elections of the Community Land Management Committee on February 24, 2021 in accordance with the provisions of Section 7 (5) of the Community Land Act, 2021 (**annexures 6**).

Under Section 15 (5) of the Act, any decision of a registered community to dispose or otherwise alienate community land shall be binding if it is supported by at least two thirds of the registered adult members of the community.

2. PETITION BY EAST MAU FOREST EVICTEES REGARDING RESETTLEMENT OF EAST MAU FOREST EVICTEES

Honourable Chair,

The petition was filed by East Mau Forest Evictees said to comprise 4,350 members who were evicted from ten (10) forests within Eastern Mau in 1988. The Petitioners claim that they had been living in the area for over seventy (70) years before they were evicted and have not been resettled.

They contend that they have been discriminated against in the resettlement programme by the National Government as other forest evictees from Bomet, Kericho and Baringo have been resettled.

According to the petitioners, although the case was referred to the Truth Justice and Reconciliation Commission (TJRC) and the National Land Commission (NLC) in 2011 and 2018 respectively, it has not been resolved. They have therefore presented the petition to request the Committee to intervene and investigate their case with a view to find a solution.

Response

Honourable Chair, I wish to respond as follows-

The Eastern Mau Forest block was proclaimed a forest reserve in 1932. The forest reserve was declared a Central Forest vide legal notice No. 174 of May 20, 1964. The total area was 65,842.21 Hectares. This block consists of the following forest stations-

- i) Baraget
- ii) Mariashoni
- iii) Kiptunga
- iv) Nessuit
- v) Likia
- vi) Logomani
- vii) Sururu
- viii) Teret
- ix) Elburgon

Part of this Eastern Mau Forest block was identified to settle mainly the Ogiek community at the edges of the forest to deter them from interfering with the rest of the forest. Other people who were evicted from other parts of Mau Forest like Chepakundi and families affected by ethnic clashes of 1992 were settled in the settlement schemes that were established as follows-

S/No.	Schemes	Area (Ha.)	No. of Beneficiaries	Status
1.	Sururu	5852	2600	Completed
2.	Likia	2290	900	Completed
3.	Teret	2117	850	Completed
4.	Sigotik	1812	600	Suspended due to a court order issued in Nakuru High Court Petition No. 11 of 2020 (annexure 7)
5.	Nessuit	4730	1500	Completed
6.	Ngongoneri	4100	1400	Completed
7.	Marioshoni	8300	1500	Suspended due to a court order issued in Nakuru High Court Petition No. 11 of 2020 (annexure 7)
8.	Kapsita (Molo)	901.6	671	Completed
9.	Kapsita (Elburgon)	3,300	900	Completed
10.	Baraget	2,800	700	Completed

Honourable Chair,

The Forest Department within the Ministry of Environment and Natural Resources had a programme called the “Shamba System” a method of forest plantation where communities were allowed to reside inside forests and tend to young plantation trees as they produce food crops. In the original practice, resident forest workers were allowed to reside on freshly cleared areas to plant food crops for 2-3 years while tree seedlings were grown. Over the years, the offer of tenancy was extended to others as well. The system was consequently banned by a presidential decree in 1987 and in 1988 all forest residents were evicted from forest areas. This is the group that lodged a petition.

They claim that they were not considered as beneficiaries in all the schemes that were established in the Eastern Mau Forest block.

After being evicted from Eastern Mau forest block in 1988 there is no documentary evidence to portray how and where they were resettled in this office. Again, there

is no list of the names to indicate whether or not they were profiled. Most of those families reside in informal settlements scattered all over Nakuru County.

3. PETITION BY HON. JOSHUA KUTUNY, MP ON BEHALF OF THE FAMILY OF THE LATE HON. ARTHUR KINYANJUI MAGUGU REGARDING FRAUDULENT SUBDIVISION OF LAND REGISTERED AS L.R NO. 12422/9

Honourable Chair,

The petitioner claims that land parcel L.R No.12422/9 measuring approximately 41.133 Hectares was registered in the name of the late Hon. Arthur Kinyanjui. The Certificate of Title was issued on December 16, 1982. They state that on February 19, 1991, the deceased engaged the firm of Kamwere & Associates Surveyors to carry out subdivision of the land into two (2) parts. The subdivision was carried out to create L.R Nos. 12422/203 & 12422/204.

They claim that the surveyor subsequently fraudulently subdivided parcel L.R No. 12422/204 to create L.R Nos. 12422/318 & 12422/319 vide a Certificate of Subdivision given on October 25, 1993 by the Town Clerk, City Council of Nairobi approving the subdivision. Parcel L.R No. 12422/ 319 was transferred to Karura Investment Limited on the same day. The Petitioners claim that the subdivision of L.R No. 12422/204 was fraudulent for the following reasons:

- i) The Certificate of Title in respect of L.R No. 12422/204 was issued to the deceased
- ii) The application for consent to transfer parcel L.R No. 12422/319 is not dated nor signed
- iii) The consent to transfer parcel L.R No. 12422/ 319 was made one (1) month before the parcel was created.
- iv) The transfer document dated October 25, 1993 was only executed by the alleged vendor and not the purchaser.

The Petitioners therefore request the Committee to:

- i) Inquire into the issues raised in the petition
- ii) Make recommendations requiring the Registrar of Titles to cancel the fraudulent entries of title registered under L.R 12422/319
- iii) Make any other recommendations, as it may deem appropriate.

Response

Honourable Chair, I wish to respond as follows-

According to our records, the parcel of land L.R. No. 12422/9 measuring approximately 41.13 Hectares was registered on December 16, 1982 as I.R. No. 37221 in favour of Arthur Kinyanjui Magugu. A copy of the Memorandum of Registration of Transfer of Land (MRT) is marked **annexure 8**.

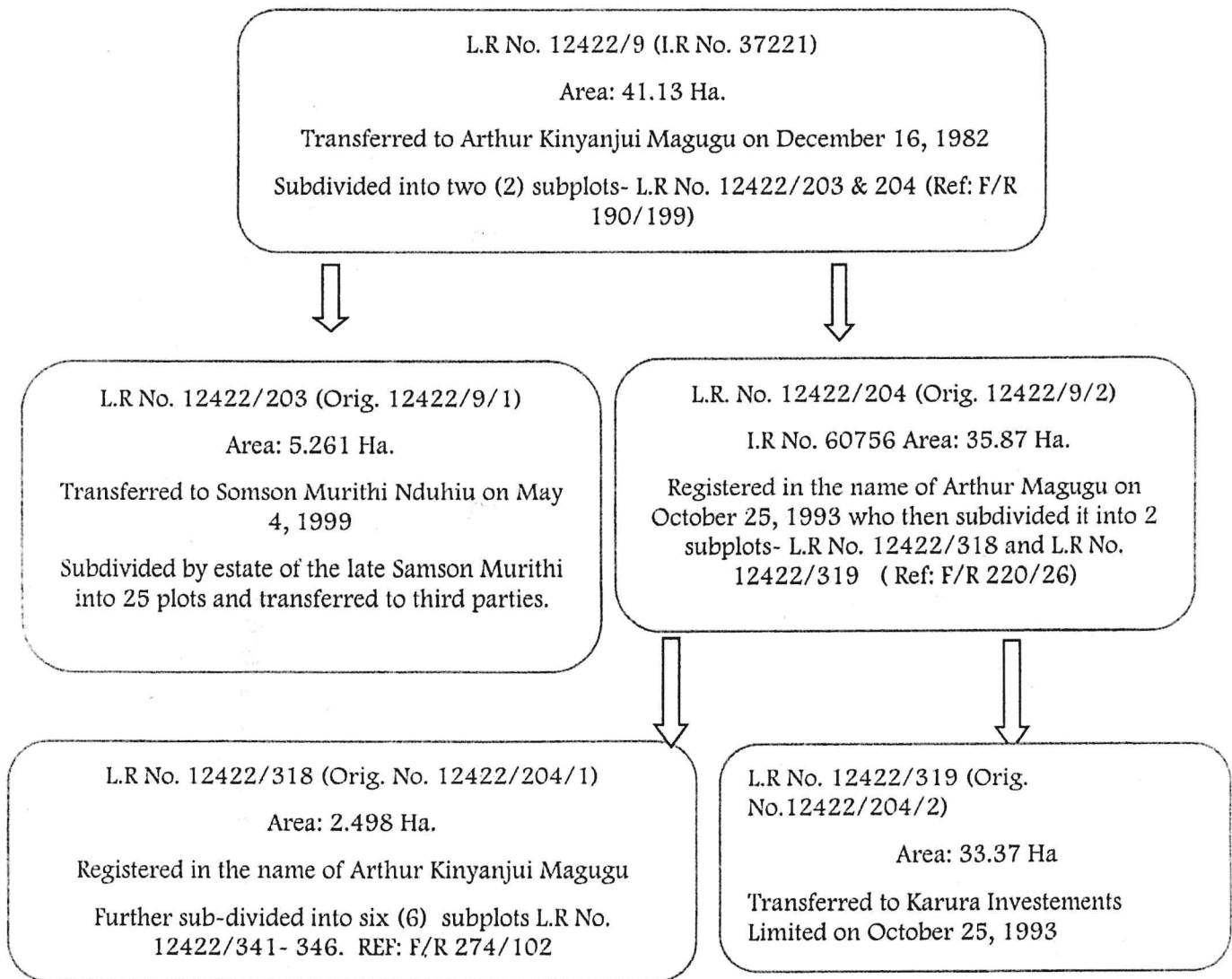
A proposal by proprietor through Kamwere & Associates (Survey & Planning Consultants) to subdivide the land into two (2) portions was approved by the then Nairobi City Commission vide a letter Ref. CP & ARCH/DC/777/L.R. 12422/9 dated February 23, 1988 (**annexure 9**). The Ministry gave its approval to the subdivision vide a letter Ref. 112003/18 dated June 8, 1990 (**annexure 10**). An approval for the subdivision was also obtained from the Nairobi Land Control Board (**annexure 11**). A copy of the approved subdivision scheme plan is marked **annexure 12**. The subdivision created land parcels L.R. Nos. 12422/203 and 12422/204 as per the copy of the survey plan marked **annexure 13**.

L.R. No. 12422/204 was further subdivided into two (2) portions creating L.R. Nos. 12422/318 measuring 2.498 Hectares and 12422/319 measuring 33.37 Hectares as per the copy of Survey Plan F/R 220/26 (**annexure 14**), approved subdivision scheme plan (**annexure 15**), approval from the Nairobi City Commission dated October 16, 1991 (**annexure 16**), consent from the Nairobi Land Control Board dated January 9, 1992 (**annexure 17**) and approval from the Ministry dated August 7, 1992 (**annexure 18**).

On October 25, 1993, a Certificate of Title (I.R 60756) was issued for L.R. No. 12422/204 in favour of Arthur Kinyanjui Magugu (**annexure 19**). On the same date, a transfer to Karura Investments Limited in respect of L.R. No. 12422/319 was registered and a Certificate of Title I.R 60757 issued (**annexure 20**).

From our records, L.R. No. 12422/203 (I.R 37227/6) measuring 5.261 Hectares was transferred to Somson Muriithi Nduhiu on May 4, 1999. The parcel was later subdivided into 25 portions and transferred to third parties. (Entry No. 6 of Certificate of Title I.R 37227 marked **annexure 21**).

L.R. No. 12422/318 was registered in favour of Arthur Kinyanjui Magugu as I.R. No. 103666 on December 7, 2004. A copy of the title is marked **annexure 22**. The resultant subdivisions relating to L.R. No. 12422/9 are described in the organogram below:-



We request more time to summon both parties to provide documentation for the subdivision of L.R NO. 12422/204 and the subsequent transfer of L.R. NO. 12422/319 to Karura Investments Limited. We shall report to the Committee on the progress within two weeks.

4. PETITION BY HON. TANDAZA KASSIM SAWA, MP ON BEHALF OF REGISTERED LAND OWNERS IN TIWI SHIMBA NORTH KUNDITSI B REGARDING IRREGULAR ANNEXATION OF PRIVATE LAND IN TIWI, SHIMBA NORTH KUNDITSI B IN MATUGA CONSTITUENCY BY GREATCOM LIMITED

The Petition was presented by Hon. Tandaza Kassim Sawa, MP on behalf of over fifty (50) registered owners of various parcels of land in Tiwi, Shimba North Kundutsi "B" in Matuga Constituency, Kwale County totaling approximately 400 acres. The parcels were adjudicated in the 1960s to 1980s and title deeds issued.

The Petitioners state that Maruma Holdings Limited owned an adjacent land registered as Kwale/Tiwi L.R No.4752/2 measuring approximately 1000 acres. They state that in early 2021, they learnt that M/s Greatcom Limited had purchased the land from Maruma Holdings Limited.

The Petitioners' complaint is that in April, 2021 the proprietors of Greatcom Holdings Limited, with the protection of the police encroached and fenced off their land and have since denied them access.

The petitioners sought the intervention of Kwale County Commissioner but the matter has not been resolved. They have thus filed the petition to request the Committee to-

- i) Investigate the circumstances in which M/s Greatcom illegally fenced off private land belonging to over fifty (50) families
- ii) Compel M/S Greatcom Limited to immediately vacate the encroached land so as to enable the petitioners to revert to their settlements and access public utilities that have been fenced off
- iii) Cause the concerned National Government Departments to re-survey the area so as to ascertain the boundary between the petitioners land and L.R No. Kwale/Tiwi 4752/2
- iv) Restrain M/s Greatcom Limited from any further development on the petitioners land pending re-survey
- v) Make any other recommendations deemed fit in safeguarding the petitioners rights

Response

Honourable Chair, I wish to respond as follows-

According to our records, land parcel L.R. No 4752 (C.R. 8561) measuring approximately 404.7 hectares (1000 acres) was registered in the name of *Brierley formerly of Aden* on November 15, 1933. **Annexure 23** is a copy of the title.

On October 8, 1943 the parcel was transferred to Diani Estates Limited. On March 15, 1978 the parcel was transferred to Jeremiah Njoroge. Subsequently, on May 28, 1980 the parcel was transferred to Maruma Holdings Company Limited **Annexure 24**.

In a letter dated May 22, 1980 Maruma Holdings Company Limited applied for extension of lease (**Annexure 25**) and vide a letter Ref: 46474/102 dated November 12, 1981 the Commissioner of Lands approved the extension of lease to 999 with effect from January 1, 1914(**Annexure 26**).

Maruma Holdings Company Limited subdivided the parcel giving rise to L.R. No. 4752/1(now L.R. No. 12800) and L.R. No 4752/2. The subdivision was done in order to excise a 150*x150* plot (L.R. No. 4752/1 measuring 0.2133 hectares) for establishing an electricity substation for the Kenya Power and Lightning Company Limited. See **Annexure 27**.


L.R. 4752/2 measuring approximately 404.5 hectares was re-granted to Maruma Holdings Company Limited and registered as CR. 16746 on March 16, 1984). The term of the leasehold title was endorsed to commence on December 1, 1981 for 932 years 1 month being the residue of the initial 999 year term approved (**annexure 28**).

On August 13, 2007, Maruma Holdings Company Limited through their advocates wrote to the then Minister of Lands and Settlement intimating their intention to sale the land to the Government with a view that the land would be ideal for settling squatters. See **Annexure 29**.

On May 10, 2013 Maruma Holdings Company Limited transferred L.R. 4752/2 to Greatcom Limited. A copy of the official search certificate is marked **annexure 30**. The Ministry is aware of the complaint by the Petitioners. Greatcom Limited applied to the Ministry for a resurvey of L.R. 4752/2 to establish the boundaries. The County Land Surveyor, Kwale summoned all interested parties on September 7, 2021 to witness the reestablishment of the beacons as shown in the letter Ref. KWL/ACS/2VOLXXVI/149 (**annexure 31**).

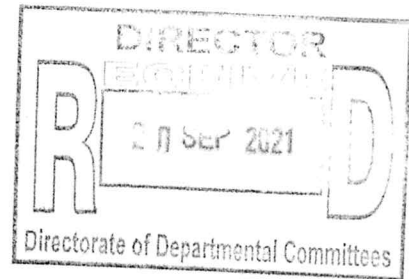
The exercise was undertaken on September 7, 2021. We shall submit a report on the outcome of the resurvey in two (2) weeks' time.

Honourable Chair, I submit.

A handwritten signature in black ink, consisting of several loops and a final vertical stroke, positioned above the printed name.

Farida Karoney, EGH
CABINET SECRETARY

September 14, 2021



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING
Office of the Principal Secretary

Tel: +254(0)20 2718050
Fax: +254(0)20 2724470

Ardhi House
1st Ngong Avenue
P.O.BOX 30450-00100
Nairobi, KENYA

When replying please quote:

Ref. No. MOLPP/ADMIN/21/8 (77)

September 16, 2021

Mr. Michael Sialai, EBC
The Clerk
National Assembly
Parliament Buildings
P.O Box 41842-00100
NAIROBI

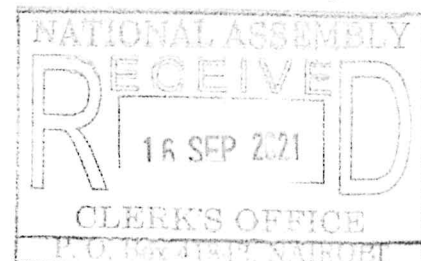
Leonard Madiro
pls facilitate Consideration
20/9/21
17/9/2021
DC

Dear Sir,

RE: RESPONSES TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE
ON LANDS

Reference is made to your letter Ref. NA/DDC/LANDS/2021 (091) dated August 10, 2021. Please find our responses to the following petitions:

1. Petition by Hon. Andrew Mwadime, MP on behalf of residents of Mto Mwagodi, Mgeno Area, Rong'e Ward in Mwatate Constituency regarding the irregular establishment of Diaspora University on community land
2. Petition by East Mau Forest evictees regarding resettlement of East Mau Forest evictees
3. Petition by Hon. Joshua Kutuny, MP on behalf of the family of the late Hon. Arthur Kinyanjui Magugu regarding fraudulent subdivision of land registered as L.R No. 12422/9
4. Petition by Hon. Tandaza Kassim Sawa, MP on behalf of registered landowners in Tiwi Shimba North Kunditsi B regarding irregular annexation of private land in Tiwi, Shimba North Kunditsi B in Matuga Constituency by Greatcom Limited.



We hope that the information is sufficient.

Yours Sincerely,



Dr, Nicholas Muraguri
PRINCIPAL SECRETARY

Encl

REPUBLIC OF KENYA



THE PRESIDENCY

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

Telegrams:

Telephone:

Telefax:

Email Address: dcc.voi@interior.go.ke

When replying please quote:

Ref: LND.5/VOL.1/79



Deputy County Commissioner's Office

Voi Sub County

P.O. Box 1 - 80300

VOI

11th September 2019

To KUP Institution
TOWN LIMITED

RE: REFUSAL TO ISSUE CONSENT FOR TRANSFER PARCEL NO. SAGALLA
NDARA 'B' / 19

Reference is made to your application to Voi Land Control Board seeking consent to transfer the above parcel of land.

We regret to inform you that your application for consent has been rejected by the Voi Land Control Board for the following reasons:

1. Your application submitted indicates parcel No. Sagalla Ndara 'B' / 19 as the subject parcel whereas your accompanying documents namely original certificate of lease is for a different parcel Sagalla Ndara 'B' / 17.
2. Your application seeks to transfer land belonging to a group ranch whereas the community Land Act under Sec 47 (3) clearly indicates that land held by group representatives referred to under Sub Section (1) shall not be sold, leased or converted to private land before its registered under this Act.
3. The minutes accompanying your application does not mention or indicate the transaction submitted to the board.
4. Your oral claims at the board that parcel No. 17 belongs to KUP Institution Town Limited is also unfounded as Sec 54(5) of the land registration Act indicates that long term leases have the effect of conferring ownership.

Long term leases under section 7 (h) of the Land Act refer to leases exceeding 21 years. KUP Institution Town Limited has a five (5) year lease from Ndara Group Ranch which is a short term lease.

5. The County government of Taita Taveta through a letter dated 12th July 2019 to the chairman Voi Land Control Board has objected to the said application for consent citing section 47 of the community land Act (copy attached).
6. The failure of the entire executive to attend the land control board.

You are further notified of your right to appeal to the Provincial Land Control Board or to seek legal redress.

Seen Olya
File Under
in Ministry


JOSEPH MTILE LEWA
DEPUTY COUNTY COMMISSIONER
VOI SUB COUNTY

DEPUTY COUNTY COMMISSIONER
VOI SUB - COUNTY

C.C

The County Commissioner
TAITA TAVETA

The County Land Registrar
TAITA TAVETA

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ANNEXURE 2

COUNTY GOVERNMENT OF TAITA TAVETA



DEPARTMENT OF LENAR, MINING, HOUSING AND TRANSPORT

Tel: +254 702 600 000

<http://www.taitataveta.go.ke>

environment@taitataveta.go.ke

P. O. BOX 1066-80304

Wundanyi

REF: TTCG/LENAR/CCOCORR/VOL.1/140

12th July, 2019

The Chairman
Land Control Board
VOI

**RE: APPLICATION FOR TRANSFER CONSENT BY KUP AND
DIASPORA UNIVERSITY OVER NDARA 'B' GROUP RANCH PARCEL**

The above matter refers.

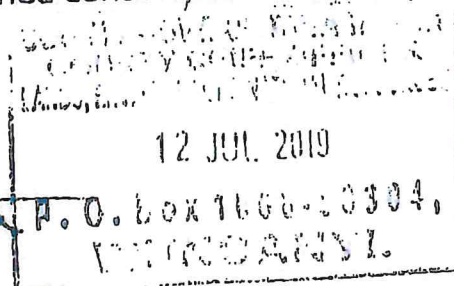
I am in receipt of information that KUP (Kenya University Project) have applied to the Land Control Board of Voi for consent to transfer a parcel at NDARA 'B' Group Ranch to Diaspora University.

Kindly note that KUP have a five year lease from NDARA 'B' Group Ranch. A five year lease is a short term lease and does not confer proprietary rights to the lessee. Section 47 of the Community Land Act clearly states that all parcels that were registered under the Group Representatives Act shall be re-registered under the Community Land Act.

On that note the County Government of Taita Taveta objects to the granting of the above mentioned consent, as the Community Land Act has come into effect.

REUBEN NGETI

CCO - LENAR, MINING, HOUSING AND TRANSPORT



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SECOND ASSEMBLY

(NO. 017)

THIRD SESSION
Afternoon Sitting
(043)

REPUBLIC OF KENYA



TAITA TAVETA COUNTY GOVERNMENT



TAITA TAVETA COUNTY ASSEMBLY

SECOND ASSEMBLY - (THIRD SESSION)

ORDER OF THE DAY

THURSDAY, MARCH 14TH, 2019, AT 2:30 P.M

ORDER OF BUSINESS

PRAYERS

1. Administration of Oath;
2. Communication from the Chair;
3. Messages;
4. Petitions;
5. Papers; (As listed in the Appendix)
6. Notices of Motion; (As listed in the Appendix)
7. Statements;
8. *MOTION; PROCEDURAL MOTION: PROCEDURAL RESOLUTION OF THE SECOND TAITA TAVETA COUNTY ASSEMBLY.

(HON. JASON TUJA MWAMODENYI, MCA WERUGHA WARD, MAJORITY LEADER, SECOND TAITA TAVETA COUNTY ASSEMBLY)

THAT, pursuant to the provisions of Standing Order No. 230, this County Assembly of Taita Taveta RESOLVES THAT, the Motions appearing on today's Order Paper be notified and moved in this same Afternoon Sitting No. 017;

(No. 017)

MARCH 14, 2019

(045)

APPENDICES

PAPERS

1. **REPORT BY THE BUDGET, FINANCE AND APPROPRIATIONS COMMITTEE ON THE SCRUTINY OF THE COUNTY FISCAL STRATEGY PAPER 2019/2020**

NOTICE OF MOTION

1. **NOTICE OF MOTION: PROCEDURAL MOTION: PROCEDURAL RESOLUTION OF THE SECOND TAITA TAVETA COUNTY ASSEMBLY.**

(HON. JASON TUJA MWAMODENYI, MCA WERUGHA WARD, MAJORITY LEADER, SECOND TAITA TAVETA COUNTY ASSEMBLY)

THAT, pursuant to the provisions of Standing Order No. 230, this County Assembly of Taita Taveta RESOLVES THAT, the Motions appearing on today's Order Paper be notified and moved in this same Afternoon Sitting No. 017;

2. **NOTICE OF MOTION: ADOPTION AND APPROVAL OF THE REPORT ON THE SCRUTINY OF THE COUNTY FISCAL STRATEGY PAPER (HON. GODWIN KILELE, CHAIRPERSON, THE BUDGET AND APPROPRIATION COMMITTEE, MCA, SAGALA WARD)**

THAT this House adopts and approves the report of the Budget and Appropriations Committee on the analysis of the County Fiscal Strategy Paper laid on the table of this House on Thursday, 14th March, 2019, afternoon, sitting No. 017, and its recommendations thereof.

3. **NOTICE OF MOTION: REJECTION OF THE DIASPORA UNIVERSITY PROJECT PROPOSAL BY TAITA TAVETA COUNTY ASSEMBLY (HON. GODWIN MWAMODO KILELE, MCA, SAGALLA WARD, MINORITY PARTY CHIEF WHIP, SECOND TAITA TAVETA COUNTY ASSEMBLY)**

WARE THAT, the National Environment Management Authority (NEMA) posted a notice to the Public on Wednesday 6th February, 2019 People Daily newspaper, inviting submission of comments on the Draft Strategic Environmental Assessment (Sea) Report for the proposed diaspora University Town Development Plan, Taita Taveta County;

(No. 017)

MARCH 14, 2019

(044)

9. MOTION: ADOPTION AND APPROVAL OF THE REPORT ON THE SCRUTINY OF THE COUNTY FISCAL STRATEGY PAPER (HON. GODWIN KILELE, CHAIRPERSON, THE BUDGET AND APPROPRIATION COMMITTEE, MCA, SAGALA WARD)

THAT this House adopts and approves the report of the Budget and Appropriations Committee on the analysis of the County Fiscal Strategy Paper laid on the table of this House on Thursday, 14th March, 2019, afternoon, sitting No. 017, and its recommendations thereof.

10. MOTION: REJECTION OF THE DIASPORA UNIVERSITY PROJECT PROPOSAL BY TAITA TAVETA COUNTY ASSEMBLY (HON. GODWIN MWAMODO KILELE, MCA, SAGALLA WARD, MINORITY PARTY CHIEF WHIP, SECOND TAITA TAVETA COUNTY ASSEMBLY)

AWARE THAT, the National Environment Management Authority (NEMA) posted a notice to the Public on Wednesday 6th February, 2019 People Daily newspaper, inviting submission of comments on the Draft Strategic Environmental Assessment (Sea) Report for the proposed Diaspora University Town Development Plan, Taita Taveta County;

FURTHER AWARE THAT, it is common and clear knowledge to this Legislative Assembly as well as to all the residents in Taita Taveta County, that as far as the County Government of Taita Taveta is concerned, the issue of proposed Diaspora University Town Development Plan in Taita Taveta County was concluded last year on 22nd November, 2018, by being rejected unanimously by the Taita Taveta County Assembly, via a Motion which was sponsored by the Assembly's Lands Committee, and whose resolution made on Thursday Afternoon Sitting No. 079 (SECOND SESSION, 2018) on 22nd November, 2018, was forwarded to the Taita Taveta County Governor;

This County Assembly of Taita Taveta **REJECTS THE PROJECT PROPOSAL** of setting up the Diaspora University anywhere in the County of Taita Taveta.

REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT

AT VOI

CIVIL SUIT NO. 161 OF 2018

1. ENGINEER ELIJAH MWANDOE } PLAINTIF
2. SULEIMAN MWAMBOGHA }

VERSUS

1. BENJAMIN MWANDAA } DEFENDANTS
2. ANDERSON MWAUMBA }
3. HAMISI KALELA }
4. PETER MAGHANGA }
5. ABDALLA KIKO }

JUDGMENT

By first track plaint dated 8th June 2018 and filed in court on 11th June 2018, the plaintiffs herein Engineer Elijah Mwandoe and Suleiman Mwambogha brought this suit against the defendants herein Benjamin Mwandaa, Anderson Mwaimba, Hamisi Kalela, Peter Maghanga and Abdalla Kiko seeking the following orders;

- (a) A permanent injunction restraining the defendants by themselves, their agents, servants, employees or anyone claiming under them from transacting any business for and on behalf of the group ranch.
- (b) An order compelling the defendants to call for an annual general meeting, hold elections and table audited reports from the time they took.

- (c) An order revoking all dealings agreements and transactions carried out by the defendants after expiry of their term in office.

The plaintiffs pleaded that they are members of Ndara 'B' group ranch, while the defendants are officials, office bearers and or trustees of Ndara 'B' group ranch carrying out the functions of the group ranch within Voi Sub-County, Taita Taveta County. That the defendants were elected in the office over three years ago and their term in office has since expired. That after expiry of their term in office, they have failed, ignored and or refused to call for an annual general meeting where members are to elect new office bearers/officials.

The plaintiffs pleaded that the defendants have now been involved in commercial engagements and business dealings while illegally in office and without the requisite approval and consent of members. That the defendants have proceeded to use members, resources in their custody for their personal benefit and have failed, ignored and or refused to hold the annual general meeting, have elections conducted, table audited accounts and handover all property owned by the group ranch.

Summons to enter appearance and file statement of defence were issued on 18th June 2018. Upon service, the defendants filed a notice of appointment of advocates, through the firm of Ms Mwanyumba & Co. Advocates.

That document acted as a memorandum of appearance by the defendants. The same was filed on 12th July 2018 and dated evenly. On 10th August 2018 the plaintiffs through their advocates on record filed a request for judgment on account of failure by the defendants to file defence within the prescribed time. The said request was endorsed on 13/8/2018. The entry of interlocutory judgment in favour of the plaintiffs triggered the filing of two applications. The duo applications were instigated through certificate of urgency.

The 1st application was filed by an intended 6th defendant, seeking to be enjoined, on 22nd august 2018. The 2nd application was by the defendants counsel, Mr Mwanyumba seeking to set aside the interlocutory judgment, and allowed them to file statement of defence. The two applications were canvassed and disposed of accordingly vide a ruling delivered on 13/12/2018, the

defendants' application was allowed on terms. The defendants proceeded to file their written statement of defence dated 18th January 2019 on even date.

The gist of the defendants' statement of defence is that they were popularly elected in various elections, admittedly, the last one being held in the year 2014. That they have held regular annual general meetings as far as it was practicable. That whereas Section 5 of the Ndara 'B' Group Ranch Constitution stipulates that the quorum of AGM shall be presided by land officer or his representative, in some occasions, the elections were delayed due to the onerous work schedules of the said land officer.

The defendants pleaded that they had not refused and or ignored or call for annual general meetings as alleged. They denied engaging in commercial and or business dealings without legal authority. That the 1st plaintiff has given approval for the said unnamed engagements. They put the plaintiffs to strict proof of the averments in paragraph 7 of the plaint. The defendants admitted that the court has jurisdiction to entertain the suit herein.

The matter was listed for interpartes hearing on 18/4/2019. The 1st plaintiff, Elijah Mwanundi Mwandoe testified on behalf of his co-plaintiff. He simply adopted his witness statement filed herein on 11/6/2018 as his evidence in chief. He too adopted his list of documents containing the two documents i.e the constitution of the ranch and minutes dated 25/8/2016.

In his statement, which he adopted as his testimony, PW 1 states that he is a member of Ndara 'B' Group Ranch located in Voi Sub-County and occupies approximately 2,215 acres of land. That the objections of the ranch is for grazing, tourism, creation of a trust fund that would benefit members, development of natural resources e.t.c. that the objections were never for settlement purposes. That according to their constitution, the elected officials serve a term of 3 years and then new officials are elected during the 3rd annual general meeting. That the defendants who had been elected over 3 years ago have failed, refused and or ignored to call for elections. That they continue to manage and run the affairs of the group ranch while their term of office has expired. That they have gone ahead and committed the ranches resources to unknown university without the knowledge and consent of the two-thirds majority needed. That they have never tabled audited accounts since they took office, hence the prayers in the plaint.

The 1st defendant Benjamin Mwandaa Reuben testified as DW 1. He stated that he is one of the founder members of Ndara 'B' group ranch. That it was registered in the year 1978. That the plaintiffs found the ranch subsequently. That he was elected as chairman in the year 2005. He adopted his witness statement dated 14/8/2018 as his evidence in chief. He too adopted his list of documents. He availed copy of the constitution of the ranch, copy of pin certificate for the ranch and certificate of incorporation.

He also availed a list of the officials of the ranch and register of members of the ranch as well as copy of the Community Land Act 2016.

The second witness (DW 2) is Peter Maganga Mjomba. He is named as the 4th defendant herein. He adopted his witness statement filed herein, as his evidence in chief. In the said statement filed in court on 18th march 2019, he contends that he is a member of Ndara 'B' ranch. That he joined the same in 1979, as one of the founder members.

He stated that he was first elected as secretary in the year 2006. That an Annual General Meeting had been held at Gimba Primary School and he was popularly elected.

That a lands officer was present. He denied that they have refused to call for an annual general meeting as alleged. He denied that they have engaged in commercial and or business dealings without legal authority as alleged. That the constitution of the ranch stipulates that whenever elections are held, the relevant government officials, especially the lands officer must be present. That the 1st plaintiff had become a member around the year 2006. That although some members were opposed to his membership, he assisted in forcing the way for his membership. That he participated in the deliberations leading to the grant of the leases to Diaspora University and Malaika orphanage.

After the testimonies of the witnesses as highlighted above, both sides closed their respective cases. The matter was reserved for filing of submissions on 6/6/2017. On that date, the matter was listed for mention and both sides confirmed filing the same.

PLAINTIFF'S SUBMISSIONS

The plaintiff's reiterates the evidence adduced by both sides. They submit that the land applicable is the Community Land Act, whose commencement date is 21st September 2016 and the Ndara 'B' Group Ranch Constitution. They cited Section 3 of the Constitution of the group ranch, which provides its aims and objectives. That none of them includes to sell, grant or transfer assets of the ranch and members. That section 5 is on the election of officials which shall be done after every three years during the AGM.

That Section 8 provides for the conduct of AGM every December of every calendar year. That notices accompanied by accounts statements and agenda be sent not less than 2 days before the AGM. That Section 8 equally sets the quorum of AGM or SGM to be not less than $\frac{2}{3}$ of all the members. That Section 11 provides that the appointment of auditors be done after every 3 years during the AGM. That the defendants have violated all the relevant sections of the group ranch constitution, without any reasons or justifiable cause.

The plaintiff's submit that Section 47 of the Community Land Act stipulates that land held under the Group Representatives Act shall be registered as community land and that upon registration, the group representatives shall cease to hold office. That land held by group representatives referred to under Section 47 shall not be sold, leased or converted to private before it has been registered under the Act.

The plaintiff's submitted that the defendants are in office illegally, and have transferred portions of the land owned by the group ranch to private entities and that they have never done audit since registration.

The plaintiff's submitted that this court has inherent jurisdiction to direct the lands officer or his representative to call for, organize and preside over the AGM that will lead to election of new officials.

DEFENDANT'S SUBMISSIONS

The defendants submitted that the plaintiff's have not proven their case on a balance of probability, to warrant the grant of the orders sought against the defendants. They submit that the

plaintiffs only became a member of Ndara 'B' Group ranch in the year 2006, about 28 years after the ranch was founded by DW 2 and others. That the 1st plaintiff participates in all activities of the group ranch, and only opposes the defendants only when the processes suit him. That the 1st plaintiff participated in the meeting that resolved to grant the Diaspora University or Malaika children home/orphanage chunks of land. That the plaintiffs hardly questioned the defendants once audited accounts exhibited by the defendants, nor do they ever mention the merits or demerits of the same. That the plaintiffs failed to offer proof of the allegations that the defendants were using members resources in their custody for personal gain while refusing and or neglecting to hold annual general meetings.

The defendants submit that though elections were last held in the year 2014, this involve and rely on section 5 of their constitution that the quorum of AGM shall be presided by land officer or his representative. That the said officer was not available to assist in the organization of the elections. They placed reliance on a letter addressed to Mbulia Group Ranch and copied to all chairmen of group ranches including Ndara 'B' which cautions that " no new resolutions in election of any kind will be binding after the Community Land Act 2016 came into effect. That they await the appointment of the Community Land Registrar who will commence the conversion".

The defendant sought leave of court to have the said letter which they annexed to their submissions be deemed as part of the record in the broader interests of justice. The defendants submit that the said letter show the preponderant and pervasive influence of the registrar in the management of Group ranch affairs.

The defendants submitted on the issue of jurisdiction, stating that the value of the group ranch land meeting approximately 5,371 acres would fetch. More than 1 billion Kenya shillings, if sold at the market rate of Kshs. 3 million per acre. That the said amount far surpasses the pecuniary jurisdiction of this court. That even the valuation report availed by the defendants places the value of the group ranch at Kenya Shillings six hundred and fifty six million, seven hundred and sixty thousand (Kshs. 656, 760,000/-). They submitted that the orders sought cannot be granted by the court for want of jurisdiction.

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I have carefully considered the plaintiff's case and the defendants' case in their entirety. I have considered the pleadings, the evidence tendered, the documents relied upon the formal submissions. Appreciably, the suit raises pertinent factual and legal issues for this court to ponder about and make a determination on each of them.

In his final submissions, counsel for the plaintiffs Mr Nyange identified two issues for determination i.e

- (a) Whether the defendants are legally in office.
- (b) Whether the plaintiffs are entitled to the orders sought.

The defendant did not expressly identify and or give a line-up of the issues to be determined, but the same can nevertheless be picked from the time of submissions adopted. The very first issue. I deduce from the submissions of the defendants is that the 1st plaintiff is not a founder member of Ndara 'B' Group Ranch. That he only joined the group in the year 2007 i.e 28 years later, whereas the defendants are founder members. If I understood them well, they were remotely alluding to a possibility of the 1st plaintiff's not having the requisite right or capacity to serve them, being founder members. A copy of the Ndara 'B' Group Ranch was availed to this court. I have had the benefit of reading the entire document Section 4 of the Group Constitution talks about who can be a member of the ranch. Section 4.1 states as follows;

"The membership of the ranch shall be open to all persons who are 18 years and above"

Section 4.3 states as follows;

"A member of the ranch shall have rights to vote if he/she has paid Kshs. 200/-"

Section 5 of the constitution talks about election of office bearers and his duties. Particularly, Section 6.4 of the said constitution is quite informing. It states as follows;

"If a member is full registered by paying two hundred shillings (Kshs. 200/-) and five shillings (Kshs. 5/-) only, as a group ranch member, then he/she qualifies to be an elected member".

From my reading of the said constitution, it does not seem to create any distinction between founder members and new members who join the group. It was admitted that the 1st plaintiff is a member of the group ranch, with rights like any other members, be they found members or otherwise.

The next issue I'll consider is whether the defendants are legally in office. It is the summary submission and contention by the plaintiffs that the group ranch constitution sets three years as the period for an elected official to be in office. That the last elections were in the year 2014 and so a mathematical computation will show that the next elections were to be held in the year 2017. That the said elections have never been held. That the defendants are in office illegally. That the process, they have flouted all the relevant provisions of the group constitution and that they have engaged in blatant abuse of office by giving any part of the group's land to private entities, without members' express approval as by law required.

There is no denial that the elections of officials to the executive committee of the ranch are long overdue. As already stated, the period of officials to stay in office is 3 years. Both DW 1 and DW 2 admitted that they were elected for the current terms way back in the year 2014. That efforts to have the elections done, were thwarted by the unavailability of a lands official to participate in the same. That the greatest impediment therefore has been a quorum hitch.

Between 2014, when the last elections were conducted, and 2017 when the subsequent election was meant to be conducted, a major event took place. That was the inauguration of a new legal regime governing group ranches. An act of parliament No. 27 of 2016 titled community land, whose commencement date is 21st September 2016 came into force. As per the preamble of the said Act, it is meant to give effect Article 63 (5) of the constitution. Among other objectives, it is to provide for the

"management and administration of community land".

Under Section 45 of the community land act, two sets of laws were repealed i.e the Land (Group Representatives) Act Cap 287, and The Trust Lands Act Cap 288. Section 46 of the Community Land Act has the surviving and transitional provisions.

Well aware about the existence of land held under the Land (Group Representatives) Act, Cap 287, the legislative dedicated Section 47 under the Community Land Act. I reproduce the said provision of the land as hereunder;

(1) In relation to land held under the land (group representatives) Act Cap 287), the respective group representatives together with the communities they represent shall be registered as a community in accordance with the provisions of this Act.

(2) Upon registration, the respective group representatives shall cease to hold office.

(3) Land held by group representatives reformed to under subsection (i) shall not be sold, leased or converted to private land before it has been registered under this act.

(4)

(5) The transitional provisions set out in the schedule shall apply upon commencement of this Act.

The process or procedure for registration of communities is clearly and well laid down under Section 7 of the Community Land Act. The said Section of the Law states as follows;

(1) A community claiming an interest in or right over community land shall be registered in accordance with the provisions of this Section.

(2) The community land registration shall by notice in at least one newspaper of nationwide circulation and a radio station of nationwide coverage, invite all members of the community with some communal interest to a public meeting for the purpose of electing the members of the community land management committee.

(3)

(4)

(5) The community shall elect between seven and fifteen members from among themselves to be in the members of the Community Land Management Committee as provided in Section 15, who has come up with a comprehensive registration of communal interest holders.

(6) The Community Land Management Committee shall come up with the name of the community and shall submit the name, register or members, minutes of the meeting and the rules and regulations of the committee to the registrar of registration.

I have highlighted the enabling sections of the law at great length to demonstrate that the community land act which succeeded the Land (Group Representatives) act is a comprehensive piece of legislation with regard to management and administration of commercially owned land. From my reading of the said provisions of the law, it is clear that the duty, obligation and responsibility of conducting elections under the Community Land Act has been bestowed upon a statutory entity. That entity is the office of the Community Land Registration. Section 7(2) of the community land act is couched on mandatory and express terms. Section 47(2) of the same Act clearly stipulates how the group representatives under the Land (Group representatives) Act shall vacate office. Immediately after registration, they shall cease to hold office.

The plaintiffs are asking the court to compel the defendants to call for an annual general meeting and hold elections. Whereas the constitution of the group ranch contemplates those activities in the management of the ranch, they did not align the request with the provisions of the new Act. The person mandated to convene a forum for selection of members of the Community Land Management Committee as already stated in the Community Land Registration is not a party in this proceedings. Why the transition contemplated under the Community Land Act in regard to the management and administration of community land, formerly governed under the Land (Group Representatives) Act has not been effected is beyond the scope of the proceedings herein. The rules of natural justice precludes this court from making any findings against the said office. In Halsbury's Laws of England, Fourth Edition Vol 1 Page 90 paragraph 74, it is stated as follows:

" The rule that no man shall be condemned unless he has been given prior notice of the allegations against him and a fair opportunity to be heard is a cardinal principle of justice..... "

The Court of Appeal in the case Speaker of National Assembly vs Karume [1992] KLR 2 stated as follows:

"Where there is a clear procedure for readiness of any particular grievance prescribed by the constitution or an act of parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures".

There are a myriad of decisions which support the above position and it is clear that the plaintiffs moved to court without exhausting the available channels to effect the transiting interpreted under the law. The court cannot impose a statutory obligation on a party it well understands has no ability to fulfill.

The plaintiffs have also urged the court to issue an order revoking all dealings, agreements, transactions carried out by the defendants after the expiry of their term in office. This is a generalized prayer that is not specific in nature. The plaintiffs are asking the court to give a blanket order, which in my view will have far reaching ramifications. Which dealings are these to be revoked? Which agreements are these to be revoked? Which transactions are these to be revoked?

The court of appeal cautions against issuance of orders which are likely to cause more trouble that they seek to resolve or remedy a situation. In Civil Appeal 97 of 2008, Caltex Oil (Kenya) Limited vs Rono Limited [2016] eKLR, the superior court rendered itself as follows;

"To find otherwise would amount to the court exercising a power it does not have and rendering decisions without any parameters or borders which would lead to total disorder and abuse of the judicial process. It would also be a recipe for the formation of public anger against the judiciary".

In the submissions, the plaintiffs submitted that the defendants were while illegally in office transferred part of the suit land to Malaika Childcare villages and KUP Institution Tour Limited. While DW 1 was testifying, it emerged that Kenya University Project had been assigned 1,500 acres of land. That both KUP and Malaika Childcare villages have title deeds to the respective parties of land under them. These are some of the targeted transactions which the plaintiffs want this court to revoke.

Two issues emerge herein. One, the said entities were never enjoined as parties in these proceedings. As already stated, the rules of natural justice (without going with details) do not permit grant of adverse orders against a party who was never notified of the proceedings where such orders are being made.

Secondly, looking at the acreage involved and the claimed value of an acre of land, the cumulative value of the parcels in question far outstrips the pecuniary jurisdiction of this court. It is a nullity in law for a court of law to issue orders regarding a matter where it apparently lacks jurisdiction. This court will not conscientiously venture into such a moment.

The final issue I'll consider is with regard to the request for injunctive orders against the defendants. The plaintiffs are seeking to have the defendants restrained either by themselves, their agents, servants, employees or anyone claiming under them from transacting any business for and on behalf of the group ranch.

It is clear that the current office bearers are time bound, in the sense that the three year period they had been popularly given to run the office had expired. As it were they are awaiting the move from the office of the Community Land Registration, as clearly outlined in the foregoing paragraphs of this judgment.

In their submissions filed herein on 6/6/2019, the defendants through the advocate on record Mr Mwanyumba annexed a letter indicating to have been issued from the Land Ministry i.e the ministry of lands and physical planning, addressed to secretary, Mbulia Group Ranch and copied to all chairmen of Group Ranches. The author of the same is one James M. Ngiriri ADLAS/ASS. Registrar of Group Ranches, Taita, Voi and Mwatate Sub-Counties. The plaintiffs urged the court to ignore the said letter as it was being irregularly introduced.

Indeed, the defendants counsel had used the many approach in introducing the same, since the plaintiffs could not have a way of responding or challenging the same.

Nevertheless, the contents are purely on a point of law. The officer highlights Section 47 of the Community Land Act 2016, which the plaintiffs themselves made reference to. It is interesting to note that the last paragraph actually supports the mind and thoughts of the plaintiffs that nothing

should be done on the land held by the group representatives. Section 47(3) of the Community Land Act should avert any concerns on the part of the plaintiffs, or any other party.

The said provision hold as follows:

(3)Land held by group representatives referred to under sub-section (1) shall not be sold, leased or converted to private land before it has been registered under the Act.

The letter by the Assistant Registrar of Group Ranches captures the spirit of this provision of the land. However, to avoid a vacuum being created and considering that the office bearers are custodians of the books of account and all documents relating to the group ranch, it is important that the court makes desirable orders to suit the circumstances of the case. Those orders are as follows:

- (a) The defendants are being restrained by themselves, their agents, servants, employees or anyone claiming under them for making any new resolutions at Ndara 'B' Group Ranch, pending conversion as contemplated under the Community Land Act, 2016.
- (b) The prayer of an order compelling the defendants to call for an annual general meeting, hold elections and table audited reports from the time they took office is hereby declined for being ultra vires the provisions of Section 7 of the Community Land Act, 2016.
- (c) The prayer for an order revoking all dealings, agreements and transactions carried out by the defendants after expiry of their term in office is hereby declined.
- (d) The prayer for general damages is hereby declined for failure on the part of the plaintiffs to prove personal injury or loss suffered.
- (e) The plaintiffs have partially succeeded in this case, and so I award them costs of this suit.

M. ONKOBA- SRM

18/7/2019

Court

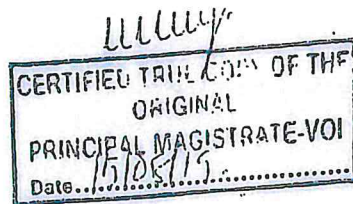
Judgment read over and delivered in open court in the presence of Mr Mwazighe holding brief for Mr Nyange for the plaintiffs and Mr Mwanyumba for the defendants. Ms Mary Ngoira court assistant is also present.

C.C No. 161 of 2018

Right of appeal within 30 days.

M. ONKOBA- SRM

18/7/2019



C.C No. 161 of 2018



Hdare B

REPUBLIC OF KENYA
MINISTRY OF LANDS AND PHYSICAL PLANNING

Telegrams "Land", Nairobi
Telephone: Nairobi 02718050
When Replying Please Quote

Department Of Land
1st Ngong Avenue Off Ngong Road
P.O. Box 30089
Nairobi

Ref. No. TTA/A/35/VOL.III/24

Date: 9th October 2020

Wanjiru Mathai & Associates
Westlands Business Park, 6th Floor
Chiromo Lane
P.O. BOX 51988-00100
Nairobi

REF: REGISTRATION-LR.NO.SAGALLA/NDARA "B"/17

Kindly refer to your letter dated 1st July 2020 on the above subject.

We have taken note of the contents of your said letter and wish to respond as follows:

1. That the lease between your client and Ndara Group Ranch was for a term of five (5) years, thus a sort term lease and do not qualify to be issued a certificate of Lease.
2. That section 30(2)(b) of the Land Registration Act 2012, provides that no certificate of title or certificate of lease shall be issued unless the lease is for a certain period exceeding twenty-five years.
3. That as per the certificate of Lease irregularly and unlawfully issued to your clients there is no noting on certificate that your clients were holding in trust.
4. That changes being sought can only be effected by way of transfer which in effect requires that you obtain consent to transfer from the relevant land control board.
5. That the changes being sought do not fall within the provisions of section 79 so far as the rectification of the register :-

From the for going you are advised to communicate to your clients to surrender to the Land Registrar Taita-Taveta the Certificate of Lease issued to them on 18th August 2017 for cancellation. By a copy of this letter the Land Registrar is directed to issue a fourteen (14) days' notice of intention to cancel the Certificate of lease so issued.


N.D. NYAMBASO
SENIOR ASSISTANT CHIEF LAND REGISTRAR

Cc: Cabinet Secretary

Principal Secretary

District Land Registrar, Taita Taveta



MINISTRY OF LANDS AND PHYSICAL PLANNING

Telephone: WUNDANYI 043-42053
If calling or telephoning, please ask for
Email: wundanyilandregistry@gmail.com

DISTRICT LANDS OFFICER,
TAITA-TAVETA DISTRICT,
P.O.BOX 1061
WUNDANYI

When replying please quote ref:

Ref: No.TT/ADM/416/8

Date: 27th October, 2020

TO
NDARA 'B' GROUP RANCH
KENYA UNIVERSITY PROJECT (KUP)

RE; REGISTRATION OF LEASE FOR L.R NO. SAGALLA/NDARA 'B'/17

Reference is made to the above matter and a letter by the Senior Assistant Chief Land Registrar addressed to your advocates, "copy attached".

You are hereby directed to surrender the certificate of Lease issued to 'KUP' Kenya University Project on 18th August, 2017 for cancellation within 14 days, failure to which the same shall be deemed cancelled and of no effect.

M. S. Manyarkiy 326

M. S. Manyarkiy
LAND REGISTRAR
TAITA/TAVETA COUNTY



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING

Certificate of Registration

Registration No: 03

I hereby certify that the Community under the name of NDARA B community and its rules and by-laws have this day been registered by me in the Community Register in pursuance to the provisions of the Act and the Regulations made thereunder.

Given under my hand at WUNDANYI this 17TH ... day of JUNE 2021

A handwritten signature in blue ink, appearing to read 'Sego Manyariki', written over a dotted line.

Sego Manyariki
Community Land Registrar

17

NDARA B COMMUNITY

P. O. Box 133-80300

Voi, Kenya

Email: ndarabcommunity@gmail.com

14th August 2021

THE NATIONAL ASSEMBLY – PARLIAMENT

DEPARTMENTAL COMMITTEE ON LANDS

P. O. Box 41842-0010

Nairobi.

Dear Honorable Members,

RE: NDARA B COMMUNITY LAND

We, the Ndara B Community Land Management Committee, have seen your letter dated 11th August 2021, that is circulating in the social media and the petition by Hon Andrew Mwadime. The letter informed us on your 20th August 2021 visit to our land based on the Petition made on behalf of residents of Mto Mwagoti regarding the irregular establishment of Diaspora University on Community land.

We herewith inform the Committee that the Community Land Hon. Mwadime made the petition on is Ndara B Community Land title Sagala/Ndara 'B' / 17 that is held by our registered community in accordance with Kenya Constitution land laws 40, 61 and 63.

As we welcome your committee to visit our land, we note that the petition is based on Kenya Constitution article 119. We ask that the Members of Parliament during the field visits adhere to Kenya Constitution article 40.

As we thank Parliament for sharing the petition with our community, we state we have seen the contents and petitioners. We further inform the committee that this is part of illegal activities supposed by some political leaders. We state that the Directorate of Criminal Investigations (DCI) and Director of Public Prosecution (DPP) are informed.

Regarding Diaspora University Town development, we wish to inform the Committee that Ndara B Community are founders and investors alongside Diaspora Kenyans.

Since the honourable members will be touching on matters relating to Ndara B Community registered land our land committee with the consideration of Kenya Constitution 19 and 40 requests that a meeting with Ndara B Community Land Management Committee be incorporated as the first meeting and thereafter the following:

11.00 – 12.30 meetings at Government Offices.

1. Ndara B Community Land Management Committee members to be present in all government offices meetings
2. Any information given be recorded and open to the media.

Ndara 'B' 17 (Diaspora University Town) Visit and Meetings

1. Ndara B Community Land Security Team and police assigned will facilitate the visit.
2. All Mto Mwagoti resident', meetings be at their individual houses.
3. A meeting held with Ndara B Community members inside their land.
4. Trespass of Ndara B Community land shall not allowed.

To further enable your committee to get the correct information and do not just come to facilitate illegal activity, below is information from Ndara B Community as follows:

- A. Ndara B Community Land Ownership.
- B. Illegal Settlements on our Land.
- C. Diaspora University Land Allocation and Founding.
- D. Illegal Interference by Government.

A. NDARA B COMMUNITY LAND OWNERSHIP

The summary points below highlight our ancestral land ownership and progressive usage.

1. Ndara B Community is an ancestral community that speaks the Sagalla dialect, one of the Taita languages.
2. The Community ancestors settled on the northern side of the hill that they called Sagalla and grazed their animals in what they called the Sagalla/Ndara plains.
3. In 1978, demarcation of our land was done. Ndara A and Ndara B created.
4. Ndara A land, between the Hill and Voi River, was subdivided to families. 14 villages created. Today they are called: Pii, Kilabu, Kalambe, Mwangea, Ongoni, Mandiri, Mngarisoni, Uvoro, Kabomu, Mnaoni, Majengo, Msambweni, Mwingoni, Kaloleni
5. Ndara B land that followed the river to the railway line and to Voi – Taveta Road was allocated to grazing. The land registered as Ndara B Group Ranch to a Register of Ndara B Group Ranch members in 1982. Title Sagalla/Ndara 'B' 1 was issued and held in accordance with Kenya Constitution, Ndara B Group Ranch Constitution, and the Land Group Representations Act.
6. In 2010, Ndara B Community members were part of the Kenyans who enacted Kenya Constitution that classified all land in Kenya as Public, Community and Individual in article 61. Ndara B Group Ranch became classified as Community land. In article 63 the land became held under article 63 (2) (d) (i). The property rights in Kenya Constitution 40 on protection of right of property became applicable
7. In 2016, Parliament as required by Kenya Constitution 63 (4) enacted the Community Land Act. The act repealed the Land Group Representatives Act. Ndara B Group Ranch registered documents transitioned to the Act through the Transitions Provisions.
8. In 2016 – 2017, when making our land productive and sustainable in accordance with Kenya Constitution 60 we sub-divided our land and created titles 15, 16, 17 and 18 for different economic and social plans to meet our constitutional rights article 43.
9. On February 2021, the Ministry of Lands after completion of setting up the requirements availed a returning officer for elections that we held on 24th February 2021.
10. On 17th June 2021 Ndara B Community Certificate of registration was issued.

11. In accordance with the Community Land Act 47, (4) we gave back the titles to be issued new titles. The Registrar has established the new titles and is holding them awaiting further instructions.

B. ILLEGAL ACTIVITIES AND ILLEGAL SETTLEMENTS ON OUR LAND

There have been illegal settlements and activities on our land over the years as per below points.

1. The illegal settlements on our land started after draughts led us from grazing to other economic activities.
2. A Company Nanak Limestone previously mining across the Voi river would enter the land and have since claimed it was allocated the land by the then President Daniel Arap Moi. The company brought workers and the Mto Mwagoti illegal settlement emerged. The community has been writing to the Company asking they proof the legality of the activity.
3. The other illegal activity was a European who came and set-up Shasha Camp. Ndara B Community on finding out about the camp formalized the lease with Shasha Camp.

C. DIASPORA UNIVERSITY TOWN LAND ALLOCATION, FOUNDING AND DEVELOPMENT

The below points are a summary of how Ndara B Community, Diaspora Kenyans and Mto Mwagoti residents joined together and are developing Diaspora University Town.

1. In 2015 Diaspora Kenyans would bring a plan for approval by the County Assembly in accordance with Kenya Kenya Constitution 185 (4).
2. In April 2016, Ndara B Community would be informed of a University and Town Development Plan looking for land.
3. Ndara B Community as holders of Ndara B Community land in accordance with Kenya Constitution 63 (2) (d) (i) and registered as Ndara B Group Ranch in accordance with the Land Group Representatives Act invited the Diaspora Kenyans to consider their community land for development of the plan.
4. The community considered the plan and understood it as one that would create jobs for the community and advance their constitution rights in Kenya Constitution 43 of education, housing, healthcare, and others. The Community chose to become founders and developers of the plan with the Diaspora Kenyans.
5. In August 2016 our community held an AGM and granted the land to incorporate Diaspora University Trust. The process done in accordance with Kenya Constitution, Ndara B Group Ranch Constitution, and the then Land Group Representatives Act.

6. In 2016 – 2017 Ndara B Community and Diaspora Kenyans progressed the development plan through Survey, Physical Planning Approval, Land Board Control approval, and Land Grant to incorporate a Trust.
7. In 2018 as the Strategic Environment Assessment (SEA) was done a humanitarian plan to incorporate the 21 families (Mto Mwagoti residents living inside our land) was established. 18 families of the 21 families living inside the land established the plan.
8. The Trust was incorporated, and the development plan continues to progress as it creates jobs and income for Ndara B Community members, Mto Mwagoti residents and other Kenyans.
9. The plan is further contributing toward the tax budget that funds the government..

D. ILLEGAL INTERFERENCE BY GOVERNMENT

It is unfortunately that taxpayer money continues to be used to deny our rights. Below the illegal processes so far done using public resources allocated to state offices and officers.

1. In 2017, the Deputy County Commissioner – Voi used his office to intimidate our community and derail our project from progressing forward.
2. In May 2018, the Deputy County Commissioner – Mwatate using his office stopped activity on our land citing security concerns. We are yet to be officially given the security concerns.
3. In June 2018, two members of our community opened a Court case, and the Magistrate became the facilitator of denying our community our constitutional rights. The community has since made complainants to the Judicial Service Commission in accordance with Kenya Constitution 172.
4. On 9th October 2018, the Governor of Taita Taveta when offered security by the then Deputy County Commissioner – Mwatate when using public offices trespassed our land and made remarks that people enter the land as their property. Ndara B Community established a security plan.
5. In March 2019 when the Strategic Environment Assessment (SEA) public participation advertisements were placed in the newspapers, a few members of the County Assembly of Taita Taveta after meeting at the Chambers wrote to NEMA saying they had rejected the project. NEMA, enabled the Community to complete the SEA so the clean and healthy environmental right can be incorporated.
6. After 6th July 2020 COVID 19 restrictions were lifted, the Community and Diaspora Kenyans reopened the site only for the following to happen.
 - a. The Ward Administrator. Ronge Ward, and the County Assembly Majority Leader, Harris Keke, came to our land uninvited, to peddle lies and intimidate the Community.

- b. When the Community refused to be intimidated, they went ahead to call the police lying on a security concern. The police asked a meeting between the persons, the Community and County Commissioner.
 - c. On 21st July 2020, the day of meeting, the County Commissioner who was supposed to host the meeting did not show up. The County Assembly Majority leader and Governor office had established case ELC 20 of 2020 and gotten a Court Order dated 17th July 2020. The police were supposed to ensure that the site remains closed based on security. When Ndara B Community Chairman, a former police officer, said he shall reopen the site, the Court Order that was withheld was issued by Fredrick Mwambili (who said he was the County Assembly lawyer,) and was in the company of the Majority Leader.
 - d. Our committee on review of the case ELC 20 of 2020 that Magistrate F.N Nyakundi issued a court order on found that in the rush to open the case the Magistrate did not consider that the legal advisor of Government is the Attorney General in Kenya Constitution 156 (4) and a County Assembly as a Government body is advised by the Attorney General. This constitutional requirement established to protect the public who shall suffer the costs of a case established by Government in case the Government loses. The amount paid through taxing Kenyans by Parliament.
7. In July 2021, parliament became the next government body to be invited to use public resources to interfere with our development.

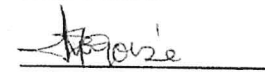
In giving this information, we are giving you the honourable members the basic facts. We look forward to your visit.

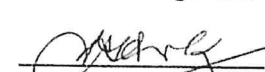
Yours faithfully

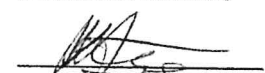
Ndara B Community Land Management Committee

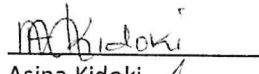

Benjamin Mwandaa

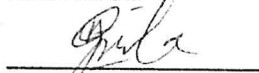

Hamisi Kalela

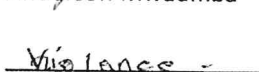

Ronald Mwangombe

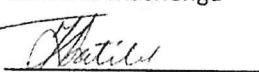

Bwanaheri Kalela

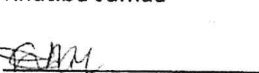

Sabastian Zenge

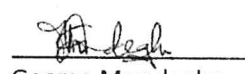

Asina Kidoki

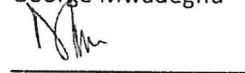

Anderson Mwaumba

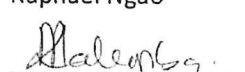

Violence Mashengu

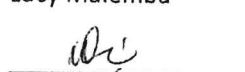

Khatibu Jumaa

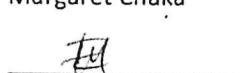

Esther Mwakandu


George Mwadeghu


Raphael Ngao


Lucy Malemba


Margaret Chaka


Elizabeth Mwacharo



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING

Certificate of Registration

Registration No: 03

I hereby certify that the Community under the name of NDARA B community and its rules and by-laws have this day been registered by me in the Community Register in pursuance to the provisions of the Act and the Regulations made thereunder.

Given under my hand at WUNDANYI this 17TH day of JUNE 2021

M. S. Manyariki 326
Sego Manyariki
Community Land Registrar



REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING

THE COMMUNITY LAND ACT NO. 27 OF 2016

NDARA B COMMUNITY LAND MANAGEMENT COMMITTEE

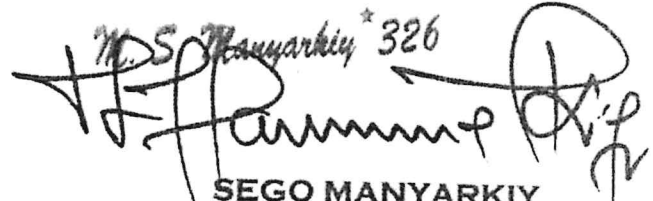
NO. 03

I MIKE SEGO MANYARKIY COMMUNITY LAND REGISTRAR hereby certify that subject to the limitations and exemptions listed on the back of this certificate the NDARA B COMMUNITY LAND MANAGEMENT COMMITTEE, at the date of the issue of certificate of Registration are:

NAME	DESIGNATION
1. Benjamin Mwandaa	Chairperson
2. Asina Mkwachu Kidoki	Vice Chairperson
3. Hamisi Kalela	Secretary
4. George Mwaele Mwadeghu	Treasurer
5. Lucy Malemba Michael	
6. Violence W. Mashengu	
7. Anderson Mwaumba Keke	
8. Ronald Mwangombe Thomas	
9. Sabastian Mwanyuma Zenge	
10. Margaret M Chaka	
11. Raphael Ngao	
12. Esther Shali Mwakandu	
13. Khatibu M. Jumaa	
14. Bwanaheri Maliso Kalela	
15. Elizabeth Mwake Mwacharo	

Elected under section 7(5) of the Community Land Act No. 27 of 2016

Dated at WUNDANYI this 17TH day of JUNE 2021

M. S. Manyarkiy 326

SEGO MANYARKIY
COMMUNITY LAND REGISTRAR

NDARA B COMMUNITY

P. O. Box 133-80300

Voi, Kenya

Email: ndarabcommunity@gmail.com

19th August 2021

COUNTY COMMISSIONER
DEPUTY COUNTY COMMISSIONER – MWATATE
DEPUTY COUNTY COMMISSIONER – VOI
COUNTY POLICE COMMANDER
TAITA TAVETA COUNTY

Dear All,

RE: NDARA B COMMUNITY LAND

Ndara B Community Land Management Committee following receipt of the petition communicated with the Members of Parliament through a letter dated 14th August 2021.

The committee gave the Mto Mwagoti residents the petition and have received a copy of the letter dated 16th August 2021 from Mto Mwagoti residents to Hon. Mwadime, the Petitioner.

Ndara B land security has received information that persons not residing in Mto Mwagoti (Ndara B 17) land are planning to come to the meeting.

To ensure security of our land and the persons, the following are the persons who shall be allowed to be inside the land site as the parliamentary group visits.

1. Ndara B Community Members.
2. Residents of Mto Mwagoti.
3. MPs visiting, Taita Taveta Security Personal and Taita Taveta Land officials.
4. Diaspora University Trust.
5. Media

The Ndara B Community members who shall be inside the land are the Land Management Committee and the Ndara B Community Land Security. The Land Management Committee shall answer all questions relating to Ndara B Community land.

The Mto Mwagoti residents will answer questions on their current living status on Ndara B Community land.

The Ndara B Community members have asked that no political leaders or persons who are not residing at Mto Mwagoti and inside the Ndara B Community land allocated to the Diaspora University development be allowed inside their land.

Ndara B Community has invited the media and will be recording all activities in their land.

Yours Faithfully,



Benjamin Mwandaa
Chairman



Hamisi Kalela
Secretary



George Mwadeghu
Treasurer

C.C

Parliament – National Assembly Lands Committee
Diaspora University Trust
Families of Mto Mwagoti



NDARA 'B' GROUP RANCH

NDARA 'B' GROUP RANCH

P.O. BOX 133 – 80300
VOI

3

28th October 2020

MICHAEL SEGO MANYARKIY
LAND REGISTRAR
TAITA TAVETA COUNTY
WUNDANYI.

Dear Sir,



NDARA 'B' 17 KUP INSTITUTION LIMITED LEASE

Refer to your letter dated 27th October 2020 that you had posted in social media before officially sending to Ndara B Group Ranch officials or Mailbox.

We note that you are revoking the lease certificate of Ndara 'B' 17 to KUP Institution Town limited. The 5 year lease certificate was issued to meet The Trustees (Perpetual Succession) Act requirement of, "Statement and short description of the Property or interest therein which at the date of application is held of intended to be held by the trustees."

In our letter dated 9th October 2020 we directed you to Land Registration article 30 (2) (a) and (b) that forbids land from having two legal instruments. Please go ahead and revoke the lease right away.

In the letter we requested you give a process that will lead to the transfer to Diaspora University Trust that is currently incorporated as per Ndara B Group Ranch grant.

Attached points raised by Ndara B Group Ranch Executive Committee, Development Committee, and members during a meeting to review their property rights, constitutional rights, and Diaspora University Town project.

Yours faithfully,

Benjamin Mwandaa
Chairman.

Hamisi Kalela
Secretary.

C.C.

Diaspora University Trustees.

Cabinet Secretary – Ministry of Lands and Physical Planning



NDARA 'B' GROUP RANCH

NDARA 'B' GROUP RANCH

P.O. BOX 133 - 80300

VOI







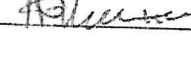
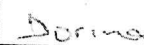

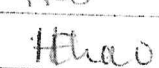
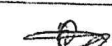
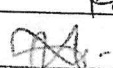
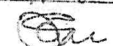
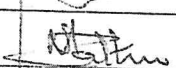
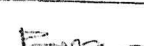
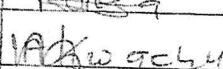

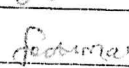
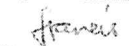



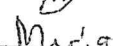
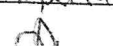
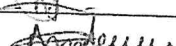

28th October 2020

NDARA B GROUP RANCH MEMBERS POINTS

Ndara B Group Ranch Executive Committee, Ndara B Group Ranch Development Committee and Members representatives in a meeting held on 28th October 2020 put forward the following points.

1. The Constitutional Rights and Property rights of Ndara B Group Ranch belong to Members of Ndara B Group Ranch. The Land Registrar should not at any point assume that their Constitutional rights and Property rights belong to the Registrar.
2. Letters coming from the Land Registrar to Ndara B Group Ranch should be addressed to the Ndara B Group Ranch Chairman and received in person or by Mail. Any letter not officially received and posted in social media shall be considered as criminal.
3. The Executive Committee should update the register from the original members of the Community and include all adult members as per Community Land Act 15.
4. Ndara B Group Ranch land Grant that was part of incorporating Diaspora University Trust should be completed without delay.

	NDARA B MEMBERS	MEMBER NO.	SIGNATURE
	EXECUTIVE		
1	VIOLENCE MASHENGU	417	
2	MICHAEL MWABILI	973	
3	HAMISI K NYOKA	418	
4	ABDALLA KIKO MVILLI	1111	
5	ALI MWADILO	141	
6	WINNIE M MWASIGWA	1073	
7	PETER MAGHANGA	20	
8	BENJAMIN MWANDAA	230	
	DEVELOPMENT COMMITTEE		
9	ROSE SULEIMAN	922	
10	RONALD MWANGOMBE	779	
11	LIVINGSTONE MWAKALE	486	
12	MATHIAS ZENGE	643	

13	IRENE KIONGO	755	
14	RAPHAEL NGAO	1259	
15	JOSHUA MWADEGHU	R 872	
16	JACKSON M KEKE	426	
17	ELIAS M MWADEGHU	519	
18	DANIEL MWASELA		
19	ALFREDI MWACHIA	225	
	MEMBERS		
20	DORINA MACHOCHO	1158	
21	MEGGY KIWOI	1241	
22	HALIMA CHAO	1426	
23	BEATRICE KIARA	773	
24	MARIA MKAMBURI	1155	
25	EMELIAH WAUDA	662	
26	NATHAN MWANDAA	863	
27	BAZILISA RUNGA	833	
28	ASINA MKWACHU	1209	
29	CLEMENT MAGHANGA	551	
30	FATUMA MACHOCHO	1037	
31	FRANCIS KITORO	732	
32	JOHNSON MWAWAZA	229	
33	REUBEN MWANDAA	549	
34	PRESILA MBOJE	1057	
35	MARIA MWACHARO	727	
36	DOMINIC MNDEKE	597	
37	ANNE M MWANDA	703	
38	THOMAS NGETI MWACHIA	711	

DIASPORA UNIVERSITY TRUST

Red Elephant Building (Off Mombasa Road)

P. O. Box 420-80300 Voi, Kenya

Website: www.dut.or.ke

Email: info@dut.or.ke

Phone: +254 112 307 655 +254 758 140 810

20th August 2021

REF. NS 08-20

THE NATIONAL ASSEMBLY

Lands Committee

Parliament Buildings

P.O. Box 41842-00100,

Nairobi, Kenya.

Dear Honourable Members of Parliament,

KENYANS CAPITAL/RESOURCES AND CONSTITUTION RIGHTS

In response to the petition filed 21 of 2021, the Trust wishes to make this submission as part of the trust response. The submission made on behalf of Kenyan investors who have put in capital to achieve their constitution rights.

In responding the Trust notes that the petition is based on Land Ownership that derives from Kenya Constitution 61, 62, 63 and 64. With consideration that the land right belongs to Ndara B Community who have registered land in accordance with 61 and 63 (2) (d) (i) the Ndara B Community will answer questions on their land ownership.

Below we show the Capital/Resources input by Diaspora Kenyans, Ndara B Community and Partners as we have progressed to develop Diaspora University Town.

We further list the Kenya Constitution 2010 laws that are in the constitution to enable persons apply their capital of human and land to achieve their rights; the constitution laws for protecting the Kenyans Capital attainment; Constitution laws for protecting constitutional rights denial, violation, infringement, and threat.

CAPITAL/RESOURCES INPUT

1. Capital input started when the ideas of housing and university were conceptualized and progressed to become development plans as follows:
 - a. Housing Development Plan by Diaspora Kenyans.
 - b. University Development by WPI professors and Diaspora Kenyan Scholars.
2. The plan developers would continue to input intellectual, time and cash capital to progress their plans 2006 – 2009 and look for resources during the annual WPI U.S – Africa business conferences during the same period.
3. In 2009, an innovation system that combined the plans was established as a university town development plan for developing a university in a town setting. The founders continued to put in their capital.
4. Following the Kenya Constitution 2010 enactment by Kenyans, the university town development plan was adjusted to incorporate Kenya Constitution and a Master Development Plan (MDP) established.
5. The MDP was a Jobs creation, Houses development and Gross Domestic Product (GDP) growth plan for attainment of constitution rights and in particular Kenya Constitution rights article 43.



6. The MDP with consideration of Kenya Constitution 20 (5) used a resources approach. Nine (9) Primary Resources or Capital inputs were created as follows:
 - i. Master Development Plan
 - ii. WPI System/Plan
 - iii. Property Developers
 - iv. Land
 - v. Design-Build Plan
 - vi. Energy Plan
 - vii. County Government Approval and Incentives
 - viii. National Government Incentives
 - ix. Finance Plan
7. The MDP second stage was the 5-year development plan that the resources would be applied in as the resources develop and fund a university, develop a town and over 500 Small medium Enterprises (SMEs).
8. The current status of resources development are:
 - a. Master Development Plan (MDP) is established.
 - b. WPI System and Plan is ready
 - c. Property Developers Plan is established and ongoing.
 - d. Land is granted by Ndara B Community.
 - e. Design – Build Plan by Kenya professionals is established. The design plan incorporated in the Institution Town Development Plan and Strategic Environment Assessment.
 - f. Energy Plan to be achieved from Kenya system and renewal resources.
 - g. County Government Approval and Incentives. The Institution town development plan was approved in May 2015 and incentives granted.
 - h. National Government Incentives not yet achieved.
 - i. Finance Plan is set up to incorporate:
 - i. Capital/Resources a – h
 - ii. Kenya finance resource that is in the banking sector. The Kenya finance resource reflected in Banking from 2015 to 2020 grew as follows: Deposits from Kshs 2.48 trillion to Kshs 4 trillion and Loan Advances from Kshs 2 trillion to Kshs 2.6 trillion.
 - iii. Global finance. This is the finance resource from other countries.
9. The ongoing project plans by Diaspora Kenyans and Ndara B Community are:
 - a. Diaspora University by Diaspora Scholars and WPI scholars as consultants.
 - b. Diaspora University Town
 - c. Medicine and Vaccine Plant by Diaspora Scientists.
 - d. Medical Hospital by over 40 Healthcare Professionals.
 - e. Ndara B Community SMEs for material supply.
 - f. Diverse SMEs plans for Jobs Creation.
 - g. Tourism Plan.



KENYA CONSTITUTION CAPITAL PROTECTION LAWS

As the petition is completed and with consideration of the effect the petition has created toward capital input, the following constitution laws be incorporated in the petition.

Kenya Capital Input to achieve constitution rights constitution law

1. (1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution. (2) The people may exercise their sovereign power either directly or through their democratically elected representatives.

Supremacy of Constitution laws

2. (1) This Constitution is the supreme law of the Republic and binds all persons and all State organs at both levels of government.

2. (2) No person may claim or exercise State authority except as authorised under this Constitution.

2. (4) Any law, including customary law, that is inconsistent with this Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.

Bill of Constitution Rights Articles 19 – 59.

Special consideration be given to these laws:

19 (3) The rights and fundamental freedoms in the Bill of Rights— (a) belong to each individual and are not granted by the State.

20. (1) The Bill of Rights applies to all law and binds all State organs and all persons.

21. (1) It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights. (2) The State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realisation of the rights guaranteed under Article 43.

22. (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated, or infringed, or is threatened.

Attorney General Government Advisory Role

156 (4) The Attorney-General— (a) is the principal legal adviser to the Government.

Taxes Application to Constitution Rights

The question answered whether tax money should be applied to Deny, Violate, Infringe and threaten constitution rights

209. (1) Only the national government may impose— (a) income tax; (b) value-added tax; (c) customs duties and other duties on import and export goods; and (d) excise tax.

209 (3) A county may impose— (a) property rates; (b) entertainment taxes; and (c) any other tax that it is authorised to impose by an Act of Parliament.

Yours Faithfully,



Daniel Kamau

Executive Trustee/Project Director
+254 743 203 168 dan@dut.or.ke



Dated as of the

day

2017

NDARA GROUP RANCH

(as Lessor)

-and-

KUP INSTITUTION TOWN LIMITED

(as Lessee)

LEASE

In respect of

Land Reference Number: SAGALLA/NDARA "B"/17

ONINDO ONINDO & ASSOCIATES

onindoc@yahoo.com

0720569974

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REPUBLIC OF KENYA

IN THE MATTER OF THE LAND REGISTRATION ACT NO.3 OF 2012

IN THE MATTER OF THE LAND ACT NO. 6 OF 2012

IN THE MATTER OF THE GOVERNMENT LAND ACT CAP.280 (REPEALED)

LEASE

This Lease is made as of the 20th day of July 2017

BETWEEN:-

1. **NDARA GROUP RANCH** having its headquarters in Voi in the Republic of Kenya, for the purposes hereof of Post Office Box Number 133-80300, Voi (hereinafter called the **LESSOR**) which expression shall where the context so admits include the Lessor's successors in title and assigns);
2. **KUP INSTITUTION TOWN LIMITED** (company Number [PVT-AAABSX7], a private Limited Liability Company incorporated in the Republic of Kenya having its registered office situate at Nairobi, for the purposes hereof of Post Office Box Number 16891-00620, Nairobi (hereinafter called the **LESSEE** which expression shall where the context so admits include Company's successors in the title and permitted assigns);
3. WHEREAS:
 - A. The Lessor is registered as the proprietor of LR. NO. SAGALLA /NDARA "B" (hereinafter called "property")
 - B. By this agreement for lease bearing the date herein stated (the Agreement for Lease) the Lessor has agreed, inter alia, to lease the said property (as defined below in schedule 1) and the Lessee agreed to accept such lease on the terms and conditions stated in the Agreement for Lease.
 - C. In consideration of the Lessee fulfilling certain terms (as defined in Appendix B-Schedule V) to the Lessor in accordance with the terms of the Agreement for Lease the Lessor has

SD
K 1200
D H C
Donald B. Mwakio 182
15/7/17



agreed to grant to the Lessee with effect from the date stated herein a lease of the stated property and as stated on the terms, conditions, covenants and stipulations set out herein.

- D. The lessee herein is holding the property in Trust awaiting the registration of DIASPORA UNIVERSITY TRUST.
- E. Upon registration of DIASPORA UNIVERSITY TRUST, the lessee and lessor shall transfer the leased property to DIASPORA UNIVERSITY TRUST.

NOW THIS LEASE WITNESSES AS FOLLOWS:

1. DEFINITIONS

- 1.1 In this Lease (including the recitals and the schedules hereto) the following expressions shall unless the context otherwise requires have the following meanings;
 - 1.1.1 Alienation means, whether legally or beneficially, any transfer, assignment or sub-letting of the said parcel of land or any part thereof or the granting of a licence over the stated property or any part thereof or any other parting with the possession of the parcel of land or any part thereof or the creation of an Encumbrance over the entire parcel of land or any part thereof and includes any such dealing with the beneficial interest in the parcel of land or any part thereof separate from the legal interest and Alienate shall be construed accordingly;
 - 1.1.2 Buildings means all the buildings, outbuildings, amenities, facilities and all other structures erected or to be erected by the Lessor on the parcel of land;
 - 1.1.3 Business Days means any day (other than Saturday, Sunday or gazette public holiday or national holiday in, Kenya) on which banking institutions in Kenya are generally open for the conduct of banking business;
 - 1.1.4 Capital means the time, cash, expertise and plan to be implemented on the land;
 - 1.1.5 Charges means the annual rent of one peppercorn (if demanded);

- 1.1.6 **Competent Authority** means the Government of the Republic of Kenya, the National Land Commission, the relevant county government and parastatal government department and other bodies having statutory competence to promulgate rules and regulations governing matters and issues contained within this Lease;
- 1.1.7 **Development Plan** has the meaning of plan approved by County Assembly per Kenya Constitution 185 (4) and as given by the Planning Acts;
- 1.1.9 **Encumbrance** means any charge (whether formal or informal) or other interest in the nature of a security interest, trust arrangement, right of way, right of support, right of light, profit, easement or restrictive covenant;
- 1.1.16 **Land** means all that piece of land more particularly described in the First Schedule;
- 1.1.17 **Lease Completion Date** means the date referred in fourth Schedule;
- 1.1.18 **Lease Premium or consideration** means the terms stated in the Appendix B in Fifth schedule;
- 1.1.20 **Open Land** means any part of the Home Premises which may not be built upon;
- 1.1.26 **Plan** means the plan registered in the Registry of Documents at Nairobi in Volume Folio , File Number annexed hereto and marked "A" and on which the boundaries of the Home Premises are delineated and bordered in red for purposes of identification;
- 1.1.27 **Planning Acts** means the Physical Planning Act of 1996, Laws of Kenya and the relevant county government building by-laws or orders and all Statutes operative in Kenya;
- 1.1.28 **Statute** means any act passed by the Parliament of Kenya, by-laws or other rules and regulations for the time being in force promulgated by any Competent Authority;
- 1.1.29 **Surveyor** means any person or firm appointed by the Lessor from time to time to perform any of the functions of the surveyor under this Lease;
- 1.1.30 **Term** means five (5) years and terms set on registration of Diaspora University Trust.

2. INTERPRETATION

- 2.1 In this Lease (including the recitals and Schedules hereto) unless the context otherwise requires:
- 2.1.1 words importing the masculine gender include the feminine gender and neuter and vice versa and words importing the singular include the plural and vice versa;
- 2.1.2 the terms "the parties" or "party" means the Lessor and/or the Lessee;

- 2.1.3 the expression "Term" includes any period of holding-over or extension or continuance of the Term whether by Statute or common law;
- 2.1.4 all rights of entry exercisable by the Lessor, any superior lessor or any mortgagee or chargee of any interest of the Lessor or any superior lessor shall extend to include all persons authorized by either of them;
- 2.1.5 any covenant by the Lessee not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person where the Lessee is or should be aware that such act or thing is being done;
- 2.1.6. if the Lessee shall consist of two or more parties such expression shall throughout mean and include such two or more parties and each of them and shall so far as the context admits be construed as well in the plural as in the singular and all covenants agreements and undertakings herein expressed or implied shall on the part of the Lessee be joint and several;
- 2.1.7 references to consent of the Lessor or words to similar effect mean a consent in writing signed by a Director of the Lessor for and on behalf of the Lessor and approved means authorized in writing by a Director of the Lessor for and on behalf of the Lessor;
- 2.1.8 references to the last year of the Term include the last year of the Term if the Term shall determine otherwise than by effluxion of time and references to the expiration of the Term include such other determination of the Term.
- 2.1.9 any references to a Statute include any statutory extension or modification, amendment or re-enactment and any subsidiary legislation by laws, regulations or orders made under such Statute and any general reference to statute or Statutes includes any subsidiary legislation, bylaws, regulations or orders made under such Statute or Statutes;
- 2.1.10 references to any clause sub-clause or schedule without further designation shall be construed as a reference to the clause or sub-clause of or schedule to this lease so numbered;
- 2.1.12 the expression person includes a natural person, body corporate, state corporation,

governmental-agency, governmental authority or firm;

- 2.1.13 headings to the clauses and Schedules, paragraphs and sub-paragraphs are for convenience only and shall not affect the construction or interpretation of this Lease;
- 2.1.14 words defined in the Agreement for Lease shall bear the same meaning in this, Lease (unless otherwise defined in herein);
- 2.1.15 the word tax shall be construed so as to include any tax, levy, impost, assessment duty or other charge of a similar nature (including without limitation value added tax, stamp duty and any penalty or interest payable in connection with any failure to pay or delay in paying any of the same) and taxes shall be construed accordingly;
- 2.1.16 references to the expression month mean a calendar month;
- 2.1.17 references to consent of the parties or words of similar effect mean a consent in writing signed by a duly authorized officer of the parties for and on behalf of the parties and approved means authorized in writing by a duly authorized officer of the either parties for and on behalf of the parties;
- 2.1.18 references to indemnifying any person against any circumstance includes indemnifying and keeping him harmless from all actions claims and proceedings from time to time made against that person and all loss or damage and all payments costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;
- 2.1.19 references to this Lease shall include all the Schedules to this Lease and which shall form an integral part of this Lease; and
- 2.1.20 Costs, charges and expenses shall include any value added tax or similar tax chargeable or attributable thereto.
- 2.1.21 If a definition of a particular term or expression in this lease imposes substantive rights and obligations on party to this lease, such rights and obligations shall be given effect to and shall be enforceable notwithstanding that they are contained in a definition
- 2.1.22 Where any term is defined within the context of any particular clause in this lease, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this lease notwithstanding that term has not been defined in this section 2.

3. LESSEE COVENANTS

3.1 The Lessee for the mutual protection of the Lessor, HEREBY COVENANTS with *the:*

3.1.1 Lessor to observe and perform the obligations on the part of the Lessee set out in the Second schedule.

4. LESSOR COVENANTS

4.1 The Lessor subject to the due performance and observance of the covenants on the part of the Lessee herein contained HEREBY COVENANTS with effect of the registration of Diaspora University Trust observe and perform the obligations on the part of the Lessor set out in the Third Schedule.

5. RIGHTS AND LEGISLATED INSTITUTION TOWN DEVELOPMENT PLAN

5.1.1 The lessor grants land to Diaspora University Trust for the achievement of Kenya Constitution rights through the legislated Institution Town Development Plan without limitations.

5.1.2 The lessor in establishing this grant transfers the land to the lessee for the implementation of the Institution Town Development Plan.

5.2 The lessor in establishing this lease starts the process to lead to the donation of land to Diaspora University Trust for implementation of Institution Town Development Plan.

5.3 The lessee in establishing this lease limits the lessor holding rights to holding the land as granted to Diaspora University Trust until when the Trust is incorporated by this land.

5.4 The lessee with the goal to accomplish the provision of rights authorizes the lessor acting on behalf of Diaspora University to commence implementation of the Institution Town Development Pan.

5.5 The lessee in granting the land toward the legislated Institution Town Development Plan states the land is a resource granted to the Diaspora University Trust for the development of a town and university as legislated through Kenya Constitution 185 (4).

5.6 The lessor in granting the land transfers the land for the commencement of the implementation of the Institution Town Development Plan.

6. GOVERNING LAW

6.1 This lease shall be governed by and construed in accordance with the laws from time to time of the Republic of Kenya.

- 6.2 The laws shall be the Kenya Constitution, Acts legislated by parliament, Institution Development Plan legislated by County Assembly and any other laws legislated and governing development in Kenya.

7. ENTIRE AGREEMENT AND REPRESENTATIONS

- 7.1 This Lease together with the Agreement for Lease, Minutes of lessee granting the land, Institution Town Development Plan contains the entire agreement and understanding between the parties.
- 7.2 Both parties in entering this agreement become representatives of Diaspora University Trust land during the time this agreement shall be effective.

FIRST SCHEDULE

THE LAND

All that piece or parcel of land comprising by measurement one five nought nought (1500) acres or thereabouts situated in Voi District of the Republic of Kenya and known as Land Reference Number SAGALLA/NDARA "B"/17 which said piece or parcel of land is with dimensions abuttals and boundaries thereof delineated and described on the Plan annexed hereto registered in the Government Lands Registry in Volume No.....file No.....and more particularly on Land Survey Plan Number.....deposited in the Survey Records Office at Voi and which said piece or parcel of land is a portion of ALL THAT piece or parcel of land situate in the Voi District of the said Republic containing by measurementAcres or thereabouts known as Land Reference Number.....

SECOND SCHEDULE

COVENANTS BY LESSEE ENFORCEABLE BY THE LESSOR

- 1 The Lessor grants the land to the lessee for the implementation of the Institution Town Development Plan by Diaspora University Trust.
- 2 The Lessor in granting the land to the lessee understands that Diaspora University Trust is receiving other capital resources as donations and as investment as set out in the Institution Town Development Plan.

3. The Lessor in leasing out to the land to the lessee intends to donate and have the land holding rights of the land held by Diaspora University Trust in the shortest time possible and for the implementation of the Institution Town Development Plan.

THIRD SCHEDULE

COVENANTS ON THE PART OF THE LESSEE

1. The lessee accepts to hold the land during the period set by lessor and before the land transfer to Diaspora University Trust.
2. The lessee accepts to transfer the land as fast as possible to Diaspora University Trust.
3. The lessee accepts to start the planning process of the implementation of the Institution Town development plan on the land as shall be approved by the Diaspora University Trust Trustees.
4. The lessee in implementing the Institution Town Development plan legislated shall act on behalf of Diaspora University Trust and as guided by Diaspora University Trust Deed and resolutions passed by the Trustees.
5. The lessee in implementing the Institution Town Development plan legislated shall add the capital received on behalf of the Trust into the land to become developments inside the land.

FORTH SCHEDULE

LEASE END DATE

1. The end date of the lease shall occur after registration of Diaspora University Trust and transfer of land to the Trust.
2. The lessee and lessor shall transfer and register the land in the name of the incorporated Diaspora University Trust immediately after the Trust is incorporated the and on transfer the lease established between the parties shall end.

FIFTH SCHEDULE

OTHER CONSIDERATIONS AND LEASE RENT

1. The lessor having donated the land to Diaspora University Trust shall not charge any rent to the lessee when lessee is acting on behalf Diaspora University Trust.
2. The lease shall not have any restrictions for development other than those in the legislated Institution Town Development Plan.

3. The lessee when acting on behalf of the Diaspora Trust shall comply with the Institution Town Development Plan.
4. The detailed premium and or consideration for the lease of the property shall be as enumerated in **APPENDIX B-NDARA B GRANT-TO DIASPORA UNIVERSITY TRUST**-attached hereto and which shall form part of this lease agreement.

IN WITNESS WHEREOF this lease has been duly executed by the parties hereto as of the day and year first hereinbefore written.

THE LESSOR

SEALED with the common seal of
NDARA GROUP RANCH

In the presence of

DIRECTOR

ID/ NO... 0331114
PIN NO... 1051189773R
Signature
DIRECTOR / SECRETARY

ID/ NO... 0331114
PIN NO... 1051189773R
Signature
DIRECTOR / SECRETARY

I CERTIFY that the above – named.....and
.....Director and

Director/secretary of **NDARA GROUP RANCH** appeared before me on the 1...day of
8 - 20/17. And being known to me / identified by ID/Passport

Nos.....And.....acknowledged the above signatures or marks to
be theirs and that they had freely and voluntarily executed this instrument and understood its

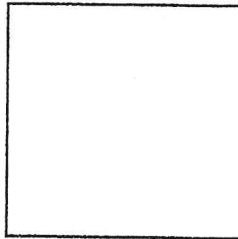
(2)

(3)

contents. I further hereby certify that the above colored passport size photographs are a true likeness of the above names persons and that I had authenticated the PIN Numbers ofand stated on this lease.

Signature and designation of the
ADVOCATE, COMMISSIONER
FOR OATHS & NOTARY PUBLIC
P.O. Box 27 - 00200, NAIROBI

KUP INSTITUTION TOWN LIMITED



THE LESSEE

SIGNED by the said [.....]

KUP INSTITUTION TOWN LIMITED

DIRECTORS ONINDO LIKUYI CHERYL

In the presence of
ADVOCATE, COMMISSIONER
FOR OATHS & NOTARY PUBLIC
P.O. Box 27 - 00200, NAIROBI

I CERTIFY that the above - named..... Appeared before me on the
.....day of....., 20..... And being known to me / identified by
ID/Passport Nos.....And.....acknowledged the above signatures
or marks to be theirs and that they had freely And voluntarily executed this instrument and
understood its contents. I further hereby certify that the above coloured passport size
photographs are a true likeness of the above names persons and that I had authenticated the
PIN Numbers ofstated on this lease.

Signature and designation of the
ADVOCATE, COMMISSIONER
FOR OATHS & NOTARY PUBLIC
P.O. Box 27 - 00200, NAIROBI

DRAWN BY:

ONINDO ONINDO & ASSOCIATES

APA ARCADE, SUITE 13,

HURLINGAM

P.O. Box 27-00200

NAIROBI

**Ndara B Group Ranch
1500 Acres Land Grant
To
Diaspora University Trust**

Onindo & Onindo Advocates

1. Introduction

Ndara B Group Ranch Community members with a goal to advance their constitutional rights as written in Kenya constitution article 43 grant 1,500 acres to Diaspora University Trust.

Kenya Constitution 43.

43. (1) Every person has the right—

- (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
- (b) to accessible and adequate housing, and to reasonable standards of sanitation;
- (c) to be free from hunger, and to have adequate food of acceptable quality;
- (d) to clean and safe water in adequate quantities;
- (e) to social security; and
- (f) to education.

(2) A person shall not be denied emergency medical treatment.

The land is granted for the development of the legislated Institution Town Development Plan as established under Kenya Constitution Article 185 (4)

185 (4) A county assembly may receive and approve plans and policies for—

- (a) the management and exploitation of the county's resources; and
- (b) the development and management of its infrastructure and institutions.

The Community members when granting the land for development of the legislated Institution Town Development Plan exercise their power directly as granted in the Kenya Constitution article 1.

1. (1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.
- (2) The people may exercise their sovereign power either directly or through their democratically elected representatives.

The land grant is further established through this Document terms and conditions Clause 2 to 11 to be executed by Diaspora University Trust on receiving the land and this grant document.

2. Grant, Benefits and Development Conditions

In making the grant, the following grant statement, benefits and conditions shall be enjoyed by Ndara Community Members as individuals and collectively as a community.

1. Grant to Advance Education and Founder Recognition. *(Clause 3)*
2. Kshs 120 million Donation to Ndara B Group Ranch Development Plan. *(Clause 4)*
3. Ndara B Group Ranch Development Plan *(Clause 5)*
4. Land Lease for Research Farming. *(Clause 6)*
5. Jobs. *(Clause 7)*
6. Natural Building Materials Income. *(Clause 8.)*
7. Minerals Income *(Clause 9)*
8. Ndara Town Creation *(Clause 10)*
9. Development Conditions *(Clause 11)*

3. Grant to Advance Education and Founder Recognition

1. The Grant of 1,500 acres is made toward the advancement of university education.
2. Ndara B Community members in granting the land shall be listed as founders of the Diaspora University. Wherever a list of founders is made the words "Ndara B Community Members," shall be listed. Where a statement is written on the founders the words, "Ndara Community members founded Diaspora University through the grant of 1,500 acres of land."
3. In recognizing every member of the community as founder
 - a. Each member name shall be written on the provided area that shall be in the first building built on the site.
 - b. Each member shall be awarded a founder certificate by the Diaspora University Trust Board of Trustees during a day set-up to appreciate the founders. The day shall be organized after the first intake is done in the university and before the second intake.
4. The Ndara Community chairman as Member of Diaspora University Trust Board of Trustees shall provide details of all members and shall oversee the implementation of 5a and 5b above.
5. The Board of Trustees shall allocate a budget toward 5a and 5b from the Trust resources.

4. Kshs 120 million Donation to Ndara B Group Ranch Development Plan.

1. Diaspora University Trust in accordance with terms set in the Master Development Plan shall donate an amount of Kshs 120 million (Kenya shillings one hundred and twenty million) toward Ndara B Community Ranch Development Plan.
2. The amount shall be disbursed within one year after land is registered to Diaspora University Trust.
3. The amount shall be disbursed toward Ndara B Group Ranch Development Plan that the members shall approve for implementation on the land not granted.
4. The Ndara B Group Chairman shall oversee the establishment of the plan, the approval and the disbursement of the funds.

5. Ndara B Group Ranch Development Plan

1. The Ndara B Group Ranch Development Plan shall be a plan for 4,040 acres development.
2. The plan shall be aligned with the Institution Town Development Plan with goal to be incorporated in the Town development.
3. The plan shall be established to advance rights as listed in Kenya constitution article 43.
4. The Plan shall be integrated with other Diaspora University Town developments as maybe stipulated in the plan.

6. Land Lease For Research Farming

1. Diaspora University Trust shall do Research Farming through a department established at the University.
2. Diaspora University Trust shall lease land as maybe availed by Ndara B Group Ranch from the 4,040 acres for a lease period of 5 years.
3. The lease amount per year shall be paid at the beginning of every year and shall be income for advancing Ndara B Group Ranch development plan.
4. The land availed for lease shall be in blocks of 500 acres established through estimates.

5. On completion of 5 years Diaspora University shall transfer the farming business developed to the management of Ndara B Group Ranch who shall advance the farming business as their business.
6. During the 5 years period,Diaspora University developments inside the land may include the following capital additions:
 - a. Fence the 500 acres into Paddocks.
 - b. Build dam/s.
 - c. Build Water tanks to supply paddocks
 - d. Install pipes installed to supply water to the tanks
 - e. Create Irrigation system.
 - f. Install Greenhouse farming for Horticulture
 - g. Install Power Supply to facilitate management of the farm.
 - h. Initiate livestock research and farming
 - i. Initiate crop research and farming.
 - j. Build buildings to facilitate management of farm and storage of produce.

7. Jobs

1. The community members, as individuals, shall get opportunity to apply for jobs created at the Diaspora University Town that they are qualified for.
2. An individual member shall get opportunity of getting trained for a job through institutions set-up in the Diaspora University Town.

8. Natural Building Materials Provisions

1. The community shall have the opportunity to be suppliers of natural materials used in the town construction based on the natural products from their land.
2. Where natural materials,especially stones, are extracted from the land granted, the Board of Trustees shall value the cost of material less extraction costs and shall consider this as income to go toward Ndara B Group Ranch Plan.

9. Minerals Provisions

1. During the ground digging for the development of infrastructure or property in the Town 1,500 acres, if when digging the ground minerals are discovered on the 1,500 acres land granted, the minerals shall be disclosed.
2. Based on applicable laws and this plan, the minerals shall be considered as the property of the Ndara Community members who granted the land.
3. The Diaspora University Trust through the Board of Trustees and Diaspora University shall facilitate the mining and sale of the minerals through the best plan possible. The income over and above the costs of mining and Diaspora University facilitation costs shall be remitted to the Ndara Community. The board shall pass a resolution based on the land area, land planning and other considerations.
4. With consideration the Institution Town Development Plan is not a mineral mining plan, but is a plan for building a property and roads on the top of the land; the Board of Trustees shall not allow exploration of minerals on the granted land that is planned for building infrastructure and property.

10. Town Creation

1. At the end of 5 years and having more than 10,000 persons living in the land a Town shall be created.
2. The town shall be established per applicable laws.
3. The Diaspora University Trust shall pass the Town administration as written in Institution Town Plan 10 (2) (c) The institute board of trustees shall pass on the town administration to the residents, public security system, and public court system and town administration laws at the time.
4. The execution of 9 (3) shall lead to the conversion of 1500 acres to a public land through the following constitutional laws:
 62. (1) Public land is— (c) land transferred to the State by way of sale, reversion or surrender;
 - 62 (2) Public land shall vest in and be held by a county government in trust for the people resident in the county, and shall be administered on their behalf by the National Land Commission, if it is classified under— (a) clause (1) (a), (c), (d) or (e)

REPUBLIC OF KENYA



THE PRESIDENCY

MINISTRY OF INTERIOR AND COORDINATION OF NATIONAL GOVERNMENT

Telegrams:

Telephone:

Telefax:

Email Address: dcc.voi@interior.go.ke

When replying please quote:

Ref: LND.5/VOL.I/79

Deputy County Commissioner's Office

Voi Sub County

P.O. Box 1 - 80300

VOI

11th September 2019

To KUP Institution
TOWN LIMITED

RE: REFUSAL TO ISSUE CONSENT FOR TRANSFER PARCEL NO. SAGALLA NDARA 'B'/ 19

Reference is made to your application to Voi Land Control Board seeking consent to transfer the above parcel of land.

We regret to inform you that your application for consent has been rejected by the Voi Land Control Board for the following reasons:


1. Your application submitted indicates parcel No. Sagalla Ndara 'B'/ 19 as the subject parcel whereas your accompanying documents namely original certificate of lease is for a different parcel Sagalla Ndara 'B'/17.
2. Your application seeks to transfer land belonging to a group ranch whereas the community Land Act under Sec 47 (3) clearly indicates that land held by group representatives referred to under Sub Section (1) shall not be sold, leased or converted to private land before its registered under this Act.
3. The minutes accompanying your application does not mention or indicate the transaction submitted to the board.
4. Your oral claims at the board that parcel No. 17 belongs to KUP Institution Town Limited is also unfounded as Sec 54(5) of the land registration Act indicates that long term leases have the effect of conferring ownership.

Long term leases under section 7 (h) of the Land Act refer to leases exceeding 21 years. KUP Institution Town Limited has a five (5) year lease from Ndara Group Ranch which is a short term lease.

5. The County government of Taita Taveta through a letter dated 12th July 2019 to the chairman Voi Land Control Board has objected to the said application for consent citing section 47 of the community land Act (copy attached).
6. The failure of the entire executive to attend the land control board.

You are further notified of your right to appeal to the Provincial Land Control Board or to seek legal redress.

Seen Olga
File Under
Administration


JOSEPH MTILE LEWA
DEPUTY COUNTY COMMISSIONER
VOI SUB COUNTY

DEPUTY COUNTY COMMISSIONER
VOI SUB-COUNTY

C.C

The County Commissioner
TAITA TAVETA

✓ The County Land Registrar
TAITA TAVETA

COUNTY GOVERNMENT OF TAITA TAVETA



DEPARTMENT OF LENAR, MINING, HOUSING AND TRANSPORT

Tel: +254 702 600 000

<http://www.taitataveta.go.ke>

info@taitataveta.go.ke

P.O. BOX 1000-10304
Mombasa

REF: TTCG/LENAR/CCOCORR/VOL.1/140

12th July, 2019

The Chairman
Land Control Board
VOI

RE: APPLICATION FOR TRANSFER CONSENT BY KUP AND
DIASPORA UNIVERSITY OVER NDARA 'B' GROUP RANCH PARCEL

The above matter refers.

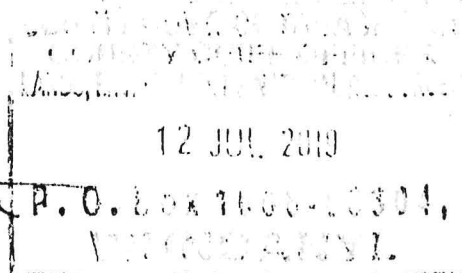
I am in receipt of information that KUP (Kenya University Project) have applied to the Land Control Board of Voi for consent to transfer a parcel at NDARA 'B' Group Ranch to Diaspora University.

Kindly note that KUP have a five year lease from NDARA 'B' Group Ranch. A five year lease is a short term lease and does not confer proprietary rights to the lessee. Section 47 of the Community Land Act clearly states that all parcels that were registered under the Group Representatives Act shall be re-registered under the Community Land Act.

On that note the County Government of Taita Taveta objects to the granting of the above mentioned consent, as the Community Land Act has come into effect.

REUBEN NGETI

CCO – LENAR, MINING, HOUSING AND TRANSPORT



SECOND ASSEMBLY

(NO. 017)

THIRD SESSION
Afternoon Sitting
(043)

REPUBLIC OF KENYA



TAITA TAVETA COUNTY GOVERNMENT



TAITA TAVETA COUNTY ASSEMBLY

SECOND ASSEMBLY – (THIRD SESSION)

ORDER OF THE DAY

THURSDAY, MARCH 14TH, 2019, AT 2:30 P.M

ORDER OF BUSINESS

PRAYERS

1. Administration of Oath;
2. Communication from the Chair;
3. Messages;
4. Petitions;
5. Papers; (As listed in the Appendix)
6. Notices of Motion; (As listed in the Appendix)
7. Statements;
8. *MOTION; PROCEDURAL MOTION: PROCEDURAL RESOLUTION OF THE SECOND TAITA TAVETA COUNTY ASSEMBLY.

(HON. JASON TUJA MWAMODENYI, MCA WERUGHA WARD, MAJORITY LEADER, SECOND TAITA TAVETA COUNTY ASSEMBLY)

THAT, pursuant to the provisions of Standing Order No. 230, this County Assembly of Taita Taveta RESOLVES THAT, the Motions appearing on today's Order Paper be notified and moved in this same Afternoon Sitting No. 017;

APPENDICES**PAPERS**

1. REPORT BY THE BUDGET, FINANCE AND APPROPRIATIONS COMMITTEE ON THE SCRUTINY OF THE COUNTY FISCAL STRATEGY PAPER 2019/2020

NOTICE OF MOTION

1. NOTICE OF MOTION: PROCEDURAL MOTION: PROCEDURAL RESOLUTION OF THE SECOND TAITA TAVETA COUNTY ASSEMBLY.

(HON. JASON TUJA MWAMODENYI, MCA WERUGHA WARD, MAJORITY LEADER, SECOND TAITA TAVETA COUNTY ASSEMBLY)

THAT, pursuant to the provisions of Standing Order No. 230, this County Assembly of Taita Taveta RESOLVES THAT, the Motions appearing on today's Order Paper be notified and moved in this same Afternoon Sitting No. 017;

2. NOTICE OF MOTION: ADOPTION AND APPROVAL OF THE REPORT ON THE SCRUTINY OF THE COUNTY FISCAL STRATEGY PAPER
(HON. GODWIN KILELE, CHAIRPERSON, THE BUDGET AND APPROPRIATION COMMITTEE, MCA, SAGALA WARD)

THAT this House adopts and approves the report of the Budget and Appropriations Committee on the analysis of the County Fiscal Strategy Paper laid on the table of this House on Thursday, 14th March, 2019, afternoon, sitting No. 017, and its recommendations thereof.

3. NOTICE OF MOTION: REJECTION OF THE DIASPORA UNIVERSITY PROJECT PROPOSAL BY TAITA TAVETA COUNTY ASSEMBLY (HON. GODWIN MWAMODO KILELE, MCA, SAGALLA WARD, MINORITY PARTY CHIEF WHIP, SECOND TAITA TAVETA COUNTY ASSEMBLY)

WARE THAT, the National Environment Management Authority (NEMA) posted a notice to the Public on Wednesday 6th February, 2019 People Daily newspaper, inviting submission of comments on the Draft Strategic Environmental Assessment (Sea) Report for the proposed diaspora University Town Development Plan, Taita Taveta County;

9. **MOTION: ADOPTION AND APPROVAL OF THE REPORT ON THE SCRUTINY OF THE COUNTY FISCAL STRATEGY PAPER (HON. GODWIN KILELE, CHAIRPERSON, THE BUDGET AND APPROPRIATION COMMITTEE, MCA, SAGALA WARD)**

THAT this House adopts and approves the report of the Budget and Appropriations Committee on the analysis of the County Fiscal Strategy Paper laid on the table of this House on Thursday, 14th March, 2019, afternoon, sitting No. 017, and its recommendations thereof.

10. **MOTION: REJECTION OF THE DIASPORA UNIVERSITY PROJECT PROPOSAL BY TAITA TAVETA COUNTY ASSEMBLY (HON. GODWIN MWAMODO KILELE, MCA, SAGALLA WARD, MINORITY PARTY CHIEF WHIP, SECOND TAITA TAVETA COUNTY ASSEMBLY)**

AWARE THAT, the National Environment Management Authority (NEMA) posted a notice to the Public on Wednesday 6th February, 2019 People Daily newspaper, inviting submission of comments on the Draft Strategic Environmental Assessment (Sea) Report for the proposed Diaspora University Town Development Plan, Taita Taveta County;

FURTHER AWARE THAT, it is common and clear knowledge to this Legislative Assembly as well as to all the residents in Taita Taveta County, that as far as the County Government of Taita Taveta is concerned, the issue of proposed Diaspora University Town Development Plan in Taita Taveta County was concluded last year on 22nd November, 2018, by being rejected unanimously by the Taita Taveta County Assembly, via a Motion which was sponsored by the Assembly's Lands Committee, and whose resolution made on Thursday Afternoon Sitting No. 079 (SECOND SESSION, 2018) on 22nd November, 2018, was forwarded to the Taita Taveta County Governor;

This County Assembly of Taita Taveta **REJECTS THE PROJECT PROPOSAL** of setting up the Diaspora University anywhere in the County of Taita Taveta.

REPUBLIC OF KENYA

IN THE SENIOR PRINCIPAL MAGISTRATE'S COURT

AT VOI

CIVIL SUIT NO. 161 OF 2018

1. ENGINEER ELIJAH MWANDOE } PLAINTIFF
2. SULEIMAN MWAMBOGHA }

VERSUS

1. BENJAMIN MWANDAA } DEFENDANTS
2. ANDERSON MWAUMBA }
3. HAMISI KALELA }
4. PETER MAGHANGA }
5. ABDALLA KIKO }

JUDGMENT

By first track plaint dated 8th June 2018 and filed in court on 11th June 2018, the plaintiffs herein Engineer Elijah Mwandoe and Suleiman Mwambogha brought this suit against the defendants herein Benjamin Mwandaa, Anderson Mwaimba, Hamisi Kalela, Peter Maghanga and Abdalla Kiko seeking the following orders;

- (a) A permanent injunction restraining the defendants by themselves, their agents, servants, employees or anyone claiming under them from transacting any business for and on behalf of the group ranch.
- (b) An order compelling the defendants to call for an annual general meeting, hold elections and table audited reports from the time they took.

- (c) An order revoking all dealings agreements and transactions carried out by the defendants after expiry of their term in office.

The plaintiffs pleaded that they are members of Ndara 'B' group ranch, while the defendants are officials, office bearers and or trustees of Ndara 'B' group ranch carrying out the functions of the group ranch within Voi Sub-County, Taita Taveta County. That the defendants were elected in the office over three years ago and their term in office has since expired. That after expiry of their term in office, they have failed, ignored and or refused to call for an annual general meeting where members are to elect new office bearers/officials.

The plaintiffs pleaded that the defendants have now been involved in commercial engagements and business dealings while illegally in office and without the requisite approval and consent of members. That the defendants have proceeded to use members, resources in their custody for their personal benefit and have failed, ignored and or refused to hold the annual general meeting, have elections conducted, table audited accounts and handover all property owned by the group ranch.

Summons to enter appearance and file statement of defence were issued on 18th June 2018. Upon service, the defendants filed a notice of appointment of advocates, through the firm of Ms Mwanyumba & Co. Advocates.

That document acted as a memorandum of appearance by the defendants. The same was filed on 12th July 2018 and dated evenly. On 10th August 2018 the plaintiffs through their advocates on record filed a request for judgment on account of failure by the defendants to file defence within the prescribed time. The said request was endorsed on 13/8/2018. The entry of interlocutory judgment in favour of the plaintiffs triggered the filing of two applications. The duo applications were instigated through certificate of urgency.

The 1st application was filed by an intended 6th defendant, seeking to be enjoined, on 22nd august 2018. The 2nd application was by the defendants counsel, Mr Mwanyumba seeking to set aside the interlocutory judgment, and allowed them to file statement of defence. The two applications were canvassed and disposed of accordingly vide a ruling delivered on 13/12/2018, the

defendants' application was allowed on terms. The defendants proceeded to file their written statement of defence dated 18th January 2019 on even date.

The gist of the defendants' statement of defence is that they were popularly elected in various elections, admittedly, the last one being held in the year 2014. That they have held regular annual general meetings as far as it was practicable. That whereas Section 5 of the Ndara 'B' Group Ranch Constitution stipulates that the quorum of AGM shall be presided by land officer or his representative, in some occasions, the elections were delayed due to the onerous work schedules of the said land officer.

The defendants pleaded that they had not refused and or ignored or call for annual general meetings as alleged. They denied engaging in commercial and or business dealings without legal authority. That the 1st plaintiff has given approval for the said unnamed engagements. They put the plaintiffs to strict proof of the averments in paragraph 7 of the plaint. The defendants admitted that the court has jurisdiction to entertain the suit herein.

The matter was listed for interpartes hearing on 18/4/2019. The 1st plaintiff, Elijah Mwanundi Mwandoe testified on behalf of his co-plaintiff. He simply adopted his witness statement filed herein on 11/6/2018 as his evidence in chief. He too adopted his list of documents containing the two documents i.e the constitution of the ranch and minutes dated 25/8/2016.

In his statement, which he adopted as his testimony, PW 1 states that he is a member of Ndara 'B' Group Ranch located in Voi Sub-County and occupies approximately 2,215 acres of land. That the objections of the ranch is for grazing, tourism, creation of a trust fund that would benefit members, development of natural resources e.t.c. that the objections were never for settlement purposes. That according to their constitution, the elected officials serve a term of 3 years and then new officials are elected during the 3rd annual general meeting. That the defendants who had been elected over 3 years ago have failed, refused and or ignored to call for elections. That they continue to manage and run the affairs of the group ranch while their term of office has expired. That they have gone ahead and committed the ranches resources to unknown university without the knowledge and consent of the two-thirds majority needed. That they have never tabled audited accounts since they took office, hence the prayers in the plaint.

The 1st defendant Benjamin Mwandaa Reuben testified as DW 1. He stated that he is one of the founder members of Ndara 'B' group ranch. That it was registered in the year 1978. That the plaintiffs found the ranch subsequently. That he was elected as chairman in the year 2005. He adopted his witness statement dated 14/8/2018 as his evidence in chief. He too adopted his list of documents. He availed copy of the constitution of the ranch, copy of pin certificate for the ranch and certificate of incorporation.

He also availed a list of the officials of the ranch and register of members of the ranch as well as copy of the Community Land Act 2016.

The second witness (DW 2) is Peter Maganga Mjomba. He is named as the 4th defendant herein. He adopted his witness statement filed herein, as his evidence in chief. In the said statement filed in court on 18th march 2019, he contends that he is a member of Ndara 'B' ranch. That he joined the same in 1979, as one of the founder members.

He stated that he was first elected as secretary in the year 2006. That an Annual General Meeting had been held at Gimba Primary School and he was popularly elected.

That a lands officer was present. He denied that they have refused to call for an annual general meeting as alleged. He denied that they have engaged in commercial and or business dealings without legal authority as alleged. That the constitution of the ranch stipulates that whenever elections are held, the relevant government officials, especially the lands officer must be present. That the 1st plaintiff had become a member around the year 2006. That although some members were opposed to his membership, he assisted in forcing the way for his membership. That he participated in the deliberations leading to the grant of the leases to Diaspora University and Malaika orphanage.

After the testimonies of the witnesses as highlighted above, both sides closed their respective cases. The matter was reserved for filing of submissions on 6/6/2017. On that date, the matter was listed for mention and both sides confirmed filing the same.

PLAINTIFF'S SUBMISSIONS

The plaintiffs reiterates the evidence adduced by both sides. They submit that the land applicable is the Community Land Act, whose commencement date is 21st September 2016 and the Ndara 'B' Group Ranch Constitution. They cited Section 3 of the Constitution of the group ranch, which provides its aims and objectives. That none of them includes to sell, grant or transfer assets of the ranch and members. That section 5 is on the election of officials which shall be done after every three years during the AGM.

That Section 8 provides for the conduct of AGM every December of every calendar year. That notices accompanied by accounts statements and agenda be sent not less than 2 days before the AGM. That Section 8 equally sets the quorum of AGM or SGM to be not less than $\frac{2}{3}$ of all the members. That Section 11 provides that the appointment of auditors be done after every 3 years during the AGM. That the defendants have violated all the relevant sections of the group ranch constitution, without any reasons or justifiable cause.

The plaintiffs submit that Section 47 of the Community Land Act stipulates that land held under the Group Representatives Act shall be registered as community land and that upon registration, the group representatives shall cease to hold office. That land held by group representatives referred to under Section 47 shall not be sold, leased or converted to private before it has been registered under the Act.

The plaintiffs submitted that the defendants are in office illegally, and have transferred portions of the land owned by the group ranch to private entities and that they have never done audit since registration.

The plaintiffs submitted that this court has inherent jurisdiction to direct the lands officer or his representative to call for, organize and preside over the AGM that will lead to election of new officials.

DEFENDANT'S SUBMISSIONS

The defendants submitted that the plaintiffs have not proven their case on a balance of probability, to warrant the grant of the orders sought against the defendants. They submit that the

plaintiffs only became a member of Ndara 'B' Group ranch in the year 2006, about 28 years after the ranch was founded by DW 2 and others. That the 1st plaintiff participates in all activities of the group ranch, and only opposes the defendants only when the processes suit him. That the 1st plaintiff participated in the meeting that resolved to grant the Diaspora University or Malaika children home/orphanage chunks of land. That the plaintiffs hardly questioned the defendants once audited accounts exhibited by the defendants, nor do they ever mention the merits or demerits of the same. That the plaintiffs failed to offer proof of the allegations that the defendants were using members resources in their custody for personal gain while refusing and or neglecting to hold annual general meetings.

The defendants submit that though elections were last held in the year 2014, this involve and rely on section 5 of their constitution that the quorum of AGM shall be presided by land officer or his representative. That the said officer was not available to assist in the organization of the elections. They placed reliance on a letter addressed to Mbulia Group Ranch and copied to all chairmen of group ranches including Ndara 'B' which cautions that " no new resolutions in election of any kind will be binding after the Community Land Act 2016 came into effect. That they await the appointment of the Community Land Registrar who will commence the conversion".

The defendant sought leave of court to have the said letter which they annexed to their submissions be deemed as part of the record in the broader interests of justice. The defendants submit that the said letter show the preponderant and pervasive influence of the registrar in the management of Group ranch affairs.

The defendants submitted on the issue of jurisdiction, stating that the value of the group ranch land meeting approximately 5,371 acres would fetch. More than 1 billion Kenya shillings, if sold at the market rate of Kshs. 3 million per acre. That the said amount far surpasses the pecuniary jurisdiction of this court. That even the valuation report availed by the defendants places the value of the group ranch at Kenya Shillings six hundred and fifty six million, seven hundred and sixty thousand (Kshs. 656, 760,000/-). They submitted that the orders sought cannot be granted by the court for want of jurisdiction.

plaintiffs only became a member of Ndara 'B' Group ranch in the year 2006, about 28 years after the ranch was founded by DW 2 and others. That the 1st plaintiff participates in all activities of the group ranch, and only opposes the defendants only when the processes suit him. That the 1st plaintiff participated in the meeting that resolved to grant the Diaspora University or Malaika children home/orphanage chunks of land. That the plaintiffs hardly questioned the defendants once audited accounts exhibited by the defendants, nor do they ever mention the merits or demerits of the same. That the plaintiffs failed to offer proof of the allegations that the defendants were using members resources in their custody for personal gain while refusing and or neglecting to hold annual general meetings.

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I have carefully considered the plaintiff's case and the defendants' case in their entirety. I have considered the pleadings, the evidence tendered, the documents relied upon the formal submissions. Appreciably, the suit raises pertinent factual and legal issues for this court to ponder about and make a determination on each of them.

In his final submissions, counsel for the plaintiffs Mr Nyangé identified two issues for determination i.e

- (a) Whether the defendants are legally in office.
- (b) Whether the plaintiffs are entitled to the orders sought.

The defendant did not expressly identify and or give a line-up of the issues to be determined, but the same can nevertheless be picked from the time of submissions adopted. The very first issue. I deduce from the submissions of the defendants is that the 1st plaintiff is not a founder member of Ndara 'B' Group Ranch. That he only joined the group in the year 2007 i.e 28 years later, whereas the defendants are founder members. If I understood them well, they were remotely alluding to a possibility of the 1st plaintiff's not having the requisite right or capacity to serve them, being founder members. A copy of the Ndara 'B' Group Ranch was availed to this court. I have had the benefit of reading the entire document Section 4 of the Group Constitution talks about who can be a member of the ranch. Section 4.1 states as follows;

"The membership of the ranch shall be open to all persons who are 18 years and above"

Section 4.3 states as follows;

"A member of the ranch shall have rights to vote if he/she has paid Kshs. 200/-"

Section 5 of the constitution talks about election of office bearers and his duties. Particularly, Section 6.4 of the said constitution is quite informing. It states as follows;

"If a member is full registered by paying two hundred shillings (Kshs. 200.-) and five shillings (Kshs. 5/-) only, as a group ranch member, then he/she qualifies to be an elected member".

From my reading of the said constitution, it does not seem to create any distinction between founder members and new members who join the group. It was admitted that the 1st plaintiff is a member of the group ranch, with rights like any other members, be they found members or otherwise.

The next issue I'll consider is whether the defendants are legally in office. It is the summary submission and contention by the plaintiffs that the group ranch constitution sets three years as the period for an elected official to be in office. That the last elections were in the year 2014 and so a mathematical computation will show that the next elections were to be held in the year 2017. That the said elections have never been held. That the defendants are in office illegally. That the process, they have flouted all the relevant provisions of the group constitution and that they have engaged in blatant abuse of office by giving any part of the groups land to private entities, without members express approval as by law required.

There is no denial that the elections of officials to the executive committee of the ranch are long overdue. As already stated, the period of officials to stay in office is 3 years. Both DW 1 and DW 2 admitted that they were elected for the current terms way back in the year 2014. That efforts to have the elections done, were thwarted by the unavailability of a lands official to participate in the same. That the greatest impediment therefore has been a quorum hitch.

Between 2014, when the last elections were conducted, and 2017 when the subsequent election was meant to be conducted, a major event took place. That was the inauguration of a new legal regime governing group ranches. An act of parliament No. 27 of 2016 titled community land, whose commencement date is 21st September 2016 came into force. As per the preamble of the said Act, it is meant to give effect Article 63 (5) of the constitution. Among other objectives, it is to provide for the

"management and administration of community land".

Under Section 45 of the community land act, two sets of laws were repealed i.e the Land (Group Representatives) Act Cap 287, and The Trust Lands Act Cap 288. Section 46 of the Community Land Act has the surviving and transitional provisions.

Well aware about the existence of land held under the Land (Group Representatives) Act, Cap 287, the legislative dedicated Section 47 under the Community Land Act. I reproduce the said provision of the land as hereunder;

- (1) In relation to land held under the land (group representatives) Act Cap 287), the respective group representatives together with the communities they represent shall be registered as a community in accordance with the provisions of this Act.
- (2) Upon registration, the respective group representatives shall cease to hold office.
- (3) Land held by group representatives reformed to under subsection (i) shall not be sold, leased or converted to private land before it has been registered under this act.
- (4)
- (5) The transitional provisions set out in the schedule shall apply upon commencement of this Act.

The process or procedure for registration of communities is clearly and well laid down under Section 7 of the Community Land Act. The said Section of the Law states as follows;

- (1) A community claiming an interest in or right over community land shall be registered in accordance with the provisions of this Section.
- (2) The community land registration shall by notice in at least one newspaper of nationwide circulation and a radio station of nationwide coverage, invite all members of the community with some communal interest to a public meeting for the purpose of electing the members of the community land management committee.
- (3)
- (4)
- (5) The community shall elect between seven and fifteen members from among themselves to be in the members of the Community Land Management Committee as provided in Section 15, who has come up with a comprehensive registration of communal interest holders.

- (6) The Community Land Management Committee shall come up with the name of the community and shall submit the name, register or members, minutes of the meeting and the rules and regulations of the committee to the registrar of registration.

I have highlighted the enabling sections of the law at great length to demonstrate that the community land act which succeeded the Land (Group Representatives) act is a comprehensive piece of legislation with regard to management and administration of commercially owned land. From my reading of the said provisions of the law, it is clear that the duty, obligation and responsibility of conducting elections under the Community Land Act has been bestowed upon a statutory entity. That entity is the office of the Community Land Registration. Section 7(2) of the community land act is couched on mandatory and express terms. Section 47(2) of the same Act clearly stipulates how the group representatives under the Land (Group representatives) Act shall vacate office. Immediately after registration, they shall cease to hold office.

The plaintiffs are asking the court to compel the defendants to call for an annual general meeting and hold elections. Whereas the constitution of the group ranch contemplates those activities in the management of the ranch, they did not align the request with the provisions of the new Act. The person mandated to convene a forum for selection of members of the Community Land Management Committee as already stated in the Community Land Registration is not a party in this proceedings. Why the transition contemplated under the Community Land Act in regard to the management and administration of community land, formerly governed under the Land (Group Representatives) Act has not been effected is beyond the scope of the proceedings herein. The rules of natural justice precludes this court from making any findings against the said office. In Halsbury's Laws of England, Fourth Edition Vol 1 Page 90 paragraph 74, it is stated as follows:

" The rule that no man shall be condemned unless he has been given prior notice of the allegations against him and a fair opportunity to be heard is a cardinal principle of justice.....".

The Court of Appeal in the case Speaker of National Assembly vs Karume [1992] KLR 2 stated as follows:

"Where there is a clear procedure for readiness of any particular grievance prescribed by the constitution or an act of parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures".

There are a myriad of decisions which support the above position and it is clear that the plaintiffs moved to court without exhausting the available channels to effect the transiting interpreted under the law. The court cannot impose a statutory obligation on a party it well understands has no ability to fulfill.

The plaintiffs have also urged the court to issue an order revoking all dealings, agreements, transactions carried out by the defendants after the expiry of their term in office. This is a generalized prayer that is not specific in nature. The plaintiffs are asking the court to give a blanket order, which in my view will have far reaching ramifications. Which dealings are these to be revoked? Which agreements are these to be revoked? Which transactions are these to be revoked?

The court of appeal cautions against issuance of orders which are likely to cause more trouble than they seek to resolve or remedy a situation. In Civil Appeal 97 of 2008, Caltex Oil (Kenya) Limited vs Rono Limited [2016] eKLR, the superior court rendered itself as follows;

"To find otherwise would amount to the court exercising a power it does not have and rendering decisions without any parameters or borders which would lead to total disorder and abuse of the judicial process. It would also be a recipe for the formation of public anger against the judiciary".

In the submissions, the plaintiffs submitted that the defendants were while illegally in office transferred part of the suit land to Malaika Childcare villages and KUP Institution Tour Limited. While DW 1 was testifying, it emerged that Kenya University Project had been assigned 1,500 acres of land. That both KUP and Malaika Childcare villages have title deeds to the respective parties of land under them. These are some of the targeted transactions which the plaintiffs want this court to revoke.

Two issues emerge herein. One, the said entities were never enjoined as parties in these proceedings. As already stated, the rules of natural justice (without going with details) do not permit grant of adverse orders against a party who was never notified of the proceedings where such orders are being made.

Secondly, looking at the acreage involved and the claimed value of an acre of land, the cumulative value of the parcels in question far outstrips the pecuniary jurisdiction of this court. It is a nullity in law for a court of law to issue orders regarding a matter where it apparently lacks jurisdiction. This court will not conscientiously venture into such a moment.

The final issue I'll consider is with regard to the request for injunctive orders against the defendants. The plaintiffs are seeking to have the defendants restrained either by themselves, their agents, servants, employees or anyone claiming under them from transacting any business for and on behalf of the group ranch.

It is clear that the current office bearers are time bound, in the sense that the three year period they had been popularly given to run the office had expired. As it were they are awaiting the move from the office of the Community Land Registration, as clearly outlined in the foregoing paragraphs of this judgment.

In their submissions filed herein on 6/6/2019, the defendants through the advocate on record Mr Mwanyumba annexed a letter indicating to have been issued from the Land Ministry i.e the ministry of lands and physical planning, addressed to secretary, Mbulia Group Ranch and copied to all chairmen of Group Ranches. The author of the same is one James M. Ngiriri ADLAS/ASS. Registrar of Group Ranches, Taita, Voi and Mwatate Sub-Counties. The plaintiffs urged the court to ignore the said letter as it was being irregularly introduced.

Indeed, the defendants counsel had used the many approach in introducing the same, since the plaintiffs could not have a way of responding or challenging the same.

Nevertheless, the contents are purely on a point of law. The officer highlights Section 47 of the Community Land Act 2016, which the plaintiffs themselves made reference to. It is interesting to note that the last paragraph actually supports the mind and thoughts of the plaintiffs that nothing

should be done on the land held by the group representatives. Section 47(3) of the Community Land Act should avert any concerns on the part of the plaintiffs, or any other party.

The said provision hold as follows:

(3)Land held by group representatives referred to under sub-section (1) shall not be sold, leased or converted to private land before it has been registered under the Act.

The letter by the Assistant Registrar of Group Ranches captures the spirit of this provision of the land. However, to avoid a vacuum being created and considering that the office bearers are custodians of the books of account and all documents relating to the group ranch, it is important that the court makes desirable orders to suit the circumstances of the case. Those orders are as follows;

- (a) The defendants are being restrained by themselves, their agents, servants, employees or anyone claiming under them for making any new resolutions at Ndara 'B' Group Ranch, pending conversion as contemplated under the Community Land Act, 2016.
- (b) The prayer of an order compelling the defendants to call for an annual general meeting, hold elections and table audited reports from the time they took office is hereby declined for being ultra vires the provisions of Section 7 of the Community Land Act, 2016.
- (c) The prayer for an order revoking all dealings, agreements and transactions carried out by the defendants after expiry of their term in office is hereby declined.
- (d) The prayer for general damages is hereby declined for failure on the part of the plaintiffs to prove personal injury or loss suffered.
- (e) The plaintiffs have partially succeeded in this case, and so I award them costs of this suit.

M. ONKOBA- SRM

18/7/2019

Court

Judgment read over and delivered in open court in the presence of Mr Mwazighe holding brief for Mr Nyange for the plaintiffs and Mr Mwanyumba for the defendants. Ms Mary Ngoira court assistant is also present.

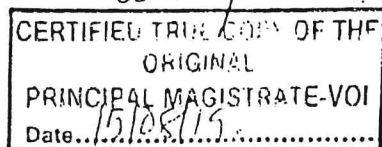
C.C No. 161 of 2018



Right of appeal within 30 days.

M. ONKOBA- SRM

18/7/2019





Melane B

REPUBLIC OF KENYA
MINISTRY OF LANDS AND PHYSICAL PLANNING

Telegrams "Land", Nairobi
Telephone: Nairobi 02718050
When Replying Please Quote

Department Of Land
1st Ngong Avenue Off Ngong Road
P.O. Box 30089
Nairobi

Ref. No. TTA/A/35/VOL.III/24

Date: 9th October 2020

Wanjiru Mathai & Associates
Westlands Business Park, 6th Floor
Chiromo Lane
P.O. BOX 51988-00100
Nairobi

REF: REGISTRATION-LR.NO.SAGALLA/NDARA "B"/17

Kindly refer to your letter dated 1st July 2020 on the above subject.

We have taken note of the contents of your said letter and wish to respond as follows:

1. That the lease between your client and Ndara Group Ranch was for a term of five (5) years, thus a sort term lease and do not qualify to be issued a certificate of Lease.
2. That section 30(2)(b) of the Land Registration Act 2012, provides that no certificate of title or certificate of lease shall be issued unless the lease is for a certain period exceeding twenty-five years.
3. That as per the certificate of Lease irregularly and unlawfully issued to your clients there is no noting on certificate that your clients were holding in trust.
4. That changes being sought can only be effected by way of transfer which in effect requires that you obtain consent to transfer from the relevant land control board.
5. That the changes being sought do not fall within the provisions of section 79 so far as the rectification of the register is concern.

From the for going you are advised to communicate to your clients to surrender to the Land Registrar Taita-Taveta the Certificate of Lease issued to them on 18th August 2017 for cancellation. By a copy of this letter the Land Registrar is directed to issue a fourteen (14) days' notice of intention to cancel the Certificate of lease so issued.


N.D. NYAMBASO
SENIOR ASSISTANT CHIEF LAND REGISTRAR

Cc: Cabinet Secretary

Principal Secretary

District Land Registrar, Taita Taveta

11. Environment Plan

Kenya Constitution 2010 Compliance

The project Environment is founded and shall be implemented to comply with Kenya Constitution 2010 articles 42, 69 and 70

42. Every person has the right to a clean and healthy environment, which includes the right—
- (a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and
 - (b) to have obligations relating to the environment fulfilled under Article 70.
69. (1) The State shall—
- (a) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;
 - (b) work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;
 - (c) protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;
 - (d) encourage public participation in the management, protection and conservation of the environment;
 - (e) protect genetic resources and biological diversity;
 - (f) establish systems of environmental impact assessment, environmental audit and monitoring of the environment;
 - (g) eliminate processes and activities that are likely to endanger the environment; and
 - (h) utilise the environment and natural resources for the benefit of the people of Kenya.
- (2) Every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.
70. (1) If a person alleges that a right to a clean and healthy environment recognized and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter.
- (2) On application under clause (1), the court may make any order, or give any directions, it considers appropriate—

(7)

(8)


- (a) to prevent, stop or discontinue any act or omission that is harmful to the environment;
 - (b) to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or
 - (c) to provide compensation for any victim of a violation of the right to a clean and healthy environment.
- (3) For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury.

11. Development Conditions

1. The Board of Trustees shall commence development as soon as possible once land registered to the University Trust.
2. If the Board of Trustees cannot commence the development of the land, the land shall be transferred back to the community.
3. Commencement of land development means the start of construction after required law approvals needed before start of construction.

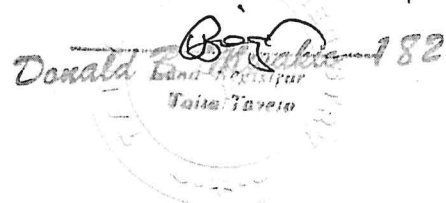
Signed by:

Donald Mwawasi  Date: 1-8-2017
Institution Town Founder and Diaspora University Trustee

Benjamin Mwandaa  Date: 1-8-2017
Ndara Community Land Chairman and Diaspora University Trustee

Onindo & Onindo Advocates

Sign & Legal Firm Stamp

Registered this 18TH of AUGUST 2017

Donald Mwawasi
Tina Tavea

