

Approved for tabling in the House.



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11/5/2022

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY


TWELFTH PARLIAMENT – SIXTH SESSION – 2022

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON-

(PUBLIC PETITION NO 068 OF 2021)

BY VICTOR MWAGANDA GOGO ON BEHALF OF RESIDENTS OF KWA
KADZENGU VILLAGE IN MTEPENI WARD OF KILIFI COUNTY REGARDING THE
URGENT RESOLUTION OF THE KWA KADZENGU LAND DISPUTE

 THE NATIONAL ASSEMBLY	
DATE: 11 MAY 2022	
WEDNESDAY	
TABLED BY:	CHAIR, DC - LANDS
CLERK AT THE TABLE:	HON. RACHEL NYAMAI MP ARMED KHADI

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

MAY, 2022

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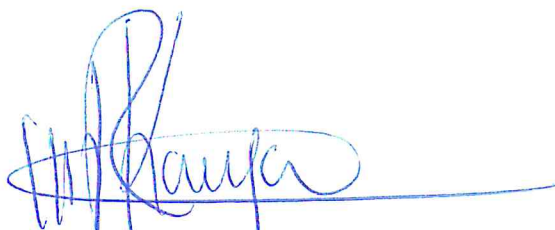
CHAIRPERSON'S FOREWORD

The Hon. Speaker, on 1st December 2021, conveyed to the House Public Petition No 068 of 2021 regarding the urgent resolution of the Kwa Kadzengo land dispute. Mr. Victor Mwanganda Gogo presented the Petition on behalf of residents of Kwa Kadzengo Village in Mtepeni Ward of Kilifi County.

While considering the Petition, the Committee heard from the Petitioners on 19th November 2021 and the Cabinet Secretary, Ministry of Lands and Physical Planning on 9th March 2022 in sittings that took place at Parliament Buildings. The Committee also received written submissions dated 4th April 2022 from the Railway Housing Cooperative Society.

The Committee is grateful to the Officers of the Speaker and Clerk of the National Assembly for logistical and technical support during the consideration of the Petition. The Committee is also thankful to the Petitioners, the Cabinet Secretary for Lands and Physical Planning, and the Railway Housing Cooperative Society for the submissions they made.

Pursuant to the provisions of Standing Order 227 and 199, it is my pleasant duty to table the Report of the Departmental Committee on Lands on its consideration of Public Petition No. 068 of 2021 by Victor Mwanganda Gogo on behalf of residents of Kwa Kadzengo Village in Mtepeni Ward of Kilifi County regarding the urgent resolution of the Kwa Kadzengo land dispute.



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

EXECUTIVE SUMMARY

This report responds to the prayers in Public Petition No 068 of 2021 regarding the urgent resolution of the Kwa Kadzengo land dispute. The Petition was presented by Victor Mwaganda Gogo on behalf of residents of Kwa Kadzengo Village in Mtepeni Ward of Kilifi County and conveyed to the House by the Hon. Speaker on 19TH October 2021.

The Petitioners requested that the National Assembly, through the Departmental Committee on Lands, intervene to forestall the impending eviction of the Petitioners from the land by the Railway Housing Cooperative Society. They also asked the Committee to investigate the circumstances under which the Railway Housing Cooperative Society purchased the land, knowing that the bonafide owners were in occupation.

Regarding the first prayer, the Committee observed that the land in question was the subject of two court cases Civil Case No. 158 of 2019 and HCC Civil Suit No. 44 of 202. The two suits were consolidated, heard, and determined among other things declaring that the Railway Housing Cooperative Society was the rightful owner of the land in question.

Further a new petition ELC Petition No. 23 of 2021, on 12th October 2021, in the Environment and Land Court in Malindi, which is still pending hearing and determination by the Court. In this regard, under Standing Order 89, the Committee observed that the matters relating to the Petition, particularly the question of ownership of the land, were pending in court.

Under Standing Order 89(5) regarding the Petitioners' prayer for the vacation of eviction orders, the Committee noted that cessation of eviction processes could only be affected by a court of law through prohibitory orders. Hence, the matter did not fall within the authority of the Committee.

Regarding the second prayer, the Committee observed that the Cabinet Secretary, Ministry of Lands and Physical Planning, submitted that the Railway Housing Cooperative Society Limited acquired five plots from Francis Kamau Kinuthia on 19th April 2006.

The Committee concluded that the question as to ownership of the land was pending hearing and determination at the ELC Court in Malindi in ELC Petition No. 23 of 2021.

Finally, the Committee recommends that the Petitioners do await the final determination of the Environment and Land Court in Malindi on the ELC Petition No. 23 of 2021 relating to the matters raised by the Petitioners in the Petition.

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Lands is established under the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference amongst others:

- (i) *investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations, and estimates of the assigned Ministries and departments.*

- (ii) *study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation.*
- (iii) *make reports and recommendations to the House as often as possible, including the guidance of proposed legislation*
- (iv) *Study and review all legislation referred to it*
- (v) *study, access, and analyse the relative success of the Ministries and departments as measured by the results obtained compared with their stated objectives.*
- (vi) *investigate and inquire into all matters relating to the assigned Ministries and departments as they deem necessary and referred to them by the House.*
- (vii) *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

4. The Committee membership comprises:

Chairperson

Hon. Dr Rachael Nyamai, CBS, MP
Kitui South Constituency

Jubilee Party

Vice-Chairperson

Hon. Mishi Mboko, MP
Likoni Constituency

Orange Democratic Movement (ODM)

Hon. Benjamin Washiali, CBS, MP
Mumias East Constituency

Jubilee Party

Hon Joshua Kutuny Serem, MP
Cherangany Constituency

Jubilee Party

Hon. Omar Mwinyi, MP
Changamwe Constituency

Orange Democratic Movement (ODM)

Hon. William Kisang, MP
Marakwet West Constituency

Hon Jubilee Party

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

5. The Committee secretariat comprises:

Lead Clerk

Mr. Leonard Machira

Senior Clerk Assistant

Mr. Ahmad Guliye

Clerk Assistant II

Ms. Jemimah Waigwa

Legal Counsel I

Mr. Collins Namulen

Fiscal Analyst III

Ms. Maureen Kweyu

Audio Recording Officer

Dr Kefa Omoti

Principal Researcher Officer

Mr. Joseph Okongo

Media Relations Officer

Ms. Peris Kaburi

Serjeant at Arms

2.0 INTRODUCTION

6. The Hon. Speaker, on 1st December 2021, conveyed to the House Public Petition No 080 of 2021 regarding the urgent resolution of the Kwa Kadzengo land dispute. The Petition was presented to the House by Victor Mwaganda Gogo on behalf of residents of Kwa Kadzengo Village in Mtepeni Ward of Kilifi County.
7. The Petitioners comprise six hundred residents of Mtepeni Ward in Kkilifi involved in a land dispute with the registered owner of LR. No Kilifi Kikambala Block 285/3 with the resultant subtitles Nos. 29,32,33, 34, 35 and 43.
8. Sheila Norton previously owned the disputed parcels. She divested her interest with specific instructions that the block of land be subdivided and transferred to her employees. The said employees resided on the said land and have remained there for 50 years. The residents have built houses and churches on the land.
9. The land was converted into Kikambala Settlement Scheme, as evidenced by map sheet number 1/198/4/11 for the settlement of squatters residing on it.
10. Unknown to the Petitioners, one Francis Kinuthia was irregularly allocated the parcel of land under unclear circumstances and then sold it to the Railway Housing Cooperative Society, the current registered owner, with the full knowledge that the petitioners were in occupation of the said land for over 50 years.
11. Therefore, Society purchased the land in bad faith. This would defeat justice because the Society knew that the Petitioners occupied the subject parcel of land at all material times.
12. The members of the Society have never resided on the said land or done any development since 19th April 2006, the purchase date.
13. The Society was gearing up to evict the over one hundred households residing on LR.NO. Kilifi /Kikambala Block 285/3 by unlawful force. Therefore, depriving them of their livelihood and a sense of belonging acquired over six decades, they have resided on the said land.
14. The issues regarding which this Petition is made are not pending before any court of law or other constitutional or legal body.
15. The Petitioners prayed that the National Assembly, through the Departmental Committee on Lands:

- a. Intervenes to forestall the impending eviction of the Petitioners from the land by the Railway Housing Cooperative Society.
 - b. Investigates the circumstances under which the Railway Housing Cooperative Society purchased the land, knowing that the bonafide owners were in occupation.
-
- c. Secure by the government the said parcel of land through direct purchase from the Railway Cooperative Society or alternative land for settling the residents of Kwa Kadzengo Village

3.0 SUBMISSIONS

3.1 Submissions by the Petitioners

16. The Committee met the Petitioners on 19th November 2021. They informed the Members that:
17. Kwa Kadzengo land Block 285/3 was registered to one Sheila Norton. He divested her interest in 1968 on instructions that the land is subdivided and transferred to her ex-employees.
18. However, later, one Francis Kinuthia was allocated the same land under unclear circumstances and later sold it to the Railway Housing Cooperative Society in 2006.
19. The Petitioners claimed that the Railway Housing Co-operative Society had not developed the land for over 15 years and was using illegal means to evict the Petitioners from the land.
20. The Petitioners requested the Committee to investigate the circumstances in which the Railways Housing Cooperative Society purchased the land, knowing that its bonafide owners were already in occupation.

3.2 Submissions by the Cabinet Secretary for Lands and Physical Planning

21. The Committee met the Cabinet Secretary for Lands and Physical Planning on 9th March 2022. The Cabinet Secretary responded to the issues raised in the Petition as follows:
22. The land in question, Kilifi Kikambala Block 285/3, is a registration section in Kilifi South Subcounty. The Ministry opened the first edition of Green Cards for the said land on 23rd March 1992. The section comprised forty-two plots, as shown in the table below:

S/N	Name	Plot	Acreage
1	Government of Kenya	1	2.4
2	Mohamed Ngala Badi	2	10.1
3	Maguya Chai Maguya	3	0.6
4	Joseph Edward Kenga	4	0.44
5	Livinston Charo Mganga	5	0.07
6	Gambo Ntamawi Lewa	6	0.22
7	Mganga Bata Kitunga	7	1.0

S/N	Name	Plot	Acreage
8	Government of Kenya	8	0.16
9	Jefwa Kitunga Mure	9	0.5
10	Twahir Mbarak Twahir	10	4.04
11	Government of Kenya	11	0.21
12	Kahindi Chengo Kitunga	12	1.5
13	Chengo Kithunga Mure	13	0.27
14	Chengo Kombe Mwangoyo & Kahonzi Chengo Kombe	14	0.27
15	Alfred Katana Muganga	15	0.40
16	Kenga Ngonyo Mwauuo	16	0.90
17	Karisa Kagana Kahiva	17	0.42
18	Kazungu Changana Bundu	18	0.40
19	Kazama Jefwa Chai & Silvester Emmanuel Kahindi	19	0.80
20	Nzara Tsimba Mwachaka	20	0.14
21	Riziki Nusura Hamisi	21	0.29
22	Ahmed Omar Ahmed	22	0.31
23	Ali Abdalla Ali	23	0.30
24	Juma Ali Mwachiyama	24	0.40
25	Wisdom Ali Mwalukumbi Kachila	25	0.24
26	Kazungu Kahindi Dumbo	26	0.86
27	Absaki Investment Limited	27	0.5
28	Railway Housing Cooperative Society Limited	28	0.92
29	Railway Housing Cooperative Society Limited	29	0.91
30	Mohamed Ngala Badi Hamisi	30	0.94
31	Mohamed Ngala Badi Hamisi	31	0.95
32	Railway Housing Cooperative Society Limited	32	0.72
33	Railway Housing Cooperative Society Limited	33	0.60
34	Mohamed Ngala Badi Hamisi	34	0.68
35	Railway Housing Cooperative Society Limited	35	0.63
36	Mohamed Ngala Badi Hamisi	36	0.57
37	Mohamed Ngala Badi Hamisi	37	0.62
38	Mohamed Ngala Badi Hamisi	38	0.13
39	Mohamed Ngala Badi Hamisi	39	0.113
40	Mohamed Ngala Badi Hamisi	40	0.62
41	Mohamed Ngala Badi Hamisi	41	0.63
42	Mohamed Ngala Badi Hamisi	42	0.66

23. Railway Housing Cooperative Society Limited acquired five plots from Francis Kamau Kinuthia on 19th April 2006 as follows:

- a. Plot No.28, which was originally registered to Mohamed Ngala Badi Hamisi on 20th October 1992. Francis Kamau Kinuthia acquired the said plot on 8th October 1993 and transferred it to Fauzia Shaban Snedi on 2nd August 2002.
- b. Plot No. 29, which was originally registered to Mohamed Ngala Badi Hamisi on 20th March 1992. Francis Kamau Kinuthia acquired the said plot on 8th October 1993.
- c. Plot No.32, which was originally registered to Mohamed Ngala Badi Hamisi on 20th March 1992. Francis Kamau Kinuthia acquired the said plot on 28th October 1996.
- d. Plot No 33, which was originally registered to Mohamed Ngala Badi Hamisi on 20th March 1992. Francis Kamau Kinuthia acquired the said plot on 28th October 1996.
- e. Plot No 35, which was originally registered to Mohamed Ngala Badi Hamisi on 20th March 1992. Francis Kamau Kinuthia acquired the said plot on 28th October 1996.

3.3 Submissions by the Railway Housing Cooperative Society

24. The Committee received written submissions from the Railway Housing Cooperative Society, through Muturi Gakuo & Kibara Advocates, dated 4th March 2022. The Society responded to the issues raised in the Petition as follows:
25. The Society is the registered proprietor of the parcel of land measuring 4.136 Hectares or 10.22, comprising the following titles:

- a. Plot No. KILIFI/KIKAMBALA/285/3/53
- b. Plot No. KILIFI/KIKAMBALA/285/3/28
- c. Plot No. KILIFI/KIKAMBALA/285/3/29
- d. Plot No. KILIFI/KIKAMBALA/285/3/32
- e. Plot No. KILIFI/KIKAMBALA/285/3/33
- f. Plot No. KILIFI/KIKAMBALA/285/3/35
- g. Plot No. KILIFI/KIKAMBALA/285/3/43

26. The Society acquired the parcels of land from contributions of its members through its Advocates, Messrs Albert Kamunde & Company Advocates. The Advocates undertook due diligence, including official searches, which revealed that Francis

Kamau Kinuthia, holder of identity card number 3835292, was the registered owner of plots 29,32,33,35 and 43. In contrast, Plot No. 28 was registered to Fauzia Shaban Swedi, holder of identity card number 8411260.

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27. The Society entered and signed sale agreements in December 2005 at a purchase price of Kshs. 680,000 per acre for the six parcels. Subsequently, the Society obtained titles in its favour on different dates between 19th April 2006 and 17th July 2008.
28. The Society applied for a mutation to consolidate the six parcels of land into one. The consolidation was successful, and a new title number, Plot No. KILIFI/KIKAMBALA/285/3/5 was issued.
29. The Petition before the Committee is premature as it was a subject of court case Civil Case No. 158 of 2019.
30. The Society also filed Civil Suit No. 44 of 2021 in the High Court at Malindi against the plaintiff in the first case on 10th May 2010. The two suits were consolidated, heard, and determined on 20th September 2019, and the Society obtained a decree. Among other things, it provided that:
- a. The Railway Housing Co-operative Society is the rightful owner of the land in question and is entitled to possession to the exclusion of the defendants.
 - b. The Society obtained eviction orders against the defendants to be enforced upon the expiry of 60 years if the defendants shall not have vacated the same.
 - c. The officer in charge of Kilifi/Kijipwa Police Station and the National Government Administration, Kilifi, supervise and provide security during the eviction process.
 - d. The Society obtained a permanent injunction restraining the defendants, their agents or servants and any other persons acting on their authority from entering or remaining on the land.
31. Subsequently, the Petitioners filed a notice of appeal. The court delivered a ruling on 5th November 2020 and the Notice of Application was dismissed for lack of merit.
32. The Petitioners then filed a new Petition No. 23 of 2021 on 12th October 2021, in the Environment and Land Court in Malindi, which is pending hearing and determination.

4.0 ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION

a. Intervene to forestall the impending eviction of the Petitioners from the land by the Railway Housing Cooperative Society.

33. Regarding this prayer, there is unrebutted evidence on record from the Railway Housing Co-operative Society that the land in question was the subject of two High Court Civil Cases No. 158 of 2019 and No. 44 of 2021 and that the two cases were consolidated and determined. The Railway Housing Cooperative Society was declared the bonafide owner of the land in question amongst other orders.

34. There is further evidence on record that upon losing the consolidated court case, the Petitioners filed a notice of appeal, which was dismissed for lack of merit. Consequently, the Petitioners on 12th October 2021 filed a new Petition No. 23 of 2021 in the Environment and Land Court in Malindi which is pending before the Court. In this regard, and pursuant to the provisions of Standing Order 89, the Committee found that the matters relating to the Petition, particularly the question of ownership, were pending in court, thus *sub judice*.

35. Further, the Committee observed that under Standing Order 89(5) regarding the Petitioners' prayer for the vacation of eviction orders, the Committee noted that cessation of eviction processes could only be effected by a court of law through the issuance of prohibitory orders. Hence, the matter did not fall within the jurisdiction of the Committee.

(b) Investigate the circumstances under which the Railway Housing Cooperative Society purchased the land, knowing that the bonafide owners were in occupation

36. The Committee observed that the Cabinet Secretary, Ministry of Lands and Physical Planning, submitted that the Railway Housing Cooperative Society Limited acquired five plots from Francis Kamau Kinuthia on 19th April 2006 as follows:

- a. Plot No.28, which was initially registered to Mohamed Ngala Badi Hamisi on 20th October 1992. Francis Kamau Kinuthia acquired the said plot on 8th October 1993 and transferred it to Fauzia Shaban Snedi on 2nd August 2002.
- b. Plot No.29, which was originally registered to Mohamed Ngala Badi Hamisi on 20th March 1992. Francis Kamau Kinuthia then acquired the said plot on 8th October 1993.

- c. Plot No.32, which was originally registered to Mohamed Ngala Badi Hamisi on 20th March 1992. Francis Kamau Kinuthia then acquired the said plot on 28th October 1996.
 - d. Plot No 33, which was originally registered to Mohamed Ngala Badi Hamisi on 20th March 1992. Francis Kamau Kinuthia then acquired the said plot on 28th October 1996.
 - e. Plot No 35, which was originally registered to Mohamed Ngala Badi Hamisi on 20th March 1992. Francis Kamau Kinuthia then acquired the said plot on 28th October 1996.
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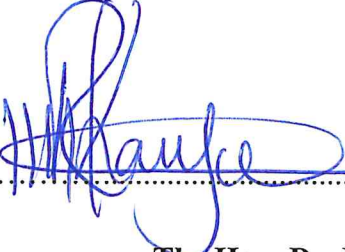
37. The Committee, however, observed that the question as to ownership was the subject Petition No. 23 of 2021 which was pending hearing and determination in the Environment and Land Court in Malindi and thus *sub judice*

c. Secure by the government the said parcel of land through direct purchase from the Railway Cooperative Society or through alternative land for settling the residents of Kwa Kadzengo Village

38. The Committee observed that the question as to ownership of the land was pending hearing and determination at the ELC Court in Malindi in ELC Petition No. 23 of 2021 thus *sub judice*

5.0 COMMITTEE RECOMMENDATION

The Committee recommends that the Petitioners await the final determination of the Environment and Land Court in Malindi on the ELC Petition No. 23 of 2021 relating to the matters raised by the Petitioners in the Petition.

Signed.......... Date 11/05/2022

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

Chairperson, Departmental Committee on Lands

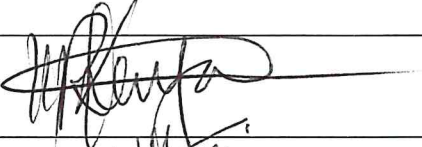

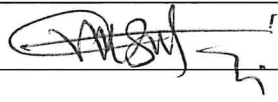
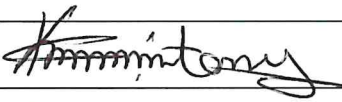
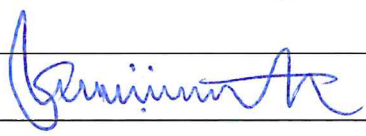


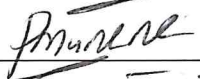
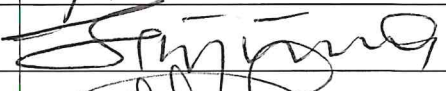





REPUBLIC OF KENYA
KENYA NATIONAL ASSEMBLY
TWELFTH PARLIAMENT
DEPARTMENTAL COMMITTEE ON LANDS
Adoption List

Public Petition No. 068 of 2021 by Victor Mwangi Gogo regarding the urgent resolution of the Kwa Kadzengo land dispute

Date: 27/04/2022

	NAMES	SIGNATURE
1.	Hon. Dr. Rachael Nyamai, CBS, MP - Chairperson	
2.	Hon. Mishi Mboko, CBS, MP V/Chairperson	
3.	Hon. Benjamin Washiali, CBS MP	
4.	Hon. Joshua Kutuny Serem, MP	
5.	Hon. Omar Mwinyi Shimbwa, MP	
6.	Hon. William Kisang, 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. Joshat 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 22ND SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD ON WEDNESDAY 27TH APRIL 2022 AT ENGLISH POINT MARINA
HOTEL MOMBASA AT 2:30 PM**

PRESENT

- | | |
|--|--------------------|
| 1. Hon. Dr. Rachael Nyamai, CBS, M.P | - Chairperson |
| 2. Hon. Mishi Mboko, CBS, M.P | - Vice-Chairperson |
| 3. Hon. Omar Mwinyi Shimbwa, M.P | |
| 4. Hon. Hon. Caleb Kositany, M.P | |
| 5. Hon. George Risa Sunkuyia, M.P | |
| 6. Hon. Josphat Gichunge Kabeabea, M.P | |
| 7. Hon. Owen Baya, MP | |
| 8. Hon. Patrick Munene Ntwiga, MP | |
| 9. Hon. Samuel Kinuthia Gachobe, MP | |
| 10. Hon. Teddy Mwambire, M.P | |

APOLOGIES

1. Hon. Benjamin Washiali, CBS, M.P
2. Hon. Joshua Kutuny, MP
3. Hon. William Kisang, MP
4. Hon. Ahmed Kolosh, MP
5. Hon. Ali Mbogo, M.P
6. Hon. Babu Owino, MP
7. Hon. George Aladwa, M.P
8. Hon. John Muchiri Nyaga, MP
9. Hon. Lilian Tomitom, MP

IN ATTENDANCE

THE NATIONAL ASSEMBLY SECRETARIAT

- | | | |
|------------------------|---|---|
| 1. Mr. John Mutega | - | Deputy Director Departmental Committees |
| 2. Mr. Leonard Machira | - | Senior Clerk Assistant |
| 3. Mr. Ahmad Guliye | - | Second Clerk Assistant |
| 4. Ms. Jemima Waigwa | - | Legal Counsel |
| 5. Mr. Collins Namulen | - | Fiscal Analyst III |
| 6. Ms. Maureen Kweyu | - | Audio Officer |

MIN. NO. NA/DC/LANDS/2022/097: PRELIMINARIES

The meeting was called to order at twenty- minutes to three o'clock with a word of prayer.

MIN. NO. NA/DC/LANDS/2022/098: CONFIRMATION OF MINUTES

The consideration of the item was deferred.

MIN. NO. NA/DC/LANDS/2022/099: ADOPTION OF A REPORT ON PUBLIC PETITION NO 080 OF 2021 BY RESIDENTS OF HARAKA SETTLEMENT SCHEME IN YATTA AND MASINGA CONSTITUENCIES REGARDING THE FORCEFUL EVICTION OF SQUATTERS FROM THE SCHEME

The Committee considered the report on the above Petition and adopted it with the following recommendations having being proposed and seconded by Hon. Owen Baya, MP and Hon. Caleb Kositany, MP respectively. That:

- I. The Cabinet Secretary, Ministry of Lands and Physical Planning, in consultation with the Cabinet Secretary, Ministry of Interior and Coordination of National Government, the County Government of Machakos, the National Land Commission and the local leadership does set up a multi-agency team to resolve the disputes relating to the 746 parcels within 90 days of the tabling of this Report.
- II. The Cabinet Secretary, Ministry of Lands and Physical Planning, facilitate the issuance of title deeds for the 1848 plots with no disputes within six months of tabling of this Report.

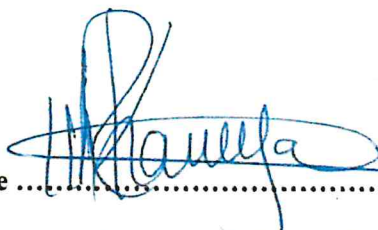
MIN. NO. NA/DC/LANDS/2022/100: ADOPTION OF A REPORT ON PUBLIC PETITION NO 068 OF 2021 VICTOR MWAGANDA GOGO ON BEHALF OF RESIDENTS OF KWA KADZENGO VILLAGE IN MTEPENI WARD OF KILIFI COUNTY REGARDING THE URGENT RESOLUTION OF THE KWA KADZENGO LAND DISPUTE

The Committee considered the report on the above Petition and adopted it with the following recommendations having being proposed and seconded by Hon. Omar Mwinyi, MP and Hon. Samuel Gachobe, MP respectively. That:

The Petitioners do await the final determination of the Environment and Land Court in Malindi on the ELC Petition No. 23 of 2021 relating to the matters raised by the Petitioners in the Petition.

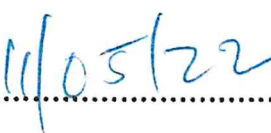
MIN. NO. NA/DC/LANDS/2022/101: ADJOURNMENT

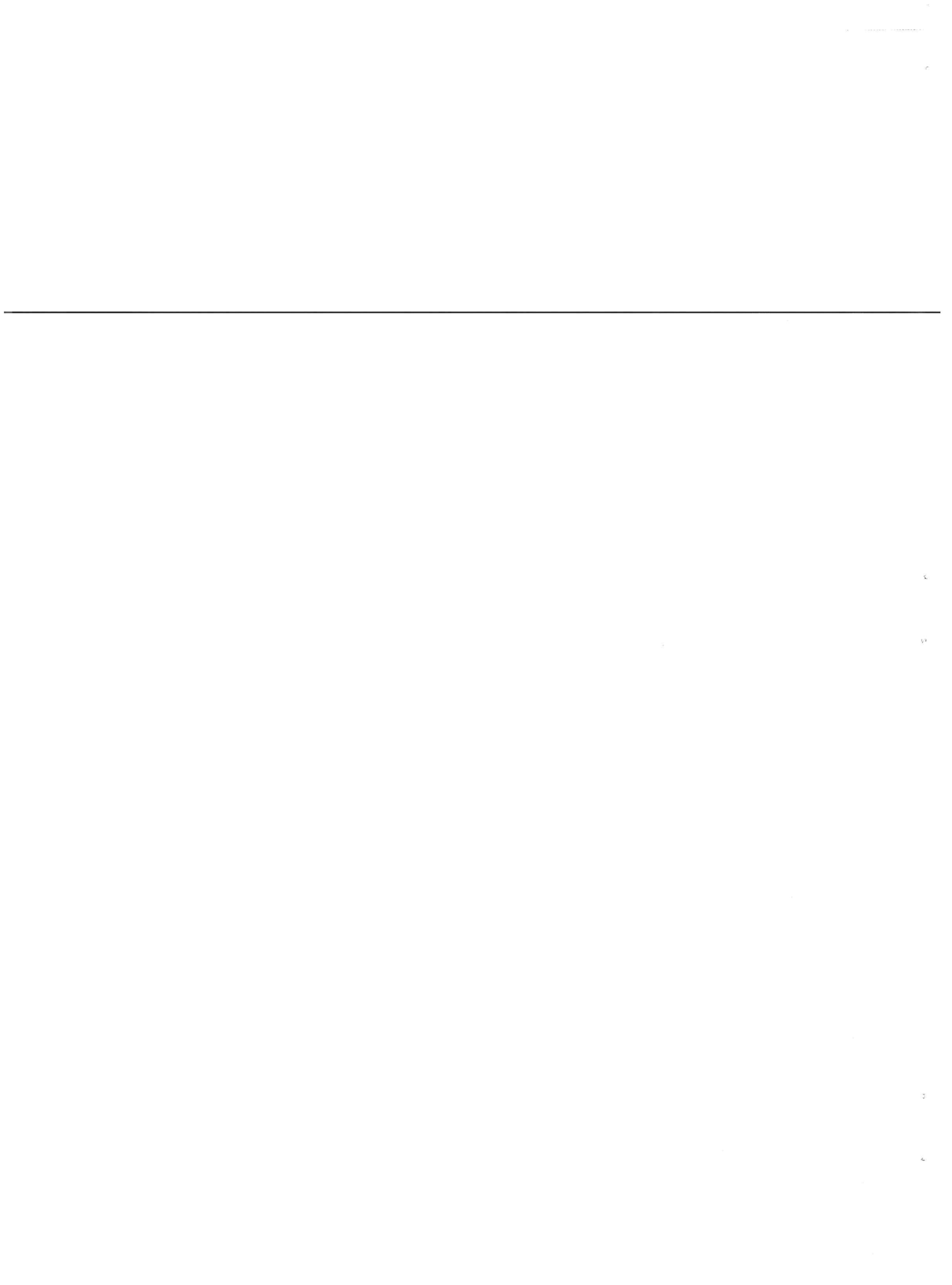
There being no other business to discuss, the meeting was adjourned at ten minutes past four o'clock. The next meeting will be held on Thursday 28th April 2022 at 9:30 a.m.

Signature 

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

(Chairperson)

Date..... 





REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY (FIFTH SESSION)

CONVEYANCE OF PUBLIC PETITION

(No. 068 of 2021)

PETITION REGARDING URGENT RESOLUTION OF KWA
KADZENGO LAND DISPUTE

Honourable Members, Standing Order 225(2)(b) requires the Speaker to report to the House any petition, other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation.

In this regard, **Honourable Members**, I wish to report to the House that my office has received a petition from MCA Victor Mwaganda Gogo of P.O. Box 332 Malindi on behalf of residents of Kwa Kadzengo Village in Mtepeni Ward of Kilifi County calling for "*urgent resolution of Kwa Kadzengo land dispute in order to save residents from impeding eviction.*"

The Petitioners elucidate that the Kwa Kadzengo land registered as Kilifi/Kikambala Block 285/3 was initially owned by one Ms. Sheila Norton who divested her interest in 1968 and gave instructions to have the land subdivided and transferred to her ex-employees, whose families currently reside on the land. Subsequently, for over 50 years, the families constructed houses, built churches, mosques and schools and cultivated the land for sustenance and commercial purposes. Additionally, they claim that their ancestors are buried on the parcel of land. The land was later converted to become part of Kikambala Settlement Scheme for purposes of settling squatters residing thereon, but unbeknown to the Petitioners, one Francis Kinuthia was irregularly allocated the parcel of land in unclear circumstances and later sold it to the Railway Housing Cooperative Society in April 2006.

Honourable Members, the Petitioners aver that the fact that the Railway Housing Cooperative Society has for over 15 years never attempted to develop the said parcel of land confirms that its management is fully aware that the land legally belongs to the residents of Kwa Kadzengo currently residing on it. However, the management of the Society is said to be currently using illegal and unorthodox avenues of attempting to evict residents from the land such as resorting to harassment, threats, brutal force and a host of other inhumane treatments.

The **Petitioners**, who constitute of over 100 households comprised of about 600 men, women, children and the elderly, now risk being unjustly and illegally evicted out of the land that has been their home for over 50 years, thereby condemning them to an unanticipated life of homelessness, poverty and misery. It is on account of this concern that they seek the intervention of this House in urgently intervening to forestall the impending eviction, the investigation into the circumstances by which the Railway Housing Cooperative Society ostensibly purchased the land despite knowing that its bonafide owners were already in occupation, and securing by the Government of the said parcel through direct purchase from the Railway Housing Cooperative Society or through provision of an alternative land for settling the residents of Kwa Kadzengo village.

Honourable Members, having determined that the matters raised by the Petitioner are well within the authority of this House, I order that, pursuant to the provisions of Standing Order 227(1), this petition be committed to the Departmental Committee on Lands. The Committee is required to consider the petition and report its findings to the House and the Petitioner in accordance with Standing Order 227(2).

I thank you!


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

19/10/2021

PETITION MADE TO THE NATIONAL ASSEMBLY PURSUANT TO
ARTICLE 119 OF THE CONSTITUTION OF KENYA AND PART
XXIII OF THE
NATIONAL ASSEMBLY STANDING ORDERS

BY

HON. VICTOR MWAGANDA GOGO ON BEHALF OF THE
RESIDENTS OF KWA KADZENGU VILLAGE KIKAMBALA, MTEPENI
WARD IN KILIFI COUNTY

CONCERNING

HARRASMENT AND EVICTIONS OF RESIDENTS AT KWA
KADZENGU VILLAGE ON LAND PARCEL DESCRIBED AS
KILIFI/KIKAMBALA BLOCK 285/3 IN MTEPENI WARD, KILIFI
COUNTY

8TH OCTOBER, 2021

I, the undersigned,

A Member of County Assembly for Mtepeni Ward in Kilifi County and a
Citizen of the Republic of Kenya;

Petition to the National Assembly by Hon. Victor Mwaganda Gogo on behalf of the residents
of Kwa Kadzengo village, Mtepeni Ward in Kilifi County concerning harassment and eviction
of residents living on the land parcel described as Kilifi/Kikambala Block 285/3

DRAW the attention of the National Assembly to the following:

On the matter relating to harassment and imminent eviction of residents of Kwa-Kadzengo Village in Kikambala. They comprise of over 100 families forming a village of about 600 people made up of women, men, children and elderly. Currently they are involved into a land dispute between them and ~~Railway housing cooperative society the registered owner of the land parcel~~ described as Kilifi/Kikambala Block 285/3 with the resultant subtitles being:
- Kilifi / Kikambala / 285/3/28; Kilifi / Kikambala /285/3/29; Kilifi / Kikambala /285/3/32; Kilifi / Kikambala /285/3/33; Kilifi / Kikambala /285/3/34; Kilifi / Kikambala /285/3/35; Kilifi / Kikambala/285/3/43 at Mtepeni Ward in Kilifi County.

THAT

The disputed parcels of land were previously owned by one Sheila Norton who divested her interest in 1968 with specific instruction that the then block of land be subdivided and transferred to her ex-employees who are the residents herein and have been resident on the said land parcels from that year till the date of this Petition. The residents' constructed family homes, churches, cultivated upon the land for sustenance and commercial purposes and have remained thereon for over 50 years.

THAT

From the record available, it seems this parcel of land was converted and it became part of Kikambala Settlement Scheme as evidenced by a land map sheet number 1 (198/4/11) for the benefit of the squatters residing thereon.

THAT

Unknown to the petitioners one Francis Kinuthia was irregularly allocated this parcel of land under unclear circumstances. The said Francis Kamau Kinuthia then sold the property to the Railway Housing Cooperative Society, the current registered owner with the full knowledge that the petitioners were in occupation of the same for over 50 years.

THAT

The purchase of the property by the Railway housing cooperative society was therefore done in bad faith and in clear attempt to defeat justice because at all material times, the Railway housing cooperative society, knew and had always known that the subject parcel of land was in the residents' occupation

THAT

The Railway housing cooperative society, has never resided on the suit property nor done any development thereon since 19th April, 2006 being the purported date of purchase. The intervening situation as is at this time is that the Railway housing cooperative society, is gearing up to evict the Petitioners by way of brute force not in conformity with the laws of Kenya and therefore, depriving them of their livelihoods, communion with their neighbors and sense of belonging cultivated over the six decades that they have resided on Kilifi/Kikambala Block 285/3.

THAT

The over 100 households residing on the Kilifi/Kikambala Block 285/3 now face the danger of harassment and eviction.

THAT

I confirm that the issues in respect of this petition are not pending before any court of law, or constitutional or legal body.

HEREFORE your humble petitioner Prays that the National Assembly —

Intervenes and sets up or directs one of its committees to urgently investigate and report on the issues raised in this petition and come up with appropriate recommendations, including making proposals for legislative interventions as may be necessary to address the issues raised in the petition not limited to -

1. The National Assembly to take any lawful measures to ensure that the residents of Kilifi/Kikambala Block 285/3 are not subjected into inhumane harassment and eviction from a property they have occupied for decades.

Dated this...^{11th}...day of...OCTOBER...2021.

NAME & SIGNATURE

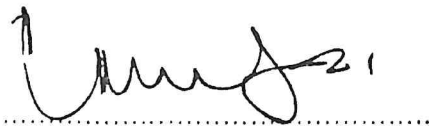
ADDRESS

ID NO.

HON. VICTOR MWAGANDA GOGO
13732405

P.O BOX 332, MALINDI

Petition to the National Assembly by Hon. Victor Mwaganda Gogo on behalf of the residents of Kwa Kadzengo village, Mtepeni Ward in Kilifi County concerning harassment and eviction of residents living on the land parcel described as Kilifi/Kikambala Block 285/3



LIST OF FAMILIES LIVING IN KWAKADZENGU/KIKAMBALA BLOCK

PLOT 285/3

No	NAME	ID. No	SIGNATURE
1.	Kaingu Ruwa Mramba	2120271	Mramba
2.	Rogers Mgala		Mgala
3.	Lauzi Nyale Chonga	2137992	Chonga
4.	Meuza Kazungu Kitsao	3385079	Kitsao
5.	Mulongo Kakunde	3905611	Mulongo
6.	Kazungu Kambi Ngonda	2118004	Ngonda
7.	Kazungu Mackson Baya	11355670	Baya
8.	Balu Munga Kiti	5334971	Kiti
9.	Sammy charo Ngala	11765377	Ngala
10.	Mramba Isaac	14567789	Isaac
11.	Samuel Kwita Baya	4567035	Baya
12.	Danson Mwaingo Kilango	0150947	Kilango
13.	Agnes Auzazi Yawa	20142041	Yawa
14.	Salama Joseph Tezo	111342405	Tezo
15.	Tembo Jeffa Mlandi	4566904	Mlandi
16.	Malilyn F.Kiti	13732408	Kiti
17.	John Chibo Chisenga	01641591	Chisenga
18.	Jackline Ngala Munda	9773433	Munda
19.	Kandze Joseph Charo	34567899	Charo
20.	Edson Kahindi Dzombo	11497735	Dzombo
21.	Josphine Samuel Kishenga	3884091	Kishenga
22.	Kadzo Tembe Jefwa	3884631	Jefwa
23.	Mupa B.Tembo	3884928	Tembo
24.	Mary Meuza Shagi	11876539	Shagi
25.	Ali Balu Munga	10689121	Munga
26.	Pauline Kalenga Mganga	20473660	Mganga
27.	Amina Dzombo Mwalimu	13375198	Dzombo
28.	Winnie Baya Kazungu	1134567815	Kazungu
29.	Josphine Isaac Baya	4732405	Isaac
30.	Salama Fondo	13732432	Fondo
31.	Roseline Malengwa M.Kilango	14567321	Kilango
32.	Kadzo Kaingu	5034214	Kaingu
33.	Japhet Dzombo	4115678	Dzombo
34.	Athuman Omari Balu	3496150	Omari
35.	Samson K.Gaga	12542304	Gaga
36.	Joseph Charo Kalu	21635780	Kalu
37.	Matano Kaingu	21757890	Kaingu
38.	Willy Kai	73456110	Kai
39.	Dancun Jefwa	21345678	Jefwa
40.	Mwanakombo Haruni	2334534	Haruni
41.	Mercy Tunje	2345678	Tunje
42.	Kahindi Balu	268910	Balu
43.	Chome Tembo	1345678	Tembo
44.	Pancrus Katana	1434567	Katana
45.	Sidi Jackson Karisa	13721576	Karisa

[illegible]

LIST OF FAMILIES LINVING IN KWAKADZENGU - KLF/KIKAMBALA BLOCK 285/3

NO.	NAME	ID NO	SIGNATURE
73	MUPA BALU	3884928	
74	SAMUEL BAYA		
75	LUCK CHARO	0690663	
76	JOSEPH CHARO		
77	JOHN JEFFWA KITTI	8456693	
78	JOSEPHINE CHISENGA	3884091	
79	DANIEL TEMBO		
80	MUNGA BALU		
81	KAINGU BALU	11087319	
82	KADZO KAINGU		
84	CHIBO CHISENGA	01641591	
85	MUNGA NJUNGA		
86	RONNY ROY	74670126	
87	MORRIS MUGUNA	27081674	
88	ALI BALU	10689121	
89	JIMMY ROY	13624915	
90	RONALD MUNDA	11874601	
91	MWANAIJI JUMA		
92	EDWIN MWENDO	21766199	
93	MULONGO KAKUNDE	3905611	
94	MATANO KAINGU		
95	BETTY KAHASO KILIFI	31020132	
96	MWALIMU KAVIHA	26448417	
97	JOHN KAZUNGU	22542822	
98	BETTY MGHARO	20959631	
99	ANGELINE KIEMA	12451000	
100	JUSTINA CHILUMO	9630464	
101	FRANCIS GAMBO	22407965	
102	CLEMENTINA MWANGIKA	2310965	
103	SIMON KIEMA	20003851	
104	GEORGE RÜNYA	23514002	
105	KADENGE KATANA		
105	HAMADI SALIM		
106	JUMA BALU	20537546	
107	ISMAIL BARROW	11551287	
108	SAIDI MUGAO		
109	JUMA MBUTO		
110	GEORGE MUNYIKA	10023268	
111	MICHAEL KARISA FONDO	8656478	
112	MONICA KENGA	5473481	
113	JAMAL HASSAN		
114	PASCAL TUNJE		
115	WEKESA RODGERS	2091132	
116	FREDRICK OGITO		



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/DC/LANDS/2022/ (006) dated February 8, 2022, the Committee requested the Cabinet Secretary Ministry of Lands and Physical Planning to respond to the following:

1. Public Petition No. 068 by Victor Mwanganda Gogo on behalf of the residents of Kwa Kadzengo village in Mtepeni Ward of Kilifi regarding the resolution of the Kwa Kadzengo land dispute
2. Public Petition No. 063 of 2021 by Hon. Mishi Juma Mboko, MP, on behalf of the residents of Mwananguvuze Village in Timbwani ward of Likoni Constituency regarding securing land ownership rights of Mwananguvuze residents
3. Complaint by the Hon. Owen Baya, MP on behalf of the family of Fundi Sudi regarding alleged irregular allocation of land parcel number 11/Kilifi/Mafumbini.

Honourable Chair, I wish to respond as follows:

1. Public Petition No. 068 by Victor Mwanganda Gogo on behalf of the residents of Kwa Kadzengo village in Mtepeni Ward of Kilifi regarding the resolution of the Kwa Kadzengo land dispute

The Petition

Honourable Chair,

The Petitioners claim that the Kwa Kadzengo land, registered as Kilifi/Kikambala Block 285/3, was initially owned by Ms. Sheila Norton who divested her interests in 1968 and gave instructions to have the land subdivided and transferred to her ex-employees whose families currently reside on the land. They claim that subsequently, their families occupied the land and constructed houses, built churches, mosques and schools and cultivated the land for sustenance and commercial purposes.

The Petitioners allege that the land was later converted to become part of the Kikambala Settlement Scheme for purposes of settling squatters residing thereon. However, the land was irregularly allocated to Francis Kinuthia in unclear circumstances and was later sold to the Railway Housing Cooperative Society in April 2006.

The Petitioners aver that the fact that the Railway Housing Co-operative Society has for over 15 years never attempted to develop the said parcel of land confirms that its management is fully aware that the land legally belong to the residents of Kwa Kadzengo Village currently residing on it. They claim that the management of the Co-operative Society is using illegal and unorthodox avenues in attempts to evict residents from the land. For this reason, the petitioners request the Committee to intervene to forestall the impending eviction and investigate the circumstances in which the Railway Housing Corporation Society ostensibly purchased the land despite knowing that its bonafide owners were already in occupation.

Response

Honourable Chair, I wish to respond as follows:

Kilifi Kikambala Block 285/3 is a registration section located in Kilifi South Subcounty in Mtepeni Ward. The Edition one Green Cards were opened on March 23, 1992 and comprised of 42 parcels of land. The proprietors are as per the attached list of beneficiaries marked **Annexure 1a**.

All other titles in the section are as a result subdivisions of the original 42 Parcels of land.

Parcel Nos. 28, 29, 32, 33 and 35 were transferred to Railway Housing Co-operative Society Limited as follows:

- a) Plot No. 28 was on March 20, 1992 registered in favour of Mohamed Ngala Badi Hamisi. On October 8, 1993 the parcel was transferred to Francis Kamau Kinuthia. On August 2, 2002 the parcel was transferred to Fauzia Shaban Snedi. The parcel was on April 19, 2006 transferred to Railway Housing Co-operative Society Limited (**annexure 1b**)
- b) Plot No. 29 was on March 20, 1992 registered in favour of Mohamed Ngala Badi Hamisi. On October 8, 1993 the parcel was transferred to Francis Kamau Kinuthia. The parcel was on April 19, 2006 transferred to Railway Housing Co-operative Society Limited (**annexure 1c**)
- c) Plot No. 32 was on March 20, 1992 registered in favour of Mohamed Ngala Badi Hamisi. On October 28, 1996 the parcel was transferred to Francis Kamau Kinuthia. The parcel was on April 19, 2006 transferred to Railway Housing Co-operative Society Limited (**annexure 1d**)

- d) Plot No. 33 was on March 20, 1992 registered in favour of Mohamed Ngala Badi Hamisi. On October 28, 1996 the parcel was transferred to Francis Kamau Kinuthia. The parcel was on April 19, 2006 transferred to Railway Housing Co-operative Society Limited (annexure 1e)
- e) Plot No. 35 was on March 20, 1992 registered in favour of Mohamed Ngala Badi Hamisi. On October 28, 1996 the parcel was transferred to Francis Kamau Kinuthia. The parcel was on April 19, 2006 transferred to Railway Housing Co-operative Society Limited. (annexure 1f).
- 2. Public Petition No. 063 of 2021 by Hon. Mishi Juma Mboko, MP, on behalf of the residents of Mwananguvuze Village in Timbwani ward of Likoni Constituency regarding securing land ownership rights of Mwananguvuze residents

Honourable Chair, I wish to respond as follows:

A response to the petition dated November 19, 2021 was submitted to the Committee on November 22, 2021. The response is contained in item no. 5 of the report marked annexure 2. We reported that the subject land L.R No. Ms/1/120 was initially Government land. The parcel has since been subdivided into Plots Nos. 1789, 1787, 1788, 1786, 1780, MS/1/1836 and MS/1/1837.

Ownership details regarding Plots Nos. 1789, 1787, 1788 and MS/1/1836 are indicated in the said report. Copies of the official searches in respect of these plots are annexed herewith marked annexures 3.

The Ministry requested additional time to provide information pertaining to Plots Nos. 1786, 1780 and MS/1/1837.

Honourable Chair,

We have not found records to show that Plots Nos. 1786, 1780 and MS/1/1837 have been allocated.

- 3. Complaint by the Hon. Owen Baya, MP on behalf of the family of Fundi Sudi regarding alleged irregular allocation of land parcel number 11/Kilifi/Mafumbini located in Mafumbini Mnarani, Kilifi North Constituency. In particular the Committee requested the Cabinet Secretary to provide:
 - i) The original and copies of entries made by the Recorder of Titles in the Mombasa Land Registry for account number 948/58 (948/1958) dated January 11, 1972
 - ii) A chronology of the ownership of the said land including information of its current registered owner

The Petition

Honourable Chair,

The petitioners claim land parcel Plot No. 11/Kilifi/Fumbini (Mnarani) indicated in Survey Plan FR 198/2 dated 1964 (L.R 11 in Topo Sheet 198/2) which they allege is their ancestral land. They claim that following the enactment of the Land Titles Act (Cap. 282) (now repealed) which was applied to parts of the coast province, the family patriarch namely Khamis Bin Fundi alias Khamis Bin Sudi made an application to the Recorder of Titles for registration of the land. The application is said to have been registered as reference 950/1828 and issued acknowledgment account number 984/58 dated January 11, 1972.

The Government issued Gazette Notice No. 4056 in October 1983 extending the period for the public to register their claims to the land before unclaimed land could be declared public land. According to the petitioners, the Recorder of Titles vide a letter dated January 31, 1986 requested them demarcate the land they claimed. In a letter dated March 7, 1986 the District Land Officer wrote to the Commissioner of Lands indicating that the said Mr. Khamisi Sudi had lodged a complaint that his land had been invaded.

They claim that in 1987, they were invited to appear before the Recorder of Titles alongside Kilifi Plantations Limited who were said to also lay claim to the land. They complain that they have not been able to obtain title to the land since then.

They presented their case to the National Land Commission in 2014. The Commission vide a letter dated November 3, 2016 invited Kilifi Plantation Limited to submit documents supporting their claim to the land but they failed to do so. The petitioners state that despite numerous visits to the Ministry and the National Land Commission, they have been unable to get a title to their land.

They therefore request the Committee to:

- i. Demand that the Ministry of Lands and Physical Planning produce all records pertaining to the claim made by the Sudi family and entered by the Recorder of Titles as Application No. 950/1828 and evidenced as Account No. 984/58
- ii. Demand the Ministry to confirm whether there were other documents required or process under the Land Titles Act that the Sudi Family did not acquire or follow other than those that they have
- iii. Require the Ministry to state why Plot no. 11 under Claim No. 984/58 cannot be titled to the Sudi family
- iv. On the other hand, since the family identifies Plot No. 11 in Survey Sheet No. 198/11, can the Ministry of Lands give a chronological background of the parcel of land since the enactment of the Land Titles Act

- v. Just in case the Ministry claims that the land is registered elsewhere, the Committee should demand from the Ministry evidence on how the registration was done, to whom, when and through which process
- vi. The Ministry also to be made to undertake a re-survey of Plot No. 11 to demarcate the boundaries.

Response

Honourable Chair, I wish to respond as follows:

1. Records held by the Ministry indicate that Kilifi Plantations Limited through their advocate Hamilton Harrison & Mathews applied for a Temporary Occupation Licence (TOL) over 6 acres out of the subject land Plot 11/Group V Kilifi as shown in the area edged red in the plan marked **annexure 4**. A copy of the application letter Ref. 10/22775/1 dated October 7, 1980. A copy of the application is marked **annexure 5**
2. The Commissioner of Lands sought the District Commissioner and the Clerk, County Council of Kilifi comments on the application vide a letter Ref. 49514/II/103 dated July 1, 1981 (**annexure 6**). They did not object to the application as demonstrated in their respective letters Ref. P&S.7/4/75 dated October 27, 1981 and KFI/LND/8/Vol. VI/116 dated December 28, 1981 respectively marked **annexures 7 and 8**. The District Forest Officer, Kilifi vide his letter Ref. K/5/7 dated February 8, 1983 gave permission for the removal of mangrove trees on the portion of land required by Kilifi Plantations Limited (**annexure 9**)
3. The Commissioner of Lands subsequently prepared the Temporary Occupation Licence and forwarded it to Kilifi Plantations Limited vide a letter dated March 22, 1985 for execution (**annexure 10**)
4. In a letter dated May 4, 1985 Kilifi Plantations Limited however informed the Commissioner of Lands that they were no longer interested in the entire 6 acres and only needed 0.5 acres citing disinterest in the kind of boats they intended to manufacture (**annexure 11**). This constituted a fresh application for a TOL. We have no records regarding processing of the new application

Honourable Chair,

5. We note that the National Land Commission's letter dated November 3, 2016 referred to by the petitioners, which requested Kilifi Plantations Limited to submit their documents makes reference to L.R. MN/IV/151, CR 13079 said to measure approximately 478 Acres. The records in our possession regarding the parcel indicate that was it transferred from Mohamed Bin Omar to Salim Khamis Bin Salman vide a Memorandum of Registration of Transfer of land dated August 19, 1963 (**annexure 12**).

The land measures 100 Acres and not 478 Acres as indicated by the Commission. An application to transfer the land to John Paul Kambi was approved by the Kilifi Land Control Board on March 24, 1969. **Annexure 13** is a copy of the letter of consent. The transfer was however not concluded by the registration of the transfer as the vendor, Salim Khamis Bin Salman departed the country and later on passed on. The purchaser also passed on afterwards. This is evidenced by a copy of a letter of Anil Suchak, Advocate dated October 22, 2009 marked **annexure 14**

Honourable Chair,

6. Our records indicate that a parallel title for the parcel was registered in favour of Kanamai Coconut Investment Limited on December 7, 2009. A copy of the title is marked **annexure 15**. Kanamai Coconut Investment Limited applied to subdivide the land and the proposal was approved by the County Council of Kilifi and the Ministry. Copies of the PPA2 and the final approval letter from the Ministry are marked **annexures 16 and 17** respectively
7. The land is currently the subject of a historical injustice claim before the National Land Commission with Residents of Majengo-Kanamai Sub-Location on one part and Kanamai Coconut Investment Limited on the other (**annexure 18**). It is also the subject of Case No. 71 of 2014 before the Environment and Land Court at Malindi (**annexure 19**). The family of the late John Paul Kambi also lays a claim on the land.

Honourable Chair, we will continue to gather information on the original Plot. 11 of Group V as reflected in topo sheet 198/II.

Honourable Chair, I submit.



Farida Karoney, EGH
CABINET SECRETARY

March 8, 2022

KILIFI KIKAMBALA BLOCK 285/3

S/No.	Name	Plot No.	Acreage (Ha)
1.	Government of Kenya	1	2.4
2.	Mohamed Ngala Badi	2	10.1
3.	Maguya Chai Maguya	3	0.6
4.	Joseph Edward Kenga	4	0.44
5.	Livinston Charo Mganga	5	0.07
6.	Gambo Ntamawi Lewa	6	0.22
7.	Mganga Bata Kitunga	7	1.0
8.	Government of Kenya	8	0.16
9.	Jefwa Kitunga Mure	9	0.5
10.	Twahir Mbarak Twahir	10	4.04
11.	Government of Kenya	11	0.21
12.	Kahindi Chengo Kitunga	12	1.5
13.	Chengo Kithunga Mure	13	0.27
14.	Chengo Kombe Mwangoyo & Kahonzi Chengo Kombe	14	0.27
15.	Alfred Katana Muganga	15	0.40
16.	Kenga Ngonyo Mwauno	16	0.90
17.	Karisa Kagana Kaviha	17	0.42
18.	Kazungu Changana Bundu	18	0.40
19.	Kazama Jefwa Chai & Silvester Emmanuel Kahindi	19	0.80
20.	Nzara Tsimba Mwachaka	20	0.14
21.	Riziki Nusura Hamisi	21	0.29
22.	Ahmed Omar Ahmed	22	0.31
23.	Ali Abdalla Ali	23	0.30
24.	Juma Ali Mwachiyama	24	0.40
25.	Wisdom Mwalukumbi Kachila	25	0.24

26.	Kazungu Kahindi Dumbo	26	0.86
27.	Absaki Investment Limited	27	0.5
28.	Railway Housing Co-operative Society Limited	28	0.92
29.	Railway Housing Co-operative Society Limited	29	0.91
30.	Mohamed Ngala Badi Hamisi	30	0.94
31.	Mohamed Ngala Badi Hamisi	31	0.95
32.	Railway Housing Co-operative Society Limited	32	0.72
33.	Railway Housing Co-operative Society Limited	33	0.60
34.	Mohamed Ngala Badi Hamisi	34	0.68
35.	Railway Housing Co-operative Society Limited	35	0.63
36.	Mohamed Ngala Badi Hamisi	36	0.57
37.	Mohamed Ngala Badi Hamisi	37	0.62
38.	Mohamed Ngala Badi Hamisi	38	0.13
39.	Mohamed Ngala Badi Hamisi	39	0.113
40.	Mohamed Ngala Badi Hamisi	40	0.62
41.	Mohamed Ngala Badi Hamisi	41	0.63
42.	Mohamed Ngala Badi Hamisi	42	0.66

EDITION: 1		PART A - PROPERTY SECTION			
OPENED: 20.3.92					
REGISTRATION SECTION		EASEMENTS ETC.		NATURE OF TITLE	
KILIFI/KIKAMBALA BLOCK/265/3				ABSOLUTE	
PARCEL NUMBER					
28					
APPROXIMATE AREA					
0.92 Ha					
REGISTRY MAP SHEET NO.					
1					
PART B - PROPRIETORSHIP SECTION					
ENTRY No.	DATE	NAME OF REGISTERED PROPRIETOR	ADDRESS AND DESCRIPTION OF REGISTERED PROPRIETOR	CONSIDERATION AND PAYMENTS	SIGNATURE OF REGISTERED PROPRIETOR
1	20.3.92	MUHAMMAD NOKIA BADI HAKISI	- ID/NO: 0517965/63		mmlla.
2	20.3.92	TITLE DEED ISSUED			mmlla.
3	8-10-93	FRANCIS KAMAU KINUTHIA	ID/NO: 3835293	TRANSFER 66 KSHS. 650,000/-	mmlla.
4	8-10-93	TITLE DEED	ISSUED		mmlla.
5	2.8.02	FAUZIA SHABANSWADI	ID/NO: 8411260		mmlla.
6	2.8.02	TITLE DEED	ISSUED		mmlla.
7	19.4.2006	RAILWAYS HOUSING CO-OPERATIVE SOCIETY LIMITED.	P.O. BOX 53313-00200, NAIROBI.	SALE 2 KSHS. 900,000/-	mmlla.
8	19.4.2006	TITLE DEED	ISSUED.		mmlla.
TITLE NUMBER		REGISTRATION SECTION		PARCEL No.	
		KILIFI/KIKAMBALA BLOCK/265/3		28	

Kilimanjaro
District Office
21337 611
TITLE REG. ON
THIS LINE.

ANNEXURE 1C

EDITION: 1		PART A - PROPERTY SECTION			
OPENED 20.3.92					
REGISTRATION SECTION		EASEMENTS ETC		NATURE OF TITLE	
KILIFI/KIKAMBALA BLOCK/285/3				ABSOLUTE	
PARCEL NUMBER					
29					
APPROXIMATE AREA					
0.91 HA					
REGISTRY MAP SHEET No.					
1					
PART B - PROPRIETORSHIP SECTION					
ENTRY No.	DATE	NAME OF REGISTERED PROPRIETOR	ADDRESS AND DESCRIPTION OF REGISTERED PROPRIETOR	CONSIDERATION AND REMARKS	SIGNATURE OF REGISTERED PROPRIETOR
1	20.3.92	MOHAMMAD NGALA BADI HAHIDI	ID/NO: 0517956/63		hmmlla
2	20.3.92	TITLE DEED 13-1885			hmmlla
3	8-10-93	FRANCIS KAMAU KINYUA	ID/NO: 3835292	TRANSFER	hmmlla
4	8-10-93	TITLE DEED	ISSUED	66 KSHS 650,000	hmmlla
5	19.4.06	RAILWAYS HOUSING	CO-OPERATIVE SOCIETY LTD. P.O. BOX 53313-00200, NRB	ISSUE: KSHS 1800,000 WITH OTHER LANDS	hmmlla
6	19.4.06	TITLE DEED	ISSUED.		hmmlla
TITLE NUMBER		REGISTRATION SECTION		PARCEL No.	
		KILIFI/KIKAMBALA BLOCK/285/3		29	

Kilifi/Kikambala
Block/285/3
TITLE BELOW
THIS LINE

15th November 2021

EDITION: 1		PART A - PROPERTY SECTION			
OPENED: 20.3.92		REGISTRATION SECTION		EASEMENTS ETC.	NATURE OF TITLE
3					ABSOLUTE
PARCEL NUMBER					
32					
APPROXIMATE AREA					
0.72 Ha					
REGISTRY MAP SHEET NO.					
1					
PART B - PROPRIETORSHIP SECTION					
ENTRY No.	DATE	NAME OF REGISTERED PROPRIETOR	ADDRESS AND DESCRIPTION OF REGISTERED PROPRIETOR	CONSIDERATION AND REMARKS	SIGNATURE OF REGISTRAR
1	20.3.92	FRANCIS KAMAU KINUTHIA	ID No. 3835292	TRANSFER KSh. 80,000/-	<i>[Signature]</i>
3	28.10.96	FRANCIS KAMAU KINUTHIA	ID No. 3835292	TRANSFER KSh. 80,000/-	<i>[Signature]</i>
4	28.10.96	TITLE DEED ISSUED			<i>[Signature]</i>
5	19.4.2006	RAILWAYS HOUSING	CO-OPERATIVE SOCIETY LIMITED P.O. Box 5331-00200, NAIROBI { KSh. 800,000/- WITHIN 1/2 LANDS	ISSUED	<i>[Signature]</i>
6	19.4.2006	TITLE DEED			<i>[Signature]</i>
REGISTRATION SECTION					PARCEL No.
TITLE NUMBER					32

Your left
the above

Attached

STELLA C
CHKWS/REG/2006
767030-011
TITLE BALANCE
THIS LINE

(the receipt whereof is hereby ack
PRANCIS KAHAM KIN

EDITION: 1		PART A - PROPERTY SECTION			
OPENED: 20.3.92		REGISTRATION SECTION		EASEMENTS ETC.	NATURE OF TITLE
20/12					ABSOLUTE
PARCEL NUMBER					
APPROXIMATE AREA					
REGISTRY MAP SHEET No.					
PART B - PROPRIETORSHIP SECTION					
ENTRY No.	DATE	NAME OF REGISTERED PROPRIETOR	ADDRESS AND DESCRIPTION OF REGISTERED PROPRIETOR	CONSIDERATION AND STAMPS	SIGNATURE OF REGISTRAR
1	28.10.96	PRANCIS KAHAM KINUTHA	ED No 2835292	TRANSFER 194.80.000/-	<i>Mulla</i>
4	28.10.96	TITLE DEED ISSUED			<i>Mulla</i>
5	19.4.2006	RAILWAYS HOUSING CO-OPERATIVE SOCIETY LIMITED	P.O. BOX 53 313-00200. NAIROBI	SALE: USK 800,000/- WINDING UP LAWS ISSUED.	<i>Mulla</i>
6	19.4.2006	TITLE	DEED		<i>Mulla</i>
REGISTRATION SECTION					PARCEL No.
TITLE NUMBER					33

Kaham-Kin
 297038-511
 TITLE BELOW
 THIS LINE

EDITION: 1
OPENED: 20.3.92

PART A - PROPERTY SECTION

REGISTRATION SECTION
MILITARY IN BULK
PES/3

EASEMENTS ETC.

NATURE OF TITLE

PARCEL NUMBER

35

APPROXIMATE AREA

0.656

REGISTRY MAP SHEET No.

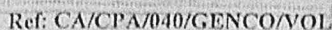
1

ABSOLUTE

PART B - PROPRIETORSHIP SECTION

ENTRY No.	DATE	NAME OF REGISTERED PROPRIETOR	ADDRESS AND DESCRIPTION OF REGISTERED PROPRIETOR	CONSIDERATION AND REMARKS	SIGNATURE OF REGISTRAR
1.	20.3.92	ROHARD KARIL & ABU HAMSI	- ID/NO. 0517956/ 63		<i>mmlla</i>
2.	20.3.92	DI TITLE DEED ISSUED			<i>mmlla</i>
3.	28.10.96	FRANCIS KAMAU KINUTHA	ID/NO. 2835292	TRANSFER ISS. 80,000/-	<i>mmlla</i>
4.	28.10.96	TITLE DEED ISSUED.			<i>mmlla</i>
5.	19.4.2006	RAILWAYS HOUSING CO-OPERATIVE SOCIETY LIMITED	P.O. BOX 53313 - 00200-NAIROBI SALE. KSh. 800,000/- WITH OTHER LAND		<i>mmlla</i>
6.	19.4.2006	TITLE DEED	ISSUED.		<i>mmlla</i>
		REGISTRATION SECTION			PARCEL No.
TITLE NUMBER					35

ENDORSEMENTS
TO BE MADE
HERE



The Clerk of the National Assembly
P.O. Box 41842
Parliament Buildings
Nairobi - 00100

Dear Sir,

RE: PARTICIPATION IN INTERNATIONAL FORA

The Communications Authority of Kenya (CA) is the regulatory Authority for the Information, Communications and Technology (ICT) sector in Kenya. One of the Authority's key strategic objectives is to promote development of ICTs in accordance with recognized international standards and practices as well as foster regional and international cooperation in the Sector.

As a designated Government representative in affiliated regional and global ICT bodies, the Authority is charged with the responsibility of fostering regional and international cooperation on ICT issues. This is achieved through active engagement in bilateral and multilateral ICT fora and participation in international meetings and conferences with a view to fostering sound ICT policy and visibility of the country on the global scene. In so doing, the Authority, in this current financial year (2021/2022), will be participating in international ICT fora.

In cognizance of the mandate of the Parliamentary Committee on National Government Constituencies Development Fund (NGCDF), we wish to invite the members to attend the NAB Show, as shown in Annex 1.

Should the decision be made to participate in the proposed meetings, we request that the National Assembly meets all costs related to the attendance of its members.

The proposal is forwarded for your kind consideration.

Yours faithfully,

Ezra Chiloba

DIRECTOR GENERAL

CA Centre, Waiyaki Way | P.O. Box 14448, Nairobi, 00800, Kenya | T: +254 (20) 4242000
M: 0703 042 000, 0730 172 000 | www.ca.go.ke | @: info@ca.go.ke | ca.kenya
Communications Authority of Kenya | CA_Kenya

M. E. Cook,

I have been to your office and
missed you. We had spoken
about this trip on ~~the~~ ^{the} morning
trains on the companies funded
by COB. I request for your approval
of 3 members from the Committee
plus both clerks this ~~and~~ ^{and} the

13/4/22

② DATGOS C

to process first

19 APR 2022

(ii) For 3 members to depart on 22 and one still arrive

30th
April 2022
cmf

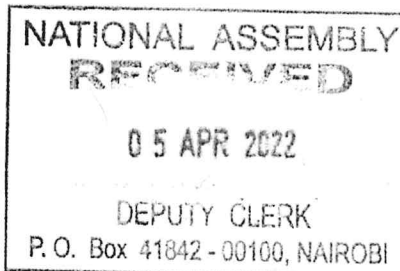
MUTURI GAKUO & KIBARA ADVOCATES

3rd Floor, New Cannon Towers
Mbaraki Wing, Moi Avenue
P. O. Box 89082-80100 OR 80228-80100
Tel: 041-2313418 & 2223931 Tel/Fax 041-2222497
MOMBASA.
E-mail: gakuo@mgkadvocates.co.ke
E-mail: kibara@mgkadvocates.co.ke
E-mail: info@mgkadvocates.co.ke
Website: www.mgkadvocates.co.ke

G.N. Gakuo
K. N Kibara
G. N. Mulongo
R.M. Oruta

OUR REF: RHCSL/01/KNK/2022
YOUR REF: NA/DDC/LANDS/2022/ (028)
DATE: 4TH April, 2022

THE CLERK OF
THE NATIONAL ASSEMBLY OF KENYA
CLERK'S CHAMBERS
PARLIAMENT BUILDING
P.O BOX 41842-00100
NAIROBI
E-mail: clerk@parliament.go.ke



Dear Sir,

RE: CONSIDERATION OF PUBLIC PETITION NO. 068 OF 2021 BY VICTOR MWAGANDA GOGO ON BEHALF OF RESIDENTS OF KWA KADZENGU VILLAGE IN MTEPENI WARD OF KILIFI REGARDING THE RESOLUTION OF THE KWA KADZENGU LAND DISPUTE
OUR CLIENT: RAILWAY HOUSING CO-OPERATIVE SOCIETY

We are in receipt of your letter dated 24th March, 2022 addressed to our Client and we have instructions to respond thereto as follows:

A. INTRODUCTION

1. Railway Housing Co-operative Society is a society duly registered and established under the provision of the Co-operative Societies Act¹ having its registered offices in Nairobi.
2. The Society comprises of 833 active members who are in charge of all activities undertaken by it. Annexed herewith and marked as annexure 1 is a copy of the list of all the 833 members of the Society.

¹ Section 4 of the Co-operative Societies Act, Cap 490 Laws of Kenya

3. The main objective of the society is to promote the welfare and economic interest of its members and majorly to ensure affordable housing plans for its members who have been frustrated in the past after retirement due to being evicted from the staff houses.

B. THE SUBJECT PROPERTY AT HAND

4. We wish to clarify that the society is the duly registered and absolute proprietor of the parcel of land comprised in the following Titles:
 - Plot No. KILIFI/KIKAMBALA /285/3/53;
 - Plot No. KILIFI/KIKAMBALA/285/3/28;
 - Plot No. KILIFI/KIKAMBALA/285/3/29;
 - Plot No. KILIFI/KIKAMBALA/285/3/32;
 - Plot No. KILIFI/KIKAMBALA/285/3/33;
 - Plot No. KILIFI/KIKAMBALA/285/3/35; and
 - Plot No. KILIFI/KIKAMBALA/285/3/43 (hereinafter referred to simply as "the suit Property").
5. The above mentioned parcels of land (hereinafter referred to as Suit Property) are about 4.136 Hectares or 10.22 Acres (Annexed herein are copies of the title deeds of the six parcels marked as annexure 2).
6. The Society acquired the aforementioned parcels of land from the contribution of its members with the sole objective of settling its members by ensuring that its members get a parcel of land after the subdivision process.

C. BACKGROUND OF ACQUISITION

7. The Society through its Advocates then Messrs Albert Kamunde & Company Advocates performed due diligence wherein official searches

were conducted on the said parcels of land, which search revealed that the registered owner of Plots 29, 32, 33, 35 and 43 was Francis Kamau Kinuthia holder of Identity Card Number 3835292 while Plot No. 28 was registered under the name of Fauzia Shaban Swedi holder of Identity Card Number 8411260, who also agreed to sell her portion to the Society.

8. The Society entered and signed the sale agreement in December, 2005. The purchase price was Kshs. 680,000/= per acre totaling to Kshs. 6,936,000.00 for all the six parcels of land. (Annexed herein is a copy of the Sale Agreement marked as annexure 3).
9. Sometime in January 2009, the society applied for mutation to consolidate the six parcels of land into one with the intention that the same will be subdivided in favour of its members. The consolidation was successfully performed and a new title number issued and the parcel of land is now known as Plot No. KILIFI/KIKAMBALA/285/3/53. (Annexed herein are mutation forms marked as annexure 4).
10. **THAT** upon completion of payment, the suit property was transferred to the society and subsequently the society managed to obtain titles in its favour on different diverse dates between 19th April, 2006 and 17th July, 2008. (Annexed herein are copies of the said titles and searches marked as annexure -5).

D. LITIGATION-COURT CASES

11. We wish to bring to the Attention of the Committee and the House as well the fact that the subject property before this House has been subject to a court case before a competent Court with which was heard and determined wherein a Judgment was delivered and a Decree extracted to the effect that :

- That the Defendants' Amended Originating Summons dated 24th May, 2011 be and is hereby dismissed.
- That the Plaintiff's suit allowed in the following terms:

-
- i. That the Plaintiff (Railway Housing CO-operative Society Limited is the rightful owner of the suit premises and is entitled to possession thereof to the exclusion of the Defendants; and they are hereby declared as trespassers.
 - ii. That the eviction orders against the Defendants be enforced upon expiry of 60 days from the date hereof in the event the Defendants shall not have vacated the same
 - iii. That the Officer in Charge Kilifi/Kijipwa Police Station and the Provincial Administration Kilifi, to supervise and provide security during the eviction process
 - iv. That a permanent injunction be and is hereby issued restraining the Defendants by themselves, their agents and/or servants and/or any other persons acting in their authority from entering into and/or remaining in possession of the suit premises.
 - v. That the costs of the suit be and is hereby awarded.

Annexed hereto and marked as annexure 6 is a copy of the Decree.

12. It is on this ground that we maintain that the Petition herein is prematurely before the House and we urge the Committee to disregard the same in totality.

13. We wish to take the House and the Committee through the events of Court cases as hereunder:

E. THE PLEADINGS

14. **THAT** the Society's activities were halted pursuant to Originating Summons filed on the 29th May, 2009 and amended on the 4th August, 2011 by Balu Munga, Samuel Baya, Lucky Charo, Joseph Charo, John Changawa, Danson Mwahengo, Tembo Jefwa, Munga Balu, Kaingu Balu, Kaingu Rua and Chibo Chishenga who instituted a suit in the High Court of Kenya at Mombasa seeking adverse possession of land known as Kilifi/Kikambala Block 285/3 including subdivision Nos. 28,29,32,33,35 and 43, namely HCC CIVIL CASE No. 158 of 2019 against Francis Kamau Kinuthia and Kenya Railway Housing Co-operative Society Limited.

Annexed herewith and marked as annexure "7" are true Photostat copies of the pleadings.

15. **THAT** in response to the amended Originating Summons, the Society filed a Response as well as comprehensive list of documents. The Society's statement Response can be summed up as follows:

- a. That the Society purchased the suit property sometime in the year 2005 from Francis Kamau Kinuthia and Fauzia Shaban Swedi which suit property initially comprised of several plots namely:
 - i. Plot No. Kilifi/Kikambala 285/3/28
 - ii. Plot No. Kilifi/Kikambala 285/3/29
 - iii. Plot No. Kilifi/Kikambala 285/3/32
 - iv. Plot No. Kilifi/Kikambala 285/3/33
 - v. Plot No. Kilifi/Kikambala 285/3/35
 - vi. Plot No. Kilifi/Kikambala 285/3/43
- b. From the above plots, Plot No. Kilifi/Kikambala 285/3/28 was owned by Fauzia Shaban Swedi while the rest of the plots were owned by Francis Kamau Kinuthia.

c. The 1st Respondent conducted due diligence prior to the purchasing of the said plots through the firm of Messrs Albert Kamunde & Co. and purchased the plots for Kshs. 680,000/= per acre making a total of the purchase price of Kshs. 6,936,0000/=

d. That later, in January, 2009 the Society applied for mutation to consolidate the parcels of Land and the said mutation was successfully done and a new title deed number issued as such the resulting new parcel of land is known as LR No. Kilifi/Kikambala/285/3/53.

e. That the Society only got wind of the presence of Balu Munga, Samuel Baya, Lucky Charo, Joseph Charo, John Changawa, Danson Mwahengo, Tembo Jefwa, Munga Balu, Kaingu Balu, Kaingu Rua and Chibo Chishenga who had invaded the suit property through the Chief's office at Mtwapa before the transfer of the suit property in the name of the Society was finalized.

f. That Balu Munga, Samuel Baya, Lucky Charo, Joseph Charo, John Changawa, Danson Mwahengo, Tembo Jefwa, Munga Balu, Kaingu Balu, Kaingu Rua and Chibo Chishenga without any color of right trespassed upon the Societys' property and thus claiming adverse possession which unlawful acts in the circumstances could not warrant an application for adverse possession.

Annexed herewith and marked as annexure "8" are true Photostat copies of the Response to the Amended Originating Summons.

16. **THAT** further the Society annexed documents to the Response to the amended originating summons whose full import and content were:

- a) Copies of the Title deeds for the six plots before mutation
- b) Copy of the Mutation form No. 276374

17. **THAT** through a Complaint filed on the 10th May, 2010, the Society instituted a suit in the High Court of Kenya at Malindi, namely HCC Civil Suit No. 44 of 2010 against Balu Munga, Samuel Baya, Lucky Charo, Joseph Charo, John Changawa, Danson Mwahengo, Tembo Jefwa, Munga Balu, Kaingu Balu, Kaingu Rua and Chibo Chishenga (hereinafter referred to as simply the suit.)

18. **THAT** in the aforementioned suit the Society prayed for judgment against Balu Munga, Samuel Baya, Lucky Charo, Joseph Charo, John Changawa, Danson Mwahengo, Tembo Jefwa, Munga Balu, Kaingu Balu, Kaingu Rua and Chibo Chishenga jointly and or severally for;

- a. A declaration that Railway Housing Co-operative Society is the lawful and rightful owner of the suit premises and is entitled to possession thereof to the exclusion of the Defendants; and they be declared as trespassers.
- b. Eviction Orders against the Defendants thereby granting vacant possession of the suit premises to the Plaintiff.
- c. Order of assistance of the Officer-in-charge, Kilifi/Kijipwa police station and the provincial Administration Kilifi, to supervise and provide security during the eviction process.
- d. A permanent injunction restraining the Defendants by themselves, their agents and/or servants and/or other persons acting in their authority from entering into and/or remaining in possession of the suit premises.
- e. Costs of and other incidental to this suit.
- f. Interest on (d) above at Court rates.

Annexed hereto a true Photostat copy of the Petitioners pleadings in the suit and collectively Mark the same as annexure "9"

19. **THAT** further the Society annexed documents to the Suit whose full import and content were:

- i. Copies of titles of the original owners
- ii. Copies of Official Search Certificate for plots No. Kilifi/Kikambala/285/3/28,29,32,33,35 and 45 as at November, 2005
- iii. Letter dated 25th November, 2005 from Flexible Credit Limited.
- iv. An agreement of sale between Francis Kairu Bachia and Railway Housing Co-operative Society Ltd sometime in 2005

- v. Copy of Valuation report dated 18th November, 2005
- vi. Power of Attorney to Geoffrey Kiambuthi Kinuthia dated 26th June, 2008
- vii. Application for consent of Land Control Board.
- viii. Transfer of Land documents
- ix. Letter by Gatome & Associates dated 14th November, 2006
- x. Certificate of compliance dated 4th June, 2009
- xi. Copy of approval letter for the sub-division of Kilifi/Kikambala/285/3/53 dated 14th May, 2009
- xii. Copies of Mutation Forms of original owner for title No. 285/3/2 dated 20th March, 1992
- xiii. Copy of the approved Mutation Form for Plots No. Kilifi/Kikambala/285/3/53 (as consolidated)
- xiv. Copy of the approved Mutation Form for Plots No. Kilifi/Kikambala/285/3/53
- xv. Copies of titles as duly transferred to Railway Housing Co-operative Society
- xvi. Copy of the Letter from the Office of the Chief Mtwapa location dated 5th May, 2006
- xvii. Copies of the eviction notices from the Advocates offices dated 25th February, 2010

We annex hereto a true Photostat copy of the List of documents filed by the Society in the suit and collectively Mark the same as annexure "10"

20. **THAT** the Society also filed a supplementary list of documents whose full import and content were:

- i. Gazette Notice No. 728 dated 19th February, 2016
- ii. Letter dated 20th May, 2016
- iii. Certified copy of the green card in respect to Kilifi/Kikambala Block 285/3/43
- iv. Certified copy of the green card in respect to Kilifi/Kikambala Block 285/3/28
- v. Certified copy of the green card in respect to Kilifi/Kikambala Block 285/3/29
- vi. Certified copy of the green card in respect to Kilifi/Kikambala Block 285/3/32
- vii. Certified copy of the green card in respect to Kilifi/Kikambala Block 285/3/33
- viii. Certified copy of the green card in respect to Kilifi/Kikambala Block 285/3/35

I annex hereto a true Photostat copy of the 1st Respondents' List of documents in the suit and collectively Mark the same as annexure "11"

21.**THAT** the 1st Respondent also filed a second supplementary list of documents whose full import and content were:

- i. Original title deed number Kilifi/Kikambala Block 285/3/28
- ii. Original title deed number Kilifi/Kikambala Block 285/3/29
- iii. Original title deed number Kilifi/Kikambala Block 285/3/32
- iv. Original title deed number Kilifi/Kikambala Block 285/3/33
- v. Original title deed number Kilifi/Kikambala Block 285/3/35

We annex hereto a true Photostat copy of the Society's Supplementary List of documents in the suit and collectively Mark the same as annexure "12"

22.**THAT** in response to the suit, Balu Munga, Samuel Baya, Lucky Charo, Joseph Charo, John Changawa, Danson Mwahengo, Tembo Jefwa, Munga Balu, Kaingu Balu, Kaingu Rua and Chibo Chishenga filed a

statement of Defence and Counter-claim and statements of its witnesses as well as a comprehensive list of documents. The Defence to the suit can be summed up as follows:

a) That the Plaintiff's right of ownership, possession and/or occupation of land parcels knows as:

- i. Plot No. Kilifi/Kikambala 285/3/28
- ii. Plot No. Kilifi/Kikambala 285/3/29
- iii. Plot No. Kilifi/Kikambala 285/3/32
- iv. Plot No. Kilifi/Kikambala 285/3/33
- v. Plot No. Kilifi/Kikambala 285/3/35
- vi. Plot No. Kilifi/Kikambala 285/3/43

have been extinguished by the prescriptive rights being enjoyed by the Defendants jointly and severally.

- b) The Defendants indicated that their ancestors have occupied the suit premises since time immemorial and there are permanent structure, schools, churches and residential premises.
- c) The Defendants also averred that the said parcels of land have always been occupied by the Defendants and their families and any acquisition of the same by the Plaintiff is illegal, null and void.
- d) That the Plaintiff was negligent in buying the suit property with the full knowledge that the Defendants and their families had resided on the same for over a half a century.

The Counter-claim

The Defendants elaborated the following in their Counter-claim

- i. That the Defendants have resided on the suit premises from time immemorial

- II. That during their long stay on the suit premises, they constructed permanent houses, schools, churches, mosques, roads, residential premises.
- III. That originally the suit premises was owned by a white lady by the name Sheila Norton who left the country sometimes in the year 1968 with specific instructions that her parcel of land be sub-divided and title deeds issued in favour of her ex-employees and which included their grandparents
- IV. They further averred that under mysterious circumstances, the said property was irregularly acquired by one Francis Kamau Kinuthia and who through his attorney Geoffrey Kiambuthi Kinuthia sued the Plaintiffs in SRMCC No. 347 of 2006 praying for vacant possession and for orders of injunction which matter was pending at the subordinate Court in Kilifi.
- V. That after failing to prosecute the said SRMCC No. 347 of 2006 is when Francis Kamau Kinuthia purported to sell the suit property herein to the Defendant in the Counter-claim with full knowledge that the said property had been occupied by the Plaintiffs for a period of a half century took unjustifiable risk of purchasing the same without placing any consideration for the occupants residing thereon.
- VI. That the change of hands of the

Chishenga jointly and or severally prayed for judgment against the Defendant in the counter-claim for the following:

- i. An Order of injunction restraining the Defendant in the counterclaim either by himself, his authorized servants, agents or employees from evicting the Plaintiff from the suit property ~~described as land parcels number Kilifi/Kikambala Block 285/3~~ including sub-division no's 29,32,33,35 and 43 and further to restrain the Defendants from selling, trespassing, disposing off, sub-dividing, developing, charging, mortgaging and/or in dealing with the property in any other way prejudicial to the peaceful occupation of the same by the Plaintiffs in the counterclaim.
- ii. A declaration that the Plaintiffs in the counterclaim have acquired prescriptive rights by adverse possession and the Defendant's title in the counterclaim duly extinguished.
- iii. Costs of and incidental to this suit.

We annex hereto a true Photostat copies of the Statement of Defence and Counter-claim together with their witness statements in the suit and collectively Mark the same as annexure "13"

24. **THAT** the Society thereafter duly filed a Reply to the Statement of Defence and Defence to Counterclaim. I annex hereto a true Photostat copy of the 1st Respondents' Reply to the Statement of Defence and Defence to Counterclaim and mark the same as annexure "14"

25. **THAT** further Balu Munga, Samuel Baya, Lucky Charo, Joseph Charo, John Changawa, Danson Mwahengo, Tembo Jefwa, Munga Balu, Kaingu Balu, Kaingu Rua and Chibo Chishenga filed a list of documents whose full import and content was as follows:

- i. A list compiled by the residents of the subject parcel of land enumerating the names of the residents and the developments thereon.
- ii. Copies of photographs showing the subject parcel of land and the developments therein.

We annex hereto a true Photostat copies of the documents as enumerated in the list of documents dated 27th August, 2012 and collectively Mark the same as annexure "15"

26. **THAT** the two suits were consolidated and were heard and determined simultaneously.

F. THE JUDGMENT AND THE DECREE

27. **THAT** the suit proceeded before Honourable Justice Olola who after hearing all the witnesses delivered judgment on the 20th September, 2019 and a Decree was extracted in the following terms:

- That the Defendants' Amended Originating Summons dated 24th May, 2011 be and is hereby dismissed.
- That the Plaintiff's suit allowed in the following terms:
 - i. That the Plaintiff (Railway Housing CO-operative Society Limited) is the rightful owner of the suit premises and is entitled to possession thereof to the exclusion of the Defendants; and they are hereby declared as trespassers.
 - ii. That the eviction orders against the Defendants be enforced upon expiry of 60 days from the date hereof in the event the Defendants shall not have vacated the same

- iii. That the Officer in Charge Kilifi/Kijipwa Police Station and the Provincial Administration Kilifi, to supervise and provide security during the eviction process
 - iv. That a permanent injunction be and is hereby issued restraining the Defendants by themselves, their agents ~~and/or servants and/or any other persons acting in their~~ authority from entering into and/or remaining in possession of the suit premises.
-

Annexed hereto a true Photostat copy of the said Judgment marked as annexure "16" and refer to annexure **No. 6** herein being the Decree.

28. **THAT** the said Judgment sanctioned the Society's title to the suit property and further directed that the Petitioners' herein be evicted from the property as they are trespassers.

G. THE APPEAL

29. **THAT** aggrieved by the said Judgment, Balu Munga, Samuel Baya, Lucky Charo, Joseph Charo, John Changawa, Danson Mwahengo, Tembo Jefwa, Munga Balu, Kaingu Balu, Kaingu Rua and Chibo Chishenga preferred an appeal to the Court of Appeal. Annexed hereto a true Photostat copy of the said Notice of Appeal filed out marked as annexure "17"

30. **THAT** after filing the Notice of Appeal, Balu Munga, Samuel Baya, Lucky Charo, Joseph Charo, John Changawa, Danson Mwahengo, Tembo Jefwa, Munga Balu, Kaingu Balu, Kaingu Rua and Chibo Chishenga also filed a Notice of Motion Application dated 19th November, 2019 seeking the following orders:

- i. That the matter be certified urgent and service thereof be dispensed with in the first instance

- ii. That the Honourable Court be pleased to stay execution of the Judgment entered on the 20th September, 2019 pending the hearing and determination of the Application.
- iii. That the Honourable Court be pleased to stay execution of the Judgment entered on the 20th September, 2019 pending the hearing and determination of the intended Appeal.
- iv. Costs of the application be provided for.

Annexed hereto a true Photostat copy of the said notice of motion application dated 19th November, 2019 marked as annexure "18"

31. **THAT** in response to the aforesaid Notice of Motion Application, the Society filed grounds of opposition dated 5th December, 2019 wherein it opposed the Application on the following grounds:

- i. That the Application is incompetent as it is founded upon an incompetent Appeal
- ii. That the application does not satisfy the mandatory provisions of Order 42 Rule 6(2) of the Civil Procedure Rules 2010
- iii. That the appeal shall not be rendered nugatory should the application be disallowed.
- iv. That the Defendant has not established any substantial loss it will suffer should the application be disallowed
- v. That the application is tainted with laches

Annexed hereto a true Photostat copy of the said Grounds of opposition dated 5th December, 2019 marked as annexure "19"

32. **THAT** further to that, the Society also filed a Replying Affidavit opposing the said application on the following grounds:

- i. That the Defendants' Application does not satisfy the mandatory provisions of Order 42 Rule 6 (2) of the Civil Procedure Rules 2010 which provides that a court shall not make an order of stay of execution unless;

- The court is satisfied that substantial loss may result to the applicant unless the order is made and;
 - The application has been made without unreasonable delay; and
 - Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
-

Annexed hereto a true Photostat copy of the said Replying marked as annexure "20"

33. **THAT** the Court considered the Application wherein parties filed their written submissions and the Court delivered a ruling on the 5th November, 2020 wherein the dismissed the Notice of Motion Application dated 19th November, 2019 with costs indicating that the same lacked merit. Annexed hereto a true Photostat copy of the said Ruling delivered on the 5th November, 2020 marked as annexure "21"

34. **THAT** the Notice of Appeal filed is still on record as the same has never been withdrawn but has since been abandoned.

H. THE NEW PETITION AFTER JUDGMENT

35. **THAT** in total disregard of the Judgment and the Decree of the Court, the Petitioners herein have also filed a new Petition on the 12th October, 2021 in the Environment and Land Court in Malindi being: **ELC Petition No. 23 of 2021** filed by; Mupa Balu, Mulongo Kakunde, Michael K. Fondo, Tobias Kadenge Katana, Kadzo Kaingu, George Munyika, Jackline Ngala, Josephine Chisenga, George Runya, Betty Mgharo and Rehema Ndoro Gona against Railway Housing Co-operative Society Limited, National Land Commission, The Cabinet Secretary, The Ministry of Lands and Physical Planning, The Chief Land Registrar, Director of Surveys, County Government of Kilifi, County Assembly of Kilifi and the Attorney General.

36. **THAT** they moved the Court vide a Notice of Motion Application dated 8th October, 2021 seeking interlocutory orders against the Society over the subject land herein. Annexed hereto and marked as annexure **22** is a copy of the pleadings filed by the Petitioners herein in the Environment and Land Court at Malindi being ELC Petition No. 23 of 2021 **which matter is still pending hearing and determination before the Court.**

37. **THAT** in response to the said Application, the Society filed a detailed Replying Affidavit. Annexed hereto and marked as annexure **23** is a copy of the Replying Affidavit filed on behalf of the Society.

38. **THAT** from the annexed pleadings hereinabove, it is evident that the Petition filed by the Petitioners herein in ELC Petition No. 23 of 2021 seeks for orders against the suit properties that are directly and substantially similar to the parcels of land which were the subject matter in the already concluded case being; **ELC Civil suit no. 44 of 2010** being:

- i. Plot No. Kilifi/Kikambala 285/3/28
- ii. Plot No. Kilifi/Kikambala 285/3/29
- iii. Plot No. Kilifi/Kikambala 285/3/32
- iv. Plot No. Kilifi/Kikambala 285/3/33
- v. Plot No. Kilifi/Kikambala 285/3/35
- vi. Plot No. Kilifi/Kikambala 285/3/43

39. **THAT** further, we wish to clarify that the Petition before this House touches on similar properties which the Environment and Land Court has already made a determination on and it is evident that the Petitioners herein brought this Petition after the Judgment of the Court.

I. THE PETITION BEFORE THE HOUSE IS RES JUDICATA

40. **THAT** the Petitioners herein **are guilty of material non-disclosure as they have deliberately failed to disclose to this Honourable House the**

existence and the findings of the already concluded case being: ELC Civil suit no. 44 of 2010 whose findings would assist this House arrive at a just conclusion.

41. **THAT** the Petitioners Petition is irreparably defective and bad in the Law for the following grounds;

a. The Petition is filed contrary to section 7 of the Civil Procedure Act, cap 21 Laws of Kenya and therefore the Honourable House lacks jurisdiction to entertain the Petition brought before it.

b. That the Petitioners in the year 2019 vide Amended Originating summons dated 24th May, 2011 moved the High Court of Kenya at Mombasa Civil Case No. 158 of 2019 seeking a claim for adverse possession which claim was dismissed vide a judgment delivered on the 20th September, 2019 by Justice J.O Olola.

c. The Respondent being aggrieved with the judgment of the Court filed a Notice of Appeal which has been abandoned as the same has never been prosecuted to date.

d. That the Petition also contravenes Section 7 of the Civil Procedure Act, Cap 21 Laws of Kenya based on the following;

- The subject matter directly and substantially in issue is the same
- The current Petition and former suit are substantially between the same parties
- The former suit was before a Court of competent jurisdiction
- The former suit has been heard and fully determined.

J. THE PETITION HEREIN IS RES SUBJUDICE

42. **THAT** the Petitioners herein are guilty of material non-disclosure as they have deliberately failed to disclose to this Honourable House the existence of the pending Petition being: ELC Petition No. 23 of 2021.

43. **THAT** the Petitioners Petition is irreparably defective and bad in the Law for the following grounds;

a. The Petition is filed contrary to section 6 of the Civil Procedure Act, cap 21 Laws of Kenya and therefore the Honourable House lacks jurisdiction to entertain the Petition brought before it.

b. That the Petitioners in the year 2021 vide a Land Petition dated 8th October, 2021 moved the Environment and Land Court of Kenya at Malindi Petition No. 23 of 2021 seeking injunctive Orders against the Society on the subject parcel of land which claim is still pending hearing and determination.

c. That the Petition also contravenes Section 6 of the Civil Procedure Act, Cap 21 Laws of Kenya based on the following;

- The subject matter directly and substantially in issue is the same
- The current Petition and former suit are substantially between the same parties
- The former suit was before a Court of competent jurisdiction
- The former suit is pending hearing and determination.

44. **THAT** Petitioners owes this House and Committee an explanation as to their whereabouts prior to the institution of this Petition to this House.

45. **THAT** in the premises and in view of the Judgment of this Honourable Court delivered on the 20th September, 2019 and the Ruling delivered on the 5th November, 2020 it is prudent that this House takes into consideration the wholesomeness of the matter and most importantly the findings Judgment of the High court of Kenya sitting at Malindi.

46. **THAT** the only remedies available to the Petitioners are to appeal against the decision of Justice Olola delivered on 20th September, 2019 and/or apply for review and not by instituting a fresh suit or by way of a Petition to this House.

47. **THAT** this Petition is frivolous, vexatious and lacks merit and ought to be dismissed.


CONCLUSION

THAT the Petition is an abuse of this Houses' time and it is in the interests of justice and fairness that the instant Petition be dismissed.

That is all.

Yours faithfully,

MUTURI GAKUO & KIBARA ADVOCATES


K.N KIBARA

Encls.