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PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SECOND SESSION – 2018

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON INQUIRY INTO ALLEGED IRREGULARITIES IN THE COMMISSION FOR PART OF LR NUMBER 7879/4 TO M/S AFRISON IMPORT EXPORT HUELANDS LTD BY THE NATIONAL LAND COMMISSION ON BEHALF OF THE MINISTRY OF EDUCATION FOR ACQUISITION OF LAND FOR RUARA SCHOOL AND DRIVE INN PRIMARY SCHOOL

Approved
7/6
[Signature]

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

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List of Abbreviations

CS	-	Cabinet Secretary
EACC	-	Ethics and Anti – Corruption Commission
GSU	-	General Service Unit
LR	-	Land Registration Number
NLC	-	National Land Commission

CHAIRPERSON'S FOREWORD

On 30th January 2018 the Departmental Committee on Lands received a complaint from Mr. Harrison Muema through a letter dated 10th January 2018 alleging that irregularities had been committed in the compensation of LR No. 7879/4 – Afrison Import Export Ltd and Huelands Ltd by the National Land Commission on behalf of the Ministry of Education, Science and Technology for acquisition of land for Drive Inn Primary School and Ruaraka High School. The matter was also reported in the print media. It is on this basis that the Committee resolved to conduct an inquiry on the matter.

During the inquiry the Committee undertook a field visit to Ruaraka High School and Drive Inn Primary School on Tuesday 10th April 2018. The Committee also held meetings with the Chairperson, National Land Commission on 29th March and 12th April, 2018, the Cabinet Secretary, Ministry of Lands and Physical Planning on Tuesday 17th April, 2018, the Attorney General and the Managing Director, Afrison Import Export Ltd and Huelands Ltd on Thursday 26th April 2018, a representative of the Ethic and Anti- Corruption Commission on Thursday 3rd May 2018, the Principal Secretary, State Department for Early Learning and Basic Education on Tuesday 15th May 2018 and representatives of the Governor, Nairobi County on Thursday 17th May 2018.

The Committee thereafter proceeded to a report writing retreat on Thursday 17th May 2018 where it analyzed the submissions by the stakeholders, made various findings and recommendations as indicated in this Report.

The Committee appreciates the support accorded to it in undertaking the inquiry by the Speaker, the Clerk and the participation of the Honourable Members of the Committee. This report contains submissions made by different stakeholders, findings and the recommendations of the Committee on the matter.

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

EXECUTIVE SUMMARY

The Departmental Committee on Lands received a complaint on 30th January 2018 through a letter dated 10th January 2018 signed by Mr. Harrison Muema. In the said letter, Mr. Mr. Harrison Muema alleged that irregularities had been committed in the compensation of LR No. 7879/4 to M/S Afrison Export and Imports Ltd by the National Land Commission on behalf of the Ministry of Education, Science and Technology for acquisition of land for Drive Inn Primary School and Ruaraka High School in Nairobi. He requested the Committee to investigate the matter. The issue was also reported in the print media. Therefore, it is on this basis that the Committee resolved to conduct an inquiry on the matter.

During the inquiry the Committee found out that the process of acquiring the land occupied by the two schools was initiated by the National Land Commission upon receiving a complaint from the Afrison Import Export Ltd and Huelands Ltd on alleged historical injustices. Further, although the Ministry of Education did eventually write to the Commission requesting that it does secure the interests in the land occupied by the two schools, this was done at the behest of the Commission.

The Committee also noted that it was not clear from the valuation report tabled by the Commission on what parameters or criteria other than stamp duty and the pricing of comparable properties was used by the Commission to ensure prudent use of public money as espoused in Article 201 of the Constitution in awarding Afrison Import Export Ltd and Huelands Ltd Kshs 3, 269, 040, 600 as compensation for land.

The Committee further observed that although the Commission presented evidence of the *Gazette* Notice, there was no evidence presented to the Committee to show where and how the inquiry proceedings were conducted. There was also no evidence to show that the Commission did serve the notices to the interested persons.

The Committee did not find any evidence to confirm that a sub-division of the land in question did occur. The evidence presented to the Committee indicated that LR. No. 7879/4 belongs to Afrison Import Export Ltd and Huelands Ltd save for the contradiction that an allotment letter had been issued to Ruaraka High School by the Commissioner of Lands

The Committee further observed that the two schools had occupied the land for an uninterrupted period of at least thirty-three years and there had been no case brought by Afrison Export Import Limited against the schools over the alleged illegal occupation by the two schools.

The Committee also found out that the title for LR. No 7879/4 was jointly held by the official receiver and Messrs Harit Sheth and Co. Advocates, the advocates for the registered owner and that the National Land Commission had not secured the interests of the government in the land compulsorily acquired in terms of the formal taking of possession of the documents of title on the land contrary to section 121 of the Lands Act, 2012.

Further, the Committee observed that the National Land Commission paid Kshs. 1,500,000,000 to Whispering and Company Limited and not to Afrison Import Export Ltd and Huelands Ltd following a request by the directors of latter and that that the payment seemed to have been made in haste raising suspicions on the integrity of the process.

The Committee recommends that the Chairperson, National Land Commission, Commissioners and other officers of the Commission take personal responsibility for acting contrary to section 107(1), section 112, section 121 of the Lands Act, 2012, Articles 201(d) and 201(e) of the Constitution. The Director of Criminal Investigations should also investigate the Chairperson, the Commissioners and other officers of the National Land Commission for the same.

The Committee also recommends that the Director of Criminal Investigations should investigate possible collusion among Afrison Import Export Ltd and Huelands, the National Land Commission, National Treasury and the Ministry of Education to fleece and swindle public funds. Following conclusion of the said investigations by the Director of Criminal Investigations, the Director of Public Prosecutions should prosecute any public officer or person who may be implicated or suspected as having engaged in any corrupt and illegal activities in the compulsory acquisition of the land in question.

The Committee further recommends that the Ethics and Anti-Corruption Commission should take responsibility for loss of public funds amounting to Kshs. 1, 500, 000, 000 as part payment made by the National Land Commission to Afrison Import Export Ltd and Huelands for delay and failure to safeguard against the loss of the funds paid into the accounts belonging to Afrison Import Export Ltd and Huelands by failing to act on time to freeze the accounts holding the funds pending the conclusion of its investigations.

The National Treasury should take responsibility for loss of public funds amounting to Kshs. 1, 500, 000, 000 as part payment made by the National Land Commission to Afrison Import Export Ltd and Huelands for authorizing payment of Kshs. 1, 500, 000, 000 to Afrison Import Export Ltd and Huelands without an express request from the Ministry of Education.

Finally, the National Land Commission should immediately secure the interests of the government on the land compulsorily acquired in portions of LR. No. 7879/4 by the formal taking of possession of the title documents of the said land in accordance with the provisions of section 121 of the Lands Act, 2012.

1.0 PREFACE

1.1 Mandate of the Committee

The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 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 programmes 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

The Committee is mandated to consider the following subjects:

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

1.3 Oversight

The Committee oversights:

- i. The Ministry of Lands and Physical Planning; and
- ii. The National Land Commission

1.4 Committee Membership

Chairperson	The Hon. Dr. Rachael Nyamai, MP
Vice Chairperson	The Hon. Khatib Mwashetani, MP
	The Hon. Jayne Njeri Wanjiru Kihara, MP
	The Hon. Mishi Mboko, MP
	The Hon. Omar Mwinyi, MP
	The Hon Joshua Kutuny Serem, MP
	The Hon. Kimani Ngunjiri, MP
	The Hon. Ali Mbogo, MP
	The Hon. Babu Owino, MP
	The Hon. Caleb Kipkemei Kositany, MP
	The Hon. Catherine Waruguru, MP
	The Hon George Aladwa, MP
	The Hon George Risa Sunkuyia,MP
	The Hon. Jane Wanjuki Njiru,MP
	The Hon. Josphat Gichunge Mwirabua Kabeabea, MP
	The Hon. Owen Yaa Baya, MP
	The Hon. Samuel Kinuthia Gachobe, MP
	The Hon. Simon Nganga Kingara, MP
	The Hon Teddy Mwambire, MP

Committee Secretariat

Clerk Assistant I	Mr. Leonard Machira
Clerk Assistant III	Mr. Ahmad Guliye
Senior Fiscal Analyst	Mr. Joash Kusiba
Legal Counsel I	Ms. JemimahWaigwa
Research Officer III	Mr. Joseph Tiyan
Audio Recording Officer	Mr. John Mungai
Media Relations Officer	Ms. Winnie Kizziah
Serjeant At Arms	Ms. Peris Kaburi

2.0 INTRODUCTION

The Committee received a complaint, through a letter dated 10th January 2018 signed by Harrison Muema, alleging that irregularities had been committed in the compensation that was made to M/S Afrison Import Export Ltd and Huelands by the National Land Commission on behalf of the Ministry of Education for acquisition of land, LR No. 7879/4, for Drive Inn Primary School and Ruaraka High School in Nairobi. In the said letter Mr. Harrison Muema requested the Committee to investigate the matter. The issue was also reported in the print media. Therefore, it is on this basis that the Committee resolved to conduct an inquiry on the matter.

3.0 SUBMISSIONS

During the inquiry the Committee undertook a field visit to Ruaraka High School and Drive Inn Primary School on Tuesday 10th April 2018. The Committee also held meetings with the Chairperson, National Land Commission on 29th March and 12th April 2018, the Cabinet Secretary, Ministry of Lands and Physical Planning on Tuesday 17th April. 2018, the Attorney General and the Managing Director, Afrison Import Export Ltd and Huelands Ltd on Thursday 26th April 2018, a representative of the Ethic and Anti- Corruption Commission on Thursday 3rd May 2018, the Principal Secretary, State Department for Early Learning and Basic Education on Tuesday 15th May 2018 and a representative of the Governor, Nairobi County on Thursday 17th May 2018.

The field visit and meetings were aimed at collecting evidence with a view to establishing the validity of the allegations that irregularities were committed in the compensation made to M/S Afrison Import Export Ltd and Huelands Ltd by the National Land Commission on behalf of the Ministry of Education for the acquisition of part of Land Registration Number 7879/4 for Ruaraka High School and Drive Inn Primary School.

3.1 Submissions by the management of Ruaraka High School

The Committee undertook a field visit to Ruaraka High School on Tuesday 10th April 2018. During the visit, Ms. Agnes Chege, the Principal of the school, assisted by members of the Board of Management led by Mr. John Thuo, who is also a former Board of Management Chairperson, explained the history of the school and averred the following, that;

- i. The school was initially started at Valley Bridge, near its current location, by Mr. De Silva, a business man who was popularly known as Baba Dogo;
- ii. The land in which the school is located was acquired in 1981 through the initiative of the then Mayor of Nairobi, Hon. Andrew Gumba; The land was, at the time, unutilized community land;
- iii. The Ministry of Education, through the Economic Stimulus Programme, awarded the school Kshs. 30 million in 2007 for the development of infrastructure that included the construction of a perimeter fence;

- iv. The school was duly registered by the Ministry of Education and the first registration was done in 1987 and renewed in 1997 and 2009 respectively to cater for increased enrolment;
- v. The land belonged to the school and an allotment letter had been issued to the school in 1999 by the Commissioner of Lands after paying the required premiums; The school was also in possession of a mutation map dating back to 1966 and a copy of a banker's cheque for the deposit for the payment of the land premium (Annex I&II);
- vi. The land where the school is located is approximately 3.05 hectares and there had been no contestations on its ownership till recently when a compensation claim was featured in the media;
- vii. The purported owners of land had not communicated with the school in respect of their claim;
- viii. The management of the school only learnt of the compensation made by the National Land Commission for the acquisition of the land through the media and when the school principal was invited by the Ethics and Anti – Corruption to write a statement on the matter;
- ix. The National Land Commission and the Ministry of Education had not communicated to the management of the school or the residents of the area regarding the acquisition of the land and that officers from the National Land Commission only visited the school on 29th May 2017 to undertake a survey of the school land without indicating that there was a planned acquisition of land for the institution; the only record of the visit was the signatures they appended on the visitors' book;
- x. The Ethics and Anti-Corruption Commission wrote to the principal in February 2018 inviting her for an interview regarding alleged irregular acquisition of land for the school.

3.2 Submissions by the Head Teacher- Drive Inn Primary School

During a field visit held on Tuesday 10th April 2018, Mr. Benjamin Oloo, the Head Teacher, Drive Inn Primary School assisted by members of the school management informed the Committee of the following;

- i. The school was started in 1986 on land given out by one. Hon. Andrew Ngumba, the then Mayor of the City Council of Nairobi;
- ii. Prior to 2013 the school was administered by the then City Council of Nairobi;
- iii. All documentations in respect of the ownership of the land where the school is located were held by the Nairobi County Government;

- iv. Officers from the National Land Commission visited the school on 29th May 2017 to undertake a survey of the school land; and
- v. The Ethics and Anti-Corruption Commission wrote to the head teacher in February 2018 inviting him for an interview regarding the irregular acquisition of land for the school

3.3 Submissions by the Chairperson, National Land Commission

The Committee held two meetings with the Chairperson, National Land Commission on Thursday 29th March and Thursday 12th April 2018. During the meetings the Committee was informed of the following:

Initiation of the compensation process: The Chairperson, National Land Commission informed the Committee that the process for acquiring land for Ruaraka High School and Drive Inn Primary School was initiated by the Principal Secretary, State Department for Early Learning and Basic Education, Ministry of Education vide a letter Ref MOE/CONF/G5 dated 7th February 2017 (Annex III) requesting the Commission to initiate the compulsory acquisition. Upon receipt of the said letter the Commission advised the Principal Secretary, vide a letter Ref. VAL.1146 dated 16th February 2017, that the process ought to have been initiated through a letter from the Cabinet Secretary, Ministry of Education as provided for in section of the Land Act 2012. Following the advice, the Cabinet Secretary wrote to the Commission vide a letter Ref. MOE.CONF/G5VOL.II/16 dated 17th March 2018 requesting the Commission to commence the process of acquiring the land.

Government acquisition of land within the vicinity of the two schools: The Chairperson stated that apart from the land acquired for Ruaraka High School and Drive Inn Primary School, the government, through the Commission, had previously compulsorily acquired land within the vicinity of the two schools) as follows; land acquired for the Kenya Urban Roads Authority for the Outering Road Improvement project vide gazette notice No.6055 of 29th August 2014; land acquired for the Kenya Urban Roads Authority for access roads and the construction of the Outering road through gazette notice No. 6322 of June,2017, where Kshs. 786,565,500, had been paid as compensation; and land acquired for the Kenya Urban Roads Authority for an access road to the upgraded Outering road where Kshs. 289,317,000 had been paid.

The Committee observed that the stated acquisitions were made to Afrison Import Export Ltd & Huelands Ltd and where for portions of LR. No. 7879/4.

Ownership of land parcel LR No. 7879/24: The Chairperson argued that based on the ruling in Afrison Import Export Ltd & another vs. Continental Credit Finance Ltd and two others, Civil Case No. 617 of 2012 the issue of ownership of the parcel of the land in question had been conclusively determined in favour of Afrison Import Export Ltd and Huelands Ltd. He further stated that the Court had determined that the plaintiffs being Afrison Export Ltd and Huelands were the registered proprietors of the parcel of land known as L.R No. 7879/24 and awarded the firm Ksh. 4,086,683,330/ to be paid by the office of the Attorney General for 37 acres occupied by the General Service Unit (GSU).

He further argued that the court ruling in Patrick Musimba vs. National Land Commission & four others petition No. 613 of 2014 elaborated in detail the process of compulsory acquisition of land for public projects undertaken by the Commission.

The Committee was further informed that the Commission had conducted a search in the Lands Registry on 19th January 2018 which indicated that Afrison Import Export Ltd and Huelands Ltd had bought the land from Joreth Ltd in 1981. The search also showed that the land still belonged to Afrison Import Export Ltd & Huelands Ltd. It was still held under a freehold grant, was all in one parcel and had no encumbrances listed on the title. The Commission had also conducted a due diligence search at the Survey of Kenya and the County Government of Nairobi and did not find any evidence of a subdivision scheme plan to have been completed and registered.

Attorney General's legal opinion: The Chairperson also stated that, in processing the acquisition, the Commission relied on the Attorney General's legal advice that the legal owners of L.R No. 7879/4 be compensated in full in accordance with Article 40(3) on compulsory acquisition for public purpose.

Valuation of the property: On valuation of the property, he stated that it relied on government records of stamp duties paid for similar parcels of land within the locality of the two schools, where the government acquired private land for public use. He also submitted copies of valuation reports for the Outering road upgrade and access roads, Drive inn Primary School and Ruaraka High School. A copy of a valuation report undertaken by Afrison Export Ltd and Huelands Ltd for a Chief's camp and the two schools that was prepared by Camp Valuers was also submitted to the Committee. The Commission's valuation of the land occupied by the two schools stood at Kshs. three billion, two hundred and sixty-nine million and forty (3,269,040,600). While the one by Camp Valuers stood at three, billion three hundred and seventy-five million (Kshs. 3,375,000,000).

Public Participation: The Chairperson, National Land Commission informed the Committee that the Commission notified the public on the intended acquisition of land for the two schools vide a gazette Notice No. 6322 of 30th June 2017. However, he could not provide any information on whether a public hearing on the matter was held and stated that it was the responsibility of the Ministry of Education to inform the management of the two schools of the planned acquisition.

Compensation payments: The Chairperson stated that the payments for the acquisition of part of LR No. 7879 for the two schools were made to Whispering Palms and Estates Ltd as an assignee of Afrison Import Export Ltd and Huelands Ltd. He further explained that this was allowed by the law and that Afrison Import Export Ltd and Huelands Ltd had indemnified the Commission from any claims that would arise on the matter.

Custody of the title for the acquired land: On the issue of custody of the title deed, the Chairperson stated that the Commission had not yet secured the title deed for the portion of land it acquired for the two schools as payments to Afrison Import Export Ltd and Huelands Ltd had not been completed and the title deed would be surrendered to the Commission once the full payments were made.

Allotment letter issued to the Ruaraka High School: Regarding the issuance of an allotment letter to Ruaraka High School by the Commissioner of Lands, the Chairperson stated that the allotment letter had been canceled although he did not provide evidence of the said cancellation.

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

The committee held a meeting with the Cabinet Secretary, Ministry of Lands and Physical Planning on Tuesday 17th April 2018. During the meeting the Cabinet Secretary informed the Committee of the following:

Background on the ownership of LR.NO.7879/4: The Cabinet Secretary stated that according to records held by the Ministry, Afrison Import Export Ltd and Huelands Ltd were the registered owners of LR No.7879/4, measuring 96 acres, having acquired it from Joreth Limited in 1981. The Committee was further informed that the land in question was registered under the Government Land Act of 1902(repealed) by an instrument of conveyance dated 1905. The crown first allocated a total of 1000 acres to Arthur Edward Atkinson as land No.216 registered as No.333/All/1905. The land went through various hands and mortgages starting with A.E. Atkinson who conveyed the land to Allan Thompson and Harris Temple on 21st February 1906 and then it was passed on to the R.H.T Hancock.

By way of letters of Administration dated 30th November 1921 the land passed on to Wilfred Arthur Randolph Nicholson from the Estate of R.H. T Hancock and on 19th August 1925 the land was conveyed to Gladys Thompson. The land further changed hands by an indenture dated 4th of December 1958 between Gladys Thompson and Joreth Ltd. Finally, Afrison Import Export Ltd and Huelands Ltd bought the land from Joreth Ltd at a price of Ksh.14, 000, 000 in 1981.

The Cabinet Secretary also informed the meeting that as at 16th of April 2018 an official search undertaken by her office indicated that LR 7879/4 was still owned by Afrison Import Export Ltd & Huelands Limited and ownership of the land since 1905 to date had been on a freehold and private basis.

Proposed subdivisions: The Committee was informed that Afrison Import Export Ltd and Huelands Ltd, through their development company, Drive In Estate Developers, applied to the Town Planning Committee on 16th September 1982 seeking approval for a proposed subdivision scheme. The Director of City Planning gave the firm a conditional approval on 28th March 1984. Drive In Estate Developers Limited did not agree with the said conditions and cancelled the planned subdivision on 5th March 1984

In the meantime, in 1983 there were ongoing processes between the developers and the Commissioner of Lands which resulted in the payment of fees to facilitate the approval of the subdivision scheme after the developer paid ksh.21, 500 on 18th November 1983. However, the surrender was not materialise. Further on 12th July 1984, the Commissioner of Lands issued ‘a letter of reservation’ reserving land for a secondary school to the Permanent Secretary, Ministry of Education. Later, 25th of June 1999, the

Commissioner of Lands issued a letter of allotment for the school to the Permanent Secretary for Education.

Whether the subdivision scheme was registered: The Cabinet Secretary stated that upon payment and approval of the subdivision scheme, the onus was on Afrison Export Import Limited and Huelands Limited, to take the next steps to have the subdivision scheme surveyed and registered with the Director of Survey. However, she added that according to the Director of Survey, Afrison Import Export Ltd and Huelands Limited neither applied for the survey and registration nor surrendered the title.

The Cabinet Secretary further elaborated that the proposed subdivision on which public land was to be created and given free of cost to the Nairobi Council was cancelled in 1984. The letter of allotment was therefore incapable of transferring part ownership of LR No.7879/4 that is private land. Therefore, the land held by the schools would not be legally acquired without going through a process of excision and compulsory acquisition. The Cabinet Secretary noted that it ought to have been in the knowledge of the Commissioner of Lands that once the scheme of subdivision had been cancelled in 1984, there was no land to be allocated to the school.

Location and size of LR.No.7879/4: The Cabinet Secretary provided a copy of a map of the land where Drive Inn Primary School and Ruaraka High School are located. She also indicated that the size of the land was approximately 38.8 hectares and was in deed plan No.85744, survey plan FR.No.107.9.

The parcel had been sub divided into two portions as follows:

- i. LR NO.7879/24(7879/4/3) with an area of 15.857 Ha (Deed plan No 398228, issued on 18th March 2016).
- ii. LR No.7879/25(7879/4/4) with an area of 22.755 Ha (Deed plan 3982229, issued on 18th March 2016).

Custody of the title deed for LR. No. 7879/4: The Cabinet Secretary informed the Committee that the title deed for the land was held by the Attorney General who was the official liquidator of Continental Credit Finance Ltd (under receivership) and that the ministry was not directly involved in the acquisition as this was within the mandate of the National Land Commission.

3.5 Submissions by the Attorney General

The Committee held a meeting with the Attorney General on Thursday 26th April 2018. During the meeting the Attorney General informed the Committee of the following in respect of the matter:

Ownership of LR No. 7879/4: Regarding the ownership of the land in question, the Attorney General informed the Committee that LR No. 7879/4 was originally owned by Joreth Ltd who sold it to Afrison Import Export Ltd and Huelands Ltd on 30th December 1981. The size of the parcel of land is 96 acres. On the same day of acquiring the land, the developers borrowed Ksh. 21,000,000.00 from Continental Credit Finance Ltd (under receivership) and a mortgage to secure the lending was registered against the title deed. The funds were meant to facilitate the construction of 500 maisonnettes for the defunct Kenya Posts and Telecommunication Corporation.

The Committee was further informed that Continental Credit Finance Ltd experienced financial difficulties and was put under receivership vide winding up case No. 29 of 1986 and an official receiver was appointed by the court as the liquidator.

Following the winding up of Continental Credit Finance Ltd, the Kenya Posts and Telecommunication secured a second mortgage of Kshs. 165,000,000 against the title to complete the stalled housing project. The second mortgage had since been paid in full and a discharge executed. However only 196 houses were completed out of the planned 500 units before the corporation also experienced financial difficulties and sold the houses to the then Ministry of Provincial Administration and Internal Security in 1988 to accommodate General Service Unit (GSU) officers. The Ministry was however never issued with title document for the portion of land where the 196 houses are located even though payments of Kshs. 64,000,000 had been made to the Corporation.

In 2006 the GSU fenced off the housing estate and occupied approximately 30 acres of land more than the area occupied by the 196 houses, to create a buffer zone to control squatters who had started invading the land and for security reasons. Attempts by the Ministry to secure the title for the acquired portion of land were hampered by various court cases and other legal issues surrounding the liquidation of Continental Credit Finance.

The Ministry formed a Technical Committee in 2012 following the recommendations of the Parliamentary Committee on Administration and National Security with a view to negotiate with the owners for the purchase of the extra land occupied and not paid for. The Technical Committee recommended the formation for a technical team to negotiate suitable terms for the purchase of government interest in the parcel of land.

However, before the negotiations were completed the owners filed a case in court seeking various reliefs including compensation for the value of the thirty (30) acres. The court awarded the plaintiff (Afrison Import Export Ltd and Huelands Ltd) Kshs. 4,086,683,330 as the fair value of the suit property. The Attorney General filed a notice of appeal. However, the intended appeal was not heard following a request made by the then Permanent Secretary, Ministry of State for Provincial Administration and Internal Security. Based on the request by the Ministry, the Attorney General sought a proposal on the settlement of the matter from the plaintiff's advocates. Subsequently an agreement was reached during a meeting held on 15th March 2013 in which a sum of Ksh. 2.4 billion was agreed upon as full settlement of the dispute. The negotiated settlement was filed in court following an authorization made by the Principal Secretary, Ministry of State for Provincial Administration and Internal Security vide a letter dated 22ND March, 2013 and Kshs. 1.2 billion was paid to the plaintiff's advocates.

However, before the balance of Kshs. 650,000,000 was paid an audit query was raised by the Auditor General. The Ministry sought legal advice from the Attorney General on whether to proceed to settle the balance. The Attorney General advised the Ministry to proceed to settle the balance in exchange of the ownership documents.

The Attorney General also stated that apart from the acquisition made by the then Ministry Provincial Administration and Internal Security of the portion of LR. No7879/4 occupied by General Service Unit. The office of the Attorney was not directly involved in any other acquisition of portions of the said land

including the acquisition made by the National Land Commission for land for Ruaraka High School and Drive Inn Primary School.

Custody of the title: In response to a question raised by the Members on whether the Attorney General as the liquidator of Continental Credit Finance Ltd was in custody of the title deed for LR. No 7879/4, where Drive Inn Primary School and Ruaraka Secondary School are located. The Attorney General first clarified that his office was not the official receiver rather the receiver had been appointed by the court and was therefore answerable directly to the court. Regarding the custody of the title, he informed the meeting that the title for LR. No 7879/4 was jointly held by the official receiver and Messrs Harit Sheth and Co. Advocates, the advocates for the registered owners of the land. Further the official receiver to facilitate the issuance of a title for the land purchased by the government released the title, through a professional undertaking, to Messrs Harit Sheth and Co. Advocates. The advocates were supposed to facilitate the subdivision of the land and forward a duly executed conveyance and deed plan to the government for the 37.5 acres that had been paid for by the office of the President, which they had done, and the documents were awaiting the payment of stamp duty once the balance of the decretal sum was paid. The sum had not been paid because Afrison Import Export Ltd and Huelands Ltd had secured a conditional clause in the out of court settlement for the land acquired by the GSU made with the Government that stipulated that the sum was to be paid after the money owed to the company had been paid in full.

Encumbrances: On whether the encumbrances on LR. No. 7879/4 had been vacated, the Attorney General informed the Committee that all the encumbrances had been vacated and the land sub-divided as follows;

- a. L.R No. 7879/24 measuring 37.5 acres to be registered in favour of the government for the acquisition of land for the General Service Unit.
- b. L.R. N.o. 7879/25 measuring 58.5 acres being the remaining portion of the 96 acres after the sale to vest to Afrison Import Export and Huleands Limited.

Involvement of the office of the Attorney General in the process of acquisition of land for Drive Inn Primary School and Ruaraka High School: The Attorney General stated that the involvement of his office in the process of acquiring land for the two schools was limited to an advisory opinion given to the Principal Secretary, Ministry of Education on the import of Article 40 (3) of the Constitution which provides that for compulsory acquisition to be effected the land must be for public use. Therefore, the Attorney General did not participate in the actual acquisition process.

Allotment letter issued to the Ruaraka High School: Regarding the issuance of an allotment letter to Ruaraka High School by the Commissioner of Lands, the Attorney General stated that it was not legally possible to issue an allotment letter on private land. Furthermore, the title of the land in question had an undischarged mortgage and a loan from Continental Credit Finance Ltd.

3.6 Submissions by the Managing Director, Afrison Export Import Limited and Huelands Limited

The Committee held a meeting with Mr. Francis Mburu, the Managing Director, Afrison Import Export Ltd and Huelands Ltd on Thursday 26th April 2018. During the meeting Mr. Francis Mburu, through an affidavit and oral submissions informed the Committee of the following in respect of the matter;

- i. Afrison Export Import Ltd and Huelands Ltd were the registered owners of LR. No. 7879/4 having acquired the land from Joreth Ltd in 1981;
- ii. That after Afrison Import Export Ltd and Huelands Ltd bought the said land the government expressed interest in acquiring it to develop houses for the General Service Unit. However, this did not happen, but the government went ahead and illegally cordoned off the land for public use;
- iii. Afrison Import Export Ltd and Huelands Ltd, through their development company, Drive In Estate Developers, applied to the Town Planning Committee on 16th September 1982 seeking approval for a proposed subdivision scheme. The Director City Planning gave the firm a conditional approval on 15th of April 1984. Drive in Estate Developers Limited did not agree with the said conditions and cancelled the planned subdivision due to fear that the City Council wanted to use the set conditions to grab the land from the owners;
- iv. That in or about 1986 the government constructed Drive Inn Primary School and Ruaraka High School on part of the land measuring 13.5364 acres in L.R No. 7879/25 and like in the case of the land occupied by the GSU no payment had been made to the company;
- v. The government also constructed an office for the District Officer and Chief within land without any approval from the company;
- vi. That Afrison Import Export Ltd and Huelands Ltd filed a case in court, Civil Case Number 617 of 2012, seeking damages for loss of use of the land and orders to compel the government to pay for the 30 acres of land occupied by the GSU; the court granted the prayers sought by the companies and awarded them Kshs. Four billion eighty-six million six hundred and eighty-three thousand three hundred and thirty (Kshs. 4,086,683,330);
- vii. The Attorney General negotiated with the companies and the said court award was reduced to Kshs. two billion and four hundred million (2,400,000,000) payable within ninety days; However, six years later, the amount had not been paid in full and the Government had only paid Kshs. 1.8 billion causing a delay in transferring the 37.4 acres to the GSU;

- viii. The parcel of land L.R. No. 7879/4 measuring 96 acres had been subdivided into two parcels of land namely; L.R No. 7879/42, the portion occupied by the General Service Unit with an acreage of 37.5 acres and L.R No. 7879/25, the remainder of the portion where the two school are located;
- ix. The Government had acquired three portions of LR 7879/4 from Afrison Import Export Ltd and Huelands Ltd as follows:
 - a. The Kenya Urban Roads Authority (KURA) had acquired 12acres for the construction of the Outering Road and an access road from Outering Road.
 - b. The State Department for Interior had acquired 37.4 acres for the GSU houses.
 - c. The Ministry of Education had acquired 13.4 acres that are occupied by Drive Inn Primary School and Ruaraka High School.
- x. In 2009 the government, through the City Council of Nairobi, Housing Department illegally issued letters of allotment to various persons and allowed them to occupy/trespass on LR. 7879/4; the said illegal issuance of letters of allotment was done by land grabbers and corrupt government officials;
- xi. The said land grabbers had been frustrating the effort of the companies to seek compensation from the government;
- xii. The government and other parties that illegally occupy LR7879/4 had ignored court orders even after the court had declared that they illegally occupied the land;
- xiii. Known individuals had been blackmailing the directors of Afrison Export Import and Huelands Limited; the said individuals were; Meshack Onyango Dehay, George Onduto and Julius Ngare Ngyu;
- xiv. Afrison Export Import and Hueland Ltd wrote to the National Land Commission regarding the illegal occupation on the land and the Commission upon being satisfied that the companies were the owners of the said land wrote to the Ministry of Education requesting the ministry to consider initiating compensation to the company;
- xv. The allegation that the portion of land measuring 13.5 acres acquired by the Commission for the two schools was too costly was baseless as the Government paid the companies almost half of the market price value for the said land as a valuation done by Camp valuers indicated that the

land was worth Kshs 5,900,000,000 while the government through the National Land Commission agreed to pay Kshs. 3,200,000,000; and

- xvi. Afrison Import Export Ltd and Huelands Ltd instructed the National Land Commission to make payments for the portion of land occupied by the two schools to Whispering Palm Estate Limited, a sister company and that the instructions were procedural and were made on business considerations;
- xvii. The Managing Director Afrison Import Export Ltd and Huelands Ltd was ready to refund the money paid by the National Land Commission for the acquisition of the two school if the government would relocate the schools from the land; and
- xviii. The title for the land was in the custody of the official receiver and the advocates of the companies.

3.7 Submissions by the Ethics and Anti - Corruption Commission

The Committee held a meeting with Ms. Rose Macharia, a Commissioner at the Ethics and Anti-Corruption Commission, on Thursday 3rd May 2018. She was accompanied by Mr. Abdi Mohamud, the Director, Investigations. She informed the Committee that the Commission was seized of the matter touching on a parcel of land reference No. 7879/4 in which the National Land Commission sought to compensate the purported owners. The said land was occupied by Ruaraka High School and Drive Primary School. She outlined the status of investigations into the matter as follows:

- Documents had been collected from concerned public institutions.
- Statements had been recorded from most of the witnesses.
- on 2nd March,2018, EACC stopped further payments to the owners until conclusion of investigations
- Payments of Kshs.1.5 billion had been made by NLC on 30th January,2018, leaving a balance of 1.7 billion.
- A valuation of the land had been undertaken.
- Investigations on-going.

She also stated that the Commission was also conducting investigations into the acquisition of two other portion of the same land as follows:

- Inquiry into allegations of irregular compensation on the LR No. 7879/4 for acquisition of a road reserve on Outering Road. The Kenya Urban Roads Authority (KURA), through the National Lands Commission (NLC). NLC had so far made a payment of Ksh. 1.4 billion to M/s Afrison Import Export Ltd and Huelands ltd, the proprietors of LR No. 7879/4. The proprietors were currently seeking a further compensation of Ksh.2.182 billion.

- Inquiries into allegations of irregular compensation on the LR No. 7879/4 for acquisition of houses by the ministry of interior and coordination of National Government for use by senior GSU officers. The Committee was informed that in the matter it was further alleged that the survey map was altered so as to overpay the owner. The government had already made payments of Kshs. 2.4 billion for the land but the title had not been issued or any entries for the government interest made in the title for LR No. 7879/4. It is also alleged that the land on which the two companies were compensated by KURA had already been acquired by the GSU.

However, the representatives of the Ethics and Anti- Corruption Commission were reluctant to provide more information to the Committee regarding the matter stating that it would compromise the integrity of the on- going investigations.

2.8 Submissions by the Principal Secretary State Department for Early Learning and Basic Education

The Committee held a meeting with the Principal Secretary, State Department for Early Learning and Basic Education on Tuesday 17th May 2018. During the meeting the Principal Secretary informed the Committee of the following:

Initiation of the compensation process. The Principal Secretary informed the Committee that the process of compulsorily acquiring land for the two schools was initiated by the National Land Commission through a letter dated 13th September 2016, in which the Commission brought to the attention of the Ministry of Education of a complaint made by Afrison Import Export Ltd and Huelands Ltd over a parcel of land that was currently occupied by Ruaraka High School and Drive Inn Primary School. The complainant alleged that the two schools had been sitting on private land measuring 13.5364 acres for 30 years without compensation.

Subsequently the National Land Commission, in a letter dated 16th March 2017, advised the Cabinet Secretary, Ministry of Education to submit a formal request for acquisition of the land to the Commission as per the provisions of section 107 (1) of the Land Act, 2012. The Cabinet Secretary made the request as advised by the Commission on 17th March 2017 vide a letter Ref No. dated 24th April 2017,

The Principal Secretary further informed the Committee that the Commission informed the Ministry that it had duly undertaken the legal processes and confirmed that the two schools occupy 13.5364 acres valued at Kshs. 3,269,040,600, inclusive of 15% statutory disturbance allowance. In this regard, the Ministry was expected to deposit the funds in the Commission's account to facilitate the acquisition.

Opinion of the Attorney General: He stated that the Ministry of Education sought the opinion of the Attorney General on 29th June 2017 attaching all documents in its possession including assessment reports of the two schools indicating that Ruaraka Secondary School was established in 1984 while Drive Inn Primary School was established in 1987. The advice of the Attorney General was received on 7th July 2017 and subsequently shared with the National Treasury on 18th July 2017.

The documents that were submitted to the Attorney General included:

- i. A claim by the school that it had been allocated the land;

- ii. A letter dated 3rd August 1984, where the Ministry of Education had written to the Commissioner of Land supporting the Company's bid to erect a private school on the same land; and
- iii. A certificate of postal search dated 8th December 2016 indicating that the land reference LR NO. 78798/4 measuring approximately 96 acres under freehold tenure is registered in the name of Afrison Import Export Ltd and Huelands Ltd as tenants in common and equal shares.

Request for funds to facilitate the compensation: The Principal Secretary stated that the Ministry of Education informed the National Treasury of the advice it had received from the National Land Commission regarding the compensation of land occupied by the two schools on 30th June 2017. The Ministry also brought to the attention of the National Treasury that it was waiting for legal advice from the Attorney General in respect of the matter.

The National Treasury authorized the Ministry of Education to spend Ksh. 1,500,000,000 on 13th November 2017 for the compulsory acquisition of the part of LR. 7879/4, pending regularization of the same expenditure in the 2017/2018 Second Supplementary Budget. The balance was to be reviewed in the 2018/2019 Budget Estimates.

Upon receiving the prerequisite documents, the Ministry of Education transferred the funds to the National Land Commission on 19th January 2018 which reflected on the latter's National Bank account on 22nd January 2018.

The National Land Commission confirmed to the Ministry of Education that the funds were disbursed to the land owners on 15th February 2018 and the Ministry requested the Commission to secure the interest of the schools since partial payments were made.

Alternative to the acquisition of the land: On whether there were alternatives to the acquisition of the land, the Principal Secretary stated that the alternative would have been to relocate the students to other schools or build new schools on alternative land. However, he emphasized that the two schools served a highly densely populated area and the right to education of the students had to be secured through acquisition of the land.

2.9 Submissions by representatives of the Governor, Nairobi City County

The Committee held a meeting with the County Executive Committee Member for Lands, Nairobi City County on Thursday 17th May 2018. During the meeting he informed the Committee of the following in respect to the matter:

Subdivision of LR. No 7879/4: He stated that the City Council of Nairobi, through a letter Ref. CPD/0644/7879/4 dated 28th March 1984 gave Ms. Drive In Estate Developers Limited a conditional surrender of 10% of the land for social amenities for subdivision to be undertaken on plot L.R NO. 7879/4. M/S Drive Estate Developers Limited rejected the conditionality of the subdivision through a letter dated 5th April, 1984 and requested for the cancellation of the scheme. This meant that the plot reverted to its position before the sub-division.

He further informed the Committee that the matter of subdivision came up later with correspondences between the office of the President and the Ministry of Lands, Housing and Urban Development requesting for excision of the portion of the plot which accommodates the General Service Unit. The

survey was done without the planning process (subdivision) and plot L.R NO. 7879/24 (G.S.U houses) measuring 15.14 hectares was hived off from the original parcel. The excision was regularized by the Nairobi City County through a subdivision done on 2nd August 2013. He added that it could be deduced that no other subdivision took place of the said plot in accordance with the processes laid down in the Physical Planning Act CAP 286 which states that a development must take place on a planned (subdivided) and surveyed plot with approved plans.

However, he contradicted himself in his oral submissions by stating that the land in question was public land without providing any evidence on the same

Approvals of the scheme for the construction of the maisonnetes on LR. No 7879: The County Executive Committee Member stated that the Nairobi City County Government could not establish approvals of the scheme by the then City Council for the construction of the maisonnetes that were built in 1981. This meant that the developer had no intention of subdividing the parcel of land and the approval for the construction of the houses may not have contained any conditions save for the provisions of internal roads, water supply and street lighting.

Establishment of Drive Inn Primary School and Ruaraka High School: The Committee was informed that the Nairobi City County Government had neither found any evidence of construction approvals for the two schools nor established any subdivision approval for the parcels of land accommodating the two institutions.

Public Participation: The County Executive Committee Member stated that the County Government of Nairobi was not involved in any inquiry proceedings by the National Land Commission during the acquisition of land for the two schools.

4.0 COMMITTEE FINDINGS

The Committee made the following findings and observations:

- (1) Section 107(1) of the Lands Act No. 6 of 2012 provides that “*whenever the national or county government is satisfied that it may be necessary to acquire some particular land under section 110, the respective Cabinet Secretary or the County Executive Committee shall submit a request for acquisition of public land to the Commission to acquire the land on its behalf.* Pursuant to the provisions of section 107(1) of the Lands Act, 2012 the Committee observed that the process of acquiring the land occupied by the two schools was initiated by the National Land Commission upon receiving a complaint from the Afrison Import Export Ltd and Huelands Ltd on alleged historical injustices. Further, although the Ministry of Education did eventually write to the Commission requesting that it does secure the interests in the land occupied by the two schools, this was done at the behest of the Commission. (See annexed letters from the National Land Commission and the Ministry of Education – Annexures III & X).
- (2) In light of paragraph (1) above, the Committee also observed that there was no evidence in terms of correspondence by the Commission to Afrison Import Export Ltd and Huelands Ltd in response to the complaint on historical injustices. There also existed no evidence of communication between the Ministry of Education and Afrison Export Import Limited either informing the Ministry of the complaint or requesting the Ministry to make a request for compulsory acquisition of land as required by the law.
- (3) Further, the Committee observed that the Commission wrote to the Ministry of Education on 13th September 2016 informing the Ministry of the complaint made by Afrison Import Export Ltd and Huelands Ltd. However, the Committee noted that it was not until five months later being on 7th February 2017 that the Ministry of Education responded to the Commission advising the Commission to go ahead and secure their interests on the land by compulsorily acquiring the said land. (See annexed letters - Annexures III & X)
- (4) The Committee also observed that it was not clear from the valuation report of the Commission on the land occupied by the two schools on what parameters or criteria other than stamp duty and the pricing of comparable properties was used by the Commission to ensure prudent use of public money as espoused in Article 201 of the Constitution in awarding Afrison Import Export Ltd and Huelands Ltd Kshs 3, 269, 040, 600 as compensation for land. (See annexed valuation report – Annex III).

- (5) Article 10 of the Constitution provides that state officers and public officers and all persons whenever any of them makes or implement public policy decisions shall be bound by the national values and principles of governance which include participation of the people. In furtherance of the objectives of public participation, section 112(1) of the Lands Act, 2012 requires the Commission at least thirty days after publishing the notice of intention to acquire land to conduct an inquiry to hear issues of propriety and claims for compensations by persons interested in the land and serve a notice of the notice on every person who appears to the Commission to be interested. The Committee observed that although the Commission presented evidence of the *Gazette* Notice, there is no evidence to show where and how the inquiry proceedings were conducted. Further, the Committee made field visits to the schools which are interested in the matter under inquiry and the schools confirmed that they were never involved or informed of the inquiry proceedings. The Committee observed that there was also no evidence to show that the Commission did serve the afore mentioned notices to the interested persons. The County Government of Nairobi also confirmed that it was not involved in any inquiry proceedings by the Commission.
- (6) The Committee also observed that there existed inconsistencies on the actual acreage of land being compulsorily acquired with the Commission submitting that the land acreage was 13.7701 acres while the documents tendered by Afrison Export Limited and the Ministry of Education indicated that the land measured 13.5364 acres revealing a 0.2337 acreage difference amounting to Kshs. 48, 142, 200 (this amount is 0.2337 multiplied by Kshs. 206 million per acre being the rate/price that was used by the Commission) additional money paid to Afrison Export Limited over and above what the Company should have been paid contrary to Article 201(d) of the Constitution which provides that public money shall be used in a prudent and responsible way. (See valuation Report and letters by Afrison Import Export Ltd & Huelands Ltd and Ministry of Education herein attached – Annexures III and X).
- (7) Further the Committee made efforts to confirm the correct acreage of the land occupied by the two schools from the acquiring body being the Ministry of Education and the Principal Secretary, State Department for Early Learning and Basic Education in a letter dated 15th May,2018 informed the Committee that the Ministry of Education was waiting for the confirmation of the actual acreage from the Ministry of Lands and Physical Planning.
- (8) The Committee also observed that the National Land Commission and the Ministry of Education failed to explore the common law doctrine of adverse possession as a means of acquiring the land noting the two schools have been occupying the land for an uninterrupted period of at least thirty-three years.

- (9) The Committee observed that although evidence was tabled to show that there was an allotment letter issued by the Commissioner of Lands supposedly on the land currently being occupied by the two schools, the Committee did not find any evidence to confirm that sub-division of the land did occur. Indeed, the Commission, the Ministry of Lands and the County Government of Nairobi confirmed that there was no sub-division that had occurred relating to the land occupied by the two schools. The Committee however observed that the only correspondences that existed on the alleged subdivision dated back to 1984 being conditional offer letter by the defunct City Council, the rejection thereof of the conditions by Afrison Export Import Limited and a letter dated 7th February 2018 by Afrison Export Import Limited seeking to know whether the cancellation did take effect which is thirty-three years later from the date the alleged cancellation took place. (See annex III)
- (10) The Committee observed that the Attorney-General opinion on the two parcels of land was advisory in nature and only to the extent that the Commission could process the acquisition of the said land in accordance with the law. The Attorney-General observed that the question as to whether the due process of law was followed by the Commission in acquiring the land lay under the purview of the Commission and not the Attorney-General. In this regard, the Committee also noted with concern that the opinion was sought by the Ministry of Education and not the Commission and it was made after gazettelement of the notice to acquire the land had been done by the Commission.
- (11) The Committee also observed with concern that the Principal Secretary Ministry of Education wrote to the Ministry of National Treasury seeking to know the budget implication of the proposed acquisition of the land occupied by the two schools prior to receiving advise from the Attorney-General. (See attached the letters – Annex X).
- (12) The Committee observed with concern that the two schools being Ruaraka Secondary School and Drive Inn Primary had occupied the land for an uninterrupted period of at least thirty-three years, infrastructure on the schools had been built up over the years following allocation of funds through the Economic Stimulus Programme, various approvals were sought for the development projects including installation of electricity transmission lines from the various government entities and yet there had been no case opposing such development or continued occupation by the schools brought by Afrison Import Export Ltd and Huelands against the schools, the Ministry of Education , the County Government or any other government entity.
- (13) Further, the Committee observed that the Physical Planning Act Cap 286 requires that whenever land is being proposed to be developed a person is required to surrender land for public utility and purpose. The Committee noted with concern that even though the

land had been subject to various development projects including the 196 Houses acquired by GSU, the Ministry of Lands and Physical Planning, Ministry of Education and the County Government failed to follow up on the surrender of the land occupied for the two public schools in furtherance of the provisions of the Act.

- (14) The Committee also observed that Afrison Import Export Ltd and Huelands failed to comply with the Physical Planning Act No. 6 of 1996 which requires a person to surrender land for public utility and purpose during development of the land in question including the 196 Houses acquired by GSU.
- (15) The Committee observed that the title for LR. No 7879/4 was jointly held by the official receiver and Messrs Harit Sheth and Co. Advocates, the advocates for the registered owner. Further, the official receiver to facilitate the issuance of a title for the land purchased by the government for the General Service Unit released the title, through a professional undertaking, to Messrs Harit Sheth and Co. Advocates. The advocates were supposed to facilitate the subdivision of the land and forward a duly executed conveyance and deed plan to the government for the 37.5 acres that had been paid for by the office of the President, which they had done, and the documents were awaiting the payment of stamp duty once the balance of the decretal sum was paid. The Committee further observed that the sum of Kshs. 150 million owed to the official receiver of Continental Credit Finance Ltd by Afrison Import Export Ltd and Huelands Ltd had not been paid despite the fact that the company had received Kshs. 4.37 billion from the government. This was mainly because the company had secured a conditional clause in the out of court settlement made with the government that stipulated that the sum was to be paid after the money owed to the company had been paid in full. Therefore, although the out of court agreement led to the reduction of award made by the court to Afrison Export Import Ltd and Huelands Ltd it disadvantaged the government in accessing ownership documents for the land it had already acquired from the company.
- (16) The Committee also observed that Afrison Import Export Ltd and Huelands had in the past been beneficiaries of compensation over acquisition of GSU land and other pieces of land portraying lack of planning and management in compulsorily acquisition of land by the government evidenced by piecemeal, incomplete and staggered acquisition of portions of LR. No. 7879/4 land for public purpose. The Committee also noted with concern that the staggered acquisition of land was evident noting the National Land Commission had during a committee meeting inadvertently tabled a valuation report by Camps Valuers indicating another pending and possible acquisition of the Chief's Camp that is within the said land. (Annex III)
- (17) In light of paragraph (14) above, the Committee also observed that although the government had paid Afrison Import Export Ltd and Huelands Ltd approximately Kshs.

4.37 billion for portions of LR. No 7879/4, no transfer of ownership has been made to the government and in particular the Ministry of Interior and Coordination of National Government has never acquired the title document for the portion of land where the 196 General Service Unit houses are located even though payments of Kshs. 64,000,000 were made to the defunct the Kenya Posts and Telecommunication.

- (18) The Committee further observed in relation to the land in question, that the National Land Commission failed to secure the interests of the government in the land compulsorily acquired in terms of the formal taking of possession of the documents of title on the land contrary to section 121 of the Lands Act, 2012. Indeed, the title documents of the 96 acres being the land where the two schools occupy, were never presented to the Committee by the National Land Commission yet the Commission had approved the payment of a total of Kshs 3, 269, 040, 600 as compensation for land and had already paid and disbursed Kshs 1, 500, 000, 000 without any title document.
- (19) The Committee also observed that although the Ethics and Anti-Corruption Commission appeared before the Committee and did make submissions, the report submitted by the EACC on the issue under investigation was not comprehensive. The Committee also did observe that the EACC had not expedited in concluding on the investigations on the alleged irregular acquisition of the land which EACC became seized of in January 2018. Additionally, the Committee also observed that EACC had been uncooperative evidenced by its failure to avail the confidential report on the matter on time as agreed. The Committee observed that the confidential report was also not comprehensive. The Committee also observed that the EACC only moved to freeze further payments to Afrison Import Export Ltd and Huelands Ltd after the money had already been diverted to other accounts by Afrison Import Export Ltd and Huelands Ltd. The Committee therefore noted that EACC failed to safeguard against loss of public funds pending the conclusion of the investigations.
- (20) Further, the Committee also observed that the Commission paid Kshs. 1, 500, 000, 000 to Whispering Palms and Company Limited and not to Afrison Import Export Ltd and Huelands Ltd following a request by the directors of Afrison Import Export Ltd and Huelands Ltd. The Committee observed with concern that although Whispering Palms and Company Limited is also owned by the directors of Afrison Export Import Limited the change of payment details was suspicious. Indeed, the Committee observed that the Managing Director of Afrison Import Export Ltd and Huelands Ltd Mr. Francis Mburu had confirmed that the change of bank details was necessitated by personal commitments the Companies had with the bank which the Committee noted was would be a decoy applied and used by Afrison Import Export Ltd and Huelands Ltd to avoid paying for liabilities to possible creditors.

- (21) The Committee also observed that evidence presented indicated that LR. No. 7879/4 belonged to Afrison Import Export Ltd and Huelands Ltd save for the contradiction that an allotment letter had been issued to Ruaraka High School by the Commissioner of Lands.
- (22) The Committee further observed that there was a deliberate lack of consultation and coordination by the National Land Commission, the Ministry of Education, the Nairobi County Government, the National Treasury and the Attorney-General's office with a view to benefit the owner and disadvantage public interest and public good.
- (23) Article 201(e) of the Constitution provides that financial management shall be responsible and fiscal reporting shall be clear. The Committee however observed that the National Treasury approved the spending of Kshs.1, 500, 000, 000 being the amount paid to Afrison Export Import Ltd and Huelands Ltd which was not provided for in the Annual Estimates but was in the second Supplementary Estimates for the 2017/18 Financial Year. The Committee observed that expenditure was foreseeable and not urgent, was made in haste and need not to have been paid hence displaying irresponsible financial management by the National Land Commission, the National Treasury and the Ministry of Education.
- (24) The Principal Secretary of the National Treasury authorized payment of public funds for compulsory acquisition of the land occupied by the two schools without request from the National Land Commission. (see annex X)


5.0 RECOMMENDATIONS

Based on the findings, the Committee recommends as follows, that -

- (1) The Chairperson, Commissioners and other officers of the National Land Commission should take personal responsibility for-**
 - (a) acting contrary to section 107(1) of the Lands Act, 2012 as the Ministry of Education made a request for compulsory acquisition of the land in question at the behest of the Commission and not on its own motion;**
 - (b) acting contrary to section 112 of the Lands Act, 2012 by failing to conduct public participation through inquiry proceedings and failure to serve notices of the proceedings on interested persons including the two schools;**
 - (c) acting contrary to section 121 of the Lands Act, 2012 by failing to secure the interests of the government on the land in terms of ensuring that the title documents in respect of the land being acquired were delivered to the Registrar of Lands and registered;**
 - (d) acting contrary to Article 201(e) of the Constitution for irresponsible financial management for recommending the payment of Kshs. 1, 500, 000, 000 as part payment for the compulsory acquired land an amount that need not to have been paid noting the Commission had not even secured the interests of government on the land in terms of having the possession of the title documents of the said piece of land; and**
 - (e) acting contrary to Article 201(d) of the Constitution for loss of public funds being Kshs. 48, 142, 200 over and above what Afrison Import Export Ltd and Huelands Ltd should have been paid and further allowing the use of public funds being Kshs. 1, 500, 000, 000 without securing the interests of the government in terms of taking possession of the title documents of the land in question.**

- (2) The Director of Criminal Investigations and the Ethics & Anti – Corruption Commission should investigate the Chairperson, Commissioners and other officers of the National Land Commission for -**
 - (a) acting contrary to section 107(1) of the Lands Act, 2012 as the Ministry of Education made a request for compulsory acquisition of the land in question at the behest of the Commission and not on its own motion;**
 - (b) acting contrary to section 112 of the Lands Act, 2012 by failing to conduct public participation through inquiry proceedings and failure to serve notices of the proceedings on interested persons including the two schools;**
 - (c) acting contrary to section 121 of the Lands Act, 2012 by failing to secure the interests of the government on the land in terms of ensuring that the title documents in respect of the land being acquired were delivered to the Registrar and registered;**
 - (d) acting contrary to Article 201(e) of the Constitution for irresponsible financial management for recommending the payment of Kshs. 1, 500, 000, 000 as part payment for the compulsorily acquired land an amount that need to have been paid**

- noting the Commission had not even secured the interests of government on the land in terms of having the possession of the title documents of the said piece of land; and
- (e) acting contrary to Article 201(d) of the Constitution for loss of public funds being Kshs. 48, 142, 200 over and above what Afrison Import Export Ltd and Huelands Ltd should have been paid and further allowing the use of public funds being Kshs. 1, 500, 000, 000 without securing the interests of the government in terms of taking possession of the title documents of the land in question.
- (3) The Director of Criminal Investigations should investigate possible collusion by Afrison Import Export Ltd and Huelands with the National Land Commission, National Treasury and the Ministry of Education including failure to subdivide the land and protect government interests in the acquisition of various portions of LR. NO. 7879/4 with an intention to fleece and swindle public funds.
- (4) The Director of Criminal Investigations should investigate the Directors of Afrison Import Export Ltd and Huelands for failure to comply with the Physical Planning Act No. 6 of 1996 which requires a person to surrender land for public utility and purpose during development of land with an intention to fleece and swindle public funds.
- (5) Following conclusion of investigations by the Director of Criminal Investigations, the Director of Public Prosecutions should prosecute any public officer or person who may be implicated or suspected as having engaged in any corrupt and illegal activities in the compulsory acquisition of the land in question.
- (6) The National Treasury should take responsibility for loss of public funds amounting to Kshs. 1, 500, 000, 000 as part payment made by the National Land Commission to Afrison Import Export Ltd and Huelands and for authorizing payment of Kshs. 1, 500, 000, 000 to Afrison Import Export Ltd and Huelands without an express request from the Ministry of Education.
- (7) The National Land Commission should immediately secure the interests of the government on the land compulsorily acquired in portions of LR. No. 7879/4 by formally taking of possession of the title documents of the said land in accordance with the provisions of section 121 of the Lands Act, 2012.

Signed..........Date. 5/6/2018.....

The Hon. Dr. Rachel Nyamai, MP
Chairperson Departmental Committee on Lands