REPUBLIC OF KENYA

THE SENATE

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TWELFTH PARLIAMENT

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

ON

PETITION ON MWAKITAU LAND OWNERSHIP DISPUTE BETWEEN MWAKITAU RESIDENTS AND ISANGAIWISHI GROUP RANCH

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List of Abbreviations/ Synonyms

1.	DCI	- Directorate of Criminal Investigations
2.	KeNHA	- Kenya National Highways Authority
3.	MOLPP	- Ministry of Land & Physical Planning
4.	NLC/Commission	- National Land Commission

PREFACE

Mr. Speaker sir,

The Standing Committee on Lands, Environment and Natural Resources is established pursuant to standing order 218(3) of the Standing Orders of the Senate. As set out in the Second Schedule, the Committee is mandated to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

Committee Membership

The Committee comprises of the following Members.

1. Sen. Paul Mwangi Githiomi, MP — **Chairperson**
2. Sen. Philip Mpaayei, MP — **Vice-Chairperson**
3. Sen. George Khaniri, MGH, MP
4. Sen. Gideon Moi, CBS, MP
5. Sen. Njeru Ndwiga, EGH, MP
6. Sen. (Dr.) Lelegwe Ltumbesi, MP
7. Sen. Issa Juma Boy, MP
8. Sen. (Arch.) Sylvia Kasanga, MP
9. Sen. Johnes Mwaruma, MP

At the sitting of the Senate held on 2nd July, 2019, the Honourable Deputy Speaker of the Senate reported to the Senate that a Petition had been submitted through the Clerk by residents of Taita Taveta County, Mwatate Sub County, Mwakitau Location regarding Mwakitau land ownership dispute between Mwakitau Residents and Isangaiwishi Group Ranch.

The salient issues raised in the Petition are as follows-

(a) The land on which over 10,000 people in Mwakitau Sub Location are occupying had its title deed given to Isangaiwishi Group Ranch and-

i. the people of Mwakitau settled there in 1920 while Isangaiwishi Group Ranch was registered in 1972 and its title deed acquired recently; and

ii. Isangaiwishi Group Ranch members are mainly from the neighbouring Bura location and have never settled in Mwakitau to either farm or keep livestock.

(b) The Isangaiwishi Group Ranch has no right to claim ownership of the Mwakitau land considering that:

i. section 7 of the Limitation of Actions Act provides that if a person has been living on private land for more than 12 years continuously and uninterrupted, the land becomes his through adverse possession; and

ii. Isangaiwishi Group Ranch never attempted to evict the citizens of Mwakitau since they settled there in 1920 to date.

(c) Isangaiwishi Group Ranch was fraudulently compensated for Mwakitau residents' parcels of land compulsorily acquired to construct Mwatate-Taveta-Holili Road instead of the individual residents of Mwakitau.

Consequently, the Petitioner prayed that the Senate-

i. hears and considers the petition;

ii. investigates the circumstances that led to the fraudulent registration of Mwakitau land as a ranch and acquisition of its title deed by Isangaiwishi Group Ranch and takes all necessary action therewith, including revoking the title deed and re-issuing it to the residents of Mwakitau;

iii. investigates the fraudulent payment of compensation for the construction of the Mwatate-Taveta-Holili Road to the Isangaiwishi Group Ranch; and

iv. provides any other measure the Senate deems fit to resolve the matters raised therein.

Pursuant to standing order 232(1) and the Second Schedule to the Standing Orders of the Senate, the Petition was committed to the Standing Committee Land, Environment and Natural Resources Committee.

Pursuant to Articles 37 and 119(1) of the Constitution, section 5(2) the Petition to

Parliament (Procedure) Act and standing order 232 of the Senate Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioner within the prescribed period.

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

The Committee proceeded to invite the Cabinet Secretary, Ministry of Lands and Physical Planning, the National Land Commission and the Taita Taveta County Government to address respective issues raised on the Petition.

ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to the Petitioners, Ms. Farida Karoney, EGH, the Cabinet Secretary in Ministry of Lands and Physical Planning, Mr. Gershom Otachi, the Chairperson of the National Land Commission and Hon. Granton G. Samboja, the Governor of Taita Taveta County Government for their submissions and contribution to addressing the issues raised in the Petition.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Standing Committee on Lands, Environment and Natural Resources on the Petition regarding Mwakitau land ownership dispute between Mwakitau Residents and Isangaiwishi Group Ranch.

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Signed: ..... **Date:** 23/6/2021

SEN. MWANGI PAUL GITHIOMI, M.P.
CHAIRPERSON, SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

CHAPTER I

INTRODUCTION

1. At the sitting of the Senate held on 2nd July, 2019, the Honourable Deputy Speaker of the Senate reported to the Senate that a Petition had been submitted through the Clerk by residents of Taita Taveta County, Mwatate Sub County, Mwakitau Location regarding Mwakitau land ownership dispute between Mwakitau Residents and Isangaiwishi Group Ranch.

2. The salient issues raised in the Petition are as follows-

(a) The land on which over 10,000 people in Mwakitau Sub Location are occupying had its title deed given to Isangaiwishi Group Ranch and-

   i. the people of Mwakitau settled there in 1920 while Isangaiwishi Group Ranch was registered in 1972 and its title deed acquired recently; and

   ii. Isangaiwishi Group Ranch members are mainly from the neighbouring Bura location and have never settled in Mwakitau to either farm or keep livestock.

(b) The Isangaiwishi Group Ranch has no right to claim ownership of the Mwakitau land considering that:

   i. section 7 of the Limitation of Actions Act provides that if a person has been living on private land for more than 12 years continuously and uninterrupted, the land becomes his through adverse possession; and

   ii. Isangaiwishi Group Ranch never attempted to evict the citizens of Mwakitau since they settled there in 1920 to date.

(c) Isangaiwishi Group Ranch was fraudulently compensated for Mwakitau residents' parcels of land compulsorily acquired to construct Mwatate-Taveta-Holili Road instead of the individual residents of Mwakitau.

Consequently, the Petitioner prayed that the Senate

i. hears and considers the petition;
ii. investigates the circumstances that led to the fraudulent registration of Mwakitau land as a ranch and acquisition of its title deed by Isangaiwishi Group Ranch and takes all necessary action therewith, including revoking the title deed and re-issuing it to the residents of Mwakitau;
iii. investigates the fraudulent payment of compensation for the construction of the Mwatate-Taveta-Holili Road to the Isangaiwishi Group Ranch; and
iv. provides any other measure the Senate deems fit to resolve the matters raised therein.

3. Pursuant to standing order 232(1) and the Second Schedule to the Standing Orders of the Senate, the Petition was committed to the Standing Committee Land, Environment and Natural Resources Committee.

LEGAL BASIS FOR PETITIONS

4. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the Senate Standing Orders.

5. Article 37 of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while Article 119(1) of the Constitution provides that *"every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation."*

6. Section 5(2) of the Petition to Parliament (Procedure) Act, provides that *a petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House*. In this regard, standing order 232 of the Senate Standing Orders provides as follows-

   232. Committal of Petitions

   (1) Every Petition presented or reported pursuant to this Part, shall stand committed to the relevant Standing Committee.

   (2) Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes.

7. Standing order 233 requires the Clerk to, within fifteen days of tabling of the report on a petition under Standing Order 232 (*Committal of Petitions*), submit a copy of the report to the petitioner or petitioners.

CHAPTER 2

CONSIDERATION OF THE PETITION

Approach taken by the Committee

1. In considering the Petition, the Committee observed that it would be important to verify the facts alleged by the Petitioners. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.

2. In this regard, the Committee received the Petition from the Petitioners through the House and further met with the Petitioners at a meeting of the Committee held on 20th November, 2019.

3. Thereafter the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning and the Chairperson of the National Land Commission, who virtually appeared before the Committee on Wednesday, 9th September, 2020.

4. The Committee further undertook a site visit on 26th March, 2021 as observed in the photos attached below.

Response by the Cabinet Secretary, Ministry of Lands and Physical Planning

Pursuant to a letter Ref: **SEN/DCS/LENR/2/2020/(19)** dated 26th May, 2020, the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning to respond to the Petition in its entirety. Based on the concerns raised the Ministry provided the following responses:

The Petitioners aver that the title deed to a piece of land in Mwakitau sub-location of Taita Taveta County measuring approximately 10,000 acres on which they have lived since 1920 was recently issued to Isangaiwishi Group Ranch. They also protest the compensation of the group ranch for the construction of Mwatate-Taveta-Holili road, claiming that the residents should have been compensated instead.

The registration of Isangaiwishi Group Ranch was as a result of the land adjudication process prescribed by the Land Adjudication Act, Cap 284. The area was declared as an Adjudication Section on June 12, 1975 vide Notice reference LA.31/35 Vol.11/114. A copy of the notice is attached to the response from the Ministry as **Annexure 3(i).**

The primary stage of demarcation and survey was completed and a notice of inspection of the register issued on March 22, 1978. **Annexure 3(ii)** of the response from the Ministry is a copy of the notice of application.

This stage gave room for inspection of the register and raising of objections. On expiry of the sixty (60) day notice, the final stage of registration followed.

On October 12, 1983 a certificate of incorporation, attached to the response from the Ministry as **Annexure 3(iii)**, was issued to the group in accordance with Land Group Representatives Act (now repealed).

A further certificate was issued in December 4, 2018 after election of another set of Group Representatives. A copy of the certificate is attached to the response from the Ministry as **Annexure 3(iv).**

Subsequently, a title deed for the land parcel number Bura/Isangaiwishi Scheme/18 measuring approximately 5992.2 hectares (14,807 acres) was issued to Isangaiwishi Group Ranch on October 25, 2018.

There was a case MISC. CIVIL APPLICATION NO. 225 OF 2000 at Mombasa High Court seeking to stop the issuance of title to Isangaiwishi Group Ranch. This application was however dismissed vide a ruling dated March 28, 2008. **Annexure 3(V)** of the response from the Ministry is a copy of the ruling.

Isangaiwishi Group Ranch therefore lawfully acquired title to the land parcel number Bura/Isangaiwishi Scheme/18.

Response by the National Land Commission

Pursuant to a letter Ref: SEN/DCS/LENR/2/2020/(19) dated 26th May, 2020, the Committee requested for written information regarding the Petition and the Committee was informed as follows:

This petition has two aspects. It raises land administration matters that are within the mandate of the Ministry of Lands and matters of compulsory acquisition which are within the mandate of the Commission. How the Tittle Deed was issued to Isangaiwishi Group Ranch can be explained by the Ministry of Lands. The Commission could however provide information on compulsory acquisition.

The Petition sought, among other things, the investigation of fraudulent payment of compensation for Mwakitau citizens 'individuals' parcels of land compulsorily acquired to construct Mwatate-Taveta-Holili road to Isangaiwishi Group Ranch.

Land acquisition for the Mwatate-Taveta-Holili (A23) road project was initiated through a request by the Kenya National Highways Authority (KeNHA) General Manager -design & construction) vide letter Ref. KeNHA/D&C/A23/Vol.3 (67) dated 24st August 2013. The notice of intention to acquire was published in Kenya Gazette notice No. 13942 of 18th October 2013.

Notice of inquiry was published in Kenya Gazette notice No. 13943 of 18th October, 2013 for land parcels listed in the notice of intention. However there were subsequent additions including the subject parcel and its inquiry was published in gazette notice no. 1174 of 26th February 2016 (copy attached).

Inquiry for the subject was slated for 16th March, 2016 at the Maktau chief's office at 9.30 a.m. The inquiry was held as scheduled and that the group ranch represented by its

officials (chairman, secretary & treasury) attended the inquiry and presented a claim to compensation. The group ranch presented a title deed for the land registered in their name.

No other interested party appeared at the inquiry to present claim to compensation and up to conclusion of the inquiry the Commission had not received any other claim on the said land. In line with provisions of Section 112 of the Land Act 2012, the Commission subsequently issued an award for the land to the group ranch who accepted the offer of compensation.

Compensation for the subject parcel was paid out in September 2019; there were no encumbrances registered against the title that could have inhibited payment nor any adverse claim against the land that had been received at the Commission by then. The following are the details of the payment.

PARCEL NO.	**REGISTERED OWNER**	**ACQD AREA (HA)**	**AWARD**
Bura/Isangaiwishi/18	Isangaiwishi Group Ranch	33.9938	28,979,545

The Commission followed the laid out legal process on compulsory acquisition in compensating the group ranch and having received no other interest or claim against the title belonging to the group ranch; the same cannot be termed as fraudulent.

Upon payment of compensation to the group ranch who were then the registered owners, there cannot be any other payment to other individuals as this would amount to double payment and imprudent use of public resources.

However, if it were to be confirmed that the group ranch was fraudulently registered as

the owners of land in 1972 and its title revoked as provided for in law, provisions of Section 116 of the land Act on payment in error would kick in – it provides that;

"If a person has received any money by way of compensation awarded for an interest in the land being acquired, either in error or before it has been established that some other person is rightfully entitled to the interest, the Commission may, by notice in writing served on that person, require that person to refund to the Commission the amount received, and the amount shall be a debt due from that person to the Commission".

Response by the Taita Taveta County Government

Pursuant to a letter Ref: GOV/TT/LND.8/NR/VOL.2/46 dated 18th May, 2021, the Taita Taveta County Government provided the Committee with the following information regarding the Petition:

Isangaiwishi Group had attempted to evict approximately 10,000 residents of Mwakitau location from what was until recently known as Isangaiwishi Group Ranch. Bura/ Isangaiwishi/18 was registered in 1984 and measures approximately 5992.2 Ha. The community challenged registration/issuance of title deed to the group in court first in 1984 and then in 1999 on grounds that the ranch was established in an area that they were residing on since 1920 without their involvement as residents of the area. In both cases the community lost the case against the group. The last time the court ruled in favor of the group ranch was in 2008 at the High Court in Mombasa (Misc. Civil Application No. 255 of 2000). To forestall the eviction, however, the County government obtained orders to stop the planned eviction until an ownership case is heard and determined. The matter is still in court.

The Mwakitau community argues that they want the areas they have occupied for over 100 years be converted to a settlement scheme and issued with individual title deeds. While the community may invoke provisions of Limitations of Actions Act on Adverse Possession, they have the option of either appealing the 2008 High Court ruling (they have ruled out this option citing the high costs involved) or taking advantage of the new window obtaining under the Community Land Act so that they become members of Isangaiwishi Community. Thereafter, being members of the Isangaiwishi, they may call a meeting of the assembly as per section 23 of the Act and pass a resolution by majority vote to subdivide the land and acquire individual titles.

In the meantime, the County government in collaboration with the Ministry of Lands and

Physical Planning is implementing the Community Land Act, 2016 which will ensure that Mwakitau residents became members of Isangaiwishi Community. On 5th March, 2021 residents convened the Assembly meeting and elected Community Land Management Committee. The next step shall be to formalize the arrangements by registering the Isangaiwishi Community. Mwakitau community will then automatically become members of Isangaiwishi as per the Community Land Regulations, 2017, Paragraph 4 of the Third Schedule.

The County Government's position is that—

(i) it acknowledges the fact that the people of Mwakitau have lived in the area for years as a Community and, therefore, are part and parcel of Isangaiwishi and must be recognized and registered as members of Isangaiwishi community land with all rights; and that

(ii) Mwakitau town settlement was established before the first World War and must not be interfered with.

It is clear from the onset that the Mwakitau Community was not consulted in either the registration of Isangaiwishi Group Ranch or the issuance of the title to the property they occupied. This is notwithstanding the provisions of Article 10 which binds "all State organs, State officers, public officers and all persons". The Committee notes that the process of registration of Isangaiwishi Group Ranch and the issuance of the title to the Mwakitau land was in contravention of Article 10 of the Constitution.

It has not escaped the mind of the Committee that Isangaiwishi Group Ranch was first registered on 12th October, 1983 under the now repealed Land (Group Representatives) Act, 1968. The Committee however notes that Isangaiwishi Group Ranch was subsequently re-registered under the Community Land Act on 4th December, 2018, more than eight (8) years after the promulgation of the current Constitution.

The Community land Registrar who registered Isangaiwishi Group Ranch and the Lands registrar who issued the title over the Mwakitau land ought to have consulted the Community on the ground before finalizing their respective processes. This is especially so noting that the property in question is community land which ought to be used for the benefit of the community. Registering any interest over such land without consulting the community, and at the very least the people occupying such land, is, if nothing else, dereliction of duty.

The Committee further notes that documents provided by the Petitioners indicate that on 24th June, 2020, the Mwakitau community applied to the Registrar of Community Land to have its interest on the Mwakitau land registered. MoLPP did not apprise the Committee of the progress of this application.

The Committee also notes that documents provided by the Petitioners indicate that the issues raised in the Petition were on 21st July, 2020 referred to the National Land Commission and also referred to the Commission on Administrative Justice. Thereafter on 10th October, 2020, the Commission on Administrative Justice referred the matter to the National Land Commission. The National Land Commission did not apprise the Committee of the progress of this reference.

2. On the prayer that the Senate investigates the fraudulent payment of compensation for the construction of the Mwatate-Taveta-Holili Road to the Isangaiwishi Group Ranch:

response from the Cabinet Secretary seems to suggest that there were no objections raised to the registration of Isangaiwishi Group Ranch.

The Cabinet Secretary, MoLPP informed the Committee that upon registration of Isangaiwishi Group Ranch, title deed for the land parcel number Bura/Isangaiwishi Scheme/18 measuring approximately 5992.2 hectares (14,807 acres) was subsequently issued to Isangaiwishi Group Ranch on 25th October, 2018. The Committee notes that the title deed could not have been issued after Isangaiwishi Group Ranch was registered as the title deed was issued on 25th October, 2018, more than a month before Isangaiwishi Group Ranch was registered (4th December, 2018).

The Committee noted that the ruling of Justice J.K. Sergon in Miscellaneous Civil Application 225 of 2000 (Republic V Commissioner of Lands & Another Exparte Edward Lenjo Musamuli & 5 Others [2008] eKLR) indicated that there was evidence that objections were raised, heard and determined before the title to the subject property was issued. The Committee did not however get copies of these objections and their determinations from MoLPP. It is therefore not clear whether the Petitioners were afforded an opportunity to object to the issuance of the title.

It is not contested that the Petitioners and their fellow Mwakitau Residents have occupied the Mwakitau Land for more than a century. The Committee therefore takes judicial notice that the Mwakitau Community has occupied the Mwakitau land for more than one hundred (100) years. The Mwakitau Community should therefore be involved in the registration of interest in the land occupied by them.

The Committee noted that public participation is one of the key tenets of the Constitution. Article 10(1) of the Constitution states that the national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—

(a) applies or interprets this Constitution;
(b) enacts, applies or interprets any law; or
(c) makes or implements public policy decisions.

Thereafter Article 10(2) of the Constitution states that the national values and principles of governance include patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people.

CHAPTER 5

COMMITTEE OBSERVATIONS

In accordance with the Prayers of the Petitioner the Committee observes as follows:

1. On the prayer that the Senate investigates the circumstances that led to the fraudulent registration of Mwakitau land as a ranch and acquisition of its title deed by Isangaiwishi Group Ranch and takes all necessary action therewith, including revoking the title deed and re-issuing it to the residents of Mwakitau:

   Committee Observations

   The Committee notes that the residents of Mwakitau have occupied the Mwakitau Land for more than one hundred (100) years, having settled there around 1920. The residents currently comprise of more than two thousand (2000) households with a population of more than ten thousand (10,000) people. The residents of Mwakitau have had occupation and quiet possession of the Mwakitau land since they first settled on the land more than a century ago.

   The Committee also notes that the Mwakitau land contains one (1) secondary school, three (3) primary schools, one (1) special school/unit, four (4) pre-schools, one (1) health centre, eight (8) churches and one (1) mosque all being utilized by the residents of Mwakitau. The first school in the area was established back in 1947, the first health centre (a dispensary) was constructed back in 1950 while the first church (Mwakitau Catholic Church) was established in the 1950s.

   The Committee further notes that the residents of Mwakitau recognize each other's rights to their respective occupied land under a system locally referred to as *mwano kwa mwano* (each household clearly knows the boundaries of their land and that of the other residents on a traditionally accepted basis).

   The Committee notes that land registry documents indicate that the Isangaiwishi Group Ranch was duly registered in accordance with the now repealed Land (Group Representatives) Act, 1968 (on 12th October, 1983) and the Community Land Act, 2016 (on 4th December, 2018). The Committee observes that whereas the Cabinet Secretary, MoLPP indicated that room for inspection of the register and raising of objections was availed for a period of sixty (60), she did not indicate whether there were any objections raised to the registration of Isangaiwishi Group Ranch. The

from interfering through entry, use or occupation of any part of the suit property.

h) *A declaration that the act of forceful takeover of the Petitioners' Land breaches the right to own property as guaranteed in Article 4 of the Constitution.*

i) *Any other relief this Honourable Court would be pleased to issue.*

j) *Costs of the Petition.*

8. The upshot of the above is that a discussion of this Petition before the hearing and determination of the two matters pending in court will be subjudice. Secondly, the Petitioners are the same people in whose interest the County government of Taita Taveta has filed **ELC CASE NO. 37 OF 2021 – MOMBASA.** Thirdly, the issues raised relate to the right of ownership which ultimately will lead to maintaining the current register of Isangaiwishi Group Ranch or altering the same. This last issue is the central matter for consideration in **ELC CONSTITUTIONAL PETITION NUMBER 14 OF 2021 – MOMBASA.** The petitioners are free to join both cases and explain their grievances.

9. In view of the issues raised above, Isangaiwishi Group Ranch which is law abiding takes the view that parallel proceedings should not be allowed. In that case the Advocates advised Isangaiwishi Group Ranch not to participate in the proposed hearing of this petition until the two pending cases are heard and determined. To discuss the Petition as drawn we will require the discussing of issues raised in the cases set out above.

suit, the County Government of Taita Taveta is purporting to move the court under the provision of Section 47(1)(2) of the Community Land Act and Regulations 26(1) - (8) of the Community Land Act 2017. The County Government purports to act as a trustee for all the communities living in Taita Taveta County.

7. On 11/3/2021, Isangaiwishi Group Ranch filed **ELC CONSTITUTIONAL PETITION NO. 14 OF 2021 – MOMBASA.** That petition is pending in court for determination of the following prayers;

   a) *A declaration that the membership of the Petitioner set out in Schedule A of this petition shall constitute the only membership of the ISANGAWISH GROUP to be constituted under section 47 of the TLCA by the 8th Respondent to won, manage and control the plot title Number BURA/ISANGAIWISH/19 & 20.*

   b) *A declaration that the decision to donate 1000 acres of the new entity under Section 47 of the TLCA and Section 8 of the Land Act, the current officials of the petitioner have the authority to manage, control and protect the assets of the petitioner including plot title number BURA/ISANGAIWISH/19 & 20 and the interests thereof.*

   c) *A declaration that the decision to donate 1000 acres of the plot Title number BURA/ISANGAIWISH 19 & 20 by the petitioner done on 4th July, 2014 was lawful.*

   d) *A mandatory order do issue compelling the Land Control Board, Taita Taveta to issue the petitioner with a consent to transfer the 1000 acres to the 9th respondent.*

   e) *A declaration that the actions of the 2nd Respondent in inviting outsiders into the suit property amounts to an express breach of chapter 6 of the Constitution.*

   f) *A Mandatory conservatory order in the form of orders of Mandamus do issue compelling the 1st , 4th , 5th and 6th respondents to evict all squatters currently occupying portion of plat title numbers BURA/ISANGAIWISH/19/& 20 fortwith.*

   g) *An order of injunction do issue restraining the 10th – 16th Respondents by themselves, servants and or agents or any other none-member of the petitioner*

Response by Isangaiwishi Group Ranch

Pursuant to a letter Ref: JM/1/109 dated 14th June, 2021, Messrs. Munyithya, Mutugi, Umara and Muzna Company Advocates who claimed to represent Isangaiwishi Group Ranch provided the Committee with the following information regarding the Petition:

1. The petition consists of falsehoods deliberately crafted by the petitioners. Had the Petitioners stuck to the truth, no petition would have been filed before the Senate.

2. The area referred to in the Petition was declared an adjudication section on 12/6/1975. At the same time Isangaiwishi Group Ranch was incorporated under the Land (Group Representatives) Act 1968. After the adjudication process was over in 1978, the District Land Adjudication officer Taita Taveta District gave notice dated 22/3/1978 declaring the adjudication process as complete. Thereafter objections were raised and each one of them dealt with but one objector proceeded on appeal to the Minister. This was finally decided in 1999.

3. Isangaiwishi Group Ranch thereafter followed and was issued with a Title Deed.

4. Sometimes in the year 2000 a group of people from a neighbouring area filed **HC MISC CIVIL APPLICATION NO. 225 OF 2000 – MOMBASA.** This group was challenging the ownership rights of Isangaiwishi Group Ranch relying on the same historical issues. The matter was heard and after careful deliberations the suit was dismissed with costs to Isangaiwishi Group Ranch.

5. Sometimes in 2020, Isangaiwishi Group Ranch noted that there were squatters who had moved into their land claiming the rights to occupy and utilize their land. Isangaiwishi Group Ranch served them with notice under Section 152E of the Land Laws (Amendment) Act, 2016 and gave all the invaders duration of four months with effect from 1/7/2020 – 31/10/2020. That notice was served by way of advertisements in the Taifa Leo newspaper of 25/6/2020 and Daily nation of the same date 25/6/2020.

6. On 24/2/2021 the County Government of Taita Taveta filed **ELC CASE NO. 37 OF 2021 MOMBASA** to restrain Isangaiwishi Group Ranch from implementing the notice mentioned in Clause 5 above. Together with the main suit, the County obtained a temporary court order restraining Isangaiwishi Group Ranch from charging, selling, leasing or further sub-dividing our client's land. Isangaiwishi Group Ranch has filed a defence against that suit and the same is set for mention on 29th June 2021. In this

Committee Observation

The Committee notes that according to the National Land Commission, the land acquisition for the Mwatate-Taveta-Holili (A23) road project was initiated through a request by KeNHA whereafter a notice of intention to acquire was published in Kenya *Gazette* notice No. 13942 of 18th October 2013 and notice no. 1174 of 26th February 2016.

The Committee further notes that the inquiry for the subject land was held on 16th March, 2016 at the Maktau Chief's office from 9.30 a.m. and only Isangaiwishi Group Ranch made representations through its officials (chairman, secretary & treasury). Isangaiwishi Group Ranch also presented a title deed for the land registered in their name, which buttressed their claim for compensation. NLC informed the Committee that no other interested party appeared at the inquiry to present claim to compensation and up to conclusion of the inquiry the Commission had not received any other claim on the said land. NLC therefore issued an award for the land to Isangaiwishi Group Ranch on that premise. Compensation for the subject land was paid out in September 2019 and there were no encumbrances registered against the title that could have inhibited payment nor any adverse claim against the land that had been received by NLC by then.

The Committee appreciated that NLC may have acted in good faith having received no other claim for the subject property for compensation. The Committee however noted that it was not clear whether NLC fulfilled all its obligations under section 107 of the Land Act. Section 107 (5) and (7) provide as follows—

(5) Upon approval of a request under subsection (1), the Commission shall publish a notice to that effect in the Gazette and the county Gazette, and shall deliver a copy of the notice to the Registrar and every person who appears to the Commission to be interested in the land.

(7) For the purposes of sections 107 to 133, interested persons shall include any person whose interests appear in the land registry and the spouse or spouses of any such person, as well as any person actually occupying the land and the spouse or spouses of such person.

The Committee notes that the persons occupying the subject land ought to have been notified of the compulsory acquisition before awarding and compensating the registered owners. Any action done without following that process was done in violation of the Land Act and should therefore be void.

That being said and noting that funds for compensation have already been paid, the property compulsorily acquired and the road completed, the Committee observes that it may not be possible to make any positive recommendation on the issue of compensation. The issue of compensation has been overtaken by events and is subject to the doctrine of latches.

3. On any other measure the Senate deems fit to resolve the matters raised:

Committee Observation

The Committee notes that for the matter to be fully settled, the interest of the Mwakitau community to the Mwakitau land ought to be recognized and protected under the Community Land Act.

The Committee also notes that it was not clear which members of the Isangaiwishi Group Ranch were, considering that residents occupying the Mwakitau land are not listed as members of the ranch.

The Committee further notes that it invited Isangaiwishi Group Ranch to a meeting of the Committee held on 16th June, 2021 but, vide a letter dated 14th June, 2021, Advocates for Isangaiwishi Group Ranch informed the Committee that the matter was in court and that they had informed their client not to honour the Committee invitation. Isangaiwishi Group Ranch did not attend the meeting of the Committee as invited.

The Committee notes that the Petitioners are not party the first case quoted by Advocates for Isangaiwishi Group Ranch which was initiated by the County Government of Taita Taveta against Isangaiwishi Group Ranch. The Petitioners cannot therefore be prejudiced by actions of the parties to that court action.

The Committee also notes that in the second case quoted by Advocates for Isangaiwishi Group Ranch, it is Isangaiwishi Group Ranch that initiated the matter against the Petitioners and the case should therefore not prejudice the rights of the Petitioners. In any event, Isangaiwishi Group Ranch ignored the invitation of the Committee and it is only logical that the Committee completes its consideration of the Petition which has been pending since July, 2019.

The Committee notes that whereas it was bound to invite the Isangaiwishi Group Ranch to respond to the allegations made against them, it is not mandated to listen to them after they refused to appear before the Committee. The Committee accorded Isangaiwishi Group Ranch an opportunity to be heard and therefore fulfilled its obligations with respect fair hearing. Isangaiwishi Group Ranch was at liberty to accept or reject the invitation and it elected to reject the Committee invitation.

The Committee also notes that the court cases currently pending in court were initiated in February and March of this year (2021) whereas the petition had been referred to the Senate in July 2019. The Committee determined that it was only fair that it finalizes the Petition noting that the court cases were initiated almost two years after the Petition had been referred to the Committee.

CHAPTER 6

COMMITTEE RECOMMENDATIONS

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders recommends as follows in accordance with the Prayers of the Petitioner—

1. On the prayer that the Senate investigates the circumstances that led to the fraudulent registration of Mwakitau land as a ranch and acquisition of its title deed by Isangaiwishi Group Ranch and takes all necessary action therewith, including revoking the title deed and re-issuing it to the residents of Mwakitau:

   Committee Recommendation

   The Committee recommends that the Community lands Registrar reviews the registration of Isangaiwishi Group Ranch with a view to ensuring that effective public participation is undertaken, especially on residents occupying the land claimed to be communally owned by the ranch. The Community lands Registrar should take into account the application by the Petitioners for recognition of their rights under the Community Land Act and report back to the Senate within ninety (90) days of the tabling of this report.

   The Committee further recommends that the Chief Land Registrar reviews the issuance of the title to the Mwakitau land to Isangaiwishi Group Ranch with a view to revoking it to ensure that effective public participation is undertaken, especially on residents occupying the land in question, before title to the property is issued and report back to the Senate within six (6) months of the tabling of this report.

   Noting that the Petitioners also referred this matter to the National Land Commission who have the mandate to investigate historical land injustices, the Committee recommends that the National Land Commission inquires into the matter and reports back to the Senate within six (6) months from the tabling of this report.

2. On the prayer that the Senate investigates the fraudulent payment of compensation for the construction of the Mwatate-Taveta-Holili Road to the Isangaiwishi Group Ranch:

Committee Recommendation

The Committee recommends that going forward and whenever undertaking a compulsory acquisition process, the NLC ensures that the acquiring authority identifies the person(s) in actual occupation of the property being acquired in accordance with section 107(4)(b) of the Land Act.

The Committee also recommends that the NLC verifies the information submitted to it under section 107(4)(b) of the Land Act and further that it itself identifies the person(s) in actual occupation of the property being acquired when conducting an inquiry under section 112 of the Land Act. NLC should ensure that any person(s) so identified are given adequate notice and are fully engaged in the inquiry as to compensation under the said section 112 of the Land Act.

3. On any other measure the Senate deems fit to resolve the matters raised:

Committee Recommendation

The Committee recommends that the DCI investigates the list of members of the Isangaiwishi Group Ranch to verify whether the persons listed exist and whether they are part of the community that has been in occupation or communal ownership of any land claimed by the ranch.

The Committee further recommends that the Senate amends the Community Land Act to provide a detailed public participation procedure for the registration of communities and interest in community land to ensure that all members of the community are consulted before any action that affects community land is taken.

APPENDICES

ANNEX I: MINUTES OF COMMITTEE MEETINGS

MINUTES OF THE 40TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 21ST JUNE, 2021 VIA ZOOM ONLINE PLATFORM AT 12.15 PM.

MEMBERS	PRESENT
1. Sen. Mwangi Paul Githiomi, MP	- **Chairperson**
2. Sen. Philip Mpaayei, MP	- **Vice Chairperson**
3. Sen. George Khaniri, MGH, MP	- Member
4. Sen. Boy Issa Juma, MP	- Member
5. Sen. Ndwiga Peter Njeru, EGH, MP	- Member
6. Sen. (Dr.) Lelegwe Ltumbesi, MP	- Member
7. Sen. Mwaruma Johnes, MP	- Member

	ABSENT WITH APOLOGY
1. Sen. Gideon Moi, CBS, MP	- Member
2. Sen. Sylvia Kasanga, MP	- Member

IN ATTENDANCE

A. SECRETARIAT

1. Ms. Veronica Kibati	- Clerk Assistant
2. Mr. Victor Bett	- Clerk Assistant
3. Mr. Mitchell Otoro	- Legal Counsel
4. Ms. Clare Kidombo	- Research Officer
5. Mr. Wilson Bosmet	- SAA
6. Ms. Lucianne Limo	- Media Relations
7. Mr. James Kimiti	- Audio Recording

MINUTE SEN/SCLENR/226/2021: PRELIMINARIES

The meeting was called to order at 11.24 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/227/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Philip Mpaayei, MP and seconded by Sen. Mwaruma Johnes, MP as follows –

1. Preliminaries – *Prayer*
2. Adoption of the Agenda
3. **Adoption of the Draft Report of the Standing Committee on Lands, Environment and Natural Resources on the Petition regarding Mwakitau land ownership dispute between Mwakitau Residents and Isanga Iwishi Group Ranch;**
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLENR/228/2021: ADOPTION OF THE DRAFT REPORT OF THE STANDING COMMITTEE ON LANDS, ENVIRONMENT AND NATURAL RESOURCES ON THE PETITION REGARDING MWAKITAU LAND OWNERSHIP DISPUTE BETWEEN MWAKITAU RESIDENTS AND ISANGA IWISHI GROUP RANCH

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders, hereby **adopted its report** with the following recommendations in accordance with the Prayers of the Petitioner—

1. On the prayer that the Senate investigates the circumstances that led to the fraudulent registration of Mwakitau land as a ranch and acquisition of its title deed by Isanga Iwishi Group Ranch and takes all necessary action therewith, including revoking the title deed and re-issuing it to the residents of Mwakitau:
   Committee Recommendation

   The Committee recommends that the Community lands Registrar reviews the registration of Isanga Iwishi Group Ranch with a view to ensuring that effective public participation is undertaken, especially on residents occupying the land claimed to be communally owned by the ranch. The Community lands Registrar should take into account the application by the Petitioners for recognition of their rights under the Community Land Act and report back to the Senate within ninety (90) days of the tabling of this report.

   The Committee further recommends that the Chief Land Registrar reviews the issuance of the title to the Mwakitau land to Isanga Iwishi Group Ranch with a view to revoking it to ensure that effective public participation is undertaken, especially on residents occupying the land in question, before title to the property is issued and report back to the Senate within six (6) months of the tabling of this report.

   Noting that the Petitioners also referred this matter to the National Land Commission who have the mandate to investigate historical land injustices, the Committee recommends that the National Land Commission inquires into the matter and reports back to the Senate within six (6) months from the tabling of this report.

2. On the prayer that the Senate investigates the fraudulent payment of compensation for the construction of the Mwatate-Taveta-Holili Road to the Isanga Iwishi Group Ranch:
   Committee Recommendation

   The Committee recommends that going forward and whenever undertaking a compulsory acquisition process, the NLC ensures that the acquiring authority identifies the person(s) in actual occupation of the property being acquired in

accordance with section 107(4)(b) of the Land Act.

The Committee also recommends that the NLC verifies the information submitted to it under section 107(4)(b) of the Land Act and further that it itself identifies the person(s) in actual occupation of the property being acquired when conducting an inquiry under section 112 of the Land Act. NLC should ensure that any person(s) so identified are given adequate notice and are fully engaged in the inquiry as to compensation under the said section 112 of the Land Act.

3. On any other measure the Senate deems fit to resolve the matters raised:
   Committee Recommendation

   The Committee recommends that the DCI investigates the list of members of the Isanga Iwishi Group Ranch to verify whether the persons listed exist and whether they are part of the community that has been in occupation or communal ownership of any land claimed by the ranch.

   The Committee further recommends that the Senate amends the Community Land Act to provide a detailed public participation procedure for the registration of communities and interest in community land to ensure that all members of the community are consulted before any action that affects community land is taken.

The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Philip Mpaayei, MP respectively.

MINUTE SEN/SCLENR/229/2021: ANY OTHER BUSINESS
There was no other business discussed.

MINUTE SEN/SCLENR/230/2021: DATE OF NEXT MEETING
The meeting was adjourned at 1.05 PM and the next meeting was to be held on 23rd June, 2021 at 11.10 am.

Signed:..... Date: **23/6 /2021**

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

ANNEX II: SUBMISSIONS BY STAKEHOLDERS

(Attached separately)

MINUTES OF THE 14TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON FRIDAY, 26TH MARCH, 2021AT 11.00AM IN TAITA TAVETA COUNTY.

MEMBERS	PRESENT
1. Sen. Mwangi Paul Githiomi, MP	- **Chairperson**
2. Sen. Philip Mpaayei, MP	- **Vice Chairperson**
3. Sen. Mwaruma Johnes, MP	- Member
4. Sen. Ndwiga Peter Njeru, EGH, MP	- Member
5. Sen. Boy Issa Juma, MP	- Member
	ABSENT WITH APOLOGY
1. Sen. George Khaniri, MGH, MP	- Member
2. Sen. Sylvia Kasanga, MP	- Member
3. Sen. Gideon Moi, CBS, MP	- Member
4. Sen. (Dr.) Lelegwe Ltumbesi, MP	- Member

IN ATTENDANCE

A. MINISTRY OF LANDS AND PHYSICAL PLANNING (MoLPP)

1. Mr. Stephen Maina Ngugi	- County Coordinator, Taita Taveta
2. Mr. Sego Manyarkiy	- Land Registrar, Taita Taveta

B. NATIONAL LAND COMMISSION (NLC)

1. Prof. James Tuitoek	- Commissioner, NLC

C. COUNTY GOVERNMENT OF TAITA TAVETA

1. Hon. Mwandawiro Mghanga	- CEC, Lands Taita Taveta County
2. Mr. Reuben Ngeti	- Chief Officer, Lands Taita Taveta

D. SECRETARIAT

1. Mr. Victor Bett	- Clerk Assistant
2. Mr. Yussuf Shimoy	- Clerk Assistant
3. Mr. Crispus Njogu	- Clerk Assistant
4. Mr. Mitchell Otoro	- Legal Counsel
5. Mr. Stephen Maru	- Sergeant-At-Arms
6. Ms. Lucianne Limo	- Media Relations Officer
7. Ms. Dorine Mbui	- Secretary
8. Josephine Galsaraco	- Office Assistant
9. Ms. Millicent Ratemo	- Audio Recording

MINUTE SEN/SCLENR/70/2021: PRELIMINARIES

The meeting was called to order at 11.13 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/71/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Boy Issa Juma, MP and seconded by Sen. Philip Mpaayei, MP as follows –

1. Preliminaries - *Prayer*
2. Adoption of the Agenda;
3. Petition on Mwakitau land ownership dispute between Mwakitau Residents and Isanga Iwishi Group Ranch
4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLENR/72/2021: PETITION ON MWAKITAU LAND OWNERSHIP DISPUTE BETWEEN MWAKITAU RESIDENTS AND ISANGA IWISHI GROUP RANCH;

Presentation by Residents of Mwakitau

The Committee was informed as follows:

- That there was no Group Ranch that was initially registered at the time;
- The two groups Mwakitau and Isangaiwishi are not comfortable with each other;
- The Petitioners complained of harassment during Community Land Registration; and
- Isanga Iwishi were paid compensations during road construction.

Presentation by MoLPP

The representative from MoLPP, Mr. Ngugi informed the meeting as follows;
According to their records held at the land office Isanga Iwishi Group Ranch was registered as parcel No. Bura/IsangIwish/18 measuring approximately 5992.2 Hectares, under map sheet 189/3. A chronology of the transactions is as follows.

1. The adjudication and demarcation of the subject land was completed on 5th April, 1978, under the Group Representative Act (now repealed).
2. A register for the Group Ranch was opened on 18th April, 1984.
3. The registered Group Ranch had approximately 2000 registered members.
4. In the year 2000 members of the Maktau Location petitioned the High Court through petition No.225 of 2000 in the High Court at Mombasa seeking for orders to compel the Commissioner of Land and the Chief Land Registrar to resurvey the entire Maktau Location and establish a settlement Scheme.
5. They further alleged that the members of IsangaIwish Group Ranch deliberately excluded them during registration.
6. The Hon. Justice Sergon on 28th March, 2008 dismissed the mooton on the grounds that the remedy sought by the petitioners was only available through private law, not public law.
7. That the Community Land Act has come into effect and repealed the Group Representative Act.
8. Section 47 (1) of the Community Land Act states that in relation to land held under the Land Group Representatives together with the Communities they represent shall be registered as a Community in accordance with the provision of this Act.
9. That the third schedule of the community shall consist of;

a. Members whose name are in the register of members of the Community upon registration; or
b. New members born and married in the community; or
c. A member who has inherited an interest from a person whose name is in the register of members; or
d. (i) The Community Land Management Committee members all agree and
e. The Community Land Management Committee members decision is confirmed at a community assembly; or
f. A court so orders.

10. That the Maktau people should either persue private law through court Under Sec 7 of the limitation of Actions Act or the County Government peruses A.D.R on their behalf.

The Committee noted the following;

- That from the meeting it emerged that the reason Isanga Iwishi was paid compensation was because they already hold a title deed for the contested land;
- The registrar of lands and the community land registrar should spearhead the process of identifying the correct membership of the Community occupying the Mwakitau land;
- Adequate public participation was not done and should have been done at the beginning before registration.
- The Makitau people hesitant to accept Alternative Dispute Resolution (ADR) as a form of ensuring they get their request.

MINUTE SEN/SCLENR/73/2021: ANY OTHER BUSINESS

There was no other business discussed.

MINUTE SEN/SCLENR/74/2021: DATE OF NEXT MEETING

The meeting was adjourned at 12.45 pm and the date of the next meeting was to be was to follow thereafter at a different venue.

Signed:..... Date: **29/6 /2021**

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

MINUTES OF THE 24TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 12TH MAY, 2021 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS	**PRESENT**
1. Sen. Philip Mpaayei, MP	- **Vice Chairperson**
2. Sen. (Dr.) Lelegwe Ltumbesi, MP	- Member
3. Sen. Mwaruma Johnes, MP	- Member
	ABSENT WITH APOLOGY
1. Sen. Mwangi Paul Githiomi, MP	- **Chairperson**
2. Sen. Gideon Moi, CBS, MP	- Member
3. Sen. Boy Issa Juma, MP	- Member
4. Sen. Sylvia Kasanga, MP	- Member
5. Sen. Ndwiga Peter Njeru, EGH, MP	- Member
6. Sen. George Khaniri, MGH, MP	- Member

IN ATTENDANCE

A. STAKEHOLDERS

i. NATIONAL LAND COMMISSION (NLC)

1. Mr. Gerishom Otachi	- Chairperson, NLC
2. Ms. Getrude Nguku	- V. Chair, NLC
3. Prof. James Tuitoek	- Commissioner, NLC
4. Ms. Esther Murugi	- Commissioner, NLC
5. Mr. Kennedy Alela	- PA Chair, NLC

ii. MINISTRY OF LANDS AND PHYSICAL PLANNING (MoLPP)

1. Hon. Alex Mbiu	- CAS, MoLPP
2. Mr. Kamau Joram	- Lands Administrator
3. Ms. Caroline Menin	- Legal Officer
4. Mr. Nyankeruma	- MoLPP

iii. COUNTY GOVERNMENT OF TAITA TAVETA

1. Gov. Granton Samboja	- Governor, Taita Taveta County
2. Ms. Majala Mlagui	- Dep. Gov. TaitaTaveta County
3. Mr. Mwandawiro Mghanga	- CECM Lands & Physical Planning
4. Mr. Reuben Ngeti	- Chief Officer, Lands & Physical Planning

B. PETITIONERS

1. Mr. Thomas Tole
2. Mr. Alfred Mnjama

C. SECRETARIAT

1. Mr. Victor Bett	- Clerk Assistant
2. Mr. Mitchell Otoro	- Legal Counsel
3. Mr. James Kimiti	- Audio Recording

MINUTE SEN/SCLENR/130/2021: PRELIMINARIES

The meeting was called to order at 11.24 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/131/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. (Dr.) Lelegwe Ltumbesi, MP and seconded by Sen. Mwaruma Johnes, MP as follows –

1. Preliminaries – *Prayer*
2. Adoption of the Agenda
3. Petition submitted by the Residents of Mkamenyi Village in Voi sub-county of Taita Taveta County, the alleged encroachment of land belonging to Mkamenyi residents by Voi Point Limited in Taita Taveta County;
    - Submissions by Ministry of Lands and Physical Planning
    - Submissions by National Land Commission
    - Submissions by County Government of Taita Taveta
4. Petition submitted by the Residents of Msambweni Village in Voi sub-county of Taita Taveta County concerning the alleged impending evictions of Msambweni residents by a private company;
    - Submissions by Ministry of Lands and Physical Planning
    - Submissions by National Land Commission
    - Submissions by County Government of Taita Taveta
5. Petition on Mwakitau land ownership dispute between Mwakitau Residents and Isanga Iwishi Group Ranch; and
    - Submissions by Ministry of Lands and Physical Planning
    - Submissions by National Land Commission
    - Submissions by County Government of Taita Taveta
6. Petition on the alleged delayed adjudication and the settlement of squatters on Machungwani land in Taita Taveta County after expiry of lease.
    - Submissions by Ministry of Lands and Physical Planning
    - Submissions by National Land Commission
    - Submissions by County Government of Taita Taveta
7. Any other Business;
8. Date of the next meeting;
9. Adjournment.

MINUTE SEN/SCLENR/132/2021: <u>PETITION SUBMITTED BY THE RESIDENTS OF MKAMENYI VILLAGE IN VOI SUB-COUNTY OF TAITA TAVETA COUNTY, THE ALLEGED ENCROACHMENT OF LAND BELONGING TO MKAMENYI RESIDENTS BY VOI POINT LIMITED IN TAITA TAVETA COUNTY</u>

- **<u>Submissions by Ministry of Lands and Physical Planning</u>**

According to our records, the land in question measures approximately 1953 hectares and is situated within Voi town in Taita Taveta County. A chronology of ownership of the parcel is as follows-

i. The subject land was originally LR No. 4637 registered as Grant No. C.R. 8814. It was granted to the British East Africa Corporation Limited in 1923 for a term of 99 years from January 1, 1923 to January 1, 2022. The grant was initially issued for agricultural purpose only but the user was later extended to include a petroleum service station.

ii. The Grant was transferred to Voi Sisal Estates Limited on August 6, 1947 and on March 25, 2011 it was surrendered to the Government to pave way for its extension of the term. (A copy of the surrendered Grant C.R. 8814 is annexed herewith marked **Annexure 7**).

iii. The Grant was extended for a further term of 99 years commencing January 1, 1993 at an annual rent of Kshs.353.795 (revisable). The parcel was registered as Grant No. C.R. 51725, LR No. 28683 measuring approximately 1953 Hectares. The land was granted to be utilized for agricultural purposes and residence for the grantee. (A copy of the Grant No. C.R. 51725 is annexed marked **Annexure 8**).

iv. On February 23, 2012 the land was transferred to Voi Plantations Limited for USD.1,855,670 and charged to Diamond Trust Bank of Kenya Limited for Kshs.300,000,000 and USD.5,000,000. On December 29, 2017 a further charge to Diamond Trust Bank of Kenya Limited for Kshs.150,000,000 was registered.

v. On December 29, 2017 a second further charge for Kshs.1,079,737,000 and a third further charge for Kshs.1,189,511,500 was registered in favour of Diamond Trust Bank of Kenya Limited. A fourth further charge for Kshs.4,218,875,000 was registered on December 29, 2017.

vi. On October 1, 2014 the National Land Commission awarded Voi Plantations Limited Kshs.359,531,100 in respect of the land acquired for the development of the Mombasa-Nairobi Standard Gauge Railway. The area of land acquired measured approximately 14.9621 Hectares. (A copy of the Award is marked **Annexure 9**).

vii. On February 13, 2019, all the charges were discharged and the land transferred to Voi Point Limited for Kshs.4,000,000,000. A charge to Diamond Trust Bank of Kenya Limited for Kshs.4,000,000,000 and a further charge to the same bank for Kshs.800,000,000 were registered on the same date. A copy of the official search is marked **Annexure 10**.

Honourable Chair,

viii. On February 6, 2020, the County Government of Taita Taveta approved the subdivision of the land into 28 portions of various sizes for agricultural use. A copy of the notification of approval (**Annexure 11**) and certificate of subdivision (**Annexure 12**) are annexed herewith. The subdivision was approved on the condition that the company was to surrender Plot No. 25 (L.R. No. 28683/27) measuring approximately 13.68 Hectares for Mkamenyi Squatter Settlement as per the copy of the provisional approval marked **Annexure 13**. Voi Point Limited accepted the conditions of the provisional approval as shown in the copy of the acceptance letter marked **Annexure 14**.

ix. On February 27, 2020 new Certificates of Title were issued for L.R. Nos. 28683/4 to 28683/31 the resultant subdivisions of L.R. No. 28683.

x. The Charge in favour of Diamond Trust Bank of Kenya Limited was registered against all the resultant subplots of L.R. No. 28683 apart from L.R. No. 28683/27 that the bank issued a discharge.

xi. On June 25, 2020, the County Government of Taita Taveta approved the subdivision and change of user of L.R. No. 28683/9 into 52 subplots (A copy of the notification of approval (**Annexure 15**). The subdivision was conditional upon surrender of 10% of the total acreage for public utility and use. The subdivision was also approved by the Voi Land Control Board as shown in **Annexure 16**.

Honourable Chair,

L.R. No. 28683/27 measuring approximately 35 acres is the portion that Voi Point Limited reserved for the settlement of the squatters. According to our records the plot is still r
egistered under Voi Point Limited. Given that this land is private land, we advise that the squatters to engage Voi Point Limited on their grievances.

Further Questions:

i) **Explanation on the current status of the lease for Voi Point Limited, given the ongoing subdivision of the land into small parcels implying change of use for the land**

In the report submitted on February 24, 2021, the Ministry reported that the County Government of Taita Taveta approved the subdivision of the land L.R. No. 28683 into 28 portions of various sizes for agricultural use on February 6, 2020. The subdivision was approved on the condition that Voi Point Limited was to surrender Plot No. 25 (L.R. No. 28683/27) measuring approximately 13.68 Hectares for Mkamenyi Squatter Settlement. Voi Point Limited accepted the conditions of the provisional approval. New Certificates of Title were issued for L.R. Nos. 28683/4 to 28683/31 the resultant subdivisions of L.R. No. 28683 On February 27, 2020.

It was also reported that on June 25, 2020, the County Government of Taita Taveta approved the subdivision of L.R. No. 28683/9 into 52 subplots. The subdivision was conditional upon surrender of 10% of the total acreage for public utility and use.

Honourable Chair

I wish to add that the County Government of Taita Taveta also approved the subdivision of L.R. No. 28683/12 (22 subplots) and L.R. No. 28683/20 (147 subplots) on June 25, 2020. The subdivisions were conditional upon surrender of 10% of the total acreage for public utility and use.

Copies of the PPA 2 forms, Land Control Board consents, approvals by the Ministry and other relevant correspondence for the subdivisions are marked **annexures 20.**

Voi Point Limited is yet to present to the Ministry the deed plans for all the sub-plots to facilitate preparation of the title documents.

ii) **Relevant documentation with attachments on the approval of the change of user from agricultural land to commercial land**

Honourable Chair,

The approvals obtained from the County Government were for the subdivisions only. The County Government has not given approval for change of user on any of the sub plots. We had erroneously reported that an approval for change of user had been granted for L.R No. 28683/9.

iii) **Provide the transfer documents and correspondence between the Ministry of Lands and Physical Planning, the County Government of Taita Taveta and Voi Point Limited**

Honourable Chair,

As earlier indicated, Voi Point Limited is yet to present to the Ministry the deed plans for the sub plots to facilitate preparation of the title documents for the transfers, if any.

iv) **Proposals on how to assist the Petitioners in obtaining more land noting that twenty-eight (28) families living within Voi Point Limited were allocated thirty-five (35) acres of land**

Honourable Chair,

In the meeting with the Committee on February 24, 2021, the Ministry undertook to refer the matter to the Land Settlement Fund Board of Trustees for consideration of acquisition of additional alternative land for settlement of the squatters. We shall report on the progress once the Board convenes.

- **Submissions by National Land Commission**

a) Explanation on the circumstances that led the Commissioner for Lands to change the conditions of lease;

On the above subject matter, National Land Commission is unable to explain the circumstances that led to variation of the lease conditions because the records are held by the Ministry of Lands and Physical Planning who are in a better position to explain the same.

b) Submit relevant documentation and evidence of correspondence that led to the change of the lease conditions

Based on the response to (a) above, the commission has no documentary evidence in support of the variation to the lease conditions

c) Proposals on the best way of assisting the people of Msambweni to get back their land.

The people of Msambweni can negotiate with the land owner perhaps using a government Arbitrator such as National Land Commission to chart a better way that will yield a win win situation for both parties.

- **Submissions by County Government of Taita Taveta**

Background

The basis of Mkamenyi community's petition is that they are victims of historical injustice. Evidence of community's residence on the land are ancient graves,

dwellings and artefacts that point to human habitation on the said land for over 100 years (the community has resided on the land since 1890). Currently, the entire Mkamenyi land has been encapsulated by what is known as Land Registration No. 28683 measuring approximately 4800 Acres. The owner being Voi Plantations Ltd (Voi Point Ltd).

When Voi Plantations Ltd. lease expired in 1993, (original number being L/R No. 4637) it was expected that the land would revert back to the community. Having failed to obtain approval for lease renewal from the then Municipal Council of Voi, the Plantation obtained extension for the lease in a manner that is believed to be irregular. Never the less, the community has continued to reside on their land as squatters. Recently Voi Point Ltd (current owners of the land) offered to allocate the community 35 Acres of land, which they later on, owing to pressure from the community and the government, increased to 150 Acres, which, again is not what the community is asking for.

The community's prayer is that Voi Point Ltd. allocates them at least 2000 Acres. It is also the community's prayer that the entire 4800 Acres will ultimately be returned to them as the rightful owners of the land.

County Government's position

i. There is need for thorough investigations into the circumstances leading to renewal of lease on L/R No. 4637 (original number) and the recent subdivision and sale of Land Registration No. 28683 (new number).
ii. Voi Point Ltd should allocate the people of Mkamenyi at least 2000 Acres pending the outcome of investigations on matters under caption (i) above.

The Committee resolved as follows:

- *Invite the Management of Voi Point Limited;*
- *Invite the Directorate of Criminal Investigations to give the status of investigations into the irregularities that were allegedly raised by the County Government of Taita Taveta on the aforementioned parcel of land.*
- *allegations raised by the County Government where they informed the Committee that the County Government had made a report to the Directorate of Criminal Investigations concerning irregularities that had taken place during the process of renewal of lease on Land Registration Number 4637 (original number) and the recent subdivision and sale of Land Registration Number 28683 (new number).*
- *The Chair further issued a directive that the Ministry of Lands and Physical Planning should forthwith withhold further subdivision being done on the said parcel of Land until the Committee completes its investigation.*

MINUTE SEN/SCLENR/133/2021: PETITION SUBMITTED BY THE RESIDENTS OF MSAMBWENI VILLAGE IN VOI SUB-COUNTY OF TAITA TAVETA COUNTY CONCERNING THE ALLEGED IMPENDING EVICTIONS OF MSAMBWENI RESIDENTS BY A PRIVATE COMPANY;

- **Submissions by Ministry of Lands and Physical Planning**

The subject parcel of land is situated within Voi Township and borders Ndara A adjudication section and Kaloleni Majengo Squatter Upgrading Scheme. The parcel is registered at the Mombasa Land Registry under the Registered Titles Act, Cap. 281 *(repealed)* as L.R No. 1956/506 C.R. No 23979 on Survey plan No. 107124 measuring approximately 54.26 hectares.

This parcel was allocated to Bata Shoe Company Limited who intended to establish a shoe factory on the land, and was issued with title deed on April 30, 1993. Bata Shoe Company later sold the parcel to Sparkle Properties Limited at a consideration of Kshs.12,000,000. The transfer was lodged on March 21, 2011 and a new title issued to sparkle properties limited as the proprietor (**Annexure 17**).

The proprietor upon receiving title to the land discovered that squatters had moved in and constructed residential houses, they also prevented the owner from taking possession or accessing the property. This prompted the company to move to the Environment and Land Court at Mombasa, Civil Case No.265 of 2013 (Sparkle properties Limited -vs- Johana Ngai & 8 Others)

On January 27, 2020 the court rendered Judgment on the case as follows-

a) Permanent injunction restraining the defendants whether acting by themselves; their employees, agents and/or servants and/or through any other manner whatsoever interfering with the suit property to unit L.R 1956/506.
b) Mandatory injunction compelling the defendants to demolish and or pull down structures erected on the suit property and to give vacant possession to the plaintiff.
c) That there be a permanent injunction restraining the defendants and/or their agents to allow them to occupy or construct the unoccupied space and proceed with construction forthwith
d) General damages for trespass awarded at Ksh.150,000 payable by each defendant to the plaintiff giving a total sum of Kshs.1,050,000 with interest from the date of filing suit until payment is made in full.
e) Costs of the suit awarded to the plaintiff.

The issues raised in the instant petition were adequately canvassed in the suit. **(Annexure 18)**

Further Questions;

i) **Explanation on the circumstances that led the Commissioner of Lands into changing the conditions of the lease**
ii) **Submit relevant documentation and evidence of correspondence that led to the change of the lease conditions**
iii) **Proposals on the best way of assisting the people of Msambweni to get back their land**

Honourable Chair,

A response to the petition was presented to the Committee in the meeting held on February 24, 2021. The response is listed as item no. 5 on Page 11 in our report dated February 24, 2021 marked **annexure 1**.

Honourable Chair,

In response to Questions **(i) and (ii)** I wish to respond as follows;

The subject parcel was originally Government land. The Commissioner of Lands allocated it to Bata Shoe Company Limited and was registered on April 30, 1993 as CR 23979. A copy of the Grant is marked **annexure 18**.

The conditions for the lease are contained in the Grant. The relevant conditions of the lease are the Special Conditions; No. 2 on development of the property within 24 months of registration of the Grant; No. 5 on the user for the property and Nos. 9 & 10 restricting transfer of the property unless Special Condition No. 2 is fulfilled.
The Commissioner of Lands gave consent for the transfer of the property to Sparkle Properties Limited despite Special Condition No. 2 being unfulfilled. Bata Shoe Company transferred the property to Sparkle Properties Limited vide a transfer lodged on March 21, 2011.
The question of the propriety of the title held by Sparkle Properties Limited has been subject of litigation in Environment and Land Court, Mombasa, Civil Case No. 265 of 2013. The Court considered the circumstances of the transfer with regard to the Special Conditions Nos. 2, 9 and 10 and upheld title as per the judgment marked **annexure 19**.
Honourable Chair, in response to **Question (iii),** I wish to submit as follows;
The Ministry has noted the plight of the Petitioners who are facing imminent evictions. We shall engage the Land Settlement Fund Board of Trustees to consider their case for resettlement.

- **Submissions by National Land Commission**

Honourable Chair, the Commission wishes to respond as follows:

a) **Explanation on who was compensated for the aforementioned parcel of land compulsorily acquired by Kenya Railways, during the construction of the Standard Gauge Railway, providing the amount compensated;**
Msambweni village was one of the residential areas of Voi town that were affected by land acquisition for the Construction of Nairobi – Mombasa Standard Gauge Railway (phase 1) pursuant to a request by Kenya Railways Corporation. The section affected lie near and almost parallel to the Nairobi – Mombasa road South of Voi town.

The village is part of the land L.R. NO. 1956/506 registered in the name of Sparkle properties limited but which initially was owned by Bata Shoe Company hence popularly known as Bata area.

The notice of intention to acquire land for the project was published in Kenya Gazette notice No. 4096 20th June, 2014. Inquiry was held as scheduled on 28th August 2014 at Voi County Commissioner's Office. The registered owner of the Land appeared at the inquiry and presented their claim to compensation for the Land. At the same time, Msambweni residents who were in occupation presented their claim to compensation for land and improvements. While the ownership of improvements was determined on the ground for the respective developers/occupants, no ownership documents were presented for land.

The subject parcel was listed in a subsequent addendum vide Gazette notice no. 5040 and its inquiry was published in gazette notice no. 6205 of 5th September, 2014. The

area acquired out of the subject parcel is **16.893 ha** for both the railway line and part of the Voi station.

However, during the inquiry it became evident that there was an ongoing Court case between the registered land owners and the occupants of the land. This was listed as ELC civil suit no 265 of 2013; Sparkle Properties Limited Vs Johana Ngai and others.

In 2020 the Commission received a Court ruling confirming that Sparkle properties limited were the rightful owners of the disputed parcel pursuant to which the Commission issued an award of **Kshs.192, 015,974.00.**

Upon conclusion of the inquiry in line with section 113 of the Land Act 2012, the Commission subsequently issued awards for interests determined on the land and improvements. However, payment for land has not been done pending conclusion of the Court case. Awards for the improvements were issued, accepted and paid for and a list of the persons compensated is as follows;

#	PARCEL NO.	PAYEE	AMOUNT	KRC PAYMENT
1	BATA	JACOB KARUTI IMUNYA	908,040.00	Payment 001
2	BATA	FREDRICK NJUMWA NYAMBU	922,300.00	Payment 001
3	BATA	GLADNESS WAKIO MSAFIRI	745,775.00	Payment 001
4	BATA	GRACE WANJALA MWADIME	1,518,862.50	Payment 001
5	BATA	FESTUS KATITU BAYA	74,750.00	Payment 001
6	BATA	ELIZABETH MARGRET KIMBAYA	215,280.00	Payment 001
7	BATA	JAMILA WAKIO ALI	1,948,445.00	Payment 008
8	BATA	HENRY MBOCE NJUGUNA	51,750.00	Payment 001
9	BATA	WALTER KALENDO	1,856,560.00	Payment 003
10	BATA	EVANSON MWACHIA MALOMBO	498,180.00	Payment 001
11	BATA	JASPHER PETER TATUA MAMBORI	866,122.50	Payment 001
12	BATA	ASHA MWAKE NDOLONGA	397,440.00	Payment 001
14	BATA	JOHNSON WAKISE MWANJALA	268,812.00	Payment 001
15	BATA	SAIDI MWALUMA NDOLONGA	23,000.00	Payment 001
16	BATA	ADIJA NDUNDA NDOLONGA	386,400.00	Payment 001
17	BATA	FATUMA CHAO NDOLONGA	1,245,450.00	Payment 001
18	BATA	HAMISA KALELA NYOKA	1,303,065.00	Payment 001
19	BATA	WILSON MWANDOE	182,160.00	Payment 001
20	BATA	ABADIAH MAKANYO MWANGOO	432,860.00	Payment 001
21	BATA	HAMFREY BUNYALI KESEKWA	811,842.50	Payment 001

22	BATA	JACKTON MWAWASI WAMADA	1,311,000.00	Payment 001
23	BATA	KASSIM MUNYIKA	712,080.00	Payment 001
25	BATA	FESTUS MAGHANGA	742,325.00	Payment 001
26	BATA	BERNARD SHAKI MWAPULA	354,545.00	Payment 001
27	BATA	HEMEDI MWAKULOMBA HAMISI	367,540.00	Payment 001
28	BATA	HAMISI M.MWAKICHONDA	537,050.00	Payment 008
29	BATA	BAKARI MWALIMU NYOKA	658,605.00	Payment 001
30	BATA	HALIMA MALISO	560,970.00	Payment 017
31	BATA	KHADIJA MALISO	321,540.00	Payment 008
32	BATA	MUSA MWAMBURI MALISO	1,577,800.00	Payment 008
33	BATA	ABASI KIMBIO MALISO	74,980.00	Payment 001
34	BATA	HANIVA MASHAKA MAGANGA	373,750.00	Payment 001
35	BATA	HAMISI KILUNCHU IDDI	363,400.00	Payment 001
36	BATA	COLIN MZEE MWAFUGA	278,300.00	Payment 004
37	BATA	ALOISE JUMA WERE	182,390.00	Payment 001
38	BATA	MUSA MWAMBURI MKWALE	1,028,330.00	Payment 001
39	BATA	RAMA MWALIMU KALELA	1,074,100.00	Payment 001
40	BATA	EDITH MWAKABA	292,675.00	Payment 001
41	BATA	JOSEPH MWAKSHIN LEO	274,160.00	Payment 001
42	BATA	SANDRA MWARABU	1,630,470.00	Payment 001
43	BATA	VERITY WINIFRED MKABILI	115,000.00	Payment 004
45	BATA	MATANO KATEMBO	3,251,855.00	Payment 003
46	BATA	RUSSIANAH NAFULA NYANGE	51,290.00	Payment 004
47	BATA	ROSE ELEEN WANJALA	2,222,375.00	Payment 001
48	BATA	JOEL SIO MANAMBO	156,227.50	Payment 001
49	BATA	ZACHARIA M. MWALUDA	28,750.00	Payment 001
50	BATA	JULIUS MTWANGUO KIMONGE	113,850.00	Payment 001
51	BATA	ISAAC JEREMIAH MBOGO	2,798,295.00	Payment 001
52	BATA	NAHASHON KISOCHI HARIDON	2,778,400.00	Payment 003
53	BATA	KASYOKI SYULU	1,758,120.00	Payment 001
54	BATA	SYLVESTER MAGHANGA MUGENDI	1,122,515.00	Payment 001
55	BATA	BEATRICE MBATHA MTEPE	40,250.00	Payment 001
56	BATA	JOHN MBURU WACHIRA	62,560.00	Payment 001
57	BATA	OMAR MWAMBOLE MWALUMA	1,017,405.00	Payment 001
58	BATA	JIMNAH THIONGO KARIUKI	1,247,750.00	Payment 001
59	BATA	ANNA MESI MBASHU	23,000.00	Payment 001
60	BATA	MARK MWAURA KINUTHIA	23,000.00	Payment 005
61	BATA	JOHN MWAKATINI TUGU	1,467,745.00	Payment 001

62	BATA	EMMANUEL HAMISI MBOGA	5,324,270.00	Payment 001
63	BATA	PATRIC WANDANA	369,150.00	Payment 001
64	BATA	SCOLAH MASHAKA CHAU	868,020.00	Payment 001
65	BATA	ERNEST MWAKIO	2,141,990.00	Payment 001
66	BATA	ELIZABETH ANYANGO PALO	1,470,275.00	Payment 001
67	BATA	ERIC WAFULA OKUMU	443,440.00	Payment 001
68	BATA	KENYOLD WANYAMA	40,250.00	Payment 001
69	BATA	BICKSON MBWANGI MWAKUDUA	304,520.00	Payment 001
71	BATA	AMINA WAUDA LAMECK	1,523,865.00	Payment 001
72	BATA	MADINA MAPEM ETHOKON KIRIAM	507,437.50	Payment 001
73	BATA	PAUL NJOROGE	3,510,835.00	Payment 001
74	BATA	JENIPHER MESI NYAMBU	1,751,500.00	Payment 001
75	BATA	RAPHAEL SHUMA	27,500.00	Payment 001
76	BATA	MARY ADHIAMBO MANGO	892,170.00	Payment 005
77	BATA	MWANAISHA ABDALLAH MOHAMED	2,452,375.00	Payment 001
78	BATA	KHAMISI JUMA FADHILI	1,869,555.00	Payment 001
79	BATA	JAPHET KIMBIO MWANGANYI	1,528,350.00	Payment 001
80	BATA	SALIM MOHAMED YUNIS	2,007,900.00	Payment 001
81	BATA	HARRISON MAHUTHU MIRANJI	611,167.50	Payment 001
82	BATA	SHABAN MALISO MWAMBURI	2,589,800.00	Payment 001
83	BATA	JEREMIAH MBINGU	237,590.00	Payment 001
84	BATA	HAMILTON MBOGO	929,660.00	Payment 003
86	BATA	ELIAS KIMWAGA MTIGO	588,167.50	Payment 001
87	BATA	VALLERY MBORI WAMAZA	277,840.00	Payment 001

b) If compensation has not been done, then the payment be held until the dispute has been sorted out;

The Commission issued awards for interests determined on the land but none was paid for the land pending conclusion of the Court case. However awards for improvements on the land were issued and paid for. Compensation is yet to be paid out to the land owner; this is undergoing due diligence and receipt of funds for disbursement to be done. It is important to note that this dispute having been processed in Court, payment can only be stopped if there are further Court orders on the same or a stay. The Commission is yet to receive any of these

C) Explanation on the possibility of using Settlement Fund Trustees (SFT) in attempting to resolve the impasse affecting the people of Msambweni.

The right to shelter is enshrined in article 53 (1) of the Constitution of Kenya and so is the protection of right to property in article 40 (1). These appear to be competing

rights in the instant petition. If the right to property were to be upheld and enforced, the Government may opt to cushion its citizens through the Settlement Fund Trustee through the Ministry of Lands and Physical Planning.
However, only the Board of Trustees for the Land Settlement Fund(LSF) can comment on the possibility of using the fund to resolve the impasse affecting the people of Msambweni in Voi.

- **Submissions by County Government of Taita Taveta**

Background
Msambweni neighborhood in Voi hosts approximately 3500 people. Just like in Mkamenyi, residents of Msambweni are victims of historical injustice and institutional malfeasance. The land the residents of Msambweni reside on was initially occupied by their kin as farmland. The land was, in the late 1970s, allocated to Bata Shoe Company for purposes of establishing a shoe making factory with strict conditions that the land should not be sold, transferred or its use changed.

Other than failing to put up the factory, Bata Shoe Company sold the land to a private company, **Sparkle Properties Ltd**, in contravention of conditions accompanying the letter of allotment. It is the private company (Sparkle Properties Ltd) that obtained eviction orders from high court in 2020 so as, not only to evict Msambweni residents, but also to be paid Ksh 1,050,000/= (One Million, Fifty Thousand Shillings only) in compensation by the hapless residents.

Be it as it may, this is no longer a Land administrative or management issue, rather it is a legal matter that can only be dealt with legally-through the courts. Being a legal matter, the most promising remedy is for the community is to appeal the Court's decision. Once the court sets aside the orders, it will then be possible for new evidence (of technical nature which was not considered by the Court) to be adduced in order to defeat the earlier ruling. The other alternative, though unpopular, is for the community to mobilize resources of their own and buy the land from the company. However, the most convenient (with justification) option is for the government to acquire the land from the current registered owner and settle the residents.

County Government's position

i. The residents of Msambweni cannot and must not be moved out. It is too late in the day for the title holders to claim the land. The residences have settled on the land for decades, put up permanent dwellings, public utilities such as schools, social halls, places of worship, etc. It will be immoral to evict the residents.

ii. The land was acquired from the residents fraudulently. The residences had donated the land to Bata Shoe company to build a shoe factory in the area. The shoe factory was never built. So, the residences have a right to reposes their ancestral land. That is what they are trying to do-to reclaim the land from fraudsters.

The Committee resolved as follows:

- *That the Petitioners should urged to first launch an appeal in court then the other subsequent processes can follow.*

MINUTE SEN/SCLENR/134/2021: PETITION ON MWAKITAU LAND OWNERSHIP DISPUTE BETWEEN MWAKITAU RESIDENTS AND ISANGA IWISHI GROUP RANCH;

- **Submissions by County Government of Taita Taveta**

Background

Isanga Iwishi Group had attempted to evict approximately 10,000 residents of Mwakitau location from what was until recently known as Isanga Iwishi Group Ranch. Bura/ Isanga Iwishi/18 was registered in 1984 and measures approximately 5992.2 Ha. The community challenged registration/issuance of title deed to the group in court first in 1984 and then in 1999 on grounds that the ranch was established in an area that they were residing on since 1920 without their involvement as residents of the area. In both cases the community lost the case against the group. The last time the court ruled in favor of the group ranch was in 2008 at the High Court in Mombasa (Misc. Civil Application No. 255 of 2000). To forestall the eviction, however, the County government obtained orders to stop the planned eviction until an ownership case is heard and determined. The matter is still in court.

The Mwakitau community argues that they want the areas they have occupied for over 100 years be converted to a settlement scheme and issued with individual title deeds. While the community may invoke provisions of Limitations of Actions Act on Adverse Possession, they have the option of either appealing the 2008 High Court ruling (they have ruled out this option citing the high costs involved) or taking advantage of the new window obtaining under the Community Land Act so that they become members of Isanga Iwishi Community. Thereafter, being members of the Isanga Iwishi, they may call a meeting of the assembly as per section 23 of the Act and pass a resolution by majority vote to subdivide the land and acquire individual titles.

In the meantime, the County government in collaboration with the Ministry of Lands and Physical Planning is implementing the Community Land Act, 2016 which will ensure that Mwakitau residents became members of Isanga Iwishi Community. On 05th March, 2021 residents convened the Assembly meeting and elected Community Land Management Committee. The next step shall be to formalize the arrangements by registering the Isanga Iwishi Community. Mwakitau community will then automatically become members of Isanga Iwishi as per the Community Land Regulations, 2017, Paragraph 4 of the Third Schedule.

County government's position

i. The government acknowledges the fact that the people of Mwakitau have lived in the area for years as a Community and, therefore, are part and parcel of

Isangaiwishi and must be recognized and registered as members of Isangaiwishi community land with all rights.

ii. Mwakitau town settlement established before the first World War must not be interfered with.

MINUTE SEN/SCLENR/135/2021: PETITION ON THE ALLEGED DELAYED ADJUDICATION AND THE SETTLEMENT OF SQUATTERS ON MACHUNGWANI LAND IN TAITA TAVETA COUNTY AFTER EXPIRY OF LEASE;

- **Submissions by Ministry of Lands and Physical Planning**

According to our records, the land is registered as L.R No.5827 (I.R 1056). It is situated in Taveta Sub-County in Taita Taveta County and measures approximately 2970 Acres.

The parcel was first registered in the name of East African Estates Limited on February 26, 1925 on a 99-year lease with effect from January 1, 1914. The parcel has been transferred severally overtime. It was last transferred to Basil Criticos on February 23, 2010. The lease expired on January 1, 2013. A copy of the title is marked **annexure 13.**

The Ministry is aware an application for the renewal of lease has been lodged with the National Land Commission **(annexure 14).** In light of the foregoing, the issues raised by the Petitioners are best handled by the National Land Commission and the Taita Taveta County Government in line with the provisions of Section 13 of the Land Act, 2021 and the Land Regulations, 2017.

- **Submissions by National Land Commission**

3.1 (a) Explanation and relevant documentation on the current status of the lease for Machungwani Farm and whether there have been efforts by the Previous Lessee to renew the Lease.

3.2 Appearance by NLC before the Senate on April 7, 2021

Hon Chair, the National Land Commission appeared before the Senate Standing Committee on Land on April 7, 2021 and gave the following response with respect to the above petition;

"The Commission will seek to establish the status of the lease with the Ministry of Lands and Physical Planning to determine the way forward. Possible reservation of the land for settlement may be recommended to the Settlement Fund Trust if the expiry of the lease is confirmed and the Conditions in section 13 of the Land Act (relating to pre-emptive rights) have been complied with."

3.3 Request by the Senate on April 7, 2021

After the presentation, the Senate asked the Commission to provide detailed information with respect to the Status of the lease for this land.

Hon Chair we provide the following history and chronology of the events regarding the status of the lease of LR No 5827.

3.4 Available records show that LR No. 5827 measuring 2970 acres was registered in the name of Basil Criticos under leasehold tenure for 99 years from January 1, 1914 **(Annex 1 and Annex 2)**. Therefore, the lease expired on January 1, 2013.

3.5 On November 20, 2012 Walker Kontos advocates for Basil Criticos applied to the Town Council of Taveta for extension of lease on LR No 5827 by filing the relevant forms for Development permission **(Annex 3).** Incidentally, in February 8, 2012 the Government through the Permanent Secretary in the office of the Deputy Prime Minister and Minister of local Government had directed County Councils to **"stop processing of land leases until the National Land Commission, and the appropriate County Government mechanisms are in place" (Annex 4).** There appears to have been no activity on this matter until 2014.

3.6 On October 1, 2014 the Deputy Governor and CEC Lands, Taita Taveta County wrote to the County Assembly (Ref Way forward on Parcel Land ref. Number 5827 - Taveta owned by Basil Criticos) giving directions which in substance recommended non-renewal of the lease but allocating it to the those in occupation. The letter also acknowledged that Basil Criticos occupied 45.96 Ha **(Annex 5).** The County Assembly agreed with the directions given by the County Government as indicated in a letter dated June 30, 2020 from Clerk of the County Assembly of Taita Taveta **(Annex 6).** The letter indicates that the resolution of the County Assembly was passed on December 4, 2014.

3.7 Petition Civil Case No. 576 of 2012.
In a Judgement by Justice E O Obaga dated March 12, 2020; paragragh 11 states that **"On 1st April 2018, the County Government of Taita Taveta held a meeting where the issue of renewal of the petitioner's lease was deliberated upon and approved. A notification of approval of the extension was subsequently issued on 17th April 2019 and a letter written on the same day to the National Land Commission stating that the County Government had no objection to renewal of the lease" (Annex 7).**
A copy of the minutes of the above referred meeting are annexed **(Annex 7a).**

3.8 On April 17, 2018 the CECM in charge of Lands, Environment and Natural Resources, Taita Taveta wrote to the Commission partly stating that **"We recommend the renewal of the parcel of land L.R. No. 5827 approximately 2970 acres in Machungwani area in Taita Taveta" (Annex 8)**. Attached to the referred letter was FORM P.P.A.2 **(Annex 9).** A follow-up letter by Walker Kontos was made in February 2020 which is the basis of the ground report referred to in paragraph 3.9 (b) below.

3.9 (b) Status of the persons currently farming and residing in the aforementioned parcel of Land
In July 2020, NLC prepared a ground status report of the parcel and the findings are summarized below.

3.10 A large section of the parcel lies on the right hand side as one travels along the murrum road heading towards Kimorigo area. A small section is on the left hand side extending up to the Machungwani water canal near Kiwalwa. **There are semi-permanent residential developments and temporary structures which appear to have been constructed in the last 5-7 years**. The more developed area lies between the Eldoro-Mschekesheni junction up to the water canal in Kiwalwa. There are temporary farm boundaries made by the encroachers. The main crops found on the farm include oranges, bananas, mangoes, beans cassava and coconut. Irrigation water is obtained from the Machungwani water canal. The marshy/swampy area is found midway between Kiwalwa and Kimorigo is scarcely built due to flooding in the wet season but used to graze livestock in the dry season.

3.11 There is an old staff camp and an office near Kiwalwa which was built by the immediate lease holder. It is alleged that the camp was abandoned in sometimes in 2013 after members of the public invaded the land after expiry of the lease. The lease holder has availed approximately 100 acres to the prisons department for farming. The department uses it to grow maize, tomatoes, kales and fish farming.

3.12 Status and way forward

a) The renewal of lease for LR No 5827 is pending at the National Land Commission has not been processed. In considering the application for renewal of lease, the Commission will take into account the provisions of section 13 of the Land Act 2012.
b) The Ministry of Lands and Physical Planning may also provide more information on this land based on the records in their possession.

- **<u>Submissions by County Government of Taita Taveta</u>**

Background

Machungwani (Land Parcel L. R/No. 5827) had a 99 years lease (from January 1914) which expired on January 2013. An application for renewal of lease on Land Parcel L/R No. 5827 was submitted to the County government sometimes in 2014. The government then, by way of an advisory, sought comments from the County Assembly, which upon debate on 04th December, 2014, resolved that the lease should not be renewed. The assembly recommended that the land reverts back to government by way of reversion as per county department of land's advisory.

However, due to the inconclusive, contradictory and inconsistent nature of the advisory, the process could not be concluded and, as such, predisposed the lease renewal process to manipulative actions. As it were, the advisory gave room to underhand dealings in the lease renewal process. While agreeing that Machungwani Estate was a volatile situation, the advisory recommended that any decision entered must be **in secret** and that the decision of the County Assembly must be relayed to the National Land Commission under **confidential cover**. The N.L.C. was advised **not to make public** pronouncements of its decision.

While the advisory proposed formation of committee comprising of, among others, political leaders, local residents, County and Provincial Administrators and the technical committee of the Lands Sector, to spearhead acquisition and adjudication of

the land, it didn't follow through this proposal to conclusion. At the same time the advisory did not clarify the reversion procedure and those responsible for its initiation. In the end these decisions were never communicated to the National Land Commission for action, thus the delays in settling the squatters.

It was until June,2020 when a formal communication was submitted to the County Assembly for review. The County Assembly communicated its earlier decision (resolution of 2014) to the National Land Commission on 30th June, 2020.

Ultimately, the legal mandate on Land Adjudication and Settlement rests with national government Ministry of Lands and Physical Planning and to some extent National Land Commission and not the County government. The county government's role is facilitative. Once we receive a communication from The National Land Commission on the way forward, we shall take necessary action. The County government is ready to facilitate and fast track adjudication/settlement process.

County Government's position

i. The lease on Land Parcel L. R/No. 5827 should not be renewed.

ii. The people have settled on the land for over 20 years, invested their time and resources on the farms making Machungwani the food basket of Taita/Taveta and the coastal region at large. It is only fair, therefore, that they are allocated the farms.

The Committee resolved as follows:

- *That since the County Government has recalled its previous communication to the NLC regarding the renewal of the lease, then the inconsistencies and contradictions be clearly spelt out for the benefit of the NLC as it freshly considers the renewal of the Lease for the People of Machungwani.*

MINUTE SEN/SCLENR/136/2021: ANY OTHER BUSINESS

There was no other business discussed.

MINUTE SEN/SCLENR/137/2021: DATE OF NEXT MEETING

The meeting was adjourned at 2.18 pm and the date of the next meeting was to be held on thereafter.

Signed:..... Date: **30/6 /2021**

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

MINUTES OF THE 38TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNESDAY, 16TH JUNE, 2021 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS	**PRESENT**
1. Sen. Mwangi Paul Githiomi, MP	- **Chairperson**
2. Sen. Philip Mpaayei, MP	- **Vice Chairperson**
3. Sen. (Dr.) Lelegwe Ltumbesi, MP	- Member
4. Sen. Mwaruma Johnes, MP	- Member
	ABSENT WITH APOLOGY
1. Sen. Gideon Moi, CBS, MP	- Member
2. Sen. George Khaniri, MGH, MP	- Member
3. Sen. Boy Issa Juma, MP	- Member
4. Sen. Sylvia Kasanga, MP	- Member
5. Sen. Ndwiga Peter Njeru, EGH, MP	- Member

IN ATTENDANCE

A. PETITIONERS

1. Mr. Thomas Tole
2. Mr. Denis Shole
3. Mr. Mwambogho Mcharo
4. Mr. Pascal Mtula
5. Mr. Alfred Mnjama

B. SECRETARIAT

1. Ms. Veronicah Kibati	- Principal Clerk Assistant
2. Mr. Victor Bett	- Clerk Assistant
3. Mr. Mitchell Otoro	- Legal Counsel
4. Mr. James Kimiti	- Audio Recording

MINUTE SEN/SCLENR/216/2021: PRELIMINARIES

The meeting was called to order at 11.24 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/217/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Philip Mpaayei, MP and seconded by Sen. Mwaruma Johnes, MP as follows –

1. Preliminaries – *Prayer*
2. Adoption of the Agenda
3. **Petition concerning the Mwakitau land ownership dispute between Mwakitau Residents and Isangaiwishi Group Ranch;**
    - Submissions by the leadership of Isangaiwishi Group Ranch

4. Any other Business;
5. Date of the next meeting;
6. Adjournment.

MINUTE SEN/SCLENR/218/2021: PETITION CONCERNING THE MWAKITAU LAND OWNERSHIP DISPUTE BETWEEN MWAKITAU RESIDENTS AND ISANGAIWISHI GROUP RANCH, IN TAITA TAVETA COUNTY

- **Submissions by Isangaiwishi Group Ranch**

Pursuant to a letter Ref: JM/1/109 dated 14th June, 2021, Messrs. Munyithya, Mutugi, Umara and Muzna Company Advocates who claimed to represent Isangaiwishi Group Ranch provided the Committee with the following information regarding the Petition:

1. The petition consists of falsehoods deliberately crafted by the petitioners. Had the petitioners stuck to the truth, no petition would have been filed before senate as this one under reference.
2. The area referred to in the petition was declared an adjudication section on 12/6/1975. At the same time our client was incorporated under the Land (Group Representatives) Act 1968 (Now repealed on 12/10/1983). After the adjudication process was over in 1978, the District Land Adjudication officer Taita Taveta District gave notice dated 22/3/1978 declaring the adjudication process as complete. Thereafter objections were raised and each one of them dealt with but one objector proceeded on appeal to the Minister. This was finally decided in 1999.
3. Our client thereafter followed and was issued with a Title Deed.
4. Sometimes in the year 2000 a group of people from a neighbouring area filed **HC MISC CIVIL APPLICATION NO. 225 OF 2000 – MOMBASA.** This group was challenging the ownership rights of our client relying on the same historical issues. The matter was heard and after careful deliberations the suit was dismissed with costs to our client.
5. Sometimes in 2020 our client noted that there were squatters who had moved into their land claiming the rights to occupy and utilize their land. Our client served them with notice Under Section 152E of the Land Laws (Amendment) Act 2016 and gave all the invaders a duration of four months with effect from 1/7/2020 – 31/10/2020. That notice was served by way of advertisements in the Taifa Leo newspaper of 25/6/2020 and Daily nation of the same date 25/6/2020.
6. On 24/2/2021 the County Government of Taita Taveta filed **ELC CASE NO. 37 OF 2021 MOMBASA** to restrain our client from implementing the notice mentioned in Clause 5 above. Together with the main suit they obtained a temporary court order restraining our client from charging, selling, leasing or further sub-dividing our client's land. Our client has filed a defence against that suit and the same is set for mention on 29th June 2021. In this suit the County Government of Taita Taveta is purporting to move the court under the provision of Section 47(1)(2) of the Community Land Act and Regulations 26(1) -(8) of the Community Land Act 2017. The County Government purports to act as a trustee for all the communities living in Taita Taveta County.

7. On 11/3/2021 our clients filed **ELC CONSTITUTIONAL PETITION NO. 14 OF 2021 – MOMBASA.** That petition is pending in court for determination of the following prayers;
   a) *A declaration that the membership of the Petitioner set out in Schedule A of this petition shall constitute the only membership of the ISANGAWISH GROUP to be constituted under section 47 of the TLCA by the 8th Respondent to won, manage and control the plot title Number BURA/ISANGAIWISH/19 & 20.*
   b) *A declaration that the decision to donate 1000 acres of the new entity under Section 47 of the TLCA and Section 8 of the Land Act, the current officials of the petitioner have the authority to manage, control and protect the assets of the petitioner including plot title number BURA/ISANGAIWISH/19 & 20 and the interests thereof.*
   c) *A declaration that the decision to donate 1000 acres of the plot Title number BURA/ISANGAIWISH 19 & 20 by the petitioner done on 4th July, 2014 was lawful.*
   d) *A mandatory order do issue compelling the Land Control Board, Taita Taveta to issue the petitioner with a consent to transfer the 1000 acres to the 9th respondent.*
   e) *A declaration that the actions of the 2nd Respondent in inviting outsiders into the suit property amounts to an express breach of chapter 6 of the Constitution.*
   f) *A Mandatory conservatory order in the form of orders of Mandamus do issue compelling the 1st , 4th , 5th and 6th respondents to evict all squatters currently occupying portion of plat title numbers BURA/ISANGAIWISH/19/& 20 fortwith.*
   g) *An order of injunction do issue restraining the 10th – 16th Respondents by themselves, servants and or agents or any other none-member of the petitioner from interfering through entry, use or occupation of any part of the suit property.*
   h) *A declaration that the act of forceful takeover of the Petitioners' Land breaches the right to own property as guaranteed in Article 4 of the Constitution.*
   i) *Any other relief this Honourable Court would be pleased to issue.*
   j) *Costs of the Petition.*
8. The upshot of the above is that a discussion of this petition before the hearing and determination of the two matters pending in court will be subjudice. Secondly the petitioners are the same people in whose interest the County government of Taita Taveta has filed **ELC CASE NO. 37 OF 2021 – MOMBASA.** Thirdly the issues raised relate to the right of ownership which ultimately will lead to maintaining the current register of our client or altering the same. This last issue is the central matter for consideration in **ELC CONSTITUTIONAL PETITION NUMBER 14 OF 2021 – MOMBASA.** The petitioners are free to join both cases and explain their grievances.
9. In view of the issues raised in paragraph 8 above our client who is law abiding takes the view that parallel proceedings should not be allowed. In that case we have advised our client not to participate in the proposed hearing of this petition until the two pending cases are heard and determined. To discuss the petition as drawn we will require that we discuss the issues raised in the cases set out in paragraph 8 above. Should you require copies of any of these documents we are ready to forward them in soft to you.

10. Kindly confirm that you shall postpone the proposed hearing until the matters set out in paragraph 8 above are fully heard and determined.

The Committee resolved as follows:

- *To conclude on the Petition, after having accorded the Isangaiwishi Group Ranch time to be heard;*
- *The Committee further noted that the matters being addressed in court are not exactly the same as the matters raised by the Petitioners, furthermore the Petition was in the Senate way before the court case and wasn't taken to court by the Petioners who petitioned the Senate.*
- *Therefore the Committee can proceed and make its recommendations.*

MINUTE SEN/SCLENR/219/2021: ANY OTHER BUSINESS

There was no other business discussed.

MINUTE SEN/SCLENR/220/2021: DATE OF NEXT MEETING

The meeting was adjourned at 11.58 am and the date of the next meeting was to be held on 17th June, 2021 at 11.00 am.

Signed:..... Date: **23/6 /2021**

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

MINUTES OF THE 37TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON WEDNSDAY, 9TH SEPTEMBER, 2020 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS	**PRESENT**
1. Sen. Mwangi Paul Githiomi, MP	- **Chairperson**
2. Sen. George Khaniri, MGH, MP	- Member
3. Sen. Boy Issa Juma, MP	- Member
4. Sen. Sylvia Kasanga, MP	- Member
5. Sen. Mwaruma Johnes, MP	- Member

	ABSENT WITH APOLOGY
1. Sen. Philip Mpaayei, MP	- **Vice Chairperson**
2. Sen. Ndwiga Peter Njeru, EGH, MP	- Member
3. Sen. Gideon Moi, CBS, MP	- Member
4. Sen. (Dr.) Lelegwe Ltumbesi, MP	- Member

IN ATTENDANCE

A. MINISTRY OF LANDS AND PHYSICAL PLANNING

1. Mr. Gideon Mungaro	- CAS
2. Ms. Caroline Menin	- Legal
3. Mr. P.K. Mwangi	- Director, Land Adjudication
4. Mr. Robert Nyakeruma	- Snr. Asst. Director
5. Mr. Benson Onditi	- Dep. Director, Land and Settlement
6. Mr. Michael Kagwe	- Dep. Director, Land and Settlement
7. Ms. Pauline Gitition	- Ag. Director of Survey

B. NATIONAL LAND COMMISSION

1. Mr. Gershom Otachi	- Chairperson
2. Ms. Getrude Nguku	- Vice Chairperson
3. Mr. Francis or	- Dep. CEO
4. Ms. Rose Kitur	

C. SECRETARIAT

1. Mr. Victor Bett	- Clerk Assistant
2. Ms. Judy Ndegwa	- Legal Counsel
3. Ms. Clare Kidombo	- Researcher/Policy Analyst
4. Mr. John Ngang'a	- Audio Recording

MINUTE SEN/SCLENR/206/2020: PRELIMINARIES

The meeting was called to order at 11.25 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/207/2020: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Mwaruma Johnes, MP and seconded by Sen. Sylvia Kasanga, MP as follows –

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. Meeting with the **Cabinet Secretary, Ministry of Lands & Physical Planning and the Chairperson, National Land Commission** on the following **Petitions** and **Statements** as follows:
   i. Statement requested by Sen. Fatuma Dullo, MP, on 27th November, 2019 regarding the Ministry of Lands and Physical Planning seeking to open up land in Isiolo County for adjudication under Legal Notice No. 150 of 27th August, 2019;
   ii. Petition by Residents of Taita Taveta County, Mwatate Sub County, Mwakitau Location on the Mwakitau land ownership dispute between Mwakitau Residents and Isanga Iwishi Group Ranch;
   iii. Statement requested on 21st July by Sen. Johnes Mwaruma, MP on the status of Voi Point Limited, LR No. 28683
5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLENR/208/2020: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The confirmation of Minutes of previous sittings was differed to a later date.

MINUTE SEN/SCLENR/209/2020: MEETING WITH THE CABINET SECRETARY, MINISTRY OF LANDS & PHYSICAL PLANNING AND THE CHAIRPERSON, NATIONAL LAND COMMISSION ON PETITIONS AND STATEMENTS

i. Statement requested by Sen. Fatuma Dullo, MP, on 27th November, 2019 regarding the Ministry of Lands and Physical Planning seeking to open up land in Isiolo County for adjudication under Legal Notice No. 150 of 27th August, 2019;

Response by the Ministry of Lands and Physical Planning

The statement read that, the Committee should;

1) State what informed the Ministry's decision in issuing the gazette notice which in effect will lead to the conversion of communal land into private land despite there being a number of contentious land related disputes in the County yet to be resolved.
2) Explain why the Ministry decided to exclude the Kenya Defense Force's School of Infantry and Combat Engineering from the adjudication process knowing very well that there is a court order in place stopping the Kenya

Defense Force from carrying out any survey in the contentious area until the dispute is settled.

3) Explain why the Ministry of Lands and Physical Planning is attempting to convert land lying along the LAPSSET corridor and Isiolo Resort into public land knowing very well that the said land has its rightful owners who are yet to be compensated.
4) Explain whether in issuing the legal notice the Ministry of Lands and Physical Planning sought and received approval from the County Government who are the legal custodians of unregistered community land.
5) Explain why the Ministry of Lands and Physical Planning failed to undertake public participation, engage with all leaders and other stakeholders before issuing the gazette notice knowing clearly that the communities' interests must be protected at all times; and
6) State whether the legal notice issued by the Ministry of Lands and Physical Planning was in accordance with the law and in adherence with the principles of openness, accountability and the confines of public participation.

The Committee was informed that, Land in Isiolo County is community land (trust land) save for settled areas. In order to determine and record the rights of individual land owners, the Land Adjudication Act had to be applied since all land was held under customary law and the Community Land Act was not operational.
The publication of the Gazette notice was informed by the need to bring the settled areas of Isiolo County under the Land Adjudication Act, Cap 284. Section 3 of the Act, States that:

(1) The Minister may by order apply this act to any area of trust land if-
    a) The County Council in whom the land is vested so requests
    b) The Minister considers it expedient that the rights and interests of persons in the land should be ascertained and registered
    c) The land consolidation act (cap. 283) does not apply to the area

The conditions set in Section 3 were fulfilled since;

a) The Isiolo County Assembly in its sittings had expressed the desire to benefit from the National titling programme as per the Land Housing and Urban Development Committee report of January 15, 2018 and the County Assembly official report of July 4, 2018. **(Annexures 1 and 2)**
b) The Cabinet Secretary consulted the County Government of Isiolo and acceded to the need to ascertain and register land rights and interests of individual land owners.
c) The Land Consolidation Act cap 283 does not apply to the area.

In view of the forging and after consultations with the County Government of Isiolo, the Cabinet Secretary Lands and Physical Planning declared parts of Isiolo County as adjudication areas vide Legal Notice No. 150 of September 3,2019. The

habited areas are to be registered under the Land Adjudication Act, Cap 284 while the grazing lands are to be registered under the Community Land Act.

This legal notice was however amended vide Legal Notice No. 1 of January 10, 2020. This was after the County Assembly Housing and Urban Development Committee held consultative meetings held between November 8 and 16, 2019 and proposed the widening of the applicable area.

The amended notice occasioned increases in the items as shown in the table below;

NO	ITEM	LN No. 150 of September 3, 2019	LN No. 1 of January 10, 2020
1.	Adjudication Sections	4	36
2.	Township Blocks	9	16
3.	Certificate of Leases	7,500	17,050
4.	Projected Title Deeds	10,250	25,250

The gazettement of the County to be an Adjudication area was not in contravention of the Community Land Act since section 46(6) of the Community Land Act does state" For the avoidance of doubt, the Cabinet Secretary shall develop the adjudication programme and ensure that **the new and existing adjudication programme** shall, subject to this act, be governed by the law applicable to it immediately before to the commencement of this Act and shall be concluded within three years of the enactment of this Act."

The Community Land Act is yet to be operationalized since civic education on implementation and formation of community land has been carried in 23 counties out of 47. Efforts to conduct civic education in Isiolo have not been fruitful. The same has not taken off and wider consultations are needed.

Part IX of the Community Land Act provides that a national public education and awareness programme is to be rolled out within twelve months of the commencement of the Act. Currently the Community Land Act cannot be implemented in Isiolo County since section 27 (I) of the Regulations and part 48(I) (h) of the Community Land Act have not been carried out. Individual land owners however can only get their rights recorded and registered by the application of the Land Adjudication Act.

Leaders from the county expressed their reservations on the application of the Land Adjudication Act to the County and did file a court case at the Environment and Land Court at Nairobi. **(Nairobi ELC Petition No. 61 of 2019 Hon. Fatuma Adan Dullo & Others-Vs- Cabinet Secretary Lands and Attorney General.** The court declined to issue injunction to the adjudication process. The case was transferred to Meru ELC and it is now petition No. 28 of 2020. **All adjudication**

and survey work being undertaken by the Ministry in the County has been suspended pending the outcome of Petition No. 28 of 2020 before the Meru Environment and Land Court challenging the application of land adjudication act cap.284 (Legal Notice Number 150,) to Isiolo County.

The Kenya Defence Forces land in Isiolo was reserved on October 31, 1977 vide Gazette Notice No. 3210. The Commissioner of Lands issued a letter of allotment to the Department of Defence for land parcel measuring 10,209 hectares for School of Infantry Cantonment. Consequently, title was issued to the Permanent Secretary to the Treasury as trustee of the Kenya Defence Forces. The Land Adjudication Act Cap 284 cannot be applied to a titled area.

The residents of the Burat wards did protest the allocation and have since filed a case in court. The case was filed by Joseph Lorunyei Kuwam and six others against the Cabinet Secretaries of Defense, Lands and Interior& Coordination of National Government, the Attorney General and others in Petition No. 25 of 2019 in the Environment and Land Court at Meru.

The LAPSETT corridor land was gazettted on October 21, 2016 vide the Kenya Gazette Notice Vol. CXVIII-No.129. The acquisition of land within the LAPSSET corridor, Isiolo resort city and Isiolo international airport is the mandate of the National Land Commission and the LAPSSET Corridor Development Authority.

Honourable chair, the gazettement of Isiolo as an adjudication area does not extinguish the rights of Isiolo residents to pursue compensation for land that has been gazetted for other uses within the County.

Response by the National Land Commission

The Committee was informed by the Chairperson, National Land Commission that the matter was directed to the Ministry of Lands and Physical Planning and they preferred that the Ministry responds.

Committee Intervention:

The Committee was not satisfied with the response given, especially founded on the allegations raised by the Senator, Isiolo County that leaders from the region have been continuously ignored by the Government agencies.

The CAS, MOLPP asked for clarification on the matter that is pending in court and the Committee informed the CAS that addressing of this matters would eventually even lead to the matters being settled out of court if amicably settled. The Committee therefore ruled that all issues raised must be adequately responded to.

The MOLPP and the NLC were urged not to proceed with further adjudication until the Committee has adequately dealt with the matter exhaustively.

The Committee therefore resolved to have this matter and all other matters touching on Isiolo County up for discussion again in the presence in person of the –

- Cabinet Secretary, Ministry of Lands and Physical Planning,
- Cabinet Secretary, Ministry of Defence and
- Chairperson National Land Commission.

ii. Petition by Residents of Taita Taveta County, Mwatate Sub County, Mwakitau Location on the Mwakitau land ownership dispute between Mwakitau Residents and Isanga Iwishi Group Ranch;

Response by Ministry of Lands and Physical Planning

The petitioners aver that the title deed to a piece of land in Mwakitau sub-location of Taita Taveta County measuring approximately 10,000 acres on which they have lived since 1920 was recently issued to Isanga Iwishi Group Ranch. They also protest the compensation of the group ranch for the construction of Mwatate-Taveta-Holili road, claiming that the residents should have been compensated instead.

They have sought that the Committee;

a) Deals with this petition immediately in view of the urgency and seriousness of the matters raised herein.
b) Investigates the circumstances that led to the fraudulent registration of Mwakitau land as a ranch and acquisition of its title deed by Isanga Iwishi Group Ranch.
c) Recommends that the Isanga Iwishi title deed be revoked forthwith and the residents of Mwakitau be declared the legal owners of the land.
d) Investigates the fraudulent payment of compensation for land compulsorily acquired to construct Mwatate-Taveta-Holili road to Isanga Iwishi Group Ranch.
e) Recommends that the residents of Mwakitau whose land was compulsorily acquired to construct Mwatate-Taveta road be compensated adequately.
f) Take any other appropriate action it deems fit to resolve the matters raised herein.

They responded as follows;

The registration of Isanga Iwishi Group Ranch was as a result of the land adjudication process prescribed by the Land Adjudication Act, Cap 284. The area was declared as an Adjudication Section on June 12, 1975 vide Notice reference LA.31/35 Vol.11/114. A copy of the notice is attached as **Annexure 3(i).**

The primary stage of demarcation and survey was completed and a notice of inspection of the register issued on March 22, 1978. **Annexure 3(ii)** is a copy of the notice of application.

This stage gave room for inspection of the register and raising of objections. On expiry of the sixty (60) day notice, the final stage of registration followed.

On October 12, 1983 a certificate of incorporation, herewith attached as **Annexure 3(iii)**, was issued to the group in accordance with Land Group Representatives Act (now repealed).

A further certificate was issued in December 4, 2018 after election of another set of Group Representatives. A copy of the certificate is attached as **Annexure 3(iv).**

Subsequently, a title deed for the land parcel number Bura/Isanga Iwishi Scheme/18 measuring approximately 5992.2 hectares (14,807 acres) was issued to Isanga Iwishi Group Ranch on October 25, 2018.

There was a case MISC. CIVIL APPLICATION NO. 225 OF 2000 at Mombasa High Court seeking to stop the issuance of title to Isanga Iwishi Group Ranch. This application was however dismissed vide a ruling dated March 28, 2008. **Annexure 3(V)** is a copy of the ruling.

Honourable Chair, from the foregoing, Isanga Iwishi Group Ranch lawfully acquired title to the land parcel number Bura/Isangaiwishi Scheme/18.

Response by the National Land Commission

This petition has two aspects. It raises land administration matters that are within the mandate of the Ministry of Lands and matters of compulsory acquisition which are within the mandate of the Commission. How the Tittle Deed was issued to Isanga Iwishi Group Ranch can be explained by the Ministry of Lands. The Commission will however provide information on compulsory acquisition.

The Petition sought among other things the investigation of fraudulent payment of compensation for mwakitau citizens 'individuals' parcel of land compulsorily acquired to construct Mwatate-Taveta-Holiliroad to Isanga Iwishi group ranch.

Land acquisition for the Mwatate-Taveta-Holili (A23) road project was initiated through a request by the Kenya National Highways Authority (KeNHA) General Manager -design & construction) vide letter Ref. KeNHA/D&C/A23/Vol.3 (67) dated 24st August 2013.

The notice of intention to acquire was published in Kenya Gazette notice No. 13942 of 18th October 2013.

Notice of inquiry was published in Kenya Gazette notice No. 13943 of 18th October 2013 for land parcels listed in the notice of intention. However there were subsequent additions including the subject parcel and its inquiry was published in gazette notice no. 1174 of 26th February 2016 (copy attached).

Inquiry for the subject was slated for 16th March 2016 at the Maktau chief's office at 9.30 a.m.

Confirmation is given that inquiry was held as scheduled and that the group ranch represented by its officials (chairman, secretary & treasury) attended the inquiry and presented a claim to compensation.

The group ranch presented a title deed for the land registered in their name.

No other interested party appeared at the inquiry to present claim to compensation and up to conclusion of the inquiry the Commission had not received any other claim on the said land. In line with provisions of Section 112 of the Land Act 2012, the Commission subsequently issued an award for the land to the group ranch who accepted the offer of compensation.

Compensation for the subject parcel was paid out in September 2019; there were no encumbrances registered against the title that could have inhibited payment or any adverse claim against the land that had been received at the Commission by then. The following are the details of the payment.

PARCEL NO.	**REGISTERED OWNER**	**ACQD AREA (HA)**	**AWARD**
Bura/Isangaiwishi/18	Isangaiwishi Group Ranch	33.9938	28,979,545

The Commission did follow the laid out legal process on compulsory acquisition in compensating the group ranch and having received no other interest or claim against the title belonging to the group ranch; the same cannot be termed as fraudulent.

Upon payment of compensation to the group ranch who were then the registered owners, there cannot be any other payment to other individuals as this would amount to double payment and imprudent use of public resources.

However, if it were to be confirmed that the group ranch was fraudulently registered as the owners of land in 1972 and its title revoked as provided for in law, provisions of Section 116 of the land Act on payment in error would kick in – it provides that;

"If a person has received any money by way of compensation awarded for an interest in the land being acquired, either in error or before it has been established that some other person is rightfully entitled to the interest, the Commission may, by notice in writing served on that person, require that person to refund to the Commission the amount received, and the amount shall be a debt due from that person to the Commission".

Committee Intervention:

The Senator, Taita Taveta County addressed some pertinent matters to the CAS, MOLPP as follows:

The main problem was titling of the Land, there were people who were living at Mwakitau running back to as old as world war II times. The main problem is how was it given out as a Ranch without reference to the Land (Group Representatives) Act. How do you fail to recorgnize people living there.

The Senator noted that as land was being given to Isanga Iwishi Group Ranch, they ignored the original settlers who were living there, close to over 10,000 persons in Mwakitau Town. They are now facing eviction and were there even before the Land (Group Representatives) Act was enacted.

The MOLPP responded by informing the Committee that all the provisions were adhered to and that any claims that existed at the time of adjudication should have been taken into account. They should have been incorporated as members of the group ranch. The matters arising are now arising after completion of the adjudication process. The process should be now that the adjudication is complete and titles being issued then the next process would be going to court. The Committee was informed that there was a miscellaneous law application No. 225 of 2000 that was challenging the registration of the group ranch by way of preventing the issuance of the title. The case was dismissed and the ministries hands are tied unless the direction of the court rules otherwise.

The Committee wanted evidence that the MOLPP verified by going to the ground to confirm whether there was any settlement, and they responded by informing the Committee that the provisions of the Act only requires them to have a window to receive complaints raised. The Committee asked the Ministry to submit the documents that led to the registration of the Land.

The Committee sought to know from the Petitioner whether they contested the notice issued by the Ministry of Lands on the process of titling of the Land in question.

The Petitioner (Mr. Vitalis) from Mwakitau, informed the Committee that they have never seen the MOLPP coming to the ground. On 31st March, 1980 elders were summoned for land adjudication and they gave their case. Further, they have evidence in form of letters stamped as received by the MOLPP. The Committee asked them to table the documents through the office of the Senator.

The MOLPP informed the Committee that their notice of inspection of the register was on 22nd March, 1978. Claims made 60 days from that date in law is considered to be time bad. On the matter of adverse possession, the MOLPP informed the Committee that the matter has to be determined by the court and not the MOLPP. Since the title has already been issued it can only be issued in court. On resettling the persons in alternative land, the MOLPP informed the Committee that, they wouldn't comment at the moment. Since there is an existing register of the ranch, its upto the leadership of the area to confirm whether the contesting persons are registered and can benefit from the community land under the Community Land Act.

The Committee resolved that the MOLPP should send notices, documents and public participation evidences ascertaining that they went to the ground to confirm whether there was any settlement on the ground as they carried out their due diligence.

The CAS, MOLPP informed the Committee that they have submitted all the information they had in regards to this matter.

The Petitioners were also directed to deposit all documents through the office of the Senator in support of their Petition.

The matter was concluded with a proposal by the CAS, MOLPP that they were going to meet with the Senator, Taita Taveta County and walk through the process of ensuring the persons contesting are listed on the Ranch registers and would therefore stand a chance of benefiting from the Community Land under the Community Land Act.

iii. Statement requested on 21st July by Sen. Johnes Mwaruma, MP on the status of Voi Point Limited, LR No. 28683

Response by the Ministry of Lands and Physical Planning

The Statement read that, the Committee should;

1) Explain the cause for the delay in surveying and titling parcels of land in Mwakingali 'A'.
2) State the commencement and completion dates for survey of parcels of land in Mwakingali 'A', and
3) State when residents of Mwakingali 'A' will be issued with title deeds.

Mwakingali 'A' informal settlement falls within Voi Municipality, Taita Taveta County and has about 800 parcels as per the Part Development Plan (PDP).

The survey and verification of ground ownership exercise took place in the 2016/2017 financial year for purposes of implementing development plans earlier prepared. This was geared towards regularization of land tenure.

The scheme has not been issued with title deeds because of various issues that need to be addressed by the Ministry of Lands and Physical Planning officials, local administration, National Land Commission, the political leadership and other stakeholders. The challenges are among others; double allocation, possible displacement of some residents, absentee landowners and ownership disputes.

The major challenges which were encountered during the exercise were;

1. Lack of community organization and mobilization to create effective awareness of exercise to facilitate acceptance and voluntary participation by the residents. This affected the pace of work as some ground occupants were not receptive of the survey and verification team.

2. The PDP failed to match the ground due to developments that have taken place without being guided by the PDP. Also, certain areas set aside for roads on the PDP turning out to be waterways and deep gullies on the ground.

The Ministry will embark on the exercise in the 2020/2021 financial year. The work is targeted to be completed by December 2020.

The strategy put in place will involve; sensitization of stakeholders, election of local land committee and ground verification. The PDP will be harmonized with the ground occupation while ensuring provision of adequate public utilities. This will involve a multi-agency team comprising of Ministry of Lands and Physical Planning, Ministry of Interior and Coordination of National Government, National Land Commission, The County Government, political and local leadership.

Response by the National Land Commission

With regard to the statement requested by Senator Jones Mwaruma, our records indicate that the CEO responded to a petition of a similar nature on 4th September 2019.

As indicated by the CEO on 4th September, 2019, Voi Sisal Estate sits on private land which is beyond the scope of our mandate, however the following information was shared by the Commission Secretariat then:

1. This is private land.
2. CR No is. 51725
3. Approximate area- 1,953ha
4. LR.NO-28683
5. Term 99 years W.e.f 1/1/1993- It has 73 years remaining before the lease expires.
6. Annual rent payable-353,795/-
7. User- agricultural (owner grows sisal).
8. The parcel was transferred to Voi Plantations Ltd and later to Voi Point Ltd.
9. It was charged to Diamond Trust Bank for Kshs. 4 Billion on 31/1/2019 and further charged to the same bank for Kshs.800Million on 13/2/2019.
10. Some members of public (Mkamenyi residents) have developments on a section of the parcel – near the staff houses at the new Voi- market along Mombasa Nairobi highway.

Compensation Details:

The Petition sought among others information on the amount of money paid by Kenya Railways as compensation to either Voi Sisal Estate, Voi Plantation or Voi Point Limited (as the case may be), during Phase One (Mombasa-Nairobi) of the construction of Standard Gauge Railway (SGR).

The part acquired from the parcel is sandwiched between the old meter gauge railway and the Nairobi-Mombasa road. The following are the details.

Area of Land acquired	14.9621 Ha or 36.971 Acres
Registered Owner:	Voi Plantations Ltd
Compensation paid	Kshs. 359,530,100/-

Committee Intervention:

The Senator, Taita Taveta County informed the Committee that the responses are not precise. Some the concerns the Senator raised include evidence from the MOLPP showing that the residence of Taita Taveta were involved in form of public participation in extending the aforementioned lease which was to end in the year 2022. The other matter raised was the subdivided pieces of land, there was to be evidence showing that County Government of Taita Taveta had consented to the extension of the lease. Further the Senator sought to know the documents that were relied upon by the MOLPP while renewing the lease. Further, on the matter of Mkamenyi, the 35 acres would it be possible for to add them more.

The CAS, MOLPP responded by requesting the Committee, that they settle the matter with the leadership of that area, and that they do not have evidence of what was done by the Municipality then. On the subdivisions, the application was only allowed for agricultural proposes and for only one user, unless this has been done through the County Government giving approval for the new user and further subdivision. On the matter of Mkamenyi, the CAS informed the Committee that they went to the ground and that they were in agreement with the private entity and didn't want further interference and all they wanted were the titles.

The Senator, Taita Taveta informed the Committee that he will be seeking supplementary questions for a more in-depth answer.

The Committee concluded with a resolution that the Senator, Taita Taveta to request for supplementary questions for the input of the MOLPP.

MINUTE SEN/SCLENR/209/2020: ANY OTHER BUSINESS;
There was no other business discussed.

MINUTE SEN/SCLENR/210/2020: DATE OF NEXT MEETING;
The meeting was adjourned at 1.45 PM and the date of the next meeting was to follow thereafter via zoom online platform.

Signed: **For:** ..... Date: **19/11/2020**

SEN. MWANGI PAUL GITHIOMI, MP

CHAIRPERSON
STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

PETITIONERS SUBMISSIONS

MWAKITAU

MWAKITAU SUB LOCATION COMMUNITY

Address to Senate Committee on Land, Environment and Natural Resources

MWAKITAU LAND OWNERSHIP DISPUTE BETWEEN MWAKITAU RESIDENTS AND ISANGA IWISHI GROUP RANCH

Citizens of the republic of Kenya living in Mwakitau Sub Location, Mwakitau Location. Mwatate Sub County, Taita Taveta County, wish to register our concern on the above matter which is in your committee.

The Mwakitau Sub Location community wish to inform you that we have continued being tormented psychologically, physically, spiritually, economically, socially among other dimensions which make up a happy citizen and this has been part of our life here in Mwakitau Sub Location since the onset of the Isanga Iwishi Group Ranch in 1970s.

On 20th day of October ,2019. The Mwakitau Sub Location Community Committee were invited and did their presentation before you The Senate Standing Committee on Land, Environment and Natural Resources. There after we expected this visit early March 2020 but the pandemic Covid 19 brought everything to a standstill. As we remained law abiding citizens on the protocols of mitigating the pandemic, it was an avenue of the Isanga Iwishi Group Ranch for championing for their motives against the Mwakitau Sub Location Community. The above is proved by:-

1) Early May, 2020 we learnt that the Isanga Iwishi Group Ranch had sent their application of transition to community land dated 3rd day of March 2020 which was received by County land registrar office on or before 10th day of March, 2020.
2) On the 27th of June, 2020 we woke up to find eviction notice mounted on electric poles in all strategic points frequented by the community including but not limited to shops and water points. We also learnt that the notice was in Daily Nation of 25th day of June, 2020 page 24 which demanded us to vacate this OUR ANCESTRAL LAND OUR ONLY HOME WE KNOW by 31st day of October, 2020.
3) Early December, 2020 we learnt that a parcel of land of 404.7 hectares had been sold or transferred to Taita Taveta University whereas in this land there are families living in. This was done without their knowledge, they just saw people making survey line and erecting beacons. When they demanded for explanation and or resisted, the Area Chief intervened and the members had no option but to retreat since they were told its orders from above.
4) Sometimes in January, 2021 the Isanga Iwishi Group Ranch officials were seen in some parcels of land and it was clear that there are plans to transfer or sell those parcels to private investors/ institutions.

5) On the 5th day of March, 2021 the Isanga Iwishi Group Ranch had its AGM where they did elections for the Community Land committee and we believe that they had other resolutions. The elections were presided over by the County Land Registrar-Taita Taveta County. This means that soon they will be officially transited to Community land from a group ranch.

Mwakitau Sub Location Community tried to its best to see that Our cries be heard but it has always been a blame to us that, **Why did we decide to come to YOU The Senate Standing Committee on Land, Environment and Natural Resources?** Of which we have no idea why we are always asked this question.

It is also in public domain that the Isanga Iwishi Group Ranch has vowed to evict us and we shall never win this issue even in the court of law and have been advising that the best option is to meet them in the court of law.

Steps we took included:-

1) On 2/6/2020 We the Mwakitau Sub Location Community did an objection letter on the Isanga Iwishi Group Ranch transition to community land and submitted the letter to the Land Registrar on 24/6/2020
2) We the Mwakitau Sub Location Community did our application of transiting to community land dated 22nd day of June,2020 and submitted the same on 24th day of June,2020.to the Community Land Registrar.
3) After the eviction notice surprise, We the Mwakitau Sub Location Community lodged a complaint to the County Government and County Commissioner,Taita Taveta County demanding for protection as we felt that we were being threatened and being provoked .
4) On 21/07/2020 We the Mwakitau Sub location Community notified the National Lands Commission office TTC on the eviction notice.
5) We the Mwakitau Sub location Community did a letter seeking for audience to the County Assembly dated 27/7/2020 and subsequent visit by the County Assembly Land Committee to the community on 3/8/2020 where we addressed the committee.
6) On 13th September, 2020 We the Mwakitau Sub Location Community, got information that You The Senate Standing Committee on Land, Environment and Natural Resources had requested for a proof that We the Mwakitau Sub Location Community were not informed and we were in the dark when the Isanga Iwishi Group Ranch was being formed. We the Mwakitau Sub Location Community submitted a document to that effect dated 14/9/2020 through **email:** csenate@parliament.go.ke and sent a hard copy through G4S addressed to The Clerk of the Senate and also submitted the same to the senate office Taita Taveta County on the same date.
7) After learning the subdivision and transfer and or sold part of it, We the Mwakitau Sub Location Community held a peaceful demonstration on 20/2/2021 with the objective of telling the world what we are undergoing when the world think that all is well.
8) On 3/3/2021 We the Mwakitau Sub location Community through Mwakitau Men CBO did a letter of protest with respect to the meeting of 5/3/2021 of Isanga Iwish Group Ranch to County Land Registrar.

HEREFORE your humble Mwakitau Sub Location Community pray that the senate through its relevant committee:

1. Finalize with the petition in question immediately in view of the urgency and seriousness of the matters raised in our petition.

2. Investigates the circumstances that led to the fraudulent registration Mwakitau land as a ranch and the acquisition of its title deed by Isanga Iwishi Group Ranch.

3. Investigates the fraudulent payment of compensation for Mwakitau citizens' individuals' parcels of land compulsorily acquired to construct Mwatate-Taveta-Holili road to Isanga Iwishi Group Ranch.

4. Recommends that the citizens of Mwakitau whose land was compulsorily acquired to construct Mwatate-Taveta road be compensated adequately.

5. Recommends that the sale/transfer of the parcel of land to Taita Taveta University be investigated.

6. Recommends that the Isanga Iwishi Title deed be revoked forthwith and the residents of Mwakitau be declared the legal owners of their Ancestral land and be declared an adjudication scheme for the Mwakitau Community

7. Recommends that the Senate Committee handling this matter expedite the process

8. Recommends that official communication be made to the community on the decision made by the committee as soon as possible

9. Takes any other appropriate action it deems fit to resolve the matters raised here in.

And your Petitioners will ever pray.

PETITION BY MAKTAU PEOPLE

According to our records held at the land office Isanga Iwishi Group Ranch was registered as parcel No. Bura/IsangaIwishi/18 measuring approximately 5992.2 Hectares, Under map sheet 189/3. A chronology of the transanctions is as follows.

1. The adjudication and demarcation of the subject land was completed on 5th April 1978, Under the Group Representative Act (now repealed).
2. A register for the Group Ranch was opened on 18th April, 1984.
3. The registered Group Ranch had approciamately 2000 registered members.
4. In the year 2000 members of the Maktau Locaton petitioned ther High Court through petition No. 225 of 2000 in the High Court At Mombasa seeking for orders to compel the Commissioner of Land and the Chief Land Registrar to resurvey the entire Maktau Location and establish a settlement Scheme.
5. They further alleged that the members of IsangaIwishi GroupRanch deliberatedly excluded them during registration.
6. The Hon.Justice Sergon on 28th March 2008, dismissed the mooton on the grounds that the remedy sought by the petitioners was only availabale through private law, not public law.
7. Thet the Community Land Act has come into effect and repealed the Group Representative Act.
8. Section 47(1) of the Community Land Act states that in relation to land held under the Land Grou Representatives together with the Communities they represent shall be registered as a Community in accordance with the provision of this aAct.
9. That the third schedule of the Community Land Regulations on membership. Provides that Membership of the Community shall consist of
   a. Members whose name are in the register of members of the Community upon reghistration; or
   b. New members born and married in the Community; or
   c. A members who has inherited an interest from a person whose name is in the register of membetrs; or
   d. (i) The Community Land Mangqement Committee members all agree and
   e. The Communnity Land Mangement Committee members decision is confirmed at a community assembly; or
   f. A court so orders.
10. That the Maktau people shoukd either persue private law through court Under Swec 7 of the limuitation of Actions Act or the County Government peruses A.D.R on their behalf.

5900 ha → Selling the land

Isanga Iwishi

① Maktau people lived in this land for year
② waiting for the outcome of Senate decision
③ Court has the power to cancel title deeds-
Provincial administr ✱ march 2008.

- Official communication to the people of Mwaktao on decision made by the senate
- Sanga Iwishi – New land

MWAKITAU SUB LOCATION COMMUNITY

P.O.BOX 170,

MWATATE.

27/7/2020

THE CLERK COUNTY ASSEMBLY,

TAITA TAVETA COUNTY,

P.O.BOX 1066,

WUNDANYI.

Dear Sir/ Madam,

RE: COUNTY ASSEMBLY LANDS COMMITTEE INVITATION.

We the Mwakitau Sub Location Community kindly invites the County Assembly Lands Committee to a meeting scheduled to take place on Monday 3/8/2020 in Mwakitau Catholic Church at 10.00 am.

The main agenda is The Mwakitau Sub Location Community Land issue.

Looking forward for your attendance.

Yours sincerely,

Mwandigha Flavian

Community Secretary

Mwafunja James

Community Chairman

MWAKITAU COMMUNITY,

MWAKITAU SUB-LOCATION,

P.O BOX 170,

MWATATE.

29/06/2020.

OFFICE OF THE GOVERNOR
RECEIVED
01 JUL 2020
TAITA TAVETA COUNTY

THE COUNTY COMMISSIONER,

TAITA TAVETA COUNTY.

Dear Sir/Madam,

REF: VACATE NOTICE IN THE DAILY NATION OF 25/06/2020 PAGE 24

We the residents of Mwakitau Sub- location the purported invaders/trespassers by the above mentioned notice hereby inform you that;

1. We are taking this issue with great concern since we have lived here from 1919
2. The above notice has raised tension to the entire community and we are now living in fear.
3. In conclusion we the Mwakitau Sub-location community deserve the right of protection of our lives and properties from the government.
4. We therefore request for your quick intervention in the matter.

Attached herewith find a copy of the said notice

Thank you

Signed by Mwakitau community

CC :

- Deputy County Commissioner Taita Taveta
- Governor Taita Taveta County
- Chief Mwakitau Location

Sn	Name	Id number	Signature
1	JAMES MUVA FLWJA	10397268	
2	MWANDIGHA FLAVIAN	12546708	
3	NAVID KOVU BANGALA	10397706	
4	BONIFACE MAGHU	54035588	
5	BRISTONE MWAZIGHE	84557878	
6	BENSON MGHARA	34648756	
7	TYRUS MWANGIMA	27731987	
8	PETER M MUMBIGHADI	22678788	
9	JOHNES MWAMBANGA	28967968	
10	AGNES MZUNGU	22466[illegible]	
11	WILFRID AUMA	40294276	
12	COSMAS MWANYENGELA	8522265	

TO ALL INVADERS AND TRESPASSERS
ON PROPERTY KNOWN AS
PLOT TITLE NO BURA/ISANGAIWISHI/18
MWATATE SUB-COUNTY, TAITA TAVETA COUNTY

Dear Sirs,

RE: NOTICE TO VACATE LAND UNDER SECTION 152 E OF THE LAND LAWS (AMENDMENT) ACT, 2016, ARTICLES 40 AND 47 OF THE CONSTITUTION

We act for officials and members of **ISANGAIWISHI GROUP RANCH** and whose instructions we write to you as follows –

1. Our clients **ISANGAIWISHI GROUP RANCH** is the registered absolute owner of all that land known as **PLOT TITLE NO BURA/ISANGAIWISHI/18**
2. At the moment our clients' officials are in the process of complying with the provisions of the Community Land Act No. 27 of 2016.
3. Isangaiwishi Group Ranch has all along been a member based group where a register is kept for purposes of identifying of the membership and for management purposes. For this reason our clients are not an association open to everyone. Besides this, our clients have a Constitution which guides their operations.
4. After the enactment of the Community Land Act No. 27 of 2016, our client is supposed to transit from being a Group Ranch to a Community Ranch. This Community is known and is not open for new membership otherwise than as provided in the Constitution of our clients
5. The rights of our clients are protected both under statute and under the Constitution. Under Article 40 of the Constitution, the rights to own property for our clients are well guarded and any infringement to those rights shall be defended vigorously and within the law.
6. Our clients have noticed a trend where you have consistently moved into and occupied empty spaces within our clients land. We are further informed that you have moved into this land violently and with total disregard of the Constitution and the law. For this reason our clients regard you as invaders and trespassers.
7. When our clients officials attempted to have dialogue with you, you became violent and issued dangerous threats against the lives of the officials of our clients. This issue and especially the threats and the possible entry into our clients property was reported on 21st May, 2020 to the Mwatate Police Station but the Police declined to intervene alleging that this is a private land issue. Our clients do not agree with this position.
8. This letter is therefore to give you notice under **Section 152 E OF THE LAND LAWS (AMENDMENT) ACT, 2016, ARTICLES 40** of the Constitution, to move out and vacate our clients' land without further negotiations.
9. This notice is for Four (4) Months from the **1st day of July, 2020** to **31st day of October, 2020** within which you are supposed to have vacated the said Land. At the same time you are required to remove any structure you may have erected or any plant or crops you may have planted on our clients property and carry away all the debris therefrom.
10. **TAKE NOTICE** that the Deputy County Commissioner and the Officer Commanding Police Division, Mwatate are hereby notified to intervene under Article 47 of the Constitution after the expiry of the above notice. Our clients expect these officers to protect our clients' property pursuant to the provisions of Article 238 of the Constitution. In this instance, our clients' private property which has been occupied without their consent by invaders should be protected by the National Police Service and the Taita Taveta County Administration.
11. **TAKE FINAL NOTICE** that unless you comply our clients have given us instructions to proceed and obtain orders for your eviction without any further notice to you.

DATED AT MOMBASA THIS **24TH** DAY OF **JUNE** 2020

MUNYITHYA, MUTUGI, UMARA & MUZNA CO,
ADVOCATES FOR THE LAND OWNER

DRAWN BY:
MUNYITHYA, MUTUGI, UMARA & MUZNA
COMPANY ADVOCATES
EPIC BUSINESS PARK, 3RD FLOOR, ALONG LINKS ROAD -NYALI
P.O. BOX 3737- 80100, MOMBASA.
Email: jpjurists@gmail.com/jpjurists@mmum.co.ke
TEL: 041-2319848/49 / 0714-822192

COUNTY GOVERNMENT OF TAITA TAVETA

PRESS STATEMENT

EVICTION OF RESIDENTS OF ISANGA IWISHI GROUP RANCH LAND

On 20th February, 2021, I was informed of the intended eviction of thousands of residents occupying the Isanga Iwishi Group Ranch Land. In the eviction notices and letters sent to the Mwatate Deputy County Commissioner, alleged rogue officials of Isanga Iwishi Group Ranch purportedly issued orders that the OCPD Mwatate and the Deputy County Commissioner forcefully evicts members of the public occupying the land.

I immediately instructed my team to investigate the dealings of the alleged officials and we were able to establish that;

(a) The alleged officials have already sub-divided land title number **Bura/Isangaiwishi/18** into two portions namely, **Bura/Isangaiwishi/19** and **Bura/Isangaiwishi/20** each measuring 5560.5 hectares and 404.7 hectares respectively;

(b) The alleged officials have entered into an arrangement to dispose 404.7 hectares and have already signed transfers, attended the Land Control Board and are in the process of submitting the transfers for registration.

As you are aware, under article 63 of the Constitution all group ranches were classified as unregistered community land and were vested on the County Governments. The Community Land Act Section 47 barred any sale, lease and conversion of group ranches.

Having discovered the aforesaid illegalities, I instructed our legal team to file a case in the Environment and Land Court at Mombasa to stop the intended eviction. We are pleased to inform members of the public and especially the residents of Maktau that the Court has, this morning, issued the following orders;

(a) a temporary injunction restraining the alleged officials of Isangaiwich Group Ranch or any of their officers or legal counsels **from charging, selling, leasing, transferring or further sub-dividing land formally known as Bura/Isangaiwishi/18, and later subdivided to Bura/Isangaiwishi/19 and Bura/Isangaiwishi/20); and**

(b) a temporary injunction restraining the Deputy County Commissioner, the OCPD or any of their officers **from evicting communities living and occupying land formally known as Bura/Isangaiwishi/18, and later subdivided to Bura/Isangaiwishi/19 and Bura/Isangaiwishi/20).**

My Government is at the forefront in fighting land-grabbing and I want to assure the residents of Maktau of my commitment in ensuring that they are not evicted or any portion of their land sold.

I also want to put all other group ranches on **notice** that my Government will not condone any illegalities in the Management of group ranches.

Thank you and God Bless you all.

H. E. GRANTON G. SAMBOJA
GOVERNOR

MINISTRY OF LANDS
24 JUN 2020
RECEIVED
DISTRICT LANDS REGISTRY TAITA TAVETA

FORM CLA 1

(r. 3(1))

REPUBLIC OF KENYA
MINISTRY OF LANDS AND PHYSICAL PLANNING

APPLICATION FOR RECOGNITION OF INTEREST/ CLAIM ON COMMUNITY LAND

To: The Registrar of ....Community.....Land..

We the ..Mwakitau..... community, hereby apply for recognition of our interest/claim in the community land referred to herein.

Our interest/ claim are as shown in the attached sketch diagrams /maps/plans and described in the Schedule.

Schedule

S/No.	Locality	Approx. Area (Ha)	Current Use of the land
	Mwakitau	16 400	Settlement
			Farming
			Grazing

Details of the Applicant(s)
Name of Persons/Group/Community: ..Mwakitau Community....
Registration No.:.....
Postal/Email Address:..P.O.Box 41-80303.....Voi.....
Tel. No.:.....0727899623.....

Dated at..... this....22nd..... day of ..June.....20.20.....

.....
Signature of Chairperson

For *Official Use Only:-*

.....
.....
.....

Signed .....
Registrar.....

MWAKITAU SUBLOCATION COMMUNITY LAND INTERIM COMMITTEE

NAME	ID NO.	S
JAMES MWAFUNJA MWANTIKA	10397268	
BONFACE MACHU MUIKAMBA	#5403588	
CRISPUS SIO MUNYIKA	3954875	
SAMUEL MWASARU MTUWETA	23637398	
JUSTIN MWAGHALI MWANYAGHA	5470642	
LYDIA MAULO CHAWANA	22777412	
CORNEL MKALA IRINGIA	13822663	
MWADIME BOCCO LOMBO	5471670	
LAWRIENCE LOMBO	8350892	
HANNAH MAMBORI MWAKUDWA	5403499	
SOPHY WANJALA MWAKULEGHA	5402231	
ANDREW MWAKUMPWA LOMBO	12705???	
ROBERTINA SANGULI	5403089	
MWANDIGHA FLAVIAN	12546708	
AURELIA SALIO	5403672	

RE: ENCROACHMENT INTO MWAKITAU COMMUNITY LAND

NAME	ID NO.	SIGNATURE
JAMES MWAFUNJA	10397268	
MWANDIGHA FLAVIAN	12546708	
MWAKIME B. LOMBO	25471670	
BONFACE MACHU	5403588	
DICKSON MOKA	24400268	
BRISTONE M. MWIWAMI	5457858	
KENNETH MWAIGHACHU	24261885	
SIMON MMUITANI	10214335	
GRACE M. MWIANGASHA	4662934	
COSMAS MWANYENGELA	25222265	
SILVERY M. KITATU	7380534	
RODGERS NGURE	12546329	
FINA MUGHANGA FUNDI	25574405	
SABINA MKAMZIKA TOLE	23892858	
Gladness M Mbogo	27319381	

MWAKITAU MEN C.B.O

P.O.BOX 170-80305,MWATATE.

Our Ref: Your Ref: TBA Date: 3rd March 2020

The County Land Registrar
Taita-Taveta County
P.O. Box 1061
WUNDANYI
Email: wundanyilandregistry@gmail.com

'URGENT VIA EMAIL'
'VIA REGISTERED POST'

Dear Sir,

RE: LETTER OF PROTEST WITH RESPECT TO MEETING OF MEMBERS OF ISANGAIWISHI GROUP RANCH

We make reference to the above matter and your Notice of the above meeting as circulated in newspapers pursuant to Section 7(2) of the Community Land Act.

Please note that we are a community based organization duly registered for the purpose of championing the rights of the indigenous people of Mwakitau Sub location which falls in all that parcel of land known as BURA/ISANGAIWISHI SCHEME/18.

Please note that vide this letter, we wish to formally protest to the holding of the said meeting by the members of Isangaiwishi Group ranch that has over the years illegally and unlawfully claimed right over the above parcel whilst disregarding the fact that the parcel is already occupied by persons whose descendants settled more than a century ago and have not heard their interests registered as a result of the actions by the Isangaiwishi Group Ranch.

That the above meeting is nothing but a process to sanctify their illegal actions which shall in due course be determined by a court of law.

Yours Faithfully,

Mwandigha Flavian
For
Mwakitau Men C.B.O

CC:
County Government of Taita Taveta

According to our records held at the land office Isanga Iwishi Group Ranch was registered as parcel No. Bura/IsangIwish/18 measuring approximately 5992.2 Hectares, under map sheet 189/3. A chronology of the transactions is as follows.

1. The adjudication and demarcation of the subject land was completed on 5th April, 1978, under the Group Representative Act (now repealed).
2. A register for the Group Ranch was opened on 18th April, 1984.
3. The registered Group Ranch had approximately 2000 registered members.
4. In the year 2000 members of the Maktau Location petitioned the High Court through petition No.225 of 2000 in the High Court at Mombasa seeking for orders to compel the Commissioner of Land and the Chief Land Registrar to resurvey the entire Maktau Location and establish a settlement Scheme.
5. They further alleged that the members of IsangaIwish Group Ranch deliberately excluded them during registration.
6. The Hon. Justice Sergon on 28th March, 2008 dismissed the mooton on the grounds that the remedy sought by the petitioners was only available through private law, not public law.
7. That the Community Land Act has come into effect and repealed the Group Representative Act.
8. Section 47 (1) of the Community Land Act states that in relation to land held under the Land Group Representatives together with the Communities they represent shall be registered as a Community in accordance with the provision of this Act.
9. That the third schedule of the community shall consist of;
    a. Members whose name are in the register of members of the Community upon registration; or
    b. New members born and married in the community; or
    c. A member who has inherited an interest from a person whose name is in the register of members; or
    d. (i) The Community Land Management Committee members all agree and
    e. The Community Land Management Committee members decision is confirmed at a community assembly; or
    f. A court so orders.
10. That the Maktau people should either persue private law through court Under Sec 7 of the limuitation of Actions Act or the County Government peruses A.D.R on their behalf.

MINISTRY OF LANDS AND PHYSICAL PLANNING

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

COUNTY LAND REGISTRAR
TAITA-TAVETA COUNTY
P.O.BOX 1061
WUNDANYI.

When replying please quote ref:

Ref: No.TT/ADM/408/VOL.I/10

Date: 5TH MARCH, 2021

HON JULIUS MWANDA WIRO MGHANGA
COUNTY EXECUTIVE COMMITTEE MEMBER
LANDS, PHYSICAL PLANNING, MINING AND ENERGY
TAITA TAVETA

RE: ADVISE TO POSTPONE THE MEETING CALLED BY ISANGAIWISHI GROUP RANCH TO ELECT THE COMMUNITY LAND MANAGEMENT COMMITTEE

I refer to your letter under reference **TTCG/LPPME/CECCORR/VOL.1/022** of 4th **March, 2021,** which has been brought to my attention today.

I have read the concerns raised in your letter and wish to respond to as follows. The agenda for the meeting to take place is to enable the group ranch elect new officials only (community land management committee). The purpose of the meeting does not include composing of the Community assembly as you allege, I would further wish to point out that the intention of Section 47 of the Community Land Act was to convert/transit group Ranches to Community Land, the Community Land Act specifically Sec 47 (1) states that in *relation to land held Under the Land*(Group Representatives) Act, the "respective" group representatives together with the communities they represent shall be registered as a Community in accordance with the provisions of this Act.

The concerns you raise paints to an understanding that after the election of the CLMCC, the group Ranches shall have been conclusively registered under the Community Land Act, and the Maktau community shall have no recourse, which is not true. The election of the Community Land Management Committee is just a step in the many that must be followed during the transition of group ranches into Community Land. The election of the CLMCC is therefore not conclusive evidence of registration of a group Ranch as a Community.

The Community Land Act guides that immediately after the election of the Community Land Management Committee. The CLMCC shall fill form CLA 3, requesting for registration as a community.

Taking into consideration the fact that your letter advising for postponement was received today, that preparations and logistics for the meeting are at an advanced stage, the cost of advertisements in the Dailies and the local radios, the short notice of your advise to postpone the meeting, and the short time that is expected of me to relay the same to the Registered Members of Isangaiwishi group Ranch, Legal Implications to this office of the same, and the deadline by the Director land adjudication to have all group ranches transit to community land by 31st March.

I wish to kindly notify you that after consulting widely I am in no position to postpone the scheduled meeting for today, However to enable room for consultations and to pave way for pursuance of alternative Dispute resolution, or legal redress. This office shall hold in abeyance the Application for Registration as a Community Under form CLA 3 for Isangaiwishi Group Ranch until such a time (not exceeding one month) when a meeting between the elected officials (CLMCC) and yourselves shall be held, or as otherwise advised.

You will also remember that during our meeting I had intimated to you that Isangaiwishi group ranch officials have shown willingness to commence negotiations over resolutions of the long standing dispute with Maktau people, and I had suggested that a committee be formed to address the same. It's my hope that the matter is taken up with utmost agency.

M.S MANYARKIY
LAND REGISTRAR
TAITA/TAVETA COUNTY

cc:

1. P.S Ministry of Lands Physical Planning
2. H.E The Governor Taita Taveta County
3. CCO Lands, Physical Planning, Mining and Energy

Commissioner NL

THE
COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"

Our Ref: CAJ/Pe/040/2414/20 – EMN
Your ref: TBA

5th October, 2020

The Chief Executive Officer,
National Lands Commission,
Ardhi House, Ngong Road
P.O. Box 44417 – 00100
Nairobi

Dear Sir,

RE: COMPLAINT BY ABAS K. MALISO

Kindly receive warmest compliments from the Commission on Administrative Justice (Office of the Ombudsman).

We are in receipt of a complaint from **Abas K. Maliso who** alleges that sometime in December, 1978, they were duped into surrendering their land for building of a Bata Factory. He said land was to be used for industrial purposes.

The complainant now alleges that the said land has been sold and that a whole community risks being evicted. Further details are as per the attached letter from the complaiant.

The commission has considered her complaint and is of the view that your office is best placed to address it and advise the complainants. By means of this letter the complainant is hereby **REFERRED** to your office for assistance.

We assure you of our highest regards.

Yours Sincerely,

VIOLA OCHOLA
FOR: COMMISSION SECRETARY/ CEO

MWAKITAU SUB-LOCATION COMMUNITY,

P.O. BOX 170,

MWATATE.

21/07/2020.

THE CHAIRMAN,

NATIONAL LANDS COMMISSION,

P.O. BOX 44417,

NAIROBI.

Dear Sir,

RE: ENCROACHMENT INTO MWAKITAU COMMUNITY LAND

We the undersigned Mwakitau community do hereby lodge a complaint against the encroachment into Mwakitau Community Land by Isanga Iwishi Group Ranch and subsequent issuance of a title deed to Isanga Iwishi group ranch for the following reasons:

1. The ancestors of the people of Mwakitau started settling on this land by 1918.
   They were mainly peasant farmers and provided milk, meat and foodstuff to the remnants of the British Army and later to the East African Railway staff at Mwakitau Railway Station.
   The community has settled traditionally and every person recognizes his or her traditional boundary. The community has been enjoying the land rights including but not limited to selling,buying,sharing among others.
   It is worthy noting that the name Mwakitau originated from the British Forces as they performed military drills and kept saying "Mark time". The natives coined it Makitau/Mwakitau.
2. At about 1920 the first headman was appointed by the British Administration. This man was called Musa Mkala.
   In 1957, Mr. Agostine Mwamburi was appointed the first assistant Chief of Mwakitau Sub-location. Hereafter there have followed successive Assistant Chiefs up to date.
3. The first school was initiated in 1947. It was later named Mwakitau Primary School in 1952 and registered in 1957 under the Ministry of Education. The Mwakitau Dispensary was started in early 1950 and was run by one Stephen Ngumbao as the nurse. The first church, (The Catholic Church) was started in 1949. The service used to be conducted by a priest from Bura Mission in Bura Location. ACK followed later in 1952.

RE: ENCROACHMENT INTO MWAKITAU COMMUNITY LAND

4. From the few early settlers of Mwakitau early 1900s to date the population has grown to above 10,000 people with over 2,000 households in the administrative area of Mwakitau Sub-location.
   This population is served by the following social amenities:
   a) Three primary schools,
   b) four pre-primary schools,
   c) one secondary school,
   d) one special unit (For Learners with disabilities),
   e) Eleven Christian churches
   f) One Mosque
   g) One police post
   h) One Health Centre
   i) KWS post
   j) One World War I Cemetry
   k) Three trading centres
   l) Eight community water Storage tanks
   m) Assistant Chief's office

Isanga iwishi group ranch was initiated in 1973 whereas the occupants of this land had already settled in Mwakitau for over fifty years ago. The group ranch owns absolutely no property nor animals within Mwakitau Community Land.

It should be noted that the people claiming that Mwakitau (purportedly Isanga Iwishi Group ranch) is their land, hail from Bura location while this land is in Mwakitau Location over 10 KM away.

It is for these reasons that we the people of Mwakitau Sub-location feel that we are the rightful occupants of this land and the title deed issued to the owners of the said Isanga Iwishi Group ranch is immoral and unjustified. The community therefore pray that title deed should be nullified and revoked and the land rights and ownership be given back to Mwakitau Community.

We shall avail ourselves for more clarification whenever a need arises.

CC.

National Land Commission- Coordinator Taita Taveta County

TAITA TAVETA COUNTY MWAKITAU COMMUNITY

2ND June 2020

THE COMMUNITY LAND REGISTRAR,

TAITA TAVETA COUNTY,

PRIVATE BAG

WUNDANYI.

Dear Sir,

RE : TRANSITION OF ISANGA IWISHI GROUP RANCH TO COMMUNITY LAND

We the undersigned;

Citizens of the republic of Kenya living in Taita Taveta County, Mwatate Sub County, Mwakitau Location, representing residents of Mwakitau sub location wish to formally object the above intended transition.

We are aware that the said ranch members have forwarded their application for transition to your office dated 3rd March 2020 attaching several copies of their documents which we have issues with including the Title deed.

We are submitting this objection noting a few points:-

1. **THAT** the people of Mwakitau settled there in 1920 and have lived there uninterruptedly and continuously to date, while Isanga Iwishi group ranch was fraudulently registered in 1972 and its title deed acquired recently.

2. **THAT** Isanga Iwishi Group Ranch has no right whatsoever to claim ownership of Mwakitau land due to the fact that:

a) Section 7 of the Limitation of Actions Act of Kenya provides that if a person has been living on a private land for more than 12 years continuously and uninterruptedly, the land becomes his through adverse possession

b) They have never made any attempt to evict the citizens of Mwakitau since they settled there in 1920 to date.

c) The area has a total of 2000 households with a population of over 1 0,000 people.

d) The area is administratively a sub location with an assistant chief.

HEREFORE your humble citizens of Mwakitau request your office not to honour the application attached herewith

MWAKITAU SUBLOCATION COMMUNITY

Nb / we have attached the first three pages of the said ranch application.

Dated this 2nd day of June 2020.

SIGNED:

Name	Id number	Signature
JAMES MWAFUNJA	10397268	
BONFACE MACHU	25403588	
CRISPUS SIO MUNYIKA	39548775	
SAMUEL MWASARU MTUWETA	23637398	
JUSTIN MWAGHALI MWANYAGHA	5470642	
MWANDIGHA FLAVIAN	12546708	
DAVID KOVO BANGALA	10397706	
DANIEL MAGHANGA MWAKUFILA	21959400	
LAURENT MWAZIGHE MWABILI	28968320	
Geoffry Mwadime Ngoto	23489325	
TINA / KUGHHINGA FUNDI	25774405	
HANNAH MAMBORI MWAKUDWA	540348	
SOPHY WANJALA MWAKOLEGHWA	5402231	
JOE WABOSHA	8464526	
ANDREW MWAKENGWA LOMBO	1270517	
ROBERTINA SANGULI	5403089	
EVENS CHIRONGO	11310615	
CORNEL MKALA TENGIA	13822663	
LYDIA MALO CHAWANA	22777412	
MCHONJI MWANYIKA	5403352	
MWADIME BOSCO LOMBO	5471676	
LAWRENCE LOMBO	8350892	
DICKSON MWASHIGHADI MOKA	24400268	
RACHEL MAHAZO WAZOME	31458062	
SARAH SHALI MWASHIGHADI	5403090	
BENEMTA MANGA	22260641	
MARIA NONO KILEWU	10759523	
WILBRIDA AUMA OSEMO	40294426	
SAMUEL MLAMBA MANGOWA	13270625	

ISANGAIWISHI GROUP RAN

3rd March 2020

The Register of Lands,
Taita-Taveta County.

Dear Sir,

ISANGAIWISHI GROUP RANCH TRANSITION TO COMMUNITY LAND

Enclosed find the Isangaiwishi Group Ranch Board Resolution in connection with the transition to community land. The board reiterates that articles 47(i) of the Community land Act 2016 be observed in spirit and action.

Yours faithfully,

MICHAEL B.M.IRENGE
CHAIRMAN

Copy to
1. Munyithia Mutungi Umara & Muzna Company Advocates
2. H.E Governor Taita-Taveta County
3. The Senator Taita-Taveta County
4. The County Commissioner –Taita-Taveta County
5. The O.C.P.D Mwatate
6. The Member of Parliament Mwatate
7. The MCA Bura Ward
8. The County Assembly-Taita-Taveta
9. The Cabinet Secretary Internal Security
10. The Cabinet Secretary Ministry of Lands
11. Inspector General N.P.S
12. The Attorney General –Republic of Kenya
13. Senate Committee on Lands and Environment
14. DCC Mwatate
15. The Chief Land Registrar, Ministry of Lands and Housing
16. The County Lands and Settlement Officer, Taita-Taveta
17. C.E.C member for Lands and Environment Taita-Taveta County
18. Acc Mwatate Sub County

TAITA TAVETA COUNTY ASSEMBLY
RECEIVED
10 MAR 2020
OFFICE OF THE CLERK
P. O. Box 1142 - WUNDANYI

RESOLUTION OF ISANGAIWISHI GROUP RANCH BOARD SITTING AT PARK VIEW HOTEL, BURA STATION ON 2ND MARCH 2020

Noting that:-

1. Isangaiwishi Group Ranch are the bona fide title holders of the piece of Land ISANGAIWISHI 18 in Taita-Taveta County registered under Group Representatives Act Cap 287 and is supported by historical documentation and
2. There is a register of 1940 members in the custody of the Ministry of Lands Settlement and Housing and
3. There is a Management Committee legally in place and
4. There is Isangaiwishi Group Ranch Constitution and
5. Aware that Section 9 of the Community Land Act 2016 vests the responsibility of registration of Community Lands in the Registrar appointed by the Chief Land Registrar of the Republic of Kenya and further aware that you the County Registrar of Lands Taita Taveta County has been given this responsibility and noting that section 47 of Community Lands Act 2016 provides for the transition of registration of members we hereby present the register of members of Isangaiwishi Group Ranch to you the County Registrar of Lands Taita-Taveta County. Kindly note that we have not amended our register.

MICHAEL B.M.IRENGE
CHAIRMAN

Attached herewith are copies of:

1. a)Land registrar fee note for Ksh 2,997,000 dated 23rd March 2016
1. b) Receipt Number 4615934 Department of Lands for Ksh 2,997,000
2. Title Deed No.2384440
3. KRA Pin Certificate
4. Court Ruling dated 28th March 2008
5. Register of 1940 members
6. a) Minutes of Joint Boundary Committee-Mwanda Location and Bura Location dated 27th September 1973.

REPUBLIC OF KENYA

THE LAND REGISTRATION ACT

(*No.* 3 *of* 2012, *section* 108)

THE REGISTERED LAND ACT

(*Chapter* 300) (REPEALED)

Title Deed

Title Number BURA/ISANGAIWISHI SCHEME/18

Approximate Area ~~5992.2 HA~~

Registry Map Sheet No. 169/3

This is to certify that ISANGAIWISHI GROUP RANCH

P.O BURA

is (are) now registered as the absolute proprietor(s) of the land comprised in the above-mentioned title, subject to the entries in the register relating to the land and to such of the overriding interests set out in section 28 of the Land Registration Act (No. 3 of 2012) as may for the time being subsist and affect the land.

GIVEN under my hand and the seal of the

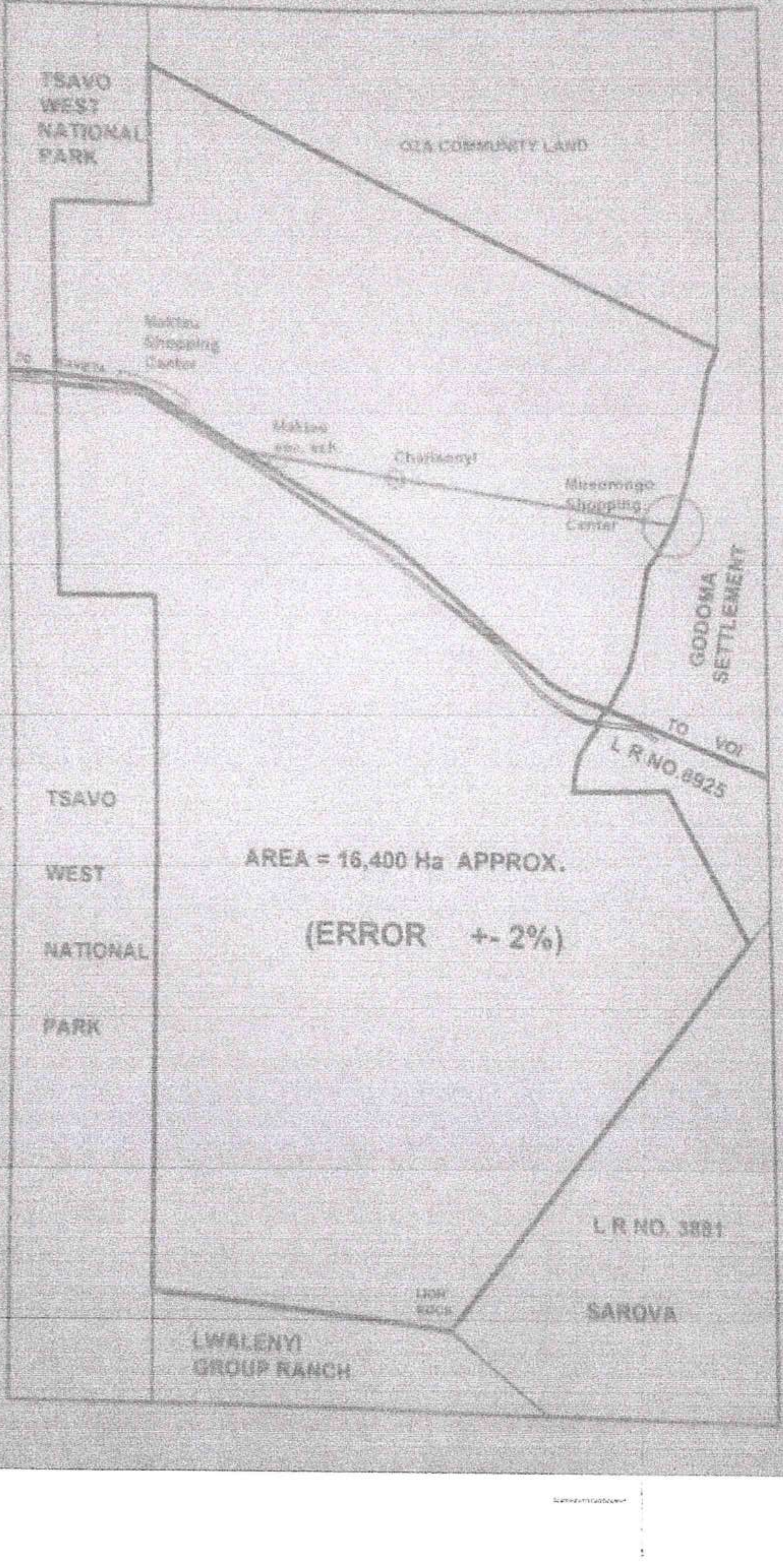
TAITA TAVETA District Land Registry

this 25TH day of OCTOBER 20 18

Land Registrar

M. S. Manyarku 326

MAKTAU SUB-LOCATION COMMUNITY LAND



STAKEHOLDER'S SUBMISSIONS

NATIONAL LAND COMMISSION

RESPONSE TO PETITIONS AND STATEMENTS REFERRED TO THE SENATE STANDING COMMITTEE ON LAND ENVIRONMENT AND NATURAL RESOURCES

REPORT BY:

GERSHOM OTACHI BW'OMANWA
CHAIRMAN

9TH SEPTEMBER, 2020

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Hon chair,

We are in receipt of invitations dated 26th May, 5th July and 6th August 2020, to provide responses to petitions and statements referred to the Senate Standing Committee on Land Environment and Natural Resources. I do note that some of the responses were submitted by the Commission Secretary/CEO on 17th June 2020.

Hon chair,

I wish to suggest that you allow us to make presentations on the latest petitions and make clarifications as may be deemed necessary by Hon members on responses that were submitted by Chief Executive Officer in June.

I also wish to inform this esteemed committee that we have refereed some of the petitions for detailed investigation by internal committees of the Commission. We shall be reporting on progress made at a later date.

Hon Chair,

We have noted that some of the petitions were outside the mandate of the Commission but we have tried to give responses whenever we found useful information. For petitions that we were not in position find information, we have advised on the appropriate agencies that should provide effective responses.

I.PETITION OVER THE GOVERNMENT'S UNLAWFUL ENCROACHMENT AND FORCEFUL OCCUPATION OF BARWAQO PLOTS WITHIN BULLA MPYA WARD, MANDERA EAST CONSTITUENCY – MANDERA COUNTY.

Hon Chair,

A number of people from Bulla Mpya Ward of Mandera County state that they are owners of plots in an area called Barwaqo having been allotted the plots by the County Government of Mandera. They have reported that on allocation, they paid for the plots and continue to pay rates for the plots but have not been able to develop the plots. They state that in the year 2014, the National Police Service (through RDU) took possession of the plots and have continued to occupy the plots that's displacing the genuine allottees who have made this petition.

The Petitioners pray for urgent investigations with a view to ensuring that the rights of the petitioners are upheld and that the process of law is followed in

the event of compulsory acquisition of the said plots by the government including payment in full, fair and prompt compensation.

Hon Chair,

Having gone through this petition, it is clear that there is a dispute over ownership and occupation of plots in Barwaqo area. Barwaqo is a residential area within Mandera Municipality. Under the assistance of the Ministry of Northern Kenya, the County Council of Mandera undertook to plan some sections of the Municipality with the aim of formalizing occupation and legalizing ownership. Barwaqo was planned and surveyed and plots were allotted to residents.

We have learnt thatiIn the year 2014, there was insecurity in Mamdera and the National Police Service and other security agents requested the County Government of Mandera to identify an area for temporary camps for purposes of security management. The area where the camps were set up happens to be the area prior planned for residential use and allocated to the Petitioner.
It appears that National Police service has been on the ground since 2014 and hence the Petitioners request for determination of their rights. This information is subject to verification by NPS.

The Petitioners want to be compensated should the National Police Service want to continue with the use of the Camp sites. There are two ways of dealing with their concern:

1. If it is confirmed that the petitioners are legitimate allottees of the plots , the Ministry of Interior and Coordination of Government could approach the County Government for formalization of its occupation through re-planning the area to change use from residential to use compatible with the Ministry of Interior intended use. The County government affected allottees (petitioners) may then be compensated through compulsory acquisition procedures.

2. Alternatively, the Ministry of Interior could request the County Government to formalize its occupation by way of re-planning and issuance of alternative plots to the Petitioners anywhere else within Mandera Municipality.

   The correct status of the nature of claims to ownership to the plots should be confirmed by the County government from its records as well as the Ministry of Lands and physical planning. Furthermore , he nature and extent of occupation of the land should be confirmed by NPS through the Ministry of Interior.

The Commission is ready to facilitate any process it is requested to regularize according to the law.

II. REQUEST FOR STATEMENT ON THE STATUS OF VOI POINT LIMITED, LR NO28683

Hon Chair,
With regard to the statement requested by Senator Jones Mwaruma, our records indicate that the CEO responded to a petition of a similar nature on 4th September 2019.
As indicated by the CEO on 4th September, 2019, Voi Sisal Estate sits on private land which is beyond the scope of our mandate, however the following information was shared by the Commission Secretariat then:

1. This is private land.
2. CR No is. 51725
3. Approximate area- 1,953ha
4. LR.NO-28683
5. Term 99 years W.e.f 1/1/1993- It has 73 years remaining before the lease expires.
6. Annual rent payable-353,795/-
7. User- agricultural (owner grows sisal).
8. The parcel was transferred to Voi Plantations Ltd and later to Voi Point Ltd.
9. It was charged to Diamond Trust Bank for Kshs. 4 Billion on 31/1/2019 and further charged to the same bank for Kshs.800Million on 13/2/2019.
10. Some members of public (Mkamenyi residents) have developments on a section of the parcel – near the staff houses at the new Voi- market along Mombasa Nairobi highway.

Compensation Details:

The Petition sought among others information on the amount of money paid by Kenya Railways as compensation to either Voi Sisal Estate, Voi Plantation or Voi Point Limited (as the case may be), during Phase One (Mombasa-Nairobi) of the construction of Standard Gauge Railway (SGR).

The part acquired from the parcel is sandwitched between the old meter gauge railway and the Nairobi-Mombasa road. The following are the details.

Area of Land acquired	14.9621 Ha or 36.971 Acres
Registered Owner:	Voi Plantations Ltd
Compensation paid	Kshs. 359,530,100/-

RESPONSES ALREADY SUBMITTED BY THE CEO ON 17TH JUNE 2020

III. PETION BY RESIDENTS OF KERICHO AND BOMET COUNTIES ON THE STATUS OF LAND OWNED BY MULTINATIONALS IN KERICHO AND BOMET COUNTIES.

This petition was submitted by three persons who are residents of Kericho and Bomet counties who pray that senate recommends that the National Land Commission (NLC) and the Kenya National Commission on Human Rights (KNHCR) to carry out investigations under which Multinationals in Kericho and Bomet Counties acquired the land they own and consider the plight of the residents.

RESPONSE

This matter was investigated by National Land Commission through its committee on Historical land injustices that sat on various dates in Kapsabet (11th.July2018),Kisumu(17th.August2018),Nairobi14th.September,2018) and Kericho(11th.October,2018)

This matter had been filed as historical land injustices claim by the Talai community,County Government of Kericho and the Kipsigis Clans as claim numbers NLC/HLI/546/2018,NLC/HLI/044/2017 and NLC/HLI/173/2017

After hearing the parties, the Commission made recommendations and gazetted them vide gazette notice no. 1995 of 1st March 2019. The Decision is attached.

The Commission's role under the Statute is to make recommendations which are implemented by other agencies.

Court Case

Upon gazzettement of the Commission recommendations on 1st march 2019, tea companies in Kericho filed case no JR No. 95 of 2019 seeking to quash the

Commission recommendations gazzetted on 1st March 2020 on the basis that the Commission failed to give them a fair hearing under Article 50 and fair administrative action among other grounds. The matter is therefore before court.

IV. PETITION TO SENATE CONCERNING RESETTLEMENT OF THE MINORITY NGEREK COMMUNITY FOLLOWING THEIR PROPOSED EVICTION FROM SOUTH NANDI FOREST, IN NANDI COUNTY.

The petition submitted by mr.Joel kenduiywa on behalf of the minority Ngerek community who are residents of Chepkumia location, Emgwen constituency in Nandi County.

That ,the Kenya Forest Service issued notices to the minority Ngerek community to vacate the area they occupy in the south Nandi forest, to enable KFS plant trees and conserve the forest as a water catchment area.

That while this was being done, the minority Ngerek community were left with nowhere to go as the land set aside by government for their resettlement was grabbed by prominent people who have refused to vacate from the said land.

RESPONSE

We wish to respond as follows:

This matter was handled by National Land Commission through the committee on historical land injustices as lodged by one Joel Kenduiywa on behalf of the Ngerek minority community as NLC/HLI/435/2018 and NLC/256/2017.

Background and the Claimant's Case

The affected community was to be moved from Nandi South forest to be resettled together with Koibem Community in part of forest land around Kapkangani. The intended area meant for resettlement was excised by KFS after they paid the requisite survey fees but their claim is that the same area was given to a different group and were not settled on the excised land as planned.

The matter was heard and determined by the Commission

Upon hearing the parties the commission made the following recommendations:

KFS to facilitate the degazettement of excised area from Nandi South Forest to enable issuance of title deeds to Ngerek and Koibem communities on land for land basis.

The Director of Survey together with Nandi County Government to expedite the excision of the forest area that KFS excised from Nandi South Forest and hand over to the Ngerek and Koibem Communities.

The final determination by the Commission have been annexed

KFS has, however sought a review of the determination. It will also be observed that the implementation of the Decision does not just lie with KFS. There is a long process that involves the National Assembly.

The Commission's role under the Statute is to make recommendations which are implemented by other agencies.

V. REQUEST FOR RESPONSES TO PETITIONS AND STATEMENTS REQUEST FOR STATEMENT ON THE IMPENDING EVICTION OF RESIDENTS OF MAVOKO FROM THEIR LAND BY THE EAST AFRICA PORTLAND CEMENT COMPANY IN MACHAKOS COUNTY.

Hon chair we wish to respond as follows;

1. The statement concerns Parcels of land L.R.Nos.8784/4 L.R No. 8786 and L.R.No. 10425.

The three parcels of land are registered in the name of East Africa Portland Cement Company. In as far as sanctity of title is concerned and as information held in the land registry the titles to this land have been held by the company as provided for by the records.

According to the Constitution, the land falls under the category of private land

64. Private land consists of —

(a) Registered land held by any person under any freehold tenure;

(b) Land held by any person under leasehold tenure; and

(c) Any other land declared private land under an Act of Parliament.

The Company and the Government can deal with any trespasser as provided for in the Land Act.

The true status of the Company, whether private or Public , would , however, best be confirmed by the Attorney General as there appears to be some uncertainty on the matter.

2.**The question of why the Company, has reneged on the Board of Directors resolution** of 30th September 2010 and 23rd July 2010, can only be explained by the CEO of EAPCC or the Chairman of the Board

3. On the alleged discrimination by the company against locals in sale of land: This question can be responded to in a better way by East African Portland Cement Company. The company is in a better position to answer

5. Resettlement and compensation: The Settlement Fund Trustee Board, Chaired by t5he CS lands is mandated with resettling the Landless and where compensation is required deposit the funds with the NLC for redistribution to the beneficiaries

6. Question on release of Mavoko Task Force Report: The Commission is not in a position to answer this question as it did not initiate the process.

VI. A PETITITION TO THE SENATE CONCERNING THE ALLEGED UNLAWFUL ACQUISITION AND DISPOSITION OF THE POKA GROUP RANCH LAND

The petitioner humbly requests that:

The Senate investigates the matter and intervenes with a view to ensuring that land LR Kajiado /Kaputiei south 23 in its entirety measuring 2,148 is transferred back to POKA Group ranch and that all private land illegally issued be repossessed. The petition further seeks to establish why private persons were paid for part of land compulsorily acquired for SGR, the identity of the payee and the amount.

Hon chair I wish to respond as follows:

Background History of Poka Group ranch- LR Kaputiei South/ 6

The Poka group ranch in Kajiado County was established in 1968 and is summarized on the table below;

Date of incorporation(under Cap 287 now repealed)	Number of members	Size (Ha)	Date of Dissolution	Area of Emali Holding ground(acres)
3.4.1970	30	8,926	2.3.1979	2,148

The Swynnerton plan of 1954 and ALDEV plan had recommended an approach that would address communities sharing common interests. Thus the group ranches were

established through the adjudication of trust lands and registered under the Land Group Representatives Act, Cap 287 (*now repealed*).
Poka Group land was owned and shared communally by 30 families, however in the 1980s the members resolved to subdivide into individual ownership and each of the family got their Titles.

THE EMALI HOLDING GROUND- L.R KAJIADO/KAPUTIEI SOUTH/23

1. The Livestock Holding Grounds were established across Kenya under the Livestock Management Division under the Ministry of Agriculture and Livestock.
2. The Emali holding ground was excised from the Poka community land in 1964 which was Trust land measuring about 2,148 acres, the Ministry of Livestock under the Land Marketing Division.
3. The purpose of the holding grounds is for promotion of livestock productivity activities to enhance livestock production systems in the country and this will ensure food security as one of the 'Big Four' agendas.
4. The County Councils had set aside land as holding grounds for Livestock production purposes.
5. The Emali holding ground was registered and held by the then County Councils on behalf of the communities and managed by the Livestock Management Division.
6. The Emali holding ground is one of the designated lands among others in the Country.
7. The designated land parcels are being used for the production of feedlots, feeding facilities and production of fodder and this will contribute towards food and nutrition security agenda.

SUB-DIVISIONS OF L.R KAJIADO/KAPUTIEI SOUTH/23

The Emali holding ground was registered as LR Kajiado/Kaputiei South/23 under the County council, who sub-divided into two parcels and transferred as follows;

1. LR kaj./Kaputiei south /46- registered under County Council measuring 759 Ha (1,874 acres) and leased to TARDA
2. LR Kaj./Kaputiei south / 47- registered under individuals who further subdivided into 3;
    - L.R kaj./ Kaputiei South /887
    - L.R kaj./ Kaputiei South/ 888 for 32.28 Ha
    - L.R kaj./ Kaputiei South/ 889 for 69.36 Ha.

The holding ground was leased by the Ministry of Livestock Development to TARDA for 30 years with effect from 1.9.1987. The total area leased is 759 Ha.

Current Status of Emali Holding Ground LR Kajiado/Kaputiei South /46

The community is utilizing about 1,400 acres of the ground for grazing, there is a school and church on the parcel and a cattle sale yard managed by the County Government.
The County Government has developed a plan covering about 250 acres of the said land and has created 727 market plots, with schools and other infrastructural facilities. The letters of allotment for the market have already been issued to individuals. TARDA is utilizing about 200 acres for farming.

RECOMMENDATIONS

The petitioners are requesting that the entire land of LR Kajiado/Kaputiei South/23 measuring 2,148 Ha be reverted back to the community and serve its intended purpose of livestock management.

The information provided above needs to be verified by the County Government and the Ministry of Lands and physical planning.

Furthermore , there are apparently various categories of Land ; Public, private and (possibly) community.

The Commission and this esteemed Committee may need to have further discussions with the County Government of Kajiado on the best way to address the challenges raised in the petition.

COMPENSATION DETAILS

From land acquisition records, part of the land belonging to the group ranch was acquired for the SGR phase I; however as noted in the petition, the Original LR. Kajiado/Kaputiei South/23 had been subdivided some times in 1995 and two different parcels created out of the original parcel as follows:

a. Parcel LR. Kajiado/Kaputiei South/46
b. Parcel LR. Kajiado/Kaputiei South/47

The Parcel LR. Kajiado/Kaputiei South/47 was further subdivided into three parcels:

a. Parcel LR. Kajiado/Kaputiei South/887
b. Parcel LR. Kajiado/Kaputiei South/888
c. Parcel LR. Kajiado / Kaputiei South/ 889

The Commission confirms that payment for the above was done by the Kenya Railways Corporation on behalf of the Commission under delegated authority in

the initial payment in schedule 3. Copies of land ownership documents and payees details for the compensations were forwarded to KRC. This compensations were paid to the registered owners in payment as shown below.

L.R. No.	Area Acquired (Ha)	Payee	Amount
Kajiado/Kaputiei South/887	3.4862	David Ole Sankori	8,912,500.00
Kajiado/Kaputiei South/888	1.483	David Ole Sankori	3,582,250.00
Kajiado/Kaputiei South/889	4.6305	David Ole Sankori	10,528,250.00
Kajiado/Kaputiei South/46	Improvements	Tana and Athirivers Development Authority (Tarda)	712,540.00

That due process as provided for by the Land Act for compulsory acquisition was followed although the community members did not participate in the process as at the time of acquisition, the subject parcels were no longer community land having being registered in favour of individuals and titles issued.

It is also not clear if the group ranch had submitted any adverse information on the above parcels or if they had submitted any counter claim to compensation in the course of acquisition of the land.

VII. RESPONSE TO STATEMENT REQUESTED BY SEN. DR. ALICE MILGO MP WITH REGARD TO IMPLEMENTATION OF LAND USE POLICY IN THE COUNTIES

Statement on Land Use Policies

Q1State how many counties have factored in provisions of the National Land use policy?

Introduction

Parliament approved the sessional paper No.1 of 2017 on the National Land Use Policy in October 2017. This was a historic moment because Kenya has never had a clearly defined National Land Use Policy yet several policy documents dating as far back as Sessional Paper no. 10 of 1965 on "African Socialism and its application to planning" identified the need for a National Land use Policy. This sessional paper recommended that "*A national land-use policy must be created and physical planning must be extended from the towns and cities to districts and rural areas. The conservation of water supplies and productive land through the maintenance of forests and windbreaks, proper methods of land cultivation, and*

prevention of fire and flood must be actively promoted by Government and the people must be fully informed and their co-operation ensured"

The National Land use Policy aims at providing legal, administrative, institutional and technological framework for optimal utilization and productivity of land and land related resources in a sustainable and desirable manner at the National and County levels.

The policy provides a framework for its implementation and the responsibility for ensuring sound implementation of the policy is vested with the National Land Commission *(para. 4.1.6 of the policy)*. As well, both the National and County Governments have the primary responsibility to implement the policy.

Implementation of the policy will be done through formulation of relevant laws and the preparation and implementation of various categories of land use plans namely:

I. County spatial plan as provided for under section 110 of the county Governments act
II. Various categories of urban plans as provided for under section 111 of the county Governments act
III. Integrated urban development plans under section 36 of the Urban areas and cities act

So far, several counties are at different stages of formulating their county spatial plans as follows:

Category 1: plans approved by the respective County Assemblies: two (3) counties including Nairobi city.

Category 2: plans completed awaiting approval by the County Assembly- eleven (12) Counties.

Category 3: have initiated the process of county spatial planning twenty one (21) counties.

Category 4: Not yet initiated preparation of County spatial plans eleven (11) counties.

Counties are also in the process of preparing urban plans for their major urban centers. Some development partners have been key in supporting counties in the planning process.

The greatest challenge that counties have faced is that planning has received low prioritization therefore there has been meagre resource allocation in terms of finances and human resources.

Q2. Explain measures put in place by counties to ensure that land regulations, land use plans and policies are implemented.

1. There has been sustained sensitization to both County Executives, land use planners as well as County Assemblies to make them aware of their respective responsibilities in land use planning, implementation and enforcement.

2. Counties have designated departments that are charged with the responsibility of land use planning and development control. Committees also exist at the County Assemblies which have been assigned responsibilities related to land, planning and urban development to oversight the operations of the designated departments.
3. The National Land Commission pursuant to Article 67(2)(h) of the Constitution has conducted monitoring and oversight of land use planning activities in the counties.
4. In pursuit of this responsibility, the National Land commission has developed monitoring and oversight guidelines that have been guiding counties in preparing the various plans. So far the Commission has issued the following monitoring and oversight guidelines:

I. County spatial planning: monitoring and oversight guidelines
II. Leaders guide to county spatial planning- *this is an abridged version targeting top officials as well as members of county assemblies.*
III. Urban land use planning: monitoring and oversight guidelines
IV. Leaders' guide to urban land use planning: this is an abridged version targeting top officials as well as Members of County assemblies
V. County spatial planning in Pastoral areas(annex to county spatial planning monitoring and oversight guidelines)

Q3. State measures put in place to ensure biodiversity in counties

County Spatial Plans are useful instruments that counties are using to delineate biodiversity sites, natural resources and spelling out measures for the conservation. Counties have also designated environment departments and committees at the county Assembly to deal with biodiversity concerns and are guided by biodiversity strategy and action plan 2019. As well, counties have established County Environment Committees.
The National Land Commission pursuant to sections *11(1)(2)*and *12(2)* of the Land Act 2012 ensures that land in environmentally fragile areas and areas of critical biodiversity are not allocated for development. Further, the Commission in collaboration with County Governments and other stakeholders are in the process of developing a natural resource inventory and documenting it in maps. So far, these inventories have been developed for 22 counties. (*Kisumu, Mombasa,Busia, Nakuru,Bungoma, Kakamega, Vihiga, Kericho, Bomet, Turkana, Baringo, Samburu, Elgeyo Marakwet, Uasin Gishu,Nandi, Narok, Kajiado, Machakos, Makueni, Nyeri, Isiolo, Laikipia).* The inventories seek to help counties to know where these critical biodiversity sites are so that measures are put in place for conservation.

VIII. PETITION ON MWAKITAU LAND OWNERSHIP DISPUTE BETWEEN MWAKITAU RESIDENTS AND ISANGA IWISHI GROUP RANCH.

Hon Chair.

This petition has two aspects. It raises land administration matters that are within the mandate of the Ministry of Lands and matters of compulsory acquisition which are within the mandate of the Commission. How the Tittle Deed was issued to Isanga Iwishi Group Ranch can be explained by the Ministry of Lands. The Commission will however provide information on compulsory acquisition.

Hon Chair

The Petition sought among other things the investigation of fraudulent payment of compensation for mwakitau citizens 'individuals' parcel of land compulsorily acquired to construct Mwatate-Taveta-Holiliroad to Isanga Iwishi group ranch.

Land acquisition for the Mwatate-Taveta-Holili (A23) road project was initiated through a request by the Kenya National Highways Authority (KeNHA) General Manager -design & construction) vide letter Ref. KeNHA/D&C/A23/Vol.3 (67) dated 24st August 2013.

The notice of intention to acquire was published in Kenya Gazette notice No. 13942 of 18th October 2013.

Notice of inquiry was published in Kenya Gazette notice No. 13943 of 18th October 2013 for land parcels listed in the notice of intention. However there were subsequent additions including the subject parcel and its inquiry was published in gazette notice no. 1174 of 26th February 2016 (copy attached).

Inquiry for the subject was slated for 16th March 2016 at the Maktau chief's office at 9.30 a.m.

Confirmation is given that inquiry was held as scheduled and that the group ranch represented by its officials (chairman, secretary & treasury) attended the inquiry and presented a claim to compensation.

The group ranch presented a title deed for the land registered in their name.

No other interested party appeared at the inquiry to present claim to compensation and up to conclusion of the inquiry the Commission had not received any other

claim on the said land. In line with provisions of Section 112 of the Land Act 2012, the Commission subsequently issued an award for the land to the group ranch who accepted the offer of compensation.

Compensation for the subject parcel was paid out in September 2019; there were no encumbrances registered against the title that could have inhibited payment nor any adverse claim against the land that had been received at the Commission by then. The following are the details of the payment.

PARCEL NO.	REGISTERED OWNER	ACQD AREA (HA)	AWARD
Bura/Isangaiwishi/18	Isangaiwishi Group Ranch	33.9938	28,979,545

The Commission did follow the laid out legal process on compulsory acquisition in compensating the group ranch and having received no other interest or claim against the title belonging to the group ranch; the same cannot be termed as fraudulent.

Upon payment of compensation to the group ranch who were then the registered owners, there cannot be any other payment to other individuals as this would amount to double payment and imprudent use of public resources.

However, if it were to be confirmed that the group ranch was fraudulently registered as the owners of land in 1972 and its title revoked as provided for in law, provisions of Section 116 of the land Act on payment in error would kick in – it provides that;

"If a person has received any money by way of compensation awarded for an interest in the land being acquired, either in error or before it has been established that some other person is rightfully entitled to the interest, the Commission may, by notice in writing served on that person, require that person to refund to the Commission the amount received, and the amount shall be a debt due from that person to the Commission".

Petition to the Senate regarding resettlement of East Mau Evictees
This petition has been referred to the Commission's Committee on Historical Land Injustices for investigation. The Committee will make a decision on whether to admit the claim as a historical land injustice.

IX. PETITIONS THAT REQUIRE MORE TIME AND CONSULTATION

The following petitions will require more time for processing internally at the Commission or for consultation with the Ministry of Lands and other agencies.

1. PETITION ON RESETTELEMENT OF EAST MAU EVICTEES

This petition has been referred to the Commission's Committee on Historical Land Injustices for investigation. The Committee will make a decision on whether to admit the claim as a historical land injustice.

2. PETITION BY DUNDORI FORMER FOREST RESIDENTS:

The petitioners are not happy with a resettlement programme undertaken in 1994. Basically the petitioners are appealing for resettlement since they were evicted from Dundori forest. Settlement is a function of the Ministry of Lands. The Commission can only look at the matter as a form of historical land injustice meted on the former forest dwellers of Dundori. It should however be noted that this matter has been dealt with extensively by the Ministry of Interior and the Kenya Forest Service. It may be useful to get their input.

3. STATEMENT REQUESTED ON LAND ADJUDICATION, SURVEYING AND TITLING OF PARCELS IN MWEAKINGALI "A" IN VOI SUB COUNTY, TAITA TAVETA.

The requested statement is within the mandate of the Ministry of Lands.

4. STATEMENT OF LAND GRABBED FROM DANDORA ESTATE WASTE SEWERAGE

We advise that the Ministry of Lands is more equipped to respond to this petition

5. STATEMENT REQUESTED BY HON FATUMA DULLOW

We note that the statement requested by the Senator Fatumo Dullo MP, is directed to the Cabinet Secretary, Lands. We shall leave this to the Cabinet Secretary to respond.

Hon Chair, we thank you and the esteemed committee for the support accorded to the secretariat during the absence of commissioners. We intend to foster a good working relationship with this committee and the Senate in general. Thank you.

GERSHOM OTACHI BW'OMANWA
CHAIRMAN

MINISTRY OF LANDS AND PHYSICAL PLANNING

WRITTEN SUBMISSIONS TO THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES

Honourable Chair,

Pursuant to a letter Ref: **SEN/DCS/LENR/2/2020(19)** dated May 26, 2020, the Committee invited the Cabinet Secretary Ministry of Lands and Physical Planning to provide written submissions on the following:

Honourable Chair, we wish to submit as follows;

1. **Petition by residents of Kericho and Bomet Counties on the legality of land ownership by multinationals in Kericho and Bomet Counties;**

The Petitioners aver that they were forcefully evicted from their ancestral land measuring approximately 25,000 acres by the British settlers, land which was later allocated and leased to multinational tea companies.

They have requested the Committee through the National Land Commission (NLC) and the Kenya National Commission on Human Rights (KNHCR) to carry out investigations on the circumstances under which the multinationals in Kericho and Bomet Counties acquired the land they own and consider the plight of residents.

Honourable Chair, we note that this petition was directed to the National Land Commission (NLC) and the Kenya National Commission on Human Rights (KNHCR). The Ministry pledges to avail any information required by the two Commissions in their investigations aimed at resolving the issues raised in the petition.

2. **Petition by Mr. Joel Kenduiywa on the resettlement of the minority Ngerek Community following their proposed eviction from South Nandi Forest, Nandi County;**

The petitioners aver that a parcel of land that was meant for resettlement of the minority Ngerek Community measuring approximately 100 acres in Yala and Kapkangani area in Nandi County was occupied by prominent personalities leaving the Ngerek community without a place to relocate to.

The petitioners have sought the intervention of the Committee in investigating the matter with a view to ensuring;

a) That the persons unlawfully occupying the land set aside for resettlement of the minority Ngerek Community are immediately evicted from the said land, and that any titles issued thereon are revoked
b) That the Government, through the Kenya Forest Service (KFS) or any other agency, is stopped from evicting the minority Ngerek Community from the South Nandi Forest before it has secured land for their resettlement, and,
c) That the rights of indigenous and minority groups in the country, including forest dwelling communities, are protected and upheld

Honourable Chair, we wish to respond as follows;

The resettlement exercise was undertaken by the Office of the President and it involved the Ngerek and Koibem communities who settled in Ngerek and Koibem villages in South Nandi.

Since the settled area was rocky and hilly, and served as a water catchment area, the Government decided to resettle the two communities in Kapkangani and New Koibem areas respectively. The Koibem community would be resettled on 266.8 Hectares and the Ngerek community on 455.4 Hectares. Public utilities for both villages were to take 188.29 Hectares. This was in exchange for land previously held by the two communities in South Nandi Forest.

The resettlement programme was to be carried out in two phases;

a) Phase one involved resettlement of the Koibem community at New Koibem/ Chepkumia area. This was successfully completed.
b) Phase two targeted the Ngerek community.

Phase two encountered many challenges that hindered its implementation.
There were allegations that people who never exchanged any land with the Kenya Forest Service became beneficiaries of the land at Kapkangani area. The challenges can be summarized as follows;

1) Political interference

2) Some original allottees sold their plots
3) The Ngerek community attempted to forcefully occupy the parcels allocated to them. This led to clashes in the year 2002.
4) The Ngerek community is still in occupation of their original land in Ngerek Hills as they did not surrender the title deeds to the Kenya Forest Service as earlier agreed.

Honourable Chair, there is need for engagement between the local leadership and relevant government agencies to resolve this matter.

3. **Statement requested by Sen. Fatuma Dullo, MP, on 27th November, 2019 regarding the Ministry of Lands and Physical Planning seeking to open up land in Isiolo County for adjudication under Legal Notice No. 150 of 27th August, 2019;**

The petitioner has requested that in its statement, the Committee should;

1) State what informed the Ministry's decision in issuing the gazette notice which in effect will lead to the conversion of communal land into private land despite there being a number of contentious land related disputes in the County yet to be resolved
2) Explain why the Ministry decided to exclude the Kenya Defense Force's School of Infantry and Combat Engineering from the adjudication process knowing very well that there is a court order in place stopping the Kenya Defense Force from carrying out any survey in the contentious area until the dispute is settled
3) Explain why the Ministry of Lands and Physical Planning is attempting to convert land lying along the LAPSSET corridor and Isiolo Resort into public land knowing very well that the said land has its rightful owners who are yet to be compensated
4) Explain whether in issuing the legal notice the Ministry of Lands and Physical Planning sought and received approval from the County Government who are the legal custodians of unregistered community land
5) Explain why the Ministry of Lands and Physical Planning failed to undertake public participation, engage with all leaders and other stakeholders before issuing the gazette notice knowing clearly that the communities' interests must be protected at all times; and
6) State whether the legal notice issued by the Ministry of Lands and Physical Planning was in accordance with the law and in adherence with the principles of openness, accountability and the confines of public participation.

Honourable Chair, Land in Isiolo County is community land (trust land) save for settled areas. In order to determine and record the rights of individual land owners, the Land Adjudication Act had to be applied since all land was held under customary law and the Community Land Act was not operational.

The publication of the Gazette notice was informed by the need to bring the settled areas of Isiolo County under the Land Adjudication Act, Cap 284. Section 3 of the Act, States that:

(1) The Minister may by order apply this act to any area of trust land if-
a) The County Council in whom the land is vested so requests
b) The Minister considers it expedient that the rights and interests of persons in the land should be ascertained and registered
c) The land consolidation act (cap. 283) does not apply to the area

The conditions set in Section 3 were fulfilled since;

a) The Isiolo County Assembly in its sittings had expressed the desire to benefit from the National titling programme as per the Land Housing and Urban Development Committee report of January 15, 2018 and the County Assembly official report of July 4, 2018. **(Annexures 1 and 2)**
b) The Cabinet Secretary consulted the County Government of Isiolo and acceded to the need to ascertain and register land rights and interests of individual land owners.
c) The Land Consolidation Act cap 283 does not apply to the area.

In view of the foregoing and after consultations with the County Government of Isiolo, the Cabinet Secretary Lands and Physical Planning declared parts of Isiolo County as adjudication areas vide Legal Notice No. 150 of September 3,2019. The habited areas are to be registered under the Land Adjudication Act, Cap 284 while the grazing lands are to be registered under the Community Land Act.

This legal notice was however amended vide Legal Notice No. 1 of January 10, 2020. This was after the County Assembly Housing and Urban Development Committee held consultative meetings held between November 8 and 16, 2019 and proposed the widening of the applicable area.
The amended notice increased the area under adjudication and township blocks. This would increase the number of leases and title deeds issued as shown in the table below;

NO	ITEM	LN No. 150 of September 3, 2019	LN No. 1 of January 10, 2020
1.	Adjudication Sections	4	36
2.	Township Blocks	9	16
3.	Certificate of Leases	7,500	17,050
4.	Projected Title Deeds	10,250	25,250

The gazettement of the County as an Adjudication area was not in contravention of the Community Land Act since section 46(6) of the Community Land Act does state" For the avoidance of doubt, the Cabinet Secretary shall develop the adjudication programme and ensure that **the new and existing adjudication programme** shall, subject to this act, be governed by the law applicable to it immediately before the commencement of this Act and shall be concluded within three years of the enactment of this Act."

The Community Land Act is yet to be operationalized since civic education on implementation and formation of community land has been carried in 23 counties with community land. Efforts to conduct civic education in Isiolo have not been fruitful. The same has not taken off and wider consultations is needed.

Part IX of the Community Land Act provides that a national public education and awareness programme is to be rolled out within twelve months of the commencement of the Act. Currently the Community Land Act cannot be implemented in Isiolo County since section 27 (I) of the Regulations and part 48(I) (h) of the Community Land Act have not been carried out. Individual land owners however can get their rights recorded and registered by the application of the Land Adjudication Act.

Leaders from the county expressed their reservations on the application of the Land Adjudication Act to the County and did file a court case at the Environment and Land Court at Nairobi. **(Nairobi ELC Petition No. 61 of 2019 Hon. Fatuma Adan Dullo & Others-Vs- Cabinet Secretary Lands and Attorney General.** The court declined to issue injunction to the adjudication process. The case was transferred to Meru ELC and it is now petition No. 28 of 2020.
All adjudication and survey work being undertaken by the Ministry in the County has been suspended pending the outcome of Petition No. 28 of 2020 before the Meru Environment and Land Court challenging the application of land adjudication act cap.284 (Legal Notice Number 150,) to Isiolo County.
The Kenya Defence Forces land in Isiolo was reserved on October 31, 1977 vide Gazette Notice No. 3210. The Commissioner of Lands issued a letter of allotment to the Department of Defence for land parcel measuring 10,209 hectares for School of Infantry Cantonment. Consequently, title was issued to the Permanent Secretary to the Treasury as trustee of the Kenya Defence Forces. The Land Adjudication Act Cap 284 cannot be applied to a titled area.

The residents of the Burat wards did protest the allocation and have since filed a case in court. The case was filed by Joseph Lorunyei Kuwam and six others against the Cabinet Secretaries of Defense, Lands and Interior& Coordination of National Government, the Attorney General and others in Petition No. 25 of 2019 in the Environment and Land Court at Meru.
The LAPSETT corridor land was gazettted on October 21, 2016 vide the Kenya Gazette Notice Vol. CXVIII-No.129.

The acquisition of land within the LAPSSET corridor, Isiolo resort city and Isiolo international airport is the mandate of the National Land Commission and the LAPSSET Corridor Development Authority.
Honourable Chair, the gazettement of Isiolo as an adjudication area does not extinguish the rights of Isiolo residents to pursue compensation for land that has been gazetted for other uses within the County.

4. **Petition by Residents of Taita Taveta County, Mwatate Sub County, Mwakitau Location on the Mwakitau land ownership dispute between Mwakitau Residents and Isanga Iwishi Group Ranch;**

The petitioners aver that the title deed to a piece of land in Mwakitau sub-location of Taita Taveta County measuring approximately 10,000 acres on which they have lived since 1920 was recently issued to Isanga Iwishi Group Ranch. They also protest the compensation of the group ranch for the construction of Mwatate-Taveta-Holili road, claiming that the residents should have been compensated instead.

They have sought that the Committee;

a) Deals with this petition immediately in view of the urgency and seriousness of the matters raised herein.
b) Investigates the circumstances that led to the fraudulent registration of Mwakitau land as a ranch and acquisition of its title deed by Isanga Iwishi Group Ranch.
c) Recommends that the Isanga Iwishi title deed be revoked forthwith and the residents of Mwakitau be declared the legal owners of the land.
d) Investigates the fraudulent payment of compensation for land compulsorily acquired to construct Mwatate-Taveta-Holili road to Isanga Iwishi Group Ranch.
e) Recommends that the residents of Mwakitau whose land was compulsorily acquired to construct Mwatate-Taveta road be compensated adequately.
f) Take any other appropriate action it deems fit to resolve the matters raised herein.

Honourable Chair, we wish to respond as follows;

The registration of Isanga Iwishi Group Ranch was as a result of the land adjudication process prescribed by the Land Adjudication Act, Cap 284. The area was declared as an Adjudication Section on June 12, 1975 vide Notice reference LA.31/35 Vol.11/114. A copy of the notice is attached as **Annexure 3(i)**.

The primary stage of demarcation and survey was completed and a notice of inspection of the register issued on March 22, 1978. **Annexure 3(ii)** is a copy of the notice of application.

This stage gave room for inspection of the register and raising of objections. On expiry of the sixty (60) day notice, the final stage of registration followed.

On October 12, 1983 a certificate of incorporation, herewith attached as **Annexure 3(iii)**, was issued to the group in accordance with Land Group Representatives Act (now repealed).

A further certificate was issued on December 4, 2018 after election of another set of Group Representatives. A copy of the certificate is attached as **Annexure 3(iv)**.

Subsequently, a title deed for the land parcel number Bura/Isanga Iwishi Scheme/18 measuring approximately 5992.2 hectares (14,807 acres) was issued to Isanga Iwishi Group Ranch on October 25, 2018.

There was a case MISC. CIVIL APPLICATION NO. 225 OF 2000 at Mombasa High Court seeking to stop the issuance of title to Isanga Iwishi Group Ranch. This application was however dismissed vide a ruling dated March 28, 2008. **Annexure 3(V)** is a copy of the ruling.

Honourable Chair, from the foregoing, Isanga Iwishi Group Ranch lawfully acquired title to the land parcel number Bura/Isangaiwishi Scheme/18.

5. **Statement requested by Sen. Johnes Mwaruma, MP, on February 26, 2020 regarding land adjudication and allocation in Mwakingali "A" in Voi Sub-County, Taita Taveta County; and**

The petitioner has requested that in its statement, the Committee should;

1) Explain the cause for the delay in surveying and titling parcels of land in Mwakingali 'A'.
2) State the commencement and completion dates for survey of parcels of land in Mwakingali 'A', and
3) State when residents of Mwakingali 'A' will be issued with title deeds.

Honourable Chair,
Mwakingali 'A' informal settlement falls within Voi Municipality, Taita Taveta County and has about 800 parcels as per the Part Development Plan (PDP).
The survey and verification of ground ownership exercise took place in the 2016/2017 financial year for purposes of implementing development plans earlier prepared. This was geared towards regularization of land tenure.
The scheme has not been issued with title deeds because of various issues that need to be addressed by the Ministry of Lands and Physical Planning officials, local administration, National Land Commission, the political leadership and other stakeholders. The challenges include double allocation, possible displacement of some residents, absentee landowners and ownership disputes.

The major challenges which were encountered during the exercise were;

1. Lack of community organization and mobilization to create effective awareness of exercise to facilitate acceptance and voluntary participation by the residents. This affected the pace of work as some ground occupants were not receptive of the survey and verification team.

2. The PDP failed to match the ground due to developments that have taken place without being guided by the PDP. Also, certain areas set aside for roads on the PDP turning out to be waterways and deep gullies on the ground.

Honourable Chair, the Ministry will embark on the exercise in the 2020/2021 Financial year. The work is targeted to be completed by December 2020. The strategy put in place will involve; sensitization of stakeholders, election of local land committee and ground verification. The PDP will be harmonized with the ground occupation while ensuring provision of adequate public utilities. This will involve a multi-agency team comprising of Ministry of Lands and Physical Planning, Ministry of Interior and Coordination of National Government, National Land Commission, The County Government, political and local leadership.

6. **Petition by Mr. Jeremiah Lemako, Chairperson, POKA Group Ranch on the alleged unlawful acquisition and disposition of the Poka Group Ranch Land;**

The petitioners aver that communal land set aside as holding ground for livestock in 1968, parcel number Kajiado/ Kaputiei South/ 23 (measuring approximately 2,148 acres), held in trust for the community by the County Government of Kajiado has over time been subdivided and allocated to private entities.

They also claim to have missed out on compensation for land acquired for the Standard Gauge Railway.

They request that the Committee;

a) Intervenes with a view to ensuring that land parcel number Kajiado/ Kaputiei South/ 23 in its entirety measuring 2,148 acres is transferred back to POKA Group Ranch and that title illegally issued be revoked, and

b) Cause the persons who may have unlawfully participated in the alleged illegal transactions of the land and the misappropriation of the compensation monies to be prosecuted.

Honourable Chair, according to our records, the status of plot number Kajiado/Kaputiei-South/23 is shown in the table below-

Plot number	Size (Hectares)	Status
Kajiado/Kaputiei-South/23	859	Registered on April 4, 1970 in favour of Olkejuado County for Emali Holding Ground. It was closed on subdivision on November 8, 1993 and new numbers issued- i) Kajiado/ Kaputiei-South/46 measuring approximately 734.5 Hectares ii) Kajiado/ Kaputiei-South/47 measuring approximately 124.4 Hectares
Kajiado/Kaputiei-South/46	734.5	Registered under Olkejuado County Council (now Kajiado County Government). The plot is still intact.

Kajiado/Kaputiei-South/47	124.4	Transferred from Olkejuado County Council to David Ole Sankori Lenante on November 8, 1993. It was later subdivided on August 28, 1995 into new plot numbers: i) Kajiado/ Kaputiei-South/887 measuring approximately 12.14 Hectares ii) Kajiado/ Kaputiei-South/888 measuring approximately 32.38 Hectares iii) Kajiado/ Kaputiei-South/889 measuring approximately 69.36 Hectares.
Kajiado/Kaputiei-South/887	12.14	Subdivided on July 20, 2016 into new plot numbers Kajiado/ Kaputiei-South/6234, 6235, 6236 and 6237 registered in the name of David Ole Sankori Lenante
Kajiado/Kaputiei-South/888	32.38	The current registered owner is Cikewa Investments Limited.
Kajiado/Kaputiei-South/889	69.36	Registered in favour of David Ole Sankori

Copies of green cards and official searches are attached as **Annexure 4.**

Honourable Chair, all land held under the repealed Local Governments Act were wholly managed and administered by the various County Councils and Municipalities. Consequently, all relevant records showing how and why the land in question was allocated to private entities are held by the County Government of Kajiado.

7. **Statement requested by Sen. Boniface Kabaka, MP, on 16th October, 2019 regarding the impending eviction of a section of residents of Mavoko, Machakos County, from their land by the East Africa Portland Cement Company;**

The petitioner has requested that in its statement, the Committee should;

1) Explain why the East African Portland Cement Company and Government Agencies have threatened to have a section of residents of Mavoko evicted from their lands, known as L.R. NO. 8784/4, L.R. NO. 8786 and L.R. NO. 10425
2) Further explain why the cement company reneged on its Board of Directors' resolutions of September 30, 2010 and July 23, 2013 that it would surrender the said land to the Government free of charge for the benefit of the local community or give the locals an irrevocable option to purchase the said land upon exhaustion of the raw material used in manufacturing cement from the said land
3) Explain why the National Government wants to repossess part of the said land known as L.R. NO. 10425 measuring 4,256 acres for the construction of affordable housing under its big four development agenda yet the land is occupied by locals and state whether there's no alternative land in Mavoko for the project
4) Explain why the cement company is discriminating against the locals in the sale and disposal of the afore-described parcels of land.
5) Explain what plans the National Government has in place to either resettle and/ or compensate the Mavoko Community Association for anticipatory loss and damage to their property and livelihoods upon eviction from the parcels of land; and
6) Explain why the National Government has refused to release to the public the outcome of the Mavoko Land Task Force set up to look into the state of ownership of land and invasions by squatters in Mavoko, Machakos County.

Honorable Chair, we wish to respond as follows: -

According to our records, the following parcels are registered under the East African Portland Cement Company Limited;

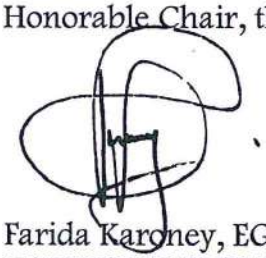
LR No. IR No.	Size	Transactions
LR No. 8784/4 IR No. 19637	1,392.5 Acres.	Originally owned by Ignancy Mann and Erica Mann Parcel was sold to Kitangilu on 4th Sept 1969 EAPC PLC bought parcel from Kitangilu on 14th Nov 1979 for Ksh1,200,000 In 1983 parcel subdivided into 4 portions:

		8784/1 – 154.7Ha and 8784/2 – 154.6Ha sold to Kimani Wanyoike, 8784/3 – 72.9Ha sold to Julius Mulandi 8784/4 which is 1329.3 acres remained with EAPC PLC. Has a leasehold of 949 years and an annual rent of Ksh266,700 User: Agricultural
LR No. 7815/1 IR No: 18389	2,095 Acres.	The original owner was East Africa Sisal Estates Ltd for a term of 999 years from August 1, 1948 and an annual rent of Ksh. 419 East Africa Sisal Estates Ltd changed to Mitchell Cotts (1968) EAPC PLC bought the land for Two million shillings from Mitchell Cotts together with LR No. 10424 Land was transferred to EAPC PLC in March 9, 1977 with an annual rent of Ksh377
LR No. 10425 IR No. 17839	4,272 Acres.	This land was a direct allocation to EAPC PLC in 1960 for a term of 945 years from April 1, 1960 for an annual rent of Ksh854.40 User: Agricultural Current status: Subdivided into two parcels LR No 10425/25 transferred to Cabinet Secretary the National Treasury. The user for the parcel of land is mixed urban development (residential, commercial and industrial). The acreage is 4260.75 acres. LR No 10425/2 was acquired by Kenya Power and Lighting Company for a power sub-station acreage 10 acres.

LR NO. 8786 IR	745 Acres	This was a direct allocation to EAPC PLC with a total acreage of 745 Acres Leasehold land for 951 years w.e.f 1st Jan 1955 and an annual rent of Ksh149 User: Agricultural Land The property is charged to Kenya Commercial Bank.
LR No. 10424 IR 17951	4,298 Acres.	Originally owned by Douglas Harcourt Stanley from 1 Nov 1960 for 952 years Land was transferred to East Africa Sisal Estates Ltd in April 10, 1961 East Africa Sisal Estates Ltd changed name to Mitchell Cotts Limited (1968) Mitchell Cotts in 1970 transferred land to EAPC PLC at a consideration of 2 million shillings together with LR No. 7815/1 User is Agricultural

(copies of official searches are marked as **Annexure 5**)

Honorable Chair, the Ministry is not aware of any planned evictions.



Farida Karoney, EGH
CABINET SECRETARY

September 8, 2020

COUNTY GOVERNMENT OF TAITA TAVETA
OFFICE OF THE GOVERNOR

RESPONSE TO PETITIONS

A. ENCROACHMENT OF LAND BELONGING TO MKAMENYI RESIDENTS BY VOI POINT LTD

Background

The basis of Mkamenyi community's petition is that they are victims of historical injustice. Evidence of community's residence on the land are ancient graves, dwellings and artefacts that point to human habitation on the said land for over 100 years (the community has resided on the land since 1890). Currently, the entire Mkamenyi land has been encapsulated by what is known as Land Registration No. 28683 measuring approximately 4800 Acres. The owner being Voi Plantations Ltd (Voi Point Ltd).

When Voi Plantations Ltd. lease expired in 1993, (original number being L/R No. 4637) it was expected that the land would revert back to the community. Having failed to obtain approval for lease renewal from the then Municipal Council of Voi, the Plantation obtained extension for the lease in a manner that is believed to be irregular. Never the less, the community has continued to reside on their land as squatters. Recently Voi Point Ltd (current owners of the land) offered to allocate the community 35 Acres of land, which they later on, owing to pressure from the community and the government, increased to 150 Acres, which, again is not what the community is asking for.

The community's prayer is that Voi Point Ltd. allocates them at least **2000 Acres.** It is also the community's prayer that the entire 4800 Acres will ultimately be returned to them as the rightful owners of the land.

County Government's position

i. There is need for thorough investigations into the circumstances leading to renewal of lease on L/R No. 4637 (original number) and the recent subdivision and sale of Land Registration No. 28683 (new number).

ii. Voi Point Ltd should allocate the people of Mkamenyi at least **2000 Acres** pending the outcome of investigations on matters under caption (i) above.

B. IMPENDING EVICTION OF MSAMBWENI VILLAGE RESIDENTS BY A PRIVATE COMPANY

Background

Msambweni neighborhood in Voi hosts approximately 3500 people. Just like in Mkamenyi, residents of Msambweni are victims of historical injustice and institutional malfeasance. The land the residents of Msambweni reside on was initially occupied by their kin as farmland. The land was, in the late 1970s, allocated to Bata Shoe Company for purposes of establishing a shoe making factory with strict conditions that the land should not be sold, transferred or its use changed.

Other than failing to put up the factory, Bata Shoe Company sold the land to a private company, **Sparkle Properties Ltd**, in contravention of conditions accompanying the letter of allotment. It is the private company (Sparkle Properties Ltd) that obtained eviction orders from high court in 2020 so as, not only to evict Msambweni residents, but also to be paid Ksh 1,050,000/= (One Million, Fifty Thousand Shillings only) in compensation by the hapless residents.

Be it as it may, this is no longer a Land administrative or management issue, rather it is a legal matter that can only be dealt with legally-through the courts. Being a legal matter, the most promising remedy is for the community is to appeal the Court's decision. Once the court sets aside the orders, it will then be possible for new evidence (of technical nature which was not considered by the Court) to be adduced in order to defeat the earlier ruling. The other alternative, though unpopular, is for the community to mobilize resources of their own and buy the land from the company. However, the most convenient (with justification) option is for

the government to acquire the land from the current registered owner and settle the residents.

County Government's position

i. The residents of Msambweni cannot and must not be moved out. It is too late in the day for the title holders to claim the land. The residences have settled on the land for decades, put up permanent dwellings, public utilities such as schools, social halls, places of worship, etc. It will be immoral to evict the residents.

ii. The land was acquired from the residents fraudulently. The residences had donated the land to Bata Shoe company to build a shoe factory in the area. The shoe factory was never built. So, the residences have a right to reposes their ancestral land. That is what they are trying to do-to reclaim the land from fraudsters.

C. LAND OWNERSHIP DISPUTE BETWEEN MWAKITAURESIDENTS AND ISANGA IWISHI GROUP RANCH

Background

Isanga Iwishi Group had attempted to evict approximately 10,000 residents of Mwakitau location from what was until recently known as Isanga Iwishi Group Ranch. Bura/ Isanga Iwishi/18 was registered in 1984 and measures approximately 5992.2 Ha. The community challenged registration/issuance of title deed to the group in court first in 1984 and then in 1999 on grounds that the ranch was established in an area that they were residing on since 1920 without their involvement as residents of the area. In both cases the community lost the case against the group. The last time the court ruled in favor of the group ranch was in 2008 at the High Court in Mombasa (Misc. Civil Application No. 255 of 2000). To forestall the eviction, however, the County government obtained orders to stop the planned eviction until an ownership case is heard and determined. The matter is still in court.

The Mwakitau community argues that they want the areas they have occupied for over 100 years be converted to a settlement scheme and issued with individual title deeds. While the community may invoke provisions of Limitations of Actions Act on Adverse Possession, they have the option of either appealing the 2008 High Court ruling (they have ruled out this option citing the high costs involved) or taking advantage of the new window obtaining under the Community Land Act so that they become members of Isanga Iwishi Community. Thereafter, being members of the Isanga Iwishi, they may call a meeting of the assembly as per section 23 of the Act and pass a resolution by majority vote to subdivide the land and acquire individual titles.

In the meantime, the County government in collaboration with the Ministry of Lands and Physical Planning is implementing the Community Land Act, 2016 which will ensure that Mwakitau residents became members of Isanga Iwishi Community. On 05th March, 2021 residents convened the Assembly meeting and elected Community Land Management Committee. The next step shall be to formalize the arrangements by registering the Isanga Iwishi Community. Mwakitau community will then automatically become members of Isanga Iwishi as per the Community Land Regulations, 2017, Paragraph 4 of the Third Schedule.

County government's position

i. The government acknowledges the fact that the people of Mwakitau have lived in the area for years as a Community and, therefore, are part and parcel of Isangaiwishi and must be recognized and registered as members of Isangaiwishi community land with all rights.

ii. Mwakitau town settlement established before the first World War must not be interfered with.

Ultimately, the legal mandate on Land Adjudication and Settlement rests with national government Ministry of Lands and Physical Planning and to some extent National Land Commission and not the County government. The county government's role is facilitative. Once we receive a communication from The National Land Commission on the way forward, we shall take necessary action. The County government is ready to facilitate and fast track adjudication/settlement process.

County Government's position

i. The lease on Land Parcel L. R/No. 5827 should not be renewed.

ii. The people have settled on the land for over 20 years, invested their time and resources on the farms making Machungwani the food basket of Taita/Taveta and the coastal region at large. It is only fair, therefore, that they are allocated the farms.

I submit,

Signed.....

H. E. GRANTON G. SAMBOJA

GOVERNOR

Date 17th May 2021

MUNYITHYA, MUTUGI, UMARA AND MUZNA COMPANY ADVOCATES

COMMISSIONERS FOR OATHS AND NOTARIES PUBLIC

MOMBASA OFFICE
Epic Business Park, 3rd Floor,
Links Road - Nyali
P.O. Box 3737-80100. MOMBASA
Tel: 041-2319848/49, Cell: 0714-822182, 0773-511546

DROPING ZONE
Maganjo House, 2nd Floor,
Above Transnational Bank,
Nyerere Avenue,
MOMBASA

NAIROBI OFFICE
View Park Towers, 11th Floor,
Monrovia Street
P.O. Box 10021-00100, NAIROBI
Cell: 0775-385148

PARTNERS

JOSEPH M. MUNYITHYA
LLM (UON), LLB (UON), DIP (KSL), CPS

SIMON P. M. MUTUGI
LLB (MOI), DIP (KSL)

JANE A. UMARA (MRS)
LLM (UOL), LLB (UON), DIP (KSL), CPS

MUZNA M. Y. JIN (MS)
LLB (UON), DIP (KSL)

JOHN L. MKOMBA
LLB (MOI), DIP (KSL)

Your Ref: TBA

Our Ref: JM/I/109 **Date:** 14/6/2021.

The Clerk of the Senate
Parliament Building
P.O BOX41482-00100
NAIROBI

Dear Sir,

RE: REPLY TO PETITION TO SENATE BY ISANGAIWISHI GROUP RANCH .

We act for Isangaiwishi Group Ranch who are the recipients of a petition dated 15/5/2019. With instructions of our clients we respond as follows;

1. The petition consists of falsehoods deliberately crafted by the petitioners. Had the petitioners stuck to the truth, no petition would have been filed before senate as this one under reference.

2. The area referred to in the petition was declared an adjudication section on 12/6/1975. At the same time our client was incorporated under the Land(Group Representatives) Act 1968 (Now repealed on 12/10/1983).After the adjudication process was over in 1978, the District Land Adjudication officer Taita Taveta District gave notice dated 22/3/1978 declaring the adjudication process as complete. Thereafter objections were raised and each one of them dealt with but one objector proceeded on appeal to the Minister. This was finally decided in 1999.

3. Our client thereafter followed and was issued with a Title Deed.

4. Sometimes in the year 2000 a group of people from a neighbouring area filed **HC MISC CIVIL APPLICATION NO. 225 OF 2000-MOMBASA**. This group was challenging the ownership rights of our client relying on the same historical issues. The matter was heard an after careful deliberations the suit was dismissed with costs to our client.

5. Sometimes in 2020 our client noted that there were squatters who had moved into their land claiming the rights to occupy and utilize their land. Our client served them with notice Under Section 152E of the Land Laws(Amendment) Act 2016 and gave all the invaders a duration of four months with effect from

1/7/2020- 31/10/2020. That notice was served by way of advertisements in the Taifa Leo newspaper of 25/6/2020 and Daily nation of the same date 25/6/2020.

6. On 24/2/2021 the County Government of Taita Taveta filed **ELC CASE NO. 37 OF 2021 MOMBASA** to restrain our client from implementing the notice mentioned in Clause 5 above. Together with the main suit they obtained a temporary court order restraining our client from charging, selling, leasing or further sub-dividing our client's land. Our client has filed a defence against that suit and the same is set for mention on **29th June 2021**. In this suit the County Government of Taita Taveta is purporting to move the court under the provision of Section 47(1)(2) of the Community Land Act and Regulations 26(1)-(8) of the Community Land Act 2017. The County Government purports to act as a trustee for all the communities living in Taita Taveta County.

7. On 11/3/2021 our clients filed **ELC CONSTITUTIONAL PETITION NO. 14 OF 2021 –MOMBASA.** That petition is pending in court for determination of the following prayers ;

   a) *A Declaration that the membership of the Petitioner set out in Schedule A of this petition shall constitute the only membership of the ISANGAIWISHI GROUP to be constituted under section 47 of the TLCA by the 8th Respondent to own, manage and control the plot title Number BURA/ISANGAIWISHI/19 & 20.*

   b) *A Declaration that pending the registration of the new entity under Section 47 of the TLCA and Section 8 of the Land Act, the current officials of the petitioner have the authority to manage, control and protect the assets of the petitioner including plot title number BURA/ISANGAIWISHI/19 & 20 and the interests thereof.*

   c) *A declaration that the decision to donate 1000 acres of the plot Title number BURA/ISANGAIWISHI/19 & 20 by the petitioner done on 4th July, 2014 was lawful.*

   d) *A Mandatory order do issue compelling the Land Control Board. Taita Taveta to issue the petitioner with a consent to transfer the 1000 acres to the 9th respondent.*

   e) *A declaration that the actions of the 2nd Respondent in inviting outsiders into the suit property amounts to an express breach of chapter 6 of the Constitution.*

   f) *A Mandatory conservatory order in the form of orders of Mandamus do issue compelling the 1st , 4th , 5th and 6th respondents to evict all squatters currently occupying portion of plot title numbers BURA/ ISANGAIWISHI/19 & 20 forthwith.*

   g) *An order of injunction do issue restraining the 10th - 16th Respondents by themselves, servants and or agents or any other non-member of the petitioner from interfering through entry, use or occupation of any part of the suit property.*

h) *A declaration that the act of forceful takeover of the Petitioners' Land breaches the right to own property as guaranteed in Article 40 of the Constitution.*

i) *Any other relief this Honourable Court would be pleased to issue.*

j) *Costs of the Petition.*

8. The upshot of the above is that a discussion of this petition before the hearing and determination of the two matters pending in court will be *subjudice*. Secondly the petitioners are the same people in whose interest the County government of Taita Taveta has filed **ELC CASE NO 37 OF 2021- MOMBASA**. Thirdly the issues raised relate to the right of ownership which ultimately will lead to maintaining the current register of our client or altering the same. This last issue is the central matter for consideration in **ELC CONSTITUTIONAL PETITION NUMBER 14 OF 2021- MOMBASA.** The petitioners are free to join both cases and explain their grievances.

9. In view of the issues raised in paragraph 8 above our client who is law abiding takes the view that parallel proceedings should not be allowed. In that case we have advised our client not to participate in the proposed hearing of this petition until the two pending cases are heard and determined. To discuss the petition as drawn we will require that we discuss the issues raised in the cases set out in paragraph 8 above. Should you require copies of any of these documents we are ready to forward them in soft to you.

10. Kindly confirm that you shall postpone the proposed hearing until the matters set out in paragraph 8 above are fully heard and determined.

Yours Faithfully,
MUNYITHYA, MUTUGI, UMARA & MUZNA CO. ADVOCATES

JOSEPH M.MUNYITHYA
/dk