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11/6/24*

**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY**

THIRTEENTH PARLIAMENT (THIRD SESSION)

PUBLIC PETITIONS COMMITTEE

**REPORT ON -
CONSIDERATION OF PUBLIC PETITION NO. 14 OF 2023 REGARDING DELAYED
ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MNARANI SUBLOCATION IN
KILIFI COUNTY, BY HON. OWEN BAYA, M.P, MEMBER FOR KILIFI NORTH
CONSTITUENCY**

JUNE, 2024

THE NATIONAL ASSEMBLY PAPERS 1410	
DATE: 11 JUN 2024 <i>Tuesday</i>	
TABLED BY:	<i>Chair, Public Petitions Committee Hon. Nimrod Mbatia, MP</i>
CLERK-AT	<i>Benson Irzopu</i>

**DIRECTORATE OF LEGISLATIVE AND PROCEDURAL SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI**

**NATIONAL ASSEMBLY
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CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Public Petition No. 14 of 2023 regarding Delayed adjudication and settlement of residents of Mnarani sublocation in Kilifi County. The petition was presented to the House pursuant to Standing Order No. 225 (2) (a) by the Member of Parliament for Kilifi North Constituency, Hon. Owen Baya, MP on behalf of residents of Mnarani in Kilifi County.

The Committee considered the Petition and observed that the Ministry of Lands, Public Works, Housing and Urban Development had expressed willingness to engage the trustee of the Wakf of Khadija Binti Suleiman El-Busaidy with a view to purchase it and issue titles to the residents. Only upon purchase of the Waqf properties as per the provisions of section 21 of the Waqf Act 2022, can allocation of the land be undertaken by the Ministry of Lands, Public Works, Housing and Urban Development in accordance with the Land Act, Cap 280.

The Committee recommends that the national government through the Ministry of Lands, Public Works, Housing and Urban Development and the Ministry of Finance and National Treasury prioritizes the settlement of the residents of Mnarani and undertake through the National Land Commission the compulsory acquisition of the land as per the provisions of the Land Act and that the trustee of the waqf M/S. Shariffa Binti Mohammed seeks to dispose of the specific land registered in the Wakf of Khadija Binti Suleiman El-Busaidy in accordance with the provisions of the Waqf Act Section 21 and 18.

The Committee appreciates the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support without which its work would not have been possible. The Chairperson expresses gratitude to the Committee Members for their devotion and commitment to duty during the consideration of the Petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.



HON. NIMROD MBITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date..... 11/6/2024

PART ONE

1. PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Public Petitions Committee is established under the provisions of Standing Order 208A with the following terms of reference:

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and
- d) advising the House and reporting on all public petitions committed to it.

1.2 COMMITTEE MEMBERSHIP

The Public Petitions Committee was constituted in October 2022 and comprises of the following Members:

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.
Kitui East Constituency

United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.
Turbo Constituency

United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.
Mavoko Constituency

Wiper Democratic Movement-Kenya (WDM-K)

Hon. Edith Vethi Nyenze, M.P.
Kitui West Constituency

Wiper Democratic Movement-Kenya (WDM-K)

Hon. Ernest Kivai Ogesi Kagesi, M.P.
Vihiga Constituency

Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.
Kuria East Constituency

United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.
Baringo Central Constituency

United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.
Awendo Constituency

Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.
Mbeere South Constituency

Independent

Hon. Bidu Mohamed Tubi, M.P.
Isiolo South

Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.
Machakos Town Constituency

Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.
Taveta Constituency

Wiper Democratic Movement-Kenya (WDM-K)

Hon. Peter Mbogho Shake, M.P.
Mwatate Constituency

Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.
Sabatia Constituency

United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.
Makueni Constituency

Wiper Democratic Movement-Kenya (WDM-K)

1.3 COMMITTEE SECRETARIAT

The Public Petitions Committee is facilitated by the following secretariat:
Lead Clerk

Mr. Ahmed Kadhi
Senior Clerk Assistant

Ms. Anne Shibuko
First Clerk Assistant

Ms. Miriam Modo
First Clerk Assistant

Mr. Willis Obiero
Clerk Assistant III

Mr. Martin Sigei
Research Officer III

Ms. Patricia Gichane
Legal Counsel II

Ms. Peninnah Naisiae
Legal Counsel II

Ms. Roselyn Njuki
Senior Sergeant at Arms I

Mr. Peter Mutethia
Audio Officer

Mr. Calvin Karungo
Media Relations Officer

Mr. Paul Shana
Sergeant at Arms

PART TWO

2. BACKGROUND TO THE PETITION

2.1 INTRODUCTION

1. Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani sublocation in Kilifi County was presented to the House on 18th April, 2023 by the Member for Kilifi North Constituency, Hon. Owen Baya, MP on behalf of residents of Mnarani in Kilifi County.
2. The Petitioners stated that the people of Mnarani village in Mnarani Ward, Kilifi North Constituency have occupied the land in Mnarani village for more than 100 years.
3. The whole land in Mnarani village which falls in Mnarani Ward was surveyed on 28th May 1912 and granted in favour of Mr. Byremji Rustumji Khanjuri. The land was later illegally acquired by Arab families during the colonial era with assistance of the then administration, and the Arabs registered the land as their property.
4. The 172.8 Acres of land occupied by the residents of Mnarani is registered as plot No: YSR130 Section V situated at Mnarani-Kilifi Takaungu in the name of Kalthum Binti Mohammed and Shariffa Binti Mohammed (referred as Mohammed family) as agricultural land. Beneficiaries of Mohammed family are Ali Mohammed, Kalthum Mohammed, Shariffa Mohammed and Said Mohammed being 1st, 2nd, 3rd, and 4th born of the Mohammed family respectively.
5. Later, the illegally registered owners of the land migrated to the Middle East leaving the property under the care of caretakers whom they called trustees and the land changed to Wakf under the Islamic Laws.
6. The trustees invited locals to settle in the areas willingly and were to pay monthly fee based on the fact that the land was agricultural and had a lot of cashewnuts, coconuts and mangoes. Ali Mohammed (the 1st born son) appointed one Mr. Ali Omar to be in charge of collecting the money from the sale of coconuts and rent from people residing in the Mnarani plots.
7. In 1952, the trustee allowed the residents to build a school which is the present Mnarani Primary School measuring 12 Acres.
8. Mr. Ali Omar, the steward died and Mr. Mohammed Mwalimu took over as the new steward; and tasked by Mr. Ali Mohammed with the help of one Mr. Shosi to vet the people who wished to be settled at Mnarani Village.

9. When Mr. Ali Mohammed died and his siter Kalthum Mohammed became the trustee of the Wakf, Kalthum gave Mr. Abdallah Serf the Power of Attorney and the Wakf was registered in the name of M/s Kalthum Binti Mohammed of P.O. Box 85059 Mombasa.
10. During the tenure of Kalthum Mohammed, the land ceased being an agricultural land and became residential, presumably with a number of households exceeding 1,107 and a population of over 20,000 people with a Mosque, Churches, Schools and other social amenities.
11. The people who have settled in the land have put it into good economic use, constructed residential houses and commercial centres which are income generating.
12. The land has not been adjudicated and therefore no title deeds have been issued. The continued absence of landlord in this land and their failure to contribute to any development or welfare in the area has caused difficulties to the residents and has created major impediments in the people's livelihoods.
13. Residents of Mnarani have written may letters and lately, a memorandum to the National Land Commission but not action has been taken concerning the matter.
14. Both the National Government and County Government have invested heavily in the piece of land by providing the necessary infrastructure such electricity connectivity, water, roads and other social amenities.
15. The matter presented in this petition is not pending before any tribunal, court of law or independent body.

2.2 PETITIONER'S PRAYERS

16. **The Petitioners prayed that the National Assembly through the Public Petitions Committee:**
 - a) inquires into the ownership of the land occupied by Mnarani residents registered as plot No: YSR130 Section V situated at Mnarani-Kilifi Takaungu in the name of Kalthum Binti Mohammed and Shariffa Binti Mohammed;
 - b) recommends that the parcel of land in Mnarani be acquired and granted to the present occupants and the process of compensation be finalized;
 - c) recommends that the land be adjudicated so as to ensure that the residents acquire title deeds and save the residents from alleged erroneous records and missing information on the parcels of land; and

d) makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.

PART THREE

3. STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 SUBMISSIONS BY PETITIONERS

On Thursday, 15th June, 2023, the Member for Kilifi County, Hon. Owen Baya, M.P. appeared before the Committee and submitted as follows:

17. Mnarani which borders the creek, with Mnarani ruins as a landmark of the area, is an established community with social amenities such as churches, mosques and schools. Despite the existence of permanent structures, all residents are squatters.
18. Initial settlers on the land were Indians who introduced coconuts and Baobab. The Queen of England gave Arabs the land North of Mombasa as a gift for helping the United Kingdom fight in the world war. The Arabs led by the Sultan of Zanzibar/Oman proceeded to occupy vast pieces of land.
19. The Land Ordinance Act of 1918 gave absolute authority and ownership of the land to Arabs. They therefore own 80 percent of the land in the coastal region as Absentee Landlords hence deepening the magnitude of the Squatter problem.
20. Currently, the area is cosmopolitan consisting of local communities and other communities from different parts of the county.
21. In the 12th Parliament, the Departmental Committee on Lands had allocated funds under the Budget for the Government to buy the land from its owners, as the family that owns the land is willing to sell the land to the Government. However, this was not successful.
22. Recently, the Mohammed family wrote to Mnarani Primary School to demolish property build on land that exceeded the 12 acres that it had been allocated.
23. The County Government of Kilifi had attempted to change the user of the land from agricultural to residential/commercial so as to allow for collection of land rates. However, this was not successful as the application was not made by owners of the land.
24. A number of key stakeholders in the matter had passed on, the latest being Mr. Shosi, one of the stewards of the land who died in July 2023. However, one of the direct descendants, Ms. Sultana Fadhil is alive and practices as a lawyer in Mombasa.

On Thursday, 20th July 2023, the Committee made a site visit to Mnarani, Kilifi County. The chairperson of Mnarani Land Committee, Mr. Joseph Migwi, appeared before the Committee and submitted as follows -

25. Before the British colonized the East Africa and named it its protectorate, the Arabs and Indians were trading in these areas.
26. The Indian settlers came as money lenders, traders and artisans. This is the time the racial segregation was normalized by the British colonial administration.
27. The Arabs had formed the Sultanate of Zanzibar in 1856-1964. This was founded by Almad Bin Said al Busaid, the ruler of Oman and its East African territories.
28. In 1886, the Arabs (Sultanate of Zanzibar) entered a treaty with the British colonial Government such that the Sultanate of Zanzibar was given a 10-mile coastal strip as his dominion and the rightful owner. These lands were later registered under the Land Title Ordinance in 1908 and a letter of certificate of administration of the Mnarani plot which measured 172.8 acres was issued on 28th May 1912 under the British Colonial East African Protectorate.
29. Based on the fact that the British had colonized India before Kenya, the Commissioner of the Protectorate used the Land Occupation Act of India, 1894, which allowed the colonial government to appropriate all lands situated within 10 miles from the coastal strip towards the interior. The Act was also used to compulsorily acquire land for other public purposes such as construction of Government Buildings.
30. In 1915, the 1902 Land Ordinance Act was repealed and replaced by a new Crown Land Ordinance. The new Act suggested several available alternatives to the Government:
 - a) buying out the interests of the landlords
 - b) compelling the landlord to sell to the settlers/ tenants under a fair valuation
 - c) forcing and have outright land acquisition
31. Mnarani plot 7 Group was later sold to Mr. Edaji Nusserwanji Patel on 16th November 1932 and the administrators were Mrs. Hirabai & Mrs. Bachubai on 15th December 1932. On 13th September 1936, the land was sold by Mr. Edaji Nusserwanji Patel to Mohamed Bin Ali Khamisi Ali Mazrui Liwali.
32. On 3rd November 1942, the land was put under WAQF whereby Khadija Bin Suleiman El Busaid became the first trustee of the plot. Other trustees of the family who had been running the WAQF from time to time were the 1st

born, Ali Mohamed; the 2nd born Kalathumi Mohamed; the 3rd born, Shariffa Mhammed and the 4th born Seif Mohamed.

33. These trustees invited people to settle in Mnarani after paying Kshs. 50 deposit and a monthly fee of Kshs. 5 for a plot of the size of 50*50 in the 1970s.

3.2 SUBMISSIONS BY THE TRUSTEE OF MNARANI LAND

On Friday 21st July 2023, Ms. Sultana Fadhili, the trustee of Mnarani land, appeared before the Committee and submitted as follows:

34. Khadija Binti Suleiman Bin Hemed El Busaid lived in Mombasa as a widow, and was registered as the proprietor of the two plots of pieces of land and premises. She recognized her sisters Shariffa, Rukiya, Kalathumi and Mwana wa Shei, all daughters of Mohamed Bin Hemed El Busaid among the beneficiaries.
35. She appointed herself as the first Trustee of the Wakf and after her, her cousin Ali bin Mohamed Bin Hemed El Busaid and after him, such persons as he shall appoint, whom failing, such persons as the beneficiaries who are competent shall appoint. In all cases, the issue of a beneficiary shall upon his or her demise, take the share that would have gone to their parent; that brothers and sisters shall share equally; and that the share of a beneficiary dying without issue shall accrue to his surviving brothers and sisters.
36. Khadija Binti Suleiman Bin Hemed El Busaid by her will dated 3rd November 1942 bequeathed upon trust all her real estate unto beneficiaries that she appointed.
37. By a Court Order dated 15th August 1996, the Court appointed appointed Zayane Mohamed Omar and Fatma Mahmoud Fadhil Al- Baakry as new trustees for the WAKF of the late Khadija Binti Suleiman Bin Hemed El Busaid.
38. The Court Order was registered on 12th September 1996 in the Lands Title Registry, Mombasa vide presentation number 227, Volume number LT number 21, Folio number 823A/21 and File number 3189.
39. On 30th June 1999, the then District Commissioner for Kilifi District wrote to the Trustee, Fatma Al. Bakryn mentioning a dispute on Plot No. 7 Mnarani by Mr. Joshua Mwero, a resident of Mnarani who bought two plots in Mnarani Village in 1989 through an agent known as Mr. Famau. However, the same agent went ahead and sold one of the plots to another party which generated conflict among the interested parties.

40. In September 2001, a deed of retirement of one of the two trustees of a will of real and personal estate was made to relieve Zayane Mohamed Omar as a trustee and allowing Fatma Mahmoud Fadhil Al- Baakry, the continuing Trustee to be the sole trustee.
41. Zayane Mohamed Omar was desirous of retiring from the trusts of the said WAKF document and had intimated her desire to retire to the continuing Trustee and beneficiaries.
42. The continuing Trustee Fatma Mahmoud Fadhil Al- Baakry and the beneficiaries consented to Zayane Mohamed Omar being discharged from the trusts of the said Wakf and to vesting in the said Fatma Mahmoud Fadhil Al- Baakry alone of the properties specified.
43. Vide a letter dated 5th November 2001, the then District Commissioner of Kilifi District invited Mrs. Fatma Shapi through Ms. Sultana Fadhili to a meeting to discuss Mnarani Plot No. 7 Group V Issue.
44. Fadhili & Kilonzo Advocates issued a Buyer Beware (Caveat Emptor) on 16th September 2002 on PLOTS NO. 7, 16 AND 18 GROUP V MNARANI KILIFI/ WAKF F KHADIJA BINTI SULEIMAN BIN HEMED EL BUSAIDY. The notice was clear that none of any portion of the plots were up for sale, letting and no interest could be passed either through Sale, Lease or Exchange and for any consideration as the property is a Trust property with specific objects and for specific beneficiaries.
45. Mr. Afis Khan, Mr. Famau Athaman and Mr. Said Swaleh (the Assistant Chief) were not mandated to transact any business in relation to the plot and anybody having transacted previously with the three persons without the express consent of the Trustees has done so at his risk.
46. In 2016, Ms. Fatma Mahmoud Fadhil raised concern that there had been invasion and haphazard development in Plot No.s 7 Group V, 16 Group V & 18 Group V, Mnarani, Kilifi County. Attempts to handle the matter had been met with hostility, volatility and difficult to manage. She therefore authorized Ms. Sultana Fadhil & Kilonzo Advocates vide a letter dated 19th August 2016 to write to the relevant Government Ministry or Departments and offer the three Wakf Trust properties for sale either for settlement of the invaders (Squatters) and/or any other purpose they may deem fit and draw up all the relevant deeds, letters and documents necessary and required to facilitate the sale.
47. In a meeting held on 5th August 2017, invasion by squatters and haphazard development in the Wakf properties at Mnarani, Kilifi County who had put up permanent structures without the consent of the Trustee was discussed. The meeting resolved that the powers, duties, rights and obligations of the

Trustee under the settlement trust be enlarged to encompass the circumstances and situations which are not provided for in the settlement (Trust) as the Trustee at her entire discretion shall deem fit, proper and expedient, which can also include the disposal through long term leases and or sale of the Wakf properties. It was resolved that, if necessary, the Trustee do a sign and register a Supplemental Deed to expand the settlement (Wakf) Deed by including the above resolutions.

48. In 2017, the advocates wrote to the then Permanent Secretary, Ministry of Lands to assist in having the Government purchase the three properties through the Land Settlement Fund and settle the squatters.

3.3 SUBMISSIONS BY WAQF COMMISSION OF KENYA

On Thursday, 17th August 2023, Mr. Ibrahim Bulushi, the Chief Executive Officer, Waqf Commission of Kenya, appeared before the Committee and submitted as follows:

49. The Waqf Commission of Kenya was established under an Act of Parliament to provide for the administration of Waqf property. The roles of the Waqf Commission are spelt out under Section 8 of the Waqf Act No. 8 of 2022 which include taking over administration of certain Wakf, holding inquiry to determine the state of certain wakf, checking records of other Wakf to ensure proper management and granting consent to certain transactions among others.
50. The Waqf Commission under the Attorney General's Office has no records with regards to the Mnarani Land issue in question, specifically pertaining to Plot No. YSR130 SECTION V situated at Mnarani Kilifi, Takaungu. Records of Titles or the Land registration office in Mombasa or Kilifi are better placed to provide the information required by the Committee.
51. The land is a private waqf arising from family succession and the rightful beneficiaries are family members entrusted. It may not have been registered since the current Waqf Commission was established through an Act of Parliament of 2022. The land may therefore have been registered under the then Lands Offices in Mombasa, Kilifi, Malindi or Lamu.
52. A Waqf cannot be revoked unless the donor had indicated Waqf are supposed to be perpetual, meaning that once created, it cannot be revoked or transferred. However, it does not prohibit temporary Waqf. If the Wakf is created by will, then it may be revoked before the death of the testator.

3.4 SUBMISSIONS BY THE NATIONAL LAND COMMISSION

53. The Chairperson of the National Lands Commission, Mr. Gerishom Otachi, appeared before the Committee on 15th August 2023 and submitted that the

subject matter of the Petition falls under the Department of Adjudication and Settlement in the State Department of Lands and Physical Planning, which is best placed to address the matter.

54. The suit land has been declared a Wakf under Islamic Law. It was therefore necessary that before the land was adjudicated, the matter of declaration of Wakf be dealt with.

3.5 SUBMISSIONS BY THE MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

On 29th February 2024, Hon. Alice Wahome, the Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development appeared before the Committee and submitted as follows:

55. As per the records, the land in question was under Plot No. 7 Group V Kilifi measuring approximately 172.80 acres. It was registered as LT. 45, Folio 475, File 15284 on a freehold basis in favor of Wakf of Khadija Binti Suleiman El-Busaidy.

56. However, the parcel of land was encumbered by three different caveats registered in favour of three different parties as follows:

- a. Caveat dated April 21, 1965, by Ag. Registrar of Titles Mombasa claiming Ownership by compulsory acquisition vide Gazette Notice No. 12 of 1965 -7.20 acres;
- b. Caveat dated November 4, 1965 by East African Power and Lighting claiming a grant of easement; and
- c. Caveat dated 1965 by Ag. Registrar of Titles on behalf of Government of Kenya claiming ownership by compulsory acquisition of 2.83 acres being portion of Plot 7 Group V by virtue of Gazette No. 72 of 1966.

57. The Ministry would in the Financial Year (2024/2025) initiate negotiations with the registered land owners with a view of arriving at an agreeable compensation and surrender of the land for settlement.

58. The Ministry would engage the Wakf of Khadija Binti Suleiman El-Busaidy to determine the available land for compensation. Notably, the land was registered as private and could not be allocated to individuals without a transfer, which would require payment through compulsory acquisition or settlement purchase.

59. The Ministry would identify the Wakf of Khadija Binti Suleiman El-Busaidy, negotiate ownership, and work towards compensating and resettling the occupants, aiming to put the land into economic use.

PART FOUR

4.0. COMMITTEE OBSERVATIONS

Upon hearing from the Petitioner and other stakeholders, the Committee observed that -

60. The land was registered in favor of Wakf of Khadija Binti Suleiman El-Busaidy under subdivision No. 72.15-18, Group No V, Meridional District of South-A- 37/V.IV.6.5 in the locality South of Kilifi Creek under office copy number 36259-63.
61. Fatma Mohammed Fadhil Al Baakry and Zayane Mohammed Omar were appointed as trustees of the waqf on 15th August 1996. Zayane Mohammed Omar placed a deed of retirement in September 2001 and Fatma Mohammed is the present sole trustee.
62. Ms. Fatma Mohammed through her advocates engaged the National Government through the Ministry of Lands, Public Works, Housing and Urban Development and initiated an offer of sale for group V Plots No. 7, 16 and 18 in the Waqf for the settlement of squatters through the Land Settlement Fund.
63. There are residents squatting on the land at Mnarani, Kilifi County who had put up permanent structures such as schools and residential homes, and the government had provided the necessary infrastructure such as electricity connectivity, water, roads and other social amenities.
64. Even though previous government administrations may have engaged the trustees of the Waqf for compulsory acquisition of the land for settlement, such plans were formulated but not executed due to budgetary constraints.
65. The Ministry of Lands, Public Works, Housing and Urban Development had expressed willingness to engage the trustee of the Wakf of Khadija Binti Suleiman El-Busaidy with a view to purchase it and issue titles to the residents.
66. Only upon purchase of the Waqf properties as per the provisions of section 21 of the Waqf Act 2022, can allocation of the land be undertaken by the Ministry of Lands, Public Works, Housing and Urban Development in accordance with the Land Act, Cap 280.

PART FIVE

5.0. ANALYSIS OF ISSUES FOR DETERMINATION AS PER THE PRAYERS IN THE PETITION

67. Arising from the findings and observations, the Committee makes determination on the following issues as per the prayers sought in the petition as follows:

Issue No. 1: The Disposal of Waqf Immovable Property

The Committee Notes:

68. The Property is registered under Waqf of Khadija Binti Suleiman El-Busaidy and Shariffa Binti Mohammed as the trustee.
69. "Waqf" means the permanent dedication by any person of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes— (a) A Waqf by the user (b) A waqf-alal-aulad "waqf" means any person making such dedication.
70. Section 2 of Waqf Act, 2022 defines waqf to mean a waqf made for the benefit of an individual or a family, or for the performance of a rite or ceremony that is recognized by Islamic law.
71. Waqf can also mean permanent dedication by any person, of any movable or immovable property for any purpose recognized by the Muslim Law as pious, religious or charitable. It is a property which is used for religious and charitable purposes.
72. Section 5 establishes the Waqf Commission and section 6 provides for the composition of the Commission to include a public trustee and eight members appointed by the Attorney General. Section 8 provides for the functions of the Commission. Every Waqf made for the benefit of any Muslim must be administered in accordance with the provisions of the Act.
73. Section 14 of the Act provides that the Commission shall establish and maintain a register of a waqf containing particulars of the trustee.
74. Waqfs are perpetual meaning once created they can hardly be revoked.
75. However, section 21 of the Act provides for the exceptions in which a waqf property may be disposed. If the Waqf Commission determines that the intentions of the Waaqif cannot be reasonably carried into effect and if it is expedient that the waqf property should be sold.
76. Section 18 of the Act provides for the procedure for sale of waqf land, the person who intends to sell immovable waqf property shall make an application to the Environment and Land Court. The court may allow the application or issue any other order appropriate.

Issue No. 2: Compulsory Acquisition of the land

The Committee Notes:

77. The Ministry of Lands, Public Works, Housing and Urban Development will need to purchase the Property registered under Waqf of Khadija Binti Suleiman El-Busaidy and Shariffa Binti Mohammed as the trustee, through compulsory acquisition as provided in sections 107 - 115 of the Land Act, Cap 280.
78. This acquisition can only be undertaken if the application for disposal of the waqf is exempted by the Waqf Commission and allowed by the Court as per the Waqf Act.
79. Where the property can be disposed the Ministry of Lands, Public Works, Housing and Urban Development may submit a request to the National Land Commission to acquire the land on its behalf. The National Land Commission may vet the request and then commence the process by publishing a Gazette Notice. The registrar of lands shall make an entry of the intended acquisition.
80. Section 111 of the Land Act provides for just compensation to be paid promptly in full for land acquired through compulsory acquisition.
81. Upon purchase of the land by the Ministry of Lands Public Works, Housing and Urban Development, the property can be allocated under section 12 (1) (b) of the Land Act that provides for the allocation of land for a targeted group of persons or groups in order to ameliorate their disadvantaged position.
82. The Land (Allocation of Public Land) Regulations of 2017 in regulation 9 provides for the vetting of targeted groups of persons and the criteria to be applied. The national government will then submit a report to the National Land Commission for the settlement of the residents of Mnarani.
83. The National Land Commission Act in section 5(2)(a) provides for the process of disposal of public land. The Act provides that disposal of public land is undertaken by the National Land Commission, with the consent of the relevant government to which the land is vested.

PART SIX

6.0. COMMITTEE RECOMMENDATIONS

Pursuant to the provisions of Standing Order 227, the Committee recommends that-

Prayer 1: inquires into the ownership of the land occupied by Mnarani residents registered as plot No: YSR130 Section V situated at Mnarani-Kilifi Takaungu in the name of Kalthum Binti Mohammed and Shariffa Binti Mohammed

84.The Committee undertook this inquiry by listening to the various stakeholders and state agencies and established that the land is registered in the Wakf of Khadija Binti Suleiman El-Busaidy.

Prayer 2: recommends that the parcel of land in Mnarani be acquired and granted to the present occupants and the process of compensation be finalized.

85.The Committee recommends that the national government through the Ministry of Lands, Public Works, Housing and Urban Development and the Ministry of Finance and National Treasury prioritizes the settlement of the residents of Mnarani and undertake through the National Land Commission the compulsory acquisition of the land as per the provisions of the Land Act.

86.The Committee recommends that the trustee of the waqf M/S. Shariffa Binti Mohammed seeks to dispose of the specific land registered in the Wakf of Khadija Binti Suleiman El-Busaidy in accordance with the provisions of the Waqf Act Section 21 and 18.

Prayer 3: recommends that the land be adjudicated to ensure that the residents acquire title deeds and save the residents from alleged erroneous records and missing information on the parcels of land

87.The Committee recommends that upon such acquisition the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development submits the request to the National Land Commission for the allocation of the land under section 12 (1) of the Land Act, Cap 280.

Signed: _____



Date: _____



THE HON. NIMROD MITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

ANNEXURES

- Annex 1: The Adoption List
- Annex 2: Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sub-location in Kilifi County
- Annex 3: Minutes of 31st Sitting of 2023 held on 15th June, 2023
- Annex 4: Minutes of 50th Sitting of 2023 held on 15th August, 2023
- Annex 5: Minutes of 52nd Sitting of 2023 held on 17th August, 2023
- Annex 6: Minutes of 66th Sitting of 2023 held on 4th October, 2023
- Annex 7: Minutes of 5th Sitting of 2024 held on 29th February, 2024
- Annex 8: Minutes of 34th Sitting of 2024 held on 23rd May, 2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE

ADOPTION SCHEDULE
OF THE REPORT ON CONSIDERATION OF PUBLIC PETITION NO. 14 OF 2023
REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MNARANI
SUBLOCATION IN KILIFI COUNTY

DATE.....23/05/2024.....

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the consideration of a **Public Petition No. 14 Of 2023 Regarding Delayed Adjudication and Settlement of Residents of Mnarani Sublocation in Kilifi County** to confirm our approval and confirm its accuracy, validity and authenticity:

NO.	NAME	DESIGNATION	SIGNATURE
1.	Hon. Nimrod Mbithuka Mbai, M.P.	Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, M.P.	Vice Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	Member	
4.	Hon. Joshua Chepyegon Kandie, M.P.	Member	
5.	Hon. John Walter Owino, M.P.	Member	
6.	Hon. Ernest Ogesi Kivai, M.P.	Member	
7.	Hon. Maisori Marwa Kitayama, M.P.	Member	
8.	Hon. Edith Vethi Nyenze, M.P.	Member	
9.	Hon. Bidu Mohamed Tubi, M.P.	Member	
10.	Hon. Caleb Mutiso Mule, M.P.	Member	
11.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	Member	
12.	Hon. Peter Mbogho Shake, M.P.	Member	
13.	Hon. Suzanne Ndunge Kiamba, M.P.	Member	
14.	Hon. John Bwire Okano, M.P.	Member	
15.	Hon. Sloya Clement Logova, M.P.	Member	

Hon. Speaker,
You may approve.
Wassanini, DCPs
13/4/23



REPUBLIC OF KENYA

Approved
SNA
13/4/23

**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)**

PUBLIC PETITION

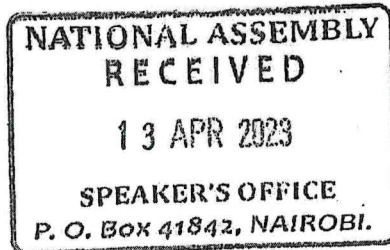
(No. 14 of 2023)

**REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF
RESIDENTS OF MNARANI SUBLOCATION, KILIFI COUNTY**

I, the **UNDERSIGNED**, on behalf of the residents of Kilifi North Constituency;

DRAW the attention of the House to the following:

1. **THAT**, the people of Mnarani village in Mnarani Ward, Kilifi North Constituency have occupied the land in Mnarani village for more than 100 years;
2. **THAT**, the whole land in Mnarani village in Mnarani Ward was surveyed on 28th May 1912 and granted in favour of Mr. Byremji Rustumji Khanjuri;
3. **THAT**, the Land was later illegally acquired by Arab families during the colonial era with the assistance of the Administration then, and the Arabs registered the land as their property;
4. **THAT**, the 172.8 Acres of land occupied by the residents of Mnarani is registered as plot No: YSR130 Section V situated at Mnarani-Kilifi Takaungu in the name of Kalthum Binti Mohammed and Shariffa Binti Mohammed (referred as Mohammed family) as an Agricultural land;
5. **THAT**, the beneficiaries of Mohammed family are Ali Mohammed, Kalthum Mohammed, Shariffa Mohammed and Said Mohammed being 1st, 2nd 3rd and 4th borns of the Mohammed family respectively;
6. **THAT**, during the later years, the illegally registered owners of the land migrated to the Middle East leaving the property under the care of caretakers whom they called trustees and the land changed to Wakf under the Islamic Laws;



**PETITION ON DELAYED ADJUDICATION AND SETTLEMENT OF
RESIDENTS OF MNARANI SUBLOCATION, KILIFI COUNTY UNDER
ABSENTEE LANDLORD**

7. **THAT,** the trustees invited locals to settle in the area willingly and were to pay a monthly fee considering that the land was agricultural and had a lot of cashewnuts, coconuts and mangoes;
8. **THAT,** Ali Mohammed (the 1st born son) appointed one Mr. Ali Omar to be in charge of collecting money from the sale of coconuts and rent from the Mnarani plots;
9. **THAT,** in the year 1959, the trustee allowed the residents to build a school which is the present Mnarani Primary School measuring 12 Acres;
10. **THAT,** Mr. Ali Omar the steward died and Mr. Mohammed Mwalimu took over as the new steward; and tasked by Mr. Ali Mohamed with the help of one Mr. Shosi to vet the people who wished to be settled at Mnarani Village;
11. **THAT,** Ali Mohammed died and his sister Kalthum Mohammed became the trustee of the wakf, Kalthum gave Mr. Abdallah Serf the power of attorney and the Wakf was registered in the name of M/s Kalthum Binti Mohammed of P.O. Box 85059 Mombasa;
12. **THAT,** at the tenure of Kalthum Mohammed, the land ceased being an Agricultural Land and became residential, presumably with a number of households exceeding 1,107 and a population of over 20,000 people with a Mosque, Churches, Schools and other social amenities;
13. **THAT,** the people who have settled in the land have put it into good economic use, constructed residential houses and commercial centres which are earning them income;
14. **THAT,** the land has not been adjudicated and therefore no title deeds issued;
15. **THAT,** the continued absence of landlords in this land and their failure to contribute to any development or welfare in the area has caused difficulties to the residents and has created major impediments in the people's livelihoods;

**PETITION ON DELAYED ADJUDICATION AND SETTLEMENT OF
RESIDENTS OF MNARANI SUBLOCATION, KILIFI COUNTY UNDER
ABSENTEE LANDLORD**

16. **THAT**, the residents of Mnarani have written many letters and lately, a memorandum to the National Lands Commission but no action has been taken concerning the matter;
17. **THAT**, both the National Government and County Government have invested heavily in the said piece of land by providing the necessary infrastructure such as electricity connectivity, water, roads and other social amenities;
18. **THAT**, the matter presented in this petition is not pending before any tribunal, court of law or Independent body.

THEREFORE, your humble Petitioners pray that the National Assembly through the Public Petitions Committee;

- i. Inquire into the ownership of the land occupied by Mnarani residents registered as plot No: YSR130 Section V situated at Mnarani-Kilifi Takaungu in the name of Kalthum Binti Mohammed and Shariffa Binti Mohammed;
- ii. Recommend that the parcel of land in Mnarani be acquired and granted to the present occupants and that the process of compensation be finalised;
- iii. Recommend that the land be adjudicated so as to ensure that the residents acquire title deeds and save the residents from alleged erroneous records and missing information on the parcels of land; and,
- iv. Makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.

And your **PETITIONERS** will ever pray.

PRESENTED BY:

THE HON. OWEN YAA BAYA CBS, MP
MEMBER FOR KILIFI NORTH CONSTITUENCY

DATE:



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 31ST SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, JUNE 15, 2023, IN COMMITTEE ROOM 9, GROUND FLOOR, MAIN PARLIAMENT BUILDINGS AT 11:30 AM

PRESENT

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. Ernest Ogesi Kivai, M.P.
4. Hon. Edith Vethi Nyenze, M.P.
5. Hon. Maisori Marwa Kitayama, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. Sloya Clement Logova, M.P.

APOLOGIES

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
6. Hon. Peter Mbogho Shake, M.P.
7. Hon. Suzanne Ndunge Kiamba, M.P.
8. Hon. John Bwire Okano, M.P.

IN ATTENDANCE

1. Hon. Owen Baya, MP - Petitioner

SECRETARIAT

1. Ms. Anne Shibuko - Clerk Assistant I
2. Mr. Willis Obiero - Clerk Assistant III
3. Mr. Shadrack Omondi - Legal Counsel II
4. Ms. Patricia Gichane - Legal Counsel II
5. Mr. Martin Sigei - Research Officer III
6. Ms. Lilian Mburugu - Media Relations Officer III
7. Ms. Marceline Kerubo - Audio Officer

MIN./PPETC/2023/199: PRELIMINARIES

The Chairperson called the meeting to order at 12.00 noon and Hon. Ernest Ogesi Kivai, M.P. said the prayers.

MIN./PPETC/2023/200: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sittings
4. Matters Arising
5. Consideration of Public Petition regarding *Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord*

-Brief on the Petition

-Meeting with the Petitioner (Hon. Owen Baya, MP-Member for Kilifi North Constituency)

6. Any other Business
7. Adjournment & Date of Next Meeting

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by the Hon. Ernest Kagesi, M.P. and seconded by the Hon. Joshua Chepyegon Kandie, M.P.

MIN./PPETC/2023/201: CONFIRMATION OF MINUTES OF PREVIOUS SITTING

The minutes of the previous meetings were confirmed as true record of the deliberations of the meetings as follows:

- i. The minutes of the 28th Sitting of the Committee held on 11th May, 2023 were confirmed after being proposed by Hon. Joshua Chepyegon Kandie, M.P. and seconded by Hon. Janet Sitienei, M.P.
- ii. The minutes of the 30th Sitting of the Committee held on 12th June, 2023 were confirmed after being proposed by Hon. Joshua Chepyegon Kandie, M.P. and seconded by Hon. Hon. Maisori Marwa Kitayama, M.P

MIN./PPETC/2023/202: MATTERS ARISING

Arising from MIN./PPETC/2023/184 on *Consideration of Public Petition regarding Pollution of River Athi*, the meeting was informed that NEMA had assisted the Committee to map the polluted area during the site visit. The Committee would be conducting a second site visit in Mwala Constituency (downstream) at the Mini Hydro Construction Site as agreed in the last sitting.

MIN./PPETC/2023/203: CONSIDERATION OF PETITION REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MNARANI SUBLOCATION, KILIFI COUNTY UNDER ABSENTEE LANDLORD

1. BRIEF OF THE PETITION

Summary of the Petition

The Petitioner states that—

- a) the people of Mnarani village in Mnarani Ward, Kilifi North Constituency have occupied the land in Mnarani village for more than 100 years;

- b) the whole land in Mnarani village is Mnarani Ward was surveyed on 28th May 1912 and granted in favour of Mr. Byremji Rustumji Khanjuri;
- c) the land was later illegally acquired by Arab families during the colonial era with assistance of the administration then, and the Arabs registered the land as their property;
- d) the 172.8 Acres of land occupied by the residents of Mnarani is registered as plot No: YSR130 Section V situated at *Mnarani-Kilifi Takaungu* in the name of Kalthum Binti Mohammed and Shariffa Binti Mohammed (referred as Mohammed family) as an Agricultural land;
- e) the beneficiaries of Mohammed family are Ali Mohammed, Kalthum Mohammed, Shariffa Mohammed and Said Mohammed being first, second, third, and fourth born of the Mohammed family respectively;
- f) the illegally registered owners of the land migrated to the Middle East leaving the property under the care of caretakers whom they called trustees and the land changed to Waqf under the Islamic Laws;
- g) the trustees invited locals to settle in the areas willingly and were to pay monthly fee considering that the land was agricultural and had a lot of cashew nuts, coconuts and mangoes;
- h) Ali Mohammed (the firstborn son) appointed one Mr. Ali Omar to be in charge of collecting the money from the sale of coconuts and rent from the Mnarani plots;
- i) in 1952, the trustee allowed the residents to build a school which is the present Mnarani Primary School measuring 12 acres;
- j) Mr. Ali Omar, the steward died and Mr. Mohammed Mwalimu took over as the new steward; and tasked by Mr. Ali Mohammed with the help of one Mr. Shosi to vet the people who wished to be settled at Mnarani Village;
- k) Ali Mohammed died and his siter Kalthum Mohammed became the trustee of the Waqf, Kalthum gave Mr. Abdallah Serf the power of attorney and the Waqf was registered in the name of M/s Kalthum Binti Mohammed.
- l) at the tenure of Kalthum Mohammed, the land ceased being an agricultural land and became residential, presumably with a number of households exceeding 1,107 and a population of over 20,000 people with a Mosque, Churches, Schools and other social amenities;
- m) the people who have settled in the land have put it into good economic use, constructed residential houses and commercial centers which are earning them income;
- n) the land has not been adjudicated and therefore no title deeds have been issued;
- o) the residents of Mnarani have written many letters and lately, a memorandum to the National Land Commission but no action has been taken concerning the matter;

- p) the continued absence of landlord on the land and their failure to contribute to any development or welfare in the area has caused difficulties to the residents and has created major impediments in the people's pursuit of their livelihoods;
- q) both the National Government and County Government have invested heavily in the said piece of land by providing the necessary infrastructure such electricity connectivity, water, roads and other social amenities;
- r) the matter presented in this petition is not pending before any tribunal, court of law or independent body.

Prayers sought by the Petitioner

The petitioner therefore seeks the intervention of the House Committee to—

- a) inquire into the ownership of the land occupied by Mnarani residents registered as plot No: YSR130 Section V situated at Mnarani-Kilifi Takaungu in the name of Kalthum Binti Mohammed and Shariffa Binti Mohammed;
- b) recommend that the parcel of land in Mnarani be acquired and granted to the present occupants and the process of compensation be finalized;
- c) recommend that the land be adjudicated so as to ensure that the residents acquire title deeds and save the residents from alleged erroneous records and missing information on the parcels of land; and
- d) make any other recommendation or action it deems fit in addressing the plight of the Petitioners.

2. SUBMISSIONS BY THE PETITIONER

The Petitioner, Hon. Owen Baya, MP appeared before the Committee and submitted as follows:

- a) Mnarani borders the creek, Mnarani ruins is a landmark of the area. It is an established community with social amenities such as churches, mosques and schools. Despite having built permanent structures, all residents are squatters.
- b) Having settled on agricultural land, the owners invited the locals help them take care of the cashew nuts, coconuts and mangoes;
- c) In the 12th Parliament, the Departmental Committee on Lands had set aside money under the Budget for the Government to buy the land from its owners. The family is willing to sell the land to the Government.
- d) Recently, the family wrote to Mnarani Primary School to demolish property build on land that exceeded the 12 acres that it had been allocated.
- e) The Mohammed family live and carry out various activities on its land so it is impossible to get adverse possession.

Committee concerns

- i. *The Committee questioned why compensate the owners of the land when the land was illegally acquired.* The petitioner explained that the initial settlers on the land were Indians who introduced coconuts and Baobab. The Queen of England gifted Arabs land North of Mombasa as a gift for helping them fight in the world war. The Arabs led by the Sultan of Zanzibar/Oman proceeded to occupy vast pieces of land. That was the “illegal” ownership that he was referring to.

The Land Ordinance Act of 1918 gave absolute authority and ownership of land to Arabs. They therefore own 80 percent of the land as Absentee Landlords hence deepening the magnitude of the Squatter problem.

- ii. *On efforts made by former Governments to repossess the land,* the Petitioner explained that former Minister of Lands, Darius Mbela attempted to have all land occupied by Arabs reverted to locals and proceeded to have the Mazrui land divided to locals. The Mazrui family went to court. In July 2012, a landmark ruling was issued by Justice Francis Tuiyot declaring that the repeal and seizure of the land from the Mazruis in 1989 was illegal and unconstitutional. Squatter families were evicted from homes they had lived in for decades, some close to a century, on the land that Mazrui dynasty had laid claims.
- iii. *On the amount previously provided for purchase of the land by the Government during the Budget of the 12th Parliament,* the Petitioner responded that it was Kshs. 300 million. The current value was likely to be Kshs.700 million. The Petitioner explained the basis of his estimation being that on a purchase of Mazrui land, the Government paid a total of Kshs. 416 M for 1,512 acres of purely agricultural land that was far from the town centre with no provision for social amenities. Therefore, the value of the Mnarani land would be higher as it was already under commercial/ residential use and was near the town centre with amenities such as roads, water and electricity in place.
- iv. *Regarding what effort the County Government had made in repossession of the land,* the Petitioner responded that the County Government of Kilifi had limitation in law on matters settlement as this was not part of their constitutional mandate. It was however ready to support any requisite processes including survey of the land.

Further, the former Town council of Kilifi had attempted to change the user of the land from agricultural to residential/commercial so as to allow the Council to collect land rates. However, this was not successful as the application was not made by owners of the land.

- v. *On whether Wilson Farm formed part of Mnarani,* the Petitioner responded that the owner of Wilson Farm bought the company that owned the land at the London Stock Exchange. The land was not part of Mnarani.
- vi. *On whether the Petitioner had engaged WAQF Commission on the matter,* the Petitioner responded that there were two different types of lands under Waqf. However, the land was a private and not under public Waqf. Therefore, the laws governing Waqf public land do not apply in the private land.

- vii. *On recommendations of which family member was available to appear before the Committee*, the Petitioner stated that a number of key people in the matter had passed on, the latest being Mr. Shosi, one of the stewards of the land who died in July 2023. However, one of the direct descendants, Ms. Sultana Fadhil was alive and practices as a lawyer in Mombasa.
- viii. *On the people who were residents of the land*, it was clarified that the area was cosmopolitan consisting of local communities and other communities from different parts of the county.

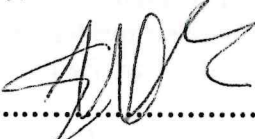
Committee Way Forward

The Committee resolved to invite the following stakeholders:

- a) The Ministry of Lands to provide information in terms of the prayers seeking specific information on:
 - the status of land ownership in Mnarani Sublocation especially the land in question; and
 - the way forward in terms of adjudication of the land to the residents.
- b) The National Land Commission;
- c) The Waqf Commission;
- d) The trustees of the land; and
- e) The heir apparent (Lawyer Sultan).

MIN./PPETC/2023/204: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1:45 p.m. The next meeting would be held on Tuesday, 20th June 2023.

Sign: 

(CHAIRPERSON)

Date..... 2/8/2023



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

**MINUTES OF THE 50TH SITTING OF THE PUBLIC PETITIONS COMMITTEE
HELD ON TUESDAY, AUGUST 15, 2023, IN COMMITTEE ROOM 12, MAIN
PARLIAMENT BUILDINGS AT 12.00 NOON**

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. Ernest Ogesi Kivai, M.P.
4. Hon. Edith Vethi Nyenze, M.P.
5. Hon. John Walter Owino, M.P.
6. Hon. Maisori Marwa Kitayama, M.P.
7. Hon. Caleb Mutiso Mule, M.P.
8. Hon. John Bwire Okano, M.P.
9. Hon. Sloya Clement Logova, M.P.

APOLOGIES

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
4. Hon. Peter Mbogho Shake, M.P.
5. Hon. Suzanne Ndunge Kiamba, M.P.
6. Hon. Bidu Mohamed Tubi, M.P.

SECRETARIAT

1. Mr. Samuel Kalama - Principal Clerk Assistant
2. Ms. Anne Shibuko - Clerk Assistant I
3. Ms. Miriam Modo - Clerk Assistant I
4. Mr. Peter Barasa - Legal Counsel II
5. Mr. Martin Sigei - Research Officer III
6. Ms. Lilian Mburugu - Media Relations Officer III
7. Ms. Rehema Koech - Audio Officer III

IN ATTENDANCE

National Lands Commission

1. Mr. Gershom Otachi - Chairperson, National Lands Commission (NLC)
2. Prof. David Kuria - Director, Land Administration and Management, NLC
3. Dr. Samuel Nthuni - Deputy Director, PLM

MIN./PPETC/2023/319: PRELIMINARIES

The Chairperson called the meeting to order at 10.15 a.m. and Hon. Caleb Mule, M.P. said the prayers.

MIN./PPETC/2023/320: ADOPTION OF AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sitings
4. Matters Arising
5. Meeting with the CEO National Lands Commission on consideration of:
 - a) *Public Petition No. 3 of 2022 regarding Degazettment of Hola Irrigation Scheme Land to allow for the expansion of the County Headquarters of Tana River;*
 - b) *Public Petition No. 13 of 2023 regarding Access roads for residents of Narok East Constituency;*
 - c) *Public Petition No. 14 of 2023 regarding Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord; and*
 - d) *Public Petition No. 36 of 2023 regarding Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub location, Tezo Location, Kilifi North Constituency*
6. Consideration of Public Petition No. 11 of 2022 regarding Pollution of River Athi

-Meeting with the Government Chemist
7. Any other Business
8. Adjournment & Date of Next Meeting

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Edith Nyenze, M.P. and seconded by Hon. Walter Owino, M.P.

MIN./PPETC/2023/321: CONSIDERATION OF PUBLIC PETITION NO. 3 OF 2022 REGARDING DEGAZETTMENT OF HOLA IRRIGATION SCHEME LAND TO ALLOW FOR THE EXPANSION OF THE COUNTY HEADQUARTERS OF TANA RIVER

The Chairperson, National Lands Commission submitted as follows:

- i) The land on which the Hola Irrigation Scheme sits on was set apart under the Native Lands Trust Ordinance in 1959 through Gazette Notices 2714 and 2715. These set apart a total of 3307.5 acres. There are references to gazette notice of 26th April 1960 and 26th April 1963. The gazette notice of 26th April 1960 has a number of setting apart orders, but not for the Hola Irrigation Scheme, We have

- not been able to trace that of 26th April 1963 (only a reference to 23rd April 1963) and cannot ascertain the acreage set apart. However, there is consensus across the board that the scheme was given 12,360 acres.
- ii) The Commission through its County Coordination office in Tana River County has been participating in a multiagency engagement that the petition alludes to. There was an agreement to degazette 2,000 acres on the southern and eastern part of scheme to facilitate expansion of Hola Town. The scheme's northern border was to be extended by a similar acreage of 2,000 acres to compensate for the degazettment.
 - iii) *What would be required to support the degazettment* -there are proposals to amend the boundaries as captured to correctly reflect the ground situation. The National Irrigation Authority (NIA) and the County Government should commission a survey to clearly demarcate the agreed portioning of the land. Prior to undertaking the survey, the County Government as the planning authority should plan the area. This plan ideally should be for the whole Municipality indicating the expansion, which surveyors will then use to have the survey work undertaken. The survey will be processed in line with the Survey Act.
 - iv) *Who should issue the degazettment orders*- the orders would be issued by the Cabinet Secretary, Ministry of Water, Sanitation and Irrigation as NIA falls under the Ministry. NIA should consent to the degazettment. To support the degazettment of the scheme as it exists and subsequent gazettment of the amended boundaries, the authenticated surveys should be used. By dint of the planning function, the County Government has powers to vary land reserved for public purposes, but with the rider that the variations should not lead to net loss of land reserved for public purposes as per revised plans. This principle appears to have been captured in the engagements that have been ongoing, that the scheme will cede 2,000 acres on the southern and eastern parts but gain 2,000 acres on the northern part. Once the land has been degazetted, the Commission upon request by the National or County Government will proceed to reserve and gazette the reservations in respect of the identified national and county public purposes.
 - v) *Will the expansion of the Scheme require compulsory acquisition of land in the northern extents of the Scheme*- the issue of compulsory will arise if the land identified on the northern parts is privately or communally held. In this respect, since the County Government is the one that needs the land for expansion, it should be the acquiring entity. The procedures for compulsory land acquisition are given I Part VIII of the Land Act, 2012. If the land is public, then the County Government as the holder will invoke Section 12 of the Land Act, 2012 and request the Commission to allocate or use Section 15 of the Act to reserve the planned and surveyed portion to NIA for the Hola Irrigation Scheme.
 - vi) *What timelines and resources are required for degazettment and eventual expansion of the Municipality*- a lot of work has gone into the discussions and engagements, however, planning being participatory could take some more time and hence resources. Survey and its authentication processes also do take time and need to be properly factored in. The process of compulsory acquisition requires time as there are statutory timelines in the various processes that need to be undertaken. There is the need to budget for the exercise to ensure that the

acquisition complies with Article 40 of the Constitution of Kenya, 2010. Additionally, the process of preparation of degazettment of the part to be ceded to the County Government for Hola Municipality and gazettment of the extension to the Scheme could be elaborate and may require Cabinet approval.

- vii) There is need to ensure that a solution to the squatter problem is explored and resolved as this matter of gazettment is being considered.

Committee concerns

Role of the National Land Commission- the Committee inquired the role of the Committee in the matter.

The Chairperson explained that its role was to move the land from one function to another with the request of either the National or County government.

*Summary of procedure of degazettment-*the Committee sought to know the procedure of degazettment. Once NIA writes to the Cabinet Secretary, Ministry of Lands, the Cabinet Secretary will proceed to degazette the land.

MIN./PPETC/2023/322: CONSIDERATION OF PUBLIC PETITION NO. 13 OF 2023 REGARDING ACCESS ROADS FOR RESIDENTS OF NAROK EAST CONSTITUENCY

The Chairperson submitted as follows:

- i) The mandate of the subject matter in the Petition lies with the county Governments and the Kenya Rural Roads Authority (KeRRA). It is expected that when the County Government approves the development plans, that as part of due diligence, the proposed developments should be reviewed to ensure that they do not obstruct or in any way restrict the flow of traffic, people and goods.
- ii) The proposed road needs to be designed and the design corridor identified within the areas proposed. The corridor will then need to be acquired in this case for the Kenya Urban Roads Authority (KURA).
- iii) The Commission's role will be restricted to matters on Compulsory Land Acquisition as spelt out in the law in consultation with the State Department of Lands and Physical Planning, and the conduct of final survey to vest the acquired road corridor to the acquiring entity.

Committee Concerns

i) Responsible agency

The Committee sought to know why both Kenya Rural Roads Authority (KeRRA) and Kenya Urban Roads Authority (KURA) had been cited as responsible agencies yet their mandates were different.

The Chairperson responded that the road passed in both rural area where KeRRA was responsible and an urban area where KURA was responsible hence the reference to the two agencies.

ii) Inadequate response

The Committee noted that the response was not detailed and did not address the concerns of the petitioners and therefore requested for a comprehensive response on the matter.

The Chairperson undertook to have the National Land Commission visit Narok East Constituency so that their response is well informed.

Regina Brown

Committee Resolution

The Committee resolved to allow the National Lands Commission 7 days within which to present a detailed submission.

MIN./PPETC/2023/323: CONSIDERATION OF PUBLIC PETITION NO. 14 OF 2023 REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MNARANI SUBLOCATION, KILIFI COUNTY UNDER ABSENTEE LANDLORD

The Chairperson, National Lands Commission submitted as follows: -

- i) The subject matter of the Petition falls under the Department of Adjudication and settlement in the State Department of Lands and Physical Planning, which is best placed to address the matter.
- ii) The suit land has been declared a Wakf under Islamic Law. It was therefore necessary that before the land is adjudicated, the matter of declaration of Wakf be dealt with.

Committee Concerns

i) Role of the National Land Commission

The Committee inquired what the role of the National Land Commission was in the matter given that there were historical injustices.

The Chairperson clarified that there were historical injustices and the matter was made easier by the fact that there was willingness of people settled on the land to cede it to the Government.

ii) Process of the Government buying land

The Committee inquired on the process of the Government buying land on which squatters had settled and included institutions such as public schools.

The Chairperson explained that if the land was intended for settlement of squatters, the process is dealt with by the Land Settlement Fund Board of Trustees, which would proceed with the purchase of the land. The Commission has a role in the board as the board composition requires a representative from the National Land Commission. The Commission would however not be involved in compulsory acquisition.

The Committee noted that the response was not detailed and did not address the concerns of the petitioners and therefore requested for a comprehensive response on the matter.

Committee resolutions

- i.) The Committee resolved to allow the National Lands Commission seven (7) days within which to present a detailed submission.
- ii.) The Secretariat was asked to send a copy of the Title Deed of Mnarani Land to the Nation Land Commission for authentication

MIN./PPETC/2023/324: CONSIDERATION OF PUBLIC PETITION NO. 36 OF 2023 REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MISUFINI, VIBANDANI AND KIBARANI SUB LOCATION, TEZO LOCATION, KILIFI NORTH CONSTITUENCY

The Chairperson, National Lands Commission submitted as follows: -

- i) The matter concerns a portion of land (LR NO. 5056/5) leased to Coast Development Company Ltd measuring 265 acres for more than 50 years. It is also noted that the land had been initially leased for a term of 99 years from 1st May 1929, therefore the lease is almost ending.
- ii) There are observations reported in the Petition that need further confirmation from records held in the State Department of Lands and Physical Planning.
- iii) The Commission requests for time to dig into the matter so that it can furnish an elaborate response. Alternatively, the Committee could invite the State Department of Lands and Physical Planning to furnish the requested information as it is already in its custody.

Conclusion

- a) The Chairperson concluded his submissions by stating that the Commission would in October 2023 commence conducting of hearings on historical land injustices. The findings and recommendations of these reports would inform their planning and preparation of the Commission to these activities.
- b) The Committee would submit brief reports on the site visits of Public Petition No. 13 of 2023 regarding Access roads for residents of Narok East Constituency; Public Petition No. 14 of 2023 regarding Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord; and Public Petition No. 36 of 2023 regarding Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub location, Tezo Location, Kilifi North Constituency to enable the National Lands Commission to submit comprehensive responses on the matter.

Committee concerns

The Committee noted that the response was not detailed and did not address the concerns of the petitioners and therefore requested for a comprehensive response on the matter, including details of how Mr. John Keen acquired the land.

Committee Resolution

The Committee resolved to allow the National Lands Commission seven(7) days within which to present detailed submissions on the petitions.

MIN./PPETC/2023/325: CONSIDERATION OF PUBLIC PETITION NO. 11 OF 2022 REGARDING POLLUTION OF RIVER ATHI

This Agenda item was deferred.

MIN./PPETC/2023/326: ANY OTHER BUSINESS

a) Status of Committee Report after Tabling

A question was asked on the status of Committee Reports once they are tabled. The meeting was informed that procedurally, once a committee report is tabled before the House, it is sent to the Petitioner, Institutions/Agencies cited in the recommendations for action and a copy is sent to the National assembly Committee on Implementation for follow up and report to the House after 60 days.

b) Consideration and adoption of the KICA Report

The Committee resolved to review the KICA Report in the next meeting scheduled for 17th August, 2023 before tabling in the course of the week. The secretariat to circulate physical copies to all Members.

c) Workshop of the Committee

The Committee discussed and agreed that it would hold a workshop from Monday 28th August 2023 to Friday 1st September 2023 to hold the Multi stakeholder engagement on Public Petition No. 13 of 2023 regarding *Access roads for residents of Narok East Constituency* and other petitions before the Committee.

MIN./PPETC/2023/327: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 02.10 p.m. The next meeting would be held on Thursday, 17th August 2023 at 11.00 a.m.

Sign:

(CHAIRPERSON)

Date.....

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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

MINUTES OF THE 52ND SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, AUGUST 17, 2023, IN COMMITTEE ROOM 12, NEW WING, MAIN PARLIAMENT BUILDINGS AT 3:00 PM

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. John Walter Owino, M.P.
3. Hon. Edith Vethi Nyenze, M.P.
4. Hon. Suzanne Ndunge Kiamba, M.P.
5. Hon. John Bwire Okano, M.P.

APOLOGIES

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. Maisori Marwa Kitayama, M.P.
4. Hon. Patrick Makau King'ola, M.P.
5. Hon. Ernest Ogesi Kivai, M.P.
6. Hon. Bidu Mohamed Tubi, M.P.
7. Hon. Caleb Mutiso Mule, M.P.
8. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
9. Hon. Peter Mbogho Shake, M.P.
10. Hon. Sloya Clement Logova, M.P.

IN ATTENDANCE

SECRETARIAT

1. Mr. Samuel Kalama - Principal Clerk Assistant II
2. Ms. Miriam Modo - First Clerk Assistant
3. Mr. Barasa - Legal Counsel II
4. Mr. Martin Sigei - Research Officer III
5. Mr. Muchiri - Audio Officer

WAQF COMMISSIONERS OF KENYA

1. Dr. Ibrahim Bulushi - CEO
2. Mr. Ali Omar - Accountant
3. Mr. Rashid Abdallah - Clerk

MIN./PPETC/2023/336: PRELIMINARIES

The Chairperson called the meeting to order at 3.00 p.m. and Hon. John Walter Owino, M.P, said the prayers.

MIN./PPETC/2023/337: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of Previous Sittings
4. Matters Arising
5. **Consideration of Public Petition No. 14 of 2023 regarding Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord**
– *Meeting with the CEO Wakf Commissioners of Kenya, Mr. Ibrahim Bulushi*
6. Any Other Business
7. Adjournment

The proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. Edith Vethi Nyenze, M.P. and seconded by Hon. Walter Owino, M.P.

MIN./PPETC/2023/338: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2023/339: CONSIDERATION OF A PUBLIC PETITION REGARDING ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MNARANI SUB-LOCATION, KILIFI COUNTY

Meeting with the Chief Executive Officer, Waqf Commissioners of Kenya (Mr. Ibrahim Bulushi)

Mr. Bulushi submitted as follows: –

That,

- a) the Waqf Commissioners of Kenya was established under Act of Parliament of 2022 to provide for the administration of Waqf property and for the connected purposes.
- b) the roles of the Waqf Commission are spelt out under Section 8 of the Waqf Act No. 8 of 2022 which include taking over administration of certain Wakf, holding inquiry to determine the state of certain wakf, checking records of other Wakf to ensure proper management and granting consent to certain transactions among others.
- c) the Commission had no records relating to the petition specifically pertaining to Plot No. YSR130 SECTION V situated at Mnarani Kilifi, Takaungu.
- d) Records of Titles or the Land registration in Mombasa or Kilifi are better placed to provide the information required by the Committee.
- e) ordinarily, if the property is under Waqf, then the Committee to look at sections 18, 19, 20 and 21 of the Waqf Act of 2022 that relate to the Management of a Waqf.

- f) Waqf Commission under the Attorney General's Office has no records with regards to the Mnarani Land issue in question.
- g) from the outset, the land is a private waqf arising from family succession. It may not have been registered since the current Waqf Commission was established through an Act of Parliament of 2022.
- h) the said land may have been registered under the then Lands Offices in Mombasa, Kilifi, Malindi or Lamu.
- i) the Committee establishes the said documents with the Land Registrar's office in Mombasa or Kilifi.

Committee Concerns

The Committee raised the following concerns with regards to the presentation by the Petitioners: -

- a) The Committee inquired if the Commission was in custody of the said documents in their Mombasa Office as alleged by the Trustee, Ms. Sultana Fadhili.

The CEO, Waqf Commission responded that they are not in custody of the said documents in either of their offices based in Malindi, Lamu and Mombasa. He however admitted that, many waqf endowments are not registered with the Commission because the Commission was established recently.

- b) The Committee sought to know if Mnarani Land is a Waqf. The CEO responded that the said land is a private waqf arising from a family's succession and the rightful beneficiaries are family members entrusted. The land is not registered with the Commission but there is a possibility, it may have been registered long ago as waqf under the then Lands Office either in Kilifi or Mombasa County.
- c) The Committee sought to know if the land could be registered as a waqf. The CEO responded that the land in question may be registered as a private waqf but not as a public waqf.
- d) The Committee sought to know if a mandate of a waqf can be revoked. The CEO informed the Committee that a waqf cannot be revoked unless the donor had indicated waqf are supposed to be perpetual, meaning that once created, it cannot be revoked or transferred. However, it does not prohibit temporary Waqf. If the Wakf is created by will, then it may be revoked before the death of the testator.
- e) The Committee sought to know whether a private waqf can be sold or surrendered for instance to settle squatters. He responded that rules of waqf discourage selling and/or disposal, however it can be done under certain special circumstances for instance, it can be sold to settle squatters among others.

Committee Resolutions

The Committee tasked the Secretariat and the CEO, Waqf Commission to review the documents submitted by Ms. Sultana Fadhili, the trustee to Mnarani Land, to establish whether the said land was a waqf or not.

MIN./PPETC/2023/340: ANY OTHER BUSINESS AND ADJOURNMENT

There being any other business, the Chairperson adjourned the meeting at 4:45 p.m. The next meeting would be held on notice.

Sign: _____
(CHAIRPERSON)

Date: 07/11/2023



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

MINUTES OF THE 66TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, OCTOBER 4, 2023, IN THE COMMITTEE ROOM ON 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10:00 AM

PRESENT

- | | | |
|--|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Maisori Marwa Kitayama, M.P. | | |
| 6. Hon. Edith Vethi Nyenze, M.P. | | |
| 7. Hon. Peter Mbogho Shake, M.P. | | |
| 8. Hon. John Bwire Okano, M.P. | | |

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Ernest Ogesi Kivai, M.P.
3. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
4. Hon. Bidu Mohamed Tubi, M.P.
5. Hon. Suzanne Ndunge Kiamba, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. Sloya Clement Logova, M.P.

SECRETARIAT

- | | | |
|------------------------|---|------------------------------|
| 1. Mr. Samuel Kalama | - | Principal Clerk Assistant II |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Mr. Willis Obiero | - | Clerk Assistant III |
| 4. Mr. Shadrack Omondi | - | Legal Counsel II |
| 5. Mr. Martin Sigei | - | Research Officer III |
| 6. Ms. Rahab Chepkilim | - | Audio Officer |

IN ATTENDANCE

MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN DEVELOPMENT

- | | | |
|------------------------------|---|-----------------------------------|
| 1. Hon. Generali Nixon Korir | - | PS, Lands |
| 2. Mr. B.K Mbiti | - | DDLAS |
| 3. Ms. Carolyne Menin | - | Legal Advisor |
| 4. Mr. Hilton Kamau | - | Ass. Director Land Administration |
| 5. Mr. Andrew Kositany | - | Personal Assistant |
| 6. Mr. Paul Ndungu | - | Ass. Dir. Land Survey |

NATIONAL LANDS COMMISSION

- | | | |
|-----------------------|---|---------------------------------------|
| 1. Mr. Gershon Otachi | - | Chairman, NLC |
| 2. Mr. Hezron Alela | - | Personal Assistant to the Chairperson |
| 3. Prof. David Kuria | - | Director |
| 4. Mr. Zachary Ndege | | |

MIN./PPETC/2023/427: PRELIMINARIES

The Chairperson called the meeting to order at 10.00 a.m. and said the prayers.

MIN.PPET/2023/428: ADOPTION OF THE AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. **Meeting with the Cabinet Secretary, Ministry of Lands regarding the following Petitions:**
 - i.) *Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of lease of Macalder Mines Ltd Land;*
 - ii.) *Public Petition No. 14 of 2023 regarding delayed adjudication and settlement of residents of Mnarani Sub-location, Kilifi County;*
 - iii.) *Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufuni, Vibandani and Kibarani Sub-Locations, Tezo Location, Kilifi North;*
 - iv.) *Public Petition No. 10 of 2023 regarding resettlement of Residents of Muthanga Farm;*
 - v.) *Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest; and*
 - vi.) *Public Petition No. 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council.*
6. **Meeting with the CEO, National Lands Commission (NLC) regarding the following Petitions:**
 - i. *Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of lease of Macalder Mines Ltd Land*
 - ii. *Public Petition No. 10 of 2023 regarding resettlement of Residents of Muthanga Farm*
 - iii. *Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest*
 - iv. *Public Petition No. 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council*
7. Any Other Business
8. Adjournment

Thereafter, the proposed Agenda of the Meeting was adopted to constitute business having been proposed by Hon. John Walter Owino, M.P. and seconded by Hon. Nimrod Mbithuka Mbai, M.P.

MIN./PPETC/2023/429: MEETING WITH THE CS MINISTRY OF LANDS

The Principal Secretary of the State Department for Lands, Hon. Generali Nixon Korir made submissions as follows: -

A. Consideration of Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of squatters after the expiry of the lease of Macalder Mines Ltd Land

- i.) The Petitioners, described as residents of Nyatike Constituency claim they were disposed of their ancestral land measuring approximately 300 acres when it was leased to Macalder Mines Ltd in 1935.
- ii.) According to the records at the Ministry, the subject falls within the parcel registered as Muhuru/Kadem/Macalder/498 which measures approximately 2167.5 Hectares. It was registered in favour of the defunct South Nyanza County Council (now County Government of Migori) on February 19, 1982 on freehold tenure.
- iii.) Following the Constitution of Kenya 2010, the land became public land under the County Government of Migori pursuant to Article 62. It can only be alienated under direct allocation, a process that can only be initiated by the county government. The Ministry will thereafter process the title documents. The matter can therefore be referred to the County Government of Migori for consideration.

Committees Concerns

Gazettement of the land as a forest

- i. The Committee inquired about the gazettement of the Macalder land as a forest land by the CS, Ministry of Environment, Forestry, and Climate Change. The PS indicated that the information had not come to the attention of the Ministry of Lands. However, there were instances of such gazettements without the knowledge of the Ministry of Lands. Further, the PS stated that a gazettement process needed public participation and involvement of the County Government of Migori which is the custodian of the land.

The status of the land

- ii. The Committee inquired about the status of the land. The PS indicated that the land in question was about 5000 acres, but the petitioners were claiming just 300 acres. However, Migori County Government should be answerable as the Ministry of Lands only facilitates issuance of title deed after the allocation has been done by the county. Further, the county oversees planning and approving the allocation before subdivision and NLC issuance of allotment letter.

Efforts by the Ministry in protection of community interest

- iii. The Committee inquired the efforts by the Ministry regarding the protection of community interest. The PS stated that a committee on historical land injustices was in place under the NLC and was mandated to look community interests in historical land instances.

Committee resolutions

After the deliberations, the Committee resolved to allow the PS two weeks to establish the records of the 5000 acres in question and any other relevant correspondences and full status of the land.

B. Consideration of Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest

- i.) The main contention in the Petition was that there was no public participation in the process of gazetting the forest. The area is occupied by three communities namely Pokot, Tugen, and Ilchamus. The Petitioners claim that the designation of the area as a forest poses an existential threat to the communities and requires urgent intervention to avert further conflict.
- ii.) The Mukutani Forest was gazetted as a public forest vide Legal Notice No. 265 of 2017 and it covers part of Mukutani Location. The forest measures approximately 13,195.8 hectares and by the time of gazettelement, the Ministry had already declared the area as an adjudication section per the Notice dated 18th February 2016.
- iii.) Due to insecurity in the area, demarcation and recording of rights had not commenced as there had been communal conflicts between residents of Mukutani Location and the neighbouring Arabal Location.
- iv.) Both Arabal and Mukutani Location residents claim that their views were not sought before gazettelement of the forest despite the area covering what they consider as their community land. The people from Arabal also view the forest as their hideout and refuge from cattle rustlers who continue to torment them.
- v.) That, if proper consultation was done and the locations involved, then issues regarding to its existence would not be in contest and measures of proper protection would have been put in place to allay the fears of the communities.
- vi.) The Forest Conservation and Management Act No. 34 of 2016 at section 30 classifies categories of forests as follows: -
 - (1) Forests may be classified as public, community, or private forests.
 - (2) Public forests include; public forests classified under Article 62(1)(g) of the Constitution; and forests on land between the high and low water marks classified under Article 62(1)(1) of the Constitution.
- vii.) Section 31(1) and (2) of the Act prescribed the procedure for the creation and management of public forests
- viii.) According to the records held by the Ministry of Lands, Mukutani Forest falls in the former trust land which transitioned to community land under Constitution of Kenya 2010 and the Community Land Act, 2016.

Committee Concerns

The Status of the land

With regards to the status of the land, the PS clarified that the land was under trust and was reverted to the community but in 2011, it was gazetted as a forest land. The gazettelement did not involve the community and ought to have been reversed and land given to the community.

The missing link between the Ministry of Land and Ministry of Environment, Forestry and Climate Change regarding gazettelement

The Committee sought to know why the two Ministries were to in tandem on matters gazettelement of forest lands and the way forward for handling the disconnect. The PS indicated that there was a missing link in decision making as the Forestry Department occasionally

gazetted forest lands without the input or knowledge of the Ministry of Lands. However, the Ministry of Environment had to get approval from the counties which allocated the lands.

The consequences of not involving the community

The Committee sought to know how the matter would be addressed when the views of the community were not collected before gazettelement of their land as a forest land. The PS indicate that the Ministry of Land was in support of the case brought forth by the community. Further, the Ministry of Lands would bring to the attention of the Ministry of Environment, Forestry and Climate Change to degazette the land and release it to the community.

C. Consideration of Public Petition No. 36 of 2023 regarding delayed adjudication and settlement of residents of Misufuni, Vibandani and Kibarani Sub-Locations, Tezo Location, Kilifi North

- i.) The Petitioners described as residents of Misufuni, Vibandani and Kibarani Sub Location, Tezo Sub location in Kilifi Constituency have been in occupation of Plot No. 5046/5 for more than 50 years as authorised by the registered proprietor, Coast Development Company.
- ii.) According to the records at the Ministry, the land in question, LR No. 5046/5 measuring approximately 107.24 Hectares (265 acres) was transferred from the estate of William Gilbert Lillywhite to Coast Development Company Limited from May 1, 1929 as per the Memorandum of Registration of transfer of Land (MRT) but not for 99 years as stated in the petition.
- iii.) The government vide a Gazette Notice No. 1782 of June 20, 1980 communicated the intention to acquire part of LR No. 5046/5 measuring approximately 34.44 Hectares for development of Coast Institute of Agriculture. On the same date, the government also issued a Notice of Inquiry vide Gazette Notice No. 1783 on the intended acquisition.
- iv.) The then Commissioner of Lands vide a letter Ref. VAL.559/50 dated April 1, 1982 issued a Notice of Taking Possession of the 34.44 Hectares acquired pursuant to section 19(3) of the Land Acquisition Act (Cap. 285) (Repealed).
- v.) A proposal by Coast Development Company Limited to subdivide LR Bo. 5046/5 was approved by the then Town Council of Kilifi vide a Notification of Approval of Development Permission (P.P A 2) Registration No. KTC/03/11 dated February 14, 2011. The Ministry also approved the same vide a letter Ref. No. KIL/LO/1750/VOL.XIX dated March 30, 2012.
- vi.) Upon subdivision, the acquired land was given L.R No. 5046/8 measuring approximately 34.48 Hectares as per the survey plan. The remaining subplots were given new LR Nos. 5046/9-38 as communicated vide a letter Ref: CT 52/VOL.28/150 dated June 3, 2015 from the Director of Surveys.
- vii.) There have been further subdivisions from the remaining resultant 30 sub plots of LR. 5046/5. The Ministry will provide a detailed report on ownership of the plots. Further, information on the registration and shareholding of Coast Development Company Limited should be sought from the
- viii.) According to the records held at the Ministry however, a title CR 76854 dated February 16, 2021 for LR No. 5046/8 was issued in the name of Coast Development Company Limited.

Committees Concerns

Status of the land

- i. The Committee inquired about the status of the land. The PS indicated that the title of the land is in the possession of Coast Development Company and the land was host to Pwani University. However, the acquisition process of the land was fraudulent, and the Director of Criminal Investigation (DCI) would investigate the matter. The PS requested the committee for additional two weeks to provide copies of the report on the directors of the company holding the title.

Addressing the concerns of squatters

- ii. The Committee inquired whether the Ministry would finalize and facilitate issuance of titles to the people who had already settled in the land. The PS indicated that the land was acquired to establish an institution hence it would be difficult to issue titles unless it uses the settlement fund after a comprehensive report on the status of ownership.

Land settlement fund

- iii. The Committee inquired on the land settlement fund and how it could be actualised to compensate the landowners to allow for closure and settlement of the people. The PS stated that the fund was a budgetary allocation for purchase of lands from absentee landlords. Further, most of the landlords were willing to surrender the lands and negotiate with government but there was need for a budgetary allocation into the fund to facilitate the process.

Different ways of acquisition

- iv. The Committee inquired about the various ways of land acquisition available for the Ministry. The PS indicated that the government could buy the land and give to the people or allow for a hybrid system where the government subsidises the costs and allows people to purchase. However, there was no provision in law for government to purchase from the landlords and the people buys back from the government.

MIN./PPETC/2023/430: MEETING WITH THE NATIONAL LANDS COMMISSION

The Chairperson, the National Lands Commission (NLC), Mr. Gerishon Otachi made the following submissions: -

A. Consideration of Public Petition No. 04 of 2023 regarding delayed adjudication and settlement of Squatters after the expiry of the lease of Macalder Mines Ltd Land

Background

Facts gathered during the visit indicate that Macalder Mines Ltd., a Canadian Company started mining in that area in 1933. According to the locals, the company mapped out specific areas for mining and displaced the locals. However, it allowed them to settle in adjacent areas with conditions to obtain a permit from Macalder Mines Ltd. and some of the conditions included:

- The locals were not supposed to cultivate more than five acres of land.
- The locals were not supposed to keep more than 16 heads of cattle.

The locals indicate that when the lease expired around 1970, they moved in claiming it as their ancestral land.

The current situation

- i.) The residents occupy the largest portion of the land where they have built residential houses and cultivated crops for subsistence. Some dwelling houses have been constructed with permanent materials, but the majority are semi-permanent materials (mud walls and corrugated iron sheets). Some individuals also keep cattle, sheep, and goats.
- ii.) There is Nyatike Market, which was planned, and resultant plots were allocated to individuals by the defunct County Council of Migori. The entire block consisting of the perimeter of the whole market is surveyed but NLC could not authenticate from the county government whether individual plots are surveyed.
- iii.) There is a catholic mission complex which comprises the church, convent, and offices. The mission complex is surveyed but NLC could not confirm whether their interest is registered.
- iv.) There are old mines on the parcel. Adjacent to these old mines are old residential buildings which appear to have been dwelling places of those who were managing the mines. The mines are still in the state where they were left by the Canadians, and they have not been rehabilitated.
- v.) On the parcel, is a central government housing scheme under the Ministry of Land Housing and Urban Development.
- vi.) There are also sub-county administration offices, residential quarters for the sub-county administrators, a police station and police lines to the North.
- vii.) There is an airstrip to the northeastern part of the parcel and a primary school almost to the central part of the land.

Observations

- i.) The land records indicate that there is a reservation for Macalder Township which was registered on 11th November 1941 and therefore adjudication as requested may not be the procedure for regularisation of settlement.
- ii.) The land records also reveal that the parcel is registered in favour of South Nyanza County Council whose successor in law is now the County Government of Migori.
- iii.) There is a need to regularise ownership for local inhabitants settled on the ground. There are also public institutions on the land which need to be regularised by way of document ownership.

Recommendation

The subject matter under the petition will be effectively addressed in a participatory manner in consultation with all the relevant stakeholders. The following processes in the prioritized order can be implemented in regularising ownership: -

- i.) A public participation forum be organised for all stakeholders on the subject land and all the views be collected and collated.
- ii.) Census/enumeration of *bonafide* squatters/institutions/allottees by the County Government to determine genuine beneficiaries can be done with the help of County Government Administrators and community leaders.

- iii.) Proper planning be undertaken on the parcel putting into consideration the topographical and registry maps sheets which may be used to prepare a development plan. The plan will indicate the plot location, approximate sizes, and users of various plots.
- iv.) The development plan is subjected to a stakeholders' forum for adoption. The plan and the list of beneficiaries are then forwarded to the county assembly for approval.
- v.) A cadastral survey is done to determine the sizes of resultant subplots according to the development plan.
- vi.) Presentation of a formal request from the County to the NLC for processing.
- vii.) Verification and validation of owners.
- viii.) Preparation of Letters of Allotment
- ix.) Acceptance and payment of levies as stipulated in the letters of allotment.
- x.) Processing of titles/certificates of leases

The land is vested in the County Government of Migori; therefore, it will be the initiator and key player in the process with the support of the Ministry of Lands and the NLC. However, the Commission remains committed to assist in processing of ownership documents within its mandate.

Committees Concerns

Gazettement of Macalder Land

- i.) The Committee inquired on the gazettement of the land as forest land by the Ministry of Environment, Forestry and Climate Change. The Chairperson indicated that the Commission knew about the gazettement from the news hence there was no background information on the matter. However, the gazettement process was not as rigorous as de-gazettement which even requires the input of Parliament hence lots of complaints arise. NLC had no role in the gazettement.

Protection of land rights by NLC as an Independent Commission

- ii.) The Committee inquired into the role of NLC in the protection of the interest of the community. The Chairperson indicated that NLC would inquire from the CS why the gazettement was done, however, the Committee should invite the CS to respond. The Commission was involved in addressing cases of historical land injustices and there were no cases pending arising from historical land injustice out of the 1000 complaints filed formally.

Legal provisions and the process of allocation

- iii.) The Committee inquired into the legal provisions and the process of allocation. The Chairperson indicated that the NLC administers land in accordance with the provisions of the law and relevant statutes. The NLC receives requests for allocation from the county government as the law confers powers to county governments but there are checks and balances.

B. Consideration of Public Petition No. 10 of 2023 regarding the resettlement of Residents of Muthanga Farm

- i.) The dispute was between the current occupants who claim to have been living on the farm and Muthanga Farm Company Limited shareholders who purchased the land from the government and subsequently issued title deeds.

- ii.) The confrontation between squatters and law enforcers during efforts to execute court orders necessitated an urgent solution to the problem.
- iii.) The office of the President through the Ministry of Interior and Coordination of National Government stepped in to look into the matter.
- iv.) The PS, Internal Security constituted a Multi-Agency Committee to review the matter and submit a report for action. The committee is comprised of State Department of Internal Security and National Administration, State Department of Lands and Physical Planning, County Government of Murang'a, Police representatives at the constituency and ward levels, representatives of Muthanga Farm Limited, representatives from Royal Capital Holding Limited and the National Lands Commission.
- v.) The NLC therefore being a party to the ongoing efforts to resolve the matter as spearheaded by the Ministry of Interior, awaits adoption and communication of final recommendation to inform implementation by the Committee.

C. Consideration of Public Petition No. 15 of 2023 on Declaration of Mukutani Forest as a Public Forest

- i.) While considering the petition, the NLC checked its records for any correspondence from the then Ministry in charge of Forestry or the Kenya Forest Service as anticipated under Section 21(2) of Forest Conservation and Management Act, 2016 leading to Legal Notice No. 265 of 27/10/2017 regarding gazettment of Mukutani Forest. The NLC affirmed that its records do not have details of involvement in the gazettment of Mukutani Forest.
- ii.) The Commission opined that the matter is better handled by direct involvement of the Ministry in charge of Forestry and the respective County Government involving all relevant stakeholders and/or residents.

Committee Concerns

Gazettment of the land

- i.) The Committee inquired into best way to address the disconnect between the Ministry of Environment and NLC regarding the missing link on gazettment. The Chairperson stated that NLC should be notified before gazettment of a community land as a forest land. However, the process required public participation.

Recommendations on the gaps in the law

- ii.) The Committee sought to know where there were gaps in the law and some recommendations from the NLC. The Chairperson stated that NLC always works on recommendations on improvement of the law for example a Bill on historical land injustice was before the National Assembly. However, there was need to tighten the gaps that allow for gazettment of lands without public participation or knowledge of the NLC.

D. Consideration of Public Petition No. 11 of 2023 regarding illegal acquisition of private land by the defunct Awendo Town Council

- i.) While considering the petition, the NLC was informed by the Court of Appeal Ruling in Kisumu (Civil Appeal No.161 of 2010) in which Town Council of Awendo appealed against a judgement delivered at Kisii High Court Civil Suit No. 133 of 2006.

- ii.) The Decree by the High Court and confirmed by the Court of Appeal is to the effect that the original owners of the suit land ought to be registered as the lawful owners of the unutilized parcels of the suit land and that unutilized parcels be re-surveyed and title deeds thereof be issued to the rightful persons by the area Land Registrar.
- iii.) In view of the above, the implementation of the decree is ideally by the Director of Survey and the Chief Land Registrar who are officers of the Ministry of Lands. However, since the County Government of Migori is the successor to Awendo Town Council which was involved in the litigation, any challenges in implementing the Decree should be addressed jointly by the County and the Ministry.


Committee Concerns

Options that address the Petitioners' prayers

The Committee inquired into the available options that could address the concerns by the petitioners. The Chairperson NLC would analyse the Supreme Court's Ruling on the matter and advise the committee within two weeks.

MIN./PPETC/2023/431: ADJOURNMENT AND DATE OF THE NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 1:30 p.m. The next meeting would be held on Thursday 5th October 2023 at 10.00 a.m.

Sign: 

FOR (CHAIRPERSON)

Date..... 29/11/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 5TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, FEBRUARY 29, 2024, IN COMMITTEE ROOM 12, NEW WING, PARLIAMENT BUILDINGS AT 12.00 NOON

PRESENT

1. Hon. Ernest Ogesi Kivai, M.P. - Chairing
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. Maisori Marwa Kitayama, MP
5. Hon. Bidu Mohamed Tubi, M.P.
6. Hon. Caleb Mutiso Mule, M.P.
7. Hon. Edith Vethi Nyenze, M.P.
8. Hon. Suzanne Ndunge Kiamba, M.P.
9. Hon. John Bwire Okano, M.P.
10. Hon. Sloya Clement Logova, M.P.

APOLOGIES

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
3. Hon. Patrick Makau King'ola, M.P.
4. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
5. Hon. Peter Mbogho Shake, M.P.

IN ATTENDANCE

PETITIONERS

1. The Hon. Richard Ken Chonga - Member for Kilifi Constituency
2. Mr. Chibuga Morris - Chairman, KUPPET Kilifi Branch
3. Mr. Caleb Mogere - Executive Secretary, KUPPET Kilifi County

MINISTRY OF LANDS

1. Hon. Alice Wahome - Cabinet Secretary
2. Hon. Nixon Korir - PS for State Department for Lands
3. Mr. Eric Mulevu - PA to the CS
4. Cathrine Muindi
5. Mr. Joseph Kamuyu
6. Mr. Andrew Kositany
7. Ms. Wambui Nganju

SECRETARIAT

- | | | |
|-------------------------|---|----------------------------|
| 1. Mr. Ahmed Kadhi | - | Senior Clerk Assistant |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Ms. Anne Shibuko | - | Clerk Assistant I |
| 4. Ms. Patricia Gichane | - | Legal Counsel II |
| 5. Mr. Willis Obiero | - | Clerk Assistant III |
| 6. Mr. Martin Sigei | - | Research Officer III |
| 7. Mr. Paul Shana | - | Assistant Serjeant-at-Arms |
| 8. Mr. Eugene Luteshi | - | Audio Officer |

MIN./PPETC/2024/ 035:

PRELIMINARIES

The Chairperson called the meeting to order at 12:00 noon and Hon. Caleb Mule, M.P. said the prayers.

MIN./PPETC/2024/036:

ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Meeting with CS, Lands, Public Works, Housing and Urban Development on consideration of the following Petitions—
 - i. Delayed adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd Land;*
 - ii. Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord;*
 - iii. Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub location, Tezo Location, Kilifi North Constituency; and*
 - iv. Illegal acquisition of private land by the defunct Awendo Town Council*
6. Meeting with CEC in charge of Lands, Migori County (Hon. John Kobado) regarding the consideration of the following Petitions—
 - i. Delayed adjudication and Settlement of Squatters after the expiry of Lease of Macalder Mines Ltd Land; and*
 - ii. Illegal acquisition of private land by the defunct Awendo Town Council*
7. Consideration of public petition regarding Hardship Allowance and Affirmative Action for Teachers in Chonyi Sub County—
 - i. Meeting with Petitioner (Hon. Ken Chonga, MP)*
 - ii. Meeting with KUPPET Kilifi Branch Chairperson (Mr. Morris Chiguba)*
8. Any Other Business
9. Adjournment

The Agenda was adopted to constitute business having been proposed by having been proposed by Hon. Caleb Mutiso, M.P and seconded by Hon. Joshua Kandie, M.P.

MIN./PPETC/2024/037: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/038: MEETING WITH CEC IN CHARGE OF LANDS, MIGORI COUNTY, HON. JOHN KOBADO

The meeting was informed that Hon. John Kobado had not indicated his attendance before the committee after the invitation vide a letter Ref KNA/DLPS/PPETC/CORR/2024/008 dated 15th February 2024.

MIN./PPETC/2024/039: CONSIDERATION OF PUBLIC PETITION REGARDING HARDSHIP ALLOWANCE AND AFFIRMATIVE ACTION FOR TEACHERS IN CHONYI SUB COUNTY

Meeting with Petitioners

The Petitioner, the Hon. Richard Ken Chonga, MP appeared before the Committee and submitted as follows—

Background of the Petition

- i. Teachers working in Chonyi area endured hardship hurdles since independence as they travel long distances without access to medical services, proper housing, food, and other essential social amenities which were only available in Kilifi Town, the headquarter of Kilifi County, 30 kilometres away. Teachers Service Commission (TSC) offices located in Vipingo area where a teacher from Chonyi area spends about Kshs. 1,000 to access their employer's office.
- ii. The hardship allowance was introduced as an incentive to teachers and other public officers working in remote areas to compensate for lack of basic amenities such as hospitals, improved infrastructure, harsh climatic conditions and communication access.
- iii. Teachers in some neighbouring constituencies in Kilifi South and areas such as Ganze were benefiting from hardship allowance.
- iv. The aforementioned challenges had caused many teachers working in Chonyi area to seek transfers to other areas with better working conditions leading to insufficient number of teachers in the area.
- v. The shortage of teachers had caused the ripple effect and created low morale for teachers remaining in the region due to heavy workload. Parents also were burdened to pay extra resources to hire teachers despite the poverty levels in the county.
- vi. The hardship allowance would motivate teachers in Chonyi and motivate others to come to Chonyi and improve the readiness of students to take exams.

Efforts made to address the issues

- i. A countrywide data collection exercise aimed at reviewing hardship areas was led by an inter-agency committee with representation from different ministries, state agencies and commissions. The committee concluded its report on 17th September, 2021 and listed Mbita, Lunga Lungu, Suba, and Chonyi areas to be gazetted as hardship areas to allow for enhanced allowances of public servants including teachers.
- ii. Despite the proposal, Chonyi was never been gazetted as a hardship area. In a collective bargaining agreement (CBA) signed between TSC and the teachers' unions, the Commission promised to embark on promotion of teachers serving in Arid and Semi-Arid Lands (ASAL) and revealed eighteen new hardship areas in the 2021-2025 CBA.
- iii. Kilifi County is an ASAL area but only had two sub counties of Magarini and Ganze being declared ASAL while other sub counties were left out including Chonyi. Further, most of the administrators in schools in Kilifi County are in acting capacity thus lowering their morale.
- iv. Efforts made to have this matter addressed by TSC had not resulted into satisfactory response.

Prayers

That the Committee—

- i. Engages the TSC to ensure teachers working in Chonyi area are paid hardship allowances.
- ii. Enquires into the matter and recommends that the entire Kilifi County be gazetted as a hardship area, be granted ASAL status as a hard to staff area to allow the teachers to benefit from all the affirmative action, promotion and hardship allowance going forward.

Meeting with KUPPET, Kilifi Branch

The Chairperson, KUPPET Kilifi Branch Mr. Morris Chiguba accompanied by the Executive Secretary, Mr. Caleb Mogere appeared before the Committee and submitted that they were in support of the petition for the following reasons—

- i. *Discrimination in Chonyi area as a hardship:* Despite its geographical location and lack of municipality status, Chonyi area was not gazetted as a hardship area. Consequently, teachers in the region were unable to benefit from hardship allowances, unlike other areas with similar work conditions.
- ii. *Medical services:* The area lacked even a single medical facility accredited by various medical schemes for teachers. It only had a poorly facilitated health center, putting the health of teachers at risk. Teachers relied on Kilifi County Referral hospital, located about 30 kilometres away.

- iii. *Poor housing conditions for teachers:* Due to inadequate housing in Chonyi, most teachers resided in Kilifi town hence the need for a hardship allowance.
- iv. *Food insecurity and harsh climatic conditions:* Unpredictable weather conditions led to failures in agricultural production, causing food insecurity.
- v. *Shortages and absence of water:* Key water and electricity infrastructure were absent in many parts of Chonyi. The available water sources were unhygienic and untreated, raising health concerns.
- vi. *Poor roads and communication network:* Major roads in Chonyi were impassable during bad weather and inconvenient during the dry season due to dust, potholes, and general damages, making it difficult for teachers to move around. Some areas had limited network coverage, hence affecting communication.
- vii. *Mass teacher transfers and understaffing:* All schools experienced understaffing, with only one out of the twelve secondary schools in Chonyi Sub County having a substantive deputy principal. The rest had deputies serving in acting capacities. This understaffing was a result of mass teacher transfers away from Chonyi due to poor working conditions.

Committee Concerns

- i. Regarding whether the gazettelement should benefit Chonyi Sub County or the entire Kilifi County, the Petitioner indicated that the petition targeted teachers in Chonyi to benefit. However, the entire Kilifi County should also be considered as ASAL area to benefit from other concession that comes along with that.
- ii. Regarding the justification for gazetting Chonyi as a hardship area and whether the issues were perennial or seasonal, the Petitioner stated that the area deserved the gazettelement as other areas with similar working conditions were already gazetted. Further, despite some of the challenges affecting other parts of the country the infrastructure in Chonyi was a perennial problem.
- iii. Members sought clarification regarding municipality status and in contributed to extra allowances for teachers. The Petitioner indicated that a municipality status would attract various benefits such as enhanced house allowance for teachers not accorded to rural areas.
- iv. The Committee sought clarification on the report quoted to recommend the gazettelement of Mbita, Lunga Lungu, Suba and Chonyi. The Petitioner indicated that the report recommended the regions including Chonyi but there was no follow up yet Chonyi featured in the inter-agency committee collecting data on areas due for gazettelement.
- v. Regarding the efforts made for TSC to address the concerns raised by the teachers, the Petitioner and KUPPET officials indicated that despite following up the matter with TSC, no action had been taken.

Delayed adjudication and settlement of residents of Misufini, Vibandani and Kibarani Sub location, Tezo Location, Kilifi North Constituency

The Committee had requested the CS to provide the ownership status of LR No's 5046/9-38. The CS provided a list of ownership status of the LR No's 5046/9-38 noting that the Coast Development Company Ltd. was the registered owner of the parcels. However, there was a caution dated 9th May 2023 by Victoria Naishorua Keen claiming beneficiary interested in on the majority of the parcels as per the records in the Ministry.

Committee Concerns

- i. Concerning the significance of the claim of beneficiary interest placed on the parcels on 9th May 2023, by Victoria Naishorua Keen, the CS clarified that it signaled a dispute over the ownership of the land. It implied that the matter was either under investigation or subject to legal proceedings. However, the CS committed to engaging with the party issuing the caution to ascertain whether it still needed to be in place, as allowed by land laws. Should there be disagreement regarding her claimed interest, the matter would be resolved in court.
- ii. In response to the query by the Committee on whether due diligence was conducted on the Coast Development Company, which had not filed returns for 25 years but managed to renew the lease, the Ministry explained that the search results indicated lease tenures from 1st May 1929, with varying periods of 999 years and others for 99 years, both on leasehold and freehold. The Ministry acknowledged a potential inconsistency in tenure, particularly with the 999 years on leasehold, and committed to confirming whether that was an error since the standard should have been 99 years and not 999 years.
- iii. The Committee inquired about the awareness of the Ministry of allegations suggesting that squatters had made payments for settlement. The CS responded, expressing uncertainty regarding the terms and capacity in which the payments were made. She emphasized that, in most instances, Kenyans were deceived into making payments for land and were at risk of financial loss.

The adjudication and settlement fund strictly adhered to official records, ensuring that no money was accepted before the allocation. Any payments made without official documentation fell beyond the control of the Ministry. The CS pledged to investigate the matter further during discussions with Victoria Keen, including an inquiry into the available land for allocation, if any, for the settlers.

- iv. The Committee raised a question regarding the renewal of a lease for 99 years, starting from 1st May 1929, set to expire in 2028, which, according to the search, was renewed before its expiration. In response, the CS clarified that the renewal process typically commences before the lease term concludes.

However, she noted that extension was allowed for an expired lease, with renewal allowed for those who failed to apply for an extension before the expiration. Applying for lease renewal before the term lapsed was not a serious concern. Various motivations for application of renewals, include the intention to sell the land or the desire to embark on development projects. The Planning Department routinely

rejected expiring leases and recommended renewal to facilitate the approval of new development plans.

Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee landlord

The Committee had requested the CS to provide a comprehensive response and way forward to the petition. The CS submitted as follows—

- i. As per the records, the land in question was under Plot No. 7 Group V Kilifi measuring approximately 172.80 acres. It was registered as LT. 45, Folio 475, File 15284 on freehold basis in favor of Wakf of Khadija Binti Suleiman El-Busaidy who was registered owner.
- ii. However, the parcel of land was encumbered by three different caveats registered in favor of three different parties as follows:
 - a) Caveat dated April 21, 1965 by Ag. Registrar of Titles Mombasa claiming Ownership by compulsory acquisition by virtue of Gazette Notice No. 12 of 1965 -7.20 acres;
 - b) Caveat dated November 4, 1965 by East African Power and Lighting claiming a grant of easement; and
 - c) Caveat dated 1965 by Ag. Registrar of Titles on behalf of Government of Kenya claiming ownership by compulsory acquisition of 2.83 acres being portion of Plot 7 Group V by virtue of Gazette No. 72 of 1966.
- iii. The Ministry would in the next Financial Year (2024/2025) initiate negotiations with the registered land owners with a view of arriving at an agreeable compensation and surrender of the land for settlement.

Committee Concerns

- i. Concerning the adjudication of Wakf land and whether the previous government had extended an offer of compensation to Khadija Binti Suleiman El-Busaidy, the Ministry acknowledged the possibility of previous engagements with Wakf for land acquisition through settlement or compensation. However, it clarified that such plans were occasionally formulated but not executed due to budgetary constraints. The Ministry expressed the intention to initiate discussions regarding the purchase of the land after budget allocation.

The CS pledged to engage with the Wakf of Khadija Binti Suleiman El-Busaidy to determine the available land for compensation. Notably, the land was registered as private and could not be allocated to individuals without a transfer, which would require payment through compulsory acquisition or settlement purchase. The land remained unavailable for allocation as it was titled under the name of Wakf Khadija Binti Suleiman El-Busaidy.

- ii. In response to the query by the Committee about the completion of the government's acquisition of the land, the CS clarified that the government's focus was on settling

individuals. The Ministry would identify the Wakf of Khadija Binti Suleiman El-Busaidy, negotiate ownership, and work towards compensating and resettling the occupants, aiming to put the land into economic use.

- iii. Regarding compensation for the landowners affected by roads built by KeNHA, the Ministry directed the inquiry to the National Lands Commission, emphasizing that it was the appropriate authority responsible for land acquisition matters.

MIN./PPETC/2024/041:

ADJOURNMENT AND DATE OF NEXT MEETING

There being no other business, the Chairperson adjourned the meeting at 01:50 p.m. The next meeting will be held on Tuesday, 5th March 2024 at 12.00 noon.

Sign: 

(CHAIRPERSON)

Date.....17-03-2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 34TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, MAY 23, 2024, IN GARDEN SUITE 1, HILTON GARDEN INN HOTEL, MACHAKOS AT 10.00. A.M

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
3. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
4. Hon. Maisori Marwa Kitayama, MP
5. Hon. Ernest Ogesi Kivai, M.P.
6. Hon. Joshua Chepyegon Kandie, M.P
7. Hon. John Walter Owino, M.P.
8. Hon. Bidu Mohamed Tubi, M.P.
9. Hon. Suzanne Ndunge Kiamba, M.P.
10. Hon. Edith Vethi Nyenze, M.P.
11. Hon. Caleb Mutiso Mule, M.P.
12. Hon. Peter Mbogho Shake, M.P.

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Sloya Clement Logova, M.P.
3. Hon. John Bwire Okano, M.P.

SECRETARIAT

1. Mr. Samuel Kalama Principal Clerk Assistant 1
2. Ms. Roselyne Ndegi Senior Serjeant-at-Arms 1
3. Ms. Miriam Modo Clerk Assistant I
4. Ms. Anne Shibuko Clerk Assistant I
5. Ms. Patricia Gichane Legal Counsel II
6. Mr. Isaac Nabiswa Legal Counsel II
7. Ms. Abdinasir Moge Yussuf Fiscal Analyst II
8. Mr. Willis Obiero Clerk Assistant III
9. Mr. Martin Sigei Research Officer III
10. Ms. Nancy Akinyi Research Officer III
11. Mr. Calvin Karungo Media Relations Officer III
12. Ms. Felistus Muiya Protocol Officer
13. Mr. Cosmas Akhonya Audio Officer

MIN./PPETC/2024/ 216: PRELIMINARIES

The Chairperson called the meeting to order at 10:00 a.m. and proceedings began with prayers by Hon. Maisori Marwa Kitayama, MP

MIN./PPETC/2024/217: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Consideration of Report on Public Petition No. 14 of 2023 on Delayed adjudication and settlement of residents of Mnarani Sublocation, Kilifi County under absentee Landlord
4. Consideration of Report on Public Petition No. 36 of 2023 on Delayed adjudication and settlement of residents of Misifuni, Vibandani and Kibarani sub locations in Tezo Location, Kilifi County
5. Confirmation of minutes of previous sittings
6. Matters Arising
7. Any Other Business
8. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Janet Sitienei, M.P. and seconded by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/218: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/219: CONSIDERATION OF REPORT ON PUBLIC PETITION NO. 14 OF 2023 REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MNARANI SUBLOCATION, KILIFI COUNTY UNDER ABSENTEE LANDLORD

The Committee reviewed the draft Report and made the following observations:

- i. The land was registered in favor of Wakf of Khadija Binti Suleiman El-Busaidy under subdivision No. 72.15-18, Group No V, Meridional District of South-A- 37/V.IV.6.5 in the locality South of Kilifi Creek under office copy number 36259-63.
- ii. Fatma Mohammed Fadhil Al Baakry and Zayane Mohammed Omar were appointed as trustees of the waqf on 15th August 1996. Zayane Mohammed Omar placed a deed of retirement in September 2001 and Fatma Mohammed is the present sole trustee.

- iii. Ms. Fatma Mohammed through her advocates engaged the National Government through the Ministry of Lands, Public Works, Housing and Urban Development and initiated an offer of sale for group V Plots No. 7, 16 and 18 in the Waqf for the settlement of squatters through the Land Settlement Fund.
- iv. There are residents squatting on the land at Mnarani, Kilifi County who had put up permanent structures such as schools and residential homes, and the government had provided the necessary infrastructure such as electricity connectivity, water, roads and other social amenities.
- v. Even though previous government administrations may have engaged the trustees of the Waqf for compulsory acquisition of the land for settlement, such plans were formulated but not executed due to budgetary constraints.
- vi. The Ministry of Lands, Public Works, Housing and Urban Development had expressed willingness to engage the trustee of the Wakf of Khadija Binti Suleiman El-Busaidy with a view to purchase it and issue titles to the residents.
- vii. Only upon purchase of the Waqf properties as per the provisions of section 21 of the Waqf Act 2022, can allocation of the land be undertaken by the Ministry of Lands, Public Works, Housing and Urban Development in accordance with the Land Act, Cap 280.

The Committee made the following recommendations:

Prayer 1: inquires into the ownership of the land occupied by Mnarani residents registered as plot No: YSR130 Section V situated at Mnarani-Kilifi Takaungu in the name of Kalthum Binti Mohammed and Shariffa Binti Mohammed

- i. The Committee undertook this inquiry by listening to the various stakeholders and state agencies and established that the land is registered in the Wakf of Khadija Binti Suleiman El-Busaidy.

Prayer 2: recommends that the parcel of land in Mnarani be acquired and granted to the present occupants and the process of compensation be finalized.

- ii. The Committee recommends that the national government through the Ministry of Lands, Public Works, Housing and Urban Development and the Ministry of Finance and National Treasury prioritizes the settlement of the residents of Mnarani and undertake through the National Land Commission the compulsory acquisition of the land as per the provisions of the Land Act.

- iii. The Committee recommends that the trustee of the waqf M/S. Shariffa Binti Mohammed seeks to dispose of the specific land registered in the Wakf of Khadija Binti Suleiman El-Busaidy in accordance with the provisions of the Waqf Act Section 21 and 18.

Prayer 3: recommends that the land be adjudicated to ensure that the residents acquire title deeds and save the residents from alleged erroneous records and missing information on the parcels of land

- iv. The Committee recommends that upon such acquisition the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development submits the request to the National Land Commission for the allocation of the land under section 12 (1) of the Land Act, Cap 280.

MIN./PPETC/2024/220:

CONSIDERATION OF REPORT ON PUBLIC PETITION NO. 36 OF 2023 REGARDING DELAYED ADJUDICATION AND SETTLEMENT OF RESIDENTS OF MISIFUNI, VIBANDANI AND KIBARANI SUB LOCATIONS IN TEZO LOCATION, KILIFI COUNTY

The Committee reviewed the draft Report and made the following observations:

- i. The land has permanent and semi-permanent residential houses, shops access roads, piped water supply, electricity service lines, and institution (churches, mosques, schools and colleges). This is irrespective of the fact that there is seemingly no formal approved map of the said parcels of land in addition to the different existing versions of the proposed subdivisions of L.R 5046/5.
- ii. Coast Development Company Ltd was registered in 1966 and the lease for the land was given in 1929. There was inconsistency in the registration of the land as it was registered before its formation.
- iii. Despite a caveat dated 14th June 1982 by the Government claiming absolute ownership in respect of LR No. 5046/5 by compulsory acquisition, the land remains registered under Coast Development Company.
- iv. There was a dispute over the ownership of the land as at 9th May 2023, as there was a claim of beneficiary interest placed on the parcels by Ms. Victoria Naishorua Keen.
- v. The Company is inactive as the records from the Business Registration Service show that the annual returns filed last on 17th of January 1987 by Rosemary Sanau Keen indicated the shareholding of the Company was; John Keen 70%, Mrs. R. Keen 20% and Ali Mohamed 10%.

- vi. The agreement between Mr. John Keen and the residents that prospective buyers would make payments, and upon completion of the instalments, would be entitled to be recorded in the members register and issue with share certificates was not honoured.
- vii. The search indicates the land has been subdivided but there is no record of the subdivision nor the authority of the subdivision.
- viii. Given Mr. John Keen's demise in July 2020, efforts by the Committee to reach the other directors to undertake negotiations or transactions with settlers on the land have not been fruitful.

The Committee made the following recommendations:

Prayer 1: inquires into the ownership of the land occupied by the residents of Misufini, Vibandani and Kibarani Sub-Locations-Kilifi North Constituency in the name of Coast Development Company.

- i. In response to the above prayer, the Committee has established that the land is registered in the name of Coast Development Company.

The Committee recommends that the Director of Criminal Investigation investigates the inconsistency that the lease for the land was given in 1929, but it was registered in 1966.

Prayer 2: establishes whether Coast Development Company is a legally registered company and the number of locals that bought shares in the Coast Development Company and their fate in terms of their shareholding in the company

- ii. In response to the above prayer, the Committee has established that Coast Development Company is a legally registered company but dormant since 1987. Shareholders of the company are John Keen 70%, Mrs. R. Keen 20% and Ali Mohamed 10%.

The Committee recommends that the Director of Criminal Investigation investigates the alleged fraud in the agreement between Mr. John Keen and the residents that prospective buyers would make payments, and upon completion of the instalments, be entitled to be recorded in the members register and issued with share certificates.

Prayer 3: recommends that the Government under the 1 Million Acre Compulsory Land Acquisition Programme acquires the land for the local residents and that the land be adjudicated so as to ensure that the residents acquire title deeds

iii. In response to the above prayer, the Committee recommends that the Ministry of Lands engages Ms. Victoria Naishorua Keen with a view to establish the reason for the encumbrance and address any disputes through the legal mechanisms.

Prayer 4: Makes any recommendation deemed fit in addressing the plight of the Petitioners and upholding the rule of law.

iv. The Committee also recommends that in each financial year, the Cabinet Secretary Ministry of Lands, Public Works, Housing and Urban Development submit Budget Estimates for the acquisition of land in the Coastal region from absentee landlords for the settlement of citizens.

MIN./PPETC/2024/221:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 01:00 p.m. The next meeting ~~will~~ ^{was} be held on Thursday, 23rd May 2024 at 02:00 p.m.

Sign: 

(CHAIRPERSON)

Date: 05-06-2024