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PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021

DEPARTMENTAL COMMITTEE ON LANDS

PARLIAMENT OF KENYA LIBRARY

REPORT ON THE CONSIDERATION OF A PETITION BY RESIDENTS OF KINYONA WARD REGARDING SAFEGUARDING PUBLIC INTEREST IN THE USE OF GITUAMBA LAND IN KINYONA WARD OF MURANGA COUNTY

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 04 MAY 2021	DAY: Tuesday
TABLED BY:	Chairperson, DC-lands
CLERK-AT THE TABLE:	M. WANJIKU

Chairman
DC-lands

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

MAY, 2021

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1.0 PREFACE

1.1 Mandate of the Committee

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

1.2 Committee subjects

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

1.3 Oversight

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

1.4 Committee Membership

4. The Committee membership comprises: -

Chairperson

Hon. Dr. Rachael Nyamai, CBS, MP
MP for Kitui South Constituency
Jubilee Party

Vice Chairperson

Hon. Khatib Mwashetani, MP
MP for Lunga Lunga Constituency
Jubilee Party

Hon. Benjamin Washiali, CBS, MP
Member for Mumias East Constituency
Jubilee Party

Hon George Risa Sunkuyia, MP
Member for Kajiado West Constituency
Jubilee Party

Hon Joshua Kutuny Serem, MP
Member for Cherangany Constituency
Jubilee Party

Hon. John Muchiri Nyaga, MP
Member for Manyatta Constituency
Jubilee Party

Hon. Mishi Mboko, MP
Member for Likoni Constituency
Orange Democratic Movement (ODM)

Hon. Josphat Gichunge Kabeabea, MP
Member for Tigania East Constituency
Party of National Unity (PNU)

Hon. Omar Mwinyi, MP
Member for Changamwe Constituency
Orange Democratic Movement (ODM)

Hon. Lilian Tomitom, MP
Member for West Pokot County
Jubilee Party

Hon. Ahmed Kolosh, MP
Member for Wajir West Constituency
Jubilee Party

Hon. Owen Yaa Baya, MP
Member for Kilifi North Constituency
Orange Democratic Movement (ODM)

Hon. Ali Mbogo, MP
Member for Kisauni Constituency
Wiper Democratic Movement (WDM)

Hon. Patrick Munene Ntwiga, MP
Member for Chuka/Igambangombe
Constituency
Jubilee Party

Hon. Babu Owino, MP
Member for Embakasi East Constituency

Hon. Samuel Kinuthia Gachobe, MP
Member for Subukia Constituency

2.0 INTRODUCTION

6. The Petition by residents of Kinyona Ward regarding safeguarding public interest in the use of Gituamba land in Kinyona Ward of Muranga County was presented to the House through the Hon. Sabina W. M. Chege, MP on 8th September 2020.
7. The Petitioners wished to draw the attention of the House to the following, that:
 - i. The parcel of land in question measuring 65 acres is in Gituamba area of Kinyona Ward, Kigumu Constituency in Muranga County. The said land was originally owned by the Petitioners' grandparents as ancestral land under LR. No/KINYONA /LOC/2/786 and was allocated for public use for establishment tea nurseries and agricultural – related research and held in trust by the Muranga Council on behalf of area residents;
 - ii. In 1962, the Murang'a County Council leased the said land to the Special Crop Development Authority for a period of 99 years;
 - iii. The Special Crop Development Authority was later renamed the Kenya Tea Development Authority and then as the Kenya Tea Development Agency Limited and finally to its current name as the Kenya Tea Development Agency Holdings Limited;
 - iv. The Community's original intention in allocating the land was the setting up of tea tree nurseries as well as establishment of a public tea research institute and not for the growth of Eucalyptus trees for KTDA 's fuel program as is currently the case;
 - v. The said land was held as public land to be utilized for public interest but its use has for years been diverted and used for private interest by the Kenya Tea Development Agency Holdings or its subsidiary companies that are privately registered entities;
 - vi. The Eucalyptus trees have created a dense forest cover that poses perennial security concerns ranging from attacks by wild animals, rape cases as well as being used as a hiding place for stolen properties;
 - vii. The planting of the water – consuming Eucalyptus trees has led to the reduction of the water volume in Kinyona River and water flow downstream hence affecting irrigation and the general eco - system of the area;
 - viii. During the recent El – Nino rains, several trees fell across the busy Mununga – Kinyona Road thereby affecting transport and communication in the entire area;
 - ix. Failure to utilize the land for its original purpose continues to cause unwarranted distress, anguish, and inconvenience to the residents of Kinyona Ward;
 - x. Efforts to have the concerns raised in this petition addressed by relevant authorities have not borne fruit;
 - xi. The issues in respect of which the petition is made are not pending before any court, or constitutional or legal body.

8. Therefore, the petitioners prayed that the National Assembly through the Departmental Committee on Lands;
 - i. Investigates the irregular change of the use of the land from public use to private use by the Kenya Tea Development Agency Holdings;
 - ii. Enquires into the matter with the objective of ascertain LR. /KINYONA/LOC/2/786 as a public land in conjunction with the National Land Commission;
 - iii. Directs KTDA Holdings to revert to the original objective of establishment of a public agricultural research institute and a tea nursery (Gituamba Tea Nursery and Factory) failure to which KTDA' land lease is to be revoked forthwith;
 - iv. Make recommendations to protect the socio- economic interest of people of Kinyona Ward as well as resolutions to protect the environment from the negative effects occasioned by KTDA's wood fuel planting; and
 - v. Makes any other orders that it deems appropriate considering the circumstances outlined in this petition.

3.2 Submissions by the Board Chair, Kenya Tea Development Agency Holding Limited

23. The Committee held a meeting with the Board Chairman Kenya Tea Development Agency Holding Limited, who was accompanied by several senior managers of the agency on 13th October 2020. The Committee also received supplementary document from the Agency dated 21st October, 2020. The Board Chair informed the Committee that:
24. The Land in question LR. No. LOC.2/KINYONA/786 Measuring 26.32 hectares is registered under the Kenya Tea Development Authority.
25. In 1962 the then Murang'a County Council leased the said land to the Special Crops Development Authority for a period of 99 years.
26. The Government revoked the legal existence of the Special Crops Development Authority vide legal Notice No. 42 of 1964 Rule 20 and transferred all its assets to the successor, Kenya Tea Development Authority.
27. Kenya Tea Development Authority was privatized in 1999 through Legal Notice No 44 (Revocation) Order and it became Kenya Tea Development Agency Limited and assumed all the rights duties assets and liabilities of the Kenya Tea Development Authority.
28. The Chairman submitted a copy of a lease document which indicated that the title for the said land was issued to the Kenya Tea Development Authority on 3rd of October 1998. This was due the fact that the original title was reported to have been misplaced and KTDA requested the Commissioner of Lands for a replacement leasehold certificate. The same was issued pursuant Gazette` Notice No. 56 of 1997.
29. Regarding the usage of the land in question the Chairman stated that:
 - a) The parcel of land was reserved for a Tea nursery and Factory and was initially used by the Scientific Research Division of the Embu Research Station that was later transferred to Thika Station in 1979 under the management of the Kenya Agricultural Research Institute (KARI).
 - b) KARI ceased tea related agricultural research on the land in the mid-1990s as the mandate of tea research remained with the Tea Research Foundation of Kenya (KRFK). Which had two stations in Kericho and Kangaita.
 - c) The development undertaken by KARI was subsequently valued and KARI was compensated by KTDA.
 - d) Kenya Tea Development Agency utilized the land for planting trees mainly Eucalyptus to provide wood fuel for use by the tea factories within the catchment area of the land.

- e) He argued this form of land use did not amount to any deviation from the intended use as per the lease as it was a cheaper and environmentally friendly source of energy compared to furnace oil.
30. The KTDA officials also argued that the Petitioners benefited indirectly from the sale of the said wood fuel through Gacharage and Ikumbi Tea Factories shareholding in KTDA. They observed that most of the Petitioners had indicated their Tea Factory membership (IK) numbers in the Petition, and this demonstrated that they were shareholders in KTDA through the said tea factories.
31. The residents of Kinyona also benefited from employment opportunities in the KTDA factories within the area and the corporate social responsibility initiatives such as education bursaries, scholarships, and medical camps.
32. Regarding the negative environmental effects arising of the Eucalyptus plantation to the residents of Kinyona, the Chairman also stated that a study undertaken by Kenya Forestry Research Institute (KEFRI) In September 2010 and the Kenya Forest Board in 2009 outlined the positive attributes of the growing of the trees in Kenya as a source of wood fuel and improvement of soil micronutrients.
33. On the claims of insecurity and other social vices arising from the plantation, he stated that the agency had deployed full time security guards at the farm and the agency had not received any specific report of insecurity from the residents.
34. The Chairman disputed the assertion made by the Petitioners that the matters raised in the petition had not been addressed by relevant as a similar petition was presented to and heard by the County Assembly of Muranga on 13th September 2016 with various recommendations.

3.3 Submissions by the Chairperson, National Land Commission

35. The Committee held a meeting with the Chairperson National Land Commission on 24th November 2020. The Chairperson informed the Committee that:
36. The land in question Kinyona Loc 2/786 measuring 26.32 Ha, was registered in the name of the Special Crops Development Authority for a term of 99 years from 1st July 1962.
37. The land was currently registered to a private entity KTDA Holdings and to revoke the same requires a court process. The Committee was also informed that the mandate of the commission to review grants and disposition lapsed in 2017.
38. A ground report revealed that part of the land was put for tea farming and the rest was under eucalyptus trees and approximately one acre was under farming.
39. The Chairperson stated that it was the view of the Commission that KTDA should use the land as stipulated in the user conditions and failure to utilize the land appropriately should lead to the process of recovery of the same through a court process. He added that

KTDA should also find a way of coexisting with their neighbours and should consider removing the eucalyptus trees which are a menace and source of complaint and discomfort by the residents of Kinyona Ward.

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

40. The Committee received written submissions from the Cabinet Secretary Ministry of Lands and Physical Planning dated 24th March 2021. The Cabinet Secretary stated that:
41. The land in question is registered as title number Loc. 2/Kinyona in MAP .18/786. The said land measures 26. 32 Ha and was first registered in the name of the Special Crops Development Authority on 12th July 1962 on a leasehold tenure of 99 years from 7th July 1962 for a tea nursery and factory. The lessor was the Trust Land Board.
42. The Special Crops Development Authority was replaced by the Kenya Tea Development Authority under the Agriculture Act (Cap 318) in 1964. Subsequently the change of name was registered against the land register to reflect Kenya Tea Development Authority as the proprietor.
43. The Kenya Tea Development Authority was privatized in 2000. The Kenya Tea Development Agency Limited, a private limited company was incorporated and took over the assets and liabilities of the state corporation pursuant to section 3 (1) of the Kenya Tea Development Authority (Revocation) Order, 1999.
44. The Kenya Tea Development Agency Limited was renamed Kenya Tea Development Agency Holding Limited in 2009 and the latter is the current owner of the land in question.
45. Trust land was initially vested in the County Councils but the same is currently vested in the County Governments with the advent of the Constitution of Kenya 2010 and in this case the County Government of Muranga. Therefore, the County Government of Muranga is the current lessor for the land in question and any change of user can only be approved or varied with the County Government 's approval.
46. The Ministry had not received any application for change of user for the land.

4.0 OBSERVATIONS / FINDINGS

The Committee made the following observations and findings:

1. The title documents submitted to the Committee in particular the Certificate of Lease Title No. LOC.2/KINYONA/786 disclosed that the land is registered in the name of Kenya Tea Development Authority for a period of 99 Years.
2. In 1999 vide Gazette Notice No. 44, the then Minister of Agriculture gazetted the privatization of the Kenya Tea Development Authority into a limited liability company being the Kenya Tea Development Agency Limited.
3. The Kenya Tea Development Agency Limited latter assumed all rights, duties, assets and liabilities of the former, including the said parcel of land.
4. The National Land Commission submitted that the parcel of land LOC.2/KINYONA/786 should be used as stipulated in the user conditions (*paragraph 39*).
5. The ground report submitted by the National Land Commission revealed that part of the land was put for tea farming and the rest was under eucalyptus trees and approximately one acre was under farming. (*paragraph 38*).
6. The Ministry of Lands and Physical Planning submitted that the land in question was currently owned by Kenya Tea Development Agency Holdings Limited. Its assets are owned by shareholders of the company. The Ministry also stated that Trust lands were vested in County Councils and eventually to County Governments with the advent of the Constitution, 2010. The County Government of Murang'a in this case is the Lessor and a change of user can only be approved or varied with the County Government's approval. The Ministry has not received any application for change of user for the land. (*paragraphs 45& 46*).
7. In light of paragraph 6 above, the LOC.2/KINYONA/786 was still under public use and it is only the status of the Kenya Tea Development Authority that was changed into a private entity being the Kenya Tea Development Agency Limited.
8. Concerning prayer 2 relating to the status of land, the Committee found that the land in question was registered as title number Loc. 2/Kinyona in MAP .18/786. The said land measures 26.32 Ha and was first registered in the name of the Special Crops Development Authority on 12th July 1962 on a leasehold tenure of 99 years from 7th July 1962 *for a tea nursery and factory*.
9. The County Government of Murang'a in this case is the Lessor and a change of user can only be approved or varied with the County Government's approval and the Ministry of Lands and Physical Planning was yet to receive any application for change of user for the land.

10. Concerning prayer 3 relating to the revocation of the lease held by KTDA, the Committee found that the revocation process required to be sanctioned by a court of law given that the mandate of the Commission to review grants and disposition under section 14 of the National Land Commission Act, 2012 lapsed.
11. Concerning prayer 4 on the negative environmental effects arising of the Eucalyptus plantation to the residents of Kinyona, the Committee found that Kenya Tea Development Agency Holdings Limited had a responsibility to ensure peaceful coexistence with the residents of Kinyona Ward and need to consider remedying any negative effects arising from the plantation. The Committee also observed that the Petitioners could also consider seeking redress through the National Environment Management Authority.

5. COMMITTEE RECOMMENDATIONS

Pursuant to Standing Order 227, the Committee recommends that:

1. Pursuant to prayer 2, the land under title number Loc. 2/Kinyona in MAP .18/786 measuring 26.32 Ha and was first registered in the name of the Special Crops Development Authority on 12th July 1962 on a leasehold tenure of 99 years from 7th July 1962 should be used for the original purpose assigned that is for *a tea nursery and factory*.
2. Any change of user of the land in question, title number Loc. 2/Kinyona in MAP 18/786 should only be approved or varied with the approval of the County Government of Muranga and the participation of the residents of Kinyona Ward.
3. Pursuant to prayer 3, the Petitioners may seek redress from the Environment and Land Court to revoke the title number Loc. 2/Kinyona in MAP .18/786 from the subsisting registered proprietor.
4. Pursuant to prayer 4, that Kenya Tea Development Agency Holding Limited should ensure peaceful coexistence with the residents of Kinyona Ward and should consider remedying any negative effects arising from the eucalyptus plantation on the land in question LR. Loc. 2/Kinyona in MAP .18/786.
5. Pursuant to prayer 4, that the Petitioners may consider seeking redress through the National Environment Management Authority.

Sign  Date 04/05/2021

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



KENYA NATIONAL ASSEMBLY
TWELFTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON LANDS
ADOPTION LIST

Report on a Petition by residents of Kinyona Ward regarding safeguarding public interest in the use of Gituamba land in Kinyona Ward of Murang'a County

DATE: 14/04/2021

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

MIN. NO. NA/DCS/LANDS/2021/049: PRELIMINARIES

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

MIN. NO. NA/DCS/LANDS/2021/050: ADOPTION OF DRAFT REPORT ON A PETITION BY RESIDENTS OF KINYONA WARD REGARDING SAFEGUARDING OF PUBLIC INTEREST IN THE USE OF GITUAMBA LAND IN KINYONA WARD, MURANGA COUNTY

The Committee considered and unanimously adopted the report on a petition by residents of kinyona ward regarding safeguarding of public interest in the use of Gituamba land in Kinyona Ward, Muranga County with the following observations and recommendations after it was proposed and seconded by Hon. Owen Baya, MP and Hon. Caleb Kositany, MP respectively;

Observations

1. The title documents submitted to the Committee in particular the Certificate of Lease Title No. LOC.2/KINYONA/786 discloses that the land is registered in the name of Kenya Tea Development Authority for a period of 99 Years.
2. In 1999 vide Gazette Notice No. 44, the then Minister of Agriculture gazetted the privatization of the Kenya Tea Development Authority into a limited liability company being the Kenya Tea Development Agency Limited.
3. The Kenya Tea Development Agency Limited latter assumed all rights, duties, assets and liabilities of the former, including the said parcel of land.
4. The National Land Commission submitted that the title documents, the parcel of land LOC.2/KINYONA/786 should use the land as stipulated in the user conditions.
5. The ground report submitted by the National Land Commission revealed that part of the land was put for tea farming and the rest was under eucalyptus trees and approximately one acre was under farming.
6. The Ministry of Lands submitted that the land in question is currently owned by Kenya Tea Development Agency Holdings Limited. Its assets are owned by shareholders of the company. The Ministry also stated that Trust lands were vested in County Councils and eventually to County Governments with the advent of the Constitution, 2010. The County Government of Murang'a in this case is the Lessor and a change of user can only be approved or varied with the County Government's approval. The Ministry has not received any application for change of user for the land.
7. In light of paragraph 6 above, the LOC.2/KINYONA/786 is still under public use and it is only the status of the Kenya Tea Development Authority that was changed into a private entity being the Kenya Tea Development Agency Limited.
8. Concerning prayer 2 relating to the status of land, the Committee found that the land in question is registered as title number Loc. 2/Kinyona in MAP .18/786. The said land measures 26.32 Ha and was first registered in the name of the Special Crops Development

Authority on 12th July 1962 on a leasehold tenure of 99 years from 7th July 1962 *for a tea nursery and factory*.

9. The County Government of Murang'a in this case is the Lessor and a change of user can only be approved or varied with the County Government's approval and the Ministry of Lands and Physical Planning is yet to receive any application for change of user for the land.
10. Concerning prayer 3 relating to the revocation of the lease held by KTDA, the Committee found that the revocation process requires to be sanctioned by a court of law given that the mandate of the Commission to review grants and disposition under section 14 of the National Land Commission Act, 2012 lapsed.
11. Concerning prayer 4 on the negative environmental effects arising of the Eucalyptus plantation to the residents of Kinyona, the Committee found that Kenya Tea Development Agency Holdings Limited had a responsibility to ensure peaceful coexistence with the residents of Kinyona Ward and need to consider remedying any negative effects arising from the plantation. The Committee also observed that the Petitioners may also consider seeking redress through the National Environment Management Authority.

Recommendations

The Committee recommended that;

1. Pursuant to prayer 2, the land under title number Loc. 2/Kinyona in MAP .18/786 measuring 26.32 Ha and was first registered in the name of the Special Crops Development Authority on 12th July 1962 on a leasehold tenure of 99 years from 7th July 1962 should be used for the original purpose assigned that is for *a tea nursery and factory*.
2. Any change of user of the land in question, title number Loc. 2/Kinyona in MAP 18/786 should only be approved or varied with the approval of the County Government of Muranga and the participation of the residents of Kinyona Ward.
3. Pursuant to prayer 3, the Petitioners may seek redress from the Environment and Land Court to revoke the title number Loc. 2/Kinyona in MAP .18/786 from the subsisting registered proprietor.
4. Pursuant to prayer 4, that Kenya Tea Development Agency Holding Limited should ensure peaceful coexistence with the residents of Kinyona Ward and should consider remedying any negative effects arising from the eucalyptus plantation on the land in question LR. Loc. 2/Kinyona.
5. Pursuant to prayer 4, that the Petitioners may also consider seeking redress through the National Environment Management Authority.

**MIN. NO. NA/DCS/LANDS/2021/051: ADOPTION OF A REPORT ON A PETITION
BY MEMBERS OF KAGAA FARMERS
COOPERATIVE SOCIETY REGARDING
LIQUIDATION OF THE SOCIETY**

The Committee unanimously adopted the report on the Petition by members of Kagaa Farmers Cooperative Society regarding the liquidation of the Society with the following observations and recommendation having been proposed and seconded by Hon. Teddy Mwambirc, MP and Hon. Khatib Mwashetani, MP respectively.

Observations

1. The submissions made to the Committee by the Petitioners indicated that the matters raised in the Petition were pending before the High Court in Civil Appeal Number E165 of 2020 lodged by the Petitioners.
2. The Petitioners filed an application for stay of orders of the Cooperative Tribunal to among other things prevent the take-over of the Kaaga Farmers' Cooperative Society by the liquidator pending the hearing of the appeal by the High Court.
3. In a ruling of the High Court in Civil Appeal Number E165 of 2020 dated 25th February, 2021, on the application for the stay of orders of the Cooperative Tribunal, the High Court dismissed the application for stay of execution pending the hearing of the appeal.
4. In view of paragraph 3, the appeal is still pending before the High Court. Additionally, the Petitioners have not submitted any supplementary submissions to indicate or demonstrate that the pending appeal has been determined or withdrawn.
5. Standing Order 89(1) provides that no Member shall refer to any particular matter which is *sub judice* and a matter is considered to be *sub judice* when it refers to active civil proceedings and the discussion of such matter is likely to prejudice its fair determination.
6. Additionally, Standing Order 89(3) provides that civil proceedings shall be deemed to be active if they refer to civil appellate proceedings when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgment or discontinuance.
7. The Petition for consideration by the Committee contains and relates to matters that are contained in the Appeal Number E165 of 2020 at the High Court including the liquidation of the Kaaga Farmers' Cooperative Society which forms the crux of the Petition in particular in relation to its assets and the land in question.
8. Consequently, the matters raised in the Petition fall under the *sub judice rule* in accordance with Standing Order 89 as they refer to active civil appellate proceedings and the

consideration of the Petition is likely to prejudice the fair determination of the case.

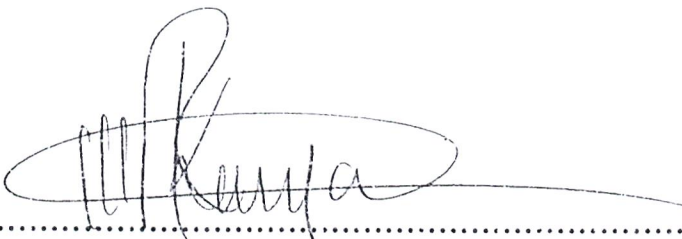
Recommendation

The Committee made the following recommendation;

In response to the prayers by the Petitioners, the Committee recommends that since the matters raised in the Petition are pending before the High Court in Civil Appeal Number E165 of 2020 and are therefore *sub judice* in terms of Standing Order 89, the Petitioners do exhaust the judicial process in addressing the prayers sought in the Petition.

MIN. NO. NA/DCS/LANDS/2021/052: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at twenty – eight minutes to twelve noon. The next meeting will be held on Tuesday, 20th April 2021 at 10.00 a.m.

Signature 

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

Date..... 27/04/2021

MAATHIRA

REPUBLIC OF KENYA



Approved

TWELFTH PARLIAMENT (FOURTH SESSION)

8/9/2020

Hon. speaker
You may approve
8/9/20.

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THE NATIONAL ASSEMBLY
PUBLIC PETITION
(No. 30 of 2020)

3) DLP
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PETITION FOR SAFEGUARDING PUBLIC INTEREST IN THE USE OF GITUAMBA LAND IN KINYONA WARD OF MURANG'A COUNTY

I, the **UNDERSIGNED**, on behalf of residents of Kinyona Ward in Murang'a County;

DRAW the attention of the House to the following: -

- 1) **THAT**, over 65 acres of land in Gituamba area of Kinyona Ward of Kigumo Constituency, Murang'a County that was originally owned by the petitioners' grandparents as ancestral land under Land Reference Number LR/KINYONA/LOC/2/786 were allocated for tea nurseries and agricultural-related research and held in trust by the Murang'a County Council on behalf of area residents;
- 2) **THAT**, in 1962, the Murang'a County Council leased the said land to the Special Crop Development Authority for a period of 99 Years;
- 3) **THAT**, the Special Crop Development Authority was later renamed first as the Kenya Tea Development Authority, then as the Kenya Tea Development Agency and finally to its current name as the Kenya Tea Development Agency Holdings;
- 4) **THAT**, the Community's original intention in allocating the land was the setting up of tea tree nurseries as well as establishment of a public tea research institute, and not for the growth of Eucalyptus trees for KTDA's fuel program as is currently the case;
- 5) **THAT**, the said land was held as public land to be utilized for public interest but its use has for years been diverted and used for private interests by the Kenya Tea Development Agency Holdings or its subsidiary companies that are privately-registered entities;
- 6) **THAT**, the Eucalyptus trees have created a dense forest cover that poses perennial security concerns ranging from attacks by wild animals, rape cases as well as being used as a hiding place for stolen properties'

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29 Joseph Critimus	2040971	JK 92/62	<i>[Signature]</i>
30 Symon Ajlin	9152823	JK 89/071	<i>[Signature]</i>
31 SIMON NDIRANGU	21749764		<i>[Signature]</i>
32 SAMUEL NDEPATI	14566504		<i>[Signature]</i>
33 DANIEL WATURU	23814263		<i>[Signature]</i>
34 ERIC KARANJA	21436933		<i>[Signature]</i>
35 ABITH WAMBUI	26211169	JK 82/204	<i>[Signature]</i>
36 PAUL KARANJA	11752244	JK 77/115	<i>[Signature]</i>
37 ANTONY NIWANDA	14489745	JK 02/103	<i>[Signature]</i>
38 DANSON NJUGUNA	22269378	JK 092/120	<i>[Signature]</i>
39 ONESIMUS KAMORE	0440511	JK 1050002	<i>[Signature]</i>
40 ISAAC KARUKU	21357702	JK 0920095	<i>[Signature]</i>
41 JULIA WAKONGU	22229962		<i>[Signature]</i>
42 Samuel Wairati	22038219	JK 0601061	<i>[Signature]</i>
43 Michael Ruge	23630478		<i>[Signature]</i>
44 Ann MUIRU	32757052		<i>[Signature]</i>

consideration of the Petition is likely to prejudice the fair determination of the case.

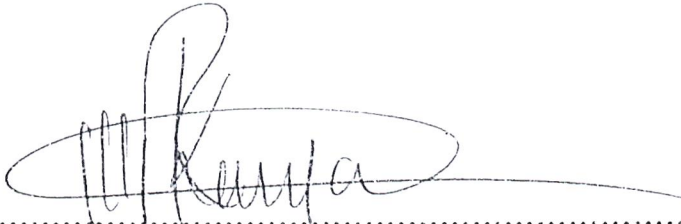
Recommendation

The Committee made the following recommendation;


In response to the prayers by the Petitioners, the Committee recommends that since the matters raised in the Petition are pending before the High Court in Civil Appeal Number E165 of 2020 and are therefore *sub judice* in terms of Standing Order 89, the Petitioners do exhaust the judicial process in addressing the prayers sought in the Petition.

MIN. NO. NA/DCS/LANDS/2021/052: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at twenty – eight minutes to twelve noon. The next meeting will be held on Tuesday, 20th April 2021 at 10.00 a.m.

Signature 

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

Date..... 

MAATHIRA

REPUBLIC OF KENYA



Approved

TWELFTH PARLIAMENT (FOURTH SESSION)

8/9/2020

Hon. speaker
You may approve!
8/9/20

RECEIVED
16 SEP 2020
THE NATIONAL ASSEMBLY
PUBLIC PETITION
SECRETARY GENERAL'S OFFICE (No. 30 of 2020)

3) DLP
see attached
8/9

PETITION FOR SAFEGUARDING PUBLIC INTEREST IN THE USE OF GITUAMBA LAND IN KINYONA WARD OF MURANG'A COUNTY

I, the **UNDERSIGNED**, on behalf of residents of Kinyona Ward in Murang'a County;

DRAW the attention of the House to the following: -

- 1) **THAT**, over 65 acres of land in Gituamba area of Kinyona Ward of Kigumo Constituency, Murang'a County that was originally owned by the petitioners' grandparents as ancestral land under Land Reference Number LR/KINYONA/LOC/2/786 were allocated for tea nurseries and agricultural-related research and held in trust by the Murang'a County Council on behalf of area residents;
- 2) **THAT**, in 1962, the Murang'a County Council leased the said land to the Special Crop Development Authority for a period of 99 Years;
- 3) **THAT**, the Special Crop Development Authority was later renamed first as the Kenya Tea Development Authority, then as the Kenya Tea Development Agency and finally to its current name as the Kenya Tea Development Agency Holdings;
- 4) **THAT**, the Community's original intention in allocating the land was the setting up of tea tree nurseries as well as establishment of a public tea research institute, and not for the growth of Eucalyptus trees for KTDA's fuel program as is currently the case;
- 5) **THAT**, the said land was held as public land to be utilized for public interest but its use has for years been diverted and used for private interests by the Kenya Tea Development Agency Holdings or its subsidiary companies that are privately-registered entities;
- 6) **THAT**, the Eucalyptus trees have created a dense forest cover that poses perennial security concerns ranging from attacks by wild animals, rape cases as well as being used as a hiding place for stolen properties'

NATIONAL ASSEMBLY
RECEIVED
08 SEP 2020
CLERK'S OFFICE
P. O. Box 41842, NAIROBI

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SPEAKER'S OFFICE
P. O. Box 41842, NAIROBI.

**PETITION FOR SAFEGUARDING PUBLIC INTEREST IN THE USE OF
GITUAMBA LAND IN KINYONA WARD OF MURANG'A COUNTY**

- 7) **THAT**, as a consequence to the planting of the water-consuming Eucalyptus trees, the Kinyona River has reduced its water volumes and water flow downstream hence affecting irrigation and the general ecosystem of the area;
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- 9) **THAT**, failure to utilize the land for its original purpose continues to cause unwarranted distress, anguish and inconvenience to the residents of Kinyona Ward;
- 10) **THAT**, efforts to have these concerns addressed by relevant authorities have not borne fruit;
- 11) **AND THAT**, the matters raised in this petition are not pending before any court of law, constitutional or legal body.

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

- i. Investigates the irregular change of the use of the land from public use to private use by Kenya Tea Development Agency Holdings;
- ii. Enquiries into the matter with the objective of ascertaining LR/KINYONA/LOC/2/786 as a public land in conjunction with the National Land Commission;
- iii. Directs KTDA Holdings to revert to the original objective of establishment of a public agricultural research institute and a tea tree nursery (Gituamba Tea Nursery and Factory), failure to which KTDA's land lease is to be revoked forthwith;
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- v. Makes any other orders that it deems appropriate in light of the circumstances outlined in this Petition.

And your **PETITIONERS** will ever pray.

PRESENTED BY



**THE HON. SABINA WANJIRU MAITU CHEGE, MP
MEMBER FOR MURANG'A COUNTY**

DATE: 7TH SEPTEMBER, 2020

	NAME	ID NO	IK No	SIGN
1	JACKSON MUGANE KAMURE	21365788	1050045	
2	BENSON KIMANI MITOBIO	21994409	IK0093089	
3	HELEN NYAMBARA KURIA	10266535	IK100101	
4	JACK WAWERU		IK94002	
5	CECILIA NJERI		IK940067	
6	Kelvin Thiongo	29180771	IK940071	
7	JAMES KURIA NGWARE	5212509	IK100030	
8	Samuel Korog'o	23814250	IK151089	
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10	LUKE Nolethu GITHURU	2040964	IK090026	
11	PETER MUGANE			
12	WILSON NIWANGI NGATHU	7422543	IK09040	
13	JOSEPH MUGI KAMURI	11622520	IK1001000	
		25693346	IK097100	
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15	Eliud M. Kuria	14627779	IK100110	
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18	SAMUEL NJUGUNA CHEGE	26440484	IK0093093	
19	DAVID KURIA GITHURU	77816707	IK1001	
20	JAMES BUKUNGU WANJAU	22397986		
21	JOSEPH NDIRANGU MAINA	4356519	IK100-121	
22	PAUL KAMARA KINYA	9587007	IK20108	
23	SAMUEL THIONGO GATHURU	10246681	IK0920101	
24	Mwangi Gathuru	2011099	IK077	
25	Wilson N. Muthura			
26	John K. Kamuri	0440478	IK043	
27	David H. Njiri	9489007	IK1050019	
28		2040619	IK000111	

	IN NO	IKNO	UIN
29 Joseph Citemu	2040971	JK 92/62	<i>[Signature]</i>
30 SUMON Ajlin	9152823	JK 89/071	<i>[Signature]</i>
31 SIMON MADIRANGU	217697614		<i>[Signature]</i>
32 SAMUEL Ndelepi	14566504		<i>[Signature]</i>
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34 ERIC KARANJA	21436933		<i>[Signature]</i>
35 TABITHA WAMBUI	26211169	JK 89/204	<i>[Signature]</i>
36 PAUL Karuru	11752244	JK 77/115	<i>[Signature]</i>
37 ANTON NISANGI	14489745	JK 092/123	<i>[Signature]</i>
38 DANSON Njuguna	22269378	JK 092/120	<i>[Signature]</i>
39 ONESIMUS KAMORE	0440511	JK 1050002	<i>[Signature]</i>
40 ISAC Karuru	21357702	JK 0920085	<i>[Signature]</i>
41 JULIA WAKONGO	22229902		<i>[Signature]</i>
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MAATHIRA

REPUBLIC OF KENYA



Approved

TWELFTH PARLIAMENT (FOURTH SESSION)

8/9/2020

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 (No. 30 of 2020)

3 DLP
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**PETITION FOR SAFEGUARDING PUBLIC INTEREST IN THE USE OF
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44 Ann MUIRU	32757052		<i>[Signature]</i>



KENYA TEA DEVELOPMENT AGENCY HOLDINGS LIMITED
 KTDA FARMERS BUILDING | P.O. Box 30213 GPO 00100 Nairobi
 Tel: +254 20 221441/2/3/4, 322 7000/1 | Fax: 254 020 2211240
 E-mail: info@ktdateas.com | Site: www.ktdateas.com

REF: ADM/PROP/117/2020/kkr

October 12, 2020

**The Clerk of the National Assembly,
 Clerk's Chambers,
 Parliament Buildings,
 P.O BOX 41842-00100,
 NAIROBI**

Attention: Mr. Jeremiah W. Ndombi

Dear Sir,

**RE: PETITION BY RESIDENTS OF KINYONA WARD IN MURANG'A
 COUNTY REGARDING SAFEGUARDING PUBLIC INTEREST IN THE USE
 OF GITUAMBA LAND IN KINYONA WARD OF MURANG'A COUNTY**

We acknowledge receipt of your letter Ref: NA/DC/LANDS/2020/(074) of 1st October, 2020 addressed to the Board Chairman, Kenya Tea Development Agency on the above subject.

Please find attached our response to the petition.

Yours faithfully,
 KENYA TEA DEVELOPMENT AGENCY HOLDINGS LIMITED


Dr. JOHN F. K. OMANGA,
GROUP COMPANY SECRETARY

Directors:

P.T. Kanyago MBS EBS (Chairman), P. Ng'etich MBS OGW (Vice-Chairman), S. L. Tiampati MBS (Managing), J. M. Wakimani, E.K. Gakuya, F. M. Mark, P. M. Migwi, S. M. Ireri, P.M. Ringera HSC, S.C. Tonui, J.N. Achoki, B. Matonda, S. K. Mbatia, I. N. Gaha (Ms.)* B. K. Ngari (Finance & Strategy) *(Independent)



October 12, 2020

**RESPONSE TO THE NATIONAL ASSEMBLY ON THE
PETITION BY RESIDENTS OF KINYONA WARD IN
MURANG'A COUNTY REGARDING SAFEGUARDING
PUBLIC INTEREST IN THE USE OF GITUAMBA LAND
IN KINYONA WARD OF MURANG'A COUNTY**

1. TITLE DOCUMENT

The land referred to as LOC.2/KINYONA/786 measuring approximately 26.32 Hectares (65 acres) is registered under Kenya Tea Development Authority.

2. HISTORY

In 1962, the Murang'a County Council leased Gituamba farm to the Special Crops Development Authority for a period of 99 years. By Legal Notice No.42 of 1964 Rule 20, the Government of Kenya revoked the legal existence of the Special Crops Development Authority and transferred all its assets and liabilities to the successor, Kenya Tea Development Authority. Later, through Legal Notice No.44 (Revocation) Order of 1999, Kenya Tea Development Authority was privatized and it became Kenya Tea Development Agency Limited, and by virtue of the order, assumed all rights, duties, obligations, assets and liabilities of the predecessor.

3. LAND USE

The parcel of land was reserved for a Tea nursery and Factory, and was initially utilized by the Scientific Research Division of the Embu Research Station, which was later transferred to the Thika Station in 1979 under the management of KARI. By the mid 1990's, KARI had practically ceased nearly all agricultural research work on the farm. By then, they had on the farm some tea bushes on 1.5 acres, few housing units and an office block. By consensus, these developments were later valued and KARI was compensated by KTDA. The mandate on tea research remained solely with the Tea Research Foundation of Kenya (TRFK), which had two well established stations in Kericho and Kangaita, both of which sufficiently met the research needs of tea farmers in Kenya and beyond. Further, with technological advancement in agricultural research, there was reduced need for vast tracts of land for the purpose.

Consequently, KTDA took full charge of the land in order to utilize it for planting trees as a way of availing woodfuel for use by the tea factories in that catchment, and for environmental conservation. This form of land use (agroforestry), did not amount to any deviation from the intended use as per the lease, considering that the use of furnace oil as an energy source by tea factories is not only expensive, but environmentally unfriendly.

4. KEFRI AND KFS PUBLICATIONS ON EUCALYPTUS TREES

KTDA has grown a mix of tree species in Gituamba farm with Eucalyptus on its upper part, wattle trees in the middle and indigenous trees along the riparian stretch.

According to publications by Kenya Forestry Research Institute (KEFRI), in September 2010, and Kenya Forest Services Board in 2009, Eucalyptus has been grown for over

100 years in Kenya and has become very popular with farmers especially for woodfuel management within the tea farms. Within a period of 8 to 10 years, areas under Eucalyptus have been found to have higher levels of micronutrients than those under old tea crops, hence improving soil fertility. Natural and plantation forests play an important role in the hydrological cycle as they reduce evaporation, increase the rate of infiltration, and therefore lead to low runoff. Further studies have been carried out showing that in high rainfall areas, replacement of indigenous bamboo forests in water catchments with plantations of eucalyptus, pine and tea did not result in any long-term reduction in water from the catchments. This in effect, and in the absence of river flow measurements, negates the claims in the petition concerning the reduction of water volumes in Kinyona River and the perceived negative impact on the general ecosystem of Kinyona Ward.

5. SECURITY

With regards to claims of insecurity and other social vices, we wish to state that we have deployed full time security guards at the farm, and to-date KTDA has not received any report on a specific incident. However, as a responsible organization, we are always ready to partner with the community, local administration and other security agencies to address and resolve such cases as may arise.

Between February and July 2020 during the first harvest, the residents of Kinyona Ward benefited immensely by KTDA allowing them access to the farm to collect firewood for household use.

6. MURANG'A PETITION OF 2016

The claim that this matter has not been appropriately dealt with by relevant authorities is untrue. The records in our possession show that there was a similar petition presented

11

to and heard by the County Assembly of Murang'a on 13th September 2016, with various recommendations.

In conclusion, we wish to appeal to your good office to carefully consider the petition in light of the facts herein presented, and in the interest of the common good of all stakeholders in the subject matter.

APPENDICES:

- Land ownership document (Title Deed)
- Excerpts of:
 - i). A Publication by Kenya Forestry Research Institute: Facts on Growing & Use of Eucalyptus in Kenya, ISBN: 9966-7458-1-5, September 2010).
 - ii). A publication by Kenya Forest Service Management Board: A guide to On-Farm Eucalyptus Growing in Kenya, Case study of a mature Eucalyptus plantation in Kericho District, Kenya, December 2009).
- Legal Notice No.42 of 1964
- Legal Notice No.44 (Revocation Order) of 1999
- Murang'a Petition on Gituamba Farm of 2016



REPUBLIC OF KENYA

THE REGISTERED LAND ACT
(Chapter 300)



REPUBLIC OF KENYA

THE REGISTERED LAND ACT
(Chapter 300)

Certificate of Lease

Certificate of Lease

TITLE No. Doc. E/NAIYORUA/706

LESSOR COUNTRY COUNCIL OF NAIROBI

RENT PEPILACOUN

TERM 99 YEARS FROM 1.7.62

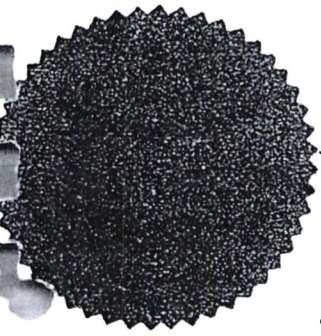
This is to certify that KENYA TEA DEVELOPMENT AUTHORITY

is (are) now registered as the proprietor(s) of the leasehold interest above referred to, subject to the agreements and other matters contained in the registered lease, to the entries in the register relating to the lease and to such of the overriding interests set out in section 30 of the Registered Land Act as may for the time being subsist and affect the land comprised in the lease.

GIVEN under my hand and the seal of the

Registrar District Registry

this thirty day of December, 1998



[Signature]

THE KENYA TEA DEVELOPMENT AUTHORITY ORDER

L.N.42/1964,
L.N.59/1964
L.N.180/1964,
L.N.181/1964,
L.N.226/1965,
L.N.157/1966,
L.N.20/1967

1. This Order may be cited as the Kenya Tea Development Authority Order.
2. In this Order, "made tea" means the product of green leaf after processing in the factory.
3. (1) There is hereby established an authority, to be known as the Kenya Tea Development Authority (hereinafter referred to as the Authority), for promoting and fostering the development of tea, for the areas specified in the First Schedule.
(2) The Authority shall consist of the following members—
 - (a) the Permanent Secretary of the Ministry;
 - (b) the Director of Agriculture;
 - (c) the chairman of the Tea Board;
 - (d) a person appointed by the Commonwealth Development Corporation, for so long as the Authority is indebted to the Commonwealth Development Corporation;
 - (e) a person appointed, if it so desires, by any government, society, person or body of persons who in the opinion of the Minister is a substantial lender of funds to the Authority, for so long as the Authority is indebted to that government, society, person or body of persons;
 - (f) if no member is appointed under paragraph (d) or (e), a person appointed by the Minister, by notice in the Gazette, for his ability or experience in the field of commerce and finance;
 - (g) not more than two members appointed by the Minister, by notice in the Gazette, who, in the opinion of the Minister, are persons suitably qualified to further the work of the Authority;
 - (h) licensed tea growers elected in the manner prescribed in the Third Schedule;
 - (i) the general manager of the Authority appointed under paragraph 9; and
 - (j) a chairman appointed by the president who may, but need not, be already a member of the Authority.
- (3) The Authority shall elect annually from amongst the members specified in paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) of subparagraph (1) a deputy chairman, who shall act in place of the chairman during his absence.
- (4) In the absence of both the chairman and deputy chairman the members present at any meeting may appoint any one of their number to act as chairman at the meeting.
- (5) Any person appointed to act as chairman under paragraph (3) or (4) shall have all the power and privileges of the chairman at and in respect of any meetings at which he presides.

(6) If any of the members specified in paragraphs (a), (b), (c), (d) and (e) of subparagraph (1) is for any reason, unable to attend any meeting or meetings of the Authority, he may in writing appoint a person to represent him, and that person shall thereupon be deemed to be a duly appointed member for all purposes connected with the meeting or meetings,

(7) Every appointment under subparagraphs (2) and (3) shall be preserved in the records of the Authority.

(8) The chairman shall hold office for a period of three years and shall be eligible for reappointment.

(9) The licensed growers who are elected members under subparagraph (1) (h) shall hold office in the manner prescribed in the Third Schedule.

4. Notwithstanding anything to the contrary in this Order, a person shall cease to be a member—

(a) upon receipt by the Minister of his resignation in writing; or

(b) upon his death; or

(c) if he is certified to be insane or otherwise adjudged to be of unsound mind under any written law; or

(d) if the Minister declares him to be physically or otherwise incapable of discharging his duties as a member; or

(e) if he is absent, without the permission of the Authority, from three consecutive meetings of the Authority; or

(f) if he is adjudged or otherwise declared bankrupt under any written law; or

(g) if he is sentenced by a court to imprisonment for a term of six months or more.

5. Every member of the Authority who is or is likely to be concerned in or who participates in the profits of any contract with or work done for the Authority, otherwise than in his capacity as a member of the Authority, shall, on the matter coming before the Authority for consideration, immediately declare his interest therein, and shall in any case abstain from voting in the matter.

6. The Authority shall meet not less than four times in each Financial year.

7. A quorum of the Authority shall be a majority of the members of the Authority.

8. (1) Every decision of the Authority shall be by a simple majority of the members present and voting, but the chairman shall have a casting as well as a deliberative vote.

(2) Subject to this Order, the Authority shall regulate its own proceedings.

(2) The terms and conditions of service of officers appointed by the Authority shall be subject to the approval of the Minister, but need not be on the same terms and conditions as salaried officers of the Government.

10. The Authority may delegate any of its powers to any committee thereof or to the Managing Director.

11. (1) The Authority shall set up tea committees in each division and District, and a board in each Province, in which tea is grown under the direction of the Authority, to advise the Authority in carrying out its functions.

(2) The composition of these committees and boards shall be as prescribed in the Second Schedule:

Provided that, notwithstanding anything to the contrary in this Order, a person shall cease to be a member of a district or divisional tea committee or a provincial board—

(a) upon receipt by the chairman of the committee or board of his resignation in writing; or

(b) upon his death; or

(c) if he is certified insane or otherwise adjudged to be of unsound mind under any written law; or

(d) if the Minister declares him to be physically or otherwise incapable of discharging his duties as a member; or

(e) if he is absent without the permission of the chairman from three consecutive meetings of the committee or board concerned; or

(f) if he is adjudged or otherwise declared bankrupt under any written law; or

(g) if he is sentenced by a court to imprisonment for a term of six months or more.

(3) Members of these committees and boards shall hold office in the manner prescribed in the Fourth Schedule.

12. Members of the Authority, other than salaried officers of the Government, shall receive such remuneration and allowances (if any) as the Minister may approve.

13. The seal of the Authority shall be authenticated by the signature of the chairman and of the general manager of the Authority, or by either one of them together with one member of the Authority so authorized by the Authority in that behalf.

14. The Authority may, by writing under its seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situated in Kenya, and a deed signed by such attorney on behalf of the Authority and under his seal shall bind the Authority and have the same effect as if it were under the seal of the Authority,

15. All documents, other than those required by law to be under seal, made by, and all decisions of, the Authority may be signified under the hand of the chairman of the Authority, or of the Managing Director of the Authority, or of any member of the Authority, or any other person, authorized by the Authority in that behalf.

16. The financial year of the Authority shall be from the 1st July in each year to the 30th June in the year following.

17. (1) The Authority shall cause to be kept such books of account and other books in relation thereto and to all its undertakings, funds, activities and property as the Minister may from time to time require or approve, and shall, within a period of four months after the end of its financial year or within such longer period as the Minister may approve, cause to be prepared, signed and transmitted to the auditor—

(a) a balance sheet showing in detail the assets and liabilities of the Authority; and

(b) such other statements of accounts as the Minister may require.

(2) The accounts of the Authority shall be examined, audited and reported upon annually by the Controller and Auditor-General or by such other person as the Minister may appoint, being a person who is the holder of a practising certificate issued pursuant to section 21 of the Accountants Act.

(3) The Authority shall produce and lay before the auditor all books and accounts of the Authority with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the auditor shall be entitled to require from all members, officers, employees and agents of the Authority such information and explanation as he may consider to be necessary for the performance of his duties as auditor.

(4) The expenses of and incidental to the audit shall be paid by the Authority.

(5) The Authority shall within a period of seven months after the end of its financial year, or within such longer period as the Minister may approve, submit to the Minister a report of its operations during that year, and the year's balance sheet and such other statements of account as the Minister shall require together with the auditor's report thereon, and the Authority shall, if the Minister so requires, publish them in such manner as the Minister may specify.

(6) The Minister shall lay the Authority's report and the auditor's report, together with the balance sheet and such other statements of account as he may have required, before the National Assembly as soon as practicable.

18. Any levy imposed by the Authority under this Order shall be payable to the Authority or its agents in that behalf by the person on whom it is imposed in such manner and within such time as the authority may direct, and shall be a civil debt due from such person to the Authority.

19. The Authority shall be empowered to do the following things---

(a) with the approval of the Minister and after consultation with the Tea Board, to schedule the areas in which it shall operate;

(b) to prepare and carry out schemes for the development of tea including---

- (i) the establishment and management of nurseries for the cultivation of seed;
- (ii) the purchase of seed and seedlings;
- (iii) the sale of seed and seedlings to growers and others;
- (iv) the supervision of cultivation by growers;
- (v) the inspection of growing and harvested green leaf;
- (vi) the purchase, collection and transportation of green leaf from growers;
- (vii) storage of green leaf;
- (viii) the processing of green leaf for the manufacture of made tea, or its sale to others for that purpose;
- (ix) the transportation and sale of made tea;

- (c) to deduct, from moneys held for and on behalf of growers, any levies due to the Authority from those growers;
- (d) to employ agents for the implementation of any scheme, or for the performance of any function of the Authority under this Order, at such remuneration as may be agreed;
- (e) to raise such loans on such terms and for such purpose as may be approved by the Minister after consultation with the Minister for the time being responsible for finance;
- (f) to utilize its profits for repayment of any outstanding loans, and with the approval of the Minister for promoting and fostering the development of tea or for any other purpose whether of a like nature or otherwise;
- (g) to make loans for the purpose of developing tea;
- (h) to market green leaf;
- (i) to enter into agreements with a processing factory or factories for the purchase or processing of green leaf;
- (j) to establish, acquire and operate processing factories, to enter into agreement for the establishment of factories, and to promote and subscribe for shares in any company incorporated in Kenya for the purpose of processing or marketing tea;
- (k) to market made tea;
- (l) to create and operate price stabilization funds, and such other reserve funds as the Minister may approve, and to apply any such funds to the repayment of any outstanding loans;
- (m) to invest sums belonging to it which are not immediately required for any of the purposes of this Order in any manner in which trustees are authorized by law to invest in trust funds, and to sell or vary any investments so made, to place money on deposit with a bank and to establish and operate bank accounts;
- (n) if, in any year, the operations of the Authority result in a surplus after all expenses and charges have been met and provision for payment to the funds provided for in subparagraph (l) has been made, with the approval of the Minister to utilize such part of the surplus as it thinks fit in repayment of any outstanding loan or in payments to the growers; and any surplus not disposed of pursuant to this Order and not otherwise appropriated shall be carried forward in the revenue and expenditure account for appropriation in succeeding years; and
- (o) with the approval of the Minister, by order published in the Gazette—
 - (i) to impose a levy or levies on growers, including levies at different rates in respect of any growers or section of growers, for the purpose of financing the operations of the Authority and for such other purposes as the Minister may approve;
 - (ii) to fix prices either generally or in reference to any particular circumstances including payment to growers for green leaf;
 - (iii) to regulate and control the marketing of crops by growers and others, including the requirement to sell crops by growers and others to particular persons only;

(iv) to provide for any other matter which is approved by the Minister as being in the furtherance of the development of tea or incidental or conducive to the exercise of any of the powers of the Authority;

(p) with the approval of the Minister, to do any other thing which in the opinion of the Authority will assist the development of tea:

Provided that, without prejudice to powers conferred upon it elsewhere in this Order, the Authority shall carry out its functions subject to the general or specific directions of the Minister.

20. Any person who contravenes any order of the Authority made under paragraph 19 (o) shall be guilty of an offence and liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding one month.

FIRST SCHEDULE

The Authority may operate in the following areas:-

Provincial	District	Division	Location/Sub-Division
Central	Kiambu	Gatundu	Kiganjo Ndarugu Chania
		Githunguri	Gatamaiyu Githunguri
		Limuru	Limuru Lari
Central	Fort Hall	Kandara Kigumo Kiharu Kangema	1, 3, 4, 5, 16 2, 6, 7, 17, 18
Central Eastern	Kirinyaga Meru	North Imenti South Imenti Nithi Nyambeni	Tigania (excluding Nyambeni Tea Company Limited Estate). Igembe.
Eastern Rift Valley	Embu Kericho	Buret	3
		Konoin	8 (excluding L.R. Nos. 6019-6028 inclusive, 7030 and 7035
		Belgut	1 and 2
Rift Valley	Nandi	Bomet Chepsir Settlement Northern	5, Waldai, Mosop. 4 Sangalo

SECOND SCHEDULE

1. (1) A tea buying centre area committee shall be composed of-

- (i) five tea growers elected by and from among the tea growers registered by the Authority for delivery of green leaf to that centre;
- (ii) the leaf collection clerk employed by the Authority, who shall attend meetings in an ex officio capacity.

(2) The members of the committee shall elect from one among their numbers to serve as chairman of the committee.

2. (1) A tea base section committee shall consist of-

- (i) nine tea growers, elected by and from among the tea grower members of all the tea buying centre committees falling under the tea base section;
- (ii) one director of the respective factory company managed by the Authority, elected by tea growers who are shareholders of the factory company;
- (iii) the factory manager for the time being responsible for the factory company, who shall attend meetings of the committee in an ex officio capacity.
- (iv) the leaf officer in charge of leaf collection operations of the Tea Base Section, who shall attend meetings in an ex officio capacity;
- (v) the assistant tea officer in charge of tea extension services in the tea base section, or the administrative division, who shall attend meetings in an ex officio capacity.

(2) The members shall elect one person from among their number to serve as chairman of the committee.

3. (1) A zonal tea committee shall consist of -

- (i) three tea growers from each tea base section falling within the zone, elected by and from among the tea-grower members of the tea base section committees;
- (ii) the zonal factory operations superintendent, appointed by the Authority to be in charge of factory operations in the zone, who shall attend meetings in an ex officio capacity;
- (iii) the zonal leaf collection superintendent appointed by the Authority to be in charge of leaf collection in the zone, who shall attend meetings in an ex officio capacity;
- (iv) the tea officer for the time being responsible for extension services in the zone or administrative district, who shall attend meetings in an ex officio capacity.

(2) The members may elect one among their numbers to serve as chairman of the committee.

THIRD SCHEDULE

1. Members of the Authority who are tea growers shall be elected members of the zonal tea committees on the basis of one for every three tea base sections falling under the zone, subject to a maximum of two members for every zone.
2. Where a member of the Authority ceases to be a member of his zonal tea committee he shall automatically cease to be a member of the Authority and shall be replaced by elections as prescribed in paragraph 1 by another member of his zonal tea committee.

FOURTH SCHEDULE

1. Members of committees set up under this Order shall hold office for a period of three years and shall be eligible for re-election.
2. An elected member of a zonal tea committee shall automatically cease to be a member of that committee when he ceases to be a member of his tea base section committee.
3. An elected member of a tea base section committee shall cease to be a member

LEGAL NOTICE NO. 44

THE AGRICULTURE ACT

(Cap. 318)

IN EXERCISE of the powers conferred by section 192 (4) of the Agriculture Act, the Minister for Agriculture, makes the following Order:—

THE KENYA TEA DEVELOPMENT AUTHORITY (REVOCATION) ORDER, 1999

1. This Order may be cited as the Kenya Tea Development Authority (Revocation) Order, 1999 and shall come into force on 1st January, 2000.

2. In this Order, unless the context otherwise requires—

“appointed day” means the date of commencement of this Order;

“Company” means the Kenya Tea Development Agency Limited;

“Kenya Tea Development Agency Limited” means the limited liability company incorporated pursuant to the provisions of paragraph 3;

“undertaking” in relation to the Kenya Tea Development Authority means its existing business, assets and property vested in or held by it and all liabilities to which it is subject in respect of its business immediately before the appointed day.

3. (1) Kenya Tea Development Authority shall incorporate a limited liability company under the provisions of the Companies Act for the purpose of bringing the provisions of this Order into operation.

Cap. 486

(2) The company shall be the successor of the Kenya Tea Development Authority and, subject to this Order, all rights, duties, obligations, assets and liabilities of the Kenya Tea Development Authority existing on the appointed day shall be automatically and fully transferred to the Kenya Tea Development Agency Limited and any reference to the Kenya Tea Development Authority in any contract or document shall, for all purposes, be deemed to be reference to the company.

4. (1) Any property or right vested in the Company by virtue of this Order which immediately before the appointed day, vested in the Kenya Tea Development Authority either alone or jointly with any other person—

- (a) as trustee or custodian trustee under any trust deed, settlement, covenant or under any other instrument; or
- (b) as executor or trustee of any person; or
- (c) as judicial trustee appointed by order of any court; or
- (d) in any other fiduciary capacity,

shall, on the appointed day, vest in the Company alone or jointly with such other person, upon the same trusts and subject to the same powers, provisions, liabilities and obligations.

(2) Any existing instrument or order, of any court under or by virtue of which any property or right vested in the Kenya Tea Development Authority in any capacity specified in subparagraph (1), including in the case of a will, any grant of probate thereof, and any provision herein or any existing contract or arrangement for the payment or retention by the Kenya Tea Development Authority or of remuneration for its services in any such capacity shall, on and after the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to the Kenya Tea Development Authority, there were substituted a reference to the Company.

5. Any existing contracts, agreements, conveyances, deeds, leases, licences, permits, exemptions, powers of attorney, undertakings, securities and other instruments, whether analogous to the foregoing or not, entered into by, made with or granted or addressed to the Kenya Tea Development Authority whether alone or with any other person and whether as principal or agent shall, as from the appointed day, be binding and be of full force and effect in every respect against or in favour of the Company as if, instead of the Kenya Tea Development Authority, the Company had been a party thereto, bound thereby or entitled to the benefit thereof and as if any reference, express or implied, to any member, officer or employee of the Kenya Tea Development Authority as respects anything to be done on or after the appointed day, were substituted a reference to the member, officer or employee of the Company who most nearly corresponds thereto.

6. Without prejudice to the provisions of any other paragraph herein, the following provisions shall have effect in relation to the business of the Kenya Tea Development Authority vested in the Company by virtue of this Order—

- (a) any account between the Kenya Tea Development Authority and a customer shall, on and after the appointed day, become an account between the Company and the customer, with the same rights and subject to the same obligations and incidents, including

the rights of set-off as theretofore, and the account shall be deemed to be a single continuing account:

Provided that nothing in this paragraph shall affect any right of the Company or of the customer to vary the conditions or incidents subject to which the account is kept;

- (b) any existing instruction, direction, mandate, power of attorney, authority or consent given to or by the Kenya Tea Development Authority shall have effect, on and after the appointed day, as if given to or by the Company;
- (c) any security held by the Kenya Tea Development Authority for the payment of debts or liabilities, whether present or future, actual or contingent, of any person, which is transferred to the company shall, on and after the appointed day, be held by and be available to the Company as security for the payment of such debts and liabilities to the company, and where the moneys secured by the security include future advances or liabilities of such person, the security shall, as from that day, be held by and be available to the company as security for future advances to the person by and future liabilities of, that person to the Company to the same extent to which the same was held by or available to the Kenya Tea Development Authority immediately before the appointed day as security for future advances or future liabilities;
- (d) the company shall, in relation to any security transferred or deemed to have been transferred to it and to the moneys thereby secured, be entitled to the same rights and priorities, and be subject to the same obligations and incidents, as the Kenya Tea Development Authority would have been entitled and subject to as if the same had continued to be held by the Kenya Tea Development Authority;
- (e) any negotiable instrument or order for payment of money whether drawn, given, accepted or endorsed before, on or after the appointed day, which is expressed to be drawn by or on, given by or to, or accepted or endorsed by the Kenya Tea Development Authority shall on or after the appointed day have effect as if it had been drawn by or on, or given by or to, or accepted or endorsed by the company;
- (f) where, by the operation of the provisions of this Order, any right, liability or obligation becomes a right, liability or obligation of the Company, all other persons shall, on and after the appointed day, have the same rights, powers and remedies, and, in particular, the same rights and powers as to taking or defending any legal proceedings or an application to any authority, for ascertaining, perfecting or enforcing that right, liability or obligation as if it had at all times been a right, liability or obligation of the company;
- (g) the custody of any documents, goods or other property held by the Kenya Tea Development Authority as bailee for any other person shall be transferred to the Company on the appointed day and the rights and obligations of the Kenya Tea Development Authority under any contract of bailment relating to such documents, goods or other property shall be transferred or deemed to be transferred to the Company on that day; and

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(h) any bank or other accounts, books of accounts, revenue accounts, balance sheets, audited accounts, profit and loss accounts, actuarial or other valuation, accounting records, or any other accountable documents held by or belonging to the Kenya Tea Development Authority immediately before the appointed day shall on and after the appointed day be held by and belong to the company.

7. (1) No existing legal or arbitration proceedings or application to any authority by or against the Kenya Tea Development Authority shall abate, be discontinued or be in any way prejudiced by reason only of the provisions of this Order, but the same may be prosecuted or continued by or against the Company and any judgement or award obtained by or against the Kenya Tea Development Authority and not fully satisfied before the appointed day shall thereafter be enforceable by or against the company.

(2) In any legal or arbitration proceedings concerning any right or liability transferred to or vested in the Company by this Order, a certificate under the hand of the Manager of a branch of the Company that such right or liability has been so transferred to or vested in the company shall be *prima facie* evidence of that transfer or vesting.

8. (1) Any person who is employed by the Kenya Tea Development Authority immediately before the appointed day shall on the appointed day become an employee of the company on the same terms and conditions of service as his existing terms and conditions and subject to any subsisting notice of termination, resignation or variation, and such employment with the Kenya Tea Development Authority and the company shall be deemed to be continuous.

(2) Any reference to the Kenya Tea Development Authority in any trust deed or rules constituting or relating to any Pension Scheme or Provident or Superannuation Fund of which persons employed by the Kenya Tea Development Authority are members shall on and after the appointed day, be construed and have effect as if the same were a reference to the Company but so that, for the purpose of ascertaining and calculating any right to benefits under such scheme or fund, service with the Kenya Tea Development Authority up to the appointed day shall be taken into account as if it were service with the company.

(3) The operation of any of the provisions of this paragraph shall not in itself give rise to any claim by any person to benefit under any scheme or fund referred to in subparagraph (2).

9. On and after the appointed day, all documents records and admissions which would, before the appointed day, have been evidence in respect of any matter for or against the Kenya Tea Development Authority shall be admissible evidence for or against the Company.

10 Every public officer having the power or duty to effect or amend any entry in any register relating to property, or to issue or amend any certificate or other document effecting or evidencing title to property shall, upon request made by or on behalf of the Company or the owner of such property, and without making any charge or receiving any fee or other payment therefor, do all such things as are by law necessary to complete the transfer of any property effected by this Order.

11. The Kenya Tea Development Authority Order, 1997, the Kenya Tea Development Authority (Tea Cultivation) Order, 1997, the Kenya

L.N. 110/1997. Tea Development Authority (Imposition of Levy) Order, 1997, and the
L.N. 111/1997. Kenya Tea Development Authority (Sun-Dried Tea) Order, 1997, are
L.N. 112/1997. revoked.

Made on the 22nd March, 1999.

MUSALIA MUDAVADI,
Minister for Agriculture.



MINISTRY OF LANDS AND PHYSICAL PLANNING

RESPONSE TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON LANDS

Honourable Chair,

Pursuant to a letter Ref. NA/DCS/LANDS/2021/(037) dated March 10, 2021, the Committee requested the Cabinet Secretary Ministry of Lands and Physical Planning to respond to a petition by residents of Kinyona Ward in Murang'a County concerning the safeguarding of Gituamba land in Kinyona Ward, Murang'a county in the public interest.

The Petition

Honourable Chair,

The Petitioners claim that land reference LR/KINYONA/LOC/2/786 in Gituamba area of Kinyona Ward, Kigumo Constituency was their ancestral land before it was allocated for tea nurseries and agricultural related research and held in trust by Murang'a County Council (now County Government of Muranga) on behalf of the area residents. The County Council leased the land to the Special Crop Development Authority (now Kenya Tea Development Agency Holdings) in 1962 for a period of 99 years.

The Petitioners complain that KTDA Holdings has instead planted eucalyptus trees for its fuel program contrary to the purpose for which the land was allocated. According to the Petitioners, KTDA Holdings is privately utilising the land despite it being public land. The Petitioners complain that the eucalyptus trees have created a dense forest which pose environmental security risks. They have therefore requested the Committee to:-

- i) Investigate the irregular change of use of the land from public use to private use by the Kenya Tea Development Agency Holdings
- ii) Enquire into the matter with the objective of ascertaining LR/Kinyona/Loc.2/786 as public land in conjunction with the National Land Commission
- iii) Direct KTDA Holdings to revert to the original objective of establishment of a public agricultural research institute and a tea tree nursery (Gituamba Tea Nursery and Factory), failure to which KTDA's land lease is to be revoked forthwith

- iv) Make recommendations to protect the socio-economic interests of the people of Kinyona Ward as well as resolutions to protect the environment from negative effects occasioned by KTDA's wood fuel planting
- v) Make any other orders that it deems appropriate in light of the circumstances outlined in the petition.

Response

Honourable Chair,

The land in question falls within an adjudicated area and is registered as title number Loc.2/Kinyona Map.18/786. It measures approximately 26.32 Hectares (65 Acres) and was first registered in the name of Special Crops Development Authority on July 12, 1962 on a leasehold tenure of 99 years from July 7, 1962, for a tea nursery and factory. The lessor was the Trust Land Board.

In 1964, the Kenya Tea Development Authority was established as a State Corporation under the Agriculture Act (Cap. 318) replacing the Special Crops Development Authority. The change of name was registered against the land register to reflect Kenya Tea Development Authority as the proprietor (Copy of official search and the Green card are annexed marked **Annexures 1 & 2**).

In the year 2000, the Kenya Tea Development Authority was privatized. Kenya Tea Development Agency Limited, a private limited liability company was incorporated and took over assets and liabilities of the Kenya Tea Development Authority upon privatization as per Section 3(1) of the Kenya Tea Development Authority (Revocation) Order, 1999.

The Section 3 reads as follows: -

- i) *“Kenya Tea Development Authority SHALL incorporate a limited liability company under the provisions of the Companies Act for the purpose of bringing the provisions of this order into operation.*
- ii) *[That] the company shall be the successor of the Kenya Tea Development Authority and, subject to this order, all rights, duties, obligations, assets liabilities of the Kenya Tea Development Authority existing on the appointed day shall be automatically and fully transferred to the Kenya Tea development Agency Limited and any reference to the Kenya Tea Development authority in any contract or document shall for all purpose be deemed to be reference to the company.” (Annexure 3)*

In 2009, Kenya Tea Development Agency Limited was renamed Kenya Tea Development Agency Holdings Limited.

Honourable Chair,

The Land in question is currently owned by Kenya Tea Development Agency Holdings Limited. Its assets are owned by shareholders of the Company.

Trust land was vested in County Councils and eventually County Governments with the advent of the Constitution of Kenya, 2010. The County Government of Murang'a in this case is the lessor and a change of user can only be approved or varied with the County Government's approval. The Ministry has not received any application for change of user for the land.

Honourable Chair, I submit.

A handwritten signature in black ink, consisting of several overlapping loops and a vertical line, positioned above the typed name.

Farida Karoney, EGH
CABINET SECRETARY

March 24, 2021

(2) The company shall be the successor of the Kenya Tea Development Authority and, subject to this Order, all rights, duties, obligations, assets and liabilities of the Kenya Tea Development Authority existing on the appointed day shall be automatically and fully transferred to the Kenya Tea Development Agency Limited and any reference to the Kenya Tea Development Authority in any contract or document shall, for all purposes, be deemed to be reference to the company.

4. (1) Any property or right vested in the Company by virtue of this Order which immediately before the appointed day, vested in the Kenya Tea Development Authority either alone or jointly with any other person—

- (a) as trustee or custodian trustee under any trust deed, settlement, covenant or under any other instrument; or
- (b) as executor or trustee of any person; or
- (c) as judicial trustee appointed by order of any court; or
- (d) in any other fiduciary capacity.

shall, on the appointed day, vest in the Company alone or jointly with such other person, upon the same trusts and subject to the same powers, provisions, liabilities and obligations.

(2) Any existing instrument or order, of any court under or by virtue of which any property or right vested in the Kenya Tea Development Authority in any capacity specified in subparagraph (1), including in the case of a will, any grant of probate thereof, and any provision herein or any existing contract or arrangement for the payment or retention by the Kenya Tea Development Authority or of remuneration for its services in any such capacity shall, on and after the appointed day, be construed and have effect, so far as the context permits, as if for any reference therein to the Kenya Tea Development Authority, there were substituted a reference to the Company.

5. Any existing contracts, agreements, conveyances, deeds, leases, licences, permits, exemptions, powers of attorney, undertakings, securities and other instruments, whether analogous to the foregoing or not, entered into by, made with or granted or addressed to the Kenya Tea Development Authority whether alone or with any other person and whether as principal or agent shall, as from the appointed day, be binding and be of full force and effect in every respect against or in favour of the Company as if, instead of the Kenya Tea Development Authority, the Company had been a party thereto, bound thereby or entitled to the benefit thereof and as if any reference, express or implied, to any member, officer or employee of the Kenya Tea Development Authority as respects anything to be done on or after the appointed day, were substituted a reference to the member, officer or employee of the Company who most nearly corresponds thereto.

6. Without prejudice to the provisions of any other paragraph herein, the following provisions shall have effect in relation to the business of the Kenya Tea Development Authority vested in the Company by virtue of this Order—

- (a) any account between the Kenya Tea Development Authority and a customer shall, on and after the appointed day, become an account between the Company and the customer, with the same rights and subject to the same obligations and incidents, including

the rights of set-off as theretofore, and the account shall be deemed to be a single continuing account:

Provided that nothing in this paragraph shall affect any right of the Company or of the customer to vary the conditions or incidents subject to which the account is kept;

- (b) any existing instruction, direction, mandate, power of attorney, authority or consent given to or by the Kenya Tea Development Authority shall have effect, on and after the appointed day, as if given to or by the Company;
- (c) any security held by the Kenya Tea Development Authority for the payment of debts or liabilities, whether present or future, actual or contingent, of any person, which is transferred to the company shall, on and after the appointed day, be held by and be available to the Company as security for the payment of such debts and liabilities to the company, and where the moneys secured by the security include future advances or liabilities of such person, the security shall, as from that day, be held by and be available to the company as security for future advances to the person by and future liabilities of, that person to the Company to the same extent to which the same was held by or available to the Kenya Tea Development Authority immediately before the appointed day as security for future advances or future liabilities;
- (d) the company shall, in relation to any security transferred or deemed to have been transferred to it and to the moneys thereby secured, be entitled to the same rights and priorities, and be subject to the same obligations and incidents, as the Kenya Tea Development Authority would have been entitled and subject to as if the same had continued to be held by the Kenya Tea Development Authority;
- (e) any negotiable instrument or order for payment of money whether drawn, given, accepted or endorsed before, on or after the appointed day, which is expressed to be drawn by or on, given by or to, or accepted or endorsed by the Kenya Tea Development Authority shall on or after the appointed day have effect as if it had been drawn by or on, or given by or to, or accepted or endorsed by the company;
- (f) where, by the operation of the provisions of this Order, any right, liability or obligation becomes a right, liability or obligation of the Company, all other persons shall, on and after the appointed day, have the same rights, powers and remedies, and, in particular, the same rights and powers as to taking or defending any legal proceedings or an application to any authority, for ascertaining, perfecting or enforcing that right, liability or obligation as if it had at all times been a right, liability or obligation of the company;
- (g) the custody of any documents, goods or other property held by the Kenya Tea Development Authority as bailee for any other person shall be transferred to the Company on the appointed day and the rights and obligations of the Kenya Tea Development Authority under any contract of bailment relating to such documents, goods or other property shall be transferred or deemed to be transferred to the Company on that day; and

(h) any bank or other accounts, books of accounts, revenue accounts, balance sheets, audited accounts, profit and loss accounts, actuarial or other valuation, accounting records, or any other accountable documents held by or belonging to the Kenya Tea Development Authority immediately before the appointed day shall on and after the appointed day be held by and belong to the company.

7. (1) No existing legal or arbitration proceedings or application to any authority by or against the Kenya Tea Development Authority shall abate, be discontinued or be in any way prejudiced by reason only of the provisions of this Order, but the same may be prosecuted or continued by or against the Company and any judgement or award obtained by or against the Kenya Tea Development Authority and not fully satisfied before the appointed day shall thereafter be enforceable by or against the company.

(2) In any legal or arbitration proceedings concerning any right or liability transferred to or vested in the Company by this Order, a certificate under the hand of the Manager of a branch of the Company that such right or liability has been so transferred to or vested in the company shall *beprima facie* evidence of that transfer or vesting.

8. (1) Any person who is employed by the Kenya Tea Development Authority immediately before the appointed day shall on the appointed day become an employee of the company on the same terms and conditions of service as his existing terms and conditions and subject to any subsisting notice of termination, resignation or variation, and such employment with the Kenya Tea Development Authority and the company shall be deemed to be continuous.

(2) Any reference to the Kenya Tea Development Authority in any trust deed or rules constituting or relating to any Pension Scheme or Provident or Superrannuation Fund of which persons employed by the Kenya Tea Development Authority are members shall on and after the appointed day, be construed and have effect as if the same were a reference to the Company but so that, for the purpose of ascertaining and calculating any right to benefits under such scheme or fund, service with the Kenya Tea Development Authority up to the appointed day shall be taken into account as if it were service with the company.

(3) The operation of any of the provisions of this paragraph shall not in itself give rise to any claim by any person to benefit under any scheme or fund referred to in subparagraph (2).

9. On and after the appointed day, all documents records and admissions which would, before the appointed day, have been evidence in respect of any matter for or against the Kenya Tea Development Authority shall be admissible evidence for or against the Company.

10. Every public officer having the power or duty to effect or amend any entry in any register relating to property, or to issue or amend any certificate or other document effecting or evidencing title to property shall, upon request made by or on behalf of the Company or the owner of such property, and without making any charge or receiving any fee or other payment therefor, do all such things as are by law necessary to complete the transfer of any property effected by this Order.

11. The Kenya Tea Development Authority Order, 1997, the Kenya Tea Development Authority (Tea Cultivation) Order, 1997, the Kenya

L.N. 110/1997. Tea Development Authority (Imposition of Levy) Order, 1997, and the
L.N. 111/1997. Kenya Tea Development Authority (Sun-Dried Tea) Order, 1997, are
L.N. 112/1997. revoked.

Made on the 22nd March, 1999.

MUSALIA MUDAVADI,
Minister for Agriculture.



**RESPONSE TO PETITIONS REFERRED TO THE DEPARTMENTAL
COMMITTEE ON LANDS
REPORT**

BY:

**GERSHOM OTACHI BW'OMANWA
CHAIRMAN**

24TH NOVEMBER, 2020

INTRODUCTION

We are in receipt of a letter REF: NA/DC/LANDS/2020(082) from the Clerk of the National Assembly requesting the Commission to provide comprehensive responses to the following Petitions:

1. Petition by Hon. Sabina Wanjiru Maitu Chege,MP on behalf of residents of Kinyona Ward in Murang'a County regarding safeguarding public interest in the use of Gituamba Land in Kin yona Ward of Murang'a County
2. Petition by Hon.Brighton Yegon,MP on behalf of Chepchabas area in Bomet and Kericho Counties regarding Historical Land Injustices in Chepchabas area in Bomet and Kericho Counties.
3. Petition by H.E Stephen Kipyego Sang, Governor,Nandi County, regarding Historical Land Injustices in Nandi County.

Hon,Chair,

We wish to respond to the three petitions is as follows:

1. PETITION BY HON.BRIGHTON YEGON, MP ON BEHALF OF CHEPCHABAS AREA IN BOMET AND KERICHO COUNTIES REGARDING HISTORICAL LAND INJUSTICES IN CHEPCHABAS AREA IN BOMET AND KERICHO COUNTIES

The petitioner prays that the National Assembly through the Departmental Committee on Lands

- a) Enquires into the irregular takeover of the land in Chepchabas Area in Bomet and Kericho Counties with the objective of facilitating due compensation for residents of the area who were compelled into squatter life in their own ancestral land
- b) Undertakes a satisfactory audit of the original sale of land to the Chepchabas.Farmers' Cooperative Society to ascertain whether the fentire 600acres of land were actually granted to the society and whether each squatter got the land they paid for, and orders that the

said land grant be given unconditionally if found not to have been fully bought.

- c) Recommends where possible that James Finlay Kenya Limited grants Chepchabas squatters pre-emptive rights in any future land dealings.
- d) Recommends where possible that James Finlay Kenya Limited share mesne profits with the chepchabas squatters proportionately for the number of years the firm has utilized the land.
- e) Makes other appropriate recommendations it deems fit in addressing the circumstances raised in the petition

We have looked at the prayers sought in the petition and wish to state as follows:

It is true that some of the issues raised in this petition were canvassed through the Historical Land Injustice claims REF.NLC/HLI/546/2018,NLC/HLI/044/2017 AND NLC/HLI/173/2017, between the County Governments of Kericho and Bomet, the Kipsigis clans, the Talai and Barowo clans and the Kipsigis Clans Self Help Group verses the British Government and the Government of Kenya as indicated in the attached copy of Gazette Notice marked as "A".

However, James Finlay Kenya Limited,Sotik Tea Company Limited,Sotik Highlands Tea Company Limited,Changoi/LelsaTea Estate Limited,Tinderet Tea Estate Limited,Kaimosi Tea Estate Limited,Kapchorua Tea PLC,Kipkebe Ltd,Nandi Tea Estates Limited,Kaisugu Limited,Emrok(EPZ) Tea Factory Limited and Members of Kenya Tea Growers Association appealed the Recommendation of the Commission in the High Court at Nairobi as Miscellaneous Civil Application no.95 of 2019 for orders of certiorari and prohibition against the National Land Commission, the Director of Survey under the Ministry of Lands and Physical Planning and the County Governments of Kericho and Bomet.

The Commission made a determination on this matter and gazztteed the same vide gazette notice No. 1995 of 1st March 2019. The determination was however challenged by multinational companies. The matter is therefore still pending in

court and any further implementation will be determined by the court. The matter was last in court on 3rd November 2020, for mention and coming up for further mention on 1st February 2021, to confirm whether all the parties have filed responses to the application for consideration of suits and a request for a three judge bench.

2. PETITION BY H.E STEPHEN KIPYEGO SANG, GOVERNOR, NANDI COUNTY, REGARDING HISTORICAL LAND INJUSTICES IN NANDI COUNTY.

The petitioner prays that National Assembly:

1. Declares the perennial landslides and mudslides situation in Nandi County and other parts of Kenya as a recurrent National Disaster and shall be responded to as such by all relevant Government Departments and Agencies.
2. Directs that the recommendations of the National Land Commission relating to this subject matter be fully implemented by the relevant Government Departments and Agencies as a means to permanently addressing the prevailing situation
3. Directs the irregular and illegal awarding, extension and renewal of expired and expiring leases belonging to individuals and multinational corporations in both the Tea Growing Highlands and the Sisal and Sugarcane Growing lowlands be acted upon and in compliance with the need to address these historical land issues henceforth.
4. Directs the government avails land from the various options discussed above to be used to resettle the vulnerable families outside the current landslides prone rugged and rocky environment. The government can then takes of the escarpment and undertake serious afforestation programs in the area.

Hon.Chair,

We wish to respond to the issues raised as follows:

Issue of declaration of the perennial landslides and mudslides as a National Disaster.

Declaration of a situation as a National Disasters is covered under Article 58 of the Constitution and the responsibility bestowed on government under Article 132(4), (d) and (e).

However, the Commission concurs with the petitioner that parts of Nandi County especially the rugged hill slopes of Tinderet, Nandi Hills, parts of Aldai and Mosop sub- counties are prone to perennial disasters of landslides and mudslides and some residents of Tinderet sub county who were displaced by perennial landslides filed a historical land injustice claim with the Commission as HLI NO.NLC/HLI/016/2017 by Kimondi Forest Squatters who were displaced to Nandi South Forest at a place called Kimondi where they practiced "shamba" system in the forest before they were stopped by Kenya Forest Service.

The Commission considered the claim and admitted it under section 15(4) (h) of the National Land Commission Act 2012 as a situation caused by natural disaster of landslides. The Commission recommended their resettlement by government under section 15(9) (c) of the National Land Commission Act, 2012.

The second issue of the National Assembly directing that the recommendations of the National Land Commission relating to this subject matter be fully implemented by the relevant Government Departments and Agencies as a means to permanently addressing the prevailing situation

We wish to respond as follows:

Some of the claims emanating from the environment prone to perennial landslides in Nandi County that were determined by the commission and recommendations given included Gazette Notice no. 1995 of 1st March ,2019 include:

HLI/NLC/001/2017 by the Titan Squatters

HLI/NLC/020/2018 by Timur Nandi Community

HLI/NLC/106/2018 by Kimondi Forest Squatters

HLI/NLC/320/2018 by Nandi Council of Elders

HLI/NLC/010/2017 Nyando Valley Association

HLI/NLC/255/2018 by Kimasas Farmers' Cooperative Society

Some of the determinations cannot be implemented because they have active cases in court such as HLI/NLC/2555/2018 which is affected by Nairobi JR MISC/100 OF 2019 Between Eastern Produce and Kimasas while HLI/NLC/010/2017 was affected by ELC petition no.4 of 2019 between Nyando Valley and County Government of Kisumu and court directed that claim can be heard afresh with all affected parties taking part in the proceedings.

Third issue that the National Assembly Directs the irregular and illegal awarding, extension and renewal of expired and expiring leases belonging to individuals and multinational corporations in both the Tea Growing Highlands and the Sisal and Sugarcane Growing lowlands be acted upon and in compliance with the need to address these historical land issues henceforth.

The Commission recommended that a resurvey of the land held by the estates be done to determine if there is a residue to be surrendered to the community and renewal of lease be held in abeyance pending agreements with the county governments

The Multi nationals challenged the HLI decision of 01/03/2019 in favor of the Talai of Nandi in **Nairobi JR Application No.56 of 2019 Eastern Produce Kenya Ltd & Others-vs.-NLC \$ Others** in relation to:

NLC/HLI/013/2017

NLC/HLI/033/2017

NLC/HLI/447/2018

NLC/HLI/546/2018

There is an order staying implementation of the recommendations by the Commission. The case is pending before court for determination.

On another note National Land commission was involved in the renewal of leases for three sisal farms in Chemilil area of Tinderet sub-county i.e LR numbers 5483,1467/8 and 1467/9 in concurrence with County Government of Nandi for Chemilil Sisal Estate who relinquished LR NO.7057 to the Land Settlement Fund Trustees(LSF) for settlement of squatters.

The fourth issue that the National Assembly directs that government avails land from the various options discussed above to be used to resettle the vulnerable families outside the current landslides prone rugged and rocky environment. The government can then take the escarpment and undertake serious afforestation programs in the area.

Hon Chair,

This matter relates to the National Government

3. PETITION BY HON SABINA WANJIRU CHEGE ON SAFEGUARDING PUBLIC INTEREST IN THE USE OF GITUAMBA LAND IN KINYONA WARD OF MURANG'A COUNTY (KINYONA/LOC/2/786)

Hon Chair,

The petition is about the safeguarding of public interest in the use of Gituamba Land in Kinyona Ward of Murang'a County.

The parcel of reference is Kinyona/Loc. 2/786 of an acreage of 26.32 Ha (65.04 acres).

The above parcel was registered in the name of Special Crops Development Authority and was on a peppercorn rental for a term of ninety nine (99) years from 1st July, 1962.

In the year 1998 there was a change of name of the Special Crops Development Authority to Kenya Tea Development Authority and a certificate of lease issued in the year of 9th December 1998.

Thereafter, a caution was registered by Dr. Samuel G. Muigai who was the center Director, National Horticultural Research Centre claiming leases interest.

The caution was later removed by the cautioner on 30th April 2014 and the parcel therefore remained as property of the Special Crops Development Authority/KTDA.

The petitioner has made several claims on the use of land which he claims is being used by the organization for planting of eucalyptus trees on the land which has led to reduction in water volume in the Kinyona River affecting the irrigation and the general Ecosystem of the area.

The last complaint is, that KTDA has failed to use the land for the original intended purpose. This has caused the unwarranted distress, anguish and inconvenience to residents of Kinyona Ward.

The prayer of the petitioners:-

The first prayer is to investigate the irregular change of the use of the land from public use to private use by KTDA.

The second prayer is to enquire into the matter with the objective of ascertaining whether Kinyona Loc. 2/786 is public land in conjunction with the National Land Commission.

The third prayer is that KTDA Holdings be directed to revert to the original objective of establishment of a public agricultural research institute and a tea tree Nursery (Gituamba Tea Nursery and Factory), failure to which KTDA;s Land lease be revoked forthwith.

The fourth prayer is to protect the Socio – Economic interests of people of Kinyona Ward as well as resolutions to protect the environment from negative effects occasioned by KTDA wood fuel planting and make any other orders that deem appropriate in light of the circumstances outlined in the petition herein.

In view of the foregoing, it should be known that the land that is the subject of this petition is registered to a private entity - KTDA Holdings. To revoke the same requires a court process. Again, the mandate of the Commission with regard to review of grants lapsed in 2017.

Our ground report reveals that part of land is put for tea farming and the rest is under eucalyptus tree planting. Approximately one acre is being utilized for tea farming and the rest is for eucalyptus trees.

Hon Chair,

It is our view that the KTDA should use of the land as stipulated in the user conditions and failure to utilize the land appropriately should lead to the process of recovery of the same - through the Court by applying forfeiture procedures. KTDA should also find a way of coexisting with their neighbors and should consider removing the eucalyptus trees which are a menace and a source of complaints and discomfort by residents of Kinyona ward



**Gershom Otachi Bw'Omanwa
CHAIRMAN**