



REPUBLIC OF KENYA

KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – THIRD SESSION

**THE DEPARTMENTAL COMMITTEE
ON
LOCAL AUTHORITIES**

REPORT ON THE STUDY TOUR TO SOUTH AFRICA

10TH JAN – 16TH JAN 2010

PARLIAMENT BUILDINGS
NAIROBI

JANUARY, 2010

PREFACE

Mr. Speaker Sir,

The Departmental Committee on Local Authorities is established under Standing Order No.198 (1); its mandate pursuant to Standing Order 198(3) is:-

- a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) to study the programme and policy objectives of the Ministries (and Local Authorities) and departments and the effectiveness for implementation;
- c) to study and review all legislation referred to it;
- d) to study, assess and analyze the relative success of Ministries and departments as measured by the results obtained as compared with its stated objective;
- e) to investigate and inquire into all matter relating to all assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister and;
- f) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee comprises of the following Members:

1. **Hon. Ahmed Shakeel Shabbir, M.P** -----Chairman
2. **Hon. Mwalimu Mwahima, M.P.**
3. **Hon. Joshua Kutuny, M.P.**
4. **Hon. Stanley Githunguri, M.P.**

5. **Hon. Gideon Konchella, M.P.**

6. **Hon. Fahim Twaha, M.P.**
7. **Hon. Mohammed H. Gabow, M.P.**
8. **Hon. David Ngugi, M.P.**
9. **Hon. Maitha Gideon Mungaro, M.P.**

Mr. Speaker Sir,

The visit was undertaken by:-

- i) **Hon. Ahmed Shakeel Shabbir MP, Leader of Delegation,**
- ii) **Hon. David Ngugi , MP**
- iii) **Hon. Fahim Twaha , MP**

Mrs. Nancy Mukunya, a Principal Clerk/Deputy Director was the Delegation Secretary.

Mr. Speaker Sir,

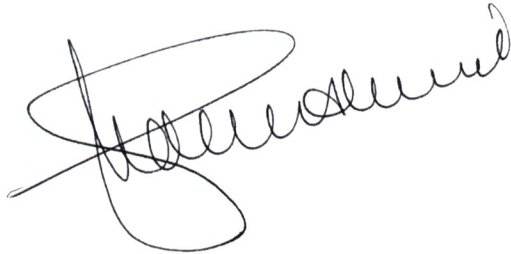
The Committee on Local Authorities is relatively new having been constituted on 17th July 2009. Its main function is to deal with policy matters of and related to local authorities. In order to learn the best practices and to interact with Committees from other jurisdictions dealing with similar matters the Committee decided to visit the Republic of South Africa. It also decided to meet mayors of a few Cities in South Africa to get information about the issues in these cities and how they are dealt with.

Mr. Speaker Sir,

The Committee is grateful to you and the Liaison Committee for the opportunity to undertake the visit and to the office of the Clerk for providing the requisite technical support.

Mr. Speaker Sir,

On behalf of the Committee, it is now my pleasant duty to lay on the Table of the House the report of the Committee on the visit, pursuant to provisions of Standing Order 181(3).

A handwritten signature in black ink, appearing to read 'Shakeel Shabbir', written in a cursive style.

Hon. SHAKEEL SHABBIR, MP
Chairman, Select Committee on Local Authorities

MEETING WITH THE MAYOR OF JOHANNESBURG AND HIS OFFICIALS

The first meeting the Members had was with the Mayor of Johannesburg. It was held on Monday the 11th January 2010.

The meeting was attended by:

Mr. Amos MasondoHis Worship the Mayor
Mr. Mavela DlaminiCity Manager (Town Clerk)
Mr. Strike Ralegoma Political Adviser
Mr. Harvey Phalatse Director Innovation & Knowledge
Manager

The Mayor introduced the three officials who had attended the meeting and informed the Members that they were of great assistance to him in running the City. He thereafter invited Hon. Shakeel Shabbir to introduce his team. After these preliminaries the Mayor made general remarks touching on A.N.C Political Party and then took the Members through the workings of the City. He highlighted the following:

1. That A.N.C. is celebrating 98 years of political activities and it is still committed to its objectives of ensuring that the Country will be democratic in all ways, that ethnic and tribal discrimination is brought to an end, that education is promoted and jobs are created and that gender equality is achieved.
2. That the 1994 Interim Constitution and the current one recognize the Local Government.
3. That there are 217 Councillors in Johannesburg who elect the Mayor.
4. That after elections the Mayor constitutes the mayor committee which assists him to run the city but since the Mayor is the executive officer he is responsible and answerable for all decisions made.
5. He further explained that at the moment his office is charged with the preparations for the Fifa World cup and he is ensuring that roads are being widened, the Rapid bus transport has been inaugurated, that 200,000 trees have been planted, soccer fields

and a quality theater has been created and are almost complete.

6. That the money needed to carry out these activities is generated by the Council through sale of water and electricity and other levies but the bulk of it has been given by the National Government.

After this there were discussions clearing all the issues that were raised by the Members and then the meeting ended.

LESSON

The Committee learnt the functions of the Executive Mayor and how Johannesburg City Council is run under the new Legislation implemented in South Africa three years ago.

VISIT TO ALEXANDRIA TOWNSHIP

The Members also made a visit to Alexandria and noted that this was a successful slum upgrading project. The visit was organized by officials from the Mayor of Johannesburg Office and what had been discussed in the earlier meeting with the mayor was observed practically.

MEETING WITH THE MEMBERS OF LOCAL GOVERNMENT AND HOUSING COMMITTEE OF THE GAUTENG PROVINCIAL LEGISLATURE IN JOHANNESBURG

On 12th January 2010 at 10.00 a.m., the Members had the second meeting with Members from the above Committee. The Members present were:

Hon.E.V.Magerman,MP -----Chairman
Hon. S.Khumalo,MP
Hon. N.Nkomo-Ralehoko,MP
Hon. R.S.Letwaba,MP
Hon. B.L.Abraham,MP
Hon. K.P.Sithole,MP

Hon. C. Motau,MP
Hon. C.N. Ndaba,MP

STAFF

Mr. Edward Sckulene -----Clerk
M/s Jacky Mokete -----Acting Clerk
M/s Nthabiseng Motokeng -----Secretary/Administrator
Mr. Moleti Masile -----Researcher
Mr.Thoko Kepadisa -----Researcher

Mr. Juma Bahati from the Kenya Embassy in Pretoria also attended the meeting which took place in Johannesburg.

After introductions, the Chairman informed the Members that the above Committee has eleven (11) Members and it is supported by the staff that was present in the meeting. He thereafter went on to explain how the Committee works. These are the highlights:

1. That the Committee meets as often as it has business to transact.
2. That the Committee deals with all the issues that relate to the Local Government and mostly the thorny issues of Housing.
3. That since the apartheid era many South Africans have remained without decent shelter and the Committee is charged with the responsibility to ensure that the Government is doing its best to upgrade the living quarters of the poor.
4. That there is an aggressive effort to upgrade the slums in Alexandria and in Soweto.
5. That the government builds houses and then gives them to the poor without asking for any payment.
6. That in an effort to ensure that these poor people get a source of income an adjacent room is build which can be rent out to foreigners from the slums who do not qualify for Government houses.
7. That if a person is given a house and he sells it, he is not entitled to get another house.
8. That to discourage sale of given houses no transfer can be effected before the expiry of ten years.

LESSON

The Members had an insight of the role and workings of the oversight Committee. This Committee oversees the operations of Johannesburg and Gauteng provinces.

MEETING WITH JOHN WESSON OF RUSTERNBURG CONSERVANCY

John Wesson is the Chairman of the Association of Conservancies of South Africa. The meeting with him took place on 13th January 2010, first at the local community office and then while driving through the conservancy area.

Mr. Wesson explained that he is the chairman of the conservancy group which is made up of the people owning land in that area. Their aim is to conserve the environment and to improve it and to use the animals and any other attraction in the area to attract tourists.

The money that is generated from tourism is then shared by the group. Where there are no tourists the locals contribute money for conservation.

Through conservation, endangered species are protected and enabled to multiply.

After going through the conservation area, the Members were then shown a slide highlighting the animals present in the area and what is being done to conserve them.

LESSON

The Members learnt that there is a partnership between the Local people, the Government and the private farmers. The challenges and the successes of Conservancies were also noted. It was also clear that Mr. Wesson has a wealth of experience and knowledge which Members can tap into when dealing with the issues of Mara Conservancy.

MEETING WITH SPEAKER OF THE CITY OF TSHWANE

This meeting took place on 14th January 2010 in the offices of the Speaker. After the usual introductions, the Speaker explained that 13 municipalities were amalgamated to form the city of Tshwane. He then made the following observations:

- That there are 76 wards in the City and each is represented by a Councillor
- That the Cities top officers are the Executive Mayor, the Speaker and the Chief whip.
- That the Chief whip ensures that Councillors attend meetings and that the Ward Committee assists the Councillor to run the ward. This ensures that the City is able to deal with issues affecting the people at the grassroots.
- That the Speaker is responsible for Legislation and he controls debate.
- That through the portfolio Committees, the Speaker plays an oversight role.
- That the office of the Speaker also accepts petitions from the general public. The petitioners are then called for a meeting in which all affected departments make presentations. If the petitioners are happy with our recommendations the matter is then referred to the full Council. After the full Council approves the recommendations, then action is taken.
- That there is a secretariat that helps in taking minutes and compiling reports.
- That the Council is currently conducting outreach programmes to educate people that they can petition on any issue that they are unhappy about.

LESSON

The Members observed that the position of Speaker does not exist in our City set ups but it is a powerful seat in South Africa. The Members also learnt that the Speaker's office accepts petitions from the general public and he actually encourages people to file their complaints so that the City services can be improved.

MEETING OF THE EXECUTIVE DEPUTY MAYOR OF CAPE TOWN

This meeting took place on 15th January 2010 in Cape Town at the Civic Centre at 11.00 am. It was attended by:

Mr. Alderman Ian Neilson-----Executive Deputy Mayor

Mr. Luzuko Mdunyelwa -----Director, External Relations

The Deputy Mayor introduced himself and the Director and thereafter Hon. Shakeel introduced his team. The Deputy Mayor then gave the Mayor's apologies as she was unable to attend the meeting due to an urgent matter that had come up. He expressed his happiness at meeting the Members and stated that this kind of interaction was beneficial to both sides and should be encouraged. Thereafter he gave a brief history of the first settlers who came to Cape Town. The following is what was noted from the meeting:

- ❖ That in Cape Town, the general majority live in formal houses but there are about 150 informal dwellings. That the City is making efforts to provide proper housing for its residents.
- ❖ That the City is proud of the fact that 99% of its population has access to clean water.
- ❖ That sanitation in the formal sector is good but there are problems in the informal houses.
- ❖ That Local Authorities have been given autonomy but corruption has hindered development.
- ❖ That in an effort to curb corruption, the Government has made it difficult for Councils to allocate land to investors. This in turn has made the City to lose chances of having business ventures started.
- ❖ That the greatest challenge facing Cape Town is lack of land and expansion is very expensive due to the sea and the Table Mountains.

The Chairman thereafter thanked the Mayor for the insights he had availed the Committee and after a brief discussion the meeting was declared closed.

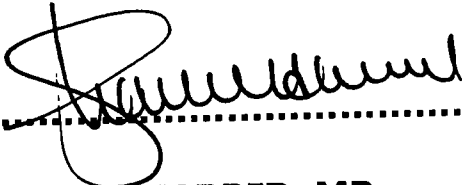
LESSON

The Members noted that the problem of slums is not confined in Kenya but Cape Town has made a lot of effort to provide its residents with proper houses. The Members could use the information gained and help the process of slum upgrading in Kenya. They further observed that corruption is not unique to Kenya but even in Cape Town it curtails economic growth.

Mr. Speaker Sir,

The Report of the Committee was adopted in a committee sitting held on *25th February* 2010.

Mr. Speaker Sir, it is now my pleasant duty and privilege, on behalf of the Departmental Committee on Local Authorities, to present and commend this report to the House.

Signed.....

Hon. SHAKEEL SHABBIR, MP
Chairman, Select Committee on Local Authorities

Date.....*26/2/10*.....

MINUTES OF THE NINETEENTH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON 25TH FEBRUARY 2010, IN THE DINING ROOM 7TH FLOOR CONTINENTAL BUILDING AT 10.00 A.M.

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairman
2. Hon. Joshua Kutuny, MP
3. Hon. David Ngugi, MP
4. Hon. Mohammed H. Gabow, MP
5. Hon. Gideon Konchella,MP

ABSENT

1. Hon. Mwalimu Mwahima,
2. Hon. Fahim Twaha, MP
3. Hon. Maitha Gideon Mungaro, MP

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

- | | |
|-----------------------|------------------|
| 1. Mrs. Nancy Mukunya | Deputy Director |
| 2. Mr. George Otieno | Third Clerk Ass. |

MIN. NO. 79/2010: ADOPTION OF THE AGENDA

The Chairman called the meeting to order at half past ten o'clock and the agenda was adopted without amendments. The Chairman thanked the Members for their attendance and appreciated the fact that they would now be in a position to go through and adopt the report on the procurement of cemetery land by Nairobi City Council. The Committee would also consider and adopt the report of the trip by three Members of the Committee to South Africa.

MIN. NO.80/2010: CONFIRMATION OF MINUTES

The Minutes of the meeting held on 16th February 2010 were proposed by Hon. Joshua Kutuny and seconded by Hon. David Ngugi.

MIN. NO. 81/2010: REPORT ON PROCUREMENT OF CEMETERY LAND BY NAIROBI CITY COUNCIL

The Committee was taken through the report by the Chairman and corrections were made where necessary. Thereafter debate ensued and at the end, all the Members agreed that the report is prepared in line with the evidence received. There was also consensus that the recommendations are drawn as per the evidence and as agreed by the Members.

The Committee noted that the Chairman seemed biased and exhibited partiality in respect of the involvement of the Deputy Prime Minister and Minister for Local government. Consequently, the Committee agreed that the report will be tabled on Wednesday the 3rd of March 2010 by the Vice-chairman.

MIN. NO. 82/2009: REPORT ON THE TRIP TO SOUTH AFRICA

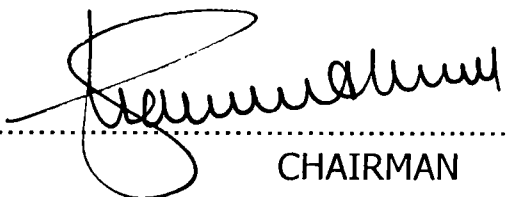
The Committee went through the report and agreed that it is a true record of what transpired during the trip. The Members who had not travelled were impressed by what was covered during the trip.

They particularly noted that John Wesson, the Chairman of Conservancies in South Africa would be helpful in dealing with the Mara Conservancy matters. It was therefore

resolved that he will be invited to the Country by the Committee at the appropriate time.
In the end, the report was adopted by the Committee and the Vice-Chairman was requested to table the same in Parliament.

MIN. NO 83/2010: ADJOURNMENT

There being no other listed business, the meeting was adjourned at 12.30 p.m. until further notice.

Signed..........
CHAIRMAN

Date.....2/3/10.....



**A Report on Procurement of Cemetery Land by the
Nairobi City Council - Land LR No.14759/2 Machakos**

To

**(1) The Rt. Honourable the Prime Minister (2) Head
of Public Service and Secretary to the Cabinet**

By

**The Acting Director / Chief Executive
Kenya Anti-Corruption Commission**

On

8th March 2010

See page 8 (b)

pg 13

A) INTRODUCTION

The allegation On 23rd March 2009 the Kenya Anti-Corruption Commission (KACC) received an anonymous report to the effect that City Council of Nairobi is in the process of acquiring a 120 acres parcel of land for cemetery use at an inflated price of Kshs. 2.4 million per acre whereas the owner had offered the same at Kshs. 400,000 per acre. It was further reported that there was a scheme by middlemen to fraudulently obtain the excess funds. The matter was taken up investigations which lead to the unearthing of the following facts:

Background of the transaction: The Lang'ata Cemetery land measuring 117.6 acres or thereabouts was acquired in 1956. It reached its full capacity in the year 2000. Since then, the Council has been using pathways within the Cemetery for burial purposes. These are now fully exhausted.

In view of the obtaining circumstances, the City Council of Nairobi (CCN) sought financial assistance from Treasury through the Ministry of Local Government (MOLG) to procure an alternative land for cemetery purposes.

The approval: The request to purchase cemetery land was approved.

B) THE TENDER PROCESS

The then Deputy Town Clerk, Mr. Nelson W. Otido, set up a team of 5 officers to prepare the tender documents for use in procuring a cemetery land. The team comprised the following Departmental Heads:

- a. Dr. Daniel M. Nguku – Medical Officer of Health (M.O.H);
- b. Peter M. Kibinda – Director City Planning;
- c. Gitonga Akotha – Chief Valuer;

d. Gibson K. Njamura – Director Procurement.

Ultimately, the tender was advertised in *The Standard* and *Daily Nation* of 18th and 22nd September 2008 respectively.

The tender was closed on 6th November 2008 with the following twelve (12) bidders responding:

- i. Impals Developers (K) Ltd.
- ii. Acres and Homes Ltd.
- iii. Triton (K) Ltd.
- iv. Kalove advocates.
- v. Zinger Enterprises.
- vi. Busam Holdings Ltd.
- vii. Naen Rech Ltd.
- viii. Gitonga Wambugu Kariuki.
- ix. Three steps Investment.
- x. Mary Njeri Muchai.
- xi. Amusement Gurdens.
- xii. Stannly Enterprises Ltd.

Technical evaluation and award

On 07th October 2008 the Deputy Town Clerk, Mr. N.W. Otido, appointed an **"Opening and Evaluation of Bids team"** which comprised of the following CCN Officials:

- a. Ms. M. N. Ngethe - Legal Affairs Department - Chairman
- b. Mr. A. Gitonga – Valuation Section – Member
- c. Mr. I. Ngacha – Internal Audit Department - Member
- d. Mr. T. Odongo – City Planning Department – Member
- e. Mr. J. Wanjohi – City Mortuary Department – Member
- f. Mr. A. Musee – Procurement Department – Secretary

The team conducted technical evaluation of the 12 bids received and recommended the purchase of 120 acres offered by M/S Naen Rech Limited at a consideration of Ksh 283,200,000 (Kshs. Two Hundred and Eighty Three Million, Two Hundred Thousand only).

The recommendation was in complete disregard of a protest by the Director of City Planning, Mr. Patrick Tom Odongo and Director in-charge of Forward Planning Section, Mr. John Koyier Barreh who had observed the following:

- i. That the Tender Document was defective and insufficient to assist in procuring suitable land for cemetery use.
- ii. That the said document was used to evaluate the five sites that were substantially responsive and that at the end of the evaluation process, none of the five sites had met the suitability criteria for land for cemetery use.

Award of the tender

In spite of the protest registered, on 12th November 2008, a Tender Committee chaired by the Deputy Town Clerk Mr. N.W. Otido proceeded to awarded the tender to M/s Naen Rech Limited for the purchase of parcel No. L.R.14759 measuring 120 acres and registered in the name of Henry Musyoki Kilonzi at a unit price of Kshs. 2,360,000 and a total cost of Kshs. 283,200,000.

PRELIMINARY FINDINGS BY KACC

1. According to the CCN Senior Funeral Superintendent Mr. David Mukuri Wanjohi the soil profile of the subject land was not suitable for burial purposes.
2. The Chairperson – Technical Evaluation Team and the Deputy Town Clerk ignored the fact that the land was not suitable for burial purposes; a fact

which was drawn to their attention by the professionals from the City Planning Department.

3. The adjudication and award of the tender was based on a forged valuation report purportedly done by Mr. Anthony Matenge Itui, a Deputy Commissioner of Lands in-charge of valuations, which conveyed a value of Ksh 325,150,000 as opposed to the actual value of at Kshs. 30,000,000.
4. The forged valuation report was introduced by the Director of Legal Affairs CCN Ms. Mary Ngethe.
5. A sale agreement in respect of the Land was prepared by the City Council Lawyer Mr. Omotii of Omotii and Company Advocates. The Sale Agreement was between Mr. Henry Musyoki Kilonzi (the Vendor) and the CCN (the Purchaser). The Purchase price was indicated as Kshs. 283,200,000. The Sale Agreement was purportedly signed by Henry Musyoki Kilonzi and witnessed by Alphonse Mutinda of Alphonse Mutinda Advocates on one hand and executed by the Mayor Geoffrey Majiwa and the Deputy Town Clerk on behalf of the CCN, on the other hand. The same was witnessed by Edward N. Omotii.
6. Mr. Henry Musyoki Kilonzi (the Vendor) has since denied ever selling his land to the CCN. He stated that he sold his land L.R. No. 14759/2 to an Israeli Company by the name of Naen Rech Limited for a consideration of Kshs. 110,000,000 and executed a sale agreement over the same. He further states that the Israeli Company, which was allegedly interested in flower farming, was represented by a Mr. Maina Chege.
7. Mr. Kilonzi has disowns the signature on the sale agreement and therefore, we might treat it as forged upon further examination.

8. Upon execution of the Sale Agreement, the Ministry of Local Government released the **Payments** in two instalments to the Town Clerk CCN for onward transmission to the CCN Lawyer Mr. Edward Omotii of Omotii and Company Advocates as follows:

- Cheque No. 005643 dated 30th June 2008 for Kshs.175,000,000 (Kenya Shillings One Hundred and Seventy Five million only) released on 22nd December 2008.
- Cheque No. 005915 dated 15th January 2009 for Kshs.108,000,000 (Kenya Shillings One Hundred and Eight Million only) released on 16th January 2009.

THE CONSPIRACY

Our investigations show that, out of Kshs. 283,200,000 paid by the Treasury through the Ministry of Local Government, only Kshs 110,000,000 was paid to the owner of Land Mr. Henry Musyoki Kilonzi. There was a clear conspiracy to defraud the Government of the balance amounting to Kshs. 173,200,000 by various Advocates, senior officials at the Ministry of Local Government, Treasury, CCN and various other intermediaries who, in one way or another, facilitated the actualization and execution of the fraudulent scheme.

Execution of the conspiracy

1. On 11th February 2009, Mr. Omotii issued a cheque for Kshs. 281,300,000 in favour of an escrow account domiciled at Bank of Africa Reinsurance branch operated by three firms of Lawyers namely Odera Osiemo and Co. Advocates, P.C. Onduso and Co. Advocates and Alphonse Mutinda and Co. Advocates (refer to funds flow chart attached).

2. On 6th November 2008, before the award of the tender, the three lawyers entered into an agreement in which they agreed that;

- Brothers
- Davies Osiemo would take care of the interests of his brother Newton Osiemo, officers in the CCN, MOLG and Treasury.
 - Alphonse Mutinda to take care of the interests of Henry Kilonzi who is the Vendor.
 - P. C. Onduso to take care of the interests of Maina Chege, the director of Naen Rech Ltd and agent of Mr. Kilonzi.

3. Out of the 'purchase price' of Kshs. 283,200,000, there was a clear understanding among the various players that only Kshs. 110,000,000m comprised the actual purchase price. Kshs. 120,000,000/- was fraudulently set aside as a benefit to public servants to wit: CCN officials, Treasury and Ministry of Local Government. This was to be conveyed through Newton Osiemo and his brother Davies Osiemo Advocate. Kshs. 50,000,000 or thereabouts, was set aside for distribution amongst 'the broker' Maina Chege, the Surveyor, Cephaz Mwaura and two lawyers namely; Alphonse Mutinda and P.C. Onduso.

4. The City Council Lawyer Mr. Edward Omotii was paid Kshs. 13,000,000 million over and above his Legal fee of Kshs. 2,030,000.

5. It was established that Dr. Daniel Mulwa Nguku, the Medical Officer of Health (MOH) CCN, who was a member of the Tender Committee received Kshs. 2,000,000 by way of a Banker's cheque whose proceeds were used to purchase building materials for development of plot No. 102 in Mwingi Town. His wife, Janet Kavula Mulwa received Kshs. 4,000,000 through P.J. Kakad and Company Advocates which was applied to purchase L.R No. 337/3495 House No. 255 Valley View Estate Mlolongo. The property was valued on 08th October 2009 at Kshs.3.8 million by the Commission's Valuer Mr. Pius Maithya. She further received a cheque of Kshs. 1,000,000 which was deposited into her account at Mwalimu SACCO.

6. The Commission traced Kshs. 20,000,000 of the Kshs. 117,000,000 wired to Osiemo and Co. Advocates which was applied to purchase land reference number 12296 Karen Nairobi measuring 2.071 hectares from Mr. James Mwangi Gacheru by Mr. Newton Osiemo the brother to Mr. Davies Osiemo of Osiemo and Co. Advocates.
7. The Commission confirmed that, Kshs. 10,000,000 paid to Peterson Gichana was later en-cashed and paid to Mr. Boniface Misera a Senior Procurement Officer in the Ministry of Local Government.
8. From a statement received from the Director, Legal Affairs, CCN, M/s Mary Ngechi Ng'ethe, the following facts emerged:
 - a. There was pressure from the Ministry of Local Government for the CCN to fast track the acquisition of the cemetery land.
 - b. The Mayor, CCN, Mr. Godfrey Majiwa introduced Mr. Newton Osiemo to M/s Mary Ng'ethe as a business associate of the Deputy Prime Minister and Minister for Local Government, Hon. Musalia Mudavadi, and that he was to take care of the personal interests of the Minister and his Permanent Secretary, Mr. Sammy Kirui in the transaction of cemetery land.
 - c. The players put in place elaborate machinery for distribution of the balance which included a written agreement amongst the lawyers on opening an escrow account and subsequent distribution of the proceeds.
 - d. M/s Ng'ethe related the vicious haggling over the actual figures to be distributed in relation to the sum of Kshs. 120,000,000. The haggling was spearheaded by the Mayor, Godfrey Majiwa, Maina Chege, Newton Osiemo, Mr. Chavera all who purported to

represent various interests. Finally, the distribution was effected as follows:

Beneficiary	Amount in Kshs.
Newton Osiemo	59,000,000
Godfrey Majiwa	11,000,000
Alex Musee	8,000,000
Dr. Nguku	8,000,000
Mr. Chavera	8,600,000
Mr. Misera	1,300,000
Mr. Gichana	100,000
Onyinkwa & Co. Advocates (William Mayaka)	4,000,000
Moekings General Contractors (Mr. Paul Ngugi)	2,000,000
Mary Ng'ethe	7,500,000
Nelson Otido	2,000,000
Councillor Simba	1,000,000
Mr. Katsolleh	1,000,000
Kanyi Njambura	500,000
Mr. Ngacha	500,000
Mr. Karisa Iha	500,000
Davies Osiemo, Advocate	2,000,000

9. As a result of searches conducted in the residences of various suspects, Kenya Anti-Corruption Commission investigators recovered an agreement dated as recent as 21st February 2010, between Maina Chege and Cibiya Worldwide Co. Ltd in the purchase of 2 acres of land at Karen out of the 5

acres being purchased by Cibiya Worldwide Co. Ltd from a Mr. Gacheru at a price of Kshs. 20,000,000. It was confirmed that the directors of Cibiya Worldwide Ltd are Mr. & Mrs Newton Osiemo. It was further confirmed that Mr. Gacheru had received a total of Kshs. 50,000,000 or thereabouts towards the purchase price from Cibiya Worldwide Ltd. So far, only Kshs. 20 million, which was wired to Mr. Gacheru earlier than the date of the agreement referred to hereinabove, can be directly linked to the 59 million that remained in the hands Newton Osiemo and his brother Davies Osiemo. Nonetheless, there are several cash withdrawals from the account of Davies Osiemo, the Advocate, of Kshs. 30 million or thereabouts. It is a reasonable inference that the Kshs. 50 million paid to Gacheru emanated from the Cemetery land funds. Assuming that Ng'ethe was correct in her statement to the effect that this is the same money which was to be distributed to the P.S. and the Minister, Ministry of Local Government, it would appear that their benefit was in the form of the Karen Land. Since the two were not directors of Cibiya Worldwide Ltd, it is not immediately clear how they were to benefit from the land. The sale of the land was disrupted by the investigations before completion.

10. From investigations, persons identified as suspects and possible charges are as follows:

Public Officers

- i. Mary N. Ng'ethe- Director of Legal Affairs, CCN- Deceiving principal contrary to section 41 of the Anti-Corruption and Economic Crimes Act (ACECA) and Abuse of office contrary to section 46 of ACECA, unlawfully acquiring public property contrary to section 45 of ACECA.
- ii. Mr. Herman S. Chavera- Chief Finance Officer, MOLG - Abuse of office contrary to section 46 of ACECA and unlawfully acquiring public property contrary to section 45 of ACECA.

- iii. Owino Kojwando of Kojwando & Co. Advocates / Mayor Godfrey Majiwa- Abuse of office contrary to section 46 of ACECA and unlawfully acquiring public property contrary to section 45 of ACECA.
- iv. Moekings General Contractors/ Mr. Paul Ngugi – Director of Budget, Treasury - Abuse of office contrary to section 46 of ACECA and unlawfully acquiring public property contrary to section 45 of ACECA.
- v. Mr. Nelson Otido – Former Deputy Town Clerk, CCN (Retired) - Abuse of office contrary to section 46 of ACECA and unlawfully acquiring public property contrary to section 45 of ACECA.
- vi. Dr. Daniel Nguku- MOH, CCN -Abuse of office contrary to section 46 of ACECA and unlawfully acquiring public property contrary to section 45 of ACECA.
- vii. Kanyi Njambura - Director Procurement CCN- Abuse of office contrary to section 46 of ACECA and unlawfully acquiring public property contrary to section 45 of ACECA.
- viii. Karisa Iha – Deputy Director of Legal Affairs, CCN - Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA.
- ix. Mr. I. N. Ngacha - Chief Internal Auditor, CCN - Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA.
- x. Mr. William Mayaka – a former P.S. - Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA.

- xi. Mr. Boniface O. Misera – Head of Procurement , MOLG- Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA.
- xii. Councillor Simba- Nominated Councillor, CCN- Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA,
- xiii. Mr. Geoffrey Katsolleh- Deputy Town Clerk, CCN- Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA.

Business Persons

- xiv. Maina Chege- Director Naen Rech Co. Ltd- Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA.
- xv. Alphonse Mutinda of Alphonse Mutinda & Co. Advocates- Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA.
- xvi. Newton Osiemo- Businessman- Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA.
- xvii. Davies Odero Osiemo of Odero Osiemo & Co. Adovocates- Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA.

- xviii. Paul Chapya Onduso of P.C. Onduso & Co. Advocates- Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA.
- xix. E.N. Omotii of E. N. Omotii & Co. Advocates- Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA.
- xx. Cephas Kamande Mwaura- Surveyor of Geotop Surveyors- Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA.
- xxi. Peterson Gichana – Business in ICT- Unlawfully acquiring public property contrary to section 45 of ACECA, in the alternative dealing with suspect property contrary to section 47 of ACECA.

The investigations are not complete and Mr. Newton Osiemo, who is purported to be the link person between the Minister of Local Government and his Permanent Secretary, is yet to be interviewed as he has gone underground. We are hopeful to examine Mr. Kojwando Advocate who is alleged to have received Kshs. 10 million on behalf of the Mayor, CCN. However, there is credible, though uncorroborated evidence at the moment that the three were involved in the conspiracy, and actually benefited from the fraud. Therefore, further investigation is going on against the following:

- ✓ 1. Hon. Musalia Mudavadi, Deputy Prime Minister and Minister for Local Government;
- ✓ 2. Mr. Sammy Kirui, the Permanent Secretary, Ministry of Local Government;

✓ 3. Councillor Godfrey Majiwa, the Mayor of Nairobi City Council.

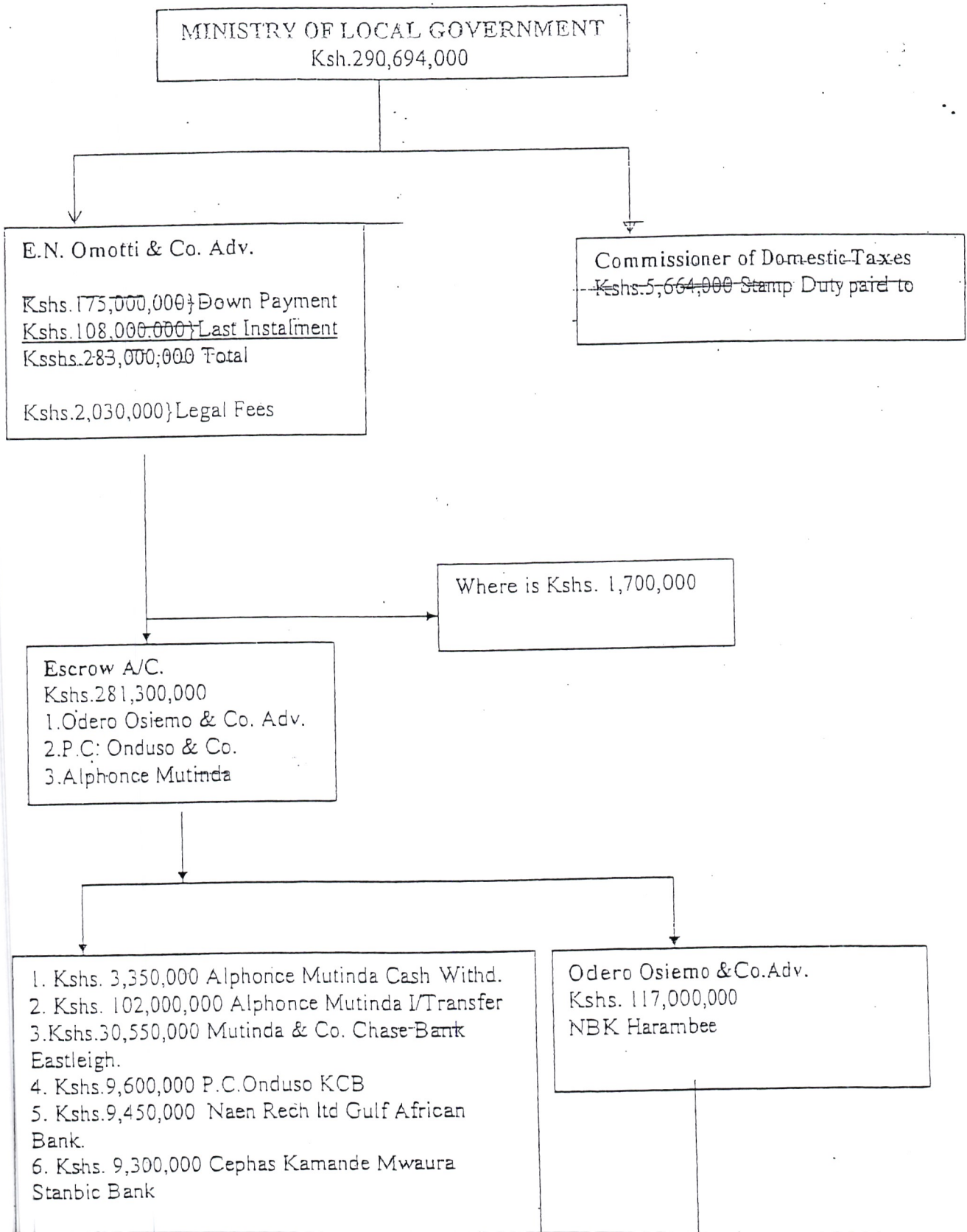
Once we have completed the investigations, we shall provide a more detailed report.

A handwritten signature in black ink, appearing to read 'J P Mutonyi', with a large, stylized flourish at the end.

Dr. J P Mutonyi, MBS

Ag. Director / Chief Executive
8th March 2010

FUNDS FLOW CHART



MINISTRY OF LOCAL GOVERNMENT
Ksh.290,694,000

E.N. Omotti & Co. Adv.
Kshs. 175,000,000 } Down Payment
Kshs. 108,000,000 } Last Instalment
Kshs.283,000,000 Total

Kshs.2,030,000 } Legal Fees

Commissioner of Domestic Taxes
~~Kshs.5,664,000~~ Stamp Duty paid to

Where is Kshs. 1,700,000

Escrow A/C.
Kshs.281,300,000
1.Odero Osiero & Co. Adv.
2.P.C: Onduso & Co.
3.Alphonse Mutinda

1. Kshs. 3,350,000 Alphonse Mutinda Cash Withd.
2. Kshs. 102,000,000 Alphonse Mutinda I/Transfer
3.Kshs.30,550,000 Mutinda & Co. Chase-Bank Eastleigh.
4. Kshs.9,600,000 P.C.Onduso KCB
5. Kshs.9,450,000 Naen Rech ltd Gulf African Bank.
6. Kshs. 9,300,000 Cephas Kamande Mwaura Stanbic Bank

Odera Osiero & Co. Adv.
Kshs. 117,000,000
NBK Harambee

1. Kshs. 2,000,000	-	Cibiya Worldwide ltd CFC Stanbic Harambee Avenue.
2. Kshs. 5,000,000	-	Cibiya Worldwide ltd CFC Stanbic Harambee Avenue.
3. Kshs. 20,000,000	-	James Mwangi Gacheru BBK Thika
4. Kshs. 1,660,000	-	James Mithamo Kamau Coop Bank Nairobi Bussiness Centre Ngong.
5. Kshs. 6,000,000	-	Owino Kojwando Co. Adv. STD bank Harambee Ave.
6. Kshs. 1,200,000	-	Cibiya Farm Holdings ltd CFC Stanbic Harambee Ave.
7. Kshs. 1,000,000	-	Mwalimu SACCO Coop bank Cooperative house Nairobi.
8. Kshs. 1,000,000	-	Billy Mbuvi Muumbo Chase Bank Eastleigh.
9. Kshs. 4,000,000	-	Shell Kenya ltd STD bank.
10. Kshs. 4,000,000	-	P.J. Kakad Advocates Fidelity Commercial bank Kimathi street.
11. Kshs. 4,000,000	-	Stiff Enterprises BBK Queensway.
12. Kshs. 2,000,000	-	Mwalimu Hardware KCB Mwingi.
13. Kshs. 4,000,000	-	Onyinkwa & Co. Advocates STD bank Eldoret.
14. Kshs. 2,000,000	-	Moeckings General Contractors Chase bank Landmark plaza.
15. Kshs. 4,000,000	-	Owino Kojwando & Co. Advocates STD bank Harambee Ave.
15. Kshs. 10,000,000	-	Peterson O. Gichana BBK Plaza, Premier branch.
16. Kshs. 13,000,000	-	E.N. Omoti & Co. Advocates Bank of Africa Taifa Road branch.
17. Kshs. 14,000,000	-	Cash cheque drawn on 14 th February 2009.
18. Kshs. 5,000,000	-	Cash cheque drawn on 16 th February 2009.
19. Kshs. 3,000,000	-	Cheque paid to Doreen Aribeta Oyugion 17 th February 2009.
20. Kshs. 2,230,000	-	Cash cheque drawn on 27 th February 2009.
21. Kshs. 1,000,000	-	Cash cheque drawn on 26 th February 2009.
22. Kshs. 1,000,000	-	Cash cheque drawn on 5 th March 2009.
23. Kshs. 1,000,000	-	Cash cheque drawn on 30 th March 2009.
24. Kshs. 1,500,000	-	Cash cheque drawn on 2 nd April 2009.
25. Kshs. 2,000,000	-	Cash cheque drawn on 21 st March 2009.
26. Kshs. 1,000,000	-	Cash cheque drawn on 17 th March 2009.

↓ FROM ODERO OSIEMO AND CO. ADVOCATES