

By Payer Lait  
Clerk's Chamber  
July 2021 afternoon  
A-100014

Approved for tabling ~~Bat~~ SNA  
1/7/2021

REPUBLIC OF KENYA




THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021

DEPARTMENTAL COMMITTEE ON LANDS

-----  
**REPORT ON THE CONSIDERATION OF A PETITION REGARDING HISTORICAL  
LAND INJUSTICES COMMITTED AGAINST THE INDIGENOUS PEOPLE OF  
VIPINGO COMMUNITY**

 <b>THE NATIONAL ASSEMBLY PAPERS LAID</b>	
<b>DATE:</b> 01 JUL 2021	<b>DAY:</b> THURSDAY
<b>TABLED BY:</b>	CHAIR, DC - LANDS HON. (DR.) RACHEL NYAMAI, CBS, MP
<b>CLERK'S CHAMBERS:</b>	Ahmed Khadhi

DIRECTORATE OF DEPARTMENTAL COMMITTEES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

JULY, 2021





Table of Contents

<b>CHAIRPERSON’S FOREWORD</b> .....	iv
<b>1.0 PREFACE</b> .....	vi
<b>1.1 Mandate of the Committee</b> .....	vi
<b>1.2 Committee subjects</b> .....	vi
<b>1.3 Oversight</b> .....	vi
<b>1.4 Committee Membership</b> .....	vii
<b>1.5 Committee Secretariat</b> .....	ix
<b>2.0 INTRODUCTION</b> .....	1
<b>3.0 SUBMISSIONS</b> .....	3
<b>3.1 Submissions by the Petitioners</b> .....	3
<b>3.2 Submissions by Vipingo Estate Limited and Vipingo Development Limited</b> .....	3
<b>3.3 Submissions by Chief Administrative Secretary and officials of the Ministry of Lands and Physical Planning</b> .....	4
<b>3.4 Submissions by the National Land Commission</b> .....	6
<b>4.0 COMMITTEE OBSERVATIONS</b> .....	13
<b>5.0 COMMITTEE RECOMMENDATION</b> .....	15

## Appendices

- Adoption List
  - Committee minutes
  - Submissions by the Petitioners and Stakeholders
-

## **CHAIRPERSON'S FOREWORD**

The Petition by the indigenous people of Vipingo Community regarding historical land injustices committed against the indigenous people of Vipingo Community was conveyed to the National on 4<sup>th</sup> June 2020 by the Hon. Ken Kiti Chonga MP on behalf of the Petitioners. A similar Petition signed by Mr. David Munga Mwadende and Mr. James Kalenga Muganga on behalf of the indigenous people of Vipingo Lands Community lapsed in the second Session of the twelfth Parliament.

In considering the Petition the Committee held meetings with the Hon. Ken Kiti Chonga, MP on behalf of the Petitioners, the Chairperson National Land Commission on 15<sup>th</sup> September, 2020 the Chief Administrative Secretary, Ministry of Lands & Physical Planning on 30<sup>th</sup> September, 2020. The Committee also considered submission made by the National Land Commission on 26<sup>th</sup> July 2018, the Ministry of Lands and Physical Planning on 26<sup>th</sup> July 2018 and submissions made by stakeholders during a field visit to Kilifi County on Friday 6<sup>th</sup> April 2018 during the Second Session, when considering a similar Petition and meet with the Petitioners.

The National Land Commission submitted that the contents raised in the Petition were also contained in a historical land injustice claim lodged with the Commission by the Petitioners. However a suit that was related to the subject matter of the Petition was litigated before a competent court and had since been determined. The National Land Commission stated that it would investigate the historical land injustice claim and recommend appropriate redress within three months of the tabling of this report.

The case ELC No. 343 of 2016 in the High Court in Malindi was determined on 28<sup>th</sup> June 2018 in favour of the defendants and therefore there was no legal barrier preventing the National Land Commission from responding to the historical land injustice claim lodged by the Petitioners.

The submissions made to the Committee by the Chief Administrative Secretary Ministry of Lands and Physical Planning on indicated that the records of ten (10) parcels of land were missing from the Land Registry in Mombasa. While the submissions made by the Chairperson the National Land Commission indicated that the records of fifteen (15) parcels of land were missing from the same registry (See Annex). Therefore, the status of the said parcels of land, particularly on whether the lease had expired as alleged by the Petitioners would not be ascertained by the Committee. The same should be investigated by the National Land Commission.

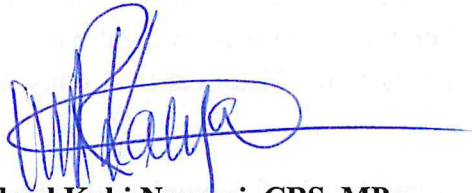
The Committee recommends;

1. THAT the National Land Commission does investigate the historical land injustice claim and recommend appropriate redress within sixty days of tabling of this report.

2. THAT the National Land Commission does identify and secure the public land that has been surrendered or is subject to surrender for public use in accordance with the requirements of the applicable laws.
3. THAT the Ethics and Anti-Corruption Commission does investigate the circumstances under which the ownership records of fifteen parcels of land are missing from the Land Registry in Mombasa; within sixty days of tabling of this report.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee is also thankful to the Petitioners, the Chairperson, National Land Commission and the Chief Administrative Secretary, Ministry of Lands & Physical Planning, and representatives of Vipingo Estate Limited for the submissions they made.

On behalf of the Committee, and pursuant to Standing Order, 227, it is my pleasant duty to table the Report of the Departmental Committee on Lands on its consideration of the Petition regarding historical land injustices committed against the indigenous people of Vipingo Community.



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

## **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
  - (v) with their stated objectives;
  - (vi) 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.
  - (vii) 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 Joshua Kutuny Serem, MP  
Member for Cherangany Constituency

### **Jubilee Party**

Hon. Mishi Mboko, MP  
Member for Likoni Constituency

### **Orange Democratic Movement (ODM)**

Hon. Omar Mwinyi, MP  
Member for Changamwe Constituency

### **Orange Democratic Movement (ODM)**

Hon. Ahmed Kolosh, MP  
Member for Wajir West Constituency

### **Jubilee Party**

Hon. Ali Mbogo, MP  
Member for Kisauni Constituency

### **Wiper Democratic Movement (WDM)**

Hon. Babu Owino, MP  
Member for Embakasi East Constituency

### **Orange Democratic Movement (ODM)**

Hon. Caleb Kipkemei Kositany, MP  
Member for Soy Constituency

### **Jubilee Party**

Hon George Aladwa, MP  
Member for Makadara Constituency

### **Orange Democratic Movement (ODM)**

Hon George Risa Sunkuyia, MP  
Member for Kajiado West Constituency

### **Jubilee Party**

Hon. John Muchiri Nyaga, MP  
Member for Manyatta Constituency

### **Jubilee Party**

Hon. Josphat Gichunge Kabeabea, MP  
Member for Tigania East Constituency

### **Party of National Unity (PNU)**

Hon. Lilian Tomitom, MP  
Member for West Pokot County

### **Jubilee Party**

Hon. Owen Yaa Baya, MP  
Member for Kilifi North Constituency

### **Orange Democratic Movement (ODM)**

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

### **Jubilee Party**

Hon. Samuel Kinuthia Gachobe, MP  
Member for Subukia Constituency  
**Jubilee Party**

Hon. Teddy Mwambire, MP  
Member for Ganze Constituency  
**Orange Democratic Movement (ODM)**

## 1.5 Committee Secretariat

5. The Committee secretariat comprises: -

### **Lead Clerk**

Mr. Leonard Machira

### **Senior Clerk Assistant**

Mr. Ahmad Guliye  
**Clerk Assistant II**

Mr. Joseph Okongo  
**Media Relations Officer**

Dr. Kefa Omoti  
**Principal Researcher Officer**

Ms. Maureen Kweyu  
**Audio Officer**

Ms. Jemimah Waigwa  
**Legal Counsel I**

Ms. Peris Kaburi  
**Serjeant-At-Arms**

Mr. Adan Abdi  
**Fiscal Analyst II**

## 2.0 INTRODUCTION

6. The Petition regarding historical land injustices committed against the indigenous people of Vipingo Community was conveyed to the House on 4<sup>th</sup> June 2020 by the Hon. Ken Chonga MP on behalf of the Petitioners. A similar Petition signed by Mr. David Munga Mwadende and Mr. James Kalenga Muganga on behalf of the Indigenous People of Vipingo Lands Community lapsed in the second Session of the twelfth Parliament.
7. The Petitioners wished to draw to the attention of the House to the following, that -
  - i. Vipingo Community land in Kilifi County is home to many indigenous residents as their known ancestral land;
  - ii. Since 1913, the indigenous people of Vipingo Community land have been squatters on their own land following compulsory acquisition of their land by the British Colonial Government purportedly for public use;
  - iii. The Vipingo Community was forcefully moved out of the ancestral land but was neither compensated nor resettled, thereby rendering them vagrant and squatters;
  - iv. Upon attainment of independence in 1963, various communities across the county that had been dislocated from or dispossessed of their ancestral land by the British Colonial Government were resettled and henceforth benefitted from the restoration and retribution policies of the post – independence Government;
  - v. On the contrary, the Vipingo Community never regained its ancestral land, and instead lost the land to private entities on leasehold obtained under irregular circumstances with subsequent government failing to address the community's plight;
  - vi. Most of the leases under private hands recently expired but have subsequently been renewed and the land subdivided and sold off once again to private individuals and companies instead of reverting it to the community;
  - vii. The marginalization of the indigenous Vipingo Community with regard to ownership of their ancestral land has taken its toll on members of the community, most of whom live in abject poverty due to lack of access to land for direct utilization or as collateral to secure credit facilities to uplift their livelihoods;

- viii. Efforts to address this matter with the relevant authorities including writing formally to the Principal Secretary in the State Department for Lands as well as the National Land Commission have not borne much fruit; and
  - ix. The matter in respect of which this Petition is made is not pending before any court of law of Constitutional body.
- 

8. The Petitioners prayed that the National Assembly through the Departmental Committee on Lands:

- a) Inquires into the circumstances that led to irregular dispossession of Vipingo Community land from its indigenous owners by private entities, with a view to reverting ownership of the said land to the indigenous people of Vipingo Community in Kilifi County;
- b) Makes any other recommendations it deems appropriate in the circumstance of the petition.



### **3.0 SUBMISSIONS**

#### **3.1 Submissions by the Petitioners**

9. The Committee held a meeting with Hon. Ken Kiti Chonga, MP on behalf of the Petitioners on 24<sup>th</sup> June 2020. During the meeting, the Committee was informed that:
10. The Vipingo Land Community members had been living as squatters on land which they considered to be their ancestral land.
11. The land was compulsorily acquired by the colonial government in 1913 for public use without compensating or resettling the affected persons. After independence, the land did not revert to the indigenous people of Vipingo. It was allocated to individuals and companies for private use, mainly for large-scale sisal farming.
12. Efforts to have the complaint addressed by the National Land Commission had not been fruitful. An historical injustice claim lodged by the Petitioners had not been investigated by the Commission. Further their efforts to reclaim the land through the Commission and the Ministry of Lands and Physical Planning had not been successful.
13. Most of the leases to the land in question had expired and they expected to get their land back but to their disappointment it was subdivided and sold to other persons and companies. This had rendered them poor and unable to earn a sustainable income.

#### **3.2 Submissions by Vipingo Estate Limited and Vipingo Development Limited**

14. The Committee received written submissions from Vipingo Estate Limited, Centum Investment Company Limited and Vipingo Development Limited dated 22<sup>nd</sup> August 2018, through their advocate Mukite Musangi,. The Committee was informed that the Petitioners had filed or were party to two suits in the Environment and Land Division in the High Court in Malindi as follows:
  - i. Malindi ELC No. 114 of 2016 Mjuma Community Development Group vs Vipingo Estate Limited, Centum Investment Limited and others – the plaintiff in the suit withdrew the suit by filing a Notice of Withdrawal in June 2016; and
  - ii. Malindi ELC No. 343 of 2016 Marsh Biryra and others vs Vipingo Estate Limited, Centum Investment Company Limited, Vipingo Development Limited and others.
15. The two companies observed that Mr. David Chome Munga who was identified as the group secretary of the Mjuma Community Development Group in court pleadings in Malindi ELC No. 114 of 2016 was also identified as the secretary of the Vipingo Lands

Community in the petition submitted to the National Assembly and that the Mjuma Community were a party to the suit in Malindi ECL No. 343 of 2016.

16. The Committee was subsequently informed that the Malindi ELC No. 343 of 2016 case had been determined. The High Court in Malindi dismissed the suit on 28<sup>th</sup> June 2018. The position of the companies on the matter was that the decision of the Court was final. Therefore, the matter had been duly determined. They also stated that the Petitioners demonstrated no cause of action and the National Assembly should not act in vain. They urged the Committee to dismiss the Petition in its entirety.

### **3.3 Submissions by Chief Administrative Secretary and officials of the Ministry of Lands and Physical Planning**

17. The Committee held a meeting with the Chief Administrative Secretary, Ministry of Lands and Physical Planning on 30<sup>th</sup> September 2020. The Committee also considered submissions from officials of the Ministry during a field visit to Kilifi County in a meeting held at the office of the Kilifi County Commissioner on Friday 6<sup>th</sup> April 2018 and the submissions made by the in the Chief Administrative Secretary, Ministry of Lands and Physical Planning on 26<sup>th</sup> July 2018
18. During the meetings, the Committee was informed that the:
19. **Registration of Rea Vipingo Estate land:** The parcels of land in question are in Kilifi County and were registered in Mombasa Central Registry under the Registration of Titles Act (Cap 281 repealed) in 1913 and have an existing lease of 999 years.
20. The land had been since transferred to several companies and individuals. However, the records of some parcels of land were missing from the Mombasa land registry as indicated in table 1 below.

Table 1. **Ownership records of Vipingo land**

<b>S/NO</b>	<b>PLOT NO.(LR)</b>	<b>TITLE NO</b>	<b>AREA</b>	<b>REGISTERED OWNER</b>
1	422/IV/MN	CR. 29192	3.0640 Ha	Awadh Tahir Faraj
2	384/IV/MN	No Record		
3	102/IV/MN	No Record		
4	92/IV/MN	No Record		

5	7334/IV/MN	CR.881	3220.0 acres	Vipingo Estates Limited
6	289/IV/MN	CR.6794	2.023 Ha	Vros Produce Limited
7	290/IV/MN	CR.67501	2.023 Ha	Vros Produce Limited
8	291/IV/MN	CR.67564	2.023 Ha	Vros Produce Limited
9	292/IV/MN	CR.67574	2.023 Ha	Vros Produce Limited
10	116/IV/MN	CR.8503	545 acres	Vipingo Development Limited
11	117/IV/MN	CR.7314	232.843 Ha	Vipingo Development Limited
12	118/IV/MN	CR.9823	42 acres	Vipingo Development Limited
13	119/IV/MN	CR.7316	496.0 acres	Vipingo Development Limited
14	120/IV/MN	CR.7314	232.85 acres	Vipingo Development Limited
15	79/IV/MN	No Record		
16	91/IV/MN	No Record		
17	95//IV/MN	No Record		
18	295/IV/MN	CR.6731	430.85 Ha	Vipingo Development Limited
19	2025 IV/MN	No Record		
20	2026/IV/MN	No Record		
21	132/IV/MN	CR.7911		
22	305/III/MN	CR.7911	597 acres	Vipingo Development Limited
23	3334/IV/MN	CR.21105	47.49 Ha	Abdalla Idha Mbarak, Mohamed Idha Mbarak,

				Nuru Idha Mbarak and others
24	338/IV/MN	No Record		
25	667/IV/MN	No Record		
26	121/IV/MN	CR. 6189	86 acres	Viingo Estates Limited

Source: Submissions made to the Committee by the Chief Administrative Secretary, Ministry of Lands and Physical Planning

21. **Historical Land Injustice Claim.:** The Ministry noted that the Petitioners claimed that their forefathers were evicted from the land in 1913 by the colonial government. After independence, the land did not revert to the indigenous people of Vipingo, but it was allocated to individuals and companies. However, the Chief Administrative Secretary noted that this was not unique to the community given the history of colonial settlement and displacement of indigenous Kenyans.
22. Further the Ministry opined that the Petitioners' prayers were a classical example of an historical injustices claim and Article 67(2)(e) of the Constitution mandates the National Land Commission to initiate investigations on its own initiative or on a complaint being lodged with the Commission and recommend appropriate redress. Therefore, the Petition touched on issues of historical injustices and the law clearly mandates the National Land Commission to investigate such matters.
23. The Chief Administrative Secretary also indicated that the Ministry was ready to provide any information in respect of the said petition to the National Land Commission should they require the same.

### 3.4 Submissions by the National Land Commission

24. The Committee held a meeting with the Chairperson National Land Commission on 15<sup>th</sup> September 2020. The Committee also considered submissions by the National Land Commission made on 26<sup>th</sup> July 2018 and during a field visit to Kilifi County on Friday 6<sup>th</sup> April 2018, following the resubmission of the Petition. The National Land Commission informed the Committee that:
25. **Registration of the land:** The title for the land under contention was initially allocated under the Land Titles Ordinance and alienated for agricultural production to White settlers during the colonial period. The land had an existing lease of 999 years from



1913 and had been under sisal production for many years but some of the land had since been subdivided leading to the land references cited in the Petition. The parcels had been sold to different developers.

26. The Chairperson, National Land Commission in submissions made on 26<sup>th</sup> July 2018 also stated that the parcels of land which the Petitioners seek to own were currently privately owned and were registered at the Mombasa Land registry. The transactions involving the said parcels of land which had been described by the petitioners such as subdivisions and intent to transfer some parcels to Vipingo Development Ltd were undertaken based on the private ownership.

27. **Term of lease:** The Committee was further informed that the term of lease for most of the properties in the land were still under 999 year and therefore the term had not expired and there could not be a case of extension of the said leases as alleged by the Petitioners. Subdivision of some parcels of the land and change of user for the development of residential estates such as Vipingo Ridge Estate had led to the conversion of some lease holding from the 999 years for the agriculture land to 99 years for parcels of the land under residential use. Part of the land that had since been subdivided and converted to 99-year leases had been transferred to the following companies: -

- a) Vipingo Development Limited
- b) Vipingo Energy Limited
- c) Vipingo Golf & Club House
- d) Vipingo Ridge Limited
- e) Mombasa Cement
- f) Sunsale Trading Limited

28. Further the land referred to by the Petitioners did not qualify as part of the land which was to be converted to 99 years lease after the enactment of the 2010 Constitution due to following reasons:

- The land was still owned by Kenyans and not foreigners.
- The lease term of 999 years was not due for expiration.
- The Constitutional provision to reduce leases of more than 999 to 99 years started from the date of the promulgation of the Constitution but did not declare them expired. Therefore, the ownership was still with the original owners.

29. The Commission also stated that the land had not been compulsorily acquired from the coastal communities as stated by the petitioners. Its history was like that of land allocated by the colonial government in other areas of the Country.



30. **Ownership status of the Vipingo land:** The Committee was further informed that available records provided to the Commission by the Ministry of Lands and Physical Planning indicated that the status of the land in question was as contained in the table 2 below;

**Table 2: Ownership record of the land in Vipingo as provided to the Committee by the National Land Commission**

S/NO	PLOT NO.	TITLE NO.	AREA	REGISTERED OWNER	TERM
1	422/IV/MN	CR.29192	3.0640Ha	Awadh Tahir Faraj	
2	384/IV/MN	No Record			
3	102/IV/MN	No Record			
4	92/IV/MN	No Record			
5	7334/V/MN	CR. 881	3220.0 acres	Vipingo Estate	
6	289/IV/MN	CR.67694	2.023Ha	Vros Produce Limited	
7	290/IV/MN	CR.67501	2.023Ha	Vros Produce Limited	
8	291/IV/MN	CR. 67564	2.023Ha	Vros Produce Limited	
9	292/IV/MN	CR. 67574	2.023Ha	Vros Produce Limited	
10	116/IV/MN	CR.8503	545 acres	Vipingo Development Limited	999years
11	117/IV/MN	CR. 7314	323.843 Ha	Vipingo Development Limited	

12	118/IV/MN	CR.9823	42 acres	Vipingo Development Limited	
13	119/IV/MN	CR.7316	496.0 acres	Vipingo Development Limited	
14	120/IV/MN	CR. 7314	232.85 acres	Vipingo Development Limited	
15	79/IV/MN	No Record			
16	91/IV/MN	No Record			
17	95/IV/MN				
18	295/IV/MN	CR.6731	430.85 Ha	Vipingo Development Limited	
19	2025/IV/MN	No Record			
20	2026/IV/MN	No. Record			
21	132/IV/MN 305/IV/MN	CR.7911 CR.7911	597acres	Vipingo Development Limited	
22	334/IV/MN	CR.21105	47.49 Ha	Abdalla Idha Mbarak, Mohamed Idha Mbarak, Nuru Idha Mbarak and others	
23	338/IV/MN	No Record			
24	667/IV/MN	No. Record			
25	121/IV/MN	CR.6189	86 acres	Vipingo Estates Limited	

26	11/IV/MN	CR.4158	3.58 acres	Omar Abdalla Omar	999 Years
27	5025/IV/MN	CR.8367	7450(less surrenders)	Vipingo Development Limited	
28	79/IV/MN	No Record			
29	3545/2/III/MN	CR. 7316	664.1 Ha	Vipingo Development Limited	
30	Subdiv. 292/III/MN	CR 7316	270 acres	Vipingo Development Limited	
31	116/IV/MN	CR 8503	545 acres	Vipingo Development Limited	
32	4393/III/MN	CR. 38223		Vipingo Development Limited	999 Yeara
33	43/111/MN	CR38221		Vipingo Estates Limited	999 Years
34	5025/97	No Record			
35	7334/4,3,2	CR. 8818	601.1 Ha	Rea Vipingo Plantations	999 Years
36	Sub -div 121/IV/MN	No Record			
37	Sub- div292/I/III/MN	CR. 7315	230.5 Ha	Vipingo Development Limited	
38	Sub- div 292/IV/MN	No Record			
39	664.IV/MN	No Record			

40	117/I& 120/I/IV/MN	CR. 7314	232,843 Ha	Vipingo Development Limited	
41	3544/2/IIMN	CR.35658	164.2 Ha	Vipingo Development Limited	
42	8724/3	CR. 69116	126 Ha	Vipingo Development Limited	
43	3544/I/III/MN	CR. 35680	71.53 Ha	Vipingo Development Limited	999Years
44	295/III/MN 95/III/MN	CR.6731	1090 acres (less surrender	Vipingo Development Limited	
45	3545/111/1/MN	CR. 35678		Vipingo Development Limited	999Years
46	3545/111/3/MN	CR.35679		Vipingo Development Limited	999Years
47	3545/111/2/MN	CR35659		Vipingo Development Limited	999Years
48	LR 88724	CR.9899		Rea Vipingo Plantation	999Years
49	MN/11/3544	CR.30670		Rea Vipingo Plantation	999Years
50	MN/111/43/92	CR.38222		Rea Vipingo Plantation	999Years

31. **Historical Land Injustice claim lodged by the petitioners:** The Committee was informed that the petitioners had lodged a historical injustice claim with the National

Land Commission seeking investigations to be carried out to establish the circumstances under which the land was taken away from the residents with a view to having it revert to the petitioners and the indigenous people of Vipingo. The Commission did not conclude the hearing of the claim because the respondents, Vipingo Sisal Estate did not appear for the proceedings. The matter is among the 43 claims that were not concluded, and the current commission planned to finalize them.

32. The Chairperson, National Land Commission further stated the said historical injustice claim would be concluded within three months from 15<sup>th</sup> September 2020.

33. **Addressing the plight of squatters residing in the land in question:** The Committee was also informed that Vipingo Sisal Estate Owners in conjunction with the Government and local authorities had surrendered portions of land to the squatters. The surrendered portions included:

- Boyani- Where 209 plots had been allocated in 2000.
- Vipingo Trading Centre – titles had been issued though there several disputes.
- Bureni Settlement Scheme- Titles had been issued to the beneficiaries.
- Gongoni – Titles had been issued to the beneficiaries.
- Kapecha- Titles had been issued to the beneficiaries.
- Kadzinuni- Titles had been issued to the beneficiaries.



## 4.0 COMMITTEE OBSERVATIONS

The Committee made the following observations from evidence adduced in the meetings, that: -

1. The Petitioners were evicted and dispossessed from the land in question by the colonial government in 1913 and after independence, the land did not revert to the indigenous people of Vipingo, but it was subsequently allocated to individuals and companies and the sub-division of the land is still ongoing to date.
2. Based on the submissions made by the Ministry of Lands and Physical Planning the ownership records of ten (10) parcels of land were missing at the Land Registry in Mombasa.
3. Further, the National Land Commission also did confirm that the ownership records of fifteen (15) parcels of land were missing from the same registry.
4. In view of paragraph 3 and 4, it is paramount that the Ethics and Anti-Corruption Commission does investigate the circumstances under which the ownership records of fifteen parcels of land being 384/IV/MN; 102/IV/MN; 92/IV/MN; 79/IV/MN; 91/IV/MN; 95/IV/MN; 2025/IV/MN; 2026/IV/MN; 338/IV/MN; 667/IV/MN; 79/IV/MN; 5025/97; Sub -div 121/IV/MN; Sub- div 292/IV/MN; 664.IV/MN are missing.
5. Whereas the original use and purpose of the land was for agriculture, upon displacement of the Petitioners, the use of the land changed to Real Estate Development.
6. The manner in which the ownership of the land has continued to change through numerous sub-divisions of the land and allocations to various individuals and companies appears irregular.
7. Due to the ongoing sub-divisions of the land and allocations to various individuals and companies, there is need for the National Land Commission to safeguard the public land that has been surrendered or is subject to surrender for public use in accordance with the requirements of the applicable laws.

8. There has been an attempt to settle the Petitioners as evidenced by the fact that the Vipingo Sisal Estate Owners in conjunction with the Government and local authorities had surrendered portions of land to the Petitioners and the areas surrendered included:
  - a) Boyani- Where 209 plots had been allocated in 2000.
  - b) Vipingo Trading Centre – titles had been issued to the beneficiaries.
  - c) Bureni Settlement Scheme- Titles had been issued to the beneficiaries.
  - d) Gongoni – Titles had been issued to the beneficiaries.
  - e) Kapecha- Titles had been issued to the beneficiaries.
  - f) Kadzinuni- Titles had been issued to the beneficiaries.
9. Article 67 (2)(e) of Constitution mandates the National Land Commission to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices and recommend appropriate redress.
10. The National Land Commission admitted that the contents raised in the Petition were also contained in a historical land injustice claim lodged with the Commission by the Petitioners.
11. The case ELC No. 343 of 2016 in the High Court in Malindi which was arguably touching on matters relating to the historical land injustice claim lodged with the Commission by the Petitioners was determined on 28<sup>th</sup> June 2018 and therefore there was no pending suit barring the National Land Commission from considering the historical land injustice claim lodged by the Petitioners.
12. The National Land Commission confirmed and averred that it would investigate the historical land injustice claim and recommend appropriate redress within three months of the tabling of this report.

## 5.0 COMMITTEE RECOMMENDATION

In response to prayers of the Petition, the Committee recommends-

1. **THAT** the National Land Commission does investigate the historical land injustice claim and recommend appropriate redress within sixty (60) days of tabling of this report.
2. **THAT** the National Land Commission does identify and secure the public land that has been surrendered or is subject to surrender for public use in accordance with the requirements of the applicable laws.
3. **THAT** the Ethics and Anti-Corruption Commission does investigate the circumstances under which the ownership records of fifteen parcels of land are missing from the Land Registry in Mombasa; within sixty (60) days of tabling of this report.


Signed.....



.....Date.....

01/07/2021

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

 <b>THE NATIONAL ASSEMBLY PAPERS LAID</b>	
<b>DATE:</b> 01 JUL 2021	<b>DAY:</b>
<b>TABLED BY:</b>	
<b>CLERK-AT THE TABLE:</b>	





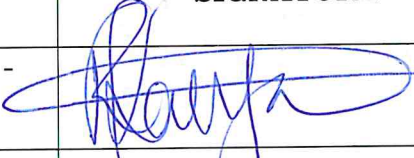
REPUBLIC OF KENYA  
KENYA NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT

**DEPARTMENTAL COMMITTEE ON LANDS**

**Adoption List**

Report on the Petition regarding Historical Land Injustices Committed against Indigenous People of Vipingo Community

Date: 24-06-2021

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





**MINUTES OF THE 28<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
LANDS HELD VIRTUALLY ON THURSDAY, 24<sup>TH</sup> JUNE 2021 AT 11:00AM**

---

**PRESENT**

1. Hon. Dr. Rachael Nyamai, CBS, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M. P - **Vice Chairperson**
3. Hon. Joshua Kutuny, MP
4. Hon. Mishi Mboko, M.P
5. Hon. Omar Mwinyi Shimbwa, M.P
6. Hon. Ahmed Kolosh, MP
7. Hon. Ali Mbogo, M.P
8. Hon. Babu Owino, MP
9. Hon. Caleb Kositany, MP
10. Hon. George Risa Sunkuyia, M.P
11. Hon. Josphat Gichunge Kabeabea, M.P
12. Hon. Owen Yaa Baya, M.P
13. Hon. Patrick Munene Ntwiga, MP
14. Hon. Samuel Kinuthia Gachobe, MP
15. Hon. Teddy Mwambire, M.P

**APOLOGIES**

1. Hon. Benjamin Washiali, CBS, MP
2. Hon. George Aladwa, M.P
3. Hon. John Muchiri Nyaga, MP
4. Hon. Lilian Tomitom, MP

**THE NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Ahmad Guliye - Second Clerk Assistant
2. Dr. Kefa Omoti - Principal Research Officer
3. Ms. Jemimah Waigwa - Legal Counsel
4. Ms. Maureen Kweyu - Audio Officer

**MIN. NO. NA/DDC/LANDS/2021/093: PRELIMINARIES**

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

**MIN. NO. NA/DDC/LANDS/2021/094: ADOPTION OF A REPORT ON THE  
PETITION  
REGARDING HISTORICAL LAND  
INJUSTICES COMMITTED  
AGAINST THE INDIGENOUS PEOPLE OF  
VIPINGO COMMUNITY**

The Committee considered the report on the consideration of the Petition regarding historical land injustices committed against the indigenous people of Vipingo Community and adopted it with the following observations and recommendations after it was proposed and seconded by Hon. Owen Baya, MP and Hon. Joshua Kutuny, MP respectively.

**Observations**

1. The Petitioners were evicted and dispossessed from the land in question by the colonial government in 1913 and after independence, the land did not revert to the Indigenous people of Vipingo, but it was subsequently allocated to individuals and companies and the sub-division of the land is still ongoing to date.
2. Based on the submissions made by the Ministry of Lands and Physical Planning the ownership records of (10) parcels of land were missing at the Land Registry in Mombasa.
3. Further, the National Land Commission also did confirm that the ownership records of fifteen (15) parcels of land were missing from the same registry.
4. In view of paragraph 3 and 4, it is paramount that the Ethics and Anti-Corruption Commission does investigate the circumstances under which the ownership records of fifteen parcels of land being 384/IV/MN; 102/IV/MN; 92/IV/MN; 79/IV/MN; 91/IV/MN; 95/IV/MN; 2025/IV/MN; 2026/IV/MN; 338/IV/MN; 667/IV/MN; 79/IV/MN; 5025/97; Sub -div 121/IV/MN; Sub- div 292/IV/MN; 664.IV/MN are missing.
5. Whereas the original use and purpose of the land was for agriculture, upon displacement of the Petitioners, the use of the land changed to Real Estate Development.

6. The manner in which the ownership of the land has continued to change through numerous sub-divisions of the land and allocations to various individuals and companies appears irregular.
7. Due to the ongoing sub-divisions of the land and allocations to various individuals and companies, there is need for the National Land Commission to safeguard the public land that has been surrendered or is subject to surrender for public use in accordance with the requirements of the applicable laws.
8. There has been an attempt to settle the Petitioners as evidenced by the fact that the Vipingo Sisal Estate Owners in conjunction with the Government and local authorities had surrendered portions of land to the Petitioners and the areas surrendered included:
  - a) Boyani- Where 209 plots had been allocated in 2000.
  - b) Vipingo Trading Centre – titles had been issued to the beneficiaries.
  - c) Bureni Settlement Scheme- Titles had been issued to the beneficiaries.
  - d) Gongoni – Titles had been issued to the beneficiaries.
  - e) Kapecha- Titles had been issued to the beneficiaries.
  - f) Kadzinuni- Titles had been issued to the beneficiaries.
9. Article 67 (2)(e) of Constitution mandates the National Land Commission to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices and recommend appropriate redress.
10. The National Land Commission admitted that the contents raised in the Petition were also contained in a historical land injustice claim lodged with the Commission by the Petitioners.
11. The case ELC No. 343 of 2016 in the High Court in Malindi which was arguably touching on matters relating to the historical land injustice claim lodged with the Commission by the Petitioners was determined on 28<sup>th</sup> June 2018 and therefore there was no pending suit barring the National Land Commission from considering the historical land injustice claim lodged by the Petitioners.
12. The National Land Commission confirmed and averred that it would investigate the historical land injustice claim and recommend appropriate redress within three months of the tabling of this report.

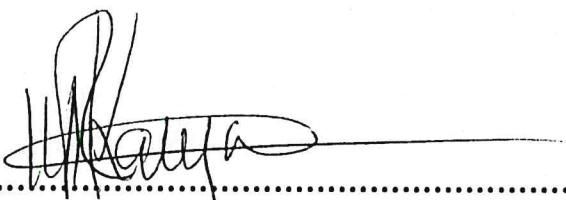
**RECOMMENDATIONS**

The Committee made the following recommendations;

1. **THAT** the National Land Commission does investigate the historical land injustice claim and recommend appropriate redress within sixty days of tabling of this report.
2. **THAT** the National Land Commission does identify and secure the public land that has been surrendered or is subject to surrender for public use in accordance with the requirements of the applicable laws.
3. **THAT** the Ethics and Anti-Corruption Commission does investigate the circumstances under which the ownership records of fifteen parcels of land are missing within sixty days of tabling of this report.

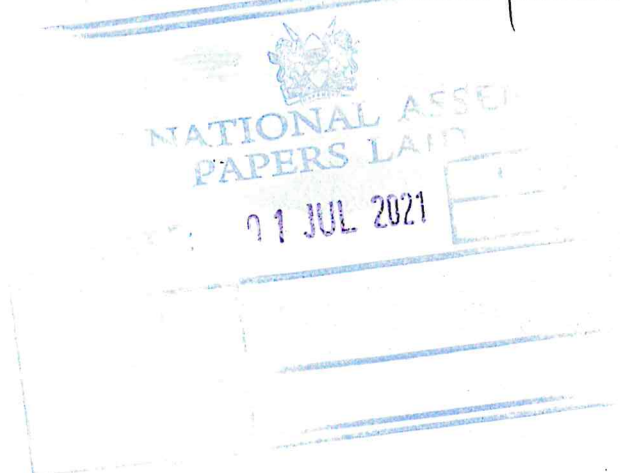
**MIN. NO. NA/DDC/LANDS/2021/095: ADJOURNMENT**

There being no other business to discuss, the meeting was adjourned at thirty-three past eleven o'clock. The next meeting will be held on notice.

Signature ..... 

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

Date..... 01/07/2021



REPUBLIC OF KENYA



TWELFTH PARLIAMENT- (FOURTH SESSION)

THE NATIONAL ASSEMBLY

PUBLIC PETITION

(No 10 of 2020)

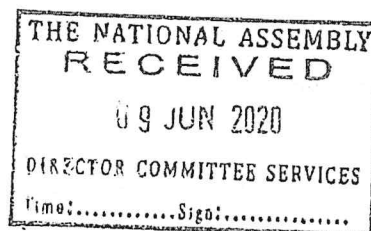
**REGARDING HISTORICAL LAND INJUSTICES COMMITTED AGAINST  
INDIGENOUS PEOPLE OF VIPINGO COMMUNITY**

Approved.  
BNA  
SNA  
4/6/2020

I, the **UNDERSIGNED**, on behalf of the indigenous people of Vipingo Community in Kilifi County;

**DRAW** the attention of the House to the following: -

1. **THAT**, Vipingo Community Lands in Kilifi County is home to many indigenous residents as their known ancestral land;
2. **THAT**, since 1913, indigenous people of Vipingo Community Lands have been squatters on their own land following compulsory acquisition of their land by British Colonial Government purportedly for public use;
3. **THAT**, the Vipingo Community was forcefully moved out of the ancestral land but was neither compensated nor resettled, thereby rendering them vagrants and squatters on their own land;
4. **THAT**, upon attainment of independence in 1963, various communities across the country that had been dislocated from or dispossessed of their ancestral land by the British Colonial Government were resettled and henceforth benefitted from restoration and retribution policies of the post-independence Government;
5. **THAT**, on the contrary, the Vipingo Community never regained its ancestral land, and instead lost the land to private entities on leasehold obtained under irregular circumstances, with subsequent governments failing to address the community's plight to-date;
6. **THAT**, most of the leases under private hands recently expired but have subsequently been renewed and the land subdivided and sold off once again to private individuals and companies instead of reverting back to the Community;





**PUBLIC PETITION**

**REGARDING HISTORICAL LAND INJUSTICES COMMITTED AGAINST  
INDIGENOUS PEOPLE OF VIPINGO COMMUNITY**

---

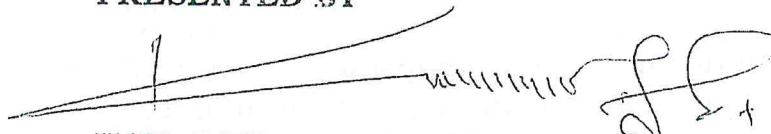
7. **THAT**, the marginalization of the indigenous Vipingo Community with regard to ownership of their ancestral land has taken its toll on members of the community, most of whom live in abject poverty due to lack of access to land for direct utilization or as collateral to secure credit facilities to uplift their livelihoods;
8. **THAT**, efforts to address this matter with relevant authorities including writing formally to the Principal Secretary in the State Department for Lands as well as the National Land Commission have not borne much fruit;
9. **THAT**, the matter in respect of which this Petition is made is not pending before any Court of Law or Constitutional body.

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

- (a) Inquires into circumstances that led to irregular dispossession of Vipingo Community land from its indigenous owners by private entities, with a view to reverting ownership of the said land to the indigenous people of Vipingo in Kilifi County;
- (b) Makes any other recommendations it deems appropriate in the circumstances of the Petition.

And your **PETITIONERS** will ever pray.

**PRESENTED BY**



**HON. RICHARD KEN KITI CHONGA, MP**  
**MEMBER FOR KILIFI SOUTH CONSTITUENCY**

**DATE:** ..... 02 / 06 / 2020 .....



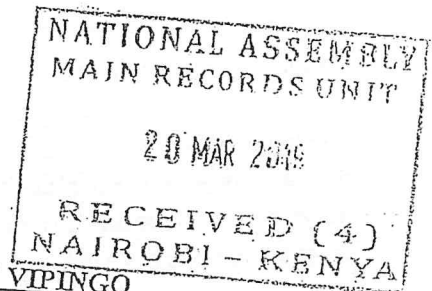
Received in the Petitions Office  
on Thursday  
17<sup>th</sup> October 2019  
from Mumba Riziki  
(P.A. to Hon. Ken Kiti Changa)

REPUBLIC OF KENYA  
THE HUMBLE PETITION



VIPINGO COMMUNITY LANDS  
P.O BOX 189-80119  
VIPINGO  
TEL: 0731 600 858/0701 810 097  
19<sup>TH</sup> March, 2019

THE CLERK OF NATIONAL ASSEMBLY  
PARLIAMENT OF KENYA  
PARLIAMENT BUILDINGS  
P.O BOX 41842-00100  
NAIROBI.



Dear Sir,

FINLAY 17/OCT/19 MURIUKI

RE: HUMBLE PETITION OF THE INDIGENOUS PEOPLE OF VIPINGO  
COMMUNITY LANDS ON HISTORICAL LAND INJUSTICES

We, the undersigned on behalf of the people of VIPINGO COMMUNITY LANDS in KILIFI COUNTY have been squatters on our lands which were compulsory acquired by the colonial government way 1913.

(N.B. All the parcels of land we refer to in this petition are enumerated in schedule I)

In 1913 the colonial government acquired our lands to allegedly use it for public purpose without resettling and compensating us. We were forcefully moved out rendering us squatters on our own lands.

This was during the colonial era and collectively as Kenyans we fought of the settlers and colonialists who gave us back our land when we gained independence.

Independence came with a promise to get our human dignity. Infact independence meant that, that which had been divested from us was restored. Other parts of the Country enjoyed this restoration and retribution. We never got our ancestral land back and suddenly and comptly the land was available for the private persons other than ourselves, the Vipingo Community lands instead, the land was given to other persons. We became colonized by our fellow Kenyans and the Independence government all the subsequent government to date.

## HUMBLE PETITION OF THE INDIGENOUS PEOPLE OF VIPINGO COMMUNITY LANDS ON HISTORICAL INJUSTICES

In the recent past, most of the leases expired and we hoped that priority will be given in settling us but as usual and expected of those in the government; the lands were subdivided and sold once again to other private people and companies. We think enough is enough.

We were met by betrayals, intimidation, discrimination and outright theft of our lands. Other part of this country got their land back, the land was subdivided and residents got their respective title documents.

The issue of marginalization at the Coast has been dominant to all government and we have been mistreated. We have never felt as being part of this Country. Our counterparts can access loans, can exploit their land while we remain poorer and dominated by other communities. This has happened since independence to date. We think the peace enjoyed in the Country is only because we have not sought our rights over our lands. We disrupted peace during colonial government and we heard by them. We thought we had independent and therefore our African government will hear us and be responsible to our land issue, the very reason we shed blood to gain independence. Nothing has changed. The agony of loss of land has been ever present and persistent since then to date.

We therefore wish to state as follows:

1. THAT every successive government has only colluded with the rich and the mighty to continue selling our lands instead of resettling us.
2. THAT we have always complained about this historical land injustice and until the same is resolved amicably, we shall continue agitating for our rights. We hope that word 'amicably' will not be replaced.
3. THAT sometime in **SEPTEMBER 2006**, we wrote a letter inform of memorandum to the head of state, which letter was received by the Principal Secretary, State Department of Lands, but with no response. We expect the president as others did, to bury his head in the sand. He hates us.
4. THAT we have lodged complaints in 2013 with the **NATIONAL LANDS COMMISSION** to investigate this matter and received no solution all. This is because, NLC is part of the government which is demeaning us, hates us and exploiting us because of our ethnicity. We feel that the three arms of the government will easily collude against us due to the powerful personalities involved. We are poor but we **WILL NEVER GIVE UP**.
5. THAT this matter is **NOT** pending before any court or tribunal or this matter has not been previously dispensed with by any court or tribunal

HUMBLE PETITION OF THE INDIGENOUS PEOPLE OF VIPINGO COMMUNITY  
LANDS ON HISTORICAL INJUSTICE

WE THE INDIGENOUS PEOPLE OF VIPINGO COMMUNITY LANDS PRAY AS  
FOLLOWS:

1. THAT the National Assembly through the departmental committee on lands to investigate the circumstances upon which the land was and has been divested from our hands as rightful owners to private persons.
2. THAT the said departmental committee on land to investigate the historical injustices attended to and in respect of land hereof with a view to restore the rights of the indigenous people of Vipingo their land.
3. THAT the land illegally divested from the petitioners be restored in toto.
4. THAT the National Assembly to order the NATIONAL LAND COMMISSION to urgently return all expired leases and revoke all those titles which were acquired fraudulently.


AND we will always continue to pray, your humble petitioners, on behalf of all others.

PIRY JOHNSTONE MUYE

ID NO. 2137713

 CHAIRMAN

DAVID CHOME MUNGA MWADENDE ID NO. 8463168

 SECRETARY



HUMBLE PETITION OF THE INDIGENOUS PEOPLE OF VIPINGO COMMUNITY  
LANDS ON HISTORICAL INJUSTICES

NO	NAME	ID NO.	TEL NO.	SIGNATURE
1	JAMES KALENGA MUGANGA	5012765	0704 537 907	<i>[Signature]</i>
2	DAVID CHOME MUNGA	8463168	0731 600 858	<i>[Signature]</i>
3	DASTO KITI NYALE	2126285	0701 810 097	<i>[Signature]</i>
4	PIRY MUYE JAMES	2137713	0704 721 412	<i>[Signature]</i>
5	JACKSON KATANA BAYA		0724 971 376	<i>[Signature]</i>
6	TITUS MWANGORI	11496643	0716 046 556	<i>[Signature]</i>
7	MOHAMOUD HAJI		0722 432 937	<i>[Signature]</i>
8	JOSEPH IHA	8527029	0726 010 305	<i>[Signature]</i>
9	DOMINIC NGALA NYENYO	22561020	0724 512 583	<i>[Signature]</i>
10	SAID LEWA RONALD			<i>[Signature]</i>
11	DOREEN ANZAZI LEWA	20293322	0724 269 413	<i>[Signature]</i>
12	TOMOTHY KOMBE NZAI	04654003		<i>[Signature]</i>
13	WILLIAM CHIRIBA CHIRAO	2146165		<i>[Signature]</i>
14	LAWRENCE LEWA GOGO	0306207		<i>[Signature]</i>
15	JOSPHINE KANG'OME FONDO	21923170		<i>[Signature]</i>
16	NELSON SHEBE CHIRUME	3902044		<i>[Signature]</i>
17	STEPHEN MWANGOMBE TOYA	3903449		<i>[Signature]</i>
18	JONATHAN ZAWADI KAZUNGU	2155529		<i>[Signature]</i>
19	CHRISTOPHER KAINGU NYALE	2151866		<i>[Signature]</i>
20	MWAGAMBO BINGO RIMBA	5024695		<i>[Signature]</i>
21	SILVESTER JUMA NGAO	11876803		<i>[Signature]</i>
22	FESTUS KASHINDO RIMBA	2147562		<i>[Signature]</i>
23	ALEX CHAI MUNGA	11763434		<i>[Signature]</i>
24	MAXON MWATELA MASHOMBO	3889124		<i>[Signature]</i>
25	MLANDA NUNGA CHIRAO	3903465		<i>[Signature]</i>
26	RAYMOND TSANGI MUNGA	10092321		<i>[Signature]</i>
27	MULONGO WASHE GURO	1376016		<i>[Signature]</i>
28	DICKSON NYAMAWI MWAIKIZA	11496475		<i>[Signature]</i>
29	KENNEDY MUINDU CHIBO	22189504		<i>[Signature]</i>
30	WILLIAM NYAMAWI GAMBO	2146172	0718 457 575	<i>[Signature]</i>
31	JESCA DENNIS TSUMA	20687782	0773 941 510	<i>[Signature]</i>
32	GASPIN KAI HARO	31479001	0703 640 888	<i>[Signature]</i>
33	LUCAS NZAI KOMBE	3902061	0700 615 085	<i>[Signature]</i>
34	NINGALA MWAMU MBAGA	20736066	0725 572 165	<i>[Signature]</i>
35	NATHANIEL MWANGUDZA KAI	1377418	0725 125 615	<i>[Signature]</i>
36	JESLINE MUYE		0720 636 028	<i>[Signature]</i>
37	EDSON HARO MBAGA	0689822	0723 669 087	<i>[Signature]</i>
38	EDSON MAJALIWA MBURA	3162260	0729 759 562	<i>[Signature]</i>
39	NATHANIEL LEWA SIRYA	2250470	0712 756 021	<i>[Signature]</i>

HUMBLE PETITION OF THE INDIGENOUS PEOPLE OF VIPINGO COMMUNITY  
LANDS ON HISTORICAL INJUSTICES

40	JONATHAN NGUJO MUYE	13849598	0729 596 414	<i>Jonathan</i>
41	REUBEN TEMBOH BINGO	11376005	0713 176 281	<i>Reuben</i>
42	LEWA KAI BINGO	4584338	0727 040 223	<i>Lewa</i>
43	JUMBALE JANJI CHIBO	11765605	0712 333 680	<i>Janji</i>
44	JOSPHINE MBUCHE NZAO	9204310	0704 089 809	<i>Josphine</i>
45	JUMA CHARO BOZO	23247085	0727 480 553	<i>Juma</i>
46	FELSON BAYA TOYA	22127348	0789 150 753	<i>Felson</i>
47	MACDENTON GAMBO MWAGAMBO	12728543	0722 115 611	<i>Macdenton</i>
48	MOSES GAMBO NYAMAWI			
49	MUYE GAMBO MUYE		0728 930 430	<i>Muye</i>
50	MAURINE KADZO DECHE	21384698	0712 833 617	<i>Kalama</i>
51	ALEX KALAMA MRANGA	9207006	0708 409 209	<i>Alex</i>
52	GLARICE CHINEDU MBAGA	13140987	0720 404 232	<i>Glalice</i>
53	MARTIN M. SHUME	21935200	0725 841 408	<i>Martin</i>
54	NELSON GAMBO MZUNGU	5024484	0711 392 904	<i>Nelson</i>
55	ALBERT KAHINDI KAZUNGU	10832244		<i>Albert</i>
56	ALICE PENDO JOHN	13849870	0710 436 988	<i>Alice</i>
57	JUMAA NYINGE BARANA	9964713		<i>Juma</i>
58	RICHARD MUNGA MUNDU	5456974	0703 291 477	<i>Richard</i>
59	KAHINDI JEFWA		0714 275 081	<i>Kahindi</i>
60	ELINA JOHANA MUNGA	8455597	0799 330 678	<i>Elina</i>







## MINISTRY OF LANDS AND PHYSICAL PLANNING

---

### RESPONSES TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON LANDS

Honourable Chair,

Pursuant to a letter Ref. NA/DC/LANDS/2020/ (63) dated September 16, 2020, the Committee requested the Cabinet Secretary Ministry of Lands and Physical Planning to respond to the following-

1. Petition by Hon. Richard Ken Kiti Chonga, MP on behalf of the indigenous people of Vipingo community in Kilifi County regarding historical land injustices committed against the indigenous people of Vipingo community.
2. Petition by residents of Keiyo North Constituency regarding compulsory acquisition of land and compensation of the residents by the Government.

Hon. Chair, I wish to submit as follows-

1. Petition by Hon. Richard Ken Kiti Chonga, MP on behalf of the indigenous people of Vipingo community in Kilifi County regarding historical land injustices committed against the indigenous people of Vipingo community.

#### 1.1 Background

Honourable Chair, the Petitioners aver that they are indigenous residents of Vipingo in Kilifi County. They claim that the British Colonial Government in 1913 acquired their land purportedly for public use. They were forcibly evicted from their ancestral homelands without compensation or resettlement. They claim that on attainment of independence, the post-independence Government resettled communities across the Country that had been disposed of their lands by the colonial government. However, they have not been resettled and have not regained their ancestral land which was leased to private entities.

The Petitioners are aggrieved that the leases held by the private entities expired recently and were renewed in their favour. They claim that the land has since been subdivided and sold off to third parties. Efforts to address their plight with relevant authorities has not borne fruits. They have therefore approached the National Assembly to-

- i) inquire into the circumstances that led to irregular dispossession of Vipingo community land from its indigenous owners by private entities, with a view to reverting ownership of the said land to the indigenous people of Vipingo in Kilifi County.
- ii) make any other recommendations it deems appropriate in the circumstances of the petition.

### Response

Honorable chair, The Ministry has issued titles to both private individuals and private entities in Vipingo area, Kilifi County. When the National Land Commission Act was enacted in 2012 it offered opportunity for review of grants and dispositions. Aggrieved persons were required to file their claims with the Commission. Unfortunately, the period for the review of grants and dispositions under the legislation has since lapsed.

The Act also provides mechanism for redress for historical land injustices claims in the Country. The Community filed their claim No. NLC/HLI/495/2018 with the National Land Commission which is still pending determination. The issues raised in the petition will be considered by the Commission. The Ministry will facilitate implementation of the recommendations of the Commission upon determination of the matter.

Nonetheless, the Ministry has established settlement schemes on land surrendered by Rea Vipingo Estates Limited for settlement of the squatters from the indigenous community of Vipingo area. These parcels of land measuring about 2,631.83 acres cover Vipingo Trading Center, Bureni Ph I and II, Gongoni, Kapecha, Kadzinuni and Takaungu (Boyani) settlement schemes (Annexure 1). A total of 4,384 titles have been issued to beneficiaries as per the table below.

No.	Scheme	No. of Parcels/ Titles	LR No.	Size Surrendered (Acres)	Year Allocated
1	Vipingo Trading Centre	1988	262/263	245.76	2009
2	Bureni Ph I and II	263	5025/95 & 5025/218	88.18	2017
3	Gongoni	725	79 MN/1	908	2016
	Kapecha	266	7334/1	296.4	2017
	Kadzinuni	960	MN/N/119/1, 87424/2, MN/IV/120/2	906.49	2017
	Takaungu (Boyani)	182	290/2	187	2012
	<b>TOTAL</b>	<b>4,384</b>		<b>2,631.83</b>	

2. Petition by residents of Keiyo North Constituency regarding compulsory acquisition of land and compensation of the residents by the Government

2.1 Background

Honourable Chair, the Petitioners who are residents of Keiyo North Constituency claim that their land was acquired by the Government through Gazette Notices Nos. 4260 and 4261 of 1985 to allow for the construction of Tambach Teachers Training College. They vacated their land and awaited compensation by means of allocation of alternative land. The Petitioners are aggrieved that the compensation was afforded to other persons who were not the original owners and the legitimate beneficiaries have not received any form of compensation to date.

They aver that the matter has been brought before the Commission of Inquiry into the Land Law System of Kenya ("the Njonjo Commission"), the Commission of inquiry into Illegal/Irregular Allocation of Public Land ("the Ndungu Commission") and the National Land Commission but remains unresolved. They have therefore approached the National Assembly to investigate the matter with a view to ensure that their property rights are upheld.

Response

Honorable Chair, the Ministry received a request from the then District Commissioner, Elgeiyo Marakwet to acquire 81 parcels of land for the construction of Tambach Teachers College. Following the request, the Commissioner of Lands Gazetted the intention to acquire the parcels as requested vide Gazette Notice No. 4260 of October 4, 1985. (Annexure 2). On same date October 4, 1985 the Commissioner of Lands issued a Gazette Notice No. 4261 (Annexure 3) giving a notice of inquiry for hearing of claims to compensation by persons interested in the affected land.

Thereafter, the District Land Officer, Usain Gishu prepared a land compensation schedule for each of the affected land together with improvements thereon, which was forwarded to the Permanent Secretary Ministry of Education, Science & Technology vide a letter Ref. UG/651/Vol. II/82 dated January 8, 1987. The District Land Officer requested the Permanent Secretary to prepare individual compensation cheques for onward transmission to the affected landowners (Annexure 4).

Vide a letter Ref. UG/651/Vol. III/37 dated September 14, 1989, the District Land Officer, Uasin Gishu forwarded another schedule for the remaining plots to the Permanent Secretary Ministry of Education, Science & Technology which letter reminded him that the compensation cheques requested earlier had not been received (Annexure 5). Another reminder for the cheques was also made Vide a letter Ref. MLS 20/003 Vol. V/57 dated March 5, 1990 by the Permanent Secretary Ministry of Lands, Housing and Physical (Annexure 6).



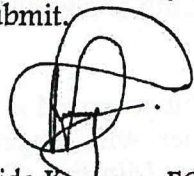
The Permanent Secretary Ministry of Education wrote to the District Commissioner, Elgeiyo Marakwet vide a letter Ref. D2/6/3/19 dated May 16, 1990 stating that the compensation of land acquired for the construction of Tambah teachers College was to be provided by the local authority (Annexure 7).

In a response Ref. 12/4/137 dated June 29, 1990, the District Commissioner stated that it was the Ministry of Education, which was to compensate the landowners affected by the construction of the college. (Annexure 8).

From our records, the District Land Officer, Uasin Gishu vide a letter Ref. UG/651/ Vol. IV/126 dated September 14, 1992 forwarded to the District Commissioner, Elgeiyo Marakwet two (2) schedules showing the equivalent land compensation to the persons whose land was acquired for the project (Annexure 9).

The alternative land was to be given to the affected person and was to take into consideration the acreage of the land to be acquired by the Government and the improvements on the affected land. The compensation money for the improvements was to be converted into land. The matter was left to the District Commissioner to source for the alternative land to resettle the landowners affected by the project.

Honourable Chair, the people affected by the project were allocated alternative land in Uasin Gishu County. However, there are claims that some of the genuine beneficiaries may not have received their share of allocation. I submit.

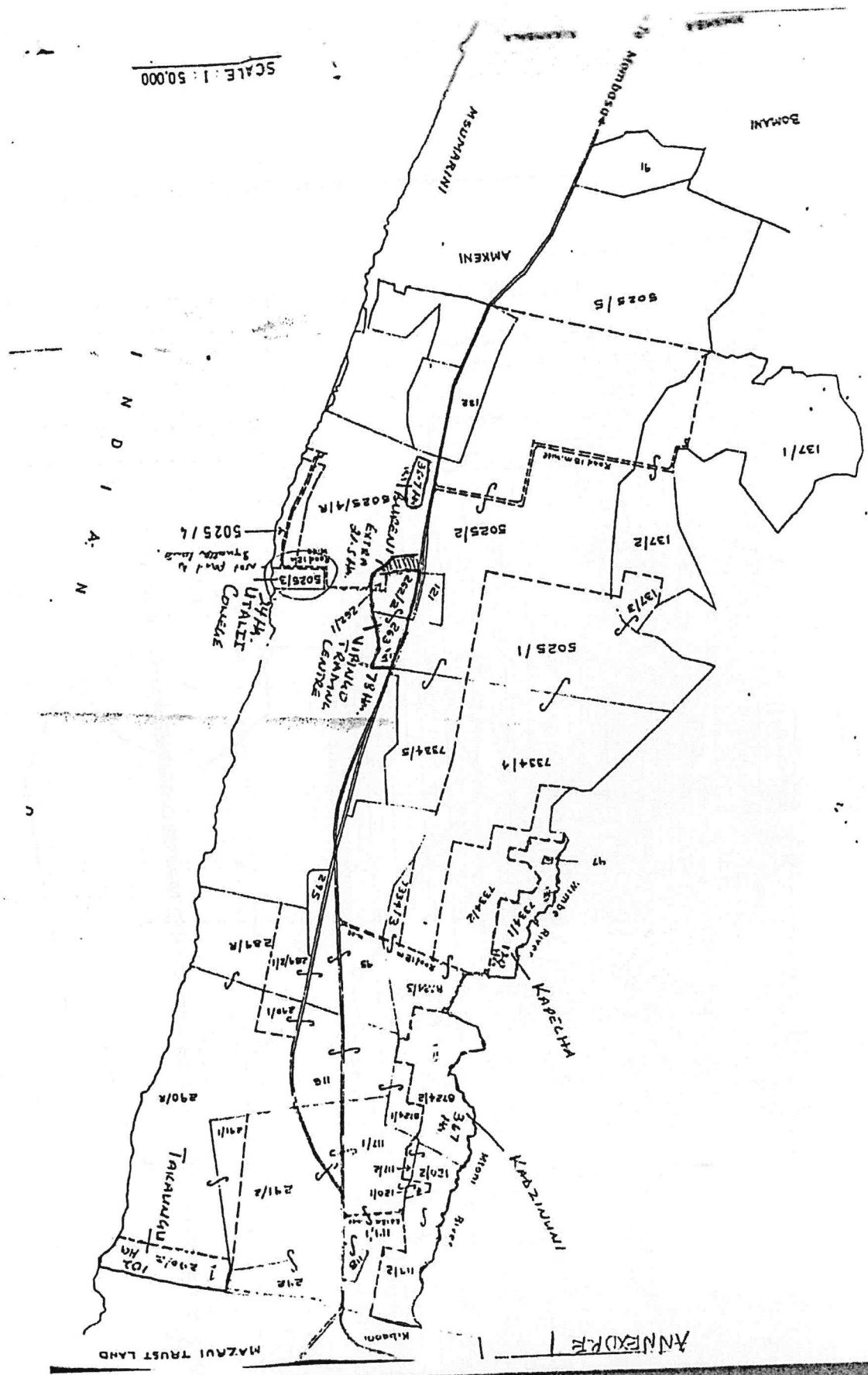


Farida Karoney, EGH  
CABINET SECRETARY

September 29, 2020

Dr. Murgor

SCALE: 1:50,000



N  
D  
I  
A  
N

MAZAVI TRUST LAND

ANNEXURE I



COLONY & PROTECTORATE OF KENYA.

PROVINCE OF SEYIDIE  
DISTRICT OF MALINDI

Locality: Gongoi (S.W. of Sakaungu)  
Scale: 1 in 25000 of 2003 as per to 1 inch.

Land Office Reference No.  
The Subdivision No.  
of Subdivision No. 79  
of Section No. 11 of Alalband Area.  
of Portion No.  
of Merulimal District South A 37  
V No. 1  
Area - 20.520 Acres (Approx.)

Subdivisions	Diagram No.



*A. E. S.*  
Director of Land Survey  
Nairobi Nov. 31 1923

PLAN NO 21626



General Notice No. 4260

THE LAND ACQUISITION ACT  
(Cap. 295)

IN PURSUANCE of section 4 (2) of the Land Acquisition Act I give notice that the government intends to acquire the following land for the development of Tarnabu Teachers Training College.

SCHEDULE

Plot No.	Registration Section	Registered Owner	Approx. Area to be Acquired in Hectares
2349	Kaptori: "A"	William Kirui Changwony	
342	"	Richard Kiptoo	0-36
341	"	Kimoi w/o Chesire	0-23
340	"	Kimwathi Karika	0-27
2215	"	Michael Kisereni Kiptoo	0-29
2422	"	Tapranlich Suriaki Kiplerui	0-49
2421	"	Kiprotich Najosio Kisingat	0-50
2213	"	Cheruiyot Chesire Koto	0-21
2216	"	Cheruyot Chebet	0-50
2217	"	Saina Sokome Kigen	0-60
2218	"	Cherop Cheboswony	2-4
53	"	Chepkok Kibanun	0-8
52	"	Chepkurgat Kirorio	0-15
57	"	Chepkurui Chepnayakwoi	0-10
51	"	Lawrence Ruto	0-16
58	"	Cherop Chesangor	0-70
45	"	Saniego Chebiego	0-17
2507	"	Martin Chepkurui Chebiego	0-21
40	"	James Chebil Omonoi	0-23
49	"	Chebil Chepkalyo	0-18
2579	"	Francis Kipruto Cheplat	0-40
56	"	Cheptoo Chesoroni	0-70
114	"	Phillip Kintalyo Chepkurui	0-34
115	"	Kimtai Chepkurui Chebor	0-31
116	"	Musa Cheptoo Sawo	0-70
101	"	Esther Maiyo	0-36
70	"	Chemat Sirma	0-31
69	"	Michael Bundotich	0-50
77	"	John Wambugu Njuguna	0-45
2502	"	Moses Oanga Siriba	0-12
99	"	Mary Cherono Ruto	0-13
67	"	Tabarbuch Toroitich	0-19
61	"	Phillip Ruto Maina	0-22
66	"	Lebai Kipyia	0-26
75	"	Cheptoo Chesoroni	0-08
79	"	Kimoi w/o Kigen	0-28
74	"	Chesang Na'eno	0-21
113	"	Michael Kipkorir Cherop	0-23
43	"	Cheboi Chemitei	0-34
63	"	William Chebol	0-31
2570	"	Joseph Chesorgan	0-16
72	"	John Kangogo Chebil	0-16
63	"	Suter Chebet	0-27
2571	"	Kibehogo Chesorgan	0-80
71	"	William Kirui Chepkwony	0-31
125	"	Ruto Sirwani Maason	0-20
89	"	Cherutich Chepnayakwoi	1-00
68	"	Kobilo Chesorgan	0-50
76	"	Cheptumo Chesire	0-19
60	"	Kipsirim Lemuto	0-05
125	"	Joseph Chesorgan	0-09
131	"	Michael Toroitich	0-10
129	"	Kita Chesario	0-12
123	"	Cheptingo Chesario	0-60
54	"	Michael Kiptanui	0-59
156	"	Kiplagat Chebil	0-21
155	"	Kimani Chesario and Thomas Chepkongat	0-36
2506	"	Chemtum Chepkurui	0-65
30	"	Martin Chepkurui Chebiego	0-08
39	"	Cheboi Chepkurui	0-35
31	"	Chepkurui Chepnayakwoi	0-09
29	"	William Chepkurui	0-09
28	"	Chepkurgat Kirorio	0-35
26	"	Cheboi Chebiego	0-14
25	"	Musa Cherno Sawo	0-11
23	"	Cherutich Chepnayakwoi	0-10
24	"	Chemweno Kirorio	0-11
41	"	Chepkurgat Kirorio	0-09
50	"	Cheleigo Chepnayakwoi	0-21
45	"	Kigen Sirwani	0-09
51	"	Saniego Chebiego	0-11
33	"	Lawrence Ruto	0-21
32	"	Chemweno Tikri	0-70
34	"	Cheboi Chemitei	0-13
36	"	Chepkhego Rutich	0-35
2613	"	Chepkaitany Bundotich	0-17
35	"	Chepkaitany Bundotich	0-06
37	"	Charles Cheruiyot Chebil	0-06
55	"	Chebol Chemitei	0-34
234	"	Kimo Kaimo	0-31
	"	Cheptinget Cherutich	0-33
	"		0-21

Plans of the affected land may be inspected during office hours at the office of the Commissioner of Lands, Ardi House, Ngong Road, Nairobi, or at Lands Office, Eldoret.  
Dated the 25th September, 1935

J. R. NJENGA,  
Commissioner of Lands.

THE LAND ACQUISITION ACT  
(Cap. 295)

IN PURSUANCE of section 9 (1) of the Land Acquisition Act, I give notice that an inquiry will be held at Tambach Administrative Lines on Thursday, 31st October, 1935, at 9.30 a.m. for hearing of claims to compensation by the persons interested in the following land

SCHEDULE

Plot No.	Registration Section	Registered Owner	Approx. Area Acquired Hectars.
2359	Kapterik "A"	William Kirui Changwony	
342	"	Richard Kiptoo	0.36
341	"	Kimul w/c Chesiro	0.28
340	"	Kimwetich Karika	0.27
2215	"	Michael Kipsereh Kiptoo	0.29
2422	"	Tapranich Sariaki Kipkurui	0.49
2421	"	Kiprotich Naibazio Kisingat	0.50
2213	"	Cheriyot Chesire Koto	0.21
2216	"	Cheriyot Chesire	0.30
2217	"	Saina Sokomo Kigen	0.60
2218	"	Cherop Chesoswony	2.4
53	"	Chepkot Kihonin	0.8
52	"	Chepkurgat Kirorio	0.15
57	"	Chepkurui Chepnayakwoi	0.16
51	"	Lawrence Ruto	0.70
58	"	Cherop Chesengor	0.17
45	"	Saniego Chebiego	0.21
2597	"	Martin Chepkurui Chebiego	0.23
40	"	James Chebii Onionei	0.18
49	"	Chebii Chepkoloyo	0.40
2579	"	Francis Kipruto Cheplut	0.70
56	"	Cheptos Chesorom	0.30
114	"	Paulo Kimaiyo Chepkurui	0.21
115	"	Kintai Chepkurui Chebor	0.31
116	"	Musa Cheptoo Sawa	0.30
101	"	Esther Maigo	0.70
70	"	Chesat Sirna	0.16
69	"	Michael Bundotich	0.31
77	"	John Wambugu Njuguna	0.30
2502	"	Moses Benza Siriba	0.43
99	"	Mary Cherono Ruto	0.12
67	"	Jababuchi Terwileh	0.13
61	"	Phillip Ruto Maina	0.19
66	"	Lebet Kipyra	0.22
75	"	Cheptoo Chesorom	0.25
79	"	Kimul w/c Kigen	0.03
74	"	Chesang Ng'eno	0.28
113	"	Michael Kipkorir Cherop	0.21
112	"	Chebat Chemitel	0.28
70	"	Chesat Sirna	0.28
43	"	William Cheboi	0.34
63	"	Joseph Chesogon	0.31
2570	"	John Kangogo Chebii	0.16
72	"	Sulei Chebet	0.13
63	"	Kipchoge Chesogon	0.16
2571	"	William Kirui Chekwony	0.27
71	"	Ruto Sirwanai Maason	0.30
125	"	Cheptich Chepnayakwoi	0.31
59	"	Kobilo Chesogon	0.20
68	"	Cheptuno Chesire	1.00
76	"	Kipsirini Lemato	0.60
60	"	Joseph Chesogon	0.19
126	"	Michael Terwileh	0.25
131	"	Kite Chesire	0.09
129	"	Chentingo Chesosio	0.10
128	"	Michael Kiptanui	0.12
54	"	Kiplaget Chebii	0.60
156	"	Kimman Chesosio and Thomas Chepkonyo	0.39
155	"	Cheptan Chepkurui	0.21
2506	"	Martin Chepkurui Chebiego	0.36
30	"	Chebere Chebiego	0.66
31	"	Chepkurui Chepnayakwoi	0.03
29	"	William Chepkurui	0.08
28	"	Chepkurui Kirorio	0.09
26	"	Cheboro Chebiego	0.09
25	"	Musa Chamu Sawa	0.35
24	"	Charulich Chepnayakwoi	0.14
41	"	Chekwony Kirorio	0.11
50	"	Chepkurgat Kirorio	0.10
45	"	Chebilas Chepnayakwoi	0.03
51	"	Kigen Sirwanai	0.17
33	"	Saniego Chebiego	0.10
32	"	Lawrence Ruto	0.03
34	"	Cheswony Titeri	0.21
36	"	Chebat Chemitel	0.70
2615	"	Chepkereh Retich	0.13
35	"	Chepkolony Bundotich	0.35
37	"	Chesat Sirwanai	0.17
53	"	Chesat Sirwanai	0.06
234	"	Chesat Sirwanai	0.06
	"	Kiano Kaitano	0.34
	"	Cheptaget Charulich	0.31
	"		0.33
	"		0.21

Every person who is interested in the land is required to deliver to me not later than the day of inquiry a written claim to compensation.  
Dated the 25th September, 1935  
I. I. NITINGI,  
Commissioner of Land.

VAL-834  
MINISTRY OF LANDS AND SETTLEMENT

ANNEXURE 4  
CVO

Telephone:  
When replying please quote  
Ref. No. UG/651/VOL.II/82  
and date

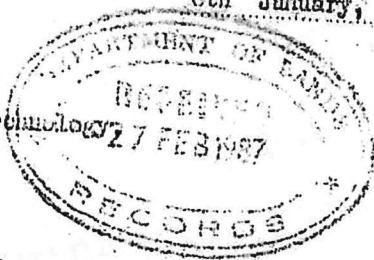


DISTRICT LANDS OFFICE  
ELEKRET

P.O. BOX 173

6th January, 1987

23



The Permanent Secretary,  
Ministry of Education Science & Technology  
P.O. Box 30040,  
NAIROBI.

RE: LAND ACQUISITION ACT (CAP. 295)  
TAMBACH TEACHERS TRAINING COLLEGE  
GAZETTE NOTICE NOS. 4260 & 4261 OF  
14th OCTOBER, 1985

The Land Acquisition process for the above project has been finalised and I have issued Award to the affected persons.

I would therefore be grateful if you would issue individual cheques in respect of the names as shown in column 4 and amount of compensation as shown in column 7 of the attached schedule.

The cheques should be forwarded to me for my onward transmission to the land owners through the District Commissioner Elgyo Marakwet District.

Please note that I shall not issue Notice of Taking Possession and Vesting the land in the Government until the affected persons have been compensated.

**M. MOINDI**  
(M. MOINDI)  
DISTRICT LAND OFFICER

MM/jma  
c.c.

The District Commissioner,  
Elgyo Marakwet District,  
P.O. Box 200,  
ELEKRET.

The Commissioner of Lands,  
P.O. Box 30089,  
NAIROBI. (actn: Chief Valuer)

*Handwritten:*  
Noted.  
file & pa.  
W. Machini 1/3.



VAC. 834

ANNEXURE 5

Tel: 33542

MINISTRY OF LANDS AND HOUSING

Ref. UG/651/Vol. III/37



District Land Office  
P.O. Box 173,  
ELLORRET.

14th September, 1989

The Ministry of Education, Science  
And Technology,  
P.O. Box 30040,  
NAIROBI.

RE: LAND ACQUISITION ACT(CAP.295)  
TAMEACH TEACHERS TRAINING COLLEGE  
GAZETTE NOTICE NOS.4260 & 4261 OF  
4TH OCTOBER, 1985

Please refer to my letter UG/651/Vol.11/82 of 8th January, 1987.  
It is disheartening to note that people affected by the above  
acquisition as submitted by my above quoted letter have not been  
compensated to date. It is now three years and the college  
development is about to be completed.

Forwarded herewith is a second schedule for payment resulting  
from the extension of the college ground.  
Please issue individual cheques in respect of the names as shown  
in column 4 and amount as shown in column 7 of the schedule 'A'  
attached.

I would also request you to issue one composite cheque in the  
name of the 'Registrar High Court Nairobi' for the total amount  
(KShs.44,290.00/=) as shown in column 7 of the schedule 'B' attached.  
All the cheques should be forwarded to me for my onward  
transmission to the Land owners through the District Commissioner,  
Elgeyo Marakwet District.

Please expedite as such long delay in payment causes suffering  
to the affected persons as they may not get alternative land to  
buy with the same monies.

M. MOINDI  
M. Moindi  
DISTRICT LAND OFFICER.

MM/dkm.  
c.c.  
The District Commissioner,  
Elgeyo Marakwet,  
P.O. Box 200,  
ITEN.

The Commissioner of Lands,  
P.O. Box 30089,  
NAIROBI.

Encls....

*[Handwritten signature]*  
VAC.  
18/10/89  
*[Handwritten signature]*

Devo (A)  
24/10/89  
10/24/11



ANNEXURE (

VAL 834

MINISTRY OF LANDS, HOUSING AND PHYSICAL PLANNING

Telegrams: "MINILANDS" Nairobi  
Telephone: Nairobi 728060 and 728860  
When replying please quote

ARDHI HOUSE  
1st NGONG AVENUE  
OFF NGONG ROAD  
P.O. Box 30450  
NAIROBI

Ref. No. **M/S 20/003 Vol. V/57**



March 1990

The Permanent Secretary,  
Ministry of Education,  
P.O. Box 30040,  
NAIROBI.

(Att: The P.F. & E.O., Mr Mule)

LAND ACQUISITION ACT TAMBACH TEACHERS COLLEGE

We spoke Opar/Mule.

Our Ministry acquired some land in Elgeyo-Marakwet district some three years ago on behalf of your Ministry for the construction of the above Teachers College.

Naturally, the Government was supposed to compensate the landowners for their land as provide for in the Act. It has taken quite a time and the landowners are now complaining because of the delay.

The purpose of this letter is to request your Ministry to release the compensation cheques to our District Lands Office Eldoret for onward transmission to the Land owners so that they do not feel cheated.

The necessary details as regards the particulars of the land and the landowners, the amount due etc, are already in your office.

Please take up the matter so that it can be finalised.

Thank you.

**E. M. O. OPAR**  
E.M.O. OPAR  
FOR: PERMANENT SECRETARY

C.C.

The Commissioner of Lands,  
NAIROBI.

The District Lands Officer,  
Uasin Gishu,  
P.O. Box 173,  
ELDORET.

SNO (A)

No trail (seen)  
- [signature]



ANNEXURE 7

VAL 834

MINISTRY OF EDUCATION

Telegrams: EDUCATION, Nairobi  
Telephone: Nairobi 28411  
When replying please quote  
Ref. No. ...D. 116/3/19  
and date



JOGOO HOUSE  
HARAMBEE AVENUE  
P.O. Box 30040  
NAIROBI

16th May 1990

The District Commissioner  
Elgeyo Marakwat  
P.O. Box 200  
ITEN



TAMBACH PRIMARY TEACHERS TRAINING COLLEGE -  
LAND ACQUISITION ACT (CAP. 295)

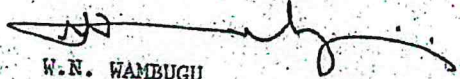
GAZETTE NOTICE NOS. 4260 AND 4261 OF 4TH OCTOBER 1985

Your letter ED.12/28/Vol.I/86 of 7th May 1990 refers.

Before the construction of the Teachers Training College was started, the Land issue had been sorted out by the parties concerned. Correspondences emanating from your office confirmed that the Land was to be provided by the Local authority and where any compulsory acquisition was involved, payment for compensation was to be made by the District Commissioner.

The District Commissioner in his letter Ref. CON. ED.12/4(48) of 19th May 1986 confirmed to the Director IDA/IBRD Project Unit that he had received authority to compensate those whose lands would be acquired for the project. He further stated that compensation cheques were to be out within three weeks from the date of his above quoted letter.

As far as this office is concerned, the compensation issue rests with your office and you are in a position to pursue the matter from your end by finding out whether compensation was executed as stipulated in the letter from your office of 1986. Before the college construction started, it was mandatory that Land was to be available locally and that all details were to be dealt with by the local administration.

  
W.N. WAMBUGU  
FOR: PERMANENT SECRETARY

cc: The District Land Officer,  
P.O. Box 173  
ELDORET

The Commissioner of Lands  
P.O. Box 300089  
NAIROBI

Scvo (A)  
2/1/90



ANNEXURE B

OFFICE OF THE PRESIDENT VAL. 834

**CONFIDENTIAL**

DISTRICT COMMISSIONER'S OFFICE,  
ELGEYO MARAKWET DISTRICT,  
P.O BOX 200,  
ITEN.

Ref.No.CON.ED.12/4/137

29th June, 1990

The Permanent Secretary,  
Ministry of Education,  
P.O Box 30040,  
NAIROBI

*CVA*

Dear Sir,

RE: TAMBACH TEACHERS TRAINING COLLEGE

LAND ACQUISITION ACT (CAP 295)

GAZETTE NOTICE NOS.4260 AND 4261 OF 4th OCT.1985

*f.i.*  
*[Signature]*  
*17/7/90*

Your letter Ref.D.2/6/3/19 dated 16th May,1990 in response to my office letter Ref.ED.12/28 Vol.1/86 of 7th May,1990 refers.

The former D.E.O wrote several letters to your office on compensation for the land owners affected as a result of the construction of Tambach Teachers Training College. There seems to have been no reaction from your office on record. The letters were: K/M/128/Vol.1/14 dated 23th June,1985, K/M/128/Vol.1/16 dated 23rd July,1985 and K/M/128/Vol.1/43 dated 4th November,1987. Further, correspondence on compensation were sent to your office by the District Land Officer, Ref.UG/651/2 dated 17th July,1985, UG/651/Vol.11/62 dated 8th January, 1987 and UG/651/Vol.111/37 dated 14th September, 1989.

Suffice to note that no action seems to have been taken on compensation correspondences to your office.

...../2

*Devo (A)*  
*23/7/90*  
*[Signature]*

*[Signature]*  
*27/7*

**CONFIDENTIAL**

CONFIDENTIAL

Cont.

/2

I am therefore requesting your office to make urgent arrangements to send funds for compensation. You will agree with me that the issue of payment is long overdue taking into account that the college will be nearing completion by November this year (1990). All evidence indicates that it is your ministry to compensate.

Please expedite. Awaiting your reply.

Yours faithfully,

*Wilson A. Chepkwony*

W.A. CHEPKWONY  
DISTRICT COMMISSIONER  
ELGEYO MARAKWET

c.c

Commissioner of Lands,  
P.O Box 30089,  
NAIROBI

Provincial Commissioner,  
Rift Valley Province,  
P.O Box 28,  
NAKURU

District Education Officer,  
Elgeyo Marakwet,  
ITEN

Clerk,  
Keiyo Marakwet County Cl.,  
ITEN

CONFIDENTIAL

ANNEXURE 9

47

KAL-8

Telephone: Eldoret 33642  
When replying please quote

Ref. No. UG/651/Vol. IV/126  
and date

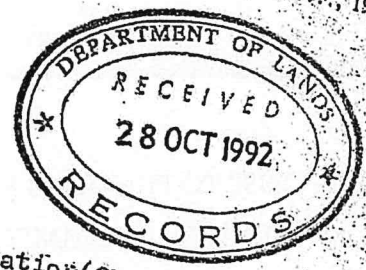
MINISTRY OF LANDS AND HOUSING



DISTRICT LANDS OFFICE  
P.O. Box 173  
ELDORET  
...14th Sept, 1992

The District Commissioner,  
Kelyo-Marakwet,  
P.O. Box 200,  
ITEN.

THE LAND ACQUISITION ACT - CAP. 295  
TAMBACH TEACHERS COLLEGE  
COMPENSATION BY WAY OF LAND



I refer to our recent telephone conversation (Chepkwony/Muse).  
I append hereby two schedules showing the equivalent land  
compensation to the persons whose land was acquired for the  
above project.

In arriving at the total land equivalent for each affected  
persons I have taken into account the following points:

1. The original area of land acquired from the parcel(s) of each  
of the affected persons.
2. The Land Acquisition Act, Cap, 295 provides for a statutory  
addition of 15% of the value of land and improvements of  
the area acquired from each parcel to arrive at the total  
compensation.
3. The land equivalent of the value of improvements has been  
arrived at by dividing the value of the improvements for  
each affected person by the value per Ha. of land that was  
used at arriving at the value of the land.

Schedule 'B' contains the awards of compensation for affected persons  
who rejected the awards of compensation by the Commissioner of  
Lands and intended to appeal to the High Court against the awards.  
It is my considered view that the equivalent of land for  
persons affected but who declined the awards as shown in the  
schedule be set aside. The final settlement of compensation  
will depend on the decision(s) of the Land Acquisition  
compensation Tribunal and the High Court.

**BKW MUSE**  
B.K.W. MUSE  
DISTRICT LAND OFFICER.

c.c.  
The Commissioner of Lands, *BKWH*  
P.O. Box 30089, NAIROBI.  
The Principal,  
Tambach Teachers College,  
Private Bag, ITEN.  
The Permanent Secretary,  
Ministry of Education,  
P.O. Box 22841, NAIROBI.

*Mr. C...*  
*(Signature)*





---

MINISTRY OF LANDS AND PHYSICAL PLANNING

---

RESPONSE TO PETITIONS REFERRED TO THE MINISTRY BY THE  
DEPARTMENTAL COMMITTEE ON LANDS.

PETITION NO: 1

Petition by George Theuri, MP on behalf of residents of Mowlem Ward regarding  
the alleged irregular allocation land LR No 11379/3

- a) The chronological/history of the ownership of the said land.
- b) The real owners of the said land
- c) Provide a copy of the original title deed
- d) If the Ministry is aware of the dispute in the said land
- e) Any other information relevant to solving to petition

Hon Chair and members of the committee,

- a) The chronological history of the ownership of the said land

LR.No.11379/3 measures about 818 acres situated in the city of Nairobi.

The parcel first belonged to Khan Nawaz Klau and Khan Abbas Khan an Asian of Indian origin. The Khan family met and engaged with five (5) gentlemen namely: Kibiro Karanja; Reuben Kangara; Keingati Watharo; Njuguna Kimani and Peter Gacheru Kingara who were representatives of a group of 225 persons that were interested in purchasing the land. The five, upon receiving the purchase price, formed a company known as Kiambu Dandora Farmers Company Limited and decided to transfer the land into the name of the company.



Disputes ensued between the five and the rest of the 225 interested parties when they failed to transfer the land to the beneficiaries/members. The members then formed a company known as Dandora Housing Scheme Limited to institute a suit against the five individuals.

Dandora Housing Scheme Limited Filed High Court Suit No. 1348 of 1972 (Robert Macharia, C.P Waithaka, Raymond Mwangi, Mutegi Karega, William Muthaura, Nelson Muchai, Njenga Chege and Dandora Housing Scheme Limited Versus Kabito Karanja, Reuben Kangara, Keingati Waiharo, Njuguna Kimani and Peter G Kangura).

HCCC NO 1348 of 1972

The matter was referred to arbitration by the court under the then Provincial Commissioner of Nairobi. The award of the PC was registered and adopted. The Ruling by the Hon Justice Sachdeva dated 8th September 1983 conferred the land to the contributors (225) persons plus the five agents (if they had interest). (See *Annex 1* court order by Justice Sachdeva and the Arbitral Award).

b) The real Owners of the said Land

Hon chair,

As stated above, the court ruling by Hon Justice Sachdeva dated September 8, 1983, conferred the land to 225 contributors plus the five agents if they are interested. These are therefore, the legal owners of the land.

We have attached a list of the beneficiaries as approved by the court (*See Annex 2*) list of recipients).

c) Provide a Copy of the Original title deed

Hon Chair,

A copy of the title deed is attached. The original title is not with the Ministry but with one of the disputing parties which is Kiambu Dandora Farmers Company Limited. Please note that the title was registered before the case. (*See Annex 3 copy of the title of LR 11379/3*)

d) If the Ministry is aware of the Dispute.

Hon Chair,

The Ministry is fully aware of the complaint by the Mowlem Ward Residents. Mowlem Ward Residents brought a claim over this land. The Ministry's Public Complaints and Resolution committee (PCRC) convened on the March 10, 2016 purposely to interview Mowlem Ward residents and Dandora Housing Scheme Limited who laid claim over this land LR 11379/3 (IR 23514).

The committee ruled as follows:

- (1) That Dandora Housing Scheme Limited are the rightful owners of the parcel of land;
- (2) That the Secretary for Lands should institute urgent and necessary measures to issue the group with new titles;
- (3) The committee was of the opinion that some officers in the Ministry's Central Registry were playing games to delay the issuance of the title deed;
- (4) That Mowlem Ward Community should negotiate with Dandora Group on willing buyer, willing seller basis, if they wanted to stay on the parcel of land. (*See Annexure 4 ruling by the Public Complaints Committee*)

The Ministry has subsequently made the following observations and recommendations:

- (i) The land should be allocated to the 230 persons as per the court order in HCCC No 1348 of 1972.
- (ii) That most of the property (over 90%) has been either sold out or allocated to numerous persons, the City Council and Government institutions to the disadvantage of the original owners.
- (iii) That Dandora Housing Scheme title was collected by CP Waithaka who later fraudulently transferred it to his private company, Falcon Kenya Limited.

The Ministry recommends that criminal investigations be opened against C.P Waithaka. We also recommend due process be followed to lead to the revocation of the registration of the land in the name of Falcon Kenya Limited.

We propose the following as the way forward: -

- a) The formation of a joint task force involving the Ministry and the National Land Commission (NLC) to investigate and conclusively deal with the Dandora Housing scheme. *In view NLC Act. on historical injustices*
- b) The Ministry, NLC and the Ministry of Interior and National Coordination to profile the list of beneficiaries of the 225 plus the five agents (if interested) or their representatives or families since most of them are now deceased.
- c) The Ministry to find out how much of this land is left as the same has been sold out over the years.
- d) Necessary action to be taken against persons who have engaged in any fraudulent dealings through the Director of Criminal Investigation.

## PETITION NO.2

Petition by Hon. Joseph Manje, MP on behalf of residents Kajiado County regarding alleged discrepancy in compensation offered to land owners by the National Land Commission due to a Land Value Survey undertaken by the Ministry of Lands and Physical Planning along the Standard Gauge Railway Phase.

Hon chair,

I wish to respond as follows:

The Ministry of Lands and Physical planning received a request from the chairman National Land Commission vide letter Ref. NLC/V&T/Project dated March 13 2018 to provide comparable sales of land along the SGR corridor for compensation of the affected persons.

Valuers from the Ministry carried out value survey of land parcels along/ adjoining SGR corridor to gather valuation data for the intended purpose. This exercise was carried out in the months of February and March 2018. The outcome was a land value guide after analysis of property values spanning between Nairobi National Park to Naivasha covering Kajiado, Kiambu and Nakuru counties. In Kiambu County areas covered included Mikuyuni location in Kikuyu sub County and Ndiuni and Ndeiya locations in Limuru sub County.

The parcel gazetted for compulsory acquisition is indicated as Kiambu Western Grazing Land under communal ownership with Kiambu County as the Trustee. The individual owners/occupants of the land are yet to be identified. The entire stretch that is subject to acquisition is undeveloped with grazing land and shrubs on undulating slopes of land, with very few temporary structures.

We identified it as one sub-market and recommended a value guide of Kshs 700,000 per acre. After the valuation surveys, the Ministry vide letter Ref. Admin/121/TPY/Memo/Vol 2/32 of 28<sup>th</sup> March 2018, forwarded the land value guide to NLC.

### PETITION NO.3

Petition by Indigenous People of Vipingo Lands Community in Kilifi County regarding alleged irregular acquisition of land belonging to the indigenous people of Vipingo Lands Community in Kilifi County.

Hon. Chair,

I wish to respond as follows:

Rea Vipingo Estate is located in Kilifi County with a land area of 8,990Ha. Most parcels of the estates are registered at Mombasa Central Registry under the Registration of Titles Act (Cap 281 repealed). There are various Companies and Individuals that own different parcels under the Rea Vipingo plantations. Some parcels of land have missing land records as shown on the attached schedule (*see Annexure 5*).

Hon. Chair,

The petitioners' claim their forefathers were evicted from the land in the year 1913 by the colonial government. They further claim that after independence in 1963 the land was not restored back to their community but allocated to private individuals and companies who are in occupation to date.



Hon Chair,

This is a case of historical injustice as the petitioners were forcefully evicted from their land. However, this is not unique to this community given the history of colonial settlements and displacements of indigenous Kenyans. That said, the law has a framework to address these injustices. Article 67(2) (e) of the Constitution of Kenya mandates the National Land Commission to initiate investigation on its own initiative or on a complaint into historical land injustices and recommend appropriate redress.

Hon Chair,

Since the petition touches on issues the Ministry is ready to provide any information concerning this petition to NLC. Attached is a schedule of all parcels stated in Schedule 1 of the petition that describes:

- a) The land reference number
- b) The coastal registry number
- c) Area and
- d) The current registered owner (*See attached as Annexure 5*)

We have also attached current land searches for the parcels (*see attached 6*)

✓ PETITION NO.4

Petition by members of Mt. Kenya Forest Squatters and residents of Meru regarding excision of the Mt. Kenya Forest pursuant to Legal Notices No. 68/75 and 107/1977 measuring 384 hectares for settlement of squatters.

Hon. Chair,

I wish to respond as follows:-

LR NO. 13269 was first granted to J. H. Angaine and Sons Limited for a consideration of Kenya shillings fifteen million two hundred and ten thousand (Kshs. 15,210,000) being capital value paid on or before the execution. The parcel measures 384.1 Ha as delineated on Deed Plan Number 194969 with a term held on fee simple subject to special conditions 1-6 as described on the title. (see copy of search of LR 13269 and IR 66177). Annex 7

The title was issued on 6<sup>th</sup> June 1995 by the Commissioner of Lands by order of the President and was registered on 21<sup>st</sup> June 1995 at the Nairobi Central Registry as IR 66177/1 (Annex 8, see copy of search).

Hon Chair,

LR No. 122234 was granted to Home Grown (Kenya) Limited for a consideration of Shillings (18,324,000/=) being capital Value paid on or before the execution hereof the President of the Republic of Kenya on behalf of the Government.

The parcel measures 540.2 Ha. as delineated on Deed Plan 194968 with term held on fee simple subject to special conditions 1-6 as describes on the title. (see copy of search of IR 12234 and IR 66178). The title was issued on 6<sup>th</sup> June 1995 by the Commissioner of Lands by order of the President and was registered on 21<sup>st</sup> June 1995 at the Nairobi Central Registry as 66178.

On the same 21<sup>st</sup> June 1995 the same was transferred to J. H. Angaine and Sons Limited for a sum of Kshs. 2,500,000.

LR 13269 registered as IR 66177, LR 12234 registered as IR 66178, LR No. 13191 registered as IR 25667 and LR No. 13176 registered as IR 25956 were amalgamated to form LR No. 20737 and issued with a new IR of IR 66259 on 28<sup>th</sup> June 1995. (Annex 9, see copy of search of IR 66259)

LR No. 20737 (IR 66259)

This parcel measures 1745.3 Ha as delineated on Deed Plan No.196658. The land was held by J. H. Angaine and Son's Limited.

- On 28<sup>th</sup> June 1995, 11.70 Ha (LR No. 20737/1) was surrendered to Government (see Entry No.2)
- On the same day 466.7 Ha. (LR No. 20737/3) was transferred to Home grown (k) Limited for a term of free hold vide IR 66260. (see Entry 3)(see Annex 10)
- 240.3 Ha. (LR No. 20737/2) was transferred to J. M. Angaine and Sons Limited vide IR 66261 (see Annex 11)
- 825 Ha (LR No. 20737/5) was issued under sec 70 of RTA and belongs to J. M. Angaine. (see Annex 12)
- 201.5 Ha (LR No. 20737/4) was transferred to Elizabeth Kaliuntu Angaine for vide (IR 6666). (see Annex 13)

PETITION NO.5

COMPLAINT BY Ndeiya Land owners regarding inadequate compensation paid by the National Land Commission for acquisition of land for the construction of the Standard Gauge Railway

Hon chair,

I wish to respond as follows: -

The Ndeiya land parcel is indicated communal within Kiambu Western grazing area. Kiambu County Government is the registered trustee.

The parcel stretches across Mikuyuni location in Kikuyu sub-county, Ndiuini & Ndeiya location in Limuru sub-county. The entire area is undeveloped with grazing land and thickets.

The Ministry of Lands and Physical Planning value guide recommends a market value of Ksh. 700,000 per acre for this area.

Thank you.

Farida Karoney, OGW  
CABINET SECRETARY



## MINISTRY OF LAND AND PHYSICAL PLANNING

### BRIEF FOR THE NATIONAL ASSEMBLY, DEPARTMENTAL COMMITTEE ON LANDS REGARDING FIELD VISIT TO KILIFI.

Hon. Chair, I wish to respond as follows,

#### Introduction:

Rea Vipingo Estate is located in Kilifi County with a land area of 8,990 Ha. Most parcels of the estates are registered at Mombasa Central Registry under the Registration of Titles Act (Cap 281 repealed).

There are various Companies and Individuals that own different parcels under the Rea Vipingo plantations. Some parcels of land have missing land records as shown on the attached schedule (see Annexure 1A).

Hon. Chair, the petitioner's claim their forefathers were evicted from the land in the year 1913 by the colonial government. They further claim that after independence in 1963 the land was not restored back to their community but allocated to private individuals and companies who are in occupation up to today.



Hon Chair,

This is a Historical injustice matter as the petitioners were forcefully evicted from their land. The law has a framework to address these injustices as stated below.

Article 67(2) (e) of the Constitution of Kenya mandates the National Land Commission to initiate investigation on its own initiative or on a complaint into historical land injustices and recommend appropriate redress.

To give effect to this Constitutional requirement, section 15 of the National Land Commission Act as amended by Section 38 of the Land Laws amendment Act 2016, provides the legal framework for redressing Historical Land Injustices.

The commission has since prepared and published the historical land injustices regulations and published the same vide gazette notice No 154 of 6<sup>th</sup> October 2017. *(See attached as Annexure 1B).*

The National Land Commission after appearing before the delegated Legislation on 15<sup>th</sup> February, 2018 were directed to resubmit the regulations after 90 days in order to carry out public participation.

The National Land Commission has subsequently advertised on 27<sup>th</sup> February, 2018 to ~~sought~~ public and stakeholders views on the Regulations.

*seek*

Hon Chair,

This petition touches on issues of historical injustices that the law clearly mandates the NLC to investigate such matters. The Ministry is ready to provide any information concerning this petition with the aim of having this matter resolved. Attached is a schedule of all parcels stated in Schedule 1 of the petition that describes:

- a) The land reference number
- b) The coastal registry number
- c) Area and
- d) The current registered owner.

Farida Karoney, OGW  
CABINET SECRETARY.

3 APRIL, 2018

BRIEF FOR THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON LAND - VIPINGO SISAL ESTATE LAND

S/NO.	PLOT NO. (LR)	TITLE NO.	AREA	REGISTERED OWNER
1	422/IV/MN	CR. 29192	3.0640 HA	AWADH TAHIR FARAJ
2	384/IV/MN	No record		
3	102/IV/MN	No record		
4	92/IV/MN	No record		
5	7334/IV/MN	CR. 881	3220.0 ACRES	VIPINGO ESTATE LTD
6	289/IV/MN	CR.67694	2.023 HA.	VR0S PRODUCE LIMITED
7	290/IV/MN	CR.67501	2.023 HA.	VR0S PRODUCE LIMITED
8	291/IV/MN	CR.67564	2.023 HA.	VR0S PRODUCE LIMITED
9	292/IV/MN	CR.67574	2.023 HA.	VR0S PRODUCE LIMITED
10	116/IV/MN	CR. 8503	545 ACRES	VIPINGO DEVELOPMENT LIMITED
11	117/IV/MN	CR. 7314	232.843 HA	VIPINGO DEVELOPMENT LIMITED
12	118/IV/MN	CR.9823	42 ACRES	VIPINGO DEVELOPMENT LIMITED
13	119/IV/MN	CR. 7316	496.0 ACRES	VIPINGO DEVELOPMENT LIMITED
14	120/IV/MN	CR.7314	232.85 ACRES	VIPINGO DEVELOPMENT LIMITED
15	79/IV/MN	No record		
16	91/IV/MN	No record		
17	95/IV/MN	No record		
18	295/IV/MN	CR. 6731	430.85 HA.	VIPINGO DEVELOPMENT LIMITED
19	2025/IV/MN	No record		
20	2026/IV/MN	No record		
21	132/IV/MN	CR.79111	597 ACRES	VIPINGO DEVELOPMENT LIMITED
22	305/III/MN	CR. 79111		ABDALLA IDHA MBARAK, MOHAMED IDHA
23	334/IV/MN	CR.21105	47.494 ACRES	MBARAK, NURU IDHA MBARAK & OTHERS
24	338/IV/MN	No record		
25	667/IV/MN	CR.6189	86 ACRES	VIPINGO ESTATES LIMITED
26	121/IV/MN	No record		
27	137/IV/MN	No record		

28	11/IV/MN 5025/IV/MN	CR. 4158 CR. 8367	3.58 ACRES 7450 ACRES (less surrenders)	OMAR ABDALLA OMAR VIPINGO DEVELOPMENT LIMITED
30	79/IV/MN	No record		VIPINGO DEVELOPMENT LIMITED
31	3545/2/III/MN	CR. 7316	664.1 HA.	VIPINGO DEVELOPMENT LIMITED
32	Subdiv. 292/III/MN	CR. 7316	270 ACRES	VIPINGO DEVELOPMENT LIMITED
33	116/IV/MN	CR. 8503	545 ACRES	VIPINGO DEVELOPMENT LTD
34	Subdiv. 4393/III/MN	CR. 37127	2.134 HA.	KETAN N. DOSHI
35	5025/97	No record		
36	7334/5)			VIPINGO DEVELOPMENT LTD
37	7334/3)	CR. 34867	601.1 HA.	
38	7334/2)			
9	Subdiv. 121/IV/MN	No record		VIPINGO DEVELOPMENT LTD
40	Subdiv. 291/1/III/MN	CR. 7315	230.5 HA.	
41	Subdiv. 292/2/III/MN	No record		
42	664/IV/MN	No record		VIPINGO DEVELOPMENT LTD
43	117/1 & 120/1/IV/MN	CR. 7314	232.843 HA.	VIPINGO DEVELOPMENT LTD
44	3544/2/III/MN	CR. 35658	164.2 HA.	VIPINGO DEVELOPMENT LTD
45	8724/3	CR. 69116	126 HA.	VIPINGO DEVELOPMENT LTD
46	3544/1/III/MN	CR. 35680	71.53 HA.	VIPINGO DEVELOPMENT LTD
47	295/III/MN 95/III/MN	CR. 6731	1090 ACRES (less surrender)	VIPINGO DEVELOPMENT LTD





**NATIONAL LAND COMMISSION**

**RESPONSE TO PETITIONS AND STATEMENTS REFERRED TO THE  
DEPARTMENTAL COMMITTEE ON LANDS OF THE NATIONAL ASSEMBLY**

**REPORT BY:**

**GERSHOM OTACHI BW'OMANWA  
CHAIRMAN**

**15<sup>TH</sup> SEPTEMBER, 2020**

## TABLE OF CONTENTS

- i. Petition by Hon. Anthony Tom Oluoch, MP on behalf of residents of Hospital Ward in Mathare Constituency regarding imminent evictions of the residents by the National Police Service
- ii. Petition by Hon. Tandaza Kassim Sawa MP on behalf of residents of Golini Settlement Scheme on regularization of allocation on land in Golini settlement scheme
- iii. Petition by Hon. Richard Ken Kiti Chonga MP. On behalf of Indigenous People of Vipingo.
- iv. Petition by Residents of Keiyo North Nonstituency on Compulsory Acquisition of Land and Compensation for the Construction of Tambach Teachers Training College

### HON CHAIR,

We are in receipt of an invitation dated 29<sup>th</sup> June, 2020, to provide responses to petitions referred to the Departmental Committee on Lands. The responses are as contained in the report hereunder:

**(i) PETITION BY HON. ANTHONY TOM OLUOCH, MP ON BEHALF OF RESIDENTS OF HOSPITAL WARD IN MATHARE CONSTITUENCY REGARDING IMMINENT EVICTIONS OF THE RESIDENTS BY THE KENYA POLICE SERVICE**

The Petitioners pray that the National Assembly through the Departmental Committee on Lands:

1. Makes inquiries into the matters raised in this Petition relating to alleged ownership of the land in Hospital Ward in Mathare Constituency with a view to ensuring that the rights to land of residents are not subverted.
2. Intervenes through the relevant government ministries to halt any potential eviction from their land by the Kenya Police until the dispute is investigated by the relevant authorities and resolved.
3. Intervenes through the Ministry of Lands and Physical Planning and the National Land Commission to ensure that Mathare Constituency is

adjudicated and verified, residents issued with title deeds and appropriate sections of the land designated for public amenities safeguarded.

## **RESPONSE**

### **HON CHAIR**

The parcel of land which is subject to this petition is known as land reference No. 209/8600. It is situated in Mathare Constituency and measures 32.65 ha. The reference for this land is file No. 36040 which is in the Ministry of Lands and Physical Planning. We did not access it. From the information that the Commission got from the Kenya Police, there is an allocation to Kenya Police who were issued an allotment letter Ref: 36040/165 in November 2010. The Kenya police accepted the offer as indicated by receipt No. 4350218 of 19<sup>th</sup> February 2016.

The acceptance of the offer was followed by subsequent correspondence between the Land Secretary Ministry of Lands and the Director of Surveys that culminated on forwarding of Deed Plan Number 398470 for Land Reference No. 209/8600. There was also indication that there were earlier commitments which gave rise to Deed Plans 271348 to 271484 for LR Nos. 209/16806-42 (about 36 subplots).

We were not able to establish the current status on registration or documentation progress on LR 209/8600 since the time the Deed Plans were received from the Director of Surveys since the correspondence files were not available. The Ministry of Lands to provide the current status.

From the Google maps and site inspection, we established the following:

1. People living in the informal settlements have encroached and occupied 15.77 ha of the Police land (LR 209/8600).
2. National police Service have occupied about 12.90 ha
3. A portion measuring approximately 2.2 ha is open space and under cultivation.

4. The informal settlement is developed with semi-permanent structures mainly of iron sheets and mud covering about 90% and very few permanent houses covering about 10% of the area occupied.
5. The area occupied by the Police has permanent buildings which include police line and newly constructed sub-county office.

#### **ANSWER TO THE QUESTIONS**

1. The National Police Service has ownership documents for the land that they occupy in Mathare Constituency vide letter of allotment Ref: 36040/165 issued on 4<sup>th</sup> November 2010 for land reference number 209/8600 measuring 32.65 ha.
2. The Commission is not aware if the Police have issued eviction notice to the persons squatting on their land at Mathare.
3. The Commission is not aware if the Police have prevented the youth and children from accessing and using the only available playground.
4. The Commission is not in a position to adjudicate and issue titles for any land in Hospital Ward in Mathare Constituency as the same has been allocated and hence not available.

#### **(ii).PETITION BY HON TANDAZA KASSIM SAWA, MP ON BEHALF OF RESIDENTS OF GOLINI SETTLEMENT SCHEME ON REGULARIZATION OF ALLOCATION ON LAND IN GOLINI SETTLEMENT SCHEME**

The Petitioners pray for intervention of the House through the Departmental Committee on Lands, to compel the concerned department to consider issuing them allotment letters in respect of the re-survey map of the year 2007 and restrain the beneficiaries of the allotment in the first survey from selling their respective plots before full issuance of allotment letters as per the re-survey of the year 2017 is concluded.

#### **RESPONSE**

**HON.CHAIR,**



Golini settlement scheme was established in 1994 on L.R 5003 as settlement scheme NO.469 with an area of 377.02 ha. 395 plots were realized, the scheme was registered and titles deeds issued.

Complains from locals alleging marginalization during plot allocation necessitated formation of a Task force committee by the District Plot Allocation Committee in 2003, which produced the Golini Task Force Report.

The scheme was abolished through a ministerial directive on 2<sup>nd</sup> March 2007, and a re- survey done as per ground occupancy, realizing 268 plots as was recommended by the task force.

Conflicting legal status arose after the second re- survey as the first survey and allocation was not nullified and the same had already been registered.

It is on the strength of this resurvey that the Kwale County Land Management Board sought to hear any unresolved/pertinent issues and give recommendations on how to amend and or operationalize the task force proposals with a view of resolving the dispute in the second survey and make recommendations that were to resolve the Golini impasse.

In January 2017, the National Land Commission made recommendations under Article 67(2)(e) on historical land injustices as follows:

- The first survey map used to allocate the land be abolished because it led to erroneous allocation
- The letters of offer that followed were hence null and void
- The second survey map that was done with the consent and involvement of Golini people be upheld and used as a basis of allocation of the subject land
- Fresh letters of offer be issued in conformity with this map subject to resolving boundary and inheritance matters therein.
- A proper PDP be prepared to reflect the existing land use and public utilities
- New titles reflecting the actual scenario on the ground be issued and registered thereafter.

This decision was communicated to the Cabinet Secretary, Ministry of Lands and Physical planning and the Governor Kwale County for implementation in a letter reference NO.NLC/CHAIRMAN/VOL.XIX/49 of 25<sup>th</sup> January, 2017as per the attached report).

**(iii).PETITION BY HON.RICHARD KEN KITI CHONGA MP. ON BEHALF OF INDIGENOUS PEOPLE OF VIPINGO**

(a)The Petitioner prays that the national Assembly inquiries into the circumstances that led to irregular dispossession of Vipingo Community land from its indigenous owners by private entities, with a view to reverting ownership of the said land to the indigenous people of Vipingo in Kilifi County.

(b) Makes any other recommendations it deems appropriate in the circumstances of the petition.

**RESPONSE**

**HON CHAIR,**

(a)Vipingo Sisal Farm is along the 10 mile coastal strip. It was allocated under the Land Titles Ordinance in 1913 with 999 years leasehold and is owned by people who are citizens of Kenya. It was allocated specifically for sisal farming.

However over the years we have had several development applications affecting the farm that has led to several sub divisions some of which have converted to 99 years leases and transferred to several farms such as;

- Vipingo Development Limited
- Vipingo Energy Limited
- Vipingo Golf and Club House
- Vipingo Ridge Limited
- Mombasa Cement
- Sunsale Trading Limited

It is also noted that ownership has been changing hands to other companies which are incorporated with stakes such as REA Vipingo Plantation Incorporated in 1995 for sisal farming with shares floated in Nairobi Stock Exchange in 1996, Centum Investment Company acquired large acreage of the same land as well as REA Trading Limited. This makes it difficult to track down the real ownership of the land

Residents have for years been going to court against the sisal plantation owners .However they lost in case ELC. No.343 of 2016.



The Community filed a historical Land Injustice claim no.NLC/HLI/495/2018 against Vipingo Sisal Estate Limited. Both parties were notified to attend the Historical Land Injustices proceedings sitting at Kilifi on 30<sup>th</sup>.August 2018.The Community attended the hearing sitting and were represented by Mr. James Kalenga Mganga, but Vipingo Sisal Limited did not attend .The community was allowed to state their claim which they said they wanted restitution and compensation for loss of their land which they claimed was taken away from them by colonial masters with a promise of resettlement and compensation. However Vipingo Sisal Estate had embarked on selling the same to other parties and therefore it was seen wise that the land should revert to the original owners which are the community.

However, the Commission did not conclude the hearing concerning this particular claim because the respondent who is Vipingo Sisal Estate did not appear for the proceedings. The Historical Land Injustices committee of the commission promised to schedule another sitting at a later date .Unfortunately their term came to an end. This matter is among the 43 claims that were not concluded and the current commission has made arrangements to finalize them after the current protocols by the Ministry of Health on Covid-19 have been relaxed to allow for public gathering.. It is also important to note that the ELC Case no.343 of 2016 could have an impact on the outcome of this claim.

**(iv)PETITION BY RESIDENTS OF KEIYO NORTH CONSTITUENCY ON COMPULSORY ACQUISITION OF LAND AND COMPENSATION FOR THE CONSTRUCTION OF TAMBACH TEACHERS TRAINING COLLEGE.**

The Petitioners claim that their land was acquired by Government in 1985 for construction of a teacher training college in Keiyo after which they duly vacated the parcels to allow for the construction of Tambach Teachers College and awaited compensation by means of allocation of alternative land. The aforementioned compensation was afforded to other persons who were not original land owners and the legitimate beneficiaries have not received any form of compensation to date

The petitioners pray that the National Assembly through the Departmental Committee on Lands investigates the matters raised in this petition with a view to ensuring that their property rights are upheld by being paid, fair and timely compensation for their land.

**RESPONSE****HON CHAIR,**

The acquisition was undertaken simultaneously with that for Kaptarakwa Rural health centre and are both in the land acquisition file No. 834

Acquisition of land for the subject project was done through gazette notice number 4260 and 4261 being notices of intention to acquire land and inquiry respectively both dated October 1985.

It is evident from the file that the process was undertaken by the office of the Commissioner of Lands (CoL) (now defunct).

The processes of inspection, awarding and requisition of compensation funds were successfully undertaken.

A total of 58 Project affected Persons (PAPs) had been identified.

There seems to have been a delay in release of funds initially assessed with back and forth correspondences on the same between the CoL and the Ministry of Education.

A head of state pronouncement seems to have directed a land for land compensation other than cash compensation.

The affected were to be allocated alternative land at Sergoit grounds, an arrangement that they seem to have been agreeable to in anticipation that each would get about 5 acres.

The alternative land was surveyed and subdivided into about 160 parcels of various sizes for allocation.

The PAPs were allocated alternative land as evidenced by a sample of the letter of allotment by the District Commissioners office for Mr. Francis Cheplait of id no. 0243711/63

The PAPs were not satisfied with the various lands allocated to them and they complained of strangers being allocated "free land". The Commission wrote to the office of County Commissioner – Elgeyo Marakwet vide letter ref.



VAL.834/53 dated 20<sup>th</sup> October 2019 to furnish the Commission with the full list of persons allocated land at SERGOIT grounds and the respective acreage.

A response from the County Commissioner was received vide letter ref. CON.LND.CC.16/3/1/VOL.1/61 dated 4<sup>th</sup> December 2019. Attached is a report by a working group chaired by the assistant County Commissioner.

**MAIN FINDINGS:**

Land owners were compensated with alternative land at Sergoit holding grounds.

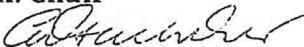
The land available at Sergoit grounds was made available to compensate other land owners whose land was acquired for other projects.

The total acreage was 300 acres against a presidential pronouncement that it was 600 Acres.

The land was enough for everyone.

It is therefore the Commission's confirmation that the land owners were compensated with alternative land.

Thank you Hon. Chair

  
GERSHOM OTACHI BW'OMANWA  
CHAIRMAN



## NATIONAL LAND COMMISSION

● CHAIRMAN

DEPARTMENTAL COMMITTEE ON LAND

● NATIONAL ASSEMBLY

●  
●  
**Question 2**

● Petition by the Indigenous people of Vipingo Lands Community in Kilifi County regarding alleged irregular acquisition of land belonging to indigenous people of Vipingo Lands Community in Kilifi

**Response**

● The petitioners attached a list of land reference numbers categorized as

1. Parcels of land that were originally owned by Vipingo Sisal Estates,

● 2. Parcels that are out of Subdivision

● 3. Land Parcels that are about to be transferred to Vipingo Development Limited, approved to be transferred to Vipingo Development Limited or to be leased to Vipingo Energy Limited.

● a) The petitioners aver that the leases of the listed plots elapsed and were renewed secretly.

From available records provided to the Commission by the Ministry of Lands, the status of the parcels is as provided in the table below.

S/NO	PLOT NO. (LR)	TITLE NO.	AREA	REGISTERED OWNER	TERM
1.	422/IV/MN	CR. 29192	3.0640 Ha	Awadh Tahir Faraj	
2.	384/IV/MN	No record			
3.	102/IV/MN	No record			
4.	92/IV/MN	No record			
5.	7334/IV/MN	CR. 881	3220.0 acres	Vipingo Estate	
6.	289/IV/MN	CR. 67694	2.023 Ha	Vros Produce Limited	
7.	290/IV/MN	CR. 67501	2.023 Ha	Vros Produce Limited	
8.	291/IV/MN	CR. 67564	2.023 Ha	Vros Produce Limited	
9.	292/IV/MN	CR. 67574	2.023 Ha	Vros Produce Limited	
10.	116/IV/MN	CR. 8503	545 acres	Vipingo Development Limited	999 yrs
11.	117/IV/MN	CR. 7314	232.843 Ha	Vipingo Development Limited	
12.	118/IV/MN	CR. 9823	42 acres	Vipingo Development Limited	
13.	119/IV/MN	CR. 7316	496.0 acres	Vipingo Development Limited	
14.	120/IV/MN	CR. 7314	232.85 acres	Vipingo Development Limited	
15.	79/IV/MN	No record			
16.	91/IV/MN	No record			
17.	95/IV/MN				
18.	295/IV/MN	CR. 6731	430.85 Ha	Vipingo Development Limited	
19.	2025/IV/MN	No record			
20.	2026/IV/MN	No record			
21.	132/IV/MN 305/III/MN	CR. 7911 CR. 7911	597 acres	Vipingo Development Limited	
22.	334/IV/MN	CR. 21105	47.49 Ha	Abdalla Idha Mbarak,	

				Mohamed Idha Mbarak, Nuru Idha Mbarak and others	
23.	338/IV/MN	No record			
24.	667/IV/MN	No record			
25.	121/IV/MN	CR 6189	86 Acres	Vipingo Estates Limited	
26.	11/IV/MN	CR. 4158	3.58 acres	Omar Abdalla Omar	
27.	5025/IV/MN	CR. 8367	7450 Acres (less surrenders)	Vipingo Development Limited	999 yrs
28.	79/IV/MN	No record			
29.	3545/2/III/M N	CR. 7316	664.1 Ha	Vipingo Development Limited	
30.	Subdiv. 292/III/MN	CR. 7316	270 acres	Vipingo Development Limited	
31.	116/IV/MN	CR. 8503	545 acres	Vipingo Development Limited	
32.	4393/III/MN	CR. 38223		Vipingo Estates Ltd	999 yrs
33.	4391/111/MN	CR 38221		Mombasa Cement	999YRS
34.	5025/97	No record			
35.	7334/5, 3, 2	CR. 8818	601.1 Ha	Rea Vipingo Plantations	999 Yrs
36.	Sub-div. 121/IV/MN	No record			
37.	Sub-div. 291/1/III/MN	CR. 7315	230.5 HA	Vipingo Development Limited	
38.	Sub-div. 292/1/III/MN	No record			
39.	664/IV/MN	No record			
40.	117/I & 120//I/IV/MN	CR. 7314	232.843 Ha	Vipingo Development Limited	
41.	3544/2/III/M	CR. 35658	164.2 ha	Vipingo Development	



	N			Limited	
42.	8724/3	CR. 69116	126Ha	Vipingo Development Limited	
43.	3544/1/III/M N	CR. 35680	71.53 Ha	Vipingo Development Limited	999 yrs
44.	295/III/MN 95/III/MN	CR 6731	1090 acres (less surrender)	Vipingo Development Limited	
45.	3545/111/1/ MN	Cr 35678		Vipingo development Ltd	999 yrs
46.	3545/111/3/ MN	Cr 35679		Vipingo development Ltd	999 yrs
47.	3545/111/2/ MN	Cr 35659		Vipingo development Ltd	999 yrs
48.	LR 88724	CR 9899		Rea Vipingo Plantation	999 YRS
49.	MN/11/3544	CR 30670		Rea Vipingo Plantation	999 YRS
50.	MN/111/4392	CR 38222		Rea Vipingo Plantations	999 Yrs

The information available on the term of lease for most of the properties is 999 years which means the term has not expired and there could never have been a case of extension of lease as alleged by the petitioners.

b) The petitioners have requested for investigations on historical land injustices carried out on them in the way the land was taken away from them with a view to having it restored back to them as indigenous people of Vipingo. This request is to the Commission and we wish to state that the admissibility of their case was based on there not being any ongoing court case in regards to the mentioned pieces of lands. However, case No. 343 of 2016 filed in Malindi Environment and Land Court has been ongoing and was concluded on 28<sup>th</sup> June, 2018. They lost the case (copy attached).

The Commission wishes to affirm to the Committee that should there not be an appeal to case No. 343 of 2016 or there being no other new application to court by the petitioners, the request to undertake a historical land injustice investigation will be undertaken immediately.

We also wish to inform the Committee that the thoroughness involved during historical land injustices investigations will enable the Commission fill in the current information gaps occasioned by lack of records and files under the custody of the Ministry of Lands and Physical Planning.

### **Supplementary Information**

Parcels of land forwarded for investigations and which the indigenous Community of Vipingo claims; currently are privately owned and registered at Mombasa Land Registry. It is on the basis of the private ownership that transactions like the ones mentioned in the petition on subdivisions and intent to transfer to Vipingo Development Limited are being undertaken.

The land use for most of the original parcels issued to Vipingo Sisal Estates is agricultural. This answers why the petitioners have provided Land Control Board numbers as proof to transactions about to take place or that have taken place. However, there those that have had change of use on subdivision leading to lease holding of 99 years for residential estates development i.e Vipingo Ridge Estate.

The transactions shall be further scrutinized during the enquiry under historical land injustices. However, there is no record of compulsory acquisition of any of the land that formed the ownership of Vipingo Sisal Estates.

It is also indicated from available records that, Vipingo Sisal Estates owners have in conjunction with the Government and the local authorities addressed the issue of landlessness by way of surrendering land for squatters. The areas surrendered include:-

1. Boyani with 209 plots. This was done in the year 2000.

2. Vipingo trading centre – titles were issued though there are claims that titles do not reflect plots developed for some beneficiaries. This can be corrected by the Ministry.
3. Bureni Settlement scheme - Titles issued.
4. Gongoni Settlement Scheme - Titles issued.
5. Kapecha Settlement Scheme - Titles issued in 2017.
6. Kadzimani Settlement Scheme - Titles issued in 2017.

## **CONCLUSION**

Vipingo Lands Community has a historical land injustice claim which if admissible, the Commission will initiate investigations and inquiries on and direct on the way forward.

*M&U&M*

**Prof. Muhammad A. Swazuri, PhD, OGW**  
**Chairman, National Land Commission and**  
**Associate Professor of Land Economics**



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**LAND CASE NO 343 OF 2016**

MASHA BIRYA.....1<sup>ST</sup> PLAINTIFF/RESPONDENT  
DANSON MWAGAMBO MWADZOYA.....2<sup>ND</sup> PLAINTIFF/RESPONDENT  
MBURA EDWARD.....3<sup>RD</sup> PLAINTIFF/RESPONDENT  
LEONARD MUBMO.....4<sup>TH</sup> PLAINTIFF/RESPONDENT  
JOHNSTONE MADZENI MBIGO.....5<sup>TH</sup> PLAINTIFF/RESPONDENT  
ALICE ANTHONY CHIKO & OTHERS.....6<sup>TH</sup> PLAINTIFF/RESPONDENT

**VERSUS**

VIPINGO ESTATE LIMITED.....1<sup>ST</sup> DEFENDANT/APPLICANT  
REA VIPINGO PLANTATION LIMITED.....2<sup>ND</sup> DEFENDANT/APPLICANT  
VIPINGO PROPERTIES.....3<sup>RD</sup> DEFENDANT/APPLICANT  
CENTUM INVESTMENT  
COMPANY LIMITED.....4<sup>TH</sup> DEFENDANT/APPLICANT  
THE NATINAL LAND COMMISSION.....5<sup>TH</sup> DEFENDANT/APPLICANT  
COUNTY GOVERNMENT OF KILIFI.....6<sup>TH</sup> DEFENDANT/APPLICANT  
MINISRY OF LANDS.....7<sup>TH</sup> DEFENDANT/APPLICANT  
THE ATTORNEY GENERAL.....8<sup>TH</sup> DEFENDANT/APPLICANT  
MINISRY OF ROADS.....9<sup>TH</sup> DEFENDANT/APPLICANT  
VIPINGO RIDGE LIMITED.....10<sup>TH</sup> DEFENDANT/APPLICANT



Masha Birya & 5 others v Vipingo Estate Limited & 17 others [2018] eKLR

Dated, signed and delivered at Malindi this 28<sup>th</sup> day of June, 2018.

J.O. OLOLA

JUDGE



While the design, structure and metadata of the Case Search database are licensed by Kenya Law under a Creative Commons Attribution-ShareAlike 4.0 International, the texts of the judicial opinions contained in it are in the public domain and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)

8. In support of the Prayers for Judgment to be issued against the Defendants as stated at paragraph 1 hereinabove, the Plaintiffs have filed a 54 paragraph Plaint in which they make all manner of allegations but with very little nexus if any, to the Defendants sued herein. After describing the Defendants in the first 19 paragraphs of the Plaint, they proceed as follows at paragraphs 20 to 23 of the Plaint:-

*“20. The all their material lives, the Plaintiff lived within Vipingo area whereby they used their local, long term names such as Jeuri, Mashogoni and Somanga villages due to the introduction of several visitors such as Chuba Moses Mohamed, Arab Settlers and Germany Settler who might happened to be the first person to register the Kuruwito Sisal Estate Company back in or at around 1910 who came and introduced himself and his intention for the sisal plantations he informed our elders that he had been on that farming for more than 10 years since he was moving out where he had his plantation at Nyali areas situated within Mombasa County.*

*21. As from that era we have received several challenges in which we even received some other visitors but they happened to be slaves from other parts of Africa such as the Makonde and the other tribes within the country are the Luhya and Luo who really faced a hard time working on the suit premises and at that moment the Africans whom were turned to be Muslims were treated differently from the others.*

*22. Since of high resistance from our communities the mentioned visitors became friends with or Chief offices where they get protected as serious investors and so that become the foundation over the construction of Kijipwa Police Station in order to protect their properties just as such as it happened in Kisauni their Kisauni Police Station which was situated at the currently around the junction which enters Kanisa Maitha road opposite Kisauni Member of Parliament office was moved to Nyali Police Station for the purposes of protecting the investors interest in Nyali area and as from that end many of us relaxed to be taken to Mtangani (former Malindi Law Court) after so many processes and their aims were to protect the 1<sup>st</sup> Defendant and his properties before he sold them to his friends.*

*23. The first person who took our community land were the investors during the colonial era since the colonial government never wanted the prosperity of the other citizens and so the Chiefs Offices were too strong to make sure that each and everything they plan on behalf of their master has accord to their plans and interest, and then the second grabber came during the independence and transition period where by the Black in power tried to ensure that they have robbed the investors land(any land belonged to an Indian or Asian) for themselves we had the former Cabinet Minister, friends to the government leaders, some were transformed to be their political battlefield and birthday presents to their friends and relatives without considering the indigenous people whom were diverted their names or identification as squatters.”*

9. I note that the above generalized and obviously unintelligible statements characterize the rest of the Plaint. In *D.T Dobie & Company (Kenya) Ltd –vs- Joseph Mbawa Muchina (1980) eKLR* the Court of Appeal observed that:-

*“.....The Court should aim at sustaining rather than terminating a suit. A suit should only be struck out if it is so weak that it is beyond redemption and incurable by amendment. As long as a suit can be injected with life by amendment, it should not be struck out.”*

10. On 11<sup>th</sup> May 2017, this Court granted the Plaintiffs leave to amend the Plaint and as it were inject it with life. The result was the Amended Plaint filed herein on 14<sup>th</sup> September 2017. I have looked at this suit as amended from all possible angles. Unfortunately even with the amendments, it remains completely ambiguous, vague and unintelligible. It is impossible to see the nexus between the Defendants and the orders sought. Neither is it easy to discern any relationship between the property claimed, and the Defendants property. As the Honourable Justice GV Odunga put it in *Peter Mulwa Wanjiku –vs Michael Owuor (2012)eKLR*

*“Courts when faced with an application for striking out pleadings, deal with pleadings as they are on record and not as they might appear when particulars are furnished. A party who fails to furnish, sufficient particulars in his pleadings runs the risk of having the same struck out as not constituting a serious pleading. Such situation is worsened when the same party does not particularise the allegations even when confronted with a threat to have his pleading struck out.*

11. In the circumstances of this case, I am compelled to strike it out as the same does not make sense even after amendments. The two applications dated 11<sup>th</sup> March 2017 and 11<sup>th</sup> May 2017 are accordingly allowed with costs.



3. By a similar application dated 11<sup>th</sup> May 2017, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants similarly asked that the Suit be struck out for being ambiguous and unintelligible and for being prolix, contradictory and confusing. The 3<sup>rd</sup> Defendant has also filed a Replying Affidavit sworn on 8<sup>th</sup> May 2017 in support of the Application dated 11<sup>th</sup> March 2017.

4. It was contended by the Applicants that the two applications remained relevant as the Amended Plaintiff had not addressed the matters of concern raised in the two applications. On 14<sup>th</sup> November 2017, the Plaintiff on the orders of this Court filed Grounds of Opposition to the two Applications in similar fashion stating as follows:-

*1. That the applications (are) mischievous, untenable and not brought in good faith as (they) seek to defeat the entire justice system.*

*2. That the Applications (are) vexatious and only calculated at prejudicing, embarrassing delaying and/or otherwise denying a fair trial as provided under Article 50 of the Constitution of Kenya. The Plaintiffs/Respondents are entitled to an efficacious and comprehensive determination of the claim.*

*3. That the Applications (are) a sham, lack merit and are unsuitable in the obtaining circumstances as Court records show that this Court itself granted leave to the Plaintiffs/Respondents to amend their pleadings, (only) for the Defendants to take the Court hostage and basically cripple the justice system.*

*4. That the suit raises issues for determination clearly evincing the fact that the suit herein raises issues worthy of consideration and the same cannot be washed away as being frivolous or vexatious or indeed (being) an abuse of the Court Process.*

*5. That the applications (are) a waste of judicial time as the Defendants intend to drug the matter further. Justice delayed is justice denied and if the Court is to entertain the application(s), it will amount to disregard of the rule of law as the application(s) only seeks to entrench the illegality and which is not within the purview of this Honourable Court.*

*6. That the applications (are) a mockery as (they) aim to occasion a travesty of justice.*

5. I have considered the two applications on the one hand and the Grounds of Opposition filed in response thereto. I have equally considered the submissions and the authorities placed before me by the Learned Counsels for the Parties herein.

6. Order 15 Rule 1 of the Civil Procedure Rules provides:-

*"At any stage of the proceedings a Court may order to be struck out or amended any pleading on the ground that-*

*a) It discloses no reasonable cause of action; or*

*b) It is scandalous, frivolous, or vexatious; or*

*c) It may prejudice, embarrass or delay the fair trial of the action; or*

*d) It is otherwise an abuse of the process of Court, and may order the suit to be stayed or dismissed or Judgment to be entered accordingly, as the case may be.*

7. What was frivolous and vexatious was defined by Ringera J in the case of *Trust Bank Limited –vs Amin Company Ltd & Another(2000) KLR 164* as follows:-

*"A pleading or an action is frivolous when it is without substance or groundless or fanciful and is vexatious when it lacks bona fides and is hopeless or offensive and tends to cause the opposite party unnecessary anxiety, trouble or expense. A pleading which tends to embarrass or delay fair trial is a pleading which is ambiguous or unintelligible or which states immaterial matters and raises irrelevant issues which may involve expenses which will prejudice fair trial of the action."*

Masha Biryia & 5 others v Vipingo Estate Limited & 17 others [2018] eKLR

SUNSAIL TRADING LIMITED.....11<sup>TH</sup> DEFENDANT/APPLICANT

MOMBASA CEMETRY FACTORY.....12<sup>TH</sup> DEFENDANT/APPLICANT

HUSSEIN DAIRY.....13<sup>TH</sup> DEFENDANT/APPLICANT

KENYA RURAL

ROADS AUTHORITY.....14<sup>TH</sup> DEFENDANT/APPLICANT

NATIONAL ENVIRONMENTAL

MANAGEMENT AUTHORITY.....15<sup>TH</sup> DEFENDANT/APPLICANT

MJUMA COMMUNITY

DEVELOPMENT GROUP.....16<sup>TH</sup> DEFENDANT/APPLICANT

BAMBANI KILIO COMMUNITY

BASED ORGANISATION.....17<sup>TH</sup> DEFENDANT/APPLICANT

VIPINGO DEVELOPMENT LIMITED.....18<sup>TH</sup> DEFENDANT/APPLICANT

#### RULING

1. By an Amended Complaint dated 14<sup>th</sup> September 2017, the 551 Plaintiffs pray for Judgment against the 18 Defendants jointly and severally as follows:-

*1. A mandatory order compelling the Defendants to ensure compliance with all land rules, procedures and regulations and ensure proper settlement plans for settlement of the natives.*

*2. An order directed towards the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup> and 18<sup>th</sup> Defendants to present their titles for investigation and if any irregularity be noticeable, the title be nullified, revoked and or cancelled outright.*

*3. An order directed towards the Defendants, compelling them to install mechanisms and or exercise protective measures while conducting their day to day operations to such an extent as to ensure that their operations do not cause damage, pollution, contamination and or effect the health standards and conditions of the natives, their crops and livestock from the excessive gas produced emanating from chemicals.*

*4. A prohibitory order directed towards the Defendants, prohibiting them from carrying out activities that interfere with public amenities such as schools, hospitals, children playgrounds, mosques, churches, access roads, dams, rivers and natural resources for utilization and the interest of the natives within the Settlement Scheme.*

*5. Costs of this suit.*

*6. Any other or further relief as this Honourable Court may deem just.*

2. Upon being served with the Suit Papers earlier on, the 10<sup>th</sup> and 11<sup>th</sup> Defendants had filed a Notice of Motion Application dated 11<sup>th</sup> March 2017 seeking orders that the Complaint filed herein be struck out against them for being unintelligible, incomprehensible, scandalous, frivolous and vexatious.



**MUKITE MUSANGI & COMPANY  
ADVOCATES**

ANDREW M. MUSANGI LLB (HONS) HULL  
WEKESA G. NASIMTYU LLB (HONS) UON, ACIArb  
SITUMA COLLINS SAMI LLB (HONS) MOI  
OPONDO HENRY OPIYO LLB (HONS) UON  
GETENGA HARRIET MORAA LLB (HONS) KU  
BETT WINNY JEPKOECH LLB (HONS) MOI  
LANG'AT KIPNG'ENO CHARLES LLB (HONS) MOI

2<sup>nd</sup> Floor, Seguton Building  
Kenyatta Avenue, Nakuru  
P.O. Box 149-20100, Nakuru  
Tel: (051) 2211880, 2215024, 2215193  
Mobile: 0722 385998 Fax (051) 2212505  
E-mail: [mmcnakuru@mmclaw.org](mailto:mmcnakuru@mmclaw.org)

3<sup>rd</sup> Floor, Cavendish Block, 14 Riverside  
Riverside Drive, Nairobi  
Tel: (020) 2675544, 4441314, 4441316, 4440984  
Mobile: 0774 208062, 0722 207809  
Fax: (020) 4441243

524  
Dants  
29/8/18

Our Ref: C57/013/NRB

Your Ref:

Date: 22<sup>nd</sup> August 2018

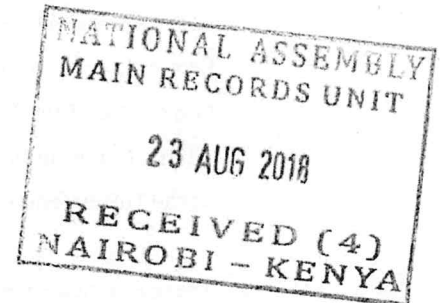
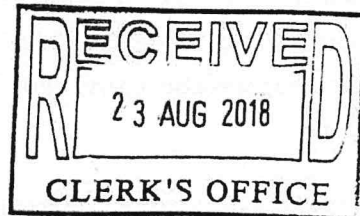
The Clerk of the National Assembly

Parliament of Kenya

Parliament Building

P.O. Box 41842 - 00100

**NAIROBI**



2. Malindi  
Lemani  
Brought to  
attention of  
committee  
27/8/18

Dear Sir,

RE: **PETITION NO. 1 OF 2017 BEFORE THE KENYA NATIONAL ASSEMBLY**

**STATEMENT OF RESPONSE BY VIPINGO ESTATE LIMITED, VIPINGO DEVELOPMENT LIMITED & CENTUM INVESTMENT COMPANY LIMITED TO THE PETITION REGARDING THE IRREGULAR ACQUISITION OF LAND BELONGING TO THE INDIGENOUS PEOPLE OF VIPINGO LANDS COMMUNITY IN KILIFI COUNTY**

We make reference to the above Petition and the letter dated 9<sup>th</sup> August 2018 from the Clerk of the National Assembly. We hereby table the Response by Vipingo Estate Limited, Vipingo Development Limited and Centum Investment Company Limited (hereinafter referred to as "Our Clients"):

1. The Petitioners acting under different names and using different vehicles filed two suits in the Environment and Land Division of the High Court in Malindi as identified hereunder:
  - i. Malindi ELC No. 114 of 2016 Mjuma Community Development Group vs Vipingo Estate Limited, Centum Investments Limited and Others - *the Plaintiff in this suit withdrew their suit by filing a Notice of Withdrawal in June 2016;*
  - ii. Malindi ELC No. 343 of 2016 Marsha Biryra & Others vs Vipingo Estate Limited, Centum Investment Company Limited, Vipingo Development Limited & Others - *this suit was dismissed summarily by the High Court on 28<sup>th</sup> June 2018. The Judge, in his Ruling,*

*stated that the suit was primarily made up of unintelligible claims which did not disclose any legally recognisable claims either on the lands or as against the Defendants.*

2. The Petitioners before you have therefore previously veiled themselves under different doaks and now, using a different name, have filed this Petition touching ostensibly on the same parcels of land as the two High Court matters identified above.
3. David Chome Munga, identified as the Group Secretary of the Mjuma Community Development Group in their pleadings in Malindi ELC No. 114 of 2016 is also identified as a Secretary of the Committee of the Vipingo Community Group in Petition 01 of 2017. It is important to note that the Mjuma Community Development Group was also a party to the suit in Malindi ELC No. 343 of 2016 as the 16<sup>th</sup> Defendant in the said suit.
4. There is a clear overlap between the land owned by our Clients, the land identified by the Plaintiffs in Malindi ELC No. 343 of 2016, the land the Petitioners have identified in Schedule I of the Petition and the land the Petitioners allege is owned by Rea Vipingo but in the process of being transferred to Vipingo Development Limited. The overlap is demonstrated hereunder:

	<b>Land Owned by Vipingo Estate Ltd and Vipingo Development Ltd</b>	<b>Land Listed in Petition No. 1</b>	<b>The Suit Properties Listed in Malindi ELC No. 343 of 2016</b>
1.	L.R. NO. 7334/4	L.R. NO. 7334/4	L.R. NO. 7334/4
2.	L.R. MN/IV/5025/97	L.R. MN/IV/5025	C.R.34866 NO. 5025/98/III
3.	L.R. MN/III/291/1	L.R. MN III/291/1 & L.R. MN IV/291/1	
4.	L.R. MN/III/295 (MN/IV/664 formerly subdivision 95/2)	L.R. MN/III/295	L.R. MN/III/295
5.	L.R. MN/IV/118 (Subdivision No. 159)	L.R. MN/IV/118	L.R. MN/IV/118
6.	L.R. MN/IV/116	L.R. MN/IV/116	L.R. MN/IV/116
7.	L.R. MN/III/3545/1	L.R. MN/III/3545/1	L.R. MN/III/3545/1
8.	L.R. MN/IV/7334/2, 7334/3, 7334/5	L.R. MN/IV/7334/2, 7334/3, 7334/5	L.R. MN/IV/7334/2, 7334/3, 7334/5
9.	L.R. MN/III/291/2	L.R. MN/III/292/2 L.R. MN/IV/292	L.R. MN III/291/2

10.	L.R. MN/IV/119/2	L.R. MN/IV/119	
11.	L.R. MN/III/121	Subdivision 121/IV/MN	
12.	L.R. MN/III/4393	Subdivision 4393/III/MN	
13.	L.R. MN/IV/117/1, 120/1	L.R. 120/IV, L.R. MN/IV/117 and subdivision 117/1 & 120/1	
14.	L.R. MN/III/3544/1	Subdivision 3544/2/III/MN	
15.	L.R. MN/3545/03	Subdivision 3545/2 SEC III MN	
16.	L.R. MN/III/8724/3	L.R. MN/III/8724/3	
17.	L.R. MN/III/132	L.R. MN/IV/132	

5. Lastly, some of the parties identified in Petition 01 of 2017 are also parties to Malindi ELC No. 343 of 2016. The Plaintiffs in Malindi ELC No. 343 of 2016 are as listed hereunder:

- i. Masha Biryia
- ii. Danson Mwangambo Mwadzoya
- iii. Mbura Edward
- iv. Leonard Mumbo
- v. Johnstone Madzeni Mbigo
- vi. Alice Anthony Chiko & Others

The Defendants in Malindi ELC No. 343 of 2016 are as follows

- i. Vipingo Estate Limited
- ii. Rea Vipingo Plantation Limited
- iii. Vipingo Properties
- iv. Centum Investment Company Limited
- v. The National Land Commission
- vi. County Government Of Kilifi
- vii. Ministry Of Lands
- viii. The Attorney General
- ix. Ministry Of Roads
- x. Vipingo Ridge Limited
- xi. Sunsail Trading Limited
- xii. Mombasa Cemetery Factory

- xiii. Hussein Dairy
- xiv. Kenya Rural Roads Authority
- xv. National Environmental Management Authority
- xvi. Mjuma Community Development Group
- xvii. Bambani Kilio Community Based Organisation
- xviii. Vipingo Development Limited

6. Both the Plaintiffs in Malindi ELC No. 343 of 2016 and the Petitioners in Petition 01 of 2017 base their claim on interference by the colonialists, failure by successive regimes to reallocate the land after independence, marginalisation and other alleged historical injustices over the years. It is therefore abundantly clear that the substratum of the two matters is largely related to the same issues.
7. The High Court in Malindi ELC No. 343 of 2016 dismissed the matter on 28th June 2018. The Judge, in his Ruling, stated that the suit was primarily made up of "*unintelligible claims which did not disclose any legally recognisable claims either on the lands or as against the Defendants*". Our position is that the decision of the Court is final and the matter stands duly determined, this Petition therefore is *res judicata*.
8. We further aver that the Petition filed herein is inept, unintelligible, ambiguous, devoid of merit and does not disclose any valid or viable cause of action against our Clients and the same ought to be dismissed summarily in its entirety.
9. Our Clients aver that any land purchased or owned by themselves or through subsidiaries have proper lawful and valid Titles, which fully disclose any existing easements where any are applicable. For purposes of clarity, it is important to note that Centum Investment Company Limited has not acquired any property in the areas alluded to in the Petition in its own right and name and no legal cause of action lies against it.
10. Our Clients are not aware whether or not the Petitioners have lived within the Vipingo area for all their material lives but deny that such residence if true, has any nexus to our Clients or land associated with them and put the Petitioners are put to strict proof of these allegations.
11. Our Clients are complete strangers to all allegations of injustices by the colonial government, forced evictions by the colonial government in 1913 as alleged or at any other times material to this Petition. Our Clients, in any event, deny any participation in the aforementioned acts including forced evictions by the colonial government, denial of human dignity and other injustices as alleged. The Petitioners are invited to strict proof of these allegations.



12. Our Clients are strangers to the allegations that upon expiry of the Leases of the land referred to in the Petition the government subdivided the land and sold it to other parties as opposed to settling the Petitioners. Our Clients deny any participation in the betrayal, intimidation, discrimination and theft of land as alleged by the Petitioners and aver that they are not in control of the current, previous or successive governments and therefore cannot be held liable for their actions. Lastly, our Clients deny any collusion with the current or even previous governments with a view to denying the Petitioners any land and reiterate that they are not in control over the actions of the government. The Petitioners are put to strict proof of these allegations.
13. Our Clients further aver that the Petitioners have shown neither nexus nor legal claim to the parcels of land associated with our Clients. In addition, the allegations by the Petitioners are in relation to a general area and the Petitioners have shown no nexus between the parcels of land above and the land associated with our Clients. Our Clients further deny the alleged community dynamics of the said area as alleged in the Petition and aver that the pleadings are unsubstantiated fiction and of no legal materiality.
14. Our Clients therefore have no knowledge of the unsubstantiated allegations dating back to pre-independence of Kenya, and aver that any property the companies may own in or around the Vipingo area has been lawfully acquired.
15. Our Clients are complete strangers to the allegations that the Petitioners have lodged complaints and written letters to the Head of State and to the National Land Commission and that the same have been ignored due to hatred and exploitation by the Head of State and the government at large. In any event the National Land Commission has no locus in a matter relating to private land.
16. Our Clients are complete strangers to the averment that the three arms of government would collude against the Petitioners and reiterate that they are not in control over the actions of the government therefore their actions or inaction cannot be attributed to them.
17. Our Clients reiterate that they do not in any way wield control over the Head of State or the government and therefore cannot and do not control or in any way coordinate the Government's agenda and their actions or inaction cannot be attributed to them.
18. Our Clients have integrated in the community and have brought about a powerful and positive change in the area by giving scholarships to over students in the Kilifi County region on merit. In addition, Centum Investment Company Limited has also undertaken the refurbishment and equipping of a number of local schools in Kilifi County as part of its corporate social responsibility. Our Clients intend to continue engaging with the community and employing members of the community in the vicinity of the land they own for purposes of development.

19. The Petitioners, other than making wild and unsubstantiated allegations, have provided no evidence of ownership of the land duly owned by our Clients. In addition, the Petitioners have not established any nexus between the actions of colonialists, previous governments and the current government and our Clients.

20. The Petitioners have also not established any nexus between the land they claim was illegally divested from them and our Clients' land. There is no allegation raised that our Clients' fraudulently obtained the land from the Petitioners and no allegation of impropriety or fraudulent acquisition of land has been raised against our Clients. All land purchased or owned by our Clients themselves or through subsidiaries have proper lawful and valid Titles and no evidence to the contrary has been provided.

21. The Petitioners therefore have demonstrated no cause of action that could possibly warrant asking the National Assembly to so act in vain and grant the orders sought. Both the National Assembly Committee and the National Lands Commission do not have the power to revoke our Clients' Titles and that whereas they have power to investigate historical injustices, our Clients were neither a part of nor complicit in the same. Our Clients pray that the Petition as against our Clients' land be dismissed in its entirety.

Yours faithfully,

**MUKITE MUSANGI & COMPANY ADVOCATES**

*AM*

for **ANDREW MUKITE MUSANGI**

Cc: County Commissioner  
Kilifi County