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PARLIAMENT OF KENYA




THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF A PETITION BY FORMER WORKERS OF THE LATE MAYER JACOB SAMUELS REGARDING INVASION AND EVICTION OF THE WORKERS FROM THEIR LAND IN ROYSAMBU CONSTITUENCY BY THE KENYA DEFENCE FORCES

DIRECTORATE OF COMMITTEE SERVICES  
CLERK'S CHAMBERS  
PARLIAMENT BUILDINGS  
NAIROBI

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 05 DEC 2019	DAY: THURSDAY
TABLED BY: <i>Sen. R. Nyamari</i>	CHAIRPERSON: <i>Chairperson</i>
CLERK-AT-THE-TABLE:	DECEMBER 2019

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## **CHAIRPERSON'S FOREWORD**

The Petition by former workers of the late Mayer Jacob Samuels regarding invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces was conveyed to the House by the Honourable Speaker on behalf of petitioners on 27<sup>th</sup> June 2019.

In considering the petition, the committee held meetings with the petitioners on Tuesday, 6<sup>th</sup> August 2019, the Ag. Chief Executive Officer, National Land Commission, on 8<sup>th</sup> August 2019 the Chief Administrative Secretary Ministry of Lands and Physical Planning on 15<sup>th</sup> October, 2019, 26<sup>th</sup> and 28<sup>th</sup> November, 2019, the Principal Secretary, Ministry of Defence on 5<sup>th</sup> November 2019, the Chief Executive Officer Uchumi Supermarket Ltd on 21<sup>st</sup> and 26<sup>th</sup> November, 2019, the Director Legal Services, Kenya Commercial Bank and the Director, Jewel Complex Ltd on 21<sup>st</sup> November 2019

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 Petitioner, the Ag. Chief Executive Officer, National Land Commission, the Chief Administrative Secretary Ministry of Lands and Physical Planning, the Principal Secretary, Ministry of Defence, the Chief Executive Officer Uchumi Supermarket Ltd, the Director Legal Service, Kenya Commercial Bank and the Director Jewel Complex Ltd for the submissions they made to the Committee.

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 by former workers of the late Mayer Jacob Samuels regarding invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces

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

## EXECUTIVE SUMMARY

The purpose of this report is to respond to prayers made in a Petition by former workers of the late Mayer Jacob Samuels regarding invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces. The Petitioners prayers are that the National Assembly through the Departmental Committee on Lands does;

- i. Ensures the upholding of the petitioners' right to occupy, reside and do business and own LR. No. 5875/2
- ii. Expedites the issuance of subtitles/leases for the approved letters of allotment issued to the members of Roysa Community Development Society;
- iii. Preserve the title deeds and issues for public purposes whose allotments are held by the society;
- iv. Investigates the eviction and invasion by the Kenya Defence Forces from LR. No. 5875/2 and any claim of ownership by the same or any other interested party; and
- v. Order compensation for the demolition of the petitioners 'premises and any other relief that may be available

The Committee observed that the owner of the land in question LR. No. 5875/2 located in Roysambu, measuring 17.16 acres under a lease of 99-years which commenced from 1<sup>st</sup> November 1904 and expired on 1<sup>st</sup> November, 2003 is Mr. M. J Samuels.

The Committee noted that whereas there exists evidence that the government intended to acquire LR. No. 5875/2 belonging to Mr. M. J Samuels as evidenced by gazette notices No. 51515 and 51552 of 1985, the acquisition process was not completed as the out of court negotiations between the government and Mr. Meshumor Jacob Samuel on amount of compensation to be made were never concluded. (Annex 1).

There was contradictory information in the Ministry of Defence concerning the intended acquisition of L. R No. 5875/2. Indeed, in a letter dated 26<sup>th</sup> January 1987, the Permanent Secretary, Department of Defence informed the Commissioner of Lands that the military had carried out an inspection of the land and found it unsuitable for the intended purpose unless four additional parcels of land surrounding the plot was acquired to enhance security as the plot was located in a residential area. However, on 10<sup>th</sup> April 1987 Major General Munyao wrote to the Commissioner of Lands vide a letter Ref. DOD/CGS/49/LND asking the Commissioner to disregard the content of the letter by the Permanent Secretary until the military made further contact on the issue. Based on the submissions of the National Land Commission, the military did not make the said contact to date.

Although, the Ministry of Defence submitted that the land was valued at Kshs. 3,530,500 and the sum was duly paid by the Ministry to the Commissioner of Lands, the Committee noted that the High Court under Land Acquisition Appeal No. 2 of 1986 had enhanced the award to Kshs. 23,000,000 and the same has not been paid to date to Mr. Meshumor Jacob Samuel. The Committee noted that the provisions of section 8 of the Land Acquisition Act Cap. 295 (now repealed), required that where land is compulsorily acquired, full

compensation was to be paid promptly. This was never done. (Annex 2)

Additionally, despite, the fact that the Ministry of Defence submitted a receipt showing that Kshs. 3,530,500 was paid to the Commissioner of Lands, there was no evidence submitted to indicate that the money was deposited to Middle East Bank and released to Mr. Jacobs.

Further, while the Ministry of Defence submitted that the land in question was formally handed over to the Ministry on 25<sup>th</sup> June, 1986, the Committee noted with concern that the Kenya Defence Forces only occupied the said land thirty-three years later, this being in 2019 and the land remains undeveloped to date. This was further confirmed by a letter dated 14<sup>th</sup> June, 2004 by the then Permanent Secretary, Ministry of Lands and Settlement to Mr. John Githongo the then Permanent Secretary in the office of the President indicating that the Kenya Defence Forces had already taken possession of the property and moved in but had thought the cost was too much and consequently moved out of the property.

Based on the submissions of the Nairobi County Government, the squatters living on the parcel of land in question were about 400 to 500 persons, there was an informal primary school and nurse school for the squatters' children, the land was occupied by 43 rows each with 10 permanent and semi-permanent houses, there were few commercial buildings, garages and workshops, there were two structures used as churches and there were numerous kiosks and churches. This was corroborated by the minutes of 25<sup>th</sup> June, 1986 submitted by the Ministry of Defence which indicated that there were two hundred and fifteen persons living there, there were forty-three blocks still existing and two jua kali garages.

The Committee also observed that there were three files that had been opened in respect of LR No. 5875/ 2 these being-

- (1) The original file regarding the land in question No. 21946/2, LR. No. 5875 with an acreage of 17 acres indicating that the land belonged to Mr. Mayer Jacob Samuels.
- (2) A second file with file no. 202033 & LR No. 5875/2 with an acreage of 6.864 Ha. which contained an allotment letter that was issued on 26<sup>th</sup> June, 1999 to Solio Constructions Limited and contained other documents.
- (3) A third file no. 215826, LR No. 23393 for land owned by Grace Independent Baptist Mission Trustees, a file which was used by officials in the Ministry to register an amalgamation with land parcel No. 5875/2.

The Ministry of Lands and Physical Planning submitted and confirmed that the second file and third file had been opened fraudulently as evidenced by-

- (1) The purported transfer of lease to Solio Construction Limited was done when there was already a subsisting lease of 99 years which was to expire in 2003 and the transfer was effected in 2001, two years before the expiry of the lease.
- (2) The Chief Land Registrar, Ms. Sarah Mwenda denied signing the transfer form transferring the parcel of land LR. 5875/2 from Solio Construction

Company Ltd to Kasarani Mall Ltd in 2001, although a stamp bearing her unique number (14) was used in the said form.

- (3) The third file no. 215826, LR No. 23393 allegedly seeking to amalgamate land parcel No. 5875/2 with LR. No. 23393 was being done yet the lease for LR. No. 23393 had also expired.
- (4) The certificate of Incorporation of Solio Construction Company was dated 18th August 1999 while the letter of allotment was issued on 26th June, 1999 revealing that the allotment was done two months before the Company was incorporated.
- (5) A letter dated 14<sup>th</sup> June, 2004 by the then Permanent Secretary, Ministry of Lands and Settlement to Mr. John Githongo the then Permanent Secretary in the office of the President instructing the Anti-Corruption Commission to investigate and take action against the fraudulent allocation of L.R No. 5875/2 to Solio Construction Company; and
- (6) The subsequent attempt to amalgamate the two pieces of land was being done albeit the existence of a caveat on the land dating back to 2004.

However, the parcel of land L.R No. 23393 was not the subject matter of the Petition and was only relevant to the extent that the third file was opened for purposes of fraudulently amalgamating L.R No. 5875/2 with L.R No. 23393.

There was no evidence submitted to the Committee to indicate that the Kenya Defence Forces having allegedly acquired the land in 1986, gazetted L.R No. 5875/2 as a protected area.

Based on the submissions of the National Land Commission, a current search at the Land Registry indicated that no record on the land was available save for that the last registered owner of L. R No. 5875/2 was Mr. M.J. Samuels.

There was no surrender or cancellation of the original certificate of lease held by Mr. Mayer Jacob Samuels on L.R No. 5875/2.

In accordance with the property rates payment request submitted by the Nairobi County Government, the property rates were still due to be paid by Mr. M. J. Samuels signifying that the records of the county still identify Mr. M. J. Samuels as the owner of the land.

The National Land Commission confirmed that the lease for LR. No. 5875/2 expired on 1<sup>st</sup> November, 2003 and reverted back to the Nairobi County Government by virtue of Article 62 of the Constitution.

The Nairobi County Government in its submissions confirmed that survey of LR. No. 5875/2 had been undertaken and completed and a subdivision scheme approved identifying each sub-plot including plots designated for public utilities.

The Nairobi County Government had already issued allotment letters to the Members of Roysa Community Development Society regularizing individual ownership upon payment of Kshs. 69, 500 of which some of the members had already paid.

There was collusion between officials of the Ministry of Lands and Physical Planning as evidenced by the second and third files in order to effect fraudulent transactions on L. R No. 5875/2 leading to loss of public funds.

Although, the Ministry of Lands and Physical Planning submitted that it was aware that the titles for L. R No. 5875/2 and L.R 23393 had been presented to it for amalgamation, the Ministry did not submit the two titles to the Committee.

The Committee noted with concern that although the Ministry of Lands and Physical Planning submitted that the second and third file were fraudulent, it was still receiving transactions payments from members of Roysa Community Development Society for titling of L.R 5875/2 to individual members.

The Ministry of Lands and Physical Planning never informed the Committee that it was aware there was any sub-division scheme that was ongoing, yet the documents submitted to the Committee indicate that the Ministry was involved in the sub-division process.

In response to the Petitioners' prayers and based on the observations, the Committee recommends that the Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County Government does complete the titling process for L. R No. 5875/2 within 180 days of tabling of this Report.

The Committee also recommends that the Director for Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to L. R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling of this Report.

Finally, the Committee recommends that the Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R 5875/2.

## **1.0 PREFACE**

### **1.1 Mandate of the Committee**

2. 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, assess and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
  - (v) investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister.
  - (vi) study and review all legislation referred to it.

### **1.2 Committee subjects**

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

### **1.3 Oversight**

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



## 1.4 Committee Membership

5. The Committee membership comprises: -

Hon. Dr. Rachael Nyamai, MP – **Chairperson**

**MP for Kitui South Constituency**

**Jubilee Party**

Hon. Khatib Mwashetani, MP – **V/Chairperson**

**MP for Lunga Lunga Constituency**

**Jubilee Party**

Hon. Jayne Wanjiru Kihara, MP

Member for Naivasha  
Constituency

**Jubilee Party**

Hon Joshua Kutuny Serem, MP

Member for Cherangany  
Constituency

**Jubilee Party**

Hon. Kimani Ngunjiri, MP

Member for Bahati Constituency

**Jubilee Party**

Hon. Mishi Mboko, MP

Member for Likoni Constituency

**Orange Democratic Movement  
(ODM)**

Hon. Omar Mwinyi, MP

Member for Changanwe  
Constituency

**Orange Democratic Movement  
(ODM)**

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. Catherine Waruguru, MP  
Woman Member for Laikipia  
County

**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. Jane Wanjuki Njiru, MP  
Woman Member for Embu  
County

**Jubilee Party**

Hon. Josphat Gichunge  
Kabeabea, MP

Member for Tigania East  
Constituency

**Party of National Unity (PNU)**

Hon. Owen Yaa Baya, MP

Member for Kilifi North  
Constituency

**Orange Democratic Movement  
(ODM)**

Hon. Samuel Kinuthia Gachobe,  
MP

Member for Subukia  
Constituency

**Jubilee Party**

Hon. Simon Nganga Kingara,  
MP

Member for Ruiru Constituency

**Jubilee Party**

Hon. Teddy Mwambire, MP  
Member for Ganze Constituency

**Orange Democratic Movement  
(ODM)**

## 1.5 Committee Secretariat

6. The Committee secretariat comprises: -

**Lead Clerk**  
Mr. Leonard Machira  
**Clerk Assistant I**

Mr. Ahmad Guliye  
**Clerk Assistant III**

Mr. Adan Abdi  
**Fiscal Analyst III**

Mr. Joseph Tiyan  
**Researcher III**

Ms. Winnie Kizia  
**Media Relations Officer III**

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

Mr. Nimrod Ochieng  
**Audio Officer**

Ms. Jemimah Waigwa  
**Legal Counsel**

## 2.0 INTRODUCTION

7. The Petition by the former workers of the late Mayer Jacob Samuels regarding invasion and eviction of the workers from their land in Roysambu Constituency by the Kenya Defence Forces was conveyed to the House by the Honourable Speaker on behalf of petitioners on 27<sup>th</sup> June 2019.
8. The Petitioners wished to draw the attention of the House to the following, that:
  - i. They are former workers of the late Mayer Jacob Samuels who were employed in various cadres in his sisal processing farm and workshop industry on L.R. No. 8575/2, before he passed away in 1974. They lived on the premises since then;
  - ii. The deceased 's sons revived the business later and the petitioners continued working for them. The employers defaulted on paying salaries and instead requested the employees to continue living on the land when they were abroad;
  - iii. The petitioners registered Roysa Community Development Society to safeguard the land from grabbers;
  - iv. They used the society to request the Nairobi City County Government to allocate the land to them.
  - v. A subdivision scheme was approved by the County Government of Nairobi and the National Land Commission and the petitioners were issued with letters of allotment;
  - vi. A platoon of the Kenya Defence Forces (KDF) evicted them from the land and demolished their homes, business premise and old structures in April 2019 on grounds that the land belonged to KDF. They have since been blocked from accessing the premises and
  - vii. There is no matter pending in court on relation to the petition.
9. Therefore, the petitioners pray that the National Assembly through the Departmental Committee on Lands;
  - i. Ensures the upholding of the petitioners' right to occupy, reside and do business and own LR. No. 5875/2
  - ii. Expedites the issuance of subtitles/leases for the approved letters of allotment issued to the members of Roysa Community Development Society;
  - iii. Preserve the title deeds and issues for public purposes whose allotments are held by the society
  - iv. Investigates the eviction and invasion by the Kenya Defence Forces from LR. No. 5875/2 and any claim of ownership by the same or any other interested party; and

- v. Order compensation for the demolition of the petitioners 'premises and any other relief that may be available

### **3.0 SUBMISSIONS**

#### **3.1 Submissions by the petitioners**

10. The Committee held a meeting with the petitioners on Tuesday, 6<sup>th</sup> August 2019. During the meeting the petitioners informed the Committee as follows:
11. The petitioners stated that they used to work for the late Mayer Jacob Samuels, who owned the land in question land in Roysambu constituency. He left the country and passed on in 1974.
12. Thereafter the late Mayer Jacob Samuels' two sons came to manage the land and operate the business. They alleged that the brothers were deported from the country after they declined an offer on the compulsory acquisition of the land made by the Kenya Defence Forces (KDF). The owners had made an offer of Ksh. 26 million for the land, while the military offered Ksh 3 million.
13. The petitioners also stated that although the KDF intended to acquire the said land, senior military officers advised that the land was not suitable for use by the military as it was located in the middle of a densely settled area and it would require the acquisition of adjacent land to create enough land to secure a military facility.
14. There was also no evidence to indicate that the military paid any compensation to the owner.
15. In 2003 the government declined to renew the lease for the land and the two sons had also left the country leaving the workers with no income. The workers then decided to start businesses in the area that included a garage and parking yard for lorries in order to make ends meet.
16. In 2004 a group of invaders attempted to enter the land and erect old containers on it. However, the invaders were repulsed. Following the attempted grabbing of the land the petitioners were advised to register a company and use it to acquire the land.
17. On 6<sup>th</sup> May 2004 the petitioners registered a company known as Roysa Community Development Society; registration No. No. 446760 and used it to request the County Government of Nairobi to allocate them the land.
18. On 17<sup>th</sup> February 2015 the County Government of Nairobi wrote to the National Land Commission indicating that the County Government had allocated the land to the

society. The Commission in a rejoinder dated 10<sup>th</sup> March 2016 informed the County Government of Nairobi that since the lease to the land had expired and was not renewed, the land had reverted to the County Government and therefore it was in order for the County Government to allocate it to Roysa Community Development Society. The petitioners tabled the said correspondence to the Committee.

19. The petitioners accepted the offer and paid the required fees for the issuance allotment letters through their trustees. They also paid the required fees to amend the index map and for valuation of the parcel of land to facilitate subdivision and issues of a certificate of subdivision.
20. However, in April 2019 a group of people in military uniform and in green lorries invaded the land and displaced the petitioners. The invaders also erected six tents on the land.

### **3.2 Submissions by the Ag. Chief Executive Officer, National Land Commission**

21. The Committee held a meeting with the Ag. Chief Executive Officer, National Land Commission on 8<sup>th</sup> August 2019. During the meeting the Ag. Chief Executive Officer informed the Committee that apart from the petitioners, the Kenya Defence Forces and Uchumi Supermarket Ltd also claimed to own the land that is the subject of the petition. She also stated that the County Government of Nairobi in conjunction with the National Land Commission had also issued letters of allotment to the petitioners.
22. Mr. Antipas Nyanjwa Deputy Director Investigations, National Land Commission informed the Committee that he was tasked by the Commission to investigate the matter and submitted a report that established the following:
23. **Chronology of land parcel LR No. 5875/2:** Lt. Col James Hays Sadler who was the Commissioner for East Africa Protectorate leased LR. No. 1012 comprising 4443 acres in 1904 to Henry Herbert Tarlton for a period on 99 years. The lease then subdivided the land into five plots each comprising 200 acres in 1920 and the said plots were further subdivided into 20-acre plots in 1927. LR 5875/2 comprising 17.16 acres was one of the plots created out of the further subdivision.
24. The plot was transferred to Mr. H.V. Briscoe on 19<sup>th</sup> February 1930, who transferred it to Mrs. K. M Forbes on 19<sup>th</sup> February 1930. Mrs. K. M Forbes also transferred it to Mr. F.K. Kelly on 1<sup>st</sup> MARCH, 1940, who transferred the plot to E.A. Residential Estate Limited. In 1964 a Mr. Smith was appointed as a liquidator of the company by the Kenya Government, but the company transferred the plot to Mr. Bau Salou Dean, Mr. Bau Saoul Dean also transferred it to Mr. Mayer Jacob Samuels, who died in 1974 but remained the registered owner ofc the land.

25. In 1976 a Mr. Rapahel Jacob Samuel a brother to the deceased owner and Mr. Meshumor Jacob Samuels the deceased's half-brother applied to the High Court in Nairobi for grant of letters of administration under Probate and Administration No. 103 of 1976.

In a letter to the Commissioner of Lands, dated 31<sup>st</sup> January 1986, Robson, Harris & Company Advocates, claimed that Mr. Meshumor Jacob Samuels obtained an order vesting the land in him as the sole registered owner.

26. **Purported acquisition of LR. 5875/2 by the Kenyan Military in 1985:** The Government through Gazette Notice No. 5151 dated 22<sup>nd</sup> November 1985 published an intention to compulsorily acquire the land to set up a Kenya Army School. But Mr. Meshumor Jacob Samuel through his advocate protested and an inquiry was held on the 5<sup>th</sup> and 18<sup>th</sup> of February 1986. During the inquiry Mr. Meshumor Jacob Samuel made an offer of Khs. 25 million for the land while the government valued it at Ksh. 3,535,000, which Mr. Meshumor Jacob Samuel rejected and went to court.

27. The court ruled that the government acquires the land at a fee of Ksh. 23 million. The government appealed but in 1997 the court stood over the case generally to allow for both parties to reach an out of court settlement, but no agreement was reached to date.

28. In a letter Ref. DOD/698/2/Wks dated 26<sup>th</sup> January 1987 the Permanent Secretary, Department of Defence informed the Commissioner of Lands that the military had carried out an inspection of the land and found it unsuitable for the intended purpose unless four additional parcels of land surrounding the plot was acquired to enhance security as the plot was located in a residential area.

29. On 10<sup>th</sup> April 1987 Major General Munyao wrote to the Commissioner of Lands vide a letter Ref. DOD/CGS/49/LND asking the Commissioner to disregard the content of the letter by the Permanent Secretary until the military made further contact on the issue.

30. However, the military did not make the said contact to date. The Ministry of Defence also indicated it could not pay the Ksh. 3,530,500 as per the government valuation of the land due to financial constraints. Therefore, there is no evidence that the government made any payment towards the compulsory acquisition of the land.

31. **Current status of the land:** The Committee was informed that a current search at the Land Registry indicated that no record on the land were available, However the investigation officers extracted the above-mentioned information from the valuation



file. A search at the County government of NAIROBI indicated that the land was last registered to Mr. M.J. Samuels.

32. On 4<sup>th</sup> November 1985 Mr. M J. Samuel, through Tysons Habenga Limited, requested for an extension of the lease for the land in question in a letter Ref. BOR/VAL/mm explaining the land had only eighteen years left on the 99 years lease. However, the Commissioner of Lands refused to extend the lease. Technically the land then reverted to the government and by extension to the County Government of Nairobi as provided for the Constitution.
33. **Other Claimants:** The Committee was informed that other parties had made several attempts to acquire the land fraudulently. The said parties include Solio Construction Limited that claimed to have been allocated the land by the government. However, the investigations by the commission revealed that the said grant was fraudulent as the company had two sets of title for the same property. the first was registered on 18<sup>th</sup> May 1992 with two different IR numbers, raising doubt on the authenticity of the title. The title was also charged to Barclays Bank of Kenya on 26<sup>th</sup> October 1993 even before the title was registered and stamp duty paid.
34. The second set of title held by Soli Constructions company Limited was registered on 24<sup>th</sup> January 2001 when the same title was already charged to Barclays Bank of Kenya.
35. There was no surrender of the original certificate of lease and the claim that this was a new grant of 99 years effective 1<sup>st</sup> July 2019 but this cannot be so because the old lease held Mr. Mayer Jacob Samuels was still valid and was to expire 2003. Further the Solio Construction Limited title was registered on 18<sup>th</sup> May 1992 before the lease commenced on 1<sup>st</sup> July 1999.
36. Solio Construction Limited then purported to have sold the land to Kasarani Mall Limited who transferred it to Uchumi Supermarkets. 9998 shares of Kasarani Mall are held by Uchumi Supermarket according to records obtained from the Registrar of Companies.
37. **Conclusion:** In a letter Ref. 21046/II/50 addressed to Robson Harris & Company Advocates dated 13<sup>th</sup> March 1986 the Commissioner of Lands declined to renew the lease held by Mr. Mayer Jacob Samuels. This meant that the land reverted to the government and by extension of the new Constitution to the County Government of Nairobi. The County Government of Nairobi vide a letter Ref. No. LS/007/001754/sgm/MK dated 9<sup>th</sup> 2018 requested the Permanent Secretary Ministry of Lands to

include Roysa Community Development Society in the titling of the land LR.5875/2.

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

38. The Committee held a meeting with the Chief Administrative Secretary Ministry of Lands and Physical Planning on 15<sup>th</sup> October, 2019. The Chief Administrative Secretary informed the Committee that;
39. **Background;** L.R No. 5875/2 measuring 17.16 acres arose from a subdivision of L.R. No. 1012 which measured approximately 4,443 acres. In 1964, it was transferred to Mayer Jacob Samuels from Bau Salau under a 99-year lease with effect from 1<sup>st</sup> November 1904. The lease expired on 1<sup>st</sup> November, 2003.
40. **Notice of intention to acquire the land:** The Commissioner of Lands received a request for the reservation and eventual acquisition from the Department of Defence vide a letter dated 8<sup>th</sup> August 1985. Subsequently the Government published a notice of intention to acquire the land vide Kenya Gazette Notice No. 5151 and 5152 of 22<sup>nd</sup> November 1985.
41. The notice reflected the size of the land as being 16,16 acres but this was corrected vide a corrigenda in the Kenya Gazette on March 14<sup>th</sup>, 1986 to read 17,16 acres.
42. A 'Notice of Taking Possession' by the government absolutely was lodged and registered in volume N. 10, Folio 494/30 File 6943 on June 25, 1986.
43. **Request for extension of lease:** The Chief Administrative Secretary submitted a copy of a letter Tysons Habenga Limited on behalf of Mr. M/J. Samuel dated 4<sup>th</sup> November 1985 seeking an extension of the lease of the land LR. No. 5875/2. The said letter indicated that the term of the lease was 99 year effective from 1<sup>st</sup> November 1904. The lease expired on 1<sup>st</sup> November 2003
44. On 1<sup>st</sup> December 1995 a request for allocation of the same land from Prilscot Company Limited was communicated but was declined as the land had prior commitments and was not available for allocation.
45. The Chief administrative Secretary informed the Committee that the National Land Commission and the County Government of Nairobi made an irregular attempt to

allocate the same land to Roysa Development Society. He stated that LR No. 5875/2 was compulsorily acquired by the Government and reserved for KDF and hence is not within the purview of the County Government or the National Land Commission. Therefore, it was not available for allocation or subdivision.

46. The Committee held a follow up meeting with the Chief Administrative Secretary, Ministry of Lands & Physical Planning, who was accompanied by Mr. Edward Kosgei, Director, Land Administration, on Tuesday, 26<sup>th</sup> November, 2019.
47. During the meeting the Chief Administrative Secretary retaliated that the land in question initially belonged to one Mr. Mayer Jacob Samuels with 99-years lease that expired in 2003.
48. The Chief Administrative Secretary emphasized that the Government acquired the said parcel of land in 1985 for military use, however the acquisition was not completed as the owner went to court challenging the value of the land.
49. The court enhanced the amount payable to the owner in lieu of the land to 23 million. The government appealed the ruling to allow for an out of court settlement. The Department of Defence took possession of the land on 25<sup>th</sup> June, 1986 after depositing Ksh 3 million in court.
50. In 2001, officials in the Ministry fraudulently opened a new file for the land in question and allocated the same to Solio Construction Company Limited through an allotment letter as a fresh allocation. The land was transferred to Kasarani Mall, a subsidiary of Uchumi Supermarkets Plc on 20<sup>th</sup> March, 2001 as LR No. 85371/2.
51. In 2018, the said officials in the Ministry sought to amalgamate the parcel of land LR No. 5875/2 with another parcel LR. No. 23393 registered in the name of Kasarani Mall using the latter file.
52. The amalgamation deed plan and the new lease had been prepared however, the new lease could not be registered as the titles were charged by banks.
53. Mr. Edward Kosgei, Director, Land Administration stated that the Ministry officers implicated in the fraudulent transactions on the second file were;
  - a. Mr. S.K W. Wangilla,( deceased) - who opened the fraudulent file
  - b. Ms. Sarah Mwenda – who signed the transfer between Solio Construction Company and Kasarani Mall in 2001
  - c. Mr. Fedson Orare – who signed the amalgamation registration form regarding parcel of land LR No. 5875/2 with another parcel LR. No. 23393

- d. Mr. Gordon Ochieng - who endorsed the amalgamation registration form regarding parcel of land LR No. 5875/2 with another parcel LR. No. 23393
  - e. An unidentified officer from the Survey of Kenya.
54. The Committee held a third meeting with the Chief Administrative Secretary, Ministry of Lands and Physical Planning on 28<sup>th</sup> November 2019. The Chief Administrative Secretary was accompanied by Ms. Sarah Mwenda, the Chief Land Registrar, and Mr. Fedson Orare, a Senior Land Registrar. They informed the Committee that;
55. The original file regarding the land in question No. 21946/2, LR. No. 5875 with an acreage of 17 acres indicated that the land belonged to Mr. Mayer Jacob Samuels. It contained a legal notice for compulsory acquisition by the Kenya Defence Forces.
56. They stated that the title deed for LR. No. 5875/2 was in a deed file stored in the Land Registry.
57. A second file with file no. 202033 & LR No. 5875/2, with an acreage of 6.864 Ha was fraudulently opened by Mr. S.K W. Wangilla, an officer in the Ministry, who is deceased. It contained an allotment letter that was issued on 26<sup>th</sup> June, 1999 to Solio Constructions Limited, which was signed by the deceased officer. The said file also contained the following documents:
- a) An acceptance of offer letter dated 22<sup>nd</sup> January,2001 and a cheque of 3,306,800 for the allotment letter and a receipt from the Ministry of the same amount dated, 23<sup>rd</sup> January 2001.
  - b) A certificate of incorporation dated 18<sup>th</sup> August 1999 and letter of allotment was issued on 26<sup>th</sup> June, 1999.
  - c) An indent from the Survey of Kenya dated 19<sup>th</sup> October, 2000 for the Deed Plan. .
  - d) A letter from the then Permanent Secretary for Lands – Eng. E. K Mwongera - dated 22<sup>nd</sup> July 2004 highlighting the fraudulent transactions on the land.
  - e) A letter dated 26<sup>th</sup> July 2004 by Ms. J.M Okungu, the then Commissioner of Lands confirming to the Permanent Secretary that the land was acquired for Military use and a compensation of 3,530, 500 was to be paid to the owner by the Department of Defence.
  - f) A letter dated 28<sup>th</sup> November 2005 by Uchumi Supermarkets Plc to the Commissioner of Lands making reference to a meeting and indicating that the company was aware that the land had been acquired by the government for military use and making reference of a land tribunal that would be formed determine the matter.

58. Ms. Sarah Mwenda denied signing the transfer form, which transferred the parcel of land LR. 5875/2 from Solio Construction Company Ltd to Kasarani Mall Ltd in 2001, although a stamp bearing her unique number (14) was used in the said form.
59. The officials also stated that a third file No. 215826, LR No. 23393 for land owned by Grace Independent Baptist Mission Trustees, was used by officials in the Ministry to register an amalgamation with land parcel No. 5875/2. Upon perusal of the third file the Committee noted that the lease for LR. No. 23393 had also expired.
60. Mr. Fedson Orare acknowledged that he signed a surrender of titles for LR.NO. 5875/2 and LR No. 23393 together with a new lease which were booked at the Ministry on 7<sup>th</sup> February 2019 by Kasarani Mall Company Ltd. He informed the Committee that one Mr. Ochieng prepared the documents and that he signed the amalgamation form based on the information provided by the said Mr. Ochieng.
61. Mr. Orare also claimed that the file containing the said amalgamation form did not contain a caveat, when he acted on it.
62. However, he stated that the said amalgamation was not completed, and the surrendered documents were in the custody of the chief Land Registrar. He added that the same were secured at the Land Registry at the Ministry of Lands and Physical Planning.

#### **3.4 Submissions by the Cabinet Secretary Ministry of Defence**

63. The Committee held a meeting with the Principal Secretary, Ministry of Defence on Tuesday, 5<sup>th</sup> November 2019. During the meeting the Principal Secretary informed the Committee that;
64. The Ministry of Defence lawfully owns the parcel of land that is the subject of the petition and the same was lawfully occupied by the Kenya Defence Forces.
65. The land in question LR. No. 5875/2 was compulsorily acquired by the Ministry of Defence through the Commissioner of Lands vide Gazette Notices No. 5151 and 5152 of 1985.
66. The land was valued at Kshs. 3,530,500 by the Commissioner of Lands which sum was duly paid by the Ministry to the Commissioner of Lands.
67. Mr. Samuels had commenced proceedings to challenge the government valuation of the land in the High Court under Land Acquisition Appeal No. 2 of 1986. In

accordance with section 13(2) of the Land Acquisition Act, the compensation money was deposited in the High Court by the Commissioner of Lands and a deposit receipt issued by the High Court Registrar. The money was subsequently deposited to Middle East Bank and released to Mr. Jacobs on 3<sup>rd</sup> October, 1987. This was confirmed by the Attorney-General in a letter dated 23<sup>rd</sup> April, 1997 and M/S Robson Harris and Company Advocates confirming that Kshs. 3,530,500 was received by them on behalf of their client. In accordance with section 19(1) of the Land Acquisition Act, the Commissioner of Lands issued a notice of taking possession on 25<sup>th</sup> June 1986. The notice also required Mr. Jacobs to deliver the title document to the Registrar of Titles for cancellation. The title for the land vests in Government free from encumbrance in accordance with section 19(4) of the Land Acquisition Act.

68. The High Court enhanced the award to Kshs 23,000,000 and the same was subsequently appealed by the Attorney-General vide Civil Appeal No. 109 of 1987. The Appeal was however stood over generally by consent of the Parties to enable them to pursue an out of court settlement. Owing to the fact that the family of Mr. Jacobs relocated from Kenya to Israel, the out of court negotiations were not concluded.
69. The land was used as a temporary camp for military athletes due to its proximity to Kasarani sports complex. In early 2019, the same land was identified as a potential land for construction of Senior Non-Commissioned Officers housing under the affordable housing program.
70. The Ministry was not aware of any other party claiming the land and no persons were evicted or property destroyed when the Ministry improved the security of camp through the deployment of officers who erected tents on the land in question as no persons were residing in the camp as claimed by the petitioners.
71. The Nairobi City Council lacked the capacity to allocate the land as it did not own the same land and the Ministry of Defence did not consent to the purported subdivision and allocation of the Land in question to the petitioners by the County Government and the National Land Commission.

### **3.5 Submissions by the County Secretary Nairobi City County Government**

72. The Committee received written submissions from the Mr. Leboo Ole Moritant, the County Secretary, Nairobi City County dated 7<sup>th</sup> November 2019. He stated that:

73. According to the County Government records the owner of the land in question LR. No. 5875/2 located in Roysambu is Mr. M. J Samuels.
74. Roysa Community Development Society in a letter dated 6<sup>th</sup> May 2004, in which the society indicated that its membership comprised former workers of the owner of the parcel of land and that they had lived on the land since the early 1970s, requested the County Government of Nairobi to allocate them the land..
75. The County Government carried out due diligence on the application by the society and established, among other things, that:
- i. The squatters living on the parcel of land in question were about 400 to 500 persons.;
  - ii. There was an informal primary school and nurse school for the squatters' children;
  - iii. The land was occupied by 43 rows each with 10 permanent and semi-permanent houses;
  - iv. There were few commercial buildings, garages and workshops;
  - v. There were two structures used as churches; and
  - vi. There were numerous kiosks and churches.
76. On 17<sup>th</sup> February 2015 the County Government of Nairobi wrote to the National Land Commission indicating that the County Government had no objection in the allocation of the land in question to Roysa Community Development Society. The Commission in rejoinder dated 10<sup>th</sup> March 2016 informed the County Government of Nairobi that since the lease to the land had expired in 2003 and was not renewed the land had reverted to the county government and it was for the County Government to allocate it to Roysa Community Development Society.
77. The County Government then proceeded to allocate the parcel of land to the petitioners as per the Nairobi County Regularization Act of 2015, which gave the County Government the authority to settle people who occupied county or government land. There was also no court order preventing the allocation of the said land.
78. The petitioners accepted the offer and paid for the issuance an allotment letter through their trustees and they also paid the required fee to amend the index map and for valuation of the parcel of land to facilitate subdivision and issues of a certificate of subdivision and lease.
79. The County Government also carried out a survey of the land and the Director of Survey approved the said survey on 1<sup>st</sup> November 2017.and also produced an area list for each sub plot. The same was forwarded to the Land Registrar to facilitate the issuance of titles to the squatters on 19<sup>th</sup> December 2017.

80. The Ministry of Lands and Physical Planning started the processing of titles by issuing letters to individual members of Roysa Community Development Society. However, the process of titling was not completed for unknown reasons

### **3.6 Submissions by the Chief Executive Officer, Uchumi Supermarket Ltd**

81. The Committee held a meeting with Mr. Mohamed Mohamed the Chief Executive Officer Uchumi Supermarket Ltd on Thursday 21<sup>st</sup> November, 2019 and a subsequent meeting on Tuesday, 26<sup>th</sup> November, 2019. During the meetings the Chief Executive Officer informed the Committee that:
82. Uchumi Supermarkets Plc lawfully acquired the land in question land, LR.No.5875/2 through its subsidiary Kasarani Mall Ltd from Solio Construction Company Ltd in 2001 and paid Ksh. 85, 000, 000 to Solio Construction Company.
83. According to the records held by Kasarani Mall Ltd a lease granting the piece of land to Solio Construction Company Limited was issued vide Grant of Lease No. I.R 85371 on 1<sup>st</sup> July 1999.
84. The transfer of the parcel of land from Solio Construction Company Ltd to Kasarani Mall Ltd was registered at the Lands Titles Registry and was signed by the Commissioner of Lands, Mr. Sammy Silas Komen Mwaita on behalf of the President and witnessed by the Registrar of Titles, Ms. Sarah Mwenda.
85. The Uchumi Supermarkets Plc then used title deed for the land to secure financing from Kenya Commercial Bank (KCB) and Southern African Trade and Development Bank on 7<sup>th</sup> December 2004. The facilities were paid and discharged on 28<sup>th</sup> June 2011.
86. The Uchumi Supermarkets Plc had also entered into agreement to sell the land to Jewel Complex Limited through financing by the bank. The buyer sought to buy the said parcel of land as amalgamated with LR. No 23393 also owned by Kasarani Mall.
87. Consequently, the company through its advocates requested KCB to release the two titles to facilitate change of user and amalgamation. The surrender of titles and the new lease were booked at the Ministry of Lands as evidenced by the booking form dated 7<sup>th</sup> February 2019 issued to the company.



88. The transfer of the land was a subject of investigations by the Directorate of Criminal following allegations of fraud and a caveat by the government that had been placed on the title. The Chief Executive Officer further stated that the DCI had found that the property was procedurally transferred to Uchumi Supermarkets Plc and that there was no evidence of conspiracy between Solio Construction, Uchumi Supermarkets Plc and the Land Registry during the allocation of the property. He also stated that the investigation found the caveat on the title held by Kasarani Mall Ltd had no legal basis.
89. The office of the Attorney General had also investigated the allegations of fraud relating to the land and found that the Solio Construction Company had transferred a valid title to Kasarani Mall.
90. Kasarani Mall had also filed a case in court Civil Case No. 495 of 2011 and obtained a permanent injunction against Roysambu Community Self Help Group who invaded the land and made similar claims to those contained in the petition. Therefore, the question of ownership of the property had been heard and determined in favour of Kasarani Mall by the Environment and Land Court.
91. The County Government of Nairobi demanded and accepted payments of land rates by Kasarani Mall as evidenced by payment receipts issued to the company by the County Government although, the County Government had not updated its records and still indicated the owner of the land as being Mr. M. J. Samuels.
92. Similarly, the Commissioner of Lands and its successor, the National Land Commission had continued to demand payment of annual land rent from Kasarani Mall.
93. The County Government of Nairobi and the National Land Commission have never sought to revoke the grant of title held by Kasarani Mall or claimed a reversion of the title to the Government.
94. The Petitioners have not produced documents to prove that they were indeed employees of the late Mayer Jacob Samuels and their National Identification Numbers reveal that they were minors at the time they claim to have been employees and some could not have been born at the time.
95. The petitioners had also not been in occupation of the land or erected structure on the property as claimed in the petition. Kasarani Mall took possession of the land in

2001. The company hired security guards to secure the land until the said guards were evicted by the Kenya Defence Forces.

96. The Chief Executive officer acknowledged that the company had a dispute regarding the land in question with the Kenya Defence Forces and the same was being address through negotiations led by the Head of Public Service

### **3.7 Submissions by the Company Secretary Kenya Commercial Bank**

97. The Committee held a meeting with the Director Legal Service, Kenya Commercial Bank on 21<sup>st</sup> November 2019. During the meeting the Director Informed the Committee that:

98. The Bank had entered into a sale agreement with Kasarani Mall Ltd for the sale of the land in question LR.NO. 5975/2 to a client financed by the bank. The said parcel of land was used as a security for the transaction

99. The bank was not in possession of the original title deed for LR. No. 5875/2 as Kasarani Mall Ltd through Hamilton, Harrison & Mathew Advocates had requested the bank to release the documents to facilitate the amalgamation of land parcels No. LR No.5875/2 with LR.NO 23393 both owned by Kasarani Mall.

100. The bank accepted the request and released the two titles to the law firm.

101. The amalgamation of the two parcels has not been completed awaiting the issuance of a certificate of title upon the lifting of a caveat placed by one of the creditors of Uchumi Supermarkets Ltd. However, the two title deeds were surrendered to the Land Registry at the Ministry of Lands and Physical Planning as evidenced by a booking form issued to Kasarani Mall.

### **3.8 Submissions by Jewel Complex Limited**

102. The Committee held a meeting with the Director, Jewel Complex Limited on 21<sup>st</sup> November 2019. He informed the Committee that:

103. The company was an interested party in the matter as it was in the process of purchasing the land in question LR NO.5875/2 and LR NO 23393 from Kasarani Mall on condition that the two parcels were amalgamated.

104. Jewel Complex Limited established contacts with Uchumi Supermarkets Limited through the Chief Executive officer Mr. Mohamed A. Mohamed and through its lawyers Messrs. Muchoki Kangata Njenga & Company Advocates.
105. He also stated that Jewel Complex Limited had paid a deposit of Ksh 330, 000,00 by way of Real Time Gross Settlement to the vendor's advocate client account held by Harrison Hamilton and Mathew Advocates at KCB to facilitate the purchase of LR. No. 5875/2.
106. The company had also acquired a loan from Equity Bank to facilitate the purchase of part of L.R 23393
107. He stated that the petition was submitted to the National Assembly in bad faith since the petitioners were named as the 4<sup>th</sup> defendants in Nairobi ELC No. 495 of 2011 in which they lost the case and no appeal was lodged in court against the decision of the court. In the said suit, the petitioners referred themselves as Roysa Community Self Help Group while in the petition they stated that they were Roysa Development Society. Therefore, the petition was an attempt to overturn a decision of the High Court.
108. Jewel Complex Ltd had committed a substantial amount of money by way of a deposit and entered into an agreement with the Kenya Commercial Bank that shall substantially affect it in the event of adverse findings by the Committee.

#### 4.0 OBSERVATIONS

The Committee made the following observations:

1. The owner of the land in question LR. No. 5875/2 located in Roysambu, measuring 17.16 acres under a lease of 99-years which commenced from 1<sup>st</sup> November 1904 and expired on 1<sup>st</sup> November, 2003 is Mr. M. J Samuels.
2. Whereas there exists evidence that the government intended to acquire LR. No. 5875/2 belonging to Mr. M. J Samuels as evidenced by gazette notices No. 51515 and 51552 of 1985, the acquisition process was not completed as the out of court negotiations between the government and Mr. Meshumor Jacob Samuel on amount of compensation to be made were never concluded. (Annex 1).
3. There was contradictory information in the Ministry of Defence concerning the intended acquisition of L. R No. 5875/2. Indeed, in a letter dated 26<sup>th</sup> January 1987, the Permanent Secretary, Department of Defence informed the Commissioner of Lands that the military had carried out an inspection of the land and found it unsuitable for the intended purpose unless four additional parcels of land surrounding the plot was acquired to enhance security as the plot was located in a residential area. However, on 10<sup>th</sup> April 1987 Major General Munyao wrote to the Commissioner of Lands vide a letter Ref. DOD/CGS/49/LND asking the Commissioner to disregard the content of the letter by the Permanent Secretary until the military made further contact on the issue. Based on the submissions of the National Land Commission, the military did not make the said contact to date.
4. Although, the Ministry of Defence submitted that the land was valued at Kshs. 3,530,500 and the sum was duly paid by the Ministry to the Commissioner of Lands, the Committee noted that the High Court under Land Acquisition Appeal No. 2 of 1986 had enhanced the award to Kshs. 23,000,000 and the same has not been paid to date to Mr. Meshumor Jacob Samuel. The Committee noted that the provisions of section 8 of the Land Acquisition Act Cap. 295 (now repealed), required that where land is compulsorily acquired, full compensation was to be paid promptly. This was never done. (Annex 2)
5. Additionally, despite, the fact that the Ministry of Defence submitted a receipt showing that Kshs. 3,530,500 was paid to the Commissioner of Lands, there was no evidence submitted to indicate that the money was deposited to Middle East Bank and released to Mr. Jacobs.
6. Further, while the Ministry of Defence submitted that the land in question was formally

handed over to the Ministry on 25<sup>th</sup> June, 1986, the Committee noted with concern that the Kenya Defence Forces only occupied the said land thirty-three years later, this being in 2019 and the land remains undeveloped to date. This was further confirmed by a letter dated 14<sup>th</sup> June, 2004 by the then Permanent Secretary, Ministry of Lands and Settlement to Mr. John Githongo the then Permanent Secretary in the office of the President indicating that the Kenya Defence Forces had already taken possession of the property and moved in but had thought the cost was too much and consequently moved out of the property.

7. Based on the submissions of the Nairobi County Government, the squatters living on the parcel of land in question were about 400 to 500 persons, there was an informal primary school and nurse school for the squatters' children, the land was occupied by 43 rows each with 10 permanent and semi-permanent houses, there were few commercial buildings, garages and workshops, there were two structures used as churches and there were numerous kiosks and churches. This was corroborated by the minutes of 25<sup>th</sup> June, 1986 submitted by the Ministry of Defence which indicated that there were two hundred and fifteen persons living there, there were forty-three blocks still existing and two jua kali garages.
8. There were three files that had been opened in respect of LR No. 5875/ 2 these being-
  - i. The original file regarding the land in question No. 21946/2, LR. No. 5875 with an acreage of 17 acres indicating that the land belonged to Mr. Mayer Jacob Samuels.
  - ii. A second file with file no. 202033 & LR No. 5875/2 with an acreage of 6.864 Ha. which contained an allotment letter that was issued on 26<sup>th</sup> June, 1999 to Solio Constructions Limited and contained other documents.
  - iii. A third file no. 215826, LR No. 23393 for land owned by Grace Independent Baptist Mission Trustees, a file which was used by officials in the Ministry to register an amalgamation with land parcel No. 5875/2.
9. The Ministry of Lands and Physical Planning submitted and confirmed that the second file and third file had been opened fraudulently as evidenced by-
  - i. The purported transfer of lease to Solio Construction Limited was done when there was already a subsisting lease of 99 years which was to expire in 2003 and the transfer was effected in 2001, two years before the expiry of the lease.
  - ii. The Chief Land Registrar, Ms. Sarah Mwenda denied signing the transfer form transferring the parcel of land LR. 5875/2 from Solio Construction Company Ltd to Kasarani Mall Ltd in 2001, although a stamp bearing her unique number (14) was used in the said form.
  - iii. The third file no. 215826, LR No. 23393 allegedly seeking to amalgamate land parcel No. 5875/2 with LR. No. 23393 was being done yet the lease for LR. No. 23393 had also expired.

- iv. The certificate of Incorporation of Solio Construction Company was dated 18th August 1999 while the letter of allotment was issued on 26th June, 1999 revealing that the allotment was done two months before the Company was incorporated.
  - v. A letter dated 14<sup>th</sup> June, 2004 by the then Permanent Secretary, Ministry of Lands and Settlement to Mr. John Githongo the then Permanent Secretary in the office of the President instructing the Anti-Corruption Commission to investigate and take action against the fraudulent allocation of L.R No. 5875/2 to Solio Construction Company; and
  - vi. The subsequent attempt to amalgamate the two pieces of land was being done albeit the existence of a caveat on the land dating back to 2004.
10. However, the parcel of land L.R No. 23393 was not the subject matter of the Petition and was only relevant to the extent that the third file was opened for purposes of fraudulently amalgamating L.R No. 5875/2 with L.R No. 23393.
  11. There was no evidence submitted to the Committee to indicate that the Kenya Defence Forces having allegedly acquired the land in 1986, gazetted L.R No. 5875/2 as a protected area.
  12. Based on the submissions of the National Land Commission, a current search at the Land Registry indicated that no record on the land was available save for that the last registered owner of L. R No. 5875/2 was Mr. M.J. Samuels.
  13. There was no surrender or cancellation of the original certificate of lease held by Mr. Mayer Jacob Samuels on L.R No. 5875/2.
  14. In accordance with the property rates payment request submitted by the Nairobi County Government, the property rates were still due to be paid by Mr. M. J. Samuels signifying that the records of the county still identify Mr. M. J. Samuels as the owner of the land.
  15. The National Land Commission confirmed that the lease for LR. No. 5875/2 expired on 1<sup>st</sup> November, 2003 and reverted back to the Nairobi County Government by virtue of Article 62 of the Constitution.
  16. The Nairobi County Government in its submissions confirmed that survey of LR. No. 5875/2 had been undertaken and completed and a subdivision scheme approved identifying each sub-plot including plots designated for public utilities.
  17. The Nairobi County Government had already issued allotment letters to the Members of Roysa Community Development Society regularizing individual ownership upon


payment of Kshs. 69, 500 of which some of the members had already paid.

18. There was collusion between officials of the Ministry of Lands and Physical Planning as evidenced by the second and third files in order to effect fraudulent transactions on L. R No. 5875/2 leading to loss of public funds.
19. Although, the Ministry of Lands and Physical Planning submitted that it was aware that the titles for L. R No. 5875/2 and L.R 23393 had been presented to it for amalgamation, the Ministry did not submit the two titles to the Committee.
20. The Committee noted with concern that although the Ministry of Lands and Physical Planning submitted that the second and third file were fraudulent, it was still receiving transactions payments from members of Roysa Community Development Society for titling of L.R 5875/2 to individual members.
21. The Ministry of Lands and Physical Planning never informed the Committee that it was aware there was any sub-division scheme that was ongoing, yet the documents submitted to the Committee indicate that the Ministry was involved in the sub-division process.

## 5.0 COMMITTEE RECOMMENDATIONS

In response to the Petitioners' prayers and based on the observations, the Committee recommends that-

1. The Ministry of Lands and Physical Planning in consultation with the National Land Commission and the Nairobi County Government does complete the titling process for L. R No. 5875/2 within 180 days of tabling of this Report.
2. The Director for Criminal Investigations does investigate the officers in the Ministry of Lands and Physical Planning who may have caused loss of public funds by effecting fraudulent transactions relating to L. R No. 5875/2 and the Director of Public Prosecutions does prosecute any person found culpable within 90 days of tabling of this Report.
3. The Ministry of Lands and Physical Planning does secure the title relating to L.R 23393 with a view of ensuring that innocent Kenyans do not lose money through fraudulent transactions as evidenced by the attempt to amalgamate it with L.R 5875/2.

Signed..........Date.....5/12/2019.....2019

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





NATIONAL ASSEMBLY

CLERK'S CHAMBERS

DEPARTMENTAL COMMITTEE ON LANDS

MEMBERS ADOPTION LIST

Consideration of the Report on the Petition by former workers of the Lake Maryasa James Samuels regarding invasion and eviction of the workers from their land in Poy Sam Kenya by K.D.F.

NO	NAME	SIGNATURE
1.	Hon. Dr. Rachael Nyamai, MP - Chairperson	
2.	Hon. Khatib Mwashetani, MP - Vice Chairperson	
3.	Hon. Jayne Wanjiru Kihara, MP	
4.	Hon. Joshua Kutuny Serem, MP	
5.	Hon. Kimani Ngunjiri, MP	
6.	Hon. Mishi Mboko, MP	
7.	Hon. Omar Mwinyi Shimbwa, MP	
8.	Hon. Ali Mbogo, MP	
9.	Hon. Babu Owino, MP	
10.	Hon. Caleb Kipkemei Kositany, MP	
11.	Hon. Catherine Waruguru, MP	
12.	Hon. George Aladwa, MP	
13.	Hon. George Risa Sunkuyia, MP	
14.	Hon. Jane Wanjuki Njiru, MP	
15.	Hon. Josphat Gichunge Kabeabea, MP	
16.	Hon. Owen Yaa Baya, MP	
17.	Hon. Samuel Kinuthia Gachobe, MP	
18.	Hon. Simon Nganga Kingara, MP	
19.	Hon. Teddy Mwambire, MP	

Answered

Miss [unclear]