

REPUBLIC OF KENYA



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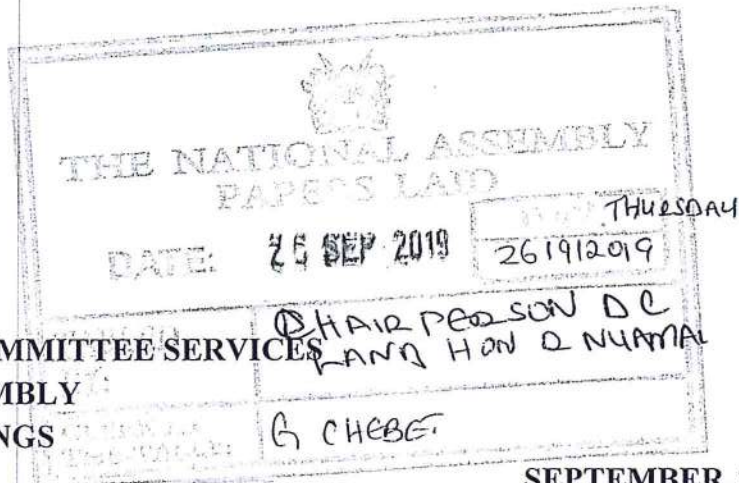
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THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT- THIRD SESSION

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON VETTING OF THE NOMINEES FOR APPOINTMENT TO THE  
POSITIONS OF CHAIRPERSON AND MEMBERS OF THE NATIONAL LAND  
COMMISSION



DIRECTORATE OF COMMITTEE SERVICES  
THE NATIONAL ASSEMBLY  
PARLIAMENT BUILDINGS  
NAIROBI

SEPTEMBER, 2019



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## LIST OF ABBREVIATIONS AND ACROYNMS

DCI	Directorate of Criminal Investigations
EACC	Ethics and Anti-Corruption Commission
H.E.	His Excellency
HELB	Higher Education Loans Board
KNEC	Kenya National Examination Council
KRA	Kenya Revenue Authority
SO	Standing Order

## CHAIRPERSON'S FOREWORD

Pursuant to Article 250 (2) of the Constitution as read together with section 12 of the National Land Commission Act (No.5 of 2012) and section 5 of the Public Appointments (Parliamentary Approval) Act, (No. 33 of 2011), His Excellency the President nominated the following to serve as Chairperson and Members of the National Land Commission:

1. Mr. Gershom Otachi Bw'Omanwa - Chairperson
2. Hon. Esther Murugi Mathenge - Member
3. Prof. James K. Tuitoek, Ph.D - Member
4. Ms. Gertrude Nduku Nguku - Member
5. Mr. Reginald Okumu - Member
6. Hon. Samwel Kazungu Kambi - Member
7. Ms. Hubbie Hussein Al-Haji - Member
8. Mr. Alistair Murimi Mutugi - Member
9. Hon. Tiyah Galgalo Ali - Member

The nominations were conveyed to the Speaker of the National Assembly on 16<sup>th</sup> August 2019. On 10<sup>th</sup> September 2019, in exercise of powers conferred on him by the National Assembly Standing Order, 42 the Speaker read the message from H.E. the President to the House and referred the nominees to the Departmental Committee on Lands for vetting.

The names of the nominees were referred to the Departmental Committee on Lands for vetting and reporting to the House within fourteen (14) days in accordance with the provisions of Standing Order 45.

In compliance with section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011, the Clerk of the National Assembly placed an advertisement in the print media on Thursday, 12<sup>th</sup> September, 2019, (*Annexure II*). The Clerk invited the public to submit memoranda by way of written statements on oath (*affidavit*) on the suitability of the nominees in conformity with section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011. The advert indicated that the submissions were to be received by Wednesday, 18<sup>th</sup> September, 2019 at 5.00 pm. By close of the submission deadline, the Committee had received fifteen (15) submissions but only three were in conformity with section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011.

Further, in fulfilment of the provisions of Article 118 of the Constitution, section 6(4) of the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Order 45(3), the Clerk of the National Assembly on Thursday, 12<sup>th</sup> September, 2019 placed an advertisement in the print media inviting the public to the Departmental Committee on Lands approval hearings of the nominees on Thursday, 19<sup>th</sup> and Friday 20<sup>th</sup> September, 2019 from 09.30am (*Annexure II*).

The nominees appeared before the Committee on Thursday, 19<sup>th</sup> and Friday, 20<sup>th</sup> September 2019 for approval hearings in accordance with the provisions of the Constitution, the Public Appointments (Parliamentary Approval) Act, 2011 and the National Assembly Standing Orders on their suitability for appointment to the positions of Chairperson and Members of the National Land Commission.

The Committee also held meetings with the Mr. James Mburu, Commissioner General, Kenya Revenue Authority and Ms. Lilian Kosgey, the Acting Corporation Secretary, Agricultural Development Corporation on Friday 20<sup>th</sup> September, 2019 to seek clarification on the suitability of three nominees with regard to tax compliance and integrity.

May I take this opportunity to thank all the Members of the Committee for their input and valuable contributions and time during the approval hearings and deliberations during the writing of the report. The Committee also takes this opportunity to thank the Offices of the Speaker and of the Clerk of the National Assembly for the logistical support accorded to it during the exercise.

On behalf of the Departmental Committee on Lands and pursuant to section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011 and the provisions of Standing Order 199(6), it is now my singular duty and privilege to present to the House, the Report of the Departmental Committee on Lands on the vetting of the nominees for appointment to the positions of Chairperson and Members of the National Land Commission.

**Hon. (Dr.) Racheal Nyamai, M.P**  
**Chairperson**

## **1.0 PREFACE**

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

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

### **1.2 Committee subjects**

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

### **1.3 Oversight**

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



## 1.4 Committee Membership

4. The Committee membership comprises: -

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**

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

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

Hon. Babu Owino, MP  
Member for Embakasi East  
Constituency  
**Orange Democratic Movement**  
**(ODM)**

Hon. Kimani Ngunjiri, MP  
Member for Bahati Constituency  
**Jubilee Party**

Hon. Caleb Kipkemei Kositany,  
MP  
Member for Soy Constituency  
**Jubilee Party**

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

Hon. Catherine Waruguru, MP  
Woman Member for Laikipia  
County  
**Jubilee Party**

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

Hon George Aladwa, MP  
Member for Makadara  
Constituency  
**Orange Democratic Movement**  
**(ODM)**

Hon. Ali Mbogo, MP  
Member for Kisauni  
Constituency

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

5. 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. Jemimah Waigwa  
**Legal Counsel I**

Mr. Nimrod Ochieng  
**Audio Officer**

Mr. Brian Wechabe  
**Legal Assistant**

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

## 2.0 BACKGROUND

### 2.1 Notification of nominations by H.E. the President

6. In accordance with the provisions of Article 250 (2) of the Constitution and section 5 of the Public Appointments (Parliamentary Approval) Act, H.E. the President forwarded to the Speaker, *vide* a letter Ref. OP/CAB.1/40A dated 15<sup>th</sup> August, 2019 (*Annexure I*) the notification of nominations, curriculum vitae and testimonials of the nominees for appointment as Chairperson and Members of the National Land Commission for approval by the National Assembly.

### 2.2 Committal to the Departmental Committee on Lands

7. Pursuant to Standing Order 42(1), on 10<sup>th</sup> September 2019, the Speaker informed the House of the notification for nomination of the nominees for the position of Chairperson and Members of the National Land Commission by H. E. the President. Pursuant to Standing Order 45, the names and curriculum vitae of the nominees: were committed to the Departmental Committee on Lands for vetting.

### 2.3 Notification to the Public

8. Section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011 provides that *“any person may, prior to the approval hearing and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated”*.
9. The Clerk of the National Assembly placed an advertisement in the print media on Thursday , 12<sup>th</sup> September, 2019 (*Annexure II*) inviting the public to submit memoranda by way of a written statement on oath (**affidavit**) on the suitability or otherwise of the nominees in conformity with section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011. The advertisement indicated that the submissions were to be received by Wednesday, 18<sup>th</sup> September, 2019 at 5.00 pm.
10. Further, pursuant to the provisions of Article 118 of the Constitution, section 6(4) of the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Order 45(3), the general public was on Wednesday 11<sup>th</sup> September,

2019 notified in the print media by the Clerk of the National Assembly of the intention of the Committee to conduct the approval hearings of the nominees on Thursday, 19<sup>th</sup> and Friday 20<sup>th</sup> September, 2019 (*Annexure II*).

#### 2.4 Notification to the Nominees

11. On Thursday 12<sup>th</sup> September 2019, pursuant to sections 4 and 6(3) of the Public Appointments (Parliamentary Approval) Act, 2011, the Clerk in writing invited the nominees for the approval hearings indicating the time and place (*Annexure II*).

#### 2.5 Clearance reports

12. On Thursday, 12<sup>th</sup> September, 2019, the Clerk of the National Assembly wrote to the Ethics and Anti-Corruption Commission (EACC), Kenya Revenue Authority (KRA), Directorate of Criminal Investigations (DCI) and the Higher Education Loans Board (HELB) (*Annexure III*) requesting for reports with respect to the nominees on the following matters:
  - (a) ethics and integrity;
  - (b) tax compliance;
  - (c) criminal records;
  - (d) Higher education loan repayments.
13. On matters of ethics and integrity, the Ethic Anti – Corruption Commission (EACC) *vide* a letter Ref. No EACC.7/10/5VOL.XI (29) dated 17<sup>th</sup> September 2019 (*Annexure IV*) confirmed that the Commission has not undertaken any investigations where any of the nominees had been found culpable.
14. With regards to matters on tax compliance, the Kenya Revenue Authority (KRA) confirmed *vide* a letter Ref. No KRA/CDT/HO/54 dated 17<sup>th</sup> September 2019 (*Annexure V*) that the nominees were tax compliant except Mr. Gershom Otachi Bw'Omanwa and Hon Tiyah Galgalo Ali.
15. With respect to the tax compliance of Mr. Gershom Otachi Bw'Omanwa, the Committee also held a meeting with the Commissioner General Kenya Revenue Authority on Friday 20<sup>th</sup> September 2019. During the meeting the Commissioner General clarified that the tax compliance certificate issued to Mr. Gershom Otachi Bw'omanwa – PIN A002584975J on 12<sup>th</sup> June 2019 was valid and it was due to expire on 11<sup>th</sup> June 2020. It was issued based on an installment payment plan arrangement to clear outstanding taxes.

However, there was a payment delay on the installment which made him technically non-compliant. Subsequently, he paid the full outstanding tax on 19<sup>th</sup> June 2019 making him tax compliant (*see Annexure V*).

16. With respect to the tax compliance of Hon Tiyah Galgalo Ali- PIN-AOO1864763G, the Commissioner General informed the Committee that she was issued with a tax compliance certificate No. KRAWON3033692018 (Annexure VI) on 23<sup>rd</sup> October 2018 that is due to expire on 22<sup>nd</sup> October, 2019. However, upon her request for a tax compliance status for the vetting exercise, it was established that she had not filed tax returns in 2017 and 2018. On 18<sup>th</sup> September 2019, she filed a nil return indicating that she had not earned any taxable income for the period under review. The Commissioner General submitted that she was required to explain the reason for filing nil returns for the said period. She went ahead to amend the said returns on 19<sup>th</sup> September 2019 by including Ksh. 8,348,300.00 earned from the Parliamentary Service Commission and Ksh 3,125,500.00 earned from the County Government of Isiolo for 2017 and 2018 respectively. He added that the verification of the returns amended for the Year 2017 and 2018 was being undertaken to determine whether they were correct.
17. The Commissioner General also averred that investigations are being done to ascertain the circumstances under which the tax compliance certificate Ali held by Hon Tiyah Galgalo Ali was issued since she had not met conditions of issuance. He undertook to report to the Committee the on Wednesday, 25<sup>th</sup> September 2019.
18. The Directorate of Criminal Investigations (DCI) through a letter Ref DCI/CRO/SEC/6/7/2/AVOL.VIII/38 dated 18<sup>th</sup> September 2019 (*Annexure VII*) confirmed that all the nominees were issued with clearance certificates annexed hereto. The DCI clarified that the clearance certificates issued to Prof. James K. Tuitoek and Gertrude Nduku Nguku had expired and they were therefore required to make fresh applications for forensic analysis. The two made fresh application for forensic analysis and were issued with clearance certificates dated 24<sup>th</sup> September (*see Annexure IV*).
19. The Higher Education Loans Board (HELB) confirmed *vide* a letter Ref. No. HELB/RR/112009/11 dated 13<sup>th</sup> September, 2019 (*Annexure IV*) that all the nominees had no outstanding loans with the Board.

20. The Registrar of Political Parties confirmed *vide* a letter Ref. No. RPP/ORG/34Vol II (65) dated 16<sup>th</sup> September, 2019 (*Annexure IV*) that all the nominees are not officials of a registered political party.

### 3.0 PROCEDURE FOR NOMINATION

#### 3.1 Constitutional and statutory provisions

21. The procedure for appointment of the Chairperson and Members of the National Land Commission is outlined under the Constitution, the National Land Commission Act No. 5 of 2012 and the Public Appointments (Parliamentary Approval) Act No. 33 of 2011.
22. Article 124(4) of the Constitution provides that when a House of Parliament considers any appointment which its approval is required under this Constitution or an Act of Parliament-
  - (a) the appointment shall be considered by a Committee of the relevant House;
  - (b) the committee's recommendation shall be tabled in the House for approval; and
  - (c) the proceedings of the committee and the House shall be public.
23. Article 250(2) of the Constitution provides that the chairperson and each member of a commission shall be identified and recommended for appointment in a manner prescribed by national legislation and approved by the National Assembly.
24. Section 7 of the National Land Commission Act, 2012 provides that the chairperson and members of the Commission shall be appointed in accordance with the procedure set out in the First Schedule.
25. Pursuant to paragraph (6) of the First Schedule to the National Land Commission Act, 2012 the National Assembly shall, within twenty-one days, it next sits after receipt of the names of the applicants under paragraph (5), vet and consider all the applicants, and may approve or reject any or all of them.
26. Section 6 of the Public Appointments (Parliamentary Approval) Act, 2011 also provides as follows on the conduct of approval hearings-
  - (a) All committee proceedings on public appointments shall be open and transparent;
  - (b) The Committee may on its own motion or on the application of a candidate or any other concerned person determine the whole or any part of its sittings shall be held in camera;
  - (c) An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background;
  - (d) The criteria specified in the Schedule shall be used by a Committee during an approval hearing for the purposes of vetting a candidate;



- (e) Any person may, prior to the approval hearing and by written statement on oath provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated.
  - (f) A candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidate's nomination shall thereupon lapse.
27. Section 7 of the Public Appointments (Parliamentary Approval) Act further provides that the issues for consideration by the relevant House of Parliament in relation to any nomination shall be-
- (a) the procedure used to arrive at the nominee;
  - (b) any constitutional or statutory requirements relating to the office in question; and
  - (c) the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is made.

### **3.2 Memoranda from members of the public in respect of the Nominees for the position of Chairperson and Members of the National Land Commission**

28. Pursuant to section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011 which provides that "*any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold office to which the candidate has been nominated*" the Clerk of the National Assembly placed an advertisement in the print media on Thursday, 12<sup>th</sup> September, 2019 (*Annexure II*) inviting the public to submit memoranda by way of written statements on oath (**affidavit**) on the suitability of the candidates.
29. The Committee also by way of a letter invited the following persons to appear before it on Wednesday, 11<sup>th</sup> September, 2019 following public reports that cases had been filed in various courts by the said persons relating to the vetting processes. The Committee observed that it was paramount that all members of the public including the petitioners to be given an opportunity to present their views and be heard prior to the Committee undertaking the approval hearings-
- (1) Mr. Okiya Omtatah Okoiti; and
  - (2) Mr. Antony Otiende.
30. By close of business on Wednesday, 17<sup>th</sup> September, 2019 at 5.00 pm the Committee had received the following memoranda-

- (1) Affidavit by Mr. Mwalimu Kazungu Ng'andu contesting the nomination of Prof. James K. Tuitoek as a Member of the National Land Commission.
- (2) Affidavit by Mr. Charo Kahindi Baya and others contesting the nomination of Prof. James K. Tuitoek as a Member of the National Land Commission.
- (3) Affidavit by Mr. Olga Sechero, Credit Manager, Development Bank of Kenya contesting the nomination of Hon. Kambi Kazungu as a Member of the National Land Commission.
- (4) Affidavit by Mr. Okiya Omtatah Okoiti contesting the suitability of all the nominees to the National Land Commission.
- (5) Public Petition from persons named citizens of Kenya from minority communities.

31. By close of business on Wednesday, 17th September, 2019 at 5.00 pm the Committee had also received the following -

- (1) Affidavit by Mr. Namada Simoni supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission;
- (2) Affidavit by Ms. Anne Too supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission;
- (3) Affidavit by Mr. Timothy Gitari Gakuu supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission;
- (4) Affidavit by Mr. Mwendia Nyaga supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission;
- (5) Affidavit by Ms. Nelly Jepkonga Yatich supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission;
- (6) Letter by Wajir Peace University Trust supporting the nomination of Ms. Hubbie Hussein Al-Haji as Member of the National Land Commission;
- (7) Recommendation Letter by the North East Professionals Association for Ms. Hubbie Hussein Al-Haji to be approved as a Member of the National Land Commission;
- (8) Memorandum by Borana Council of Elders supporting the nomination of Ms. Tiyah Galgalo Ali as Member of the National

Land Commission;

(9) Memorandum by the Inter-Faith Council of Isiolo supporting the nomination of Ms. Tiyah Galgalo Ali as Member of the National Land Commission;

(10) Memorandum by the Women Caucus of Isiolo and Marsabit Counties supporting the nomination of Ms. Tiyah Galgalo Ali as Member of the National Land Commission; and

32. During a meeting held on 17<sup>th</sup> September, 2019 the Committee analyzed each of the memorandum received as follows-

**1. Affidavit by Mr. Mwalimu Kazungu Ng'andu contesting the nomination of Prof. James K. Tuitoek as a Member of the National Land Commission**

33. The deponent, Mr. Mwalimu Kazungu Ng'andu a resident of Sabaki Ward, Magarini Constituency averred as follows in the affidavit for consideration by the Committee-

- (1) That the Departmental Committee on Lands tabled a report in the House on a Petition submitted by residents of Sabaki Ward in Magarini Constituency concerning the illegal dispossession and disposal of their ancestral land currently occupied by farms belonging to the Agricultural Development Corporation Kisiwani Complex to private individuals.
- (2) That during the consideration of the Report, the Cabinet Secretary Ministry of Lands and Physical Planning tabled a list of 125 persons being the persons who were illegally allocated land among them being the nominee to be a Member of the National Land Commission Prof. James K. Tuitoek at a throw away price of Ksh 20, 000 as opposed to the proposal that the land be sold at Kshs 250,000 to Kshs 300,000 being the market price.
- (3) That the nominee was allocated 5 acres of land valued at Kshs, 100, 000 for which he only paid Kshs.55,000 meaning for each acre he paid 11,000 shillings only.
- (4) That further one of the recommendations of the Committee in its Report was that pursuant to section 15 of the National Land Commission Act, 2012, the National Land Commission does investigate the historical land injustice claim relating to the ADC Kisiwani Farm.
- (5) That in the unlikely event that the nominee was approved to hold the office of a Member of the Commission there is also a likelihood of conflict of his personal and public interest noting he illegally holds an

interest in ADC Kisiwani Farm and yet the National Land Commission is supposed to investigate the historical land injustice claim relating to the same Farm.

- (6) That further, the recommendation of the Committee was to the effect that upon investigation by the National Land Commission of the historical land injustice claims, where it establishes valid claims of historical land injustices the Commission should consider ordering the revocation of titles issued in respect to the farm and subsequent reallocation of the land to the rightful owners.
  - (7) That the nominee if approved as a Member of National Land Commission a conflict between his personal interests in the land and public interest was most likely to arise as the recommendation of the Committee was tantamount to telling him to revoke his own title.
  - (8) The deponent therefore prayed that the Committee rejects the nomination of Prof. James K. Tuitoek as a Member of the National Land Commission on grounds of lack of personal integrity.
34. In view of the foregoing, the Committee analysed the memoranda and observed that the deponent raised issues that related to the personal integrity of the candidate which in accordance with section 6(7) of the Public Appointments (Parliamentary Approval) Act No. 33 of 2011 provides that an approval hearing shall focus on among other things the personal integrity of a candidate.
35. Further, section 7 of the Public Appointments (Parliamentary Approval) Act also provides that the issues for consideration by the relevant House of Parliament in relation to any nomination includes any constitutional or statutory requirements relating to the office in question.
36. Section 8 of the National Land Commission Act No. 5 of 2012 prescribes the qualifications necessary for a person to be appointed as a chairperson or member of the Commission which include the fact that a nominee must meet the requirements of Chapter Six of the Constitution on leadership and integrity
37. To this end, the Committee resolved to admit the memorandum for consideration during the approval hearing as it met the requirements of the law on form being an affidavit and it also raised issues of personal integrity.
38. The Committee resolved that it would raise and present all the issues contained in the Affidavit to the nominee for the position of the member of

the National Land Commission, Prof. James K. Tuitoek during the approval hearing. The Committee also tasked the secretariat to submit a copy of the same to the nominee to enable him respond and prepare for the hearing.

**2. Affidavit by Mr. Charo Kahindi Baya and others contesting the nomination of Prof. James K. Tuitoek as a Member of the National Land Commission**

39. The deponent, Mr. Charo Kahindi Baya and others being residents of Sabaki Area in Kilifi County averred as follows in the affidavit for consideration by the Committee-

- (1) That the land measuring 955 acres situated in Sabaki Area are in the ownership of the Agricultural Development Corporation and its subsidiary Lands Limited.
- (2) That the National Land Commission is investigating a claim by the residents of Sabaki on the historical land injustices and on 13<sup>th</sup> March, 2015 it issued a letter directing all concerned parties to desist from any subdivision, sale or transfer of the land among other activities.
- (3) That the EACC issued a notice on 29<sup>th</sup> August, 2019 directing all people with evidence in regard to illegal sale of the land to submit to it.
- (4) That the ADC has been the subject of intensive land grabbing, the Ndungu Report having established that it had lost approximately Kshs 12 Billion.
- (5) That Prof. James K. Tuitoek the nominee for the position of a Member of the National Land Commission has been a beneficiary of the illegal sale of the ADC land in Sabaki Area within Kilifi County.
- (6) That the appointment of the nominee having a vested interest in the NLC will give rise to obvious conflict since the nominee is not likely to approve the revocation of the titles irregularly issued.
- (7) That the residents of Sabaki residents have been forcefully evicted by the land grabbers such as the nominee, the approval of the nominee shall hinder the progress made by the residents in the fight for justice.
- (8) That the nominee should not have been cleared by EACC as he is a direct beneficiary of illegal land matters which are still under the active investigation by EACC.

40. In view of the foregoing, the Committee analysed the memoranda and observed that the deponent raised issues that related to the personal integrity of the candidate which in accordance with section 6(7) of the Public Appointments (Parliamentary Approval) Act provides that an approval

hearing shall focus on among other things the personal integrity of a candidate.

41. Further, section 7 of the Public Appointments (Parliamentary Approval) Act also provides that the issues for consideration by the relevant House of Parliament in relation to any nomination includes any constitutional or statutory requirements relating to the office in question.
42. Section 8 of the National Land Commission Act No. 5 of 2012 prescribes the qualifications necessary for a person to be appointed as a chairperson or member of the Commission which include the fact that a nominee must meet the requirements of Chapter Six of the Constitution on leadership and integrity.
43. To this end, the Committee resolved to admit the memorandum for consideration during the approval hearing as it met the requirements of the law on form being an affidavit and it also raised issues of personal integrity.
44. The Committee resolved that it would raise and present all the issues contained in the Affidavit to the nominee for the position of the Member of the National Land Commission, Prof. James K. Tuitoek during the approval hearing. The Committee also tasked the secretariat to submit a copy of the same to the nominee to enable him respond and prepare for the hearing.

**3. Affidavit by Mr. Olga Sechero, Credit Manager Development Bank of Kenya contesting the nomination of Hon. Kambi Kazungu as a Member of the National Land Commission**

45. The deponent, Mr. Olga Sechero, Credit Manager, Development Bank of Kenya averred as follows in the Affidavit-
  - (1) That he is the credit manager of the Development Bank based at its head office in Nairobi.
  - (2) That Hon. Kambi Kazungu obtained banking facilities from the Development Bank of Kenya of Kshs. 250 Million for his Riva oils Company.
  - (3) That the Hon. Kambi Kazungu defaulted in the repayment of the loan and the Development Bank obtained a judgement and decree for Kshs. 304,906,835.40.
  - (4) That the Hon. Kambi Kazungu thereafter defaulted in settling the decretal sum forcing the bank to take bankruptcy proceedings against him.
  - (5) That thereafter following negotiations with the bank Hon. Kambi Kazungu agreed to pay the bank Kshs 305 million within six months but only paid 30 million and refused to the rest being Kshs. 275

Million.

- (6) That the bank auctioned the property LR 12785 Giriama Ranch given by Hon. Kambi as security only for the owners of Giriama Ranch namely Giriama Ranching Company to oppose the auction.
  - (7) That Giriama Ranch and its owners have taken out other cases against the nominee and his company for fraudulently using their titles to obtain loans from the bank.
  - (8) That the Hon. Kambi has been trumping up charges against the Bank to defeat the course of justice by financing members of Giriama Ranch.
  - (9) That Hon. Kambi is a dishonest person lacking integrity required by the Constitution of a public officer.
  - (10) That Hon. Kambi also lacks character, the ethos or integrity necessary to sit at the National Land Commission.
46. In view of the foregoing, the Committee analysed the memoranda and observed that the deponent raised issues that related to the personal integrity of the candidate which in accordance with section 6(7) of the Public Appointments (Parliamentary Approval) Act provides that an approval hearing shall focus on among other things the personal integrity of a candidate.
47. Further, section 7 of the Public Appointments (Parliamentary Approval) Act also provides that the issues for consideration by the relevant House of Parliament in relation to any nomination includes any constitutional or statutory requirements relating to the office in question.
48. Section 8 of the National Land Commission Act No. 5 of 2012 prescribes the qualifications necessary for a person to be appointed as a chairperson or member of the Commission which include the fact that a nominee must meet the requirements of Chapter Six of the Constitution on leadership and integrity.
49. To this end, the Committee resolved to admit the memorandum for consideration during the approval hearing as it met the requirements of the law on form being an affidavit and it also raised issues of personal integrity.
50. The Committee resolved that it would raise and present all the issues contained in the Affidavit to the nominee for the position of the Member of the National Land Commission, Hon. Samwel Kazungu Kambi during the approval hearing. The Committee also tasked the secretariat to submit a copy of the same to the nominee to enable him respond and prepare for the hearing.

**4. Affidavit by Mr. Okiya Omtatah Okoiti contesting the suitability of the all the nominees to the National Land Commission presented to the Committee during a meeting held on 17<sup>th</sup> September, 2019**

51. The deponent, Mr. Okiya Omtatah Okoiti averred as follows in the Affidavit-

- (1) That he had filed a Petition in the Employment and Labour Relations Court dated 28<sup>th</sup> August, 2019 challenging the constitutional and statutory validity of the Selection Panel for the NLC as the President had failed to make any appointments under paragraph 1(d) of the First Schedule to the National Land Commission being two persons, of opposite gender, nominated by the Non- Governmental Organisations Council, who have demonstrated competence and capacity in matters related to natural resources.
- (2) That the Selection Panel processes used to select persons presented to the President for nomination were opaque.
- (3) That Hon. Esther Murugi and Hon. Tiya Galgalo Ali both being nominees for the position of Members of the National Land Commission nomination was invalid as the two Members were never shortlisted and interviewed for the position of Members of the National Land Commission but were shortlisted and interviewed for the position of Chairperson of the National Land Commission.

52. In view of the foregoing, the Committee analysed the memoranda and observed that the deponent raised issues that related to the procedure used to arrive at the nominees which is one of the issues for consideration by the Committee in terms of section 7 of the Public Appointments (Parliamentary Approval) Act.

53. To this end, the Committee resolved to request for a copy of the Report of the Selection Panel on the selection of all the nominees to the National Land Commission in order to carefully and closely scrutinize and examine whether indeed the procedures as laid out in the National Land Commission Act No. 5 of 2012 were followed by the Selection Panel in selecting all the nine nominees to the National Land Commission.

**5. Public Petition from persons named citizens of Kenya from minority communities**

54. The Petition was filed by Mr. Manasseh Rux Matunge and others who prayed that the House does reject the names of the nominees for appointment as



Members of the National Land Commission based on the fact the Selection Panel nominated for appointment persons who did not apply to be members of the commission but had applied to be Chairperson of the Commission. The Petitioners also averred that the Panel did not nominate any person from marginalized communities.

55. In light of the foregoing, the Committee examined the Petition against the provision of the Public Appointments (Parliamentary Approval) Act and observed that although the Petitioners appeared to challenge the procedure used to arrive at the nominees which is one of the issues for consideration under section 7 of the Public Appointments (Parliamentary Approval) Act, pursuant to section 6(9) of the Public Appointments (Parliamentary Approval) Act which requires that any person challenging the suitability of a candidate must do so in form of a written statement on oath, the Petition was not a written statement on oath and was therefore inadmissible and could not be considered further.

**6. Affidavit by Mr. Namada Simoni supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission**

56. The deponent, Mr. Namada Simoni, a Director at the Geothermal Development Company filed an affidavit supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission. The Committee however observed that section 6(9) of the Public Appointments (Parliamentary Approval) Act provides that any person may, prior to the approval hearing and by written statement on oath provide the Clerk with **evidence contesting the suitability** of a candidate to hold the office to which the candidate has been nominated. To this end, the Act envisages the submission of a written statement only contesting the suitability of a candidate. Consequently, the Committee resolved not to consider the affidavit further as it was not contesting the suitability of the said nominee.

**7. Affidavit by Ms. Anne Too supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission**

57. The deponent, Ms. Anne Too, a Director at the Geothermal Development Company filed an affidavit supporting the nomination of Mr. Gershom

Otachi Bw'Omanwa for position of Chairperson of National Land Commission. The Committee however observed that section 6(9) of the Public Appointments (Parliamentary Approval) Act provides that any person may, prior to the approval hearing and by written statement on oath provide the Clerk with **evidence contesting the suitability** of a candidate to hold the office to which the candidate has been nominated. To this end, the Act envisages the submission of a written statement only contesting the suitability of a candidate. Consequently, the Committee resolved not to consider the affidavit further as it was not contesting the suitability of the said nominee.

**8. Affidavit by Mr. Timothy Gitari Gakuu supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission**

58. The deponent, Mr. Timothy Gitari Gakuu, a Director at the Geothermal Development Company filed an affidavit supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission. The Committee however observed that section 6(9) of the Public Appointments (Parliamentary Approval) Act provides that any person may, prior to the approval hearing and by written statement on oath provide the Clerk with **evidence contesting the suitability** of a candidate to hold the office to which the candidate has been nominated. To this end, the Act envisages the submission of a written statement only contesting the suitability of a candidate. Consequently, the Committee resolved not to consider the affidavit further as it was not contesting the suitability of the said nominee.

**9. Affidavit by Mr. Mwendia Nyaga supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission**

59. The deponent, Mr. Mwendia Nyaga, a Director at the Geothermal Development Company filed an affidavit supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission. The Committee however observed that section 6(9) of the Public Appointments (Parliamentary Approval) Act provides that any person may, prior to the approval hearing and by written statement on oath provide the Clerk with **evidence contesting the suitability** of a candidate to hold the office to which the candidate has been nominated. To this end, the Act

envisages the submission of a written statement only contesting the suitability of a candidate. Consequently, the Committee resolved not to consider the affidavit further as it was not contesting the suitability of the said nominee.

**10. Affidavit by Ms. Nelly Jepkonga Yatich supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission**

60. The deponent, Ms. Nelly Jepkonga Yatich, a Director at the Geothermal Development Company filed an affidavit supporting the nomination of Mr. Gershom Otachi Bw'Omanwa for position of Chairperson of National Land Commission. The Committee however observed that section 6(9) of the Public Appointments (Parliamentary Approval) Act provides that any person may, prior to the approval hearing and by written statement on oath provide the Clerk with **evidence contesting the suitability** of a candidate to hold the office to which the candidate has been nominated. To this end, the Act envisages the submission of a written statement only contesting the suitability of a candidate. Consequently, the Committee resolved not to consider the affidavit further as it was not contesting the suitability of the said nominee.

**11. Letter by Wajir Peace University Trust supporting the nomination of Ms. Hubbie Hussein Al-Haji as Member of the National Land Commission**

61. A letter signed by Mr. Abdullahi Abdi, the Chairperson of the Wajir Peace University Trust was submitted to the Committee supporting the nomination of Ms. Hubbie Hussein Al-Haji for position of Member of National Land Commission. The Committee however observed that section 6(9) of the Public Appointments (Parliamentary Approval) Act provides that any person may, prior to the approval hearing and by written statement on oath provide the Clerk with **evidence contesting the suitability** of a candidate to hold the office to which the candidate has been nominated.

62. To this end, the Act envisages the submission of a written statement only contesting the suitability of a candidate. Consequently, the Committee resolved not to consider the letter further as it was not contesting the suitability of the said nominee. It is also noteworthy, that the letter is not a written statement of oath contrary to section 6(9) of the Public Appointments (Parliamentary Approval) Act.

**12. Recommendation Letter by the North East Professionals Association for Ms. Hubbie Hussein Al-Haji as Member of the National Land Commission**

63. A letter signed by Mr. Abdirizak Arale Nunow, the Chairperson of the North East Professionals Association was submitted to the Committee supporting the nomination of Ms. Hubbie Hussein Al-Haji for position of Member of National Land Commission. The Committee however observed that section 6(9) of the Public Appointments (Parliamentary Approval) Act provides that any person may, prior to the approval hearing and by written statement on oath provide the Clerk with **evidence contesting the suitability** of a candidate to hold the office to which the candidate has been nominated. To this end, the Act envisages the submission of a written statement only contesting the suitability of a candidate. Consequently, the Committee resolved not to consider the letter further as it was not contesting the suitability of the said nominee. It is also noteworthy, that the letter is not a written statement of oath contrary to section 6(9) of the Public Appointments (Parliamentary Approval) Act.

**13. Memorandum by Borana Council of Elders supporting the nomination of Ms. Tiyah Galgalo Ali as Member of the National Land Commission**

64. A memorandum signed by the Borana Council of Elders, was submitted to the Committee supporting the nomination of Ms. Tiya Galgalo Ali for position of Member of National Land Commission. The Committee however observed that section 6(9) of the Public Appointments (Parliamentary Approval) Act provides that any person may, prior to the approval hearing and by written statement on oath provide the Clerk with **evidence contesting the suitability** of a candidate to hold the office to which the candidate has been nominated. To this end, the Act envisages the submission of a written statement only contesting the suitability of a candidate. Consequently, the Committee resolved not to consider the memorandum further as it was not contesting the suitability of the said nominee. It is also noteworthy, that the memorandum is not a written statement of oath contrary to section 6(9) of the Public Appointments (Parliamentary Approval) Act.

**14. Memorandum by the Inter-Faith Council of Isiolo supporting the nomination of Ms. Tiyah Galgalo Ali as Member of the National Land Commission;**

65. A memorandum signed by the Inter-Faith Council of Isiolo was submitted to the Committee supporting the nomination of Ms. Tiya Galgalo Ali for position of Member of National Land Commission. The Committee however observed that section 6(9) of the Public Appointments (Parliamentary Approval) Act provides that any person may, prior to the approval hearing and by written statement on oath provide the Clerk with **evidence contesting the suitability** of a candidate to hold the office to which the candidate has been nominated. To this end, the Act envisages the submission of a written statement only contesting the suitability of a candidate. Consequently, the Committee resolved not to consider the memorandum further as it was not contesting the suitability of the said nominee. It is also noteworthy, that the memorandum is not a written statement of oath contrary to section 6(9) of the Public Appointments (Parliamentary Approval) Act.

**15. Memorandum by the Women Caucus of Isiolo and and Marsabit Counties supporting the nomination of Ms. Tiyah Galgalo Ali as Member of the National Land Commission**

66. A memorandum signed by the Women Caucus of Isiolo and and Marsabit Counties was submitted to the Committee supporting the nomination of Ms. Tiya Galgalo Ali for position of Member of National Land Commission. The Committee however observed that section 6(9) of the Public Appointments (Parliamentary Approval) Act provides that any person may, prior to the approval hearing and by written statement on oath provide the Clerk with **evidence contesting the suitability** of a candidate to hold the office to which the candidate has been nominated. To this end, the Act envisages the submission of a written statement only contesting the suitability of a candidate. Consequently, the Committee resolved not to consider the memorandum further as it was not contesting the suitability of the said nominee. It is also noteworthy, that the memorandum is not a written statement of oath contrary to section 6(9) of the Public Appointments (Parliamentary Approval) Act.

**16. Response by Mr. Antony Otiende**

67. Mr. Antony Otiende declined to appear before the Committee to make his submissions during its sitting held on 17<sup>th</sup> September, 2019 despite being

invited to do so sighting the fact that he had filed a suit at the High Court challenging the constitutional and legal basis for vetting some of the nominees.

68. He further stated that he had listed the National Assembly as one of the respondents in the suit and that the reliefs he was seeking in Court were incapable of being delivered either by the Committee or the National Assembly.

### 3.3 Responses to the memoranda by the nominees

69. In respect of the affidavit submitted by Mr. Mwalimu Kazungu Ng'andu and the affidavit submitted by Mr. Charo Kahindi Baya contesting the nomination of Prof. James K. Tuitoek as a Member of the National Land Commission, the nominee, responded as follows-

(1) That he is the Professor of Animal Nutrition in the department of Animal Science at Egerton University.

(2) That the said James Tuitoek is not Prof. James K Tuitoek as alleged in the press and he was not among the beneficiaries of the illegal allocation of ADC land in Magarini Constituency.

(3) That he wrote to the Chairperson of the Departmental Committee on Land and copied the Vice-Chairperson and other two persons stating that he had nothing to do with the ADC land in Magarini and expressed his interest to appear before the Committee.

(4) That on 6<sup>th</sup> June, 2019 he received a reply from the Acting Managing Director of ADC, Mr. Mohamed Bulle which confirmed the beneficiary of the said land as being Mr. James C. Tuitoek and had full details of the beneficiary including his photographs.

(5) That in view of the foregoing Mr. James C. Tuitoek cannot be Prof. James K. Tuitoek. (*Annexure VII*)

(6) That on 3<sup>rd</sup> June, 2019 he instructed his lawyers to demand an apology from two media houses that had published malicious and baseless materials against him.

(7) That he is not a beneficiary of the ADC land in Kiswani Complex.

(8) That he meets the requirements of Chapter Six of the Constitution.

70. Following the submissions of the nominee, the Committee on Thursday 19<sup>th</sup> September, 2019 during the approval hearing of the nominee also resolved to invite the Managing Director of the Agricultural Development Corporation to

apprise the Committee on the identity of the beneficiary of the ADC Land in Sabaki area.

71. On Friday, 20<sup>th</sup> September, 2019, the Acting Corporation Secretary of the Agricultural Development Corporation, Ms. Lilian Kosgey appeared before the Committee on behalf of the Managing Director of ADC and presented as follows on the identity of the beneficiary of the ADC Land in Sabaki-

- (1) That on 19<sup>th</sup> October, 1993, Mr. James C. Tuitoek and Mrs. Pauline Maiyo applied to the Managing Director of the ADC requesting to be allocated land in Kisiwani Farm. (*Annexure VIIb*).
- (2) That on 6<sup>th</sup> May, 1994, Dr. W. K. Kilele, the Managing Director of ADC informed Mr. James C. Tuitoek that his request for allocation of land had been approved. (*Annexure VIIb*).
- (3) That vide a letter dated 18<sup>th</sup> September, 2019, Mr. Mohammed Bulle, the Acting Managing Director of ADC confirmed that Mr. James C. Tuitoek and Prof. James K. Tuitoek are not the same persons and Prof. James K. Tuitoek did not benefit from any land in ADC (*Annexure VIIb*).
- (4) That the ID Number of the said Mr. James C. Tuitoek is 2342499.

72. In respect of the affidavit submitted by Mr. Olga Sechero, Credit Manager, Development Bank of Kenya contesting the nomination of Hon. Kambi Kazungu as a Member of the National Land Commission the nominee, Hon. Kambi Kazungu responded as follows-

- (1) That he had obtained banking facilities from the Development Bank of Kenya of Kshs. 250 Million for his Riva oils Company.
- (2) That the Development Bank obtained a judgement and decree. Thereafter the bank lodged bankruptcy proceedings against him.
- (3) That thereafter he initiated negotiations with the bank and agreed to pay the bank within six months but only managed to pay 30 million.
- (4) A consent judgement signifying the agreement between himself and the bank was entered and registered in court.
- (5) That thereafter the bank auctioned the property LR 12785 Giriama Ranch as security only for the owners of Giriama Ranch namely Giriama Ranching Company to initiate court proceedings to oppose the auction.
- (6) That Giriama Ranch and its owners have filed cases in court touching on the same matters.

- (7) The court proceedings are still active in court awaiting determination on the way forward in settling the dispute noting it had arisen due to failure of the bank to recognise the corporate status of Riva Oil Company which should have been sued and not him as an individual.



#### 4.0 APPROVAL HEARINGS

73. The Committee held the approval hearings on Thursday 19<sup>th</sup> and Friday 20<sup>th</sup> September, 2019 as per the date advertised by the Clerk of the National Assembly which was communicated to the members of the public and the nominees. In conducting the approval hearings, the Committee examined the nominees against the following criteria, as set out in section 7 of the Public Appointments (Parliamentary Approval) Act, 2011:

- (a) Gender - compliance with Article 27(8) of the Constitution that requires the State to take measures to ensure that not more than two thirds of members of elective or appointive bodies shall be of the same gender;
- (b) Age - to ascertain whether the youth are represented as provided under Article 55 of the Constitution;
- (c) Nationality - to ascertain the nationality of the nominee to ensure compliance with Article 78 of the Constitution which provides that State Officers must be Kenyan citizens;
- (d) Educational background;
- (e) Employment record;
- (f) Honours or awards given to the nominee;
- (g) Membership to professional bodies;
- (h) Public office and political affiliations held - to ascertain whether the nominee does not hold office in a political party in compliance with Article 77(2) of the Constitution that prohibits an appointed State Officer from holding an office in a political party;
- (i) Information on whether the nominee has been removed from office under Article 75 of the Constitution which prohibits a State Officer who has been removed from office under this Article from holding any other State Office;
- (j) Nominee's finances;
- (k) External commitments that nominee intends to undertake while in office (if appointed). Article 77(1) of the Constitution prohibits a full time State Officer from participating in any other gainful employment;
- (l) Tax status and net worth;
- (m) Potential conflict of interest - Article 75(1) of the Constitution bars State Officers from engagements or association that may give rise to conflict between official duties and personal interest;
- (n) Whether the nominee has been charged in a court of law in the past three years; and
- (o) Whether the nominee has been adversely mentioned in a report of Parliament or a Commission of inquiry in the past three years.

74. The Committee also took into consideration:
- (a) the procedure used to arrive at the nominee;
  - (b) any constitutional or statutory requirements relating to the office in question; and
  - (c) the suitability of the nominee for appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is being made.

**4.1 Mr. Gershom Otachi Bw'Omanwa - Nominee for the position of Chairperson, National Land Commission**

75. Mr. Gershom Otachi Bw'Omanwa appeared before the Committee on Thursday, 19<sup>th</sup> September 2019 at 09.30 am and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approval) Act, 2011 and the Standing Orders of the National Assembly. The Committee took note of the following –

76. **Citizenship, Date and Place of Birth:** He is a Kenyan citizen, Identity Card Number 7466017. He was born on 4th January 1965 in Nyamira County. He is married with four children.
77. **Academic and Professional Qualifications:** He is a holder of a Post Graduate Diploma in Law from Kenya School of Law (1989-1990), a Bachelor of Laws (LLB) Degree from University of Nairobi (1986-1989). He attended Alliance High School for his O - level education (1979-1982). He also attended the same School for his A- level education from 1983 to 1984.
78. **Work and Professional Experience:** He is an advocate of High Court of Kenya with 29 years' experience in Civil, Land, Criminal, Matrimonial and Property Arbitration, Elections Petitions, among others. Currently, he is the Managing Partner at Ogetto, Otachi & Company Advocates and has also worked in United National Tribunal for Rwanda as a Defence Attorney from 1996 to date.
79. **Professional Associations:** He is involved in several professional associations including being a member of the Law Society of Kenya since 1990, he is also on the International Criminal Court (ICC) list of Counsel, International Criminal Tribunal for Rwanda (ICTR) list of Counsel , A

member of the East African Law Society, Association of Defense Lawyers (IADAD), a member in the International Criminal Bar and International Association of Defense Lawyers (IADAD) and the International Commission of Jurist- Kenya.

80. **Public Office:** The nominee stated that he has considerable experience in public service having chaired the Policyholders Compensation Fund for six years. The nominee is currently serving as Chairman of the Geothermal Development Company (State Corporation). He was appointed to the current position at the company in 2015 and re-appointed in June 2018.
81. **Potential Conflict of Interest:** He stated that he has no immediate associations that are likely to present potential conflict of interest when he assumes the position.
82. **Net-worth:** The nominee stated that his net worth is Ksh. 200 million.
83. **Integrity:** The nominee also indicated that he has not been dismissed or otherwise removed from office for contravening the provisions of Article 75 of the Constitution.
84. **Other specific issues:** The nominee also responded to several questions during the vetting as follows:
- i. The nominee stated that he was suitable for the position of chairperson, National Land Commission have attained significant achievements at the Geothermal Development Company, where he led the company to record profits of Kshs. 100 billion. He also stated that he had demonstrated that he could work with people of different background during his service at the ICTR in Rwanda;
  - ii. The nominee also noted that the conflict over mandate between the Ministry of Lands and Physical Planning and the National Land Commission had derailed the implementation of the activities of the commission and promised to employ a collaborative approach to foster the relationship between the two agencies and other stakeholders in the land sector. He also observed that the commission's mandate was mainly advisory rather than executive;

- iii. On historical land injustices the nominee indicated that he will seek the extension of the period for admissibility of claims from the current five years. He would also recommend the development of a proper legal framework to ensure that the claims are addressed promptly, noting that currently the role of the commission was only limited to making recommendations;
- iv. The nominee further stated that he will use his experience in law to ensure that litigation against the commission is reduced. He will also facilitate the creation of proper structures in the commission that work efficiently within the law;
- v. The nominee assured the committee that he would discharge his duty as the chairperson of the commission if approved on a full time basis and that he will hand over his private legal work in order to concentrate in his new role as the chairperson of the commission if appointed;
- vi. The nominee informed the Committee that he was tax compliant and had been issued with a tax compliance certificate by the Kenya Revenue Authority on 12<sup>th</sup> June 2019 which will expire on 11<sup>th</sup> of June 2020. He further stated that he had no pending tax obligations and was only made aware of a report by the Authority indicating that he was non-compliant during the vetting exercise. He added that he had used the same compliance certificate during interviews with the Selection Panel; and
- vii. The nominee informed the Committee that he was a top student in all examination he sat for in the schools he attended. He added that was position six (6) in the country in the National Examinations during his A-levels.

#### **4.2 Hon. Esther Murugi Mathenge – Nominee for the position of Member, National Land Commission**

85. Hon. Esther Murugi Mathenge appeared before the Committee on Thursday, 19<sup>th</sup> September, 2019 at 10.30 am and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approval) Act, 2011 and the Standing Orders of the National Assembly. The Committee took note of the following –

86. **Citizenship, Date and Place of Birth:** She is Kenyan citizen, Identity Card Number 1238807 and she was born on 21<sup>st</sup> September 1953 in Nyeri County.
87. **Academic and Professional Qualifications:** She holds a Master of Business Administration (MBA) in Global Business and Sustainability from Tangaza University College (2014-2015), a Bachelor of Arts in Land Economics from University of Nairobi (1973-1976). She attended Highlands Secondary school in Eldoret for her A - Level education (1971-1972), Highlands secondary School, Eldoret for her O - Level (1967-1970) and Githiru primary school (1960-1966).
88. **Work and Professional Experience:** she is currently serving as a Managing Director, Lustman Co (90) Ltd & Mugi Property Consultants.
89. **Professional Associations:** She is a member of the Member of Soroptimist International which deals with projects to advance human rights and status of women in society.
90. **Public Office:** Prior to her nomination, she served as the Member of Parliament for Nyeri Town Constituency between 2008 and 2010, Minister for Special programmes (2010-2013) and Member of Parliament for Nyeri Town Constituency (2013-2017).
91. **Potential Conflict of Interest:** She stated that she has no immediate associations that are likely to present potential conflict of interest when she assumes the position.
92. **Sources of Income and Net-worth:** Her net worth is approximately 320M
93. **Integrity:** The nominee has not been dismissed or otherwise removed from office for contravening the provisions of Article 75 of the Constitution.
94. **Other specific issues:** The nominee also responded to several questions during the vetting as follows:
- i. The nominee stated that she was suitable to serve in the position of member of the commission and that her experience in public service as a Member of Parliament and minister had equipped her with the necessary leadership skills;

- ii. She informed the Committee that she had applied for both the position of Chairperson and Member of the National Land Commission. She further stated that she informed the selection panel that she would take up either of the position. Therefore, she was interviewed for both positions simultaneously;
- iii. She also promised to work with the Ministry of Lands and Physical planning and other stakeholders. The nominee further stated that ADR was the way to go to help Kenyans solve their land related problems due to the back log of cases and the tedious court process being experienced currently;
- iv. Regarding her age the nominee stated that although she is almost seventy years old, she is physically fit and ready to execute her role as a member of the commission if approved and that age would not hamper the same;
- v. On measures to safeguard public land she stated that she will ensure that all public land is identified and registered to protect it from grabbers and will also recommend measures to penalize grabbing of public land to deter people from the vice;
- vi. The nominee informed the committee that during her tenure as the Minister of State for Special programmes, she had implemented resettlement of landless persons in Mogotio and would recommend similar measures to ensure that evictions are conducted in a humane manner and that the regulations on evictions are adhered to; and
- vii. In response to a question whether her involvement in the real estate sector as a Managing Director, Lustman Co (90) Ltd & Mugi Property Consultants will present a Conflict of interest is appointed to the position of a member of the commission. She assured the committee that no conflict of interest will arise, and she will perform her role at the commission in a professional manner.

#### **4.3 Prof. James K. Tuitoek, PhD Nominee for the position of Member, National Land Commission**

95. Prof. James K. Tuitoek, Ph.D appeared before the Committee on Thursday, 19<sup>th</sup> September, 2019 at 11.30 am and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary

Approval) Act, 2011 and the Standing Orders of the National Assembly. The Committee took note of the following –

96. **Citizenship, Date and Place of Birth:** He is Kenyan, citizen, Identity Card Number 0323892 and was born on 9<sup>th</sup> October 1958 in Baringo.
97. **Academic and Professional Qualifications:** He is a holder of a PhD in Monogastric Nutrition from University of Guelph, Canada, a MSc Animal Science University of Manitoba, Canada, and a Bachelor of Science in Agriculture from University of Nairobi.
98. **Work and Professional Experience:**, He has served as a Vice Chancellor, Egerton University (2006-2016), Deputy Vice Chancellor (Administration and Finance) Egerton university (2001-2006), Dean, Faculty of Agriculture, Egerton University (1997-2001) and Section Head, Pig Unit, Kenya Agricultural Research Institute (1983-19889).
99. **Honours and Awards:** He was awarded the CIDA Scholarship under the Kenya Government General Training Fund to undertake Msc studies. He received a research grant of Ksh. 1.7 million from the Agricultural research, a research grant from the National Research Fund of Ksh. 18 million to undertake studies on Mitigation of Aflatoxins in the Food chain in Kenya He received an Elder of the Burning Spear (EBS) award in 2007 and a certificate of recognition for over 10 years of Service by the Agricultural Society of Kenya .
100. **Professional Associations:** He is a member of the Animal Societies of Kenya and the Kenya Institute of Management.
101. **Published Writing:** His publications include Tuitoek JK. 1992 pelagic wholefish (*Rastriobola argenteus* as a protein sources for pigs. *Trop. Anim. Helth. prod.* 24:251-255, Tuitoek JK and AO Ayangbile. 1992. Fermented cattle blood for growing pigs. *Bull. Anim. Health. Prod. Afr.* 40:293-295 among others.
102. **Public Office:** He has held positions in various public offices Prior to his nomination, he served as the Vice Chancellor, Egerton University (2006-2016), Deputy Vice Chancellor (Admin and Finance) Egerton university, (2001-2006), Dean, Faculty of Agriculture, Egerton University (1997-2001) and Section Head, Pig Unit, Kenya Agricultural research institute (1983-1985, 1988-1989).

103. **Potential Conflict of Interest:** He stated that he has no immediate associations that are likely to present potential conflict of interest when he assumes the position.
104. **Sources of Income and Net-worth:** He has a financial net worth of Ksh. 109 million and was expecting to receive a pension of Ksh36 million.
105. **Integrity:** The nominee has not been dismissed or otherwise removed from office for contravening the provisions of Article 75 of the Constitution.
106. **Other specific issues:** The nominee also responded to several questions during the vetting as follows:
- (i) In response to the concerns raised in affidavit sworn by Mr. Mwalimu Kazungu Ng'andu. He informed the Committee that the said James Tuitoek is not Prof. James K Tuitoek as alleged and that he was not among the beneficiaries of the illegal allocation of ADC land in Magarini Constituency. He indicated that he had also received a reply from the Acting Managing Director of ADC, Mr. Mohamed Bulle which confirmed the beneficiary of the said land as being Mr. James C. Tuitoek and had full details of the beneficiary including his photograph. He also had that on 3<sup>rd</sup> June, 2019, he instructed his lawyers to demand an apology from two media houses that had published malicious and baseless materials against him.
  - (ii) The nominee stated that he had extensive experience in conflict resolution, human resources, research and public administration and he will employ the same in the commission if appointed;
  - (iii) He also promised to entrench public participation in the implementation of programmes and activities in the commission. He informed the Committee that during his tenure as Deputy Vice-Chancellor at Egerton University he espoused public participation by working with the student leaders and that this had considerably reduced strikes in the institution;
  - (iv) The nominee also stated that he will restore public confidence in the commission by working in collaboration with the Ministry of Lands and Physical Planning, allowing the commission secretariat to ply its



role, developing a code of conduct for the commission, and applying the law consistently;

- (v) To address historical land injustice the nominee stated that he will set up a base station in each county and ensure that all community land is registered; and
- (vi) In responding to a question from the Committee on why he had taken the Public Service Commission, two media houses and Egerton University to court, he asserted that he was defending his rights and he was not litigious.

#### **4.4 Ms. Gertrude Nduku Nguku - Nominee for the position of Member, National Land Commission**

107. Ms. Gertrude Nduku Nguku appeared before the Committee on Thursday, 19<sup>th</sup> September, 2019 at 2.30 am and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approval) Act, 2011 and the Standing Orders of the National Assembly. The Committee took note of the following –
108. **Citizenship, Date and Place of Birth:** She is Kenyan, citizen, Identity Card Number 7272450. She was born on 11/7/1966 in Makueni County.
109. **Academic and Professional Qualifications:** She is a holder of a Master of Advanced Studies in peace and Conflict Studies from European University Centre for Peace Studies, Stadchlaining/Burg, Austria (2002-2005), a Bachelor of Laws (LLB) degree from University of Nairobi, However the Committee noted that she had lost the original copy of her LLB degree certificate and had obtained a letter from the university indicating the same.
110. **Work and Professional Experience:** She is currently serving as a consultant, She has also worked as a Protection Office at United Nations Integrated Mission in Timor Leste (April 2011-December 2012), She also worked as a legal officer in the United Nation Interim Administration Mission in Kosovo (October 2003 - 2004), a Deputy Head of Region in the United Nation Interim Administration Mission in Kosovo (200-2009), a Legal Strategist in the People for Peace in

Africa (2002) , a Partner in Nguru & Co Advocates 1994-2002 and a Legal Associate Otieno Kajwang & Co Advocates (1990 - 1994).

111. **Potential Conflict of Interest:** She stated that she has no immediate associations that are likely to present potential conflict of interest when she assumes the position.
112. **Sources of Income and Net-worth.** She stated that her net worth is Ksh. 60,360, 000.
113. **Integrity:** The nominee has not been dismissed or otherwise removed from office for contravening the provisions of Article 75 of the Constitution.
114. **Other specific issues:** The nominee also responded to several questions during the vetting as follows:
  - (i) She stated that if appointed to the position of Member of the National Land Commission she will assess the corruption risk in the commission and institute measures to remedy the same;
  - (ii) The nominee stated that she will use her experience in conflict resolution and handling court cases to facilitate Alternative Dispute Resolutions cases forwarded to the commission is appointed.
  - (iii) She also informed the committee that she was not aware of an anomaly in her National Identification Card that indicated that she was born on 1<sup>st</sup> of January, 1966 while she had stated that she was born on 11<sup>th</sup> of July, 1966 and also indicated the same in the questionnaire. In responding to this anomaly, she attributed the error to a mistake that would have occurred when she replaced the document the year 2018. The Committee requested her to submit copies of her birth certificate and passport (Annexure XII); and
  - (iv) She also indicated that she had lost her original Bachelor of Laws degree certificate but had obtained a letter from the university to confirm that she obtained the degree and that university would not issue her with another certificate; and

- (v) She also informed the Committee that she will advocate for the observation of the United Nations Conventions on Human Rights to safeguard the rights of evictees.

#### **4.5 Mr. Reginald Okumu - Nominee for the position of Member, National Land Commission**

115. Mr. Reginald Okumu appeared before the Committee on Thursday, 19<sup>th</sup> September, 2019 at 3.30 pm and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approval) Act, 2011 and the Standing Orders of the National Assembly. The Committee took note of the following –
116. **Citizenship, Date and Place of Birth:** He is Kenyan, male citizen, Identity Card Number 1090707. He was born in 1971 in Busia County and is married.
117. **Academic and Professional Qualifications:** The nominee attended Rabai Road Primary School before proceeding to Eastleigh High school for his Secondary Education. He attained a Bachelor of Arts degree in Land Economics from University of Nairobi in 1995. He also holds a Master of Business Administration (MBA) degree from Strathmore University. The nominee is currently undertaking a Masters degree in Valuation and Property Management.
118. **Work and Professional Experience:** He is currently serving as Chief Executive Officer of Solum Consultants Limited from 1<sup>st</sup> December, 2018 to date. He has also worked as a Chairman/Acting Chief Operating Officer; Superior Homes Kenya, Kenya Power and Lighting Company from 26<sup>th</sup> March, 2018 to 16<sup>th</sup> July 2018, Director Ark Consultants Limited from 1<sup>st</sup> September 2004 to 31<sup>st</sup> March 2018, Head of Agency and Marketing/Senior Valuer ; CB Richard Ellis Limited from October 2003 to August 2004, Associate Director (Letting); Tysons Limited; May from 2001 to September 2003, Commercial Negotiator, Lloyd Masika Limited from April 1997 to April 2001, Branch Manager Metrocosmo Valuers Limited from September 1996 to March 1997 and Trainee Valuer/Estate Manager Metrocosmo Valuer Limited; January 1996- August 1996.
119. **Professional Associations:** He is a member of the Institution of Surveyors of Kenya as associate member (1998-2001) Full member,

Institution of Surveyors of Kenya, 2001 to date, registered valuer; Valuers Registration Board; 2002 to date, Registered Estate agent; Estate Agent Registration Board; 2002- date and Pricing Valuer; Valuers Registration Board; 2003.

120. **Published Writing:** His publications include: The Performance of sector concentrated versus diversified equity portfolio in Kenya, Paper Submitted in part fulfilment of a Master's in Business Administration Degree at Strathmore University November, 2017, Pricing land for real estate development in Kenya, Real estate sector in Kenya: a review of 2016 and forecast for 2017, Role of Surveyors in Kenya, a Presentation Made to Rotaract Club Nairobi Ventral General Meeting 3<sup>rd</sup> October, 2006, Management of Urban Spatial Environment with Focus on Environmental Management, Environmental Concerns at City Level and Waste Disposal and Resource Cycling, published 2004 by Institution of Surveyors among others.
121. **Potential Conflict of Interest:** He indicated that he has no immediate associations that are likely to present potential conflict of interest when he assumes the position.
122. **Net-worth:** His net worth is KES 32 million.
123. **Integrity:** The nominee informed the Committee he has not been dismissed or otherwise removed from office for contravening the provisions of Article 75 of the Constitution.
124. **Other specific issues:** The nominee also responded to several questions during the vetting as follows:
- (i) The nominee observed that the Private Sector and Public Sector both play key roles in the development of the Country. Having been in the Private Sector, he stated that he will use his expertise to advise Government on how land can be viewed and used much better;
  - (ii) He indicated that he will promote Alternative Dispute Resolution mechanism to solve land disputes to avoid long litigation processes in the courts;

- (iii) He observed that Land should be acquired for a purpose and immediately used for the intended purpose to curb land grabbing. Public awareness of such projects should also be undertaken to deter grabbing;
- (iv) He noted that Akiwumi Commission Report had made good recommendations on the issue of Land clashes and that the implementation of such recommendation to address land related conflict in the country;
- (v) He informed the Committee that during his tenure at the Board of the National Housing Corporation between 2006 and 2012 as the Chairperson of the Audit Committee he spearheaded the publication of a report on housing allocation that highlighted corruption in the allocation of houses by the Corporation. He also informed the Committee that he never acquired any house while serving in the corporation. This demonstrated his integrity; and
- (vi) He observed that County Land Control Boards safeguard the interests of the Community. Therefore, he argued that the disbanded County Land Control Boards needed to be reinstated.

**4.6 Hon. Samwel Kazungu Kambi – Nominee for the position of Member, National Land Commission**

- 125. Hon. Samwel Kazungu Kambi appeared before the Committee on Thursday, 19<sup>th</sup> September 2019 at 4.30 pm and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approval) Act, 2011 and the Standing Orders of the National Assembly. The Committee took note of the following –
- 126. **Citizenship, Date and Place of Birth:** He is Kenyan, male citizen, Identity Card Number 11262708. He was born on 12<sup>th</sup> February, 1962 in Kilifi County and his married.
- 127. **Academic and Professional Qualifications:** He is a holder of Bachelor of Arts Degree in Development Studies with a Minor in Theology from the University of Eastern Africa, Baraton. He also

holds a Master of Business Administration degree majoring in Management and Finance from University of Eastern Africa, Baraton and is pursuing a PhD in Finance at Maseno University.

128. **Work and Professional Experience:** He is currently serving as Chairman Coast Development Authority and he is also the Executive Chairman in Riva Oils Company Ltd. He also worked in Kenya Postbank Savings as a Manager, Credit from 1990 to 1994 and as an Assistant Manager from 1987 to 1990.
129. **Public Office:** Prior to his nomination, he served as the Cabinet Secretary, Ministry of Labour, Social Security and Services from May 2013 to 2015 and an Assistant Minister of Medical Services from December 2007 to March 2013. He has served as a Member of Parliament for Kaloleni Constituency from January 2008 to March 2013.
130. **Potential Conflict of Interest:** He stated that he has no immediate associations that are likely to present potential conflict of interest when he assumes the position.
131. **Sources of Income and Net-worth:** Net worth is KES. 50 million.
132. **Integrity:** The nominee has not been dismissed or otherwise removed from office for contravening the provisions of Article 75 of the Constitution.
133. **Other specific issues:** The nominee also responded to several questions during the vetting as follows:  
(i) On the issues raised in an affidavit by Mr. Olga Sechero, Credit Manager, Development Bank of Kenya contesting his nomination. He stated that he did not personally obtain the loan from Development Bank, but the facility was secured by Riva Oils Company Ltd, a company in which he has interests. He informed the Committee that he only guaranteed the loan. In 2009, Riva oils lost approximately 15 Billion during the triton scandal and couldn't pay the loan. Subsequently, to a court decree, the nominee managed to pay Ksh. 30 million towards settlement of the loan and entered a payment plan with the creditors. He also stated the loan was secured by Giriama Ranching Limited;

- (ii) In response to a question by the Committee regarding his integrity record. He stated that he stepped aside as Cabinet Secretary due to integrity issues, but he was finally proved innocent and vindicated of the accusations;
- (iii) He noted that the previous Commission did not have a strategy to execute their roles. They ought to have worked as a team with all arms of Government;
- (iv) He promised to foster teamwork in the Commission and discourage the assigning of commissioners to oversee a given region as was done in the previous Commission.
- (v) He noted that historical land injustice had affected many areas in the county not only in the the coast region. The injustices ought to be addressed through the involvement of all leaders; and
- (vi) He stated that during his tenure as a Cabinet Secretary he transformed the labor sector by reforming the policy framework on persons living with disability and introducing a biometric based cash transfer system for the elderly, which reduced corruption in the transfer of cash to the elderly.

#### 4.7 Ms. Hubbie Hussein Al-Haji – Nominee for the position of Member, National Land Commission

134. Ms. Hubbie Hussein Al-Haji appeared before the Committee on Friday 20<sup>th</sup> September, 2019 at 10.30 am and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approval) Act, 2011 and the Standing Orders of the National Assembly. The Committee took note of the following –
135. **Citizenship, Date and Place of Birth:** She is a Kenyan, Identity Card Number 035410 born in 1958 in Garissa County.
136. **Academic and Professional Qualifications:** She is a holder of Bachelors of Arts in Development studies from Kimmange Development Studies Centre- Kimmange Manor Ireland (2006-2008) , a Diploma in Community Development from Kenya Institute of Social and Community Development work (2000-2002), a Diploma in

Animal Health from Egerton University (1984-1987), Certificate in Animal Health Animal from Health Training institute Kabete (1977-1979). She attended Alliance Girls High School for her East African Certificate of Education (1973-1976) and Garissa Primary School for her Kenya Certificate of Primary education (1966-1972).

137. **Work and Professional Experience:** She has served as Chief Executive Officer, Womankind Kenya (NGO) from 2008 to 2013, founded a warfare society (UMUL-KHEIR) to assist under privileged women and children (1989-1994), an Assistant Project of CARITAS Somalia (NGO) 1993-1994 and a District Livestock officer- Ministry of Agriculture and Livestock Development (1979-1993).
138. **Honours and Awards:** She was awarded the 2006 *Won the Ralph Stone Memorial Award* on Women Leadership in Washington DC, 1997- Awarded with MBS (Moran of the Burning Spear) by the president of Kenya, 2010- Recognized by the UN human rights for exemplary performance on Human rights and 2011 –Recognized as a role model and unsung hero for extraordinary efforts to promote the empowerment of Kenyan women girls by US Ambassador. Michael E.Rannberger.
139. **Published Writing:** Her publications include Engendered analysis on water management practice in Masalani Division of Ijara District-North Eastern Province of Kenya, *The Impact of traditional harmful practices against Somali Women in Kenya and Base line Survey on human rights and female Genital Mutilation.*
140. **Public Office:** She has held positions in various public offices in addition to those highlighted under the section on work and professional experiences. Prior to her nomination, the nominee served as the County Executive Member for Agriculture, Livestock and Fisheries 2013-2014, County Executive Member for Health 2015-2016 in Garissa County.
141. **Potential Conflict of Interest:** She has no immediate associations that are likely to present potential conflict of interest when he assumes the position. However, the Committee noted.
142. **Net-worth:** She stated that her financial net worth was Kshs 50 Million.



143. **Integrity:** The nominee has not been dismissed or otherwise removed from office for contravening the provisions of Article 75 of the Constitution.
144. **Other specific issues:** The nominee also responded to several questions during the vetting as follows:
- (i) The nominee informed the meeting that she had a grasp of knowledge of the laws relating to land, the roles and mandate of the National Land Commission;
  - (ii) The nominee also informed the meeting that she is well versed with conflict management and dispute resolution. The nominee advocates for the employment of 'alternative dispute resolution' (ADR) as an alternate to court litigation as the latter is costly to both parties in terms of time and other resources;
  - (iii) The nominee further informed the meeting that she exhibited confidence that with cooperation and collaboration with all other relevant agencies, the Commission will redeem its otherwise tainted image and achieve its expected roles optimally;
  - (iv) The nominee abhors corruption and revealed to the Committee that in her last assignment as County Executive Committee Member for Health in Garissa County Government, she blew a whistle on impending project that were not beneficial to the People of Garissa. The projects were finally cancelled;
  - (v) The nominee confirmed to the Committee that her relationship with a former NLC Commissioner and other government officials will not influence her decision making in the Commission if appointed should conflict of interest arise; and
  - (vi) The nominee asserted that she has been nominated to represent Person Living with Disabilities (PLWD) as she has hearing impairment (*Annexure IX*).

#### 4.8 Mr. Alister Murimi Mutugi – Nominee for the position of Member, National Land Commission

145. Mr. Alister Murimi Mutugi appeared before the Committee on Friday 20<sup>th</sup> day, 2019 at 10.30 am and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approval) Act, 2011 and the Standing Orders of the National Assembly. The Committee took note of the following-
146. **Citizenship, Date and Place of Birth:** He is Kenyan, citizen, Identity Card Number 11289166. He was born on 15<sup>th</sup> July 1972 in Nairobi County and is married.
147. **Academic and Professional Qualifications:** He is a holder of a Bachelor degree in Land Economics from University of Nairobi (1992-1996), he also holds a Post Graduate Diploma from the Institution of surveyors, a Postgraduate Diploma in Project Management from the University College of Estate Management, Reading United Kingdom (2002-2006), MBA in Construction and Real Estate from the same university: (2002-2006). He also attended Lenana School Nairobi his secondary school education and Nairobi River Primary School for his primary education.
148. **Work and Professional Experience;** He is currently serving as the Managing Director in Ark Consultants Limited and has served in the same capacity since 2004, He was a Consultant in CB Richard Ellis, Kenya (2002-2004).He had also worked in Gimco Africa Property Management Ltd, Tanzania as General Manager (2000-2002), and Gimco Afric and Project Manager, Valuer (1996-2000).
149. **Professional Associations:** He is a registered Valuer and a member of the Institution of surveyors of Kenya He is also a registered Real estate agent, a member of the Chartered Institute of Builders and Africa Real Estate Society (AFRES).
150. **Published Writing:** His publications include ‘PPP’ As an avenue to Real estate Investment in the Counties: Presentation during the Retirement benefits scheme Property Conference in Mombasa, 2015, ‘Developing a Real estate Investment Plan: Presentation during the Retirement benefits scheme Property Conference in Mombasa, 2015,

'Legacy of the Boom': Concept paper Presented during the Retirement benefits scheme Property Conference in Nairobi, 2015, ' Knowledge Sharing and Management in Kenya's Real Estate Firms: MBA Dissertation, 'Effects of Employee Housing on Welfare of Employees: Research paper for award of B.A in land economics among others.

151. **Potential Conflict of Interest:** He has no immediate associations that are likely to present potential conflict of interest when he assumes the position. However, the Committee noted.
152. **Net-worth:** He informed the Committee that his net worth is 250 million.
153. **Integrity:** The nominee has not been dismissed or otherwise removed from office for contravening the provisions of Article 75 of the Constitution.
154. **Other specific issues:** The nominee also responded to several questions during the vetting as follows:
- (i) On measures to protect land compulsorily acquired by the government for infrastructural projects the nominee indicated that he will ensure that the land is vested to deter land grabbing;
  - (ii) He will also recommend the development of an inventory on land owned by absentee landlords and all public land to ensure that such land is utilized for public value should he be appointed;
  - (iii) He will further recommend strategic rethinking in the commission and discourage confrontation with stakeholders but instead develop an accommodate approach in stakeholder engagement;
  - (iv) He also observed that his experience in the private sector was an advantage rather than a disadvantage noting that the two sectors were interrelated, and he will use his skills and exposure and valuation and real estate management to improve service delivery in the commission. He also stated that he had interacted with the public sector through his work in the National Transport and safety Authority (NTSA);
  - (v) On the role of the commission in natural resource management he indicated that he will recommend the

formulation of regulations to manage the exploitation of natural resources and the blue economy.

#### **4.9 Hon. Tiyah Galgalo Ali – Nominee for the position of Member, National Land Commission**

155. Hon. Tiyah Galgalo appeared before the Committee on Friday, 20<sup>th</sup> September, 2019 at 09.30 am and was interviewed pursuant to the provisions of the Constitution, Public Appointments (Parliamentary Approval) Act, 2011 and the Standing Orders of the National Assembly. The Committee took note of the following:
156. **Citizenship, Date and Place of Birth:** She is Kenyan, male citizen, Identity Card Number 787399. She was born on 12<sup>th</sup> November 1966 in Isiolo County.
157. **Academic and Professional Qualifications:** She is a holder of a M. aster of Education degree in Administration and Planning from University of Nairobi (1999-2004, a Bachelor of Education (Arts) from Kenyatta University (1986-1990) , She attended Njonjo Girls' for her A - Levels ( 1985-1986) and Garbatulla High School her O' Levels (1981-1984).
158. **Work and Professional Experience:** She is currently serving as County Executive Committee Member in charge of Public Service & County Administration, Tourism, wildlife, Trade, Co-operative, Industrialization and Enterprise Development in Isiolo County (2017-Date), an Emergency Education Officer; UNICEF (2008-2009), Programme Officer; Pastoralists Development Network (2005-2009) and School Principal; Isiolo Girls High School (1992-2004).
159. **Other Activities and Membership:** She is a life a member Kenya Red Cross and Maendeleo ya Wanawake Organization.
160. **Public Office:** She has held positions in various public offices in addition to those highlighted under the section on work and professional experiences. Prior to his nomination, the nominee served as the served as Member of Parliament (MP) Isiolo County (2013-2017), Commissioner; Interim Independent Electoral Commission

(IIEC): 2009-2011, and a Commissioner; Poverty eradication Commission (2008-2009).

161. **Potential Conflict of Interest:** She has no immediate associations that are likely to present potential conflict of interest when she assumes the position. However, the Committee noted.
162. **Net-worth:** She stated that her net worth is Kshs. 116 Million.
163. **Integrity:** The nominee has not been dismissed or otherwise removed from office for contravening the provisions of Article 75 of the Constitution.
164. **Other specific issues:** The nominee also responded to several questions during the vetting as follows:
- i. The nominee informed the Committee that she was issued with a tax compliance certificate on 23<sup>rd</sup> November, 2018 which she acquired through the KRA i-tax platform which she has been using in all her applications subsequent to that date;
  - ii. She was only made aware of her tax non-compliance status by KRA two days prior to her vetting and was advised to file nil returns on 18<sup>th</sup> September 2019 which she later amended on 19<sup>th</sup> September by including Ksh. 8,348,300.00 earned from the Parliamentary Service Commission and Ksh 3,125,500.00 earned from the County Government of Isiolo for 2017 and 2018 respectively. She also stated that she had paid Ksh. 4000 as penalty for late submission of the returns;
  - iii. The nominee believes that cordial working relationship with all the relevant agencies will forestall the animosity that was witnessed between the Ministry of Lands and Physical Planning and the inaugural Commission;
  - iv. The nominee advocates for close corporation and collaboration between the Commission and other relevant agencies for the Commission to achieve its expected mandate optimally;
  - v. The nominee indicated that she applied for the positions of the Chairperson and Member of the Commission, was shortlisted

for the Chairperson's position and interviewed for both positions.

## 5.0 COMMITTEE OBSERVATIONS

The Committee made the following observations having considered the nominees curriculum vitae, filled questionnaires pursuant to the Schedule to the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011) and the oral submissions made during the approval hearings:

1. That the issues for considerations in terms of section 7 of the Public Appointments (Parliamentary Approval) Act were-
  - (1) the procedure used to arrive at the nominee;
  - (2) any constitutional or statutory requirements relating to the office in question; and
  - (3) the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is made.
2. The Committee also observed it was paramount that each of the issues for consideration is carefully examined in seeking to determine the suitability of each candidate.

**(1) The procedure used to arrive at the nominees to the position of the Chairperson and Members of the National Land Commission.**

3. The Committee observed that the procedure used to arrive at the nominees can be construed from the time the Selection Panel was constituted, the way the selection processes were undertaken and subsequently the nomination of the nominees to the National Land Commission.
4. The Committee noted that the First Schedule to the National Land Commission Act provides for the procedure for appointment of Chairperson and Members of the National Land Commission. It provides that the President shall, within fourteen days

after the commencement of the Act and whenever a vacancy arises, constitute a selection panel comprising-

- i. a nominee of the Office of the President;
  - ii. a representative of the Cabinet Secretary;
  - iii. two persons, of opposite gender, nominated by the Non- Governmental Organizations Council, who have demonstrated competence and capacity in matters related to natural resources;
  - iv. one person who is a citizen of Kenya, nominated by the Kenya Private Sector Alliance from their member organizations who has demonstrated competence and capacity in the land sector;
  - v. a nominee of the Association of Professional Societies in East Africa; and
  - vi. a nominee of the National Gender and Equality Commission.
5. In responding to the issues relating to the Selection Panel on grounds that it was not properly constituted as the two nominees from the Non- Governmental Organizations Council had not been appointed by the President, the Committee made reference to a letter dated 18<sup>th</sup> October, 2018 by the Head of the Public Service, Mr. Joseph Kinyua to the Chairperson of the Non- Governmental Organizations Council and another letter dated 30<sup>th</sup> October, 2018 by the Chairperson of the Non-Governmental Organizations Coordination Board to the Head of the Public Service. (Annexure XI)
6. The Committee observed that pursuant to paragraph 1(d) of the First Schedule to the National Land Commission Act, it is the Non- Governmental Organizations Council that is required by law to nominate the two persons of opposite gender under paragraph 1(d).
7. The Committee also observed that vide a letter dated 18<sup>th</sup> October, 2018 by the Head of the Public Service, Mr. Joseph Kinyua wrote to the Chairperson of the Non-Governmental Organizations Council, Mr. Gichira Kibara, informing the Council of the dictates of paragraph 1(d) of the First Schedule to the National Land Commission Act. The Head of Public Service through the letter also requested the Council to nominate the two persons required under paragraph 1(d) for appointment by the



President.

8. On 30<sup>th</sup> October, 2018, one Ms. Joyce Yiale on behalf of the Chairman of the Non-Governmental Organizations Coordination Board replied to the Head of the Public Service and stated that they were unable to nominate the two persons required under paragraph 1(d) due to the fact that the Non-Governmental Organizations Council was still under leadership of different factions that had culminated into litigation.
9. In this regard, the Committee observed that the absence of the persons under paragraph 1(d) of the First Schedule to the National Land Commission Act was occasioned by the inability of the Council to nominate its nominees as required by law.
10. The Committee also observed that His Excellency the President appointed the Members of the Selection Panel for the nomination of the Chairperson and Members of the National Land Commission through Gazette Notice No. 3758 of 26<sup>th</sup> April, 2019.
11. In light of the foregoing, the Committee observed that the Selection Panel was constituted in accordance with the dictates of the First Schedule to the National Land Commission Act, 2012.
12. Further, the Committee observed that the First Schedule to the National Land Commission Act provided as follows on the steps to be undertaken by the Panel-
  - i. The selection panel shall, within seven days of convening, by advertisement in at least two daily newspapers of nationwide circulation, invite applications from persons who qualify for nomination and appointment for the position of the chairperson and members referred to under section 8.
  - ii. The selection panel shall within twenty-one days after the expiry of the deadline for receipt of applications—
    - (a) consider the applications received to determine their compliance with the provisions of the Constitution and the National Land Commission Act;
    - (b) short list the applicants;

- (c) publish the names of the shortlisted applicants and the qualified applicants in at least two daily newspapers of nationwide circulation;
- (d) conduct interviews of the shortlisted persons in public;
- (e) shortlist two qualified applicants for the position of chairperson;
- (f) shortlist sixteen qualified applicants for the position of the members; and
- (g) forward the names of the qualified persons to the President.

13. The Committee observed that the question that arose was therefore whether the steps envisaged by the National Land Commission Act were followed by the Selection Panel. In answering this, the Committee inquired further into the following questions-

*(1) Did the Selection Panel advertise in at least two daily newspapers of nationwide circulation, invite applications from persons who qualify for nomination and appointment for the position of the chairperson and members referred to under section 8?*

The Committee observed that indeed the Selection Panel did invite applications from persons wishing to be considered for appointment to the position of chairperson and members of the National Land Commission in the print media, Public Service Commission and MyGov websites on 4<sup>th</sup> and 11<sup>th</sup> June, 2019 as evidenced by the adverts placed in the print media and the Public Service Commission website. (Annexure XI)

*(2) Did the Selection Panel consider the applications received to determine their compliance with the provisions of the Constitution and the National Land Commission Act?* The Committee observed that at the end of the application period the Panel had received a total of 117 applications for Chairperson and 940 for Members as evidenced by the long list of persons who applied for position of Chairperson and Members respectively. (Annexure XI)

*(3) Did the Selection Panel short list the applicants?* The Committee observed that the Panel shortlisted eleven candidates for the position of chairperson and fifty candidates for the position of Member as evidenced in the shortlist and interview schedule available at the Public Service Commission website. (Annexure XI)

*(4) Did the Selection Panel publish the names of the shortlisted applicants and the qualified applicants in at least two daily newspapers of nationwide circulation?*

The Committee observed that the Panel published the names of the applicants in print media and the Public Service Commission websites as evidenced in the adverts attached herein. (Annexure XI)

*(5) Did the Selection Panel conduct interviews of the shortlisted persons in public?*

The Committee observed that the interviews were conducted at the Public Service Commission and the members of the public were also invited to avail in writing any credible information concerning the nominees to the Chairperson of the Selection Panel as evidenced in the information contained in the shortlist and interview schedule published in the Public Service Commission website. (Annexure XI).

*(6) Did the Selection Panel shortlist two qualified applicants for the position of chairperson? The Committee observed that according to the Report of the Selection Panel, the Panel shortlisted two qualified applicants for chairperson namely Mr. Gershom Otachi Bw'Omanwa and Mr. John K. Njiraini.*

*(7) Did the Selection Panel shortlist sixteen qualified applicants for the position of chairperson? The Committee observed that according to the Report of the Selection Panel, the Panel shortlisted sixteen qualified applicants for Members of the National Land Commission.*

14. In light of the foregoing, the Committee observed that indeed the Selection Panel followed all the procedures required in law to be undertaken in arriving at all the nine nominees to the National Land Commission.

15. In answering the question of whether the procedures adopted by the Selection Panel were opaque, the Committee observed that the Selection Panel invited for applications to the positions of the chairperson and members of the National Land Commission through print media, Public Service Commission and MyGov websites, the shortlist was also published in print media, Public Service Commission and MyGov websites, the interviews were also conducted in public and members of the public were invited to submit information on the shortlisted candidates.(Annexure XI)

16. In this regard, the Committee therefore observed that the procedures used to arrive at all the nine nominees were transparent and open to the public as required by the First Schedule to the National Land Commission Act.
17. The Committee also observed that in respect of the issues raised in relation to Hon. Esther Murugi and Hon. Tiya Galgalo Ali to the effect that the two had been shortlisted for Chairperson and not Member of the National Land Commission, the Committee examined the shortlist and interview schedule and confirmed that the two were shortlisted in the category of the Chairperson.
18. This necessitated the Committee to proceed to consider the Report of the Selection Panel where upon examination it observed that the Panel had advised the President that a total of nine candidates among them being Hon. Esther Murugi and Hon. Tiya Galgalo Ali had applied for the position of Chairperson and Member and hence recommended that they be considered for nomination to both positions.
19. The Committee also further verified the long list of the Selection Panel culminating from closure of the application period and observed that Hon. Esther Murugi and Hon. Tiya Galgalo Ali did actually apply for both positions as evidenced by the long list No.41 and 115 for both candidates respectively for the position of Chairperson and the long list No. 372 and 897 for both candidates respectively for the position of Member. (Annexure XI)
20. The Committee also received an application letter dated 21<sup>st</sup> June, 2019 addressed to the Selection Panel by Hon. Esther Murugi applying for both the position of Chairperson and Member of the National Land Commission. (Annexure XVI)
21. The Committee also received two applications letters dated 1<sup>st</sup> July 2019 respectively addressed to the Selection Panel by Hon. Tiyah Galgalo Ali one applying for the position of Chairperson and the other Member of the National Land Commission (Annexure X).
22. The Committee further did examine Hon. Esther Murugi during the approval hearing who submitted that although she had been shortlisted for the position of Chairperson,

on the day she appeared before the Panel she was interviewed for both the position of a Chairperson and Member.

23. The Committee further did examine Hon. Tiyah Galgalo Ali during the approval hearing who submitted that although she had been shortlisted for the position of Chairperson, on the day she appeared before the Panel she was also interviewed for both the position of a Chairperson and Member.
24. Further, paragraph 13 of the First Schedule to the National Land Commission Act, 2012 provides that the Selection Panel may determine its own procedure. From the foregoing, as part of the procedure adopted by the Panel, whereas Hon. Esther Murugi and Hon. Tiya Galgalo Ali were shortlisted for the positions of Chairpersons, since both of them had applied for two positions being that of the Chairperson and Member, the two candidates were interviewed for both positions on the day they appeared for the interview.
25. The Committee noted that having to conduct separate interviews on different dates to a candidate who had applied for both positions may also not have been necessary and efficient noting the qualifications to be appointed as Chairperson or Member were nearly the same save for a only a difference of five years' experience between the two.
26. From the submissions by the nominees and the Report of the Selection Panel, the Hon. Esther Murugi and Hon. Tiyah Galgalo Ali, the Committee observed that the two were nominated for the positions of Member of the National Land Commission having duly applied for the positions of Member of the National Land Commission and duly interviewed by the Selection Panel for the position of Member of the National Land Commission.

**(2) Constitutional or statutory requirements relating to the office in question**

27. The Committee observed that section 8(1) of the National Land Commission Act No. 5 of 2012 prescribes the qualifications necessary for a person to be appointed as a chairperson of the Commission as follows-

*(1) A person shall be qualified for appointment as the chairperson if the person—*

*(a) holds a degree from a university recognized in Kenya;*

*(b) has knowledge and experience of at least **fifteen** years in matters relating to any of the following fields—*

*(i) public administration;*

*(ii) land management and administration;*

*(iii) management of natural resources;*

*(iv) land adjudication and settlement;*

*(v) land law, land survey, spatial planning or land economics; or*

*(vi) social sciences;*

*(c) meets the requirements of Chapter Six of the Constitution; and*

*(d) has had a distinguished career in their respective fields.*

28. The Committee further observed that section 8(2) of the National Land Commission Act No. 5 of 2012 prescribes the qualifications necessary for a person to be appointed as a member of the Commission as follows—

*(2) A person shall be qualified for appointment as a member of the Commission if the person—*

*(a) holds a degree from a university recognized in Kenya;*

*(b) has knowledge and experience of at least **ten** years in matters relating to any of the following fields—*

*(i) public administration;*

*(ii) land management and administration;*

*(iii) management of natural resources;*

*(iv) land adjudication and settlement;*

*(v) land law, land survey, spatial planning or land economics;*

*or*

- (vi) *social sciences;*  
(c) *meets the requirements of Chapter Six of the Constitution; and*  
(d) *has had a distinguished career in their respective fields.*

29. In light of the foregoing, the Committee observed that based on evidence submitted in terms of original academics certificates and testimonials during the approval hearings by all the nominees, a scrutiny of each of the nominee's curriculum vitae and oral submissions made by each of the nominee during the approval hearings, pursuant to the Constitution and the provisions of section 8(1) and (2) of the National Land Commission Act, the following nominees had met all the respective constitutional and statutory requirements for appointment to the National Land Commission –

- |                                   |               |
|-----------------------------------|---------------|
| (1) Mr. Gershom Otachi Bw'Omwanwa | - Chairperson |
| (2) Hon. Esther Murugi Mathenge   | - Member      |
| (3) Prof. James K. Tuitoek        | - Member      |
| (4) Ms. Gertude Nduku Nguku       | - Member      |
| (5) Mr. Reginald Okumu            | - Member      |
| (6) Hon. Samwel Kazungu Kambi     | - Member      |
| (7) Ms. Hubbie Hussein Al-Haji    | - Member      |
| (8) Mr. Alister Murimi Mutugi     | - Member      |

30. Further, the Committee observed that it had received clearance reports on ethics and integrity, tax compliance, criminal records and higher education loan repayments from the Ethics and Anti-Corruption Commission, Kenya Revenue Authority, Directorate of Criminal Investigations and the Higher Education Loans Board with respect to the following nominees-

- |                                  |               |
|----------------------------------|---------------|
| (1) Mr. Gershom Otachi Bw'Omanwa | - Chairperson |
| (2) Hon. Esther Murugi Mathenge  | - Member      |
| (3) Prof. James K. Tuitoek       | - Member      |
| (4) Ms. Gertude Nduku Nguku      | - Member      |
| (5) Mr. Reginald Okumu           | - Member      |

- (6) Hon. Samwel Kazungu Kambi - Member
- (7) Ms. Hubbie Hussein Al-Haji - Member
- (8) Mr. Alister Murimi Mutugi - Member

31. With respect to the tax compliance certificate - KRAWON3033692018 submitted to the Committee by Hon Tiyah Galgalo Ali - PIN-AOO1864763G, the Committee noted that the Kenya Revenue Authority had submitted a further report, vide a letter Ref No. KRA/M&CF/SEEM19/11 dated 25<sup>th</sup> September 2019 which stated the following in respect of tax compliance status of Hon. Tiyah Galgalo Ali, a nominee for the position of Member, National Land Commission (*Annexure V*);

- i. Tax Compliance Certificate number KRAWON3033692018 issued to Hon. Tiyah Galgalo Ali on 23<sup>rd</sup> October 2018 was withdrawn for having been irregularly issued;
- ii. The Authority was pursuing internal disciplinary action on the officers who issued the certificate with full knowledge that the return for the year 2017 had not been filed;
- iii. The review had identified transactions and amounts that were received by her that will require further investigations. She will be required to provide explanation and supporting evidence before she could be considered for issuance of a valid Tax Compliance Certificate; and
- iv. The Authority concluded that she has not been tax compliant and further put her returns for 2017 and 2018 under investigations having identified funds that need to be explained/supported in the determination of her taxable income.

32. The Committee further observed that Hon Tiyah Galgalo Ali had not submitted a valid tax compliance certificate for purposes of the vetting exercise.

**3. The suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is made.**

33. The Committee observed that based on the oral submissions of the nine nominees to



the National Land Commission during the approval hearings, the Committee did confirm that all the nine nominees possessed abilities, experience and qualities necessary for which the nomination was made.

#### **4. Personal Integrity Issues.**

34. The Committee also observed that in respect to the memoranda submitted contesting the suitability of the nominee for Member of the National Land Commission, Prof. James K. Tuitoek, the documents submitted by the ADC indicated that the beneficiary of the ADC land in question was Mr. James C. Tuitoek and not Prof. James K. Tuitoek.
35. From the document containing the picture of the said Mr. James C. Tuitoek, who was allocated land by ADC, the Committee observed that it did not match with the nominee. (Annexure VIIb).
36. From the document containing the Identification Number of Mr. James C. Tuitoek, the Committee observed that the Identification Number of Mr. James C. Tuitoek was 2342499 while that of the nominee was 0323892 and hence did not match with that of the nominee.
37. In this regard, the Committee observed that although the two affidavits raised in respect of the suitability of the nominee, touched on integrity issues which is a requirement for qualification for appointment as a Member, the nominee was not the said beneficiary of alleged allocation of ADC land. The beneficiary was Mr. James C. Tuitoek and not the nominee.
38. The Committee observed that in respect of the affidavit contesting the suitability of Hon. Kambi Kazungu, the dispute between the nominee, the Development Bank and the Giriama Ranch owners relating to a bank facility the following cases were still pending in various courts awaiting determination:
  - (1) High Court Civil Case No. 57/2018;
  - (2) Civil Case No.304/2018; and
  - (3) Civil Case No. 155/2018.

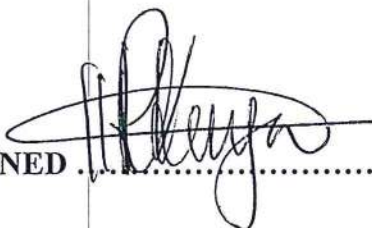
## 5. Other issues arising from the approval hearings

39. The Committee observed that in respect to the issue of inconsistencies between the date of birth of Ms. Gertude Nduku Nguku, as indicated in her Identification Card as 1/1/1966 vis-à-vis the information contained in the duly filled questionnaire as 11/7/1966 the nominee submitted her original passport and birth certificate the Committee certified itself on the correct date of birth of the nominee as being 11/7/1966.

## 6.0 COMMITTEE RECOMMENDATIONS

Having conducted the approval hearings for the nominees pursuant to Article 250 (2) of the Constitution, sections 3 of the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Order 199, the Committee recommends that this House:

1. Approves the nomination of Mr. Gershom Otachi Bw'Omanwa as the Chairperson and the following as Members of the National Land Commission:
  1. Hon. Esther Murugi Mathenge - Member
  2. Prof. James K. Tuitoek, Ph.D - Member
  3. Ms. Gertrude Nduku Nguku - Member
  4. Mr. Reginald Okumu - Member
  5. Hon. Samwel Kazungu Kambi - Member
  6. Ms. Hubbie Hussein Al-Haji - Member
  7. Mr. Alister Murimi Mutugi - Member
  
2. Rejects the nomination of Hon. Tiyah Galgalo Ali as a Member of the National Land Commission.

SIGNED  .....

HON. (DR.) RACHAEL NYAMAI, M.P  
CHAIRPERSON  
DEPARTMENTAL COMMITTEE ON LANDS

DATE 26/09/2019 .....





**NATIONAL ASSEMBLY**

**CLERK'S CHAMBERS**

**DEPARTMENTAL COMMITTEE ON LANDS**

**ADOPTION LIST**

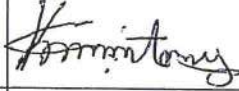
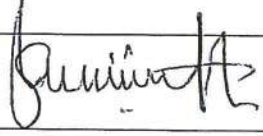
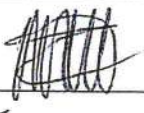

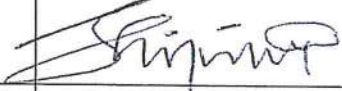

*Adoption of the report on vetting of the nominees for appointment to the positions of Chairperson and Members of the National Land Commission*

DATE: 26-09-2019 TIME: 12:00pm

VENUE 2<sup>nd</sup> floor, Continental House

NO	NAME	SIGNATURE
1.	Hon. Dr. Rachael Nyamai, MP - <b>Chairperson</b>	
2.	Hon. Khatib Mwashetani, MP - <b>Vice Chairperson</b>	
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	

*Adoption of the report on vetting of the nominees for appointment to the positions of Chairperson and Members of the National Land Commission*

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	

**MINORITY REPORT ON VETTING OF THE NOMINEES FOR APPOINTMENT TO THE POSITIONS OF CHAIRPERSON AND MEMBERS OF THE NATIONAL LAND COMMISSION**

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1. This Report has been made pursuant to the provisions of Standing Order 199 by the following Members in respect of the nominee for the position of Member of the National Land Commission, Hon. Samwel Kazungu Kambi -

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

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

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

2. The Members wish to observe as follows in respect of the nomination of Hon. Hon. Samwel Kazungu Kambi –

**Lack of academic qualifications**

- (i) The Members observed that there existed inconsistencies in the information contained in the curriculum vitae of Hon. Samwel Kazungu Kambi vis-à-vis the sworn statement dated 25<sup>th</sup> September, 2019.
- (ii) The curriculum vitae of the nominee indicates that between 1990 to 1994 the nominee worked as a Manager in the Kenya Post Bank and between 1987 to 1990 as an Assistant Manager, in the same bank. This information has been captured in paragraph 127 and page 34 of the majority report.
- (iii) However, in his sworn statement dated 25<sup>th</sup> September, 2019, the nominee indicates in 1985 he had sat for his KCPE at Mwijo Primary School and later sat for his KCSE in 1990 at Kilala Secondary School indicating that the period therefore between 1985 to 1990 he was still in school. This is the said period that he also indicates that he was working as an Assistant and Manager of the Post Bank of Kenya.
- (iv) The inconsistencies cast doubt on the integrity of the nominee in terms of dishonesty contrary to Article 73 of the Constitution contained in Chapter Six

of the Constitution which lists down honesty as one of the principles of leadership and integrity.

- (v) It is noteworthy that section 8 of the National Land Commission Act, 2012 also provides that a person is qualified for appointment as a Member of NLC, if the person meets the requirements of Chapter Six of the Constitution. In this regard, in view of the inconsistencies in the submissions by the said nominee revealing falsehoods, the said nominee lacks personal integrity and is therefore not suitable for appointment as a State Officer.
- (vi) The nominee also averred during the approval hearings that he had obtained a D+ in his KCSE and had undertaken three months bridging course thereafter.
- (vii) The nominee was tasked to produce the KCSE certificate showing the grade that he actually obtained which he promised to produce the following day but he did not. In reply, he stated that he could not locate his certificate. The nominee did not also submit the bridging course certificate. This raises questions and queries on the manner in which his degree certificate was obtained. The question that was never answered was therefore how did the nominee manage to be admitted to the University with a D+ and three months bridging course to pursue a bachelor's degree.
- (viii) That although the National Land Commission Act, 2012 says that the qualifications for appointment as a Member is just a degree at a university recognised in Kenya, the Committee needed to have exercised due diligence by counter checking with the relevant authorities this being the KNEC and the Commission for University Education so that to remove doubt on the authenticity of the degree certificate.
- (ix) As it is now, the authenticity of the degree is therefore still in doubt as one cannot procure such without having gone to secondary school, a fact that the Committee did not prove as the nominee never submitted any KCSE certificate.
- (x) It is common parlance and practice that whenever this House vets persons for appointment to state offices, the House through its Committees must confirm the academic qualifications of nominees by either writing to the relevant authorities or summoning the persons in charge of the authorities to appear before them.
- (xi) This was the case, during the vetting of the Inspector-General in the 11<sup>th</sup> Parliament, where the Joint Committee of both Houses on Administration and National Security summoned the Chief Executive Officer of the Commission of Universities Education.
- (xii) It is worth noting that despite all the queries that have been raised in respect of the nominee's academic qualifications, the Committee neither wrote to the



KNEC and the Commission of Universities Education nor summoned any of its officers.

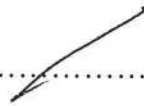
**Lack of Personal Integrity**

- (xiii) There are three cases namely the High Court Civil Case No. 57/2018, Civil Case No.304/2018 and Civil Case No. 155/2018 all relating to the fact that the nominee fraudulently obtained a credit facility using land belonging to the Giriama Ranch Company Limited as security for the said loan raising doubt therefore on his suitability in terms of personal integrity.
- (xiv) That pending court cases cannot be used as a justification for negating the provisions of Chapter Six of the Constitution and the requirements of the Public Appointment (Parliamentary Approval) Act on the need for a nominee to have personal integrity as a conditional precedent for appointment.
- (xv) That the House cannot depart from its own precedent set during the nomination of Mr. Ben Chumo the nominee for chairperson of the Salaries and Remuneration Commission where the Committee on Finance and National Planning rejected the nomination of the said nominee over graft charges.
- (xvi) That there is no threshold on personal integrity and all that is required is the existence of doubt on the personal integrity of a nominee.
- (xvii) That the nominee even admitted to having obtained a Kshs 250 Million loan from the Development Bank of Kenya using the land belonging to Giriama Ranch Company Limited where over 6000 families now face eviction.
- (xviii) The nominee stated during the approval hearings that he had obtained consent from the Giriama Ranch to use their land as collateral for the loan, a fact which those who purported to have given the said consent dispute.
- (xix) The authenticity of the purported consent is also in doubt and the Committee should not have relied on it in making its decision.
- (xx) The nominee also stated in the approval hearing that the borrower of the said loan was Riva Oils Company Limited and not him. The Committee failed to take into cognizance that the nominee is the owner of the said company and he could not argue that he had not borrowed the loan. The Committee also ignored the fact that the nominee admitted to have personally paid the Development Bank Kshs 30 Million as part payment of the loan further admitting that he owned Riva Oils Company.
- (xxi) That the nominee is still serving as Chairman of Coast Development Authority and there is a potential existence of a conflict of interest if he is approved noting the nominee did not even indicate the willingness to resign.

(xxii) That contrary to section 13 of the leadership and Integrity Act,2012 the self-declaration form for the nominee was not signed by the nominee and sworn as required by the law.

**Recommendation**

3. In view of the foregoing, the Members recommend that the House does reject the nomination of Hon. Samwel Kazungu Kambi for appointment as a Member of the National Land Commission as he-
  - (a) does not possess the academic qualifications necessary for appointment as Member of the National Land Commission as stipulated in section 8 of the National Land Commission Act;
  - (b) does not meet the requirements of Chapter Six of the Constitution as required under section 8 of the National Land Commission Act;
  - (c) lacks personal integrity as required under section 6 of the Public Appointments (Parliamentary Approval) Act.
4. That a Committee cannot approve a candidate for appointment as a Member of the National Land Commission unless the candidate meets the requirements of the law in terms of academic and personal integrity requirements.

Dated the.....*26<sup>th</sup>*.....September..........2019

Name	Signature
1. Hon. Owen Yaa Baya, MP.	
2. Hon. Teddy Mwambire, MP	
3. Hon. Omar Mwinyi, MP	

**MINUTES OF THE 71<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON LANDS HELD ON THURSDAY, 26<sup>TH</sup> SEPTEMBER 2019 IN 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 9.30 A.M**

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**PRESENT**

1. Hon. Dr. Rachael Nyamai, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M.P - **Vice Chairperson**
3. Hon. Jayne Kihara, M.P
4. Hon. Joshua Kutuny, M.P
5. Hon. Kimani Ngunjiri, M.P
6. Hon. Omar Mwinyi Shimbwa, M.P
7. Hon. Caleb Kositany, M.P
8. Hon. George Risa Sunkuyia, M.P
9. Hon. Jane Wanjuki Njiru, M.P
10. Hon. Josphat Gichunge Kabeabea, M.P
11. Hon. Owen Baya, M.P
12. Hon. Samuel Kinuthia Gachobe, M.P
13. Hon. Simon Nganga Kingara, M.P
14. Hon. Teddy Mwambire, M.P

**APOLOGIES**

1. Hon. Mishi Mboko, M.P
2. Hon. Catherine Waruguru, M.P
3. Hon. Ali Mbogo, M.P
4. Hon. Babu Owino, M.P
5. Hon. George Aladwa, M.P

**IN ATTENDANCE**

**THE NATIONAL ASSEMBLY SECRETARIAT**

1. Mr. Leonard Machira - Clerk Assistant I
2. Mr. Ahmad Guliye - Clerk Assistant III
3. Ms. Jemimah Waigwa - Legal Counsel I
4. Mr. Joseph Tiyan - Research Officer II
5. Mr. Nimrod Ochieng - Audio Recording Officer
6. Ms. Peris Kaburi - Serjeant – At – Arms

**MIN. NO. NA/DCS/LANDS/2019/269: PRELIMINARIES**

The meeting was called to order at four minutes to ten o'clock and prayers were said.

**MIN. NO. NA/DCS/LANDS/2019/270: CONFIRMATION OF PREVIOUS MINUTES**

- i. The minutes of the 70<sup>th</sup> Sitting held on Wednesday, 25<sup>th</sup> September 2019 were confirmed as true record of the Committee's proceedings after it was proposed and seconded by Hon. George Sunkuyia, M.P and Hon. Caleb Kositany respectively.

**MIN. NO. NA/DCS/LANDS/2019/271: MATTERS ARISING**

The Committee was informed that the following documents were availed by two nominees;

- a. Ms. Gertrude Nduku Nguku availed a sworn affidavit in support of her lost Identity Card and further averred that her correct date of birth was 11/7/1966.
- b. Hon. Samwel Kazungu Kambi availed a sworn affidavit averring that he lost his primary and secondary school certificates.
- c. Hon. Samwel Kazungu Kambi also submitted a consent letter from Giriama Ranching Company Limited guaranteeing Riva Oil Company Limited to borrow a further sum of 190 million form Development Bank.

**MIN. NO. NA/DCS/LANDS/2019/272: ADOPTION OF REPORT ON VETTING OF THE NOMINESS FOR APPOINTMENT AS CHAIRPERSON AND MEMBERS OF THE NATIONAL LAND COMMISSION**

- I. ~~The Committee adopted the report on vetting of the nominees for appointment as Chairperson and Members of the National Land Commission with the following recommendations;~~

Having conducted the approval hearings for the nominees pursuant to Article 250 (2) of the Constitution, sections 3 of the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Order 199, the Committee recommends that this House:


- a) Approves the nomination of Mr. Gershom Otachi Bw'Omanwa as the Chairperson and the following as Members of the National Land Commission:
  1. Hon. Esther Murugi Mathenge - Member
  2. Prof. James K. Tuitoek, Ph.D - Member
  3. Ms. Gertrude Nduku Nguku - Member
  4. Mr. Reginald Okumu - Member
  5. Hon. Samwel Kazungu Kambi - Member
  6. Ms. Hubbie Hussein Al-Haji - Member

7. Mr. Alister Murimi Mutugi - Member

- b) Rejects the nomination of Hon. Tiyah Galgalo Ali as a Member of the National Land Commission.
- II. The Committee rejected the nomination of nominee Hon. Tiyah Galgalo Ali on the basis that the tax compliance certificate she presented to the Committee has since been withdrawn by the Kenya Revenue Authority on grounds that it was irregularly issued and the nominee was not tax compliant.
- III. Three members of the Committee; the Hon. Owen Baya, MP, Hon. Omar Mwinyi, MP and Hon. Teddy Mwambire, MP dissented on the approval of the nomination of Hon. Samwel Kasungu Kambi on the grounds of questionable academic qualifications and integrity.

**MIN. NO. NA/DCS/LANDS/2019/273: ADJOURNMENT**

There being no other business to discuss, the meeting was adjourned at twelve minutes past twelve noon. The next meeting will be held on Tuesday, 1<sup>st</sup> October 2019 at 10.00 a.m.

Signature  .....

**HON. DR. RACHAEL KAKI NYAMAI, M.P.**

**(Chairperson)**

Date. 26/09/2019 .....

