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THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT- (SECOND SESSION)

PUBLIC PETITION

I, the UNDERSIGNED, on behalf of the Stakeholders of the Kenya Planters' Cooperative Union,

DRAW the attention of the House to the following;

- i) THAT, aware that the Kenya Planters' Cooperative Union (KPCU) Ltd is an institution wholly owned by over 700,000 shareholders registered in over 400 Cooperatives Unions, Plantations and Estates and which has played a leading role in the development of the coffee sub-sector but was placed under receivership by the Kenya Commercial Bank (KCB) for failure to service a Ksh 644 million loan that accrued interest to Ksh 1.4 billion;
- ii) THAT, despite a directive from former President Mwai Kibaki, EGH, MP to revive KPCU in September 2011 the Commissioner for Cooperatives Development has been attempting to scuttle the revival efforts as evidenced by a serious conflict of interest since he sits in the Board of Directors of a competitor (the Kenya Coffee Cooperative Exporters), and as proven by his failure to support the Union in its compensation claim against Cooperative Insurance Company despite being a Board Member at the insurance firm, his orders to call for elections that allowed persons barred by a National Assembly resolution of August 2012 to vie in irregularly convened elections, his deliberately unsupportive approach to all matters concerning the settling of the aforementioned KCB debt and lifting of the receivership of the Union, and generally by his failure to faithfully and diligently perform his duties and responsibilities to expected standards;



PUBLIC PETITION

BY THE STAKEHOLDERS OF THE KENYA PLANTERS'
COOPERATIVE UNION LTD

FOR

THE REMOVAL OF THE COMMISSIONER FOR COOPERATIVES DEVELOPMENT

iii) NOTING, that intervention efforts at addressing the myriad of challenges posed by the Commissioner of Cooperatives and sustaining KPCU's revival are best handled by appropriate government agencies;

iv) AND NOTING further that the issues in respect of which this Petition is made are not pending before any court of law or any constitutional or legal body,

THEREFORE your humble Petitioners PRAY that the National Assembly through the Departmental Committee on Agriculture, Livestock and Cooperatives

i) investigates the conduct of the Commissioner for Cooperatives Development with a view to sanctioning, censuring and removing him from his position;

ii) urges the Government to support the Union's revival efforts by writing off its outstanding debts, injecting capital, and granting the interim Board a three-year operational period to allow for stabilization;

iii) directs the Cooperative Bank of Kenya to forthwith cease meddling in KPCU's affairs and micro-managing the coffee industry.

And your PETITIONERS will ever pray.

PRESENTED BY,


for HON. VICTOR MUNYAKA, MP

MEMBER FOR MACHAKOS TOWN CONSTITUENCY

DATE:

BY THE STAKEHOLDERS OF THE KENYA PLANTERS'
COOPERATIVE UNION LTD
FOR
THE REMOVAL OF THE COMMISSIONER FOR COOPERATIVES DEVELOPMENT

On Behalf of the Stakeholders of the Kenya Planters' Cooperative Union:

	Name	Designation	I/D No.	Signature
1	JAMES -N. MUNGANI	Stakeholder	6258458	
2	STEPHEN CUITAO	"	23122753	
3	BEN MUMENGE	"	25085765	
4	MBAE KIRIMI	"	18892299	
5	LAWRENCE NJUGUNA	"	11755893	
6	DAVID MURIMI	"	23405757	
7	JACK NJUGUNA	"	71928716	
8	KIMYARUJI EDWARDS	"	12494560	
9	SIMON NTOITI	Stakeholder	072963784	
10	OBADIAH LANGAT	Stakeholder	27453841	
11	MAINA MWANGI	Stakeholder	08443796	
12	JAMES JUNJA	FARMER	13865003	
13	PETER M. NYOROGI	STAKEHOLDER FARMER	1340208	
14	Vincent Nyoroge W.	Business man/ Stakeholder	13676293	



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18th November 2014

HON. JUSTIN MUTURI
SPEAKER,
KENYA NATIONAL ASSEMBLY
REPUBLIC OF KENYA
NAIROBI

Dear Sir,

REF: PETITION ON THE MATTER OF KENYA PLANTERS CO-
OPERATIVE UNION (KPCU) LTD.

Preamble

We the Board of Directors of Kenya Planters Co-operative Union (KPCU) hereby seek to petition Parliament to sanction, censure and institute a public inquiry in the conduct of public affairs by the Commissioner of Co-operatives Development on the matters of KPCU Ltd.

KPCU is farmers' wholly owned institution whose membership comprises of over 700,000 small scale farmers represented by over 400 Co-operatives and about 2,000 estate farmers owning small, medium and large scale farms. It has for a long time played a leading role in the development of the coffee sub-sector. It was instrumental to the rapid growth witnessed in the coffee industry immediately before and after independence. Its peak performance was in the year 1987/88 crop year when it milled the country's highest production of 130,000 metric tons of clean coffee, when it was the only coffee mill in the country.

All correspondence should be addressed to THE MANAGING DIRECTOR



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KPCU has an elaborate infrastructural network for coffee milling, storage and warehousing which is strategically located in all the coffee growing areas with an installed milling capacity of 150,000 metric tones of clean coffee with electronic coffee color sorting equipments.

Liberalization of the coffee industry which started in early 1990s found KPCU, like many other institutions in the sector not well prepared for the change. It was adversely affected by the stiff competition by other players in its core activities of coffee milling and marketing.

In the year 2009 Kenya Commercial Bank Limited (KCB) put KPCU's under receivership due to its failure to service a loan amounting to **Ksh.644 million** dating back to January 1998 which accrued interest to **Kshs. 1.4 billion**. The Bank appointed Deloitte Consulting Group as the Receiver and Managers.

On 15th September 2011, the former President H.E Mwai Kibaki directed the Ministries of Agriculture and Co-operative Development & Marketing to look into the revival of KPCU. This ultimately led to the convening of a Special General Meeting of KPCU on 20th July, 2012 at the KPCU's mills Dandora in Nairobi. During this meeting, grassroot shareholders elected seven (7) board of directors to spearhead KPCU's revival (*minutes herein attached*). The TOR for the Board were to include

- Liquidation of KCB's outstanding debt
- Settlement of debts from other creditors
- Lifting of the receivership by KCB
- Implement the resolutions of shareholders on the revival strategies and
- Review by-laws and Articles of Association

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The board had limited room for flexibility since the executive powers were vested with the receiver and therefore had no source of revenue, no office space and no staff to assist them in the day-to-day running of the Union. In spite and despite all this limitation, the board was able to engage in negotiation with KCB with a view of reducing the loan amount from Kshs. 1.4 Billion to 680 million.

It is worthwhile to note that even as KPCU Board members were engaging in negotiation with KCB on repayment and subsequent lifting of the receivership, the Commissioner of Co-operatives had initiated inquiry and investigations in the primary Co-operatives of KPCU board members with a view of coercing and intimidating them and hence scuttling the revival of KPCU.

Due to complexity and broad nature of the TOR's, an AGM was convened and held in July 2013 and the Board was confirmed and given a new mandate and a one term for a period of 3 years so that they could comprehensively address the above TOR's and revive the Company. (*Minutes herein enclosed*)

During the period of receivership, the receivers and managers made little progress in recovering KPCU's debts, as the core business of KPCU being coffee milling and marketing stalled from April, 2010 when Coffee Board of Kenya (CBK) revoked both the milling and marketing license for KPCU. The receiver did not attempt to run any of KPCU core business but instead chose to rely on rental incomes from Wakulima house and other KPCU properties to meet his running cost. In an effort to further frustrate and diminish any hopes of KPCU recovery, the receiver leased out KPCU Sagana Mills to a competing company (KCCE/M) whose sole intention was to takeover KPCU properties. Incidentally the Commissioner of Co-operatives sits in the Board of directors of KCCE, the mother company of KCCM and was therefore part of the grand scheme to fleece and strip KPCU off its core assets.



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Mr. Speaker, Kenya Coffee Co-operative Exporters (KCCE) and Kenya Coffee Co-operative Millers (KCCM), are the two companies that have been at the center of the coffee woes and wars in Mt. Kenya region especially Nyeri County. They have completely mishandled the coffee sector resulting in huge economic and financial losses to the ordinary/peasant coffee farmer. KPCU revival therefore offers the best alternative to farmers and thus a credible threat to both KCCE/M. As a director of KCCM, the Commissioner of Co-operatives loyalty evidently lies with KCCM and hence the deliberate effort to frustrate the revival program undertaken by the current KPCU directors.

By October 2013, the receiver had collected over Kshs. 312 million but had not paid any money to KCB towards the defraying of the outstanding debt (*attached Receivers Statement of Receipts and Payments for entire period*). During the same period of receivership KPCU also lost one of its most valued assets i.e. the Nairobi Coffee Mills which was valued at Kshs. 805 Million and insured by CIC insurance. The mill was equipped with a computerized color sorter which is the only one of its kind in the Kenyan coffee industry. It has been an uphill struggle to be given Insurance policy documents concerning the Nairobi Coffee Mills so as to pursue any meaningful claim from the insurer. As all of this was happening, the Commissioner of Co-operatives did nothing to assist KPCU even though he is a member of the board of directors of CIC insurance.

In the year 2013, after a process of intense consultation and negotiation, KPCU and KCB registered the 1st Deed of Settlement dated 19th December 2013 and the receivership was lifted on the 3rd of December 2013. The Deed of Settlement provide that KPCU was to pay KCB Kshs. 100Million within the first 30 days of lifting of the receivership and the balance of Kshs. 580 Million to be paid by the 3rd



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of May 2014 or in 6 Months time from the lifting of the receivership. On resumption of activities, the board was shocked to discover that no original title deeds of all KPCU properties were available and hence no transactions could be completed. Both KCB and the Receiver-Manager admitted that for the Four (4) years that KPCU had been in Receivership, no attempt had been made to establish the whereabouts of KPCU's Original Title Deeds. Due to unavailability of documents of ownership/ title deeds, the terms of the deed of settlement could not be honored and KPCU was once again placed under receivership on 9th January 2014.

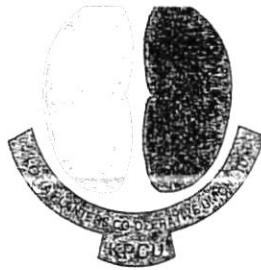
Progress attained:

In a second attempt to lift the receivership, Both KPCU and KCB again engaged in mediation effort aimed at arriving at a compromise and workable solution. KCB subsequently agreed to reduce the amount to **Kshs.400 million in full and final payment of the debt**. The settlements terms includes payment of Kshs.100 Million upon signing of the Deed of Settlement and lifting of the receivership and the balance of Kshs.300 Million to be recovered from 50% of rental incomes earned by KPCU.

The Board of KPCU paid **Kshs. 100 million** upon execution of the deed of settlement (*herein attached*) dated 27th June 2014 which resulted in the lifting of the receivership and the filing of the deed of revocation on Friday 4th July 2014 (*herein-attached*).

KPCU is no longer under receivership but back to its rightful owners represented by the current Board.

To address the coffee farmers' creditors, the Board called farmers to immediately ~~embark on verification of amounts owed to them by KPCU before it was put under~~



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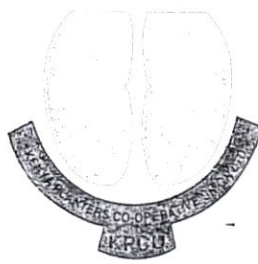
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receivership. The Board sourced **Kshs. 135 million** which was to be used to offset money owed to coffee farmers by KPCU (*schedule attached*).

The Board convened a Special General Meeting on 30th July 2014 (*notice attached*) and appraised shareholders on the progress we have made in lifting the receivership and the way forward towards revival of KPCU and the industry in general.

Despite all these efforts KPCU directors have received no support from the Ministry of Industrialization and Enterprise Development which is in charge of co-operatives towards the revival of KPCU and settling of the debt with the Bank. They are instead blocking these efforts with current edicts from the Ministry regarding election of new directors. This does not bode well with the financing consortium that bailed out KPCU and they have thus stalled the releasing of funds to farmers citing uneasiness with the actions of the Ministry of Industrialization, and in particular the Commissioner of Cooperatives. The Commissioner of Co-operatives, without consulting the KPCU Board and in total disregard of KPCU directors, AGM resolutions and the Memorandum and Articles of Association called for grass root elections through the county co-operative commissioners. (*Letters herein attached*). The Ministry officials whether deliberately or by design refused to assist the Board in the revival and lifting of the receivership. These officials cannot therefore purport to have a higher mandate and a new zeal of reviving KPCU now that the receivership has been lifted.

In calling for the purported elections the Commissioner of Co-operatives acted in total disregard and contempt of the Parliamentary Departmental Committee on Agriculture, Livestock and Co-operative which had tabled their report in **Parliament on the Inquiry into the Receivership of KPCU** on 6th March 2012.



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In their wisdom, the house barred the directors who were in office then from participating and holding office in KPCU for two terms for mismanagement of the Union to the extent of putting it to receivership. The said directors were further accused of not delivering their own coffee or that of their co-operative societies to KPCU mills despite milling being KPCU's core business. In that letter and by allowing participation of those named individuals, the Commissioner of Co-operatives acted in contempt of the **Parliamentary Report on Inquiry** which he is privy to.

The Commissioner of Co-operatives further without consulting the current KPCU Board and in total disregard of KPCU AGM resolutions and the Memorandum and Articles of Association called for grassroots elections through the county co-operative commissioners.

In the notice he issued, he breached the very Act; The Co-operative Societies Act, 2004, which he is supposed to enforce. Section 28 (4) (k) of the Act requires that during election of any co-operative society regulated by the said Act, one will not be legible for election if he/she is adversely mentioned in an inquiry report which has been adopted in a general meeting. The **Parliamentary Report on Inquiry of Receivership in KPCU** was not only adopted by the KPCU general meeting but also the National Assembly on 15th August 2012.

OUR PRAYERS:

1. That the commissioner for Co-operatives and Development be named and shamed for abdicating and failing in his duties of guiding and giving necessary support to KPCU during the receivership status.



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2. That the Commissioner for Co-operative and Development be censured for acting in contempt of Parliamentary Report of inquiry on KPCU in receivership which he is privy to.
3. That the Commissioner for Co-operatives Development be censured for his action of calling for grassroots nominations of KPCU directors and ignoring the KPCU Memorandum and Articles of Association that govern the organization, and rules of Natural Justice by not informing the current directors of his intended actions.
4. That the Commissioner for Co-operative Development be censured for breach of the Co-operative Societies Act section 28 (4) (K) by allowing person adversely mentioned in an inquiry report to participate in the purported elections.
5. That the Commissioner for Co-operative Development to be stopped forthwith from interfering in the operations of KPCU Ltd after doing nothing for a period of five years when KPCU was in receivership; on the contrary, he has trashed the covenants that KPCU Board has entered with other partners in the rescue package and therefore putting in jeopardy the assets the coffee farmers have accumulated over time.
6. That the Commissioner of Co-operatives be censured for his unilateral and illegal actions amounting to interference with the tenure of office of the current directors and whose interference might trigger relapsing into receivership by KPCU on account of the terms of the financial bailout which are premised on the tenure of the current board.

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7. That the Commissioner of Co-operatives be censured for allowing individual and co-operatives to be members and shareholders of two Apex Co-operatives i.e. KPCU and KCCE(M) operating with similar mandate and goal contrarily to the provision of the Co-operatives Societies Act Section 18
8. That provides that "no person shall be a member of more than one co-operative society having the same or similar object".
9. That the Commissioner of Co-operatives be Sanctioned and censured for being in contempt of court by allowing and facilitating the purported directors to hold an illegal AGM, conduct illegal elections and subsequently storm the KPCU Headquarters at Wakulima House-Nairobi on the 15th of August 2014, despite being served with a court order, which was also published in the Daily Nation of 15th August 2014, stopping the purported illegal function.
10. That the National Assembly therefore constitutes a **public inquiry on the conduct of public affairs** by the Commissioner for Co-operative Development on the matters touching KPCU Ltd.

As a Board, we are committed to restoring KPCU to its rightful place in the coffee industry and also engage in other activities that would benefit coffee farmers and shareholders.

FOR AND ON BEHALF OF KPCU DIRECTORS


WILLIAM GATEI
CHAIRMAN


JOSPEH KIOKO
MANAGING DIRECTOR

