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THE REPORT OF THE SENATE STANDING COMMITTEE ON LAND,
ENVIRONMENT AND NATURAL RESOURCES

ON

THE PETITION REGARDING THE ALLEGED ILLEGAL
ENCROACHMENT OF LAND COVERING THE VILLAGES OF PANGANI,
NYATHA, KAISARI, MAVUNO, PROMOKO AND WIDHO IN LAMU
COUNTY BY WITU LIVESTOCK COOPERATIVE SOCIETY

PAPERS LAID	
DATE	07/07/2021
TABLED BY	Chairman.
COMMITTEE	Lands
CLERK AT THE TABLE	<i>[Signature]</i>

JUNE, 2021

② Rt Hon Speaker
You may approve for tabling.
[Signature]
05/07/21

① DC-EG
Recommended & forwarded for
processing for approval
[Signature] 02/07/21

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List of Abbreviations/ Synonyms

1. CS - Cabinet Secretary
2. EACC - Ethics and Anti-Corruption Commission
3. MOLPP - Ministry of Land & Physical Planning
4. NLC - National Land Commission
5. ODPP - Office of the Director of Public Prosecution

PREFACE

Mr. Speaker sir,

The Standing Committee on Lands, Environment and Natural Resources is established pursuant to standing order 218(3) of the Standing Orders of the Senate. As set out in the Second Schedule, the Committee is mandated to consider all matters relating to lands and settlement, housing, environment, forestry, wildlife, mining, water resource management and development.

A. Committee Membership

The Committee comprises of the following Members.

1. Sen. Paul Mwangi Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. George Khaniri, MGH, MP
4. Sen. Gideon Moi, CBS, MP
5. Sen. Njeru Ndwiga, EGH, MP
6. Sen. (Dr.) Lelegwe Ltumbesi, MP
7. Sen. Issa Juma Boy, MP
8. Sen. (Arch.) Sylvia Kasanga, MP
9. Sen. Johnes Mwaruma, MP

Chairperson

Vice-Chairperson

At the sitting of the Senate held on 4th March, 2021, Sen. Anuar Loitiptip, MP reported to the Senate that a Petition has been submitted through the Clerk, from Representatives of White House Progressive Community Based Organization and residents of Mavuno Sub-location in Lamu County on the alleged illegal encroachment of land covering the villages of Pangani, Nyatha, Kaisari, Mavuno, Promoko and Widho in Lamu County by Witu Livestock Cooperative Society.

The salient issues raised in the said Petition are as follows-

- (1) THAT, the White House Progressive is a registered community based organization that represents farmers and squatters living and working in various

portions of land covering the villages of Pangani, Nyatha, Kaisari, Mavuno, Poromoko and Widho in Lamu County.

- (2) THAT, the farmers and squatters have settled and established their livelihoods in the said portion of land since 2011;
- (3) THAT, the encroachment and expansion of the said portions of land by the Witu Livestock Cooperative Society has brought about conflict causing the residents of this land to live in fear of forceful eviction;
- (4) THAT, the petitioners have made their best efforts to have these matters addressed by the relevant authorities all of which have failed.

The petitioners pray that the Senate investigates this matter with a view to-

- (1) Initiate a process to ascertain the true ownership of parcels of land in the said area.
- (2) Plan a physical visit to Lamu County by the Senate Committee on Land, Environment and Natural Resources so as to meet the various squatters and understand the nature of land issues in Lamu County.

Pursuant to standing order 232(1) and the Second Schedule to the Standing Orders of the Senate, the Petition was committed to the Standing Committee Land, Environment and Natural Resources Committee.

Pursuant to Articles 37 and 119(1) of the Constitution, section 5(2) the Petition to Parliament (Procedure) Act and standing order 232 of the Senate Standing Orders, the Committee is mandated to consider the Petition and respond to the Petitioner within the prescribed period.

To enable a judicious disposal of the Petition, the Committee resolved to conduct an inquiry on the issues raised in the Petition. In this regard the Committee made an attempt to invite the Petitioners to a meeting of the Committee for the Petitioner to elaborate further on the issues raised in the Petition, but was unable to reach them as the contact details listed on the Petition weren't valid/in use. Having had the Petition, the Committee proceeded with the Petition as submitted and obtained relevant

information on the matter from the Stakeholders.

The Committee proceeded to invite the Cabinet Secretary, Ministry of Lands and Physical Planning and the Chairperson National Land Commission to address respective issues raised on the Petition.

ACKNOWLEDGEMENT

The Committee thanks the Offices of the Speaker of the Senate and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate. The Committee further extends its appreciation to Ms. Farida Karoney, EGH, Cabinet Secretary, Ministry of Lands and Physical Planning and Mr. Gershom Otachi, Chairperson, National Land Commission for their submissions and contribution to the resolution of this matter.

Mr. Speaker Sir,

It is now my pleasant duty and privilege, on behalf of the Committee, to present this Report of the Standing Committee on Land, Environment and Natural Resources on the Petition on the alleged illegal encroachment of land covering the villages of Pangani, Nyatha, Kaisari, Mavuno, Promoko and Widho in Lamu County by Witu Livestock Cooperative Society.

Signed:  Date: 12/6/2021

SEN. MWANGI PAUL GITHIOMI, M.P.
CHAIRPERSON, SENATE STANDING COMMITTEE ON LAND,
ENVIRONMENT AND NATURAL RESOURCES

CHAPTER I

INTRODUCTION

1. At the sitting of the Senate held on 4th March, 2021, Sen. Anuar Loitiptip, MP reported to the Senate that a Petition has been submitted through the Clerk, from Representatives of White House Progressive Community Based Organization and residents of Mavuno Sub-location in Lamu County on the alleged illegal encroachment of land covering the villages of Pangani, Nyatha, Kaisari, Mavuno, Promoko and Widho in Lamu County by Witu Livestock Cooperative Society.
2. The Petition reads as follows-
 - a) THAT, White House Progressive is a registered community based organization (CBO) legally and covers farmers and squatters living and working on various portions of land covering the villages of Pangani, Nyatha, Kaisari, Mavuno, Poromoko and Widho in Lamu County.
 - b) THAT, the land in question has been humble abode for the said squatters dating back to 2011. We the squatters started a school, registered the school and currently the government has posted TSC teachers to the school.
 - c) THAT, Government institutions have recognized our presence in that area and activities have been held involving the locals. The most notable one is the launch of BEYOND ZERO MOBILE CLINIC in Lamu County.
 - d) THAT, the Act of encroachment and expansion of the said portions of land by the WITU LIVESTOCK COOPERATIVE SOCIETY RANCH has brought about conflict causing the resident of this land to live in fear of forceful eviction;
 - e) THAT, the petitioners have made their best efforts to have these matters addressed by the relevant authorities all of which have failed. We have not received any responses nor our concerns addressed.

f) THAT, none of these issues raised in this petition is pending in any Court of Law, Constitutional or any other legal body.

The petitioners pray that the Senate investigates this matter with a view to: -

- (1) Initiate a process to ascertain the true ownership of parcels of land in the said area.
 - (2) Compel the County Government of Lamu to demarcate the land and prepare title ownership to the said squatters.
 - (3) Prohibit Witu Cooperative Society Ranch from further making demands to the innocent squatters in the piece of land.
 - (4) Plan a physical visit to Lamu County by the Senate Committee on Land, Environment and Natural Resources so as to meet the various squatters and understand the nature of land issues in Lamu County.
3. Pursuant to standing order 232(1) of the Standing Orders of the Senate, the Petition was committed to the Land, Environment and Natural Resources Committee.

B. LEGAL BASIS FOR PETITIONS

1. Petitions to the Senate are governed by the Constitution, the Petition to Parliament (Procedure) Act, No. 22 of 2012 and the Senate Standing Orders.
2. Article 37 of the Constitution provides that *every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities* while Article 119(1) of the Constitution provides that “*every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.*”
3. Section 5(2) of the Petition to Parliament (Procedure) Act, provides that *a petition that is tabled in Parliament under this Act shall be considered in accordance with the Standing Orders of the relevant House.* In this regard, standing order 232 of the Senate Standing Orders provides as follows-
 232. *Committal of Petitions*
 - (1) *Every Petition presented or reported pursuant to this Part, shall stand committed to the relevant Standing Committee.*
 - (2) *Whenever a Petition is committed to a Standing Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the Senate and no debate on or in relation to the report shall be allowed, but the Speaker may, allow comments or observations in relation to the Petition for not more than thirty Minutes.*
4. Standing order 233 requires the Clerk to, within fifteen days of tabling of the report on a petition under Standing Order 232 (Committal of Petitions), submit a copy of the report to the petitioner or petitioners.

CHAPTER 2

CONSIDERATION OF THE PETITION

Approach taken by the Committee

1. In considering the Petition, the Committee observed that it would be important to verify the facts alleged by the Petition. The Committee therefore resolved to conduct an inquiry on the issues raised in the Petition.
2. In this regard the Committee received the Petition from the Petitioner through the House and further made an attempt to reach the Petitioners using the contact details indicated in the Petition but the contacts indicated weren't going through.
3. Thereafter the Committee proceeded to invite the Cabinet Secretary, Ministry of Lands and Physical Planning and the Chairperson of the National Land Commission, who then provided the information as was requested by the Committee.

A. Responses by the Cabinet Secretary, Ministry of Lands and Physical Planning

Vide a letter Ref: **SEN/DCS/LENR/2/2021/(23)** dated 15th April, 2021, the Committee invited the Cabinet Secretary, Ministry of Lands and Physical Planning to respond to the Petition in its entirety. Based on the concerns raised the Ministry provided the responses indicated:

According to records, the subject land is registered as L.R.No.1405/1 measuring approximately 639.783 Acres. The land was registered as M.I. Folio 72/17 in favour of Henry Eric Burnier on February 28, 1966 as shown in **annexure 15**.

Mr. Henry Eric Burnier surrendered the land to the Government as a gift and the transfer was registered as M.I. Folio 72/18 on May 12, 1966 in favour of the President of the Republic of Kenya as shown in **annexure 16**.

From our records, the land is reserved for settlement of squatters. In 1983, the Ministry received an application for allocation of the land from Witu Livestock Development Centre but the request was declined for this reason. (**annexures 17**)

The Ministry will embark on plot demarcation survey and squatter verification programme for settlement of ground occupants during the 2021/2022 financial year.

B. Responses by the National Land Commission

Vide a letter Ref: SEN/DCS/LENR/2/2021/(23) dated 15th April, 2020, the Committee invited the Chairperson of and received the following submissions –

The Commission undertook consultation between the NLC County Coordinator – Lamu, the Ministry of Lands and Physical Planning Officers in Lamu County – namely the District Lands and Settlement Officer and the District Land Registrar, and the County Government Department of Physical Planning. Official records indicate that there are three institutions with vast lands within Witu which use some similar words in their identity namely;

1. Witu Nyongoro Cooperative Society Ranch on parcel Number 29274
2. Witu Livestock Cooperative Society Limited on Parcel Number 29114
3. Witu Livestock Multiplying Center

Records in the NLC Lamu office reveal that the Witu Livestock Cooperative Society has been the subject of the NLC Review of Grants and Disposition of Public Land (copy attached) where a determination was made that said at (20) on the document:

- Regularize the title
- Ensure planning
- Apply for approval under Section 35 of the Transition to Devolved Government Act of 2012.
- Confirm the boundary with Witu Nyangoro Ranch
- The County Government of Lamu to Plan Pangani Village adjacent to the ranch.

Our interpretation of this is that the Cooperative society needed to follow due process (formal legal procedure) to obtain a title, including ensuring the ranch is planned, seeking approval of the relevant authorities to allow transfer/registration of the asset to them as per the Transition to Devolved Government Act Section 35, determine the true boundaries of the ranch through survey and have Pangani village found adjacent to the ranch planned by the County Government.

The Chairman of the NLC made a follow up on this determination as follow vide Letter to the The Governor – Lamu County Ref NLC/CHAIRMAN/VOL.XII/103 dated 21st Sept 2015 advising implementation of the determination (copy attached).

Records in the County Survey office show that Witu Livestock Cooperative Ranch was surveyed as parcel number 29114 but the same is not registered at the Lamu Land Registry. We have requested the Land Registrar – Mombasa to check at the Coast Registry but they are yet to reply.

Hon Chair, we report that on Tuesday 25th May 2021 the Lamu Lands team set out on a site inspection of the six villages mentioned in the Senate query. The team included the NLC – County Coordinator, the A.C.C.- Witu Sub County, Ministry of Lands Adj and Settlement Surveyor, County Government Surveyor, the Chairman of Witu Livestock Cooperative Society, Chief Majembeni Location, Chief Witu Location and Assistant Chiefs at Coast Arid Secondary School at Pangani Village. The team undertook a ground visit of the said six villages vis a vis the Witu Cooperative Society land (see copy of

Minutes attached at folio 3).

Hon Chair the following observations were noted from the visit:

- a. That the land claimed by Witu Livestock Cooperative Ranch may not have been competently surveyed nor boundaries established on the ground as required during registration of title and as recommended by the previous determination made by the National Lands Commission. The ranch has for many years remained idle probably due to lack of capacity by the initiators or insecurity threats. The boundary is thus undetermined leading to real (from the perspective of the Cooperative Society) and imagined (from the perspective of the settlers) encroachment by outsiders (Witemere).
- b. The date when the Cooperative Society gained formal interest and claim to the ranch, the date of acquisition of title vis a vis the date of the earliest settlements in the six villages mentioned could not be determined by the team.
- c. The Cooperative Society Chairman reiterated that their land is titled (collected from Nairobi!) but does not touch the Highway but is further in the interior (eight kilometers at some point and reducing to one and a half kilometers) from the road at some point. He claims their Ranch strategic development idea was curtailed by threats and insecurity (including being exiled). That after the NLC determination they attempted to effect a physical survey and develop a cut line around the boundary but the effort was thwarted by the masses settled within their land.
- d. The Chair to the Cooperative Society said that during the period of NLC determination the only village of settlers was Pangani which was domiciled on the land between the ranch boundaries and the highway, as confirmed in the determination. He claimed that all the rest of the villages mentioned in the senate query are within the Cooperative Society Ranch land and that they have severally sought Government intervention to evict them – giving instances where the Provincial Administration severally ordered and effected a removal. He was of the

opinion that the current invasion was occasioned by massive interest perpetrated by persons who wanted to benefit from the new LAPSSET infrastructural developments including the highway and the high potential ‘virgin’ land ripe for agricultural activities.

Hon Chair, the physical site inspection of the individual villages mentioned in the petition revealed the following;

1. PANGANI VILLAGE;

- a) Old Pangani village found in Sendemuke Sub Location around the general area of the Coast Arid Secondary School found to the left of the highway (as you go towards Mokowe) where through local elders, settlers informally divided residential/commercial plots along the road and apportioned themselves parcels of land behind the spaces for farming (Witemere).
- b) Further North along the road and going West further from the main road now within Majembeni/Mavuno sub-locations is also referred to as Pangani. A new settlement (extension of Pangani) has recently developed along the road mainly of pastoralist community who have set up commercial developments and manyatta homesteads from where they move into the hinterland to graze In the last census the Locational Chief reports 1,051 households were recorded in Manyatta.
- c) The Settlements in the interior away from the highway are farm parcels with homesteads within which public purpose/utilities have been provided including Primary School, Police post, Clinic, water point, shopping centers. The locals use the same common name Pangani and in the last census the locational chief reports 580 households were recorded.
- d) The County Government Physical Planning office records show Government Land set aside for trading center Located on the left of the

Minjila – Mokowe Highway (from Mokowe) hence on the opposite side of the road from the settlements described in a, b, and c, above. Being on Government Land (reserved for trading center) an initiative has been undertaken by the County Government of Lamu to pick, plan and survey the same for purpose of regularization.

2. MAVUNO: Borders the Pangani shambas and here the settlements are on parcels ranging from an acre to five acres probably through subdivision and used for farming. There are Provisions for public purpose including churches and the roads of access are more defined. The area Chief said approximately 525 households were recorded in the last census.
3. NYATHA: Seems to be a recently formed settlement with evidence of recent clearing, erection of new buildings and the homestead are not nucleated into a village. The roads of access are not well defined Last census recorded 110 households according to the area chief.
4. POROMOKO: The settlements here appear to be on larger tracts of land, and the team also noticed more serious agricultural practices including fenced e of farm machinery and irrigation farming where banana, mangoes, bixa, vegetables are grown and poultry farming practiced on a larger scale. This was five to eight kilometers from the highway and the Chief said about 589 households were recorded in the last census.
5. WIDHO MANYATTA: There were no cultivated shambas seen but a very large pastoralist nucleated village settlement was seen complete with a mosque. The settlement is near a large natural water dam and the area Chief says 663 households were recorded in the last census.
 - WIDHO MAJEMBENI: Another side of Widho towards the highway has agrarian settlers who have settled on large parcels of land which they farm using mechanized agricultural machines. Many of the parcels are recently opened and homesteads have new developments. The area Chief says 516

homesteads were recorded in the last census.

6. KAISARI: The area Chief reported this is the village furthest inland from the highway, where settlers ventured at one time, started opening up the deep bushes but were forced out by constant raids from bandits. At present the place was not accessible by vehicle and was insecure. He says only one occupant is recorded to be venturing at Kaiseri where he does bee keeping in the deep forest.

Hon Chair, following the preliminary enquiry, Commission suggests the under listed recommendations for consideration;

- i. Secondary research be conducted on if Witu Livestock Cooperative Society is duly and competently registered and adheres to the Law of Cooperative Societies- *Ministry of Cooperatives*
- ii. To ascertain the survey done in respect for Witu Livestock Cooperative Society Ranch is authentic, approved and supports the “Title” said issued to them. Awaiting the “search” report on the title issued from the Mombasa Land Registry- *Ministry of Lands and Physical Planning*.
- iii. Committee to institute a multi-agency approach towards resolution of matters raised in the petition - National Government Ministry of Interior and Coordination of National Government, Ministry of Lands and Physical Planning, relevant County Government Departments, National Lands Commission and Witu Livestock Cooperative Society that must factor in Public Participation on the issue of regularization of ownership of the land.

CHAPTER 5

COMMITTEE OBSERVATIONS

In accordance with the Prayers of the Petitioner the Committee observes as follows:

1. Initiate a process to ascertain the true ownership of parcels of land in the said area.

The Committee after obtaining submissions from the stakeholders was able to note that the land has been set aside for the settlement of the said squatters.

2. Compel the County Government of Lamu to demarcate the land and prepare title ownership to the said squatters.

From the submissions of the Ministry the Committee observes that the Ministry will embark on plot demarcation survey and a squatter verification programme for the settlement of ground occupants during the 2021/2022 financial year.

3. Prohibit Witu Cooperative Society Ranch from further making demands to the innocent squatters in the piece of land.

The Committee, from the Ministry's response tabled with the Committee observes that, the land is reserved for settlement of squatters. In 1983, the Ministry received an application for allocation of the land from Witu Livestock Development Centre but the request was declined for this reason. Annexures 17 of the MoLPP response has a copy of the declined request.

4. Plan a physical visit to Lamu County by the Senate Committee on Land, Environment and Natural Resources so as to meet the various squatters and understand the nature of land issues in Lamu County.

The Committee on consideration of the written response from the MoLPP, that indicated that plans were underway to meet the prayers of the Petitioners, the Committee was then able to solve the matter without having to conduct a physical site visit.

CHAPTER 6

COMMITTEE RECOMMENDATIONS

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders recommends as follows-

The Committee recommends that the Ministry of Lands and Physical Planning together with the National Land Commission to ensure that proper and transparent plot demarcation survey and squatter verification programme for settlement of ground occupants is done and the exercise be completed by 31st December, 2021, and a report shared with the Committee on the status.

APPENDICES

A. ANNEX I: MINUTES OF THE MEETINGS

MINUTES OF THE 37TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON SATURDAY, 12TH JUNE, 2021 AT SAROVA WHITESANDS HOTEL, MOMBASA AT 2.00 PM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. Mwaruma Johnes, MP
4. Sen. Ndwiga Peter Njeru, EGH, MP
5. Sen. Boy Issa Juma, MP

PRESENT

- **Chairperson**
- **Vice Chairperson**
- Member
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. George Khaniri, MGH, MP - Member
2. Sen. Gideon Moi, CBS, MP - Member
3. Sen. (Dr.) Lelegwe Ltumbesi, MP - Member
4. Sen. Sylvia Kasanga, MP - Member

IN ATTENDANCE

1. Ms. Veronicah Kibati
2. Mr. Victor Bett
3. Mr. Crispus Njogu
4. Mr. Yussuf Shimoy
5. Ms. Mitchell Otoro
6. Ms. Lucianne Limo
7. Ms. Sakina Halako
8. Mr. John Pere
9. Mr. James Kimiti
10. Mr. Naftali Ondiba
11. Mr. Benard Oteyo

SECRETARIAT

- Principal Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Clerk Assistant
- Legal Counsel
- Media Relations Officer
- Personal Secretary
- Sergeant-At-Arms
- Audio Recording
- Finance Officer
- Office Assistant

MINUTE SEN/SCLENR/210/2021: PRELIMINARIES

The meeting was called to order at 2.30 pm by the Vice Chairperson followed by a word of prayer.

MINUTE SEN/SCLENR/211/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. Ndwiga Peter Njeru, EGH, MP and seconded by Sen. Boy Issa Juma, MP as follows –

1. Preliminaries
2. Adoption of the agenda;
3. Confirmation of Minutes;
4. **Adoption of the following Petition Reports;**
 - (a) Draft Report of the Committee on the Petition regarding the Illegal alienation of land belonging to Kitale Primary School by a private developer
 - (b) Draft Report of the Committee on the Petition regarding the Illegal encroachment of land covering the villages of Pangani, Nyatha, Kaisari,

Mavuno, Promoko and Widho in Lamu County by Witu Livestock Cooperative Society

5. Any other Business;
6. Date of the next meeting;
7. Adjournment.

MINUTE SEN/SCLNR/212/2021: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Committee differed the confirmation of Minutes.

MINUTE SEN/SCLNR/213/2021: ADOPTION OF THE FOLLOWING PETITION REPORTS;

(a) Draft Report of the Committee on the Petition regarding the Illegal alienation of land belonging to Kitale Primary School by a private developer

The Committee considered the draft report but was unable to arrive at appropriate recommendations without having to visit the site being contested and Kitale school primary to look at the boundaries between the school and the developer. As a result the Committee resolved to visit the Kitale School Primary on 22nd June, 2021.

(b) Draft Report of the Committee on the Petition regarding the Illegal encroachment of land covering the villages of Pangani, Nyatha, Kaisari, Mavuno, Promoko and Widho in Lamu County by Witu Livestock Cooperative Society

The Committee having investigated the matter in accordance with its mandate under the standing order 223 of the Senate Standing Orders, hereby **adopted its report** with the following recommendations in accordance with the Prayers of the Petitioner—

The Committee recommends that the Ministry of Lands and Physical Planning together with the National Land Commission to ensure that proper and transparent plot demarcation survey and squatter verification programme for settlement of ground occupants is done and the exercise be completed by 31st December, 2021, and a report shared with the Committee on the status.

The Report of the Committee was therefore adopted after having been proposed and seconded by Sen. Ndwiga Peter Njeru, EGH, MP and Sen. Philip Mpaayei, MP respectively.

MINUTE SEN/SCLNR/214/2021: ANY OTHER BUSINESS;

There was no other business discussed.

MINUTE SEN/SCLNR/215/2021: DATE OF NEXT MEETING;

The meeting was adjourned at 1.00 pm and the next meeting was scheduled for 16th June, 2021.

Signed:

Date: 23/6/2021

SEN. MWANGI PAUL GITHIOMI, MP
CHAIRPERSON, STANDING COMMITTEE ON LAND, ENVIRONMENT
AND NATURAL RESOURCES

B. ANNEX II: SUBMISSIONS BY KEY STAKEHOLDERS

(Attached separately)

C. ANNEX III: SUBMISSIONS BY THE PETITIONER

(Attached separately)

MINUTES OF THE 26TH SITTING OF THE SENATE STANDING COMMITTEE ON LAND, ENVIRONMENT AND NATURAL RESOURCES HELD ON THURSDAY, 20TH MAY, 2021 VIA ZOOM ONLINE PLATFORM AT 11.00 AM.

MEMBERS

1. Sen. Mwangi Paul Githiomi, MP
2. Sen. Philip Mpaayei, MP
3. Sen. George Khaniri, MGH, MP
4. Sen. (Dr.) Lelegwe Ltumbesi, MP

PRESENT

- **Chairperson**
- **Vice Chairperson**
- Member
- Member

ABSENT WITH APOLOGY

1. Sen. Gideon Moi, CBS, MP - Member
2. Sen. Ndwiga Peter Njeru, EGH, MP - Member
3. Sen. Boy Issa Juma, MP - Member
4. Sen. Sylvia Kasanga, MP - Member
5. Sen. Mwaruma Johnes, MP - Member

IN ATTENDANCE

A. SENATORS

1. Sen. Michael Mbiti, MP - Senator, Trans Nzoia County

B. MINISTRY OF LANDS AND PHYSICAL PLANNING (MoLPP)

1. Hon. Alex Mbiu - CAS, MoLPP
2. Mr. Kamau Maina - Lands Administrator
3. Mr. Chacha Maroa - Lands Registrar

C. PETITIONERS

1. Mr. Emel Sitienei - Principal of the School
2. Mr. Stephen Mainga - Dep. Principal
3. Mr. Peter Kebati - Chair, Alumni Association
4. Mr. Otsula Robert - PA, Principal Kitale School
5. Salim Mwidadi - Jomvu
6. Ahmed Kombo - Jomvu
7. Mwinyiusi Mzee Mwidadi - Jomvu
8. Issa Mwidadi Salim - Jomvu
9. Patience Muhambwa - Jomvu
10. Joyce Rhai - Jomvu
11. Ochieng' Githinji - Jomvu

D. RESPONDENTS

1. Dr. Nathaniel Tum - Private Developer, Kitale

E. SECRETARIAT

1. Mr. Victor Bett - Clerk Assistant
2. Ms. Lucianne Limo - Media Relations
3. Mr. James Kimiti - Audio Recording

MINUTE SEN/SCLNENR/148/2021: PRELIMINARIES

The meeting was called to order at 11.22 am by the Chairperson followed by a word of prayer.

MINUTE SEN/SCLNENR/149/2021: ADOPTION OF AGENDA

The agenda of the meeting was adopted after being proposed by Sen. (Dr.) Lelegwe Ltumbesi, MP and seconded by Sen. Mwaruma Johnes, MP as follows –

1. Preliminaries – *Prayer and Introductions*
2. Adoption of the Agenda
3. **Petition concerning the alleged historical land injustices involving Plot No. 162/V/M.N.CR 1070, in Mombasa County;**
 - Submissions by Ministry of Lands and Physical Planning
4. **Petition concerning the alleged illegal alienation of land belonging to Kitale School Primary by a private developer;**
 - Submissions by Ministry of Lands and Physical Planning
 - Submissions by Dr. Nathaniel Tum
5. **Petition on the alleged illegal encroachment of land covering the villages of Pangani, Nyatha, Kaisari, Mavuno, Promoko and Widho in Lamu County by Witu Livestock Cooperative Society.**
 - Submissions by Ministry of Lands and Physical Planning
6. Any other Business;
7. Date of the next meeting;
8. Adjournment.

MINUTE SEN/SCLNENR/150/2021: PETITION CONCERNING THE ALLEGED ILLEGAL ALIENATION OF LAND BELONGING TO KITALE SCHOOL PRIMARY BY A PRIVATE DEVELOPER;

- **Submissions by Ministry of Lands and Physical Planning**

Prior to 1990, the Government reserved land for public institutions through letters of reservation. A letter of reservation was issued for unsurveyed plot.

Later on, the Government began reserving land for public institutions by issuing letters of allotment.

We have not been able to trace the letter of reservation issued to Kitale Primary School. A letter Ref. DURP/10/1/161 dated September 14, 1973 signed by the then Director of Urban and Rural Physical Planning addressed to the school indicates that approximately 55 Hectares was reserved for the school (**annexure 2**). The Kitale Town Development Plan (DP) of 1973 shows the reservation for Kitale Primary School marked as 2₇ (**annexure 3**).

From our records, the School applied for processing of the title vide a letter dated October 7, 1993. They also applied for allocation of an adjacent land, which they claimed to have been utilising for at least 10 years (**annexures 4**).

A Part Development Plan (PDP), Departmental Reference No. KTL.10/96/100 was prepared for the school and approved in 1998 with Approval No. 294 (**Annexure 5**).

A comparison between the Development Plan of 1973 and the PDP of 1998 shows a variance in orientation of the parcel.

On July 2, 1999, the Commissioner of Lands issued an allotment letter Ref. 20089/XXXIV/106 of July 2, 1999 for the un-surveyed school plot measuring 43.33 hectares. Survey was done and a Lease prepared for a total area of 41.28 Ha (102 acres).

On June 14, 2010, the parcel was registered as Kitale Municipality Block 12/229 in favour of The Permanent Secretary to the Treasury of Kenya as Trustee to Kitale School (**annexure 6**). As per the title, the school land measures approximately 41.28 Hectares.

Kitale Municipality Block 12/236 (formerly 132)

According to our records, Nathaniel K. Tum was allocated Uns. Hotel Site-Kitale Municipality measuring approximately 4 Hectares for a 99-year term commencing September 1, 1994, vide letter of allotment Ref. 20089/XXXIV/1 of September 29, 1994 (**annexure 7**). A certificate of lease was issued on December 6, 1994 for Kitale Municipality Block 12/132.

In 2007, the District Surveyor discovered that the land parcel Kitale Municipality Block 12/132 had encroached into Kitale Primary School Land (Kitale Municipality Block 12/229) and thereby requested the Commissioner of Land to compel the owner of Kitale Municipality Block 12/132 to surrender the title for necessary corrections (**annexure 8**).

The Ministry therefore requested Mr. Tum to surrender his Certificate of Lease for cancellation and issuance of a new lease bearing the correct survey area (**annexure 9**). The Certificate of Lease Kitale Municipality Block 12/132 was cancelled vide gazette notice No. 5560 of May 21, 2010 (**annexure 10**).

The land allocated to Mr. Tum was re-surveyed and the Registry Index Map amended. The area reduced from 4 Hectares to 3.560 Hectares and a new parcel No. Kitale Municipality Block 12/236 was issued (**annexure 11**). On March 1, 2013 Nathaniel K. Tum was registered as the proprietor of Kitale Municipality Block 12/236 and a certificate of lease issued (**annexure 12**).

Honourable Chair,

According to the petitioners, the dispute between the school and Mr. Nathaniel Tum is before National Land Commission. According to our records, the Ethics and Anti-Corruption Commission is also handling the matter. The Ministry will liaise with the respective agencies with a view to resolving the matter.

• **Submissions by Dr. Nathaniel Tum**

Vide a letter Ref: SEN/DCS/LENR/2/2021/(19) dated 31st April, 2021, the Committee invited the accused, Dr. Nathaniel Tum who made the following submission -

1. THAT I received the above Petition dated 31/3/2021 by email on 1st of April 2021 and wish to address the complaints raised in the petition as follows: -
2. THAT I vehemently deny the allegation by the petitioner that here was an illegal alienation of land belonging to Kitale School and that I conspired with the Commissioner of Lands to alienate 1 acres of the school land.
3. THAT I obtained L. R. NO. KITALE MUNICIPALITY BLOCK 12/236 (formerly BLOCK 12/132) legally having followed all the due process of land ownership in Kenya.
4. THAT I applied for the land referred to above which was Government land together with other applicants being Ms. Halima Kokita of Kapenguria, Messrs Ken Kiptoo and Josephine Kerubo. I am also aware that the Anglican Church where Bishop Emmanuel Chemengich is overseeing and the AIC Church were also applicants for the said land.
5. THAT I am aware that the four of us Kiptoo & Kerubo, Halima and myself were successful each being allotted 1.357, 0.40 and 3.56 hectares respectively.
6. THAT pursuant to my application to be allocated L.R. NO> KITALE MUNICIPALITY BLOCK 12/236, I was issued with a letter of Allotment dated 29th September, 1994. (Annexed herein as NKT1).
7. THAT the letter of allotment was specific that the property was unsurveyed.
8. THAT I have been paying rates to Trans Nzoia County for the property since 1994. (Annexed herein as NKT2 is a copy of receipt dated 6th December, 1994).
9. THAT I am aware that the Government has a right to allot land belonging to it and thus there was no illegality as I applied as an ordinary citizen and was allotted and fulfilled the requirements pertaining to the allotment including the payments of fees to the government and all the necessary rates and rents to the relevant authorities.
10. THAT I was issued with the Certificate of Lease on 6th December, 1994 with annual rent of Kshs.70,000. (Annexed herein as NKT3.)
11. THAT upon obtaining the above parcel and after of developing the same, Kitale

School complained through a letter to the ministry of lands that I have encroached into L.R. NO. KITALE MUNICIPALITY BLOCK 12/229.

12. THAT vide a letter dated 27th September 2007, I was requested to surrender the Certificate of Lease to the Commissioner of Lands for cancellation and replacement of a new certificate bearing the correct survey area. (Annexed herein as NKT4).
13. THAT I obliged to the request and vide a letter dated 24th February 2010, I was further requested by the Ministry of Lands to facilitate excision of the part touching Kitale school. (Annexed herein as NKT5).
14. THAT to honour the request, I visited the lands office where I met Mr. Kariuki J.K and voluntarily surrendered the certificate of lease for L.R. NO. KITALE MUNICIPALITY BLOCK 12/132.
15. THAT I was issued with a Surrender Certificate of lease dated 9th March 2010. (Annexed herein as NKT6 is a copy of the certificate.)
16. THAT vide a letter dated 23rd March 2010 the Commissioner of Lands was notified of the new certificate of lease from the Director of Survey. (Annexed herein as NKT7 is copy of the letter.)
17. THAT I was thus issued with a new number being L.R. NO. KITALE MUNICIPALITY BLOCK 12/236. (Annexed herein as NKT8 is a copy of the Title.)
18. THAT the Petitioners have been shifting goal posts from encroachment issues to grabbing of their alleged land which forced the Commissioner of Lands to direct the Districts lands office vide a letter dated 8th June 2011 to solve the matter amicably between the Kitale school and myself. (Annexed herein as NKT9 is a copy of the letter.)
19. THAT a Technical Team was formed by the Chief Land Administration office to investigate the matter, which report found that; -
 - a) *Both Tum and the school knew that the disputed land was government land.*
 - b) *The school applied to be allocated the land.*
 - c) *Tum also applied to be allocated the same land.*
 - d) *Tum was allocated the site and developed the same.*
 - e) *The site in dispute was formally the area which had encroached on the school compound.*

- f) *Tum has surrendered the land which was in dispute and PIA NO.132 has been resurveyed as Block 12/229.*
20. **THAT** the recommendation of the Technical Team referred to in paragraph 19, was that I retain the site block 12/236 that I have developed and the boundaries be maintained as they are on the ground as per the fencing. (Annexed herein as **NKT 10** is a copy of the Report dated 9th October 2012.)
21. **THAT** having being dissatisfied with the above report, Kitale School abandoned the negotiations and filed judicial Review No. 35 of 2011 where the court dismissed their application with costs. (Attached herein as **NKT11** is a copy of the ruling.)
22. **THAT** in its *Orbiter Dictum*, on page 14 of the ruling the court stated that there was undisputed documentary evidence by myself in the application to the Government to be allocated the vacant land.
23. **THAT** the Applicant in Judicial Review No. 38 of 2011 being Kitale school were dissatisfied with the decision and appealed to the Court of Appeal vide C.A No. 1 of 2013 which appeal was dismissed with costs.
24. **THAT** I have since developed my parcel of land where there is a large extensive service station, service by, supermarket and cafeteria. Other developments include a water plant, car wash and residential units at a total cost of Kshs.250 million.
25. **THAT** I am the lawful allottee and thus the legal owner of L.R. NO. KITALE MUNICIPALITY BLOCK12/236 measuring 3.56 ha.
26. **THAT** in reply to **paragraph 16 of the Petition**, Kitale school is being economical with the truth since when they started applying for the school title on 7/6/1993 to the Town Clerk, they were advised to forward their application to the Commissioner of Lands. The question of the school having 55 hectares did not arise. This is captured in the Report of Land Technical Team Trans Nzoia dated 9/10/2012 annexed as NKT10.
27. In **reply to paragraph 17 of the Petition**, the petitioners have not attached evidence of reservation and further the details of the said reservation be it the acreage and the extent of the reservation.
28. In **reply to paragraph 18 of the Petition**, the allegation of grabbing is malicious. The mentioned Part Development Plan (PDP) can only be viewed against subsequent applications and allocation processes for the land in question. I have

STAKEHOLDER'S SUBMISSIONS



MINISTRY OF TOURISM AND WILDLIFE
STATE DEPARTMENT FOR WILDLIFE
Office of The Principal Secretary

Telephone: 254-20-2724646
Email: pswildlife@tourism.go.ke
When replying please quote

NSSF BUILDING, BLOCK 'A'
P.O. Box 41394-00100
NAIROBI, KENYA

Ref: SDW/4/15

13th May, 2021

J. M. Nyegenye, CBS,
Clerk of the Senate
Parliament Buildings
P. O. Box 41842 – 00100
NAIROBI

Dear *Mr Nyegenye*

**RE: MEETING WITH THE DEPARTMENTAL COMMITTEE ON ENVIRONMENT
AND NATURAL RESOURCES TO RESPOND TO A STATEMENT AND A
QUESTION**

Reference is made to your letter Ref. No.SEN/DCS/LENR/2/2021/(25) dated 30th April, 2021 on the above subject.

The purpose of this letter is to respond to the petitions and statements as attached herein.

Yours *Sincerely*

[Signature]
Prof. Fred H. K. Segor, CBS
PRINCIPAL SECRETARY

Copy to: Hon. Najib Balala, EGH
Cabinet Secretary
Ministry of Tourism and Wildlife

Encl.

1. Petition by residents of Lamu County concerning the compensation for victims of Human-Wildlife Conflict

Introduction

Lamu is one of seven identified Human Wildlife Conflict (HWC) hotspot areas in the Country with the following areas reporting high HWC conflicts over the years Mpeketoni, Ziwani, Kiunga, Witu, Boko, Toroko, Lake Kenyatta, Madagoni and Mokowe. These conflicts are mainly caused by Buffalo, Hippo, Elephants, Hyena, Lions and Primates.

According to Kenya Wildlife Service (KWS) total count done using aerial census for large mammal undertaken in the County in 2015, it was established that Lamu had the highest density of Buffalo population in the Country with over 13,700 individuals counted. Other wildlife species also occur abundantly like Topi (7,728), Giraffe (1,325) and Zebra (669) among others. KWS Lamu station now headed by a Senior Warden was created to manage the diverse wildlife species and address the resultant conflicts. The Service has presence with outposts at Mokowe, Witu, Kipini, and Mpeketoni.

Death and injury claims status in Lamu County

The Cabinet Secretary Ministry of Tourism and Wildlife facilitated the appointment of members of the Community Wildlife Conservation Committees (CWCC) in all the 47 Counties.

The current 47 CWCC's were gazetted on 16th August 2019 and are comprised of a Chairperson appointed by the Cabinet Secretary, four persons not being public servants nominated by Community Wildlife Associations and other relevant technical officers at the County Government level. KWS County Wardens are the Secretaries to the CWCC. The Ministry facilitated the committees' latest meetings across the Country held in July-August 2020 to deliberate on the pending compensation claims.

The legal mandate of the CWCC includes;

1. Review and recommend payment of compensation on claims resulting from loss of damage caused by wildlife.
2. Develop and implement in collaboration with the Service and Community Wildlife Associations, mechanisms for mitigating HWC.
3. Bringing together relevant stakeholders to harness participation in conservation and management programs of wildlife.
4. Perform any other duties that the Service may require or delegate to it.

The Ministry continues to support the CWCCs in the discharge of their mandate.

KWS is committed to significantly reduce the cases of HWC throughout the Country and especially at the mapped conflict hotspots like in Lamu County and works together with other stakeholders including the County Government in those areas. So far, the following have been undertaken to minimize conflicts in Lamu County:

The whole region of Lamu County was mapped to indentify problem areas for targeted response as follows:

A) Mpeketoni Settlement Scheme.

The main problem animals are Hippos, Elephants, Baboons, Zebras and Lions.

In this area the Service has an operational permanent Camp at Mpeketoni to mitigate the arising conflicts and undertakes the following measures to address the problem animals:

1. Operations of the camp include day and night surveillance of affected areas of the scheme (Ziwani, Tewe, Kibaoni, Mkunumbi, Mapenya and Lake Amu)
2. KWS has stationed a Land cruiser vehicle at Mpeketoni to undertake fast response to distress calls at night and day time.
3. KWS has been working closely with the local communities that have formed conflict resolution groups to mitigate problem animals like Baboons to drive them away from the farms with the help of KWS rangers.
4. KWS has been working closely with wildlife stakeholders in the County like the Kipini conservancy forest rangers, Community rangers in Bajaber ranch and Nairobi ranch to address issues of Lions and Elephant conflicts. Recently two lion traps were placed at Mpeketoni to capture any Lion causing danger to the community.
5. KWS has been conducting awareness meetings to educate farmers on matters related to HWC and compensation in the settlement scheme.

B) Hindi -Magogoni Settlement Scheme and Bargoni village area

The problem animals here have been identified as Baboons, Hyenas and Lions.

Measures being undertaken are as follows:

1. KWS has positioned a serviceable vehicle at Mokowe KWS Camp to ensure fast response to distress calls within the area.

2. Three Lion traps have been placed at Mokowe KWS Camp to capture any Lions and Hyenas causing danger in Hindi-Magogoni Settlement Scheme, Baragoni, Hamu Island and Manda Island.
3. KWS has been conducting awareness creation meetings to educate the Hindi-Magogoni Settlement farmers on matters related to human wildlife conflict in the scheme.

C) Witu-Kipini Settlement Scheme

Hippos and Buffaloes are the main problem animals with the rangers managing them through awareness creation to the public on the animal behavior and the dos and don'ts concerning them.

KWS has stationed three rangers at Witu who team up with Conservancy rangers to address conflicts within the area.

The public have the ranger's numbers for swift reporting and response to any animal causing threats to the public.

D) Manda and Lamu Island

The main problem animals have been identified as Buffaloes and Hyenas.

KWS has a problem animal control team stationed at Mokowe who respond to conflicts in the area. This is facilitated by a boat stationed at Lamu to ensure swift response.

In addition to the area specific measures listed above, KWS recently recruited 100 community scouts to work with KWS and farmers on issues related to wildlife conservation in the County under the economic stimulus program. Table 1 and Table 2 below summarizes compensation claims for death and injury respectively and their status to date:

Table 1: Claims for death.

NO.	VICTIMS NAME	DEATH	DAY OF INCIDENT	NEXT OF KIN	ANIMAL RESPONSIBLE	COMPENSATION STATUS
1	BAKARI ATHMAN BEJA	DEATH	18/1/20 15	ATHMAN BEJA	HIPPO	Compensation funds released to the family of the victim.
2	OSMAIL NOOR ABDULLAH	DEATH	01/02/2 016	MAHADITH OSMAIL	BUFFALO	Compensation funds released to

				NOOR		the family of the victim.
3	ESTHER RESILA	DEATH	02/02/2016	CHRISTINE MSANZU	CROCO DILE	Compensation funds released to the family of the victim.
4	SAMSON KATANA CHARO	DEATH	12/09/2015	KADZO KAZUNGU BAYA	HIPPO	Compensation funds released to the family of the victim.
5	MUSA AHMED SHIDOW	DEATH	24/8/2016	AHMED SHIDOW DAMA	HIPPO	Compensation funds released to the family of the victim.
6	OMAR MOHAMED MAALIM	DEATH	23/11/2016	MOHAMED MWALIMU LIONGO	HIPPO	Compensation funds released to the family of the victim.
7	PETER MBURU KARANJA	DEATH	30/01/2017	HENRY KENGETHE MBURU	BUFFALO	Compensation funds released to the family of the victim.
8	JAMES MUTUNGA MUNYAZUI	DEATH	31/01/17	GRACE WANJIRU MBUNGU	BUFFALO	Rejected by CWCC.
9	OMESHAK OWIGO OLENGE	DEATH	03/02/17	BENTA AKINYI OWIGO	BUFFALO	Awaiting payment
10	CHARLES NGUMO KANYARI	DEATH	12/02/17	JOSEPH WANDETO KANYARI	BUFFALO	REJECTED BY CWCC
11	HASAN MZAMIL ALI	DEATH	14/02/17	MZAMIL ALI KHALIFA	BUFFALO	DEFERRED BY CWCC
12	ABUBAKAR OMAR DARA	DEATH	14/02/17	HUSSEIN TORI BORU	BUFFALO	DEFERRED BY CWCC
13	JOSPHAT GITHUNDI MUNIA	DEATH	07/03/2017	SIMON MUNIA GITHUNDI	BUFFALO	Rejected by MWCC
14	PETER MUHIA MWANGI	DEATH	14/04/2020	PATRICK MWANGI KAMAU	SNAKE	Rejected by MWCC

Table 2: Compensation claims/ injury cases and their status to date.

NO.	VICTIMS NAME	INJURY	DATE OF INCIDENCE	NEXT OF KIN	ANIMAL RESPONSIBLE	COMPENSATION STATUS
1	TERESIA WAKONYO	INJURY	01/09/2013	JOSEPH K. MWAGIRU	SNAKE	Compensation funds released to victim.
2	JAMES WAINAINA GITARI	INJURY	02/04/2013	JAMES MBUCHI	SNAKE	Compensation funds released to victim.
3	MICHAEL MUIA NGULUVAI	INJURY	21/3/2013	ROSEMARY GITHINJI	BUFFALO	Compensation funds released to victim.
4	JOSEPH KINYUA KIRUI	INJURY	15/4/2013	ANNA WANJIRU KINYUA	BUFFALO	Compensation funds released to victim.
5	GABRIEL MALINGO OKELO	INJURY	05/05/2013	KHUMWE ABWOGA MICHAEL	CROCODILE	Compensation funds released to victim.
6	JACKSON MWENDWA KAVUKU	INJURY	07/03/2013	KAVUKU MWENDWA	BUFFALO	Compensation funds released to victim.
7	ESTHER SIDI KENGA	INJURY	22/4/2020	TIMOTHY KEA	SNAKE	Rejected By MWCC
8	JULIUS MBEVO	INJURY	04/05/2020	CAROLINE NZEU	SNAKE	Rejected By MWCC
9	IJAB MINHAI SIGALE	INJURY	23/06/2020	ABDIRAHMAN ABDILLAHI	SNAKE	Rejected By MWCC
10	JOSEPH WAINAINA MUKUNDI	INJURY	07/07/2020	WILSON M MBURU	SNAKE	Recommended for payment by CWCC.
11	WILSON NJOROGE WAWERU	INJURY	14/07/2020	FUNDI KTHAKA	SNAKE	Rejected By MWCC

12	SAMUEL NDUNGU	INJURY	27/3/2019	LOISE WANGARI	SNAKE	Rejected By MWCC.
13	DANIEL CHEGE THINGA	INJURY	22/10/2019	MARY W. THINGA	HIPPO	Approved awaiting Payment
14	DISHON KAMAU MWAURA	INJURY	29/11/2019	NEWTON KIMANI	SNAKE	Rejected By MWCC

CONCLUSION

Anthropogenic factors including farming near water sources (Lake Kenyatta & Lake Amu), establishment of settlement schemes on wildlife migratory routes and infrastructure development has contributed to the displacement of wildlife in areas that formed their habitats leading to increased conflict. To mitigate against these KWS strategically deploys personnel and vehicles to respond promptly wherever the reports of conflict arise and whenever the reports are made, verification of incident is done by personnel and claim documentation prepared to await the deliberations by CWCC and payment by the State via the Service.