

PETITION ON DELAYED COMPENSATION IN RESPECT OF ELDORET TOWN BY-PASS ROAD PROJECT



The Affected Land Owners,
Eldoret Town Bypass Land Project,
P.O Box 4196-30100,
ELDORET.

To:
The Uasin Gishu Senator,
P. O. Box 41842-00100,
NAIROBI.

Dear Sir,

Mr. Mungwe
ps expedite this petition.
25/9/18

ODLPS
Please deal.
25/9/18

RE: PETITION ON DELAYED COMPENSATION IN RESPECT OF ELDORET TOWN BY-PASS ROAD PROJECT

We, the undersigned land owners affected by the Eldoret Town By-pass Road Project, being citizens of Kenya and residents of Kapsaret Constituency, Uasin Gishu County.

DRAW the attention of the Senate to the following issues concerning the Eldoret Town Bypass Road Project:-

The Project:-

The Government of Kenya through financing by African Development Bank intends to construct a 33 kilometre bypass road which starts at Cheplaskei trading centre on the Eldoret-Nairobi highway and terminates at Maili Tisa junction on the Eldoret- Malaba highway. The project affects 256 land parcels along the said route across 5 locations namely Ngeria, Kapsaret, Simat, Kamagut, and Leseru locations. The project will cost Kshs. 5,079,517.13 and will be undertaken by China Wu Yi Company Limited who have already set up a construction site in Kapsaret Centre and have commenced construction of an interchange at Maili Tisa junction. The project will affect many land owners and their families some of whom will be totally displaced. The total amount of compensation due to persons determined to be interested in the land sought to be compulsorily acquired for the project is about Kshs. 4.2 billion. The project duration is thirty (30) months and the by-pass road is expected to be completed by July 2020.

The Role of National Land Commission in the Project

The National Land Commission is an independent constitutional Commission established by dint of Article 67 of the Constitution of Kenya, 2010. Amongst the roles of the Commission is the responsibility to manage public land and to acquire private land on behalf the Government

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of Kenya for public purposes. These roles are replicated in section 2 of the National Land Commission Act, 2012. These duties are further amplified in Part VIII of the Land Act, 2012.

In the discharge of its constitutional and statutory mandate in relation to the aforesaid project, the Commission engaged in the following activities:-

- a) Received and approved a request for acquisition of land from Kenya National Highways Authority to acquire land on its behalf.
- b) Published in the Kenya Gazette a notice of intention to acquire our clients' land parcels for purposes of construction of a bypass road vide Gazette Notice No. 1822 of 18th March 2016.
- c) Inspected and assessed our clients' land parcels for suitability for acquisition and certified that the said land parcels are required for the aforesaid public purpose.
- d) Issued a notice of inquiry to determine issues of propriety and claims of compensation by persons interested in the land parcels Kenya Gazette No. 5265 of 2nd June 2017.
- e) Prepared written awards for every person whom the Commission determined to have an interest in the land sought to be acquired compulsorily.

Vide Gazette notice No. 1822 of 18/3/2016 and 5265 of 2/6/2017, the Commission published notices of intention to acquire land parcels from the persons interested in the land affected by the Project pursuant to the provisions of section 107(5) and Section 112 of the Land Act 2012.

It is against this background that the affected land owners wish to present the following grievances, concerns and challenges for your immediate action:-

(i) Delayed compensation

Article 40(3) of the Constitution of Kenya 2010 provides that:-

" The State shall not deprive a person of property of any description, or of any interest in, or of any interest in, or right over, property of any description, unless the deprivation;-

- a) Results from an acquisition of land or an interest in land or conversion of an interest in land , or title to land in accordance with Chapter Five; or
- b) Is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that-
 - (i) Requires prompt payment on full, of just compensation to the person; and
 - (ii) Allows any person who has an interest in, or right over, that property a right of access to a court of law."

Section 111 of the Land Act, 2012 further provides that:-

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“If land is acquired compulsorily under this Act, just compensation shall be paid promptly in full to all persons whose interests in the land have been determined.”

Section 115 of the Land Act, 2012 provides that:-

“After notice of an award has been served on all the persons determined to be interested in the land, the Commission shall, promptly pay compensation in accordance with the award to the persons entitled thereunder, except in case where:-

- a) there is no person competent to receive payment; or**
- b) the person entitled does not consent to receive the amount awarded; or**
- c) there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which the compensation is to be paid.”**

Additionally, Section 125 (1) of the Land Act, 2012 provides that:-

“The Commission shall, as soon as is practicable, before taking possession, pay full and just compensation to all persons interested in the land.”

On 29th January 2018 the National Land Commission issued award letters to the affected owners of the land parcels. This was to pave way for compensation of the land owners and eventual acquisition of the land by the national government for construction of the Eldoret town by-pass road. The affected land owners were asked to give their bank account details and were assured that the agreed compensation in the letters of award would be paid within a period of three weeks. The Commission is legally obligated to **promptly pay** just compensation to all affected land owners in accordance with the award issued to the persons affected. It is now more than seven (7) months since the affected land owners were issued with award letters yet no compensation has been paid to the affected land owners. This delay is unreasonable and unjustified and is an infringement of the constitutional rights of the affected land owners contrary to the provisions of Article 40(3) of the Constitution of Kenya, 2010 and violates the mandatory provisions of Sections 111, 115 and 125 of the Land Act, 2012.

(ii) Under-valuation

When the Commission issued award letters on 29th January 2018, there was notable disparity in the award for adjacent land parcels. Some affected persons were aggrieved by the awards and lodged written complaints. Most of these complaints are yet to be addressed. Meanwhile some verbal complaints were addressed on the spot and fresh awards issued without re-valuation in dubious circumstances. The land owners are particularly concerned about the lack

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of uniformity and transparency in addressing complaints concerning awards. Furthermore, the written awards were handwritten and were done in photocopied forms casting doubts as to their credibility. When the land owners demanded the original letters of awards they were told that they remained in Nairobi and only photocopies of the forms would be filled and awards issued to them. Furthermore, there was no provision in the forms for awardees signatures to signify acceptance of the award. There was also no breakdown of the award in respect of improvements. These concerns created doubts as to the credibility and authenticity of the process. The formal claims for enhanced awards are yet to be addressed by the Commission.

(iii) Phased compensation

It has come to our attention that the National Land Commission intends to pay compensation to affected land owners in phases. That out of the earmarked total compensation sum of approximately Kshs. 4.2 billion, the National Land Commission intends to disburse only Kshs. 300 million to people in occupation of government land in Maili Tisa area at the expense of genuine private land owners holding legitimate title to land in other areas. Sections 111 and 115 of the Land Act, 2012 provides that land acquired compulsorily shall be **paid promptly and in full to all persons** whose interests in the land have been determined once notices of an award have been served upon all persons determined to be interested in the land. Section 125 further obliges the Commission to pay **full** and just compensation to **all persons** interested in the land before taking possession of the land. The law therefore does not contemplate compensation of land owners in installments or in phases. Such intended action is without basis and is illegal and unconstitutional. Our clients therefore wish to reject any intended compensation of land owners in phases or in installments.

(iv) Illegal Compensation

It has come to our attention that the National Land Commission intends to compensate illegal settlers on government land owned by the Kenya Defence Forces on Maili Tisa Junction to the tune of Kshs. 300 million in the first phase of compensation due in a few days time. It is our submission that the illegal settlers herein, some of whom had put up temporary structures on public land have no proprietary interests on the government land that they are in occupation of to justify compensation using public funds. It amounts to the government purchasing its own land as such land is not compulsorily acquired to warrant compensation. By dint of Article 40(6) of the Constitution of Kenya, 2010 the right to property does not extend to illegally acquired property. The law affords no protection to illegal occupiers of land who have no proprietary rights and interests in the said. Furthermore Section 155 of the Land Act 2012 provides that;-

“Any person who, without, express or implied, lawful authority or without any right or license, under customary or statutory land law so to do -

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- a) occupies, erects any building on any public land;
 - b) clears, digs, ploughs, cultivates, or grazes animals over, any public land or part of it; or
 - c) cuts or removes any timber or other produce on or from any public land or part of it,
- shall be taken to be in unlawful occupation of that land.”

The funds earmarked for compensation of affected land owners should be utilized for its lawful purpose to pay genuine land owners and not trespassers in unlawful occupation of public land. We request that the said funds be channeled towards payment of genuine affected land owners on private land and any intended payment to trespassers in unlawful occupation of public land be stopped forthwith.

(v) Disturbance Allowance

The land owners were awarded a disturbance allowance equivalent to 15% of the value of the land. This percentage of allowance is not sufficient to compensate for the inconvenience suffered by the land owners. The compensation in that respect is unfair and unjustified. Our clients request that the disturbance allowance be reviewed upwards to 30%.

THAT

We confirm that the issues in respect of which the petition is made is not pending before any court of law, or constitutional or legal body.


HEREFORE, your humble petitioners pray that the Senate intervenes as follows:-

- i. That the National Land Commission forthwith stops the process of intended compensation of land owners in phases, particularly the intended disbursement of Kshs. 300 million to allegedly affected “land owners” in Maili Tisa area who are in unlawful occupation of public land until the Commission avails funds for full payment of all persons whose interests in the land have been determined.
- ii. That the Commission avails original award letters in respect of all affected land owners for authentication of the awards.
- iii. That the project contractor China Wu Yi Company Limited should immediately cease any operations in respect of the Eldoret town bypass road project until all affected land owners are fully compensated for their land.
- iv. That the Commission reviews the awards particularly the percentage of disturbance allowance upwards to 30% of the value of the property.

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- v. That all unresolved complaints regarding quantum of compensation awards raised by affected land owners and the County Government of Uasin Gishu be addressed by the Commission within 14 days from the date hereof.
- vi. That the National Land Commission do process prompt and just compensation in full to all affected persons in any event not later than a period of 30 days from the date hereof.
- vii. That the National Land Commission shall not take possession of the affected land parcels until all affected land owners are paid in full the just compensation due to them.

Thank you.

	DNO	Telephone	Sign
LEVIS K BOIT - 27326001		0721 201147	

25/09/2018

**PRIVATE LAND OWNERS
AFFECTED BY CHEPLASKEI MAILI TISA BYPASS**

	NAME	ID NO	PHONE NO	SIGN
1	EMILY JEBET KEMBOI	20732320	0722405195	
2	ELIZABETH JEPKEMBOI	12641025	0710480149	
3	BRIGID KIRICH		0720427674	
4	EDWIN KIPRONO ROTICH	6665599	0722694080	
5	HULLA-AM BISTALAM	11338613	0721903736	
6	SUSAN TOROITICH	12828300	0720616956	
7	GLADYS JEDKOECH	21933770	0721483652	
8	REFORMED CHURCH OF EAST AFRICA-LEMOKI	28638013	0727179827	
9	Christopher Mutai	12737938	0726512714	
10	Elisha Kingo	1817049	0716911050	
11	SAMMY KURTHI	26145153	0728-397921	
12	PAUL AUGOT	10704485	0722-464-740	
13	DINKEN KILUWA NDAEONA	34863317	0717417927	
14	JOSEPH SUNGOLEI	8716009	0721384975	
15	SAMUEL KIPROPO SAKA	23935291	0722101920	
17	Paul K. Kirui	10012857	0722420750	
18	ERIC K. HOEDEL	13125521	0722557867	
19	DOMINIC K KOGO	12638883	0726317419	
20	Moses Is Kosgei	12973425	0721357024	
21	Abel-K. Maritim	25493925	0721562632	
22	JOHN M. KIPAMGA	0286228	0712215924	
23	THOMAS K. SIUENEI	6862115	0726320687	
24	JOHN K. KORIN	3648545	0724672559	
25	Paul Mauyo	9425285	0721956586	
26	Caroline C Tanyi	13366100	0723611718	
27	LUMBERTI KOSGEI	27511324	0721779598	
28	Grace Maina	12641096	0727880192	
29	DAVID 'K' MUTAI	12640044	0725479642	
30	LILIAN KEBENEI	10761903	0729715522	
31	Nathan Koska	22158850	0721246204	
32	ZAKARO KLOTIAM	10376654	0726949359	
33	Julia Kemboi	22402195	0722608820	
34	Isabel KEMANT	21772638	0725-831870	
35	ELIZABETH Odundo Odundo	23751140	0731122870	
36	Lizzy J. TAYOI	9603902	0722305946	
37	Bernamin Talam	12466300	0721812365	
38	Florence Mauenzi	21835378	0721853745	
39	Anne Busieney	5592769	0727504438	
40	RICHARD TUM	5592769	0721751835	
41	Chelagat Sang	22025945	0728066123	
42	Kenny Kiprotich	11378394	0725330898	
43	William Kirwa Barinwoi	19346588	0724414734	
44	DANIEL KIPKURUGAT KETEN	10540991	0722466913	
45	PHILEMAN K. SIBER	3259929	0706071997	
46	JASIT TRO	5613679	0722402930	
47	ENOCH YEHO	6846030	0714577421	
48	Josea Kimutai	9871224	0723752452	
49	Eric Kidun	7699102	0720777099	
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Secretary: LENS KBOI

- 0721201147

Chairman - SIMON SAMOET - 0726904692

**PRIVATE LAND OWNERS
AFFECTED BY CHEPLASKEI MAILI TISA BYPASS**

		ID NO	PHONE NO.	SIGN.
1	Henry Maijo	8627551	0700341	<i>[Signature]</i>
2	Paul Sirmah	8626471	0725873652	<i>[Signature]</i>
3	JOHN SAWE	1114652	0724074483	<i>[Signature]</i>
4	NELSON SEREM	16019846	0724422403	<i>[Signature]</i>
5	Simon PATE	3936606	0766867135	<i>[Signature]</i>
6	Isaiah Katya	0485459	0724079250	<i>[Signature]</i>
7	Isidore Bofit	23856048	0716133229	<i>[Signature]</i>
8	Jacob Seda	10548803	0716041734	<i>[Signature]</i>
9	Ann Wangane		0719713222	<i>[Signature]</i>
10	Samuel Kipchirichir	12878320	0715476778	<i>[Signature]</i>
11	Paul Sitienei	0847685	0728026075	<i>[Signature]</i>
12	MUSA ELONDANGA	7220594	0710697728	<i>[Signature]</i>
13	Francis Njuguna Mbugua	24727957	0724494551	<i>[Signature]</i>
14	Kenneth Kiplimo BODISEI	28454566	0710817821	<i>[Signature]</i>
15	ROBERTS BOMET	71507773	0715346333	<i>[Signature]</i>
17	SIMION CHIRCHIE KOECH	12634125	0722641152	<i>[Signature]</i>
19	EMMET Sirmah/Mary Bartilol	11339142	0726778392	<i>[Signature]</i>
19	DAVID K. TANUI	10760589	0700864725	<i>[Signature]</i>
20	Peter chepkwony	20951603	0707328655	<i>[Signature]</i>
21	Hellen Arusei	21696168	0728494935	<i>[Signature]</i>
22	LIZBETH TANUI	23311240	0720806433	<i>[Signature]</i>
23	LEAH KEMEI	9841116	0714991497	<i>[Signature]</i>
24	CHRISTINE MURIA	3324996	0716075587	<i>[Signature]</i>
25	Urban Koinur	0144413	070727241062	<i>[Signature]</i>
26	Shaban Marrow	27416648	0720363258	<i>[Signature]</i>
27	Rebecca Lutomya	13054622	0720362258	<i>[Signature]</i>
28	Francis Chemase		0722221597	<i>[Signature]</i>
29	Nathan Kimalwo	12830237	0722966496	<i>[Signature]</i>
30	Paul Murei	332038	0716821129	<i>[Signature]</i>
31	Sue Too	6856652	0723250622	<i>[Signature]</i>
32	Pius Magak	22548879	0728948362	<i>[Signature]</i>
33	Mary Bartilol	4359291	0710795080	<i>[Signature]</i>
34	Glady's J. Cheruiyot	23158611	0729602042	<i>[Signature]</i>
	GRACE MATUITI		0729828577	<i>[Signature]</i>
36	Glady's Kwambai	2281832	0721738460	<i>[Signature]</i>
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**PRIVATE LAND OWNERS
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	NAME	ID NO	PHONE NO	SIGN
1	SAMUEL KIPRUTO SAMG.	23935296	0722 141920	
2	TOTH K KORIR	3648345	0724 672599	
3	GEORGINA C KOSLAEI	20 49 2628	0720 169777	
4	ELIFA K. AARUSEI	11181656	0724439820	
5	Paul Sitienei	0847685	0728026075	
6	HELEN AARUSEI	21696168	0728494935	
7	SIMEON SAMOEL	3324768	0726904692	
8	SIMUEL KUSORIO	12636454	0729 977431	
9	DAMINIC K KOGO	12038883	0720 317 419	
10	EMILY SEBAST KUMBOI	20732320	0722 1105195	
11	GLADIS AEPKOECH KORIR	21935770	0721 483552	
12	Paul Lagat	3266342	0724883529	
13	Maffai Ketter	0846693	0717 082738	
14	Hellert Lagat	4899992	0721284274	
15	Peter MUMBO	3398672	0722249324	
17	Kunice Keltany	9253273	0721540654	
19	John Kumboi	11181304	0722 776291	
20	Daniel Melfo	487717	0720801007	
21	Samuel Kemp	23935296	0722 141920	
22	Abraham Mbugu	9778829	0722 930 998	
22	Samuel Koech	13293281	0725436077	
23	Francis Mbugu	24727957	0724494531	
24	Dinah Cheilagat	0721 227 355	0721 227 355	
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