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PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION – 2019

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF A PETITION BY RESIDENTS OF SABAKI WARD MAGARINI CONSTITUENCY REGARDING DISPOSSESSION ANCENTRAL LAND

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE:	31 JUL 2019
	Day Wednesday
TABLED BY:	Hon. Dr. Rachael Nyamira Chairperson of the Committee
CLERK AT THE TABLE:	Halima Ahmed

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

JULY, 2019

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CHAIRPERSON'S FOREWORD

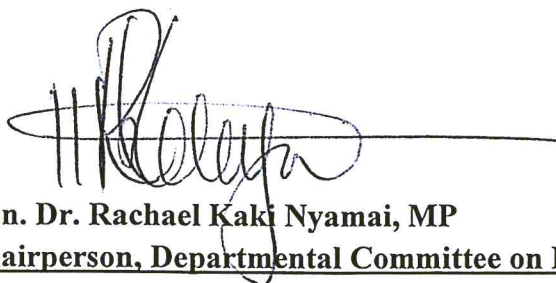
The Petition residents of Sabaki Ward, Magarini Constituency regarding dispossession of ancestral land. was tabled in the House on 1st March 2019 pursuant to Article 119 (1) of the Constitution and Standing Order No. 225 (1) (b) by the Michael Kingi Thoya, MP on behalf of the Petitioners.

The House, pursuant to Standing Order 227 referred the Petition to the Departmental Committee on Lands on 21st February 2019 for consideration. The Committee set out a procedure for its consideration and to report to the House as set out in Standing Order No 227(2).

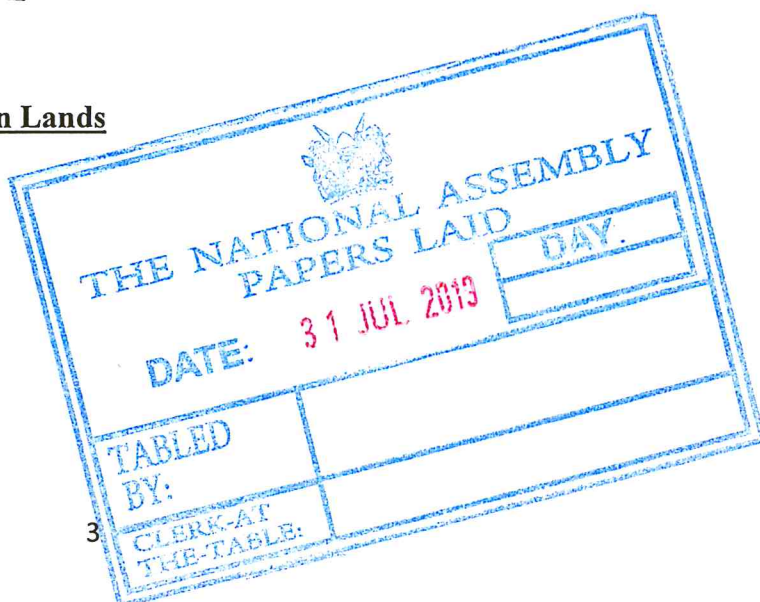
In considering the Petition the Committee undertook a field visit to Sakaki, Magarini Constituency on Friday 13th and Saturday 14th April 2019 During the visit the Committee held meetings with the Petitioners and representatives of government agencies based in Kilifi County. The Committee also held meetings with the Ag. Chief Executive, National Land Commission and the Cabinet Secretary, Ministry of Lands & Physical Planning, the Chief Administrative Secretary Ministry of Agriculture, Livestock & Fisheries, the Ag. Managing Director, Agricultural Development Corporation and the Vice Chairperson Ethics & Anti – Corruption Commission.

The Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee is also thankful to the Petitioners, the Ag. Chief Executive Officer, National Land Commission, the Cabinet Secretary, Ministry of Lands & Physical Planning, the Cabinet Secretary Ministry of Agriculture, Livestock & Fisheries, the Ag. Managing Director, Agricultural Development Corporation and the Vice Chairperson Ethics & Anti – Corruption Commission for the submissions they made to the Committee.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my pleasant duty to table the Report of the Departmental Committee on Lands on its consideration of the Petition by residents of Sabaki Ward, Magarini Constituency regarding dispossession of ancestral land.



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



EXECUTIVE SUMMARY

The purpose of this report is to respond to prayers made by residents of Sabaki Ward, Magarini Constituency in a Petition regarding dispossession of ancestral land. The Committee observed that the evidence tabled before it supported a position that the Petitioners had a valid historical land injustice claim noting they were originally occupying the land before independence and were subsequently dispossessed during the colonial era to pave way for the establishment of Kisima farm by a foreign national without receiving any compensation.

The Committee observed that the evidence tabled before it supported a position that the Petitioners had a valid historical land injustice claim noting they were originally occupying the land before independence and were subsequently dispossessed during the colonial era to pave way for the establishment of Kisima farm by a foreign national without receiving any compensation.

The Committee also observed that Ethics and Anti – Corruption Commission (EACC) tabled submissions that contained evidence that the land under consideration in this petition was granted to a foreign national in 1927 and the disposition of the latter was illegal.

The Committee further observed that the Agricultural Development Corporation (ADC) Kiswani Home Farm is public land that was illegally subdivided and sold to different persons without being sanctioned by either the ADC or Lands Limited Board. The land was also sold at Kshs 20,000 per acre, which may have been below the prevailing market rate.

The Committee also noted the reluctance and the inordinate delay by the National Land Commission and Ethics and Anti- Corruption Commission to have the claims by the Petitioners resolved noting that the claim by Petitioners has been pending for several years and to date the EACC has also not put caveats to restrict further sub-division of land.

The Committee recommends that pursuant to section 15 of the National Land Commission Act, 2012, the National Land Commission investigates the historical land injustice claim of the Petitioners and where it establishes valid claims of historical land injustice consider ordering the revocation of titles issued in respect of ADC Kiswani Home Land Farm, land registration Nos. 540, M53, M3B and LR. No. 5061 in Malindi. and reallocation of the land to the Petitioners within ninety days of tabling of this Report.

The also Committee recommends that the Ethics and Anti- Corruption Commission should conclude investigating all persons who may have been involved in illegally disposing of the ADC land including issuance of titles on public land and recommend prosecution to the Director Public Prosecutions if any person is found culpable within ninety days of tabling of this report.

Finally, the Committee recommends that pursuant to section 76 of the Lands Registration Act, 2012, the registrar of lands does immediately place restrictions on the ADC land to guard against further illegal disposal of the land upon tabling of this Report.

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 oversights:
 - i. The Ministry of Lands and Physical Planning; and
 - ii. The National Land Commission

1.4 Committee Membership

4. The Committee membership comprises: -

Member	Constituency	Party
Hon. Dr. Rachael Nyamai, MP - Chairperson	Kitui South	Jubilee Party
Hon. Khatib Mwashetani, MP - V/Chairperson	Lunga Lunga	Jubilee Party
Hon. Jayne Wanjiru Kihara, MP	Naivaisha	Jubilee Party
Hon Joshua Kutuny Serem, MP	Cherangany	Jubilee Party
Hon. Kimani Ngunjiri, MP	Bahati	Jubilee Party
Hon. Mishi Mboko, MP	Likoni	Orange Democratic Movement (ODM)

Hon. Omar Mwinyi, MP	Changamwe	Orange Democratic Movement (ODM)
Hon. Ali Mbogo, MP	Kisauni	Wiper Democratic Part
Hon. Babu Owino, MP	Embakasi East	Orange Democratic Movement (ODM)
Hon. Caleb Kipkemei Kositany, MP	Soy	Jubilee Party
Hon. Catherine Waruguru, MP	Laikipia County	Jubilee Party
Hon George Aladwa, MP	Makadara	Orange Democratic Movement (ODM)
Hon George Risa Sunkuyia, MP	Kajiado West	Jubilee Party
Hon. Jane Wanjuki Njiru, MP	Embu County	Jubilee Party
Hon. Josphat Gichunge Kabeabea, MP	Tigania East	Party of National Unity
Hon. Owen Yaa Baya, MP	Kilifi North	Orange Democratic Movement (ODM)
Hon. Samuel Kinuthia Gachobe, MP	Subukia	Jubilee Party
Hon. Simon Nganga Kingara, MP	Ruiru	Jubilee Party
Hon. Teddy Mwambire, MP	Ganze	Orange Democratic Movement (ODM)

1.5 Committee Secretariat

5. The Committee secretariat comprises: -

Clerk Assistant I	Mr. Leonard Machira
Clerk Assistant III	Mr. Ahmad Guliye
Legal Counsel I	Ms. Jemimah Waigwa
Researcher III	Mr. Joseph Tiyan
Fiscal Analyst III	Mr. Adan Abdi
Media Relations Officer III	Ms. Winnie Kizia
Audio Officer	Mr. Nimrod Ochieng
Serjeant-At-Arms	Ms. Peris Kaburi

2.0 INTRODUCTION

6. The Petition by residents of Sabaki Ward in Magarini Constituency regarding the dispossession of ancestral land was tabled in the House on 1st March 2019 by the Hon Michael Thoya Kingi MP pursuant to Article 119 (1) of the Constitution and Standing Order No. 225 (1) (b). Subsequently the Petition was referred to Departmental Committee on Lands.
7. The Committee received the Petition on 1st March 2019 and set out a procedure for its consideration and to report to the House as set out in Standing Order No 227(2).
8. The Petitioners wished to draw to the attention of the House to the following, that: -
9. Before independence, the residents of Sabaki Ward were forcefully evicted from their ancestral land by the colonial government to pave way for the establishment of Kisima farm.
10. The forceful eviction and the subsequent relocation were done without any compensation despite the abandoned farms being rich in cash crops like cashew nuts trees, mango trees among others.
11. After independence the Kenyan Government repossessed Kisima Farm and vested it in the Agricultural Development Corporation (ADC) a state corporation and renamed it Sabaki Farm.
12. The once thriving livestock enterprise started to dwindle under the management of ADC. The residents felt that this was a deliberate attempt to allow well connected individuals to get easy access to the prime land.
13. The ADC management had illegally allocated the land to well-connected individuals and had issued them with title deeds.
14. The National Land Commission vide a letter dated 13th March 2015, addressed to the Kilifi County Commissioner, confirmed that ADC management was illegally allocating land to individuals.
15. The residents who were evicted from Sabaki Ward ADC farm were currently squatters on land which is not arable.
16. Efforts to have the matter resolved with relevant government agencies have been futile.
17. The matters in respect of which this petition raised were not pending in any court of law, constitutional or legal body.
18. The petitioners prayed that the National Assembly through the Departmental Committee on Lands:
 - a. Cause the government to resettle the evicted people on the Sabaki ADC farm.
 - b. Cause the National Land Commission to investigate allocation of ADC Sabaki farmland with a view of revoking all the title deeds that were illegally issued to individuals.
 - c. Makes any other direction that it deems fit in the circumstances of this matter

3.0 SUBMISSIONS

3.1 Submissions by stakeholders during a field visit to Sabaki, Magarini Constituency

a) Submissions by the Petitioners

19. The Committee held a meeting with the Petitioners during a field visit to Sabaki, Magarini Constituency on Friday 13th April 2019. During the meeting the Petitioners and the Hon. Michael Kingi, M.P informed the Committee that the residents of Sabaki Ward were evicted by the colonial government from their ancestral land without any compensation to pave way for the establishment of Kisima Farm.
20. In 1976 the Kenyan Government repossessed the land and allocated it to the Agricultural Development Corporation (ADC).
21. The ADC management promised to facilitate farming in the area through the breeding of pedigree livestock and crops.
22. However, in the 1990s the Agricultural Development Corporation (ADC) management illegally facilitated the allocation of the farm's entire 1000 acres to well-connected individuals and the said individuals had been issued of title deeds including a title deed for the land where the office of the farm manager is located.
23. The Petitioners argued that, being the descendants of the initial ancestral owners of the land they deserved to be allocated the land as opposed by the situation in which the management of ADC had illegally allocated the land to people from outside the County and to private companies.
24. The Committee was also informed that residents who were evicted from the land in question by the colonial government were currently living as squatters on un-arable land and sought to be allocated their ancestral land given that it was no longer held by the Agricultural Development Corporation.
25. The Petitioners also stated that the management of ADC Kiswani Home Farm harassed residents who grazed livestock in the unoccupied land by confiscating the animals and demanding payment of illegal penalties. They further complained that the said management allowed individuals and companies with title deeds to construct building in the same land.

b) Submissions by the Ag Managing Director, Agricultural Development Corporation

26. The Committee received oral and written submissions from the Mr. Mohamed Bulle, the Ag Managing Director, Agricultural Development Corporation (ADC) during a field visit to Magarini Constituency on Friday 13th April 2019. He informed the Committee as follows:
27. The land referred to in the Petition is known as Kiswani Home Farm and was bought by the corporation, through its subsidiary Lands Limited, from Kisima Limited in 1976.
28. In the 1990 the farm was subdivided and allocated to individuals and companies by the then management of ADC. The corporation received Kshs. 40,000,000 as proceeds from the sale, however Kshs. 1,675,000 was still outstanding.
29. The subdivision and allocation of the farm to individuals and companies was not approved by the ADC Board.
30. Ownership documents for approximately 66% of the land had been issued to individuals and companies. While documents for the remaining 33% of the allocated land had not been processed by the beneficiaries following a freeze on the said transactions by the Ethics and Anti-Corruption Commission.
31. In 2010 the Ethics and Anti-Corruption Commission initiated investigations into the said allocations and subsequently froze further transactions on the land in question.
32. The National Land Commission also initiated investigations on the matter after receiving complaints from residents of Malindi in March 2015. The Commission also directed that transactions on the said land be halted and later issued a gazette notice on 11th December 2018, in which a 14-day ultimatum was issued to all landowners to present their ownership documents to the NLC offices in Nairobi for verification failure to which the said titles would be cancelled after 90 days. However, no documents were submitted to the commission at the expiry of the said deadline.
33. The Ag. Managing Director indicated that ADC welcomed investigations into the allocation of the land in question to individuals and companies to establish any breach of the law. He also argued that it was in the best interest of the public that ADC continued to occupy the land for furtherance of its mandate. He further argued that it was in the best interest of the government and the local community that the land was vested in the ADC for the sake of peace and tranquility among local community members. He also promised that ADC would endeavor to protect the land from being irregularly acquired by other parties.

c) Submissions by the Ag. Deputy Chief Executive Officer, National Land Commission and the County Coordinator, Kilifi County

34. The Committee also received submissions from the Ag. Deputy Chief Executive Officer, National Land Commission and the County Coordinator, Kilifi County. The two officers informed the

Committee that the Commission had made efforts to address the matters raised in the Petition since 2014 following complaints lodged by residents of Malindi.

35. The officers further stated that the former Commission Chairperson, Prof. Muhammed Swazuri held a public rally in Sabaki in February 2014. After the said rally the Commission vide a letter dated 13th March 2015 directed that all transactions involving the land in question be stopped.
36. The Malindi ADC farms were bought by Lands Ltd that fully is owned by ADC, from departing settlers on 1976. The farms comprise Top farm covering an area of 3000 acres and Home Farm covering an area of 1000 acres. The Petitioners' claims relate to Home Farm
37. The entire 1000 acres of land in the Kiswani Home Farm was disposed and allocated to individuals and companies by former ADC managers. Some of the allottees later sold the land to third parties. They further stated that Kshs. 40 million was realized from the sale.
38. The Commission issued a notice to persons owning land in the ADC farms to submit their ownership documents to the Commission for verification. However, no documents were submitted for verification at the expiry of the notice.

3.2 Submissions by the Cabinet Secretary Ministry of Lands & Physical Planning

39. The Committee held a meeting with the Cabinet Secretary, Ministry of Lands & Physical Planning on Tuesday 7th May 2019. During the meeting the Committee was informed that the ADC Kiswani Complex was previously known as Kisima farm. It is situated within land registration Nos. 540, M53, M3B and LR. No. 5061 in Malindi.
40. **Background:** The Cabinet Secretary further informed the Committee that after Kenya attained independence the government bought the land from departing settlers through Lands Limited. Further ADC was established by an Act of Parliament in 1965 and assumed full control of Lands Limited.
41. In July 1976, Lands limited bought land portion No. 540 measuring 470 acres, which was later consolidated with land portions Nos. 19,36,569, and LR. No. 5061 from Kisima Farm Limited at a sum of Kshs. 1,309,900.
42. **Subdivisions:** The Cabinet Secretary also stated that according to records at the Ministry the ADC Kiswani Complex is situated within Portion No. 540 (411.5 acres, Portion No. M53(128.5 acres) Portion M3B (237.96 acres) and LR. MNO506 (470) acres. The said parcels were surveyed in 1930 vide survey plan F/R/41/37.
43. L.R No. 5061 measuring 470 acres was still intact and had not been subdivided. The other portions had been subdivided into 125 parcels as follows:
 - In May 1994, portion No. 540 was subdivided into 31 parcels (portion Nos 8930 to 8961) vide survey plan F/R 247 /77.

- In August 1994, portion M3B was subdivided into 7 parcels (portion Nos 9358 to 9364) vide survey plan F/R 251 /55.
- In August 1995 portions Nos 9363, M53 and 8930 were consolidated and subdivided into 63 parcels vide survey plan No F/R 259/61 resulting in portion Nos. 10144 to 10204.
- In July 1996 portion 10144 was consolidated with 29R vide survey plan F/R No 304/182 and issued into portion No. 10617 measuring 205.28 ha. Portion No. 10617 was further subdivided vide survey plan F/R 267/96 into 53 portions (portion Nos 10618 to 10670).
- In 1997 portion No 10618 was subdivided into 3 portions namely 10618/2 measuring 14.01 ha, 10618/3 measuring 16.80 ha. and 10618/4 measuring 28.47 ha.

44. **List of persons holding title deeds arising from the subdivisions:** The Cabinet Secretary tabled a list of 125 persons and companies who were allocated the land in question following the above-mentioned subdivisions (See Annex I). She also informed the Committee that 92 subdivisions out of the 125 parcels of land had been registered. Title deeds for the said subdivisions had also been issued to the individuals and companies.

3.3 Submissions by the Ag Chief Executive Officer National Land Commission

45. The Committee held a meeting with Ms. Kabale Tache, the Ag Chief Executive Officer, National Land Commission on Tuesday 7th May 2019. She informed the Committee as follows;
46. The Malindi ADC farms were bought by Lands Ltd that fully owned by ADC, from departing settlers on 1976. The farms comprise Top farm covering an area of 300 acre and Home Farm covering an area of 1000 acres.
47. In the 1990s the then management of ADC subdivided and allocated the farm to individuals and companies. ADC received Kshs. 40,000,000 as proceeds from the sale, however Kshs. 1,675,000 was still outstanding.
48. The Commission issued a notice on 11th December 2018 to persons owning land in the ADC farms to submit their ownership documents to the Commission for verification. However, no documents were submitted for verification.
49. The Ag, Chief Executive officer requested the Committee to consider extending the powers of the Commission to review grants to establish their propriety and legality, which lapsed in 2017 by amending section 14 of the National Land Commission Act 2012. She indicated that the lapse of the said provision had rendered the Commission without the power to recommend revocation of titles.
50. The Ag Chief Executive Officer also recommended that the ancestral claim to the land in question made by the Petitioners may be referred to the second Commission as an Historical Land Injustice claim as provided in section 15 of the National Land Commission Act 2012.

3.4 Submissions by the Cabinet Secretary Ministry of Agriculture, Livestock, Fisheries and Irrigation

51. The Committee received oral and written submissions from the Chief administrative Secretary, on behalf of the Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries and Irrigation during a meeting held on 28th May 2019. He informed the Committee that the ADC Kiswani Complex comprises two farms; Kiswani Home Farm and Kiswani Top Farm. The matters raised in the Petition relate to Kiswani Home Farm which covers an area of 1000 acres.
52. ADC was created through an Act of Parliament in 1965. The current assets of Lands Limited are held in public interest and were gazetted as special farms vide gazette notice No. 37 of 2001. The ADC Kiswani Complex is one of the said special farms.
53. The ADC Kiswani Home Farm was fully allocated to individuals and companies in the early 1990s by the ADC management during the tenure of Dr. Water Kilele (deceased). The said allocations were a subject of investigations by Ethics Anti- Corruption Commission (EACC).
54. Ownership documents of 66% of the land had been issued, while documents for 33% of the allocated land had not been processed following a freeze on the said transaction by the EACC.
55. ADC received Kshs. 40 million from the sale of the farm with an outstanding balance of Kshs. 1.7 million yet to be paid by the beneficiaries.
56. ADC and Lands Limited Board did not make any resolution to allocate the land in question to individuals and companies.
57. Despite the land having been allocated to individuals and companies ADC still occupied the land.
58. The National Land Commission issued a gazette notice on 11th December 2018 in which a 14-day ultimatum was issued to all landowners to present their ownership documents to the NLC offices in Nairobi for verification failure to which the said titles would be cancelled after 90 days. No documents were submitted at the expiry of the said notice.
59. The Chief Administrative Secretary also tabled a list of 125 individuals and companies that were allocated parcels of land in the ADC Kiswani Home Farm (Annex II).

3.5 Submissions by the Vice Chairperson Ethics and Anti- Corruption Commission

60. The Committee held a meeting with the Vice Chairperson Ethics and Anti- Corruption Commission on 13th June 2019. The Committee also received a written progress report from the Commission dated 27th June 2019, on investigations undertaken by the Commission regarding allegations of irregular subdivision and acquisition by private developers of ADC Kiswani Home Farm. The submissions and report outlined the following:

61. **Nature of allegation:** The Commission received a complaint from residents of Sabaki Ward, that land belonging to the Agricultural Development Corporation in Malindi – LR No. 540 had been irregularly sub – divided and acquired by private developers.
62. **Action taken by the Commission:** The Commission initiated investigations into the matter with the objective to verify the allegations and the investigations are still ongoing. The said investigation had revealed that:
- a. The land in question is owned by Agricultural Development Corporation and was purchased from Kisima Ltd on 30th April 1976 through Lands Limited, a subsidiary of ADC at a sum of Kshs. 1,700,300. It is composed of four (4) blocks totaling to 990 acres LR. Nos 540,53, M3B 29, 256, 467,470,480,485,488(all freehold) and LR Nos: 5061 852, and 726 (all leaseholds).
 - b. Parcel 540 measuring 41.5 acres was registered on 19th July 1927 as a Grant in favour of Harold George Robertson for 999 years.
 - c. In 1994, ADC sub- divided the land and allocated it to 125 persons at Ksh. 20,000 per acre. A total of Kshs. 41,348,380 was paid to ADC by the said allottees. The Commission presented a document titled “NOTE FOR THE FILE” obtained from ADC alleging that the former Head of State (H.E Daniel Moi) granted the sale of the land at the best possible market rate of between Ksh. 250,000 to Ksh. 300,000 following a meeting with the then ADC, Managing Director Dr. Walter Kilele (deceased).
 - d. Upon allocation , ADC processed title deeds for the parcels of land and some allottees subsequently sold the land to third parties as the locals could not allow the purchasers to take possession of the land as they claim ancestral ownership and that they should have been given priority by ADC to purchase the land . The transfer instruments were signed by the then ADC Managing Director, Dr. Walter Kilele and Ms. Jayne Otieno (both deceased).
 - e. The disposal and sub-division of the subject property was sanctioned by the ADC or the Lands Ltd Board. The land was also sold at Kshs. 20,000 per acre as opposed to the alleged proposal made to the then President of Kshs. 250,000 to Kshs 300,000 per acre.
 - f. The residents of Sabaki’s ancestral claim on the land is not valid as the land was bought and paid for by Lands Ltd in April 1976. As such the locals claim on the land is that if ADC does not utilize the land and decided to allocate it to private parties, the locals should be given priority.

The matter was handled by the National Land Commission, but the commission did not deal with it conclusively due the expiry of the power of the commission to review grants and disposition as stipulated in section 14 of the National land Commission Act 2012. Although the Commission had issued a notice to the public on 11th December 2018, seeking to revoke all title issued in regard of the land in question.

63. Conclusions: The Commission made the following conclusions:

- The land in question is public land that was illegally subdivided and sold. The decision was undertaken unilaterally by the Managing Director, Walter Kilelee and there are no Board minutes to ratify the said decision.
- The consideration paid by the allottees for the parcels of land was below the market rates
- Some of the allottees have since sold third parcels of land to third parties, However the land in question has not been fully occupied
- The National Land Commission (NLC) did not conclusively dealt with the matter despite having been seized of it due the expiry of the mandate to revoke title deeds.
- The squatters claiming ancestral ownership of the land have no valid claim on the land

64. Recommendation: The Commission undertook to place caveats to restrict further sub – division of the land, to file a civil suit to recover the public land and to conclude criminal investigations and take appropriate action against ADC officials found culpable

4.0 COMMITTEE OBSERVATIONS

The Committee made the following observations:

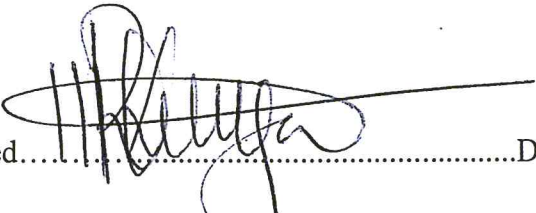
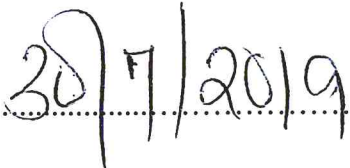
1. The Committee observed that the evidence tabled before it supported a position that the Petitioners had a valid historical land injustice claim noting they were originally occupying the land before independence and were subsequently dispossessed during the colonial era to pave way for the establishment of Kisima farm by a foreign national without receiving any compensation.
2. The Committee also observed that the land in question, ADC Kiswani Home Farm, is public land that was illegally subdivided and sold to different persons without being sanctioned by either the ADC or Lands Limited Board.
3. The Committee observed that the ADC Kiswani Home Farm land was illegally sold to 125 persons and companies at Kshs 20,000 per acre as opposed to the proposal to sell the land at Kshs 250, 000 to Kshs 300, 000 as indicated in a document titled “NOTE FOR THE FILE” obtained from ADC by the EACC. (Annex iv). The note also indicated that the former President H.E Daniel Moi reportedly granted the sale of the land at the best possible market rate following a purported meeting with the then ADC, Managing Director Dr. Walter Kilele (deceased).
4. The Committee observed that land that is the subject matter of the petition, which was illegally subdivided and sold to different persons, included land presently occupied by ADC offices.
5. The Committee observed that EACC tabled submissions/Report that contained evidence that the land under consideration in this petition was granted to a foreign national in 1927 and the disposition of the latter was illegal.
6. The Committee observed that it was suspicious that the National Land Commission-
 - (a) Had taken three years from the date the complaint regarding irregular allocation of land in ADC Kiswani Home Farm was filed by the petitioners to conduct an inquiry on verification of titles in respect to the said land.
 - (b) Issued a notice for verification of titles in 2018, when the commission had no power to review grants and titles as prescribed under section 14 (1) of the National Land Commission Act as it was barred by time.
7. Despite the National Land Commission issuing a notice inviting persons with titles as proof of ownership of land on ADC to submit the documents, no documents were presented for verification.

8. There has been reluctance by the National Land Commission and EACC to have the claims by the Petitioners resolved noting the claim by Petitioners has been pending for several years and to date the EACC has also not put caveats to restrict further sub-division of land.
9. The Committee noted with concern the inordinate delay by the Ethics and Anti- Corruption Commission and the National land Commission to investigate allegations of irregular allocation of ADC Kiswani Home Farm despite having received complaints on the same in 2010 and 2014 respectively.
10. The Committee observed that the circumstances in which the former managing director of ADC Dr. Andrew Tuimur acquired one share of Lands Limited a subsidiary of the ADC.

5.0 RECOMMENDATIONS

In response to the prayers by the Petitioners, the Committee recommends that within ninety days of tabling of this Report:

1. Pursuant to section 15 of the National Land Commission Act, 2012, the National Land Commission investigates the historical land injustice claim of the Petitioners and where it establishes valid claims of historical land injustice consider ordering the revocation of titles issued in respect of ADC Kiswani Home Farm, comprising land registration numbers 540, M53, M3B and LR. No. 5061 in Malindi. and reallocation of the land to the Petitioners.
2. The Ethics and Anti – Corruption Commission should expedite and conclude investigating all persons who may have been involved in illegally disposing of the ADC Kiswani Home Farm, comprising land registration numbers 540, M53, M3B and LR. No. 5061 in Malindi, including issuance of titles on public land and recommend prosecution to the Director Public Prosecutions if any person is found culpable within ninety days of tabling of this report.
3. Pursuant to the procedure provided under section 76 of the Lands Registration Act, 2012, the Registrar of Lands does immediately place restrictions on the ADC Kiswani Home Farm, comprising land registration numbers 540, M53, M3B and LR. No. 5061 in Malindi to guard against further illegal disposal of the land upon tabling of this Report.
4. The Ethics and Anti – Corruption Commission investigates the circumstances a person serving as an officer of a state corporation acquired a share in the said same state corporation and therefore establish the propriety under which the former managing director of ADC Dr. Andrew Tuimur acquired one share of Lands Limited a subsidiary of the ADC.

Signed..........Date..........

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