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REPUBLIC OF KENYA

**Rt. Hon. Speaker**  
You may approve/sign  
J.M. Nyegenye, C.B.S.,  
Clerk of the senate/secretary, PSC  
Date: 08/08/23

THIRTEENTH PARLIAMENT | SECOND SESSION

THE SENATE

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND  
HUMAN RIGHTS

REPORT ON THE PETITION BY THE KIPSIGIS COMMUNITY  
CLANS ORGANIZATION CONCERNING HISTORICAL LAND  
INJUSTICES AGAINST THE KIPSIGIS COMMUNITY

PAPERS LAID	
DATE	10/08/2023
TABLED BY	SEN HILLARY UGELI
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CLERK AT THE TABLE	Chesop.

**APPROVED**  
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09/08/23

Clerk's Chambers,  
The Senate,  
Parliament Buildings,  
**NAIROBI.**

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

COK	- Constitution of Kenya
KNCHR	- Kenya National Commission on Human Rights
KTGA	- Kenya Tea Growers Association
LSTP	- Large Scale Tea Producer
NLC	- National Land Commission
TJRC	- Truth, Justice and Reconciliation Commission

## PRELIMINARIES

### Establishment and Mandate of the Committee

The Standing Committee on Justice, Legal Affairs and Human Rights is established under the Standing Orders of the Senate and is mandated *'to consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.*

### Membership of the Committee

The Committee is comprised of –

- |  |                    |
|--|--------------------|
| 1) Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson      |
| 2) Sen. Raphael Chimera Mwinzagu, MP       | - Vice-Chairperson |
| 3) Sen. Fatuma Adan Dullo, CBS, MP         | - Member           |
| 4) Sen. William Cheptumo Kipkiror, CBS, MP | - Member           |
| 5) Sen. Hamida Ali Kibwana, MP             | - Member           |
| 6) Sen. Catherine Muyeka Mumma, MP         | - Member           |
| 7) Sen. Veronica W. Maina, MP              | - Member           |
| 8) Sen. Karen Njeri Nyamu, MP              | - Member           |
| 9) Sen. Andrew Omtatah Okoiti, MP          | - Member           |

The Minutes of the Committee in considering the Petition by the Kipsigis Community Clans Organization concerning historical land injustices against the Kipsigis Community are attached to this Report as *Annex 1*.



## FOREWORD BY THE CHAIRPERSON

**Hon. Speaker,**

The Petition by the Kipsigis Community Clans Organization was presented in the Senate by the Senator for Kericho County on Thursday, 9<sup>th</sup> March, 2023, following which it was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

The salient issue in the Petition relates to the brutal and systematic eviction of the Kipsigis community from their ancestral lands in the present day Kericho, Bomet, Nandi and parts of Nakuru Counties. The members of the community were evicted without compensation or resettlement and the said lands, in what was then known as the ‘White Highlands’, allocated by the colonial government to British settlers. After independence, these lands remained under the ownership and control of multinational tea companies.

The Petition by the Kipsigis community clans was thus for their ancestral lands to be reinstated to them, for assistance with pursuing legal cases filed in various courts, and for compensation and reparations to be paid to the community for the pain, loss and suffering that the community has been subjected to over the past more than one century.

**Hon. Speaker,**

In considering the Petition, the Committee visited Kericho County where it met with and listened to first-hand accounts of the Petitioners. This was to enable the Committee to better understand the issues raised in the Petition, the interventions that the community has sought so far and whether the same have been successful, and the remedies that they seek from the Committee and the Senate.

The Committee subsequently held meetings with the Kenya Tea Growers Association, incorporating the Large-Scale Tea Producers, and considered written submissions from the National Land Commission, the Kenya National Commission on Human Rights, and the Office of the Attorney General. These are summarized at Chapter Two of this Report.

**Hon. Speaker,**

Having heard from the Petitioners and the other stakeholders, the Committee made various observations which are set out at Chapter Three of the Report. Notably –

- a) The Committee observed that the investigation of historical land injustices is constitutionally vested in the National Land Commission, which had indeed considered the claim by the Kipsigis community and rendered its determination in March 2019;
- b) However, the NLC determination was challenged in Court on the ground that it did not accord the multinational tea companies an opportunity to be heard before arriving at its determination. Consequently, in April 2023, the High Court delivered a Judgment quashing the said determination by the NLC; and
- c) The County Government of Kericho filed an appeal against the said Judgment, and the matter was pending in Court at the time of adopting this Report.

The Committee further observed that –

- i) The Kipsigis community had filed a case at the High Court in the United Kingdom seeking compensation and reparations from the British government. The said case was determined as inadmissible to limitation of time, following which the community proceeded to file a case against the UK government at the European Court of Human Rights (ECHR). The said matter is ongoing.
- ii) During the time when the Petition was under consideration by the Committee, efforts were ongoing between the County Governments of Bomet and Kericho, the Large-Scale Tea Producers and the local community towards reaching a solution to the matter which was amicable, sustainable and which took into account the interests of the various stakeholders.

The other detailed observations by the Committee are contained in Chapter Three of the Report.

**Hon. Speaker,**

Arising from its observations on the Petition, the Committee has made five key recommendations, namely –

- a) Pursuant to its mandate under the Constitution and the National Land Commission Act, the National Land Commission to immediately reopen its investigation into the historical land injustices claim filed on behalf of the Kipsigis Community, and ensure that it accords due process and the right to be heard to all interested parties, including the Large-Scale Tea Producers. The Commission to submit a status report to the Senate within **three months** of the tabling of this Report.
- b) The National Land Commission, in consultation with the Director of Surveys, to submit to the Senate documentation in respect of the land owned by eleven large

scale tea producers in Kericho, Bomet and Nandi Counties, including the Registry Index Maps, within **thirty days** of the tabling of this Report.

- c) The Large-Scale Tea Producers, the County Governments of Kericho and Bomet and the local community to collaborate in coming up with innovative, structured, and sustainable ways through which the local population can benefit from the presence and activities of Large-Scale Tea Producers in the area. This includes ensuring fair labour practices, training, and employment of locals in technical and managerial positions, improved social amenities such as electricity, water, schools, hospitals and roads, better relations between the local community and the Large-Scale Tea Producers and reopening of closed access roads in and through the plantations.
- d) The National Land Commission to prepare and submit to the Senate, within **sixty days**, a status report on all investigations initiated pursuant to Article 67 (2) of the Constitution, which report should contain among other matters, the actions taken, the redress recommended and whether the recommendations have been implemented or challenged in court, and the reasons for the same.
- e) The National Land Commission to create and maintain an accurate database and register of all land leased out to the LSTPs within Bomet and Kericho Counties and to disseminate the same in accordance with section 8 of the Land Act. The report and a copy of the register to be submitted to the Senate within **six months** of the tabling of this Report.

On its part, the Committee undertakes to --

- 1) Initiate an amendment to section 15 of the National Land Commission Act (No. 5 of 2012) to delete section 15(3)(e) and section 15(11) which limit the mandate of the National Land Commission of investigating present and past historical injustices, contrary to the provisions of Article 67 of the Constitution; and
- 2) Follow the proceedings in Supreme Court Advisory Opinion Reference No. 2 of 2020 and, once the matter is concluded, initiate appropriate reforms to implement the findings and recommendations of the Court on the matter.

**Hon. Speaker,**

Allow me to thank the Members of the Committee for their diligence and insights during the consideration of this Petition. I also wish to thank the Petitioners and the Senator for Kericho County for bringing this matter to the attention of the Senate. I further wish to thank the stakeholders who presented submissions before the Committee, including

the Large-Scale Tea Producers, the National Land Commission, the Kenya National Commission on Human Rights, and the Office of the Attorney General.

Lastly, I wish to thank the Offices of the Speaker and the Clerk of the Senate for the support accorded to the Committee during consideration of this Petition.

**Hon. Speaker,**

It is now my pleasant duty, pursuant to Standing Order 238(2), to present the Report of the Standing Committee on Justice, Legal Affairs and Human rights on the Petition by the Kipsigis Community Clans Organization regarding historical land injustices against the Kipsigis Community.

Signed.....

Date.....8/8/2023.....

**SEN. WAKILI HILLARY SIGEL, MP  
CHAIRPERSON, STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS  
AND HUMAN RIGHTS.**

**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS ON THE PETITION BY THE KIPSIGIS COMMUNITY CLANS ORGANIZATION CONCERNING HISTORICAL LAND INJUSTICES AGAINST THE KIPSIGIS COMMUNITY**

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We, the undersigned Members of the Standing Committee on Justice, Legal Affairs and Human rights, do hereby append our signatures to adopt this Report

No	Name	Signature
1.	Sen. Wakili Hillary Kiprotich Sigei, MP <i>(Chairperson)</i>	
2.	Sen. Raphael Chimera Mwinzagu, MP <i>(Vice-Chairperson)</i>	
3.	Sen. Fatuma Adan Dullo, CBS, MP	
4.	Sen. William Cheptumo Kipkiror, CBS, MP	
5.	Sen. Hamida Ali Kibwana, MP	
6.	Sen. Catherine Muyeka Mumma, MP	
7.	Sen. Veronica W. Maina, MP	
8.	Sen. Karen Njeri Nyamu, MP	
9.	Sen. Andrew Omtatah Okoiti, MP	

## CHAPTER ONE: INTRODUCTION

### 1.1 Summary of the Petition

1. The right to present petitions to public authorities is provided for at Article 37 of the Constitution. Article 119(1) further 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.’
2. Parliament enacted the Petition to Parliament (Procedure) Act, No. 12 of 2012, to make provision for the procedure for the exercise of this right. Further, Part XXVII of the Standing Orders of the Senate also makes provision of how this right may be exercised.
3. Pursuant to the said provisions, at the sitting of the Senate held on Thursday, 9<sup>th</sup> March, 2023, the Senator for Kericho County presented to the Senate a Petition by the Kipsigis Community Clans Organization regarding historical land injustices against the Kipsigis Community. A copy of the Petition is attached to this Report as *Annex 2*, while an extract of the Hansard for the Senate sitting of Thursday, 9<sup>th</sup> March, 2023 is attached as *Annex 3*.
4. The salient issues raised in the Petition were that –
  - i) The British colonial government invaded Kenya and forcefully took Kipsigis ancestral land;
  - ii) In 1909, the British passed the Removal of Natives Ordinance that was used to evict, displace, deport and detain Kipsigis people;
  - iii) The British offered no compensation for the land that was forcibly and illegally acquired;
  - iv) After the First World War, the British government alienated the community further by evicting the people from Kericho, Kerenga and Tagabi estates and the whole white highlands in order to give their British soldiers through British East African Disabled Officers Colony;
  - v) The forcefully taken land included; Unilever Tea Kenya (Brooke Bond), James Finlay Kenya (Africa Highlands), George Williamson (Changoi and Lelsa), Sotik Tea, Sotik Highlands, Kaugu Tea, Mau Tea, Kore Farms (Kap Normans), Kabianga Tea, Tinga farms among others;

- vi) The Kipsigis Talai clan were displaced and deported to live in a harsh environment;
  - vii) The British introduced land titles and laws awarding themselves leases that have since expired; and
  - viii) Post-independence, the Kipsigis ancestral lands are still being held by the people who illegally evicted the community.
5. The Petitioners therefore prayed that the Senate –
- a) recommends that the Kipsigis community ancestral lands revert back to them, free of charge, as the rightful owners;
  - b) recommends that the land be lawfully transferred and registered to Kipsigis Community Group of Tea Estates;
  - c) recommends the removal of the leases until the matter has been resolved by placing caveat and caution on the multinational farms;
  - d) recommends support on following up with the case on compensation of the Kipsigis and Talai for the damage caused;
  - e) Recommends employment for them in national and county governments;
  - f) Recommends that the National government should resettle the landless Kipsigis or alternatively pay them a sum of money to facilitate the purchase of their preferred land;
  - g) Recommends and endorses the creation of a three-level management system as follows; Kipsigis Community Board of Directors, Management Trustees and Current Management Systems in those farms, to safeguard from corruption; and
  - h) Recommends that once the land is reverted, it is not subdivided and that any proceeds from the same be deposited in a Kipsigis Community bank account which will be used to address education, treating disease and eradicating poverty, among others.
6. Pursuant to standing order 238(1) of the Senate Standing Orders, the Petition was committed to the Standing Committee on Justice, Legal Affairs and Human Rights for consideration.

## **1.2 Legal Framework on the Investigation of Claims for Historical Land Injustices**

7. Article 67(2)(e) of the Constitution provides that the National Land Commission may initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.

8. The National Land Commission Act (No. 5 of 2012) provides for the NLC's mandate with regard to historical land injustices. Section 15 of the Act defines historical injustices to include grievances which -
  - a) were occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
  - b) resulted in displacement from their habitual place of residence;
  - c) occurred between 15<sup>th</sup> June, 1895 when Kenya became a protectorate under the British East African Protectorate and 27<sup>th</sup> August, 2010 when the Constitution of Kenya was promulgated;
  - d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
  - e) meets the criteria set out under subsection 3 of this section.
  
9. Under section 15(3) of the Act, a historical land claim may only be admitted, registered, and processed by the Commission if it meets the following criteria-
  - a) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;
  - b) the claim has not or is not capable of being addressed through the ordinary court system on the basis that-
    - (i) the claim contradicts a law that was in force at the time when the injustice began; or
    - (ii) the claim is debarred under section 7 of the Limitation of Actions Act or any other law;
  - c) the claimant was either a proprietor or occupant of the land upon which the claim is based;
  - d) no action or omission on the part of the claimant amounts to surrender or renunciation of the right to the land in question; and
  - e) it is brought within five years from the date of commencement of the Act.
  
10. Section 15(4) of the Act further provides that a claim alleging historical land injustice shall be permissible if, *inter alia*, it was occasioned by colonial occupation, independence struggle, pre-independence treaty or agreement between a community and the government, inequitable land adjudication process or resettlement scheme.



11. On remedies, section 15(9) of the Act provides that the NLC, after investigating any case of historical land injustice referred to it, **shall** recommend any of the following remedies-
  - a) restitution;
  - b) compensation, if it is impossible to restore the land;
  - c) resettlement on an alternative land;
  - d) rehabilitation through provision of social infrastructure;
  - e) affirmative action programmes for marginalised groups and communities;
  - f) creation of wayleaves and easements;
  - g) order for revocation and reallocation of the land;
  - h) order for revocation of an official declaration in respect of any public land and reallocation;
  - i) sale and sharing of the proceeds;
  - j) refund to bona fide, third party purchasers after valuation; or
  - k) declaratory and preservation orders including injunctions.
12. Upon determination of a historical land injustice claim by the Commission, any authority mandated to act under the redress recommended shall be required, pursuant to section 15(10) of the Act, to do so **within three years**. The provision on redress of historical injustices has a sunset clause. Section 15(11) provides that the section shall stand repealed **after ten years**.
13. The National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017 were gazetted on 6<sup>th</sup> October, 2017<sup>1</sup>. sets out the procedure for investigation into historical land injustices that occurred between 15<sup>th</sup> June 1895 to 27<sup>th</sup> August, 2010. It sets out the powers of the Commission to initiate investigations or upon complaint, the procedure for lodging a claim, and the conduct of hearings.
14. The Regulations further set out procedures for the investigation and resolution of claims arising out of historical land injustices. Regulation 7(1) specifically provides for the procedure for lodging a claim which should be by prescribed form, through a letter, a Memorandum or oral submission.

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<sup>1</sup> Special Issue, Kenya Gazette Supplement No.154, Legal Notice No. 258 of 6<sup>th</sup> October, 2017

### 1.3 Grievances recorded by the Truth, Justice and Reconciliation Commission

15. The Land and Conflict chapter of the report of the **Truth Justice and Reconciliation Commission (TJRC Report)**<sup>2</sup> sets out a record of the historical injustices visited upon Kenyan communities during the colonial era. The report notes that the colonial administration used irregular and/or illegal methods to obtain land from local communities such as: the establishment of native reserves, including the forced evictions of the Talai, Pokot, Turkana, and Sabaot communities.
16. The Truth Justice and Reconciliation Commission recommended that, with regard to atrocities committed during the colonial era, the British Government should issue an acknowledgement and an apology to the communities who suffered atrocities. Further, that the Kenyan Government and the British Government should negotiate for compensation for the affected communities within 12 months of the release of the TJRC Report<sup>3</sup>.The Commission further recommended that the National Land Commission should come up with reparations for historical land injustices within 36 months<sup>4</sup>.
17. The recommendations contained in the TJRC Report are, however, yet to be implemented.

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<sup>2</sup> The TJRC Report was tabled in the National Assembly in July 2013

<sup>3</sup> Truth Justice and Reconciliation Report, Volume IV, Annex: Recommendations and Implementation Matrix, 3<sup>rd</sup> May, 2013, pg.63

<sup>4</sup> Ibid. pg.67

## **CHAPTER TWO: CONSIDERATION OF THE PETITION**

### **2.1 Introduction**

18. The Petition by the Kipsigis Community Clans Organization was presented in the Senate on 9<sup>th</sup> March, 2023, following which it was committed to the Standing Committee on Justice, Legal Affairs and Human Rights.
19. In considering the Petition, the Committee received both written and oral evidence, and further visited Kericho County, on 15<sup>th</sup> April, 2023, where it met and received testimonies and submissions from members of the Kipsigis Community.

### **2.2 Submissions by the Kipsigis Community Clans Organization**

20. During the hearing of the Petition by the Committee in Kericho, the representatives of the Petitioner made submitted that –
  - a) The Kipsigis are a community within the Republic of Kenya existing as a subgroup of the larger Kalenjin tribe and inhabiting what is currently the Bomet, Kericho, Narok and Nakuru Counties.
  - b) The community were illegally expropriated from their traditional, ancestral homelands using excessive force during the colonization process by the British empire.
  - c) The community was subjected to a brutal hut and poll tax regime that had grave social and economic implications to the Africans.
  - d) The British soldiers committed acts of sexual violence on the Kipsigis women, which inadvertently led to the spread of ‘western’ sexually transmitted diseases that never existed in the community prior.
  - e) The British created Native Reserves and moved the Kipsigis to the reserves in order to claim the more fertile Kipsigis land as the white highlands. The British would often redraw the boundaries, pushing the Kipsigis further and further. This had devastating social and economic impact on the community.
  - f) The British forcefully conscripted Kipsigis to the army and transported them to foreign lands to fight in wars they had no interest in.
  - g) The exploitative industry that saw thousands of families forcibly evicted with no compensation. This illegally and freely acquired land was then sold to British nationals at a price.

- h) Some of the community members, including the Talai people, were relocated to distant lands to die.
  - i) The Kipsigis people are prevalently suffering from esophageal cancer and is suspected to be a cause of the toxic substances from the tea farms. This cancer is the most common among the Kipsigis men and women.
  - j) The large-scale tea plantations had in recent years commenced implementation of mechanized tea picking, which further negatively impacted the community due to the massive loss of jobs in the tea farms. This was tantamount to the ‘last eviction’.
21. The Petitioners therefore prayed that the Senate –
- a) recommends that the Kipsigis ancestral land reverts to the community free of charge;
  - b) recommends that the British should compensate the community for the damage caused and land lost;
  - c) recommends that the British government apologizes for the human right violations; and
  - d) recommends that the government resettles the landless by providing land or paying them to look for land where they prefer.
22. Additionally, the Petitioners requested the Senate to give them a go-ahead to put in place a three-level management team to manage the tea estates once the ownership reverts to the Kipsigis Community.
23. A copy of the submissions by the Kipsigis Community Clans Organization is attached to this Report as *Annex 4*.

### **2.3 Submissions by the Kenya Tea Growers Association**

24. The Kenya Tea Growers Association (KTGA), incorporating the Large-Scale Tea Producers (LSTPs) made the following submissions before the Committee –
- a) The subject matter of the Petition was *sub judice* since the issues under consideration were pending in Court.
  - b) Article 40 of the Constitution guarantees and protects the right to own property. To this effect the LSTPs all have valid and current leases which are not expired.
  - c) The prayers by the community to have the leases reverted would be impossible to be achieved by any arm of government without the amendment of the

Constitution. This is because the Constitution and all other operational land laws, including the Land Act and the Land Registration Act were clear on the procedures to be followed for acquisition of land, registration of land interests, renewal of leases and expiry of leases as well as all other land administration matters.

- d) Further the KTGA insisted on reliance on Article 47 and 50 of the Constitution on fair administrative action as well as the right to a fair hearing. Evidenced by the judgement delivered in Judicial Review Application of 20<sup>th</sup> April 2023 in which the court ruled in favour of the LSTPs concerning the NLC Gazette Notice that was deemed procedurally unfair.
  - e) The Courts had also pronounced themselves on the adequacy of the legal framework including the Constitution and various land laws, to address the land issues raised in the Petition, providing reference to instructive, the decision of Court in Constitutional Petition No.2 of 2018.
  - f) The major failure and setback to these communities achieving justice was squarely in the hand of the NLC and delay by the Ministry of Lands to undertake appropriate steps for the conversion of titles.
25. Additionally, the KTGA submitted that its members had invested heavily in the community through corporate social responsibility (CSR) initiatives, including –
- a) 55% - 89% of the employees in the tea plantations were from the local communities.
  - b) Kes 6.4 billion Payroll earnings per annum injected into the local economy.
  - c) 50% labour costs as a percentage of total cost of production.
  - d) Kes 800 million CSR contribution to the communities by the estates to Kericho and Bomet Counties over the last four (4) years.
  - e) Kes 1.8 billion local procurement of goods and services per annum around Kericho and Bomet Counties.
  - f) Kes 75 million through other activities (certification premiums, local community development support, etc.) per annum injected around Kericho and Bomet counties.
  - g) 60,000 Small-holder farmers whose tea is processed and marketed by the LSTPs in Kericho, Bomet and Nyamira region.
26. The KTGA therefore prayed that the Senate –
- a) Takes the submissions into consideration in delivering a favorable response, with cognizance of the supremacy and sovereignty of the Constitution and

guided by the Constitution in carrying out its mandate to protect the interests of County Government, to uphold the position that a failure of prudence by the relevant authorities ought not be applied to visit upon the parties unjustified blame for historical matters that occurred at a time when they held no interest in the land; and

- b) Take cognizance of the extensive CSR and community benefit programs that have been set up to remedy possible social injustice to the affected communities where the LSTPs operations lie.
27. The written submissions by the Kenya Tea Growers Association and the Large-Scale Tea Producers are attached to this Report as *Annex 5*.

#### **2.4 Submissions by the County Government of Kericho**

28. During the visit by the Committee to Kericho, the County Executive Member for Lands, Housing and Physical Planning submitted to the Committee a copy of the 'Report of the Taskforce on Multinationals And other Tea Sub Sector Stakeholder Engagement', for its reference in considering the Petition. The taskforce had been set up to investigate several of the areas with claims of historical land injustices including those in Kericho and Bomet Counties.
29. Some of the highlights and recommendations of the Report were that –
- a) It was recommended that the County Government of Kericho, the local community, the LSTPs and other stakeholders should foster a strategic and sustainable mutual relationship and partnership.
  - b) The Taskforce recommended the prompt and full implementation, by the County Government of Kericho and the National Government, of the NLC's 2019 Ruling on Historical Land Injustices (HLI). Further, that in the long term, the County Government of Kericho in conjunction with the Government of Kenya should initiate the process of reverting all ancestral land currently under LSTPs and other tea sub-sectors to the indigenous people of Kericho and Bomet Counties.
  - c) It was recommended that a Liaison and Resource Mobilization office be established with membership drawn from the County Government of Kericho, LSTPs and other tea sub-sector, to coordinate matters of common interest between the County Government and LSTPs.

- d) The County Government of Kericho in conjunction with LSTPs to develop a policy to guide in CSR activities.
  - e) The County Government in conjunction with the national government do direct leasehold titles to be converted to the current land law regime.
  - f) The land used by LSTPs and other tea sub-sector be re-surveyed to establish the actual land size and subject to court's directions, since the matter is pending before court. Pursuant to the outcome of the said re-survey, the rates be reviewed accordingly.
30. The Taskforce further established that there are myriads of court cases lodged by LSTPs. Even though it was their right to go to court, the many cases had stifled development. The Task Force recommended Alternative Dispute Resolution (ADR) to be embraced to create an environment of good relationship.
31. A copy of the said Report is attached to this Report as *Annex 6*.

## **2.5 Submissions by the Kenya National Commission on Human Rights**

32. The Kenya National Commission on Human Rights presented written submissions on the Petition, in which it stated that –
- a) The Commission had not received or investigated a complaint from the Kipsigis Community on the matters raised in the Petition.
  - b) This being a case of historical land injustices, the matter fell within the mandate and jurisdiction of the National Land Commission.
  - c) The Commission was aware of the recommendations by the National Land Commission, which had since been quashed by the High Court.
33. The Commission therefore recommended that the matter be referred back to the National Land Commission for further inquiry on the grounds that both KNHCR and the NLC are independent bodies with different mandates.
34. A copy of the response by the KNCHR is attached to this Report as *Annex 7*.

## **2.6 Submissions by the National Land Commission**

35. The National Land Commission presented written submissions to the Committee, in which it stated that –

- a) The Commission received three claims on the subject matter namely: NLC/HLI/044/2017 by Joel Kimetto on behalf of the Kipsigis Community, NLC/HLI/173/2017 by Peter Kiprotich Bett on behalf of the Borowo and Kipsigis Clans self-help group, and NLC/HLI/013/2017 by David Ngasura Tuei on behalf of the Kipsigis Talai.
  - b) In their claims, the claimants averred that the British colonial government had illegally evicted and illegally acquired the communities' ancestral land. Further, even in Post-independence Kenya, the leases to their lands are still held illegally by the heirs and appointees of the white settlers.
  - c) The claims were determined in favour of the communities and orders were made vide NLC Gazette Notice No. 1995 of 1<sup>st</sup> March, 2019. These orders were:
    - i) A re-survey of the land held by the tea estates to determine whether any surplus land residue had been held in trust by the county government for public use;
    - ii) A Memorandum of Understanding be undertaken between the multinationals and the County government to provide public utilities;
    - iii) The renewal of leases be withheld;
    - iv) An adjustment of land rates and rents to benefit both National and county governments; and
    - v) All 999-year leases are converted to the required 99 years.
36. The Commission further submitted that its determination on the historical land injustices claim by the Kipsigis community had since been quashed by the High Court in ELC No. JR 3 of 2020, delivered on 20<sup>th</sup> April 2023. The Commission therefore sought the Committee's guidance on the matter.
37. A copy of the response by the National Land Commission is attached to this Report as *Annex 8*, while a copy of the Judgment in ELC No. JR 3 of 2020, delivered on 20<sup>th</sup> April 2023, is attached as *Annex 9*.

## **2.7 Submissions by the Office of the Attorney General**

38. The Office of the Attorney General and Department of Justice submitted a written response to the Petition, in which it –
- a) Acknowledged the plight of the Kipsigis Community as a whole citing cognizance of the orders given by the National Land Commission *vide* Gazette Notice No. 1995 of 1<sup>st</sup> March, 2019.



- b) Cited the Judgement delivered by the High Court on 20<sup>th</sup> April 2023, quashing the determination of the National Land Commission on the claims by the Kipsigis community based on procedural unfairness.
  - c) Brought to the Committee's attention Advisory Opinion Reference No. 2 of 2020 in the Supreme Court of Kenya which was filed on behalf of the County Government of Kericho, seeking guidance on questions pertinent to the Petition, among them –
    - i) What happens to the 999-year leases that were granted to multinational companies owned by non-citizens which should have been converted to 99-year term leases as per Article 65 of the 2010 Constitution of Kenya.
    - ii) When does time start running for the fresh 99-year leases held by these multinationals.
    - iii) Upon expiry of the leases, which level of government does the land revert to.
    - iv) Whether the NLC has exclusive powers to issue leases without the involvement of the County Government.
    - v) What is the role of the County Government in issuance of leases as per Article 65(1) of the Constitution.
    - vi) Whether the land allocated to the multinationals is under leasehold tenure as defined in Article 65(1) of the Constitution.
    - vii) Whether the public land previously administered by the defunct local authorities and municipal councils was envisioned to be held by the County Government on behalf of the people.
    - viii) What is the role of County Government in community land administration and management.
39. The Attorney General informed the Committee that the matter before the Supreme Court was ongoing, and that the office was a party.
40. A copy of the response by the Office of the Attorney General is attached to this Report as *Annex 10*.

### CHAPTER THREE: COMMITTEE OBSERVATIONS

41. Having considered the Petition and the responses and submissions received thereon, the Committee made observations as set out herein below.
42. Prior to submission of the present Petition to the Senate, the County Governments of Kericho and Bomet, in 2018, submitted a claim detailing the historical land injustices allegedly suffered by the Kipsigis to the NLC on behalf of the Petitioners. The Claim was based on the same grounds as the present petition, and sought mainly for the return of land forcefully expropriated from the Kipsigis Community.
43. The NLC conducted investigations of the grievances presented by the Petitioners and allowed the claim. In a gazette notice published in the Kenya Gazette in 2019, the NLC recommendations were that –
  - i) A resurvey should be done on the lands being held by the tea estates to determine if there is any surplus land or residue to be held in trust for the community by the County Government for public purposes;
  - ii) The County Government and the multi-nationals sign MoU (Memorandum of Understanding) for the multinationals to provide public utilities to the community;
  - iii) Renewal of the leases to these lands be withheld until an agreement is reached with the respective County Governments of Kericho and Bomet;
  - iv) With regard to rate and rent on such lands the Commission recommends that these should be enhanced to benefit national and county governments; and
  - v) The Commission orders that all 999 year old leases should be converted to the Constitutional requirement of 99 years.

A copy of the said Gazette Notice is attached to this Report as *Annex 11*.

44. It is noted that the recommendations published in the above gazette notice largely differ from those contained in the NLC's report, where the NLC allowed the claim for historical land injustices and recommended that –
  - i) The British Government do apologize to the Kipsigis and Talai victims for the injustices inflicted on them;
  - ii) The Kenya Government to make a formal acknowledgment that what was crown land was unlawfully taken away from the Kipsigis and Talai by the Colonial

- Government and ought to have been surrendered to the community at independence;
- iii) The British Government to construct amenities for the communities;
  - iv) The British Government do pay reparations to the direct victims of the historical land injustices;
  - v) The Multi-National Companies do pay Mesne profits to the victims for loss of use of the land since 1902;
  - vi) Rates and rent for land occupied by the companies be enhanced so as to benefit the County Governments of Kericho and Bomet;
  - vii) The companies do lease the said parcels from the County Governments of Kericho and Bomet;
  - viii) The leases that have expired should not be renewed without the concurrence of the County Government where the land is domiciled;
  - ix) The Government of Kenya to resettle the members of the Kipsigis and Talai Community within the vicinity of Kericho and Bomet to end their perennial landlessness; and
  - x) A fresh survey and audit be undertaken for land allocated to the companies and any land in excess of the size documented in the official records be reverted back to the County Governments of Kericho and Bomet and be held in trust on behalf of the residents of the two counties.

A copy of the NLC Report containing the said recommendations is attached to this Report as *Annex 12*.

- 45. The recommendations contained in the said Report and in the Gazette Notice are contradictory in that, although the NLC acknowledges that the land was taken forcefully from the Petitioners and should have been surrendered to the Petitioners upon independence, the Commission at the same time recommended that the tea companies lease the land from the County Government. Additionally, the NLC, in its submissions, did not shed any light on the variance in the recommendations published in the gazette notice and those contained in its report.
- 46. The KTGA, representing the Large-Scale Tea Producers, filed an application for judicial review (ELC JR No. 3 of 2020). In its application, KTGA requested the court to quash the gazette notice issued by NLC, on grounds that they were not informed of the grievances presented by the petitioners and consequently, they were not given an opportunity to be heard and to make submissions before the NLC.

47. The Environment and Land Court, in its ruling issued on 20<sup>th</sup> April 2023, agreed with KTGA that the failure to inform them of the investigations being conducted and to give them an opportunity to make representations before the NLC was against the rules of natural justice. For this reason, the court issued orders of certiorari thereby quashing the gazette notice published by NLC.
48. The County Government of Kericho has filed a Notice of Appeal challenging the ruling of the Court, whereas the NLC has not yet filed any appeal, and has instead requested the Committee to advise it on how to proceed.
49. Unless the Ruling of the court is overturned, the recommendations of the NLC cannot be implemented as they have been quashed.
50. Additionally, under the National Land Commission Act, the NLC cannot ask the Petitioners to submit the Petition afresh for the reason that:
  - i) The statutory mandate of the NLC as regards receipt of allegations of historical land injustices for investigation lapsed on 20<sup>th</sup> September 2021. This is because section 15 (3)(e) of the National Land Commission Act provides that claims for historical land injustices are only admissible if brought within five years from the date of commencement of the Act. Whereas the Act commenced on 2<sup>nd</sup> May, 2012, this provision was inserted through Land Laws (Amendment) Act, 2016, which commenced on 21<sup>st</sup> September 2016; and
  - ii) Unless the Act is amended and section 15 of the Act repealed, the NLC does not have the statutory mandate to receive and investigate fresh claims alleging historical land injustices.
51. It is worth noting that the court quashed the NLC's recommendations on the allegations submitted to it by the Petitioner on the basis of the NLC's failure to adhere to the constitutional right to be heard, and not as a result of any mistake on the part of the Petitioner. Furthermore, the Petitioner submitted the Petition within the statutory timeline provided for in section 15 of the National Land Commission Act. As such, it is the Committee's view that the Petitioner would not need to submit the Petition afresh, and that the NLC can rightfully consider afresh the Petition as earlier submitted and make fresh recommendations.

52. Despite the observations noted above, it is noteworthy that the Constitution has no sunset clause on the mandate of the NLC as regards investigation of historical land injustices. The sunset clauses in section 15 of the National Land Commission Act appear to limit the mandate of the NLC contrary to the provisions of Article 67(2)(e) of the Constitution, and there is therefore need for harmonization.
53. The issue of land held by the Large-Scale Tea Producers, particularly matters relating to the lease, the revision of land rates and land rent payable, as well as benefits accruing to the local community were among the matters dealt with by the Task Force on Multinationals and other Tea Sub-Sector Stakeholder Engagement appointed by the County Government of Kericho on 28<sup>th</sup> October 2022. Although the taskforce recommended that the NLC's recommendations be implemented, this had not been done as due to the Judicial Review Application that was ongoing in the Environment and Land Court. The said NLC's recommendations have since been quashed.
54. The NLC is mandated under Article 67(2)(a) of the Constitution and the National Land Commission Act, as read together with section 8 of the Land Act, to manage public land on behalf of the national and county governments. As such, all matters relating to the public land including databases and registers required under section 8 of the Land Act, the leases, size of land held, as well as the land rent payable by the Large-Scale Tea Producers should be handled by the NLC in collaboration with other relevant agencies as provided for in the relevant statutes.
55. The interests of all parties concerned as well as the interests of the nation ought to be taken into consideration so as to ensure that the constitutional provisions on the right to property and on land management are adhered to.
56. Finally, the County Government of Kericho did not disclose that they had filed a request for an advisory opinion, Reference no. 2 of 2020 at the Supreme Court of Kenya, which matter is still ongoing. The advisory opinion given will be very key not only in this particular matter, but also in giving direction on NLC and county governments roles in leasing of public land. It is observed that the ongoing matter does not in any way interfere with the duty of the NLC in investigating historical land injustices, though it may affect some of the recommendations to be made.

57. The Committee further observed that –

- a) there were proceedings filed in a United Kingdom court on the eviction of the Kipsigis and Talai communities from their ancestral lands by the British to pave the way for the creation of tea estates. Following its dismissal on the grounds that the claim was inadmissible due to limitation of time, the community proceeded to file a case against the UK government at the European Court of Human Rights (ECHR) for the alleged colonial abuses. The matter is ongoing.
- b) during the time when the Petition was under consideration by the Committee, efforts were ongoing between County Governments of Bomet and Kericho, the Large-Scale Tea Producers and the local community towards reaching a solution that was amicable, sustainable and which took into account the interests of the various stakeholders.

58. With regard to the specific prayers sought by the Petitioners, the Committee makes the following observations –

- i) Under the provisions of the Constitution, the Land Act and the Land Registration Act, the Committee does not have the mandate to order for cancellation of the leases held by the Large-Scale Tea Producers.
- ii) Since the Large-Scale Tea Producers hold the leases to the said land, the Committee lacks the legal mandate to give the Petitioners a go-ahead to introduce a three-level management system in the tea estates as it would violate the leaseholders' right to property.
- iii) The NLC should enquire and determine issues of resettlement and compensation of the alleged displaced persons and recommend redress for any affected person in accordance with its constitutional mandate under Article 67 of the Constitution.
- iv) Since the NLC has the constitutional mandate to manage public land on behalf of the national and county governments, it ought to ensure that there are accurate databases and registers of all public land as well as dissemination of the same in accordance with section 8 of the Land Act.

## CHAPTER FOUR: RECOMMENDATIONS

59. Arising from its observations as set out in the preceding Chapter, the Standing Committee on Justice, Legal Affairs and Human Rights recommends the following:
- 1) Pursuant to its mandate under the Constitution and the National Land Commission Act, the National Land Commission to immediately reopen its investigation into the historical land injustices claim filed on behalf of the Kipsigis Community, and ensure that it accords due process and the right to be heard to all interested parties, including the Large-Scale Tea Producers. The Commission to submit a status report to the Senate within **three months** of the tabling of this Report.
  - 2) The National Land Commission, in consultation with the Director of Surveys, to submit to the Senate documentation in respect of the land owned by the underlisted large scale tea producers, including the Registry Index Maps, within **thirty days** of the tabling of this Report –
    - i) James Finlays Kenya Limited/ Browns Investment PLC
    - ii) Sotik Tea Company Limited
    - iii) Sotik Highlands Tea Company Limited
    - iv) Changoi/Lesla Tea Estate Limited
    - v) Tinderet Tea Estate Limited
    - vi) Kaimosi Tea Estate Limited
    - vii) Kapchorua Tea PLC
    - viii) Kipkebe Limited
    - ix) Nandi Tea Estate Limited
    - x) Kaisugu Limited
    - xi) Emrock (EPZ) Tea Factory Limited
  - 3) The Large-Scale Tea Producers, the County Governments of Kericho and Bomet and the local community to collaborate in coming up with innovative, structured and sustainable ways through which the local population can benefit from the presence and activities of Large-Scale Tea Producers. This may include ensuring fair labour practices, training and employment of locals in technical and managerial positions, improved social amenities such as electricity, water, schools, hospitals and roads, better relations between the local community and the Large-Scale Tea Producers and reopening of closed access roads in and through the tea plantations.

- 4) The National Land Commission to prepare and submit to the Senate, within **sixty days**, a status report on all investigations initiated pursuant to Article 67 (2) of the Constitution, which report should contain among other matters, the actions taken, the redress recommended and whether the recommendations have been implemented or challenged in court, and the reasons for the same.
  - 5) The National Land Commission to create and maintain an accurate database and register of all land leased out to the LSTPs within Bomet and Kericho Counties and to disseminate the same in accordance with section 8 of the Land Act. The report and a copy of the register to be submitted to the Senate within **six months** of the tabling of this Report.
60. On its part, the Committee undertakes to –
- 1) Initiate an amendment to section 15 of the National Land Commission Act (No. 5 of 2012) to delete section 15(3)(e) and section 15(11) which limit the mandate of the National Land Commission of investigating present and past historical injustices, contrary to the provisions of Article 67 of the Constitution; and
  - 2) Follow the proceedings in Supreme Court Advisory Opinion Reference No. 2 of 2020 and, once the matter is concluded, initiate appropriate reforms to implement the findings and recommendations of the Court on the matter.



## LIST OF ANNEXES

- Annex 1:** Minutes of the Committee in Considering the Petition
- Annex 2:** Copy of the Petition
- Annex 3:** Extract of the Hansard for the Senate sitting of Thursday, 9<sup>th</sup> March, 2023
- Annex 4:** Submissions by the Kipsigis Community Clans Organization
- Annex 5:** Submissions by the Kenya Tea Growers Association
- Annex 6:** Report of the Taskforce on Multinationals And other Tea Sub Sector Stakeholder Engagement | County Government of Kericho
- Annex 7:** Submissions by the Kenya National Commission on Human Rights
- Annex 8:** Submissions by the National Land Commission
- Annex 9:** Copy of the High Court Judgment in ELC No. JR 3 of 2020, *Republic vs. The National Land Commission & Others Ex Parte James Finlays Kenya Limited & Others*, delivered on 20<sup>th</sup> April 2023
- Annex 10:** Submissions by the Office of the Attorney General
- Annex 11:** Extract of Gazette Notice No. 1995 dated 18<sup>th</sup> February, 2019 and published in Kenya Gazette Vol. CXXI – No. 27 dated 1<sup>st</sup> March, 2019.
- Annex 12:** Copy of the Determination by the National Land Commission in Ref. Nos. NLC/HLI/546/2018, NLC/HLI/044/2017 and NLC/HLI/173/2017 dated 7<sup>th</sup> February, 2019.

**Annex 1: Minutes of the Committee in  
Considering the Petition**



## 13<sup>TH</sup> PARLIAMENT | 2<sup>ND</sup> SESSION

### MINUTES OF THE SIXTY-SIXTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 3<sup>RD</sup> AUGUST, 2023 AT 9.00 A.M IN ROOM 25, 5<sup>TH</sup> FLOOR, BUNGE TOWERS, PARLIAMENT BUILDINGS

#### PRESENT

1. Sen. Wakili Hillary Kiprotich Sigei, MP - Chairperson (*Chairing*)
2. Sen. Fatuma Adan Dullo, CBS, MP - Member
3. Sen. Catherine Muyeka Mumma, MP - Member
4. Sen. Veronica W. Maina, MP - Member
5. Sen. Andrew Omtatah Okoiti, MP - Member

#### ABSENT WITH APOLOGY

1. Sen. Raphael Chimera Mwinzagu, MP - Vice-Chair
2. Sen. William Cheptumo Kipkiror, CBS, MP - Member
3. Sen. Hamida Ali Kibwana, MP - Member
4. Sen. Karen Njeri Nyamu, MP - Member

#### SECRETARIAT

1. Mr. Charles Munyua - Senior Clerk Assistant
2. Ms. Lilian Waweru - Legal Counsel II
3. Ms. Lynn Aseka - Clerk Assistant III (*Taking Minutes*)
4. Mr. Constant Wamayuyi - Research Officer III
5. Mr. Josphat Ng'eno - Media Relations Officer III
6. Ms. Judith Aoka - Audio Officer III
7. Mr. David Barasa - Assistant Serjeant at Arms

#### IN ATTENDANCE – NATIONAL BANK OF KENYA LIMITED

1. Mr. George Odhiambo - Managing Director
2. Mr. Samuel Mundia - Director, Legal Services & Company Secretary
3. Prof. Githu Muigai, SC - Advocate

#### MIN. NO. 324/2023

#### PRELIMINARIES

The Chairperson called the meeting to order at twenty-nine minutes past nine O'clock and opened with a word of prayer. This was followed by a self-introduction session by the Senators, Secretariat, and the invited guests from National Bank of Kenya Limited.

**MIN. NO. 325/2023**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Fatuma Adan Dullo, CBS, MP.

**MIN. NO. 326/2023**

**PETITION BY MS. ZIPPORAH C. K. SERONEY  
CONCERNING MISTREATMENT, HARASSMENT,  
PROPERTY LOSS AND HUMAN RIGHTS  
VIOLATIONS METED ON THE FAMILY OF THE  
LATE HON. JEAN MARIE SERONEY**

The Committee resumed consideration of the Petition by Ms. Zipporah C. K. Seroney concerning mistreatment, harassment, property loss and human rights violations meted on the family of the late Hon. Jean Marie Seroney.

Upon invitation by the Chairperson, the Director, Legal Services and Company Secretary of the Bank informed the Committee that –

- a) the late Hon Jean Marie Seroney was a Director and Shareholder of Kaprotuk Estates Limited ('the Borrower'), a private company which was a customer of National Bank of Kenya Limited ('the Bank'). The other directors were Jean Seroney and Ibrahim Kibyego arap Limo, who was also a Shareholder of the company;
- b) in 1975, the Bank advanced to the Borrower a loan of Kshs.1,035,000/- to purchase the parcel of land known as L.R. No. 10815, situated in Tinderet in Nandi County ('the Land'). The loan was secured by a Charge registered against the title to the Land;
- c) the loan fell into default immediately thereafter and the Bank demanded for regularization of the accounts, failure to which the Land would be sold to redeem the loan;
- d) the Bank accommodated the Borrower several times and called off arrangements to auction the land;
- e) the Borrower's continued and persistent default crystalized the Bank's right of sale in order to recover the outstanding debt. However, the Bank's efforts were severely impeded due to the presence of squatters on the Land who had proven hostile;
- f) the Land was initially advertised for auction on 28<sup>th</sup> May, 2001, and notices served both physically on the Land and by registered post;
- g) an auction was conducted on 15<sup>th</sup> June, 2001 which attracted a bid of Kshs.8 million subject to financing;
- h) as the auction was unsuccessful, another notification of sale was served on 1<sup>st</sup> August 2001, advertised in the newspapers on 17<sup>th</sup> September 2001 and 1<sup>st</sup> October 2001, delivered on the Land and sent by registered post;
- i) the Bank resumed the sale by auction process and, on 4<sup>th</sup> April 2002, auctioned the property to the highest bidder, namely Kipkures Farmers Limited ('the Purchaser'). This was at the sum of Kshs.7.6 million, which was the reserve price, against an open market value of Kshs.19 million at the time;

- j) the said amount was not sufficient to offset the loan which had, as at the auction date, risen to Kshs.74.8 million;
- k) by a letter dated 4<sup>th</sup> January, 2002, the Bank released the original Grant and the Charge documents to Messrs Fatuma Sichale & Company Advocates, who were the advocates acting for the Purchaser; and
- l) the Bank complied with the provisions of the Registration of Titles Act (now repealed), the Auctioneers Act, the provisions of the legal Charge and the Letter of Offer accepted by the Customer.

Following interventions by Members, the officials of the Bank further informed the Committee that –

- a) while the physical notices for auction of the land were served on Daniel Kiplagat Karan and Nancy Kiplagat Karan, respectively, the Bank had complied with the modes of service set out in the law then in place and in the Charge documents, namely, advertising in the national newspapers as well as sending the notices by registered post to the last known address of the Borrower;
- b) following auction of the Land and payment of the auction proceeds to the Bank, the Bank had written off the then outstanding loan as a bad debt;
- c) the *in-duplum rule* was not in place at the time when the loan was taken until the time when the Bank exercised its statutory power of sale;
- d) the loan by the Bank was to Kaprotuk Estates Limited as a company. Thus, the Land was not subject to the succession process in respect of the Estate of the late Hon Jean Marie Seroney, since the shares in the company were never part of the properties distributed by the Court or made subject of the Administration;
- e) following the death of the late Hon Jean Marie Seroney, the Bank wrote to the Borrower seeking details of who the Administrators of his estate were together with the supporting documents. No response was received to the said letter;
- f) the Bank had discharged its obligations under the Charge documents by releasing to the Purchaser's Advocates the original Grant together with the duly executed Discharge of Charge and Transfer by Chargee ('the Completion Documents'). The Bank was thus taken by surprise to learn that the said documents had not been registered; and
- g) in the year 2011, the Bank had received a letter from the Purchaser's Advocates requesting for the original Completion Documents. The Bank had written back to them indicating that the said documents were already sent to them in the year 2005.

**Directions:**

Thereupon, the Committee directed that the Bank furnishes the Committee with copies of –

- i) the letter dated 1993 by the Bank to the Borrower seeking details of the Administrator/s of the Estate of the late Hon Jean Marie Seroney together with the supporting documents thereon;
- ii) the Valuation Report by Mwaka Musau Consultants Limited, dated 16<sup>th</sup> March, 1992;
- iii) the letter dated 4<sup>th</sup> January, 2005 releasing the Completion Documents to the Purchaser's Advocates; and

iv) the letter dated 2011 from the Purchaser's Advocates requesting for the Completion Documents, and the response thereon by the Bank.

**MIN. NO. 327/2023**

**PETITION BY THE KIPSIGIS COMMUNITY  
CLANS ORGANIZATION CONCERNING  
HISTORICAL LAND INJUSTICES SUFFERED BY  
THE KIPSIGIS COMMUNITY**

The Committee considered the draft Report as revised to incorporate the observations and recommendations proposed by Members. Thereupon, the Committee adopted the Report, having been proposed by Sen. Veronica W. Maina, MP and seconded by Sen. Andrew Omtatah Okoiti, MP

**MIN. NO. 328/2023**

**ADJOURNMENT**

The Chair adjourned the meeting at fifteen minutes past eleven O'clock. The next meeting was scheduled to be held on Tuesday, 8<sup>th</sup> August, 2023 at eight O'clock.

SIGNED: .....  .....

DATE: .....  .....



**13<sup>TH</sup> PARLIAMENT | 2<sup>ND</sup> SESSION**

**MINUTES OF THE SIXTY-FIFTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 1<sup>ST</sup> AUGUST, 2023 AT 8.00 A.M ON THE ZOOM ONLINE MEETING PLATFORM**

**PRESENT**

- |  |                                   |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson ( <i>Chairing</i> ) |
| 2. Sen. Raphael Chimera Mwinzagu, MP       | - Vice-Chair                      |
| 3. Sen. Fatuma Adan Dullo, CBS, MP         | - Member                          |
| 4. Sen. Catherine Muyeka Mumma, MP         | - Member                          |
| 5. Sen. Veronica W. Maina, MP              | - Member                          |
| 6. Sen. Karen Njeri Nyamu, MP              | - Member                          |
| 7. Sen. Andrew Omtatah Okoiti, MP          | - Member                          |

**ABSENT WITH APOLOGY**

- |  |          |
|--|----------|
| 1. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 2. Sen. Hamida Ali Kibwana, MP             | - Member |

**SECRETARIAT**

- |                          |   |
|--------------------------|---|
| 1. Mr. Charles Munyua    | - Senior Clerk Assistant                        |
| 2. Ms. Lilian Waweru     | - Legal Counsel II                              |
| 3. Ms. Lynn Aseka        | - Clerk Assistant III ( <i>Taking Minutes</i> ) |
| 4. Mr. Constant Wamayuyi | - Research Officer III                          |
| 5. Mr. Josphat Ng'eno    | - Media Relations Officer III                   |
| 6. Ms. Judith Aoka       | - Audio Officer III                             |
| 7. Mr. Kennedy Okoth     | - Fiscal Officer III                            |

**MIN. NO. 320/2023**

**PRELIMINARIES**

The Chairperson called the meeting to order at fourteen minutes past eight O'clock and opened with a word of prayer.

**MIN. NO. 321/2023**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Veronica W. Maina, MP.

**MIN. NO. 322/2023**

**PETITION BY THE KIPSIGIS COMMUNITY  
CLANS ORGANIZATION MEMBERS  
CONCERNING HISTORICAL LAND INJUSTICES  
SUFFERED BY THE KIPSIGIS COMMUNITY**

The Committee resumed consideration of the draft Report on the Petition by the Kipsigis Community Clans Organization concerning historical land injustices suffered by the Kipsigis Community.

Thereupon, the Committee resolved that the Report be further amended as follows –

- a) That the National Land Commission be directed to reopen its investigation into the historical land injustices claim filed on behalf of the Kipsigis Community, to ensure that all interested parties were given the opportunity to be heard, and to submit a status report to the Senate within six months of the tabling of the Committee report.
- b) That a recommendation be included for the National Land Commission and the Director of Surveys to conduct a resurvey of the land leased by the large-scale tea producers in Bomet and Kericho Counties, and to submit a status report to the Senate within six months of the tabling of the report.
- c) The word ‘CSR’ be replaced with a detailed description of the initiatives that the large-scale tea producers should undertake to add value to the communities in which their operations were based.
- d) The National Land Commission to submit a report within sixty days on the status of investigations undertaken pursuant to Article 67 (2) of the Constitution, including the redress recommended, whether the recommendations have been implemented or challenged in court, and the reasons for the same; and
- e) The NLC to create and maintain an accurate database and register of all land leased out to the Large-Scale Tea Producers within Bomet and Kericho County as well as disseminate the same in accordance with section 8 of the Land Act, and a copy of the register to be shared with the Committee within six months upon tabling of the report.

The Secretariat was directed to incorporate the said changes in the Report, following which the Report would be scheduled for adoption.

**MIN. NO. 323/2023**

**ADJOURNMENT**

The Chair adjourned the meeting at twenty-one minutes past nine O'clock. The next meeting was scheduled to be held on Wednesday, 2<sup>nd</sup> August, 2023 at eight O'clock.

SIGNED: .....  .....

DATE: .....  .....





**13<sup>TH</sup> PARLIAMENT | 2<sup>ND</sup> SESSION**

**MINUTES OF THE SIXTY-SECOND SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 25<sup>TH</sup> JULY, 2023 AT 8.00 A.M IN THE FIRST FLOOR BOARDROOM, RED CROSS BUILDING AND ON THE ZOOM ONLINE MEETING PLATFORM**

**PRESENT**

- |  |                                   |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson ( <i>Chairing</i> ) |
| 2. Sen. Raphael Chimera Mwinzagu, MP       | - Vice-Chair                      |
| 3. Sen. Fatuma Adan Dullo, CBS, MP         | - Member                          |
| 4. Sen. Hamida Ali Kibwana, MP             | - Member                          |
| 5. Sen. Catherine Muyeka Mumma, MP         | - Member                          |
| 6. Sen. Veronica W. Maina, MP              | - Member                          |
| 7. Sen. Andrew Omtatah Okoiti, MP          | - Member                          |

**ABSENT WITH APOLOGY**

- |  |          |
|--|----------|
| 1. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 2. Sen. Karen Njeri Nyamu, MP              | - Member |

**SECRETARIAT**

- |                          |   |
|--------------------------|---|
| 1. Mr. Charles Munyua    | - Senior Clerk Assistant                        |
| 2. Mr. Moses Kenyanchui  | - Legal Counsel I                               |
| 3. Ms. Lilian Waweru     | - Legal Counsel II                              |
| 4. Ms. Lynn Aseka        | - Clerk Assistant III ( <i>Taking Minutes</i> ) |
| 5. Mr. Constant Wamayuyi | - Research Officer III                          |
| 6. Mr. Josphat Ng'eno    | - Media Relations Officer III                   |
| 7. Ms. Judith Aoka       | - Audio Officer III                             |
| 8. Mr. Kennedy Okoth     | - Fiscal Officer III                            |
| 9. Ms. Ngesa Rosebella   | - Public Communications Officer III             |
| 10. Mr. David Barasa     | - Assistant Serjeant at Arms                    |

**MIN. NO. 306/2023**

**PRELIMINARIES**

The Chairperson called the meeting to order at twenty minutes past eight O'clock and opened with a word of prayer.

**MIN. NO. 307/2023**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. Fatuma Adan Dullo, CBS, MP.

**MIN. NO. 308/2023**

**CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

Confirmation of minutes of the previous meetings was deferred to the next meeting.

**MIN. NO. 309/2023**

**PETITION BY THE KIPSIGIS COMMUNITY CLANS ORGANIZATION CONCERNING HISTORICAL LAND INJUSTICES SUFFERED BY THE KIPSIGIS COMMUNITY**

The Committee was taken through the draft Report on a Petition by the Kipsigis Community Clans Organization members concerning historical land injustices suffered by the Kipsigis Community.

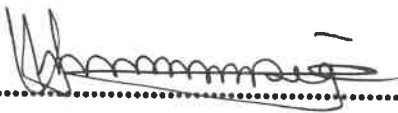
During deliberations –

- a) Members observed that some of the issues arising from the Petition were pending at various fora, including –
  - i) an appeal against the High Court decision which was pending at the Court of Appeal;
  - ii) the Advisory Opinion sought from the Supreme Court on the conversion of leases and the responsibilities of the two levels of government, which was still pending;
  - iii) a matter before the High Court contesting the amendment to the National Land Commission which restricted its mandate to investigate historical land injustice claims; and
  - iv) a claim filed by the Community at the High Court in London and at the European Court of Human Rights.
- b) Members observed that, while the amendment to the National Land Commission Act meant that it could not receive new claims for historical land injustices, there was nothing stopping it from resuming consideration of claims which had been filed within the applicable timelines, including the claim filed on behalf of the Kipsigis Community.
- c) Members observed that there was need to either invite the Director of Surveys to appear before the Committee to discuss the issue of the actual size of the lands held by the large-scale tea growers, or for the Committee to make a strong recommendation in this regard which it could then follow up to ensure it was done.
- d) Members underscored the need for the recommendations contained in the draft Report to be redrafted for precision and, further, to place specific timelines for implementation.

Thereupon, the Committee directed that the Secretariat incorporates the said observations and recommendations in the draft Report, following which it would be scheduled for adoption.

**MIN. NO. 310/2023**      **ADJOURNMENT**

The Chair adjourned the meeting at forty-five minutes past nine O'clock. The next meeting was scheduled to be held on Wednesday, 26<sup>th</sup> July, 2023 at eight O'clock.

SIGNED: .....  .....

DATE: ..... 8/8/2023 .....



## 13<sup>TH</sup> PARLIAMENT | 2<sup>ND</sup> SESSION

### MINUTES OF THE FORTY-FOURTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON THURSDAY, 27<sup>TH</sup> APRIL, 2023 AT 9.00 A.M IN COMMITTEE ROOM 5, FIRST FLOOR, PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

#### PRESENT

1. Sen. Wakili Hillary Kiprotich Sigei, MP - Chairperson (*Chairing*)
2. Sen. Fatuma Adan Dullo, CBS, MP - Member
3. Sen. Hamida Ali Kibwana, MP - Member
4. Sen. Catherine Muyeka Mumma, MP - Member
5. Sen. Veronica W. Maina, MP - Member
6. Sen. Andrew Omtatah Okoiti, MP - Member

#### ABSENT WITH APOLOGY

1. Sen. Raphael Chimera Mwinzagu, MP - Vice-Chairperson
2. Sen. William Cheptumo Kipkiror, CBS, MP - Member
3. Sen. Karen Njeri Nyamu, MP - Member

#### SECRETARIAT

1. Mr. Charles Munyua - Senior Clerk Assistant
2. Mr. Moses Kenyanchui - Legal Counsel I
3. Ms. Lilian Waweru - Legal Counsel II
4. Ms. Lynn Aseka - Clerk Assistant III (*Taking Minutes*)
5. Mr. Constant Wamayuyi - Research Officer III
6. Ms. Ndindi Kibathi - Research Officer III
7. Mr. Josphat Ng'eno - Media Relations Officer III
8. Ms. Judith Aoka - Audio Officer III
9. Mr. John Lekampule - Serjeant at Arms

#### IN ATTENDANCE – KENYA TEA GROWERS ASSOCIATION

1. Mr. Collins Cheruiyot - Vice-Chairperson
2. Mr. Apollo Kiarui - Chief Executive Officer
3. Mr. Sambai Livingstone - Communications Manager
4. Mr. Sammy Kirui - General Manager, Finlays Kenya Ltd

- |    |                       |                               |
|----|-----------------------|-------------------------------|
| 5. | Mr. Guillyin Chambers | - Sotik Tea Company           |
| 6. | Mr. Samuel N. Thumbi  | - Williamson Tea Kenya Plc    |
| 7. | Mr. Peter Gachuhi     | - Advocate, Kaplan & Stratton |
| 8. | Mr. Tumaini Kimone    | - Legal Counsel, Ekaterra     |
| 9. | Ms. Linda Oluoch      | - Legal & Advocacy Manager    |

**MIN. NO. 227/2023**

**PRELIMINARIES**

The Chairperson called the meeting to order at twenty-seven minutes past nine O'clock and opened with a word of prayer. This was followed by a self-introductory session by Senators, Secretariat, and the invited guests from Kenya Tea Growers Association.

**MIN. NO. 228/2023**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Veronica W. Maina, MP and seconded by Sen. Andrew Omtatah Okoiti, MP.

**MIN. NO. 229/2023**

**PETITION BY MR. JOEL K. KIMETTO AND THE  
KIPSIGIS COMMUNITY CLANS ORGANIZATION  
MEMBERS CONCERNING HISTORICAL LAND  
INJUSTICES SUFFERED BY THE KIPSIGIS  
COMMUNITY**

The Committee resumed consideration of the Petition by Mr. Joel K. Kimetto and the Kipsigis Community Clans Organization Members concerning historical land injustices suffered by the Kipsigis Community.

Thereupon, the Committee was taken through the responses by the Kenya Tea Growers Association (KTGA), incorporating the Large-Scale Tea Producers (LSTPs) and other members of the Association.

In their response, KTGA submitted that –

1. The subject matter was *sub judice* as it was pending determination in Court where the Association had challenged the determination by the National Land Commission on the historical land injustices claim filed by the Kipsigis Community.
2. The Large-Scale Tea Plantations all had valid leases to the land, and enjoyed the due protection accorded under Article 140 of the Constitution.
3. The prayers by the community to have the leases reverted would be impossible to be achieved by any arm of government without the amendment of the Constitution. This was on the basis that the Constitution and applicable statutes were clear on the procedures to be followed for acquisition of land, registration of land interests, renewal of leases and expiry of leases as well as all other land administration matters.

4. That the Courts had pronounced themselves on the impossibility of reverting all communities to the ancestral lands they occupied prior to Kenya's colonial administration.
5. That the KTGA members had invested significantly in the communities around them through corporate social responsibility initiatives.

The Association members therefore prayed that the Committee upholds the position that a failure of prudence by the relevant authorities ought not to be applied upon the parties who were not to blame for the historical matters that occurred at a time when they held no interest in the land, and that the Committee takes into account the extensive corporate social responsibility initiatives put in place by the KTGA members.

Upon deliberations, the Committee observed that the response by the KTGA was unsatisfactory and had failed to specifically address the matters raised in the Petition before the Committee. Thereupon, the Association was directed to prepare a detailed response to the Petition and submit it to the Committee within a week of the meeting.

Further, upon request by the KTGA, the Committee directed that a copy of the documents submitted by the Petitioners during the Committee visit to Kericho be furnished to the KTGA.

**MIN. NO. 230/2023**                      **ADJOURNMENT**

The Chair adjourned the meeting at thirty minutes past ten O'clock. The next meeting was scheduled to be held on Tuesday, 2<sup>nd</sup> May, 2023 at eight O'clock.

SIGNED: .....  .....

DATE: .....  .....



## 13<sup>TH</sup> PARLIAMENT | 2<sup>ND</sup> SESSION

### MINUTES OF THE THIRTY-SEVENTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON SATURDAY, 15<sup>TH</sup> APRIL, 2023 AT 11.15 A.M AT SUNSHINE HOTEL, IN KERICHO COUNTY

#### PRESENT

1. Sen. Wakili Hillary Kiprotich Sigei, MP - Chairperson (*Chairing*)
2. Sen. Veronicah W. Maina, MP - Member
3. Sen. Andrew Omtatah Okoiti, MP - Member

#### ABSENT WITH APOLOGY

1. Sen. Raphael Chimera Mwinzagu, MP - Vice Chair
2. Sen. Fatuma Adan Dullo, CBS, MP - Member
3. Sen. William Cheptumo Kipkiror, CBS, MP - Member
4. Sen. Hamida Ali Kibwana, MP - Member
5. Sen. Catherine Muyeka Mumma, MP - Member
6. Sen. Karen Njeri Nyamu, MP - Member

#### SECRETARIAT

1. Mr. Charles Munyua - Senior Clerk Assistant
2. Ms. Lilian Waweru - Legal Counsel II
3. Ms. Lynn Aseka - Clerk Assistant III (*Taking Minutes*)
4. Mr. Constant Wamayuyi - Research Officer III
5. Mr. Josphat Ng'eno - Media Relations Officer III
6. Mr. Johnstone Simiyu - Audio Officer III
7. Mr. David Barasa - Assistant Serjeant at Arms

#### IN ATTENDANCE – COUNTY GOVERNMENT OF KERICHO

1. Hon. Brian Lang'at - County Executive Committee Member for Lands, Housing and Physical Planning

#### IN ATTENDANCE – KIPSIGIS COMMUNITY CLANS ORGANIZATION

1. Mr. Joseph K. Kimetto - Chairman
2. Mr. Joel K. Kimetto - Secretary General
3. Mr. David Ngasura Tuei - Researcher
4. Mr. Stanley Kipkorui Mutai - Member

5. Ms. Elizabeth Chepkemai Rotich - Member
  6. Ms. Esther Chemutai Soi - Member
  7. Mr. Richard Chumo - Member
  8. Mr. Joel K. Koske - Member
  9. Ms. Hellen Sielo - Member
- (And other Members from the Community)*

**MIN. NO. 197/2023**      **PRELIMINARIES**

The Chairperson called the meeting to order at fifteen minutes past eleven O'clock.

**MIN. NO. 198/2023**      **PETITION BY JOEL KIMETTO AND OTHERS ON  
HISTORICAL LAND INJUSTICES AGAINST THE  
KIPSIGIS COMMUNITY**

The Committee resumed consideration of the Petition by the Kipsigis Community Clans Organization regarding historical land injustices against the Kipsigis community.

Thereupon, the Committee was informed as follows –

After the brutal eviction of the Kipsigis community from their ancestral lands, these lands were subsequently leased by the British and later the Kenyan government to large scale tea farms without the involvement or consent of the community. The interests in the lands were also transferred between the various owners without involving the community.

While members of the community had partially benefitted from the tea plantations through employment as tea pickers, among other roles, they submitted that the ongoing mechanization of tea picking on the farms had resulted in widespread loss of jobs and was tantamount to the “last eviction”.

The Petitioners therefore prayed that the Senate:

1. recommends the Kipsigis ancestral land to revert to the community at no cost;
2. recommends that the British should compensate the community for the damage caused and land lost;
3. recommends that the British government apologizes to the community for the human right violations; and
4. recommends that the government resettle the landless by providing land or paying them to look for land where they prefer.

**Interventions**

The Committee noted that the matter of the Kipsigis ancestral lands had been the subject of various processes, including the Truth, Justice and Reconciliation Commission, the National Land Commission investigation of historical land injustices, as well as court cases both in the country and abroad.



The Committee undertook to carefully consider these matters, and to engage all key parties to the Petition, before coming up with a Report on the Petition.

**MIN. NO. 199/2023**      **ADJOURNMENT**

The Chairperson adjourned the meeting at ten minutes to one O'clock. The next meeting would be held on Tuesday, 18<sup>th</sup> April, 2023.

SIGNED: .....  .....

DATE: ..... 8/8/2023 .....



## 13<sup>TH</sup> PARLIAMENT | 2<sup>ND</sup> SESSION

### MINUTES OF THE THIRTY-SIXTH SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON SATURDAY, 15<sup>TH</sup> APRIL, 2023 AT 9.00 A.M AT SUNSHINE HOTEL, IN KERICHO COUNTY

#### PRESENT

1. Sen. Wakili Hillary Kiprotich Sigei, MP - Chairperson (*Chairing*)
2. Sen. Veronicah W. Maina, MP - Member
3. Sen. Andrew Omtatah Okoiti, MP - Member

#### ABSENT WITH APOLOGY

1. Sen. Raphael Chimera Mwinzagu, MP - Vice Chair
2. Sen. Fatuma Adan Dullo, CBS, MP - Member
3. Sen. William Cheptumo Kipkiror, CBS, MP - Member
4. Sen. Hamida Ali Kibwana, MP - Member
5. Sen. Catherine Muyeka Mumma, MP - Member
6. Sen. Karen Njeri Nyamu, MP - Member

#### SECRETARIAT

1. Mr. Charles Munyua - Senior Clerk Assistant
2. Ms. Lilian Waweru - Legal Counsel II
3. Ms. Lynn Aseka - Clerk Assistant III (*Taking Minutes*)
4. Mr. Constant Wamayuyi - Research Officer III
5. Mr. Josphat Ng'eno - Media Relations Officer III
6. Mr. Johnstone Simiyu - Audio Officer III
7. Mr. David Barasa - Assistant Serjeant at Arms

#### IN ATTENDANCE – COUNTY GOVERNMENT OF KERICHO

1. Hon. Brian Lang'at - County Executive Committee Member for Lands, Housing and Physical Planning

#### IN ATTENDANCE – KIPSIGIS COMMUNITY CLANS ORGANIZATION

1. Mr. Joseph K. Kimetto - Chairman
2. Mr. Joel K. Kimetto - Secretary General
3. Mr. David Ngasura Tuei - Researcher
4. Mr. Stanley Kipkorui Mutai - Member

5. Ms. Elizabeth Chepkemai Rotich - Member
  6. Ms. Esther Chemutai Soi - Member
  7. Mr. Richard Chumo - Member
  8. Mr. Joel K. Koske - Member
  9. Ms. Hellen Sielo - Member
- (And other Members from the Community)*

**MIN. NO. 193/2023**                      **PRELIMINARIES**

The Chairperson called the meeting to order at nine O'clock and invited a religious leader present to open the meeting with a word of prayer. This was followed by a self-introductory session by Senators, Secretariat, and the members of the Kipsigis Community Clans Organization.

**MIN. NO. 194/2023**                      **ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Andrew Omtatah Okoiti, MP and seconded by Sen Veronicah W. Maina, MP.

**MIN. NO. 195/2023**                      **PETITION BY JOEL KIMETTO AND OTHERS ON  
HISTORICAL LAND INJUSTICES AGAINST THE  
KIPSIGIS COMMUNITY**

The Committee proceeded to receive testimony and submissions from members of the Kipsigis Community Clans Organization in support of the Petition submitted to the Senate regarding historical land injustices against the Kipsigis community.

Thereupon, the Committee was informed as follows –

The Kipsigis are a community within the Republic of Kenya existing as a subgroup of the larger Kalenjin. The community is mainly found in the present day Bomet, Kericho and parts of Narok and Nakuru Counties. During the colonial administration, members of the community were forcibly evicted from their ancestral homelands which were illegally expropriated by the then administration.

The community was subjected to a brutal 'hut and poll' tax regime that had grave social and economic implications to the Africans. The British soldiers committed acts of sexual violence on the Kipsigis women, which inadvertently led to the spread of 'western' sexually transmitted diseases that never existed in the community prior.

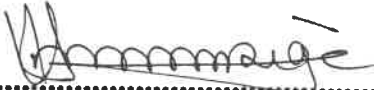
The British 'created Native Reserves' and moved the Kipsigis to the reserves in order to claim the more fertile Kipsigis land as the 'white highlands'. The British would often redraw the boundaries, pushing the Kipsigis further and further. This had devastating social and economic ramifications on the community. The British further forcefully conscripted Kipsigis to the army and transported them to foreign lands to fight in wars they had no interest in.

The exploitative industry that saw thousands of families forcibly evicted with no compensation. This illegally and freely acquired land was then sold to British nationals at a price.

The Petitioners further narrated to the Committee on the brutal eviction of the Talai people from the Kipsigis community and relocation to distant lands. The Kipsigis people were prevalently suffering from esophageal cancer which was suspected to be caused by the toxic substances from the tea farms. This cancer was the most common among the Kipsigis men and women.

**MIN. NO. 196/2023**      **ADJOURNMENT**

The Chairperson adjourned the meeting at five minutes to eleven O'clock. The next meeting was scheduled to commence the same day at fifteen minutes past eleven O'clock.

SIGNED: .....  .....

DATE: ..... 8/8/2023 .....  
.....



## 13<sup>TH</sup> PARLIAMENT | 2<sup>ND</sup> SESSION

### MINUTES OF THE THIRTY-FIRST SITTING OF THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 28<sup>TH</sup> MARCH, 2023 AT 8.00 A.M IN COMMITTEE ROOM 5, FIRST FLOOR, PARLIAMENT BUILDINGS AND ON THE ZOOM ONLINE MEETING PLATFORM

#### PRESENT

1. Sen. Raphael Chimera Mwinzagu, MP - Vice-Chair (*Chairing*)
2. Sen. William Cheptumo Kipkiror, CBS, MP - Member
3. Sen. Hamida Ali Kibwana, MP - Member
4. Sen. Catherine Muyeka Mumma, MP - Member
5. Sen. Veronica W. Maina, MP - Member
6. Sen. Karen Njeri Nyamu, MP - Member
7. Sen. Andrew Omtatah Okoiti, MP - Member

#### ABSENT WITH APOLOGY

1. Sen. Wakili Hillary Kiprotich Sigei, MP - Chairperson
2. Sen. Fatuma Adan Dullo, CBS, MP - Member

#### SECRETARIAT

1. Mr. Charles Munyua - Senior Clerk Assistant
2. Mr. Moses Kenyanchui - Legal Counsel I
3. Ms. Lilian Waweru - Legal Counsel II
4. Ms. Lynn Aseka - Clerk Assistant III
5. Mr. Constant Wamayuyi - Research Officer III
6. Ms. Ndindi Kibathi - Research Officer III
7. Mr. Josphat Ng'eno - Media Relations Officer III
8. Ms. Judith Aoka - Audio Officer III
9. Ms. Ngesa Rosebella - Public Communication Officer III
10. Mr. David Barasa - Assistant Serjeant at Arms

#### MIN. NO. 170/2023

#### PRELIMINARIES

The Vice-Chair called the meeting to order at twenty-three minutes past eight O'clock and opened with a word of prayer.

**MIN. NO. 171/2023**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Veronica W. Maina, MP and seconded by Sen. Andrew Omtatah Okoiti MP.

**MIN. NO. 172/2023**

**CONSIDERATION OF A PETITION BY THE  
KIPSIGIS COMMUNITY CLANS ORGANIZATION  
MEMBERS CONCERNING HISTORICAL LAND  
INJUSTICES SUFFERED BY THE KIPSIGIS  
COMMUNITY**

The Committee was informed that at the Sitting of the Senate held on Thursday, 9<sup>th</sup> March, 2023, the Senator for Kericho County presented a Petition by the Kipsigis Community Clans Organization regarding historical injustices by the British colonial government against the Kipsigis Community in Kenya, following which the Petition was committed to the Committee for consideration.

The Committee was further taken through a Brief on the Petition, detailing the background to the petition, and matters that arose during previous consideration of the Petition by the Senate, notably –

- i) the disputed NLC determination and recommendations on the matter;
- ii) a pending Judicial Review approach filed in Court challenging the NLC determination; and
- iii) the nature of legal support that may be extended to the Petitioners.

Upon deliberating on the matter, the Committee resolved –

- a) That the Committee proceeds with the working visit to Kericho County on Saturday, 15<sup>th</sup> April, 2023 to receive submissions from the Petitioners and other stakeholders on the Petition;
- b) That, subsequently, the Committee would meetings in Nairobi with the National Land Commission and the State Law Office; and
- c) That a letter be sent to the Registrar of the High Court requesting for a status report on the Judicial Review application.

**MIN. NO. 173/2023**

**ANY OTHER BUSINESS**


- (a) A clarification was sought on the procedural options available to the Committee following the proceeding with debate on the Preservation of Human Dignity and Enforcement of Economic and Social Rights Bill, 2022, despite tabling of the Committee report which had recommended that the Bill be not proceeded with.

Following deliberations, it was resolved that Members of the Committee be furnished with copies of the Report on the Bill to enable them to effectively contribute to the debate in plenary.

(b) Members were reminded of the Committee Stakeholder Engagement Retreat scheduled to be held on 3<sup>rd</sup> to 5<sup>th</sup> April, 2023 in Naivasha, Nakuru County.

**MIN. NO. 174/2023      ADJOURNMENT**

The Vice-Chair adjourned the meeting at sixteen minutes past nine O'clock. The next meeting was scheduled to be held on notice.



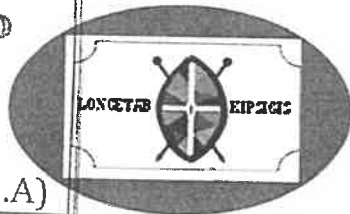
**SIGNED:** .....

**DATE:** ..... 12/04/2023 .....

**Annex 2: Copy of the Petition**



**Kipsigis Community Clans**  
THE SENATE  
RECEIVED  
24 NOV 2022  
DEPUTY CLERK (M.A.)



THE SENATE  
RECEIVED  
4 NOV 2022  
P.O. Box 61 - 20205  
SOSIOT, KENYA  
DIRECTOR LEGISLATIVE AND  
PROCEDURAL SERVICES  
Cellphone: 0722 440056

The Clerk of the Senate,  
Parliament Buildings,  
P.O. Box 41842 - 00100, NAIROBI.  
Monday, 17<sup>th</sup> October 2022.

*ODLPS*

THE SENATE CLERKS OFFICE  
RECEIVED  
24 NOV 2022  
P.O. Box 41842 - 00100, NAIROBI

Dear Sir, *Mr. Moger (ODLPS)*  
*ps process - only file 25/11/22*

*Please process*  
*[Signature]*

**RE: PETITION TO THE SENATE CONCERNING THE BRITISH COLONIAL HISTORICAL LAND INJUSTICES AGAINST THE KIPSIGIS PEOPLE**

Thank you for your response letter dated 8<sup>th</sup> October 2018 and that of the Senate Visit to Kericho on 12<sup>th</sup> June 2018 and 19<sup>th</sup> October 2020. And all the debates of the year 2021/2022 on the same.

Your Ref: SEN./12/2/PETITIONS/No.120(1)/2018

Pursuant to the Petition to Parliament (Procedure) Act (No. 22 of 2012) and the Senate Standing Orders and also article 37 of the Constitution of Kenya, every person has a right to present petitions to public authorities and article 119 of the Constitution, every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.

We the undersigned Kipsigis Community Clans Organization Members and also the Citizens of the Republic of Kenya and residents of Kipsigis Land (occupying the Counties of Kericho, Bomet, Nakuru and Narok) and who are mandated by the Kipsigis Community people to follow up on these matters with the relevant authorities.

**Would like to DRAW the attention of the SENATE to the following:**

1. The British colonial Government came to our Country and forcefully took our Kipsigis ancestral lands.
  - 1.1. That in 1895, the British made Kenya a British Protectorate and in 1899 made land laws and regulations to suit them and their needs.
  - 1.2. That in 1901, due to resistance of our people to move away, the British thought of ways of acquiring land from our people and they introduced the Crown Land Ordinance in 1902 which the colonial government used it to say that the lands were no longer ours.
  - 1.3. That in 1909, they introduced the Removal of Natives Ordinance which was used to evict, displace, deport or detain our people when our people refused to move away from the areas that they were found having occupied for several years.

*Ms. Belinda*  
*had handled such*  
*petition in the*  
*previous Parliament.*  
*Kindly establish*  
*status and help us*  
*re-litigate.*  
*D: Chani*  
*25/11/2022*

**Petition to the Senate by the Kipsigis Community Clans Organization concerning the British Colonial Historical Land Injustices against the Kipsigis People**

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- 1.4. That there was no compensation at all for their lands which were taken as Crown Lands and of which the British said were suitable for white settlement. Kipsigis people were moved away from their areas to the other parts of their lands.
  - 1.5. That in 1914, Kipsigis were against the taking away of their lands and the British thought of ways to make them weak. The divide and rule came in and the Kipsigis Talai Clan leaders were imprisoned and detained for false allegations.
  - 1.6. That in 1915, they came up with yet another Crown Land Ordinance to further oppress our people and were evicted to Tanganyika, Chebalungu and Kapogiek.
  - 1.7. That between 1919 and 1920 after the 1<sup>st</sup> World War, the British chased away our people from their ancestral lands around Kericho, Kerenga, Tagabi estates and the whole of African Highlands so as to give it to the British Soldiers in the name of British East African Disabled Officers Colony (BEADOC). Our black Soldiers were rewarded with medals and certificates which are now valueless.
  - 1.8. That the forcefully taken Lands include Unilever Tea Kenya (Brooke Bond), James Finlay Kenya (African Highlands), George Williamson (Changoi & Lelsa), Sotik Tea, Sotik Highlands, Kaisugu Tea, Mau Tea, Koru & Forttennan Farms (Kap Norman's), Kabianga Tea, Tinga Farm, among others.
  - 1.9. That our Kipsigis people became squatters in their own land, they also became cheap labor and they were later totally evicted, displaced, deported coupled with the unlawful prosecutions, detaining and the untold sufferings.
  - 1.10. That in 1932, the complaints by the Kipsigis against the colonial government taking away their ancestral lands increased as is seen in the Native Evidence captured on 23rd September 1932 by Mr. C. Tomkinson who was the District Commissioner, Kericho when he collected the views from the Kipsigis Elders.
  - 1.11. That in 1934, a whole of one Kipsigis Community Clan were displaced and deported to live in harsh environment, Gwasi by then, The Kipsigis Talai Clan.
  - 1.12. That the British government wanted more land to give it to its people, the White Settlers, which resulted in more land being taken from our people as from 1900 upto 1962. Our people were dropped on the roads to find for themselves where to live. Others went to live with relatives, others along the rivers, others at communal markets and others were asked to go to a foreign country.
  - 1.13. That the British introduced the land titles and laws to take our land after making them Crown Land, they gave themselves land leases/contracts of which most of them have expired. Our people were not involved in the same nor paid.
  - 1.14. That Kenya got independence in 1963 and up to-date the Kipsigis forcefully taken ancestral lands are still being held and used by those who forcefully took it. Although they got the soft name of Multinational farms but the fact remains that they are still colonial white settler farms.
2. Sue the British Government to compensate the Kipsigis Community for all the damages caused and the use of our land for all those years (1900 to-date)
- 2.1. We gave our petition to Kericho County as Kipsigis Community Clans Organization, Kipsigis Talai Clan and Borowo & Kipsigis Self-help Group in the year 2014.

## **Petition to the Senate by the Kipsigis Community Clans Organization concerning the British Colonial Historical Land Injustices against the Kipsigis People**

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- 2.2. Kericho County hired competent lawyers to take up the case against the British Government which they have been following up to-date. The lawyers took our case to UN, and also to the European Court of Human Rights.
  - 2.3. As stake holders, we want the British to admit to their mistakes. And that they should also apologize to Kipsigis Community for all the atrocities committed.
  - 2.4. The Kenya Government should also apologize and take up these issues so as to find ways of how to resolve and settle these matters.
3. The return of our Kipsigis Community forcefully taken land to its rightful owners who are the Kipsigis Community.
- 3.1. That we as Kipsigis Community mandated by the people to follow up on the same, gave our claims/complaints to the National Land Commission in the year 2017 as follows:
    - a) Kipsigis Community Clans Organization whose evidence presentation was done by Joel K. Kimetto. NLC/HL1/044/2017
    - b) Kipsigis Talai Clan/Community whose evidence presentation was done by David Ngasura Tuei. NLC/HL1/013/2017
    - c) Borowo and Kipsigis Clans Self-help Group whose evidence presentation was done by Peter Kiprotich Bett. NLC/HL1/173/2017
  - 3.2. That the National Land Commission gave out recommendations in our favor dated 7<sup>th</sup> February 2019 and the Kenya Gazette notice dated 1<sup>st</sup> March 2019 which said that our **claims are allowed**. That the National Land Commission in the Constitution of Kenya 67.2 (e) are given the mandate by the constitution to initiate investigations on a complaint into present or historical land injustices and recommend appropriate redress.
    - a) That there are areas which we dis-agreed, on the National Land Commission recommendations as we did not pray for the same and there was no consultation.
    - b) We are in agreement with 5 points of the recommendations dated and signed by the Commissioners on 7<sup>th</sup> February 2019 and we disagree with the other 5 as indicated below:
      - **Agreed on these recommendations: Page 25. a, Page 26. b, d, e and i**
      - **Dis-agreed on these recommendations: Page 26. c, f, g, h and j**
4. That the matters raised in this petition is not pending in any Kenyan court of law and that we as Kipsigis Community are now relying on the Senate and the National Assembly to re-solve this matter for us once and for all.
- 4.1. Please guide us and apply the Constitution of Kenya 63.1 a), b), c), d) (i& ii only) so that our Kipsigis Community ancestral land goes back to the rightful owners of the soil.
  - 4.2. Make and pass laws which will see that the past mistakes committed by the British colonial government are corrected.

**Petition to the Senate by the Kipsigis Community Clans Organization concerning the British Colonial Historical Land Injustices against the Kipsigis People**

**WHEREFORE, your humble petitioners PRAY that the SENATE:**

- 1/ Takes up this matter to ensure that our Kipsigis Community ancestral lands go back to the rightful owners, of the soil free of charge. Kipsigis were forcefully evicted by the British colonialists by use of wrong laws which were passed to suit them only.
2. Helps us follow up on the case against the British Government to pay the Kipsigis and Talai victims for all the damages caused e.g. the loss of our livelihood, huts, livestock, food, properties when they came and forcefully took our ancestral lands.
3. Guides us, use our laws so that the Lands should then be lawfully transferred and registered as Kipsigis Community Group of Tea Estates.
4. Remove the land leases/contracts which the British introduced and gave themselves our ancestral lands. The first leases started expiring in 2008 and most of them have now expired. That nobody should renew those leases before the issues are addressed. Help us to enforce the Caveat and Caution on these Multi-national farms.

5. These are the lands:

Note that: We do not honor these land leases which the British government gave them to the white settlers who occupied our Kipsigis forcefully taken ancestral lands.

**a) The Names:**

Kapkorech, Kapkatungor, Sambret, Cheymen, Cheboswa, Chagaik, Kimugu, Chelimo, Kericho, Kerenga, Chebown, Tagabi, Jamji, Ngoina, Kapgwen, Chemogo, Chemosit, Koruma, Kaptien, Koiwa, Kimari, Chepkoiben, Tiluet, Chemase, Kapsongoi, Marinyin, Kapkoros, Kaproret, Chebitet, Simotwet, Cheptabes, Tendwet, Bondet, Chemasingi, Chemamul, Changoi, Lelsa, Sotik, Koru, Changoi, Lelsa, sotik tea, Tinga etc.

**b) Title Numbers:**

These are the LR Numbers which the British gave themselves as the lease hold and free hold on our Kipsigis ancestral lands. Showing the LR numbers, area in Ha, expiry yr.

11386 / R 133.2 FREEHOLD; 11621 170.9 FREEHOLD; 612 / 3; 24.5 FREEHOLD;  
612 / 1 / R 178.0 FREEHOLD; 1677 10.7 FREEHOLD; 7282 191.2 FREEHOLD  
11408 51.0 FREEHOLD; 1676/6; 87.9 2008; 7282 66.0 FREEHOLD; 1677 158.3  
FREEHOLD; 1676/1 107.7 2008; 1676/2 25.5 2008; 1676/3 16.0 2008; 62030.2  
FREEHOLD; 621 126.4 2009; 1676/6 197.6 2008; 520 99.4 FREEHOLD; 62255.7  
2010; 3884 207.4 FREEHOLD; 9932 689.2 FREEHOLD; 622 72.3 2010;  
624 83.4 2010; 3884 92.3 FREEHOLD; 624 45.8 2010; 626 129.6  
FREEHOLD; 628 129.6 FREEHOLD; 8434/R 258.4 FREEHOLD; 11408 83.4  
FREEHOLD; 8434/1 0.4 FREEHOLD; 8434/2 0.9 FREEHOLD; 11409 1.1  
FREEHOLD; 5467/R 311.4 FREEHOLD; 3944 260.2 FREEHOLD; 631/75 8.7  
FREEHOLD; 5467/R 636.3 2018; 3941 262.7 2021; 5467/R 588.3 2018; 5467/R  
482.6 2018; 3939 76.4 2018; 3939 546.0 2018; 4098/3/R 200.0; 5478 61.1  
2018; 4431 605.0 2029; 940/R 1349.7; 5429 215.7; 5430 232.3; 5435 312.8;  
5429 472.3; 5436 611.5; 5427 121.4 2019; 5428 286.5 2019;  
5443 198.0 2018; 5443 115.6 2018; 6001/1 219.6 2018; 6022/2 227.9 2018; 6020  
228.7 2018; 6021 511.9 2018; 6019 124.6 2018; 6026/2 107.0 2018; 6027 46.4

**Petition to the Senate by the Kipsigis Community Clans Organization concerning the British Colonial Historical Land Injustices against the Kipsigis People**

2018; 6025 134.8 2018; 6024 425.8 2018; 6026/2 158.9 2018; 6027 221.9 2018; 6025 12.9 2018; 6028 256.2 2018; 9472 1.0 2018; 9473 1.7 2018; 5468; 5469; 7797; 3821/R and others not mentioned.

Land leases by then was handled only by the **Secretary of State for the British Government.**

6. Provides a means that the Kenya Government should re-settle the landless Kipsigis and Talai people or pay them money to look for alternative land in their area of choice.
7. Considers and investigate this matter further so that this petition goes to the Senate for tabling and that our Senators may get more information/evidence from us.
8. Gives us an Okay to introduce a 3 level management system as follows: 1) Kipsigis Community Board of Directors 2) Management Trustees 3) Current management systems in those farms. This will ensure that there will be no corruption in such a system.
9. Ensures that once the lands revert back to the rightful owners, the lands will not be divided. They will be managed to the highest levels of standard. The money will go to a Kipsigis Community Bank Account and will be used to address the following: i) Education ii) Diseases and iii) Eradication of poverty; which will ensure that our people do not suffer any more.
10. Gives us a fair treatment in this subject matter. We need to be released from the foreign colonial yokes. Our soil should not be under those who took it by force.

Dated this 27<sup>th</sup> day of September 2022.

As per the Acts and Standing Orders, please find herewith the humble petitioners and their required information as set out by law.

**Some of the Kipsigis Community Clans Organization Members**

S/No	Name	Address	I.D. No.	Signature
1.	Joel K. Kimetto	Box 61-20205, Sosiot	6609027	
2.	Joseph K. Kimetto	Box 61-20205, Sosiot	5289262	
3.	Joseph K. Towett	Box 61, Sosiot	8949448	
4.	Paul K.A. Langat	" "	0739329	
5.	Samson A. Malel	" "	7629900	
6.	Joseph K.A. Rotich	" "	0094061	
7.	John K. Tonui	Box 1232-20200, Kco	1771944	
8.	David C. Mitei	Box 61, Sosiot	8602301	
9.	Pastor Paul Misik	" "	0262989	
10.	Pastor Jennifer Nyigei	" "	2355465	
11.	Sigira A. Koech	Box 61, Sosiot	1779899	
12.	Julius K. Kimetto	" "	11636886	
13.	Thomas K. Cherutany	" "	2347386	

Petition to the Senate by the Kipsigis Community Clans Organization concerning the  
British Colonial Historical Land Injustices against the Kipsigis People

S/No	Name	Address	I.D. No.	Signature
14.	John K.A. Sigei	Box 61, Sosisot	3834250	
15.	James K. Bii	Box 763 KCO	0851872	
16.	James Misik	Box 61, Sosisot	0325001	
17.	Peter K. Bett	" "	2419683	
18.	Pius Kiplimo A. Misoi	" "	1456459	
19.	Dr. David Soo	" "	6421143	
20.	Ev. George Langat	" "	3864253	
21.	Stanley K. Biegon	Box 122 Bount	2353764	
22.	Evaline C. Kikwai	Box 61, Sosisot	12553681	
23.	Joel K. Koske	" "	2411993	
24.	Richard K. Sigei	" "	2435171	
25.	Rtd Chief John Koske	" "	3865510	
26.	Joseph K.A. Koskei	" "	0323118	
27.	Christopher K. Soi	" "	1770801	
28.	Rev. Moses K. Tonui	Box 78 Kiptere	7642564	
29.	John K. Rop	Box 61, Sosisot	3462726	
30.	John M.K. Langat	" "	0324828	
31.	David Ngasura Tuei	" "	3823177	
32.	Samwel Langat	Box 61, Sosisot	6019441	
33.	Paul Kiget	144 SOT) R	7493586	
34.	John K. Koech	Box 61, Sosisot	7643556	
35.	Wilson Bii	" "	3866636	
36.	Johana Rono	" "	0323378	
37.	Moses K. Mutai	" "	0736852	
38.	Joseph A. Laboso	" "	0604963	
39.	John A. Langat	" "	1742144	
40.	Nehemiah Ngeno	" "	2359185	
41.	Richard K. Koske	" "	5996165	
42.	Richard K. Chumo	" "	5998585	
43.	Bishop Peter Langat	" "	8551988	
44.	Kimutai A. Chelulei	" "	0871299	
45.	Daniel Soy	" "	7293914	

**Petition to the Senate by the Kipsigis Community Clans Organization concerning the  
British Colonial Historical Land Injustices against the Kipsigis People**

S/No	Name	Address	I.D. No.	Signature
46.	Richard Ruto	Box 61, Sosisot	2429040	
47.	Simion K. Maiywa	Box 61, Sosisot	1767199	
48.	Rev. Joel Langat	n . 11	1754910	
49.	Daniel Siele	n 11	2358938	
50.	Joseph Yegon	n 11	2340837	
51.	Edward Towett	n 11	0436386	
52.	Richard Ngeno	n 11	1796675	
53.	WILSON C. MUTO	BOX 18, LITEN	3876430	
54.	JULIUS CHELLE	BOX 363 LESOS	3095244	
55.	Joseph K. Leluy	Box 38 Kutygum	4748783	
56.	FRANCIS K. A. CHELUMU	Box 225 K...	180196	
57.	CHARLES KIPSIGIS CHELUMU	BOX 75 LITEN	5235509	
58.	May J. Koriv	Box 33 Bmt	434722	
59.	KIP LANGAT KAPOKOK	BOX 62 AMALO	6214839	
60.	WILSON KIPRONI SOY	BOX 512 SOTIK	6244154	
61.	RICHARD S. KORROREN	BOX 88 AMALO	0094986	
62.	DAVID KIPRO BII	BOX 21 Sosisot	2402723	
63.	KIP LANGAT ARAP TOWETT	BOX 62 AMALO	2288614	
64.	MICHAEL KIRINI SITONIK	BOX 7 ADIGORIAN	1072130	
65.	REUBEN KIPKIECH MARURIT	BOX 870 SOTIK	31274527	
66.	ERNEST KIPKORIR RUTO	BOX 342 KERICH	2401287	
67.	DAVID KIPROSP MUTAI	BOX 427 KCO	2359317	
68.	JOSEPH KIP LANGAT RONDO	BOX 142 LITEN	607336	
69.	VINCENT KIPROTICH IGETH	BOX 2 KCO	9724502	
70.	RICHARD KIPKOTICH A KUSCEI	BOX 99 SOTIK	5996165	
71.	MARY CHEPKEMOI KERICHI	BOX 387 KCO	6010790	
72.	ALEXANDER IGETH ROTICH	BOX 64 CHESINENDE	6010769	
73.	JAMES KIPKOROS CHEPENO	BOX 64 CHESINENDE	3879263	
74.	THOMAS KIP LANGAT MUTAI	BOX 441 KCO	7699850	
75.	HOKWILLIAM KIP LANGAT ARAP	BOX 387 KCO	0867915	
76.	ISAIAH KIPYEGON ASIELE	BOX 387 KCO	3820129	



Petition to the Senate by the Kipsigis Community Clans Organization concerning the British Colonial Historical Land Injustices against the Kipsigis People

S/No	Name	Address	I.D. No.	Signature
77.	DAVID K TURGUT	Box 215 Kilgoris	21399674	[Signature]
78.	WILLIAM RONO	Box 4 Feli-Ternan	7627365	[Signature]
79.	ANNA TONGON	Box 387 KCO	5220989	[Signature]
80.	ALEXANDER BEE	Box 215 Kilgoris	4559952	[Signature]
81.	VICENT KOECH	Box 2 KCO	9724582	[Signature]
82.	ALEX K RONO	Box 402 KCO	8859478	[Signature]
83.	REUBEN K. MUTAI	Box 309 LITEIN	0738473	[Signature]
84.	CHRISTOPHER SAMBAI	Box 458 Kilgoris	4558901	[Signature]
85.	DAVID K. KOSKE	Box 45, KARSOIT	3877835	[Signature]
86.	WILSON K. LANGAT	Box 62, AMALO	0101716	[Signature]
87.	SAMUEL K. ROTICH	179	2420715	[Signature]
88.	GILADYE CHELANGAT	Box 13, Litein	13886017	[Signature]
89.	DAVID A. LANGAT	Box 458 Kilgoris	9724107	[Signature]
90.	PHILIP KIPRMO KOSGO	Box 61, Sosiat	3647424	[Signature]
91.	JACKSON K. LANGAT	Box 215, Kilgoris	1068889	[Signature]
92.	SAMUEL K. TAYOTI	Box 61, Sosiat	4561753	[Signature]
93.	WILLIAM K. RONO	Box 61, Sosiat	1244819	[Signature]
94.	HELLEN TUINISING	43, Longisa	13720812	[Signature]
95.	STEPHEN K. LABUSO	69, Chesinade	1767002	[Signature]
96.	JOSEPH CHEPKWONY	Box 68, Kiptere	04748784	[Signature]
97.	WALTER KOECH	Box 83, Kedowa	0850821	[Signature]
98.	JEREMIAH K. TURGUT	Box 773, KCO	2403880	[Signature]
99.	JONATHAN KETOR	Box 10, Kiptuguma	3870937	[Signature]
100.	SAMUEL K. SINGEI	16, Longisa	9485765	[Signature]
101.	SARA CHEBITOM	Box 61, Sosiat	1772258	[Signature]
102.	PAUL LANGAT	Box 56, Sosiat	3877519	[Signature]
103.	DAVID KOSKE	Box 43, Kimbat	7960147	[Signature]
104.	SIMON K. KOSGE	Box 17, Kautian	2325895	[Signature]
105.	NANCY C. MUTAI	387, Kenicho	12748359	[Signature]
106.	ANNA TONGON	215, Kilgoris	8809373	[Signature]
107.	HENRY ROTIETT	Box 61, Sosiat	3866915	[Signature]



**Petition to the Senate by the Kipsigis Community Clans Organization concerning the British Colonial Historical Land Injustices against the Kipsigis People**

S/No	Name	Address	I.D. No.	Signature
108.				
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- ❖ On the Kenya Land Commission report page 2466, they wrote: The complete upsetting of their homes, their mode of life and their laws.
- ❖ Mr. H.R. Montgomery said that in the somewhat distant future, natives will have gotten more and more representation, and will bring about the changes in the laws enabling them to claim back their lands.
- ❖ We are now praying that you make such laws so as to enable us to get back our forcefully taken Kipsigis ancestral lands.

**Counter signed:**

1. **Sen. Aaron Cheruiyot** .  
Senator for Kericho County
2. **Sen. Samson Cherargei**  
Senator for Nandi County

**Annex 3:** Extract of the Hansard for the Senate sitting of Thursday, 9<sup>th</sup> March, 2023

According to our Constitution Article 96, the Senate of Kenya is supposed to defend devolution. We gave ourselves a new Constitution in 2010. The work that we do is to defend devolution.

Welcome to the Senate of Kenya. I know at the end of the day, you would have learnt about how we run our business in Kenya. I know, at one point, we will come to South Africa to “revenge” - so to speak - so that we also see how you do things in South Africa.

Welcome once again and when you go back, say hello to the King.

**The Speaker** (Hon. Kingi): Sen. Mwaruma, there is a very big difference between the Kingdom of Eswatini and South Africa.

Next Order.

### PETITION

#### LAND INJUSTICES SUFFERED BY THE KIPSIGIS COMMUNITY

**The Speaker** (Hon. Kingi): The Leader of Majority kindly proceed to present your Petition.

**The Senate Majority Leader** (Sen. Cheruiyot): Mr. Speaker, Sir, I rise pursuant to Standing Order No.232 (1). I hereby to present a Petition to the Senate submitted by the Kipsigis Community Clan Organizations, citizens of the Republic of Kenya and residents of Kericho County.

Mr. Speaker, Sir, as you are aware, under Article 119(1) of the Constitution-

“Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.”

The salient issues raised in the Petition are as follows-

(1) That the British Colonial Government forcefully took away the Kipsigis ancestral land during the colonial period-

(a) There was no compensation to the Kipsigis Community for the land taken for settlement by the British. Instead, the Kipsigis people became squatters and forced to provide cheap labour to the British settlers.

(b)After the First World War, the colonial Government forcefully evicted the Kipsigis Community from their ancestral land around Kericho, Kerenga and Tagabi estates and the whole of the African highlands so as to give it to the British soldiers in the name of British East African Disabled Officers Colony.

(c) The forcibly taken away land includes: Unilever tea, Brookbond or now Ekaterra, James Finlay, which was then African Highlands, George Williamson in charge of Changoya and Lesla, Sotik Tea, Sotik highlands, Kaisugu tea, Mau tea, Koru and Fort Tenan farms, Kapnomads, Kabianga Tea and Tinga farms amongst other.

When Kenya gained Independence in 1963, the land forcefully taken from the Kipsigis Community continued to be held and used by those who forcibly acquired it during the colonial administration.

The Kipsigis Community is seeking redress in the form of compensation and an apology by the British Government for the damage caused in the forceful eviction and use of their land.

(d)The Kipsigis Community lodged a claim with the National Land Commission (NLC) in 2017. However, disagreements arose on some of the recommendations made by the Commission as the community members were not involved in negotiations.

(e)The Petitioners have forwarded the matter to relevant authorities for consideration, but the response has been unsatisfactory. That none of the issues raised in this Petition are pending before any court of law or any other legal body.

(4) Consequently, the Petitioners pray to the Senate as follows;

(i) That you hear and consider this Petition.

(ii) That you assist in following up law suits against the British colonial government for compensation and a formal apology.

(3) Intervene and ensure necessary institutions, bodies and review all land laws regulations put in place by the British Colonial Government that are discriminated towards indigenous African communities and lawfully return the land to Kipsigis Community to be registered as the Kipsigis Community Group of Teas.

(4) Intervene into solutions of disputed recommendations made by LNC on the matter.

(5) Take any measures and recommendations that the Senate may deem appropriate.

Thank you.

**The Speaker** (Hon. Kingi): Hon. Senators, pursuant to Standing Order No.237, I shall now allow comments, observations or clarifications in relations to the Petition for not more than 30 minutes.

Proceed, Sen. Orwoba.

**Sen. Orwoba:** Thank you, Mr. Speaker, Sir. We were in Kericho County last weekend on a separate matter, but which also touches on the issues raised in this Petition. The Senate Committee on Labour and Social Welfare went there to investigate matters sex for workers as per the British Broadcasting Corporation (BBC) exposé.

I can tell you as we interrogated the victims and the stakeholders of this tea farming industries, we found out that most of it is actually pegged on historical injustices. Some of them come from issues such as forceful take-over of land from different communities.

Mr. Speaker, Sir, we tried to talk to these companies listed here. We were at Finlays and Ekaterra. We tried to see if a middle ground could be reached or have a conversation and see how the community can benefit from tea farming.

Mr. Speaker, Sir, I am not afraid to say that the feedback that we got was very negative. Honestly speaking, we are back in colonial era when it comes to tea farming activities down in Kericho County.

I saw with my two eyes how most welfare issues that are being raised by residents of Kericho County who work on those tea farms, were being ignored. Communities talked about how the land used to be theirs and that they do not understand how it went

**The Speaker** (Hon. Kingi): Sen. Cherarkey, Sen. M. Kajwang', Sen. Kavindu Muthama and Sen. Kinyua, kindly consult in low tones, so that we hear the good Senator making his contribution.

**Sen. Kisang:** Mr. Speaker, Sir, I need your protection from the Senators consulting loudly because most of them have already spoken. I do not know why they are consulting loudly.

The Truth, Justice and Reconciliation Commission of Kenya (TJRC) Report should be implemented because it will sort out most of these issues. The term of the leases is also very key. I know the British gave themselves long leases of 999 years. We need to review the leases, so that it cannot go beyond 99 years. As soon as the leases expire, as my colleague Sen. Cheptumo has said, the land should revert to the Government and the communities that they were taken from. The lands should be redistributed among the people whose land was taken away free of charge instead of the rich buying the land when the leases expire or they allocate themselves the land, while the poor continue to languish in poverty as the rich take the land.

Mr. Speaker, Sir, along the Coastal part of the country, there are many absentee landlords. The land is lying idle. People do not have title deeds and so they cannot borrow loans. We need to move with speed and rectify the injustices that have been done against our people.

Mr. Speaker, Sir, I support.

**The Speaker** (Hon. Kingi): Hon. Senators, pursuant to Standing Order No.238 (1), the Petition should be committed to the relevant Standing Committee for its consideration.

In this case, I direct that the Petition be committed to the Standing Committee on Justice, Legal Affairs and Human Rights, with latitude to have other Committees co-opted to this hearing, so that we can have a comprehensive consideration of this Petition.

In term of Standing Order No. 238 (2), the Committees require, in not more than 60 calendar days from the time of reading this prayer, to respond to the petitioner by way of report addressed to the petitioner and laid on the Table of the Senate.

I thank you.

Hon. Senators, I have a Communication to make.

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM CHRIST THE KING CATHEDRAL PRIMARY SCHOOL, BUNGOMA COUNTY

In the Public Gallery, we have 50 pupils, accompanied by seven teachers from Christ the King Cathedral Primary School in Bungoma County, who are in the Senate on an education tour.

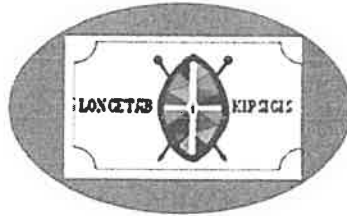
Hon. Senators, in our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate and my own behalf, I wish them a fruitful visit.

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**Annex 4: Submissions by the Kipsigis  
Community Clans Organization**

## Kipsigis Community Clans



P.O. Box 61 - 20205 SOSIOT, KENYA

P.O. Box 315 - 40200 BOMET, KENYA

Cellphone: 0722 440056 / 0101 440056

Cellphone: 0726 693788 / 0724 327025

To:

**The Senate Standing Committee on: Land Environment and Natural Resources; and that of Justice, Legal Affairs & Human Rights, Parliament Buildings, P.O. Box 41842 - 00100, Nairobi, Kenya.**

**Saturday, 15<sup>th</sup> April 2023**

### **KIPSIGIS COMMUNITY MEMORANDUM TO THE STANDING COMMITTEE (Kericho).**

Thank you for coming here today so that you can get the first hand evidence concerning the historical colonial injustices which were meted against the Kipsigis Community by the British colonial government.

#### **What we want as Kipsigis Community:**

1. The Kipsigis forcefully taken ancestral lands should revert back to us free of charge.
2. The British should compensate us for all the damages caused and for using our lands for all those years.
3. The British should apologize for their mistakes and the human rights violations against us.
4. The Kenya Government should resettle the landless Kipsigis people by providing land or by paying them to look for land in their area of choice.

#### **It is our Kipsigis prayers THAT:**

1. As Kipsigis Community, we want all our Kipsigis forcefully taken ancestral lands to revert back to the community free of charge and as community property and not public.
2. That the Senate should make laws so that we can do away with the Crown land ordinance which is still in Kipsigis land even after several years of Kenya's independence.
3. The Senate should establish the body which is leasing out our Kipsigis ancestral lands without the Kipsigis people's knowledge. A lease is a legal arrangement between the owner of land and a tenant of the land. In our case, what we know is that we are the real owners of these lands.
4. You ask these multinational farms to prove how they obtained these farms. Ensure that the white man who says that the lands are his is to answer. NOT the employees.
5. The Senate should enforce what the tenancy says: Tenancy will come to an end automatically when the fixed term runs out, or, in the case of a **tenancy that ends on the happening of an event**, when the event occurs. It is also possible for a tenant, either expressly or impliedly, to give up the tenancy to the landlord. **This process is known as a surrender of the lease.** They should now surrender those land leases since the happening of an event now is that the community is claiming back their stolen lands.

6. This standing committee should critically look at what the Kipsigis community have said on their pamphlet termed "Proposals and Plans on projects to be done so as to raise our living standards and that of our future generations" once the lands revert back to us. These proposals were arrived at and agreed by all the Clans Chairmen – the real owners of the forcefully taken lands. We will team up with the County and the National Government.
7. The senate should address the removal of natives' ordinance by coming up with suitable laws to revert back the community lands and protect its loyal citizens.
8. We request you to investigate and know the work of KTGA. Who introduced it and was meant for what purpose? Do they claim that those lands are theirs?
9. The Senate should protect us from anybody who says that they want to lease out or even buy our stolen Kipsigis ancestral lands. We want everything returned to us in full. Not part.
10. The Government should resettle the landless Kipsigis people by providing land or by paying them money so that they could look for and buy land in their area of choice.
11. The Senate sermons the Ministry of lands so that you could establish how this mistake of not returning the lands to the real owners arose. Please ask them to give you the title numbers for these farms and let them explain to you why the real owners of the soil are not involved in the leasing out?
12. The Senate should establish who the real owners of the soil are. The lands were forcefully taken away by the colonial government. They transferred the mistake to the Kenya Government who assumed the mistake of leasing it out to those who stole the lands. We do not want the same mistake of making our lands to be public properties. The Community will appoint the trustees to take care of these farms as community lands.
13. You please take note that the lands will not be divided but will be used as community properties. Applicable money payable to both the county and the national governments should be agreed upon in an amicable way.
14. You should now initiate the process of reverting back the lands to the real owners of the soil and over rule any complaints from the oppressors.
15. We need to meet with the white man who says that the lands are his and not the employees and/or the CS for Ministry of Lands, Public Works, Housing and Urban Development so that they can answer most of the questions which we all have.
16. This honorable house helps us to pursue the compensation claims from the British colonial government for all the damages caused.

As Kipsigis community, we all know that our ancestral lands were taken by force. We have always opted to follow for our rights using the provided legal processes. We are now asking you to re-solve this matter for us as its loyal citizens since we do not have money to go to court. That is why we have consistently brought the matter to the Senate since year 2014.

We need to be investors investing on our own soil. Not the oppressors who left a long time ago.

Thank You.

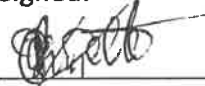
Yours Faithfully

Signed:



Joseph K. Kimetto  
**Chairman**

Signed:



Joel K. Kimetto  
**Secretary General**

Signed:



Joseph K. Towett  
**Treasurer**



## BRIEF ON HISTORICAL INJUSTICES AMONG THE KIPSIGIS

The Kipsigis suffered serious historical injustices in the time they encountered the British from 1889 to 1963. In many ways they continue to suffer from that encounter

The following is a general brief of the historical injustices:

### 1. **Forceful Expropriation of traditional homelands:**

From 1899, the colonial administration began seizing Kipsigis land for the construction of the Railway and from 1904 took even more land to Europeans. This was the start of a systematic expropriation of well over 800,000 acres of land between 1899 and 1953. The said land was declared 'Crown land' and coercively obtained depriving the Kipsigis of their ancient grazing lands and allowing European settlers to have much of that land taken from the Kipsigis without compensation. The process was excessively forceful with many Kipsigis homes being burnt down and livestock taken in order to create land for British settlement.

### 2. **Excessive force during the colonization process:**

In June 1905 some 1,900 individuals in the Sotik / Chemagel area were killed under the fire of two maxim guns ostensibly for refusing to return stolen cattle from the Maasai. This was conservatively 25 percent of the entire male adult population at that time and which qualifies as a genocide. This came to be known as the **Kipsigis Massacre of 1905**. Another 5,000 people were wounded in the process. Thousands of cattle were then appropriated from the Kipsigis and driven to Naivasha where they were auctioned off to the European farmers at throw-away prices.

### 3. **Creation of a brutal taxation regime:**

The creation of the odious **Hut and Poll** taxes applicable only to Africans led to much social upheaval. The taxes were designed to force the African to provide labour to the European settler but had grave social and economic consequences on the African. To reduce the tax burden, many Kipsigis men bundled their wives into one hut and destroying the extra huts. They had lived in utter humiliation with little privacy for them and their children. Many women chose to run away to the cities and became commercial sex workers if only to pay for their own taxes as they had no other way of raising the money. War widows from the WWI were taxed and many could not keep up with raising children and paying for the taxes at the same time. This led to destitution among women and delinquency among children.

### 4. **Sexual exploitation and rape of Kipsigis women:**

Many young girls were taken in as domestic servants and many of them suffered untold humiliation when they were impregnated by their bosses and dismissed to

go back to the Native Reserves where the girls gave birth to bi-racial children who were not accepted by either side of the two races. These children had a very difficult time relating with the others and were often ostracized and unwelcome by the society. Their mothers remained unmarried and could never have other children, and if they did, the differences were so stark.

#### **5. Spread of European sexually-transmitted infections**

Some of the women raped by the British employers contracted sexually transmitted diseases notably Syphilis and gonorrhoea hitherto unknown in Africa and which was fatal when left untreated. There are documented statistics of high prevalence of these diseases among the Kipsigis particularly in the early colonial period, and the British employers particularly the settler farmers and even those soliciting for sex were to blame for this. There was of course no known treatment in the early colonial period (until 1943 when penicillin was discovered but was still not made available to the Africans as it remained the preserve of the Europeans for a long time). And so, these men and women suffered the pangs of the disease until they died.

#### **6. Forced eviction from the Reserves:**

The British created 'Native Reserves' and concentrated the Kipsigis there in order to delimit the exclusive settler area known as the 'White Highlands.' The Africans living in the reserves suffered severe movement restrictions and needed a pass if they needed to leave. But even then, the British would occasionally re-draw the boundaries of the 'White Highlands' to create more farming land for themselves and brutally evicted the Kipsigis living there moving them deeper into the Reserves. The British were always looking for more land for European settlement. Kerenga and Chebown tea estates for instance, and their respective factories (all lying in about 10,000 acres of land), were once part of the 'Native Reserves' but were acquired by forceful and brutal displacement of thousands of Kipsigis people without any compensation and granted to Unilever Tea (presently operating as Ekaterra). And as before, there was no compensation.

#### **7. Forceful conscription into the Armed Forces**

Many Kipsigis were forcefully conscripted to the World Wars I and II to fight in a course they did not understand and for a very ungrateful empire. They were shipped to foreign lands where they died for a British monarch they had never seen. They were paid a trifle and when they returned, could scarcely keep up with the rising cost of living. Africa War widows were uncompensated and left to raise children as single parents and were also made to pay taxes. The taxation laws did not spare them and had to pay the taxes anyway.

#### **8. The exploitative tea industry:**

The direct loss of 25,000 acres to the failed Beadoc scheme which had the direct consent of the Colonial Secretary in London, saw the uncompensated evictions of families who had settled there for generations. The land, which required massive eviction operations led to displacement of the population to the created Reserves which led to lots of suffering of the Kipsigis people with no compensation. The initial land was then sold to the Muir Finlay and Brooke Bond consortiums (both of which still hold the lands through their heirs and assigns). Sale of land which had been acquired free in the first place, led to immediate interest in the area particularly when tea was discovered to be viable in the area. This led to additional systematic, but often chaotic alienation of land which expanded the holdings from the initial 25,000 acres held by two companies to an estimated 300,000 acres by 1953 held by 34 tea companies: These were: **Kericho area:** The African Highlands Produce Co. Ltd (presently Finlays/Swire Group), The Buret Tea Co. Ltd (part of Unilever/Ekaterra), Changoi Limited, Lelsa Tea Estates Ltd. (Agents: George Williamson & Co.), Kaisugu Limited, Kenya Tea Co. Ltd (Brooke Bond), Kapkorech Limited, Kisimot Farm (J.T. Wilson), Kymulot Tea Co. Ltd. (c/o Finlays/Swire), Tea Research Institute of East Africa, Mau Forest Tea Ltd., Maramara Estate (H. Borman), Rest Harrow Estate (R.C.C. MacDonald), R.A. Fielder Tea Estates, **Sotik area:** Manaret Estate (Buchanan's Kenya Estates Ltd), Kelunet Ltd., Kapkimolwa Tea Estate Ltd., Kapkoya Estate (Mr. J.K. Madson), Kimoro Estates Ltd. (W.G. Dawson), Kipkebe Ltd., Keritor Ltd., Bell & Company, Kiptenden Estates Ltd., Kitaru Ltd (W.J.H. George), Monieri Estates Ltd., Arreket Estate, Messrs. Sotik Tea Co. Ltd., Ngoina Tea Estates Ltd, Brook Bod E.A. Ltd., Sotik Highlands Tea Estates, Narangai Tea Estates (R.D. Mackintosh), Mannamead Farm (F.W. Hill), Magura Estates Ltd., Sotik Wattle Co.

The said firms planted tea which earned the British billions of pounds in tea earnings while the Africans who owned the land, were kept at bay using powerful racially motivated Trespass laws. The Kipsigis were forced to work the estates as part of the squatters where they suffered from poor pay, poor housing and sanitation and poor healthcare. They imported tens of thousands of migrant workers which impacted the Kipsigis socially and economically.

#### **9. Continued exploitation of their land by foreign nationals and foreign interests:**

The tea industry can be classed as an extractive industry and continues the exploitation of the Kipsigis on their land with little being returned to develop the local communities. Much of that money is earned and kept in the United Kingdom and the Kipsigis get the least in terms of rates to the County Governments and the like. Today, the tea multinationals amalgamated much of the tea estates above and continue to hold over 300,000 acres of land now held by five multi-nationals re:

**Swire Group** (flagship holder of James Finlay Group and related companies including predecessors African Highlands Produce Company, Kymulot Tea Company et al), **Unilever** (holder of the Brooke Bond brand of tea including predecessor companies such as Kenya Tea Company, Kerenga and Chebown among others and now trading as **Ekaterra**). **George Williamson** who still manage Changoi and Lelsa, **Sotik Tea Company** in Sotik and **Sotik Highlands Tea Company**. To obtain nearly all of their land, required serious displacements of people from land they had lived in for centuries. None of the people evicted was ever paid.

#### **10. The Kimulot Affair**

Evictions of people from their ancestral lands in Kericho continued until 1953. The Kimulot Tea Company (now part of the James Finlay/Swire Group) was created in 1951 and offers a rare glimpse of an interesting glimpse on gross human rights violations and injustices. To extend their holdings, the African Highlands Tea Company (now part of the Swire Group), applied for and was granted land that belonged to 88 families living in the Kamogonjet and Kaptuigeny areas adjacent to their holdings at Mara Mara Estate. They fought for their land in court, won two cases before losing a third which was clearly rigged against them. Two heroes of the fight – **Kipsoi araap Chemorore** and **Tapsimate araap Borowo** – two uneducated Kipsigis, emerged from obscurity to fight for their land. Despite winning two cases and also going through the motions, the British manipulated the legal system and eventually got their way. They were evicted at the height of the rainy season and many of these families had little children who got sick. The evictions affected over 300 individuals without any compensation deeply hurt them and led them to deep poverty and still live like 70 years later.

#### **11. Creation of the Kipsigis into squatters in their own land:**

Conversion of the Kipsigis into squatters in their own land and forcing them to work for the British settler farmers in slave-like conditions, was part of that deeply humiliating encounter with colonial rule. Many suffered and died in this system that was designed to ensure constant supply of labour and to keep them dependent on the master for survival. Many lost their livestock in forced offtake programs to limit animals to a certain level. It created a class of landless individuals who were forced out of the land when ownership changed hands and without any meaningful savings, were subjected to great poverty. To this day, many Kipsigis are living in humble circumstances for being squatters in colonial period. The squatters of Chepchas area under the African Highlands Produce Company are part of the unfortunate lot who were forced to purchase tiny plots of land from the company and live in abject poverty in the area.

**12. Relocation of the Kipsigis people to foreign lands –**

Tied with the creation of squatters, the Kipsigis who refused to sign up were forced to relocate to foreign lands more specifically to Tanganyika (now Tanzania) and to Uganda. After refusing to accede to the compulsory offtake of their livestock or to live as squatters in the European farms they left but many of them lost their lives in the process. Their livestock died of disease in the new lands reducing them to abject poverty. Many went on single journeys never to return to their former lands and to this day, there are many Kipsigis who still live in Tanzania.

**13. Suffering in the hands of brutal employers**

The British settler farmer was known to be ill-tempered, intolerant, impatient, brutish, inhumane and an inveterate racist. There is a lot of documentary evidence of former employees who broke a limb or lost a body part or became injured in various parts of the body while others even lost their lives from being beaten by the farmer. And they got away with it as the same settler farmer had magisterial powers so they could even lay the blame on the victim and send them to prison. They often abused their magisterial powers and could commit errant employees to jail for lengthy periods for the flimsiest of reasons.

**14. Limitation of their traditional homelands:**

By (re)drawing the boundaries of the Kericho District in diverse dates from 1903 through to 1963, most of the traditional homelands of the Kipsigis were cut out of their administrative land unit and granted to others. The river Kipchorian for instance, which downstream is known as the Nyando, was the natural border between the Kipsigis and the Nandi but today most of it is in Kisumu County including much of the Nyando valley which was the traditional grazing land of the two communities. On the south, the Abagusii were allowed to encroach into much of Kipsigis land in Sotik just before Independence

**15. Eviction of the Talai people from among the Kipsigis and relocation to distant lands:**

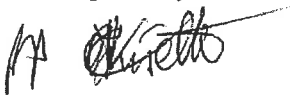
In 1934, the Talai, a clan among the Kipsigis, were evicted from among the Kipsigis and kept in stockades before being resettled in harsh uninhabitable foreign lands of Gwassi where many encountered untold suffering from among others disease especially malaria and sleeping sickness, attack from reptiles including crocodiles and poisonous snakes, livestock diseases, lack of fresh drinking water, poor sanitation and lack of health facilities etc. The women suffered miscarriages as did the livestock, unable to cope with the sudden change in climate and temperature. The British government and the colonial Kenya government were fully aware of what awaited the Kipsigis since the area had previously been evacuated due to endemicity of malaria and sleeping sickness. They had probably estimated that the

Kipsigis, who were not even immune to malaria as it was not present in the Highlands, should die off within the second or third generation. All the basic human needs were not provided and disease decimated them by the dozens. Besides, being a singular clan, they could not find suitable brides for marriage which led their youth into rebellion. They somehow survived the odds and came to terms with it. Upon their release in 1961 they live in stockades in Kericho town in great squalor and continue languishing in poverty and landlessness to this day.

#### **16. Esophageal cancer among the Kipsigis**

A recent retrospective study originating from Tenwek Hospital of Bomet County in the south Rift, concluded that oesophageal cancer was the most common malignancy among the Kipsigis. Of the 2643 patients presenting to this hospital with cancer from 1999 to 2007, 35% had oesophageal cancer. This was the most common cancer in both men and women among the Kipsigis and is significant contributor to mortality among the Kipsigis. Researchers suspect a causative link between the activities of the Tea estates and their use and release of harmful chemical substances to the environment through aerial spraying of chemicals to prevent weeds and also to fertilize the soil. They also used Aluminium sulphide  $Al_2S_3$  to control hailstones and which is shot into the air from aeroplanes. These chemical compounds find their way to the water streams and poison the water drank by humans as animals.

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Tapsimatee Araap Borowo a Kipsigis clan self-help group  
Presentation

3

## **The Kimulot Affair: Examining the forceful expropriation of Kipsigis land in Colonial Kenya**

Godfrey K. Sang

### *Prelude*

On February 26, 1952 British officials in the tea-growing Kericho highlands sent their forces to evict two hundred Kipsigis families living on a parcel of land that had been sold by the Government to the African Highlands Produce Company. The firm, owned by James Finlay of London, had bid for the land so as to expand its already considerable land under tea. The post-war boom in tea demand saw many European firms and individuals take up growing of tea in Western highlands of Kenya for export to Europe. The success of the crop in the highlands made the land extremely valuable for the Europeans. It however placed significant pressure on the Kipsigis who lived on the precious resource but were at the same time forbidden to grow tea. The land was at an area known as Kimulot, ten miles south of Kericho town and which had been identified as ideal for plantation tea growing, only that the Africans had been in occupation for centuries. This posed a significant dilemma for the British who also needed to extend their commercial hegemony in colonial Africa. The Kipsigis people living there put up a spirited resistance against the British who used the might of the Provincial administration to intimidate the Kipsigis who generally understood occupation of land to also mean ownership.

The matter ended up in the local courts. Despite having won three Court cases against the Crown, the evictions went ahead, with great loss of property, identity and heritage. In the end, 86 families (names attached) representing more than 1,000 individuals, were evicted with no compensation in what remains as a scar in the face of British colonialism with regard to Land. Today, the James Finlay Company (formerly the African Highlands Produce Company) and wholly owned by M/S Swire Group of London, continues to farm the land, measuring nearly 9,000 acres. But then the cold hard evictions and the scars it left behind, are still fresh in the memories of the Kipsigis, some of whom are old enough to remember the developments, nearly 7 decades ago. Two men, Kipsoi araap Chemorore and Tapsimate araap Borowo became the symbols of African defiance of British intimidation standing their ground long after everyone else had succumbed to pressure to leave or had been evicted by the might of force. This document revisits the events of the period which collectively became known as 'the Kimulot affair'. In many ways, the Kimulot affair was the culmination of a series of blunders the Colonial administration with regard to land and which continues to haunt Kenya to this day.

### *Introduction*

British colonialism in Kenya depended on the exploitation of resources chief of which was land. Soon after the declaration of a protectorate over British East Africa, the structures that would support the venture were put in place including a railway to link the Coast to what was then known as Uganda. To pay for the costly venture, European settlement of

British East African was encouraged. At the turn of the 20<sup>th</sup> Century, land alienation commenced in earnest and European farmers were offered land at concessionary rates so as to exploit the land and keep the railway busy. Land issues turned out to be quite emotive and often brought bloody conflicts between the Africans and the new colonials. From 1895 there was a steady stream of African resistance wars against Europeans. Within ten years, the British administration was firmly established and most of the resistance wars had been quelled. The British then embarked on a system of racial separation creating 'Native Reserves' where the Africans were restricted to. These were usually poorer lands and that not viable for meaningful agriculture with perhaps the exception of pastoralist agriculture. They then marked out areas of European settlement which would be informally and collectively known as the 'White Highlands'.

The areas of European settlement was usually the most productive land with the Africans sent to live in reserves where a system of that were not as desirable or as productive as that availed to the Europeans. There were moments when the British alienated land that was already under native occupation and operations to remove them sometimes ended up with loss of lives and property. Kericho lies on verdant highlands west of the Mau ecosystem in Western Kenya. Abundant rainfall, well drained fertile soils proved quite attractive to Europeans. Right from the onset of colonial rule, Europeans identified Kericho as prime settlement area. The Kipsigis were bundled into three native reserves – Belgut, Bureti and Sotik. This constituted half of Kericho land thereby availing the remainder for British settlement.

#### *Alienation of Kipsigis land*

By 1905, the first European settlers began to settle the South Lumbwa district which was later to be known as Kericho district. By 1920 Kericho district was determined to be and gazetted as 1,617 square miles or some 1,034,880 acres (418,801 hac.)<sup>1</sup> The Government then moved forward had designated some 821 square miles or 525,440 acres as 'Native Land'. The remaining 787 square miles or 503,680 acres of land was alienated and made available to the European settlers.<sup>2</sup>

By 1932, the total acreage of the Kipsigis reserve was placed at 523,200 acres a reduction (unexplained) of 2,240 acres. A further excision of 5,839 acres to create the farms LR 4078 and 3944 reduced the land to 517,361 acres.<sup>3</sup> The total land area of the South Lumbwa District or what was renamed Kericho, included what is today Kericho and Bomet counties. A good portion of the Western Mau was a part of this area. It covered the area from Amala river which formed the natural border with the Maasai and up to the Tinderet forest reserve and Londiani in the North.

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<sup>1</sup> DC/KER/3/17 KNA

<sup>2</sup> DC/KER/37 KNA

<sup>3</sup> Memorandum presented by C. Tomkinson District Commissioner Kericho before the Carter Land Commission sitting at Kericho on September 23, 1932



	Non-Native land	Native Land	Totals (Acres)	%age
Native Occupation:	-	525,440	525,440	<b>50.77%</b>
Forest reserves:	35,200	-	35,200	<b>3.40%</b>
Agricultural Reserves:	-	-	-	
Veterinary reserves & outspans:	-	-	-	
Other Government Reserves:	-	-	-	
Townships & town reserves:	3,200	-	3,200	<b>0.31%</b>
Alienated Land:	177,920	5,760	183,680	<b>17.75%</b>
Land surveyed for Alienation:	13,440	-	13,440	<b>1.30%</b>
Crown Land unsurveyed:	273,920	-	273,920	
Total Land area:	503,680	531,200	1,034,880	
Water area:	-	-	-	
Total area including water	503,680	531,200	1,034,880	
	<b>48.67%</b>	<b>51.33%</b>		<b>100%</b>

Figure 5.1: Alienation and distribution of Kipsigis Land 1920 (Source: DC/KER/3/17)

#### *European settlement of Kericho – the coming of BEADOC*

The second phase of European settlement in Kericho came in form of plantation creation which began in earnest in 1918. The large-scale ventures were to become the most significant form of land tenure to this day. In December 1918, Lt. Col. Hughes Ridge an officer in the just concluded War, came up with a plan to massively produce flax in Kenya and submitted it to the Colonial Office requesting for a grant of land for that purpose. The proposal was received well because Britain imported over 90% of its flax requirements. Ridge managed to convince the Colonial Office that land was set aside to give the ex-officers to produce flax made financial sense. This was the birth of what became known as the British East Africa Disabled Officers Cooperative (BEADOC).

The scheme represented the second wave of European settlement of the district the first wave having started in 1905. This was the first large-scale plantation settlement of Kericho. Land was quickly earmarked in Kericho and a grant of 25,000 acres was set aside for them even without the awareness of the local District Commissioner C.M. Dobbs. Dobbs earmarked land that was already occupied by the Kipsigis and secured some 4,000 acres of land from them by simply asking them to leave. Another 21,000 acres was cut from bush which supported the Kipsigis as an important source of including honey,

fruits, tubers and game meat as well as woodfuel, building materials and perhaps more importantly, natural medicaments. The name Kericho means 'a place of medicines.'

The BEADOC floated their interest in London and attracted some 37 former officers who agreed to raise some £600 in capital for the venture enticed by anticipated profits in the high flax prices<sup>4</sup>. The venture to grow flax, however, failed completely leaving most of the holders in bankruptcy. Their respite however came by the early twenties, the land in Kericho was found to be ideal to grow tea.<sup>5</sup> A portion of the BEADOC venture was bought out by the Brooke Bond, the leading tea exporter of that time and so began an industry that Kericho would be famous for.

Note that the BEADOC was selling the land that had been excised from the natives with no compensation to them. This was the creation of

#### *The tea industry in Kericho*

In the 1920's, Kericho proved to be robust tea growing country and soon international and local firms were taking up land to grow the crop which proved to be quite profitable particularly in the Depression years. The first was Brooke Bond Co. of London which bought portions of the BEADOC venture followed closely by the African Highlands Produce Company owned by James Finlay & Co of London. The latter was shaping up as a significant player in the sector and was soon to overtake the Brooke Bond as significant tea grower, processor and exporter. Known today as Finlay Tea it expanded by taking advantage of the original BEADOC holding and established many tea factories for processing tea from their farms. Other than managing their own estates, they also managed the plantations of smaller holdings.

The largest operative in Kericho remained the Brooke Bond Tea trading as the Kenya Tea Company. They had the most processing factories and the most acreage under tea. Other than operating in Kericho, the Brooke Bond also controlled production in other areas in Kenya especially in Limuru. Other important estates in Kericho included the Buret Tea Company, the Changoi Ltd. and Lelsa Tea Estates Ltd whose managing agent was George Williamson & Co. There was also Kaisugu Tea owned by Col. Brayne, and the Kapkorech Ltd., the Kisimot Farm owned by J.T. Wilson as well as the Kimulot Tea Company (established in 1951) owned by James Finlay. There was also the Maramara Estate owned by H. Borman and the Rest Harrow Estate owned by R.C.C. MacDonald. The other significant tea planter in Kericho was R.A. Fielder.<sup>6</sup>

By the early 1940's Kericho was by far the leading producer of tea in Kenya accounting for more than 98% of all Kenya production. In 1945 the tea production in Kericho stood at to 12,206,250 lbs (5,536,662 kgs.) while in 1946 it climbed slightly to 12,593,640 lbs

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<sup>4</sup> Duder C. J. D., (1992), *BEADOC—the British East Africa Disabled Officers' Colony and the white frontier in Kenya*, - *Agricultural History Review*, 40, 142-45

<sup>5</sup> Political Record, Kericho, May 1919 (KNA)

<sup>6</sup> DC/KER/1/3 Kenya National Archives

(5,712,379 kgs.) and in 1947 fell slightly to 12,224,452 lbs. (5,544,918 kgs)<sup>7</sup>. The industry rode through the War with pretty much stable production and profits.

Describing his 1948 visit to Kericho, American writer Negley Farson said, "Here at Kericho we saw some of the hard-faced men who are flocking out from London to buy land for more tea plantations. And more of the fine forests will be destroyed. They told me that one of the tight-lipped gentlemen was getting a salary of £30,000 a year. He can have it."<sup>8</sup> The rush for the green gold in Kericho was in earnest.

### *Excision of Kimulot*

The post-war years saw a great surge in the demand for tea. To fill the demand, the firms began an aggressive expansion acquiring new lands for growth of tea and expanding to other areas. Kericho was their natural destination. In 1949, after lengthy discussions, the Kericho Local Native Council agreed to grant the African Highlands Produce Company its request to extend its tea growing into the Kimulot area. Kimulot lies some 10 miles south of Kericho town and was found to be an excellent area to grow tea. The soils were just right as was slope and climate. The only problem was that the area was settled by over 200 Kipsigis families but was right at the edge of the land already owned by the African Highlands Tea estate. Legally, the administration classed the land as 'unalienated Crown Land'. This was however a convenient classification because, if indeed it was Crown land, it should have long been vacated from as early as 1909. It was on the strength of the advantages of Kimulot that the AHPC decided to go for the land.

At the Full Council meeting of the Kericho LNC held between 4<sup>th</sup> to 6<sup>th</sup> October 1949, it was resolved that the Kipsigis 'shall relinquish all rights to an area of approximately 6,500 acres occupied by the Kenya Tea Company i.e. LR Nos. 5467 and 4097, which land is at present included in the Native Land Unit.'<sup>9</sup> In short, the Brooke Bond tea company the proprietors of the Kenya Tea Company, had illegally alienated Kipsigis land upon which they had established their two premier tea estates Chebown and Kerenga. The two parcels of land was excised from the Kipsigis reserve in 1920 as part of the Beadoc scheme and they had already planted tea. This minute was meant to regularize the situation.

The same meeting resolved that 6,500 acres of the Kimulot block be added to the Native Land Unit while at the same time 4,500 acres of the same land 'be alienated for European Tea production.'<sup>10</sup> It was also resolved that LR No. 3821/R of approximately 4,000 acres of 'unalienated Crown Land, to the North-East of the Kimulot plot shall be alienated for European Tea Production.'<sup>11</sup> This would bring the loss of land at 27,000 acres and a gain of 6,500 bringing that to a net loss 20500 acres of Kipsigis land. (see Fig. 1). This is not to mention the 130,000 acres of land in the Sotik area of which the 10,000-acre Marshall-Webb land being availed to the Kipsigis. The latter farm was an inducement to agree to

<sup>7</sup> Annual Reports Kericho 1947. DC/KER/2/14

<sup>8</sup> Farson, Negley, *Last Chance in Africa*, Victor Gollancz Ltd., London 1949, p. 265

<sup>9</sup> Paragraph 3 of Minute 68/49 (Kimulot and Sotik land proposals) File No. AA/45/2/6, KNA

<sup>10</sup> Paragraph 4 & 5 of Minute 68/49 (Kimulot and Sotik land proposals) File No. AA/45/2/6, KNA

<sup>11</sup> Paragraph 4 & 5 of Minute 68/49 (Kimulot and Sotik land proposals) File No. AA/45/2/6, KNA

## The Kimulot Affair:

move out to the area where controlled grazing would be constructed. They were not to settle but just graze.

		<b>Land area</b>	<b>Kipsigis Losses</b>	<b>Kipsigis 'Gains'</b>
1	L.R. No. 5467	Chebown	6,500	
2	L.R. No. 4098	Kerenga		
3		Kimulot (North)	4,500	
4		Kimulot (South)		6,500
5	L.R. No. 3821/R	Kimulot (N/E)	4,000	
6		Timbilil (West Mau)	12,000	
		<b>Total Land (acres)</b>	<b>27,000</b>	<b>6,500</b>

*Fig. 1: Land loss by the Kipsigis in October 1949. (Source: Minute 68/49 of the Kericho LNC of the full council sitting on Oct. 4-6, 1949.)*

It must be understood that the Marshall-Webb farms in Sotik was only availed to the Kipsigis under a special grazing arrangement and it not designated as an area of permanent residence. The area was much poorer soil and climate meaning they could not do much with it.

Needless to say, the reactions of the Council members was horror and emotive debates surrounded the proposals particularly around the Chebown/Kerenga land. The council members resolved to reject the proposals as they were completely against the Kipsigis best interests.

The District Commissioner Anthony C.C. Swann held discussions with the Nyanza Provincial Commissioner K.L. Hunter about the imminent decision by the councilmen. Hunter agreed to attend the next meeting to persuade the councilmen why they should allow the proposals to continue. At the next council meeting held on December 16, 1949 Hunter explained that rejecting the now controversial Min. 68/49 would be tantamount to leaving the status quo untouched. He emphasized that the Kipsigis still held the reversionary rights to the lease given to the Kenya Tea Company (999 years) and after that period, they would get their land back.

This was of course not acceptable because of the time it would take. In return for that, Hunter offered to increase the Kimulot South area from 6,500 to 7,250 acres in exchange for the reversionary rights.

In short, the Kipsigis were permanently forgoing 6,500 acres of their land meant to revert to them in 999-years in exchange for just an additional 750 acres. Hunter sold a hard bargain and the council, which was made of men who were selected by the same administration on the basis of their loyalty to the colonial government, had no option but to give in. Hunter would soon leave his position in the provincial administration and accept

another as Deputy Chief Secretary, a position that would find him actively engaged in the same Kimulot affair before the Legislative Council in Nairobi.

*The LNC approves the Kimulot excision*

The LNC meeting on December 16, 1949 agreed to make a visit to the proposed area of excision at Kimulot. The following morning all the councillors including the DC A.C.C. Swann went to Kimulot. Those in the entourage included Chief Daudi araap Kirui, Chief Cheborge araap Tengecha, Chief Samuel araap Ngulalu, Sawe araap Koskey, James araap Marta, Kipngeny arap Simbolei, Kipterer araap Serser, Jonah araap Chumo, Elijah araap Misoi, Tangut araap Sinei, Daniel araap Sitonik, Kipruto araap Cheruiyot, Maritim araap Mibei, Chepkelat araap Chamdany, Chepkwony araap Barimen and Chumo araap Muriet.<sup>12</sup> Some of these individuals were elected councillors who vehemently opposed the excision the 'official' members of the council were always in the majority and had their way.

The question of what to do with the Kipsigis living there was discussed extensively and it was stated that they should have to be moved to alternative land. The Kimulot area proposed for excision included the Kamogonjet and Kaptuigong both of them ancient villages of the Kipsigis that had been in occupation since before the coming of colonial rule.

The exchange however meant that the Kipsigis living in this area would be evicted to create land which, the African Highlands Produce Company had pressured the authorities to create as part of their expansion to the area.

On December 19, 1949, the Full Council of the meeting resolved to ratify the proposals. The countdown now started. On February 9, 1950, the DC Anthony CC Swann stated that indeed the Kipsigis in the area were objected to the Kamogonjet and Kaptuigong excision and for the first time the matter took a political angle with the coming of Benaiah Apolo Ohanga the MLC representing Nyanza. Swann turned to the 1933 Carter Commission Report<sup>13</sup> which had made various recommendations in regard to Kipsigis land. Swann wanted to find clauses that could support his intended move to excise the land. He had received instructions from the Chief Native Commissioner for a comprehensive briefing over the matter.

*Opposition to the deal*

Through much of 1950, the Kimulot matter gained currency with the locals in the area petitioning the area member of the Legislative Council Ohanga who immediately came to the area and held barazas (meetings). These barazas were not authorized by the District Commissioner but went on underscoring the defiant nature of the people and the determination of the Administration to proceed with the matter.<sup>14</sup> Ohanga told the

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<sup>12</sup> Extract of LNC Minute 95/49; File No. AA/45/2/6, Kenya National Archives

<sup>13</sup> Chaired by Sir (later Lord) William Morris Carter, the Commission to look into land matters in the Colony made sweeping recommendations on land tenure in Kenya. His report was completed in 1933 and published in 1934

<sup>14</sup> Kericho Annual Reports 1950, Kenya National Archives p. 3

Kimulot people to stay put and resist in the best way they could, the excision of their land. Matters however took a lull in the year 1950 and the residents went on as usual. This was however a deceptive lull since as it were, the legal processes to excise the land was taking place in earnest.

*Kimulot Tea Company awarded the land*

On April 6, 1950, the Special Commissioner and Acting Commissioner of Lands E.R. Cousins issued General notice No. 847 in which he invited tenders for the purchase of Kimulot land. It stated in part that the land would be for 'tea growing purposes...of the areas situated in the Highlands detailed in the Schedule hereto.'<sup>15</sup> The Schedule stated that there were two pieces known as Block – Jamji (LR 3821/2) in the approximate 4,000 acres which was surveyed and Block – Kimulot approximate 4,500 acres. The latter block was unsurveyed and the bidder would have to place an offer for how much they intended to pay for the land.

Cousins indicated that the grant would be for 999 years from the 1<sup>st</sup> of the month following the acceptance of the tender, and will be subject to the ordinary conditions of the Crown Lands Ordinance (Cap 140). The annual rent was calculated at 20 cents per acre per annum until the 31<sup>st</sup> of December 1960 when it would be revised as per the stated law. He indicated that the tender would have to be accompanied by comprehensive development proposals including European staff housing, native labour lines, factory, the minimum acreage which is intended to put under tea, the number of Europeans likely to be employed, the minimum capital which will be available for development in the event of the tender being accepted. It was almost obvious that the tender was put in such a way that only the African Highlands would win the tender. They were the immediately proximate land holders and had lots of time to survey the land and prepare for takeover. They also draw extensive plans including the placement of European residences, the African labour lines and also the factory and access roads to the farms. The African Highlands General Manager Fitzgerald Villiers-Stuart went on to make the bid which was received by Cousins.

Villiers formed a subsidiary of the AHPC known as the Kimulot Tea Company and which applied for the land. The application satisfied Cousins who now needed the approval of the Native Lands Trust board and the Legislative Council before he awarded the land to the newly formed company.

On January 29, 1951, the Native Lands Trust Board met and endorsed the recommendations of the LNC's Minute 68/49 and Minute 95/49. The NL/TB, a creation of the Carter Commission, consisted of only two Africans who were easily outvoted. First formed in 1938 following the enactment of the Native Lands Trust Ordinance (Cap 100 of 1938), the body was responsible for matters of land within the Reserves. The European version of the same body, known as the Highlands Board, had no Africans sitting there.

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<sup>15</sup> The Official Gazette of the Colony and Protectorate of Kenya, Vol. LII-No. 19, April 25, 1950, p. 326

*The Kimulot affair is debated in the Legislative Council*

On May 9, 1951, the Legislative Council debated the Kimulot Affair. Acting Deputy Chief Secretary Kenneth L. Hunter tabled the proposals of the LNC minutes proposing the alienation of the Kimulot land under the provisions of the Native Lands Trust Ordinance. Hunter moved the motion which was seconded by Philip E. Pike the acting Solicitor General. The emotive debates by BA Ohanga decried the alienation of Kipsigis land starting from the coming of colonial rule. He stated how 600 Kipsigis huts had been razed in 1927 in the excision of their land for the tea industry.<sup>16</sup> Ohanga stated the Kipsigis case eloquently. He said that the Kipsigis indeed are saying 'Kimulot is our land, we were forced to get out of it. Kerenga and Chebown is our land, why should we be made to exchange our land with our land?'

*Notice to vacate the land*

In March 1951, the PC Nyanza Cyril H. Williams issued notices to the Kimulot residents to leave the area but these were ignored. It turned out that the main leader of the group Tapsimatei araap Borowo was the local KAU chairman and working with the KAU Office in Kisumu, worked behind the scenes to block the transfer of Kimulot.

On June 8, 1951 Nyanza PC Williams went to the Kimulot area in person for the first time and held a baraza in which he asked the people to move out. When he arrived, the mood was tense and even trying to greet the 500 people in the local Kipsigis language, he received no response. He went on to repeat the intention of the government to clear the land for the Kimulot Tea Company. Those present included the DC Peter G. Tait, the DO Hubert Wilkes and the chiefs and headmen.

The following day June 9, the DC Tait interviewed those who attended wanting to know why there was such (uncharacteristic) hostility. Tait learnt that the proper names for the area were Chebang'ang and Kaptebeng'wet. From his interviews Tait concluded that the Kipsigis had possibly taken an oath to defy government on the matter. Chief Cheborge araap Tengecha who was present at the meeting, told Tait that indeed only forceful removal was the only way to deal with the matter. Agreeing with Tengecha was the Interpreter Chelule araap Bowen. He also informed Tait that the two main ringleaders were Tapsimatei araap Borowo and Kipsoi araap Chemorore who were now targeted for victimization. Tait learnt that Chemorore owned a water mill along the Kimasse river in Kimulot and which brought him considerable income.

On July 20, 1951 the Commissioner of Lands Athur W. Horner wrote to the PC Nyanza Williams warning him that the AHPC was shortly to receive the letter of Allotment for the land. On August 1, 1951 the Kimulot Tea Company is awarded a 999-year lease on the Kimulot Land registered as LR No. 8804.

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<sup>16</sup> Legislative Council Debates Official Report, Vol. XLII (Third Session – Third Sitting) May 9, 1951, p. 52-74

*Kipsigis resist the loss of their land*

On September 2, 1951 the members of KAU met at the Kaloleni Social Hall in Kisumu to discuss the Kimulot Affair. A strong representation from the Kipsigis affected by the case led by araap Borowo was present. They resolved to stay put. More importantly, they put up a legal defence fund in the event the cases go to court. On return, the Kipsigis immediately confront H. Borman (owner of Mara Mara Tea estate) who was clearing land for tea expansion on land that was within the reserve. Borman was clearing the land for the firm Williamson (now George Williamson). The attitude towards Maj. J.P. Graham was hostile. The DC PG Tait wrote to the Chief Native Commissioner E.R. St. A. Davies who orders an immediate deployment of police patrols in the Kimulot area.

On October 15, 1951 the DO Wilkes visits Kipsoi araap Chemorore at his water-mill known in the Kipsigis language as *rege rege*) which was at the Kimasse river. Wilkes was accompanied by three other Europeans the others being Villiers-Stuart the GM of AHPC who proceed to confront Chemorore why he was defying government. Chemorore refused to be intimidated repeating that he had lived on the land and farmed it for many years. The GM Villiers-Stuart told him to vacate the land so that he could build a bridge right where his mill stood. Villiers-Stuart had planned to construct his house right on the spot which Chemorore lived.

*The cases go to court*

In October 1951, the Administration decided to prosecute Kipsoi araap Chemorore and Tapsimate araap Borowo on behalf of the other residents. They had hoped that indeed the Courts would compel the Kipsigis to move out and the Administration would be lawfully able to evict them. The case known as Criminal Case no 346 of 1951 (Rex vs. Tapsimate araap Borowo) and Criminal Case no. 461 (Rex vs. Kipsoi araap Chemorore) were defeated in two successive hearings. Chemorore showed the LNC license that had been issued to him by then DC Gregory-Smith in 1947. He argued that if indeed this was Crown land, then he should not have been given the licence to operate the mill. Tapsimate on the other hand showed the registration document (Kipande) which showed that he had been born on the land. He also brought several other documents which clearly stated the place of birth and the compelling arguments saw them win the case. The two appeared before the Kericho resident Magistrate Hubert G. Sherrin who found them not guilty on account of the technicality.

*The second PC's baraza*

The matter of eviction of the Kimulot residents began in earnest in the middle of October when the PC Williams held yet another baraza in the area. Even after losing two cases in court, the PC decided to use the Native Authority Ordinance one of those colonial pieces of legislation which allowed him to get the residents out. On the morning of 16<sup>th</sup> October 1951, Williams was at Kimulot trading centre accompanied by the DO Wilkes and DC Tait as well as a number of chiefs and headmen. Williams tried to greet the crowd numbering over 500 in the Kipsigis language, but was met with silence – not a single person responded



to the greeting greatly embarrassing Williams. Through the Interpreter Bowen, Williams appealed to them to move out voluntarily and threatened to have them evicted within 7 days.

In an act of blatant intimidation, the DO Wilkes proceeded to call out the 25 known residents of Kimulot to come forward. They did so and he photographed them as a group. After the PC left, Wilkes tried to serve the 25 people with the PC's order drafted under Section 13 (1) of the Native Authority Ordinance which had been typed out but they refused to accept them.

The following day October 17, 1951, Villiers-Stuart visited the DC Tait in Kericho and offered to buy out Chemorore's mill and any trees planted.

#### *The Administration loses the criminal appeal*

Because of the victory in the courts – a very rare victory for the Africans who almost always lost their cases, there was jubilation all over Kipsigis land. The exasperated officials of the Administration decided to appeal. This came to be known as Criminal Appeal No. 242 of 1951. On October 23, the hearing begun in Kisumu. The Magistrate Arthur Reade upheld the decision of the lower court leading to further jubilation by the Kipsigis. Tapsimate did the uncharacteristic act of informing the Chief Secretary in Nairobi about the victory vide a telegram. Freedom fighter Achieng Oneko who was the Kisumu KAU Branch leader, also sent another telegram to the CNC.

On November 6, 1951 he Chief Native Commissioner K.M. Cowley writes to PC Nyanza informing him that he intends to take the matter to court a third time. The news of the victory in courts spread through Kipsigis Country.

#### *The Chepalungu Affair*

Part of the recommendations of the now infamous Min. 68/49 was that there would be a fly fence as a mounted boundary in Chepalungu between the native reserve and the settled area. On August 16, 1951 workers on the Sisi leg of the fence go on strike. The DC PG Tait visits Chepalungu on September 3 and warns the residents at a baraza in Kapkech that he would not tolerate any acts of lawlessness in the area. On November 14, 1951, the workers on that section refuse to work and the Kipsigis threaten to cut loose the fence. PG Tait informs the PC Nyanza that the situation looks dire.

#### *The Third Case*

On November 19, 1951 the third case Rex vs. Tapsimate araap Borowo commences in Kericho under Sherrin as Magistrate. This time round, the government sent for the help of the renowned DPP A.G.C Somerhough. Somerhough was a veteran of the just concluded war. He joined the RAF in 1927 and was called to the bar in 1936. The trial dates run through to 21<sup>st</sup>. He proved to be a tough prosecutor and his presence made the difference for the state. Despite the compelling evidence Sherrin finds Borowo guilty and fines him Sh. 75. However, Borowo requests appeal and Sherrin raises the fine to Sh. 101 as the amount had to be above Sh. 100 to warrant an appeal. Sherrin also bids Borowo to sign a

bond to keep the peace for at least one year. Borowo who has 14 days to appeal, refuses to sign the bond and thereby giving Sherrin the much needed excuse to jail him in default. The cases of the other 50 continue and most of them are outrightly convicted and sentenced. On November 28, 1951, the KAU Secretary General Kamaluki in Kisumu sends an urgent telegram to the CNC bitterly complaining about the miscarriage of justice in the case. He gets no response.

*The Evictions Commence*

Taking advantage of the win and before the appeal took place, the evictions commenced. The timing could not have been worse. On December 9 DO Wilkes draws up plans for demolition and circulates. On December 14, PC Williams write to CNC Davies seeking assurance that it is the Government's intention to carry out the evictions.

It was at the height of the rainy season and indeed 1952 was stated as the wettest year on record. On January 22, 1952 the Chief Native Commissioner ER St. A Davies wrote to the DC Tait to wait until the second or third week of January before commencing operations to evict the residents.

It so happened that Princess Elizabeth was visiting and it would not look good to commence evictions during a Royal visit. Davies wrote to John Whyatt the member of the Legco for Law and Order proposing to delay the evictions.

On February 4, 1952 Whyatt warns that the Kipsigis serving in the KAR and the Police could suffer morale issues if their kith and kin are being evicted. He proposed that the Kipsigis in the Tribal police and the regular police, be removed from the force that would assist in the evictions.

On February 6, 1952 King George VI died at Sandringham House in London and his death gives the Kipsigis temporary reprieve. The Colonial administration went into mourning, the issue of the evictions was pushed ahead.

On February 8, Nyanza PC Cyril H. Williams holds another baraza at Kimulot. The people stay put in defiance. He recommends a 'Kimulot Demolitions Operational Orders' from his Nairobi superiors requesting for the orders to be in place by February 28.

On February 14, MLO Whatt writes to CNC Davies doubting whether the evictions would be completed in the stated period. He states that the Chief of Police would be in Kericho on February 19 to oversee operations.

On February 21, PC Williams mulled over an ex-gratia payment of say £10 per hut. He was quickly disabused of the idea by CNC Davies stating that it would not be a good idea and would set a bad precedent. February 23 Whyatt states that there would be no compensation and no ex-gratia payments of any kind. He however proposes payments to the old. This however is only a recommendation which the State would not even act upon. On February 26 the operations to flush out the Kimulot residents begins. Despite the ongoing rains, the 35 convicts drawn from the Luo and Kisii in the Kericho prison were used to destroy the huts.

On March 14, PC Williams confirms to the CNC Davies that operations were successful. The same day Kericho DO W.B.G. Raynor authors the Raynor Report which details how

the operations were carried out. He states that of the demolitions that took place, 6 women were particularly difficult. The wife of Chemorore refused to leave her demolished house camping in the ruins of her house for two days with her children. Chemorore was in prison awaiting the appeal of his case. Perhaps on day 3 some of her children who had been rained on began to fall sick and so she agreed to leave.

### *The Situation Unravels*

Meanwhile KAU wrote a telegram to Fenner Brockway the British MP who was deeply concerned at African affairs, bitterly complaining about the actions of the Administration in the Kimulot evictions. Brockway asks in the Commons why the Kipsigis were being evicted from their land. On March 24, the Governor Sir Philip E. Mitchell sends a telegram to Secretary of State for the Colonies Oliver Lyttelton explaining their version calling the Kimulot people 'illegal residents on Crown land.' The answers in reply to the question are a distortion of the actual events on the ground.

On March 27, Pritchard on behalf of the MLO Wyhatt writes denying knowledge of any advice on the demolitions. He urges that the remaining huts be left undemolished so as to find an alternative to removal.

On April 1 the court dismisses the case despite the renowned Deputy Public Prosecutor Anthony Somerhough prosecuting.<sup>17</sup> Chemorore is freed from custody and is a free man. This was a profound setback which was not anticipated by the administration and was not in their plan. They decided to appeal against the dismissal. On June 30, 1952 Chemorore wins the appeal. On July 1, the East African Standard runs the Administration's loss of the case in its pages. This causes additional embarrassment and the situation threatens to spin out of control. Legally the evictions were illegal and as such Chemorore returned to his land and reconstructed his hut from the ruins.

On July 23, the Solicitor General Griffith-Jones offered his legal opinion stating that no further criminal action would be necessary against the Kipsigis and opines that it would be better for the AHPC to sue the Crown instead because, as per the terms of the Lease, they should have 'quiet enjoyment' of the land leased to them by the Crown but were not.

On August 25, legal firm Kaplan & Stratton acting for Kimulot Tea Company write to sue Chemorore who had returned to his old abode and was farming as usual. Chemorore now had the entire sum total of land to himself. Everyone else had been evicted. On September 11, Kaplan & Stratton wrote to the DC Kericho and asked for his help to serve the suit papers to Chemorore. The KTC offered to pay Chemorore for the mill and wanted the case heard in Nairobi.

The following month October 1952 the Emergency was declared over Kenya and indeed the Emergency operations affected the response and action on the Kimulot affair.

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<sup>17</sup> Somerhough a former RAF officer was appointed DPP in 1950. He joined the RAF in 1927 and was called to the Bar in 1936. In 1953 he distinguished himself (poorly) at the shambolic Kenyatta Trial in Kapenguria and in April that year he was appointed the Acting Solicitor General. Shortly afterwards he moved to Northern Rhodesia (now Zambia) where he accepted a judgeship serving there until his death in 1960.

On January 6, 1953 the PC Rift Valley wrote to the PC Nyanza informing him that the Kipsigis in his province were now sympathizing with the Mau Mau and blamed the Kimulot affair over the new development. This was probably one unintended consequence of the actions of the administration over the Kimulot affair.

On March 25, 1953 Griffith-Jones wrote to the DC Kericho offering to sue Chemorore if he refuses to accept alternative land. He suggests that Chemorore be sued under Section 48 of the Native Lands Trust Ordinance which came into effect on March 1, 1939. In that law, his rights were extinguished by Section 70 which allowed the Governor to remove any native from any land without requiring him (the Governor) to give any reasons for doing so.

On March 31, PD. McEntee the MLC for Legal Affairs echoed Griffith-Jones' legal opinion and agrees that was the best way to proceed.

On April 14, the acting PC Nyanza RDF Ryland places the value of Chemorore's mill at £50 (which at that time was about Sh. 1,000). He suggested that Chemorore be provoked to a suit so that he could be compelled to vacate the land. The general agreement was that this was the best way to proceed. Chemorore was then served with documents which was largely a trap so that he could incriminate himself. The idea was to get him to admit that he indeed lived on the land before March 1, 1939 whereupon he would be sued under the Native Lands Trust Ordinance.

On May 4, the DC Kericho PG Tait actually visited Chemorore and after interviewing him, gave him the order to move out of the land on May 10 to live as a squatter on Maj. Graham's land away from Kimulot. Tait also threatens Chemorore with a Civil suit if he fails to do so.

On May 5, Griffith-Jones states that the European MLC for the area Mrs Agnes Shaw had spoken to him saying that Chemorore was showing signs he was willing to move out of the area. It turned out that she was wrong as Chemorore had made no such commitment or had such intentions. In fact the same day Ryland writes back doubting Chemorore's commitment to move out. Indeed the date May 10 came and went. Chemorore stayed put.

On May 13, the Kipsigis learnt that Colonial Secretary Lyttelton was visiting and wrote a Telegram to Government House requesting that he visits Kericho to meet with them to discuss the Kimulot affair. On May 16, the Acting Chief Native Commissioner E.H. Windley intercepted the telegram and stating that Lyttelton would not be responding to the matter which had been dealt with by the Administration. On May 19, LFG Pritchard, the Governor's private secretary to write to the PC Nyanza to inform the Kipsigis that the Secretary of State was aware of the situation.

On July 25, the DC PG Tait visited Chemorore at Kimulot and interviewed him along the lines suggested by Griffith-Jones. The following month August 14 the PC Williams together with the DC Tait visited Chemorore and asked him why he wont move. The questions were intended to get his version of the story so that he would be trapped under the Native Authority Ordinance provisions. Chemorore unsuspecting, stated that he was born there. This meant that indeed he had been resident before March 1939. Chemorore had swallowed the bait.

On September 24, as a final act of altruism, DC Tait offered 20 acres land to Chemorore at Kimulot Settled Area, outside the designated area. He offered him preferential treatment in the new site so he could choose where his mill could best be located and that the government would take care of his transportation. Still unaware of the schemes by the Administration, Chemorore refuses yet again.

On October 5, The DO1 Kericho R.H. Symes-Thompson visited Chemorore and offered him approximately 20 acres in the Kimulot Settled Area. With him were Mr. John Howard (later DC Kericho) agricultural officers C.W. Barwell and Campbell Wilson as well as a surveyor. They tried to interest him on the piece of land which touched the Kiptiget river. Chemorore informed them that it was a waste of time showing him the plot. Symes-Thompson stated that the impression he gained was that 'he will stay where he is until he is actually evicted.'

On November 27, 1953 Griffith-Jones offers his final verdict on the matter stating that he should proceed to prosecute Chemorore on the basis of the Native Lands Trust Ordinance. With all the evidence in and the sworn affidavits secretly collected by the DC and DO, he was satisfied that Chemorore's legal standing was extinguished by the provisions of Section 70 of the Ordinance.

The problem was how to go about serving someone who refused summons. On December 31, Nyanza PC Williams stated to the new DC Howard that he was quite convinced Chemorore would decline service and would not leave voluntarily. Howard had proposed a compensation package to be offered to Chemorore but Williams advised otherwise stating that the question of compensation would only be discussed with him when he accepted the summons and 'if it is obvious that he will decline to go until forcibly removed, I advise that you should make an estimate of compensation yourself and forward it to me for onward transmission to the Member for Finance.'<sup>18</sup>

On December 9, 1953, Griffith-Jones suggests that the Governor Sir Evelyn Baring proceed and sign the order to evict Chemorore.

On December 12, 1953, Pritchard (now PA to Governor Baring) asks the CNC Windley if indeed any ex-gratia offer would be made to Chemorore before the Governor signs the Order to evict Chemorore but he declines.

On December 21, Governor signs order to evict Chemorore. Pritchard communicates to the DC Kericho and PC Nyanza.

On December 24, 1953 acting CNC KM Cowley writes to the PC Nyanza over Chemorore to serve him with the Order (original) and to make him aware of his alternatives. On January 6, 1954 PC Nyanza Williams stated his fears that indeed Chemorore would decline to accept service from the Governor. Cowley advised that in the event of such declining, then the DC would have to indicate the same as an endorsement on the Order.

In January 1954, Chemorore as expected, declined the summons and Williams and Howard orchestrated a forceful eviction.

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<sup>18</sup> Letter to DC Kericho from PC Nyanza dated December 31, 1953 (File No. AA/45/2/6, KNA)

*APPENDIX 1 –DRAMATIS PERSONAE*

**LIST OF IMPORTANT PERSONALITIES IN THE KIMULOT  
AFFAIR**

	<i>Name</i>	<i>Designation</i>
1	Kipsoi araap Chemorore	Kimulot resident
2	Tapsimatei araap Borowo	Kimulot resident
3	Hubert Charles Francis Wilkes	DO Kericho
4	William Belcher Greaves Raynor	DO Kericho later DC
5	Peter Guthrie Tait	DC Kericho
6	Kenneth Leggatt Hunter	PC Nyanza/ ag. Deputy Chief Secretary
7	Cyril Herbert Williams	PC Nyanza
8	Anthony George Carl Somerhough	Deputy Public Prosecutor
9	Harry Gillett Sherrin	Magistrate Kericho
10	Arthur Essex Edgeworth Reade	Magistrate Kisumu
11	Eric Reginald St. Aubrey Davies	Chief Native Commissioner
12	Fitzgerald Villiers-Stuart	General Manager - African Highlands PC
13	Benaiah Apolo Ohanga	MLC Nyanza
14	Charles Pocklington Chevenix-Trench	Appeals Tribunal
15	Eric Newton Griffiths-Jones	Solicitor General
16	John Whyatt	MLC for Law and Order
17	Sir Philip Euen Mitchell	Governor of Kenya
18	Richard Desmond Fetherstonchaugh Ryland	Ag. PC Nyanza
19	Leslie Francis Gordon Pritchard	PA to Governor of Kenya
20	Robert Everard Wainwright	PC Rift Valley
21	Oliver Lyttelton (Lord Chandos)	Secretary of State for the Colonies
22	Anthony Charles Christopher Swann	DC Kericho
23	Arthur William Horner	Commissioner for Lands
24	Cheborge araap Tengecha	Chief of Bureti Location
25	Chelule araap Bowen	Interpreter to DC Kericho
26	Edward Henry Windley	Ag. Chief Native Commissioner
27	Joseph Kerr	Chief Inspector of Police
28	John William Howard	DC Kericho takes over from Tait

*APPENDIX II - ABBREVIATIONS*

ABBREVIATIONS

AHPC	-	African Highlands Produce Company
PC	-	Provincial Commissioner
DC	-	District Commissioner
DO	-	District Officer
KTC	-	Kimulot Tea Company
KAU	-	Kenya African Union
CNC	-	Chief Native Commissioner.
MLO	-	Member for Law & Order
COP	-	Commissioner of Police
LNC	-	Local Native Council
ADC	-	African District Council
MLC	-	Member of the Legislative Council

*APPENDIX III – CASE NO 346*

COURT PROCEEDINGS

Criminal Case No. 346 of 1951 Rex vs. Tapsimate araap Borowo and others  
(November 5-7, 1951)

MAGISTRATE: H.G. SHERRIN

PW1. John Lawrence Brown – Sworn

I hold appointment in Department of Lands. I have made enquiries and caused maps to be made of land adjoining Lumbwa Land Unit. I produce map signed in my presence by Commissioner of Lands. LR 7707 has always been Crown Land according to our records which dates back a long time. Within past 5 or 6 months, Crown alienated this land, which is 5196 acres, to African Highland Produce Company Ltd., on 10<sup>th</sup> July 1951. Term of grant to commence from 1<sup>st</sup> August, 1951. Term of grant to commence from 1<sup>st</sup> August 1951. Position as regards title is that title has passed to the African Highlands. This land has never been in Lumbwa Native Land Unit. Prior to August, no African had, according to our record, been given any right whatever to occupy land.

By Court: Crown land does not include land lease according to my sense my department uses term.

XXD: I have made search of documents in Department and I have found no evidence of occupation by anyone. I do not know if your grandfathers occupied the place in 1914. According to our records this land has never been Location No. 12 of Lumbwa Land Unit. I do not know of it was ever Location 12.

R.C.D.E. H.G. Sherrin

PW2. Fitzgerald Villiers-Stuart: Sworn:

I am General Manager of African Highlands Produce Co. Ltd. And hold there power of Attorney. Area LR 7797 marked in blue has been leased to our Company for 999 years. Lease has commenced to run. We have paid rent. I have given no authority to any African to live on the land. A number of firms tendered for the land. We have given no contract to Accused to live on land.

XXD. The land is ours. We bought it. It was Crown Land purchased from Government. I do not remember you telling me you had no land to sell. On 15<sup>th</sup> October, Mr. Wilkes held a baraza and the Kipsigis said they had no land to sell.

R.C.D.E. H.G. Sherrin

PW3 Cyril Herbert Williams: Sworn

I am Provincial Commissioner Nyanza Province. I have acted since 1<sup>st</sup> October 1950 and was confirmed on 5<sup>th</sup> March, 1951. In Exhibit 1 I see area LR 7977. It has been, as far as I know, leased to African Highlands. It is in my Province. In October 1950 I found that Accused was living in that area. Accused is a Kipsigis who are sometimes called Lumbwa. He is a member of tribe for which Lumbwa Native Land Unit was set aside. LR 7797 was outside Native Land Unit. I found that he was living there without license, contract or valid authority. I signed Order in duplicate ordering him to go in seven days. I produce the two copies - Ex. 2a and 2b. On 16<sup>th</sup> October I held baraza. Accused was present. At that baraza I told assembled people they were residing illegally in land not their reserve. I asked them to remove themselves voluntarily, but said that if they did not, orders would be issued rendering them liable to be prosecuted. Two people



replied. One said he thought the matter was over and they would be told land belonged to them. The other asked where they were to go. I said there was land in the Land Unit and District Commissioner would show them. I then ordered them to go. I caused Exhibit 2 to be read to them.

XXD: You (plural) said you could not go because the land was yours. When I started my job I did not know land was yours. I learnt it was Crown Land because when I was appointed Provincial Commissioner I read it up in file. It was discussed in Leg. Co., African members were there. When you were given Exhibit 2 you did not tell me anything. I was not there.

XXD. To best of my knowledge as Provincial Commissioner this land was never Accused's

R.C.D.E. H.G. Sherrin.

PW4. Robert Charles Francis Wilkes: sworn

I am District Officer, Kericho. Exhibit 1 shows area in blue LR 7977. It now belongs to African Highlands Tea Company. It has done since August. Before that it was unalienated Crown Land. It is within Kericho District. I know Kaptuigeny. It is a ridge between Chepchas River and Koruma Rivers. This ridge is within Plot L.R. 7977.

I was at baraza on 10<sup>th</sup> October 1951, at Kimulot, marked in Lumbwa Land Unit. Chelule araap Bowen was interpreter. Accused was summoned and was present. Provincial Commissioner arrived at 11:50. I heard Provincial Commissioner address baraza. After giving history he ordered Accused to leave land he was occupying at Kaptuigeny and enter Lumbwa Native Land Unit within seven days. The Provincial Commissioner spoke in Swahili which was put into Kipsigis by Chelule. At end Provincial Commissioner asked if there were any questions. There were no questions about order. Provincial Commissioner left after instructing me to serve written Order. I speaking in Swahili, read Exhibit 2 through the interpreter. I explained it in simpler language and asked if there was anything they did not understand. I made it as clear as it was possible to make it. No questions were asked although I asked for 'any questions'. I called Accused by name and he stood up. I attempted to give him the original of Order and he refused to accept it. I explained to him that constituted service of Order and endorsed Order with not if what I had done. Exhibit II is very document used. I then left area. On 1<sup>st</sup> October I personally posted a number of notices in LR 7977 on prominent paths. One or two were still there recently. The notices were in Kipsigis. I produce a duplicate of the notice I posted. They were duplicates made by printing. There were some in Kaptuigeny Ridge. I produce duplicate of original Exhibit 3. Order to move referred to in Exhibit 2. Translation of Exhibit 3 by Interpreter:

Notice

*"Everyone living in Kaptuigeny and Kamogonjet, there is another area where the people who are living at the place mentioned may go. Anyone who wishes to go and see that place or who wants help in moving his things may come and tell the District Commissioner in market of Kimulot at 10am. Friday 19<sup>th</sup> October 1951, or the District Officers who will be coming to Kaptuigeny and Kamogonjet on Wednesday 24.10.51 and will be there all day; or to any district officer at any time he can be found."*

*Sgd. P.G. Tait – District Commissioner  
Kericho  
17.10.51*

I held baraza at Kimulot Market on 25<sup>th</sup> October. I warned people to attend when at baraza 16<sup>th</sup> October. Accused was present when I warned those at baraza on 16<sup>th</sup>, but was not present on 25<sup>th</sup>.

I instituted proceedings against him by summons on 25<sup>th</sup> in respect of disobedience of Provincial Commissioner's Order of 16<sup>th</sup>, but was not present on 25<sup>th</sup>.

I did not see Accused on 25<sup>th</sup>. I saw him on 8<sup>th</sup> November going up a path in Kaptuigeny leading to his home and half a mile from his hut. I know where he lives. I spoke to Accused in response to a remark. He said he was going home. As far as I could see Order had not been complied with on 8<sup>th</sup> November. Accused is a Kipsigis otherwise known as Lumbwa.

XXD. I do administration work in Kericho District. I know a certain amount about Kimulot. I have been there eight or ten times. I saw a lot of people. The majority cultivate. They have sheep, goats and cattle. Some have children. They people say the land is theirs. You have said so. There are some trees planted. In my opinion none are over 6 years old. Majority are young. Some of the blue gums are 90 ft., wattles about 15ft. I saw no macrocarpa higher than three ft. I only know of one mill on Mt. Elend. The LNC did consider an application to put that mill in a different place – that is the Kimassi (Chemosi) River. If a man gets permission to build a mill on Kimassi River he should build it there, not on the Mar-Mara (Mara Mara). Accused and his neighbours should know names of river and localities. His neighbours told me it was not Kimassi. Person who built mill asked for mill on Mara Mara. A licence has been taken out by araap Chemorore in respect of two mills in Kimulot. It was issued on June 9<sup>th</sup> 1951 by an Officer who had no right to sign receipt. That was date owner was served with Order in previous case to evacuate land. Licence for mill is fixed by LNC. It was not paid until this date. I do not know if mill is new.

I do not know how long you have been living on that land. Your hut is not recent. I have not seen disused Kipsigis huts. I have not seen sites. There are more than 78 heads of households. There are cattle paths – I cannot estimate their age. Many of huts are connected by recent paths. Paths are on reverse slopes viewed Reverse. Going north to south you cross Mar-Mara, one boundary, a stream the Chepchabas and the other boundary stream. Some of the crossing places are old. I am not lying.

XXD Kimulot is the name of an area. It includes LR 7797. It includes a portion of Lumbwa Native Land unit and LR. No. 7798, which is unalienated Crown Land. Kimulot Market is in Lubwa Native Land Unit near boundary. I will write it in on map.

R.C.D.E.            H.G. Sherrin.

PW. 5 Chelule araap Bowen: affirmed.

I am Kipsigis and am D.C.'s Interpreter. I speak Kipsigis and Swahili. I interpreted at P.C.'s baraza at Kimulot Market on 6<sup>th</sup> October. I interpreted all P.C. said to best of my ability. Accused was there. P.C. told them place where they were living was not allowed and were given seven days to quit. Kaptuigeny was one of the places he spoke of. When PC had gone, Mr. Wilkes read Order and I translated it. He called Accused forward by name. He gave his copy of Exhibit 2, but Accused said, 'I don't want it.' I am Kipsigis, so is Accused. He understood what I was saying.

XXD. I am Kipsigis and an interpreter. I have come to Kimulot three times. I came to baraza to interpret. I heard what you told PC 'We though you are going to give us land.' He said "No". You said you would not move. I have heard the land belongs to Kipsigis I do not know. I do not know how many people live there. This is the third hearing.

R.C.D.E. H.G. Sherrin

PW6 Kipkoech araap Chepkwony affirmed

I am Kipsigis and am Tribal Policeman. On 25<sup>th</sup> October I was present when Mr. Wilkes held a baraza. At 5 in the afternoon, I went to Kaptuigeny with the Kenya policeman called Cherote arap Too. I went to Accused's house. I know Accused, he is arap Borowo. I had a summons but we did not find him there. His family were at their house. House was occupied. There was sheep and goats outside. We gave her summons. She refused. We stuck it on door.

XXD It is your house. I say land is theirs, they lived there. That is how Kipsigis live. There is a mill and cultivation there, some were harvesting wimbi (finger millet). You have lived there some time as big trees have been cut down. There were gardens and sites of old huts. The foot paths were well worn.

R.C.D.E. H.G. Sherrin.

PW7 Chebusit araap Ng'erechi: affirmed

I am Kipsigis and Tribal Policeman. On 31<sup>st</sup> October I went to Accused's hut at Kaptuigeny. Kipsang araap Ng'eno accompanied me. I know Accused and his house. I went to his house. I found his wife and children there. House was lived in.

XXD I came to your place twice. That place that Kipsigis place and you must be Kipsigis to live there. Because we found you there we can say it belongs to Kipsigis. I found your wife and family. I saw a garden. Trees planted were black wattle trees. They were big trees. I saw three mills there. If D.C. sent me to arrest you for non-payment of tax I would come. He can ask you why you do not pay tax.

R.C.D.E. H.G. Sherrin

PW8 Cheborge araap Tengecha sworn:

I am Kipsigis and chief of Location No. 3. I have been Chief or 9 years. I know Accused. He is Tapsimatei araap Borowo. He is Kipsigis and Lumbwa is other name for Kipsigis, but we do not like it. I became chief in 1943. When I became Chief, accused lived on his farm in Kimulot. He lived near a camp which was

there. A DC's camp a chief there had built. That camp was ¼ mile from River Kuruma on side away from Kaptuigeny. Accused had cattle, sheep and goats. In 1944 he lived there, but had built a temporary house in Kaptuigeny. He had started to plant trees. One DC has given permission to graze there, and he put up a shelter for animals. He moved there with his family and built proper house in 1943 I saw his wife and sheep there in 1943.

Kaptuigeny was known as Location 12 and was under Chief arap Teimuren. That was from 1914 to 1920. Government turned people off the land then. People lived there many years ago. I heard it was 1927. When I became Chief in 1943, there were Kipsigis living on either side of Koruma River. They moved over when araap Borowo started in 1948. He was one of the first. Two first were Accused and Kipsoi arap Chemarore.

XXD: I am your Chief. When I was interpreter in Masai, I knew land belonging to Kipsigis because they were there. I used to come to Kipsigis on leave. I then lived in Massaria. I came home by main road. I passed Kimulot in 1938. From 1921 to 1925, there was a Chief in your Location No. 12. It belonged to Kipsigis. I demand Poll Tax from you. I know our forefathers lived on that land. I came and stayed at your house in 1944 and I know there was no one living on Kaptuigeny then. They had been removed. I do not know why Government removed them.

R.C.D.E. H.G. Sherrin

PW9. Peter Guthrie Tait:

I am District Commissioner, Kericho, and have been since 1<sup>st</sup> August 1950. I know DC's camp near Kimulot. It still exists. I will mark it on Exhibit 1. It is inside Native Land Unit.

XXD I have been in Kericho since 30<sup>th</sup> April 1946 till Nov. 1948 and the 19<sup>th</sup> June 1950 to date. I have been to Kaptuigeny and not know what Location 122 was called. Location 12 disappeared when number of locations was reduced. It is now part of Location No. 3. There may be a list in the office of old and new members.

RE.XD. I have been in Kenya 11 years. LR 7797 is not in Location No. 3.

R.C.D.E. H.G. Sherrin

Section 309 complied with.

ACCUSED: Tapsimatei araap Borowo, affirmed, states: -

I am Kipsigis. I am occupying land at Kaptuigeny. I received an Order to return to Kipsigis Reserve and I refused, telling him I would not go as this is my land. Up to now I have not obeyed the Order. My excuse is that the land is mine. My grandfathers and past generations of the Kipsigis lived there. I have other reasons for my disobedience. I show Kipandes which have 'Kaptuigeny' and 'Kamogonjet' as the 'groups' upon them. One of 1921 and two of 1924. From that day to this we have been living there. My grandfather and grandmother and father and mother are all buried there and I don't want to leave the graves of my ancestors. I will do the customs there that my forefathers did there. In the old days the people that lived to a good old age were buried; those who died early of disease were not buried. I am taking care of the

high places where there were sacrifices made and I wish to take care of the places where barazas were held. There is a baraza place called Kipturabach. That is from generations back. Chief Tengecha asked me to keep the baraza place from being over-grown. All these places have Kipsigis names.

Mr. Villiers-Stuart says he bought Kaptuigeny and Kamogonjet. Did he buy the people and the works the people had done on the land or did he buy the land only? Is it the custom of the Government in England of King George to sell people? When did Mr. Villiers-Stuart buy this country of ours? We were here with him on 10<sup>th</sup> September. If he bought this land in October why did he appear before in September. I produce copy of LNC minute referring to arap Chemorore's mill at Kimassi, Exhibit 4. I do so because it has been said we had no permission to live there. Araap Chemorore has one mill at Kimassi, one at Kuruma. Because our ancestors lived there we want to live there until there is no more people in the world.

XXD. I am chairman of K.A.U. in this district. We have not talked of Carter Land Commission. I do not know there was a Commission which gave much land to Africans. I do not know there is land set aside for our tribe. There is not land set aside for the Kipsigis tribe alone. We have talked about existence of land. I have not told anyone to go. They knew it was their land already without my telling them. I have not read Exhibit 3. I have seen it but have not gone up to read it. For many months we have been told to leave this land because it is not ours. We told everyone who came to us we would not go as it is our land. I did not hear us told to come to baraza on 26<sup>th</sup>. We did not know about it. I was not there when it was said. I was offered Exhibit 2 at baraza. We told him we were not going. We refused paper because it was to tell us to leave. I heard Chief Tengecha say when he became Chief I lived near DC's camp. It was untrue. He told lies there. He found us living there in 1946. It is not true that I did not go and build house until 3 years ago. I have lived there ever since I can remember. Chief was lying when he said I only grazed animals there. Our people had houses all over the place. I refuse to leave the land, whatever the result of this case is.

Read over and found correct H.G. Sherrin

D.W.2 Arthur Essex Edgeworth Reade:

I am R.M. (Resident Magistrate) Kericho. Exhibit 5 is a copy of previous proceedings I have the original here

NOT XXD

R.C.D.E. H.G. Sherrin

DW. 3 Kimalal araap Boldo: affirmed, states

I am Kipsigis. I know the land is ours. I only know from my childhood. I say they have always lived there. Your grandparent's graves are there. You are living there. Our grandparents lived there according to the customs we observe now. All names there are Kipsigis. There is a salt lick in Kibitbiten. I do cultivate there. I have seen trees are planted there. They are six years old.

XXD. I lived in Kapset Kokwet. I refer to Kaptuigeny. I say Kaptuigeny is his. I do not know now many acres. Salt lick is quite a way from Kaptuigeny. Rivers

are Chepchabas and Koruma River and the Mara Mara. There are two names. Kimassi is the river and a crossing. Mara Mara is same river at Kimassi. Kimassi is one river. I do not know of any land set aside for Lumbwa. I live in Kapset. I know there is land where no one can live but Kipsigis. I do not know Government will not let others come where I lived.

BY COURT: I know land to Chemagel, Sondu and Lumbwa from here is land on which only Kipsigis can live

R.C.D.E. H.G. Sherrin

D.W.4. Kipsang arap Tirmet, affirmed, states:

I know Accused. I know our grandfathers. Our grandfathers had a baraza place there. the generation that had lived there. The whole area is Kipsigis land. You are cultivating wimbi and maize. I know you are planted trees. I say it is our land and from beginning.

XXD: I live in native land unit. I was head man in Chief Tegutwa when Chief. I used to go to this land on his orders. It is a long time ago. I never heard of land being set aside. It is all Kipsigis.

R.C.D.E. H.G. Sherrin

D.W. 5 Kiptegut araap Bii: affirmed:-

I am Kipsigis. I live in Belgut. I know you live at Kaptuigeny. That place has been ours and has walyaws been spoken of as one unit with Kimulot. I know our customs. You can place where huts, gardens and paths were. The place and name after people who lived there. you can tell places that are made by Kipsigis – barazas and places for sacrifice. It would be difficult to find sacrifice places there. I know about my own and I know the names. From the beginning land is ours.

NOT XXD.

R.C.D.E. H.G. Sherrin.

D.W. 6 Kiptoo araap Sigilai, affirmed.

I am Kipsigis. You live at Kaptuigen. You did not recently move there. You lived there. We used to have a Chief there. I know them all since 1914. The last, Kobirgo araap Temure. It was up to Korko wing. On east I do not know boundary. Chief Kobirgo was recognized by Government. He was Chief there for a long time. It was Location 12.

XXD. There was a location 12. There is not one now. I do not remember 1909. I was a small child when first World War started. I do not remember Mr. Partington. I do not remember DCs. They come and go. I remember Mr. Filleul. People were removed from the forest then. I do not remember people being moved from Kaptuigeny and Kamogonjet.

R.C.D.E. H.G. Sherrin

D.W. 7. Kipkosgey araap Koech: affirmed:

I am Kipsigis. I know Accused. That is Accused's country from his forefathers till now. I know Government tax you. We buried our grandfathers there. I know

there were salt licks and people lived there. we were there when Government came. I belived it belonged to Kipsigis from beginning.

XXD. I remember first war started. I was at Kamogonjet then. I saw Accused's grandfather when I was just able to understand things. The elders showed us where Accused's grandfather was buried. I left Kamogonjet of my own accord. I went to Kimulot from there. I lived just below camp.

R.C.D.E. H.G. Sherrin

D.W. 8 Kiprere araap Kimeto: affirmed

I know Accused. I knw name of his father. He lived where you live now. When you first understood things you were at Kaptuigeny. As far back as I know that country was ours. Accused's grandfather's house was there. We had a chief araap Tamuren there. My kipande was Kamogonjet on it.

XXD. I live at Boito. I took my Kipande when I was at Kamogonjet. It was during 1914/1918 war. I left of my own accord some time ago. I was not turned off.

R.C.D.E. H.G. Sherrin

Accused asked for two other Kipsigis and Mr. A.G. Malik.  
Accused says I have heard all he wishes me to hear.

31/11/51 Deputy Public Prosecutor  
Accused

Herbert Charles Francis Wilkes: sworn:

I am DO Kericho. I know Accused. I believe Accused is likely to cause breach of the peace. I have heard him say he will not comply with order of Court made yesterday.

Order under Sec. 42 requiring Accused to show cause etc:

Court: Whereas Herbert Charles Francis Wilkes has informed me upon oath that he believes you Tapsimatei araap Borowa to be likely to cause a breach of the peace by reason of the fact that he heard you say you would refuse to comply with the Order of the Court made yesterday, you Tapsimate araap Borowo are hereby required to show cause in the sum of 200/- for keeping peace for the period of one year from today 31.11.51.

*APPENDIX IV*  
THE RAYNOR REPORT

SECRET OUT 174

THE KIMULOT DEMOLITIONS OF 1952

REPORT ON THE WHOLE OPERATION FROM FEBRUARY 26<sup>TH</sup> – MARCH 13<sup>TH</sup>

1. INTRODUCTION

As is now well known, this operation was conducted for the purpose of removing from land, which was previously Crown land and which has now been allocated to the African Highlands Produce Company Ltd., considerable numbers of illegal Kipsigis residents who had entered the land unlawfully. The land concerned comprises the two ridges of Kaptuigen and Kamogonjet in Kimulot area.

2. FORCE EMPLOYED

The Operations were under the direction of Mr. H.C.F. Wilkes from February 26<sup>th</sup> to March 5<sup>th</sup> and of Mr. W.B.G Raynor from March 6<sup>th</sup> to March 13<sup>th</sup>. Mr. Raynor was also present to help Mr. Wilkes on the first two days of the demolition programme on February 28<sup>th</sup> and 29<sup>th</sup>.

A strong force of police was present throughout under command of Chief Inspector Kerr, and comprising "B" Platoon of the Emergency Company, with their complement of armoured vehicles, and a composite force of police consisting of a platoon in strength, drawn from various stations of Nyanza Province. The total number of police exceeded 100.

6 Tribal policemen were present throughout.

The actual demolitions were carried out by 35 detainees from Kericho, mainly Luo and Kisii. A dresser provided by the Medical Officer Kericho was also present throughout. All these personnel were camped throughout in a large tented camp at the junction of Kaptuigen and Kamogonjet ridges.

Two European policemen from the Nyeri training school were present throughout to assist Chief Inspector Kerr.

3. METHOD USED

The programme was a heavy one, involving the demolition of 61 family holdings, each holding having an average of 2 huts, or 1 hut and 1 store. All these families were removed completely and all the buildings demolished. Also, of the 23 old men allowed to stay through the kindness of African Highlands Produce Company Ltd, some 6 houses had to be demolished to bring them all down to the authorized scale of one house and one store each.

At Appendix "A" is a complete list of houses demolished and houses of old men allowed to stay on. The total number of demolitions must exceed 130.

Each morning at dawn, a party of Kenya Police and Tribal police set off to warn all owners of house to be demolished that day that the demolition party set off, consisting of the District Officer, the Police Officer, the remainder of the Tribal Police, and 40 or



50 armed Kenya Police, the remainder of whom stayed to guard the camp. Some 18 detainees equipped with tools and a rope accompanied this party.

On arrival at the scene, the police immediately blocked all paths, whilst the District Officer interviewed the owner. I do not propose to elaborate here the care with which demolitions were carried out, as this is clear from the demolition sheet made out in respect of each and every demolition. The following points were always adhered to.

1. The owner was always asked if there was anything left in the house. It was always carefully moved by prisoners in front of the owner. If the latter was not present, an inventory was always made on the demolition sheet.
2. All thatch was moved first, and stacked on one side so that the owner could use it again.
3. NO FIRE WAS USED. Great care was taken to extinguish all fires burning in the huts before demolition.
4. Concessions of from one to eight days were always given in case of genuine sickness, to allow recovery before demolishing the house.
5. At the end of the demolition, each owner was asked if he had any complaints. These were always recorded on the demolition sheets.

### KIMULOT EVICTEES OF 1952

Recorded during the evictions that took place between February 26 and March 13, 1952

#### APPENDIX A

##### FAMILY HOLDINGS COMPLETELY DEMOLISHED

(Numbers (in bold) refer to numbers given to holdings on the Kimulot Map)

1	<b>1</b>	Tapsimate araap Borowo
2	<b>2</b>	Matecha araap Cheptiony
3	<b>4</b>	Kipsoi araap Barti
4	<b>5</b>	Kipruto araap Siele
5	<b>6</b>	Kipwogeny araap Turieny
6	<b>8</b>	Kiptonui araap Chumo
7	<b>9</b>	Kipseron araap Chumo
8	<b>10</b>	Kibargak araap Torongei
9	<b>11</b>	Kipsang araap Chemuigut
10	<b>13</b>	Kimibei araap Ng'eno
11	<b>14</b>	Kapketwony araap Bati
12	<b>15</b>	Kibii araap Cheruiyot
13	<b>16</b>	Kiptoo araap Tepkoi
14	<b>18</b>	Kimngeno araap Ketili
15	<b>21</b>	Kiptoror araap Cheriro
16	<b>22</b>	Chepkwony araap Kering
17	<b>23</b>	Kipkoech araap Ng'eno
18	<b>24</b>	Maina araap Mai
19	<b>25</b>	Kipkobel araap Nyige
20	<b>26</b>	Kipkosgei araap Bartaa
21	<b>27</b>	Boiyot araap Maina

22	31	Kipkoror araap Soo
		Kipkemoi araap
23	32	Chepkwony
24	33	Kimaiywa araap Rono
25	34	Kipkosgei araap Maina
		Kiprono araap
26	35	Chemuywok
27	36	Kiprotich araap Langat
28	37	Tapkokwo araap Maina
29	38	Kipkok araap Lobu
30	39	Kibii araap Maina
31	40	Kiprono araap Bii
32	41	Kitur araap Chebochok
33	42	Kiplangat araap Mosiony
34	43	Maritim araap Chepkwony
35	44	Kimilgo araap Marumoo
36	49	Chepatindiri araap Kitur
37	50	Kipseron araap Chumo
38	53	Kimubai araap Kering
39	54	Chebole araap Kering
40	57	Chelule araap Cheruiyot
41	58	Chepchilat araap Bii
42	60	Chepkwony araap Koech
43	62	Marusoi araap Tiembei
44	63	Kiprono araap Bon
45	64	Bargechu araap Tele
46	65	Kiprono araap Birir
47	66	Kimata araap Saa
48	67	Kimngole araap Bii
49	68	araap Chepkwony
50	69	Kiprono araap itare
51	70	Kipterer araap Maina
52	72	Kiprono araap Matage
		Kipkosge araap
53	73	Kapketwony
54	77	Kibet araap Chepkwony
55	79	Chesana araap Boror
56	81	Chepkwony araap Soo
57	82	Mungoni araap Maritim
58	83	araap Rop
59	84	Chepkoris araap Lasoi
60	87	Kiprotich araap Malisa
61	88	araap Tambai

HOLDINGS OF OLD MEN ALLOWED TO STAY BUT PARTLY  
DEMOLISHED

TO BRING THEM DOWN TO THE AUTHORIZED SCALE OF ONE HOUSE AND ONE STORE

1	17	Masingoi araap Kauria
2	20	Kipkoech araap Chesuge
3	29	Maina araap Chang'toek
4	55	Kimurei araap Boror
5	61	Tereney araap Menjo
6	78	Kipsoi araap Langat

HOLDINGS OF OLD MEN ALLOWED TO STAY - NO DEMOLITIONS CARRIED OUT

1	3	Bartai araap Tele
2	7	Maseti araap Nyangate
3	12	Chepkwony araap Baliach
4	19	Chumo araap Bon
5	30	Kipsoi araap Kutol
6	45	Kapketwony araap Kimeto
7	45	Chemarus araap Kimeto
8	46	Chumo araap Bon
9	47	Marusoi araap Kogo
10	51	Chebochok araap Leitich
11	52	Chepkwony araap Keremwo
12	56	Kimngeno araap Simotwo
13	74	Chepkwony araap Kauria
14	75	Kipsoi araap Chumo
15	76	Kutwet araap Taiwa
16	85	Chumo araap Bon
17	86	Kibet araap Chumo

HOLDINGS STILL REMAINING

		Reason	
1	28	Kipsoi araap Chemorore	Court action awaited
2	48	Kimalit araap Mutai	No house - only mill on Mara Mara (on Jamji Township)
3	71	Kipkemoi araap Chepkwony	Already dealt with - See 32
4	59	Kiprotich araap Kiria	Neither owner or house can be found
5	80	Kiplang'at araap Chegelyek	Family in Nakuru - no court action taken
6	54	Taprandich araap Min	Sold by owner for Sh. 200/- to African Highlands Produce Co.

APPENDIX B

REACTIONS OF OWNERS OR WIVES TO DEMOLITIONS

*ACTIVELY  
OBSTRUCTIVE*

*The Kimulot Affair:*

1	1	Tapsimate araap Borowo	Especially bad
2	5	Kipruto araap Siele	Especially bad
3	8	Kiptonui araap Chumo	Especially bad
4	9	Kipseron araap Chumo	Especially bad
5	11	Kipsang araap Chemuigut	
6	15	Kibii araap Cheruiyot	Especially bad
7	16	Kiptoo araap Tepkoi	Especially bad
8	22	Chepkwony araap Kering	
9	36	Kiprotich araap Langat	
10	41	Kitur araap Chebochok	
11	81	Chepkwony araap Soo	

*COOPERATIVE*

1	14	Kapketwony araap Bati	Especially good
2	18	Kimngeno araap Ketili	Especially good
3	23	Kipkoech araap Ng'eno	
4	25	Kipkobel araap Nyige	
5	33	Kimaiywa araap Rono	
6	34	Kipkosgei araap Maina	
7	35	Kiprono araap Chemuywok	
8	39	Kibii araap Maina	
9	40	Kiprono araap Bii	
10	42	Kiplangat araap Mosiony	
11	43	Maritim araap Chepkwony	
12	44	Kimilgo araap Marumoo	Especially good
13	49	Chepatindiri araap Kitur	
14	60	Chepkwony araap Koech	
15	82	Mungoni araap Maritim	
16	83	araap Rop	
17	87	Kiprotich araap Malisa	Especially good
18	88	araap Tambai	Especially good

The remainder were no trouble but not actually cooperative

PREPARED BY:

W.B.G. RAYNOR  
District Officer II  
KERICHO

(i/c Kimulot Demolitions)

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Letter to DC Kericho from PC Nyanza dated December 31, 1953 (File No. AA/45/2/6, KNA)

- Dr Godfrey K. Sang (Researcher) - 0727 911 611
  - Peter K Bett (co-ordinator of Tapsimalee Boromo, Kipsoi Arap Chemorerei and Eighty Six other families. n. no. 0722 153 452. Richard Zwart (Chemorerei) 0724 407 106
  - Mr. ... - 0722 502 200
- Exodus Ki 2

**KIPSIGIS TALAI MEMORANDUM TO THE STANDING COMMITTEE ON LAND ENVIRONMENT AND NATURAL RESOURCES AND THAT OF JUSTICE , LEGAL AFFAIRS AND HUMAN RIGHTS**  
**15<sup>TH</sup> APRIL 2023**

On behalf of the Kipsigis Talai community, I am very happy and appreciate the Senate Standing Committee On Land Environment AND Natural Resources AND That of Justice, Legal Affairs AND Human Rights to hear views from among others; the Kipsigis Talai on various land and injustices issues during the Colonial time to-date.

My name is David Ngasura Tuei from the Kipsigis Talai the Researcher of the Kipsigis Talai past history to-date. I am also a committee member of the Kipsigis Clans. I have written 2 history books on the Kipsigis Talai ; 1) The Kipsigis Talai .., Published in 2018 in Kenya (Order from Dr. Godfrey Sang the Publisher in Nairobi - 0727911611 (2) The Once Powerful Talai Clan A Trail of Tears- Published in 2021 in India now at the Amazon get from the Amazon link – <http://www.amazon.com> .

I am a retired employee of Brooke Bond Tea Kenya / Unilever Tea Kenya.

**Brief History of the Kipsigis Talai**

The Kipsigis Talai moved from Nandi in 1890 they settled in various places of the Kipsigis land. Kipchomber arap Koilegen was accepted as the leader of the Kipsigis, he led in the resistance of the British colonial administration in the Kipsigis country from 1895 -1914 (20 years) before his detention in Jan.1914 with his two brothers Arap Boisio and Kibuigut in the Agikuyu land Fort Hall (Muranga) Nyeri , Kamakwa (Kericho) in Othaya. Their Children continued with the resistance up-to 1934 when they were banished to Gwassii in South Nyanza, a total of 40 years while in Nandi Koitalel Samoei his younger brother led the Nandi resistance until when he was killed on 19<sup>th</sup> Oct.1905 in Nandi Hills after 11 years war from 1895 -1905<sup>1</sup>.

After the arrival of the white man to Kenya then known as Imperial British East Africa (IBEAA) from 1895 onwards they started to construct the Kenya Uganda Railway from Mombasa 1899 to Kisumu ( Lake Victoria) which reached in 1901. The Railway was constructed all the way from Mombasa without any major resistance. When the railway was between Londiani and Kibigori the Kipsigis and Nandis resisted very much such that a peace treaty between the Kipsigis and the British took place at Lumbwa Railway Station in 1900, a dog was killed for the peace treaty led by a Kipsigis man known as arap Tombo on behalf of arap Koilegen the leader of the Kipsigis, arap Tombo held the tail of the dog and a whiteman held the head. Arap Koilegen had instructed arap Tombo to hold the tail of the dog so that when the innocent dog was cut its painful “cry” will go to the white man (men) holding the head. The dog was buried and a tree was planted at the site<sup>2</sup>.

<sup>1</sup> Meinertzhagen photo of 1956, Leadership stuff

<sup>2</sup> The Tree at Kipkelion

Some Kipsigis and Nandis staying along the railway line were forcefully moved 2 miles from the railway line on both sides with no compensation for their taken land.

In July 1900 during Nandi expedition by the British soldiers the British soldiers came to Cheplel and Laliat in Ainamoi following Nandi warriors, they took by force Kipsigis cows and told the Kipsigis people to show them the Nandi warriors so that the cows would be given back to the Kipsigis people.

When arap Koilegen heard this he sent 500 Kipsigis warriors to attack the white men at their camp at night taking back their cows. There was a fierce fighting, the British killed many warriors while 2 white men (officers) were killed. The British used a maxim gun to fight the Kipsigis warriors , the place is now known as Koitabmat (Kaitabmat) because of the 'spitting' flame from the maxim gun.

In April 1902, at Chilchilla (Fort Ternan) Indian Coolies started to hijack by force some Kipsigis and Nandi ladies and took them to their camps. Over 500 Kipsigis and Nandi warriors attacked the Indian Coolies at the railway camp at Fort Ternan killing several Indians. The British asked for reinforcement from Uganda and Nairobi to come and protect the railway line, over 300 3KAR soldiers and Levies were sent.

In May 1902, because of the Nandi and Kipsigis warriors who were now resisting the railway construction, South Lumbwa (Kericho) Post was established to contain the Kipsigis warriors while the Fort Ternan Post was to contain the Nandi warriors. Mr. Charles Hobley (Political officer) sent Mjr. Gorges at the Fort Ternan camp to look for a suitable place to establish the Lumbwa (Kipsigis) Post. Mjr. Gorges traveled to Kapcheptoror and liked the place but there were no enough rivers, he then went downhill reaching Kaptebengwet (present Kericho Town) he found a good place with several rivers. He saw a house there and asked someone whose house it was and was told "KaparapKerich yoon", it was a home for arap Kerich, he named the place Kericho in his Diary. He went and told his senior Mr. Charles Hobley that he had found a good place along the western Mau and he named the place Kericho. That became the South Lumbwa Post( Kericho Post) after they sought permission from Kipchomber arap Koilegen the leader of the Kipsigis (May 1902).

In July 1905, British had an expedition in Sotik where they killed over 2000 Kipsigis men, women and children at a place later named by the Kipsigis as Chemagel because of the skulls. This was after Kipsigis warriors had raided Maasais of Elbargon and brought cows and some young ladies.

During this time the British also took by force 90,000 acres of the Kipsigis land along Londiani , Kipkelion and Fort Ternan areas moving the owners to Kipsigis Native Reserved Lands in along Kipchorian river, Binyiny, Ainamoi, Soin, Belgut, Buret and Sotik.

In July 1906 Kipchomber arap Koilegen was invited to Mombasa to attend King Edward's VII Birthday Celebration, Mombasa was the HQs of IBEA.

He went with his Council of Kipsigis leaders (8)– Kibaliach, Mastamet, arap Soiti, arap Nyarino, Cheriro, Mugeni , arap Tombo and his son Kenduiwo Sonoet<sup>3</sup>.

He was told that the King among other things wanted peace and that arap Koilegen should give part of the Kipsigis land to the British colonial government and people staying there to be moved to Tanganyika. Arap Koilegen refused and this made him later to be deported in 1914 to the Kikuyu country with his 2 brothers arap Boisio from Mombwo in Buret and Kibuigut from Binyiny in Kipkelion to Fort Hall (Maragua), Nyeri (Kericho) and Meru (Maua) respectively where they died<sup>4</sup>.

From 1914 – 1940s the colonial government started to take more of the Kipsigis land by force moving the owners to Kipsigis Native Reserved lands all the way from Londiani ,Kipkelion as far as Sotik areas, to places like Binyiny, Kipchorian, Soin, Chebolungu, Buret, Belgut, Ainamoi, etc, which were less productive. The area the British took was 70% of the good land of the Kipsigis leaving only 30% for the Kipsigis. That was how the Multinational Tea firms and the White Settlement lands came to be.

In 1919 after the end of WWI, the British forcefully moved some Kipsigis and Talais living at now the Multinational Tea farms and took over 25,000 acres of land moved the owners to the Kipsigis Native Reserved lands of Ainamoi, Belgut, Buret, Sotik, Chebolungu, Maasai, Mau, Nakuru, Thomson Falls, etc. The lands were given to some retired British WWI soldiers some who were hurt during the war as gift. The Multinationals Brooke Bond (Kenya Tea) & AHP Co. Ltd later bought from them in piece meal. Hence by 1940s the British had taken 70% of good Kipsigis land leaving for the Kipsigis 30% of their land which some of the land were not productive enough.

During this exercise of moving the Kipsigis and Talais from their land they burnt their houses destroyed their crops while they took cows from those who resisted as punishment<sup>5</sup>.

In 1934, Talais who the British said led the resistance after their leaders were found with arms were rounded up and banished to Gwassi under "The Laibon Removal Ordinance of 1934"<sup>6</sup>, while the leaders were jailed. Gwassi was a death land as it had a lot of challenges, when Talai arrived there within a month 14 pregnant women had miscarriages because of the hostile environment<sup>7</sup>.

In 1945 Talai youths after they protested in Gwassi as they could not marry Luo women were brought to Kericho Township to " Laibon Youths Detention Camp" now the Social Services

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<sup>3</sup>Mombasa Photo

<sup>4</sup> Detention Order, Death letter

<sup>5</sup> One of those moved from the Tea fields

<sup>6</sup> 1934 Ordinance, Registration list

<sup>7</sup> Colonial letters of Gwassi, etc



premises so as to get married later. Those who married were moved to now Laibon/ Talai village in Town where Talai live upto now<sup>8</sup>.

In 1947 the colonial government and the Kipsigis African District Council ( ADC) proposed that when Talai were returned back to Kipsigis they will be settled either at Kaptuigeny (Kimulot), Olenguroune or Kibulgeny<sup>9</sup>.

The Talais were brought back to Kericho in the eve of independence in 1962 to where some Talai live upto now.

Kaptuigeny and Olenguroune were given to other people. Talai have always petitioned to the authorities to be given the promised Kibulgeny land.

In Sept.2009, I sent a Talai Memorandum to H.M the Queen with a covering letter saying that the British government should compensate and apologize to Talai for what they did to Talai.

I received a reply from her office saying that HM thanked me for the letter and that the letter was forwarded to Rt. Hon. David Miliband , MP, Secretary of State and Foreign and Commonwealth Affairs who was to get in touch with me. I never got any response from him<sup>10</sup>.

In June 2011, I sent Talai Memorandum to the Parliamentary Select Committee of IDPs of PEV of 2007/2008. 2 members of the Talai, Elly Sigilai & Mjr.Rtd W.Koitaba (EBS) and our then consultant Mr. Bill Rutto defended the memorandum before the select committee. The Talai settlement motion was debated by the National Assembly and it was passed and Chapter 5 of the Recommendations Option 5 said "..... The Settlement Programme must be extended to include historical IDPS including Talai in Kericho and Kipkelion (1,867) family members given to the Parliament on that date<sup>11</sup>.

Talais in Kericho town were given plots while the rest have not been resettled. I had mention the Kibulgeny land in the Memorandum same with the Compensation<sup>12</sup>.

In 2011 Sept, I Presented Talai Memorandum to the TJRC – mentioning about the Compensation by the British government and the Settlement of Talai by the government, CC: to Unilever Tea (K), Finlay Head Offices, Mayors of Kericho and Bomet as I had mentioned them in the Memorandum. The TJRC Commissioners congratulated me for my presentation of the Memorandum<sup>13</sup>.

In 2014, H.E Prof. Paul Chepkwony the Kericho County governor initiated a motion at the County Assembly after hearing our plights of Talai & Kipsigis. A motion was passed that the

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<sup>8</sup> 1945 Photo

<sup>9</sup> 1947 Kibulgeny letter

<sup>10</sup> Queen's letter & reply

<sup>11</sup>Parliament Memorandum

<sup>12</sup> Parliament Recommendations, etc

<sup>13</sup> TJRC Memorandum

Talai & Kipsigis must be Compensated, Reparations to be paid and Apology, etc, by the British government.

In 2015, Historical Injustices victims Registration was started. Lawyers were engaged to pursue the case Mr. J.K Bosek of J.K.Bosek Advocates from Kenya and Mr. Karim Khan the QC , Mr. Rodney Dickson the QC and team from the U.K. Mr. Joel Kimetto and myself among other Researchers and Historians were contracted by the Legal team to provide them with all that they required about Talai and the Kipsigis which we did perfectly<sup>14</sup>.

In 2018, Joel Kimetto (Kipsigis), Peter Bett (Karapborowo) and myself from Talai presented our Memoranda to the NLC in Kisumu which were well received<sup>15</sup>.

On 7<sup>th</sup> February 2019, the NLC Commissioners sent us their report which all the Commissioners signed Recommending that 6000 Talai family members to be settled at Kibulgeny. Talai have not been settled to-date<sup>16</sup>.

In 2015, the Lawyers took the Compensation Case before the British government but they turned it down on technical grounds that the case should have been brought in-between 30 years after independence. The governor and his legal team took the case to the U.N Human Rights Agencies in Geneva. By this time Mr. Karim Khan the QC the lead lawyer had joined the U.N New York, so Mr. Rodney Dixon the QC was the one leading the Legal team from the U.K. The U.N Human Rights Rapporteurs deliberated on the case for some time, after they completed hearing the Petitions and the evidence from the lawyers and the victims they passed a verdict in favor of the Kipsigis and Talai. The U.N Human Rights Rapporteurs instructed the British government to honor the Historical Injustices victims' demands. The British government still stood firm, the governor and his legal team with the blessings of the U.N Human Rights Agencies took the case to the European Union Human Rights court and the case is going on there now 2022.

As per the Lawyer Mr. J.K Bosek, the Tea Estates have been awarded to the Kipsigis community by the relevant institution (NLC). All the titles are to be registered in the names of Bomet and Kericho counties as Trustees. The Multinationals went to court and the verdict will be delivered in February 2023 (The Kipsigis Clans committee members on behalf of all the Kipsigis clans have their reservations on this).

The U.N Human Rights Council (Geneva) and UN General Assembly -UNGA (New York) passed resolution that there be reparations and compensation to the Kipsigis & Talai victims. U.K declined despite lots of persuasion. The matter is now before the European Court of Human Rights.

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<sup>14</sup> Contract Letter

<sup>15</sup> NLC Memorandum

<sup>16</sup> NLC Report

We continue to have IDPs including those who were flushed from the Mau Complex. The British brought about widespread poverty, landlessness, inequalities in wealth distributions, education, employment, marriage problems to some Talai members, some never got married because of old age, lack of dowry, etc<sup>17</sup>.

So we are all waiting for the EU Human Rights Court's verdict and the ruling of the Multinational petition on the NLC recommendations for the Way forward on the Multinational Tea firms and the settlement of the Kipsigis & Talai landless families at Sambret / Kibulgeny of which some of the land there was for the Unilever Tea Company now the Eketerra Tea Company.

As for the Multinational Mechanical plucking Machines my personal wish is for the Multinationals and the stakeholders the employees union and the county governments of Kericho and Bomet to have a round table meeting to arrive at a win win resolution.

I hope my presentation has addressed some of the challenges the Kipsigis & Talai are facing.

Thanks;

David Ngasura Tuei – The Kipsigis Talai Consultant and Member of the Kipsigis clans.

Phone: 0722619901

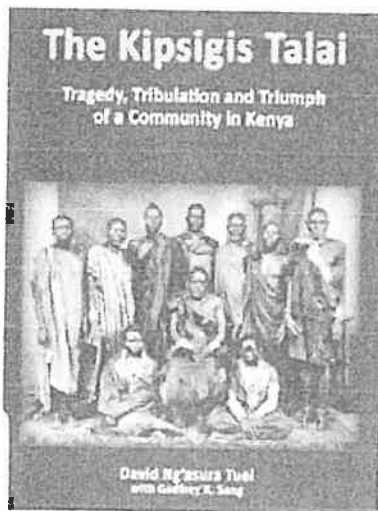
Eml: [davidngasura@yahoo.com](mailto:davidngasura@yahoo.com).

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<sup>17</sup> Final Plea, Unmararried Talai members list



- PUBLISHED IN INDIA - DEC.2021



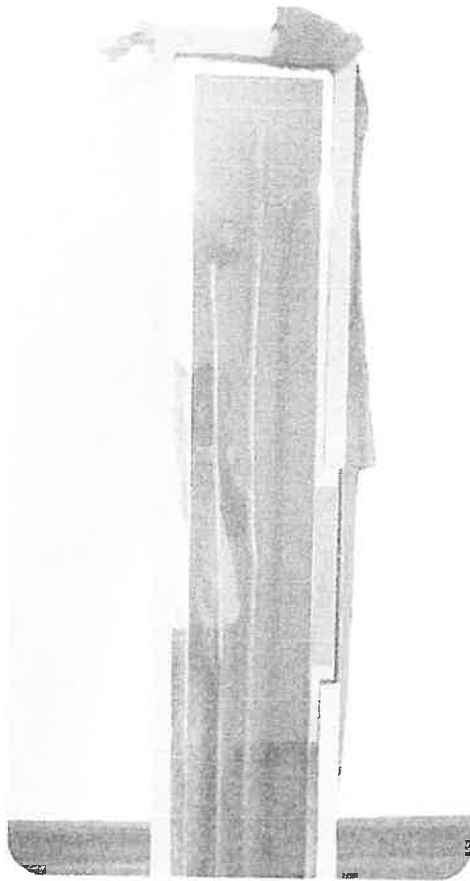
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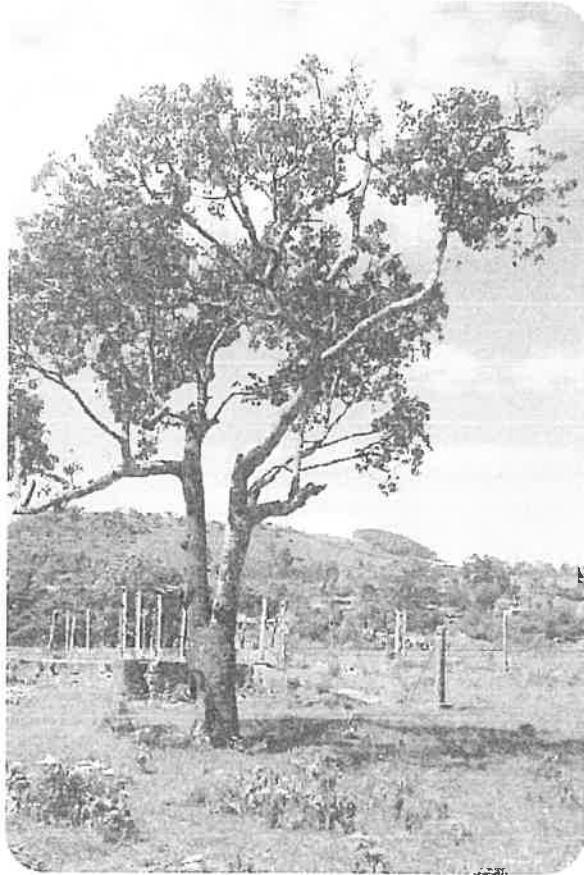
- PUBLISHED IN KENYA - 1995



Coln. Meinertzhagen who killed Samoei Koitalel on 19<sup>th</sup> Oct.1905 standing with Senior Nandi Chief Elijah arap Cheruiyot. Meinertzhagen visited Nandi in 1956 to say sorry to Nandis and Samoei's family for the killing of Samoei .



Koitalel Samoei's leadership staff which had been taken to U.K in 1905 by Coln. Meinertzhagen after he killed Samoei on 19<sup>th</sup> Oct. 1905 at Ketparak Nandi Hills. The staff were brought back to Kenya by Dr. Kipkoech Sambu and Colleagues on 13<sup>th</sup> June 2006. The staff are now at the Koitalel Museum Nandi Hills, Kenya.



The tree which was planted at the site where a dog was cut to signify peace between the whites and the Kipsigis at Lumbwa Station in 1900.



**Kipchomber arap Koilegen the leader of  
the Kipsigis until 1914.**





Kipchomber arap Koilegen the leader of the Kipsigis seated 2<sup>nd</sup> from the left wearing Sultan's clothing. Sitting below him was his eldest son Kenduiwo Sonoet (his PA). The rest were his Cabinet (Maotik) members from the whole of the Kipsigis country –Kibaliach, Mastamet, Arap Nyarino, Chero, Arap Soiti, Arap Tombo and Mugeni.

Arap Koilegen was requested by HM King Edward VII to give out some Kipsigis land to the Whites for their developments and Settlement and the Kipsigis living there to be moved to Tanganyika. He refused and that led him and his 2 other brothers to be detained at Fort Hall (Muranga), Nyeri and Meru (Maua) in 1914.

The Photo was taken at Mombasa the HQs of the IBEA (Imperial British East Africa) during King Edward's VII Birthday Celebration in July 1906.

No. S. 7011.

Ref PC/NZA/3/31/12 1914-12

APP B Native Ag (B)

To

The Acting Provincial Commissioner,

K I S U M U.

WHEREAS it has been made to appear to me by evidence on oath that Arap Koileke of Lumbwa has heretofore conducted himself so as to be dangerous to peace and good order in the Protectorate AND WHEREAS it has been considered advisable in the interests of peace and good order that the said Arap Koileke shall be deported from within the limits of the district in which he ordinarily resides to some other district.

NOW THEREFORE this is to command you Henry Hastings Horne, the Acting Provincial Commissioner, Nyanza Province that you forthwith cause the said Arap Koileke to be deported to Fort Hall in the Province of Kenya and that you Charles Robert William Lane, the Provincial Commissioner of the said Province, do hereby receive and detain the said Arap Koileke as a politically detained native at Fort Hall aforesaid under and subject to the provisions of "The Removal of Natives Ordinance 1909" and for doing so this shall be your sufficient authority.

GIVEN under my hand and Official Seal at Nairobi this 7th day of January One thousand nine hundred and fourteen.

(Sd) H. CONWAY BELLEFIELD

Governor

Detention letter for Kipchomber arap Koilegen the leader of the Kipsigis until January 1914. Note the letter said arap Koilegen was detained on Political grounds. His 2 brothers had similar detention letters.

KIPCHOMBER ARAP KOILEGEN'S DEATH LETTER OF 18<sup>TH</sup> JULY 1916

Copy.

No. 13/13/16.

District Commissioner's Office,

Nyeri.

July 18th, 1916.

Sir, I have the honour to inform you that the Sambwa  
Kipchomber Arap Koilegen, deported to this Station some years  
ago, died yesterday (July 18<sup>th</sup>, 1916)

Would you kindly advise the Provincial Commissioner,  
Nyanza, Province, accordingly.

I have etc. etc.

Sd/- R. Keene.

District Commissioner.

The Provincial Commissioner,  
Nyeri.

1916  
31710

P.T.O.

Copy to ...

...

Ref KNA/PC/NZA/3/31/12 - 1914-18  
Native Affairs

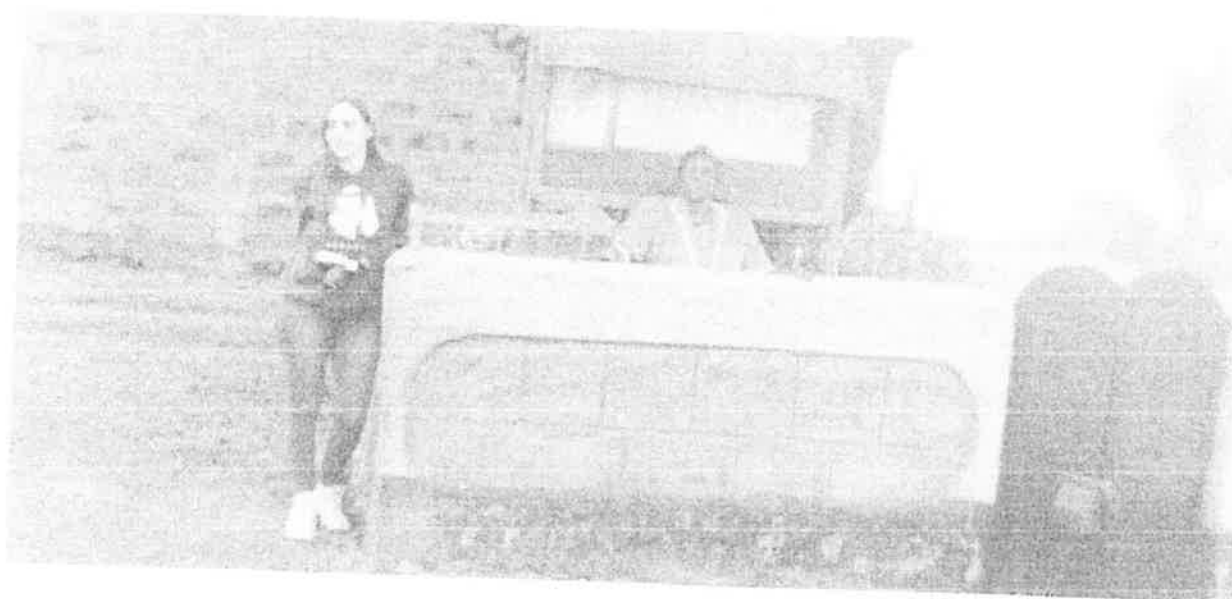
PROF. HENRY MWANZI

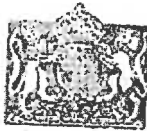
Prof. Henry Mwanzi, interviewed Petero in 1977<sup>1</sup> Petero said *"I regret very much having got involved in the struggle against the Orgoiik, because they were leaders of the people. Many of my personal and family problems, I consider to be the consequence of that involvement. But at that time I thought I was doing what was right. The missionaries had told us at School to report what we saw, especially in connection with the Orgoiyot (araap Koilegen)"*. The scholar went on to write, *"This statement clearly shows a man full of remorse and repentance and one who had acted out of ignorance of the motives of the white man."*

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<sup>1</sup>Mwanzi H, (1980), *Koitalel arap Samoei and Kipchomber arap Koilege: Southern Kalenjin Rulers and their Encounters with British Imperialism*, in Kipkorir B.E. (ed) (1980), *Biographical Essays on Imperialism and Collaboration in Colonial Kenya*, Kenya Literature Bureau, Nairobi.

KIPCHOMBER ARAP KOILEGEN'S SHRINE AT LOTI EQUATOR KOIBATEK DISTRICT





COLONY AND PROTECTORATE OF KENYA

THE NATIVE LANDS TRUST ORDINANCE, 1938

ORDER

WHEREAS CHERUYOT ABAP ROTICH ..... a native of Kenya Colony, is residing outside the native lands, the native reserves, the temporary native reserves, or the native leasehold areas:

AND WHEREAS his rights, if any, in respect of the land on which he is at present residing have, under the provisions of Section 70, Native Lands Trust Ordinance, 1938, been extinguished:

AND WHEREAS I, Henry Monck-Mason Moore, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief of the Colony and Protectorate of Kenya, am satisfied that sufficient suitable land for the accommodation of CHERUYOT ABAP ROTICH ..... and his family is available, and that provision for compensation for disturbance has been made:

NOW, THEREFORE, in exercise of the powers conferred on me by Section 49 of the Native Lands Trust Ordinance, 1938, and all other powers enabling me, do order the said CHERUYOT ABAP ROTICH ..... on or before the 15th day of September, 1941, to remove himself, his family and his property forthwith from the Crown land on which he is at present residing.

Given under my hand and the Public Seal of the Colony at Nairobi this 19th day of August, 1941.

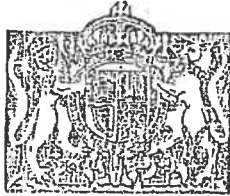
*Henry Monck-Mason Moore*  
Governor

LAIBON REMOVAL ORDINANCE OF 1934

(201)

No. XXXII.

1934



Colony and Protectorate of Kenya.

IN THE TWENTY-NINTH YEAR OF THE REIGN OF

His Majesty KING GEORGE V.

ROBERTS BERNHARDT, G.O.M.G., K.B.E., C.B.,  
(Governor.)

Assented to, in His Majesty's  
name this 27<sup>th</sup> day of August  
1934.

Governor.

AN ORDINANCE TO PROVIDE FOR THE  
REMOVAL AND SETTLEMENT OF LAIBONS





No	NAME	SEX	HEIGHT		WEIGHT		REMARKS
			INS	INC	99	791	
43	Khangat Ara	Kangai	5	3	1	16	10 Loc. 1.
44	Cheruru	Kangai	3	4	1	46	20 "
45	Cherusebet	Kangai	5	1	2	10	5 "
46	Cherusey	Kangai	1	1	1	-	1 "
47	Pael	Kangai	6	1	1	-	Nandi District
48	Kikooka	Maia	3	-	-	10	5 Nbarud
49	Kiber	Kuro	1	1	2	-	Loc. 1.
50	Kiurwo	Kuro	2	1	-	4	5 "
51	Kiruru	Kuro	3	-	-	30	15 "
52	Kance	Cheruyot	1	3	1	-	"
53	Kiruru	Cherusebet	1	3	-	-	"
54	Karala	Maritia	3	-	2	3	2 "
55	Toch	Kangai	1	1	1	-	3 "
56	Kandak	Kuro	-	-	-	-	"
57	Kiruru	Cheritan	1	1	1	5	5 "
58	Kimjoren	Chelani	1	3	-	-	Kango Police
59	Kand	Cheritan	-	-	-	-	Loc. 1.
60	Chengo	Koch	1	-	-	-	Kangai
61	Kikoli	Koch	3	1	1	-	Loc. 1.
62	Kikooka	Koch	3	-	1	50	"
63	Kipko	Koch	3	-	1	-	"
64	Kand	Kangai	1	-	-	-	"
65	Kand	Kangai	1	-	-	-	"
			138	321	107	993	780

No	NAME	SEX	HEIGHT		WEIGHT		REMARKS
			INS	INC	99	791	
66	Kikooka Ara	Kangai	1	-	-	-	Loc. 1.
67	Kikooka	Wakelomoko	3	1	20	15	"
68	Kikooka	Kikooka	2	1	-	30	15 "
69	Kikooka	Wakelomoko	4	1	10	10	"
70	Kiber	Kuro	1	2	1	7	6 "
71	Kiber	Kuro	2	2	2	5	3 "
72	Cheruyot	Kuro	1	1	1	5	4 "
73	Kurume	Kuro	1	-	-	-	"
74	Kand	Kuro	1	1	-	-	"
75	Kikooka	Kuro	1	-	-	1	"
76	Kikooka	Kuro	-	-	2	4	5 "
77	Kand	Cheritan	-	-	-	-	"
78	Kand	Kuro	-	-	-	-	"
79	Kand	Kuro	1	-	-	-	Kandara
80	Kand	Kuro	1	-	1	-	Murara Kavira
81	Kikooka	Kuro	2	1	-	5	10 Loc. 1.
82	Kikooka	Kuro	3	-	2	6	5 Loc. 1.
83	Kikooka	Kuro	1	-	-	-	"
84	Kiber	Kuro	1	1	-	-	"
85	Kand	Kuro	3	-	1	-	"
86	Cheritan	Kuro	2	-	-	-	Local Reserve
87	Kikooka	Kuro	1	-	-	-	"
			138	321	107	993	780

No.	Name	Age		Sex		Occupation
		Male	Female	Male	Female	
87	Mawani arao Marich	1	-	4	5	Loc 1
88	Morim arao Marich	-	-	-	-	Loc 1
89	Murum arao Tama	1	1	-	-	Loc 1
90	Mabunao arao Tama	1	1	10	8	Loc 1
91	Mafunai arao Tama	1	-	-	10	Loc 1
92	Mimadok arao Tama	2	2	8	8	Loc 1
93	Mibumba arao Mibat	1	-	-	-	Loc 1
94	Mimuro arao Mibat	-	-	-	-	Loc 1
95	Mokid arao Mibat	-	-	-	-	Loc 1
96	arao Mibata	1	-	-	-	Loc 1
97	Mibunao arao Mibata	-	-	-	8	Loc 1
98	Mibat arao Mibat	1	1	10	10	Loc 1
99	Mibunao arao Mibat	-	-	-	-	Loc 1
100	Mibunao arao Mibat	1	1	-	-	Loc 1
101	Mibunao arao Mibat	1	-	-	-	Loc 1
102	Mibunao arao Mibat	2	2	10	4	Loc 1
103	Mibunao arao Mibat	-	-	4	2	Loc 1
104	Mibunao arao Mibat	1	-	9	14	Loc 1
105	Mibunao arao Mibat	1	-	-	-	Loc 1
106	Mibunao arao Mibat	1	-	-	-	Loc 1
107	Mibunao arao Mibat	-	-	-	-	Loc 1
108	Mibunao arao Mibat	1	1	-	-	Loc 1
109	Mibunao arao Mibat	-	-	-	-	Loc 1
		102	102	100	100	

No.	Name	Age				Occupation
		Male	Female	Male	Female	
110	Mura	-	-	-	-	Loc 1
111	Mura	-	-	-	-	Loc 1
Family of Mura		2	2	2	-	With No. 10.
Mura		2	2	2	20	20
Mura		2	2	2	-	With No. 10.
Mura		7	2	1	-	With No. 10.
Mura		4	1	2	20	15
Mura		6	2	1	-	With No. 10.
Mura		1	-	-	-	With No. 10.
Total		102	102	100	100	100

Men ..... 111  
 Women ..... 279  
 Children ..... 157  
 Totals ..... 547  
 Total ..... 698

1937 TALAI CENSUS LETTER IN GWASSI TO SHOW BIRTHRATES AND DEATH RATES

1937/20/3. III.



DISTRICT COMMISSIONER'S OFFICE  
SOUTH KAVIRONDO

KISII, 13th October, 1937.

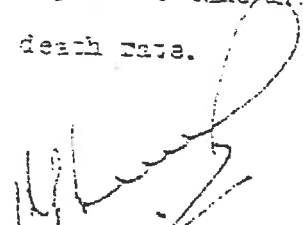
The Hon. Provincial Commissioner,  
Nyanza Province, Kisumu.

TALAI.

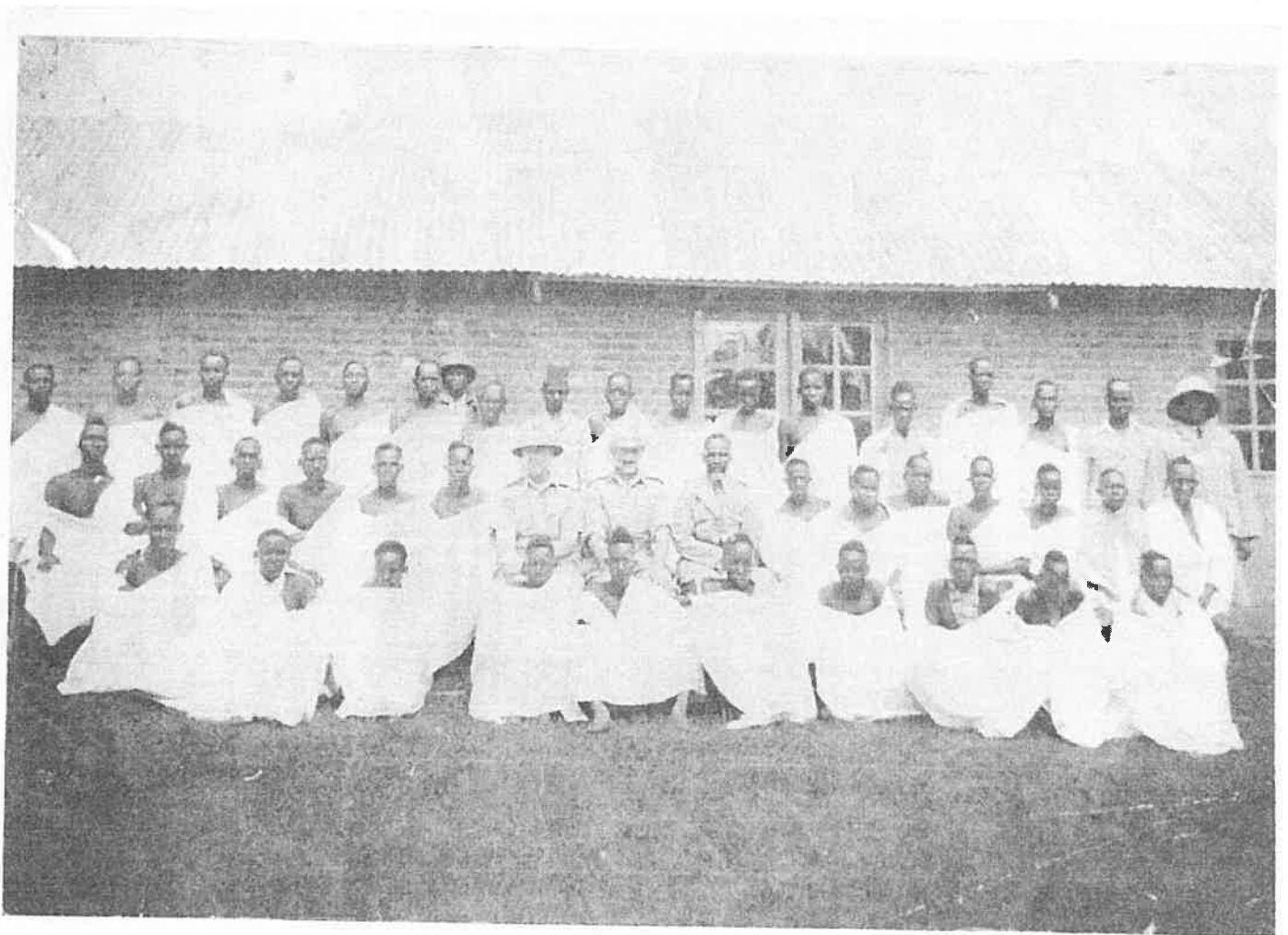
I forward herewith for record purposes in your files, a nominal census of the Gwassi Talai.

I propose that this time next year we take a nominal census to check their birthrate and death rate.

ME/SPMS

  
District Commissioner.

## 1945 Talai Youths Photo at Kericho Detention Camp



The Talai youths at 'Kericho Laibons' Detention Camp' 1945. In the middle row were Mr. Gregory Smith (Kiptabut) DC Kericho, Mr. Hunter PC Nyanza and the Talai instructor Mariko arap Chebotalai. 3<sup>rd</sup> in the middle row from the left was the only Gwassi survivor by 2022 Kibore Cheruiyot Ngasura the father of the author David Ngasura Twei. The back row farthest right was the chief of Chebolungu Arap Kirui at the back of the back row wearing a hat similar to the chief's hat was Oruasa a WWI Veteran who was insane because of the WWI stress.

1947 Letter by Kericho DC Mr. A C. Swann to PC Nyanza  
on the Gwasssi Talai

Telegrams District Kericho  
I reply please quote  
No. 140.17/22/284  
Date



DISTRICT COMMISSIONER'S OFFICE  
KERICHO

18th. November, 1947

The Provincial Commissioner,  
Nyanza Province,  
KISUMU.

KIPSIGIS TELAI.

Ref. Your L&O.4/1/2/291 of 8-11-47.

I am not very happy about the Crown Land adjacent to the Chepalungu, as it is in this very backward area that the Laibon have their chief influence. Headman arap Bartai of ABOSSI had to be removed for travelling to Gwasssi too often.

2. With all respect I think we should face up to the fact that we should concentrate on the children, and, brutal though it may seem, leave the old men to die out gradually, in Gwasssi. If we concentrate on the children and the procedure suggested in sub-para 2, para 6 of your L&O.4/1/2/284 of 26-4-47 the area in the Township should be sufficient.

3. I am quite agreeable to the old and young women returning here gradually, but quite frankly I have little sympathy with the actual age-grade, who made life so difficult for Government in the past.

*A C Swann*  
DISTRICT COMMISSIONER,  
KERICHO.

ACCS/JFS.

*PC*

**A LETTER BY THE NYANZA PC SAYING THAT THE GOVT'S PLAN ON LAIBONS (TALAI) HAS FAILED**

*A letter dated 15<sup>th</sup> Nov. 1943 by Acting Provincial Commissioner Nyanza to the Chief Secretary read in part*

*"It has become apparent to the Officers of the Administration who are in any manner connected with the Laibon, that we have failed in what we set out to achieve when we moved the Lumbwa Laibon to Gwasssi settlement. Though this objective is not set out in so many words, it was undoubtedly to sever all physical contact between them and the Kipsigis tribe and so break down their influence and power over those people.*

*2. The Officers of the Government who advised the move must have considered that when moved to the settlement the Laibon would form a homogeneous community of their own, either marrying amongst themselves or amongst members of tribes immediately surrounding them. This they have failed to do, and if complete severance from the Kipsigis were possible and enforced, the Laibon would be doomed to extinction".*

**The Kibulgeny land proposal for Talai settlement by the Colonial government and the Kipsigis ADC 1947 – KNA: DC/KER/1/33/9 as per Michael Sialai Rotich's Thesis "The Response of the Kipsigis Orkoik to Colonial Rule" – 1994 Kenyatta University.**

When the young Talai men were taken to Kericho Boma, the view to go back to Kipsigis Country gained support amongst the Talai, though the colonial government was averse to repatriating the Orkoik to Kipsigis as they still

- "had strong influence in the more backward locations n. Sotik and Chebalungu" (KNA DC/KER. 1/19:5).

The political implications of their return militated against this.

During the same period, plans were put in place by the Kipsigis African District Council (A.D.C) and the colonial government to the effect that the Talai be repatriated and be settled at either Kimililoi, Chengaroma or at Kibulgeny (KNA DC/KER, 1/33:19).

David Ngasura Tuei,  
P.O.Box 1864,  
Kericho, Kenya.  
Email:davidngasura@yahoo.com,  
Cell:+254722619901,  
3/9/2009.

-----  
**HER MAJESTY THE QUEEN**  
**BUCKINGHAM PALACE**  
**LONDON SW1A 1AA.**  
-----

YOUR MAJESTY, Please, pardon me for writing to inform you about the plight of my community, The Kipsigis Talai/Laibons of Kenya. I am Mr. David Ngasura Tuei, a member, an official and a researcher of the Kipsigis Talai.

As a member and researcher of the Talai and since we are a Marginalized Minority community, I have been raising the awareness to all, of our history and plight. I have been writing to Newspapers and other Media Institutions about our plight. I have also, been attending various Workshops relevant to us organized by some Ngos and UN Institutions ie; the UNDP, to present our history and the plight.

Please, go thro' the documents by me and our consultant/researcher (not a Talai) Mr. Bill Rutto, cell:+254 721 368 361, Eml: [bill.rutto@gmail.com](mailto:bill.rutto@gmail.com) – in Nairobi, which we sent to the Pambazuka News (The Fahamu-Ngo-UK) for further global awareness. The consultant requires assistance to publish a Talai history book; 'The Talai – A Case of Human Rights Violation'.

I am sure your office can check and verify our issue and claims, to confirm.

However, I am confirming to you that I have seen old men and women from the community crying and asking God why they were born, while they die. The young ones who are innocent die because of the poverty related diseases not knowing why they are the poorest. In our community, we have a saying that ..." **an antelope does not blame who kills it, but who disturbed it from its hiding place**".

YOUR MAJESTY, you are the only one to bring a lasting solution to our plight. May be you can invite us and whoever you wish, to discuss and negotiate the compensation issue rather than us going to International Court of Law which would be embarrassing to the British (Colonial) Government. The issue was a "Human Error".

We are ready to reconcile and forgive each other.

GOD BLESS THE QUEEN.

Yours Faithfully;

David Ngasura Tuei- Kipsigis Talai official/ Researcher.

NB: Members of the community have asked me to pass their regards to you. They are aware of this letter to you. Some were members of the traditional dancing group they were to entertain you during your Feb.1952 visit to Kenya before you became "THE QUEEN", on your proposed visit to Lake Victoria which was cut short by an urgent message from your Home that you return immediately to England. They still remember the song they specially composed for you (Chepo Kapkingi- the daughter of the King). The youths are the ones appearing in one of the photos, ex- Gwassii Talai youths at the Kericho Concentration Camp. They were known as " **the Kericho DC, Mr. Gregory Smith's Boys**".





BUCKINGHAM PALACE

6th October, 2009

Dear Mr. Tuel,

The Queen has asked me to thank you for your letter of 3rd September expressing your views on what you feel is the plight of the *Kipsigis Talai/Laibons* people of Kenya. Her Majesty has taken careful note of your comments.

I must tell you, however, that this is not a matter in which The Queen would intervene. As a constitutional Sovereign, Her Majesty acts on the advice of her Ministers, and I have, therefore, been instructed to send your letter to the Right Honourable David Miliband, MP, the Secretary of State for Foreign and Commonwealth Affairs, so that he may know of your approach to The Queen on this matter and may consider the points you raise.

Yours sincerely,

Mrs. Sonia Bonici  
Senior Correspondence Officer

Mr. David Tuel.

THE KIPSIGIS TALAI DEVELOPMENT PROGRAMME  
P O BOX 1864, KERICHO  
EMAIL:davidngasura@yahoo.com  
PHN:0722619901

MEMORANDUM OF KIPSIGIS TALAI SUBMITTED TO THE NATIONAL ASSEMBLY DEPARTMENTAL  
COMMITTEE ON LANDS ON 15/6/2011

.....

TO THE KENYA GOVERNMENT AND THE KERICHO AND BOMET COUNTIES

This petition seeks to bring to your attention the plight of the Talai, with a plea that the community be accorded justice which has not been forthcoming for many years. The primary concern of the community is resettlement on a suitable piece of land within the Kipsigisland (5 acres per family) and compensation for the suffering they have undergone since their deportation under the *Laibons[Talai] Removal Ordinance* of 1934. The lands are Joubert and Kibulgeny . Kibulgeny, Kaptuigeny and Olenguruone had been proposed to settle Talai by the Colonial government -Ref: KNA:DC/KER/1/33/19, Joubert and Kibulgeny are large enough to accommodate the Talai.

Yours Faithfully;

David N Twei- Kipsigis Talai Member and Official.

To JE SIGILAI  
REPUBLIC OF KENYA



KENYA NATIONAL ASSEMBLY

TENTH PARLIAMENT – FOURTH SESSION – 2012

REPORT OF THE  
PARLIAMENTARY SELECT COMMITTEE ON THE  
RESETTLEMENT OF THE INTERNALLY DISPLACED PERSONS IN  
KENYA

CLERK'S CHAMBERS,

PARLIAMENT BUILDINGS,

NAIROBI

APRIL, 2012

CHAPTER FIVE

RECOMMENDATIONS

1. The Government should immediately undertake a re-vetting exercise of IDPs to ascertain the genuine ones and resettle them forthwith. The vetting exercise should be public, inclusive and be conducted by a committee that includes but not limited to, village elders, IDPs representatives, the local chiefs, religious leaders and the area Member of Parliament.
2. Those found to be fake IDPs following the re-vetting exercise should be arrested and prosecuted.
3. The Government must recognize all categories of IDPs including the integrated IDPs.
4. The Kenya National Bureau of Statistics should release data on the profiled IDPs to the public.
5. The Government must accelerate and conclude the resettlement of all the PEV IDPs and forest evictees by May 2012. These include the IDPs in the camps (4,691); OI kelou (3,898) and Turkana IDPs (2,597); forest evictees in Mau (2,459); Embobut (2,964) and Kipkunar (Lalak) forest squatters (48). The resettlement programme must be extended to include historical IDPs including Tala in Kericho and Kipkejon (1,867), Trans-nyaia squatters (5,977), Kipkurere in Nandi (997); Elgeyo Singore squatters (36), Njoguni/Kilindine IDPs in Tharaka (135), Machaka village squatters in Meru Central district (604), Shilu Hills squatters in Makeni and Coastal squatters.
6. The Government should start a comprehensive programme of profiling, resettlement and compensation of all displaced persons as a result of pastoral conflicts, floods, droughts and famine.
7. The Government should accelerate payment of ex-gratia of KShs.10,000 and KShs.25,000 to all genuine IDPs who had not been paid. The Government must not discriminate in these payments.
8. The Government should complete the construction of shelter for all categories of IDPs including the integrated IDPs by May 2012.

THE KIPSIGIS TALAI DEVELOPMENT PROGRAMME  
P.O BOX 1864, KERICHO  
EMAIL:davidngasura@yahoo.com  
Phn:0722619901

MEMARANDUM OF THE KIPSIGIS TALAI SUBMITTED TO THE TRUTH JUSTICE AND RECONCILIATION  
COMMISSION ON 19.9.2011

.....  
TO THE KENYA GOVERNMENT AND THE KERICHO AND BOMET COUNTIES

This petition seeks to bring to your attention the plight of the Talai, with a plea that the community be accorded justice which has not been forthcoming for many years. The primary concern of the community is resettlement on a suitable piece of land within the Kipsigisland (5 acres per family) and compensation for the suffering they have undergone since their deportation under the *Laibons[Talai] Removal Ordinance* of 1934. The lands are Jourbert and Kibulgeny .Kibulgeny, Kaptuigeny and Olenguruone had been proposed to settle Talai by the Colonial government -Ref: KNA:DC/KER/1/33/19, Joubert and Kibulgeny are large enough to accommodate the Talai.

Yours Faithfully;

David N Tuei- KipsigisTalai Member and Official.

# Contract Letter

## J. K. BOSEK & COMPANY

Advocates & Commissioner for Oaths, Notaries Public

J.K. Bosek, LL.B. (Hons), (M.B.B.), LL.M. (Law), LL.M. (Wash. State)  
15, COLONIAL DRIVE, GOWAN, KERICHO, KENYA  
Tel: 011-254-519-23400 (KERICHO)

### TERMS OF REFERENCE

Between

J.K. BOSEK & COMPANY ADVOCATES  
And

MR. DAVID TUI NGASIRA  
(Herein referred to as the Consultant)

#### Background

Pursuant to the resolution passed by the Kericho County Assembly on 31<sup>st</sup> July, 1914, J.K. Bosek and Company Advocates *(hereinafter referred to as the firm)* were a bid to pursue compensation claims on behalf of the victims affected by forced labour, cruel and degrading treatment and the loss of their lands of hereditary title by the British pre and colonial administrators.

Consequently, there is need to carry out an in-depth research and collect data relating to historical injustices suffered by the Kipsigis and Talai communities during pre-colonial and colonial era. The case will be filed at the High Court in London should the British Government decline an out of court settlement.

It is on the foregoing that we feel honoured to appoint you as one of the Lead Consultants.

1. The services to be provided by the Consultant shall include but not limited to the following:-

- a) Legal instruments that were used to forcefully remove the Talai from Kipsigis Land in Kericho to Gwasii in Luoland.
- b) The habitation conditions of Gwasii at the time of deportation.
- c) Review the task force report on the habitability of Gwasii land.
- d) Establish the socio-economic, psychological and reproductive damage caused by deportation of the Talai from Kericho to Gwasii land.
- e) Examine various correspondences between the British Government colonial Administrators and,
- f) Carry out any other duty incidental to the realisation of the above brief.

2. The Consultant shall Photocopy and certify all the copies of materials collected.
3. The consultant shall be required to testify in case need arises.
4. This is a two month consultancy.
5. The professional fee payable to you by the firm for this exercise will be Kenya Shillings ..... only. The fee will be paid to you per month and upon delivery of the reports to the satisfaction of the firm.
6. The firm shall however reimburse the consultant transport, photocopy and accommodation costs on a monthly basis.

Please indicate your agreement with the foregoing by signing and returning a copy of this contract to the firm  
J.K. BOSEK & COMPANY ADVOCATES, Accept this offer as the firm has defined in the above statement.

Signature: *[Signature]* Date: *15/1/2014* Contact details: *011-254-519-23400*  
*15, Colonial Drive, Gowan, Kericho, Kenya*

#### FOR OFFICIAL USE ONLY

Prepared by: J.K. BOSEK  
*[Signature]*  
Proprietor

Sign: ..... Date: .....

THE KIPSIGIS TALAI

P.O BOX 1864

KERICHO

Phone:0722619901

Eml:davidngasura@yahoo.com

17/8/2018

---

THE DEPUTY DIRECTOR LEGAL AFFAIRS AND ENFORCEMENT  
NATIONAL LAND COMMISSION

REF:TALAI HISTORICAL LAND INJUSTICES CLAIM

.....

However, the Kipsigis Talai would like to plea that the community be accorded justice, which has not been forthcoming for many years. The primary concern of the community is settlement on a suitable piece of land within the Kipsigisland (5 acres per family) or the equivalent compensation, since they lost their ancestral land when the community was banished to Gwassi in 1934 under the Laibons (Talai) Removal Ordinance of 1934. They can be settled at Kibulgeny land, which had been proposed earlier by the colonial government<sup>18</sup>Ref- *The Response of the Kipsigis Orkoiik to Colonial Rule- 1995 – Thesis by Michael Sialai Rotich- Kenyatta University, now (2018) the Clerk of the National Assembly.*

Yours faithfully;

David Ngasura Tuei

Official of the Kipsigis Talai and Researcher on the Talai past history.

Joel Rono - Talai Chairman

Joseph Ellly Sigilai – Talai Patron

REPUBLIC OF KENYA



**NATIONAL LAND COMMISSION  
HISTORICAL LAND INJUSTICE COMMITTEE**

In the matter of Article 67(2) (e) of the Constitution of Kenya  
In the matter of section 15 of National Land Commission Act  
In the matter of Historical Land Injustice Reference: Nos.  
NLC/HLI/013/2017, NLC/HLI/447/2018 and NLC/HLI/333/2018

Talai Clan Community.....Claimant  
And  
British Colonial Government.....1<sup>st</sup> Respondent  
The Government of Kenya.....2<sup>nd</sup> Respondent

**DETERMINATION**

**Hearing:** 11<sup>th</sup> July, 2018 (Kapsabet), 17<sup>th</sup> August 2018 (Kisumu)  
14<sup>th</sup> September 2018 and 11<sup>th</sup> October 2018  
(Nairobi)

**Panel:** Commissioner Dr. Samuel Toroitich - Chairman  
Commissioner Emma Njogu-Member  
Commissioner Dr. Rose Musyoka-Member  
Commissioner – Dr. Clement Lenachuru

**Appearances for the Talai Clan:** Rev. James Gassy  
David Nasira Juwei  
**Queens Counsel:** Chussy Rodney Dickson and Mr. Aiden  
**County Government of Kericho:** Kimutai Bosek

**Background and the Claimants' Case**

1. The Claimants who are the Talai is one of the Kalenjin clans, who lost land during pre-colonial, colonial and post-colonial times. During the colonial period, the white highlands were delineated meant exclusively for the whites and therefore dispossessing the Talai of their ancestral land and confined them to the Lumbwa Native Reserves of Buret, Belgut and Soik.
2. The colonial government removed the Talai through the Labour Removal Ordinance of 1962 and banished them to Gwasi in South Nyanza, and they lost approx. 6,75m acres of land.
3. At independence they came back and lived as squatters in the outskirts of Kericho, Nandi and Bomet Counties. They also suffered a lot of atrocities and human violations amongst other injustices.
4. The British took away so much land that they created one million acre settlement scheme to be given back to Africans. The Talai requested to be compensated for their lost lands and property.
5. After independence, the Talai were to be resettled at Moi Ndobi settlement scheme 1994, out of a population of 3300, only 187 were given land of 5 acre each. These lands were given to other people and not the rightful people Kisiigi and Talai.

6. The Kipsigis Talai is requesting for a suitable land for resettlement in Kipsigis area, at least 5 acres per family (about 6,000 families), and specifically in Kibugen area which is about 2,000 acres.

**Submissions:**

**By: Talai Community (Claimants)**

7. The area was approximately 358 hectares. The Claimants relied on the following list of documents and oral submissions hereto:
- a) Petition to the Senate on Historical Injustices in March, 2018
  - b) Memorandum to H.E the President of the Republic of Kenya, Hon. Uhuru Kenyatta dated 26<sup>th</sup> Feb, 2016
  - c) Report of a meeting with the Truth Justice and Reconciliation Commission minutes and Minister of state for special programs in April, 2012
  - d) Recorded oral statements for more than 300 victims and witnesses
  - e) Maps of the tea estates.

**Findings**

8. The Commission after consideration of the above submissions by the parties herein confirms that there was an historical land injustice occasioned on the claimants by the colonial administration as well as post-independence governments. The commission has no jurisdiction over the abuses that occurred, but only matters regarding to land.

**Recommendations**

9. The Commission finds that the claim raised by the Claimant is merited.  
10. Further the Commission recommends that:

- a. A survey be done on the lands being held by the tea estates to determine if there is any residue to be held in trust for the community by the County Government for public utilities.
- b. A scholarship fund to educate Talai Children be set up by the Multinational companies holding the land.
- c. The County Government and the multi-nationalists sign a MoU (Memorandum of Understanding) for the multinationalists to provide public utilities to the community.
- d. The Commission further recommends that the renewal of the leases to these lands be held in abeyance until an agreement is reached with the respective county governments.
- e. With regard to rates and rent on such lands, the Commission recommends that these should be enhanced to benefit national and county governments.
- f. The Commission maintains that all 999 year old leases be converted to the constitutional requirement of 99 years.

Dated and delivered at Nairobi this 7<sup>th</sup> day of February, 2019.

Signed:

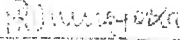
Commissioner Dr. Samuel Tororei

Chairman,

Historical Land Injustice Committee, National Land Commission



Signed:  
Commissioner Dr. Rose Musyoka



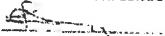
Member,  
Historical Land Injustice Committee, National Land Commission

Signed:  
Commissioner Emma Njogu



Member,  
Historical Land Injustice Committee, National Land Commission

Signed:  
Commissioner Dr. Clement Lenachuru



Member  
Historical Land Injustice Committee, National Land Commission



# THE KENYA GAZETTE

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No.	Class No. and County	Title	Remarks
8	NLC/19/04/2017	Naali Royal Trust (Classroom and Clinical Government, Mwanja Sugar Company, Chemical Sugar Company, Mwanja Sugar Company (Banyoni) and County Government of Naali (International Party)	The class is allowed. The Government is pleased to allow the class to be held in the Naali Royal Trust (Classroom and Clinical Government) and Mwanja Sugar Company (Banyoni) and County Government of Naali (International Party).
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12	NLC/19/04/2018	Naali Royal Trust (Classroom and Clinical Government, Mwanja Sugar Company, Chemical Sugar Company, Mwanja Sugar Company (Banyoni) and County Government of Naali (International Party)	The class is allowed. The Government is pleased to allow the class to be held in the Naali Royal Trust (Classroom and Clinical Government) and Mwanja Sugar Company (Banyoni) and County Government of Naali (International Party).
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COPY OF SQUATTERS DOCUMENT FOR ALL THE TALAIS AT THE KERICHO TOWNSHIP - 1963-1966

Issued in 1966 To all Talai People in Kipicho

FORM 2

CONFIDENTIAL  
REPUBLIC OF KENYA

File No. SC9/44/1/256

SPECIAL COMMISSIONER (SQUATTERS)  
P.O. Box 30028  
NAIROBI

DATE 19-7-66

REGISTRATION OF SQUATTERS

The undermentioned person whose name is given below has been registered as a squatter at KERICHO Talai KERICHO district. I shall be grateful if you will please furnish me with the details required in this form to enable me to deal with his/her case.

1. Name Babtiany A. Sowe ID. No. 656.05/KIP
2. District KERICHO
3. Location KERICHO Sub-Location Township
4. Property: Does he/she possess any of the following:  
(a) Land in acreage

5. If landless—why? (Briefly state the circumstances that led to the landlessness—for example state if he/she sold his/her land and when)

**UNMARRIED TALAI MEN (20) AND WOMEN(14) EX-GWASSI-(TOTAL-34)  
AFTERMATH OF THE DETENTION**

**Men:**

- 1.Arap Busienei S/O Bototieno – Died in 1960s
- 2.Chesengeny Kapcheborgei- Kaptalelyoi – Died 1977
3. Tombis Kapsongol – Died in 1936
3. Arap Mosoin- Died 1980s
4. Kiprono Kaplutan- Died 1990s
- 5.Arap Berenge Karapbureti- Became insane because of stress- Died 2014
- 6.Sibuor Kapkimuge- Died 1967
- 7.Arap Busienei Kiara – Died 1960s
- 8.Arap Kenduiwo- Kapkendiwo- Died
- 9.Chebochok Kapkipkech- He became mad because of stress –Died in 1960s.
10. Arap Barno- Kapsamuel – Died in 1967
- 11.Nduso- Kapsuel – Died in 1970s
12. Philip- Kapdaudi- Died in 1970s
13. Koske Kapjames- Died in 2004
- 14.Arap Busienei- Kapminget - Died
- 15.George Berenge Kimunai- Died in 1980s
- 16.Laboso Kapkech.- He became mad because of stress.
- 17.Kimalel Kappaulo- Died in 1970s
- 18.Dalmas Keswai- Kitoi
- 19.Danger Langat
- 20.Arap Barno Kapchebochok Kapbuigut- Died in 2000s

**Women:**

- 1.Christine Nyambegi Kapochola – Still alive
- 2.Christina Tongoi Karapmaritim- Died
- 3.Tabarno – D/o Botpascalia
4. Pascalia
5. Kendagor Kelong- Karapkipyegon Keturet
- 6.Chebusyo Kapberenge - Died
7. Chepkasi Karap Songonyo- Died 2022 was over 90 years old
8. Rael Cheptoo- Kitoi
- 9.Esther Chelangat Koske- Kitoi
- 10.Cherogony Kapmatutu– She became mad because of stress.Died in 1980s
- 11.Christine Chelelgo Kapdaudi- She became mad because of stress. Died in 1990s.
12. Sister arap Maritim- She became mad because of stress. Died in 1960s.
13. Sister of arap Barno – She became mad because of stress- Died in 1960s.
14. Kechingo Kapngasura sister of Kipchalchal- Disappeared in Gwassi in 1940s went to Luo land because of stress she wanted to go back to Kipsigis land.

## MY RECOMMENDATIONS AS A MEMBER OF THE TALAI

### TO THE BRITISH GOVERNMENT

The Talai have suffered for more than 70 years since being deprived of their ancestral land in 1934 under "The Laibon Removal Ordinance of 1934", since then, they have not had a permanent Settlement of known peace like the majority of other Kenyans. I cannot think of any other ethnic Group that has suffered this level of Human Rights Deprivation to-day in Kenya or globally. Yes! Our fore leaders resisted the colonialists and were; killed, exiled or imprisoned, but the most interesting or saddest thing is; Nowhere and never in the History of African Reaction of European Intrusion, have a whole community, innocent children, women, old men have been exiled (with their livestock). They were not given a chance to defend themselves in Court of Law. Normally leaders would be exiled or jailed (i.e.; Mzee Jomo Kenyatta, the First President of Kenya and Nelson Mandela of South Africa), but not hundreds of innocent people, this was the WORST VIOLATION OF THE HUMAN RIGHTS by the BRITISH COLONIAL GOVERNMENT in Kenya.

### Compensation & Reparations from the British Government

The Talai are seeking reasonable compensation for the losses (and lost earnings) the community has suffered since 1934 when they were first deported to Gwassi. The community wishes to leave the method of calculating the compensation to the relevant institutions/ authorities to decide on.

This compensation would then be computed, taking into account the cost of living indices over the period time since 1934 when they were deported.

Apart from the above, the British government may consider assisting the Talai as follows;

a) Built and support a "HOME" for the aged Talai members.

b) Fund an Education Foundation for the Talai children.

c) Assist to Develop the Talai Settlement Area should the National government or County governments of Kericho and Bomet resettle them (i.e.; to construct schools, hospitals, etc).

This will at least uplift the living Standards of the Talai as they have been disadvantaged by their past historical events (injustices) by the British Colonial government.

We are grateful to the Kericho Governor and the County Assembly for initiating the issue of the Compensation , the Lawyers from Kenya and U.K Pursuing the case and not forgetting the Media Institutions who have highlighted the Talai Compensation Case worldwide.

I hope Justice will be done to the Talai.

By

*David Ngasura Tuei – Kipsigis Talai Member and Researcher*

### **Finally the Plea by Talai**

The Kipsigis Talai would like to plea that the community be accorded justice, which has not been forthcoming for many years. The Primary concern of the community is settlement on suitable piece of land within the Kipsigisland (5 acres per family) or the equivalent compensation since they lost their ancestral land when the community was banished to Gwassi in 1934 under the Laibons (Talai) Removal Ordinance of 1934. They can be settled at Kibulgeny land which had been proposed earlier by the Colonial government and the Kipsigis ADC, 1947

*( KNA: DC/KER/1/33/9) - Ref: The Response of the Kipsigis Orkoiik to Colonial Rule – 1995 – Thesis by Mr. Michael Sialai Rotich – Kenyatta University the former Clerk of the National Assembly.*

# Kipsigis Community Clans



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## Kericho and Bomet Counties

### PROPOSALS AND PLANS ON PROJECTS TO BE DONE SO AS TO RAISE THE LIVING STANDARDS AND THAT OF FUTURE GENERATIONS

#### The talks of Year 2014 to-date



Prepared and edited by: **Joel K. Kimetto**  
**KCCO Secretary General**  
and **Kipsigis Researcher**

Ver. Year 2023

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## 1. Kipsigis Community Clans Organization

The main objectives of the Organization are as follows:

To bring the Kipsigis Community together and to iron out/solve the challenging cultural, ancestral or traditional matters facing the community and to provide guidance, control and oversight of the same.  
Pursue its visions and build a better Kipsigis for the future generations by coming up with viable and sustainable projects in all the Kipsigis Land. Make it a better place to live in than we found it. Work with the County/National Governments.  
It is a non-political Organization Registration Certificate No. 10370 of 1/7/2014

To carry out the main objectives of the Organization as seen below:

- a) Uniting all for peace, prosperity and tranquility.
- b) Prevention of any form of commitment of sins against the community culture.
- c) Develop policies on customary and cultural issues like the ransom compensation payments. - Muget
- d) Control of Kipsigis Community age-set naming timings.
- e) Bring up and follow the challenges on Kipsigis Community historical or current land issues and the land boundaries with the relevant authorities.
- f) Help to promote development, education, poverty eradication, medical care, culture and care for the environment.
- g) Bring up Ideas/projects to promote the uplifting of our living standards.
- h) Pursue the patenting of Kipsigis cultural and traditional items as would be agreed by the Committee/Board of Directors.

Kipsigis Community Clans Organization covers all the Kipsigis land and diaspora as follows:

1. The Main Kipsigis Committee Members.
2. The Branches Kipsigis Community Committee from Wards, Constituencies / Sub-Counties, Counties and Diaspora.  
- Kericho, Bomet, Narok, Nakuru, Nandi and Diaspora
3. The overall clans Chairmen, Secretaries and Treasurers
4. Each Clan Committee Members

The Kipsigis people through our meetings mandated the Kipsigis Community Clans Organization to follow up and address our communal challenges through the right procedures.

The Organization was started with the aim of solving our Kipsigis Communal challenges and find ways which will help us as a Community to raise/improve our living standards from where we found it to a higher standards so as to improve the living conditions of our future generations.



2. As Kipsigis Community, we found out that our real main challenge is the Historical Colonial Injustices which were meted upon us by the British colonial government when they came and forcefully took our ancestral lands.

During our very many meetings, this is what we said that we want as Kipsigis Community on the issue of the Colonial Historical Injustices in our Kipsigis Land:

- a) That the the British should compensate us for all the damages caused during the colonial rule. 1895 to 1962
- b) That they should also compensations us for using our land for several years. Some were 69 years and others to-date year 2022.
- c) That the Kenya Government should make suitable laws for the return of all our forcefully taken ancestral lands free of charge to the Kipsigis Community peacefully.
- d) That the Kenya Government should resettle the landless Kipsigis and Talai people by finding/identifying suitable areas for the same and or by paying them money to look for and buy any land of their choice.
- e) That we also need apology from the British Government and from His Majesty the King, King Charles III.

3. What our people suffered during the colonial forceful evictions:

- a) The wrong / forceful eviction of our people from their own ancestral land.
- b) The torching or burning of our people's huts and belongings.
- c) The destruction of our people's property.
- d) The confiscation of their animals of herds and flocks.
- e) The congestion in the overpopulated rural reserves.
- f) The growing souring poverty levels affecting the Kipsigis people.
- g) Deaths due to strange diseases as a result of the environmental change from cool areas to the harsh conditions.
- h) The mental agony and sufferings of our people which still linger in their minds.
- i) The restrictions in accessing the water points, ancestral shrines and salt-licks with the introduction of trespass law which was a strange thing to our people.
- j) The souring poverty levels while money from proceeds on our own soil is being siphoned out without benefiting the rightful owners of the soil.
- k) The introduction of forced taxes which further made our people poor since they had to pay using their animals which were confiscated.
- l) Our people were rendered as squatters in their own ancestral land and some are still living as squatters and most are landless as the British predicted that there will be the landless lot made up of women and children who are now old.
- m) Squatters were dropped on the roads to find themselves where to live when they grew old after working as cheap labour in the colonial farms.
- n) The destruction of our forests, big trees and medicinal plants and riparian strips.
- o) Wild life loss and the sweet honey is no longer there.
- p) Racial discrimination was there.
- q) Loss of indigenous flour/posho mills along the alienated rivers.
- r) Our people ended up in rocky, sloppy and un-fertile land.

That in our very many Kipsigis Community Clans meetings, We said:

That the Community is seeking Justice and they want back their ancestral lands.

4. And once our ancestral lands have been returned, we will appoint the trustees to take care of the farms for the Kipsigis Community and the money from proceeds will be used to develop the Kipsigis Projects as suggested below.

And that we should team up with both the County and the National Governments in some of the big projects.

- a) Education and educational facilities – International University.
- b) Health, Medical care and medical facilities – International Hospital.
- c) Infra-structure, roads and drainages/management.
- d) Environmental issues including riparian strip care (Carbon offsets).
- e) Poverty eradication, disaster and floods outcry support.
- f) Own Electricity self-sufficiency and connected to National grid.
- g) Provision of clean drinking water to each house in Kipsigis Land.
- h) Farming and farm produce loans, Dairies, Poultry etc.
- i) The Green City in the Sun development. (Kericho & Bomet)
- j) Kipsigis Banking facilities and Insurance Companies.
- k) Tourism creation and tourism facilities, Identification/development.
- l) Good housing & buildings + other priorities as would be screened by the Kipsigis Board of Directors and planning Engineers.
- m) The big modern International sports stadium and show ground.
- n) International Airport.
- o) A modern big Church for our thanksgiving.

> The farms should be managed well without touching the current management system. The change is the shareholder from the British who forcefully took it, to the original owner of the soil – The Kipsigis Community.

> The Kipsigis Board of Directors will appoint the management trustees to oversee the smooth running of the farms on behalf of the Community. A 3 level structure: (Board of Directors – Management Trustees – the current Managers)

5. Let us be wise. Let us unite. Let us consult each other on matters touching on the Community. Let us be investors on our own Soil. Let us discuss on how to tackle and handle other challenges facing us.

**WE ARE A VERY RICH COMMUNITY IF WE ARE WISE & UNITED.**

As we said: WE ARE A VERY RICH COMMUNITY IF WE ARE WISE & UNITED.

6. These are now the details on how we want our proposals to be implemented:

**KIPSIGIS COMMUNITY PROPOSALS ON PROJECTS TO BE DONE SO AS TO RAISE OUR LIVING STANDARDS AND THAT OF THE FUTURE GENERATIONS:**

1. The farms should not be divided but the Community should appoint their Board of Directors to oversee the smooth running of these farms and the proceeds will be used on projects to be developed so as to uplift the living standards of our people and that of our future generations.
2. Once our ancestral lands have been returned, the Board of Directors will appoint the trustees to take care of the farms for the Kipsigis Community. A 3 level structure: (1. Board of Directors – 2. Management Trustees and, 3. Current Managers) will ensure that there will be no corruptions in the system.
3. The money from the proceeds will be used to develop Kipsigis Projects in Kipsigis Land as will be suggested by the Community and those as trustees. We will team up with the National and the County Governments in some of the big projects.
4. The farms should be managed well without touching the current management system. The change will be the current ownership of the properties – to Kipsigis Community tea estates.
5. The money should be deposited in our Kipsigis Community Bank Account as would be provided by the main committee.
5. The land titles should then be changed from the private (colonial ones) to Kipsigis Community Properties and that the lands will be run as Kipsigis Community Communal properties/tea estates.
6. The Kipsigis Board of Directors will appoint the management trustees to oversee the smooth running of the farms on behalf of the Community.

**D. These are some of the forcefully and unlawfully taken Kipsigis Community ancestral lands:**

Unilever Tea Kenya (Brooke Bond)/Ekaterra/Lipton, James Finlay Kenya (African Highlands), George Williamson (Changoi & Lelsa), Sotik Tea, Sotik Highlands, Kaisugu, Mau Tea, Koru & Forttennan Farms (Normans), Kabianga Tea Farm, Tinga Farm among others. These are very large farms as one can easily see them in google maps.

**7. Tenancy: The tenancy will come to an end automatically when the fixed term runs out, or, in the case of a tenancy that ends on the happening of an event, when the event occurs.**

It is also possible for a tenant, either expressly or impliedly, to give up the tenancy to the owner. This process is known as a surrender of the lease.

- a. For our case, we do not honor the leases which the British gave themselves. The tenancy or the land leases should automatically end following our genuine complaint that our ancestral lands were forcefully taken. This is the happening of the event and those owning the farms should give up / surrender the leases and go.
- b. The renewal of the land leases is not a case to be discussed here since we did not leased out our land. We want it back right now. It was taken by force.
- c. The Land should revert back to the rightful owners of the soil who were chased away. It was the colonial Government who did that and we cannot agree to give our land to other people.
- d. Over history, many different forms of land ownership or ways of owning land have been established. Most of it was used to oppress our people and the same mistake cannot be repeated or allowed.

**8. Summary of what we want as Kipsigis Community**

- a) Our people now want the historical land injustices addressed. That is the call of every Kipsigis person through their clans to our able Government. Please listen to our complaints and claims and address this issue as soon as possible.
- b) These are not individual decisions but they are part of the resolutions reached in our Kipsigis community clans meetings.
- c) Consultation and public participation is always the best way in any decision making process concerning how the land should be used.
- d) Politics should not interfere with what the people want.
- e) We would urge all including the British to listen to our grievances. As Kipsigis and Talai peoples, we have been fighting for our rights by following the laid down law procedures. It should also be noted that we have been talking to our youth not to tire and take the wrong approach/routes.

THE DETAILED VERSION OF THE  
KIPSIGIS COMMUNITY CLANS PROPOSALS ON PROJECTS TO BE DONE SO AS  
TO RAISE OUR LIVING STANDARDS AND THAT OF OUR FUTURE GENERATIONS:

**9. THESE ARE OUR PROPOSALS FOR THE KIPSIGIS COMMUNITY PROJECTS AS  
SEEN ON OUR KIPSIGIS PROPOSALS FROM YEAR 2013/2014:**

i. The Green City in the Sun Development - Expansion of Towns. (Kericho & Bomet Counties)  
As soon as the farms revert back to the community, we can then plan on how we can expand our towns of Kericho and Bomet into cities.  
Along the roads of over 30 kilometers of these estates, we should mark and demarcate plots of 100ft x 100ft. each. This will give us up to about 3000 plots for a start. We should sell each for 2,000,000/- (2M) each or 1M for half. This will give us 6,000,000,000/- this amount will then be used to construct a huge Kipsigis building to be used as: Offices, Rentals, and on those on "C" J. Kipsigis Banking facilities, Kipsigis Bank and Insurance Companies.

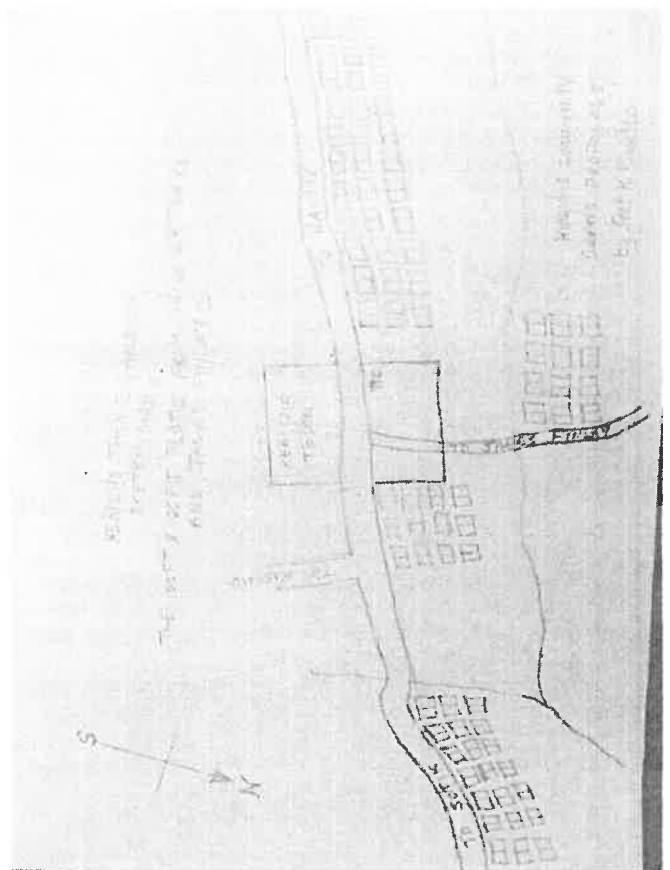
Get very good Town/City planners to do a very good sustainable planning. A planning committee should be formed and should include eight (8) clans elders of the Organization.

These now together with the proceeds from the tea Industry profits will surely help to do the other projects raised above as follows:

a) **Education** and educational facilities e.g. International University.  
On Education matters, we need to see that no Kipsigis needy Children are left behind because of lack of fees. There should be a section within the created offices who will deal with the same. We should team up with the National and the County Governments to look at the facilities required in this field.

b) **Health, Medical care and medical facilities** including an International Hospital.  
On health matters, there should be a section on the building to deal and vet for the Kipsigis needy medical requirements. If need be, NHIF should be paid for the Elderly, needy people who deserve the same. We should also team up with the National and the County Governments to look at the facilities required in this field.

10. A sketch proposal map. Roads, Electricity Water and sewerage should be done in an organized manner. They should not be near the rivers.



11. The Way forward on the Green City in the Sun Development  
Expansion of our Kipsigis Towns.

1. The stake holders should sit with the County Town Development officials (team work) so as to agree on how this could be done. The stake holders here are the Kipsigis community through KCCO.
2. We want all the stolen Kipsigis ancestral lands to revert back to us. We do not honor the leases which the British gave themselves.
3. Constitute a taskforce committee who will see that the proposals are implemented and that it should benefit the poor to the rich.
4. Start the planning and visit the sites for suitability, identification, physical plans and demarcation and the plots marking.
5. Once all things are in place, get ways of advertising the sale of the plots to any investor who may be interested (Local, National or International).
6. Develop the rules, guidelines and procedures to be followed so that order is in place when the same is going on.
7. The requirements for one to apply should have a questionnaire which should include the time the developer will start. The type of building he wants to construct.
8. Assign the plots according to one's ability to develop it straight. Those who are ready to do it say within 1. 2. 3. 4. 5 years time will be allocated the plots as follows. Those who will start soon will be given the plots which are nearer to the current town.
9. The money received from the sale of the earmarked 3,000 plots should be deposited in a Kipsigis Community Bank Account. This money will then be used to construct the big Kipsigis building which will host all the already mentioned sections.
10. The signatories of the Kipsigis Bank Account will be as agreed by the Kipsigis Clans Chairmen and the KCCO officials. Bik che lukwoben.
11. These Kipsigis Community proposal have been done in the best ways to address one of the most Kipsigis community communal challenge with the major aim of raising our living standards.
12. As Kipsigis community, we need the good will of all the political leaders so that we can unite, work as a team so as to realize our dreams.

11. Cont.... THE DETAILED VERSION OF THE  
KIPSIGIS COMMUNITY PROPOSALS ON PROJECTS TO BE DONE SO AS TO RAISE  
OUR LIVING STANDARDS AND THAT OF OUR FUTURE GENERATIONS:

- c) Needy infra-structure, roads and drainages/management.  
We should team up with the National and the County Governments to look at the areas which deserve support in this proposal.
- d) Environmental issues including riparian strip care (Carbon offsets).  
We should involve the stake holders who in this case are the Kipsigis Community. Get an office so as to team up with Counties and the National Government to look into these matters. That way, our forests, the springs, rivers and soil are protected. This will reduce the global warming effects as a contribution from our Kipsigis area. This will also raise the forest cover of the required standards
- e) Poverty eradication, disaster, drought and floods outcry support.  
Poverty is a bad thing which should be taken care of. No Kipsigis should die because of hunger.
- f) Own Electricity self-sufficiency to all our Houses and connected to National grid.  
This is a major area which we as Kipsigis Community will benefit from the waters of our big rivers before being used by other Counties and Countries. Currently, these companies each generate its own electricity for their own internal use. Kipsigis can erect more of these along the big rivers of Itare, Chemosit and Klmugu rivers and supply the same even to the newly constructed facilities on the new 100ft by 100ft plots. They should be metered as well as Kipsigis electricity payable to Kipsigis Power Account.  
An office within the big building will be created to deal with this.
- g) Provision of clean drinking water to each house in Kipsigis Land.  
We should team up with the National and the County Governments so as to look at the areas which need dams, wells, and any other method of water conservation. This will also ensure that food is available throughout because of crop irrigations
- h) Farming and farm produce loans, Dalries, Poultry etc.  
The Kipsigis Community Bank and the Governments will provide the soft loans, training and the follow up on the same even up to the small scale farming.

12. Cont.... THE DETAILED VERSION OF THE  
KIPSIGIS COMMUNITY PROPOSALS ON PROJECTS TO BE DONE SO AS TO RAISE  
OUR LIVING STANDARDS AND THAT OF OUR FUTURE GENERATIONS:

**j. Kipsigis Banking facilities and Insurance Companies.**

In the big Kipsigis Building, we should have a Kipsigis Community Bank.  
There should be an Insurance Company for the Kipsigis which should be started  
to cater for all our counties and other people's insurance needs.

**k. Tourism creation and tourism facilities, identification/development.**

There should be offices both at the Kipsigis building, dealing with culture and  
our Kipsigis cultural practices. The famous tourist attraction sites should be  
developed.

**L. Good housing & buildings + other priorities as would be screened by the  
Kipsigis Board of Directors and the planning Engineers.**

Housing is a fast growing requirement. This will be addressed by those  
investors who will be buying the plots.

All these need those who are in Government and the stake holders to sit and  
agree on these plans and the way forward.



**Annex 5: Submissions by the Kenya Tea Growers Association**

# THE KENYA TEA GROWERS' ASSOCIATION

Affiliated to: Federation of Kenya Employers (FKE); East African Tea Trade Association (EATTA); Kenya Association of Manufacturers (KAM); Kenya Private Sector Alliance (KEPSA) and Agricultural Sector Network (ASNET)

P.O. Box 320,  
KERICHO.

Cell – 0718 - 757342  
Email: [info@ktga.or.ke](mailto:info@ktga.or.ke)

Date: 2<sup>nd</sup> May 2023

Mr. J. M. Nyegenye, CBS  
Clerk of the Senate  
The Senate Clerk's Chambers, Parliament Building  
P.O. Box 41842-00100  
NAIROBI

Dear Sir,

## **FURTHER SUBMISSIONS IN REPLY TO THE PETITION BY THE KIPSIGIS, TALAI AND BOROWO CLANS ON HISTORICAL LAND INJUSTICES**

We write further to our submission letter dated 26<sup>th</sup> April 2023 and the Senate Committee Session of 27<sup>th</sup> April 2023, where we were asked to provide further responses to the Petition of 17<sup>th</sup> October 2022.

We are happy to provide further responses to the Petition. However, please note that the submissions herein are made wholly on a **WITHOUT PREJUDICE BASIS** as the matters sought to be addressed are the subject of a pending Court Appeal, i.e. **JR No. 3 of 2020 – Republic vs NLC and 4 Others, David Ngasura Tuei & 19 Others (Interested Parties)**. We have enclosed copy of the Notice of Appeal for your records.

We ask that the Senate Committee be guided by its Standing Orders adopted on 16<sup>th</sup> June 2022 which provide as follows under Order 103:

### **“Matters *sub judice* or secret**

- 1. Subject to paragraph (5), no Senator shall refer to any particular matter which is sub judice or which, by the operation of any written law, is secret.*
- 2. A matter shall be considered to be sub judice when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.*
- 3. In determining whether a criminal or civil proceeding is active, the following shall apply—*

*.....appellate proceedings whether criminal or civil shall be deemed to be active from the time when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgment or discontinuance....*

4. *A Senator alleging that a matter is sub judice shall provide evidence to show that paragraphs (2) and (3) are applicable.*

5. *Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the Senate or a Committee.”*

1. We shall now proceed to make our submissions on the reliefs the Petitioners pray for under the Petition.

1.1 Prayer 1: *That the Senate takes up this matter to ensure that our Kipsigis community’s ancestral lands go back to the rightful owners of the soil free of charge. Kipsigis were forcefully evicted by the British colonialists by use of wrong laws which were passed to suit them only.*

1.2 The issue of displacement of the Petitioners’ ancestors must be placed in historical context as the displacements going back over hundred years ago transcends the Petitioner’s claims and applies to **ALL OF KENYA** and to a large segment of its people.

1.3 Kenya, prior to the demarcation of its political boundaries, right to attaining its **independence** in 1963 had a land tenure system under the ordinances of the former British Protectorate, which applied to the entire Country. Some of these ordinances are:

a) In **1901, the East African Lands Order in Council** provided for the alienation and control of all land in Kenya by the British Protectorate. The Order in Council determined that crown land pertained to all public land in Kenya, which allowed the seizure of land in actual occupation by the indigenous masses.

b) The **Crown Lands Ordinance No. 21 of 1902** vested power in the Commissioner to sell freeholds in crown land within the protectorate. The 1902 Ordinance was repealed and replaced by a new Crown Land Ordinance in 1915 that declared all land within the protectorate as crown land, whether or not such land was occupied by the local community or reserved for local community occupation.

c) In **1931, the Native Land Trust Ordinance** excluded lands declared to be native lands.

1.4 This system of alienation was not peculiar to Kenya as it had been the case in other British colonies.

1.5 Upon the attainment of independence in 1963, the Government of Kenya took over and confirmed the laws then enacted, including the laws relating to land. The Government also took over the claims to and titles of the former Government and maintained the status quo with respect to titles to land already guaranteed by its predecessor. This protected the right to ownership of property acquired pre-1963. The 1963 Constitution and its amendments guaranteed the



right to property under **Order 14 Schedule 2 of the Kenya Independence Order in Council of 1963 and Section 75 of the repealed Constitution of 1969.**

1.6 The right to ownership of property is now protected by **Article 40 of the Constitution of Kenya 2010**, which *inter alia* provides as follows:

- a) Every person has a right to, either individually or in association with others, acquire and own property of any description and in any part of Kenya.
- b) Parliament shall not enact a law that permits the State or any person to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description or to limit or in any way restrict the enjoyment of any property right on the basis of any of the grounds specified or contemplated in Article 27 (4).
- c) The State shall not deprive a person of property of any description, 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 a conversion of an interest in land, or title to land; or
  - (b) is for a public purpose or in the public interest and is carried out in accordance with the Constitution and any Act of Parliament that--
    - (i) requires prompt payment in 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.

1.7 In answer, to prayer 1, unless and until the Constitution is amended by way of a referendum, neither the Senate, the National Assembly nor the courts can revoke titles on the basis of the claims made by the Petitioners. Additionally, the purported measures sought by the Petitioners would amount to discrimination of a lawful owner on account of an alleged heritage notwithstanding that the present owners have no linkages to the Petitioners claims. Such discrimination is prohibited by **Article 27 (4) of the Constitution.**

**2. Prayer 2: *That the Senate helps us follow up on the case against the British Government to pay the Kipsigis and Talai victims for all the damages caused e.g. the loss of our livelihood, huts, livestock, food, properties when they came and forcefully took our ancestral lands.***

2.1 We have noted the Petitioners' averments with respect to the actions they have initiated against the British Government before the UN and the EU Court of

Human Rights. The LSTPs or Respondents herein are not parties to the said proceedings.

**3. Prayer 3: *That the Senate guides us, use our laws so that the Lands should then be lawfully transferred and registered as Kipsigis Community Group of Tea Estates:***

3.1 We reiterate that the rule of law must be upheld. We believe we have already addressed prayer 3 by our answer to prayer 1 above. The Respondents / LSTPs hold valid titles to their respective properties. As such, their titles cannot be impugned by way of this petition.

3.2 Additionally, the Petitioners have not demonstrated their alleged dispossession was by the LSTPs to warrant the deprivation of lawfully held properties. Due process must be followed.

3.3 We also wish to reiterate that making an order for persons with valid titles to cede their land to original occupants or their descendants may well negate the application of constitutional right to property. A pronouncement to this effect was made by the Environment and Land Court's decision in **Henry Wambega & 733 others v Attorney General & 9 others** that *"if every Kenyan asserted the right to be settled in the land originally occupied by our forefathers, we will only be opening a Pandora's Box and creating an even bigger problem for there will be massive displacement of persons which will be catastrophic."*

**4. Prayer 4: *That the Senate removes the land leases/contracts which the British introduced and gave themselves our ancestral lands. The first leases started expiring in 2008 and most of them have now expired. That nobody should renew those leases before the issues are addressed. Help us to enforce the Caveat and Caution on these Multi-national farms.***

4.1 The prayer for the removal of land leases is not understood. If this is meant to be a prayer for revocation or cancellation of titles issued by the former British Protectorate, we reiterate that leases lawfully held under the current laws and the Constitution cannot be revoked by way of a petition to the Senate.

4.2 This notwithstanding, please note for leases held by foreign nationals (which is not entirely reflective of the circumstances herein) the **Constitution of Kenya 2010 under Article 65** provides for the conversion of their freehold leases above 99 years to leaseholds of 99 years. Further **section 107(3) of the Land Registration Act 2012** provides that any lease granted to a non-citizen shall not exceed 99 years from the effective date under the Constitution.

4.3 Therefore, any freehold land owned by a non-Kenyan citizen is deemed to have been converted into a 99-year leasehold interest commencing from 27<sup>th</sup> August 2010, and any leasehold interest with an unexpired term of over 99 years is deemed to be converted into a 99-year leasehold interest commencing from 27<sup>th</sup>

August 2010. This was the position held by the court in Koome Mwambia & 3 other v Deshun Properties Company Limited & 4 others [2014] eKLR, holding that “*the wording of Article 65(2), in view is a self-executing provision which requires no further formalities to be operational. Therefore, it is an automatic conversion from a freehold to a leasehold interest.*”

4.4 In addition, **Section 14 of the Land Regulations of 2017** provides that it shall be the duty of the Commissioner of Lands to notify non-citizens of the need to convert freehold titles into 99-year leasehold titles.

4.5 As such, the titles acquired pre-independence by LSTPs remain valid under the current land tenure systems. The Petitioners would therefore have no right to impose a caveat or caution over the properties owned by LSTPs when the law has not conferred upon them any interest in the land.

5. **Issue No. 5: *These are the lands: Note that: We do-not honour these land leases which the British government gave them to the white settlers who occupied our Kipsigis forcefully taken ancestral lands.***

a. ***The Names: Kapkorech, Kapkatungor, Sambret, Cheymen, Cheboswa, Chagaik, Kimugu, Chelimo, Kericho, Kerenga, Chebown, Tagabi, Jamji, Ngoina, Kapgwen, Chemogo, Chemosit, Koruma, Kaptien, Koiwa, Kimari, Chepkoiben, Tiluet, Chemase, Kapsongoi, Marinyin, Kapkoros, Kaproret, Chebitet, Simotwet, Cheptabes, Tendwet, Bondet, Chemasingi, Chemamul, Changoi, Leisa, Sotik, Koru, Changoi, Leisa, sotik tea, Tinga etc.***

b. ***Title Numbers: These are the LR Numbers, which the British gave themselves as the leasehold and freehold on our Kipsigis ancestral lands. Showing the LR numbers, area In Ha, expiry yr. 11386 / R 133.2 FREEHOLD; 11621170.9 FREEHOLD; 612 / 3; 24.5 FREEHOLD; (612 / 1 / R 178.0 FREEHOLD; 1677 10.7 FREEHOLD; 7282 191.2 FREEHOLD 11408 51.0 FREEHOLD; 1676/6; 87.9 2008; 7282 66.0. FREEHOLD; 1677 158.3 FREEHOLD; 1676/1 107.7 2008; 1676/2 25.5 2008; 1676/3 16.0 2008; 62030.2 FREEHOLD; 621 126.4 2009; 1676/6 197.6 2008; 520 99.4 FREEHOLD; 62255.7 2010; 3884 207.4 FREEHOLD;.9932 689.2 FREEHOLD; 622 72.3 2010; 624 83.4 2010; 3884 92.3 FREEHOLD; 624 45.8 2010; 626 129.6 FREEHOLD; 628 129.6 FREEHOLD; 8434/R 258.4 FREEHOLD; 11408 83.4 FREEHOLD; 8434/1 0.4 FREEHOLD; 8434/2 0.9 FREEHOLD; 11409 1.1 FREEHOLD; 5467/R 311.4 FREEHOLD; 3944260.2 FREEHOLD; 631n5 8.7 FREEHOLD; 5467/R 636.3 2018; 3941 262.7 2021; 5467/R 588.3 2018; 5467/R 482.6 2018; 3939 76.4 2018; 3939 546.0 2018; 4Q98/3/R 200.0; 5478 61.1 . 2018; 4431 605.0 2029; 940/R 1349.7; 5429 215.7; 5430 232.3; 5435 312.8; 5429 472.3; 5436 611.5; 5427 121.4 2019; 5428 286.5 2019; 5443 198.0 2018; 5443 115.6 2018; 6001/1219.6 2018; 6022/2227.9 2018; 6020 228. 7 2018; 6021 511.9 2018; 6019 124.6 2018; 6026/2107.0 2018; 6027 46.4 2018; 6025 134.8 2018;***

*6024 425.8 2018; 6026/2158.9 2018; 6027 221.9 2018; 6025 12.9 2018; 6028 256.2 2018; 9472 1.0 2018; 9473 1.7 2018; 5468; 5469; 7797; 3821/R and others not mentioned. Land leases by then were handled only by the Secretary of State for the British Government*

See our responses to prayers 1 to 4 above.

**6. Prayer 6: *That the Senate provides a means that the Kenya Government should re-settle the landless Kipsigis and Talai people or pay them money to look for alternative land in their area of choice***

6.1 Matters relating to resettlement or compensation of communities fall within the purview of the Kenyan Government.

**7. Prayer 7: *That the Senate considers and investigate this matter further so that this petition goes to the Senate for tabling and that our Senators may get more information/evidence from us***

7.1 The reliefs sought under this prayer in our humble view is for the Senate Committee to consider the implications of the prayers and make recommendations that will serve the wider national interests.

7.2 Kenyans specifically provided for the establishment of a National Land Commission to investigate the matters raised in the petition under Article 67 (2) (e).

7.3 The Senate Committee has been made aware of the proceedings before the NLC and which are now before the High Court and the Court of Appeal. We believe these are the forums mandated by law to address the issues in the petition.

**8. Prayer 8: *That the Senate gives us an okay to introduce a 3-level management system as follows) Kipsigis Community Board of Directors 2) Management Trustees 3) Current management systems in those farms. This will ensure that there will be no corruption in such a system:***

We believe that this cannot be addressed by the LSTPs.

**9. Prayer 9: *Ensures that once the lands revert back to the rightful owners, the lands will not be divided.***

*They will be managed to the highest levels of standard. The money will go to a Kipsigis Community Bank Account and will be used to address the following: i) Education ii) Diseases and iii) Eradication of poverty; which will ensure that our people do not suffer anymore.*

See our responses to prayers above.

**10. Prayer 10: *That the Senate gives us a fair treatment in this subject matter. We need to be released from the foreign colonial yokes. Our soil should not be under those who took it by force.***

10.1 Fair treatment must be accorded not only to the Petitioners but also to LSTPs. We are guided by the provisions of **Articles 47 and 50 of the Constitution of Kenya**, which secures the right to fair administrative action and the right to a fair hearing for **ALL PERSONS**. We thus ask that LSTPs be granted equally just treatment without being condemned and vilified (even on social media on these very proceedings).

**11. Further *Submissions* on the LSTP's Corporate Social Responsibility (CSR):**

11.1 As was proffered in our previous submissions before the Senate Committee, please see below further particulars of the CSR activities undertaken by the LSTPs:

11.2 ekaterra as one of the LSTPs collaborates with other stakeholders in various initiatives. Below is a summary of the socio-economic contributions of all the large-scale tea producers in Kericho / Bomet Counties.:

1. Forex: 40% of foreign exchange earned by tea sector (**\$462,000,000 in 2021**)
2. Corporation tax to national government (large tea producers categorized as large taxpayers); Payment of VAT; PAYE through employment and production respectively, assured over the long-term if the industry is supported to remain sustainable
3. Partnership with small-holder farmers (approximately 45,000) who supply green leaf for processing earning approximately Kshs 5 billion per annum which is injected into the local economy.
4. Long-term sustained employment and incomes. The tea sub-sector nationally remains the largest employer of permanent and out-sourced labour from service providers (**local community ranging from 55% to 89%**) injecting approximately **Kshs 6.4 billion per annum** in payroll earnings into the local economy.
5. The industry is also the highest paying agricultural sub-sector with incomes nearly double the gazetted sector Agricultural wages by Government.
6. Transport of green leaf / made tea and connected business activities thereby boosting local economic activities.
7. Out-growers' empowerment model- Kipsigis Highlands Cooperative Society Ltd, the programme has facilitated farmers to put up Sacco and other business ventures.

8. Cooperatives development in the communities around large tea producers.
9. Technology transfer through the introduction of brush cutters and pruning machines.
10. Development of high yielding clones such as S15/10. TN 14/3 through Industry investment.
11. Provision of technical advice to local communities in various areas e.g., water, power generation etc
12. Environmental Conservation activities including Mau Forest Conservation and preservation of various indigenous ecological zones.
13. Introduction of alternative cash crops
14. Skills transfer via training, membership in various institutional boards, industrial attachments etc.
15. Long-term sustained CSR contributions and benefits to the local community:
  - i. Construction of education institutions
  - ii. Bursary programmes
  - iii. Subsidized health services access in underserved areas
  - iv. Provision of wholesome water facilities:
  - v. Infrastructure development including roads in tea catchment areas
  - vi. Environmental Conservation initiatives such as planting trees in partnership with other stakeholders.
  - vii. The CSR activities of the industry stand at approximately **Kshs 800 million (2018-2021)** expended in Kericho / Bomet Counties. This level of investment cannot be sustained if companies are not profitable.
  - viii. Local procurement of goods and services approximately **Kshs 1.8 billion** per annum around Kericho / Bomet regions
  - ix. Other activities (premiums etc.) approximately **Kshs 75 million** per annum around Kericho / Bomet counties

Attached are schedules of CSR and other joint and individual economic empowerments activities by enterprises to the residents and communities living around the LSTPs.

We sincerely appreciate the Senate Committee for inviting the LSTPs to give their representations on the Petition. We pray that it considers our responses above, together with those conveyed in our letter of 26<sup>th</sup> April 2023, and arrives at a report that will uphold the rule of law and due process.

Presented on behalf of KTGA & ekaterra Kenya PLC by:



Apollo Kiarri  
CHIEF EXECUTIVE OFFICER

DocuSigned by:  
  
0B671781BFDA408...  
Kenneth Odire  
ekaterra Kenya PLC

KTGA - (Finlays/Williamson Tea/Kaisugu & ekaterra) Joint Education Programs - Kericho Branch 2009-2020

FROM THE YEAR 2009 TO DATE

Year	Project Name	Beneficiary	Paid amount	Remarks
2009	Classrooms	Kericho Primary School	2,000,000.00	completed
2011	Water Project	Kericho Tea Boys Secondary School	700,000.00	completed
2011	Principal Trip to Israel	Moi Tea Girls Secondary School	150,000.00	completed
2011	Inlet Road	Moi Tea Girls Secondary School	758,491.89	completed
2011	Dormitory	Moi Tea Girls Secondary School	15,000,000.00	completed
2011	Flat screen TV	Moi Tea Girls Secondary School	124,995.00	completed
2014	Twin Laboratory	Moi Tea Girls Secondary School	6,900,000.00	completed
2014	Dormitory repairs	Kericho Tea Boys Secondary School	4,667,730.00	completed
2015	Facelift-Gate,septic tank,repairs	Kericho Primary School	2,964,519.00	completed
2015	Library,dining hall,classrooms	Kericho Tea Boys Secondary School	5,538,868.00	completed
2015	Storm water drainage	Moi Tea Girls Secondary School	1,897,289.00	completed
2016	Gutters--extra works	Kericho Tea Boys Secondary School	107,353.00	completed
2016	Staff quarters	Moi Tea Girls Secondary School	10,120,594.18	completed
2016	Extra works on the drainage	Moi Tea Girls Secondary School	348,000.00	completed
2017	Wardrobes,Gas unit & Kitchen sinks	Moi Tea Girls Secondary School	435,417.60	completed
2017	Staff Houses	Kericho Primary School	12,881,468.84	completed
2017	Library/Resource Centre	Moi Tea Girls Secondary School	21,502,086.05	completed
2018	Dormitory	Kericho Tea Boys Secondary School	8,373,129.40	completed
2018	Canopies	Moi Tea Girls Secondary School	1,675,110.76	completed
2018	Ablution Block	Kericho Tea Boys Secondary School	2,810,573.29	completed
2019	Sanitorium	Kericho Tea Boys Secondary School	2,017,500.00	completed
2019	Classroom & Laboratory Reroofing	Kericho Tea Boys Secondary School	1,535,376.00	completed
2019	Single Laboratory	Kericho Tea Boys Secondary School	5,700,008.15	completed
2020	Expansion of Kitchen -Modern Kitchen	Kericho Tea Boys Secondary School	4,877,545.00	completed
	<b>TOTAL</b>		<b>113,086,055.16</b>	



**FINLAYS COMMUNITY TRUST PROGRAMMES TO JLAHRC APRIL 2023.****SCHOLARSHIPS**

ITEM	INSTITUTION	INTAKE PER YEAR	NO OF BENEFICIARIES	AMOUNT IN KSHS
Secondary School Scholarships	Local Secondary Schools	20	566	49.5 million
Undergraduate Scholarships	Local Universities	28	372	99 million
Masters Scholarships (Swire Charitable Trust)	UK Universities	2	21	91.6 million
Totals			959	240.1 million

**INFRASTRUCTURE PROJECTS**

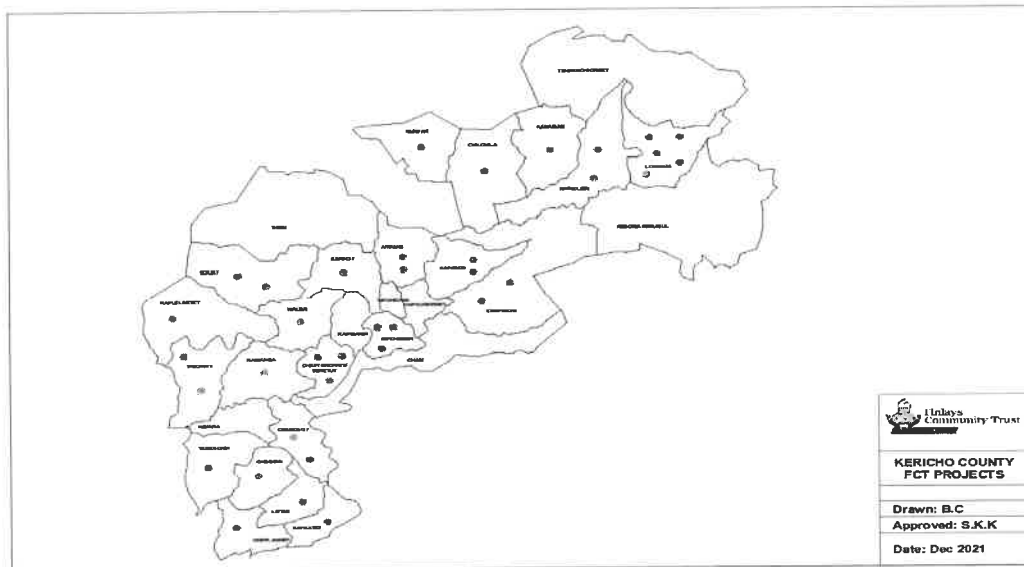
NO.	ITEM	NUMBER	COST
1	Two-streamed fully equipped secondary school	1	101,000,000
2	Science Laboratories	19	50,351,668
3	Libraries	11	23,917,369
4	Classrooms	12	21,506,788
5	Dormitories	3	13,043,056
6	Multipurpose halls	2	5,100,000
7	Administration block	1	1,327,494
8	Girls' sanitary block	1	124,914
9	Construction of a Water tank	1	950,000
10	Learning Resource Centre	1	1,850,000
11	Reconstruction of buildings destroyed by fire	1	1,110,350
12	Construction of Living Quarters (Units)	4	2,748,175
13	Construction of Lemotit/Dispensary Road	1	1,600,000
14	Dining halls	3	10,313,479
15	Technical support Hydro Generation & Water Project	2	150,000
16	Construction of a Maternity wing	1	1,500,000

17	Construction of Civil Workshop	1	3,899,999
18	Purchase of a School bus	1	1,701,720
19	Construction of Male & Female wards	2	1,250,000
20	Electricity Project	1	777,200
21	Dog Kernel	1	1,000,000
	TOTAL		245,222,212

**WATER PROJECTS**

NO.	PROJET	NUMBER	COST (KES)
1	Water projects	4	16 million
	TOTAL		16 million

The maps below show the distribution of Finlay's Community Trust projects in Kericho and Bomet counties





## Sotik Tea Companies Limited

### CSR Done by Andrew Wemyss Charitable Trust (Sotik Tea Companies)

Annual Breakdown	Bomet	Kericho	Nyamira	Scholarship
2018	40,338,482	17,349,700	26,498,300	2,277,408
2019	5,819,900	11,639,800	5,819,900	1,828,487
2020	18,204,952	104,931,844	17,109,562	1,169,656
2021	11,639,800	17,639,800	17,639,800	1,172,966
2022				
<b>Total</b>	<b>76,003,134</b>	<b>151,561,144</b>	<b>67,067,562</b>	<b>6,448,517</b>

Project Breakdown	Total 2018-2021			
	Bomet	Kericho	Nyamira	Total
Computer Lab Building	35,945,000	31,890,000	28,000,000	95,835,000
Computer Equipment	16,379,100	14,559,200	14,559,200	45,497,500
Boreholes	10,640,434	6,000,000	11,469,762	28,110,197
Kapkatet Hospital Building and Equipment	-	99,111,944	-	99,111,944
Beyond Zero MAN Lorry Ambulance	13,038,600	-	13,038,600	26,077,200
Scholarships				6,448,517
<b>Total</b>	<b>76,003,134</b>	<b>151,561,144</b>	<b>67,067,562</b>	<b>301,080,357</b>

The project at Kapkatet Hospital was done over a period of time. Total cost has been indicated in 2020. The major focus has been on computer laboratories in schools and started in 2014. Projects and scholars Beyond Zero Ambulances were donated in 2015, among the initial projects supported. Included for com

**Out-grower farmer Earnings**

Total
86,463,890
25,108,087
141,416,014
48,092,366
<b>301,080,357</b>

Column1	Farmers	Kgs Green Leaf	Earnings in KES
	5,268	29,402,704	836,718,003
	5,773	29,384,207	823,601,242
	5,838	22,803,680	675,372,473
	4,421	23,589,600	498,843,231
	5,884	22,241,010	597,862,342
<b>Average</b>	<b>5,437</b>	<b>25,484,240</b>	<b>686,479,458</b>

ships for 2014 - 2017 are not included.  
 pleteness of project types.

**WILLIAMSON TEA K PLC-CHANGOI****CSR Done by Williamson Tea K Plc, Farmer Earnings**

<b>Annual Breakdown</b>	<b>Bomet</b>	<b>Kericho</b>	<b>Scholarship</b>
2018	4,877,122		1,020,000
2019	7,181,150	25,000	1,360,000
2020	7,152,622	25,000	2,160,000
2021	9,313,542	250,000	2,061,254
2022			
<b>Total</b>	<b>28,524,435</b>	<b>300,000</b>	<b>6,601,254</b>

<b>Project Breakdown</b>	<b>Total 2018-2021</b>		
	<b>Bomet</b>	<b>Kericho</b>	<b>Total</b>
Educational Institutions: Infrastructure projects, etc.	13,218,582		13,218,582
Contribution to joint Branch CSR Activities	11,592,289		11,592,289
Donation of Chairs and Desks	988,640		988,640
Sponsoring Kericho Marathon	75,000.00	50,000	125,000
Scholarships	6,601,254		6,601,254
Building Kimulot market	1,605,234		1,605,234
Donation of Books to neighboring schools	969,690		969,690
HIV & Nutrition (Mentally handicapped child)	50,000		50,000
Eawls donation		25,000	25,000
Kericho Orphanage-Kids International		250,000	250,000
<b>Total</b>	<b>35,100,689</b>	<b>325,000</b>	<b>35,425,689</b>

Total	Column1
5,897,122	11,794,244
8,566,150	17,132,300
9,337,622	18,675,244
11,624,796	23,249,591
	-
<b>35,425,689</b>	<b>70,851,378</b>

Column1	Farmers	Kgs Green Leaf
	1,535	10,992,995
	1,535	8,822,824
	1,329	9,729,636
	1,277	12,237,549
	1,512	11,857,376
<b>Average</b>	<b>1,438</b>	<b>10,728,076</b>

**Total**

---

**70,851,377**

Earnings in KES
383,872,066
308,100,970
288,702,055
354,297,814
343,888,492
<b>335,772,279</b>

**2,014,633,677**



# THE KENYA TEA GROWERS' ASSOCIATION

Affiliated to: Federation of Kenya Employers (FKE); East African Tea Trade Association (EATTA); Kenya Association of Manufacturers (KAM); Kenya Private Sector Alliance (KEPSA) and Agricultural Sector Network (ASNET)

P.O. Box 320,  
KERICHO.

Cell – 0718 - 757342  
Email: [info@ktga.or.ke](mailto:info@ktga.or.ke)

Date: **26<sup>th</sup> April, 2023**

Mr. J. M. Nyegenye, CBS  
Clerk of the Senate  
The Senate, Clerk's Chambers, Parliament Building  
P. O. Box 41842-00100  
**NAIROBI**

Dear Sir

**RE: SUBMISSIONS IN REPLY TO THE PETITION BY THE KIPSIGIS, TALAI AND BOROWO CLANS ON HISTORICAL LAND INJUSTICES**

## **INTRODUCTION**

The Kenya Tea Growers Association (KTGA) represents large scale tea producers (LSTPs). The Association has four branches and its membership spans five Counties: Kericho, Bomet, Nyamira, Nandi and Kiambu. The Association promotes the common interests of members in the cultivation and manufacture of tea and advances good industrial relations and sound wage policies for the workers.

We wish to submit as follows in response to the Petition by the Kipsigis, Talai and Borowo clans in respect of alleged historical land injustice claims.

## **RESPONSE TO THE PETITION**

The above referenced Petition dated 17<sup>th</sup> October 2022 avers that the land held by James Finlay Kenya Limited, George Williamson (Williamson Tea Kenya Plc, Changoi and Lelsa Estates) Sotik Tea Company, Sotik Highlands Company Limited, Kaisugu Limited and ekaterra Tea Kenya PLC (formerly, Unilever Tea Kenya Limited), was allegedly acquired through violent eviction of the Borowo, Kipsigis and Talai Clan families.

James Finlay Kenya Limited, George Williamson (Williamson Tea Kenya Plc, Changoi and Lelsa Estates) Sotik Tea Company, Sotik Highlands Company Limited, Kaisugu Limited are members of KTGA. ekaterra Tea Kenya PLC also associates fully with the below submissions by KTGA. We shall in these submissions refer to the tea producers as Large-Scale Tea Producers (LSPTs) and submit as follows on the relevant assertions in the Petition.

1. We are in full agreement with the Petitioners and the Senate on the following:
  - 1.1 That the rule of law must be upheld;
  - 1.2 That due process must be followed;
  - 1.3 That no one should take the law into their own hands.
2. In response to paragraph 1.3, we submit that the above named LSTPs are lawful registered proprietors of the land on which their operations are situated. The land is held under current

- leasehold title with unexpired term and is governed by Kenyan law. The land in question does not relate to any expired leases.
3. The Constitution at Chapter Five and all other operational land laws including the Land Act 2012, Land Registration Act 2012, Land Amendment Act 2016, Land Value Amendment Act 2019 are clear on the procedures to be followed for acquisition of land, registration of land interests, renewal of leases and expiry of leases as well as all other land administration matters. These enterprises are bound by these laws and any attendant, lawfully implemented regulations thereunder.
  4. The lease renewal, conversion and other administrative processes will be according to the law but requires action by legally mandated bodies on land registration and administration i.e. Ministry of Land and National Land Commission. Any government lead operations cannot be attributed to the listed land-holders under para. 1.3 of the Petition
  5. We reiterate in response to paragraph 1.13 that land tenure in Kenya for all land is governed by the land laws named above. By the said law, title to land is conferred through allocation, transfer and registration, which the named LSTPs are all in compliance with as relates to their titles. That substantively, the claims in this and previous Petitions were framed against private business enterprises that hold titles validly acquired under Kenyan law.
  6. The constant attacks on validly held land pose a threat to the security of land rights in the Country and impact the viability and security of investments in the Country.
  7. In response to paragraph 3, although the Petition is indicated to be lodged against the British Colonial Government, the referenced determinations and recommendations of the National Land Commission, whose implementation is sought by the Petitions were directed at the LSTPs.
  8. The recommendations principally set out that:
    - a. Resurvey of the land held by the enterprises to be done
    - b. Scholarship fund to be set up by the named enterprises
    - c. MOU to be entered for the enterprises to provide public utilities
    - d. Enhancement of land rates and land rents
    - e. Conversion of titles to be undertaken
    - f. Renewal of leases be held in abeyance subject to agreement being reached with the respective County Governments.
  9. Because of the substantial impact of the recommendations to the rights of the affected enterprises, a Judicial Review Application was preferred in **ELC Judicial Review No. 3 of 2020**. As at the date of the Petition i.e. 17<sup>th</sup> October 2022, the matter was pending in Court and the Petitioners were parties in the matter having been enjoined earlier in the year.
  10. Judgment was delivered in the Judicial Review Application on 20<sup>th</sup> April 2023. A copy is annexed. In summary, the Court quashed the decision and recommendations of the National Land Commission for reasons of procedural impropriety. The Court finding was that there was **procedural impropriety** due to breach of Section 4 of the Fair Administrative Actions Act arising from a failure to afford the Applicants opportunity to be heard. In the determination of the Court, the proceedings that culminated in the published recommendations by NLC were vitiated by procedural impropriety and were therefore a nullity. The County Government of Kericho has filed a Notice of Appeal against the said decision (a copy of the Notice of Appeal is attached).

There is a danger of parallel proceedings and/or determinations resulting in conflicting decisions in respect of the same subject matter, if both the courts and Senate deal with historical land injustice claims.

11. In response to paragraph 4 of the Petition, the response of the named LSTPs is that there are appropriate laws to deal with the alleged issues in the Petition. Community land rights are well protected under the Community Land Act.

a. The position that adequate effort has been applied and measures put in place to address historical land injustices, protect community land right and to preserve the right to land by any person is evident. The Courts have also pronounced themselves on the adequacy of the legal framework including the Constitution and various land laws, to address the land issues raised in the Petition.

b. We also wish to call to the attention of the Committee the various decisions of Courts about historical land injustices. We find instructive, the decision of Court in Constitutional Petition No.2 of 2018 (a copy is enclosed). The considerations by the Court in arriving at its determination in the matter are relevant to the present Petition. The Court considered the extensive claims premised on historical land injustice and the avenues to address the injustices where established. We rely on the following statement by the Judge:

*"56. There is clearly agitation for land from people who claim to have faced historical injustices. ...There was certainly injustice caused by colonialism and people were displaced and their lives destabilized. But this did not just occur in the coastal region, it was countrywide. Persons were displaced in Central Kenya and Rift Valley, where the colonialists established the so called "White Highlands." The Maasai were also displaced from a huge swathe of what would otherwise comprise their native land. So too the Nandi in Uasin Gishu, the Kipsigis in Kericho, and even the Taita at the Coast. Almost every community that had "good land" (in the eyes of the colonial settlers) was dispossessed to pave way for colonial occupation. We in fact had native reserves dotted all over the country where displaced indigenous persons were concentrated while the colonialists hogged all the prime land. Was it unjust? Yes. Was it fair? No. The fact of the matter is that almost every other person in Kenya has been affected by the historical accident of colonial occupation. If we all asserted that we have a right to be settled in the land that was originally occupied by our forefathers, we will only be opening a Pandora's Box, and creating an even bigger problem, for there will be a massive displacement of persons which will be catastrophic. Even Nairobi itself, with its Maasai origin, would be overrun. How to move on from the dark colonial past does not lie, in the circumstances of this country, by making an order for people to cede their land so that the original native occupants, or their descendants, are settled in it. Neither does the solution lie in invading land that one believes belonged to his ancestor, for this would be a total negation of the constitutional right to property...."*

12. The LSTPs named above are of the position that the failure of the National Land Commission in its processes and delay by the Ministry of Lands to undertake appropriate steps for the conversion of titles, ought not to be applied to threaten legitimate title to lawfully held land.

## INDUSTRY CONTRIBUTION TO THE ECONOMY

13. In response to prayers in the Petition and particular, Prayers 6 to 10, the LSTPs submit as follows:

a) The operations of the LSTPs named above span Kericho, Bomet and Nyamira Counties. Below is a summary of the socio-economic contributions of the above enterprises to the local economy:

<b>55% - 89%</b>	Local Communities employed in the Large Tea Producers
<b>Kes 6.4 billion</b>	Payroll earnings per annum injected into the local economy
<b>50%</b>	Labour costs as a percentage of total cost of production
<b>Kes 800 million</b>	CSR contribution to the communities by the estates to Kericho / Bomet Counties over the last four (4) years
<b>Kes 1.8 billion</b>	Local procurement of goods and services per annum around Kericho / Bomet Counties
<b>Kes 75 million</b>	Other activities (certification premiums, local community development support, etc.) per annum injected around Kericho / Bomet counties
<b>60,000</b>	Small-holder farmers whose tea is processed and marketed by the LSTPs in Kericho, Bomet and Nyamira region

14. In addition to the above direct economic contributions of the LSTPs as part of a larger key economic sub-sector, independently and collectively, the enterprises support the following:

- Infrastructure development in educational institutions
- Student scholarships and bursaries
- Community benefit projects including development of water supply facilities
- Hospitals and hospital facilities to the local community health facilities
- Infrastructure development and maintenance of roads in tea catchment areas

15. The tea producers also constitute the highest tax-payers' categories to national government. Further national significance of the industry is evident in its furtherance of Kenya's obligations under international law. As employers, the enterprises aim to secure decent wages for workers. Further, technological development has been advanced by the industry to further skills improvement among workers and improve operational efficiencies to ensure business sustainability. The industry has also contributed to innovation and scientific advancement through the development, piloting and cultivation of advanced tea clones that attain high yield. This is important for efficient and effective natural resource utilization. Skills and technology pioneered by the enterprises have been transferred to local community to advance development of skills and capacities of small-holder farmers.

## CONCLUSION

We reiterate the contribution of the industry to the economy through foreign exchange earnings and direct employment and economic activities, community and CSR efforts as well as technological development of Kenya. From the perspective of business enterprises holding land for investment purposes, there is need for finality of proceedings and claims to avoid compromising national interests in attracting investments and sustaining growth.

For this reason, we urge the Committee in applying its mandate in the preservation of the supremacy and sovereignty of the Constitution and guided by the Constitution in carrying out its mandate to protect the interests of County Government, to uphold the position that a failure of prudence by the relevant

authorities ought not be applied to visit upon the parties unjustified blame for historical matters that occurred at a time when they held no interest in the land.

We urge the Committee to take cognizance of the extensive CSR and community benefit programs that have been set up to remedy possible social injustice to the affected communities where the LSTPs operations lie. We look forward to your favorable consideration of the above submission.

**Presented on behalf of KTGA & ekaterra Kenya PLC by:**

**Apollo Kiarri**  
**CHIEF EXECUTIVE OFFICER**

**Kenneth Odire**  
**ekaterra Kenya PLC**

**Annex 6:** Report of the Taskforce on  
Multinationals And other Tea Sub  
Sector Stakeholder Engagement |  
County Government of Kericho



**REPUBLIC OF KENYA**



**COUNTY GOVERNMENT OF KERICHO**

**REPORT OF THE TASKFORCE ON  
MULTINATIONALS AND OTHER TEA SUB-  
SECTOR STAKEHOLDER ENGAGEMENT.**

**Submitted To:**

**HIS EXCELLENCY DR ERICK KIPKOECH  
MUTAI, PhD, THE GOVERNOR, KERICHO  
COUNTY.**

**JANUARY 2023**

## LETTER OF TRANSMITTAL




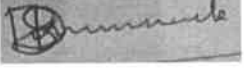


### RE: REPORT OF KERICHO COUNTY TASK FORCE ON MULTINATIONAL AND OTHER TEA SUB-SECTOR STAKEHOLDER ENGAGEMENT

Your Excellency,

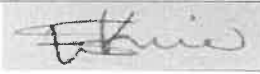

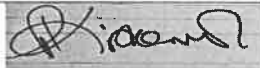

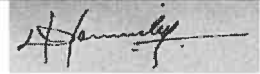


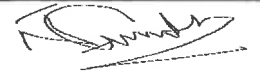
In exercise of the powers vested on you, you appointed the County **Task Force on Multinationals and Other Tea Sub-Sector Stakeholder Engagement** vide Gazette Notice No.13047 of 24<sup>th</sup> October 2022, for a period of 60 days with effect from 31<sup>st</sup> October 2022.

The Taskforce was required to conduct extensive review on the multinational companies and other tea sub-sector in Kericho in collaboration with Nandi and Bomet Counties. The Task Force undertook its assignment diligently.

We now have the great pleasure and honour to submit our report.

NAME & DESIGNATION	SIGNATURE	DATE
<b>CAPTAIN (RTD) RICHARD TOO</b> <i>Chairperson</i>		10.03.2023
<b>NICHOLAS KIRUI</b> <i>Alternate Chairperson</i>		10.03.2023
<b>DR WILLY CHEPKUTTO</b> <i>Member</i>		10.03.2023
<b>STANLEY MUTAI</b> <i>Member</i>		10.03.2023
<b>MARY BETTY CHELANGAT</b> <i>Member</i>		10.03.2023
<b>REUBEN KIPKIRUI KEMEI (BISHOP)</b> <i>Member</i>		10.03.2023



<b>NAME &amp; DESIGNATION</b>	<b>SIGNATURE</b>	<b>DATE</b>
<b>EMILY KIRUI</b> <i>Member</i>		<b>10.03.2023</b>
<b>FRANSISCA C. NGETICH</b> <i>Member</i>		<b>10.03.2023</b>
<b>PHILIP LANGAT</b> <b>Member</b>		<b>10.03.2023</b>
<b>BEATRICE SIGEI</b> <i>Member</i>		<b>10.03.2023</b>
<b>DAVID SIELE</b> <i>Member</i>		<b>10.03.2023</b>
<b>DR EVELYN C. C. RUGUTT</b> <i>Co-opted Member</i>		<b>10.03.2023</b>
<b>SAMWEL KEBENEI</b> <i>Secretariat</i>		<b>10.03.2023</b>
<b>IRENE CHEROTICH</b> <i>Secretariat</i>		<b>10.03.2023</b>



**Plate 1: Taskforce Members with HE The Governor Dr Erick Mutai.**

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## **ACKNOWLEDGEMENT**

The Taskforce registers its profound gratitude to many individuals and institutions that supported the course of this assignment. Special thanks go to His Excellency Dr Erick Mutai, the Governor of Kericho County for entrusting us to undertake this rigorous exercise. The formation of Taskforce to conduct extensive review on the multinational companies and other tea sub-sector engagement is a clear demonstration of the commitment and desire on the part of HE the Governor to improve the socio-economic status of Kericho County.

The Taskforce would also like to express its sincere appreciation to the staff of the County for providing us with the necessary support to conduct this exercise. We wish to extend our sincere gratitude to the following stakeholders who participated in this process for their contribution and support; Kericho County Community/tea growers, Kipsigis/Talai clan elders, Bunge la Mwananchi, Tea Research Institute, Kenya Tea Growers Association (KTGA), PWD representatives, Youth Bunge, LSTPs, Members of Parliament, Members of County Assembly, KTDA, Kericho Business Community, Boda Boda Association, Ministry of Labour, Ministry of Lands, NLC and all those who gave their views in different fora. Finally, we wish to thank, in a special way, members of the Task Force for their dedication, diligence and commitment throughout the planning stages, public hearings, information gathering, data analysis, and report writing.

## **ABBREVIATIONS AND ACRONYMS**

AEA	Agricultural Employers Association
CGOK	County Government of Kericho
COTU	Central Organization of Trade Unions
CSR	Corporate Social Responsibility
EIA	Environmental Impact Assessment
EATTA	East African Tea Trade Association
HP	Hand Plucking
KTGA	Kenya Tea Growers Association
KAPWU	Kenya Plantation and Agricultural workers Union
KUDHEIHA	Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers
KTDA	Kenya Tea Development Agency
KETEPA	Kenya Tea Packers
LSTPs	Large-scale Tea Producers
MNCs	Multinational Companies
NEMA	National Environmental Management Authority
NLC	National Land Commission
TBK	Tea Board of Kenya
TMH	Two Man Harvester
TRI	Tea Research Institute
SPH	Self-Propelled Harvester
WRA	Water Resources Authority
WRUA	Water Resources Users Association

## FOREWORD

The Kenyan tea industry has been, and still is, a significant contributor to the country's economy, accounting for 40% of marketed agricultural produce and 25% of total export earnings. However, the impact of the industry on the indigenous Kipsigis community of Kericho has been long standing issue that continues to negatively affect community to this day.

The forceful eviction of the indigenous people and the recent introduction of mechanization have caused major adverse effects on the indigenous population of Kericho since their livelihoods revolve around the employment in the tea sector which is no longer forthcoming due to advent of mechanisation in tea harvesting.

The partitioning of Africa in 1984 Berlin Conference led to the occupation of Kericho by white settlers who began planting tea before and after the First and Second World Wars. Various companies were established whose roles would later have far reaching consequences on the local communities who previously occupied the land where tea had been grown.

The first expansion of tea plantations led to the displacement of the Kipsigis community between 1920 and 1924. Before the Second World War, tea covered less than 500 acres and thereafter the war, this shot up to thousands upon thousands of acres of tea plantations as a result of commercialization of tea farming by the then formed companies such as Kenya Tea Limited and African Highlands Rea limited.

The white settlers' land and the tea estates were separated from the unproductive land named 'reserved land' which the indigenous Kipsigis community were concentrated so as to provide cheap labour to the tea plantation. The 'reserved land' soon became overpopulated and unproductive. The paramount chiefs were maliciously used by the settlers for the expansion of the plantations and the inhumane eviction took place in 1954 to 1957 and in some regions in 1960 before Kenya got independence.

While the white settlers provided direct employment opportunities to the local communities in the tea plantations from 1918 to 2018, the locals went through exploitation because they provided cheap labour while the colonial masters were amassing superfluous wealth at the expense of the poor Kipsigis community in Kericho.

In 2007, the UN General Assembly adopted the United Nation Declaration on the Rights of Indigenous Peoples (UNDRIP). The declaration **RECOGNIZES** the urgent need to respect and promote the inherent rights of indigenous people which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights



to their lands, territories and resources. Article 32(1) of UNDRIP states that *“indigenous people have the right to determine and develop priorities and strategies for the development or use of their land or territories and other resources”*; Article 32(2) further states that *“states shall consult and cooperate in good faith with indigenous people concerned through their representative institutions to obtain their free and informed consent before the approval of any project affecting their lands and territories and other resources particularly in connection with the development, utilization or exploitation of mineral, water or other resources”*.

After the Kenya attained its independence, the white settlers surrendered the occupied land back to the indigenous people in most parts of Country notably Uasin Gishu and Transzoia. However, this did not happen in Kericho and Bomet Counties where the white settlers continued to occupy the land while the indigenous people watch them siphon away their wealth by the uncaring settler hegemony who are determined to stay put.

The final brutal eviction and re-colonization affecting the Kipsigis community in Kericho and Bomet Counties is from the heavy mechanization of tea harvesting which has rendered many population of workers redundant with no consideration for the people who were forcefully evicted from their ancestral land 100 years ago and who have been working for generations in the tea plantation.

The introduction of tea harvesting machines have led to mass unemployment culminating in extreme poverty, overcrowding, insecurity and lack of basic needs amongst others social ills. Shopping centres such as Brooke, Kapsaos, Kericho Town, Kapsuser, Kapkelek and Chesinende are now ghosts of their old vibrant self as a result of loss of earnings from former tea estate workers who used to spur the economy of these areas.

The Constitution of Kenya, 2010 gave the counties the mandate to manage the resources within their jurisdiction on behalf of the indigenous communities. Thus, the County Government of Kericho has the responsibility over the Kipsigis ancestral land within Kericho County. The MNCs have continued to occupy their land while the community languish in misery and poverty.

It is therefore critical and crucial for the National Government and the County Government of Kericho to steer the process towards having a prompt and conclusive resolution of these issues; it is only then when the “curse” of tea on the indigenous people of Kericho County will be lifted and turned into a blessing.

## EXECUTIVE SUMMARY

### INTRODUCTION:

The Kericho County governor, HE Dr Erick Mutai, PhD, in exercise of the powers vested on him, appointed the **Taskforce on Multinationals and Other Tea Sub-Sector Stakeholder Engagement** vide a Gazette Notice No. 13047 of 24<sup>th</sup> October 2022 for a period of 60 days with effect from 31<sup>st</sup> October 2022.

The gazetted Terms of Reference (ToR) for the Taskforce were as follows.

- a) Review the current and emerging challenges facing the multinational and other tea subsector stakeholders within Kericho County and make appropriate recommendations.
- b) Analyze the roles of different stakeholder's segments and make recommendations on how they can collaborate amongst themselves and with the county governments to develop the tea sub sector.
- c) To come up with recommendations on social and economic impact of the current and emerging challenges on the residents of Kericho including but not limited to heavy mechanization of the MNCs and other tea sub sector.
- d) To co-ordinate consultations with stake holders in the multinationals and other tea sub sector on how to address the current and emerging challenges including but not limited to applicable and proposed land rates and fees payable.
- e) Conduct any matter ancillary to or in furtherance of any of the foregoing terms of reference.

Pursuant to TOR (no.(e) above), the Taskforce formulated auxiliary TORs as follows:

- i) To establish the legal and regulatory framework, revenue aspects, effects of water use and renewable energy generation by the multinationals and other tea sub-sectors in Kericho County.
- ii) To assess the effects of proposed Kericho town expansion on multinationals and other tea sub sectors in Kericho County.

- iii) To assess how CSR is undertaken by MNCs and other tea sub-sectors in Kericho County.

The Taskforce was required to conduct extensive review on the multinational companies and other tea sub-sectors in Kericho County in collaboration with Nandi and Bomet Counties. Subsequently, the Taskforce embarked on its mandate with the initial phase culminating in the preparation of the Inception Report, which highlighted the key methodology and deliverables. The same was handed over to HE the Governor on 24<sup>th</sup> November 2022.

#### **METHODOLOGY:**

The Taskforce employed various methodological approaches, procedures, techniques and tools to identify, select, collect, collate, process, compile, analyse and present the information on the subject matter. Specifically, the following approaches and tools were utilized:

**Stakeholder Analysis** to identify key persons, group or institutions that have significant interest in the tea sector within Kericho (such as LSTPs, other tea sub-sectors, current employees in tea sector, former employees, County Government of Kericho, the National Government, residents of Kericho County and business community among others together with their roles.

**Strategic Analysis** of various factors affecting the relationship between the various tea sector stakeholders with a view of establishing viable linkages between the stated parties (including Environmental Scanning, Revenue Avenues, Natural Resources, Political and Social Assessment among others).

**Questionnaires** for data collection from the LSTPs, other tea sub-sector stakeholders and some Government Departments in Kericho.

**Interview Guides** were used for data collection from all other stakeholders besides the LSTPs and other tea sub-sectors and was the primary data collection tool during the various public participation events.

**Direct Observation/ Site Visits** was applied in data collection during the single site visits to LSTPs' tea estates and other tea sub-sectors' farms which were undertaken mainly for the purpose of face-to-face engagement, slide presentations, interaction with labor and direct observation of different tea harvesting operations.

**Slide Presentations** were used to facilitate a clear appreciation and understanding of the different aspects of the LSTPs and other tea sub-sector by the Taskforce. The LSTPs and the other tea sub-sectors made slide presentations to the Taskforce.

**Written Submissions** was allowed to capture the issues by the LSTPs and other tea sub-sector stakeholders and were accurately captured and documented. Subsequently, written submissions were received from individual LSTPs, KTGA, Talai clan, Kipsigis clan, KPAWU among others.

**Literature Review** was applied to collect and analyze information from the local, regional and international literature on LSTPs; its relationship with various governments across the world, the legislative and policy frameworks governing the relationship between the LSTPs and the governments and within which they operate.

**Historical Analysis** was utilized to obtain the background and historical information tracing the origin and the trajectory of the challenges facing the County Government of Kericho, the LSTPs and other tea sub sectors and how they have been hitherto addressed.

## **KEY FINDINGS:**

The key findings of the Taskforce included the following;

1. The LSTPs and other tea sub-sectors have experienced, and continue to experience, myriads of challenges, locally and internationally, which includes;
  - Lack of a clear national tea policy to direct industry growth and prioritized actions by key sector players
  - Lack of a clear legal framework that addresses the specific issues touching on the various players within the tea value chain (small scale farmers, independent producers, large scale tea producers),
  - Tea Board of Kenya as currently constituted does not serve the interests of tea producers, e.g., it is mandated to carry out marketing, but this is not felt,
  - The lack of a clear governance structure between them and the Tea Research Foundation Institute,
  - Poor maintenance of roads within the tea catchment areas,
  - High cost of production (High labour costs, High Energy Costs, Multiple levies; High Input costs, High certification and maintenance Standards and Market Challenges among others.
2. The LSTPs and other tea sub-sectors have implemented several mitigation measures with varying degrees of success.
3. The LSTPs and other tea sub-sectors have suggestions/proposals on ways in which the County Government of Kericho may help mitigate these challenges.
4. There are several areas of synergy in which the LSTPs and other tea sub-sectors and the County Government of Kericho may work together for the common and greater good of all the stakeholders.
5. Nearly all LSTPs and other tea sub-sectors have introduced mechanized tea harvesting in varying proportions, most of which are 100% mechanized.

6. There are various types and models of tea harvesting machines being employed and include Sheer Harvesters, Battery Powered Harvesters (Hand-held tea harvesters Operated by one person), Two-man Held Machine (Hand-held tea harvesters Operated by two people) and Self-propelled Harvesting machines (Valiant Model).
7. The cost of tea harvesting is maximal (Kshs.15.32) with Hand Plucking and minimal (Kshs. 4) with Self-propelled Machines (Valiant model). Thus, the introduction of tea harvesting machines has significantly reduced the cost of production in the LSTPs.
8. The introduction of the tea harvesting machines by the LSTPs and other tea sub-sectors has occasioned widespread and far-reaching negative social and economic effects amongst the residents in Kericho County which include, the loss of livelihoods, increased insecurity and crimes rates among other cross-cutting effects.
9. The LSTPs and other tea sub-sectors continue to pay the land rates at Kshs. 1,600 as negotiated with the defunct County Council of Kipsigis and the Municipal Council of Kericho. The legal land rates as per the Valuation Roll in force (1966) is Kshs. 264.
10. The County Government of Kericho reviewed Valuation Roll but it was challenged by among others the LSTPs and other tea subsectors. The Valuation Court which was subsequently established to hear and determine this matter has never rendered its verdict to date due to non-funding of the said court.
11. The Taskforce did not find any evidence that the LSTPs and other tea subsectors have been, or are paying, any rent to National Government or at all as expected.
12. The Taskforce could not determine the exact land size occupied by the MNCs.
13. The Title Deeds/Lease Titles, Lease Agreements, Survey Plans, Maps and Geospatial Data regarding the land under the LSTPs and other tea sub-

sectors could neither be traced nor provided from the Department of Lands and Physical Planning of the County Government of Kericho, Ministry of Lands Kericho, National Land Commission (NLC) Kericho and the National Land Commission (NLC) Nairobi.

14. The need for re-surveying of the land under LSTPs and other tea sub-sectors has been recommended by the NLC and widely supported by the stakeholders. However, the move by the NLC and the County Government of Kericho to re-survey the said land was vehemently opposed by the MNCs and matter is currently pending and active in court.
15. Most LSTPs and other tea sub-sectors does undertake various Corporate Social Responsibility (CSR) programmes across the county. However, this was found to be far too low in comparison with their earnings or annual turnover. Additionally, their spatial coverage in the County is ad-hoc.

**RECOMMENDATIONS:**

The Taskforce, on the basis of its key findings, made a raft of practical recommendations to various actors to ensure prompt, complete and mutually beneficial outcomes between the LSTPs and County Government of Kericho.

## **CHAPTER 4.0 RECOMMENDATIONS AND PLAN OF ACTION**

### **PART I: RECOMMENDATIONS**

Following comprehensive stakeholder engagement and the findings thereof, the Taskforce makes the following recommendations:

#### **A. RELATIONSHIP BETWEEN THE LSTPs AND OTHER TEA SUB-SECTOR VIZ-A- VIS THE COUNTY GOVERNMENT OF KERICHO AND THE LARGER COMMUNITY**

1. The County Government of Kericho, the local community, the LSTPs and other tea sub-sector and indeed all tea sector stakeholders should foster a strategic and sustainable mutual relationship and partnership.
2. Develop and sustain a continuous structured and active dialogue and negotiation among all stakeholders.

#### **B. THE HISTORICAL LAND INJUSTICES**

1. The Taskforce recommends the prompt and full implementation, by the County Government of Kericho and the National Government, of the NLC's 2019 Ruling on Historical Land Injustices (HLI).
2. In the long term, the County Government of Kericho in conjunction with the Government of Kenya should initiate the process of reverting all ancestral land currently under LSTPs and other tea sub-sectors to the indigenous people of Kericho and Bome Counties

#### **C. AREAS OF SYNERGY BETWEEN THE LSTPs AND OTHER TEA SUB-SECTOR AND THE COUNTY GOVERNMENT OF KERICHO**

1. Establish a Liaison and Resource Mobilization office, where its membership shall be drawn from County Government of Kericho, LSTPs and other tea sub-sector to coordinate matters of common interest between the County Government and LSTPs.



2. The County Government of Kericho in conjunction with LSTPs to develop a policy to guide in CSR activities.
3. The County Government of Kericho to release infrastructure development funds. (Formerly, Ad-Valorem) for roads maintenance.
4. LSTPs representatives be included in the County Agricultural Steering Committee (CASCOM).
5. The County Government of Kericho to improve and support extension services to the farmers.
6. The National Government and the County Government to work on bringing down high certification cost and increasing demanding maintenance obligations which are near mandatory for market access or create their own standards to insulate their own industries from the foreign standards.
7. The County Government of Kericho, LSTPs and other tea sub-sector embrace ADR rather than court Litigations to foster good relationship.
8. LSTPs to come forward and present their land documents to the County lands offices in Kericho to avoid land tenure disputes which are shrouded in obscurity because of lack of documents to support the claim and demystify misinformation, incitement, and interference by local political leaders as claimed.

**D. THE TEA HARVESTING MACHINES, SOCIAL AND ECONOMIC EFFECTS**

1. Technology in the tea industry cannot be wholly wished away, it is therefore necessary for the County Government of Kericho to negotiate with the LSTPs and other tea sub-sector with a view to achieving a win-win situation. The Taskforce recommends a ratio of 60%:40% machine harvesting to hand plucking respectively.
2. Legislation to control importation of heavy mechanization (Valiant tea harvesting machines) to be enacted in the National Government and at the County Government level.

## **E. LAND RATES, RENT, AND OTHER FEES PAYABLE**

### **(a) Land Rates**

1. The County Government of Kericho to facilitate the Valuation Court in order to expedite and render itself on dispute involving the reviewed Valuation Roll.
2. The County Government of Kericho should establish the registration numbers of all land parcels under leasehold tenure and regularize their records to enhance the collection of revenue.
3. The land rates of Kshs 5,000 - 10,000 per acre to be charged and reviewed as and when the time comes, subject to a maximum of 4% of the Unimproved Site Value (USV).
4. The rateable land area owned by the LSTPs be reviewed to include the entire portion leased as opposed to current practice of rating the area under tea and eucalyptus only and subject to Valuation for Rating Act.

### **(b) Land Rent**

The LSTPs and other tea sub-sector should pay rent as provided for under Section 28 of the Land Act, 2012.

1. The County Government to repossess the land from leasehold owners for non-payment of rent as mandated by the law.
2. The Rent payable to the Commissioner of Lands be remitted to the respective county governments.
3. The County Government of Kericho should, through legislation, or other mechanisms, advocate for the sharing of the land rent, which currently is allegedly being remitted wholly to the national government, in the ratio of 80:20 i.e., 80% to the County Government of Kericho and 20% to the national government.

**(c) Other fees payable**

1. The Taskforce recommends that the county government charge cess on made tea and bauxite. The tea Cess should be charged at Kshs 1.0 per kilogram of made tea while that of Bauxite to be charged at Kshs. 1000 per ton.
2. The Taskforce further recommends that Cess be levied on quarry stones and sand mined within the county at Kshs. 200 per ton, while sand be charged at Kshs. 200.
3. The Kericho Finance Act be further amended to incorporate the above stated proposals.

**F. LAND TITLES, LAND LEASES, LAND SIZE AND LAND RE-SURVEYING**

1. The County Government in conjunction with the national government do direct leasehold titles to be converted to the current land law regime.
2. The Taskforce recommends that the County Government to act and call for decentralization of land records for land parcels held under leasehold tenure for ease of accessibility.
3. The land used by LSTPs and other tea sub-sector be re-surveyed to establish the actual land size and subject to court's directions, since the matter is pending before court. Pursuant to the outcome of the said re-survey, the rates be reviewed accordingly.
4. Department of Finance and Economic Planning and the County Assembly should appropriate sufficient funding to the Department of Lands and Physical Planning in order to procure necessary equipment for efficient operation.
5. Lands office needs to be properly empowered to undertake its mandate effectively including the stated re-surveying – adequate appropriation, motor vehicles, appropriate technology (such as Land

Management Information System (LIMS), GIS Laboratory, RTGS) and political goodwill and support.

**G. WATER USE AND CARBON CREDIT TRADING**

1. The County Assembly of Kericho to enact the KERICHO COUNTY WATER ACT, to protect and control the use of water resource and sources.
2. Working together with the County Assembly of Kericho, The Senate and the National Assembly should initiate the formal process, legislative or otherwise, of sharing the proceeds of the Water Resources in the County as per the Constitution of Kenya 2010.
3. The County Government of Kericho to encourage the LSTPs and other tea sub-sectors to register for Carbon Trading, since tea and forest cover is a carbon sink. Carbon trading proceeds is pure profits; therefore, LSTPs should consider sharing the proceeds with the Kipsigis community through the County Government of Kericho.
4. A water legislation covering i.e., water abstraction by LSTP and other tea sub-sector should be put in place detailing how the revenue can be shared equitably between WARA and the County Government so that revenue collection is enhanced. This can also be pursued through the Council of Governors.

**H. CORPORATE SOCIAL RESPONSIBILITY (CSR)**

1. A Liaison Office in the Office of the Governor be established to provide a structure on how development activities through CSR are coordinated between the county Government of Kericho and LSTPs.
2. The CSR budget from the LSTPs should be based on a percentage of the annual turnover, and the Taskforce recommends at least 4%.

**I. LAND FOR KERICHO TOWN EXPANSION AND SAMBRET LAND QUESTION**

1. The 1000 acres of land for expansion of Kericho Municipality should be compulsorily acquired, as per the laws established, on a need-basis and not the whole 1000 acres at once as it will be misused and may fall into the hands of land grabbers. Effective public participation must be undertaken prior to acquisition.
2. Following the NLC ruling on historical land injustices that the current land occupied by the LSTPs belongs to the indigenous people (Kipsigis community), the county Government should petition the courts to execute the said ruling.
3. Sambret land disputed between ekaterra and other entities should be reverted to the County Government of Kericho to be held in trust for the Kipsigis community. Any purported adjudication and issuance of titles must be annulled.

**J. CURRENT AND EMERGING CHALLENGES FACING THE LSTPS AND OTHER TEA SUB-SECTORS**

1. The LSTPs and other tea sub-sectors to carry out tea value addition and product diversification of tea to improve tea earnings. The County Government of Kericho to lobby the national government to fast-track the implementation of the key recommendations of the tea industry Taskforce report of 2007 and 2016; particularly in respect of enactment of an Agricultural Products Value Addition Bill, the Geographical Indications of Goods Bill and the establishment of Tea Development and Value Addition Revolving Fund and to promote the competitiveness of premium teas.
2. County Government to lobby National Government to pass tight legislation to cap 40% of tea products for value addition and 60% for bulk tea in order to maximize value to the producers. The Taskforce

further recommends that the 40% meant for value addition to be achieved over a period of 20 years.

3. The Taskforce recommends that the County should lobby for the fast-tracking and the full implementation of the Amended Tea Act 2020, especially the retention of the challenged sections like section 36 which calls for all tea to be auctioned at the floor.
4. The Taskforce recommends the elimination of Value Added Tax (VAT) on locally sold tea would certainly help to stimulate local per capita consumption and reduce the flooding of the international Market.

## **K. ANCILLARY MATTERS/EMERGING ISSUES**

### **(a) Inter-county Border Disputes**

1. The border disputes between Kericho County and Bomet (such as the disputed Ngoina Estate), Kericho and Nyamira, and Kericho and Kisumu should be promptly resolved. In so doing, specific use should be made of Districts and Provinces Act (No. 5 of 1992) which provides clear coordinates on these physical boundaries.
2. The Ngoina Estate which is disputed between Kericho County and Bomet County should be resolved immediately by establishing the boundaries as per 1963 maps. The land rates which were previously paid to Bomet and which are now held by ekaterra Tea Co. Limited should be put in an escrow account for transmission to the rightful county.
3. The boundaries of Soin, Sondu and Bogwo/Koguta land should be established between Kericho County and Kisumu County to avoid conflict and loss of land and revenue.

### **(b) Court Cases**

The Taskforce established that there are myriads of court cases lodged by LSTPs. Even though it is their right to go to court, the many cases have

stifled development. The Taskforce recommends Alternative Dispute Resolution (ADR) to be embraced so as to create an environment of good relationship.

**(c) Public Roads**

The Ministry of Roads and Public Works should resolve the ambiguity in public and private roads passing through the land owned by LSTPs and other tea sub-sector e.g. James Finlay's Road.

**(d) Tenders and Contracts Awards**

All companies and contractors doing business with LSTP should present a single business permit, a requirement for consideration for the jobs and supply of goods and services. The copies should be certified by the county revenue offices.

**(e) Establishment of South Rift National Polytechnic**

1. The LSTPs, other tea sub-sectors, the County Government of Kericho and other stakeholders should work together to establish a South Rift National Polytechnic in Kericho County which will be an economic engine and anchor in the community in the greater South Rift region (Kericho, Bomet & Narok) at large.
2. The polytechnic and other TVET institutions in the county to work in collaboration with the tea sector companies and the County Government to develop a tea industry related curriculum.

**(f) Creation of an Inland Tea Auction Centre**

A Kericho Tea Auction Centre should be established to ease pressure on the Mombasa Auction which is now the largest tea auction in the world. This should result in better uptake of the teas from the west of rift which have suffered historical injustices in other auctions.

## PART II: PLAN OF ACTION

This constitutes the Plan of Action for the Key Recommendations.

S/n	Main Issue	Recommendation (s)	Responsible Person (s)	Timeline
<b>A</b>	<b>Relationship between the LSTPs and other tea sub-sectors and the County Government of Kericho</b>	1. The County Government of Kericho, the local community, the LSTPs and other tea sub-sectors and indeed all tea sector stakeholders should foster a strategic and sustainable mutual relationship and partnership through dialogue, negotiation and Alternative Dispute Resolution (ADR)	<ul style="list-style-type: none"> <li>- County Government of Kericho</li> <li>- County Assembly</li> <li>- National Government</li> <li>- Kipsigis Community Clans</li> <li>- LSTP</li> <li>- Other tea sub-sectors</li> </ul>	<ul style="list-style-type: none"> <li>- Start Immediately</li> <li>- Continuing basis</li> </ul>
<b>B</b>	<b>Historical Land Injustices</b>	1. The NLC's judgement on Historical Land Injustices (HLI) should be implemented.	<ul style="list-style-type: none"> <li>- HE The Governor, Kericho County</li> <li>- NLC</li> <li>- National Government</li> <li>- Judiciary</li> </ul>	- Immediate
		2. In the long term, the County Government of Kericho in conjunction with the National Government should initiate the process of reverting all ancestral land currently under LSTPs and other tea sub-sectors to the indigenous people.	<ul style="list-style-type: none"> <li>- County Government of Kericho</li> <li>- County Assembly of Kericho</li> <li>- National Government</li> <li>- Parliament of Kenya</li> <li>- Judiciary</li> </ul>	- Immediate (Upon Commissioning of the Taskforce's Report)
<b>C</b>	<b>Current and emerging challenges facing the LSTPs and other tea sub-sectors</b>	1. The LSTPs and other tea sub-sectors to carry out tea value addition and product diversification of tea to improve tea earnings.	<ul style="list-style-type: none"> <li>- County Government of Kericho</li> <li>- National Government</li> <li>- Parliament of Kenya</li> <li>- LSTPs</li> <li>- TBK</li> </ul>	- Immediate
		2. County Government of Kericho to lobby for the fast-tracking of the full implementation of the Amended Tea Act 2020.	<ul style="list-style-type: none"> <li>- County Government of Kericho</li> <li>- National Government - Parliament of Kenya</li> <li>- LSTPs</li> <li>- TBK</li> </ul>	- Immediate



S/n	Main Issue	Recommendation (s)	Responsible Person (s)	Timeline
		3. The County Government elimination of Value Added Tax (VAT) on locally sold tea would certainly help to stimulate local per capita consumption and reduce the flooding of the international Market.	- County Government of Kericho - National Government - Parliament of Kenya - LSTPs - TBK	- Immediate
D	Area (s) of Synergy	1. Establish a Liaison and Resource Mobilization office, where its membership shall be drawn from County government of Kericho, LSTPs and other tea sub-sector to coordinate matters of common interest between the County Government, LSTPs and other tea sub-sectors.	- County Government of Kericho - LSTPs - Other tea sub-sector	- Immediate
E	Mechanisation in tea harvesting and social and economic effects	1. The County Government of Kericho to negotiate with the LSTPs and other tea sub-sector with a view to achieving a win-win situation. The Taskforce recommends a ratio of 60%:40%; machine plucking to hand plucking respectively.	- County Government of Kericho - National Government - Parliament of Kenya - LSTPs - Other tea sub-sector	- Immediate
		2. Legislation to control importation of heavy mechanization (Valiant tea harvesting machines) be enacted.	- County Assembly of Kericho - Parliament of Kenya	-Immediate
F	Land rates, land rents and other fees payable	1. The land rates of Kshs 5,000 - 10,000 per acre to be charged and reviewed in time, subject to a maximum of 4% of the Unimproved Site Value (USV).	- County Government of Kericho - County Assembly of Kericho	Immediate
		2. The County Government of Kericho to facilitate the Valuation Court in order to expedite and render itself on dispute in involving the reviewed Valuation Roll.	- County Government of Kericho - County Assembly of Kericho	Immediate
		3. The County Government of Kericho should establish the registration numbers for all land parcels under leasehold tenure and regularize their	Department of Lands and Physical Planning.	Immediate

S/n	Main Issue	Recommendation (s)	Responsible Person (s)	Timeline
		records to enhance the collection of rates.		
		<b>4.</b> The LSTPs and other tea sub-sector should pay rent as provided for under section 28 of the Land Act, 2012.	- Ministry of Lands - County Government of Kericho	Immediate
		<b>5.</b> The County Government of Kericho should, through a legislation, or other mechanisms, advocate for the sharing of the land rent, which currently is allegedly being remitted wholly to the national government, in the ratio of 80:20 i.e. 80% to the County Government of Kericho and 20% to the national government.	- County Assembly of Kericho - County Government of Kericho	Immediate
		<b>6.</b> The Taskforce recommends that the County Government charge Cess on made tea and bauxite – the tea Cess should be charged at Kshs 1.0 per kilogram of made tea while that of Bauxite to be charged at Kshs. 1000 per ton; the Taskforce further recommends that Cess be levied on quarry stones and sand mined within the county at Kshs. 200 per ton, while sand be charged at Kshs. 200.	- County Assembly of Kericho - County Government of Kericho	Immediate
<b>G</b>	<b>Land Titles, Land Leases, Land Size and Land Re-Surveying</b>	<b>1.</b> The County government in conjunction with the national government do direct leasehold titles to be converted to the current land law regime.	- Ministry of Lands (Chief Registrar, Lands & NLC) - County Assembly of Kericho - County Government of Kericho	Immediate
		<b>2.</b> The Taskforce recommends that the county government to act and call for decentralization of land records for land parcel held under leasehold tenure for ease of accessibility.	- County Assembly of Kericho - County Government of Kericho	Immediate
		<b>3.</b> The land used by LSTPs and other tea sub-sector should be re-surveyed to	- Ministry of Lands (Director of Survey & NLC)	Immediate

S/n	Main Issue	Recommendation (s)	Responsible Person (s)	Timeline
		establish the actual land size and subject to court's directions, since the matter is pending before court; pursuant to the outcome of the said re-survey, the rates be reviewed accordingly.	- County Assembly of Kericho - County Government of Kericho - LSTPs & other tea sub-sector	
		4. Department of Finance and Economic Planning and the County Assembly should adequate appropriate sufficient funding to the department of lands and physical planning to procure necessary equipment and technology for efficient operation.	- County Assembly of Kericho - Department of Finance and Economic Planning	- Immediate
H	Utilization of Abstracted Water Resources	1. The County Assembly of Kericho to enact the KERICHO COUNTY WATER ACT, to protect and control the use of water sources.	- County Assembly of Kericho - County Government of Kericho	- Immediate
		2. Working together with the County Assembly of Kericho, The Senate and the National Assembly, should initiate the formal process, legislative or otherwise, of sharing the proceeds of the Water Resources in the County as per the Constitution of Kenya 2010.	- County Assembly of Kericho - County Government of Kericho - National Government - Parliament - LSTPs & other tea sub-sector	- Immediate
I	Corporate Social Responsibility (CSR)	1. The County Government in conjunction with LSTPs to develop a policy to guide in CSR activities.	- County Government of Kericho - LSTPs & other tea sub-sector	- Immediate
		2. To eliminate duplication or concentration of CSR projects in one locality, a liaison office in the Office of the Governor be established to provide a structure on how development activities through CSR are coordinated between the County Government of Kericho and LSTPs and other tea sub-sectors.	- County Government of Kericho - LSTPs & other tea sub-sector	- Immediate
		3. The CSR budget from the LSTPs and other tea sub-sector should be based on a	- County Government of Kericho	- Immediate

<b>S/n</b>	<b>Main Issue</b>	<b>Recommendation (s)</b>	<b>Responsible Person (s)</b>	<b>Timeline</b>
		percentage of the annual turnover, and the Taskforce recommends at least 4%.	- LSTPs & other tea sub-sector	
<b>J</b>	<b>Sambret Land</b>	<b>1.</b> The County Government of Kericho should petition the National Lands Commission (NLC) and the Ministry of Lands which adjudicated, surveyed, and subdivided to cancel all titles and the land be reverted to the Kipsigis community and to be held in trust by the County Government of Kericho. Furthermore, a Presidential decree to cancel all titles therein should be sought by the Governor from the President on behalf of the Kipsigis community in Kericho County.	- County Government of Kericho - NLC - Ministry of Lands (Chief Registrar, Lands) - HE The Governor	- Immediate

**Annex 7:** Submissions by the Kenya National  
Commission on Human Rights



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**KENYA NATIONAL COMMISSION ON HUMAN RIGHTS**

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**ADVISORY ON**

- 1. PETITION CONCERNING THE BRITISH COLONIAL HISTORICAL LAND INJUSTICES AGAINST THE KIPSIGIS PEOPLE**
- 2. PETITION CONCERNING HISTORICAL INJUSTICES SUFFERED BY THE TOROBEEK COMMUNITY**
- 3. PETITION CONCERNING MISTREATMENT, HARASSMENT, PROPERTY LOSS AND HUMAN RIGHTS VIOLATIONS METED ON THE FAMILY OF THE LATE HON. JEAN MARIE SERONEY**

**PRESENTED TO**

**THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND  
HUMAN RIGHTS**

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**DATED: 8<sup>TH</sup> AUGUST 2022**

**Kenya National Commission on Human Rights  
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NAIROBI, KENYA  
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Fax: 254-20-2716160  
Website: [www.knchr.org](http://www.knchr.org)  
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1. The Kenya National Commission on Human Rights (“KNCHR” or “National Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution with a broad mandate to promote a culture of respect for human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the United Nations Paris Principles on the establishment and functioning of Independent National Human Rights Institutions commonly referred to as the Paris Principles and is accredited as an ‘A’ status institution for its compliance with the Paris Principles by the Global Alliance of National Human Rights Institutions (GANHRI). The Commission also enjoys Affiliate Status before the African Commission on Human and Peoples’ Rights.
2. The National Commission under Article 249 of the Constitution has a mandate to secure observance of all state organs of democratic values and principles and to promote constitutionalism. Article 10 of the Constitution requires all state organs to ensure they uphold constitutionalism and the rule of law whenever they make public policy decisions or interpret the constitution. One of the strategies pursued by the Commission to secure observance of all state organs of democratic values and principles is through the issuance of advisories.
3. Article 19 of the Constitution of Kenya affirms that the Bill of Rights is an integral part of Kenya’s democracy, which forms the framework for social, political, economic and cultural policies. The purpose of recognizing, protecting human rights and fundamental freedoms is to preserve the dignity of individuals, communities and to promote social justice and the realization of the potential of all human beings. That said, the Commission is alive to a myriad of competing interests between Communities and investors especially those in the tea sector; processes of land acquisition and ownership, benefit

sharing amongst others. The Commission is also alive to the country and counties as well as global business interests. These are very weighty issues, which must be balanced, canvassed deeply and with finality.

The Commission wishes to respond to the aforementioned petitions as follows:

**A. PETITION CONCERNING THE BRITISH COLONIAL  
HISTORICAL LAND INJUSTICES AGAINST THE KIPSIGIS  
PEOPLE**

4. The Commission wishes to inform the Committee that it has not received complaints from the community on the issues raised in the petition. However, it has had a very informed discussion with National Land Commission on the Subject matter. Similarly the Commission is privy to the appeal application by various parties who were negatively affected by the decision of the National Land Commission as gazetted under Gazette Notice No. 1995 dated 1<sup>st</sup> March 2019.
5. The Commission is informed that the appeal has been heard and concluded in favour of the applicants. The Environment and Land Court in Nairobi vide decision dated 20<sup>th</sup> April 2023 in Judicial Review No. 3 of 2020 has issued orders quashing the decisions of the National Land Commission as gazetted under Gazette Notice No. 1995 of 1<sup>st</sup> March 2019.

**The Commission's Recommendations:**

6. Whereas the Commission appreciates the role the Committee plays in oversight, protecting and promoting access to justice and human rights, the



Commission is of the view that the National Land Commission (NLC) is given an opportunity to hear the matter afresh in view of the Court's judgement.

7. The Commission's view is guided by the doctrine of separation of powers, as both the Commission and National Land Commission do enjoy independence as far as their mandates are concerned. The Committee is requested to remit the matter back to NLC for its consideration in line with Section 6 as read together with Section 15 of the National Land Commission Act, 2012.

## **B. PETITION CONCERNING HISTORICAL INJUSTICES SUFFERED BY THE TOROBEEK COMMUNITY**

8. Indigenous People in Kenya continue to face a myriad of challenges. With lack of land tenure rights to their ancestral lands being a key concern. Indigenous people are so connected to their lands that the lands enable them to enjoy other rights such as the right to culture and religion. Eviction of indigenous people from their ancestral lands has in effect made it impractical for them to enjoy these rights.<sup>1</sup>
9. In 2009, the Government of the Republic of Kenya sought to evict Members of the Ogiek Community from their ancestral lands within Mau forest. The Community approached the African Commission on Human and Peoples' Rights (African Commission) that later referred the matter to the African Court on Human and Peoples' rights (African Court) for a judicial determination. The African Court delivered its Judgment on merits on 26<sup>th</sup>

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<sup>1</sup> See para 164 of the decision of the African Court on Human and Peoples' Rights decision in African Commission on Human and Peoples Rights v Republic of Kenya (Application No 006/2012) where the Court observed that: "*in the context of traditional societies where formal religious institutions do not exist, the practice and profession of religion are usually inextricably linked with land and the environment. In indigenous societies in particular, the freedom to worship and to engage in religious ceremonies depends on access to land and the natural environment. Any impediments to, or interference with accessing the natural environment, including land, severely constrains their ability to conduct or engage in religious rituals with considerable repercussion on their freedom of worship.*"

May 2017.<sup>2</sup> While delivering its Judgment, the African Court Ordered the Republic of Kenya to take steps to remedy the violations disclosed and file its report within 6 months from the date of the Judgment.

10. In 2019, the Government of the Republic of Kenya through the then Cabinet Secretary, Ministry of Environment and Forestry appointed a Taskforce to advise on implementation of the African Court Judgment. The KNCHR sat in the Taskforce whose report has never been made public.

11. The African Court later (on 23<sup>rd</sup> June 2022) gave its Judgment on Reparations. In its Judgment on reparations, the African Court observed that there was no compliance with its earlier Judgment on merits. The Court ordered the Republic of Kenya to among others:

- a) Pay compensation to the Ogiek community an amount of Ksh 57,850,000 and Ksh 100,000,000 for material and moral prejudice respectively;
- b) Take all necessary measures, in consultation with the Ogiek community and its representatives, to identify, delimit and grant collective land title to the community and, by law, assure them of unhindered use and enjoyment of their land;
- c) Take all steps to ensure full recognition of the Ogiek as an Indigenous People by among others recognition of the Ogiek language, culture and religious practices;
- d) Take all necessary legislative, administrative or other measures to recognize, respect and protect the right of the Ogiek to be effectively consulted in accordance with their traditions and customs, on all matters concerning development, conservation or investment on their lands;

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<sup>2</sup>The Judgment confirmed violation of the rights to; the freedom of conscience and religion, the right to culture, ancestral land rights, the right of the Ogiek to dispose of freely their wealth and natural resources and the right to development.

- e) Establish a Community Development Fund within 12 months, in which all funds ordered as compensation - in this case - will be deposited;
- f) Adopt legislative and administrative and/or any other measures to give full effect to the terms of the judgment as a means of guaranteeing the non-repetition of the violations identified;
- g) Ensure the full consultation and participation of the Ogiek, in accordance with their traditions/customs in the reparation process (in line with the judgment);
- h) Publish the Judgments of the Court on both Merits and Reparations and their summaries (as provided by the Registry of the Court) in a government website where they will be available for a period of at least 1 year. The State was further ordered to publish the summaries on the official Kenya Gazette and a newspaper with nationwide circulation.

12. The KNCHR notes that Kenya has no specific legislation governing indigenous peoples and has not ratified the United Nations Declaration on the Rights of Indigenous People. There is need to have a specific legislation to enhance the protection of among others ancestral land rights, the freedom of religion and/or belief for indigenous communities, Free Prior and Informed Consent among other safeguards.

13. The KNCHR has documented incidences of forced evictions against members of the Ogiek and Sengwer communities from their ancestral lands in Embobut and Mau forests respectively. The evictions have been pursued ostensibly for purposes of forest conservation. In this respect, the Commission conducted various investigation missions including a high level fact finding mission to ascertain the allegations and seek redress on behalf of the community. The

forced evictions have resulted in destruction of property, loss of life and made it impractical for the community to exercise its freedom of religion and belief.<sup>3</sup>

14. The KNCHR notes that conservation efforts have often times disadvantaged indigenous people who have since time immemorial conserved the forests that they assert ancestral land ownership rights. The State needs to adopt and mainstream a Human Rights Based Approach to conservation that appreciates the role and significant contribution of indigenous people to climate change, mitigation and adaptation.

15. Notably, that the Ogiek and Endorois decisions are grounded on the provisions of the African Charter on Human and Peoples' rights which is binding and applicable in the Kenyan context by virtue of Article 2 (6) of the Constitution.<sup>4</sup> The Commission notes the current government's commitment to determine "*within 60 days, all judgments and orders against the government, and make sure that the government abides by all court rulings.*"<sup>5</sup>

16. Of concern, the timelines within which certain orders in the Ogiek Judgment ought to have been implemented is running out and the continued non-implementation of the decisions puts into question Kenya's commitment to ensure full implementation of the African Charter on Human and Peoples' Rights.

### **The Commission's Recommendations:**

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<sup>3</sup> See Kenya National Commission on Human Rights 'The Report of the High Level Independent Fact-Finding Mission to Embobut Forest in Elgeyo Marakwet Community' available at <http://www.knchr.org/portals/0/grouprightsreports/KNCHR-Fact-Finding-Mission-to-Embobut-Forest.pdf>

<sup>4</sup> Article 2(6) of the Constitution provides that "any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution"

<sup>5</sup> Page 58 of the Kenya Kwanza Plan: The Bottom Up Economic Transformation Agenda

17. Given that the Torebeek community claims to be living with the Ogiek community in the Mau forest complex, the Commission holds the view that the primary focus at the first instance will be Ogiek Decision of the African Court owing to its binding and final nature having been rendered by the African Court unanimously.<sup>6</sup> The reliefs applied by the State should address the concerns of all Mau dwelling communities. The Republic of Kenya being a State Party to the Protocol establishing the African Court has an obligation to comply with the judgment of the court within the specified timelines and to guarantee its implementation.<sup>7</sup>

18. The Commission further reiterates to the Committee the need to have a legislation on Indigenous People and fast tracking the legislation envisioned under Article 100 of the Constitution.

**C. PETITION CONCERNING MISTREATMENT,  
HARASSMENT, PROPERTY LOSS AND HUMAN RIGHTS  
VIOLATIONS METED ON THE FAMILY OF THE LATE HON.  
JEAN MARIE SERONEY**

19. The Commission is well aware of the epoch in the Kenyan history when human rights were a privilege, rather than an inherent right; thus, people who stood firm for justice were considered political dissents and severely punished. The 2010 Constitution heralded a new dawn, where the government is required to subscribe and be guided by the essential values of human rights,

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<sup>6</sup> Article 28(2) of the Protocol to the African Charter Establishing the African Court on Human and Peoples Rights provides that the judgment of the Court decided by Majority is final and is not subject to appeal.

<sup>7</sup> Article 30 of the Protocol the African Charter Establishing the African Court on Human and Peoples Rights

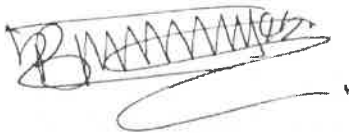
equality, freedom, democracy, social justice and the rule of law; values that were conspicuously absent in the former regimes.

20. On the Petition concerning Hon. J.M Seroney, the Commission would have wished that the relevant Court orders were annexed. Nonetheless, the Commission notes that the current government campaigned on a platform for respect for the Rule of Law with a clear undertaking in its Manifesto to review within 60 days all Judgments made against the state with a view to ensure/advise on compliance. As a National Human Rights Institution that supports the observance of the rule of law, which is a National Value and Principle of Governance under Article 10 of the Constitution, the Commission welcomes this commitment as a good starting point, and supports this petition and look forward to the findings of the Committee.

The Commission hopes that this advisory would enable the Committee to successfully deliberate on the three Petitions and would welcome an opportunity to engage further.

Please receive the considerations of our highest regards,

Signed by,

A handwritten signature in black ink, appearing to read 'Bernard Mogesa', written over a horizontal line.

Dr. Bernard Mogesa PhD, CPM  
**Commission Secretary/Chief Executive Officer**

**Annex 8: Submissions by the National Land  
Commission**



**NATIONAL LAND COMMISSION**

**RESPONSE TO THE SENATE STANDING COMMITTEE ON JUSTICE, LEGAL  
AFFAIRS AND HUMAN RIGHTS.**

**REPORT BY:**

**GERSHOM OTACHI BW'OMANWA  
CHAIRMAN**

**11<sup>TH</sup> MAY 2023**



## **RESPONSE TO COMMITTEE REQUEST ON PETITIONS REGARDING HISTORICAL LAND INJUSTICES BY TOROBEEK COMMUNITY AND KIPSIGIS COMMUNITY CLANS' ORGANIZATION**

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**Honourable Chair,**

Pursuant to the letter Ref: **SEN/DGAC/DGC/JLAHRC/2023/(96)** dated **27<sup>th</sup> April, 2023** and a further letter Ref: **SEN/DGAC/DGC/JLAHRC/2023/(101)** dated **5<sup>th</sup> May, 2023** inviting the Chairman, National Land Commission to submit a written response to the Committee to address matters raised in the petitions. NLC wishes to acknowledge the courtesy extended by your committee in acceding to our request for additional time occasioned by another conflicting Parliamentary appearance.

**Honourable Chair,** I wish to respond as follows:

The National Land Commission (NLC) was established under articles 67 and 248 of the Constitution of Kenya 2010. It was formed to spearhead the land reform agenda in Kenya as intended in the National Land Policy 2009. The Commission is operationalized through Acts of Parliament that include: National Land Commission Act, 2012; the Land Act, 2012 and the Land Registration Act, 2012. The role of the Commission is to facilitate sustainable land use in Kenya through a holistic land policy, efficient land management practices, equitable access to land, comprehensive land registration, consider and make recommendation on Historical Land Injustice claims and applying appropriate land dispute handling mechanisms among others.

### **1. PETITIONS REGARDING HISTORICAL LAND INJUSTICES BY KIPSIGIS COMMUNITY CLANS' ORGANIZATION**

**Honourable Chair,** considering the petition as submitted by Mr. Joel K. Kimetto for the Kipsigis Clans Organization, the National Land Commission submits as follows;

In 2018, the Commission received, registered and admitted Historical Land Injustice claims from the Kipsigis of Kericho and Bomet Counties as follows;

- i. NLC/HLI/044/2017 by Joel K Kimetto for Kipsigis Community Clans;

- ii. NLC/HLI/013/2017 by David Ngasura Tuei for Kipsigis Talai Clan/Community, and
- iii. NLC/HLI/173/2017 by Peter Kiprotich Bett for Borowo and Kipsigis Clans Self-Help Group.

**Hon Chair**, the Commission proceeded to carry out investigative hearings and made the following decision in favor of the Talai & Kipsigis Clans of Kericho and Bomet Counties in the following terms:

- a) The claims were allowed.
- b) A resurvey should be done on the lands being held by the tea estates to determine if there is any surplus land or residue to be held in trust for the community by the County Government for public purposes.
- c) The County Government and the multi-nationals sign a Memorandum of Understanding (MoU) for the multinationals to provide public utilities to the community.
- d) Renewal of the leases to these lands be withheld until an agreement is reached with the respective County Governments of Kericho and Bomet.
- e) With regard to rate and rent on such lands the Commission recommends that these should be enhanced to benefit national and county governments.
- f) The Commission orders that all 999-year-old leases should be converted to the Constitutional requirement of 99 years.

The above Commission's recommendations were also published in the Kenya Gazette no 1995 on 01/03/2019.

### **Court Case**

However, the tea companies were aggrieved with the Commission's decision and moved to court and filed a court case number **Nairobi JR No.95 of 2019 James Finlays Kenya Ltd & Others-vs-NLC & Others (later consolidated as Nairobi ELC JR 3 of 2020, JR 4 of 2020, JR 5 of 2020)**. The details for ELC JR 3 of 2020 relates to the Kipsigis claims. The parties to the court case are,

- i. Republic ..... Applicant

- ii. National Land Commission ..... 1<sup>st</sup> Respondent
- iii. Director of Survey (Under The Ministry of Lands) ..... 2<sup>nd</sup> Respondent
- iv. County Government of Kericho ..... 3<sup>rd</sup> Respondent
- v. County Government of Bomet ..... 4<sup>th</sup> Respondent
- vi. David Twei & 19 Others ..... 1<sup>st</sup> - 20<sup>th</sup> Interested Parties
- vii. Borowo & Kipsigis Clans Self Help Group ..... 21<sup>st</sup> Interested Parties

EX-PARTE (Being Members of Kenya Tea Growers Association).

- i. James Finlays Kenya Ltd;
- ii. Sotik Tea Company Limited;
- iii. Sotik Highlands Tea Co. Ltd;
- iv. Changoi/Lelsa Tea Estate Ltd;
- v. Tinderet Tea Estate Ltd;
- vi. Kaimosi Tea Estate Ltd;
- vii. Kapchorua Tea Plc;
- viii. Kipkebe Ltd;
- ix. Nandi Tea Estate Ltd;
- x. Kaisugu Ltd; And
- xi. Emrock (EPZ) Tea Factory Ltd

The multinational tea companies sought to quash the decision of NLC on a number of grounds that included lack of fair hearing and fair administrative action contrary to Articles 50 and 47 of the Constitution of Kenya and the Fair Administrative Actions Act. They also stated that NLC conducted the hearings without regulations and went beyond their jurisdiction under the law. At the beginning, the court gave the multinational tea companies an order injuncting the Commission from implementing its decision until the case was finalized.

**Hon Chair**, on 20<sup>th</sup> April 2023, the Court rendered its judgement and issued the following **Final Orders** on ELC No. JR 3 of 2020 after its finding that the Commission did not afford the tea companies a fair hearing.

- i. ***An order of Certiorari be and is hereby issued to remove into this Court for purposes of being quashed and quashing, quash the Gazette notice***

*published on the 1<sup>st</sup> March, 2019 in so far as it relates to the National Land Commission recommendations dated 18<sup>th</sup> February, 2019 in so far as it relates to the claims by the County Governments of Kericho and Bomet on behalf of the Kipsigis and Talai clans, Kipsigis clans and the Borowo and Kipsigis Clans Self Help Group vs The Colonial Government and the Government of Kenya under Ref: NLC/HL1/044/2017, NLC/HL1/546/2018 and NLC/HL1/173/2017.*

- ii. *An order of Prohibition be and is hereby issued, prohibiting the Director of Surveys under the Ministry of Land and the County Governments of Kericho and Bomet from implementing the recommendations published in the Kenya Gazette Notice of 1<sup>st</sup> March, 2019 and dated 18<sup>th</sup> February, 2019 in respect of the claims by the County Governments of Kericho and Bomet on behalf of the Kipsigis and Talai clans, Kipsigis clans and the Borowo and Kipsigis Clans Self Help Group vs The Colonial Government and the Government of Kenya under Ref: NLC/HL1/044/2017, NLC/HL1/546/2018 and NLC/HL1/173/2017.*

**Honourable Chair**, the National Land Commission takes cognizance of the above judgement and stands guided by this Committee on way forward.

## **2. PETITION BY PAULO MOSBEI ON BEHALF OF TOROBEEK COMMUNITY OF KENYA ON HISTORICAL LAND INJUSTICE**

**Honourable Chair**, the National Land Commission in considering the petition as submitted by Mr. Paulo Mosbei for the Torobeek community responds as follows;

### **Background**

Torobeek Community Association of Kenya of Box Nakuru made a formal complaint on 10<sup>th</sup> September, 2021 to the National Land Commission concerning historical land injustice suffered by the community in Kenya.

The claimants allege that:

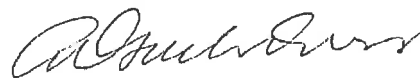
- i. That Torobeek Community are associated with the Dorobo who are forest dwellers within Kalenjin community in Kenya and they were found originally living together with Ogiek Community before they were forcefully evicted and displaced from the region of Mau Complex of Nakuru. They claim to be equally marginalized in Kenya like the Ogiek.
- ii. That they are still living with Ogiek Community in Mau Complex while the rest are scattered across Rift Valley counties

**Prayers**

- i. The government to set aside fund for compensation
- ii. The government to resettle the community in collaboration with the relevant National government ministries and agencies

Upon receipt of the claim by Torobeek Community, the NLC proceeded to record it as file reference number NLC/HLI/1117/2021 alongside other 3,740 claims. The claim was admitted for hearing after being taken through the admissibility criteria as per Section 15 of the National Land Commission Act of 2012. Currently the matter is under active investigation.

**Honourable Chair**, I submit.



**GERSHOM OTACHI BW'OMANWA**  
**CHAIRMAN**

**11<sup>TH</sup> MAY 2023**

**Annex 9:** Copy of the High Court Judgment in ELC No. JR 3 of 2020, *Republic vs. The National Land Commission & Others Ex Parte James Finlays Kenya Limited & Others*, delivered on 20<sup>th</sup> April 2023

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**JR CASE No. 3 OF 2020**

REPUBLIC ..... APPLICANT

VERSUS

NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT

DIRECTOR OF SURVEY [UNDER  
THE MINISTRY OF LANDS ..... 2<sup>ND</sup> RESPONDENT

COUNTY GOVERNMENT OF KERICHO ..... 3<sup>RD</sup> RESPONDENT

COUNTY GOVERNMENT OF BOMET ..... 4<sup>TH</sup> RESPONDENT

DAVID TUEI & 19 OTHERS ..... 1<sup>ST</sup> - 20<sup>TH</sup> INTERESTED PARTIES

BOROWO & KIPSIGIS CLANS

SELF HELP GROUP ..... 21<sup>ST</sup> INTERESTED PARTIES

**EX-PARTE** .

JAMES FINLAYS KENYA LTD; SOTIK TEA COMPANY LIMITED;  
SOTIK HIGHLANDS TEA CO. LTD; CHANGOI/LELSA TEA  
ESTATE LTD; TINDERET TEA ESTATE LTD; KAIMOSI TEA  
ESTATE LTD; KAPCHORUA TEA PLC; KIPKEBE LTD; NANDI  
TEA ESTATE LTD; KAISUGU LTD; AND EMROCK (EPZ) TEA  
FACTORY LTD BEING MEMBERS OF KENYA TEA GROWERS  
ASSOCIATION AND KENYA TEA GROWERS ASSOCIATION.

AS CONSOLIDATED WITH

**ELC JR 4 OF 2020**

REPUBLIC ..... APPLICANT

AND  
NATIONAL LAND COMMISSION ..... 1<sup>st</sup> RESPONDENT  
THE MINISTRY OF LANDS &  
PHYSICAL PLANNING ..... 2<sup>nd</sup> RESPONDENT  
COUNTY GOVERNMENT OF MURANGA ..... 3<sup>rd</sup> RESPONDENT

AND  
KAKUZI DEVELOPMENT  
ASSOCIATION ..... 1<sup>ST</sup> INTERESTED PARTY  
KITOTO COMMUNITY IDPs, GACHANGI MAKUYU  
IDPS, GAICHANJARU SELF HELP GROUP,  
KIHINGANDA SELF-HELP GROUP AND  
KINYANGI SQUATTERS ..... 2<sup>ND</sup> INTERESTED PARTIES

EX-PARTE

KAKUZI PLC

AND

ELC J.R CASE NO 5 OF 2020

REPUBLIC ..... APPLICANT

AND

THE NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> RESPONDENT  
THE CHIEF LAND REGISTRAR ..... 2<sup>nd</sup> RESPONDENT  
KIMASAS FARMERS  
CO-OPERATIVE SOCIETY ..... INTERESTED PARTY

EX-PARTE

EASTERN PRODUCE KENYA LIMITED

JUDGMENT

Background



1. This judgement is in respect of three Judicial Review Applications being ELC JR 3, 4 & 5 of 2020.

**ELC JR No. 3 of 2020**

2. Vide a Notice of Motion dated 12<sup>th</sup> April, 2019, the Ex-parte Applicants (herein after the Applicants) seek the following reliefs;
  - i. **An order of Certiorari to remove into the High Court for purposes of being quashed and quashing, quash the Gazette Notice published on the 1<sup>st</sup> March, 2019 in so far as it relates to the National Land Commission recommendations dated 18<sup>th</sup> February, 2019 in so far as it relates to the claims by the County Governments of Kericho and Bomet on behalf of the Kipsigis and Talai Clans, Kipsigis Clans and the Borowo and Kipsigis Clans Self Help Group vs The Colonial Government and the Government of Kenya under Ref: NLC/HL1/044/2017, NLC/HL1/546/2018 and NLC/HL1/173/2017.**
  - ii. **The High Court does issue an order of Prohibition, prohibiting the Director of Survey under the Ministry of Lands and the County Governments of Kericho and Bomet from implementing the recommendations published in the Kenya Gazette Notice of 1<sup>st</sup> March, 2019 and dated 18<sup>th</sup> February, 2019 in respect of the claims by the County Governments of Kericho and Bomet on behalf of the Kipsigis and Talai Clans, Kipsigis Clans**

and the Borowo and Kipsigis Clans Self Help Group vs The Colonial Government and the Government of Kenya under Ref: NLC/HL1/044/2017, NLC/HL1/546/2018 and NLC/HL1/173/2017.

- iii. The High Court does issue a Declaratory Order that the National Land Commission proceedings and determinations dated the 18<sup>th</sup> February, 2019 in respect of the claims by the County Governments of Kericho and Bomet on behalf of the Kipsigis and Talai clans, Kipsigis Clans and the Borowo and Kipsigis Clans Self Help Group vs The Colonial Government and the Government of Kenya under Ref: NLC/HL1/044/2017, NLC/HL1/546/2018 and NLC/HL1/173/2017 published in the Kenya Gazette of 1<sup>st</sup> March, 2019 are unlawful and tainted with illegality for contravening Section 4(3) and (4) of the Fair Administrative Act and Articles 47 and 50(1) of the Constitution and are consequently null and void.
  - iv. Any other or further consequential orders and/or directions that may be given.
  - v. Costs of the Application be awarded to the Applicant.
3. The application is premised on the grounds on the face of the Motion and supported by the Verifying Affidavit of Apollo Kiarie, the Chief Executive Officer of the Kenya Tea Growers Association (KTGA) comprising of the Applicants, sworn on 1<sup>st</sup> April, 2019, and the Statutory Statement of an even date.

4. The Chief Executive Officer of the Kenya Tea Growers Association(KTGA) deposed that KTGA promotes the common interests of the tea plantation sub sector members in the manufacture of tea and accounts for 40% of the tea production in Kenya and that vide Gazette Notice Vol CXX1-No 27 in the Kenya Gazzette of 1<sup>st</sup> March, 2019, the 1<sup>st</sup> Respondent published recommendations dated 18<sup>th</sup> February, 2019 arising from historical land injustice complaints in a complaint by Talai-Nandi.
5. The Chief Executive Officer of the Kenya Tea Growers Association(KTGA) deposed that the 1<sup>st</sup> Respondent made its determination on the complaint on 28<sup>th</sup> March, 2019; that the Applicants were not notified of the aforesaid claims, nor invited to participate in any sittings and/or sessions between the Claimants, the County Governments of Kericho and Bomet and the 1<sup>st</sup> Respondent even though it was apparent that such recommendations would adversely affect their interests and that of other tea estates in the Kericho and Bomet Counties.
6. It was deposed that the recommendations by the 1<sup>st</sup> Respondent were to wit: the claims are allowed; a resurvey be done on the lands being held by the tea estates to determine if there is any surplus land or residue to be held in trust for the community by the County Government for public purposes and the County Government and the multi-nationals sign an M.O.U to provide public utilities to the community.
7. It was deposed that the other recommendations include the renewal of leases to the lands be withheld until an agreement is reached with the respective County Governments of Kericho and Bomet; that with regard

to rates and rent on such lands, the same should be enhanced to benefit national and county governments and that all 999 year leases be converted to the constitutional requirement of 99 years.

8. According to Mr Kiarie, as advised by Counsel, the decision of the 1<sup>st</sup> Respondent offends the principles of natural justice because the 1<sup>st</sup> Respondent did not notify the Applicants of the claims and as such, they were not afforded an opportunity to be heard and that issuing a decision without notice to the Applicants when it was apparent that such delivery would adversely affect their interests was a deliberate act of malice.
9. It was deposed by the Chief Executive Officer of the Applicants that the 1<sup>st</sup> Respondent's failure to notify the Applicants was a direct contravention of **Articles 47 and 50(1) of the Constitution** and **Section 4(3) and (4) and 5 of the Fair Administrative Action Act** in respect of the requirement of a fair hearing and that the proceedings are a nullity as they were conducted in the absence of any regulations, the NLC (Historical Injustices) Regulations having been annulled on 28<sup>th</sup> March, 2018.
10. According to the Applicants, the 1<sup>st</sup> Respondent's directives, though couched as recommendations, are in reality determinations in direct contravention of **Section 15(9) of the National Land Commission Act**; that the 1<sup>st</sup> Respondent's recommendations are in excess of the jurisdiction of the 1<sup>st</sup> Respondent under **Section 15(9) of the National Land Commission Act** and that the Applicants have a constitutional right to enjoy their property.
11. It was deposed by the Chief Executive Officer of the Kenya Tea Growers Association(KTGA) that the Applicants are significant contributors to

the economy through their international export and employment of thousands of workers; that the 1<sup>st</sup> Respondent's actions were unreasonable and made in bad faith and that the Applicants are entitled to the orders sought.

12. The 1<sup>st</sup> Respondent, through its Director of Legal Affairs and Enforcement, Edmond Gichuru, deponed that the 1<sup>st</sup> Respondent is an independent commission established under **Article 67(1)** of the **Constitution** and was operationalized by the **NLC Act**; that among the functions donated to it, is to investigate historical land injustices and recommend appropriate redress and that in exercise of this mandate, the 1<sup>st</sup> Respondent operates as a quasi-judicial body within the meaning of **Article 159** of the **Constitution**.
13. It was deposed by the 1<sup>st</sup> Respondent's Director of Legal Affairs and Enforcement that the 1<sup>st</sup> Respondent's procedure while investigating claims of historical injustices is laid out in **Section 15** of the **NLC Act**; that pursuant to its mandate, the 1<sup>st</sup> Respondent admitted complaints from the County Governments of Kericho and Bomet, the Kipsigis and Talai Clans, and the Borowo and Kipsigis Self Help Group as Historical Land Injustice Ref No: NLC/HL1/044/2017, NLC/HL1/546/2018 and NLC/HL1/173/2017.
14. It was deposed that the complaints alleged that the Kipsigis and Talai Clans lost several thousands of acres of land to the British white settlers as a result of the British Colonial Government; that the claims met all the parameters set out in law and were duly admitted and processed; that the parties were invited to hearings on 11<sup>th</sup> October, 2019 at Kericho Training Teachers College and that contrary to the Applicants'

assertions, the proceedings were publicly announced through the public address system and the local radio stations and were well attended by several victims and the public in general.

15. It was deposed that the Applicants are based in Kericho and cannot purport to have been unaware of the proceedings; that all the parties duly participated in the proceedings where they made oral and written submissions; that the 1<sup>st</sup> Respondent has been given leeway to formulate its own model of investigation and is clothed with powers under **Section 6 and 15(5)** of its Act to gather information by any means it considers appropriate and that this provision should not be construed to mean that the 1<sup>st</sup> Respondent should conduct adversarial proceedings.
16. According to the 1<sup>st</sup> Respondent, it is not enough to seek orders quashing its decision merely because it was able to collect information without undertaking an adversarial mode of investigation and that in any event, the Applicants have not demonstrated what material input they would have brought to the 1<sup>st</sup> Respondent and how the same would have changed its recommendations.
17. The 1<sup>st</sup> Respondent's Director of Legal Affairs and Enforcement deposed that the 1<sup>st</sup> Respondent through its secretariat, further conducted its own independent investigation which entailed research, interviewing victims, reviewing and analyzing ownership documents among others with a view to determining the complaint; that after extensive investigations, consideration of the submissions by the parties and a scrutiny of documents, it delivered well-informed determination dated 7<sup>th</sup> February, 2019 which was gazzetted on 1<sup>st</sup> March, 2019 and that the

1<sup>st</sup> Respondent complied with the provisions of **Articles 40, 47, 50,60,64 and 232** of the **Constitution**.

18. It was deposed by the 1<sup>st</sup> Respondent's Director of Legal Affairs and Enforcement that the 1<sup>st</sup> Respondent made recommendations in accordance with the parameters set out in **Section 15(9)** of the **NLC Act**; that the Motion herein is based on the misconception and wrong interpretation of **Article 67** of the **Constitution** and that the right to protection of property conferred under **Article 40(1)** of the **Constitution** is not absolute and does not extend to property found to have been acquired illegally.
19. It is the 1<sup>st</sup> Respondent's case that Section 15 of the NLC Act clearly lays out the procedure to be followed while conducting investigations notwithstanding the absence of the NLC (Historical Land Injustice) Regulations; that the Court in *Republic vs National Land Commission Ex-parte Holborn Ltd [2016]eKLR* affirmed that the absence of regulations cannot be sufficient reason to stop a body from exercising its functions and that the allegations of ultra-vires and irrationality are unfounded and the application should be dismissed.
20. The 2<sup>nd</sup> Respondent did not file a response.
21. The 3<sup>rd</sup> Respondent, through Professor Paul Kiprono Chepkwony, deposed that the matter involves several parcels of land situate in Kericho and Bomet Counties; that the Applicants are opposed to their ownership being transferred to Kericho and Bomet County Governments to hold in trust for the Kipsigis and Talai Communities and that the Motion is based on a mandate given to the 1<sup>st</sup> Respondent under **Article 67** of the **Constitution**.

22. The 3<sup>rd</sup> Respondent's representative deposed that the Applicants have not demonstrated how the 1<sup>st</sup> Respondent failed in its investigative mandate; that further, being an investigative body, it was not necessary that the 1<sup>st</sup> Respondent hears all the parties and that the proceedings were publicly announced and attended by victims from remote areas and the Applicants who are based in Kericho cannot claim ignorance of the same.
23. It is the 3<sup>rd</sup> Respondent's case that the 1<sup>st</sup> Respondent granted proper reliefs pursuant to **Section 15(9)** of the **NLC Act**; that the Applicants have not demonstrated what prejudice they will suffer as a result of the recommendations; that upon promulgation of the Constitution, all 999 year leases held by foreign companies were reduced to 99 years and that the Motion is unmerited and should be dismissed.
24. The 3<sup>rd</sup> Respondent, through Professor Paul Kiprono Chepkwony, filed a Further Replying Affidavit in which he gave a brief overview of the history of alienation of the Kipsigis clans' land, stating that even without the recommendations of the 1<sup>st</sup> Respondent, the County Governments have the mandate of establishing the status of land ownership within their areas of jurisdiction and that the Applicants failed to furnish the 3<sup>rd</sup> Respondent with further and better particulars requested of them regarding their claims of ownership of the suit properties.
25. It was deposed that that the Applicants have concealed material facts and as such are disentitled to the judicial review orders sought which are discretionary in nature; that the Applicants have failed to establish sufficient interest in the matter with respect to ownership and or



leasehold interest in the land and that most of the grounds relied on by the Applicants are too general in nature and don't disclose the properties affected by the recommendations by the 1<sup>st</sup> Respondent.

26. According to the 3<sup>rd</sup> Respondent, the Motion is fatal for having been initially instituted in a Court without jurisdiction and that the Applicants are already parties in Petition EO349 of 2021 which is seeking to have the Court declare that the 1<sup>st</sup> Respondent's decision should abate with the expiry of three years.
27. In response to the Motion, the 4<sup>th</sup> Respondent, through its Governor, Dr Hillary K Barchok, deposed that the proceedings having been commenced in the High Court are a nullity notwithstanding the transfer to this Court because a court without jurisdiction has no authority to transfer a suit; that the Applicants have no locus before this Court having filed the suit in a representative capacity without following the provisions of **Order 1 Rule 8** of the **Civil Procedure Rules** and that there is no resolution by the Applicants appointing anyone to represent them and as such the affidavit by Apollo Kiarie is a nullity.
28. It was deposed by the 4<sup>th</sup> Respondent's Governor that pursuant to **Article 67 (2)** of the **Constitution**, the 1<sup>st</sup> Respondent is duly mandated to investigate historical land injustice claims pursuant to which it has the powers to order revocation and re-allocation of land as well as declaratory and preservative orders, which include injunctions and rehabilitation through provision of social infrastructure.
29. The Governor deposed that the 1<sup>st</sup> Respondent has the mandate to review grants; that the 1<sup>st</sup> Respondent invited all Interested Parties for comments on the alleged complaints in accordance with the principles

of natural justice and that the Applicants' allegations of having not been notified are unfounded.

30. The 4<sup>th</sup> Respondent's Governor deposed that **Section 6 (1)** of the **Community Land Act, 2016** provides that the County Governments shall hold all unregistered community land on behalf of the communities for which it is held; that the 1<sup>st</sup> Respondent's recommendations on the leasing arrangements, rates and rents are matters within the jurisdiction of the 1<sup>st</sup> Respondent pursuant to **Article 67 (2) (g)** of the **Constitution** and that the Applicants' right to property has not been infringed as they not only under-declared the acreage and value of their land but pay low agricultural wages.
31. It was deposed that even though the Applicants contribute to the economy, the Applicants have deprived the community of their land; that the 1<sup>st</sup> Respondent's recommendations that the Applicants' leases automatically lapsed on the promulgation of the new Constitution and fresh leases needed to be obtained is a constitutional requirement that cannot be subject to debate and that the 1<sup>st</sup> Respondent duly complied with the provisions of **Articles 47, 50(1)** and **67** of the Constitution, **Section 15** of the **National Land Commission Act** and **Sections 4(3)** and **(4)** and **5** of the **Fair Administrative Action Act**.
32. The 1<sup>st</sup> -20<sup>th</sup> Interested Parties responded to the Motion vide Grounds of Opposition dated 31<sup>st</sup> January, 2022. The Interested Parties averred that the 1<sup>st</sup> Respondent is duly established pursuant to **Article 67 (1)** of the Constitution whose functions include *inter-alia* investigations of historical land injustice claims pursuant to **Section 15 (1)** and **(2)** of the **National Land Commission Act, 2012**.

33. It is the Interested Parties' case that the 1<sup>st</sup> Respondent received historical land injustice complaints from the 3<sup>rd</sup> and 4<sup>th</sup> Respondents acting on behalf of Kipsigis and Talai communities in the matters of Kipsigis Clans and Borowo and Kipsigis Clans Self Help Group Versus the Colonial Government and the Government of Kenya which was within its Constitutional mandate.
34. According to the Interested Parties, the 1<sup>st</sup> Respondent acted rationally, and judiciously with due regard to the applicable provisions of the law on leasing arrangements, rates and rent of the Applicants' properties in accordance with **Article 67 (2), (g) of the Constitution** which mandates the 1<sup>st</sup> Respondent to assess tax on land and premiums on immovable property in any area designated by law and that the 1<sup>st</sup> Respondent has not breached any provisions of the law as alleged.
35. The 21<sup>st</sup> Interested Party, through its Chairman, Willy Kipkiriu Rono, deponed that the 21<sup>st</sup> Interested Party is one of the claimants who filed a complaint with the 1<sup>st</sup> Respondent claiming illegal and forceful eviction from their land; that they appeared before the 1<sup>st</sup> Respondent on 14<sup>th</sup> September 2018 and presented their case and that the 1<sup>st</sup> Respondent investigated the historical land injustice claims and made its findings vide Gazzette Notice on the 1<sup>st</sup> March, 2019.
36. According to the 21<sup>st</sup> Interested Party, the 1<sup>st</sup> Respondent is a constitutionally created commission with the mandate to hear disputes on historical injustice claims; that the procedure before the Commission was procedurally fair and no omission in that regard has been demonstrated by the Applicants and that after intensive investigations

and examinations of the evidence by the complainant, the 1<sup>st</sup> Respondent rendered a well-informed determination.

37. It was deposed that the 1<sup>st</sup> Respondent has prescribed remedies within the ambit of the law; that the recommendations on leasing arrangements rates and rents are meant to benefit the whole community and are thus within the confines of the provided remedies; that the proceedings before the 1<sup>st</sup> Respondent are investigative and not adversarial in nature; that **Section 15** of the **NLC Act** clearly sets out the parameters of historical injustices claim and that the application is devoid of merit and should be dismissed.

### **Submissions**

38. Counsel for the Applicants submitted that vide its Ruling of 16<sup>th</sup> December, March, 2021, this Court addressed the question of its jurisdiction to entertain the matter; that through the Ruling of 20<sup>th</sup> January, 2020, the Court dealt with the question of timelines under **Section 8** of the **Fair Administrative Action Act** and that the two issues are *res judicata*.
39. It was submitted that the decision by the 1<sup>st</sup> Respondent offends the principles of natural justice as the Applicants were never notified of the claims in respect of their property; that no Affidavit has been filed proving service of the notices to the Applicants and that the 1<sup>st</sup> Respondent has in this respect failed to discharge its burden in proving service.
40. Reliance was placed on the case of ***Republic vs NLC & Others Ex-parte Oyster Village Ltd [2021] eKLR***, where the Court found that

failure to give the Applicants notice of the allegations against it violated its rights to fair administrative action and that the 1<sup>st</sup> Respondent's alleged use of use of radio stations and public address systems to notify the Applicants has first not been proven, and the same cannot be said to be sufficient.

41. Counsel for the Applicants submitted that the Court in *Sceneries vs National Land Commission[2017]eKLR* emphasized that all affected persons must be served with proper notices; that the 1<sup>st</sup> Respondent had no discretion in respect to ensuring proper service and that the assertion that the proceedings were investigatory hence the participation of the Applicants was not necessary does not hold water.
42. By holding the proceedings in the absence of the Applicants, it was submitted, the 1<sup>st</sup> Respondent acted in an arbitrary and discriminatory manner. Counsel cited the case of *Kenya Human Rights Commission & Another vs Non-Governmental Organization Co-ordination Board and Another [2018] eKLR* which expounded on the principles of fair administrative action under **Article 47** of the **Constitution**.
43. The Applicants' counsel submitted that the 1<sup>st</sup> Respondent's proceedings were a nullity for lack of regulations. Reliance in this regard was placed on the case of *Sceneries Limited(supra)*; that the decision in *R vs National Land Commission ex-parte Holborn properties* is inapplicable having been decided in 2016 before the annulment of the NLC(Historical Injustice)Regulations in 2018 and that the 1<sup>st</sup> Respondent's recommendations were essentially determinations in excess of its jurisdiction as set out under **Section 15(9)** of the **NLC Act**.

44. Counsel urged that in view of the fact that the 1<sup>st</sup> Respondent's decision was illegal, irrational and in breach of **Articles 47 and 50** of the **Constitution** and **Section 4(3)** of the **Fair Administrative Action Act**, the Applicants are entitled to the orders sought in the application; that **Section 11** of the **Fair Administrative Action Act** provides that the Court can issue declaratory orders and that the doctrine of exhaustion is inapplicable as the 1<sup>st</sup> Respondent gave a final determination.
45. The 1<sup>st</sup> Respondent's counsel submitted that the 1<sup>st</sup> Respondent is an independent commission established under **Article 67(1)** of the **Constitution of Kenya 2010** and was operationalized by the **National Land Commission Act No 5 of 2012**; that the 1<sup>st</sup> Respondent is mandated under **Article 67(1) (e)** of the **Constitution** to initiate investigations, on its own initiative or on a complaint on historical land injustices, and recommend appropriate redress and that in the exercise of this mandate, the 1<sup>st</sup> Respondent operates as a quasi-judicial body within the full meaning of **Article 159(1)** of the **Constitution**.
46. It was submitted that the procedure for carrying out this mandate is well stipulated notwithstanding the absence of rules and regulations to guide the process. Reliance in this regard was placed on the case of ***R vs Ex-parte Holborn Properties Ltd [2016] eKLR*** where the Court held that the absence of the rules was not sufficient reason to stop the 1<sup>st</sup> Respondent from exercising its functions pursuant to **Section 14** of the **NLC Act**, considering that the Act is clear on how the exercise should be carried out.

47. Contrary to the Applicants' assertion, it was submitted, the 1<sup>st</sup> Respondent's recommendations were in line with **Section 15 (9)** of the Act, as it serves to reconstitute the property having been irregularly taken over by the Applicants at the expense of the 1<sup>st</sup> – 21<sup>st</sup> Interested Parties.
48. As to whether the Applicants were afforded an opportunity to be heard, Counsel responded in the affirmative stating that proceedings were publicly announced through the public address system and the local radio stations and was well attended by several victims and the public in general and that by the fact that the Applicants are based within Kericho County, it is untrue to allege that they were unaware of the proceedings.
49. Counsel submitted that the 1<sup>st</sup> Respondent has been given a leeway to formulate its own model of investigation and is clothed with powers under **Section 6 and 15 (5)** of the **NLC Act** to gather, by such means as it considers appropriate, any relevant information and that it is not enough to seek orders for quashing of its decision merely because the 1<sup>st</sup> Respondent was able to collect information without necessarily occasioning an adversarial mode of investigation directly involving the Applicants.
50. Counsel for the 1<sup>st</sup> Respondent cited the case of ***Republic vs National Irrigation Board & 4 Others Ex-parte Josphat Kariuki Mutuanjara [2016] eKLR*** where the Court stated that there are no rigid rules on the right to be heard and that the *audi alteram partem* rule does not mean a full adversarial hearing or anything close to it like what happens in a Court of law.
51. Counsel also cited the case of ***Union Insurance Co of Kenya Ltd vs Ramazan Abdul Dhangri Civil Application No. 179 of 1998***

where the Court stated that the law is not that a party must be heard in every litigation but that they must be given a reasonable opportunity of being heard and once that opportunity is given and is not utilized, then the only point on which the party not utilizing the opportunity can be heard is why he did not utilize it.

52. Counsel for the 1<sup>st</sup> Respondent submitted that the Applicants have not proved the judicial review limbs of illegality, irrationality or procedural impropriety as set out in the Ugandan case of *Pastoli vs Kabali District Local Government Council & Others [2008] 2EA 300-301* and the Court of Appeal decision in *Kenya National Examination Council vs Republic Ex-parte Geoffrey Gathenji Njoroge & 9 Others [1997] eKLR*; that the Applicants are not entitled to the equitable reliefs sought having come to Court with unclean hands and that the Applicants' rights to property under **Article 40** of the **Constitution** do not extend to property found to have been acquired unlawfully thus occasioning a historical land injustice.
53. The 3<sup>rd</sup> Respondent's counsel submitted that the application is dead on arrival having been transferred by the High Court which admitted to having no jurisdiction to handle the matter in the first instance and that as affirmed by the Court of Appeal in *Equity Bank Limited vs Bruce Mutie Mutuku t/a Diani Tour Travel[2016]eKLR*, a court without jurisdiction cannot purport to transfer a suit as this would be tantamount to a Court attempting to sanctify an incompetent suit;
54. Counsel for the 3<sup>rd</sup> Respondent submitted that the leave having been granted by the High Court is void and the Applicant ought to have regularized the position by seeking leave in this Court and that as



espoused by the Supreme Court in *Samuel Kamau Macharia and Another vs Kenya Commercial Bank Limited & 2 Others* [2012]eKLR, jurisdiction cannot be created by judicial craftsmanship.

55. It was submitted by the 3<sup>rd</sup> Respondent's counsel that the 1<sup>st</sup> Respondent is duly mandated to carry out investigations into historical land injustices pursuant to **Article 67** of the **Constitution** whose mandate is clearly investigative; that the Applicants' attempts to convince the Court that the 1<sup>st</sup> Respondent should conduct itself like a Court of law should fail and that the Applicants have not demonstrated that the 1<sup>st</sup> Respondent would have reached a different conclusion had they appeared before it.
56. It was submitted that the Applicants are not denying the allegations in the complaint; that the Applicants have not demonstrated the bias, irrationality and illegality of the decision by the 1<sup>st</sup> Respondent; that on the contrary, it is the Applicants who rejected a request for further and better particulars and that the decision by the 1<sup>st</sup> Respondent was apt and fair.
57. The 4<sup>th</sup> Respondent's counsel submitted that the 1<sup>st</sup> Respondent is mandated to pursue historical land injustice claims by **Article 67 (1)** of the **Constitution** and **Section 15** of the **NLC Act**; that the complaint lodged with the 1<sup>st</sup> Respondent was a historical land injustice claim prompting the 1<sup>st</sup> Respondent to invoke its authority thereunder and that as affirmed by the Court in *R vs Land Registrar, Mombasa & 2 Others Ex-parte Bhangra Ltd*[2012]eKLR, the 1<sup>st</sup> Respondent

has power to review grants and it cannot be said that the 1<sup>st</sup> Respondent abused its power in this regard.

58. It was submitted that the 1<sup>st</sup> Respondent did invite all the interested parties to give comments and responses to the complaints and the allegations in accordance with the principles of natural justice, right to a fair hearing and fair administrative action pursuant to **Articles 40 and 50(1)** of the Constitution and **Section 4(3) and (4)** of the **Fair Administration Act**.
59. Counsel for the 4<sup>th</sup> Respondent submitted that the allegations that the Applicants were not given an opportunity to be heard is baseless; that the recommendation that any surplus land be held in trust for the community by the County Government is in line with **Section 6(1)** of the **Community Land Act** and that the 1<sup>st</sup> Respondent in conducting its investigations followed the criteria laid down in **Section 15(1) and (2)** of the **National Land Commission Act**.
60. The 1<sup>st</sup> to 20<sup>th</sup> Interested Parties' counsel submitted that the purpose of Judicial Review is to interrogate the legality, rationality and procedural propriety of an administrative body; that the 1<sup>st</sup> Respondent is an independent constitutional commission mandated by **Article 67(2)(e)** of the **Constitution** and **Section 15(1) and (2)** of the **National Land Commission Act** to investigate historical claims and that **Article 67(2)(g)** of the **Constitution** gives the 1<sup>st</sup> Respondent the authority to assess tax on land and premiums.
61. Counsel submitted that the 1<sup>st</sup> Respondent has power to revoke and re-allocate land pursuant to **Section 15** of the **National Land Commission Act**; that the principles of natural justice were not

offended as all interested parties were invited for comments and responses as indicated in the impugned gazette notice and that **Section 6(1)** of the **Community Land Act, 2016** mandates the County Governments to hold all unregistered community land in trust for communities for which it is held.

62. According to the Interested Parties' counsel, **Article 65** of the Constitution provides that a person who is not a citizen may hold land on the basis of a leasehold tenure not exceeding 99 years which applies to the Applicants; that notwithstanding the absence of rules, the 1<sup>st</sup> Respondent carried out its duty of investigating historical injustice claims as mandated by **Section 15** of the National Land Commission and that **Section 14(2)** of the **National Land Commission Act** envisages a situation where no regulations have been provided for and whether or not the 1<sup>st</sup> Respondent has duly performed its mandate is assessed as per the rules of natural justice.
63. Counsel relied on the case of *Republic vs National Land Commission; Pacifica Mwangi & Another (Interested Parties); Ex-parte Anil Ratil Tailor*[2019]eKLR, where the court found that in the absence of rules guiding the NLC's process of reviewing grants and dispositions to land, the provisions of **Section 4** of the **Fair Administrative Action Act** come into play and that the 1<sup>st</sup> Respondent duly complied with the principles of natural justice and the allegations of breach of **Article 47(1)** and **50** are unfounded.
64. The 2<sup>nd</sup> Interested Party submitted that the 1<sup>st</sup> Respondent is a constitutional commission duly mandated to carry out investigations into historical land injustice claims pursuant to the provisions of

**Article 67(2)(e)** of the Constitution and **Section 15** of the **National Land Commission Act** and that the Applicants lodged a complaint claiming historical land injustices in the nature of forceful eviction from their land.

65. Counsel submitted that the 1<sup>st</sup> Respondent duly admitted and processed the claims; that contrary to the Applicants' assertions, the absence of regulations cannot stop the 1<sup>st</sup> Respondent from carrying out its constitutional mandate neither can it render proceedings a nullity and that the 1<sup>st</sup> Respondent acted fairly, judiciously and with due regard to the applicable law.
66. Counsel submitted that the recommendations by the 1<sup>st</sup> Respondent were within the threshold of **Section 15(9)** of the **NLC Act**; that the parties herein were duly invited to hearings; that the Applicants are based in Kericho and thus they are not candid when they state that they were unaware of the proceedings and that the Applicants deliberately avoided the proceedings squandering their opportunity to submit before the 1<sup>st</sup> Respondent.
67. Counsel for the 21<sup>st</sup> Interested Party submitted that the process before the 1<sup>st</sup> Respondent was procedurally fair and adhered to the provisions of **Section 15** of the **NLC Act**; and that the Applicants are not entitled to the orders sought having not established any illegality, irrationality and/or procedural impropriety.

**ELC JR No. 4 of 2020**

68. Vide a Notice of Motion dated 12<sup>th</sup> April, 2019, the Ex-parte Applicant (the Applicant) is seeking for the following reliefs;

- i. *An order of Certiorari to remove into the High Court for purposes of being quashed and quashing, quash the Gazette Notice published on the 1<sup>st</sup> March, 2019 in so far as it relates to the National Land Commission recommendations dated 18<sup>th</sup> February, 2019 in so far as it relates to NLC/HLI/530/2018, NLC/HLI/069/2017/ NLC/HLI/063/2017, NLC/HLI/006/2017, NLC/HLI/049/2017, NLC/HLI/170/2018, NLC/HLI/176/2018 and NLC.HLI/052/2017.*
- ii. *The High Court does issue an order of Prohibition, prohibiting the Director of Surveys under the Ministry of Lands and Physical Planning, the National Land Commission and the County Government of Muranga from implementing the recommendations in the Gazette Notice published on the 1<sup>st</sup> March, 2019 in so far as it relates to the National Land Commission recommendations dated the 18<sup>th</sup> February, 2019 in so far as it relates to NLC/HLI/530/2018, NLC/HLI/069/2017/ NLC/HLI/063/2017, NLC/HLI/006/2017, NLC/HLI/049/2017, NLC/HLI/170/2018, NLC/HLI/176/2018 and NLC/HLI/052/2017.*
- iii. *The High Court does issue a Declaratory Order that the National Land Commission proceedings and determinations dated the 18<sup>th</sup> February, 2019 in so far*

*as it relates to NLC/HLI/530/2018,  
NLC/HLI/069/2017/ NLC/HLI/063/2017,  
NLC/HLI/006/2017, NLC/HLI/049/2017,  
NLC/HLI/170/2018, NLC/HLI/176/2018 and  
NLC/HLI/052/2017 are unlawful and tainted with  
illegality for contravening Section 4(3) and (4) of the  
Fair Administration Act and Articles 47 and 50(1) of  
the Constitution and are subsequently null and void.*

*iv. Any other or further consequential orders and/or  
directions that may be given.*

*v. Costs of the Application be awarded to the Applicant.*

69. The application is premised on the grounds set out on its face and supported by the Verifying Affidavit of David Gitaka sworn on the 1<sup>st</sup> April, 2019 as well as a Statutory Statement of the same date.

70. Mr Gitaka deponed that on various dated in 2018, several parties filed historical land injustice claims against the Applicant, and the same were admitted as NLC/HLI/530/2018(Gachagi Makuyu IDP), NLC/HLI/069/2017(Gaichanjiru Self-Help), NLC/HLI/006/2017(Kakuzi Divisions Development Association), NLC/HLI/049/2017 (Kihinganda Self Help Group), NLC/HLI/170/2018(Ndula Resource Centre-Kanyangi Squatters), NLC/HLI/176/2018(Kitoto Community IDPs) and NLC/HLI/052/2017(Makuyu Sisal IDPS).

71. It was deposed by the Applicant's representative that the claims relate to the Applicant's properties registered as L.R No's 11674 and L.R No

10731 and L.R Nos 3558, 3536/1, 3569/2, 6862,4741, 4883,1363/19, 1363/20, 10739/2, 3536, 3568, 3569/1 and 6871 under leasehold situate in Muranga county (the suit properties).

72. It is the Applicant's case that it carries out intense agricultural activities on the suit properties and that on 24<sup>th</sup> July, 2018, the Court in HCCC No. 255 of 2018 granted an interim conservatory orders staying the proceedings before the 1<sup>st</sup> Respondent in respect of a historical land injustice claim filed by Kakuzi Division Development Association-NLC/HL1/006/2017.
73. According to the Applicant, on 15<sup>th</sup> October, 2018, the 1<sup>st</sup> Respondent served the Applicant with a hearing notice for 1<sup>st</sup> November, 2018 in respect of the historical land injustice claims relating to NLC/HL1/176/2018(Kitoto Community IDPs), NLC/HL1/170/2018(Ndula Resource Centre Kinyangi Squatters), NLC/HL1/168/2018(Kituamba Kaloleni IDPs), NLC/HL1/054/2017(Gathungururu), NLC/HL1/069/2017(Kihiganda Self Help Group) and other historical land injustice claims and proceedings in respect of the Applicants properties until 3<sup>rd</sup> December, 2018.
74. According to the Applicant, on 26<sup>th</sup> October, 2018, the Court in Petition No. 369 of 2018 granted interim conservatory orders staying the land injustice proceedings being NLC/HL1/176/2018, NLC/HL1/170/2018/NLC/HL1/168/2018/, NLC/HL1/054/2017, NLC/HL1/069/2017, NLC/HL1/530/2018, NLC/HL1/049/2017 and any other land injustice claims in respect of the Applicant's property until 3<sup>rd</sup> December, 2018 and that when the matters came up for hearing

on 1<sup>st</sup> November, 2018, all the historical land injustice claims were stayed pending the hearing and determination of the suit.

75. It was deponed that on 7<sup>th</sup> November, 2018, the Court in Petition No 255 of 2018 made an order that the same be consolidated with Petition No. 369 of 2018 and both matters be mentioned before the Court on 3<sup>rd</sup> December, 2018 for further directions; that on the aforesaid date, the Court noting that both petitions challenged the same sections of the law, found that it would be best for the parties to withdraw one petition and only proceed with one and that by consent, the parties withdrew Petition 369 of 2018.
76. Mr Gitaka deponed that the 1<sup>st</sup> Respondent, vide Kenya Gazzette Notice Vol. CXX1-No 27 in the Kenya Gazette of 1<sup>st</sup> March, 2019 published recommendations arising from historical land injustice complaints in respect of NLC/HL1/530/2018, NLC/HL1/069/2017, NLC/HL1/063/2017, NLC/HL1/006/2017, NLC/HL1/049/2017, NLC/HL1/170/2018, NLC/HL1/176/2018 and NLC/HL1/052/2017.
77. It was deposed that the full recommendations were to the effect that the matter being before the High Court, the Commission will pend the hearing of the historical injustice claims until final determination by the Court and that however, as the manager of public land, the 1<sup>st</sup> Respondent ordered the Applicant, Kakuzi Limited, to surrender all public utilities on their land including schools, markets, police stations, hospitals, public roads of access, wayleaves and easements to the national and county governments as appropriate.
78. The Applicant's representative finally deposed that the 1<sup>st</sup> Respondent also directed that allotments and titles should be issued for public



purpose only; that all leases for land held by the Applicant in Muranga County should not be renewed until the historical land injustice claim is heard and determined and that any 999 year leases to be converted to 99 years.

79. According to Mr Gitaka, the aforesaid decisions offend the principles of natural justice as no hearings were held by the 1<sup>st</sup> Respondent in respect of the claims as they were pending in court as Petition No. 255 of 2018; that no prior notification and documentation was issued by the 1<sup>st</sup> Respondent pertaining to the alleged public utilities so as to afford them an opportunity to file a response in this regard and that the proceedings of the 1<sup>st</sup> Respondent are a nullity having been conducted in the absence of any regulations, the NLC(Historical Injustices) Regulation, 2017 having been annulled by Parliament on 28<sup>th</sup> March, 2018.
80. It was deposed that the directives of the 1<sup>st</sup> Respondent although couched as recommendations were essentially determinations in direct contravention of **Section 15(9)** of the **NLC Act**; that in further contravention of **Section 15(9)** aforesaid, the 1<sup>st</sup> Respondent's decision was in excess of its jurisdiction in so far as it made reference to the Applicant's leasing arrangements and that the Applicant is listed in the Nairobi Securities exchange and is a major contributor to the economy through its export of agricultural product and employs thousands of workers whose livelihoods are at risk.
81. The 1<sup>st</sup> Respondent, through its Deputy Director, Legal Affairs and Enforcement, filed a Replying Affidavit whose contents are similar to the reply in respect of ELC JR No. 3 of 2020 which I have summarized above.

- 82.** According to the 1<sup>st</sup> Respondent's Deputy Director, Legal Affairs and Enforcement, the parties herein were invited to hearings which were to be held on 1<sup>st</sup> March, 2018 (Nairobi), 27<sup>th</sup> September (Thika) and 1<sup>st</sup> November, 2018 (Nairobi); that the parties were duly served with the notices of the investigative hearings with all the necessary documentations and that on 1<sup>st</sup> November, 2018, the proceedings before the commission were stopped temporarily by the court in HCCC No 225 of 2018 and Petition No 369 of 2018.
- 83.** It was deposed that as at 1<sup>st</sup> November, 2018, the proceedings with regards to the historical land injustices against the Applicant were at an advanced stage and the Applicant had participated in the process before securing the orders; that the temporary conservatory orders granted by the Court lapsed on 3<sup>rd</sup> December, 2018 and that the Applicant did not bother to file any documents thereafter indicative of their disinterest in the proceedings.
- 84.** According to the 1<sup>st</sup> Respondent, the 1<sup>st</sup> Respondent rendered its decision on 7<sup>th</sup> February, 2019; that the 1<sup>st</sup> Respondent stopped its proceedings with respect to the historical land injustices claim subject to the court orders; that the Court order was limited to the ongoing historical land injustice claim and did not stop the 1<sup>st</sup> Respondent from undertaking its other mandate with regard to management of public land and that the conservatory orders having lapsed on 3<sup>rd</sup> December, 2018, nothing stopped the commission from making further inquiries with regard to any aspect of its mandate.

- 85.** It was submitted that all the decisions made with regard to the subject property were in line with the roles of the National Land Commission as provided for in **Section 5** of the Act; that pursuant to **Section 6(3)** of the **NLC Act**, the Commission is not bound by rules of evidence and may inform itself in any manner it deems fit and that the right to protection of property conferred under **Article 40(1)** of the **Constitution** is not an absolute right in itself as this protection does not extend to property that is found to have been illegally and irregularly acquired thus occasioning a historical injustice.
- 86.** Mr Gichuru deponed that the Applicant has not approached the Court with clean hands having refused to file a response even after having been given an opportunity to do so and that **Article 26** of the United Nations Declaration on the rights to indigenous and tribal peoples in independent countries defines historical land injustices in terms of safeguarding the rights of indigenous people over their ancestral land as in this instance.
- 87.** The 2<sup>nd</sup> Respondent did not file a response.
- 88.** The 3<sup>rd</sup> Respondent, through its Deputy secretary, JM Muthama deponed that the recommendations vide the impugned gazette notice were well within the mandate of the 1<sup>st</sup> Respondent; and that the recommendations essentially staying the determination apart from the issue of public land, should not be held in abeyance, neither should the public be deprived of its rights thereto.
- 89.** According to the 3<sup>rd</sup> Respondent, it is only fair that public utilities within the Applicant's property be surrendered as the issue is neither debatable

nor disputed and that the recommendations as to rates and rent constitutes a general declaration as the operative Act is the Murang'a Finance Act.

90. The 1<sup>st</sup> Interested Party, through its Secretary General, Stephen Kuria Mbugua, deponed that the 1<sup>st</sup> Interested Party comprises of members of a majority of the local community historically settled within Kakuzi Area, carrying out farming and living in their communal lands now known as L.R 10731 and L.R No 11674(21211) and that the colonial government took over this property and gave it to its people until 1962 when the same reverted to the Government.
91. According to the 1<sup>st</sup> Interested Party, instead of reverting the property to them after independence, the Government amalgamated all the ancestral lands and issued a grant of lease to Kakuzi Fibrelands Limited; that in 1996, the President issued another grant of 12,705 acres to Sisal Limited and issued it with a lease of 941 years under L.R No 11674 (21211) and that by the foregoing actions, the Government ratified the historical injustices perpetuated by the Colonial Government.
92. It was deposed that the 1<sup>st</sup> Interested Party filed a claim with the 1<sup>st</sup> Respondent which was admitted as NLC/HL1/006/2017; that the Applicant was invited to file a response; that parties went through pre-trial and the matter was set down for hearing; that on 1<sup>st</sup> March, 2019, the 1<sup>st</sup> Respondent made the impugned recommendations and that contrary to the Applicant's assertion, it was duly notified of the complaint and invited to respond to the same.

93. The 1<sup>st</sup> Interested Party deposed that anticipating the outcome, the Applicant filed a Petition in the High Court and halted the proceedings; that the 1<sup>st</sup> Respondent is aware that the Applicant holds a lease on the properties and there are public utilities thereon and that they filed documents which were sufficient for the recommendations that were made by the 1<sup>st</sup> Respondent. The 2<sup>nd</sup> Interested Parties did not file a response.

### Submissions

94. The submissions by the Applicant's counsel are similar in all respect to the submissions that were made in ELC JR No. 3 of 2020 which I have already summarized above. I will therefore not repeat them here. The same case applies to the submissions of the 1<sup>st</sup> Respondent.
95. On his part, the 3<sup>rd</sup> Respondent's counsel submitted that contrary to the Applicant's assertion, the directives by the 1<sup>st</sup> Respondent were recommendations and were not final orders capable of execution; that nonetheless, the decision to gazette the recommendations was in bad faith; that the NLC grossly exceeded its jurisdiction and its proceedings were a sham there having been no hearing and that the same should be set aside.
96. Vide further submissions, the 3<sup>rd</sup> Respondent through Counsel submitted that there are thousands of registered squatters within the County who have laid claim to the same parcel of land and who equally filed a complaint before the 1<sup>st</sup> Respondent; that chaos would reign if some squatters are granted the land without due process and that it is on this basis that the 3<sup>rd</sup> Respondent challenges the gazetment of the recommendations by the 1<sup>st</sup> Respondent.

97. The 1<sup>st</sup> Interested Party submitted that the 1<sup>st</sup> Respondent is a constitutionally established Commission pursuant to the provisions of **Article 67** which outlines its mandate; that **Section 15** of the **NLC Act** gives the commission the mandate to inquire into historical land injustices and that in order to succeed in an application for judicial review, an Applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety.
98. Counsel relied on the decision of *Republic vs Betting Control and Licensing Board & another Ex parte Outdoor Advertising Association of Kenya [2019] eKLR*, where the court held that in evaluating whether a decision is illegal, it has to look at the scope of the instrument conferring the power to the decision maker and that in this case, having regard to **Article 67** of the **Constitution** and **Section 15** of the **NLC Act**, and being guided by the history of land in Kenya, the 1<sup>st</sup> Respondent was duly mandated to carry out investigations on historical land injustices.
99. Counsel for the 1<sup>st</sup> Interested Party submitted that there was no irrationality as alleged because the 1<sup>st</sup> Respondent did not make any final findings but only asked for the surrender of the public utilities and the stoppage of the renewal of leases pending the full hearing by the 1<sup>st</sup> Respondent.
100. It was submitted that there was no procedural impropriety as the Applicant was duly notified of the complaint and invited to respond but instead opted to file proceedings in the High Court. Counsel submitted

that having failed to prove any illegality, irrationality and procedural impropriety, it follows that the Motion must fail.

**ELC JR No. 5 of 2020**

101. Vide the Notice of Motion dated 18<sup>th</sup> April, 2019, the Ex-Parte Applicant (*Applicant*), Eastern Kenya Limited, seeks the following orders;

- i. An order of Certiorari to remove into the High Court for purposes of being quashed and quashing, quash the Gazette Notice published on 1<sup>st</sup> March, 2019 in so far as it relates to the National Land Commission recommendations dated 18<sup>th</sup> February, 2019 in so far as it relates to a complaint by Kimasas Farmers' Co-operative Society under Ref: NLC/HLI/255/2018.*
- ii. The High Court does issue an order of Prohibition, prohibiting the National Land Commission and Chief Land Registrar from implementing the recommendations in the Gazette Notice published on 1<sup>st</sup> March, 2019 in so far as it relates to the National Land Commission recommendations dated the 18<sup>th</sup> February, 2019 in so far as it relates to a complaint by Kimasas Farmers' Co-operative Society under REF: NLC/HL1/255/2018.*
- iii. The High Court does issue a Declaratory Order that the National Land Commission proceedings and determinations dated the 18<sup>th</sup> February, 2019 in so far as it relates to a complaint by Kimasas Farmers' Co-*

*operative Society under Ref: NLC/HL1/255/2018 are unlawful and tainted with illegality for contravening Section 4(3) and (4) of the Fair Administrative Action Act and Articles 47 and 50(1) of the Constitution and are consequently null and void.*

*iv. Any or further and consequential orders and/or directions that may be given.*

*v. Costs of the Application be awarded to the Applicant.*

102. The application is based on the grounds set out on the face of the Motion and supported by the Verifying Affidavit of David Gitaka, the Legal Manager of the Applicant and a Statutory Statement of an even date.

103. The Legal Manager of the Applicant deponed that vide a Gazzette Notice dated 1<sup>st</sup> March, 2019 in the Kenya Gazzette Vol. CXX1-No 27, the 1<sup>st</sup> Respondent published recommendations arising from a historical land injustice complaint by Kimasas Farmers Co-operative Society (*the society*) against the Applicant.

104. He deposed that the decision was to the effect that: the claim is allowed; all resultant sub-divisions were done illegally and should be cancelled; L.R No 9285/2 be given to Kimasas Farmers Co-operative Society Limited; and the Chief Lands Registrar, Ministry of Lands and Settlement, to implement the decision.

105. The Legal Manager of the Applicant deponed that vide an invite dated the 5<sup>th</sup> June, 2018 and served on them on 7<sup>th</sup> June, 2019, the Applicant was invited to attend a session relating to the complaint on 11<sup>th</sup> July,



2018; that enclosed with the invite was a complaint by the society dated 21<sup>st</sup> February, 2018 and that apart from the complaint, no other documents were enclosed including documents referred to in the complaint.

- 106.** It was deposed that Simon Kipketer Sawe, the owner of L.R 9285/4, was not one of the parties mentioned in the letter of 5<sup>th</sup> June, 2018; that during the mentions on 10<sup>th</sup> and 11<sup>th</sup> July, 2018, he queried the lack of service of any documents supporting the claim to assist in filing a response, noting that the Applicant had only transferred 81.6 Ha to the society vide a transfer registered in 1995 and that in response, Mr Biwott on behalf of the society clarified that the society's members had paid for 550 acres at the value of Kshs 214,000 and had supporting documents.
- 107.** According to the Legal Manager of the Applicant, the decision by the 1<sup>st</sup> Respondent offends the principles of natural justice as the Applicant was not afforded a fair opportunity to be heard; that no hearing was conducted by the 1<sup>st</sup> Respondent in respect of the matter, there only being a mention on 11<sup>th</sup> July, 2018 and that the 1<sup>st</sup> Respondent never served the Applicant with supporting documentation in respect of the claim depriving it of an opportunity to file its Defence.
- 108.** It is the Applicant's case that the 1<sup>st</sup> Respondent's actions were a deliberate attempt to disenfranchise the Applicant's ownership of the property-LR 9285/3, contrary to **Article 40** of the **Constitution**; that in view of the aforesaid breaches, the decision by the 1<sup>st</sup> Respondent contravenes **Articles 47** and **50(1)** of the Constitution,

**Section 4(3) &(4) and 5 of the Fair Administrative Action Act and Section 15(9) of the National Land Commission Act.**

109. In response to the Motion, the 1<sup>st</sup> Respondent, through its Deputy Director, Legal Affairs and Enforcement filed a response which is similar to the response he gave in ELC JR No. 3 of 2020 which I have already summarized above, with a few alterations on matters of fact.
110. The 1<sup>st</sup> Respondent, through its Deputy Director, Legal Affairs and Enforcement, deposed that the 1<sup>st</sup> Respondent received a complaint under Ref: NLC/HLI/255/2018 from the Interested Party against the Applicant and that it was the complainants' assertion that sometime in November, 1986, the then area superintendent Mr P.G Scott allocated to them 550 acres of land as a gift but the Applicant only transferred 210 acres and retained 340 which they sought.
111. It was deponed that before undertaking any investigations, the 1<sup>st</sup> Respondent vide a letter dated 5<sup>th</sup> June, 2018 invited all the interested parties to a hearing on 10<sup>th</sup> and 11<sup>th</sup> July, 2018 at the NLC County Co-ordinators office, Nandi; that on the said dates, both the Applicant and the Interested Party appeared before the 1<sup>st</sup> Respondent and gave their representations and filed submissions and that counsel for the Applicant admitted to having received the complaint and the claim filed therewith.
112. According to the deponent, after hearing both parties, the Applicant was granted 21 days to file its response and to issue the 1<sup>st</sup> Respondent with all its ownership documents including lease documents, PDPs, current searches, stamp duty receipts and a current copy of the CR-12

and that the Applicant failed and/or neglected to file any response and consequently, the 1<sup>st</sup> Respondent prepared its determination.

113. The 2<sup>nd</sup> Respondent did not file a response.
114. The 1<sup>st</sup> Interested Party, through its Chairman, David Biwott, deponed that the 1<sup>st</sup> Interested Party was registered sometime in 1980 to facilitate the realization of the promise of a tea farm from an undertaking given by Mr P.G Scot, a white settler and the area superintendent and that in 1986, Mr P.G Scott decided to settle the 1<sup>st</sup> Interested Party on land parcels number L.R No 9282/2, 9283/2, and 9285/2 all within the Applicant's company which measured approximately 550 acres.
115. According to the 1<sup>st</sup> Interested Party, the Applicant was to transfer to the 1<sup>st</sup> Interested Party the said land; that the Applicant only transferred 81.6 Ha(210 acres) after the 1<sup>st</sup> Interested Party paid Kshs 247,000 and that the Applicant has since refused to transfer the remaining 340 acres to the 1<sup>st</sup> Interested Party despite the 1<sup>st</sup> Interested Party being the one paying the land rates.
116. It is the Interested Party's case that vide its complaint dated 21<sup>st</sup> February, 2018, it petitioned the 1<sup>st</sup> Respondent in an attempt to reclaim its ancestral land; that acting on the complaint, the 1<sup>st</sup> Respondent sent a letter dated 5<sup>th</sup> June, 2018 to the 1<sup>st</sup> Interested Party and the Applicant inviting them to its hearing scheduled on 11<sup>th</sup> July, 2018 and that the 1<sup>st</sup> Respondent conducted its hearings on 11<sup>th</sup> July, 2018 where both parties attended and presented their cases.

117. According to the 1<sup>st</sup> Interested Party, the Applicant's representative sought time to put in a response and was granted 21 days; that in its determination of 7<sup>th</sup> February, 2019, the 1<sup>st</sup> Respondent indicated that it had received no response from the Applicant; that the Applicant having failed to put in its response cannot now allege to have been denied an opportunity to be heard and that the 1<sup>st</sup> Respondent through its decision published in Kenya Gazette of 1<sup>st</sup> March, 2019 found in favour of the 1<sup>st</sup> Interested Party by revoking the sub-divisions of L.R 9285 and recommending the return of L.R 9285 to the 1<sup>st</sup> Interested Party.
118. It was deposed that the 1<sup>st</sup> Interested Party's claim was with respect to L.R 9282/2, 9283/2 and 9285/2; that nowhere did it refer to L.R 9285/4 which allegedly belongs to Mr Simeon Kipketer Sawe and that L.R 9285/3 which is claimed by Mr Sawe was grabbed from the 1<sup>st</sup> Interested Party and that the mischief can be seen from the certificate of lease issued on the 27<sup>th</sup> May 1999 to Simeon Sawe where the term lease is backdated to 953 years from 1<sup>st</sup> December 1956.
119. It was deposed that all the procedures were followed and rules of natural Justice adhered to; that the parties were given a fair hearing and the decision by the 1<sup>st</sup> Respondent was given in accordance to the law; that it is a principle of law that he who comes to equity must come with clean hands and that the Applicant having come before the Court with unclean hands is not entitled to the orders sought.
120. The Applicant, through its Legal Manager, filed a Further Affidavit in which he deposed that the present review is limited to due process and the rights of the Applicant and not the substantive merits of the

complaint which can only be addressed through witness testimony; that there was no hearing on 11<sup>th</sup> July, 2018, the notice of 5<sup>th</sup> July, 2018 having indicated that it was a commission's session and that the fact that the Applicant had yet to be served with the documents by 11<sup>th</sup> July, 2018 affirms that there could not have been a hearing on that date.

### **Submissions**

- 121.** It was submitted by the Applicant's counsel that whereas the Applicant was invited to a session relating to the complaint by the society, none of the documents indicated in the complaint were included and that despite having sought the same and the 1<sup>st</sup> Respondent directing that the Applicant would be issued with the documents, none was forthcoming by either the 1<sup>st</sup> Respondent or 1<sup>st</sup> Interested Party constituting a breach of the Applicants rights under **Section 4(3) (g)** of the **Fair Administrative Actions Act**.
- 122.** It was submitted that the proceedings of 11<sup>th</sup> July, 2018 did not constitute a hearing as the Applicant had not been availed with all the information; that there was no cross-examination of the 1<sup>st</sup> Interested Party by the Applicant, and the Applicant did not tender any evidence and that neither the 1<sup>st</sup> Respondent nor the 1<sup>st</sup> Interested Party has adduced evidence of having provided the Applicant with information related to the complaint.
- 123.** Counsel for the Applicant submitted that as the 1<sup>st</sup> Respondent's recommendations directly affected the Applicant's proprietary rights, they had no choice but to comply with **Articles 47 and 50(1)** of the **Constitution** and that the 1<sup>st</sup> Respondent has no discretion when it

comes to fair administrative action. Reliance in this regard was placed on the cases of *Sceneries vs National Land Commission [2017] eKLR, Kenya Human Rights Commission & Another vs Non-Governmental Organizations Co-ordination Board and Anor[2018]eKLR* and *Judicial Service Commission vs Mbalu Mutava & Another[2014]eKLR*.

124. According to Counsel, the NLC ( Historical Injustices) Regulations, 2017 which set out the procedures in respect of admission of historical land injustice claims were annulled on the 28<sup>th</sup> March, 2018 with Parliament directing the 1<sup>st</sup> Respondent to submit fresh regulations which are yet to be submitted and that it was therefore unlawful for the 1<sup>st</sup> Respondent to conduct hearings relating to historical land injustice claims in the absence of regulations when Parliament made it clear that it was crucial to have the regulations in place.
125. The 1<sup>st</sup> Respondent filed submissions on the 1<sup>st</sup> March, 2021 which are similar to the submissions that were filed in ELC JR No. 3 of 2022 which I have already summarized above, with a variation on matters of fact, which are captured in the 1<sup>st</sup> Respondent's Replying Affidavit. The Applicant filed further submissions which I have considered.
126. The 1<sup>st</sup> Interested Party submitted that the Applicant has no locus to institute this suit as the party before the 1<sup>st</sup> Respondent was Eastern Produce Africa Ltd and not the Applicant herein, Eastern Produce Kenya Limited and that the Applicant was duly afforded an opportunity to be heard in terms of **Article 47** and **50(1)** of the **Constitution**, **Section 14** of the NLC Act and **Section 4** of the Fair

**Administrative Actions Act** as evinced by the Hansard proceedings.

127. According to Counsel, the Applicant is not entitled to the orders sought as it has not come to equity with clean hands, alleging non-service of documents whereas the Hansard shows otherwise and that its Advocate disregarded the 1<sup>st</sup> Respondent's directions. Reliance was placed on the case of *Republic vs National Land Commission & another: Kenya National Highways Authority (Interested Party) Ex-parte George Kimani t/a Capri Construction[2019]eKLR* where misrepresentation of facts by a party was held to be a relevant consideration by the Court while exercising its discretion in granting orders. That the Applicant agreed to get all the relevant documentation and its failure to do so could not prevent the 1<sup>st</sup> Respondent from rendering its decision and that the Applicant does not deserve the orders sought and the application should be dismissed.
128. The 2<sup>nd</sup> Interested Party submitted that the orders of prohibition do not lie as the Applicant was well aware of the proceedings before the 1<sup>st</sup> Respondent in which they were duly represented but deliberately chose not to respond to the complaint.
129. Counsel urged the Court to be guided by the cases of *Pastoli vs Kabale Local District Government Council and Others[2008]2 EA 300* in which the Court cited with approval the case of *Council of Civil Servants Union vs Minister for the Civil Service[1985] AC 2* and *An Application by Bukoba Gymkhana Club[1963] EA 478 & 479* which expressed that in

order to succeed in an application for Judicial Review, an Applicant must show that the decision complained of is tainted with illegality, irrationality and procedural impropriety.

130. Counsel also relied on the case of *Dry Associates Limited vs Capital Markets Authority & Others*[2012]eKLR which expounded on the principles of fair administrative action under **Article 47** of the **Constitution**. It was submitted that the Hansard proceedings make it apparent that the Applicant was afforded an opportunity to be heard and chose to waive it; that as expressed by the Court in *R vs NLC Ex-parte Krystalline Salt Limited*[2015]eKLR, the law only protects lawfully acquired property; that the Court in *R vs National Transport and Safety Authority & 10 Others Ex-parte James Maina Mugo* outlined the considerations on whether or not to grant the quashing orders and that the Applicants are not entitled to the orders sought having proven no wrong on the part of the 1<sup>st</sup> Respondent.

131. The parties highlighted their submissions on 4<sup>th</sup> October, 2022, which I have considered. I have also considered the bulky lists of authorities that were filed by counsel in support of their respective cases.

### **Analysis & Determination**

132. Having considered the Motions, Affidavits in support and against and the submissions thereto, the issues that arise for determination are;

- i. *Whether the Judicial Review Applications Nos. 3, 4 & 5 of 2020 are competent?*



- ii. *Whether the Ex-Parte Applicants in JR Nos. 3, 4 & 5 of 2020 have met the threshold for the grant of the Judicial Review Orders of Certiorari and Prohibition?*
- iii. *What are the appropriate orders to issue?*

**133.** A common thread running through the three Judicial Review Motions are the objections with respect to their competency. The objections touching on jurisdiction and locus are potentially dispositive issues and the Court will determine them first.

**134.** Jurisdiction is the cornerstone of any suit, without which a court cannot entertain any matter before it. As expressed by the Court in the *locus classicus* case of Owners of the Motor Vessel “Lillian S” vs Caltex Oil (Kenya) Ltd [1989] eKLR;

*“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.....Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given.”*

**135.** It is trite that where a question is raised as to the court’s jurisdiction, it should be determined at the first instance. Nyarangi JA in Owners of Motor Vessel “Lillian S” (supra) stated as follows:

*“...A question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence before the court. A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined. I can see no grounds why a question of jurisdiction could not be raised during the proceedings. As soon as that is done, the court should hear and dispose of that issue without further ado.”*

**ELC JR No. 3 of 2020**

136. It is contended that this court has no jurisdiction to handle the case. According to the 4<sup>th</sup> Respondent, the proceedings having been commenced in the High Court, the same are a nullity notwithstanding the transfer to this court because a court without jurisdiction has no authority to transfer a matter.
137. The record shows that vide its Ruling delivered on 16<sup>th</sup> December 2021, this Court in dealing with the application of 19<sup>th</sup> May, 2020 dealt with this objection. The court found that the question of whether it was vested with jurisdiction to entertain the matter having been transferred from the High Court was substantively dealt with by the previous Court when the matters were transferred. This Court found the question to be *res-judicata* stating as follows:

*“It is clear from the foregoing that the Judge did not divest herself of jurisdiction to determine the matter. On the contrary, the Judge stated that she was transferring the suits to this court by virtue of the concurrent jurisdiction held by this court and the High Court with regard to the three matters. That being the case, to purport to hold that the High court had no jurisdiction to transfer the three suits to this court, and that the three suits are void for having been transferred by a court without jurisdiction would be tantamount to sitting on appeal of the decision of a court of equal status, an invitation which this court must decline. Indeed, as the High Court’s jurisdiction has not been impeached, it follows that the leave granted therein to commence judicial review proceedings remains valid.”*

138. It is noted that no review or appeal has been sought with respect to this court’s finding above. The issue is therefore clearly *res judicata*. The Court will not belabor this issue. This objection fails.
139. Still on matters jurisdiction, the 3<sup>rd</sup> Respondent avers that the ELC Court at Kericho, and not this court, has jurisdiction to entertain the matter. It is noted that a similar objection was raised by the 4<sup>th</sup> Respondent vide the Preliminary Objection of 23<sup>rd</sup> June, 2020. That objection was not successful and the same is *res judicata*.
140. Nonetheless, vide its Ruling of 16<sup>th</sup> December, 2021, the present matters were consolidated to be heard by this Court. No appeal has

been filed against the said order of consolidation. In that respect, the parties have subjected themselves to the jurisdiction of this Court. Indeed, acceding to this objection this late in the proceedings militates against the provisions of **Article 159** of the Constitution and **Section 3** of the ELC Act which provides that the principal objective of the Act is to enable the Court to facilitate the just, expeditious, proportionate and accessible resolution of disputes governed by the Act. The objection therefore fails.

141. According to the 4<sup>th</sup> Respondent, the present suit is fatally defective having been instituted contrary to the rules governing representative suits; and that there is no resolution by the Applicants appointing anyone to represent them and as such, the Affidavit by Apollo Kiarie is a nullity. According to the 4<sup>th</sup> Respondent, this runs contra to **Order 1 Rule 8** of the **Civil Procedure Rules** which is to the effect that;

*“(1) Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.*

*(2) The parties shall in such case give notice of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.*

***(3) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub rule (1) may apply to the Court to be made a party to such suit.”***

142. In the present case, the impugned affidavit was signed by Apollo Kiarie, the Chairman of the Kenya Tea Growers Association, one of the applicants on behalf of its membership, who are also Applicants. Looking at the pleadings, it is apparent that the suit is not a representative suit, rather, it is a scenario where one party pleads on behalf of the others, albeit without written authority. Is this omission fatal?

143. This being a judicial review proceeding, the first question is whether the provisions of **Order 1 Rule 8** of the **Civil Procedure Rules** is applicable. The Court in *Republic vs Musanka Ole Runkes Tarakwa & 5 Others Ex-parte Joseph Lesalol Lekition & Others [2015] eKLR* held that although the rule pertained to cases commenced by way of Plaints hence the use of the terminologies Plaintiff and Defendant, the principle was applicable to other processes including matters of judicial review. The court held as follows:

***“Where there are more litigants than one, one of them may be authorized by others to appear, plead or act on their behalf. Such authority must be in writing and must be signed by the parties giving it and must be filed. That is the only way the court will know that the parties have given the one before court, the authority to act for them... Authority in a case where there are several litigants is critical, for it is the only way that***

*others can be bound by what one person files. It is not a matter to be taken casually. One cannot purport to bind others unless with their authority.”*

144. On the other hand, the Court in Republic vs Law Society of Kenya & 2 Others Ex-Parte Paul Wainaina Kimani & Another [2014] eKLR stated as follows:

*“Fourthly, the Interested Party contends that the 1<sup>st</sup> Applicant has purported to swear affidavits and file pleadings on behalf of the 2<sup>nd</sup> applicant without any written authority contrary to law. These are judicial review proceedings and the Civil Procedure Rules do not strictly apply. The 2<sup>nd</sup> Applicant has not complained to the Court and it is assumed that these proceedings were filed with her permission.”*

145. This was the position in Republic vs Public Procurement Administrative Review Board & 2 others [2013] eKLR where the court stated as follows:

*“First and foremost, it must be made clear that the provisions of the Civil Procedure Act as well as the Rules made thereunder do not ordinarily apply to Judicial Review proceedings since the Civil Procedure Act is expressed to be “An Act of Parliament to make provision for procedure in civil courts” yet Judicial Review proceedings are neither civil nor criminal proceedings.”*

146. This Court is persuaded by the school of thought that the Civil Procedure Rules save for Order 53 are not ordinarily applicable to judicial review proceedings. In any event, it is clear that the mischief sought to be addressed by Order 1 Rule 13 is that a party should be aware of any proceedings at its instance and be ready to be bound to the same.

147. Looking at the Gazette notice, it is clear that the Applicants being tea estates within the Bomet and Kericho Counties were the affected parties. None has come to assert that they did not grant any authority to the deponent to swear an affidavit on their behalf. The Court therefore disregards this objection.

**ELC JR No. 5 of 2020**

148. It has been submitted in this matter that the Applicant has no locus to file the Application. *Locus standi* is defined by the **Black's Law Dictionary** as-

***“The right to bring an action or to be heard in a given forum.”***

149. The Court in the case of **Alfred Njau and Others vs City Council of Nairobi (1982) KAR 229**, defined *locus standi* thus;

***“The term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.***

150. According to the 1<sup>st</sup> Interested Party, the Applicant has no locus to institute this suit as the party before the 1<sup>st</sup> Respondent was Eastern

Produce Africa Ltd and not the Applicant herein, Eastern Produce Kenya Limited. The Applicant maintains that it is the same entity that was before the 1<sup>st</sup> Respondent.

151. The Court has considered the pleadings. It is noted that there appears to be a mis-description of the Applicant, with the 1<sup>st</sup> Respondent referring to it as Eastern Product Africa Ltd in the letter of 5<sup>th</sup> June, 2018 and thereafter Eastern Produce Kenya Limited. The Applicant herein describes itself as Eastern Produce Kenya Limited, while the 1<sup>st</sup> Respondent's determination refers to Eastern Produce Kenya Limited. The impugned Gazette notice refers to the Applicant as Eastern Produce Kenya Limited.
152. That being the case, it is the finding of this court the Applicant herein is the same body whose titled was impugned by the 1<sup>st</sup> Respondent. Therefore, the court finds that the Applicant has locus standi in this matter.
153. I will now determine the issue of whether the Ex-parte Applicants in ELC JR Nos. 3, 4 & 5 of 2020 have met the threshold for granting of Judicial Review Orders of Certiorari and Prohibition.
154. Vide their respective Applications, the Ex-parte Applicants (*hereinafter the Applicants*) seek *inter-alia*, the Judicial Review orders of Certiorari and Prohibition as well as declaratory orders. Judicial Review has its foundation in **Sections 8 and 9** of the **Law Reform Act**, which constitutes the substantive law for judicial review of administrative actions and **Order 53** of the **Civil Procedure Rules** which deals with the procedural aspects thereof.



155. **Article 47** of the Constitution of Kenya provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and fair. **Section 4** of the **Fair Administrative Action Act, 2015** re-echoes **Article 47** of the Constitution and reiterates the entitlement of every Kenyan to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
156. At the onset, it must be appreciated that Judicial Review is primarily concerned with the decision making process and not with the merit of the decision. This was expressed by the Supreme Court in *Judges and Magistrates Vetting Board vs Centre for Human Rights and Democracy [2014] eKLR* where it was stated that:
- “when Courts conduct judicial review, they are in essence ensuring that the decisions made by the relevant bodies are lawful. Consequently, should they find that the decision made is unlawful, Courts can set aside that decision. Judicial review, therefore, can be said to safeguard the rule of law, and individual rights; and ensures that decision makers are not above the law, but have taken responsibility for making lawful decisions, in the knowledge that they are reviewable.”*
157. Similarly, the Court of Appeal in *OJSC Power Machines Limited, Trans Century Limited, and Civicon Limited (Consortium) vs Public Procurement Administrative Review Board Kenya & 2 others [2017] eKLR*, stated thus;

*“The law on the jurisdiction of the High Court to entertain judicial review proceedings are encapsulated in several decisions, some of which were cited before us while the learned Judge applied others in his judgment. The law, from these decisions is to the following effect;*

*That the purpose of judicial review is to ensure that a party receives fair treatment in the hands of public bodies; that it is the purpose of judicial review to ensure that the public body, after according fair treatment to a party, reaches on a matter which it is authorized by law to decide for itself, a conclusion which is correct in the eyes of the court in a judicial review proceeding. Put another way, judicial review is concerned with the decision making process, not with the merits of the decision itself. In that regard, the court will concern itself with such issues as to whether the public body in making the decision being challenged had the jurisdiction, whether the persons affected by the decision were heard before the decision was made and whether in making the decision, the public body took into account irrelevant matters or did not take into account relevant matters.”*

158. The parameters of judicial review were set out by the Court of Appeal in the case of Republic vs Kenya National Examinations Council Ex parte Gathenji & Others Civil Appeal No. 266 of 1996 where the court stated as follows:

*“Prohibition looks to the future so that if a tribunal were to announce in advance that it would consider itself not bound by the rules of natural justice the High Court would be obliged to prohibit it from acting contrary to the rules of natural justice. However, where a decision has been made, whether in excess or lack of jurisdiction or whether in violation of the rules of natural justice, an order of prohibition would not be efficacious against the decision so made. Prohibition cannot quash a decision which has already been made; it can only prevent the making of a contemplated decision...Prohibition is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings...”*

*The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the*

*nature of a public duty. Its purpose is to remedy the defects of justice and accordingly it will issue, to the end that justice may be done, in all cases where there is a specific legal right or no specific legal remedy for enforcing that right; and it may issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual. The order must command no more than the party against whom the application is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty, leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out in a specific way...These principles mean that an order of mandamus compels the performance of a public duty which is imposed on a person or body of persons by a statute and where that person or body of persons has failed to perform the duty to the detriment of a party who has a legal right to expect the duty to be performed. An order of mandamus compels the performance of a duty imposed by statute where the person or body on whom the duty is imposed fails or refuses to perform the same but if the complaint is that the duty has been wrongfully performed i.e. that the duty has not been performed according to the law,*

*then mandamus is wrong remedy to apply for because, like an order of prohibition, an order of mandamus cannot quash what has already been done...*

*Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is without jurisdiction or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons.”*

159. In the Ugandan case of *Pastoli vs Kabale District Local Government Council & Others*, (2008) 2 EA, the court gave an in depth analysis of the parameters to be met in order to be successful in a judicial review application as follows:

*“In order to succeed in an application for Judicial Review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety: See Council of Civil Service Union v Minister for the Civil Service [1985] AC 2; and also Francis Bahikirwe Muntu and others v Kyambogo University, High Court, Kampala, miscellaneous application number 643 of 2005 (UR).*

*Illegality is when the decisionmaking authority commits an error of law in the process of taking the decision or making the act, the subject of the complaint. Acting without Jurisdiction or ultra vires, or contrary to the provisions of a law or its principles*

*are instances of illegality....Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards: Re An Application by Bukoba Gymkhana Club [1963] EA 478 at page 479 paragraph "E".*

*Procedural impropriety is when there is failure to act fairly on the part of the decision making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision. (Al-Mehdawi v Secretary of State for the Home Department [1990] AC 876)."*

160. What resonates from the above case law is that the scope of judicial review proceedings is limited to the decision making process in relation to the decision which is being challenged. The role of the court is therefore supervisory and the court should not attempt to delve into the "*forbidden appellate approach.*" Thus, the court can neither hear the merits of the dispute nor re-hear the same.

161. As aforesaid, the Applicants are seeking the orders Certiorari and Prohibition. The learned authors of **H. W. Wade and C. F. Forsyth, Administrative Law, 10th Edition**, have stated as follows at page 509 on the remedies of Certiorari and Prohibition;

*“The quashing order and prohibiting order are complementing remedies, based upon common law principles....A quashing order issues to quash a decision which is ultra vires. A prohibiting order issues to forbid some act or decision which will be ultravires. A quashing order looks to the past, a prohibiting order to the future.”*

162. The Applicants’ claims in all the three Motions arise from the recommendations of the 1<sup>st</sup> Respondent’s investigations of historical land injustice claims. As such, a brief on the 1<sup>st</sup> Respondent and its role in this respect will suffice.

163. The 1<sup>st</sup> Respondent is an independent constitutional commission established under **Article 67** of the **Constitution** which provides as follows:

*“(1) There is established the National Land Commission.*

*(2) The functions of the National Land Commission are-*

*(a) to manage public land on behalf of the national and county governments;*

- (b) to recommend a national land policy to the national government;*
- (c) to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;*
- (d) to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;*
- (e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;*
- (f) to encourage the application of traditional dispute resolution mechanisms in land conflicts;*
- (g) to assess tax on land and premiums on immovable property in any area designated by law; and*
- (h) to monitor and have oversight responsibilities over land use planning throughout the country.*

*(3) The National Land Commission may perform any other functions prescribed by national legislation.”*

164. The 1<sup>st</sup> Respondent is further guided in its mandate and functions by the **National Land Commission Act, 2012** (hereinafter the NLC Act). **Section 15** of the NLC Act defines historical land injustice claims. It provides as follows;

*“(1) Pursuant to Article 67 (3) of the Constitution, the Commission shall receive, admit and investigate all*



*historical land injustice complaints and recommend appropriate redress.*

*(2) For the purposes of this section, a historical land injustice means a grievance which-*

*(a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;*

*(b) resulted in displacement from their habitual place of residence;*

*(c) occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated;*

*(d) has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and*

*(e) meets the criteria set out under subsection 3 of this section.”*

165. The criteria to be met before a claim can be considered a historical land injustice is set out in **Section 15(3)** of the NLC Act which states;

*“(3) A historical land claim may only be admitted, registered and processed by the Commission if it meets the following criteria-*

*(a) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;*

*(b) the claim has not or is not capable of being addressed through the ordinary court system on the basis that-*

*(i) the claim contradicts a law that was in force at the time when the injustice began; or*

*(ii) the claim is debarred under section 7 of the Limitation of Actions Act, (Cap. 22) or any other law;*

*(c) the claimant was either a proprietor or occupant of the land upon which the claim is based;*

*(d) no action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question; and*

*(e) it is brought within five years from the date of commencement of this Act.”*

166. The 1<sup>st</sup> Respondent’s mandate when handling a historical land injustice claim includes not only the power to recommend appropriate redress but also the power to conduct investigations prior to making its determination. In this regard, **Section 15 (5) and (6)** of the Act provide as follows:

*“(5) When conducting investigations under subsection (1) into historical land injustices the Commission may—*

*(a) request from any person including any government department such particulars, documents and information regarding any investigation, as may be necessary; or (b) by notice in writing, addressed and*

*delivered by a staff of the Commission to any person, direct such person, in relation to any investigation, to appear before the Commission at such time and place as may be specified in the notice, and to produce such documents or objects in the possession, custody or under the control of such person and which are relevant to that investigation.*

*(6) Where a complainant is unable to provide all the information necessary for the adequate submission or investigation of a complaint, the Commission shall take reasonable steps to have this information made available.”*

167. Section 15(9) of the NLC Act lists the remedies the 1<sup>st</sup> Respondent may issue after the investigations. It states;

*“The Commission, after investigating any case of historical land injustice referred to it, shall recommend any of the following remedies-*

*(a) restitution;*

*(b) compensation, if it is impossible to restore the land;*

*(c) resettlement on an alternative land; (d) rehabilitation through provision of social infrastructure;*

*(e) affirmative action programmes for marginalized groups and communities;*

*(f) creation of wayleaves and easements;*

*(g) order for revocation and reallocation of the land;*

- (h) order for revocation of an official declaration in respect of any public land and reallocation;*
- (i) sale and sharing of the proceeds;*
- (j) refund to bona fide, third party purchasers after valuation; or*
- (k) declaratory and preservation orders including injunctions.”*

168. Section 15(10) of the NLC Act provides as follows:

*“Upon determination of a historical land injustice claim by the Commission, any authority mandated to act under the redress recommended shall be required to do so within three years.”*

169. Having laid down the law governing the 1<sup>st</sup> Respondent’s mandate with respect to historical land injustice claims, the Court will proceed on a short discourse on the tenets of fair administrative action and the right to a fair hearing, the alleged breaches of which form the primary basis for the present motions.

170. The right to fair administrative action in Kenya has a constitutional underpinning. Article 47 of the Constitution, provides as follows:

*“47(1) Every person has a right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.*

*(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by*

*administrative action, that person has the right to be given written reasons for the action.”*

171. In discussing the import of **Article 47** of the Constitution, the Court of Appeal in the case of *Benson Wekesa Milimo vs National Land Commission & 2 others [2021] eKLR* stated thus;

*“In addition, Article 47 of the Constitution provides a right to fair administrative action. This right includes, amongst others, the right to administrative action that is lawful, reasonable and procedurally fair, and the right to have prior adequate notice of the nature and reason for the proposed administrative action, and an opportunity to be heard.”*

172. This right is further secured through the **Fair Administrative Action Act, 2015. Section 2** thereof defines “administrative action” as including the powers, functions and duties exercised by authorities or quasi-judicial tribunals or any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates and defines “administrator” as meaning a person who takes an administrative action or who makes an administrative decision.

173. **Section 4 (3) and (4)** of the Act provide as follows:

*“(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision—*

- (a) prior and adequate notice of the nature and reasons for the proposed administrative action;*
  - (b) an opportunity to be heard and to make representations in that regard;*
  - (c) notice of a right to a review or internal appeal against an administrative decision, where applicable;*
  - (d) a statement of reasons pursuant to section 6;*
  - (e) notice of the right to legal representation, where applicable;*
  - (f) notice of the right to cross-examine or where applicable; or*
  - (g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.*
- (4) The administrator shall accord the person against whom administrative action is taken an opportunity to—*
- (a) attend proceedings, in person or in the company of an expert of his choice;*
  - (b) be heard;*
  - (c) cross-examine persons who give adverse evidence against him; and*
  - (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.”*

174. The foregoing provisions sum up what is commonly referred to as natural justice. The Court of Appeal summarized the rule as follows in *The Judicial Service Commission vs Hon. Mr. Justice Mbalu*

Mutava & Another Civil Appeal No. 52 of 2014 where the court relied on the decision of the House of Lords in Ridge vs Baldwin thus:

*“... The landmark decision of the House of Lords in Ridge v. Baldwin [1964] AC 40 clarified the law, that the rules of natural justice, in particular right to fair hearing, (audi alteram partem rule) applied not only to bodies having a duty to act judicially but also to the bodies exercising administrative duties. In that case, Lord Hodson at page 132 identified three features of natural justice as:*

- 1. the right to be heard by an unbiased tribunal.*
- 2. the right to have notice of charges of misconduct*
- 3. the right to be heard in answer to those charges.*

*On his part, Lord Reid when dealing with class of cases of dismissal from office “where there must be something against a man to warrant his dismissal” said at page 66: “There, I find an unbroken line of authority to the effect that an officer cannot be dismissed without first telling him what is alleged against him and hearing his defence or explanation.”*

*[20] The right to fair hearing as a rule of natural justice, a part of the common law, has in modern times been variously described as “fair play in action”, justice of the common law”; “common fairness” “fairness of procedure” or simply as “duty to act fairly.”*

*As an example, in Wiseman v Borneman [1969] 3 All ER 275 in determining, inter alia, the question whether the principles of natural justice (right to fair hearing) had been followed Lord Morris of Borth-y-Gest denominated the issue as to one of whether the tribunal had “acted unfairly”.*

*So did Lord Denning MR in Selvarajan v Race Relations Board [1976] 1 All ER 12 when dealing with the procedure of bodies required to make investigation where he said at page 19:*

*“In all these cases it has been held that the investigating body is under a duty to act fairly; but that which fairness requires depends on the nature of the investigations and the consequence which it may have on the person affected by it.”*

175. One of the core pillars of natural justice is the right to fair hearing. This is provided for under Article 50(1) of the Constitution which provides;

*“Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.”*

176. This right was extensively discussed by the Supreme Court in Evans Odhiambo Kidero & 4 others vs Ferdinand Ndungu Waititu & 4 others [2014] eKLR, where the court held;



*“Article 50(1) refers to the right to a fair hearing for all persons, while article 50(2) accords all accused persons the right to a fair trial. Article 25(c) lists the right to a fair trial as a non-derogable fundamental right and freedom that may not be limited. Often the terms ‘fair hearing’ and ‘fair trial’ are used interchangeably, sometimes to define the same concept, and other times to connote a minor difference. Although the right to a fair trial is encompassed in the right to a fair hearing in our Constitution, a literal construction of these two provisions may be misconstrued in some quarters to mean that Article 50(1) deals with the right to fair hearing in any disputes including those of a civil, criminal or quasi criminal nature whereas Article 50(2) is limited to accused persons thereby arguing that the protection of such right only relates to criminal matters. This is not an acceptable interpretation or construction within the parameters of articles 19 and 20 of the Bill of Rights, which calls for an expansive and inclusive construction to give a right its full effect.”*

177. The twin rules of natural Justice that no man shall be a judge in his own cause (*Nemo Judex in causa sua*) and that no man shall be condemned unheard (*audi alteram partem*) are cardinal principles of law which are fundamental in our justice system and embody the duty imposed on administrative bodies to act fairly.

178. As to what constitutes procedural fairness, there is no set standard and each case must be decided on its own merits. The Canadian Supreme Court in Baker vs Canada (Minister of Citizenship & Immigration) 2 S.C.R. 817 6 stated thus:

*“The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decision affecting their rights, interests, or privileges made using a fair, impartial and open process, appropriate to the statutory, institutional and social context of the decisions.”*

179. The Court further emphasized that procedural fairness is flexible and entirely dependent on context. In order to determine the degree of procedural fairness owed in a given case, the court set out five factors to be considered: (1) The nature of the decision being made and the process followed in making it; (2) The nature of the statutory scheme and the term of the statute pursuant to which the body operates; (3) The importance of the decision to the affected person; (4) The presence of any legitimate expectations; and (5) The choice of procedure made by the decision-maker. The Court will be guided by the foregoing principles.

**ELC JR No. 3 of 2020**

180. By way of brief background, the 1<sup>st</sup> Respondent received complaints from the County Governments of Kericho and Bomet on behalf of the

Kipsigis and Talai Clans, Kipsigis Clans and Borowo and Kipsigis Clans Self Help Groups against the Colonial Government and the County Government of Kenya in which it was alleged that the British Colonial white settlers took away thousands of acres of their land. The complaints were duly admitted as historical land injustices.

- 181.** On 1<sup>st</sup> March, 2019, the 1<sup>st</sup> Respondent vide the Kenya Gazette Vol CXXI-No 27 published recommendations arising from the aforesaid claims which were to the effect that: the claims are allowed; a re-survey be done on the land being held by the tea estates to determine if there is any surplus land or residue to be held in trust for the community by the County Government for public purposes and that the County Government and the multi-nationals sign an M.O.U(Memorandum of Understanding) for the multi-nationals to provide public utilities to the community.
- 182.** The 1<sup>st</sup> Respondent further recommended that the renewal of the leases to these lands be withheld until an agreement is reached with the respective County Governments of Kericho and Bomet; the rates and rent on such lands should be enhanced to benefit the National and County Governments and that all 999-year leases be converted to the constitutional requirement of 99 years.
- 183.** The Applicants assert that the above decision offends the principles of natural justice as they were never notified of the claims nor afforded an opportunity to be heard; that the decision was issued without notice to the Applicants despite them being apparent that the same would adversely affect their interests; that the proceedings were a nullity having been conducted in the absence of the NLC (Historical

Injustices) Regulations, and that the 1<sup>st</sup> Respondent's recommendations are essentially directives and in excess of the 1<sup>st</sup> Respondent's jurisdiction under **Section 15 (9)** of the **NLC Act**.

184. The 1<sup>st</sup> Respondent maintains that the investigations were procedurally fair and above board in all aspects and that the recommendations were valid. The 1<sup>st</sup> Respondent is in this respect supported by the 3<sup>rd</sup> and 4<sup>th</sup> Respondents and the Interested Parties.
185. Beginning with the challenge on the legality of the 1<sup>st</sup> Respondent's actions, the Applicants maintain that the proceedings before the 1<sup>st</sup> Respondent were a nullity having been conducted in the absence of any regulations governing their proceedings.
186. In 2017, the 1<sup>st</sup> Respondent promulgated the National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017 ("Regulations"), which provided the procedure for conducting an investigation on historical land injustices.
187. On 26<sup>th</sup> March, 2018, the aforesaid regulations were annulled by Parliament. The annulment was informed by the fact that the 1<sup>st</sup> Respondent failed to comply with the public scrutiny requirement by failing to ensure that the regulations are tabled before Parliament. Looking at the timelines for the hearings herein and eventual recommendation, there can be no dispute that at the time thereof, the regulations were no longer operative. Did this, as alleged by the Applicants, render the proceedings fatally defective?
188. This Court in the case of *R vs Ex-parte Holborn Properties* (*supra*) dealing with the question of whether the failure by the 1<sup>st</sup>

Respondent to make rules, for the better carrying out of its functions of reviewing grants or dispositions of public land to establish their propriety or legality negated the proceedings in that regard found in the negative stating thus;

***“Although the Respondent, in addition to the provisions of the Act, is required to make rules for the better carrying out of its functions of reviewing grants or dispositions of public land, the absence of the rules cannot be sufficient reason to stop it from exercising those functions considering that the Act is clear on how the exercise should be carried out.”***

189. Indeed, the 1<sup>st</sup> Respondent is constitutionally mandated to investigate historical land injustice claims. Section 15 of the Act succinctly sets out the parameters thereof. The aim of the regulations was to streamline the 1<sup>st</sup> Respondent’s mandate in this regard and their absence cannot be said to upheave the 1<sup>st</sup> Respondent’s constitutional mandate to investigate historical land injustices.
190. The rationale in the case of *R vs Ex-parte Holborn(supra)* which was decided by this court remains solid. It is the court’s findings that the lack of regulations on historical land injustices did not render the proceedings a nullity. The provisions of section 15 of the NLC Act on historical land injustice is sufficient in guiding the 1<sup>st</sup> Respondent in conducting its proceedings.
191. The next issue to deal with is whether the investigations leading to the findings and recommendations by the 1<sup>st</sup> Respondent were irrational

and/or tainted with procedural irregularity. The Applicants have alleged breach of fair administrative actions by the 1<sup>st</sup> Respondent for failure to notify them of the claims against them and the issuance of the decision without notice to them.

192. The 1<sup>st</sup> Respondent in contrast states that all affected parties were duly notified through the public address system and the local radio stations and participated in the proceedings; that the 1<sup>st</sup> Respondent means of investigation is not adversarial in nature and that it is at liberty to adopt any model it considers appropriate.
193. The Court has considered the Hansard with respect to proceedings conducted by the 1<sup>st</sup> Respondent on 11<sup>th</sup> October, 2018. There was no representation on behalf of the Applicants. A look at the determination equally reveals that there was no representation by and/or for the Applicants. This begs the question whether they were notified of the proceedings.
194. The Court has keenly analyzed the evidence. Whereas the 1<sup>st</sup> Respondent asserts that it publicly notified all the relevant parties of the hearings, there is no evidence of the same. It is not acceptable nor indeed sufficient for the 1<sup>st</sup> Respondent to allege that the Applicants by virtue of residing in Kericho and Bomet Counties ought to have been aware of the proceedings.
195. Even if the Court were to presume that the notices were issued in the manner alleged, was that sufficient? The Court thinks not. In *Geothermal Development Company Limited vs Attorney General & 3 Others [2013] eKLR*, the concept of notice before administrative action is undertaken was discussed as follows:

*“In many jurisdictions around the world, it has long been established that notice is a matter of procedural fairness and an important component of natural justice. As such, information provided in relation to administrative proceedings must be sufficiently precise to put the individual on notice of exactly what the focus of any forthcoming inquiry or action will be. (See Charkaoui v Canada [2007] SCC 9, Alberta Workers’ Compensation Board v Alberta Appeals Commission (2005) 258 DLR (4<sup>th</sup>), 29, 55 and Sinkovich v Strathroy Commissioners of Police (1988) 51 DLR (4<sup>th</sup>) 750).”*

196. In the circumstances, the Court finds that no notice was given to the Applicants contrary to **Article 47** of the **Constitution** and **Section 4(3)** of the **Fair Administrative Action Act**. Apart from the element of notice, **Section 4(3)** of the **Fair Administrative Action Act** mandates a tribunal such as the 1<sup>st</sup> Respondent herein to afford a party an opportunity to be heard and to make representations before making an administrative action that is likely to affect the party.

197. In this regard, the Court associates with the sentiments of the court in *Republic vs the Honourable the Chief Justice of Kenya & Others Ex Parte Justice Moiwo Mataiya Ole Keiwua Nairobi HCMCA No. 1298 of 2004* in which the court held that:

*“The right to be heard has two facts, intrinsic and instrumental. The intrinsic value of that right consists*

*in the opportunity which it gives to the individuals or groups, against whom decisions taken by public authorities operate, to participate in the proceedings by which those decisions are made, an opportunity to express their dignity as persons. The ordinary rule which regulates all procedures is that persons who are likely to be affected by the proposed/likely action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it and such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence.”*

198. The right of a party to be afforded a hearing, and how that should be done, is further provided for in the **Fair Administrative Action Act** under **section 4** as follows:

*“ (1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.*

*(2) Every person has the right to be given written reasons for any administrative action that is taken against him.*



*(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision—*

*(a) prior and adequate notice of the nature and reasons for the proposed administrative action;*

*(b) an opportunity to be heard and to make representations in that regard.”*

- 199.** While appreciating that the 1<sup>st</sup> Respondent’s manner of investigation into historical land injustices claims is more “investigative” than “adversarial,” it does not take away the need to notify any party that may be affected of a complaint about it and giving it an opportunity to be heard. Failure to do so is a grave violation of fair administrative action and renders any resultant decision a nullity.
- 200.** As held by the Court of Appeal in *Evans Thiga Gaturu & another vs Naiposha Company Ltd & 13 Others [2017] eKLR*, a decision arrived at without affording a party a fair opportunity to be heard cannot be allowed to stand and it matters not that the court or tribunal would have come to the same conclusion had it afforded the party a fair hearing.
- 201.** If indeed the principles of natural justice are violated in respect of any decision, it is immaterial whether the same decision would have been arrived at in the absence of the departure from essential principle of justice. The decision must be declared to be no decision.

202. In conclusion, the Court is persuaded that the investigations that culminated in the recommendations set out in the gazette notice of 1<sup>st</sup> March, 2019 were vitiated by procedural impropriety and consequently constitute a nullity. In view of the foregoing, the question of whether the decision by the 1<sup>st</sup> Respondent constituted directives rather than determinations is moot.
203. From the circumstances of the case and the material placed before this court it, I am satisfied that the application in **ELC JR No. 3 of 2020** meets the threshold for granting of the Judicial Review Orders of Certiorari and Prohibition.
204. As to the declaratory orders sought, the Court is not convinced that the same are available to the Applicants. The remedies available in judicial review proceedings are certiorari, mandamus and prohibition. The Court is in this respect persuaded by the position by the Court in *Republic vs Commissioner of Mines & Another Ex-Parte Basu Mining Limited & Cortec Mining Kenya Limited & 5 Others [2015] eKLR*, where the Court stated;

*“Under judicial review the court’s jurisdiction is restricted to issue orders of mandamus, certiorari and prohibition which of necessity are confined to review of decisions whose propriety is in question. As earlier stated judicial review is about reviewing the process through which the decision was made to determine whether the process was indeed fair and not about the merit or the demerits of the decision. Accordingly, it is my holding and finding that the applicant’s*

*application for declaratory orders within the present judicial review proceedings is misconceived and incompetent and cannot be granted.”*

- 205.** The remedy of declaration although available in judicial review reforms of 1977 in the United Kingdom is not available in Kenya where there is no similar reform expanding the traditional prerogative orders available in judicial review procedure by an order of declaration.
- 206.** Declaration orders remains the preserve of regular civil and constitutional procedures and not *judicial review* procedure. **Order 53 Rule 1 (1) of the Civil Procedure Rules** still retains as available only *order of mandamus, prohibition or certiorari*.

**ELC JR No. 4 of 2020**

- 207.** By way of brief background, the 1<sup>st</sup> Respondent on various dates in 2018 received complaints from several groups being Gachagi Makuyu IDP, Gaichanjiru Self Help Group, Kakuzi Division Development Association, Kihinganda Self Help Group, Kituamba Kaloleni IDPs’, Gathungururu Village Ndula Resource Centre-Kanyangi Squatters, Kitoto Community IDPS and Makuyu Sisal IDPs as against Kakuzi Limited which were admitted as historical land injustice claims.
- 208.** The complainants alleged various historical land injustices such as eviction from their ancestral land and failure to honour land exchange programmes and settlement processes.
- 209.** On 1<sup>st</sup> March, 2019, the 1<sup>st</sup> Respondent vide a notice in the Kenya Gazette published recommendations arising from historical land injustice claims which were to wit: the matter being before the High

Court, the commission will pend the hearing of the historical land injustice claim until final determination is reached by the Court; that Kakuzi Limited should surrender all public utilities on their land including schools, markets, police stations, hospitals, public roads of access, wayleaves and easements to the national and county governments as appropriate; allotments and titles to be issued for public purpose only; all leases for land held by Kakuzi Limited in Murang'a County should not be renewed until the historical land injustice claim is heard and determined; and any 999 year old leases should be converted to 99 years.

**210.** According to the Applicant, the aforesaid decisions offend the principles of natural justice as there were no hearings held by the 1<sup>st</sup> Respondent in respect of the claims since there were pending constitutional Petitions and that the 1<sup>st</sup> Respondent ought not to have issued any recommendations until the matters were determined by the High Court.

**211.** The Applicant asserted that no prior notification and documentation was issued by the 1<sup>st</sup> Respondent pertaining to the alleged public utilities and conversion of leases and that it did not have an opportunity to file its Defence in this regard; that the 1<sup>st</sup> Respondent purported to issue final recommendations before the claims were substantively heard and that the proceedings are a nullity having been conducted in the absence of any regulations.

**212.** In response, the 1<sup>st</sup> Respondent states that all the parties were duly invited for hearing with respect to the historical land injustice claims

and the parties were duly served with the notices and all relevant documentations; that indeed on 1<sup>st</sup> November, 2018, the proceedings before the commission were temporarily stopped pursuant to HCC 225 of 2018 and Petition 369 of 2018 and that the 1<sup>st</sup> Respondent ceased its proceedings.

- 213.** According to the 1<sup>st</sup> Respondent, the orders of the court lapsed on 3<sup>rd</sup> December, 2018 and nothing stopped the 1<sup>st</sup> Respondent from making further inquiries with respect to the property and that the other decisions made by the 1<sup>st</sup> Respondent is in line with its roles pursuant to **Section 5** of the NLC Act.
- 214.** The 3<sup>rd</sup> Respondent vide the Replying Affidavit supported the 1<sup>st</sup> Respondent's assertions that the recommendations were above board, but took a contrary stance in the submissions indicating that all the relevant parties were not afforded an opportunity to be heard. The 1<sup>st</sup> Interested Party supports the 1<sup>st</sup> Respondent's assertions that everything was above board.
- 215.** It is asserted that the 1<sup>st</sup> Respondent had no jurisdiction to entertain the matter as stay orders had been granted against the proceedings by the High Court, whose proceedings were pending over the same issue. The Court has considered the evidence. On the 29<sup>th</sup> October, 2018, the High Court in Petition No 369 of 2018 granted orders arising from an application of 26<sup>th</sup> October, 2018. Of relevance is order 7 which stated;

*“That pending the hearing of this Application inter-partes and determination thereof, conservatory orders be and are hereby granted staying the proceedings before the 2<sup>nd</sup> Respondent in Nairobi*

*NLC/HL1/176/2017(Kitoto Community IDPs),  
NLC/HLI/170/2018(Ndula resource centre on behalf of  
Kinyangi Squatters & Others),  
NLC/HL1/168/2018(Kituamba Kaloleni IDPs),  
NLC/HL1/054/2017(Gathungururu Village),  
NLC/HLI/069/2017(Gaichanjiru Self Help Group),  
NLC/HLI/530/2018(Gaichagi Makuyu IDPs),  
NLC/HLI/049/2017(Kihinginda Self Help Group) and  
any other historical land injustice claims and  
proceedings in respect of the Applicants properties  
until 3<sup>rd</sup> December, 2018.”*

216. The 1<sup>st</sup> Respondent admits to having received the foregoing orders and states that it ceased its proceedings in this regard. The Hansard of the 1<sup>st</sup> November, 2018 indicates that the aforesaid order was the subject of the proceedings with Commissioner Tororei commenting as follows:

*“Right, I think I need to bring this matter to a close; the Commission as it were is now barred from proceeding.”*

217. The above notwithstanding, on 7<sup>th</sup> February, 2019, the 1<sup>st</sup> Respondent issued the impugned recommendations instigating the present Motion. The 1<sup>st</sup> Respondent states that the stay was limited to historical land injustice proceedings and second, that the stay orders lapsed on 3<sup>rd</sup> December, 2018 and it was thereafter at liberty to continue with its investigations.

218. So, what are stay proceedings? The same was discussed by the Court in *R (H) vs Ashworth Special Hospital Authority (2003) 1WLR 127*, as cited by the Court in the case of *Sun Africa Hotels Limited & Another Vs K.R.A & 2 Others (2018) eKLR*, where it was held that;

*“As I have said, the essential effect of a stay of proceedings is to suspend them. What this means in practice will depend on the context and the stage that has been reached in the proceedings. If the inferior court or administrative body has not yet made a final decision, then the effect of the stay will be to prevent the taking of the steps that are required for the decision to be made. If a final decision has been made, but it has not been implemented, then the effect of the stay will be to prevent its implementation. In each of these situations, so long as the stay remains in force, no further steps can be taken in the proceedings, and any decision taken will cease to have effect: it is suspended for the time being.”*

219. Looking at the orders of 29<sup>th</sup> October, 2018, can it be said, as alleged, that the same were limited to the 1<sup>st</sup> Respondent’s mandate in investigating historical land injustices and as such the 1<sup>st</sup> Respondent was at liberty to make other recommendations? To answer this question, the proceedings before the 1<sup>st</sup> Respondent must be contextualized.

- 220.** Whereas the 1<sup>st</sup> Respondent's mandate as set out in the NLC Act is far reaching, the proceedings, the subject of this motion were carried out within its jurisdiction to entertain historical land injustices. In the court's opinion, the stay order was a blanket stay on the proceedings by the 1<sup>st</sup> Respondent in respect to the complaints that were before it, and specifically for land registered in favour of the Applicant.
- 221.** It is therefore far-fetched for the 1<sup>st</sup> Respondent to import its jurisdiction to deal with public land into proceedings on historical land injustices and claim that their mandate in this regard was unaffected by the orders. The Court opines that the 1<sup>st</sup> Respondent ought to have downed its tools with respect to the entirety of the proceedings. Having failed to do so, the court is convinced that the recommendations were ultra-vires
- 222.** Even if the court was to accept the contention that the 1<sup>st</sup> Respondent's recommendations were issued pursuant to its mandate with regard to the management of public land, which mandate was not stopped by the Court, it remains alive to the principle that before an administrative action is made which is likely to affect a party, the party ought to be afforded an opportunity to make representations in that regard.
- 223.** The claim before the 1<sup>st</sup> Respondent was a historical land injustice claim in which the complainants were seeking, *inter-alia*, ownership of the suit properties and to be resettled thereon. If the 1<sup>st</sup> Respondent was invoking its jurisdiction to handle public land or any other matter, the Applicant ought to have been duly notified to make representations in this respect.



- 224.** Indeed, the fact of whether the property is public land and has utilities therein is disputed. As was held in the case of *Minister of Health and Another vs New Clicks South Africa (Pty) Ltd and Others [2005] ZACC 14*, an individual needs to know the concerns of the administrator and to be given an opportunity of answering those concerns. The decisions may depend on particular facts and may sometimes involve disputes of fact that have to be resolved.”
- 225.** The same argument applies to the 1<sup>st</sup> Respondent’s contention that the stay proceedings had ceased on 3<sup>rd</sup> December, 2018. Upon the lapse of the same, the 1<sup>st</sup> Respondent should have set new hearing dates, and notified the Applicant of the same especially noting that the Applicant had objected to the proceedings on account of the pending High Court matters.
- 226.** Further, even though the stay had lapsed, the matter was still *sub judice* as admitted in the determination. In view of the foregoing, it is the finding of the Court that the proceedings and the resulting recommendations were vitiated by illegality and procedural impropriety and are subsequently void.
- 227.** In view of the foregoing, the questions of whether the decision by the 1<sup>st</sup> Respondent constituted directives rather than determinations are moot. The Court is satisfied that the Applicant has made a case for the grant of the Judicial Review Orders of Certiorari and Prohibition.
- 228.** As to the declaratory orders sought, the Court is not convinced that the same are available to the Applicants for the same reasons I have given in ELC JR No. 3 of 2020.

ELC JR No. 5 of 2020

229. In this case, the 1<sup>st</sup> Respondent received a complaint from Kimasas Farmers' Co-operative Society against Eastern Produce Africa Limited alleging that the Area Superintendent, Mr P.G Scott, allocated them land measuring 560 acres as a gift in 1986 but the Applicant only transferred 210 acres to them and retained 340 acres. The Complaint was admitted as a historical land injustice claim.
230. On 1<sup>st</sup> March, 2019, the 1<sup>st</sup> Respondent published recommendations in the Kenya Gazette Vol CXX1-No 27 to the effect that: all resultant subdivisions were done illegally and should be cancelled; L.R No 9285/2 (the property) to be given to Kimasas Co-operative Society Limited; and that the Chief Land Registrar, Ministry of Lands and Settlement to implement the decision.
231. The Applicant alleges that the decision by the 1<sup>st</sup> Respondent offends the principles of natural justice because it was not afforded a fair opportunity to be heard; that no hearing was conducted by the 1<sup>st</sup> Respondent in respect of the matter, there only being a mention on 11<sup>th</sup> July, 2018 and that the 1<sup>st</sup> Respondent never served the Applicant with supporting documentation in respect of the claim depriving it of an opportunity to file its Defence, all of which contravened **Articles 47, 50(1) of the Constitution and Section 4(3) &(4) and 5 of the Fair Administrative Action Act.**
232. The court has considered the Hansard proceedings of 10<sup>th</sup> July, 2018. They indicate the presence of Mr Gitaka for the Applicant who stated *inter-alia*,

*“...We were served with the petition documents last week on Friday and it is part of the reason why the Advocate on record could not attend. With your kind indulgence if we could get 21 days to give our written submissions in regards to the documents that have been served. But I would also like to get clarification on what has been submitted”*

233. It was decided during this session that the 1<sup>st</sup> Respondent would have another session on Thursday at 10:00am. Counsel Gitaka indicated that he may have difficulty attending on the aforesaid Thursday and requested a prior date stating that..... *“if they can serve the statements we can file a response prior to the attendance”*

234. The matter next proceeded on 11<sup>th</sup> July, 2018. Counsel Gitaka was present and indicated that he was yet to receive all the relevant documents and supporting documents to enable him file his responses. In response, Commissioner Tororei stated as follows;

*“...this is how we shall proceed, we will give eastern produce an opportunity of 21 days like we did yesterday for other issues and companies to do their response. Please so have a bit of aggressiveness to get the documents to get the documents you require in order to respond, do give us the write ups, serve the County and serve the complaints. We will give the Complaints 7 days to respond and then will advise you if you will require further information or further clarification.”*

- 235.** The Applicant was also asked to provide all the relevant information, including titles and leases. On 7<sup>th</sup> February, 2019, the 1<sup>st</sup> Respondent gave its recommendation, in which it was noted that the hearing took place on 11<sup>th</sup> July, 2018. Under the head response, it was indicated that counsel for the Applicant was requested time to file a response but no response had been received as at the time of the report.
- 236.** The Applicant admits to having been served with the complaint and having been invited to the hearing thereof. Indeed, the Hansard affirms the presence of counsel Gitaka for the Applicant on 10<sup>th</sup> and 11<sup>th</sup> July, 2018. The main points of contention, as the Court understand them are first, that the applicant was not provided with any other documents apart from the complaint, depriving it of an opportunity to file its Defence and secondly, that no hearing was conducted by the 1<sup>st</sup> Respondent in respect of the matter, there only being a mention on 11<sup>th</sup> July, 2018.
- 237.** Beginning with the assertion that the Applicant did not have sufficient information to prepare a Defence, it is noted that counsel brought up this issue before the 1<sup>st</sup> Respondent. In response, he was asked to seek the documents he needed and was granted 21 days to file a response. While appreciating the Applicant's rights to fair administrative action, of necessity includes the right to have the necessary information. Does it then mean that the Applicant as in this case has no part to play in getting this information?
- 238.** The court thinks not. A reading of the proceedings makes it clear that counsel was not completely oblivious to the claims against the

Applicant. If indeed, as alleged, the Applicant was not issued with the relevant documents despite the 1<sup>st</sup> Respondent's directions to that effect, it should have written to the 1<sup>st</sup> Respondent asserting the same. No evidence in that respect has been adduced.

- 239.** Further, apart from the documents to be served upon it, the Applicant was apart from its Defence asked to provide documents in its custody which it did not do. This lapse cannot in the court's opinion be equated to the 1<sup>st</sup> Respondent having failed to give the Applicant a fair opportunity to be heard.
- 240.** In determining whether or not a hearing was conducted, the Court remains alive to the fact that the 1<sup>st</sup> Respondent is a tribunal whose process is not fully adversarial. In *Kenya Revenue Authority vs Menginya Salim Murgani Civil Appeal No. 108 of 2009*, the Court of Appeal delivered itself as follows:

***“There is ample authority that decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed.”***

- 241.** The Courts have held that the rule of fair hearing does not mean an adversarial hearing akin to what happens in a court room. When one is invited to a meeting where a decision is made where his/her interest is likely to be affected, his presence during such meeting is sufficient evidence that he/she was afforded a hearing under the rules of natural justice.

242. In the case of Josphat Kariuki Mutuanjara vs National Irrigation Board & 4 Others (2016) eKLR, the Court cited the case of Union Insurance Co. of Kenya Ltd vs Ramazan Abdul Dhangi, Civil Application No. 179 of 1998 where it was held as follows:

*“The law is not that a party must be heard in every litigation. The law is that parties must be given a reasonable opportunity of being heard and once that opportunity is given and is not utilized, then the only point on which the party not utilizing the opportunity can be heard is why he did not utilize it”.*

243. This position was fortified by the Court in Republic vs National Irrigation Board & 4 Others ex-parte Josphat Kariuki Mutuanjara [2016] eKLR where the court while dealing with the National Irrigation Board proceedings stated as follows:

*“It must be appreciated that there are no rigid rules and neither does the audi alteram partem rule mean a full adversarial hearing or anything close to it like what happens in a Court of law”*

244. From the above decisions, it follows that fairness does not necessarily require a plurality of hearings or representations and counter representations. If there were too much elaboration of procedural safeguards, nothing could be done simply, cheaply and quickly. Administrative or executive efficiency and economy should not be too easily sacrificed.

245. In the premises, the court is of the opinion that the Applicant was granted an adequate opportunity to be heard which was not utilized. As such, the Applicant cannot be heard to say otherwise. The Court finds that the Applicant herein has not proved that its constitutional rights to a fair administrative action under **Article 47** and **50** of the **Constitution** and **Section 4(3)** and **4** of the **Fair Administrative Actions Act** have been infringed, violated and/or threatened.

246. The next issue is whether the decision by the 1<sup>st</sup> Respondent was a recommendation pursuant to the Act or a determination. The Black's Law Dictionary defines "determination" as "a final decision by a court or administrative agency." A recommendation on the other hand is defined as a suggestion or proposal as to the best course of action, especially one put forward by an authoritative body.

247. In *The Matter of the National Land Commission Advisory Opinion Reference No. 2 of 2014 [2015] eKLR*, the Supreme Court stated as follows:

*“The words ‘recommend, advise, research, investigate, encourage, assess, monitor and oversight’ – are all actions that provide a facilitative role rather than a primary one. The context in which those words are used, presumes that there is another body or organ whom such recommendations, advice, research, investigations, encouragement, and assessment shall be sent to, received by, and in relation to which the proposals shall be implemented.”*

248. In the present case, it is clear that the directives by the 1<sup>st</sup> Respondent can only be implemented by other bodies and to that end, notwithstanding the absence of the word recommend, they remain recommendations. As such, the Court is not convinced that the decision herein was in excess of the 1<sup>st</sup> Respondents jurisdiction so as to constitute an illegality.

249. In the end, the Court finds that the Applicant has not met the threshold for the grant of the orders of Certiorari and Prohibition sought.

250. In conclusion, the court makes the following final orders in respect of **ELC JR Nos. 3, 4 and 5 of 2020:**

**ELC No. JR 3 of 2020**

i. **An order of Certiorari be and is hereby issued to remove into this Court for purposes of being quashed and quashing, quash the Gazette notice published on the 1<sup>st</sup> March, 2019 in so far as it relates to the National Land Commission recommendations dated 18<sup>th</sup> February, 2019 in so far as it relates to the claims by the County Governments of Kericho and Bomet on behalf of the Kipsigis and Talai clans, Kipsigis clans and the Borowo and Kipsigis Clans Self Help Group vs The Colonial Government and the Government of Kenya under Ref: NLC/HL1/044/2017, NLC/HL1/546/2018 and NLC/HL1/173/2017.**

ii. **An order of Prohibition be and is hereby issued, prohibiting the Director of Surveys under the Ministry of**



Land and the County Governments of Kericho and Bomet from implementing the recommendations published in the Kenya Gazette Notice of 1<sup>st</sup> March, 2019 and dated 18<sup>th</sup> February, 2019 in respect of the claims by the County Governments of Kericho and Bomet on behalf of the Kipsigis and Talai clans, Kipsigis clans and the Borowo and Kipsigis Clans Self Help Group vs The Colonial Government and the Government of Kenya under Ref: NLC/HL1/044/2017, NLC/HL1/546/2018 and NLC/HL1/173/2017.

- iii. The 1<sup>st</sup> Respondent will pay the Applicant the costs of the application.

**ELC JR No. 4 of 2020**

- i. An order of Certiorari is hereby issued quashing, the Gazette Notice published on the 1<sup>st</sup> March, 2019 in so far as it relates to the National Land Commission recommendations dated 18<sup>th</sup> February, 2019 in so far as it relates to NLC/HLI/530/2018, NLC/HLI/069/2017/ NLC/HLI/063/2017, NLC/HLI/006/2017, NLC/HLI/049/2017, NLC/HL1/170/2018, NLC/HLI/176/2018 and NLC.HLI/052/2017.
- ii. An order of prohibition does hereby issue, prohibiting the Director of Surveys under the Ministry of Lands and Physical Planning, the National Land Commission and the County Government of Muranga from implementing the recommendations in the Gazette

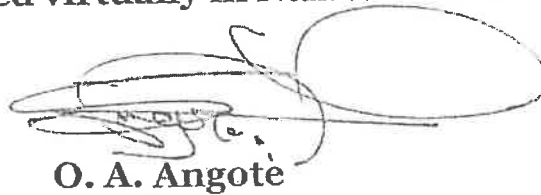
Notice published on the 1<sup>st</sup> March, 2019 in so far as it relates to the National Land Commission recommendations dated the 18<sup>th</sup> February, 2019 in so far as it relates to NLC/HLI/530/2018, NLC/HLI/069/2017/ NLC/HLI/063/2017, NLC/HLI/006/2017, NLC/HLI/049/2017, NLC/HL1/170/2018, NLC/HLI/176/2018 and NLC/HLI/052/2017.

iii. The 1<sup>st</sup> Respondent will pay the costs of the application

ELC No. JR 5 of 2020

- i. The Notice of Motion dated 18<sup>th</sup> April, 2019 is dismissed.
- ii. the Ex parte Applicant to pay the costs of the application.

Dated, signed and delivered virtually in Nairobi this 20<sup>th</sup> day of April, 2023.



O. A. Angoté

Judge

In the presence of:

Ms Opiyo for the Applicant

Ms Kerubo for the Attorney General

Ms Nderitu for 1<sup>st</sup> Interested Party

Ms Kyalo h/b for peter Wanyama for 1<sup>st</sup> -20<sup>th</sup> Interested Party

Ms Chepkoriri/h/b for Langat for 21<sup>st</sup> Interested party.

Mrs Kithu for Bosek for 3<sup>rd</sup> Respondent  
Court Assistant - June

**Annex 10: Submissions by the Office of the  
Attorney General**

REPUBLIC OF KENYA



OFFICE OF THE ATTORNEY-GENERAL  
&  
DEPARTMENT OF JUSTICE

Our Ref: AG/CIV/NA/84/23

25<sup>th</sup> May, 2023

Mr. Jeremiah M Nyegenye, CBS  
Clerk of the Senate  
Clerk's chambers  
P.O Box 41842- 00100  
**NAIROBI**

**RE: INVITATION TO A MEETING OF THE STANDING COMMITTEE ON  
JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS**

Reference is made to your letter under Reference No. **SEN/DGAC/JLAHRC/2023/ (104)** dated 27<sup>th</sup> April, 2023 received by us on 2<sup>nd</sup> May, 2023 inviting the Honourable Attorney General to respond to Three Petitions:

- a) Petition by Mr. Paulo Mosbei regarding historical injustices suffered by the Torobeek community.
- b) Petition by Mr. Joel K Kimetto and Kipsigis community clan organization members concerning land injustices suffered by the Kipsigis community.
- c) Petition by Ms. Zipporah C. K Seroney regarding mistreatment, harassment, property loss and human rights violations meted on the family of the late Hon. Jean Marie Seroney.

Much as the Hon. Attorney General would have wished to appear before the committee unfortunately due to exigencies of duty he couldn't hence following are our response:

**A. INTRODUCTION**

The office of the Attorney General is established under Article 156 of the Constitution of Kenya as read together with the Office of the Attorney General Act, as the Principal legal adviser to Government and provides policy, coordination and oversight with

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DEPARTMENT OF JUSTICE  
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regard to various legal sector institutions and therefore has a broader cross-cutting mandate to support the strengthening of legal sector institutions in Kenya. The Attorney General has the overall mandate to promote, protect and uphold the rule of law and defend public interest.

## **B. RESPONSE**

### **a) PETITION BY MR. PAULO MOSBEI REGARDING HISTORICAL INJUSTICES SUFFERED BY THE TOROBEK COMMUNITY.**

**The Committee has sought for submission on the status of historical injustices suffered by the Torobeek community.**

1. The Torobeek Community claim they lived together with the Ogiek in the Mau Complex before their forceful eviction and displacement by the colonialists. As a result of the displacement, the community is facing marginalization and has not been recognized by the government. They thus seek among other prayers compensation, resettlement and consideration for employment.
2. Land remains a politically sensitive and culturally complex issue in Kenya. The land question is characterized by indications of a breakdown in land administration, disparities in land ownership, tenure insecurity and conflict courtesy of history of colonialism. These challenges necessitated the promulgation of the Constitution of Kenya, 2010 which established a legislative and institutional framework for land use and management on the basis of equity, efficiency, productivity and sustainability.
3. The Constitution also established the National Land Commission (NLC) as the manager of public land, articulator of the National Land Policy and investigator of historical land injustices.
4. Issues of historical land injustices all begun during the colonial administration which used irregular and/or illegal methods to obtain land from local communities such as the establishment of native reserves; forced evictions of the Talai, Pokot, Turkana and Sabaot communities. land alienation by multinational corporations and measures such as forced African labour, forced taxation and forced military service.
5. These colonial policies, laws and practices had both immediate and long-term effects on African communities, including permanent displacement and the devastating post elections violence of 2007/2008 which led to loss of lives, properties and Internally displaced persons (IDPs). As part of remedial approach, the Truth, Justice and Reconciliation Commission (TJRC) was

established by the Truth, Justice and Reconciliation Act No. 6 of 2008. The mandate of the Commission was to:

- a) Inquire into human rights violations, including those committed by the state, groups or individuals.
  - b) Inquire into major economic crimes, particularly grand corruption, **historical land injustices** and illegal or irregular acquisition of land especially those relating to conflict and violence.
  - c) Promote peace, justice, national unity, healing and reconciliation among Kenyans.
  - d) Investigate gross human right violations and other **historical injustices** in Kenya between 12<sup>th</sup> December 1963 and 28<sup>th</sup> February 2008 and determining ways and means of redress for victims of gross human rights violations.
  - e) Make recommendations with regard to the granting of reparations to victims or undertaking of other measures aimed at rehabilitating and restoring human and civil dignity of victims.
6. The TJRC report and the recommendations therein, was submitted to His Excellency Uhuru Kenyatta, the then President, on 21<sup>st</sup> May, 2013. The Report was laid before the National Assembly on 24<sup>th</sup> July 2013 by the then Leader of Majority.
7. The Historical Land Injustices of Torobeek community can be addressed either at the National assembly under TJRC report or National Land Commission, however at the National Assembly the following matters are notable:
- a) The TJRC report made recommendations on incidents of historical injustices alleged to have happened during colonial period, well beyond its mandate.
  - b) The National Assembly must consider and make recommendations on the TJRC report as required by Section 49 of the Truth, justice and reconciliation Act, then implementation can take place based on the recommendations of the National Assembly.
  - c) At the moment Senate or the Committee has no authority to discuss the TJRC report.
8. The Constitution under Article 67(1) establishes the **National Land Commission**. The Commission has among other mandates, the mandate of initiating investigations on *suo moto* or on a complaint into present or historical land injustices and recommend appropriate redress under Article 67(2)(e). In

addition to Section 15(1) of National Land Commission Act, 5 of 2012 which empowers the Commission to receive, admit and **investigate all historical land injustice complaints** and recommend appropriate redress.

9. Section 15(1) defines historical land injustices to mean grievances which: -
  - a) was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;
  - b) Resulted in displacement from their habitual place of residence;
  - c) Occurred between **15th June 1895** when Kenya became a protectorate under the British East African Protectorate and **27<sup>th</sup> August, 2010** when the Constitution of Kenya was promulgated;
  - d) Has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and
  - e) Meets the criteria set out under subsection 3 of this section.
10. **National Land Commission Act, 2012** under Section 15(9)(b) allows the Commission to recommend appropriate remedies including compensation or restoration of the land to the rightful owners after investigation, nevertheless any institution mandated to act to redress the recommendations of the Commission shall be done within 3 years.
11. **Land Law (Amendment) Act No.28 of 2016** under Section 38(11) extends the mandate of the Commission to receive, admit and investigate historical land injustices claim for another 10 years from 2016 and the mandate lapses in the years 2026.
12. **National Land Commission (Investigation of Historical Land Injustices) Regulations, 2017 (L.N. No. 258 of 2017)**. The regulations were formulated to facilitate the expeditious, efficient, impartial investigations and just resolution of claims arising out of historical land injustices. Under regulation 26(1), after conducting investigations on the matter, the Commission shall render a decision within twenty-one days.
13. The Courts have in a number of cases held that “where a clear procedure for redress of any particular grievances prescribed by the Constitution or Act of Parliament, that procedure should be followed, provided that the remedy thereunder is effectual” **Safepak Limited v Henry Wambega & 11 others [2019] eKLR**, see also **Advisory opinion of the Supreme Court in the Matter of the National Land Commission**.
14. The National Land Commission is properly placed to investigate the matter and provide appropriate remedies to the Torobeek community, nevertheless,



the Community engaged a number of Government Institutions among them: - the Ministry of Interior and Coordination of National Government, Ministry of Lands, National Lands Commission, Kenya National Human Rights Commission. It will be prudent to find out the deliberations and the outcome of the meetings, in particular with the National Land Commission.

**b. PETITION BY MR. JOEL K KIMETTO AND KIPSIGIS COMMUNITY CLAN ORGANIZATIONS MEMBERS CONCERNING LAND INJUSTICES SUFFERED BY THE KIPSIGIS COMMUNITY**

15. The County Government of Kericho, The County Government of Bomet, the Kipsigis Clans, Talai Clan Community and Borowo & Kipsigis Clans Self-help Group filed an historical land injustice claim at the National Land Commission against the British Government and the Government of Kenya claiming that the Kipsigis and Talai communities lost several thousands of Acres of land to the British white settlers as a result of the British colonialism. With support of the British Colonial Government, the white settlers forcefully took away the most fertile and arable parcels. To date a number of such parcels are occupied by British Multi-National Tea Companies which include: -Chagaik, Cheymen, Tagabi, Saosa, Timbilil, Chemosit, Chamji, Kapkorech, Kimulot, Kimugu, Koiwa, Kipkebe, Chemamul, Tendwet, Chebown among others. They further alleged that the Talai were forcefully removed to Gwasi a place that was quite hostile for their habitation.

16. The claimants are seeking the following reliefs: -

- i) An apology from the British Government for the injustices inflicted upon the Kipsigis and Talai victims.
- ii) Compensation by the British Government for the injustices inflicted upon them.
- iii) Mesne profits for the loss of use of land for the period they were denied possession and ownership.
- iv) The land occupied by the Multi-National Companies be reverted back to them.
- v) The Multi- National companies be asked to lease the said parcels from the County Governments of Kericho and Bomet.
- vi) The Companies be allowed to remain as tenants in the unexpired period of tenancy.
- vii) The British Government asked to construct community amenities for the communities.

17. The National Land Commission made a finding and recommended the following Redress:-

- i) The British Government do apologize to the Kipsigis and Talai victims for the injustices inflicted on them.
- ii) The Kenya Government to make a formal acknowledgment that what was crown land was unlawfully taken away from the Kipsigis and Talai by the Colonial Government and ought to have been surrendered to the community at independence.
- iii) The British Government to construct community amenities for the communities.
- iv) The British Government do pay reparations to the direct victims of the historical land injustices.
- v) The Multi-National Companies do pay Mesne profits to the victims for loss of use of land since 1902.
- vi) Rates and Rent for land occupied by the companies be enhanced so as to benefit the County Governments of Kericho and Bomet.
- vii) The companies do lease the said parcels from the County Governments of Kericho and Bomet.
- viii) The leases that have expired should not be renewed without concurrence of the County Government where the land is domiciled.
- ix) The Government of Kenya to resettle the members of the Kipsigis and Talai Community within the vicinity of Kericho and Bomet to end their perennial landlessness.
- x) A fresh survey and audit be undertaken for land allocated to the companies and any land in excess of the size documented in the official records be reverted back to the County Governments of Kericho and Bomet and be held in trust on behalf of the residents of the two counties.

18. These recommendations were published on the Kenya Gazette on 1<sup>st</sup> March, 2019 and on 30<sup>th</sup> May, 2019 the following Multi-National Companies: - James Finlays Kenya Limited, Sotik Tea Co. Ltd, Sotik Highlands Tea Ltd, Changoi/Lelsa Tea Estate Ltd, Tinderet Tea Estate Ltd, Tinderet Tea Estate Ltd, Kaimosi Tea Estate Ltd, Kapchorua Tea PLC, Kipkebe Ltd, Nandi Tea Estates Ltd, Kaisugu Ltd, Emrok (EPZ) Tea Factory Ltd, filed an Application for Judicial Review before the Environment and Land Court at Nairobi being **Nairobi ELC JR. NO. 3 OF 2020**, R vs. The National Land Commission & Others Ex parte James Finlays Kenya Limited, Sotik Tea Co. Ltd, Sotik Highlands Tea Ltd, Changoi/Lelsa Tea Estate Ltd, Tinderet Tea Estate Ltd, Tinderet Tea Estate Ltd, Kaimosi Tea Estate Ltd, Kapchorua Tea Plc, Kipkebe Ltd, Nandi Tea Estates Ltd, Kaisugu Ltd, Emrok (Epz) Tea Factory Ltd being members of Kenya tea growers and Kenya tea growers associated with the ex-parte applicants. **(ANNEX 1)**

19. In the said suit, the Multi-National Companies sought among other Orders a judicial review order of certiorari to quash the decision of the National Land Commission. This matter was heard and judgment delivered on **20<sup>th</sup> April, 2023** in which the Court held that the National Land Commission did not grant the Applicants a chance of being heard and as such, the Court quashed the gazette notice dated 1<sup>st</sup> March, 2019 and the recommendations of the Commission dated 18<sup>th</sup> February, 2019 in so far as it relates to the claims by the County Governments of Kericho and Bomet on behalf of the Kipsigis and Talai clans. The Court further prohibited the Director of Surveys from implementing the NLC recommendations.

20. In addition to the above mentioned Judicial Review proceedings, the County Government of Kericho filed Supreme Court **Advisory Opinion Reference No. 2 of 2020** between the **County Government of Kericho and The National Land Commission, the Ministry of lands and the Hon. Attorney General (ANNEX 2)**. In the said reference, the County Government of Kericho raised the historical land injustice against the Kipsigis clan, the Talai community among others. The County Government therefore sought an advisory from the Supreme Court on the following questions:-

- a) What happens to the leases granted to multinational companies operating in Kenya and owned by non-citizens which were for a term of 999 years and were converted to a term of not more than 99 years according to Article 65 of the constitution?
- b) When does time start running for the fresh 99 year leases held by non-citizens?
- c) Upon expiry of the lease to which level of government does the land revert to?
- d) Whether the NLC has exclusive powers to issue leases without the involvement of the County Government?
- e) What is the role of the County Government in renewal of leases within the meaning of Article 65(1) of the Constitution?
- f) Is the land allocated to the Multi-national companies during colonial administration, leasehold tenure within the meaning of Article 65(1) of the Constitution?

- g) Whether NLC has exclusive powers to allocate land and the role of the County Government in renewal of leases within the meaning of Article 65(1) of the Constitution.
- h) Whether the public land previously managed by the defunct local authorities and municipal councils was envisioned to be held by the County Governments on behalf of the people.
- i) What is the role of the County Governments in community land management and administration?

21. The matter is pending before the Supreme Court. Parties have filed submissions. We appeared before Court on 12<sup>th</sup> May 2023 for directions. The Court informed us that it had directed the County Government of Kericho to seek a legal opinion from our office. The Court therefore directed this office to advise the County Government of Kericho within two weeks. This matter shall be mentioned on 29<sup>th</sup> May, 2023 for purposes of reporting back to the Court on whether the office has advised the County Government of Kericho as directed.

22. We received a letter dated 28<sup>th</sup> April, 2023 from the firm of Manyonge Wanyama & Associates LLP, who are on record for the County Government of Kericho, seeking our opinion on this issue among other legal issues. We are in the process of preparing the said legal opinion.

**c) PETITION BY MS. ZIPPORAH C. K SERONEY REGARDING MISTREATMENT, HARASSMENT, PROPERTY LOSS AND HUMAN RIGHTS VIOLATIONS METED ON THE FAMILY OF THE LATE HON. JEAN MARIE SERONEY.**

23. Ms. Zipporah C.K Seroney sued the office of the Attorney General in the High Court in Nairobi in constitutional petition No. 500 of 2013, **Zipporah Seroney vs. Attorney General (ANNEX 3)**, the court heard the matter and on 3<sup>rd</sup> April 2020, judgment was entered against the Attorney General. The Office of the Attorney General has made full payment of Kshs. **20,000,000** to Ms. Zipporah C.K Seroney, being the decretal sum inclusive of the costs of the suit.

### **C) RECOMMENDATIONS**

24. The petition involving the Kipsigis community is a matter under judicial consideration, I humbly request that the Supreme Court be allowed to make a determination as it will be inappropriate for the Senate to comment on a matter under consideration by the Court of law.

25. On the Petition involving the family of the Late Hon. Jean Marie Seroney, it is my opinion that this matter has already been determined by the Court and compensation paid to the family by the Government.

26. The petition involving the Torobeek Community falls within the mandate of the National Land Commission, it is my considered view that this issue be handled by the Commission, if the claim has been lodged with them, as per the Provisions of Article 67(2)(e) of the Constitution of Kenya, 2010, Section 15(1), (2)(c) and 2(d) of the National Land Commission Act No.5 of 2012 and Section 38 of the Land Laws (Amendment) Act. No.28 of 2016.

We respectfully submit this report for your due consideration.



HON. J.B.N MUTURI, EGH  
ATTORNEY GENERAL

Copy to:

Hon. Shadrack J. Mose  
Solicitor General

LIST OF ANNEXES

- Annex 1: Judgment in Nairobi ELC JR. NO. 3 OF 2020
- Annex 2: Supreme Court Reference No. 2 of 2020
- Annex 3: Judgment in Nairobi Constitutional Petition No. 500 Of 2013

**Annex 11:** Extract of Gazette Notice No. 1995 dated 18<sup>th</sup> February, 2019 and published in Kenya Gazette Vol. CXXI – No. 27 dated 1<sup>st</sup> March, 2019.



# THE KENYA GAZETTE

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GAZETTE NOTICE NO. 1994

## THE LAND ACT

(No. 6 of 2012)

## DUALLING OF SOBEA-SALGAA-MAU SUMIT ROAD PROJECT (A104)

## INQUIRY

IN PURSUANCE of sections 162 (2) of Land Act, 2012, the National Land Commission on behalf of Kenya National Highways Authority (KeNHA) gives notice that inquiries for hearing of claims to compensation for interested parties in land to be acquired for Emergency Road Safety Enhancement along Kabaraka Junction to Kibunja (A8) Road Construction of a Lorry Park at Kibunja Area shall be held on the dates and places as shown in the schedule here below:

## SCHEDULE

Chiefs Office at 9.30 am, on the 14th March, 2019

Registration Section	Registered Land Owner	Area Acquired (Ha.)
G.L.-Londiani Mountain Forest (L.O. 504)	G.L.-Londiani Mountain Forest (L. O. 504)	10.8062

Every person interested in the affected land is required to deliver to the National Land Commission on or before the day of inquiry a written claim to compensation, copy of identity card (ID), Personal Identification No. (PIN), land ownership documents and bank account details. Commission Offices are in Ardhi House, 3rd Floor Room 305.

Dated the 18th February, 2019.

MR/5816131 ABIGAE MBAGAYA-MUKOLWE,  
Ag. Chairperson, National Land Commission.

GAZETTE NOTICE NO. 1995

## NATIONAL LAND COMMISSION

## INVESTIGATIVE HEARING FOR COMPLAINTS RELATING TO HISTORICAL LAND INJUSTICES

IN EXERCISE of the powers conferred by Article 67 (2) (e) of the Constitution of Kenya 2010 and sections 6 and 15 of the National Land Commission Act, 2012, the Chairman, National Land Commission, informs the general public that the Commission upon receipt of Historical Land Injustice claims from the National Government, County Governments and members of the public admitted and investigated the complaints to ascertain the appropriate redress. The Commission invited all the complainants, respondents and the interested parties to appear before it, inspect documents and make written representations and submissions after which the Commission undertook further investigations. Consequently, the Commission has made recommendation in respect of the following claims.

The Commission calls upon the mandated authority(s) to effect the recommendations herein.

TABLE 1 KERICHO, NANDI, BOMET AND NAKURU COUNTIES

S/No.	Case No. and County	Parties	Recommendation
1.	NLC/HLI/194/2018 Kericho County	Simon Towett Maritim (Claimant) and Jotham Muiruri Kibaru (Respondent)	The claim is dismissed. The claimant misled the Commission and could not link himself to the claimed land. The decision of the Nakuru Civil Appeal No. 292 of 2005 is affirmed.
2.	NLC/HLI/522/2018 Nakuru County	The Families/Clans of Kipboson arap Selemu And Kipkilach arap Leitich (Claimants) -vs-The Estate of Morrison Waweru Njenga, Njenga Mathu and George Mathu (Waweru Farm) and The Attorney General (Respondents)	The claim is allowed. L.R. No 8652 I.R. 14002 and LR No. 8653 I.R. 13230 to be allocated to Kipkilach Arap Leitich and Kipboson Arap Selemu families/clans for settlement. The Ministry of lands and physical planning (Department of Land Adjudication and Settlement) shall facilitate the settlement of the claimants.
3.	NLC/HLI/518/2018 Kericho County	Kabunech Squatters (Claimants) -Vs- County Government of Kericho (Respondent)	The claimants are referred to the NLC County Coordination office Kericho to fast-track the remaining process of resettling the squatters.
4.	NLC/HLI/481/2018 Kericho County	Mzee Samson Chepkwony (Claimant) and A.I.C Mission Hospital-Litein (Respondents)	The claim is dismissed. The family members actually sold the claimed land to the hospital
5.	NLC/HLI/435/2018 NLC/HLI/256/2018 Nandi County	Ngerek Community, Koibem community (claimants) and Kenya Forest Service (Respondents)	The claim is allowed. The Kenya Forest Service to complete the degazettement of the area promised (Nandi South Forest) to the claimants and settle both communities (Koibem and Ngerek) on land for land basis as initially intended. The Director of Survey together with the Nandi County Government to expedite the process and hand over the land to the Ngerek and Koibem Communities.
6.	NLC/HLI/001/2017NLC/HLI/020/2017NLC/HLI/390/2018 Nandi County	Titan Squatters (392 members), Timur Nandi community (claimants) and Nandi Kaburwo council of elders, British Government (Respondent) and County Government of Nandi (Interested party)	The claim is allowed. The claim is referred to the Privatization Commission to consider setting aside land to settle the claimants (Titan Squatters, Timur Nandi community and Nandi Kaburwo council of elders) and other squatters from both Nandi and Kisumu counties including Tanzanian returnees. The Ministry of lands and physical planning to facilitate the process.
7.	NLC/HLI/246/2018 Nandi County	Pemja Community (claimant) -v- Kenya Forest Service (Respondent)	The claim is allowed. Kenya Forest services (KFS) to complete the degazettement and survey of Nandi South Forest to excise the area they had undertaken to settle Pemja community.



S/No.	Case No. and County	Parties	Recommendation
8.	NLC/HLI/245/2018  Nandi County	Nandi Royal Trust Claimant and Colonial Government, Miwani Sugar Company, Chemilil Sugar Company, Muhoroni Sugar Company (Respondent) and County Government of Nandi (Interested Party)	The claim do not meet Historical Land Injustice criteria. The claimants are advised to await the establishment of the Independent County Boundaries Commission as proposed under the County Boundaries Bill, 2015.
9.	NLC/HLI/140/2017  Nakuru County	Moi-Ndabi Settlement Scheme (Claimant) and The Director Land Adjudication and Settlement (Respondent)	The claim is dismissed. The claimants are directed to present their claim to the Director of Land Adjudication and Settlement.
10.	NLC/HLI/430/2018 NLC/HLI/016/2017  Nandi County	Former Kimondi Forest Squatters, Kimondi Forest Squatters (Claimants) and Kenya Forest Service (KFS) (Respondent) County Government of Nandi (Interested Party)	The claim is allowed The County Government in collaboration with the Ministry of Lands (Adjudication and Settlement Department) and other relevant authorities, should proceed with the resettlement of both groups of Claimants
11.	NLC/HLI/159/2017  Bomet County	Tapnyobi A. Torgotit family, Cecilia Chelangat Keiyo family (Claimants) and County Government of Bomet (Respondent)	The claim is allowed. The County Government, should ensure allocation and registration to Tapnyobi Kiruchu Torgotit and Cecilia Chelangat Keiyo of the 3.2 hectares and 2.02 hectares respectively. The County Government of Bomet should compensate the Claimants on the remaining acreage at the current market rate (4.78 ha).
12.	NLC/HLI/326/2018 NLC/HLI/065/2017 NLC/HLI/325/2018 NLC/HLI/198/2018 NLC/HLI/121/2017 NLC/HLI/346/2018 NLC/HLI/106/2017 NLC/HLI/091/2017 NLC/HLI/078/2017 NLC/HLI/362/2018 NLC/HLI/361/2018 Nakuru County Kericho County Nandi County Bomet County Tranzoia County Bungoma County	Ogiek Land Injustices West South Ogiek Mau Forest Ogiek (Litein) Ogiek Welfare Council Dorobo Community Community of Chepkitale and Chepyuk Settlement Scheme Chepkitale Ogiek Council of Elders Nandi South Ogiek Community Ogiek Marginalized Lelpangot and Kipkongor squatters Ogiek of Tanzania Chepkitale Ogiek Community of Mount Elgon (claimants) -v- The Government of Kenya	The claims are allowed. The Historical land injustice claims listed herein be and are hereby forwarded to the Kenyan government Task Force on the implementation of the African Court on Human and Peoples' Rights judgment regarding the case of the indigenous Ogiek people.
13.	NLC/HLI/437/2018 Nandi County	Tinderet Forest Dorobo Squatters-Kosabei Nandi Vs. Kenya Forest Services	The claim is allowed. The Kenya Forest Service to complete the de-gazettement of the area set aside to settle the communities (Tinderet Forest Dorobo Squatters-Kosabei Nandi).
14.	NLC/HLI/010/2017 Nandi County	Nyando Valley Association vs Richard Ochieng Olwenge L.R 3098, 3097, 3092, Chemilil Sugar Co, Gulbing Singh Panjcy, Omamo Farm, Utonga Geta firm MV Plantations	The claim is allowed. It is hereby referred to the Privatization Commission for consideration of part of the land from Chemilil Sugar company L/R NO 11840 for the settlement of members of Nyando Valley Association and other communities using a predetermined formula or ratio between the people of Kisumu County and Nandi County
15.	NLC/HLI/255/2018  Nandi County	Kimasas Farmers' Cooperative Society Limited Vs. Eastern Produce Kenya Limited and Chief Land Registrar Claim	The claim is allowed. All resultant subdivisions were done illegally and should be cancelled. Land L/R No. 9285/2 is given to Kimasas Cooperative Society Limited. Chief Land Registrar, Ministry of Lands and Settlement to implement the decision.
16.	NLC/HLI/044/2017 NLC/HLI/546/2018 NLC/HLI/173/2017  Kericho County	County Governments of Kericho and Bomet on behalf of the Kipsigis and Talai Clans, Kipsigis clans and the Borowo and Kipsigis Clans Self Help Group versus The Colonial Government and the Government of Kenya.	The claims are allowed. A resurvey should be done on the lands being held by the tea estates to determine if there is any surplus land or residue to be held in trust for the community by the County Government for public purposes. The County Government and the multi-nationals sign MoU (Memorandum of Understanding) for the multinationals to provide public utilities to the community. Renewal of the leases to these lands be withheld until an agreement is reached with the respective County Governments of Kericho and Bomet. With regard to rate and rent on such lands the Commission recommends that these should be enhanced to benefit national and county governments. The Commission orders that all 999 year old leases should be converted to the Constitutional requirement of 99 years.

S/No.	Case No. and County	Parties	Recommendation
17.	NLC/HLI/013/2017 NLC/HLI/033/2017NLC/ HLI/447/2018NLC/HLI/ 546/2018 Nandi County	In the Matter of Talai- Nandi	The claims are allowed. The commission recommends that; A resurvey be done on the lands being held by the tea estates to determine if there is any residue to be held in trust for the community by the County Government for public utilities. A scholarship fund to educate Talai Children be set up by the Multinational companies holding the land. The County Government and the multi-nationals sign a MoU (Memorandum of Understanding) for the multinationals to provide public utilities to the community. The Commission further recommends that the renewal of the leases to these lands be held in abeyance until an agreement is reached with the respective county governments. With regard to rates and rent on such lands, the Commission recommends that these should be enhanced to benefit national and county governments. The Commission maintains that all 999 year old leases be converted to the constitutional requirement of 99 years.

TABLE 2 NAIROBI KIAMBU, NYERI AND MURANG'A COUNTIES

S/No.	Case No. and County	Parties	Recommendation
1.	NLC/HLI/530/2018NLC/ HLI/069/2017NLC/HLI/ 063/2017NLC/HLI/006/2 017NLC/HLI/049/2017N LC/HLI/170/2018NLC/H LI/176/2018 and NLC/HLI/052/2017 Murang'a County	Gachangi Makuyu IDPs, Gaichanjiru Self Help Group, John Rugano Nthuraku, Kakuzi Development Association, Kihinganda Self Help Group, Kinyangi Squatters, Kitito Community IDPs, Makuyu Sisal IDPs (Claimants) -vs- Kakuzi Limited (Respondent) and Kenya Human Rights Commission (Interested Party)	The matter being before the High Court, the Commission will pend hearing of the Historical Injustice claim until the final determination is reached by the Court. However as the manager of public land, the Commission orders that Kakuzi Ltd should surrender all public utilities on their land including schools, markets, police stations, hospitals, public roads of access, wayleaves and easements to the national and county Governments as appropriate. Allotments and titles to be issued for public purpose only. All leases for land held by Kakuzi Limited in Muranga County should not be renewed until the Historical Land Injustice claim is heard and determined. Any 999 year leases to convert to 99 years.
2.	NLC/HLI/055/2017 Nairobi County	Wilson Mitumba Women Group Limited (Claimant) -vs- National Police Service (Respondent)	The claim is allowed. Taking into account the long standing dispute among the parties herein, the Commission directs the parties to explore Alternative Dispute Resolution (A.D.R) to amicably bring a rest the seemingly endless litigation process with a view to the National Police Service (Respondents) giving up/ surrendering a suitable amount of land to the Claimant group. The National Land Commission to lead the A.D.R process for a win-win settlement to be arrived at between the parties herein.
3.	NLC/HLI/184/2018 Nyeri County	John Ndirangu Kiboga and Others (Claimants) and The Hon Attorney General, Ministry of Education Science and Technology, Kagumo Teachers College, County Government of Nyeri (Respondents)	The claim is dismissed. The land title parcel number Aguthi/Gaki/865 be and is hereby vested fully to Kagumo Teachers Training College and the National Treasury. The Chief Land Registrar is directed to effect the changes on land parcel number Aguthi/Gaki/865 and amend the green card and all land records to be titled to the 3rd respondent, Kagumo Teachers Training College and the National Treasury. The Chief Land Registrar is directed to expunge all records relating to Minerva Nominees (E.A) Ltd on land title parcel number Aguthi/Gaki/865 from the green card and all land records;
4.	NLC/HLI/112/2017 Nairobi County	Dagoretti Nyakinyua Co-operative Savings And Credit Society (Claimant) and Dagoretti Nyakinyua Company (Respondent)	The claim is allowed. All titles emanating from the fraudulent transaction undertaken by Dagoretti Nyakinyua Company to be revoked and the same be allocated to the members of Dagoretti Nyakinyua Co-operative Savings and Credit Society Limited who are the bona-fide owners under the supervision of the Commissioner of Cooperatives. The Chief Land Registrar to facilitate and effect the recommendation herein.
5.	NLC/HLI/138/2017 Nairobi County	Taylor Adforce (E.A) Limited (Claimant) and The County Government of Nairobi, Jonathan Preston and Angela Scott, Giraffe View Limited (Respondent)	The claim is dismissed. The parties to proceed with the matter in court JR Ele Application No. 44 of 2018 Giraffe View Estate vs National Land Commission and 2 Others.
6.	NLC/HLI/068/2017 Nairobi County	Makadara Nyakinyua Self Help Group	The claim is dismissed That Makadara Self-Help Group was unable to produce any ownership documents to support their claim, neither were they able to link themselves to the said suit land.
7.	NLC/HLI/043/2017	Mugumo Tree Nursery Group	The claim is dismissed since the 7 acres of land being claimed is

S/No.	Case No. and County	Parties	Recommendation
	Nairobi County		not available for allocation. The land lies within a riparian reserve and the County Government of Nairobi should clear the land of any human settlement.
8.	NLC/HLI/070/2017  Kiambu County	Kamiti Forest Squatters, Kamiti Anmer Development Association, Muungano wa Kamiti Society (Claimants) and Kenya Forest Services (KFS) (Respondent)	The claim is allowed. The allotment letters issued to the members of the 2nd Claimant (Kamiti Anmer Development Association) are found to be valid and therefore the rightful occupants of the subject land. The allottees and the squatters should adopt Alternative Dispute Resolution (A.D.R) with a view that the land held by the allottees be partly redistributed to the squatters. Kenya Forest Service is hereby directed to degazette the Kamiti Anmer Forest.
9.	NLC/HLI/004/2017 NLC/HLI/064/2017  Kiambu and Muranga County	Kandara Residents Association (Claimant) and Del monte Kenya Limited (Respondent) County Government of Muranga (Interested)	The claim is allowed. A resurvey should be undertaken by the Director of Survey in conjunction with County Governments of Murang'a and Kiambu to establish if there is any variance between land leased and land the company occupies. Any residue should given/surrendered to the Claimants for resettlement and the County Government for public purpose in the ratio of 70:30 respectively. Should it be found that there is no residue, then on expiry of the lease a suitable amount of land should be set aside and held in trust by the County Governments for purposes of resettlement and public utilities. The respondent to surrender all public utility within the land to the relevant National and County Government agencies whether the leases have expired or not.
10.	NLC/HLI/003/2017  Muranga County	Stanley Muigai Kiama and Jeremy Kiama	The claim is allowed. The Commission recommends monetary compensation by the National Government to the claimants over the loss of their ancestral land. The family should get recognition and an apology from the Government for their loss.
11.	HLI/506/507/508/2018 Kiambu County	Kirathimo land, Limuru	The claim is allowed. The commission recommends that the land L.R 25484/2-22, L.R. 13121 and L.R. 15473 revert to County Government of Kiambu, title be issued in the name of the County Government as trustees. The Commission directs that the Land is not available for any allocation now or in future.
12.	NLC/HLI/519/2018  Kiambu County	Uplands – Kiambu	The claim is allowed. The commission recommends that the land L.R. No. 7593/1 and 7593/2 revert to County Government of Kiambu, title be issued in the name of the County Government as a trustees. The Commission directs that the Land is not available for any allocation now or in future.
13.	NLC/HLI/550/2018  Kiambu County	Flourspar Land-(Diatomite)	The claim is allowed. The commission recommends that the land L.R. Nguirubi/Thigio/1882, 1534, 1698 and 1699 reverts to County Government of Kiambu. Title be issued in the name of the County Government as a trustee. The Land is not available for any allocation now or in future. The Commission directs that any titles by private developers on the land be revoked.
14.	NLC/HLI/537/2018  Kiambu County	Mangu Block 19 and 20 Residents CBO	The claim is allowed. The Commission adopts the report by Thika District Land officer on public utilities within Thika Municipality block 19 Mangu and block 20 Ngoingwa company limited. REF: LND/TKA/ADM/29/VOL.111 dated 12th September, 2018. The following plots are recovered for public utility and reverted to the National and County Government as appropriate. PLOT/Nos.1213,1990,1993, 1995, 1999, 2004, 255, 1992, 2058, 1142, 2260, 1995, 1999,142 and 1998. Similarly the Commission recovers the following plots from Block 20 for public utilities as follows: Plot No/Nos 533, 584, 202, 255, 340, 342, 1035 and 995, 457 and 335, 330, 341, 340, 2368 and 247. The Commission upholds titles to the following plots; Block 19/199, Block 19/2035, Block 20/2159, Block 20/1092, Block 20/2894, Block 20/ 338 & Block 20/994. If there are any other public lands parcel under ownership of private entities and/or individuals be surrendered and such titles be cancelled.
15.	NLC/HLI/215/2018	Mau Mau Jamhuri ya Kenya Umbrella Body	The claim is allowed.

S/No.	Case No. and County	Parties	Recommendation
	Kiambu County	VS County Commissioner Kiambu (Githunguri Githunguri/463)	The land is the residence of County Commissioner and is a gazetted cultural site under the National Museums of Kenya through gazette notice 244 of 14th January, 2011. The Commission recommends that National Museums of Kenya and claimants negotiate with a view to accommodate the Mau Mau shrine on the said land.
16.	NLC/HLI/509/2018 Kiambu County	Samuel Mureithi	The claim is allowed. The County Government of Kiambu to compensate the claimant at current market price for land and loss of user (Chania/Kamwangi/T197) allocated to ACK church contrary to the exchange agreement with the County.
17.	NLC/HLI/101/2017 Kiambu County	Pebewa Society	The claim is dismissed. The Commission observed that the matter is a land allocation matter. The claimant had no relevant documentation to support the claim as Historical Land Injustice. The land claimed belongs to a private entity.
18.	NLC/HLI/053/2017 Kiambu County	In the matter of Kasarini Estate Kasarini Co-operative Society, Kasarini Ancestral Families, Mbari ya Mbogo and Gichinga	The claim is dismissed. There are pending suits in court on the subject matter. The Commission however notes the following anomalies which it recommends to be investigated by the incoming commissioners or the Courts: How the claimants bought the land in question. If the respondents bought the land before the claimants could raise money to buy the land A clarification on the existence of the Cooperative especially in view of the correspondence from the Commissioner of Co-operatives. The legality of existence of the two entities with regard to buying and ownership of the properties.
19.	NLC/HLI/182/2018 Kiambu County	Kiang'ombe Squatters Settlement Scheme versus John Mburu Mwaura, Gladys Wangoi Mburu, Lydia Njeri Wangondu, Isaac Njoroge Mwaniki, Gabriel Njuguna Mdungu, Manager Alternative Energy Limited	The claim is dismissed. The Commission noted that the land under claim is different from the land allocated to the squatters.
20.	NLC/HLI/482/2018 Kiambu County	Muirikia Family	The claim is allowed. The commission recommends a resurvey to be undertaken by the Director of Survey together with claimants and the respondents to establish if there is any residue which should be titled as community land under the Community land Act for Mbari ya Muirikia

TABLE 3 MOMBASA, KILIFI, TAITA TAVETA AND KWALE COUNTIES

S/No.	Case No. and County	Parties	Recommendation
1.	NLC/HLI/488/2018 Kilifi County	Mwadzaya Wachanda Clan Welfare Trust (Claimant) -v- Dunda S/O Kasitu Of Mitangoni, Mwahaje Zembe (Respondent)	This claim is dismissed. The claimants are advised to proceed with the matter in Court Petition No. 26 of 2016, Malindi Ramadhan Ali Mwatsahu and others vs County Government of Kilifi, the National Land Commission and others.
2.	NLC/HLI/310/2018 Kwale County	Ali Bakari Mwadzinyeto Alias Ali Bakari Harry (Plot No. Kwale/Waa/79)	The claim is dismissed. The matter do not meet the Historical Land Injustice Criteria, the Commission refers the matter to traditional Dispute Resolution Mechanisms (Village elders)
3.	NLC/HLI/227/2018 Kilifi	Patrobas Mangi Chai (Claimant) and Dickson Choluvu Nguma (Respondent)	This claim is dismissed The parties to proceed with the matter in court on grounds of <i>sub-judice</i> .
4.	NLC/HLI/124/2017 Mombasa County	Residents Of Ziwani Majengo vs. The Estate Of Yahya Karama And Hassan Karama	The claim is allowed The claimants to apply to the court for the Deputy Registrar to facilitate the transfer of the subject parcels of land to them.
5.	NLC/HLI/061/2017 Mombasa County	Godfrey Mwambaga Allan Mjomba Girls Secondary	The claim is dismissed. The Commission refers the claim to the County Surveyor (Director of Survey) to resolve the matter.
6.	NLC/HLI/098/2017 Mombasa County	Jitoni Mwachandc vs Mash Developers	The Commission noted that there is an active ADR process initiated by National Land Commission. The parties are advised to proceed with the ADR process.
7.	NLC/HLI/099/2017 Mombasa County	Bemokosi Tsango Family vs Family of The Late Bwana Juma Mwachangoma	The claim is dismissed. The claimants are advised to seek assistance from the Digo elders (traditional dispute resolution)
8.	NLC/HLI/464/2018 Kilifi County	Omar Safari Charo Vs Mohammed Hoyohoyo	The claim is dismissed. The Claimants could not link themselves to the subject land.

S/No.	Case No. and County	Parties	Recommendation
9.	NLC/HLI/485/2018 Kilifi County	Wellington M. Pazia & Hezron Mwangi vs Kipyegon Arap Rotich	The claim is Dismissed. The claimants are advised to seek redress from the County Surveyor (Director of Surveys).
10.	NLC/HLI/487/2018 Kilifi County	Kassim Swaleh Kassim (claimants) –v- The Government of Kenya (respondent)	The claim is dismissed. The claim does not meet Historical Land Injustices claim.
11.	NLC/HLI/490/2018 Kwale County	Juma Bakari Mwandzumu (claimant) –v- Rachel Wanjala Kileta (respondent)	The claim is dismissed. Claimant could not link himself to the claimed Land.
12.	NLC/HLI/493/2018 Taita Taveta	Mwanake Mlagelaghe (claimant) -V- Land Adjudication Officer (respondent)	The Claim is dismissed. The claimant benefitted from allocation in a settlement scheme.
13.	NLC/HLI/494/2018 Kilifi County	Kibaoni Residents CBO –V- Innock Trading Limited (Respondents)	The claim is dismissed. The parties to proceed with the matter in court.
14.	NLC/HLI/001/2017 Mombasa County	Utange Lamkani Vs African University Trust	The claim is allowed The Commission recommend ADR between African University Trust and the claimants led by National Land Commission.
15.	NLC/HLI/435/2018 Kwale County	Mwatende Hamisi Vs James Gakuunja Kahiu Daniel Kibuka Gikonyo, Frank Gitau Njenga, Lawrence Kinyanjui Gita, Betty Muthoni	The claim is allowed. The land reverts back to the claimant (Mwatende Hamisi) and the Chief Land Registrar to prepare the necessary ownership documents.
16.	NLC/HLI/522/2018 Kwale County	Wasini Island (Sagaff family)	The Commission upholds the decision of Court and orders that the land be issued to family of the claimants after a survey. The Chief Land Registrar to revoke any titles on land as per the court order and restore ownership to Sagaff Family and issue appropriate ownership documents to the family. ADR encouraged between the family and the squatters. NLC to facilitate negotiation between family and squatters.
17.	NLC/HLI/024/2017 Mombasa County	Utange Lamkani Village Squatters Estate of Jonathan Kagiri	The claim fails. The claimants could not link themselves to the subject land. Respondent (Estate of Jonathan Kagiri) bought land through an auction from Government. Claimants can seek alternative redress from Government.
18.	NLC/HLI/489/2017 Kilifi County	Tsuma Ndaru Mbaruku -Vs- Director Land Adjudication and Settlement & Kalama Jefwa Chai	The claim is allowed. The Director Land Adjudication and Settlement to regularize Parcel Kijipwa/31 to the claimant Tsuma Ndaru Mbaruku who have lived on the land for the past 50 years.
19.	NLC/HLI/486/2018 Kwale County	Tiwi Aggrieved Land Claimants Claim	The claim is allowed. The Commission, recommends that the Chief Land Registrar ensures that land Tiwi beach block 13444 be restituted to the Bwika family of Tiwi and the title to this land revoked so that the land is transferred to Mwinyi Mohammed Bwika And Rashid Khamisi Bwika and family.

TABLE 4 NAROK AND KISII COUNTIES

S/No	Case No. and County	Parties	Recommendation
1.	NLC/HLI/318/2018 Narok County	Sudo ole Nankoris (Claimant) and County Government of Narok (Respondent)	The claim is allowed. Mr. Sudo Ole Nankoris be issued with title for plot No. 77 measuring 18 acres. The Claimant must be compensated for all the land taken against his will by the County Government of Narok namely land allocated to the dispensary (L.R. No. 79) approximately 8 acres, L.R. 77 approximately 20 acres irregularly allocated to the market and 4 acres occupied by the cattle dip (L.R. 81). The Catholic Church, and Women's group to compensate the claimant for the land they occupy at the current market rate. The National government (Cabinet Secretary for Interior & Coordination) to compensate the claimant for the land allocated to the Chief's camp (L.R. No. 80) at the current market rate. The National Government (Cabinet Secretary Ministry of Education) to compensate the claimant for L.R. No. 78 occupied by the school taken against his will. However the claimant will not be compensated for the 5 acres for the school and the 2 acres for the cattle dip, which he consented and gave voluntarily.
2.	NLC/HLI/038/2017	Ikarekeshe Group Trust (Claimants) and Oolololo Game Ranch Ltd (Respondent)	The claim is allowed Title(s) (if any) resulting from the adjudication process of

S/No	Case No. and County	Parties	Recommendation
	Narok County		Oloololo section be cancelled specifically, the title to the Respondent(Oloololo Game Ranch Ltd) be revoked as earlier intended by the Chief Land Registrar. The Oloololo section be reverted back to the Community (Ikarekeshe Group Trust). The Chief Land Registrar, Ministry of Lands and the Director Land Adjudication and Settlement to implement these directives.
3.	NLC/HLI/019/2017 Narok County	Tende Community Welfare Association (Claimant) and Chief Land Registrar, Director of Land Adjudication and Settlement, County Commissioner, Narok (Respondents)	The claim is allowed. The Commission recommends restitution of the claimants, Tende Community, to Area C with integration of the current land occupants. The Chief land registrar and Director of Land Adjudication to cancel all the titles from the two adjudication sections and the land settlement to accommodate all the communities.
4.	NLC/HLI/057/2017 Narok County	Keiyan Self Help Group vs. Keiyan Group Ranch, Oolontare, Sikawa and Oldanyati	The claim is dismissed. Area A and B found to be in Migori and not part of Keiyan Group Ranch, Oolontare, Sikawa and Oldanyati of Transmara Sub County.
5.	NLC/HLI/120/2017 Narok County	Enoosupukia IDPs versus Government of Kenya	The claim is allowed. The Commission refers this claim to Department of Special Programmes in the Ministry of Interior and Coordination of National Government and the National Consultative Committee and Coordination (NCCC) of IDPs in view of settling the claimants.
6.	NLC/HLI/323/2018 Narok County	Eutuut Group Ranch versus Director Land Adjudication	The claim is dismissed. The parties are advised to proceed with the matter that is pending hearing and determination before the <i>Environment and Land Court in Narok</i> .
7.	NLC/HLI/301/2018 Narok County	Ndorobo Group Ranch versus Director Land Adjudication	The claim is allowed. The Commission upholds the decree of 8 <sup>th</sup> January, 2008 by the Court adopting Land Dispute Tribunal decision. The current subdivision done by Mr Kenduiwo are null and void. The Land Registrar and District Surveyor to re-establish the proper boundaries of parcel no. Cis-mara/Lemck/40. The Director Land Adjudication and Settlement to oversee the process and ensure the claimants are allocated the Land.
8.	NLC/HLI/143/2017 Narok County	Members of Olpusimoru versus Director Land Adjudication	The claim is allowed. The Commission noted that the reversal of the adjudication process and declaration of the area as forest land occasioned the injustice. With regard to these the Commission recommends that Kenya Forest Service compensates the claimants for the loss of their land (land should be compensated as if it was compulsorily acquired) and/or alternative land be set aside for settlement of the claimants.
9.	NLC/HLI/313/2018 Narok County	Martine Nkuito versus Tinga Nkuito	The claim is dismissed. The Commission refers this matter to the Department of Land Adjudication and Settlement, Ministry of Lands and Physical Planning to resolve this case as they have all the necessary information including the original land demarcation map for Olerkurto land adjudication and settlement to enable them resolve this matter.
10.	NLC/HLI/017/2017 Narok County	Olasakwana 'B' Adjudication Section	The claim is allowed. The Commission recommends that the Chief Land Registrar and the Director of Surveys ensure that the land reverts back to the claimants' family (Ledama Ole Lokoto Family) and all the resultant titles with regard to Plot no. 69 be cancelled.
11.	NLC/HLI/092/2017 Narok County	Moitalele ole Kenta versus Director Land Adjudication; County Government of Narok	The claim is dismissed The parties are advised to proceed with the matter pending hearing and determination at the High Court Petition No. 12 and 13 of 2018 in Narok.
12.	NLC/HLI/071/2017 Kisii County	Abagusii Otenyo Freedom Fighters (Claimant) -V- County Government of Bomot (Respondent)	The claim is dismissed. The claimants are advised to await the formation of commission on boundaries as per the County Boundary Bill as their claim is an inter-county boundary matter.

TABLE 5 KISUMU, SIAYA AND KAKAMEGA COUNTIES

S/No	Case No. and County	Parties	Recommendation
1.	NLC/HLI/012/2017 and NLC/HLI/297/2018 Kisumu County	Residents of Nyalenda and Pandpieri versus Kenya Prisons Service (Kisumu)	The claims are dismissed. The Commission established that the land being claimed is on government land under the Kenya Prisons department. It was also established that the claimants were neither squatters nor landless

S/No	Case No. and County	Parties	Recommendation
2.	NLC/HLI/103/2017 Kisumu County	Kajulu Kithimo Welfare Association (claimant) And The National Government (Respondent)	persons. The claim is dismissed. The claimants did not establish a link to the subject land therefore the claim of ancestry fails. The Privatisation commission to set aside land to settle members of the claimants group who may be landless.
3.	NLC/HLI/102/2017 Kisumu County	Tobias Oriwo Apiyo (Claimant) and Kisumu County Government (Respondent)	The claim is allowed. The land, Plot 132, Manyatta A, be restored to claimant and all restrictions be removed by the chief land registrar. The Chief Land Registrar to prepare ownership documents for the claimant.
4.	NLC/HLI/295/2018 Kisumu County	Kokoyo Family (Claimant) and Benson Garth Bunde (Respondent)	The matter is referred to Cabinet Secretary Ministry of Lands and Physical planning to conclude the appeal process on the ruling of Land Arbitration Board Case No. 8/68 and Land Committee Case No. 52/67 appropriately.
5.	NLC/HLI/298/2018 Siaya County	Residents of Yala Swamp Communities (Claimant) and Dominion Farms Limited (Respondent)	The claim is allowed. The Ministry of Land and Physical Planning and County Government of Siaya resurvey the swamp to determine the acreage under Dominion Farm. The Commission further recommends that if there is excess land, it should be restored to the affected communities and ownership documents prepared for the community.
6.	NLC/HLI/466/2018 Kakamega County	Joshua Lubanda Alusiola (Claimant) and Isikhi Primary School (Respondent)	The claim is dismissed. The Commission noted that there is succession cause in Kakamega High Court Succession Cause No. 317 OF 2012 and ELC No. 244 of 2015.
7.	NLC/HLI/310/2018 Kisumu County	George Onyango Obuya & Others (Claimant) And Kasule Christ Church (Respondent)	The claim is dismissed. The Commission established that there was an active Civil Case in Kisumu Land & Environment court, Case No. 2 of 2015. Kisumu, Emmanuel Oduor Opondo and 2 Others Vs Denis Miganda Okoth & 2 Others.
8.	NLC/HLI/309/2018 NLC/HLI/103/2017 NLC/HLI/126/2017 Kisumu County	Residence of Kanyakwar and South Kajulu (Claimants) Kikako Welfare Association & Kolwa Development Association -v- Government of Kenya, County Government of Kisumu (Respondents)	The claim is allowed. The Commission recommends formation of a taskforce comprising the National Land Commission, Ministry of Interior and Coordination of Government functions and the County Government of Kisumu to review the compensation process and identify those who may not have been compensated or inadequately compensated with a view of fully compensating the claimants (by the acquiring body). The Privatization commission to set aside land at the sugar belt with a view of settling those who may be landless among the claimants.
9.	NLC/HLI/029/2017 Kisumu County	Mageta Island Versus Government Of Kenya	The claim is dismissed. The claimants are already settled elsewhere. The island has been adjudicated as well as the areas where the claimants have settled. It was proven that the claimants are neither squatters nor landless.
10.	NLC/HLI/045/2017 Kisumu County	Koguta Land Reclamation versus Muhoroni Sugar Company	The claim is allowed. The Commission acknowledges the report from the Privatization Commission. The Committee hereby, recommends that the Privatization Commission and Ministry of Lands and Physical Planning assist in Planning, Surveying and resettling the claimants on the said parcels of land LR. No. 3977 and LR. No. 3978.

TABLE 6 UASIN GISHU, ELGEYO-MARAKWET AND TRANS NZOIA COUNTIES

S/No	Case No. and County	Parties	Recommendation
1.	NLC/HLI/002/2017 NLC/HLI/418/2018 and NLC/HLI/075/2017 Elgeyo Marakwet County	Lower Segoo and Kapkomol (Lower Segoo and Chepsigot Adjudication Sections)	The claims are allowed. From a cultural perspective, the adjudication was not properly done. The Commission recommends that a review of the whole adjudication process is undertaken by National Land Commission, Ministry of Lands Physical Planning, County Government of Elgeyo Marakwet and clan elders with a view to solving the claim amicably.
2.	NLC/HLI/263/2018 Trans Nzoia County	AIC Kapkoi Sec. School Vs Mrs. Jane Wakhungu	The claim is allowed. The Land Plot No 35 registered under cattle dip be reverted unconditionally to AIC Kapkoi Secondary School and be vested in the Cabinet Secretary Treasury in trust for the school. The Chief Land Registrar to revoke titles for plots Nos 401, 402, 403 and 404 issued to other parties other than the schools.
3.	NLC/HLI/164/2017	Family of Muthini Wambua vs. Miriam	The claim is allowed.

S/No	Case No. and County	Parties	Recommendation
	Trans Nzoia County	Nyangara Murumbi	National Land Commission recommends to the chief Land Registrar to cancel the title Kakamega/Sirigoit/145 given to Miriam Nyangara Murumbi and register the same to Wambua Muthini.
4.	NLC/HLI/046/2017 Uasin Gishu County	Kibirgen Kimaiyo, Abdi Sitienc, Elias Busienci, Kipsang Masai, John Kisugut Too, Sylvester Arap Choge, Philip Sawe Tonui (claiming as shareholders of Kaptuktuk Farm Ltd) -versus- Justice Philip Tunoi (Rtd) (Respondent)	The claim is allowed. The Chief Land Registrar should revoke all titles resulting from the subdivision of 400 acres excised from LR No. 8409/1 and revert the same to members of Kaptuktuk Farm Limited In the alternative, the Claimants should seek compensation from the Respondent for their 400 acres of LR 8409/1 at current market price. That should the Claimants apply to the Chief Justice, the Commission prays that the Chief Justice show kindness to the Claimants and allow the reopening of the case out of time since Section 15, 3 (11) of the National Land Commission Act 2012 as amended by Section 38 of Land Laws Amended Act, 2016 waives restrictions of Section 7 of the Limitations Actions Act in respect of historical land injustice claim.
5.	NLC/HLI/112/2017 Uasin Gishu County	Betty Rono (Suing as Executrix of the Estate of the Late David Rono) Claimant and Almer Farm Limited (Respondent)	The claim is allowed. The Commission recommends that Abraham Kiptanui restitutes for the 400 acres being claimed by the executrix of estate of the late David Rono. The Chief Land Registrar and Director of Survey to excise the 400 acres and Cabinet Secretary Ministry of Lands, Ministry of Interior and NLC assist the estate to get the land back. The Estate of the late Biwott is absolved from the claim.
6.	NLC/HLI/036/2017 Uasin Gishu County	Human Relief and Disaster Reduction Society Organization (TARBO) (Claimant) Government of Kenya (Ministry of Interior and Coordination of National Government) (Respondent)	The claim is allowed. The Commission refers this claim to Department of Special Programmes in the Ministry of Interior and Coordination of Government functions and the National Consultative Committee and Coordination (NCCC) of IDPs in view of settling the claimants.

TABLE 7 MACHAKOS, MAKUENI AND OTHER COUNTIES

S/No	Case No. and County	Parties	Recommendation
1.	NLC/HLI/130/2017 Meru County	Francis Mwiraria Methaiba versus Director Land Adjudication	The claim is allowed. The Commission recommends that County Government of Meru compensates the claimant for the loss of 4 acres of his land at current market rate.
2.	NLC/HLI/259/2017 Machakos County	Gregory Kavivya Muvevi versus Gideon Muli	The claim is allowed. The Commission recommends that the land reverts back to the original owner owing to the fact that the respondent never paid the money to the claimant as directed by the then District Commissioner. The Chief Land Registrar to lift the restriction on the land and make necessary adjustments to the records.
3.	NLC/HLI/025/2017 Meru County	Ontulili Forest Squatters versus Family of the late Hon. J. H. Angaine	The claim is allowed. The Commission noted that the land under question was excised for the squatters. The Commission recommends that the Chief Land Registrar reverts the land to the claimants. Alternatively, the respondent (family of the late Angaine) should give the claimants alternative land of equal size and value. The Chief Land Registrar registers the land in the name of the squatters and they should be settled with the assistance of the Director Land Adjudication and the Director of Surveys.
4.	NLC/HLI/039/2017 Machakos County	Ndithini Squatters versus Matungulu Farmers Company Limited and 8 others	The claim is dismissed. The parties are advised to proceed with Civil Case No. 1104 of 1999 pending in the Environment and Land Court.
5.	NLC/HLI/439/2018 Embu County	Ruthundi family versus Embu County Government; University of Embu; KALRO; KSG	The Claim is dismissed. The claimants could not link themselves to the specific land parcels.
6.	NLC/HLI/450/2018 Tharaka Nithi County	Magundu ma Chuka versus Kenya Forest Service	The claim is allowed. The Commission, recommends that Kenya Forest Service considers excising 10,000 acres in favour of the claimants and 2,000 acres for the claimants' community forest. The community forest to act as a buffer zone between the claimants and the forest. The Chief Land Registrar, Director of Settlement and Tharaka Nithi County Government to establish a conventional settlement scheme for them within the parameters of Land Settlement Scheme.
7.	NLC/HLI/048/2017	JK.Maroo and Phares Kariuki Gakuya vs	The claim is allowed.



S/No	Case No. and County	Parties	Recommendation
	Meru County	Director of Land Adjudication and Settlement	The Commission recommends that Plot no.1471 and 3791 be registered to Phares Kariuki and JK Maroo respectively and the position on the map and ground be rectified by the Director of Survey, the Chief Land Registrar and the Director of Land Adjudication and Settlement.
8.	NLC/HLI/483/2018 Nyandarua County	Samuel Korio Mbugua (Claimant) Versus Kipkering Arap Rop and Jacob Kimaru Machira (Respondents)	The claim is allowed. The Commission recommends that the Chief Land Registrar revoke the title deed to Jacob Kimaru Machira. The Ministry of Lands and Physical Planning through the Director of Land Adjudication and Settlement is directed to regularize the title to Mr. Kipkering Arap Rop.
9.	NLC/HLI/128/2017  Laikipia County Nyeri County	Kabaru Ndathi Forest Squatters (Residing in Mt. Kenya Forest)	The claim is dismissed. The Claimants are advised to enjoin themselves in the pending case in Court to claim their stake in Solio Ranch with a view to getting themselves settled in the Ranch. The government should, however resettle squatters who were left out of Solio Ranch. In the alternative the Ministry of Lands to investigate all parcels of land that were not allocated to squatters or IDPs so that the land can be allocated to deserving squatters and landless Kenyans.
10.	NLC/HLI/051/2017  Laikipia County	Kanu Ex-War versus Solio Ranch (LR No.11571)	The matter is dismissed. The parties are advised to proceed with the matter before court.
11.	NLC/HLI/545/2018  Kajiado County	Ilkeekonyokie-Olmorogi Trust Versus Ministry of Agriculture	The claim is allowed. The Commission recommends that National Land Commission, Ministry of Lands and Physical Planning and the County Government of Kajiado undertakes to ensure that; The land under claim is resurveyed That all the public utilities and agencies are given sufficient land taking into consideration future land requirements And the residue land revert back to Ilkeekonyokie to be registered as community land. Any land irregularly given to private entities is reversed back to Ilkeekonyokie

TABLE 8 THE FOLLOWING MATTERS HAVE BEEN DIFFERED FOR FURTHER INVESTIGATIONS TO THE NEXT COMMISSION

S/No.	Case No.	County	Parties
	NLC/HLI/064/2017	Muranga County	Makenji Squatters-Muranga vs County Government of Muranga
	NLC/HLI/139/2018	Kiambu and Nairobi County	Tutua clan Self Help Group VS. The University of Nairobi
	NLC/HLI/504/2017	Kiambu County	Mbari ya Hinga Society vs. Government of Kenya (Alliance Boys High School, P.C.E.A church and Mission hospitals Thogoto, Kikuyu Day High School, Musa Gitau Pri School, Thogoto Teachers College, Nairobi University Kikuyu Campus, Dagoretti Children Home, Red Cross Karen and Muhu Kangari Sec School)
	NLC/HLI/009/2017	Kiambu County	Mbari ya Gatonye wa Munenc vs. Kenya government, Sigona Golf Club, Sigona Settlement Scheme, Lands, KALRO, KEFRI, KFS, Muguga Jet Scheme University of Nairobi Kabete Campus
	NLC/HLI/456/2018	Kiambu County	Mbari ya Gichamba Association vs. Messrs Cooper and Harrison.
	NLC/HLI/504/2018	Kiambu County	Mbari ya Gicheru and Munjuga Association vs. Government of Kenya and Colonial government
	NLC/HLI/218/2018	Kiambu County	Mbari ya Githua Mutonga Association vs. Government of Kenya (allocation to various institutions) and Colonial Government.
	NLC/HLI/413/2018	Kiambu County	Mbari ya Kabocha Association vs. Government of Kenya, Colonial Government
	NLC/HLI/500/2017	Kiambu County	Mbari ya Muthemba vs. Kenya government, Kenya School of Government, University of Nairobi Kabete Campus
	NLC/HLI/446/2018	Kiambu County	Mbari ya Ngecha (K) Association vs. Government of Kenya
	NLC/HLI/037/2017	Nairobi & Kiambu County	Mburu Njoroge vs.53 Institutions Claim
	NLC/HLI/162/2018	Kiambu County	Mbari ya Ngotho Association vs. Kenya government, Maramba Tea Estate, Kimera Medical Centre, Kimlea Technical Training Centre, Oakridge Gardens, Ombi Rubber Rollers. Dinham Resort Gardens, Tigoni Tea Estate
	NLC/HLI/405/2018	Kiambu County	Mbari ya Wahothi Social Welfare Group VS. Kenya Government
	NLC/HLI/008/2017	Kericho County	1988 Kipkelion Evictees
	NLC/HLI/038/2017	Kisumu County	Dorsila Ajuoga Owuor versus Jackton Osino
	NLC/HLI/521/2018	Kisumu County	Estate Of Kibinot Rongoi Versus Yuda Awour and Alfred

S/No.	Case No.	County	Parties
			Owuor
	NLC/HLI/305/2018; NLC/HLI/304/2018; NLC/HLI/317/2018; NLC/HLI/021/2017	Narok County	Anglo- Maasai Kingdom
	NLC/HLI/208/2018; NLC/HLI/444/2018	Nakuru County	Bararget Settlement Scheme and Tachasis Mosop Community versus Kenya Forest Service
	NLC/HLI/532/2018	Makueni County	Family of Late Ndiku Wambua versus Family of Joel Mulinge Malombe and Makuli Company Limited
	NLC/HLI/093/2017	Kiambu County	Mbo-i-Kamiti Welfare Group versus Mbo-i-Kamiti Farmers Company Ltd
	NLC/HLI/154/2017	Baringo County	Lembus Torongo
	NLC/HLI/007/2017	Mombasa County	Utange Lamkani Vs African University Trust
	NLC/HLI/495/2018	Mombasa County	The Communities of Vipingo Lands, Residents of Vipingo Sisal Plantation, Mjuma Lands Association versus Vipingo Estate Limited, Hussein Dairy Farm, Mombasa Cement Ltd, Rea Vipingo
	NLC/HLI/023/2017	Nairobi County	Litha Katumbi Kathumba versus Kenya Airports Authority (KAA)
	NLC/HLI/007/2017	Mombasa County	Residents Of Pendua Maweni Versus The Late Mwanakombo Abdalla Family
	NLC/HLI/135/2017	Elgeyo Marakwet County	Saniak Tiliol Clan Foundation vs Tambach High School
	NLC/HLI/072/2017	Kiambu County	Tigoni Lands Claim
	NLC/HLI/472/2018	Mombasa County	Emmanuel Ngade vs Simba Colt Claim
	NLC/HLI/CF/2018	Kisumu County	Kogony Land Council of Elders and Kenya Airports Authority, Attorney General of Kenya, National Land Commission and County Government of Kisumu

The full determination may be collected after twenty one (21) days of this gazette notice, from the National Land Commission offices, Historical Land Injustice Registry, 4th Floor, ACK Gardens-Annex, 1st Ngong Avenue, from Monday to Friday, 8.00 a.m. to 5.00 p.m., during official working hours.

Dated the 18th February, 2019.

ABIGAE M BAGAYA MUKOLWE,  
Vice-Chairperson,  
National Land Commission.

MR/5816071

GAZETTE NOTICE NO. 1996

THE KENYA ACCREDITATION SERVICE ORDER

(L.N. 55 of 2019)

KENYA ACCREDITATION SERVICE

CONFORMITY ASSESSMENT BODIES

PURSUANT to section 13 of the Kenya Accreditation Service Order, 2009, (Legal Notice No. 55 of 2009), it is notified for the information of the general public that the following are the Conformity Assessment Bodies accredited by Kenya Accreditation Service as at 7th February, 2019. The detailed Scopes of Accreditation of these Accredited Bodies are provided on our website ([www.kenas.go.ke](http://www.kenas.go.ke)). Reference should be made to the Scopes of Accreditation of the respective Conformity Assessment Bodies all times.

1. Calibration Laboratories

Cab Name and Address	Normative Standard	Date of Expiry
KENAS/CL/ 02 SONIC QUALITY INSPECTORS LIMITED; Mirage Plaza, Mombasa Road; P.O. Box 6063-00200 Nairobi, Kenya; Tel: +254-20-60007509; Email: <a href="mailto:sonicinspections@yahoo.com">sonicinspections@yahoo.com</a> , <a href="mailto:info@sqi-sonicinspections.com">info@sqi-sonicinspections.com</a>	ISO/IEC 17025:2005	21-Feb-2021
KENAS/CL/07 ELISTERS 2000 LIMITED; Buruburu Complex -Mumias Road; P.O Box 9091 00100 Nairobi, Kenya; Tel: 020- 7784338; Fax: 020 -788000; Email: <a href="mailto:info@elisters2000.com">info@elisters2000.com</a>	ISO/IEC 17025:2005	20-Sep-2022
KENAS/CL/08 ESTEC LIMITED; Chromato House, Bungoma Road, off Baricho Road; P.O. Box 12143-00400 Nairobi, Kenya; Tel. No. +254-20-537709/10; E-mail: <a href="mailto:info@estecenya.com">info@estecenya.com</a>	ISO/IEC 17025:2005	21-Feb-2021
KENAS/CL/ 10 QUALITY ASSURANCE SYSTEMS LIMITED; QAS PLAZA-Mombasa Road; P.O. Box 56871-00200 Nairobi, Kenya; Tel: +254-20-2049892 / 2034681; Email: <a href="mailto:info@qas-limited.com">info@qas-limited.com</a>	ISO/IEC 17025:2005	13-Sep-2022
KENAS/CL/19 LABCRS SERVICES LTD; Park Place, Magadi Road off Langata Road ; P.O. Box 791 – 00511 Ongata Rongai, Nairobi, Kenya; Tel: +254722858041, 020 – 2323520; Email: <a href="mailto:info@labcrsservices.com">info@labcrsservices.com</a> ; <a href="mailto:labcrs.services@gmail.com">labcrs.services@gmail.com</a>	ISO/IEC 17025:2005	03-Dec-2022
KENAS/CL/ 18 NYERI WATER AND SEWAGE COMPANY LIMITED; NYERI WATER AND SEWAGE COMPANY – HEADQUARTERS; P. O. BOX 1520-10100 Nyeri, Kenya;	ISO/IEC 17025:2005	22-Nov-2020

**Annex 12:** Copy of the Determination by the National Land Commission in Ref. Nos. NLC/HLI/546/2018, NLC/HLI/044/2017 and NLC/HLI/173/2017 dated 7<sup>th</sup> February, 2019.

REPUBLIC OF KENYA



NATIONAL LAND COMMISSION  
HISTORICAL LAND INJUSTICE COMMITTEE

In the matter of Article 67(2) (e) of the Constitution of Kenya  
In the matter of section 15 of National Land Commission Act

In the matter of Historical Land Injustice Reference No:  
NLC/HLI/546/2018, NLC/HLI/044/2017, NLC/HLI/173/2017

KECCO

County Governments of Kericho and Bomet, Kipsingis Clans, Talal  
Clan Community and Borowo & Kipsigis Clans  
Self Help Group ..... Claimants

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And

The British Government, The Government of Kenya....Respondents

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**DETERMINATION**

**Hearings:** 11<sup>th</sup> July, 2018 at Kapsabet, 17<sup>th</sup> August 2018 at  
Kisumu, 14<sup>th</sup> Sept., 2018 at Nairobi, & 11<sup>th</sup> Oct. 2018  
in Kericho

**Panel:** Commissioner Dr. Samuel Tororei - Chairman  
Commissioner Emma Njogu- Member  
Commissioner Dr. Rose Musyoka- Member  
Commissioner Dr. Clement Lenachuru- Member

**Appearances for the Talai clan:** Rev. James Passy

David Ngasura Tuwei

**Appearances for the Borowo & Kipsigis Clans**

**Self Help Group** : Mr. Peter Kiprotich Bett and  
Judith Cherotich

**County Gov. of Kericho:** Kimutai Bosek, Queens Counsel Chussy  
Rodney Dickson and Mr Aiden Ellis

## **INTRODUCTION**

1. The Claimants herein lodged various Claims seeking among others, the following reliefs:

- i. The British Government be asked to apologies for the various forms of injustices inflicted against the Kipsigis and Talai victims and to pay compensations.
- ii. Victims be paid *mesne* profits for the loss of use of land for the period they were denied possession and ownership.
- iii. The Government land that is now under British Multi-national Tea Companies be granted to the Kericho and Bomet County Governments
- iv. The British Multi National Tea Companies be asked to lease land from the Kericho and Bomet County Governments at commercial rates.
- v. Kenya Government be made to acknowledge that what was crown land was unlawfully taken from the Kipsigis and Talai and ought to have been surrendered to the community at independence.

- vi. British Multi Nationals be allowed to remain as tenants in the unexpired period of tenancy.
- vii. The British government be asked to construct community amenities that would alleviate sufferings of the victims and their children such as schools, hospitals, road, a museum, a university and provide other services such as water and electricity.

## BACKGROUND

### The petitioners claim that:

1. British pre-colonial and colonial administration (1895 to 1963) generated a number of human rights issues that adversely affected thousands of Kipsigis and Talai people. British settlers' quest for more and more fertile land in Kipsigis country caused conflict with the natives. The Applicable laws (Ordinances) advocated British settler supremacy and granted impunity to the British administrators. The UK government in London abetted, connived and directed administrative actions and policies that grossly violated the rights of the Kipsigis and Talai. In most instances white settler interests were deemed to be more paramount and were advanced at the expense of the natives' basic human rights.

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2. The Kipsigis lost several thousands of acres of land to the British white settlers as a result of British colonialism. With the support of the British colonial government, the white settlers took away the most fertile and well-watered parcels of Kipsigis land.

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3. With the establishment of the European Highlands in 1934, the appetite for Kipsigis land on the part of the white settlers went a notch higher. Today, a number of such parcels are occupied by British Multi National Tea Companies. White settlers and multinational tea companies retained the local names. These include, Chagaik, Cheymen, Tagabi, Saosa,

Timbilil, Chemosit, Chamji, Kapkorech, Kimulot, Kimugu, Koiwa, Chepkebe, Chemamul, Tendwet, Chebown among many others. Indeed most tea estates bear local Kipsigis names, an indication that they formed part indigenous Kipsigis lands.

4. On the other hand the Talai who were considered leaders of the Kipsigis community and who were deemed to be hostile and resistant to British rule, were forcefully removed to Gwasi in 1934 a place that was quite hostile for human habitation. It was like sending the entire community to an open prison. This process begun with the exiling of the top leadership to far flung places between 1911 and 1934.

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#### INVESTIGATIVE HEARINGS

5. These claims were heard by the Historical Injustices Committee of the Commission in Kisumu, Kericho and Nairobi on various in dates in September, October and November 2018.
6. A team of lawyers led by British Barrister Rodney Dixon QC assisted by Kimutai Bosek, Maureen Okoth and Aidan Ellis appearing for the County Government of Kericho made extensive presentation and submitted documents resulting from a research into the matter commissioned by the county Government of Kericho.
7. Victims of the historical land injustices including the Talai, and the Kipsigi also made oral presentations to the committee. We also received several documents from various archives. The Governor, Kericho County Prof. Paul Kiprono Chepkwony attended the proceedings.
8. The Claimants' legal team began their case by stating that they have registered more than 120,000 victims who were

forcefully displaced from their ancestral land by the British Government. They further stated that many Kipsigis witnesses describe the burning of houses, physical abuse, sexual abuses and confiscation of livestock, limiting the number of livestock to restriction of movement by the colonial askaris, hut tax, poll tax as some of the worst colonial instruments used to subdue them.

9. They allege that with the support of the colonial government, the white settlers took away the most fertile and well-watered parcels of Kipsigis land. This was formalized by the Carter Commission of 1934 whose recommendation resulted in increased acquisition of Kipsigis land by the settlers and later the multinational agricultural companies.

10. The legal team posited that colonialism reduced many households into abject poverty and a life of hopelessness. Many people suffered physical injuries and psychiatric injuries as well. These have been confirmed by the medical experts instructed to assess and evaluate their medical condition.

11. They relied upon the 1946 Kericho District Annual Report where the then Kericho District Commissioner (DC), ACC Swann stated: *'Certainly no tribe has lost more land than the unfortunate Kipsigis.'*

12. The lawyers also submitted on the Talai case. The Talai, also known as the Laibons (i.e. diviners), is a clan within the larger Kipsigis sub ethnic group. They trace their origin to Nandi, another sub ethnic group within the Kalenjin ethnic group. Talai was an elitist clan and occupied leadership position among the larger Kipsigis before they were deported, en masse, by the British colonial authorities in 1934, to Gwassi. The removal was based on an Ordinance "The Removal of Talai Ordinance. The lawyers submitted that this ordinance was a product of consultation between the British



government in England and British colonial government in Kenya. The Talai are said to have led the resistance to colonial rule in the Kipsigis country. As a clan, it played the religious role of divination and were, ipso facto, key advisers of the people and their traditional government and social institutions on a wide range of issues.

13. The lawyers argued that the Talai were inevitably set on a collision course with the British authorities who, as colonizers, were on a mission to dismantle all Kipsigis traditional systems (social, economic, cultural and political), including the authority of the Talai King (orgoiyot). Being the vanguard of the community's interests, the Talai, naturally, countered the British onslaught on the Kipsigis by spearheading resistance and circumventing colonial edicts and other forms of control.

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14. To facilitate expeditious removal of the entire Talai clan from amongst the Kipsigis, the colonial authorities enacted two ad hoc legislative instruments, namely, The Laibons Removal and Settlement Ordinance, 1934, and a general one—The Special Districts (Administrative) Ordinance (No. XIII), 32 1934. The Talai Removal Ordinance provided for the "removal and settlement" of the Talai community, while the latter legislation guaranteed generally any displaced persons in the colony an award of compensation for loss suffered in the event and process of forced removal.

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15. Counsel further submitted that the expulsion of the Talai began on 22 October 1934 and was completed on 30 June 1937 after a most heart-rending and cruel displacement of an innocent group of people in Kenya's colonial history. A total of 698 members of the Talai clan were removed.

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16. On their part the Talai' emphasized in their oral testimony that their removal from their lands situated in Nandi,

20. Land alienation in Kenya began in 1901 when East Africa (Lands) Order in Council was issued. This was followed by the Crown Lands Ordinances of 1902, 1915 and 1919. Huge chunks of the Kipsigis' native land was declared 'Crown Land' in the process. Such declaration provided a basis for alienation of Kipsigis tribal or communal land. This process was challenged by the victims' lawyers who argued that as a Protectorate British government lacked the jurisdiction to alienate land. We note that the alienated land was allocated to the European settlers.
21. In 1905 the Kipsigis lost 90,000 acres of land in what is today Londiani. British government authority divided this huge land into 18 blocks of 5,000 acres each and gave it to British settlers. Counsel for claimants opined that the British government created Apartheid like Bantustans named Lubwa Reserves of Sotik, Bureti and Belgut in 1907 to accommodate the displaced population. In 1911, more Kipsigis families were forced out of their land into the reserves.
22. The Claimants allege that subsequent alienation ended up dividing Kericho into four principle regions considered prime areas for European settlement. These were – Lumbwa (encompassing modern day Kipkelion and Londiani), Sotik (encompassing modern Sotik, Litein and Bomet), Tinderet (encompassing modern Songhor, Koru and Fort Teman) and Kericho which included much of its present vicinity and the surrounding areas. In between these areas were three main 'Native' reserves – Belgut, Bureti and Sot. These are areas that were exclusively reserved for Kipsigis native occupation and where their movement was restricted.
23. By 1905, the land that comprised the South Lumbwa district as it was known before it became Kericho district, was gazetted as 1,617 square miles or just a little over 1 million acres. It was made up of 1,034,880 acres or 418,801 hectares. The Government designated some 821 square miles or 525,440

Baringo and Kericho district into a holding camp in Kiptere, then forced to trek to Gwassii and the difficult life they experienced due to drought, mosquito, tsetse fly and snake infestation was unbearable.

17. Several documents were adduced in support of both the Kipsigis and Talai case which the Commission has considered. Submission by counsel is borne out of documentary evidence which were largely corroborated by viva voce evidence.

### **ANALYSIS**

18. The claimants collectively relied on information collected and collated from a wide ranging research commissioned by the county Government of Kericho involving both local and international researches and covering Kenya and the United Kingdom. Much of this massive information and counsels' presentations at the investigative hearing dealt with general historical injustices which are by and large outside the jurisdiction of the Commission and which should be considered by human rights or other institutions.

19. Nevertheless, counsel presented an impressive amount of information and evidence relating to alleged historical land injustices primarily committed by the protectorate and colonial governments. These included alienation of huge tracks of Kipsigis ancestral land to white settlers and multinational agricultural companies eg tea companies without compensation ; forcible evictions and deportation or exile (especially of the Talai). The chronology of events is as summarised below:

acres as 'Native Land'. The remaining 787 square miles or 503,680 acres of land was alienated and made available to the European settlers.

24. After the First World War, a number of British soldiers who had returned home fell into hard times. It was even harder for those who had become disabled during the War. Of particular concern to the British Government in London was the ex-officers who had become disabled and on account of the War and could not find regular employment. It was thought that as a result of their disability, they were best suited to do supervisory work particularly on farms. In 1919, with the encouragement of British government in London, a group of disabled British ex-Soldiers came up to try their hand in farming in Kericho

25. The claimants aver that by 1920 the Europeans who numbered just about 300 - including men, women and children, had at their disposal about 50% of the entire Kipsigis land area. The remainder of the land was under the Kipsigis occupation whose population in 1920 stood at nearly 63,000 individuals excluding another 8,000 living outside the reserve. Over the next few years more of their land was taken putting more pressure on the Kipsigis population.

26. A census carried out in May 1921 indicated that in the four principal settlement areas:-Kericho, Sotik, Lumbwa and Fort Ternan there was a total of 293 Europeans - 174 men, 71 women and 48 children. Kericho alone had 152 of these, followed by Lumbwa with 85 and Fort Ternan 32 and Sotik with 24. He had prior to this conducted an extensive tour of Kericho about this time to ascertain the proper boundaries of the district. Part of it was to also define the best lands suitable for European settlement.

27. By 1932, the colonial government had already alienated several huge parcels of land for tea companies as follows-

- (i) L.O. No 620 –The Kenya Tea Company Limited
- (ii) L.O No 628-The Kenya Tea Company Limited
- (iii) L.O No 629-The African Highlands Produce Company
- (iv) L.O 3677-H.G Dawson

28. Other Allocations include-

- L.O 624,625,626,627-Kenya Tea Company Limited
- L.O 623-Grehardson Bros
- L.O 630- The African Highlands Produce Company
- L.O 631-Kericho Township
- L.O 640- J. Butterfield, Brierly R.A.H.C
- L.O 641-H.G Dawson (can we get the LR equivalent of Los ?)

29. In a subsequent report titled 'Progress of European Settlements, the DC-Kericho lists the settled farms as follows-

- 
- (i) L.O 3666-B.F Webb
  - (ii) 3667-R.E Richardson
  - (iii) 3668-Lindsay3676-Manga Limited (Managed by C.C Dawson)
  - (iv) 3723-Major Brayne
  - (v) 3724-BEA Cooperation
  - (vi) 3884- (Cheymen Estate)-Kenya Tea Co. (Managed by Floyer)
  - (vii) 3941-Kenya Tea –T.N.Derby
- 
- (viii) 3942-African Highlands Produce Company - (Managed by W.A.Lee)
- 
- (ix) 3944-Chelimo Farm- Major C.J.Caddick (Managed by owner)
  - (x) 3945 (1) Kaptalil –Stevens Syndicate (Managed by R.T Sneyd)

- (xi) 3945 (2) Colmalie –Davidson and Mowalters (A.H Mowalters)3945(3) Nuri – H.W.Tilman (Managed by owner)
  - (xii) 4078(1)-Kericho Estate- Kenya Tea Company (Managed by T.N Derby,W.G.EPickford,S.LSpringer,L.S. Springer)
  - (xiii) 4078 (2)-African Highlands Produce Co. (W.A Lee)
  - (xiv) 40783 ..... (Villier Stuart)
  - (xv) 4098- Tagabi –The Tagabi Syndicate (Managed by G.E Gunning)
  - (xvi) 4400(1) - Crown Land
  - (xvii) 4400(2) - Beaton (Managed by EH Currie)
  - (xviii) 4400(3)-Tinderet Range –B.F Webb (M Richardson)
- 
- (xix) 942-Kivogu Estate –Gen Sir G.F Milne (Managed by J.K Matheson
  - (xx) 944 –Monieri- T. E. Haslehurst (Managed by owner)
  - (xxi) 945(1) Kapsimba -H.B. Dooner Capt. J.(Managed by owner)
  - (xxii) 945(2)-Kaptule- H.S.F Dawson (Managed by owner
  - ~~(xxiii) 945(3).....W.G Dawson,T.N Derby (Managed by W.G Dawson)~~
  - (xxiv) 946 Aitibu –AitibuSotik Plantations-A.H Daly

(xxv) 947 Dunedin Estate - Sotik Flax and Coffee Land  
Ltd.- (Managed by R.M.Dunbar Major)

(xxvi) 948-.....Major Bryne

(xxvii) 949 (1) LelBoinet J.H Frank (Managed by  
owner)

(xxviii) 949 (2) Kibori-H.M. Tilman

(xxix) 949 (8) ..... Freeman

(xxx) 950 ..... Tritton

(xxxi) 962 -Sotik Estate Mrs.A.F. Fenwick (Name of  
manager unclear)

(xxxii) 965-Mutarakwa -Name of owner Unclear  
(Managed by owner)

(xxxiii) 957- B.F .Webb

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(xxxiv) 958-Bushy Ark-H.Duire (Managed by owner)

(xxxv) 959- Government Reserve

(xxxvi) 960 -.....Sotik Post

(xxxvii) 3475-Maramura Estate -Commander A. Coke  
(Managed by owner)

(xxxviii) 3644 A.Craigmore Estate. -Major Dunbar  
(Managed by M.J Dannhouser)

(xxxix) 3644 B. Manga Limited -Manga Limited (C.C  
Dawson)

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(xl) 610- Inasosurua -H.Clift (Managed by owner)

(xli) 611 (1), 611(2)-H.H Wilson (Managed by owner)

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(xlii) 612 (1) ----- J.W Yodham(Managed by C.A.F  
Mathews)

(xliii) 612 (2) A-.....G.J Grant (Managed by owner)

(xlv) 613,614,615,616,617-.....C.A.F      Matthews  
(Managed by owner.)

(xlv) 618,619 -Chagaik W.R. Hotchkiss (Missionary)  
Owner

(xlvi) 620 .(Name of Farm Unclear -Kenya Tea  
Company (Managed by E.A Floyer)

(xlvii) 621-Farabwet -Orchardson Brothers (Managed  
by I.Q Orchardson and G.Q Orchardson).

Can we get their equivalent LR numbers?

30. At independence, thousands of acres of land had been brought under tea farming in Kericho. The greatest beneficiaries were the British multinationals, white settlers; British and South African white farmers. Thousands of Kipsigis became permanent landless squatters. Direct victims and their descendants continue to feel the brunt of British colonial actions. There are victims who suffered multiple dispossession and forceful evictions. The notable one being, Mama Ann Birir who in her oral testimony claimed that her family was forced out of their land in Tulwab Bureti to give way for tea plantation, in what is now Ngoina Tea Estate. She and Several Kipsigis families were forced to settle in Saboti in Trans Nzoia County. It was not long before they were forced out again. This was after the land was granted to South African Boers to grow cereals, principally maize and wheat. Accordingly, approximately 800 individuals were forced to move to Samburu and ordered to become Ndorobos. Survivors of the so called Samburu Ndorobo claim during their deportation



from Saboti to Samburu the Colonial administration confiscated more than 4000 livestock from them and slaughtered them at the Archers Post to feed the British soldiers. Today they remain landless and live in abject conditions. Their claim is largely corroborated by archival materials tendered by claimants' legal team.

31. The nature of Land subdivision between the natives (who were restricted to reserves) and the Europeans always caused friction between the two groups. In response to the Kericho DC over the claim that Native reserve land was leased to Kenya Tea Company, the Nyanza Provincial Commissioner (PC) affirmed that that the company was given land before the proclamation of the Native Reserves, and argued that it was the Natives that were given land belonging to the company and not vice versa. However in response, the DC insisted:

*"...The Kenya Tea Company appears to have taken over the land in 1926, presumably after the Reserve boundary had been decided upon but before their gazetement. the Natives have always considered the land to be theirs in spite of its alienation under the Soldiers Settlement Scheme, perhaps because though alienated, the land was only sporadically, if at all, settled before the Kenya Tea Company took over."*

32. This controversy is captured in subsequent correspondences between the PC, DC and the Commissioner for Local Government

33. On February 26, 1952 British officials in the tea-growing Kericho highlands sent their forces to evict two hundred Kipsigis families living on a parcel of land that had been sold by the Government to the African Highlands Produce Company.

34. Consequently 200 families representing several individuals were evicted with no compensation, and this remains a scar in the face of British colonialism. Today, the AHPC (Now James Finlay) continues to farm the land, measuring nearly 8,000 acres but the cold hard evictions and the scars it left behind, are still fresh in the memories of the Kipsigis, some of whom are old enough to remember the events, nearly 7 decades ago

35. After the alienation of the African land, the British developed two initiatives to 'resettle the Africans, these were: Settlement Schemes and Native Reserves. A letter written by the Commissioner for Lands and Settlements noted that consideration on the extension of native reserves can only be approved by the Native commissioner. The Native Reserves were often subject to the Native Land Trust Ordinance. All land meant for the Natives was therefore administered

through the Native Land Boards while the White (Europeans) Highlands were administered through the Highland Boards. That dispossession/reallocation of land from the Natives to the Europeans was done by transferring administration of land between the two boards. Sometimes, land between the two boards would even be swapped. For instance in a letter dated Dec 1953, the DC Kericho proposed that Kerenga and Cheboin Tea Estates be excised from the Native Lands to the white highlands in return for Marshall web farms (Itembe settlement scheme).

36. On 28<sup>th</sup> October, 1948, the P.C Nyanza<sup>1</sup> wrote to the DC- Kericho (in a letter labelled Secret) concerning the maintenance of settlers' fence. This fence was to be constructed to stop African from intruding into the settler's homes and Farms.

37. The claimants contend that discrimination in matters of land was not only restricted to land purchase. There is evidence that the African reserves were located in poor land that was often unsuitable for either livestock or crops. A letter labelled secret and written to Ingham, by the PC Nyanza on 2<sup>nd</sup> September, 1948, suggests that crown land lying to the South west of Chepalungu and near Mosonik Trigon metrical beacon be added to Kipsigis land unit. The letter references on earlier letter for L.R. No. 5467 and L.R. 3821 all of which are

tea company land. He notes that farms 957 and 958 marked for African settlements are not as fertile as the European land. He added that the two landlords have never used the land and were not likely to use it in the immediate future. He further noted that he was particularly impressed by the kind of use the natives had put of their land (in the reserves<sup>2</sup>). He pointed out that the land to be given to Africans was not arable land and not suitable for Europeans. Barton also wrote:

*...It is not of much value to the European community as it is distant from any centre....There is water on one boundary only."*

Burton's description could be the reason why the original owners were unwilling to invest in the land. ~~It is unacceptable to propose an unsuitable land to~~ Africans whose movement was already restricted in the reserves. Of what value would land without water be to a mainly pastoral community?

38. In the same letter, the DC proposes Chepalungu Crown land (for African Reserves), about 3500 acres, but recognized that this piece was also mountainous and therefore unsuitable for Europeans.

39. Even after restricting the Kipsigis into the reserves, no strategy was put in place to improve their welfare. Instead, they were abandoned in deplorable inhuman conditions where colonial presence was only felt with regard to policing

and restriction and not in service delivery. The Nyainza PC seemed to have been alert to this fact. On 28<sup>th</sup> Dec ember, 1948, through a letter to the Chief Secretary noted that he had received complaints with regard to overstocking in the African reserves. The Africans complained that the overstocking has come about because their land was taken away (and the pieces given in the reserves were too small yet they were a pastoralist community with many livestock).

40. The Claimants contend that Colonial violation didn't stop at land alienation. Rather, they included rampant evictions which were carried out in an inhuman manner without any moral or legal consideration of the natives' interests or well-being.

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41. These widespread evictions attracted the interest of the Kenya African union (KAU) activists at the time who complained over the arbitrary eviction of the Kipsigis and the arrest of those who resisted. They noted that the eviction of the Kipsigis to pave way for the tea companies violated the existing laws. In a letter dated 26<sup>th</sup> November 1951, KAU notes that:

*...Its now sometime since the administration tried to evict these Kipsigis from their land. Everybody knows that the administration has not been successful in finding a legal ground for their eviction. Twice, these Kipsigis have been acquitted in the court of Kenya...Originally no one knows how the transaction was made and there were no Kipsigis signatories to an agreement to exchange land with the tea company. Nor do we know how those locations became crown land...Even in*

*Legislative Council, the African Member for Nyanza never agreed to this proposal....This union is informed that you have ordered the eviction of the Kipsigis from these Locations in 14 days' time, and furthermore have held in prison many of these complainants including 38 from Chepalungu location ...Also that 8 men from Location 3 are in Prison in Kericho....'*

42. Concern over colonial alienation of Kipsigis Land seems to have preoccupied KAU in 1951. In a subsequent letter dated 3<sup>rd</sup> September 1951, KAU notes:

*'...This provincial Delegates meeting of the Kenya African Union held in Kaloleni Social Hall, Kisumu on the 2<sup>nd</sup> day of September, 1951 regrets the action of the government in passing a law which has resulted in the most undesirable alienation of Kipsigis land by the tea companies....The situation is made worse by the fact that after charges against certain Kipsigis for refusing to remove themselves from the land had failed in the court, the administration has repeated the same charges against the Kipsigis. The land in question was given away by the administration to the Tea companies without Permission of the Kipsigis and in the face of strong opposition of the African Member of the Legislative Council...'*

43. The claimants insisted that alienation of the Kipsigis lands and their eviction were contrary to existing British law. For

instance under the provisions of the British Settlements Act 1887, the Queen of England was obligated to ensure the running of good government in territories where Her Majesty's subject had settled with others within British settlement. Section 2 states;

**'It shall be lawful for Her Majesty the Queen in Council from time to time to establish all such laws and institutions, and constitute such courts and officers, and make such provisions and regulations for the proceedings in the said court and for the administration of justice, as may appear to Her Majesty in Council to be necessary for peace, order and good government of Her Majesty's subject and others within any British settlement'**

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44. The victims' legal team submitted that it was the failure on the part of the British Crown to establish institutions that guaranteed peace, order and good governance and respect for human rights that exposed their clients to several human rights violation. Accordingly, the responsibility of Her Majesty's Government stated from the time Kenya became a British Protectorate in 1895 up to the appointed day, when Kenya was granted independence, 12<sup>th</sup> December 1963. Provisions of Section 1 (1) of Kenya Independence Act 1963 states:

On or after 12<sup>th</sup> December 1963 (in this Act referred to as 'the appointed day') Her Majesty's Government in the United Kingdom shall have no responsibility for the government of Kenya.

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45. The legal team opined that by the time the British declared Kenya its protectorate, English law had developed considerably. They pointed out instruments such as the Magna Carta 1215, the 1689 Bill of Rights formed part of its

principles of governance. They also noted that the Principles in Waitangi Treaty ought to have guided Her Majesty's institutions in their governance in Kenya.

### TALAI EXPERIENCE

46. Both counsel for the County Government and representatives of the Talai community insisted that the suffering of the Talai should be given special treatment as it demonstrates examples of extreme deprivation and negative consequences of banishment of a community to an inhospitable settlement far from their ordinary habitat in the eyes of the colonial government Qwasi was considered ..... a "St. Hellena" to hold as a threat over the heads of those who misbehave' (. DC Kericho, February 26, 1951). The suffering of the Talai and their quest to return to their homeland are summarised in the following paragraphs.

47. The 1950s saw the Talai agitating for better land for farming and wanted to know when the deportation would end. However, it was the intention of the Government to deport the Laibon for life. The Colonial Government did not have intention of re-settling the Laibons once they were deported to Gwassi. The agitation to leave Gwassi and the frequent escape of Laibon to look for employment also saw strict measures put in place to effectively control and concentrate the Talai at Gwassi.



48. Allowing the Talai to leave Gwassi posed potential danger as they prophesied in 1935 when they were being deported that they would eventually return to Kericho. For this reason, their influential and prestigious position would be enhanced if they were ever allowed to return.

49. Kiboin arap Sitonik and Muneria Arap Tonui were accused of maintaining influence in the Kipsigis reserve. This led to their deportation to Mfangano Island. Clearly this was to isolate them from possible contact. This is one of the islands that had been declared unfit for human habitation when the Government was looking for a place to settle the Talai.

50. At a baraza held on the 22<sup>nd</sup> February, 1951 Laibons requested that Muneria arap Tonui and arap Sitonik be returned from Mfangano Island and that Laibons be allowed to settle at Kiptere in location 1 or that they be allowed to settle in a part of South Nyanza opposite the Kipsigis reserve.

51. The DC, Kericho vide his letter dated 26<sup>th</sup> February 1951 noted that the Laibon had suffered hardship, ill health and very serious losses. There was evidence of encroachment of tsetse fly out of the Lambwe Valley.

52. In his report, the DC, Kericho recommended that it would be unwise and wrong to move all the Laibon from Gwassi for the following reasons: -

- a. They were not popular with the Kipsigis whom they ruled by fear in the past.
- b. Their return would be unwelcome both to the Kipsigis and the European settler.
- c. Land in Kipsigis for a Laibon settlement was short and such settlement would be unpopular.
- d. Land at Gwassi is plentiful if clearing and settlement takes place at Lambwe.
- e. I consider it advisable to have a "St. Hellena" to hold as a threat over the heads of those who misbehave.
- f. Given permanent water and a settlement officer or someone to direct clearing there is nothing to stop the Talai from getting land under control at Gwassi.
- g. The Laibon had always boasted that they would return to Kipsigis and it would be a severe blow to the government and triumph to them if they did return.

53. The said DC, Kericho further suggested that all male Laibons of the Maina Age group<sup>3</sup> and over remain at Gwassi for life unless ready for employment elsewhere. He went on to

suggest that the Laibon be told officially by the PC, Nyanza in a baraza that unless accepted elsewhere after being passed by committee they can only stay at Gwasi. They were also to be told that they must help in the Lambwe clearing as no other area will be found for them in the colony and that if the stock dies from fly out of their laziness of not clearing the bushes then it's their own fault. Further, no male Laibon of Maina age set to leave South Nyanza without the PC's written permission, if any leaves then they are to be removed to Mfangano.

54. Consequently a policy was put in place on 22<sup>nd</sup> November 1954 to control the movement of the Kipsigis Laibons. It was directed among others that weekly roll calls, occasional spot checks, more intensive inspection of taxis leaving the area and banishment to Mfangano in cases of repeated breaches of the provisions of the Ordinance be implemented.

55. Throughout their stay in Gwassi the Talai continuously agitated for their return to Kericho. This eventually happened in 1962. However on their return they discovered that there was no land set aside for them, a situation which exist to date despite promises by the post-independence governments.

## **DETERMINATION**

56. Having analysed submissions made by the legal team, the various documents and other forms of exhibits placed before us and oral evidence by witnesses and having conducted our own investigation we observe as follows:-

57. The Commission draws its jurisdiction from Article 67 (2) (e) of the Constitution, Section 15 of the National Land Commission Act 2012 as amended by Section 38 of Land Laws Amendment Act 2016 and other enabling statutes.

58. We note that in the processes of forceful evictions from their parcels of land the Kipsigis and Talai victims were subjected to other forms of human rights violations that are not within the investigative ambit of the Commission. We call for a further investigation of these issues with a view to finding lasting solutions and peaceful coexistence between the multinational tea companies and the local community.

Stolen lands?

59. The claimants have however established that the Kipsigis and the Talai suffered historical land injustices as envisaged in section 15 of the National Land Commission Act 2012 as amended by section 38 of the Land Laws Amendment Act 2016.

60. These legislations provide a basis upon which the reliefs sought by the claimants and those the commission deems deserving shall be considered and appropriate remedies recommended as provided for in section 15 (9) of the Act.

### RECOMMENDATION

We hereby make the following recommendations:

- a. The British Government do apologize for the various forms of injustices inflicted against the Kipsigis and Talai victims that led to among others loss of their ancestral land.

✓

b. Kenya Government makes a formal acknowledgement that what was crown land was unlawfully taken from the Kipsigis and Talai by the colonial government and ought to have been surrendered to the community at independence.

*Worship  
we can do  
it*

c. The British government and the multinational tea companies are requested to construct for the Kipsigis and Talai amenities such as schools, hospitals, road, a museum, a university and provide other services such as water and electricity that would alleviate or compensate for their suffering.

d. The British government do pay reparations to the direct victims of the historical land injustices.

e. The British Government and the Multi-National Companies, British Government and the Kenyan Government do pay victims mesne profits for the loss of use of land from 1902.

*Community  
Land*

Rates and rents for land occupied by multinational and other tea companies be enhanced so as to benefit the County Governments of Kericho and Bomet and the National Government.

*We don't  
want to  
lose it*

g. The British Multi National Tea Companies do lease land from the Kericho and Bomet County Governments at commercial rates.

*Kipsigis do not  
honour those  
leases*

h. Land with expired leases should not be renewed without the concurrence of the County Government where the land is domiciled.

*✓*

i. The government of Kenya through the department of adjudication and settlement in the Ministry of Lands and Physical Planning identify and acquire adequate suitable land to resettle members of the kipsigis and Talai community within the vicinity of Kericho and Bomet counties in order to end their perennial landlessness.

*What benefit  
will this bring to  
the community  
we want back  
all the lands*

*[Signature]*


A fresh survey and audit be undertaken for land allocated to multinational companies in Kericho and Bomet and any land in excess of the size documented in official records should be reverted to the County Governments of Bomet and Kericho to

be held in trust on behalf of the residents of the two counties.  
The land shall be used for public purpose.  
*We want it as community land.*

Dated and delivered at Nairobi this 7<sup>th</sup> day of February 2019.

Signed:

Commissioner Dr. Samuel Tororei

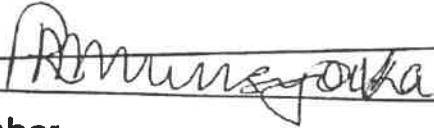


Chairman,

Historical Land Injustice Committee, National Land Commission

Signed:

Commissioner Dr. Rose Musyoka

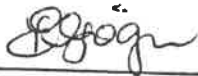


Member,

Historical Land Injustice Committee, National Land Commission

Signed:

Commissioner Emma Njogu



Member,

Historical Land Injustice Committee, National Land Commission

Signed:

Commissioner Dr. Clement Lenachuru



**Member  
Historical Land Injustice Committee, National Land Commission**

