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Rt. Hon. Speaker
The report is in order
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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - THIRD SESSION - 2024


PUBLIC PETITIONS COMMITTEE

PARLIAMENT
OF KENYA
LIBRARY

REPORT ON-

CONSIDERATION OF PUBLIC PETITION NO. 33 OF 2023 REGARDING COMPENSATION
OF PERSONS AFFECTED BY MOMBASA- MARIAKANI DUALLING PROJECT

NOVEMBER, 2024

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 27 NOV 2024	
DAY: <u>Wednesday</u>	
TABLED BY:	Hon. Nimrod Mbari (Chairperson)
CLERK-AT THE-TABLE:	Lomale

Directorate of Legislative & Procedural Services
Clerk's Chambers
Main Parliament Buildings
NAIROBI

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LIST OF ACRONYMS

KeNHA	Kenya National Highways Authority
NLC	National Lands Commission
CSR	Corporate Social Responsibility

CHAIRPERSON'S FOREWORD

On behalf of the Public Petitions Committee and pursuant to the provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on Petition No. 33 of 2023 regarding compensation of persons affected by Mombasa- Mariakani dualling project.

The Petition was presented to the House pursuant to Standing Order No. 225 (2) (a) by Hon. Bady Twalib Bady, M.P. on behalf of the people affected by the Mombasa West Community Project in Jomvu Constituency.

The Committee considered the Petition and observed that pursuant to Article 40(3) of the Constitution and section 110 of the Land Act (Cap. 280), the National Land Commission on behalf of the Kenya National Highway Authority compulsorily acquired the parcels for a public purpose of expanding the Mombasa-Mariakani road. However, some of the interested persons of Jomvu constituency are yet to be paid due to disputes on property ownership.

The Committee recommends that any dispute that relates to compensation may be referred to the Environment and Lands Court pursuant to section 128 of the Land Act (Cap. 280)

The Committee appreciates the Offices of the Speaker and Clerk of the National Assembly for providing guidance and necessary technical support without which its work would not have been possible. The Chairperson expresses gratitude to the Committee Members for their devotion and commitment to duty during the consideration of the Petition.

On behalf of the Committee and pursuant to the provisions of Standing Order 199, I now wish to lay the Report on the Table of the House.



HON. NIMROD MBITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE

Date.....20/11/2024.....

PART ONE

1 PREFACE

1.1 Establishment and Mandate of the Committee

The Public Petitions Committee is established under the provisions of Standing Order 208A with the following terms of reference:

- a) considering all public petitions tabled in the House;
- b) making such recommendations as may be appropriate with respect to the prayers sought in the petitions;
- c) recommending whether the findings arising from consideration of a petition should be debated; and
- d) advising the House and reporting on all public petitions committed to it.

1.2 Committee Membership

The Public Petitions Committee was constituted in October 2022 and comprises the following Members:

Chairperson

Hon. Nimrod Mbithuka Mbai, M.P.

Kitui East Constituency

United Democratic Alliance (UDA)

Vice Chairperson

Hon. Janet Jepkemboi Sitienei, M.P.

Turbo Constituency

United Democratic Alliance (UDA)

Hon. Patrick Makau King'ola, M.P.

Mavoko Constituency

Wiper Democratic Movement-Kenya
(WDM-K)

Hon. Edith Vethi Nyenze, M.P.

Kitui West Constituency

Wiper Democratic Movement-Kenya
(WDM-K)

Hon. Ernest Kivai Ogesi Kagesi, M.P.

Vihiga Constituency

Amani National Congress (ANC)

Hon. Maisori Marwa Kitayama, M.P.

Kuria East Constituency

United Democratic Alliance (UDA)

Hon. Joshua Chepyegon Kandie, M.P.

Baringo Central Constituency

United Democratic Alliance (UDA)

Hon. John Walter Owino, M.P.

Awendo Constituency

Orange Democratic Movement (ODM)

Hon. Bernard Muriuki Nebart, M.P.

Mbeere South Constituency

Independent

Hon. Bidu Mohamed Tubi, M.P.

Isiolo South

Jubilee Party (JP)

Hon. Caleb Mutiso Mule, M.P.

Machakos Town Constituency

Maendeleo Chap Chap Party (MCCP)

Hon. John Bwire Okano, M.P.

Taveta Constituency

Wiper Democratic Movement-Kenya
(WDM-K)

Hon. Peter Mbogho Shake, M.P.

Mwatate Constituency

Jubilee Party (JP)

Hon. Sloya Clement Logova, M.P.

Sabatia Constituency

United Democratic Alliance (UDA)

Hon. Suzanne Ndunge Kiamba, M.P.

Makueni Constituency

Wiper Democratic Movement-Kenya
(WDM-K)

1.3 Committee Secretariat

The Public Petitions Committee was facilitated members of the secretariat:

Lead Clerk
Mr. Ahmed Kadhi
Principal Clerk Assistant II

Ms. Anne Shibuko
First Clerk Assistant

Mr. Willis Obiero
Clerk Assistant III

Ms. Patricia Gichane
Legal Counsel II

Ms. Nancie Akinyi
Research Officer III

Mr. Calvin Karungo
Media Relations Officer III

Ms. Miriam Modo
First Clerk Assistant

Ms. Isaac Nabiswa
Legal Counsel II

Mr. Martin Sigei
Research Officer III

Mr. Paul Shana
Serjeant-at-Arms

Mr. Peter Mutethia
Audio Officer

PART TWO

2 BACKGROUND TO THE PETITION

2.1 Introduction

1. Public Petition No. 33 of 2023 regarding Compensation of Persons Affected by Mombasa-Mariakani Road Dualling Project was presented to the House on Tuesday, 4th July 2023 by the Hon. Bady Twalib Bady, M.P on behalf of the Project Affected Persons (PAPs) of Jomvu Constituency.
2. The Petitioner averred that the Kenya National Highway Authority (KeNHA) undertook rehabilitation and expansion of a 41.3km Regional Mombasa Port Access Road running from Mombasa to Mariakani as part of a 2,000-kilometer-long corridor directly connecting the Port of Mombasa to several neighboring countries. However, the construction had stopped in Jomvu Madafuni area where the road was in a pathetic state despite the area being a gateway to Mombasa City.
3. Whereas the construction part of the project was financed by the African Development Bank, German KFW, European Investment Bank and the EU-Africa Infrastructure Trust Fund, the Government was to oversee compensation of all PAPs on the project corridor.
4. Following this funding model, KENHA prepared a faulty Resettlement Action Plan in 2014. The project design excluded the use of the Geographic Information System for asset inventory tabulation, but later KENHA claimed that the project was allegedly on public land.
5. The National Land Commission (NLC) conducted an unclear valuation that led to grave injustice being meted out on the PAPs.
6. Contrary to expectations and agreement, KeNHA proceeded to brutally evict residents of Jomvu Constituency from their houses without notice in May 2017, whilst the NLC omitted many residents and property-owners from the final compensation list.
7. Efforts by the PAPs to secure the collaboration and cooperation of KeNHA and NLC were futile.

2.2 Prayers

8. The Petitioners prayed that the Committee—
 - (i) Urgently intervenes to compel the NLC to compensate the PAPs fairly in accordance with the actual value of their assets, and to disclose the valuation report feedback.
 - (ii) Directs KeNHA to implement the Corrective Action Plan agreed upon with the PAPs and to additionally embrace the use of Geographic Information System in asset inventory.

(iii) Makes any other recommendation or action it deems fit in addressing the plight of the petitioners.

PART THREE

3 STAKEHOLDERS' SUBMISSIONS ON THE PETITION

3.1 Petitioner

On Wednesday, 20th March 2024, the Petitioner, Hon. Bady Twalib Bady, M.P. appeared before the Committee and submitted as follows—

9. Various residents earmarked for compensation had been given allotment letters that have never been honored. Some of the PAPs had been compensated at meagre amounts which were a far cry from the market value of the land. An example was given of a petitioner who was compensated a sum of Kshs. 600,000, despite officials from the Ministry of Lands having valued the land at Kshs. 2.160m. In addition, some of the PAPs had died without being compensated.
10. The PAPs included owners of businesses around the project area including Owino Uhuru, Bangladesh, Birikani, Bahati and other areas who had not been compensated for loss of their properties.
11. There was no proper representation of the PAPs in the committees deliberating on the matter including negotiations with the respective authorities. Further, it was not clear how many PAPs had been compensated and at what rate.

3.2 Kenya National Highway Authority

On Thursday, 13th June 2024, the Director General KENHA, appeared before the Committee and submitted as follows—

12. The work at Kwa Jomvu have delayed due to ongoing court cases. The petitioners obtained court orders stopping the Authority and its agents from accessing and executing any construction works in the area. The two major court cases hampering the completion of the Kwa Jomvu Interchange were—
 - (i) **Kamlesh Pandya (SYNERGY GASES LTD) -Court Injunction stopping the demolition of structures encroaching road reserve. MSA HC Petition No. 13 of 2015; and**
 - (ii) **Mistry Premji Investments Ltd -Court Injunction stopping demolition of structures encroaching road reserve. MSA HC Petition no.106 of 2015.**
13. These two cases were peculiar as the parties were challenging that the road reserve was their land and contesting the compensation awards given by the NLC in court, hence the need for out-of-court negotiations.
14. The Authority had engaged the two parties for an out-of-court settlement to allow the progress of the works, including engaging the Cabinet Secretary for the Ministry of Roads and Transport, but the efforts were not successful. In the interim, the Authority carried out the maintenance of the road to ensure proper motor ability. Consequently, the road was therefore in good condition

as the Authority waits for the conclusion of the court cases to enable the execution of permanent works.

15. There had been eleven (11) cases in court, but the two outstanding cases had stopped the work. The rest had been resolved, including through redesigning the road.
16. The funding model through the loan agreement provided that the compensation of the PAPs was the responsibility of the Government through KENHA as the project executing agency and the NLC.
17. The total awards for compensation in the project were Kshs. 5,324,943,181.58 out of which the NLC had paid out Kshs. 4,445,270,894.95 to the PAPs. The unpaid amount was Kshs. 879,672,286.63. Out of the unpaid amount, KENHA had disbursed to the NLC Kshs. 570,311,816.87 which was yet to be paid out to the PAPs mainly due to disputes and the court cases by the PAPs on property ownership. Approximately Kshs. 300 million owed to PAPs was yet to be transmitted to the NLC, and this amount could increase after the finalization of court cases.
18. The money from KENHA to the NLC is placed in an NLC bank account, awaiting the beneficiaries to resolve their issues. Despite the money earning interest, the land and property owners would make a claim on the interest and the government would not stall the process for its own benefit.
19. In October 2014, KENHA contracted a consulting firm, M/s Aquaclean Services, to develop the Resettlement Action Plan (RAP) including compiling details of the people who would be affected by the project. The RAP report detailed the Geographic Information System (GIS) location of the PAPs with clear location coordinates and inventory of assets together with the entitlement matrix for each.
20. The process of identifying legitimate PAPs was rigorous, ensuring that the persons, land, and property affected were genuine. To eliminate illegitimate claimants, there was a cutoff date to identify legitimate PAPs, ensuring that traders who come later seeking compensation were excluded.
21. The RAP report was further reviewed in January 2017, by M/s Panafcon Development Limited also contracted by KENHA. The RAP report included the PAPs who were doing business while encroaching the road reserve.
22. The land acquisition was carried out by the NLC as prescribed in law and due process was followed. This is illustrated in the following:
 - (i) Cabinet Secretary for Roads and Transport writing to the Chairman of the National Land Commission (NLC) on 25th September 2015 as the law requires;
 - (ii) NLC as required issued the Gazette Notice on 18th December, 2015;
 - (iii) NLC then carried out the inspection, valuations, and later issued the awards to the PAPs; and
 - (iv) NLC has further visited the site on several occasions to resolve any issues involving compensation and complaints from the PAPs.

23. The KeNHA had not forcefully evicted any of the PAPs even after due compensation. The PAPs were given thirty (30) days' notice to relocate their property. All the pending compensation cases were mainly due to disagreements within the PAPs on the right to be compensated. The Authority would not undertake forceful evictions as due process was provided for in the law. Furthermore, development partners in such projects have strict loan conditions that do not allow for forceful evictions. Additionally, some parties have put claims against the maps in court, and the process is ongoing.
24. For the sections where the PAPs had not been compensated, works were yet to be executed, and the PAPs were still on site as evidenced by the delay in work at the Kwa Jomvu Interchange.
25. The PAPs were accorded an utmost opportunity to air their views and complaints in the road projects throughout the implementation of the project. This was through continuous public participation and the establishment of the Grievance Redress Committee (GRC) which was cascaded downwards to the locational committee comprised of—
 - (i) PAPs elected representative;
 - (ii) Village elder;
 - (iii) Religions leader (Muslim/Christian);
 - (iv) Person with disability; and
 - (v) Youth presentative.
26. The community could use these committees to lodge any complaints. The GRC meetings were held quarterly or whenever issues arose. Besides the GRC, there was significant public participation and interaction, with officials always reachable through toll free telephone lines for receiving community complaints.
27. The total number of PAPs was 617, out of which 529 had been compensated, leaving 89 pending, who were not part of the two cases in court. The reason these 89 were yet to be compensated was due to their own internal family disputes in most cases. These disputes must be resolved, and a beneficiary identified. The NLC and KeNHA assisted in resolving these disputes gradually using community liaison officers before the NLC releases the funds to them. KeNHA committed to expediting the compensation for these eighty-eight (88) PAPs as they are not in court.
28. The compulsory acquisition of land was guided by sections 107 to 133 of the Land Act 2012. The process begins with KeNHA submitting a request through the Cabinet Secretary to the NLC. The areas sought for acquisition are mapped and owners engaged. The NLC then gazettes the intention to acquire and the inquiry period, during which all PAPs submit their claims.
29. Every gazettement by the NLC is issued to the PAPs for transparency. Thereafter, inspection and valuation for compensation are conducted, written awards are issued to PAPs, who can signify acceptance or rejection.
30. Following acceptance by PAPs, the NLC prepared a payment schedule for those who have accepted the awards and forwards it to KENHA for the transmission of compensation funds to the NLC. KENHA verifies the schedule and remits the

funds to the NLC to pay the beneficiaries, providing returns for record reconciliation by KENHA. The law also allows early entry in certain cases, as a notice of taking possession is issued to PAPs either before or after paying compensation. The Government takes possession, a final survey is done, and the land becomes public land.

Vide a letter Ref: KeNHA/0.5B/AfDB/3549/VOL.10/5736 and dated 2nd July 2024, Eng. Kungu Ndungu, the Director General, KENHA submitted a written response as follows—

31. The total number of PAPs in the subject project was six hundred and seventeen (617) with total compensation amount being Kshs5,324,943,181.58. To date, five hundred and twenty-nine (529) PAPs have been compensated a total of Kshs4,445,270,894.95.
32. The total outstanding compensation amount was Kshs879,672,286.63 for eighty-eight (88) PAPs. However, Kshs570,311,816.87 of the outstanding Kshs879,672,286.63 had already been disbursed to NLC. Remittance of the remaining Kshs.309,360,469.76 was pending due to budgetary constraints.
33. There were three (3) ongoing court cases related to land acquisition at Kwa Jomvu area whose outcome may result in requirement for additional funds for land acquisition. The request for additional funds shall be made once the court cases are concluded.
34. The acquisition of land in 1969 were evidenced by—
 - (i) Kenya Gazette Notices No. 3581 of 21st November 1969 and No. 3637 of 28th November 1969;
 - (ii) Land compensation schedules showing the names of the beneficiaries and the amounts paid;
 - (iii) Copies of Notice of Taking Possession for the acquired parcels. The Notices were also requesting submission of affected titles for amendments to the Registrar; and
 - (iv) Copies of land acquisition drawings of 1969.

3.3 Site Visit

On Saturday, 27th April 2024 the Committee conducted a site visit to Jomvu Constituency during which it engaged the petitioners including members of Okoa Watu Cobweb Community Based Organisation, officials from KENHA and officials from the NLC in a town hall meeting who submitted as follows—

3.3.1 Submissions by the PAPs

35. The Mombasa-Mariakani Road expansion project was a substantial infrastructure development that aimed to improve transit and reduce congestion in and out of Mombasa. However, the project encountered challenges, particularly in compensation of residents affected by land acquisition.

36. In 2018, KENHA in conjunction with NLC undertook the process of compensating all the affected residents of Jomvu and registered them but some of them did not end up on the final compensation list.
37. A committee was formed to map out the residents who were due for compensation. However, some residents on the PAPs list were never compensated.
38. The PAPs have tried to reach the stakeholders including KENHA, NLC, the Attorney General and the African Development Bank who were the financiers of the project for a way forward on the issue but have no lasting solution was found.
39. There have been allegations of corruption and mismanagement in the compensation process, leading to mistrust among the residents. This led to residents requesting an investigation by the Directorate of Criminal Investigation.
40. Affected residents resolved to alternative justice systems, which in this case was mediation, held at the Kenya School of Government, Mombasa in 2022 to solve the compensation issue. Despite receiving awards of different amounts, not all of them were paid.
41. There were allegations that some affected residents signed under duress to have received compensation from KENHA, while others received partial compensation. There were also delays and at times no communication regarding when the full disbursement was to be paid.
42. Most of the residents who received compensation were unsatisfied with the amount allocated as it did not reflect the true value of the loss incurred during the demolition. This has led to legal challenges which has in turn contributed to the delayed compensation. This is evident from the numerous complaints that were filed at KENHA.
43. KENHA paid the affected residents in general without considering the compensation of structures and business losses incurred during the demolitions.
44. The PAPs were praying for afresh evaluation to be conducted due to the current economic conditions and high cost of living as compared to the same in 2018.
45. Despite all the challenges, KENHA had conducted a Corporate Social Responsibility (CSR) exercise by building the community a local market in which they could conduct business which is worth approximately Kshs. 50 million.

3.3.2 Submissions by Kenya National Highway Authority

Eng. Antony Omach, representing KENHA made submissions as follows—

46. The Authority had an amicable relationship with the local community and was amicable with numerous public participation meetings regarding solving the compensation issue with the residents of Jomvu.
47. KENHA had agreed to facilitate the compensate all legitimate PAPs occasioned by the road construction and extra awards were paid to PAPs who were not registered earlier. Mediation efforts were carried out which led to full payment of twenty-seven (27) PAPs who were in the process.
48. The Authority established Grievance Redress Committees (GRCs) from the location level to deal with various complaints by the residents on the state of the road and matters compensation. Therefore, KENHA actively addressed the concerns raised by the residents.
49. Continued efforts to expedite the compensation processes, increase transparency, and communicate with the community was critical to addressing these issues and ensuring a fair resolution for all PAPs.

3.3.3 Submissions by the National Lands Commission

Mr. Mariko Kaliamoi representing NLC submitted as follows—

50. There was a mediation process was conducted in 2022 at the Kenya School of Government which involved 400 people affected by the highway expansion.
51. The valuation report on the compensation was guided by law. It was shared publicly as well as with the Directorate of Criminal Investigation, KENHA and the office of the Auditor General.
52. After conducting inquiries, awards were issued indicating the amount paid for land, structure and the business destroyed. During the inquiry, all the PAPs with awards were paid in full.
53. There were no cases of Jomvu residents being under duress in signing for payments. The form indicated the amount one would be paid, the amount which they accepted and were paid the full amount.
54. The Commission was aware of some pending payments due to ongoing court cases hence the compensation of the residents was slowed down further.

3.3.4 Observations

Following the guided tour of the project area and engagement with the PAPs, NLC and KENHA, the Committee made the following observations—

55. Despite the claims by NLC and KENHA that due process was followed in identifying and compensating the PAPs, a significant number of PAPs made counter claims and allegations expressing disgruntled with the process.

56. The pending complaints and claims majorly concerned inadequate compensation.

57. At the Kwa Jomvu area, the project was stalled creating difficulties in passage due to dust and incomplete sections including walkways, uncleared presence of hips of soil, concrete and other construction materials.



Figure 1: Hon. Bady Twalib, M.P. Jomvu Constituency, taking Members of the Committee on a guided tour of the Mombasa- Mariakani Road



Figure 2: A section of the Mombasa-Mariakani Road undergoing construction.

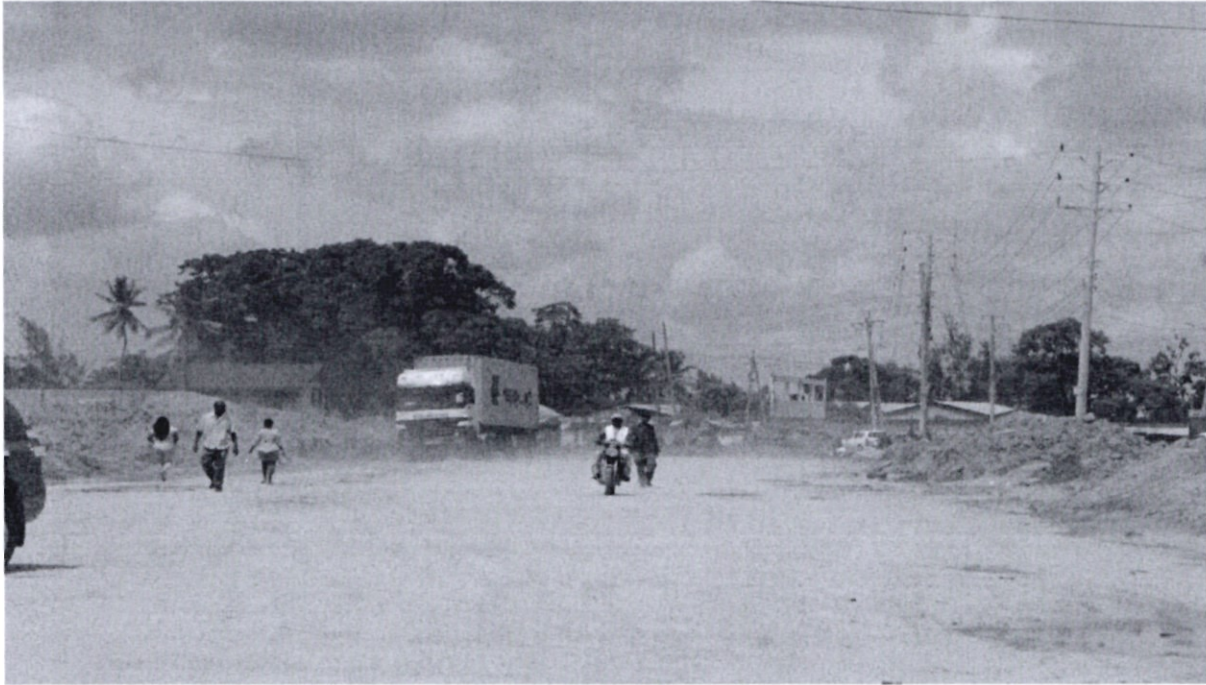


Figure 3: *Incomplete sections of the road project at Kwa Jomvu area*

58. As part of Community Social Responsibility (CSR), KENHA had constructed a community market in the area to accommodate traders originally operating along the project area.
59. The compensation of PAPs was being effected in sections based on priority areas for beginning works.

PART FOUR

4 COMMITTEE OBSERVATIONS

60. Upon hearing from the Petitioner, PAPs, KENHA, NLC and conducting a site visit, the Committee observed that—

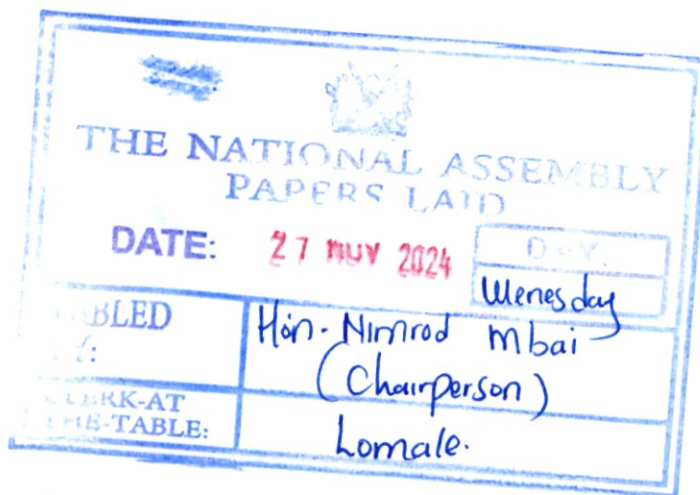
- (i) Article 40(3) prohibits the State from depriving a person of property of any description unless the deprivation is for a public purpose or in the public interest and is carried out in accordance with the Constitution and the Land Act (Cap. 280) which allows prompt payment in full of just compensation and allows a person who has interest in that property access to a court of law. Based on these provisions of the Constitution and the Land Act, KENHA, through NLC, compulsorily acquired land for the expansion of Mombasa-Mariakani (A109) road.
- (ii) Pursuant to section 111 (1) of the Land Act, where land is compulsorily acquired, compensation shall be paid promptly in full to all persons whose interest in the land has been determined. However, the compensation process has been slow which has led to frustrations among the affected parties.
- (iii) Section 115 (1) of the Land Act provides for circumstances where NLC may withhold the payment of compensation to a person having an interest in the land. These circumstances include where there is no person competent to receive payment; where the person entitled does not consent to receive the amount awarded; or where there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which the compensation is to be paid. In this regard, NLC has acknowledged that some of the PAPs are yet to be paid their share of compensation due to existing disputes.
- (iv) Some PAPs complained that their compensation was either inadequate to compensate for their losses or delayed. The displaced families now face even more financial difficulties as a result of some receiving sums that were insufficient to restore their businesses or rebuild their homes.
- (v) The NLC organized public forums to get feedback on the compensation process. During these forums, PAPs were informed of the criteria for valuation and were given opportunities to give feedback on issues arising.

PART FIVE

5 COMMITTEE RECOMMENDATIONS

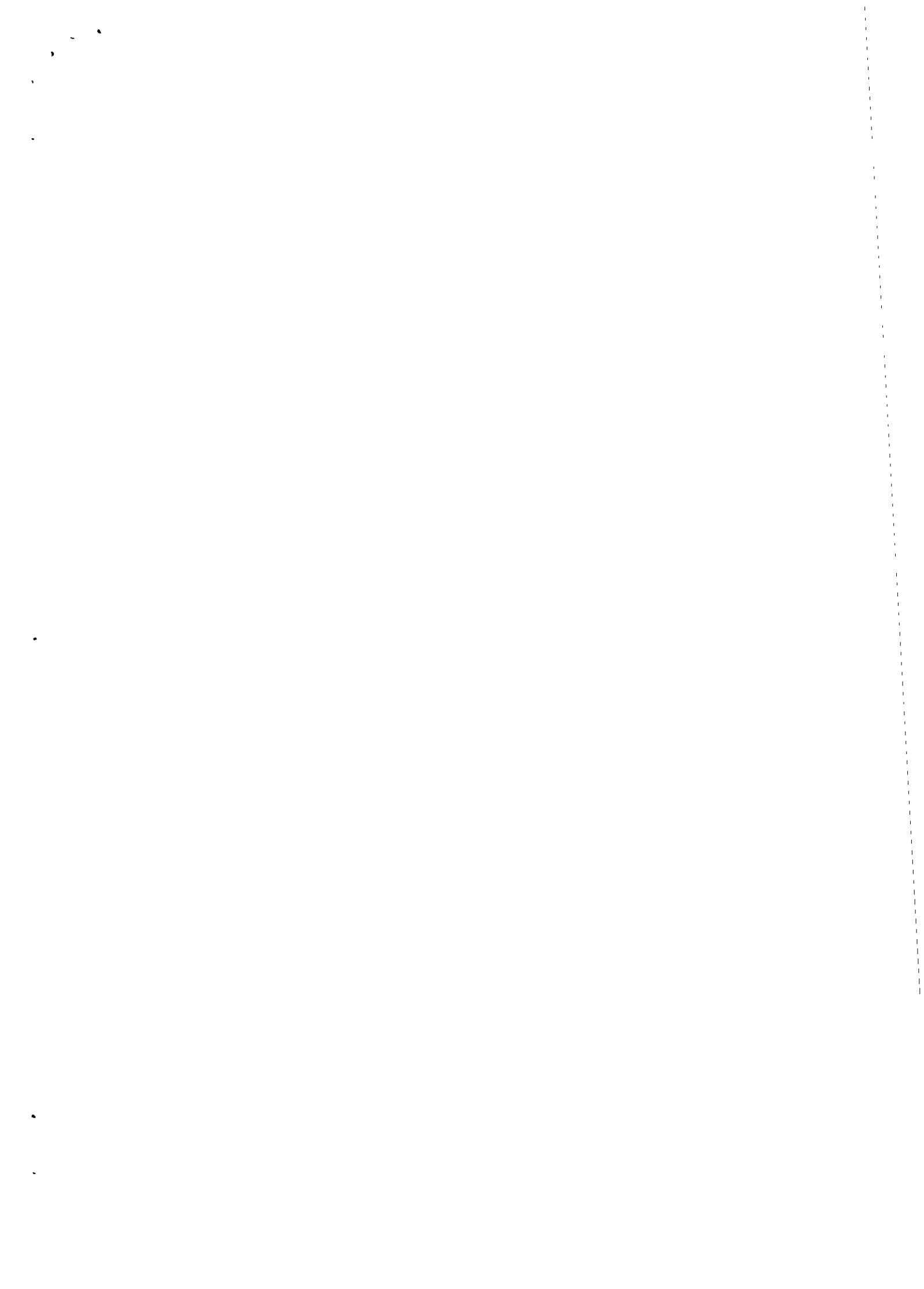
61. Pursuant to the provisions of Standing Order 227, the Committee makes the following recommendations—

- (i) The Committee rejects the prayer that the House urgently intervenes to compel the NLC to compensate the Project Affected Persons fairly in accordance with the actual value of their assets, and to disclose the valuation report feedback. This was on the grounds that, pursuant to section 113(2) of the Land Act, an award of compensation is final and conclusive evidence of the value of the land. However, the Committee recommends that any dispute arising out of compensation may be referred to the Environment and Land Court for a determination pursuant to section 128 of the Land Act.
- (ii) The Kenya National Highway Authority should implement the corrective action plan agreed upon with the affected persons and embrace the use of geographic information system in asset inventory within sixty (60) days of tabling of the report.
- (iii) The Kenya National Highway Authority should fast track the completion of the project especially at the Kwa Jomvu area, where the project has stalled and secondly take measures to deal with the dust and complete the walkways, clear the hips of soil, concrete and other construction materials on the site within sixty (60) days of tabling of the report.



Signed:  Date: 25/11/2024

THE HON. NIMROD MBITHUKA MBAI, M.P.
CHAIRPERSON, PUBLIC PETITIONS COMMITTEE



ANNEXURES

- Annex 1: The Adoption List**
- Annex 2: Public Petition no. 33 of 2023 regarding compensation of persons affected by Mombasa- Mariakani Dualling Project**
- Annex 3: Minutes of 11th Sitting of 2024 held on 20th March 2024**
- Annex 4: Minutes of 41st Sitting of 2024 held on 13th June 2024**
- Annex 5: Minutes of 59th Sitting of 2024 held on 8th November 2024**



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION - 2024
PUBLIC PETITIONS COMMITTEE

ADOPTION SCHEDULE
OF THE REPORT ON CONSIDERATION OF PUBLIC PETITION NO. 33 OF 2023
REGARDING COMPENSATION OF PERSONS AFFECTED BY MOMBASA- MARIAKANI
DUALLING PROJECT

DATE..... 8TH NOVEMBER 2024

We, the undersigned Honourable Members of the Public Petitions Committee, do hereby affix our signatures to this Report on the consideration of **Public Petition No. 33 of 2023 regarding Compensation of Persons Affected by Mombasa- Mariakani Dualling Project** to confirm our approval and confirm its accuracy, validity and authenticity:

NO.	NAME	DESIGNATION	SIGNATURE
1.	Hon. Nimrod Mbithuka Mbai, M.P.	Chairperson	
2.	Hon. Janet Jepkemboi Sitienei, M.P.	Vice Chairperson	
3.	Hon. Patrick Makau King'ola, M.P.	Member	
4.	Hon. Joshua Chepyegon Kandie, M.P.	Member	
5.	Hon. John Walter Owino, M.P.	Member	
6.	Hon. Ernest Ogesi Kivai, M.P.	Member	
7.	Hon. Maisori Marwa Kitayama, M.P.	Member	
8.	Hon. Edith Vethi Nyenze, M.P.	Member	
9.	Hon. Bidu Mohamed Tubi, M.P.	Member	
10.	Hon. Caleb Mutiso Mule, M.P.	Member	
11.	Hon. (Eng.) Bernard Muriuki Nebart, M.P.	Member	
12.	Hon. Peter Mbogho Shake, M.P.	Member	
13.	Hon. Suzanne Ndunge Kiamba, M.P.	Member	
14.	Hon. John Bwire Okano, M.P.	Member	
15.	Hon. Sloya Clement Logova, M.P.	Member	



**REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (SECOND SESSION)**

PUBLIC PETITION

(No. 33 of 2023)

**REGARDING COMPENSATION OF PERSONS AFFECTED BY
MOMBASA – MARIAKANI ROAD DUALLING PROJECT**

I, the **UNDERSIGNED**, on behalf of Mombasa West Community Project Affected Persons of Jomvu Constituency;

DRAW the attention of the House to the following:

1. **THAT**, the Kenya National Highway Authority (KeNHA) undertook rehabilitation and expansion of a 41.3km Regional Mombasa Port Access Road from Mombasa Town heading to Mariakani as part of a 2,000km-long corridor directly connecting the Port of Mombasa to several neighbouring countries, but whose construction has stopped in Jomvu Madafuni where the said road is in a pathetic state despite being the gateway to Mombasa;
2. **THAT**, whereas the construction part of the project was financed by the African Development Bank, German KfW, European Investment Bank and the EU-Africa Infrastructure Trust Fund, the Government of Kenya was to oversee compensation of all Project Affected Persons on the project corridor;
3. **THAT**, pursuant to this arrangement, in 2014 KeNHA prepared a faulty Resettlement Action Plan that excluded use of Geographic Information System on asset inventory tabulation, but later claimed that the project was allegedly on public land;
4. **THAT**, on its part, the National Land Commission conducted an unclear valuation that led to grave injustice being meted out on Project Affected Persons;

*Hon. Speaker
Hon. Member
Approved
22.6.23*

*Approved
SNA
27/6/23*

PUBLIC PETITION

**REGARDING COMPENSATION OF PERSONS AFFECTED BY
MOMBASA – MARIAKANI ROAD DUALLING PROJECT**

5. **THAT**, contrary to expectations and agreement, KeNHA proceeded to brutally evict residents of Jomvu Constituency from their houses without notice in May 2017, whilst the National Land Commission omitted many residents and property-owners from the Final Compensation List;
6. **THAT**, efforts by the Project Affected Persons to secure the collaboration and cooperation of KeNHA and the National Lands Commission have been futile;
7. **AND THAT** , the issues in respect of which this Petition is raised are not pending before any court of Law, or any constitutional or legal body .

THEREFORE, your humble petitioners pray that the National Assembly through the Public Petitions Committee;

-
- a) urgently intervenes to compel the National Lands Commission to compensate Project Affected Persons fairly and in accordance with actual value of their assets; and to disclose the Valuation Report Feedback;
 - b) directs KeNHA to implement that Corrective Action Plan agreed with Project Affected Persons and to additionally embrace use of Geographic Information System in Asset Inventory, and
 - c) makes any other recommendation or action it deems fit in addressing the plight of the Petitioners.

And your **PETITIONER** will ever pray.

PRESENTED BY:



**THE HON. BADY TWALIB BADY, MP
MEMBER FOR JOMVU CONSTITUENCY**

DATE: 21/6/2023



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 11TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON WEDNESDAY, MARCH 20, 2024, IN COMMITTEE ROOM 24, BUNGE TOWERS, PARLIAMENT BUILDINGS AT 12.00 NOON

PRESENT

- | | | |
|---|---|----------|
| 1. Hon. Ernest Ogesi Kivai, M.P. | - | Chairing |
| 2. Hon. Joshua Chepyegon Kandie, M.P. | | |
| 3. Hon. Maisori Marwa Kitayama, MP | | |
| 4. Hon. John Walter Owino, M.P. | | |
| 5. Hon. Edith Vethi Nyenze, M.P. | | |
| 6. Hon. Bidu Mohamed Tubi, M.P. | | |
| 7. Hon. (Eng.) Bernard Muriuki Nebart, M.P. | | |
| 8. Hon. Peter Mbogho Shake, M.P. | | |
| 9. Hon. Suzanne Ndunge Kiamba, M.P. | | |

APOLOGIES

- | | | |
|--|---|------------------|
| 1. Hon. Nimrod Mbithuka Mbai, M.P. | - | Chairperson |
| 2. Hon. Janet Jepkemboi Sitienei, M.P. | - | Vice Chairperson |
| 3. Hon. Patrick Makau King'ola, M.P. | | |
| 4. Hon. Caleb Mutiso Mule, M.P. | | |
| 5. Hon. John Bwire Okano, M.P. | | |
| 6. Hon. Sloya Clement Logova, M.P. | | |

IN ATTENDANCEMINISTRY OF LABOUR AND SOCIAL PROTECTION

- | | | |
|------------------------|---|--------------------------|
| 1. Hon. Florence Bore | - | Cabinet Secretary |
| 2. Ms. Hellen Apiyo | - | Commissioner for Labour |
| 3. Mr. Douglas Katho | - | Director, Liaison |
| 4. Ms. Mercy Kandie | - | Communications Assistant |
| 5. Mr. Kenneth Kasyoki | - | Labour Officer |
| 6. Mr. Peter Mutema | - | Senior Labour Officer |
| 7. Mr. Daniel Kigen | - | Communications Officer |

PETITIONER

- | | | |
|-------------------------------|---|--|
| 1. Hon. Bady Twalib Bady, M.P | - | Member of Parliament, Jomvu Constituency |
| 2. Ms. Aziza Juma Daudi | - | Petitioner and residence of Jomvu |

SECRETARIAT

- | | | |
|-------------------------|---|-----------------------------|
| 1. Mr. Ahmed Kadhi | - | Senior Clerk Assistant |
| 2. Ms. Miriam Modo | - | Clerk Assistant I |
| 3. Ms. Patricia Gichane | - | Legal Counsel II |
| 4. Mr. Willis Obiero | - | Clerk Assistant III |
| 5. Mr. Martin Sigei | - | Research Officer III |
| 6. Mr. Calvin Karungo | - | Media Relations Officer III |
| 7. Mr. Paul Shana | - | Serjeant-at-Arms |
| 8. Mr. Peter Mutethia | - | Audio Officer |

MIN./PPETC/2024/ 076: PRELIMINARIES

The Chairperson called the meeting to order at 12:00 noon and proceedings began with prayers by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/077: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 6 of 2024 regarding Delays in posting medical interns, absorption of universal health coverage contract staff, conclusion of Collective Bargaining Agreements (CBAs) and Recognition Agreements in the health sector in the country.
 - Meeting with Council of Governors (CoG)
 - Meeting with CS, Ministry of Labor & Social Protection
6. Consideration of Public Petition No. 33 of 2023 regarding Compensation of persons affected by Mombasa-Mariakani Road Dualling Project
7. Consideration of Public Petition No. 82 of 2023 regarding Delay in completion of Jitoni-Rabai Road in Jomvu Sub-County
8. Any Other Business
9. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Peter Shake, M.P. and seconded by Hon. Joshua Chepyegon Kandie, M.P

MIN./PPETC/2024/078: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/079:

CONSIDERATION OF THE DRAFT REPORT OF
PUBLIC PETITION NO. 6 OF 2024 REGARDING
DELAYS IN POSTING MEDICAL INTERNS,
ABSORPTION OF UNIVERSAL HEALTH COVERAGE
CONTRACT STAFF, CONCLUSION OF COLLECTIVE
BARGAINING AGREEMENTS (CBAS) AND
RECOGNITION AGREEMENTS IN THE HEALTH
SECTOR IN THE COUNTRY

Meeting with Cabinet Secretary, Ministry of Labor & Social Protection

The Cabinet Secretary, Hon. Florence Bore appeared before the Committee and submitted as follows that—

- a) Owing to the fact that the issues raised in the petitions were ongoing national issues, the Ministry would provide a further detailed response to the petition.
- b) The Kenya Medical Practitioners, Pharmacists and Dentists Union (KMPDU) issued a strike notice on 28th November 2022 and in response, the Cabinet Secretary appointed a Conciliator who attempted to reconcile the parties.
- c) Given the complex nature of the dispute there was a need to have a broad-based intervention by various government agencies, from whom key information and opinion is required. The process was prolonged and not concluded amicably. The Conciliator's report of the negotiation process was released on 6th March 2024.
- d) The KMPDU recently issued a notice of strike on 6th March 2024 expressing intention to proceed on industrial action within seven days of the notice. There were several issues raised by the Union including non-implementation of the parties CBAs, negotiation of the new CBAs, and failure to implement court decisions and directives.
- e) In response, the Cabinet Secretary appointed a Conciliation Committee on 11th March 2024. In the meantime, the employer proceeded to Court and under Case Number ELRCPET/E032/2024 and obtained the following orders—
 - i. restraining orders against KMPPDU proceeding on industrial action;
 - ii. the Conciliation Committee appointed by the Cabinet Secretary to expeditiously proceed for the union and the concerned public service employers to conclude a Tripartite Memorandum of Understanding on the Minimum Safety services the members of the Union shall provide in the event of a strike;
 - iii. to institute a whole-nation approach towards resolving the instant outstanding dispute and to achieving a sustainable solution of the ongoing negotiation and conciliation to incorporate—
 1. Head of Public Service
 2. Cabinet Secretary, Ministry of Finance
 3. Cabinet Secretary for Ministry of Public Service

4. Cabinet Secretary for Labour and Social Protection
5. Salaries & Remuneration Commission (SRC)
6. Public Service Commission (PSC)
7. Council of Governors (COG) and each of the 47 County Governors
8. The Federation of Kenya Employers
9. Central Organization of Trade Unions (COTU)
10. All National Referral Hospitals and the parties to the suit

f) The role of Ministry was to bring the parties on the table for them to have an agreement and negotiations. The Conciliation Committee was ongoing with meetings to have an agreement between the parties.

Committee concerns

- a) Regarding the detailed written response to the petition from the Ministry, the CS indicated that the Ministry would present a detailed response within one week to enable the Committee proceed to prosecute the petition including the concerns raised by Members. The Members requested the CS to submit proposals for a long-term solution to sought the perennial issues in the health sector which were not going to go away.
- b) The Committee inquired whether the issue of posting of interns was not within the purview of the Ministry and how it would be addressed. In response, the CS indicated that the issue had not been submitted to the Ministry as well as other matter that were being dealt with by the Ministry of Health including the doctors, nurses and clinical officers.
- c) Regarding whether prosecuting the matters raised in the Petition would be *sub judice*, the Committee informed the CS that the Petitioners had earlier indicated that the issue before court was about the strike and not the matters in the petition and asked the CS to confirm the correct position. The CS indicated that the Ministry of Health had filed a court case seeking restraining orders and the courts would handle the matter.
- d) The Committee sought the opinion of the CS on whether KMPDU was justified to go on strike and how the Ministry would address their concerns. The CS stated that the unions had the right to strike. However, health services were essential and the matters need discussions for a way forward. For instance, the interns were awarded through the CBA to be paid Kshs. 206,000 because of the speciality of the medical field yet a common intern in Kenya was paid Kshs. 25,000. Therefore, there was need to relook by not necessarily bring the Kshs. 206,000 down to Kshs.25,000 but at least a reasonable and affordable figure could be negotiated not to burden the exchequer.

That despite the strike notice that was issued in 2022 but the process on conciliation required investigation which progressed slowly and took time as the dispute was a complex matter with a host of many issues. The Conciliator required information from different government agencies including Ministry of

Health, COG and the 47 governors, PSC, Ministry of National Treasury among others.

- e) The Committee asked about the preparedness of the Ministry to act swiftly to address the issues when they arise instead of waiting for strike notices to be issued. The Ministry indicated that on the operative CBA of 2017-2021 whose term lapsed, the Ministry of Labour and Social Protection was a neutral party assisting the parties to reconcile negotiation. The Ministry was not in a position to confirm that the CBA had not been implemented since it was just ceased of the matter and reconciliation process included negotiations of parties and was dependent on the facts which were established by way of investigations which the Ministry was involved in.
- f) Regarding the non-implementation of CBAs, the Ministry indicated that the issue of could only be ascertained once the progress of investigations and conciliation was concluded by way of a report or determined in court. As it were, the parties involved were of different opinions and were still making their presentation before the Conciliation Committee.
- g) Regarding whether the CS was aware of the Kericho Declaration Agreement and what the Ministry was doing about it, the CS indicated that the several stakeholders were engaging to find solutions to the several issues despite the budgetary concerns.
- h) The CS also clarified that the Petition covered concerns raised by the other unions and they had filed disputes to the Ministry and the detailed response would include their issues apart from the doctors'. The Committee clarified to the CS that there were other organised unions and association that the Petitioners had alleged that the Ministry had reportedly failed to recognise despite their registration.

Committee Decision

The Committee resolved that the CS, Ministry of Labour and Social Protection provides a detailed written response to the petition and issues raised by Members within one week including—

- i. Recognition of the registered health care workers' unions and associations;
- ii. Progress report on the work undertaken by Conciliation Committee;
- iii. Proposals on the long-term solutions to avert the labour-related issues that occasions perennial strike by health care workers;

MIN./PPETC/2024/080: CONSIDERATION OF PUBLIC PETITION NO. 33 OF 2023 REGARDING COMPENSATION OF PERSONS AFFECTED BY MOMBASA-MARIAKANI ROAD DUALLING PROJECT

Meeting with the Petitioner

The Member for Jomvu Constituency, Hon. Bady Twalib Bady, MP appeared before the Committee and submitted as follows:

- a) He was presenting the Petition on behalf of the people affected by the Mombasa West Community Project of Jomvu Constituency; that is, starting from Jomvu Narcol all the way to Bahati area
- b) THAT, the Kenya National Highways Authority (KeNHA) undertook rehabilitation and expansion of a 41.3 km regional Mombasa Port access road running from Mombasa to Mariakani as part of a 2,000 km-long corridor directly connecting the Port of Mombasa to several neighbouring countries but whose construction has stopped in Jomvu Madafuni where the said road is in a pathetic state despite being the gateway to Mombasa;
- c) THAT, whereas the construction part of the project was financed by the African Development Bank, German KfW, European Investment Bank and the European-Africa Infrastructure Trust Fund, the Government of Kenya was to oversee compensation of all affected persons on the project corridor;
- d) THAT, pursuant to this arrangement, in 2014, KeNHA prepared a faulty resettlement action plan that excluded use of geographic information system on asset inventory tabulation, but later claimed that the project was on public land;
- e) THAT, on its part, the National Land Commission conducted an unclear valuation that led to grave injustice being meted out on the persons affected by the project;
- f) THAT, contrary to expectations and agreement, KeNHA proceeded to brutally evict residents of Jomvu Constituency from their houses without notice in May 2017, whilst the National Land Commission omitted many residents and property-owners from the final compensation list;
- g) THAT, efforts by the affected persons to secure the collaboration and cooperation of KeNHA and the National Land Commission have been futile; and;
- h) THAT, the issues in respect of which this Petition is raised are not pending before any court of law or any constitutional or legal body.
- i) THAT, the Committee:
 - a. urgently intervenes to compel the National Land Commission to compensate the affected persons fairly and in accordance with the actual value of their assets and to disclose the contents of the valuation report, which they have declined to do up to now;
 - b. directs KeNHA to implement the corrective action plan agreed upon with the affected persons and to additionally embrace the use of geographic information system in asset inventory; and,
 - c. makes any other recommendation or action it deems fit in addressing the plight of the petitioners.

Allotment letters- the Committee enquired whether allotment letters had been issued. The petitioner responded that various residents have been given allotment letters that have never been honoured.

Compensation of stakeholders- the Committee was concerned on whether some of the affected persons had been compensated. The petitioner responded that some of the persons have been compensated at meagre amounts which are a far cry from the market value of the land. An example was given of a petitioner who was compensated a sum of Kshs. 600,000, despite officials from Ministry of Lands having valued the land at Kshs. 2.160m. In addition, some of these residents have since died without being compensated.

List of Project Affected Persons- the Committee enquired whether the petitioner had a list of persons that are to be compensated. The Petitioner responded that he had a list of business owners and people around Owino Uhuru, Bangladesh, Birikani Bahati and other areas who had not been compensated.

Proper representation of the Project Affected Persons- the Committee enquired on whether the affected parties constituted a committee to address their matter and whether there was any legal representation by the residents affected by the road in the process of negotiations with the relevant authorities. The petitioner responded that there was no such structure in place.

Relevant documentation- the Committee enquired on whether there was a valuation report from KENHA, how many people had been compensated and at what rate based on the size of land that had been acquired by the project. The petitioner responded that he was not in possession of the required documents.

MIN./PPETC/2024/081: CONSIDERATION OF PUBLIC PETITION NO. 82 OF 2023 REGARDING DELAY IN COMPLETION OF JITONI-RABAI ROAD IN JOMVU SUB-COUNTY

Meeting with the Petitioner

The Member for Jomvu Constituency, Hon. Bady Twalib Bady, MP appeared before the Committee and submitted as follows:

- a) THAT, the Jitoni-Rabai Road was launched by the then Deputy President, who is now our current President, His Excellency William Samoei Ruto, on 16th March 2018 and was meant to link the interior parts of Jomvu Constituency to Rabai Constituency without having to drive to Mazeras;
- b) THAT, the road was part of the old Mombasa-Nairobi Road and links the interior parts of Jomvu to areas like Mazeras and Rabai, thereby complementing the main Mombasa-Nairobi Highway;

- c) THAT, out of the 12 kilometres, the contractor made substantial progress and completed construction of the first nine kilometres, after which he abandoned the site without completing the remaining three kilometres on Jomvu side, despite residents demolishing their houses and businesses to pave way for the construction of the said road;
- d) THAT, the remaining section of the road is dilapidated exposing residents to extremely dusty conditions when it is dry and impassable due to mud accumulated during rainy weather;
- e) THAT, transport costs incurred by residents have tremendously increased due to high maintenance costs of vehicles and motorcycles passed on to users by service providers;
- f) THAT, access to water has been curtailed through destruction of pipes during construction of the road, which cannot be fixed until conclusion of the road construction. This has forced residents to incur exorbitant charges in accessing this basic commodity through purchase of water from water bowsers;
- g) THAT, efforts by the petitioners to have the matter addressed by the Kenya Urban Roads Authority (KURA) under Director-General, Eng. Kinoti, have been futile; and
- h) THAT, the matter presented in this Petition is not pending before any tribunal, court of law or independent body.
- i) Therefore, your humble Petitioners pray that the National Assembly, through the Public Petitions Committee:
 - (i) Compels KURA to complete construction of the road as per the contractual agreement within the next six months; and,
 - (ii) Makes any other recommendation or action it deems fit in addressing the plight of the petitioners.

MIN./PPETC/2024/082:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 02:30 p.m. The next meeting will be held on Thursday 21st March, 2024 at 09.00 a.m.

fol Sign: 

(CHAIRPERSON)

Date: 29/04/2024

REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 41ST SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON THURSDAY, JUNE 13, 2024, IN COMMITTEE ROOM 12, NEW WING, MAIN PARLIAMENT BUILDINGS AT 12.00. P.M

PRESENT

1. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
2. Hon. Joshua Chepyegon Kandie, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. Maisori Marwa Kitayama, MP
5. Hon. Edith Vethi Nyenze, M.P.
6. Hon. Bidu Mohamed Tubi, M.P.
7. Hon. Suzanne Ndunge Kiamba, M.P.

APOLOGIES

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Patrick Makau King'ola, M.P.
3. Hon. Ernest Ogesi Kivai, M.P.
4. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
5. Hon. Peter Mbogho Shake, M.P.
6. Hon. Sloya Clement Logova, M.P.
7. Hon. Caleb Mutiso Mule, M.P.
8. Hon. John Bwire Okano, M.P.

SECRETARIAT

- | | |
|-------------------------|-----------------------------|
| 1. Ms. Anne Shibuko | Clerk Assistant I |
| 2. Mr. Willis Obiero | Clerk Assistant III |
| 3. Ms. Patricia Gichane | Legal Counsel II |
| 4. Mr. Martin Sigei | Research Officer III |
| 5. Ms. Nancy Akinyi | Research Officer III |
| 6. Mr. Peter Mutethia | Audio Officer |
| 7. Mr. Calvin Karungo | Media Relations Officer III |
| 8. Mr. Paul Shana | Sergeant-at-Arms |

IN ATTENDANCE

KENYA NATIONAL HIGHWAYS AUTHORITY (KENHA)

- | | |
|-----------------------|-------------------------|
| 1. Eng. Kungu Ndungu | Director General |
| 2. Mr. Eliud Munene | Deputy Director, Survey |
| 3. Eng. Anthony Omach | Senior Engineer |
| 4. Ms. Irene Oyugi | Senior Accountant |

MIN./PPETC/2024/259: PRELIMINARIES

The Chairperson called the meeting to order at 12:00 noon. and proceedings began with prayers by Hon. Walter Owino, M.P.

MIN./PPETC/2024/260: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 33 of 2023 on Compensation of person affected by Mombasa-Mariakani Road Dualling Project

-Meeting with KENHA

6. Consideration of Public Petition No. 82 of 2023 on Delay in the Completion of Jomvu Kuu-Jitoni-Rabai Road in Jomvu Sub County

-Meeting with Kenya Urban Roads Authority (KURA)

7. Any Other Business
8. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Mohamed Tubi, M.P. and seconded by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/261: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The Agenda was deferred.

MIN./PPETC/2024/262: CONSIDERATION OF PUBLIC PETITION NO. 33 OF 2023 REGARDING COMPENSATION OF PERSONS AFFECTED BY THE MOMBASA MARIAKANI ROAD DUALLING PROJECT

The Director General of Kenya National Highway Authority, Eng. Kung'u Ndungu, MBS appeared before the Committee and submitted as follows regarding the Petition—

Issue 1: The Kenya National Highways Authority (KeNHA) undertook rehabilitation and expansion of a 41.3 Regional Mombasa Port Access Road from Mombasa Town heading to Mariakani as part of a 2,000 Km long corridor directly connecting the Port of Mombasa to several neighbouring countries, but whose construction has stopped in Jomvu Madafuni where the said road is in a pathetic state despite being the gateway to Mombasa.

Response:

- i. The works at Kwa Jomvu have delayed due to ongoing court cases. The petitioners obtained court orders stopping KeNHA and its agents from accessing and executing any construction works in the area. The two major court cases hampering the completion of the Kwa Jomvu Interchange are:
 - a) *Kamlesh Pandya (SYNERGY GASEŞ LTD)* -Court Injunction stopping demolition of structures encroaching road reserve. Mombasa High Court Petition No. 13 of 2015; and
 - b) *Mistry Premji Investments Ltd*- Court Injunction stopping demolition of structures encroaching road reserve. Mombasa High Court Petition No. 106 of 2015
- ii. KeNHA has been engaging the two parties for an out of court settlement to allow progress of the works, but the efforts have not been successful. In the interim, the Authority has carried out the maintenance of the road to ensure proper motorability. The road is currently in good condition as the Authority waits for the conclusion of the court cases to enable execution of permanent works.

Issue 2: Whereas the construction part of the project was financed by the African Development Bank German KfW, European Investment Bank and the EU-Africa Infrastructure Trust Fund, the Government of Kenya through KeNHA and the National Land Commission was to oversee compensation of all Project Affected Persons on the project corridor.

Response

- iii. The loan agreement provided that the compensation of the Project Affected Persons (PAPs) is the responsibility of the Government through KeNHA as the project executing agency and the NLC.

Issue 3: That KeNHA prepared a faulty Resettlement Action Plan that excluded the use of Geographic Information System on asset Inventory tabulation but later claimed that the project was allegedly on public land.

Response

- iv. In October 2014, KeNHA contracted a consulting firm, M/s Aquaclean Services, to developed the Resettlement Action Plan (RAP) including compiling details of the people who would be affected by the project. The

RAP report detailed the Geographic Information System (GIS) location of the PAPs with clear location coordinates and inventory of assets together with the entitlement matrix for each.

- v. The RAP report was further reviewed in January 2017, by M/s Panafcon Development Limited also contracted by KeNHA. The RAP report also included the PAPs who were doing business while encroaching the Road Reserve.

Issue 4: That the NLC conducted unclear valuation that led to grave injustice being meted out on the PAPs.

Response

- vi. The land acquisition was carried out by the NLC as prescribed in law and due process was followed. This is illustrated in the following:
 - a) Cabinet Secretary for Roads and Transport writing to the Chairman of National Land Commission (NLC) on 25th September, 2015 as the law requires.
 - b) NLC as required issued the Gazette Notice on 18th December, 2015.
 - c) NLC then carried out the inspection, valuations, and later issued the awards to the PAPs.
 - d) NLC has further visited the site on several occasions to resolve any issues involving compensation and complaints from the PAPs.

Issue 5: That contrary to expectations and agreement, KeNHA proceeded to brutally evict residents of Jomvu Constituency from their houses without notice in May 2017, whilst the NLC omitted many residents and property-owners from the final compensation list.

Response

- vii. KeNHA has not forcefully evicted any of the Project Affected Persons (PAPs) even after due compensation. The PAPS are given thirty (30) days notice to relocate their property. All the pending compensation cases are mainly due to disagreements within the PAPS on the right to be compensated.
- viii. For the sections where the PAPs have not been compensated, works are yet to be executed and the PAPs are still on site. This is evidenced by the delay in works at Kwa Jomvu interchange.
- ix. The total awards for compensation in the project are Kshs. 5,324,943,181.58 out of which the National Land Commission has paid out Kshs.

4,445,270,894.95 to the PAPs. The unpaid amount is Kshs. 879,672,286.63. Of the unpaid amount, KeNHA has disbursed to the National Land Commission Kshs. 570,311,816.87 which is yet to be paid out to the PAPs mainly due to disputes and court cases by the PAPs on property ownership.

Issue 6: That efforts by the PAPs to secure the collaboration and cooperation of KeNHA and the NLC have been futile.

Response

- x. The Project Affected Persons have been accorded utmost opportunity to air their views and complaints in the road projects throughout the implementation of the project. This has been through continuous public participation and the establishment of the Grievance Redress Mechanism which have been cascaded downwards to the locational committees. The committee is comprised of:
 - a) PAPs elected representative
 - b) Village elder
 - c) Religions leader (Muslim/Christian)
 - d) Person with disability
 - e) Youth presentative
- xi. The community can use these committees to lodge any complaints. The project also has toll free telephone lines for receiving community complaints.

Committee Concerns

- i. **Regarding the measures taken by KeNHA to fast-track the works that had taken long to complete**, the Director-General (DG) indicated that KeNHA had held numerous consultations at various levels with the two parties who had halted construction. This included engaging the Cabinet Secretary for the Ministry of Roads and Transport to settle the matter out of court. However, these efforts have not borne fruit. KeNHA clarified that these two parties were peculiar as they were challenging in court that the road reserve was their land and contesting the compensation awards given by the NLC in court, hence the need for out-of-court negotiations.
- ii. **Regarding claims of deliberate delays in compensating Project Affected Persons (PAPs)**, the DG clarified that the money from KeNHA to the NLC is placed in an NLC bank account, awaiting the beneficiaries to resolve their issues. Despite the money earning interest, the land and property owners

would make a claim on the interest. However, the government would not stall the process for its own benefit.

- iii. **Concerning the identification of beneficiary PAPs and the amounts owed to them**, the DG stated that KeNHA would submit a list of legitimate PAPs, including those who have been compensated and those yet to be compensated. He clarified that the process of identifying legitimate PAPs is rigorous, ensuring that the persons, land, and property affected are genuine. To eliminate illegitimate claimants, there is a cutoff date to identify legitimate PAPs, ensuring that traders who come later seeking compensation are excluded.
- iv. **Regarding the valuation of the land and properties and how the award amount is determined**, the DG clarified that this expertise lies with the NLC.
- v. **Regarding the number of PAPs**, KeNHA indicated that the total number of PAPs was 618, out of which 579 had been compensated, leaving 89 pending, who are not part of the two cases in court. The reason these 89 have not been compensated is due to their own internal family disputes in most cases. These disputes must be resolved and a beneficiary identified. The NLC and KeNHA have assisted in resolving these disputes gradually using community liaison officers before the NLC releases the funds to them. KeNHA committed to expediting the compensation for these 89 PAPs as they are not in court.
- vi. **Regarding pending cases apart from the two companies**, KeNHA submitted that there were eleven (11) cases in court, but the two outstanding cases had stopped the works. The rest had been resolved, including through redesigning the road.
- vii. **Concerning evidence of public participation and the Grievance Redress Committee (GRC)**, KeNHA indicated that meetings were held quarterly or whenever issues arose. Minutes of these meetings could be provided to the committee. Besides the GRC, there was significant public participation and interaction, with officials always reachable.
- viii. **Regarding the process of compulsory acquisition of land**, KeNHA clarified that it is guided by sections 107 to 133 of the Land Act 2012. The process begins with KeNHA submitting a request through the Cabinet Secretary to the NLC. The areas sought for acquisition are mapped and owners engaged. The NLC then gazettes the intention to acquire and the inquiry period, during which all PAPs submit their claims. Every gazettelement by the NLC is

issued to the PAPs for transparency. Thereafter, inspection and valuation for compensation are conducted, written awards are issued to PAPs, who can signify acceptance or rejection.

Following acceptance by PAPs, the NLC prepares a payment schedule for those who have accepted the awards and forwards it to KeNHA for the transmission of compensation funds to the NLC. KeNHA verifies the schedule and remits the funds to the NLC to pay the beneficiaries, providing returns for record reconciliation by KeNHA. The law also allows early entry in certain cases, as a notice of taking possession is issued to PAPs either before or after paying compensation. The government takes possession, a final survey is done, and the land becomes public land.

- ix. **Regarding the use of forceful eviction**, the DG clarified that KeNHA would not undertake forceful evictions as due process is provided for in the law. Furthermore, development partners in such projects have strict loan conditions that do not allow for forceful evictions. Additionally, some parties have put claims against the maps in court, and the process is ongoing.
- x. **Regarding recommendations by KeNHA to the Committee**, the DG stated that KeNHA would submit a written proposal on how the National Assembly could intervene in cases of public interest stalled by disputes with private parties. Furthermore, KeNHA stated that they have not forwarded all the money to the NLC. Approximately Kshs. 300 million owed to PAPs has yet to be transmitted to the NLC, and this amount could increase after the finalization of court cases. Therefore, the Committee should recommend allocating resources for the compensation of PAPs on projects undertaken by KeNHA.

Committee Resolution

After deliberations, the Committee resolved that KeNHA provides a written submission within two weeks on the following:

- a) A list of all PAPs, including those compensated and those yet to be compensated;
- b) A proposal for the requisition of the amount owed to PAPs and an explanation of whether the amounts might increase based on the matters pending in court;
- c) Documentation confirming the status of the land as public, which has been challenged in court by the two parties; and
- d) Sample minutes of the GRC meetings.

MIN./PPETC/2024/263:

CONSIDERATION OF PUBLIC PETITION NO. 82 OF
2023 ON DELAY IN THE COMPLETION OF JOMVU
KUU-JITONI-RABAI ROAD IN JOMVU SUB COUNTY

Meeting with KURA

The Committee was informed that the Director General of Kenya Urban Roads Authority (KURA) had vide a letter Ref KURA/SP/6 VOL.3(2) and dated 11th June, 2024 submitted advanced written submissions for consideration owing to prior engagement.


Committee Resolution

After deliberations, the Committee resolved to reschedule the meeting to a later date.

MIN./PPETC/2024/264:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 02:30 p.m. The next meeting will be held on Tuesday, 18th June 2024 at 12:00 p.m.

Sign: 

(CHAIRPERSON)

Date..... 18-06-2024



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

MINUTES OF THE 59TH SITTING OF THE PUBLIC PETITIONS COMMITTEE HELD ON FRIDAY, NOVEMBER 08, 2024, IN MEDUSA 2 ROOM, ENGLISH POINT MARINA AT 02.00. P.M

PRESENT

1. Hon. Nimrod Mbithuka Mbai, M.P. - Chairperson
2. Hon. Janet Jepkemboi Sitienei, M.P. - Vice Chairperson
3. Hon. Maisori Marwa Kitayama, MP
4. Hon. Edith Vethi Nyenze, M.P
5. Hon. (Eng.) Bernard Muriuki Nebart, M.P.
6. Hon. Suzanne Ndunge Kiamba, M.P.
7. Hon. Ernest Ogesi Kivai, M.P.
8. Hon. Joshua Chepyegon Kandie, M.P
9. Hon. Bidu Mohamed Tubi, M.P.
10. Hon. Peter Mbogho Shake, M.P.

APOLOGIES

1. Hon. Patrick Makau King'ola, M.P.
2. Hon. Caleb Mutiso Mule, M.P.
3. Hon. John Walter Owino, M.P.
4. Hon. John Bwire Okano, M.P.
5. Hon. Sloya Clement Logova, M.P.

SECRETARIAT

1. Mr. Samuel Kalama Principal Clerk Assistant II
2. Mr. Ahmad Kadhi Principal Clerk Assistant II
3. Ms. Roselyn Njuki Senior Sergeant at Arms I
4. Ms. Anne Shibuko Clerk Assistant I
5. Ms. Patricia Gichane Legal Counsel II
6. Mr. Issaac Nabiswa Legal Counsel II
7. Mr. Willis Obiero Clerk Assistant III
8. Ms. Nancy Akinyi Research Officer III
9. Mr. Benson Muchiri Audio Officer
10. Mr. Calvin Karungo Media Relations Officer III

MIN./PPETC/2024/371: PRELIMINARIES

The Chairperson called the meeting to order at 11:00 a.m. and proceedings began with prayers by Hon. Peter Shake, M.P.

MIN./PPETC/2024/372: ADOPTION OF AGENDA

AGENDA

1. Prayer
2. Adoption of the Agenda
3. Confirmation of minutes of previous sittings
4. Matters Arising
5. Consideration of Public Petition No. 11 of 2023 regarding Illegal Acquisition of Private Land by the Defunct Awendo Town Council
6. Consideration Of Public Petition No. 3 of 2023 regarding the management of Standard Gauge Railways (SGR) Services
7. Consideration of Public Petition No. 15 of 2023 regarding Declaration of Mukutani Forest as a Public Forest
8. Consideration of Public Petition No. 33 of 2023 regarding Compensation of persons affected by Mombasa-Mariakani Road Dualling Project
9. Any Other Business
10. Adjournment

The Agenda was adopted to constitute business having been proposed by Hon. Joshua Kandie, M.P. and seconded by Hon. Edith Nyenze, M.P.

MIN./PPETC/2024/373: CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

The agenda was deferred.

MIN./PPETC/2024/374: CONSIDERATION OF PUBLIC PETITION NO. 11 OF 2023 REGARDING ILLEGAL ACQUISITION OF PRIVATE LAND BY THE DEFUNCT AWENDO TOWN COUNCIL

The Committee considered the draft Report and noted that vide a letter dated 15th February 2024, the Clerk of the National Assembly had written to the Principal Secretary, Ministry of Lands, Public Works, Housing, and Urban Development requesting for a list of the owners who were compensated after compulsory acquisition of the land in question. The Ministry of Lands, Public Works, Housing, and Urban Development has not provided the information.

Committee Decision

The Committee resolved that the secretariat would do a follow up letter with the Ministry of Lands on the list of persons that were compensated. This would form part of the findings before conclusion of the Petition.

MIN./PPETC/2024/375: CONSIDERATION OF PUBLIC PETITION NO. 3 OF 2023 REGARDING THE MANAGEMENT OF STANDARD GAUGE RAILWAYS (SGR) SERVICES

As per the instruction of the Committee, the Clerk of the National Assembly, vide a Letter Ref. No. KNA/DLPS/PPETC/CORR/2024/087 dated 29th May 2024, wrote to the Managing Director, Kenya Railways Corporation inviting him to a meeting scheduled for 5th June 2024, and requesting for the following information:

- a. Copies of the Contract agreement of the terms of engagement of Kenya Railways Corporation and Afristar Railway Company Limited
- b. A brief on the sustainability of the project
- c. Financial statements of the GoK and Exim Bank of China joint account
- d. Status of the uptake of the functions by Kenya Railways Corporation from Afristar
- e. Operational Costs and revenue projections for FY2023/24
- f. Monitoring and Evaluation Framework in place
- g. Challenges faced by Kenya Railways Corporation in the operations of SGR
- h. Amount of money paid to Afristar as management fees
- i. Compliance with occupational health and safety, green energy and environment

Vide a letter dated 9th September 2024 Ref. No. AFRISTAR/CL/068/2024, the General Manager, Afristar Railway Operation Company Limited, had written to the Clerk of the National Assembly. In his letter, he stated that the company had jointly with Kenya Railways, prepared the information required for the petition and was of the view that Kenya Railways should take the lead in the meeting as it was the responsible agency for the operation and Management of SGR.

MIN./PPETC/2024/376: CONSIDERATION OF PUBLIC PETITION NO. 15 OF 2023 REGARDING DECLARATION OF MUKUTANI FOREST AS A PUBLIC FOREST

The Committee considered the Report and observed that based on the submissions by the petitioners, there were two distinct groups i.e those who state proper public participation for gazettment of Mukutani Forest and those who claim that the public participation conducted was not sufficient.

Committee Decision

The Committee deliberated on the matter and resolved that in order to get further insights into the matter, there was need to—

- (i) invite elected Members of the National Assembly from Baringo County to appear before the Committee.
- (ii) conduct a site visit to engage stakeholders drawn from the different communities living around Mukutani Forest.

MIN./PPETC/2024/377: CONSIDERATION OF PUBLIC PETITION NO. 33 OF 2023 REGARDING COMPENSATION OF PERSON AFFECTED BY MOMBASA-MARIAKANI ROAD DUALLING PROJECT

Observations

The Committee considered the draft report and observed that:

- (i) Article 40(3) prohibits the State from depriving a person of property of any description unless the deprivation is for a public purpose or in the public interest and is carried out in accordance with the Constitution and the Land Act (Cap. 280) which allows prompt payment in full of just compensation and allows a person who has interest in that property access to a court of law. Based on these provisions of the Constitution and the Land Act, KENHA, through NLC, compulsorily acquired land for the expansion of Mombasa-Mariakani (A109) road.
- (ii) Pursuant to section 111 (1) of the Land Act, where land is compulsorily acquired, compensation shall be paid promptly in full to all persons whose interest in the land have been determined. However, the compensation process has been slow which has led to frustrations among the affected parties.
- (iii) Section 115 (1) of the Land Act provides for circumstances where NLC may withhold the payment of compensation to a person having an interest in the land. These circumstances include where there is no person competent to receive payment; where the person entitled does not consent to receive the amount awarded; or where there is a dispute as to the right of the persons entitled to receive the compensation or as to the shares in which the compensation is to be paid. In this regard, NLC has acknowledged that some of the PAPs are yet to be paid their share of compensation due to existing disputes.
- (iv) Some PAPs complained that their compensation was either inadequate to compensate for their losses or delayed. The displaced families now face even more financial difficulties as a result of some receiving sums that were insufficient to restore their businesses or rebuild their homes.
- (v) The NLC organized public forums to get feedback on the compensation process. During these forums, PAPs were informed of the criteria for valuation and were given opportunities to give feedback on issues arising.

Recommendations

Pursuant to the provisions of Standing Order 227, the Committee made the following recommendations—

- (i) The Committee rejects the prayer that the National Assembly urgently intervenes to compel the NLC to compensate the PAPs fairly in accordance with the actual value of their assets, and to disclose the valuation report feedback. This was on the grounds that, pursuant to section 113(2) of the Land Act, an award of compensation is final and conclusive evidence of the value of the land. However, the Committee recommends that any dispute arising out of compensation may be referred to the Environment and Land Court for a determination pursuant to section 128 of the Land Act.
- (ii) The Kenya National Highway Authority should implement the corrective action plan agreed upon with the affected persons and embrace the use of


geographic information system in asset inventory within sixty (60) days of tabling of the report.

- (iii) The Kenya National Highway Authority should fast track the completion of the project especially at the Kwa Jomvu area, where the project has stalled and secondly take measures to deal with the dust and complete the walkways, clear the hips of soil, concrete and other construction materials on the site within sixty (60) days of tabling of the report.

MIN./PPETC/2024/378:

ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at 05:00 p.m. The next meeting will be held on Saturday, 9th November 2024 at 10:00 a.m.

Sign: 

for (CHAIRPERSON)

Date.....19-11-2024.....