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REPUBLIC OF KENYA

KENYA NATIONAL ASSEMBLY



TENTH PARLIAMENT – THIRD SESSION

**THE DEPARTMENTAL COMMITTEE
ON
LOCAL AUTHORITIES**

**REPORT ON THE PROCUREMENT OF CEMETERY LAND BY THE CITY
COUNCIL OF NAIROBI**

PARLIAMENT BUILDINGS
NAIROBI

JANUARY, 2010

Antica

PREFACE

Mr. Speaker Sir,

Departmental Committee on Local Authorities is established under Standing Order No.198 (1); its mandate pursuant to Standing Order 198(3) is:-

- a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;**
- b) to study the programme and policy objectives of the Ministries (and Local Authorities) and departments and the effectiveness for implementation;**
- c) to study and review all legislation referred to it;**
- d) to study, assess and analyze the relative success of Ministries and departments as measured by the results obtained as compared with its stated objective;**
- e) to investigate and inquire into all matters relating to all assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister and;**
- f) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.**

The Committee comprises of the following Members:

Hon. Ahmed Shakeel Shabbir, M.P -----Chairman

Hon. Mwalimu Mwahima, M.P.

Hon. Joshua Kutuny, M.P.

Hon. Stanley Githunguri, M.P.

Hon. Fahim Twaha, M.P.

Hon. Gideon Konchella, M.P.

Hon. Mohammed H. Gabow, M.P.
Hon. David Ngugi, M.P.
Hon. Maitha Gideon Mungaro, M.P.

Mr. Speaker Sir,

Your office ordered the Committee to investigate and to file a report on the procurement of Cemetery Land by the City Council of Nairobi after a question by private notice was asked by Hon. Linturi to the Minister for Local Government.

Mr. Speaker Sir,

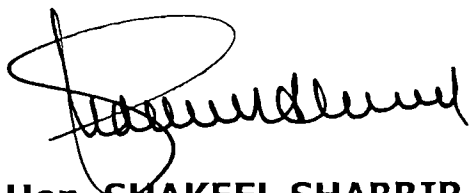
The Committee has carried out the investigations and has taken evidence from many witnesses and has now compiled the attached report.

Mr. Speaker Sir,

The Committee is grateful to you and to the office of the Clerk for providing the requisite technical support.

Mr. Speaker Sir,

On behalf of the Committee, it is now my pleasant duty to lay on the Table of the House the report of the Committee pursuant to the provisions of Standing Order 181(3).



Hon. SHAKEEL SHABBIR, MP

Chairman, Select Committee on Local Authorities

REPORT ON THE PROCUREMENT OF CEMETERY LAND BY NAIROBI CITY COUNCIL

BACKGROUND

Mr Tom Sipul of Kenya Wildlife Service provided the following information:-

The plot in question was formally part of L.R. No. 10029 which had a size of 8,912 acres registered in 1951 in favour of Kenya Meat Commission(KMC) for a term of 99 years.

KMC surrendered the land back to the government on 31st December 1970 so that it could be reserved for the Ministry of Agriculture and Livestock Development for a holding ground.

In 1982, the government sub-divided the plot into two portions namely:-

L.R. No. 10029/1 measuring 6000 acres allocated to a group of squatters who were occupying it at the time.

From the evidence adduced it is clear that one of the squatters on L.R NO. 10029/1 by the name Marinie Ole Tiranti Makaita apparently allowed one Henry Kilonzi to lease his land for agricultural purposes.

After the death of Marinie Ole Tiranti Makaita in 2002, Henry Kilonzi obtained a title for the land which is now known as L R. No. 14759/1 in Athi River Township. It is the sale of this land to Nairobi City Council which is under investigations.

ii) L.R. NO. 10029/II measuring 2912 acres (1,179 hectares)approximately reserved for the Ministry of Agriculture and Livestock Development for sheep and goat rearing- Reservation letter was dated 23rd March 1982.

On 7th May, 1996, the Permanent Secretary, Ministry of Agriculture and livestock Development vide his letter Ref.



MALD/LAND.1Vol./161 relinquished the Ministry's interest on 2,500 acres for allocation to KMC thus leaving a balance of 412 acres.

In the same letter it is stated that his Ministry had decided that decided that 250 acres be allocated to masai Imprex and the balance of 162 acres be left in the Ministry's name.

Consequently, 2500 acres were allocated to Kenya Meat Commission vide a letter of allotment Ref. No. 64408/233 of 9th July, 1998.

Another 250 acres (101.2 ha) were allocated to M/S Masai Impex Ltd who are the owner Vide a letter of allotment Ref. No. 64408/230 of 25th June, 1996 at a stand premium of Ksh 3.6 million and annual rent of Ksh. 720,000/=p.a.

This plot is now surveyed as L.R No. 23139 and title No. I.R 70443/1 registered on 9th September, 1986.

On the remaining portion (after item c and d) there is a Mr. Francis Mayaka who was allowed to do horticultural farming on a 125 acres plot on temporary basis by the ministry of Agriculture and Livestock Development.

The Kenya Wildlife service has complained of the above developments stating that the land L.R 10029/II which is adjacent to the Nairobi national park is used as a Wildlife Corridor.

He also stated that the area is not suitable for a cemetery because it is rocky and the soil is not six feet deep.

EVIDENCE ADDUCED BY VARIOUS WITNESSES

RICHARD NGANGI

This witness testified as follows:

My names are Richard Ngangi and I retired in 2002 from Portland Cement. I am a farmer in Mavoko area where I went in 1971. In 1970 the then President, Hon. Daniel Arap



Moi gave a group of us about 6,000 acres. The land was planned in 1971 and thereafter subdivision ensued.

The land was divided into 64 plots and 62 people were allocated one plot each leaving one plot for a church and the other for public utility. Marinie Ole Tiranti Makaita also got his letter of allocation. I produce a copy of the allocation letter. It is marked WI. Each of us paid Kshs. 5,000 for the planning and processing of the titles.

In 1984 those of us who had paid got their titles. Our surveyor was Gikonyo Mwangi. All the plots were fully occupied.

I hear that someone is claiming to have been given land by President Moi in 1991 in the same area but this cannot be possible because all the plots had owners. I knew all the 62 allottees. There were 64 plots. One of these plots was given to the Church and the other for Shopping Centre. The material land was given to Marinie Ole Tiranti Makaita. It is number LR. 14759. I live near this *shamba* and I have never heard that the deceased sold this land to anybody.

Bishop William Nkaangi

This witness testified as follows:

I am a Bishop with Pentecostal Churches. The late Marinie Ole Tiranti Makaita was a husband to my sister Agnes Nenkao. Marinie and his family lived on the disputed land and I used to visit them there. My sister was cultivating part of the land and a friend of the family, Mr. Kilonzi was also cultivating part of the land. The remaining part was used for grazing their animals. In 2002 Marinie died and his family moved back to his father's land as his mother became mentally sick and needed assistance.

The land parcel that belonged to the late Marinie was LR.14759. On or about 2003, my sister came to my home and



informed me that she had gone to their above land and had found that Kilonzi had pulled down her house and had used the iron sheets to build a shed for his animals. She was quite shaken but I assured her that all would be well as I would take her to the land office where the land issue would be sorted out.

When we visited the land office we found the file and the letters of allotment in the name of her late husband but my sister was told she must produce the letters of administration to enable the land officer to transfer the land to her name. I helped her to file a succession suit but before she got the letters of administration, a School was put up on the land by people who said they got the land from Kilonzi. When we asked Kilonzi how he sold the land he said we should not bother him as he had been given the land by the President Moi.

Buckson Semei

This witness testified as follows:

I was a member of the Committee dealing with the Shamba in question. A group of about 62 people were given land by President Moi. We had to pay Ksh. 5,000 to the surveyor so that we could get our title deeds. I was the treasurer and I used to receive this money and then I would forward it to the Surveyor. I know the land in question belonged to Marinie Ole Tiranti Makaita. He never informed me he was selling the land and I don't know how Kilonzi got the land. He was not one of the original beneficiaries.

Agnes Nenka Marinie

This witness testified as follows:

I married Marinie Ole Tiranti Makaita in 1982 and we got our first child in 1984. My husband died in 2002.



One day after the 1984 drought, my husband came home with three friends and we slaughtered a goat. Thereafter when it started raining one of these friends came and asked to be allowed to cultivate part of our land and my husband agreed on condition that he would cultivate 10 acres for himself and then plough three (3) acres for us.

In 2002, my husband contracted tuberculosis and he died. His mother became mentally ill soon thereafter and my father-in-law requested me to go and assist her. So I took the children and we moved to my father-in-law's land. Unfortunately, she also died after sometime.

I then came back to Mavoko to check on our land as I wanted to come back so that the children would start going to school. To my shock, I found our so called friend Kilonzi had taken possession of our land and had built a house thereon. He had brought down our small house and he had used the iron sheets to put a shed for his animals. I asked him what was going on and he told me that he had been given the land by the President and I should not go there again. He threatened to kill me if I dared set foot on that land.

I thereafter went to my brother's home to seek assistance. This was about 2003. My brother, Bishop Nkaangi, took me to the Lands office where a search showed that our land was intact and it had not changed hands. I was however, advised to get Letters of administration from court so that the land could be transferred to my name.

I was assisted to file a succession suit but before I obtained the letters, I noticed a school was being built on our land. I got information that the school owners had bought the land from Kilonzi. I went to the offices of FIDA to seek help which has not been forthcoming.



I now appeal to you Members to help my children and I to get back our land. My late husband never informed me that he had sold the land. I would also like Kilonzi to produce proof of payment of any money to my late husband. If he had truly bought the land, why did he lie to me that he had been given the same by the President? I need help and I want justice to be done.

Jeremiah Kaloi

This witness testified as follows:

I come from Embakasi village. I knew the deceased person who owned the land in question. I live next to Marinie Ole Tiranti's land. Kilonzi used to cultivate there and he then started building. He said that he got the land from the government.

I heard from the media that the land was going to be a Cemetery and when I asked the widow (marinie's) about it she informed me that Kilonzi had grabbed the land. When we approached Kilonzi as a community he said he didn't know anything about a Cemetery. The normal value of the land there is between ksh. 300,000 to ksh.500, 000 per acre.

MAVOKO MUNICIPAL COUNCIL

Mr. Patrick Makau

This witness testified as follows:

I am the Mayor of Mavoko Municipal Council. I heard about the material land being the proposed site for the City Council of Nairobi Cemetery from the media. As far as I am concerned the land is still agricultural as the Council has not approved change of user. The City Council of Nairobi officials never sought our opinion in respect of purchasing land within our area for a cemetery. If they had, my officers and I



would have informed them that the area is not suitable for a cemetery.

WISDOM MWAMBURI,

This witness testified as follows:

I became the Town Clerk to Mavoko Municipal Council in June 2008. In Mavoko there is no red soil which is normally suitable for a cemetery. There was no planning brief brought to Mavoko Municipal Council. The area is mainly agricultural and no environmental assessment has been carried out to show whether the area is suitable for a cemetery.

PETER MBATHA :

This witness testified as follows:

I was posted two weeks ago in Mavoko Municipal Council as a Town Planner but I am resident there. In the municipality there were no documents showing who the owner of the disputed land is. There is no registered use of the land but the area is mainly agricultural land. I have not seen any application for change of land use. As far as I know there is no approved master plan for the material area. The children's home on the land is illegally built because there was no change of user approved. Those buildings put up before 2007 without approval will be considered when owners apply for change of use.

MR.PETER MBATHA

This witness testified as follows:

I am the Deputy Treasurer in Mavoko Municipal Council. I am the planner and I have given evidence here before. I understand I was recalled to confirm whether a clearance certificate produced to the Committee originated from Mavoko Municipal Council. (Document shown to him).

The document looks genuine and the signature is that of former Town Clerk of Mavoko Municipal Council. So it is clear



Mavoko Council had knowledge of the land in issue. At the time I testified earlier I did not know that Mavoko Municipal Council had issued the clearance certificate.

SAMUEL MAKALI

This witness testified as hereunder:

Henry Kilonzi started transactions with Mavoko Municipal Council on 22nd April 2008. He paid for 3 components in the council.

(a) He paid land rates of ksh. 45,099 and it was an agricultural land rate.

(b) He also paid debt clearance of ksh.3, 000.

(c) He paid for change of user of ksh. 6,000. He wanted to change from agriculture for plot development.

He had subdivided the land into 16 plots. You cannot apply for change of user on temporary numbers but this is what Henry Kilonzi did. The change of user has not yet been approved. He made the payments in April 2008 but he has not followed up the matter. Notification of approval has not been given to him. There is no approval for the buildings on his land.

On 26th November 2008 he applied for the subdivision of the land into two portions. This was approved and new numbers were to be given. The City Council of Nairobi has never contacted us in respect of this land. The initial size of the two plots was 8.9 hectares and 48.3 hectares.



LOCAL GOVERNMENT MINISTRY

MR. SAMMY KIRUI-PERMANENT SECRETARY, MINISTRY OF LOCAL GOVERNMENT

This witness testified as hereunder:

The City Council of Nairobi wanted Cemetery land and the Town Clerk requested the Ministry of Local Government to assist as the Council had no funds. Lack of a burial ground being a National issue, the Ministry was obliged to help and asked the Council to procure the land and funds would be availed to them. As early as 5th June 2008 a meeting was held by the officers from my Ministry and officers from Nairobi City Council to deliberate on the issue. The meeting was chaired by Reuben Rotich, Senior deputy secretary and Mary Ngethe, the director of Legal affairs in City Hall was taking minutes. Copy of minutes marked W2. We released the cheque when we were told the land was available.

This was a Nairobi City Council Project.

The cheque was issued to the lawyers acting for Nairobi City Council.

The letter the Ministry received from the Council is dated 28th June 2008 and another one is dated 28th September 2009. In April 2008 part of the money was available for purchase of the cemetery land.

Yes, there were tender Committee minutes from Nairobi city Council.

The Ministry got a draft agreement for the sale.

In September 2008, the tender was advertised in the newspapers.

There was no documentation to support the cheque issued on 30th June 2008 in the name of Omotii and company advocates. All the Ministry wanted was to safeguard the money and not to return it to the treasury. It is true we did



not follow the government regulation of returning the money to Treasury. There was no bad intention in issuing the cheque. It is not normal to ask for money in two installments.

On 11th November 2008 there was a Memo from the tender Committee stating the land was unsuitable.

There was no meeting in my office in respect of Cemetery land. I didn't see the need to involve our legal department because the Nairobi City Council has its own Lawyers. So I may have directed that the legal officer in the Ministry be left out of the transaction.

The officers in City Hall involved in this transaction that have caused a lot of public money to be misused are still in office but one has retired and one is on leave.

I agree that if the price is inflated then there is fraud. It seems that this is the case in respect of Nairobi Cemetery Land Procurement.

If some of my officers were involved I was not aware. I didn't collude with the Town Clerk.

There was no intention on my part as the Permanent Secretary to defraud the Government. I have never been corrupt and I have worked in various departments of the Government.

I will give all the support that this Committee may need.

THE DEPUTY PRIME MINISTER AND MINISTER FOR LOCAL GOVERNMENT

This witness testified as hereunder:

It is true there are issues surrounding this matter and I hope the Committee can unveil the grey areas.



KOMBO MWERO

This witness testified as hereunder:

I was employed by the Government as a surveyor. I served for 28 years. In 2005 I was the Permanent Secretary in the Ministry of Local Government until 2007 when I was transferred to the Ministry of Wildlife.

The transaction of the proposed Cemetery land took place after I had moved from the Ministry of land. It is irregular to give a title deed to a member who was not originally given land after the original allottee has died.

SOLOMON BOIT

This witness testified as hereunder:-

I am a retired civil servant. I was a Permanent Secretary in the Ministry of Local Government until April 2008. The Minister then directed that some senior officials from the Ministry should meet senior officials from Nairobi city council so that the process of acquiring a cemetery land would be started. Apparently a delegation had seen the president and it had been agreed that there was need to assist the City Council of Nairobi to acquire another cemetery land.

The current cemetery was over used. I led a group of officers to Treasury to request for finances. At first treasury was reluctant but the matter was revisited after the post election violence and it was agreed that funds would be availed.

I know the Minister for Local Government is executive just like the finance Minister. Minister had to be notified of what is going on before any transaction can be concluded. This may be done orally but also preferably in writing. Normally the Permanent Secretary will consult the in house counsel



CITY COUNCIL OF NAIROBI

W 19



TOWN CLERK
FAX: 217704
TELEPHONE: 224281 / 221349

CITY HALL
P.O. BOX 30075-00100
NAIROBI
KENYA.

Director of Legal Affairs

EXT.....

Ref No. DLA/MNN/992/E/2008

26TH November, 2008

E N Omotii & Company
Advocates,
NAIROBI.

Dear Sir,

RE: PURCHASE OF LAND FOR CEMETERY USE - L.R NO. 14759

I hereby appoint you to represent the Council in the purchase of the above referenced property.

I hereby forward a copy of the letter of award and the tender document for your reference.

Yours faithfully,


M N NG'ETHE
DIRECTOR LEGAL AFFAIRS.

RECEIVED
Date: 26/11/08
Time: 1:30
M. N. Ng'ethe

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W 20

GOVERNMENT OF KENYA
CENTRAL BANK OF KENYA
BANKI KUU YA KENYA



Date 30/06/2008

NAIROBI
Schedule No 396195
Item No 6

09-001

Pay ENOMOTHI CO ADVOCATES

Or Order KSh *****175,000,000.00

Kenya Shillings One Hundred Seventy-Five Million And Cents Zero

Not Negotiable
A/C Payee Only

VALID FOR SIX MONTHS FROM DATE OF ISSUE

MINISTRY OF LOCAL GOVERNMENT -
DEVELOPMENT - 12

[Signature]
Authorised Signatory

MINISTRY OF LOCAL GOVERNMENT
DEVELOPMENT - 12
17/11/05

Cheque Number 3643

Bank Code

01-010-D012
Account Number

[Signature]
Authorised Signatory

⑈005643⑈090017⑈010102012⑈

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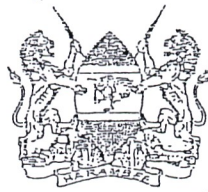
OFFICE OF THE DEPUTY PRIME MINISTER
AND
MINISTRY OF LOCAL GOVERNMENT

M 21

Telegrams: "AUTHORITY"
Telephone: Nairobi 217475
Fax: 217369

E-mail: molg@mbnet.co.ke
When replying please quote

Ref. No. MOLG/402-01/(23)
and date



JOGOO HOUSE "A"

TAIFA ROAD

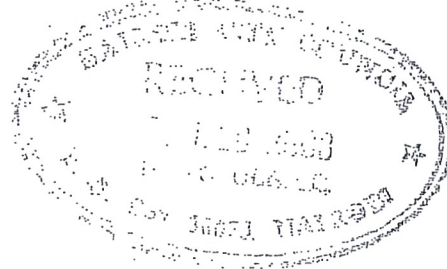
P.O. Box 30004-00100

NAIROBI

22ND DECEMBER, 2008

20.....

Town Clerk
City Council of Nairobi
City Hall
P. o. Box 30075
NAIROBI.




**RE: PURCHASE OF CEMETERY LAND
RELEASE OF CHEQUE NO. 005643
DATED 30TH JUNE, 2008 FOR KSHS. 175,000,000.00**

Herein enclosed please find our cheque No. 005643 dated 30th June, 2008 for Kshs.175, 000,000.00 (Kenya Shillings One hundred and seventy five million only) being payment in respect of purchase of land for use as cemetery.

You may in turn release the cheque to your Advocates but with due attention to all necessary details to ensure that these public funds are fully secured and best Government and public interest achieved as envisaged with full accountability.

Please ensure that you forward to this office copy of the new Title Deed on registration and that all relevant documentation are recorded and securely stored for audit purposes.


**R. K. ROTICH, MBS
FOR: PERMANENT SECRETARY**

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

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AND
MINISTRY OF LOCAL GOVERNMENT

Telegrams: "AUTHORITY"
Telephone: Nairobi 217475
Fax: 217869
E-mail: molg@nhnet.co.ke
When replying please quote

Ref. No. **MOLG/402-01(27)**
and date



JOGOO HOUSE "A"
TAIFA ROAD
P.O. Box 30004-00100
NAIROBI

January 16, 2009

The Town clerk
City Council of Nairobi
City Hall
P.O. Box 30075
NAIROBI

W 22

**RE: PURCHASE OF CEMETERY LAND RELEASE OF
CHEQUE NO 005915 DATED 15TH JANUARY 2009
FOR KSH 108,000,000**

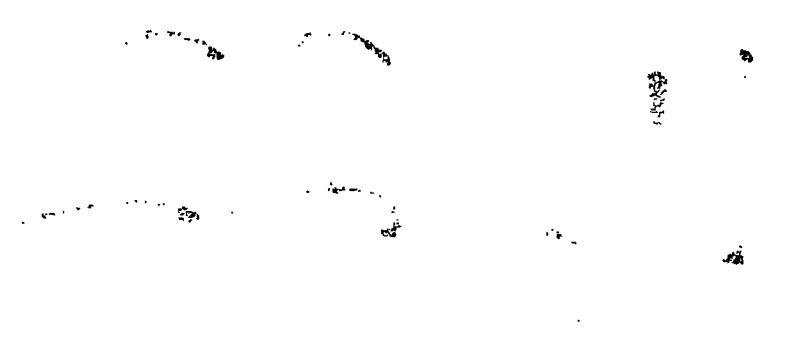
Enclosed herewith please find our cheque No. 005915 dated 15th January 2009 for Kshs 108,000,000 (Kenya shilling One Hundred and Eighty Million only) being payment in respect of purchase of land for use as Cemetery.

You may in turn release the cheque to your Advocates but with due attention to all necessary details to ensure that these public funds are fully secured and best Government and Public Interest achieved as envisaged with full accountability.

Please ensure that you forward to this office copy of the new Title Deed on Registration and that all relevant documentation are recorded and securely stored for audit purposes.


R.K. Rotich, MBS
For: PERMANENT SECRETARY

ENCLS



W 23

2412

DOP/GKN/Min.3-07/sm/4805/08

13th November, 2008

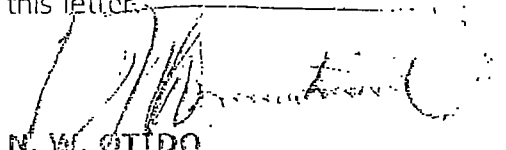
M/s Naen Rech Limited,
P. O. Box 5018-00506
NAIROBI

RE: TENDER NO. CCN/MOH/T/020/08-09 – EXPRESSION OF
INTEREST FOR SALE OF LAND FOR CEMETERY USE

NOTIFICATION OF AWARD

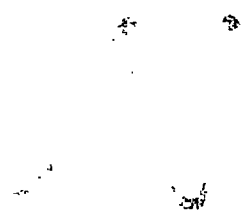
I write to inform you that the City Council of Nairobi has accepted your bid for Tender No. CCN/MOH/T/020/08-09– Expression of Interest for Sale of Land for Cemetery Use and approved the acquisition of Parcel of Land No. L.R 14759 situated in the South of Athi River Township in Machakos District measuring 120 acres (57.22 hectares) and registered in the name of Henry Musyoki Kilonzi at a cost of Kshs. 2,360,000/= (Two million three hundred sixty thousand) only per acre and a total cost of Kshs. 283,200,000/= (Two hundred and Eighty three million two hundred thousand) only, when the parcel is confirmed to be 120 acres and subject to the piece of land being free from all encumbrances.

You are required to furnish your written acceptance and provide a Performance Bond of Kshs. 14,160,000/= within 14 days from the date of this letter.



N. W. OTIDO
For: TOWN CLERK

c.c: Director of Legal Affairs



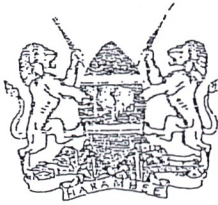
OFFICE OF THE DEPUTY PRIME MINISTER
AND MINISTRY OF LOCAL GOVERNMENT

OFFICE OF THE PERMANENT SECRETARY



JOGOO HO
TAIFA ROAD
P.O. Box 30004-00100
NAIROBI

Tel: +254 (0) 217869
Fax: +254 (0) 217869
E-mail: psi@localgovernment.go.ke
When replying please quote



REPUBLIC OF KENYA

December 19, 2008 20.....

Ref No: **MLG/402-01(18)**

Mr. John Gakuo
Town Clerk
City Council of Nairobi
P.O. Box 30075
NAIROBI

W
W. Gakuo
TAIFA

RECEIVED BY
DEPUTY TOWN CLERK

Date: 19/12/08

TE
19/12/08

Dear Mr. Gakuo,

RE: PURCHASE OF LAND FOR CEMENTARY

Your letter Ref. No. DTC/NOW/789/E/08 dated 28th
November 2008 and TC/JG/9/3889/2008 dated 17th
December 2008.

Kindly execute the agreement and ensure the interests of the Nairobi City Council are safeguarded. In view of the fact that we are nearing Christmas season and the cheque is almost becoming stale, I will appreciate your quick response.

Yours, *Sincerely,*

Sammy Kirui MBS
PERMANENT SECRETARY



W 25

MINISTRY OF LOCAL GOVERNMENT
Ksh.288,664,000

E.N. Omotti & Co. Adv.
Kshs.175,000,000 } Down Payment
Kshs.108,000,000 } Last Instalment
Kshs.283,000,000 Total
Kshs.2,030,000 } Legal Fees

Commissioner of Domestic Taxes
Kshs.5,664,000 Stamp Duty paid to

Where is Kshs. 1,500,000

Escrow A/C.
Kshs.281,300,000
1.Odero Osiemo & Co. Adv.
2.P.C. Onduso & Co.
3.Alphonse Mutinda

1. Kshs. 3,350,000 Alphonse Mutinda Cash Withd.
2. Kshs. 102,000,000 Alphonse Mutinda I/Transfer
3.Kshs.30,550,000 Mutinda & Co. Chase Bank Eastleigh.
4. Kshs.9,600,000 P.C.Onduso KCB
5. Kshs.9,450,000 Naen Rech Ltd Gulf African Bank.
6. Kshs. 9,300,000 Cephass Kamande Mwaura Stanbic Bank

Odero Osiemo & Co. Adv.
Kshs. 117,000,000
NBK Harambee

10/10/10

10/10/10

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FROM ODERO OSIEMO AND CO. ADVOCATES

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1. Kshs. 2,000,000 - Cibiya Worldwide Ltd CFC Stanbic Harambee Avenue.
2. Kshs. 5,000,000 - Cibiya Worldwide Ltd CFC Stanbic Harambee Avenue.
3. Kshs. 20,000,000 - James Mwangi Gacheru BBK Thika
4. Kshs. 1,660,000 - James Mithamo Kamau Coop Bank Nairobi Bussiness Centre Ngong.
5. Kshs. 6,000,000 - Owino Kojwando Co. Adv. STD bank Harambee Ave.
6. Kshs. 1,200,000 - Cibiya Farm Holdings Ltd CFC Stanbic Harambee Ave.
7. Kshs. 1,000,000 - Mwalimu SACCO Coop bank Cooperative house Nairobi.
8. Kshs. 1,000,000 - Billy Mbuvi Muumbo Chase Bank Eastleigh.
9. Kshs. 4,000,000 - Shell Kenya Ltd STD bank.
10. Kshs. 4,000,000 - P.J. Kakad Advocates Fidelity Commercial bank Kimathi street.
11. Kshs. 4,000,000 - Stiff Enterprises BBK Qucensway.
12. Kshs. 2,000,000 - Mwalimu Hardware KCB Mwingi.
13. Kshs. 4,000,000 - Onyinkwa & Co. Advocates STD bank Eldoret.
14. Kshs. 2,000,000 - Moeckings General Contractors- Chase bank Landmark plaza.
15. Kshs. 4,000,000 - Owino Kojwando & Co. Advocates STD bank Harambee Ave.
15. Kshs. 10,000,000 - Peterson O. Gichana BBK Plaza, Premier branch.
16. Kshs. 13,000,000 - E.N. Omoti & Co. Advocates Bank of Africa Taifa Road branch.
17. Kshs. 14,000,000 -- Cash cheque drawn on 14th February 2009.
18. Kshs. 5,000,000 -- Cash cheque drawn on 16th February 2009.
19. Kshs. 3,000,000 - Cheque paid to Dorcen Aribeta Oyugi on 17th February 2009.
20. Kshs. 2,230,000 - Cash cheque drawn on 27th February 2009.
21. Kshs. 1,000,000 - Cash cheque drawn on 26th February 2009.
22. Kshs. 1,000,000 - Cash cheque drawn on 5th March 2009.
23. Kshs. 1,000,000 - Cash cheque drawn on 30th March 2009.
24. Kshs. 1,500,000 - Cash cheque drawn on 2nd April 2009.
25. Kshs. 2,000,000 - Cash cheque drawn on 21st March 2009.
26. Kshs. 1,000,000 - Cash cheque drawn on 17th March 2009.



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JOINT PARLIAMENTARY ASSEMBLY

Prof. Kamar: Mr. Temporary Deputy Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Reports of the 14th 15th and 16th Sessions of the ACP-EU Parliamentary Assembly and the 16th and 17th ACP-EU Joint Parliament Assembly meetings held in November, 2008, in Port Moresby, Papua New Guinea; February, 2009, Brussels Belgium and April, 2009 in Prague, Czech Republic laid on the Table of the House on Thursday, 4th June, 2009.

OFFICIAL RECOGNITION OF KENYAN CHAPTER OF AMANI FORUM

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I wish to give notice of the following Motion:-

THAT, appreciating the role played by the Great Lakes Parliamentary Forum, Amani Forum, in building the capacities of Members of Parliament in peace building and conflict management in Kenya and within the Great Lakes Region and the Horn of Africa; considering that the participation of Members of Parliament in regional and national Amani Forum activities have significantly enriched debate in the House, informed Committee deliberations and created strategic linkages between Parliament and other actors in the society; convinced of the need to mainstream peace building and conflict management aspects with the National Assembly of Kenya as the country emerges from post-election violence and its undertaking deliberate measures to promote reconciliation and national healing; aware that this is the only legislature in the region that has not given due recognition to that strategic regional organization; this House resolves that Amani Forum, Kenya Chapter, be officially recognized as a parliamentary organization within the national Assembly of the Republic of Kenya.

QUESTIONS BY PRIVATE NOTICE

PROCUREMENT OF CEMETERY LAND BY
NAIROBI CITY COUNCIL

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, I beg to ask the Deputy Prime Minister and Minister for Local Government the following Question by Private Notice.

(a) Could the Minister confirm that the Treasury, through his Ministry, allocated Kshs283,200,000 to the Nairobi City Council for the purchase of land for a cemetery in the Financial Year 2008/2009?

(b) Could the Minister inform the House who the vendor was, the size, cost and the location of the land?

(c) Could the Minister clarify whether, in procuring the said land, the relevant Government procurement regulations were followed and if so, whether he could table the valuation report, sale agreement and inform the House which firm was involved in the conveyancing of the said land?

Dr. Khaiwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. I have looked at this Question and our Standing Orders. Standing Order No.43(9) says:-

~~“A Question shall not be asked which makes or implies any allegation of a personal nature---“~~

I am rising on this point of order because this is a very weighty issue dealing with the possibility of corruption involving Kshs283 million.

The Temporary Deputy Speaker (Mr. Imanyara): We do not know that! The Question has not been answered!

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, let me raise my point of order! In view of the fact that we are aware that the major player in this case is the City Council of Nairobi, what will be the impression on the integrity of this House if the Question is being fronted by hon. Linturi, my colleague in the Grand Opposition, whom we know has taken the City Council of Nairobi to court, claiming that he he paid over Kshs26 million?

I have no interest in this matter, but I would just like to be guided. Would it not be inviting what forced hon. ole Kaparo to make a ruling in this House that we should not raise Questions that attempt either to advance our personal interests or attempts to use this supreme House as a debt collecting institution?

The Temporary Deputy Speaker (Mr. Imanyara): Order! Dr. Khalwale, do you have the ruling by the former Speaker, hon. ole Kaparo?

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, that ruling by hon. ole Kaparo is in the HANSARD. I was in this House when he made that ruling. But I also happen to know – and it is a fact - that the City Council of Nairobi has been taken to court by hon. Linturi.

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Midiwo, is it in relation to the same issue?

Mr. Midiwo: Yes, Mr. Temporary Deputy Speaker, Sir. Further to Dr. Khalwale's concern, this Question was before this House just about three weeks ago and it was dropped. How has it found its way back to the Order Paper?

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, it is very important for me to put this issue clearly to this House and to my brothers, Dr. Khalwale and hon. Midiwo. It is true that this Question came before the House when the Public Investments Committee (PIC) was in Mombasa compiling its report. For that reason, I was not here to ask this Question.

The Temporary Deputy Speaker (Mr. Imanyara): Order! I have been informed that the Question is on the Order Paper on the direction of Mr. Speaker. That is to answer hon. Midiwo's question. In relation to the issue raised by Dr. Khalwale, this is dealt with under Standing Order No.81. Mr. Linturi, if you have a personal interest in this matter, you need to disclose it to the House before asking the Question!

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, maybe, I need to explain to the House something. The issue about personal interest is so relative.

The Temporary Deputy Speaker (Mr. Imanyara): No! No! I think you need to clear the air!

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, I have no personal interest in this matter. The matter that Dr. Khalwale is alluding to is as a result of a contract entered into in July, 2004, between a company in which I have shares and the City Council of Nairobi. That is even before I became a Member of Parliament!

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I think it is only fair that you defer this Question and make a ruling. In the light of what the Member is saying, I, personally, have information that he has interest in this Question. A public officer at the Nairobi City Council has called me to explain. It would be unfair for me not to bring up those issues if this Question was to continue.

Mr. Waititu: On a point of order, Mr. Temporary Deputy Speaker, Sir. This issue is of corruption in nature. Very many Kenyans are concerned about the issue of the cemetery. It is supposed to benefit Kenyans in Nairobi. We need to get to the bottom of the matter in order to understand the truth. This Question should proceed so that we can debate the matter and know exactly what happened.

Mr. C. Kilonzo: On a point of order, Mr. Temporary Deputy Speaker, Sir. It is very unfortunate that when a Question becomes the property of the House, some Members are called by people who have some interest in the Question. That is what hon. Midiwo has stated, so that the Question cannot proceed.

This Question is before the House. The procedure is very clear. The hon. Member has said that he has no personal interest in this Question. So, I beg you to rule that this Question continues.

Mr. Mungatana: On a point of order, Mr. Temporary Deputy Speaker, Sir. In terms of assisting the House to move forward, just the day before yesterday, the Chair gave a ruling that is relevant to this. I had made an application that there

were some documents that we needed to use for purposes of supporting an application in this House. The Chair ruled that because that was hearsay, we could not delay the business of the House. That is a fresh ruling. We should also say that hon. Midiwo is also alluding to matters that are purely hearsay. The Question is before the House. Please, let the Question be answered.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Mr. Minister, you have heard the concerns of the hon. Members. In your answer to the Question, if there are any areas that you feel would unfairly prejudice officials of Nairobi City Council who are not in the House, you can indicate that before giving the reply. However, it is up to you, Mr. Minister, to tell us whether you are ready to answer the Question or not, or whether the issues that hon. Members have raised have any bearing on the answer that you will give.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I am not aware of anything other than what I have heard about at this point and time. I am ready to answer the Question.

The Temporary Deputy Speaker (Mr. Imanyara): Please, go ahead and answer!

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I beg to reply.

(a) It is true that the Treasury, through my Ministry, had allocated Kshs283, 200,000 to the Nairobi City Council for the purchase of land for a cemetery. Out of this amount, Kshs175 million was provided in the 2007/2008 Financial Year and Kshs108,200,000 was provided in the 2008/2009 Financial Year.

(b) The vendor was Mr. Henry Musyoki Kilonzi who put a bid into this matter through his agent namely Naem Rech Limited. The size of the land in question is 120 acres. The land is located in the Municipal Council of Mavoko, Athi River, which is adjacent to Nairobi. The land was purchased at Kshs283 million.

(c) According to the documentation I have from the Nairobi City Council, it would appear that they followed the procurement regulations. The council advocate was Messrs. E. N. Omothii and Company Advocates while the vendor's advocates were Messrs. Alphonse Mutinda, Odera Osiemo and P.C Onduso Advocates. The Questioner also requested me to lay certain documents on the Table. I would like to lay the following documents on the Table:

The newspaper advertisement, minutes of the Opening and Evaluation Committee, minutes of the Tender Committee, a valuation report, the Sale Agreement, the title issued to the Nairobi City Council and the transfer from Henry Musyoki to the Council and also a letter from the vendor's advocate, Alphonse

Mutinda, authorizing Naem Rech Limited to bid on behalf of Henry Musyoki Kilonzi. All these documents are available and I will lay them on the Table.

(Mr. Mudavadi laid the documents on the Table)

Mr. Linturi: Thank you, Mr. Temporary Deputy Speaker, Sir. I beg the indulgence of the Chair that I may be able to present this matter properly before the House so that it can be well understood by hon. Members, so that in their opinion, they can as well determine whether I have any interests in this matter or not. I want to start by thanking the Deputy Prime Minister and Minister for Local Government for giving a very good answer, especially to parts "a" and "b". I want to seriously look at his answer to part "c". In my view, proper procurement procedures were not followed in this matter. ~~What was followed is a proper scheme between council officers and the Ministry to defraud and to steal money from the public.~~ I am saying this because when the advertisement for the purchase of this land was published---

The Assistant Minister for Roads (Dr. Machage): On point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to introduce a Motion in this House when he is supposed to ask a specific question to the Deputy Prime Minister and Minister for Local Government?

The Temporary Deputy Speaker (Mr. Imanyara): I think he made it clear that he wanted to lay down the basis of the matter and I allowed him to do so.

Mr. Linturi: Thank you for your protection, Mr. Temporary Deputy Speaker, Sir. When the advertisement was placed in the newspapers, a number of bidders bid for this plot. According to my documents, 12 people bid for this plot. Out of that, the Legal Officer wrote a letter to the Ministry of Lands requesting a valuation report which was supposed to form a valuation basis for this plot. I will be laying all these documents on the Table. After the valuation report was given, the report that came from the Ministry of Lands, and went to Ms. N. Ng'ethe, gave a valuation figure of Kshs3,515,000. This is the valuation report, to me, is a letter and does not qualify to be a valuation report. During the valuation process, a Mr. Odindo and Mr. Mbarere, who were the members of the valuation team through a memo dated 11th November, wrote to the chairman of this committee that was doing the valuation. The chairman of this committee was the Legal Officer. In this memo, which I want to zero in on one paragraph, the Director of City Planning is saying that according to his opinion and that of the people serving in his department, the land they were buying was not suitable for cemetery use.

He goes further and says---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Linturi, you need to ask a question arising from the answer that has been given.

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, how do I ask a question before the matter is understood? I am trying to lay down the basis of this and demonstrate how corruption has taken root here!

Mr. Yinda: On a point of order, Mr. Temporary Deputy Speaker, Sir. Is hon. Linturi introducing a Motion or asking a question or seeking clarification?

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Linturi, the answer has been given by the Deputy Prime Minister. You need to ask a question arising from the answer that has been given.

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, if that is the case, then I will ask one question that I merit. If the Ministry of Lands did a letter to disown the valuation report that was purported to have been given by the Nairobi City Council itself, is this transaction valid or not? There are two sets of agreements that are contradictory. One is between Henry Kilonzi and Rech Naem at Kshs110 million and another one between Nairobi City Council and Henry Kilonzi at Kshs282 million. The land in question was bought at Kshs110 million and a Mr. Alphonse Mutinda did a letter when they were compromised by Henry Musyoki who purportedly learnt later that his land was sold at Kshs283 million.

Hon. Members: Ask a question!

Mr. Linturi: The truth must be known!

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Linturi! Address the Chair in the first place!

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, I am asking the last question! Among the documents I have is a transfer of land that was signed between Henry Musyoki Kilonzi at a cost of Kshs110 Million which I want to lay on the Table.

Finally, I want to table a document where Henry Musyoki, who was the owner of the land, acknowledged receipt of only Kshs107 million which was payment for the purchase of the land. The last one is a document from the Ministry of Lands disowning the valuation.

The Temporary Deputy Speaker (Mr. Imanyara): Very well! You have put your point across!

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, finally, there is an agreement that was entered, one between Henry Kilonzi and Rech Naem and the other one between the Nairobi City Council and Henry Kilonzi for Kshs283 million which was even signed by the Mayor of the Nairobi City Council and a Mr. Odindo who was then a councillor.

(Mr. Linturi laid the documents on the Table)

Mr. Mudavadi: Mr. Temporary Deputy Speaker, Sir, some of the documents he is referring to are also in the bundle that I have submitted and tabled in this House. The sale agreement and the minutes of the tender committee are all in the bundle that I have tabled here.

I am not aware of the other communication between Kilonzi and the other advocates. That information is not within City Hall. However, I have availed to this Parliament the documents from City Hall. These documents are very clear. They are composed of the agreements, transfer and valuation report. If, indeed, there is any document---

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Deputy Prime Minister and Minister for Local Government! Would you like to have a look at the documents that you say are not part of the ones you have?

~~Mr. Mudavadi:~~ Mr. Temporary Deputy Speaker, Sir, I would be very happy to look at the documents I have said are not part of the documents that I have and make a comment. However, I have laid on the Table the official documents from City Hall.

Dr. Khalwale: On a point of order, Mr. Temporary Deputy Speaker, Sir. As I said at the beginning, this is a lot of money and the amount of details is such that we cannot---

The Temporary Deputy Speaker (Mr. Imanyara): Are you asking a supplementary question or revisiting the order which I ruled upon?

Dr. Khalwale: No, Mr. Temporary Deputy Speaker, Sir. Mine is a point of order.

Mr. Temporary Deputy Speaker, Sir, my scrutiny shows that there was a payment of Kshs175 million in June, long before the advertisement in September. Because this is very convoluted and we need to get to the bottom of the matter, I request that as you rule that the Deputy Prime Minister and Minister for Local Government be given an opportunity to look at this matter, we refer it to the relevant Departmental Committee so that it can inform us properly. We want to get to the bottom of this matter.

The Temporary Deputy Speaker (Mr. Imanyara): Let me hear more views on this before I make a ruling on this matter.

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, a cemetery is a very important facility in Nairobi. If you visit Langata Cemetery right now you will find that bodies are being buried in graves where others were previously buried. The issue of buying land for a cemetery was in City Hall even when I was there as the Deputy Mayor. One specification of land for a cemetery was that it had to be a red-soil piece of land. However, the land that was bought, through corruption, is rocky. Could the Deputy Prime Minister and Minister for Local Government clarify why

the Council left out bidders with red soil land along Kamiti Road and went all the way to Athi River to buy rocky land? Bodies cannot be covered with rocks!.

The Temporary Deputy Speaker (Mr. Imanyara): Order! Mr. Deputy Prime Minister and Minister for Local Government, could you answer that question?

Mr. Mudavadi: Mr. Temporary Deputy Speaker, Sir, in the documentation that we have, which shows how the tender committee operated and the evaluation process, there is a criteria for determining the kind of land they were looking for. Some of the issues that the hon. Member has raised are, indeed, tabulated in that particular document. I do not want to enumerate the criteria, because I was not in the tender committee. All that was done by this committee and the details are given. The 12 bidders and the prices are all tabulated in the tender document.

Mr. Linturi: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am very uncomfortable when the Deputy Prime Minister and Minister for Local Government rises here to mislead the House! I agree that there was a criteria but---

The Temporary Deputy Speaker (Mr. Imanyara): What is your point of order?

Mr. Linturi: Mr. Temporary Deputy Speaker, Sir, is the Deputy Prime Minister and Minister for Local Government in order to say that there was a set criteria which was the basis for the award of this tender, when the Technical Department in charge of City Planning wrote a memorandum which is signed by Mr. F.D. Odongo saying clearly that the land was not suitable for a cemetery?

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, you have heard the Deputy Prime Minister and Minister for Local Government admit that he was not the tenderer and does not have the details of this transaction. You have also heard the hon. Member say that, in fact, the seller in the agreement acknowledged receipt of Kshs110 million while the Deputy Prime Minister and Minister for Local Government has told us that he paid Kshs283 million.

Mr. Temporary Deputy Speaker, Sir, while in support of your consideration to have this matter investigated further, the variance is too big for us to leave it casually. The Deputy Prime Minister and Minister for Local Government should take time and look at the documents. The matter should be referred to the relevant Departmental Committee of this House.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Deputy Prime Minister and Minister for Local Government, what do you have to say in your own admission that you have not seen a number of these documents?

Mr. Mudavadi: Mr. Temporary Deputy Speaker, Sir, I have said that the documents I have not seen are those that relate to the transaction or communication between the lawyer and the vendor. I have no qualms over the matter being

referred to the relevant Departmental Committee. However, I will be very happy if this matter is investigated thoroughly so that we can get to the bottom of it.

Mr. Temporary Deputy Speaker, Sir, as I speak here, I know that this matter has also been taken over by the Kenya Anti-Corruption Commission (KACC) for investigation. Therefore, it is perfectly in order for Parliament to scrutinise the documents further as the other agency also undertakes its investigations.

(Applause)

The Temporary Deputy Speaker (Mr. Imanyara): Very well! Indeed, these are serious issues which have been raised in the documents, and because the Deputy Prime Minister and Minister for Local Government has agreed with the hon. Members' proposal, I order that the matter be referred to the Departmental Committee on Local Authorities for it to investigate and report back to the House within three months. If the Committee completes the investigations before the three months are over, the Clerk's Office can be informed and the issue brought forward. Let the Committee investigate the matter and report to the House within three months.

Mr. Waititu: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Imanyara): Unless it is a point of order not related to that issue! If it is related to that issue, you can appear before the Committee when it starts sitting.

What is it, Mr. Waititu?

Mr. Waititu: Mr. Temporary Deputy Speaker, Sir, the Nairobi City Council offices are located just on the road opposite and the land we will investigate is about 10 kilometres away. Why should the Committee take three months to complete its investigation? I do not want to contradict your ruling, but three months is too long!

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Waititu! That is up to the Departmental Committee. If it can finish the work within two days or one week, well and good, but I have given it three months within which to complete its investigation.

Next Question by the Member for Bura!

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, I have not been supplied with a copy of the written answer.

GOVERNMENT POLICY ON DISASTER PREPAREDNESS

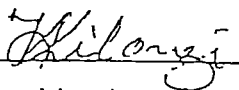
Kenya containing by measurement Five Seven Decimal Two Two (57.22) hectares or thereabouts that is to say Land Reference Number 14759 (hereinafter referred to as "the said piece of Land") which piece of land with dimensions abuttals and boundaries thereof is delineated and edged red on the plan Number 139382 deposited in the Survey Records office at Nairobi to hold in fee simple subject to the Government Lands Act (Cap 280) and the special conditions set forth therein.

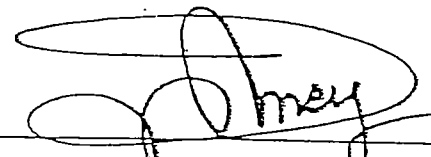
2.2 The Vendor has agreed with the Purchaser to sell and transfer to the Purchaser One Hundred And Twenty Acres (120 Acres) of the said piece of land at the price and on terms hereinafter provided.

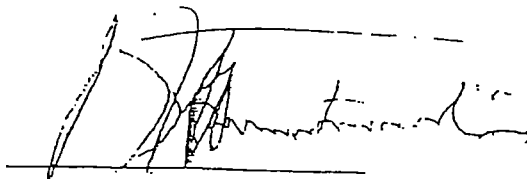
NOW THIS AGREEMENT WITNESSETH AS FOLLOWS.

3. PURCHASE PRICE

The purchase price for the sale and purchase of the property shall be Kenya Shillings Two Hundred And Eighty Three Million Two Hundred Thousand Only (Ksh.283,200,000/-) (hereinafter referred to as "the Purchase Price") which sum the Purchaser shall cause to be released to its Advocates (E.N. Omotii & Company Advocates) at the date of execution of this Agreement to hold as stakeholders in a reputable banking institution until the completion date.


Vendor


Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

4. COMPLETION DATE

The completion date shall be on the 30th day after the Vendor and/or his Advocates delivers to the Purchaser's Advocates the documents comprised at Clause J of this Agreement (hereinafter referred to as "the Completion Date") which period shall on mutual agreement of the Vendor and the Purchaser be extended for an agreed period at the expiry thereof.

4.1 Completion shall take place at the office of the Purchaser's Advocates.

5. PROFESSIONAL UNDERTAKING

The Vendor and/or his Advocates shall release the documents comprised at clause J of this Agreement to the Purchaser's Advocates on the latter's professional undertaking to hold the same to the order of the Vendor's Advocates and not release or deal with the same in any manner save for purposes of completing the sale herein.

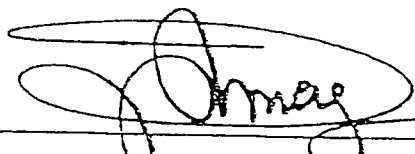
6. WARRANTY BY VENDOR

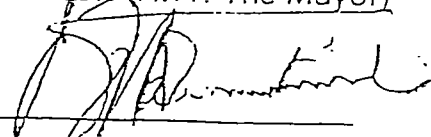
The Vendor warrants and it is a fundamental term of this Agreement that he has full legal capacity and authority to sell and transfer the piece of land to the Purchaser.

7. LAW SOCIETY CONDITIONS OF SALE

The sale of the property is subject to the Law Society Conditions of sale (1989 Edition) in so far as they are not inconsistent with the conditions contained in this Agreement.


Vendor


Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

8. RELEASE OF PURCHASE PRICE

- 8.1 The Stakeholders shall release the purchase price to the Vendor's Advocates upon the following terms.
- 8.2 On the completion date or upon successful registration of the Transfer of the piece of land in favour of the Purchaser (whichever occurs earlier)
AND:-
- 8.2.1 Upon the Vendor putting the Purchaser in actual physical possession and control of the property.

9 ADVOCATES FOR THE VENDOR

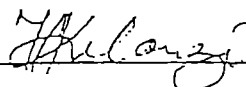
The Vendor's Advocates are Messrs Odera Osiemo & Company Advocates, Messrs PC Onduso Advocate and Messrs Alphonse Mutinda & Company Advocates, Queensway House, 4th Floor, P.O. Box 73098-00200, Nairobi.

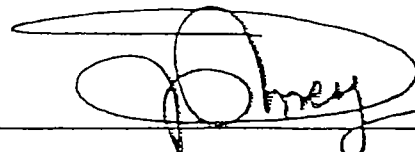
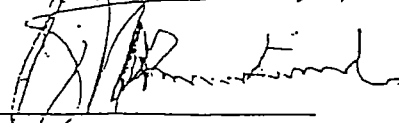
10 ADVOCATES FOR THE PURCHASER

The Advocates for the Purchaser are E.N. Omotii & Company Advocates, Reinsurance Plaza, 1st Floor, Taifa Road, P.O. Box 3165-00200 Nairobi.

11 MATTERS AFFECTING THE PROPERTY

- 11.1 The property is sold subject to the rights, privileges, condition and covenants originally referred to in the title of Property but otherwise free from all liens, charges and mortgages (whether legal or equitable) and all other encumbrances.


Vendor


Purchaser (H.W. The Mayor).

Purchaser (Town Clerk)


11.2 The property is sold with vacant possession together with any developments and improvements thereon (if any).


11.3 Both parties agree that this Agreement constitutes the whole and any agreement between the parties hereto relating to the sale and purchase of the property and supersedes and extinguishes any prior agreements, undertakings, representations warranties and arrangements of any nature whatsoever, between any parties, whether or not in writing, relating to the sale and purchase of the property.

12 SPECIAL CONDITIONS

- A. The Vendor shall pay all the outstanding electricity, water and telephone charges (if any) and any other outgoings which may be charged upon the property unto the Completion Date.
- B. The Vendor shall at his cost undertake any necessary sub-divisions and obtain requisite consents on that behalf.
- C. The Vendor shall at his cost obtain all necessary consents, undertaken requisite sub-division and obtain a separate title for the 120 acre parcel of land to be sold.
- D. The Purchaser shall obtain all necessary statutory and ministerial consents to purchase the property subject matter hereof.


Vendor


Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

E. Costs

Each of the Parties shall pay their respective Advocates' charges in connection with this transaction. The Vendor shall meet the costs of obtaining the Completion Documents and the Purchaser shall meet the costs of stamp duty and registration fees on the Transfer.

F. NOTICE

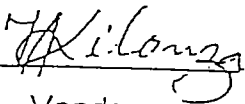
Any notice to be given to any party to this Agreement shall be in writing and may be delivered or sent by registered post or recorded delivery to the recipient at the address indicated above. Such notice shall be deemed to be received upon delivery or Seven (7) days after posting.


G. SURVIVAL

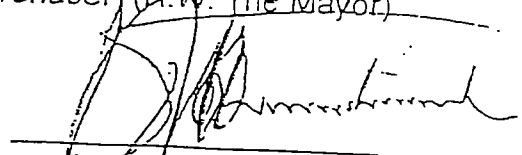
Save with regard to matters which require to be fulfilled and are in fact fulfilled prior to or at the Completion Date, the Agreement shall continue to be in full force and effect with regard to any provisions herein which are capable of being performed after but which will not have been performed at or before the Completion Date.

H. WAIVER

No failure or delay by the Vendor or the Purchaser in exercising any claim, remedy, right, power or privilege under this Agreement shall operate as a waiver nor shall any single or partial exercise of any claim, remedy, right, power or privilege preclude any further exercise thereof or the exercise of any other claim, right or power.


Vendor


Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

I. REMEDIES CUMULATIVE

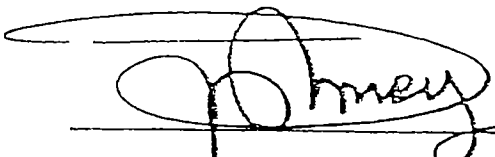
Any remedy or right conferred upon the Vendor or the Purchaser for breach of this Agreement including the right of rescission shall be in addition to and without prejudice to all other rights and remedies available to them.

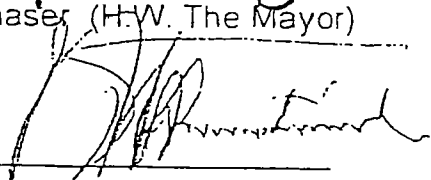
J. On the Completion Date:-

The Vendor shall on the Completion Date deliver to the Purchaser's Advocates the following:-

- (i) Original title for the portion of 120 Acres (free from Encumbrances);
- (ii) ~~Consent to Transfer;~~
- (iii) The Transfer to the piece of land (in triplicate) duly executed by the Vendor,
- (iv) A duly completed form of valuation for stamp duty;
- (v) Rates clearance certificate valid for at least 30 days after the Completion Date;
- (vi) Land rent clearance certificate valid for at least 30 days after the Completion Date;
- (vii) Certified copy of the vendor's Identity Card.
- (viii) Certified copy of the Vendor's PIN.

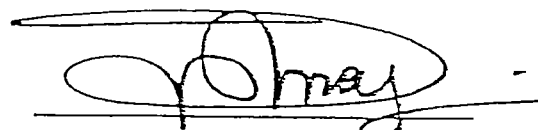

Vendor

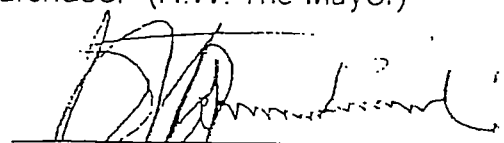

Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

- (ix) Three colour passport size photographs of the Vendor.
- F. (i) All payments due to be made by the Purchaser hereunder and all costs, charges, expenses or remuneration are inclusive of all taxes, any value added tax or similar tax charged or chargeable.
- (ii) If any term or condition of this Agreement shall to any extent be found or held to be invalid or unenforceable, the parties shall negotiate in good faith to amend such term or condition so as to be valid and enforceable and to be construed with the interest of the parties as contained herein.
- (iii) If any term or condition of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected and each other term and condition shall be valid and enforceable to the fullest extent permitted by law.
- (iv) No amendment, change or addition to this Agreement shall be effectual or binding on the parties hereto unless it is in writing and duly executed by or on behalf of the parties hereto.
- (v) Any commissions payable to any agent shall be paid for by the Vendor.
- (vi) No interest is payable on account of default or delay in completion of the sale.


Vendor


Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

G The Purchaser admits that it has inspected the property and purchases it, as represented by the Vendor, as to its actual state and conditions and shall without prejudice to the Purchaser right to repudiate the Agreement owing to the Vendor's breach or material misrepresentation, take the property as it stands provided that the Vendor shall point out the beacons of the property to the Purchaser prior to the Completion Date.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto as of the day and year first above written.

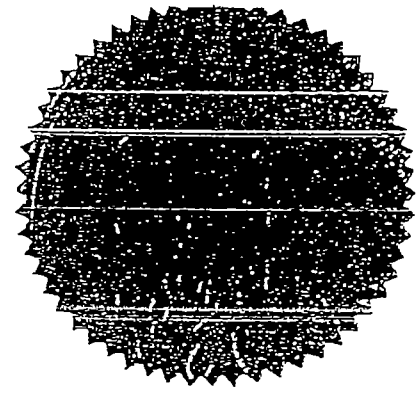
SIGNED by the
HENRY MUSYOKI KILONZI



ALPHONCE MUTINDA
in the presence of ADVOCATE
P.O. Box 73098 - 00200
NAIROBI.

ADVOCATE

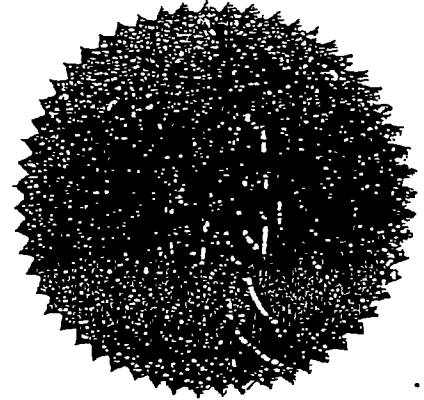
)
) *Henry Musyoki Kilonzi*
)
) I/D 1809529
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I certify that the said Henry Musyoki Kilonzi being the Vendor hereof appeared before me on the 19th Day of Dec 2007 and signed in my presence:

Alphonce Mutinda
ALPHONCE MUTINDA
P.O. Box 73098 - 00200
NAIROBI.
ADVOCATE

SEALED with the Common Seal of
CITY COUNCIL OF NAIROBI



In the presence of:-

H.W. THE MAYOR

TOWN CLERK

I certify that the said GEORGEY MATIWA and
NELSON OTIHO being His Worship the Mayor and
Town Clerk of the Purchaser appeared before me on the 19th day
of February 2008 and signed in my presence.

EDWARD N. OMOTII
ADVOCATE &
COMMISSIONER FOR OATHS
P.O. Box 11113, NAIROBI
ADVOCATE

DRAWN BY:

E.N. OMOTII & CO. ADVOCATES,
REINSURANCE PLAZA, 1ST FLOOR,
TAIFA ROAD,
P.O. BOX 3165-00200,
NAIROBI.

REPUBLIC OF KENYA

DISTRICT OF MACHAKOS

Land Reference No. 14759/12

Locality South of Athi River

(Orig. No. ...)

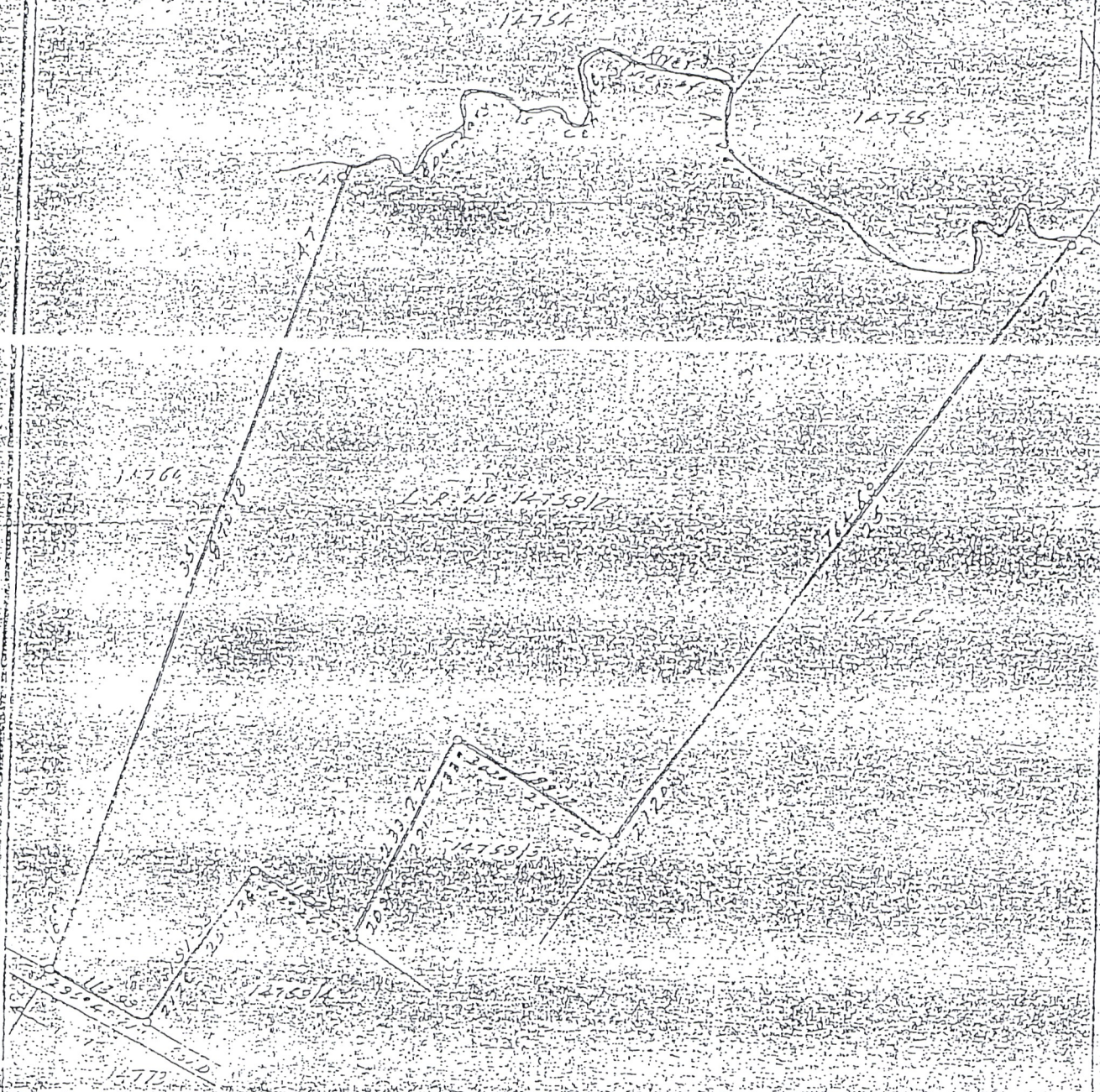
Reference Map SOUTHERN A 27
G. II. 8

Sub division No. (Orig. No. ...)

| | Bearings | | | Distance
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| | 0 | 1 | 2 | |
| 1. Body | 16 | 35 | 47 | 10m |
| 2. Body | 212 | 25 | 40 | 10m |

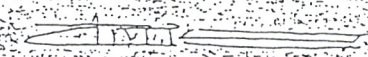
of Section No

Area = 28.30 Ha (Approx)



I. N. Amelani
Surveyor

L.P. NO. 464/81
S.O.M.P.S. NO. 56788



for Director of Surveys

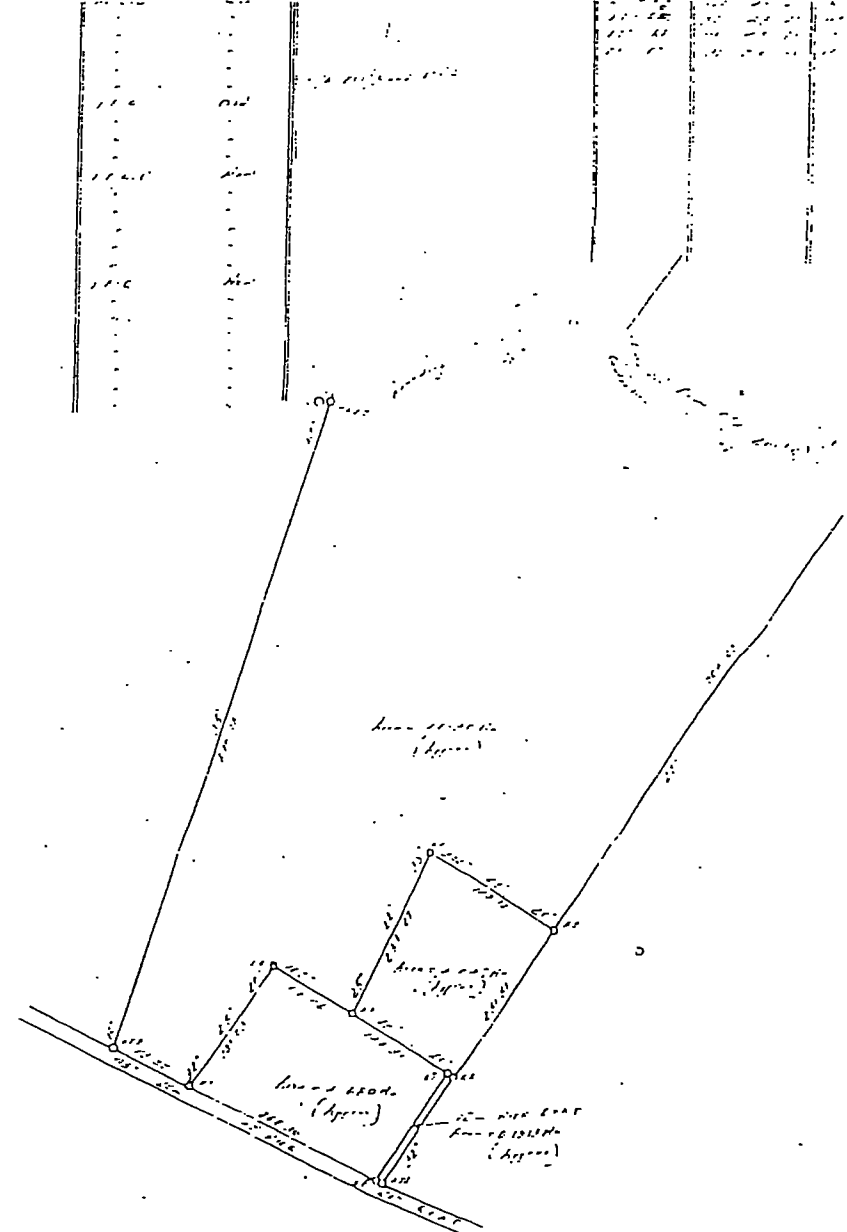
Nairobi 15th JUNE 1974 2009

DEED PLAN No 293535

Traced by
Compared by

Scale 1 in 5000

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This plan shows the boundaries of the land as surveyed and approved by the Surveyor General of the Province of Ontario, and is a true and correct copy of the original plan as approved by him.

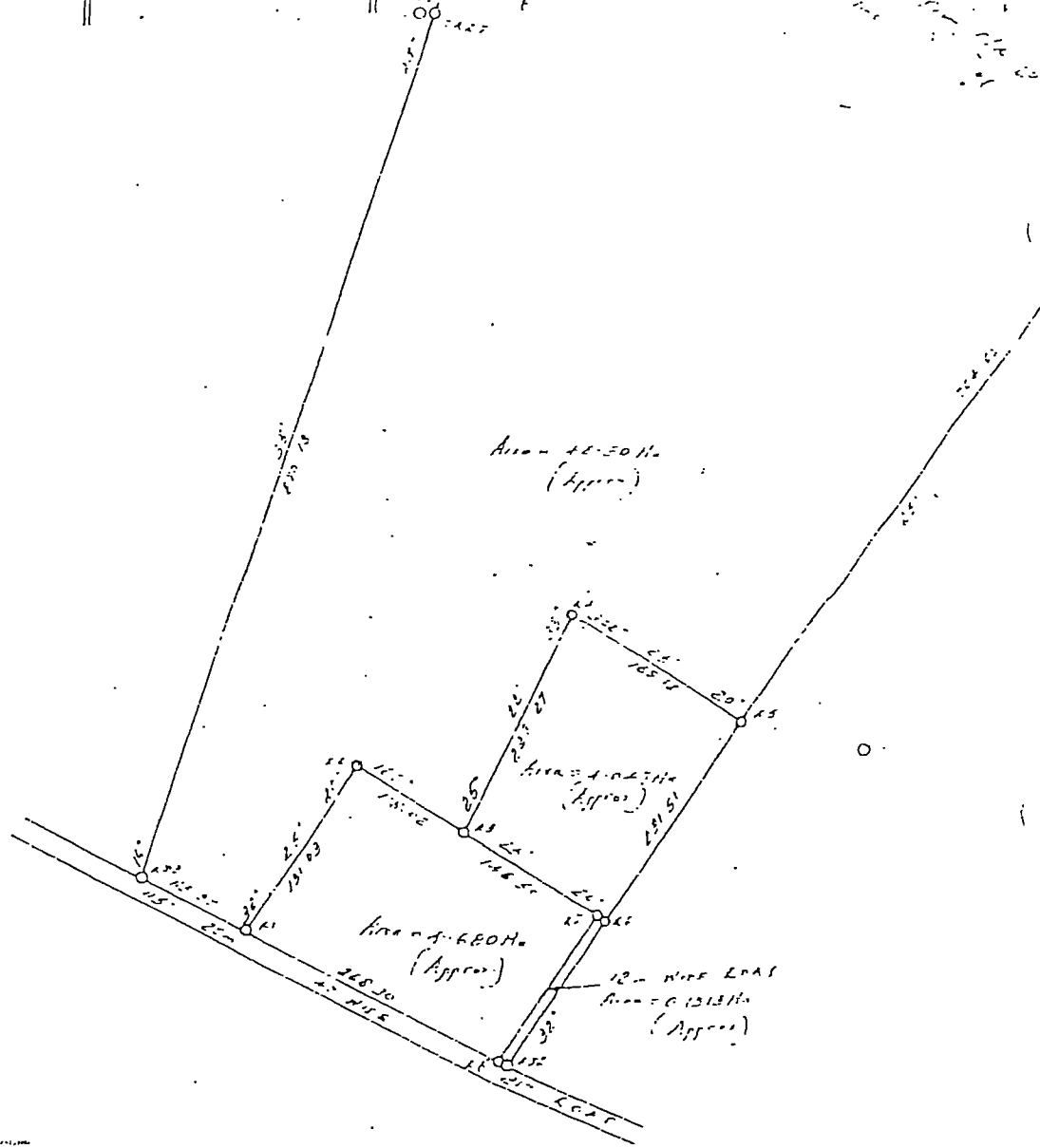
SCALE 1 : 5000

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| Plot/Parcel No. |
| Ref. Map/R. 101 |
| Registration Block |
| Registration District |
| Locality |

| Registration | Transaction | Authentication | Date | Record | Date |
|--------------|-------------------|----------------|------|-----------|------|
| 100-100-100 | Personal Approval | Examined by | | Traced by | |

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|------------|-----------|
| 152 58 57 | 3 376 57 |
| 152 570 10 | 3 220 64 |
| 157 335 43 | 10 615 67 |
| 157 187 53 | 3 275 18 |
| 151 126 31 | 10 161 57 |
| 153 308 30 | 10 400 18 |
| 153 157 18 | 10 155 47 |
| 157 323 63 | 10 506 32 |
| 158 143 56 | 3 735 66 |
| 153 124 44 | 3 654 75 |
| 153 015 42 | 10 070 85 |
| 151 806 00 | 10 551 15 |
| 158 211 80 | 10 131 56 |
| 158 304 62 | 10 517 53 |
| 157 621 58 | 10 307 56 |
| 153 206 83 | 10 252 86 |
| 153 045 50 | 10 530 44 |
| 153 108 65 | 10 450 62 |
| 158 838 10 | 10 350 65 |
| 158 553 50 | 10 131 21 |
| 153 134 31 | 10 315 34 |
| 153 128 48 | 10 175 47 |
| 153 323 70 | 10 411 35 |

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| 152 58 57 | Old |
| 157 335 43 | " |
| 157 187 53 | New |
| 151 126 31 | " |
| 153 308 30 | " |
| 153 157 18 | " |
| 157 323 63 | New |
| 158 143 56 | " |
| 153 124 44 | " |
| 153 015 42 | " |
| 151 806 00 | " |
| 158 211 80 | " |
| 158 304 62 | " |
| 157 621 58 | " |
| 153 206 83 | New |
| 153 045 50 | " |
| 153 108 65 | " |
| 158 838 10 | " |
| 158 553 50 | " |
| 153 134 31 | " |
| 153 128 48 | " |
| 153 323 70 | " |



The boundaries of the field and in the office have been approximated as shown.
 Area of the field is 100.00 Ha. The area of the field is 100.00 Ha.
 The area of the field is 100.00 Ha. The area of the field is 100.00 Ha.

1. The person who has made this map is the person who has made this map.
 2. The person who has made this map is the person who has made this map.
 3. The person who has made this map is the person who has made this map.

SCALE: 1 : 5000

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|-----------------------|--|
| Plot/Parcel No. | |
| P.L. Map/R.L.M. | |
| Registration Block | |
| Registration District | |
| Locality | |

*Paper laid by
Hon. Musyoki
in support of
Private Notice
L.P.D
446*

Bundle II

④

... day of *January* 2009
Commissioner for Oaths

WIS

HON. MUSYOKI KILONZI

-TO-

CITY COUNCIL OF NAIROBI

TRANSFER

OF

L.R. NO. 14759/ 2 MAVOKO MUNICIPALITY, MACHAKOS

DRAWN BY:
E.N.OMOTI & CO.
ADVOCATES,
REINSURANCE PLAZA
1ST FLOOR
P.O.BOX 3165 - 0200,
NAIROBI.

104
P

DEPARTMENT OF LANDS
CENTRAL OFFICE
13 FEB 2009
14504

REPUBLIC OF KENYA

REGISTRATION OF TITLES ACT

(CHAPTER 281)

TITLE NUMBER: I.R.

TERM: FREEHOLD

TRANSFER

I HENRY MUSYOKI KILONZI of Post Office Box Number 19022 00500, Nairobi in the Republic of Kenya being registered proprietor for an estate in fee simple ALL THAT piece of land situate in the South of Athi River Township in the Machakos District of the Republic of Kenya containing by measurement ^{FIVE TWP} ~~Four~~ eight decimal five six three ^{53.22} ~~(48.563)~~ of a hectare or thereabouts and known as Land Reference Number 14759/2 (Original Number 14759) which said piece of land being the premises comprised in a Grant dated the Thirtieth day of December One Thousand Nine Hundred and Ninety One and registered in the Registry of Titles at Nairobi aforesaid as Number I.R. ~~54655/1~~ (Original I.R. 54655) is with the dimensions abuttals and boundaries thereof delineated /and described on the plan annexed to said ^{Grant} certificate of title registered as Number I.R. ~~54655/1~~ and more particularly on Land Survey Plan Number ¹³⁹³⁵² ~~29353~~ deposited in the Survey Records Office at Nairobi aforesaid and thereon bordered red SUBJECT however to special conditions, encumbrances and other matters written IN CONSIDERATION of the sum of Kenya Shillings two hundred and eighty three Million Two Hundred Thousand only (KShs.283,200,000/-) on or before the execution of these presents paid to me by CITY COUNCIL OF NAIROBI of Post Office Box Number 30075-00100 Nairobi aforesaid (hereinafter called "the

283 200,000/-

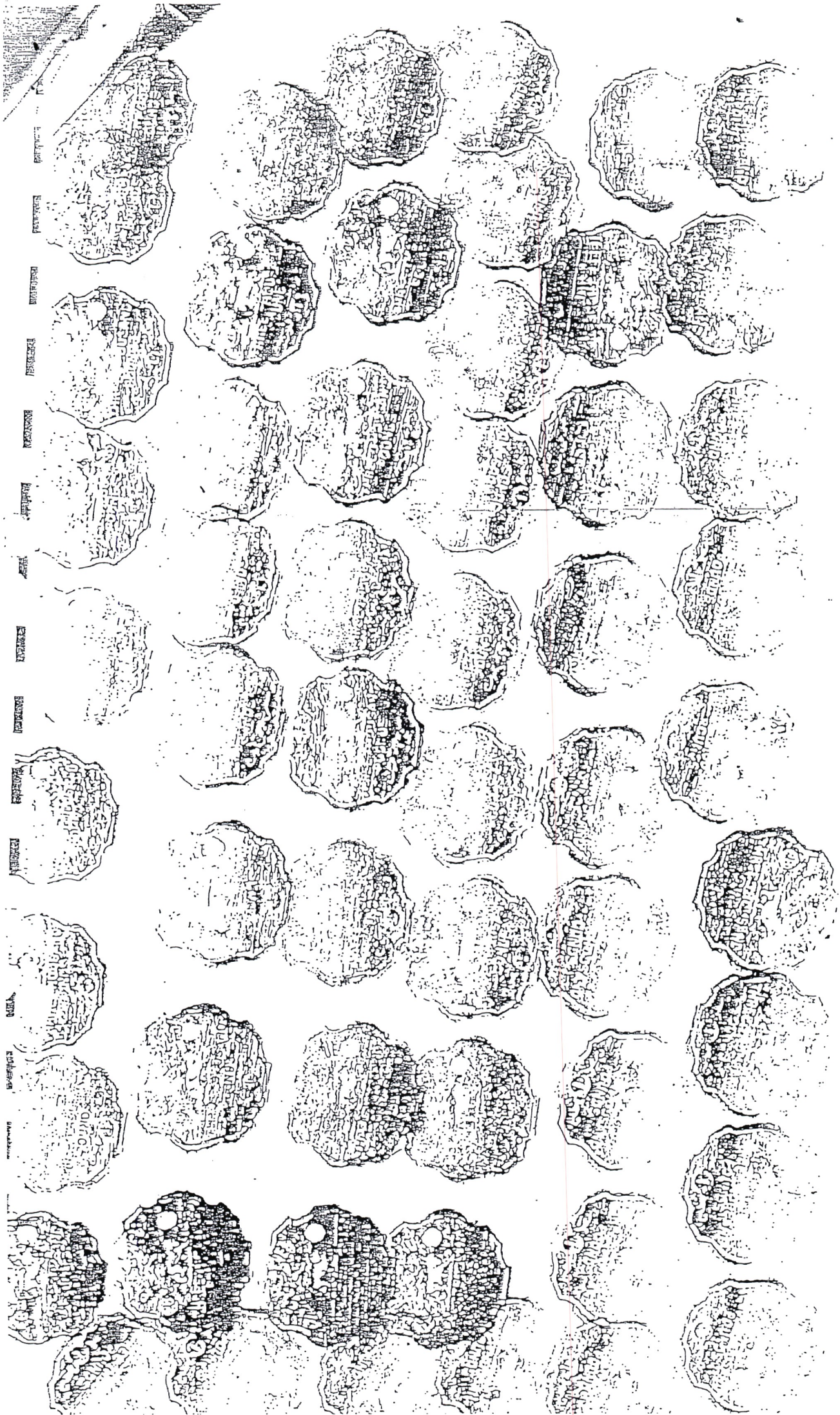
3/21/09
P. Luchessa, C.A.

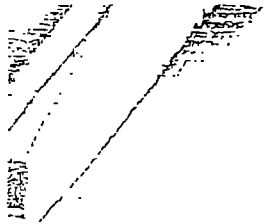
MUTINDA ADVOCATE
Box 73098
NAIROBI - 00200

MUTINDA ADVOCATE
Box 73098
NAIROBI - 00200

*The owner has caused the said piece of land to be subdivided into various portions and is offering to transfer each portion that is to be L.R. no 14759/2 Area 4.8356 ha







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Purchaser") (the receipt of which sum I do hereby
acknowledge) DO HEREBY TRANSFER all my
respective rights, titles and interests in the said piece of
land to the Purchaser and TO HOLD the same unto the
purchaser's use subject as aforesaid.

IN WITNESS whereof the Transferee and the Transferor
have hereunto affixed their respective hands this
23rd day of January Two Thousand and
Nine.

SIGNED by the TRANSFEROR

HENRY MUSYOKI KILONZI)

Henry Musyoki Kilonzi

in the presence of: -)

Alphonse M. Inda
ALPHONSE M. INDA
ADVOCATE
P. O. Box 73098 - 00200,
NAIROBI.



ADVOCATE.

CERTIFICATE.

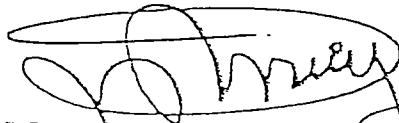
ID No : 1809529
PIN No: A-000115874P

I certify that I was present and saw the Transferee HENRY
MUSYOKI KILONZI sign this transfer on the...19th day
of JANUARY.....2009.

Alphonse M. Inda
ALPHONSE M. INDA
ADVOCATE
P. O. Box 73098 - 00200,
NAIROBI.

SEALED with the COMMON SEAL of
CITY COUNCIL OF NAIROBI

In the Presence of:



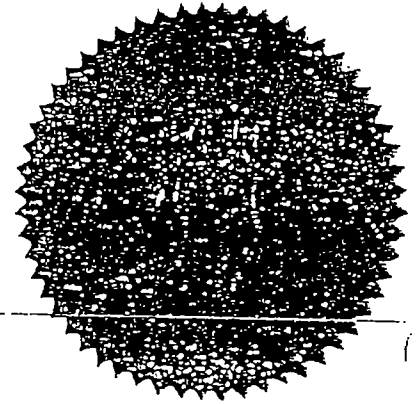
HIS WORSHIP THE MAYOR

TOWN CLERK



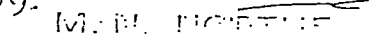
ADVOCATE

9772208



CERTIFICATE.

I certify that I was present and saw His Worship the Mayor
and Town Clerk of the Transferee sign this transfer on
the...23rd...day of...January...2009.


M. B. MURPHY
COMMISSIONER OF LANDS

ADVOCATE.

MEMORANDUM

1. The provisions of the Government Lands Act (Chapter 280).
2. Special Conditions contained in a Grant registered as aforesaid as Number I. R. 54655/1

LAND TITLES REGISTRY - NAIROBI REGISTRY
REGISTRATION OF TITLES ACT
REGISTERED AS NO. I.R. 54655/1
PRESENTED 30th FEBRUARY 2009
BY 10450/MS



I certify that this is a true copy of the original document of title.

J.R.

KARISA IMA
DEPUTY DIRECTOR LEGAL
CITY COUNCIL OF NAIROBI

17-02-09

REPUBLIC OF KENYA

THE REGISTRATION OF TITLES ACT
(Chapter 281)

CERTIFICATE OF TITLE

TITLE No. IR 115561

I HEREBY CERTIFY that CITY COUNCIL OF NAIROBI

of Post Office Box Number 30075-00100 NAIROBI

in the Republic of Kenya pursuant to a Transfer registered as Number I.R. 54655/7
is/are now the registered proprietor(s) as owner(s) for an estate in fee simple

of ALL that piece of land situate in the South of Athi River

in the Machakos District containing by measurement Forty eight decimal three nought
(48.30Ha)
hectares/acres ~~(less road reserve of~~

hectares/acres) or thereabouts and being Land Reference Number 14759/2

(Original Number)

as delineated on Land Survey Plan Number 293535

annexed to the said Transfer

SUBJECT however to the Act Special Conditions Encumbrances and other matters specified
in the Memorandum hereunder written.

IN WITNESS whereof I have hereunto set my hand and seal this 3rd

day of February Two thousand and nine

[Signature]
Registrar of Titles

G. G. Gidde 013

MEMORANDUM

1. Special conditions contained in a Grant registered as IR 54655/1

CPK 3417-25-7708

LAND TITLES REGISTRY - NAIROBI REGISTRY

REGISTRATION OF TITLES ACT

REGISTERED IN I.R. 115561/1

PRESENTED 3rd February 2009

TIME 14:50 Hrs. *[Signature]*
Registrar of Titles



REPUBLIC OF KENYA

DISTRICT OF *MACHAKOS*

Land Reference No. *14759/2*

Locality *South of Athi River*

(Orig No.

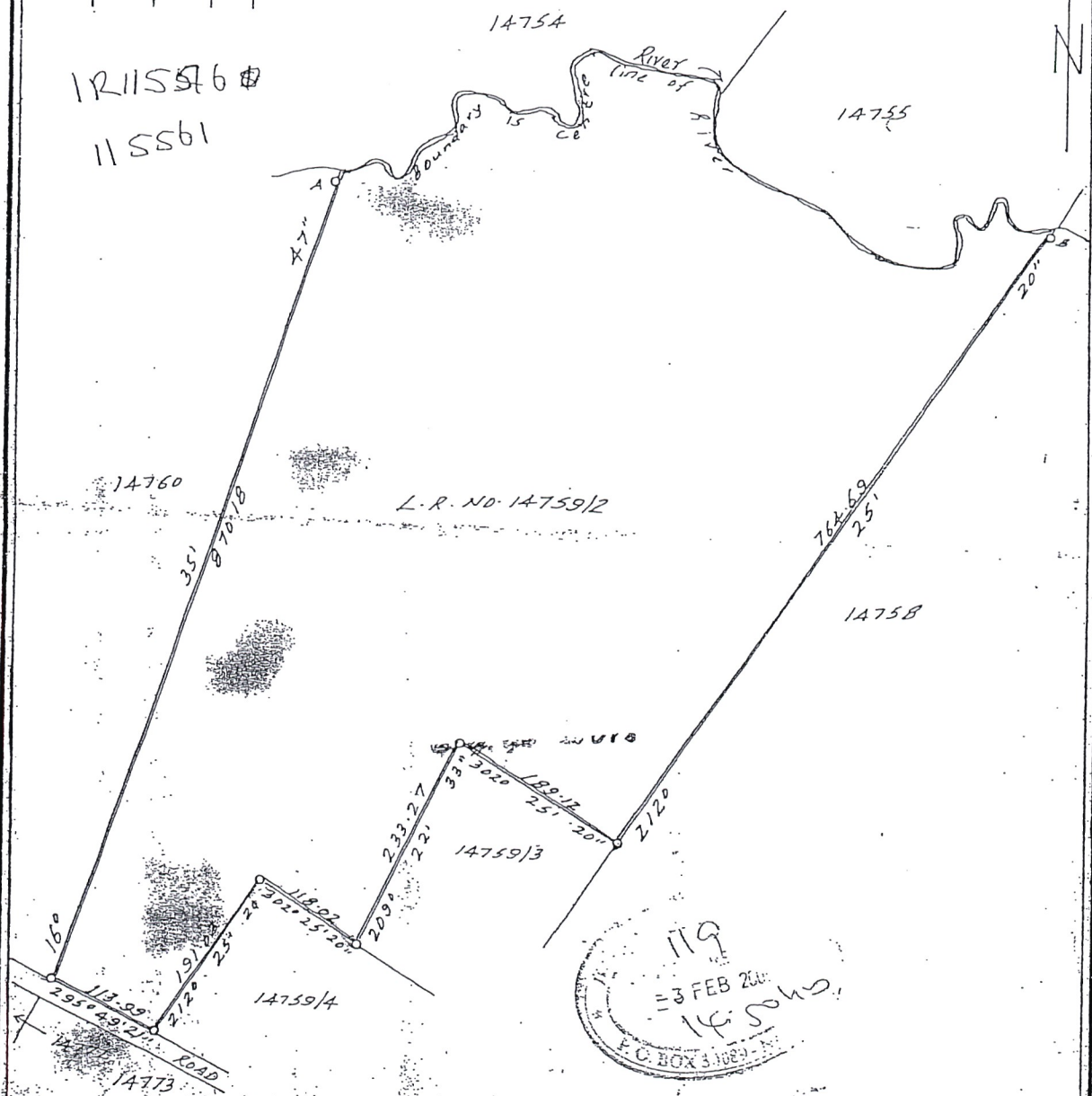
Reference Map *South A-379*
G-II-9

Sub division No (Orig No.

of Section No.

Area = *48.30 H². (Approx)*

| | Bearings | | | Distance
Metres |
|-------|----------|----|----|--------------------|
| | 0 | ' | " | |
| A-Adj | 16 | 35 | 47 | 10.07 |
| Bdy-B | 212 | 25 | 20 | 10.07 |



119
 = 3 FEB 2009
 14:50 hrs
 P.O. BOX 31089 - NAIROBI

I. N. Mwachane
 Licensed Surveyor.
 P.R. No. *484/81*
 COMPS NO. *56788*

[Signature]

for Director of Surveys
 Nairobi *15TH JANUARY 2009*
 DEED PLAN No. *293535*

Traced by *[Signature]* Scale 1 in *5000*
 Compared by *[Signature]*

CITY OF

NAIROBI



CITY PLANNING DEPARTMENT

M E M O

TO : TOWN CLERK
FROM : DIRECTOR
CITY PLANNING DEPARTMENT
REF : CPD/ADMIN/6614
DATE : 11TH NOVEMBER, 2008

W 15

RE: PURCHASE OF LAND FOR CEMETERY

I refer to your memo ref. TC/JG/9/3804/2008 dated 30th October, 2008 and Permanent Secretary Ministry of Local Government letter ref. No. MLG/402-01(16) equal date on the above referenced.

This is to inform you that the tender for purchase of the land has been advertised. However, the open tender process is proving to be ineffective in regard to attracting bidders with suitable land for cemetery use. This is because availability of suitable land for this purpose is confined in fewer and specific locations due to environmental concerns requiring careful attention. Currently, all respondents to the recently advertised tender have offered lands that due to their locations, soil profile, accessibility status, and other environmental conditions are unsuitable and inappropriate for cemetery use.

Arising from the afore-going, it would appear that a method which directs procurement of land in preferred locations with suitable land in terms of soil profile, infrastructure and services, accessibility, size and acceptable environmental conditions and permits informed negotiations with selected land owners may yield better results than the open tender.

Consequently, I would advise that a legally acceptable alternative means be employed to acquire the land other than open tender which has proved ineffective in view of the aforementioned factors.

P. M. KIBINDA

P. M. KIBINDA
DIRECTOR OF CITY PLANNING

C.c - Medical Officer of Health
- Director of Legal Affairs.

ENG/jsk

CONFIDENTIAL

CITY COUNCIL OF NAIROBI

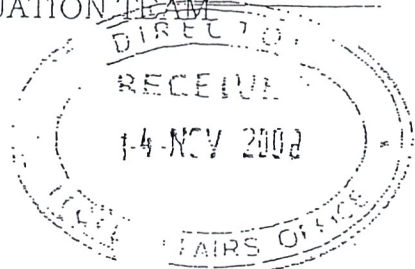
W16



CITY PLANNING DEPARTMENT

M E M O

TO : ~~CHAIRMAN - TECHNICAL EVALUATION TEAM~~
FROM : MR. P.T. ODONGO
 : MR. J. K. BARREH
DATE : 11TH NOVEMBER, 2008



RE: TENDER FOR SALE OF CEMETERY LAND

We have been available to offer technical advice regarding the above referenced matter.

It needs to be appreciated that the undersigned pointed out from the outset of the referred evaluation that the tender document(s) are defective and insufficient to assist in procuring the suitable land for cemetery use.

Nevertheless, we agreed to proceed with the above evaluation based on the said document(s) as the procurement process had already commenced on the basis of the same document(s)

Based on administrative requirements and other documentation five sites were selected for further evaluation while others were eliminated.

We would like to reiterate the importance of the second phase of the above evaluation whereby the suitability of the land and location are being examined on the basis of the referred tender document.

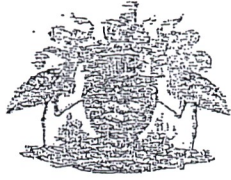
The defectiveness of the said document notwithstanding; we applied this to examine the remaining five sites. At the end of this phase of the evaluation process, it is categorical that none of the five sites met the suitability criteria for land for cemetery use.

This matter being very sensitive needed to be carefully handled to conclusion of evaluation of the tender but if ever the evaluation was done, we were not represented/made aware of.

13/19

CITY COUNCIL OF NAIROBI

W 17



CITY PLANNING DEPARTMENT

M E M O

TO : TOWN CLERK

FROM : DEPUTY DIRECTOR
CITY PLANNING DEPARTMENT

REF : CPD/ADMIN/7543

DATE : 19TH DECEMBER, 2008

RE: PURCHASE OF LAND FOR CEMETERY

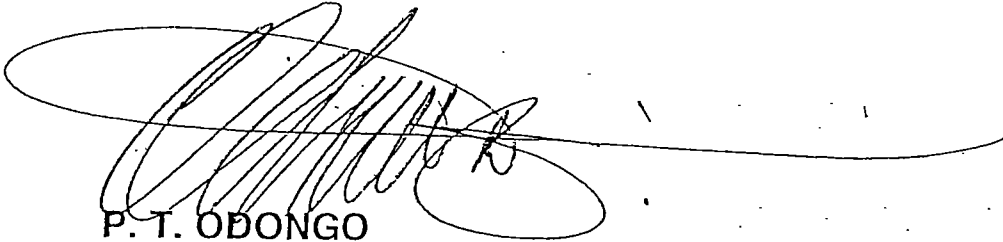
Your memo reference TC/JG/9/3887/2008 of 16th December, 2008 and the forwarded letter reference MLG/402-01/ (17) of 4th December, 2008 from the Permanent Secretary, Office of the Deputy Prime Minister and Ministry of Local Government concerning the above refers.

I regret the fact that my well intended memo of 11th November, 2008 to the Chair person of the Evaluation Team found its way outside the designated offices unintended. Land that is suitable for a cemetery from the point of view of city planning, public health and environmental considerations is evidently in short supply and its supply is also restricted to fewer locations in the city and its environs. This fact mitigates that a mode of acquisition that is heavily dependent on market processes to locate a cemetery is severely incompetent.

The referred memo was precipitated by two main concerns both of which are connected to the aforementioned.

Firstly, it was a fact that the tender document that was guiding the evaluation process was severely inadequate in terms of criteria of determining appropriateness of locations and suitability of sites for cemetery use. It is noted that suitability of site for cemetery is principally a function of the soil profile/type and the level of services and infrastructure provision while appropriateness of location is about physical accessibility in terms of distance in relation to the location of the targeted population catchments as well as the obtaining social and environmental characteristics of the surroundings. The referred tender document lacked the competence to sufficiently address the above mentioned fundamental considerations.

Secondly, the open tender obviously failed to attract competitive bids in terms of suitable locations and sites as majority of the bids were off the mark by the measure of the tender document that was in use. I took the position that, much as there could be pressure to utilize the allocated funds on time, the duty to ensure that such utilization is aligned to securing suitable site in appropriate location is at the heart of the evaluation exercises. My memo was intended to reiterate the significance of the technical considerations relating to suitability of site and appropriateness of location for the proposed cemetery and to caution on the consequences of over-weighting the issue of utilizing the allocated funds on time.



P. T. ODONGO

DEPUTY DIRECTOR OF CITY PLANNING

29/10/30

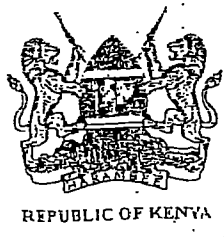
W 18

OFFICE OF THE DEPUTY PRIME MINISTER
AND MINISTRY OF LOCAL GOVERNMENT

OFFICE OF THE PERMANENT SECRETARY

JOGOO HOUSE "A"
TAIFA ROAD
P.O. Box 30004-00100
NAIROBI

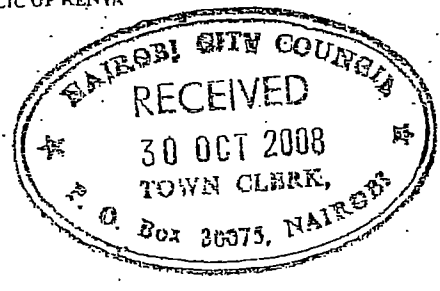
Telegrams: "AUTHORITY"
Telephone: Nairobi 2217475
Fax: 2217869
E-mail: ps@localgovernment.go.ke
When replying please quote
MLG/402-01/ (16)
Ref No. _____
and date _____



....., 20.....

30th October, 2008

Mr. John Gakuo
Town Clerk
City Council of Nairobi
NAIROBI



PS

Dear Mr. Gakuo

RE: PURCHASE OF LAND FOR CEMETERY

Refer to my letters Ref No. C/1142.131/ (39) dated 25th June, 2008 and MLG/402-01/(15) dated 8th September, 2008.

It is now 5 months since you initiated action on this matter and yet you have not concluded and advised the Ministry to effect payment. The continued holding of this payment is adversely affecting other financial transactions in the Ministry. From the date of this letter I want to get this matter concluded within a period of 5 days. At the expiry of this period the Ministry will take over the procurement process and proceed with the advertisement for the purchase of the land for the cemetery.

Yours sincerely


Samir Kirui, MBS
PERMANENT SECRETARY

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date the said letter in question was already written (10th November 2008) purportedly as our reply communicating the valuation figure back.

(c) We wrote on 13th November 2008 vide our letter Ref. VAL1360/6 to the Director, Legal Affairs, City Council of Nairobi, to contact us to facilitate inspection – **The same is still outstanding as there has been no response since.**

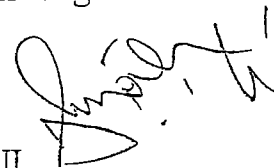
(d) Most importantly is the fact that **Valuation Division does not have a Valuation Officer by the name 'A. Otieno' either in the Headquarters or in the District offices** who has purported to sign 'for Deputy Commissioner Lands valuation'.

(e) In a Standard form of communication of the valuation figure we would have attached a comprehensive valuation report and **NOT a 'Letter bearing a figure'** as is the case with the Letter in question.

(f) You will note that the **Ministry's Letter heads** used for the Letter are no longer in use. The correct and applicable Letter heads for the Ministry are "**Ministry of Lands**", and NOT Ministry of Lands and Settlement.

(g) We do not have 'Deputy Commissioner Lands Valuation' but we sign as 'Deputy Commissioner of Lands (Valuation)'

In conclusion we wish to disown the Letter of Valuation Ref. 156708 of 10th November 2008 as a forgery and not emanating from this office.



A. M. ITUI

DEPUTY COMMISSIONER OF LANDS (VALUATION)
FOR: COMMISSIONER OF LANDS

CC. THE COMMISSIONER OF LANDS

Encl. Copy - Ref. DLA/MNN/924/E/08 OF 4TH NOV. 2008.
Copy - Ref. VAL 1360/6 OF 13TH NOV. 2008

REPORT AND VALUATION

LR. NO. 14759/2

SITUATION: The property is situated approximately 7.2 km from Kitengela on the Kitengela - Ongata road. It borders the Merciful Redeemer Childrens home, within Mavoko Municipality.

DATE OF INSPECTION: 29th January 2009

VENDOR: Henry Musyoki Kilonzi

PURCHASER: City Council of Nairobi

AREA: 48.653 Hectares or 120 Acres approximately

INTEREST PASSING: Freehold

USER: Agricultural

THE LAND: The land is of fairly level gradient. Soils are shallow black cotton with a rocky base.

RAINFALL: The exact amounts were not established but this area is under dry grassland and thorny bushes both of which are an indication of fairly low rainfall amounts.

AGRICULTURE: The most common activity in this area is cattle rearing. Sheep and goats also do well here.

SERVICES: The land is accessible via the Kitengela - Ongata earth road which may be almost impassable in the wet season. The road of access is used by lorries collecting building stones from the nearby quarries; hence rough. There is no water on this particular plot but water maybe obtained from boreholes nearby.

DEVELOPMENTS: The land is vacant, currently under grassland and thorny bushes.

REMARKS: The land has a low carrying capacity. Due to the little rainfall amounts received here and the shallow black cotton soils, crop husbandry is not a good option for this land.

The land is relatively far from Kitengela (7.2km) and therefore its subdivision and change of user potential is low. This area is variously referred to as a wildlife migratory corridor. Raising of livestock therefore may be presented with wildlife/human conflict.

VALUATION: Having considered all factors that may influence the value of this land, we return an open market value of **Kshs. 24,000,000/=(Kenya shillings twenty four million)** only.

COMMENTS: Declared figure of Kshs. 283,200,000/- may be accepted for Stamp Duty.

DATED: 30th January 2009.



JACINTA MUTUA
ASSISTANT COMMISSIONER OF LANDS (VALUATION)
FOR: COMMISSIONER OF LANDS

W9



REPUBLIC OF KENYA
MINISTRY OF LANDS

Telegrams: "LANDS", Nairobi
Telephone: Nairobi 718050-9

When replying please quote

DEPARTMENT OF LANDS
1st NGONG AVENUE
OFF NGONG ROAD
P. O. Box 30089
NAIROBI

VAL: 1360/(19)

10th March 2009

The Controller and Auditor general
P.O. Box 300840-00100
NAIROBI

(Attn. Mr. S. B. Mangucia)

RE: PURCHASE OF LAND FOR CEMENTERY
LR No. 14759 – MAVOKO TOWNSHIP
CITY COUNCIL OF NAIROBI

I refer to your letter Ref. DEVT./AA/2007/2008/12B dated 6th March 2009 attaching a letter Ref. 156708 of 10th November, 2008 purportedly from us for authentication.

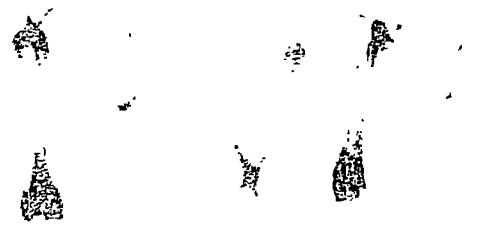
The said letter was issued by one A. Otieno (purportedly for Deputy Commissioner of Lands valuation), It also purported to communicate a valuation figure of Kshs.325,150,000/= to the director, Legal Affairs, City Council Nairobi(one M.N. Ng'ethe).

My comments about the letter are as follows:-

(1) On the face of it the Letter is a forgery as evidenced by so many omissions/commissions

(a)The Reference Number on the letter is not from Valuation Division.

(b)The letter Ref. DLA/MNN/924/E/08 of 4th November 2008 mentioned therein was received here on 13th November 2008 by which



MINISTRY OF LANDS AND SETTLEMENT

Telegrams: "LANDS", Nairobi
Telephone: Nairobi 718050-9
When replying please quote

DEPARTMENT OF LANDS
P.O. Box 30089
NAIROBI



Ref. No. 156703.....
and date

November, 10th 2008 20.....

17

The Director
Legal affairs
City Council Nairobi
NAIROBI.

WIO

At: M.N. NG'ETHE.

Dear Sir/ Madam,

RE: VALUATION REPORT FOR L.R. NO. 14759- MAVOKO
TOWN SHIP.

Reference is made to your letter Reference Number DLA / MNN/924/E/08 dated 4th November 2008.

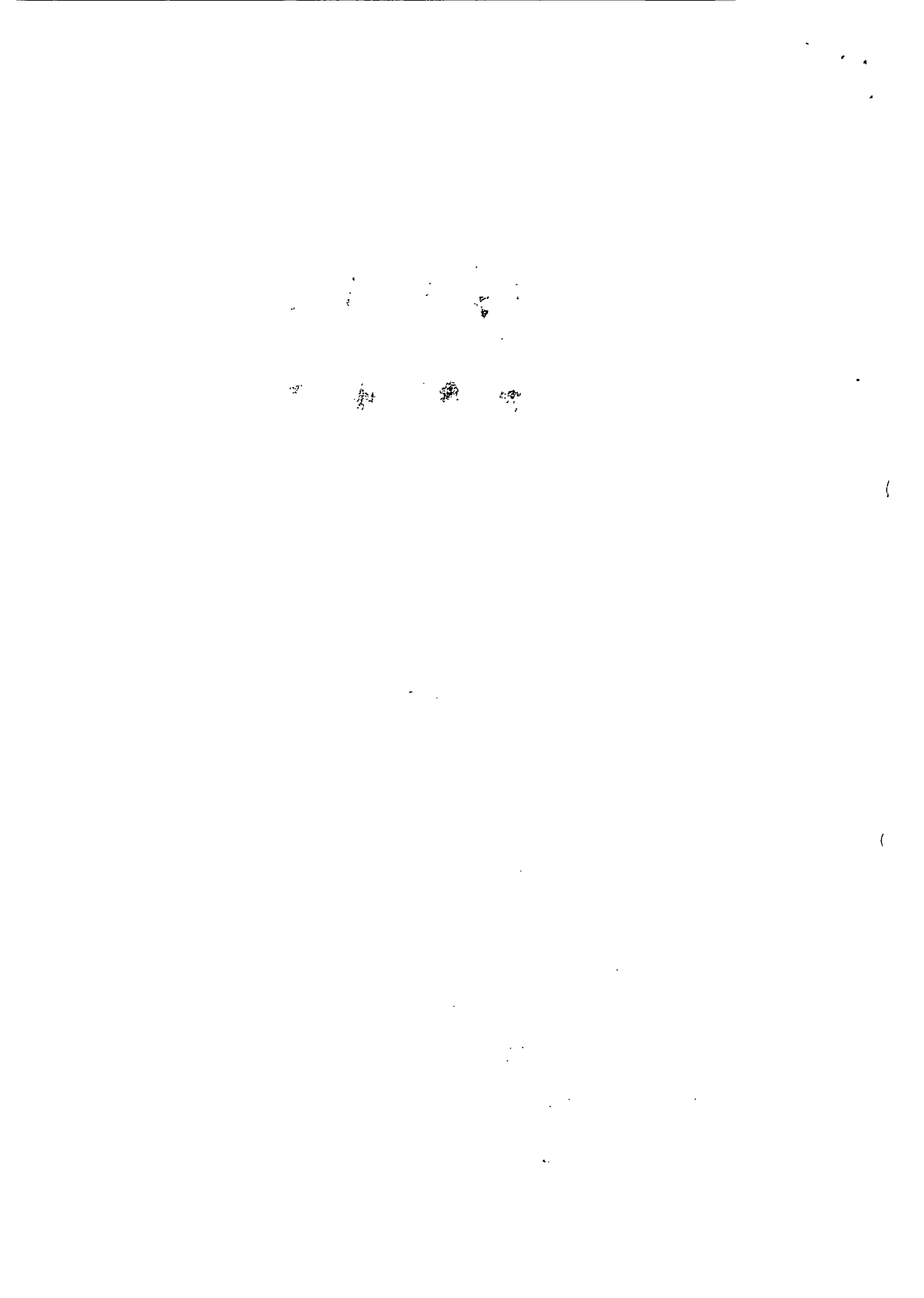
We have inspected the subject property with a view of advising on its current market value for purchase purposes.

We now have the pleasure to state that the current market value for the subject property is Kenya Shillings Three Hundred and Twenty Five Million one Hundred and Fifty Thousand Only (Kshs. 325,150,000/-)

Yours sincerely,

M. OTIENO.

For: DEPUTY COMMISSIONER
LANDS VALUATION.



W I I

REPORT AND VALUATION

UPON

AN AGRICULTURAL PARCEL OF LAND

L.R. NO. 14759/2

ON THE KITENGELA – ONGATA ROAD

MACHAKOS DISTRICT

TERMS OF REFERENCE

Acting on instructions from the Collector of Stamp Duty, we inspected the referenced property with a view to advising on its fair current market value. Herebelow is the report and valuation:



CLEAR COPY

DATED THE 19TH DAY OF DECEMBER 2008

*Paper laid by
Hon Mutika Dindi
in support of Auction
by private notice
Alkwas*

AGREEMENT FOR SALE

W12

HENRY MUSYOKI KILONZI

TO

CITY COUNCIL OF NAIROBI

in respect of 120 Acres of land comprised in
LAND REFERENCE NUMBER. 14759 MACHAKOS

E.N. OMOTII & COMPANY,
ADVOCATES
REINSURANCE PLAZA, 1ST FLOOR,
TAIFA ROAD,
P.O. BOX 3165-00200,
NAIROBI.

Henry Musyoki Kilonzi
Vendor

[Signature]
Purchaser (H.W. The Mayor)
[Signature]
Purchaser (Town Clerk)

14/01/2008

AGREEMENT FOR SALE

This Agreement is made the _____ day of _____ Two
Thousand and Eight

BETWEEN:-

1. HENRY MUSYOKI KILONZI of Post Office Box Number 19022-00500 Nairobi, in the Republic of Kenya (hereinafter called "the Vendor") which expression shall where the context so admits include his personal representatives and assigns.

AND

2. THE CITY COUNCIL OF NAIROBI, a local authority duly established under The Local Government Act, Cap 265 of The Laws of Kenya and of Post Office Box Number 30075-00100 Nairobi (hereinafter referred to as the "Council").

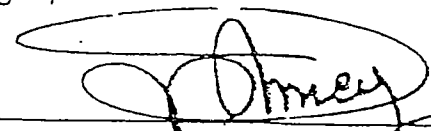
IT IS HEREBY AGREED AND CONFIRMED by and between the parties hereto as follows:-


1. DEFINITIONS AND INTERPRETATION:

1.1 In this agreement, unless the context otherwise requires, reference to:

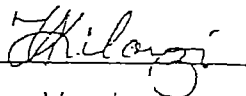
(a) The "Vendor" and "the Purchaser" includes the Vendor's Purchaser's successors in title and their permitted assigns;



Vendor

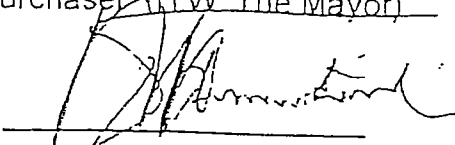

Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

- (b) Words importing the singular number only shall include the plural number also and vice versa and words importing the masculine gender includes the feminine gender and neuter and vice versa;
- (c) Clauses, Sub-clauses, Conditions and Sections shall be construed as references to Clause, Sub-clauses, Conditions and Sections of this Agreement;
- (d) "Encumbrance" includes any mortgage, charge (whether legal or equitable), lien, option, security interest, restrictive covenants, pledge, hypothecation, assignment, title retention, trust arrangement or other restriction or equity of any kind or other encumbrance securing or any right conferring a priority of payment in respect of any obligation of any person or any other rights over the property in favour of any person;
- (e) The expression "person" shall include any legal or natural person, partnership, trust, company, joint venture, agency, government or local authority department or other body (whether corporate or un-incorporate);
- (f) The expression "registration" means due and effective registration of the formal instrument of Transfer in the Central Land Registry Nairobi;
- (g) Any statute or any provision of any statute shall be deemed to refer to any statutory modification or re-enactment thereof and to any statutory instrument, order or regulation and thereunder or under any such re-enactment;


Vendor


Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

- (h) Indemnifying any person against any circumstance includes indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, costs and expenses, made or incurred by that person as a consequence of or which would not have arisen but for that circumstance; and
- (i) The expression "month" means a calendar month.
- (j) "Business Day" shall mean a day (other than a Saturday, Sunday or Gazetted public holiday in Kenya) on which banking and financial institutions are generally open for the conduct of the banking business in Kenya.

1.2 ~~Headings to Sections are for convenience only and shall not affect the construction or interpretation of this Agreement.~~

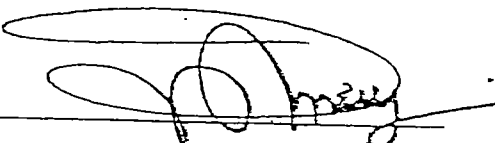
1.3 In this Agreement any reference to any document means that document as is supplemented, amended or varied from time to time between the parties thereto in accordance with the terms (if applicable) hereof and thereof.

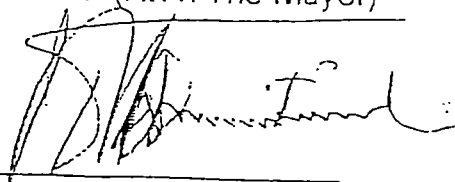
2. AGREEMENT FOR SALE

WHEREAS

2.1 The Vendor is registered as proprietor of all that piece of land situate in the South of Athi River Township in the Machakos District of the Republic of


Vendor


Purchaser (H.W. The Mayor)


Purchaser (Town Clerk)

**MINUTES OF THE NINETEENTH SITTING OF THE
DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD
ON 25TH FEBRUARY 2010, IN THE DINING ROOM 7TH FLOOR
CONTINENTAL BUILDING AT 10.00 A.M.**

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairman
2. Hon. Joshua Kutuny, MP
3. Hon. David Ngugi, MP
4. Hon. Mohammed H. Gabow, MP
5. Hon. Gideon Konchella,MP

ABSENT

1. Hon. Mwalimu Mwahima,
2. Hon. Fahim Twaha, MP
3. Hon. Maitha Gideon Mungaro, MP

IN ATTENDANCE

1. Mrs. Nancy Mukunya
2. Mr. George Otieno

KENYA NATIONAL ASSEMBLY

Deputy Director
Third Clerk Ass.

MIN. NO. 79/2010: ADOPTION OF THE AGENDA

The Chairman called the meeting to order at half past ten o'clock and the agenda was adopted without amendments. The Chairman thanked the Members for their attendance and appreciated the fact that they would now be in a position to go through and adopt the report on the procurement of cemetery land by Nairobi City Council. The Committee would also consider and adopt the report of the trip by three Members of the Committee to South Africa.

MIN. NO.80/2010: CONFIRMATION OF MINUTES

The Minutes of the meeting held on 16th February 2010 were proposed by Hon. Joshua Kutuny and seconded by Hon. David Ngugi.

MIN. NO. 81/2010: REPORT ON PROCUREMENT OF CEMETERY LAND BY NAIROBI CITY COUNCIL

The Committee was taken through the report by the Chairman and corrections were made where necessary. Thereafter debate ensued and at the end, all the Members agreed that the report is prepared in line with the evidence received. There was also consensus that the recommendations are drawn as per the evidence and as agreed by the Members.

The Committee further agreed that the report will be tabled on Wednesday the 3rd of March 2010 by the vice-chairman.

MIN. NO. 82/2009: REPORT ON THE TRIP TO SOUTH AFRICA

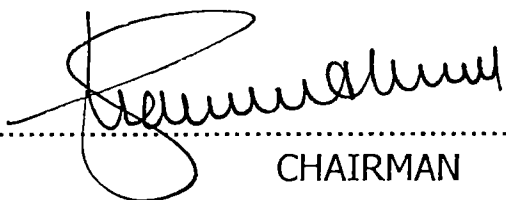
The Committee went through the report and agreed that it is a true record of what transpired during the trip. The Members who had not travelled were impressed by what was covered during the trip.

They particularly noted that John Wesson, the Chairman of Conservancies in South Africa would be helpful in dealing with the Mara Conservancy matters. It was therefore resolved that he will be invited to the Country by the Committee at the appropriate time.

resolved that he will be invited to the Country by the Committee at the appropriate time.
In the end, the report was adopted by the Committee and the Vice-Chairman was requested to table the same in Parliament.

MIN. NO 83/2010: ADJOURNMENT

There being no other listed business, the meeting was adjourned at 12.30 p.m. until further notice.

Signed..........
CHAIRMAN

Date.....2/3/10.....

**MINUTES OF THE TWENTIETH SITTING OF THE
DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD
ON 3RD MARCH 2010, IN THE COMMITTEE ROOM 2ND FLOOR
CONTINENTAL BUILDING AT 4.30 P.M.**

PRESENT

1. Hon. Ahmed Shakeel Shabbir, MP.....Chairman
2. Hon. Joshua Kutuny, MP
3. Hon. David Ngugi, MP
4. Hon. Gideon Konchella,MP.

ABSENT

1. Hon. Mwalimu Mwahima,
2. Hon. Fahim Twaha, MP
3. Hon. Maitha Gideon Mungaro, MP
4. Hon. Mohammed H.Gabow

IN ATTENDANCE

KENYA NATIONAL ASSEMBLY

1. Mrs. Nancy Mukunya Deputy Director

MIN. NO. 84/2010: ADOPTION OF THE AGENDA

The Chairman called the meeting to order at half past four o'clock and informed the Committee that they needed to meet to correct an error on page 48 of the report on the procurement of the cemetery land by Nairobi City Council. The agenda was adopted.

**MIN. NO.85/2010: CORRECTION OF THE ERROR ON THE
REPORT ON PROCUREMENT OF CEMETERY LAND BY
NAIROBI CITY COUNCIL**

The Committee was informed that on page 48 of the report on the procurement of the cemetery land by the Nairobi City Council, the heading reads,

"the Deputy Prime Minister and the Minister for Local Government, Hon. Musalia Mudavadi" but the first line of the paragraph reads, "the Prime Minister should take....."

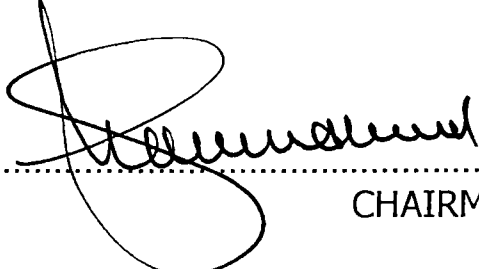
The Committee agreed that this was a typing error and it should be corrected to read

"the Deputy Prime Minister and Minister for Local Government, Hon. Musalia Mudavadi should take....."

The Secretary was requested to make the correction and she did so in the presence of the Members. The Chairman then initialed the page.

MIN. NO. 86/2010: ADJOURNMENT

There being no other listed business, the meeting was adjourned at 5.00 p.m. until further notice.

Signed..........
CHAIRMAN

Date..... 3rd March 2010

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REPUBLIC OF KENYA

NI

Telegrams: "Lands", Nairobi
Telephone: Nairobi ~~27471/1st~~ 728060
~~Maningo Ole, Nairobi~~
c/o D. O. Central Division
P.O. Box 1, KAJIADO
Ref. No. 118431/2

DEPARTMENT OF LANDS
P.O. Box 30089
NAIROBI

24th February, 1987

REGISTERED

SIR(S)/MADAM, L.R. 10029/32 - KIPPENGEIA FARM

LETTER OF ALLOTMENT

I have the honour to inform you that the Government hereby offers you a grant of
the above mentioned plot shown edged red on the attached plan
No. 64408/185A subject to your formal written acceptance of the following
conditions and to the payment of the charges as prescribed hereunder:—

AREA: 53 hectares or acres (approximately)
TERM: Freshhold years from the
STAND PREMIUM: Sh. - } Subject to adjustment on survey.
ANNUAL RENT: Sh. - }

GENERAL: This Letter of Allotment is subject to, and the grant will be made under the provisions of the Government Lands Act, (Cap. 280 of the Revised Edition the Laws of Kenya) and title will be issued under the Registration of Titles Act, (Cap. 281).

SPECIAL CONDITIONS: See attached.

2. I should be glad to receive your acceptance of the attached conditions together with your cheque for the amount as set out below:—

| | |
|------------------------------------|------------------|
| | Sh. |
| Stand Premium | - |
| Rent from | - |
| Conveyancing Fees | 350.00 + 150/- |
| Registration Fees | 50.00 + 50/- |
| Rates, proportion of (provisional) | on demand |
| Stamp Duty | 20.00 |
| Survey Fees | on demand |
| Road and Road Drains | - |
| Sewers | - |
| Receipt No. | Less Deposit |
| | TOTAL Sh. 420.00 |

MINUTES OF THE MEETING HELD ON FRIDAY THE 5TH JUNE 2008 IN THE BOARDROOM MINISTRY OF LOCAL GOVERNMENT.

PRESENT:

REUBEN ROTICH - SENIOR DEPUTY SECRETARY (CHAIRING)
B O MISERA - MOLG CHIEF PROCUREMENT OFFICER
E TOROME - MOLG COUNSEL
M N NG'ETHE - CCN DIRECTOR LEGAL AFFAIRS (TAKING MINUTES)
P KIBINDA - CCN DIRECTOR CITY PLANNING
DR. NGUKU - CCN MEDICAL OFFICER OF HEALTH
G K NJAMURA - CCN DIRECTOR OF PROCUREMENT

WZ

The Chair informed the members that the meeting was urgently convened for the following reasons:

1) The Langata Cemetery was full. The Ministry of Local Government had approached the Central Government to finance acquisition of another parcel of land for cemetery. The Central Government undertook to finance the same to the tune of Kshs 350 M. Several meetings had been held and Treasury released Kshs 175M in the Financial Year 2007-2008. Ministry of Local Government informed the Council that the money was available but so far the Council had not yet procured the land. Since the Financial Year was ending, this money would be returned to the Central Government, and even the balance which was to be released in the Financial Year 2008-2009 would not be allocated since it was clear that the Council was not serious in acquiring land for cemetery. The meeting was convened to find out what was delaying the Council in acquiring the land. The Council officers informed the meeting that they had made efforts to acquire land. The Council had advertised for tenders for expression of interest. The offers were evaluated and land LR No 7149/10 (Original No. 7149/218) belonging to Ardhi Highway Developers Limited was awarded. The Company was informed and it brought a Performance Bond. A search was duly carried out at Land's office, and the registered owner was found to Arthi Developers Highway, who had bought it from West End Butchery Limited. A Sale Agreement was duly prepared between the Council and Ardhi Highway Developers Limited and the vendor signed its part and brought it to the Council. However before the Council could execute it, a lawyer claiming to represent

West End Butchery wrote to the Council informing it that the parcel of land was in dispute and the matter was in court alleging that Arthi Highway Developers had forged the transfer document. The Council investigated and established that indeed the matter was being investigated by the C I D and there was a case HCCC NO 167 OF 2007, West End Butchery Limited vs Arthi Developers Limited, Solomon Mwinzi Mwau, John Micheni Musa, The Registrar General and the Commissioner of Lands which West End Butchery claimed fraudulent transfer of the said parcel of land. The Council could not therefore proceed with the procurement of this parcel of land and cancelled the transaction.

The Council then put another advertisement for expression of interests. The tenders were to be opened on 19th June 2008. However, the Ministry brought to the attention of the officers that the financial year was ending and the procurement process would not be completed in time to secure the money.

The Chief Procurement Officer from the Ministry advised that the best way to beat the deadline was for the Council to go for direct procurement, for the following reasons:-

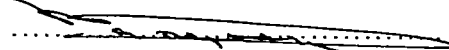
- Land is not like any other commodity that one can buy in the market
- Evaluating land in different locations is very difficult since the cost cannot be the same
- Further, land for cemetery cannot be planned just anywhere.

The council should therefore identify an ideal area for cemetery, and then approach owners of the parcels of land for offers. Once the owner gave an offer, the Government Valuer should value the land. If the value given by the Government valuer is lower than the offer given, then the officers would negotiate with the owner. If the owner agreed to sell at the Government valuer's valuation, then the Council would table this in the Tender Committee for deliberations.

Thereafter, after the Tender Committee's deliberations, the Council would write to the Procurement Board to notify it.

The Council was therefore advised to cancel the advertisement and proceed on direct procurement.

Signed: CHAIRMAN

SECRETARY 

W

CITY COUNCIL OF NAIROBI



TOWN CLERK
FAX: 217704
TELEPHONE: 224281 / 221349

CITY HALL
P.O. BOX 30075 - 00100
NAIROBI
KENYA.

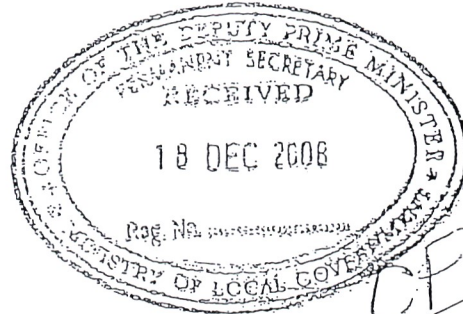
OFFICE OF THE TOWN CLERK

EXT

Ref No. TC/JG/9/3889/2008

17th December, 2008

Sammy Kirui, MBS.,
Permanent Secretary,
Office of the Deputy Prime Minister &
Ministry of Local Government,
P. O. Box 30004 - 00100,
NAIROBI



RE: PURCHASE OF CEMETERY LAND

Reference is made to your letter Ref. MLG/402-01/(17) dated 17th December 2008 on the above subject matter.

Attached herewith please find a copy of a self-explanatory memorandum Ref. CPD/ADMIN/008020/PMK/mmg dated 17th December, 2008 from the Director of City Planning on the above subject matter forwarded to you for your information and any further necessary action.

JOHN GAKUO
TOWN CLERK

CFD
The issue of the state counsel regarding the agreement is just another bureaucratic hurdle, I believe the NCC lawyers have safeguarded the interest of their client. The objective of documents, the one bidder has not raised alarm, more has gone to the IPOA on this same matter. - and we cannot sit as an appendage to the state counsel. I hope all the people who are complaining about the matter will be satisfied.

CFD
It looks like there were not 1000 copies issued on this matter. No further action is required. The presence of the money in our account is a consolation over cash flow situation. Had they wanted to release the fund I hope all the people who are complaining about the matter will be satisfied.

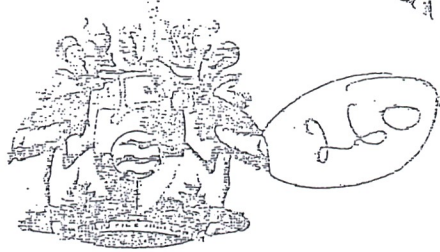
PS
The issue of defective tender documents has been addressed. I suggest the Chief Procurement officer examine them. The state counsel permit the draft sale agreement which has been forwarded to the state counsel.

EW

CITY COUNCIL OF NAIROBI

12

TOWN CLERK
FAX: 217704
TELEPHONE: 224281 / 221349



CITY HALL
P.O. BOX 3007
NAIROBI
KENYA.

EXT.....

Ref No... DLA/MNN/670/E/08

22 28
22 4281/2

7th August, 2008

The Chief Valuer,
Ardhi House,
P O Box 30089,
NAIROBI.

W4

Dear Sir,

RE: LRNO. 14759 - MAVOKO TOWNSHIP

The above matter refers.

The Council is desirous of purchasing land for purpose of a cemetery through Open Negotiation. The Council has been offered for sale the above mentioned land within Mavoko Township and the user Department has approved the same as suitable for use as a cemetery.

This is therefore to request you to carry out valuation for the said land to enable the Council start negotiations with the seller

Enclosed herewith please find a copy of the title attached to facilitate the valuation.

Yours Faithfully,

N.W OTIDO
FOR: TOWN CLERK

Hand delivered
on 22/9/2008
Wangari
22/9/08

① Karaga ② Mrs Wangari

Please do a search this arrangement
with respect to the title
documents attached to the title
documents attached to the title

30

1000

1000

1000

(

(

W5

14

Ref: VAL.40020/E/261

Date: 26th September, 2008


The Town Clerk,
City Council of Nairobi,
P.O. Box 30075,
Nairobi.

Att: Ms Ngethe

Re: PURCHASE OF L.R. NO. 14759 – MAVOKO TOWNSHIP

Reference is made to your undated letter Ref. No. DLA/MNN/170/E/08 and our (Ms Ngethe/Mrs. Wanjohi) telephone conversation today regarding the above matter.

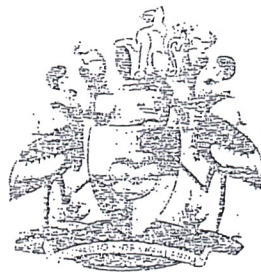
This is to acknowledge officially that the matter has been shelved from your end until further notice, and it so remains from this end also.


M. W. WANJOHI
FOR: COMMISSIONER OF LANDS

21

CITY COUNCIL OF NAIROBI

15



TOWN CLERK
FAX: 217704
TELEPHONE: 224281 / 221349

CITY HALL
P.O. BOX 30075-00100
NAIROBI
KENYA.

Director of Legal Affairs

WG

EXT.....

Ref No. DLA/MNN/924/E/08

4th November, 2008

The Chief Valuer,
Ardhi House,
P O Box 30089,
NAIROBI.

Dear Sir,

received
13/11/08
[Signature]

RE: L R NO. 14759 - MAVOKO TOWNSHIP


The above matter refers.

The Council is desirous of purchasing land for purpose of a cemetery through Open Negotiation. The Council has been offered for sale the above mentioned land within Mavoko Township and the user Department has approved the same as suitable for use as a cemetery.

This is therefore to request you to carry out valuation for the said land to enable the Council start negotiations with the seller

Enclosed herewith please find a copy of the title attached to facilitate the valuation.

Yours Faithfully,


M N NG'ETHE
DIRECTOR LEGAL AFFAIRS

W

W 7

16

MINISTRY OF LANDS

Telegrams "Lands", Nairobi
Telephone: Nairobi 02718050
When replying please



DEPARTMENT OF LANDS
1st NGONG AVENUE
OFF NGONG ROAD
P.O.BOX 30089,
NAIROBI.

VAL:1360/6

13th November, 2008

The Director Legal Affairs
City Council of Nairobi
P.O. Box 30075-00100
NAIROBI

RE: LR NO.14759 – MAVOKO

Your letter Ref. DLA / MNN / 924/E / 08 of 4th November 2008 refers.

The matter is receiving our attention and you will be notified of the progress as soon as possible. Please note that our fees will be calculated and advised when the report is ready.

Meanwhile let your officer contact us to facilitate site inspection on an agreed date.

A. M. ITUR
DEPUTY COMMISSIONER OF LANDS (VALUATION)

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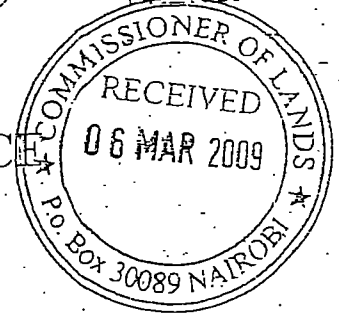
REPUBLIC OF KENYA

Telephone: +254-20-342330
Fax: +254-20-311482
E-mail: cag@kenyaweb.com



18

P.O. Box 30084-00100
NAIROBI



KENYA NATIONAL AUDIT OFFICE

WS

6th March, 2009

DEVT./AA/2007/2008/12B

The Commissioner of Lands,

P.O. Box 30089,

NAIROBI.

*Doc Valuation
Please confirm the
authenticity of the
letter on
ce
9/3/09*

PURCHASE OF LAND FOR CEMETERY

Reference is made to letter dated November, 10th 2008 on the valuation report for LR No. 14759 – MAVOKO TOWNSHIP.

The letter is purported to have been written by an officer in your Ministry Valuation Department, a MR. A. OTIENO signed on behalf of Deputy Commissioner Land Valuation. The land was to be valued for purchase purpose by City Council of Nairobi which was given as Kshs. 325,150,000.00 as per the attached valuation report.

Please authenticate the same for audit purpose.

MR. S.B. MANGUCIA

FOR: CONTROLLER AND AUDITOR GENERAL

51

not suitable for a cemetery but even after he got the information he took no action to arrest the situation.

The committee noted that the Treasurer is part of the cover up as he is a member of the committee that oversaw the fraud and never raised a finger.

The committee noted that the Technical Evaluation committee headed by Mary Ngethe chose to ignore the criteria set for a cemetery land and went further to clear the land as suitable when they clearly knew it was not. One of their own members (Mr. P.T. Odongo) raised the concern that the land was not suitable for a cemetery but they still gave it a clean bill of health. Besides, J K Barreh also raised the concern about the same but the chairman ignored both of them.

MAYOR GEOFFRY MAJIWA

The committee noted that he was aware about the complaints by some members of the committee but ignored their complaints. He claimed that he was misinformed.

The committee noted that his claim was that he signed as a ceremonial mayor but the Committee knows he is an executive Mayor and should have questioned why so much money was being spent on a rocky land that is not suitable for a cemetery.

MARY NGETHE, DIRECTOR LEGAL AFFAIRS

The committee noted that she failed totally as a legal adviser and is one of the major players in this fraud and her involvement was noted throughout the whole process.

It was noted that she had been working in cahoots with the Town Clerk and the ministry of local government officials to the extent that the local government ministry excluded Edith Torome, the legal Counsel from the entire process.



It was also noted that she failed to look at all documents before the process was complete to ascertain that they were proper and above board.

It is to be noted that on 7th August 2008, N. W. Otido wrote a letter to the chief valuer in the lands ministry requesting for a valuation of L.R No. 14759 but she wrote another one on 4th November to the same valuer asking for a valuation for the same land. Thereafter, a forged valuation was received by the City Council of Nairobi.

The Committee believes she knew about this forged valuation and that is why she accepted it without raising any objections.

KARISA IHA, DEPUTY DIRECTOR LEGAL AFFAIRS

At the time of procurement of the cemetery land he was the deputy Director of legal affairs and consequently he was fully involved in the process. The committee noted that he was obliged to highlight any anomalies he might have found but did not do so. This negligence of duty enabled the fraud to be perpetrated.

DR. NGUKU-MEDICAL OFFICER OF HEALTH

The committee noted that he knew the requirements for a cemetery land but did not insist on them and further declared the land to be suitable knowing very well it was not. Obviously he was compromised and the Committee has credible evidence that he was given Kshs. 7,000,000/= after the fraudulent deal was concluded.

PETER M. KIBINDA, DIRECTOR CITY PLANNING

The committee noted that this is one of the few officials in Nairobi City Council who objected to the procurement of the land in issue. He and two other officers, P.T. Odongo and Barreh wrote a memo to the town clerk stating the land was unsuitable for a cemetery.



EDITH TOROME-LEGAL COUNSEL MINISTRY OF LOCAL GOVERNMENT

The committee noted that initially she was involved in the meeting at the ministry of finance to request for the funds, thereafter she was specifically excluded from the transaction by the Permanent Secretary in the ministry of Local Government.

Her legal advice on the procurement was not sought and soon thereafter she was transferred to another ministry.

H.S.CHAVERA, CHIEF FINANCE OFFICER

The committee noted that there is factual evidence that he raised an objection on a letter dated 18th Dec to the Permanent Secretary Local Government about the defective process and suggested to him that the state counsel should peruse the documents before the procurement process was carried out. The Permanent Secretary in the Ministry of Local Government ignored his objections and specifically excluded the legal officer from the process.

It was noted that he wrote the cheque dated 30th June 2008 and there were no supporting documents for the same. This was not in tandem with his earlier objections.

The committee noted that the Chief Finance Officer seemed to be under intense pressure to write and release the cheque.

BONIFACE MISERA, DIRECTOR OF PROCUREMENT

The committee noted that he failed in his duties of ensuring that the government regulations are followed and there is



evidence he was compromised and he actually received ksh.10, 000,000 after the fraudulent deal.

REUBEN K. ROTICH, SENIOR DEPUTY SECRETARY

There is factual evidence that he held meetings with the then Town Clerk and his officials and even after of the defective tender documents and the unsuitability of the land, he still facilitated the procurement.

The committee is convinced that he was involved in the fraud.

SAMMY KIRUI, PERMANENT SECRETARY

The committee observed that he took direct action by pushing the officers in City Council of Nairobi to conclude the process within five days (see his letter dated 30th October 2008 and marked W18). There is evidence that he was involved in the process from the beginning to the end.

The committee also noted that the Kshs. 108,000,000/= sought as the additional purchase price was exactly the balance required in the fraudulent purchase. The committee therefore wondered whether the officials involved knew exactly the amount they needed long before the tender was advertised. This is enough evidence that the fraud was hatched long before the land negotiations began.

The permanent secretary himself admitted that the law was not followed as the cheque of ksh. 175,000,000 was written without supporting document which is contrary to the law and to government regulations.

It was also noted that to date he has not visited the land and that he deliberately sidelined the state counsel whose responsibility was to advise the ministry on legal issues such as land procurement.



DEPUTY PRIME MINISTER AND MINISTER FOR LOCAL GOVERNMENT

The committee noted that the minister is executive and is expected to be briefed or to have known about the current procurement of land for cemetery.

The committee is further concerned that the minister has not taken any action in this matter against those who were involved despite the fact that his attention has been drawn to it.

The Committee did not believe him when he said that his Permanent Secretary did not update him on the procurement of the cemetery land.

The Committee therefore observed that he failed to ensure proper procedures were followed and should take political responsibility.

RECOMMENDATIONS

From the evidence adduced before the Committee, it is clear that the process of the procurement of the cemetery land by the City Council of Nairobi is riddled with corruption and illegality and all officers involved should be relieved of their duties and charged in court for the appropriate offences.

1. MR. SAMMY KIRUI, PERMANENT SECRETARY IN THE MINISTRY OF LOCAL GOVERNMENT

As the Chief Executive and Accounting officer he was shown to be personally involved in the process to the extent of ignoring the advice given by his officers. The Committee has enough evidence to show that he was one of the main architects of the fraud.



He was informed by the Chief Finance Officer that the tender documents were defective and the legal officer should examine them but he ignored this advice. (See his remarks on attached letter dated 17th Dec.2008 and marked W3)

He caused a cheque of Kshs. 175,000,000/= to be drawn on 30th June 2008 to Omotii & Company advocates and this was irregular for the following reasons:

- a) He was supposed to return the money to the Treasury as the land to be purchased had not been identified.
- b) There were no supporting documents to warrant issuing the cheque as required by government regulations.
- c) The advocate had not been instructed to act for the City Council of Nairobi in respect of procurement of this particular land.

On 30th October 2008 he wrote a letter to the Town Clerk asking him to conclude the procurement of the cemetery land within five days otherwise the ministry would take over the process. (See his attached letter dated 30th October 2008 and marked W18)

Evidently he had a lot of interest in the matter and the Committee recommends that he steps down to allow Kenya Anti Corruption Commission to carry out thorough investigations into the fraud.

2. MR. R. K. ROTICH, THE SENIOR DEPUTY SECRETARY IN THE MINISTRY OF LOCAL GOVERNMENT

The Committee received enough evidence to show he played a major role in the fraud. He chaired the meeting of 5th June 2008 from which the procurement process started. (See attachment W2). He forwarded the cheques of ksh.175, 000.000 and of ksh.108, 000,000 to Mary Ngethe who in turn



sent them to Omotii & Company advocates.) Clearly he was involved in the fraud and it is recommended that he be interdicted and be investigated.

3. MR. BONIFACE MISERA- DIRECTOR OF PROCUREMENT

From the evidence the Committee received, it is clear that the procurement committee in the Ministry was very involved in the process of acquiring the cemetery land. Consequently there is no doubt that Boniface Misera was involved in this fraud. Further more there is factual evidence that he received ten million (ksh.10, 000,000) after the fraudulent deal. The Committee therefore recommends that he be interdicted, investigated and charged.

4. MR. H. S. CHAVERA, THE CHIEF FINANCE OFFICER.

The Committee noted that he actually wrote to the Permanent Secretary, Ministry of Local Government, Mr. Sammy Kirui, raising his concerns in respect of the defective tender documents. His concerns were ignored and it is possible he was coerced into writing and releasing the cheques. The Committee therefore does not recommend any adverse action against him.

5. EDITH TOROME, THE STATE COUNSEL was evidently precluded from the procurement transactions. She is therefore not responsible for the fraud and no adverse action should be taken against her.

6. THE DEPUTY PRIME MINISTER AND MINISTER FOR LOCAL GOVERNMENT, HON. MUSALIA MUDAVADI

The Deputy Prime Minister should take full responsibility since he is an executive minister and cannot feign ignorance. The Committee finds his inaction inexcusable and if he was not truly involved in the fraud, he should have taken action



against his Permanent Secretary and all those involved in defrauding the public. At the time of writing this report, there is evidence that he has not even gone to visit the site to ascertain its suitability or otherwise.

It is recommended that the minister steps down to allow thorough investigations into the fraud.

NAIROBI CITY COUNCIL

7. MR. JOHN GAKUO, THE FORMER TOWN CLERK,

As noted above, the former town clerk has been very obstructive and totally unhelpful to the committee. When he first appeared before the Committee he hid vital information which was revealed by some of his officers in their evidence. He was recalled and confronted with the evidence and it is only then that he reluctantly admitted some of the evidence. The Committee is convinced he is one of the architects of this fraud. He withheld the memo written to him by the Town Planner, Peter Kibinda which stated that the land was not suitable for a cemetery. The Committee finds him totally and directly involved in the fraud.

The Committee recommends that he should not be allowed to hold any public office and that Kenya Anti Corruption Commission should investigate to determine his actual involvement.

8. MR. N. OTIDO, THE DEPUTY TOWN CLERK.

He was the Chairman of the tender committee and a signatory in all land transactions. The Tender committee awarded the irregular tender and ignored the written correspondence dated 11th November 2008 which questioned the suitability of the land as a cemetery. Though he had power to cancel the process or put it into abeyance, he didn't do so and actually went ahead to sign the sale



agreement. Though he is retired, the he should be investigated and charged with the appropriate offence.

9. DR. NGUKU, MEDICAL OFFICER OF HEALTH

He illegally and irregularly confirmed that he was satisfied by the suitability of the land in question.

This was false and fraudulent because there is factual evidence to show that the land has no red soil, it is rocky and is not easily accessible. Further evidence has shown he certified the land as suitable due to financial gain. It has been proven that he received Kshs.7, 000,000/= after the conclusion of the fraudulent procurement of the land.

The Committee recommends that he be interdicted, arrested and charged.

10. G. K. NJAMURA, DIRECTOR OF PROCUREMENT

Evidently the Procurement Committee, whose director was G.K. Njamura was very involved in the procurement of the Cemetery land. There is evidence to show he oversaw and facilitated the irregular and illegal process for financial gain. There is actual evidence that he received four million (ksh.4, 000,000) after the fraudulent deal. The Committee recommends that he be interdicted, charged and be investigated further.

11. EVALUATION TEAM chaired by Mary Ngethe endorsed a false report which was the basis of the whole fraud. This Committee was comprised of David Wanjohi, Tom Odongo, I Ngacha, Akotha Gitonga, M. Ouko and Alex Musee. The Committee recommends that all these officers with the exception of Tom Odongo be interdicted, investigated and charged with appropriate offences.



11(a) TOM ODONGO

The Committee notes that he is one of the officers from the planning department that wrote a memo to the Town Clerk stating that the land proposed to be bought was not suitable for a cemetery. (See his memo dated 11th November 2008 and marked W16). The Committee therefore commends his effort and recommends that no adverse action should be taken against him.

12. MARY NGETHE, DIRECTOR OF LEGAL DEPARTMENT

The Committee noted with a lot of concern that Mary Ngethe failed to protect the interest of the City Council of Nairobi. Evidently she was involved in the fraud from the beginning to the end. She attended the meeting of 5th June 2008 whereby the process of acquiring the current land started and she was taking the minutes.

She called the Ministry of Lands to inform them that no action should be taken against the letter of N. Otido which had requested for a valuation of the current land (see the Ministry's letter of 26th September 2008 and marked W5). Soon thereafter she wrote a letter on 4th November 2008 requesting for valuation on the same land. (Letter is marked W6). It is to be noted here that on 10th November 2008, she received a one page letter (marked W10) purporting to be valuation of the Mavoko land and which she accepted without raising any concerns. This letter turned out to be a forgery.

She chaired the Technical Committee and ignored the observations of her colleagues in the planning department when they raised the issue of the unsuitability of the land as a cemetery.

She appointed lawyer Omotii & Company advocates to act for Nairobi City Council in the fraudulent procurement of the cemetery land and she frustrated the inclusion of the state



counsel at the Ministry of Local Government in the transaction.

As the legal Director, she failed in her duties as she did not ensure that the performance bond of ksh.14, 160,000 was executed and that all the documents relied on by the Council were genuine.

The Committee is convinced she played a major role in perpetrating the fraud. It is recommended that she be interdicted and be investigated further.

13. KARISA IHA, DEPUTY DIRECTOR LEGAL AFFAIRS

He was not in the procurement Committee but there is evidence to show he was involved in the procurement process. He should have acted when he realized there was impropriety but he did nothing. He should be interdicted and investigated.

14. MR. ALEXANDER MUSEE: DEPUTY DIRECTOR PROCUREMENT

There is evidence he was a member of the Committee that deliberately prepared defective tender documents thus facilitating the fraud. Further evidence reveal that he received Kshs. 8,000,000/= after the process was concluded. The committee recommends he be interdicted, investigated and charged.

15. COUNCILLOR MAJIWA, HIS WORSHIP THE MAYOR OF NAIROBI CITY,

As a signatory, he signed the sale agreement and the transfer document for the mavoko land which is unsuitable for a cemetery. He claimed he was misinformed when he signed the documents but the Committee did not believe him. He further claimed the Permanent Secretary was micro-managing the whole process.



The Mayor should have shown more interest in the transaction of this magnitude. He should take political responsibility and step down.

16. MAINA CHEGE

He is one of the directors of Naen Rech Co.ltd which purported to sell land to Nairobi city Council when the company had not acquired any title to the land. Maina Chege, Celphas Mwaura, Henry Kilonzi and Alphonse Mutinda advocate met and hatched the plan to defraud the public and then worked with the Ministry of Local government officials and the Nairobi City Council officials to realize the fraud.

There is credible evidence to warrant them to be investigated for obtaining money under false pretenses and fraud.

Their assets should be seized to recover public funds.

17. HENRY KILONZI should be further investigated for obtaining the land fraudulently and illegally and subsequently selling it fraudulently.

18. CELPHAS KAMANDE MWAURA, there is actual evidence that he received Kshs. 9,300,000/= after the fraudulent procurement and it is recommended that he be charged with the appropriate offence.

19. E. N. OMOTII ADVOCATE, ODERO OSIEMO ADVOCATE, P.C. ONDUSO ADVOCATE AND ALPHONCE MUTINDA ADVOCATE.

There is credible evidence that all these lawyers facilitated this fraud and illegal transaction in various capacities through collaboration with various government officials. They all received huge sums of money which they have not accounted for and part of which they have distributed to the accomplices.

Odero Osiemo has personally received ksh.29, 860,000 and has used ksh.20, 000,000 to buy 5 acres of land at Karen and



has bought a van for 1,660,000. The owner of the land and the van have confirmed the transactions.

P.C ONDUSO received ksh.9, 600,000 and banked it in his Kenya Commercial bank account.

ALPHONCE MUTINDA received ksh.135, 000,000 and since it has been proved that this procurement was fraudulent he should be made to disclose why and on whose behalf he received this money.

Clearly then all these lawyers should be investigated by Kenya Anti Corruption Commission, Kenya Law Society and Kenya Revenue Authority.

The property they have purchased using public funds should be confiscated and sold to recover the funds. The Law society should take the appropriate action.

Where fraud is established, like in the present procurement, lawyers should not be allowed to withhold information citing advocate client privilege.

20. The Committee has evidence that ALICE MAYAKA, a former permanent secretary in the Ministry of National Heritage received ksh.4,000,000, DOREEN A.OYUGI received ksh.3,000,000, MOECKINGS GENERAL CONTRACTORS received ksh.2,000,000 and all these recipients should be investigated and charged with the appropriate offences. CIBIYA WORLD WIDE LIMITED, whose director is Newton Osiemo, a brother to Odero Osiemo advocate and which received 29,860,000 should be thoroughly investigated and charged.

All other persons who will be proved to have received money after the fraudulent procurement of the cemetery land should be investigated and charged with the appropriate offences.



21. All those involved in this financial scandal should be reported to Kenya Revenue Authority so that the authority may take the appropriate action.

22. There is need to amend and strength the following:-

- a) Law on restitution.
- b) Local Government Act to ensure that officials do not misuse public funds like they did in the present scandal.
- c) Kenya Anti-Corruption Commission should be strengthened so that it has power to compel witnesses to give information that can be used in court.

Mr. Speaker Sir,

The Report of the Committee was adopted in a committee sitting held on 2010.

Mr. Speaker Sir,

On behalf of the Committee, it is now my pleasant duty to lay on the Table of the House the report of the Committee on the procurement of cemetery land by Nairobi City Council, pursuant to provisions of Standing Order 181(3).



Hon. SHAKEEL SHABBIR, MP
Chairman, Select Committee on Local Authorities

Date.....3/3/2010.....

That the interest generated by the amount received by E.N.Omotii was ksh.1, 800,000 and he retained the same.

That a joint account was opened and was operated by three advocates, namely, Odero Osiemo & Co.Advocates, P.C.Onduso &Co advocates and Alphonse Mutinda & Co.Advocates. A total of Ksh.281, 300,000 was deposited in this account.

That Alphonse Mutinda received Ksh135, 900,000 out of the above account

That P.C.Onduso transferred ksh.9, 600.000 to his KCB account

That Naen Rech Limited received ksh.9, 450,000

That Ksh.9, 300,000 went to Celhas Kamande Mwaura who introduced Henry Kilonzi to Alphonse Mutinda advocate.

That Odero Osiemo & Co Advocates received Ksh.117, 000,000

Part of the ksh.117, 000,000 received by Odero Osiemo was distributed as follows:-

Cibiya World Wide Ltd whose director is Newton Osiemo, a brother to Odero advocate received a total of Ksh.29, 860,000. He spent 20,000,000 in buying 5 acres of land from James Mwangi and 1,660,000 to buy a van from James Mithamo.

Janet Kabura Nguku who is the wife of Dr. Nguku, the Medical Officer of Health at Nairobi City Council received a total of Ksh.7, 000,000 out of which she used P.J. Kakad advocates to purchase a house at Mlolongo for ksh.4,000,000 and 2,000,000 to buy construction material for a house being built by Dr. Nguku at Mwingi.

Stephen Githinji Kamau received 8,000,000 on behalf of Alexander Musee who is the Deputy Director of Procurement in Nairobi City Council.



Peterson Gichana received ksh.10, 000,000 on behalf of Boniface Misera who is the director of procurement in the Ministry of Local Government.

Omotii advocate was given ksh.13, 000,000

Alice Mayaka ,a former permanent secretary in the ministry of National Heritage received ksh.4,000,000 and it has not been established why she got the money.

Item 14 – It has not been established why Moeckings General Contractors took the 2,000,000

Item 19 – Likewise it is not yet known why or on whose behalf Doreen A.Oyugi received ksh.3, 000,000.

The remaining money was withdrawn by cheques by Odero advocate.

Conclusion

Kenya Anti-corruption Commission is almost at the end of the investigations and it will recommend court charges in respect of all the people who were involved in this fraud.

The Commission further requests that it be given back the power to compel suspects to produce documents and to disclose all information to us.

EXECUTIVE SUMMARY

From the evidence adduced above, the committee has ascertained the following pertinent issues:-

- The advice of the director of city planning on the tender documents and search for land for use as cemetery, important as it was, was not considered during the entire process of the procurement.



- **The council does not appear to have established the existence or otherwise of contractual relationship between M/S Naen Rech Ltd and Musyoki Kilonzo before awarding the tender to the company or how such a relationship if it existed would have influenced the pricing of the land.**
- **The council was not diligent on establishing the status of the company before awarding the tender as required by law; no performance bond (KSH.14,160,000) appeared to have been secured before the award of the tender.**
- **The municipal council of Mavoko did not grant approval of change of user of the land in question from agricultural to cemetery.**
- **National Environmental Management Authority did not grant clearance on environmental impact once use of the land has changed.**
- **The fact that the area is dry grassland and is a wildlife migratory corridor was ignored during the procurement process.**
- **The site inspection showed that the land is situated at approximately 12kms west of Kitengela Township and borders Merciful Redeemer Children's home.**
- **The access of the land is rough road which is not all weather usable and is impassible during wet seasons.**
- **The soil is not red and it is shallow with a rocky base and cannot attain a depth of 6 feet.**
- **The land has not been marked with beacons and can be encroached.**
- **There are no amenities on the land eg water, telephone etc**



- That Naen Rech Company Ltd purported to sell and pass a good title to the City Council of Nairobi when it indeed did not legally own the land.
- The transfer document was drawn by Omotii and Company Advocates and the alteration of the acreage from 48.63 hectares to 52.22 hectares was done by Alphonse Mutinda Advocates which is irregular. That this alteration was only a sham because the actual document of title actually reads 48.30 hectares.
- That Henry Kilonzi purports to have bought the land in question from Mariinie ole Tianti Makaita but there is no evidence of a sale agreement and the payment of purchase prize to the vendor.
- That the widow, Agnes Tirainti insists that Henry Kilonzi defrauded them of their land as it had only been leased to him.
- That for some unknown reasons the Town Clerk and the top officials in the Ministry of the Local Government decided to ignore the objections in relation to soil unsuitability and went ahead with the procurement of the land.
- That there is evidence of corruption because the vendor only got 110,000,000 and the rest has been shared among the key players.
- There is no evidence to show that Henry Kilonzi had appointed Naen Rech as his agent. The verbal claim by Maina Chege should not have been relied upon by the officials of the City Council.
- There was clear evidence from the Mayor and the Clerk of Mavoko Municipal Council that the City Council of Nairobi did not apply for change of user of land for the land in question.



- The officials in the City Council of Nairobi accepted a suspect valuation report which was only one page.

GENERAL OBSERVATIONS

(1)ACQUISITION OF THE LAND

The Committee is in agreement that the evidence adduced by the first five witnesses, that is, Richard Ngangi, Bishop William Nkaangi, Buckson Semei, Agnes Nenka Marinie and Jeremiah Kaloi was credible.

These witnesses testified that they were not aware of any sale of the land in issue to Henry Kilonzi. In fact, they all stated that when confronted by them and asked why he was selling Marinie Ole Tianti Makaita's land, he told them that he was given the land by President Moi. When he appeared before the committee, Henry Kilonzi said he had bought the land from Marinie Ole Tiranti Makaita but he did not produce any sale agreement or proof of payment of the purchase price.

Hence there is credible evidence that points to Henry Kilonzi having fraudulently acquired the land from the deceased. The Committee believed the evidence adduced that as late as 2003, records at the land office registry in Ardhi house showed that the land still belonged to Marinie Ole Tiranti Makaita.

(2)SUITABILITY OF LAND AS CEMETERY

From the evidence adduced by officers from the Kenya Wildlife Services and the above six witnesses, the land is not suitable for a cemetery as it does not have red soil that is six feet deep, it is not easily accessible and it is on the animal migratory corridor.

There is further evidence from the City Planning department that is from, P.T. Odongo and J.K. Barreh that the land is not suitable for a cemetery.



The Maasai communities living around the area are also opposed to the land being used as a cemetery.

National Environmental Management Authority did not do any impact assessment as required by the law.

(3) PROCESS OF PROCURING THE LAND

Although there was a genuine need for another cemetery, some people saw this as an opportunity to milk money from the government. This was taken advantage of by some unscrupulous businessmen and corrupt government officials.

The committee observed that there is overwhelming evidence that the process of obtaining the land was a well thought out, premeditated plan to defraud the government of the public funds which seem to have involved the city council, ministry officials, businessmen and advocates.

Only KShs.110, 000,000/= went to the purported owner and the rest was distributed to the perpetrators of the fraud.

The committee also observed that the Ministry of Local Government was leading the process from the inception till the end.

The committee also observed that the price of the land was inflated and the government procedure on procurement was not followed. This was meant to assist the fraudsters in their mission.

(4) ILLEGALLITIES and IRREGULARITIES

The committee observed that there were a lot of illegalities and irregularities bordering on criminal acts. For example, instead of returning the Kshs. 175,000,000/= to the Treasury because suitable land had not been identified, a cheque was drawn in favour of Omotii and Company advocates for this amount in June 2008 without any



supporting documents and the same was forwarded to the lawyers in December 2008. It is to be noted that the advocates had not been appointed to act in this transaction by the time the cheque was drawn in their favour.

(5) KENYA ANTI CORRUPTION COMMISSION

The committee observed that there is need to amend the law to give KACC more power to summon witnesses and compel them to give evidence.

(6) MINISTRY OF LOCAL GOVERNMENT

The committee observed that the Local Government Ministry seemed not to have taken any action to mitigate any future fraud unlike the Lands Ministry where the minister undertook to make sure that any land transaction concerning government or a government agency and involving above twenty million (20,000,000) must be approved by him.

The committee further noted that the Minister for Local Government has not even gone to see the land. Besides, despite the knowledge of the fraud and public outcry of the misuse of funds the ministry has shown no real steps of trying to avoid a repetition. The Committee noted with concern that all the officers involved in the fraud are still in offices. It is also to be observed that most of the Ministry officials who appeared before the committee withheld vital evidence. In Parliament, the minister's statement was aimed at covering and exonerating his officers. (Refer to the hansard attached and marked W26).

SPECIFIC OBSERVATIONS

MAVOKO MUNICIPAL COUNCIL AND KENYA WILDLIFE SERVICE

It appears to the Committee that Mavoko Municipal C was not involved in the process of buying the cemete and there is evidence that if their opinion had been :



they would have guided and warned the City Council of Nairobi against buying the land. (Refer to the evidence of the Mayor, Town Clerk and the Town Planner of Mavoko Municipal Council). Kenya Wildlife Service officials were also clear in their evidence that the land is not suitable for a cemetery.

HENRY KILONZI

There is credible evidence to show that he illegally and fraudulently got the land from Marinie Ole Tiranti Makaita.

It is also clear that he was involved in the fraud and may have been used by the City Council of Nairobi officials and the Ministry of Local Government officials to perpetuate the fraud. This is proved by the fact that he had agreed to sell the land in question at Kshs. 800,000/=per acre totaling ksh.96, 000,000 but in the advocate's office the price was raised to Kshs. 110,000,000/=.

It is clear from the evidence that he got the land irregularly and illegally and defrauded the family of the late Marinie Ole Tiranti Makaita.

- committee further noted that Henry Kilonzi might have used by the officials of the city council to inflate the price of the land so as to further the fraud they had hatched.

WEGE

It was observed that he played an integral part in the fraud. It noted that he is one of the registered members of the City Council of Nairobi. His tentacles spread further to the Ministry of Local Government.

It is concluded that he is one of the main players in the buying of this cemetery land to defraud the public of a lot of money at a high purchase price but other players who were involved outsmarted him. He

City Council
of Nairobi
ought

instructed three lawyers to protect his interest but he still has not received the money he had hoped for. The Committee therefore questioned his motive of bringing on board two lawyers to watch over other lawyers he had contracted.

CEPHAS K. MWAURA

The committee noted that Celphas Mwaura introduced Henry Kilonzi to Alphonse Mutinda advocate. This advocate then arranged for Mwaura, Maina Chege and Henry Kilonzi to meet in his office. The committee has received credible evidence that Cephass Mwaura was paid Kshs. 9,300,000/= after the procurement of the cemetery land. He was therefore directly involved in the fraud. Why else would he be receiving this money and he did not own the land?

ALPHONCE MUTINDA ADVOCATE

The Committee has received actual evidence that this advocate received Kshs. 135,000,000/after the procurement of the land in issue. Even assuming he was the lawyer for the vendor, he should only have received ksh.110, 000,000 for Henry Kilonzi and not ksh.135, 000,000. He should disclose who received the balance of the money.

The committee noted that he played more than the role of an advocate in respect of this transaction. He arranged a meeting of Maina Chege, Mwaura and Henry Kilonzi in his office.

The Committee is convinced that he was a facilitator of the fraud and distributor of money fraudulently obtained.

E. N. OMOTII ADVOCATE

The committee noted that this advocate has connections both in the City Council of Nairobi and the Ministry of Government.



The committee further observed that he did not question why Naen Rech Co. Ltd could win the tender when it had no land to sell. This was professional negligence. The committee noted that he failed in his duty when he did not disclose that he was not dealing with the person who won the tender in this particular transaction. It is also questionable why he drew the agreement of sale between Henry Kilonzi and the City Council of Nairobi while there was no evidence to show that Naen Rech Co.Ltd was legally appointed as an agent of Henry Kilonzi.

The Committee also noted that he banked Kshs. 283,000,000/= in his bank account and this money earned an interest of Kshs. 1,800,000/= which he retained on top of the Kshs. 13,000,000/= given back to him by Osiemo and Co. Advocates and the Kshs. 2,030,000/= he had retained as legal fees.

ODERO OSIEMO ADVOCATE

The Committee observed that he is the distributor of money to various accomplices and also hides behind Cibiya World Wide Ltd. whose director is his brother Newton Osiemo.

committee noted that he was one of the advocates who had a joint account into which Kshs. 281,300,000/= was deposited. He thereafter received money he has not accounted for and was therefore clearly involved in the

not investigated fully and be made to refund the money or disclose for what purpose he has received it.

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Local

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at Hon. James Orengo had no objection. When the matter came to his attention, he found out that the transactions involving the

government or a government agency of over twenty million (Kshs. 20,000,000) must be approved by him. He also advised the Committee that the procurement may be nullified on account of the altered transfer document. He undertook to place a caveat.

COLLECTOR OF STAMP DUTY

The committee observed that he collected stamp duty on the sale prize in accordance with the law and therefore he did his work diligently. The committee noted that the City Council of Nairobi could have asked for exemption but they did not apply for it.

REGISTRAR OF LANDS

The committee noted that she accepted the altered transfer document and also facilitated the process within a day.

The Committee wondered if she compared the sale agreement and the transfer document. The transfer originally read 48.562 hectares and it was altered to read 52.22 hectares and yet the title deed issued reads 48.30 hectares. She failed to explain these anomalies to the Committee and this led to the conclusion that she was compromised and assisted in the fraud.

COMMISSIONER OF LAND

The committee noted that he issued the title deed whose acreage was different from the transfer document and the sale agreement.

It was noted that he did not question the validity of the valuation document and seemed to give credibility to the fraudulent valuation by allowing his officers to accept the stamp duty.



It was also noted that he approved sub division of the land even after knowing the process was not above board.

CITY COUNCIL OF NAIROBI

JOHN GAKUO

The committee noted that he did not cooperate with it at all during his two interviews and failed to answer any questions put to him. Instead he chose to conveniently hide behind the procurement and tender committee.

He feigned ignorance in the whole matter and wanted the committee to believe his only guilt is incompetence and that he never participated. This is negated by the fact that he held onto the memorandum which advised the land was not suitable for a cemetery. He had also originally denied holding a meeting to discuss the procurement of the cemetery land only admitted it in his second appearance before the Committee when he was confronted with the evidence adduced by one of his officers.

The committee further noted that he failed to protect the City Council of Nairobi as its Chief Executive Officer. In fact, after the allegations of corruption in the process came to his attention he chose to do nothing about it.

The committee noted and is convinced that he is part and parcel of the scandal.

PROCUREMENT COMMITTEE FOR NAIROBI CITY COUNCIL

The committee noted that they played a critical role in the facilitation of the fraud and totally ignored all safeguards in the Procurement Act.

The committee noted that the Town Clerk as the chair of the tender committee and the Town Clerk withheld the memoranda from the Procurement Planner pointing to the fact that the land was



for legal matters e.g. land sale and if it is felt the ministry has no capacity, the Attorney General is consulted.

EDITH TOROME

This witness testified as hereunder:

At present, I am a State Counsel in the Ministry of Higher Education. Before this, I was the State Counsel in the Ministry of Local Government. I am totally unaware of the procurement of cemetery land by the City Council of Nairobi although I attended the initial meeting in the Finance Ministry when we went to request that funds be availed for purchase of the cemetery. The Chief Finance Officer in the Ministry had noted that the tender documents were defective as they did not provide the required specification of land suitable for a cemetery and had requested that I give a legal opinion but the Permanent Secretary, Mr. Sammy Kirui said that the City Council had competent lawyers. Letter is marked W3

As a state counsel, I should give advice on all legal matters but in this particular case I was not involved. I saw the comment by the Permanent Secretary to keep me out of the transaction in the file. The procurement was completed in February 2009 and in March 2009 I was transferred to the Ministry of Higher Education.

THE MINISTRY OF LANDS

Mr Zablon Mabae

This witness made the following statement:-

I am the Commissioner of Lands in the Ministry. In respect of the land in question, I want to state the foll

The Ministry's main function is to keep records of all transactions.



On 7th August 2008 we received a letter to give a valuation for negotiation purposes. It was signed by N.W.Otido. It is marked W4. We didn't get a follow up but after talking to Mary Ngethe, she said the Council was not interested in the enquiry. Our letter to confirm this communication is dated 26th September 2008 and is marked W5

(iii) The Ministry again received a letter dated 4th November 2008 from Nairobi City Council (signed by Mary Ngethe) asking that a valuation be carried out on the same land parcel LR.NO. 14759 in Mavoko Township. The letter is marked W6

(iv) The Ministry wrote back on 13th November 2008 asking for an officer from Nairobi City Council to take the Ministries's officers to the Ground. The letter is marked W7

(v) No action was forthcoming from the City Council of Nairobi until we received the letter asking us to confirm that we had valued the land. This was the letter from Auditor general marked W8

\ We hadn't done any valuation and when we scrutinized the letter we confirmed it was a forgery. We didn't have any name of the person named A. Otieno and the letter head on the letter was abandoned by the Ministry. We wrote back to the Auditor General explaining all this in our letter of 10th March 2009 marked W9. I don't know why Mary Ngethe, a Minister, acted on a one page valuation report (marked W8) without checking with the Ministry as to whether we had valued the land.

\ subdivision of the material land was

owing:
land

and valued the land at 200,000
of the material land. This valuation is marked

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q stamp duty but in this
noted.

On 3rd February 2009 the City Council of Nairobi was issued with a title after the sale agreement (marked *W12*) transfer (marked *W13*) was submitted. Copy of title is marked *W14*

HON JAMES ORENGO –MINISTER FOR LANDS

The Minister made the following remarks:-

The alterations on the transfer document were meant to correct an anomaly in the acreage. Embakasi ranching group was the initial owner of the land. The land was subdivided and shared among the 62 members of the group.

The transfer document is drawn by E.N. Omotii & Co. Advocates but the alteration is signed for by Alphonse Mutinda advocate. This is illegal but my officers overlooked this fact. In a court of law the document would be found defective and the sale can be annulled.

We shall put a restriction on the land in question until the investigations are complete.

The City Council of Nairobi is a body corporate and has power to deal with their property as they please.

CITY COUNCIL OF NAIROBI

PETER MBURU KABINDA

This witness testified as follows:-

I deal with planning and especially future urban development. In 2003, I was transferred to Thika Municipality and was there until 2008 when I came back work for Nairobi City Council. At this particular time, the council was worried because Langata cemetery was sa be full and the Council needed to buy another burial g Towards this end, the Local Government Ministry faci



a meeting between Mary Ngethe, the legal officer and other Council officials with Mr. Kinyua, the Permanent Secretary in the Ministry of Finance. The purpose of the meeting was to request for funds to buy land for a cemetery. The Ministry of Finance agreed to provide funds to buy land for a cemetery.

The Council then started to look for land to purchase. In the first advertisement the Council only got three people interested in selling land for a cemetery.

When the Council officials visited these lands, it became clear that these lands did not qualify since they didn't have red soil which is more than 6 feet deep and they were not serviced by an all weather road. The land near Kapa industry would have been suitable but its title had encumbrances.

In 2008 we visited several sites in search of a suitable cemetery land. I was not in the technical team but my deputy Tom Odongo and Mr. J.Barreh were in it. The Chairperson of the technical committee was Mary Ngethe.

When the land in issue was identified I and my colleagues in the planning department wrote two memos, both dated 11th November 2008(marked *W15* and *W16*) to the Town Clerk stating that in our opinion the land was not suitable for a cemetery and we gave our reasons. I don't know how the contents of this memo leaked to the Ministry but the Permanent Secretary in the Ministry of Local Government and the Town Clerk referring to the same. The Town Clerk did not take our objections kindly and he asked us to justify this by our memo of 19th December 2008. (marked *W17*.)The Town Clerk called a meeting with the technical team. It was three days after I and my colleagues minutes were taken in that meeting. I don't know the genesis of the contents of the above mentioned memo to the Town Clerk to justify our objections since the open tender was proving to be unsuccessful in either compulsory acquire the land or to buy land having red soil.

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The Clerk had some reservations and stated that the issue had taken too long and it needed to be finalized. A meeting was called at the Ministry of Local Government which was attended by the finance officer, Permanent Secretary, Procurement officer, Director of legal affairs from Ministry, Edith Torome and also the funeral superintendent. The meeting was to discuss a report of progress made on the issue of procuring the cemetery land. The Council had no budget to buy land and that is why we involved the Ministry of Local Government.

A meeting of the tender Committee was called and I attended the meeting for a short period since I had other engagements. Before I left, however, I made it clear that the proposed land was not suitable and no tender should be awarded. The Town Clerk was aware of what was going on in respect of the purchase of cemetery land. There was no meeting in City hall by Councillors to endorse the purchasing of cemetery land by the City Council of Nairobi.

The general purpose Committee never met to deliberate on this matter. There was no full Council meeting to approve the purchase of the Cemetery land.

The matter has not even been brought to the Council for ratification.

The Deputy Town Clerk signed the transfer documents and he was still the Chairman of the tender Committee. This is illegal.

The Mayor or Councilors never attended any of the above meetings.

I know Maina Chege the Director of Naen Rech Ltd. He comes from Maragwa. He is the proprietor of marchant auctioneers.



JOHN GAKUO

This witness testified as follows:

In 2004 – 2008 I was the Town Clerk of Nairobi City Council. As the Chief Executive Officer of the Council then, I referred the matter of the procurement of cemetery land to the Procurement Committee. In September 2008 the process of buying cemetery land started. The tender was open and was put in the media. The members of procurement committee are Deputy Clerk, Treasurer, Medical Officer of Health, Engineer, Director of City Education, Legal Officer and Director of Procurement.

The memo of 11th November 2008 questioning the suitability of the land to be procured for a cemetery came to me and I personally gave a response. The reply is in the office of the Clerk of the City Council of Nairobi. Permanent Secretary then in the ministry of Local Government was Mr. Sammy Kirui. The payment was made directly to a lawyer who was representing the City Council of Nairobi. There is a valuation department in the Council but for this transaction valuation was to be done by a government valuer.

I don't know whether the valuation department was requested to value the land.

I acted on the technical committee advice.

I was informed that the valuation was done by the Ministry

I was recalled as he had been very guarded the matter raised before the Committee and now he

I was the Clerk of Nairobi City Council. I called a meeting in September 2008 when I received a letter

from the Permanent Secretary, Mr. Sammy Kirui. With procurement the buck does not stop with me. For any government land to be purchased, valuation had to be done. If not the procurement is defective. That is all I have to say.

MR. GEOFFREY MAJIWA-HIS WORSHIP THE MAYOR OF NAIROBI CITY

Takes the Oath by the Bible and then states as follows:-

I Geoffrey Majiwa, swear by the Almighty God that the evidence I will give before this Committee, shall be the truth, the whole truth, so help me God.

I know that sometimes in the year 2004 Members of the Council had a resolution that the council should acquire land for a Cemetery. We wanted the land next to the current Cemetery but this did not materialize. The Council then had to look for land elsewhere and we sought funds from the Local Government Ministry. Thereafter the council was dissolved and we resumed again in 2008.

Individual lands were looked at in early 2008 but the earmarked lands were found not to be available. Later it was agreed that the land be identified by a team from the City Council.

On 30th October 2008 a letter from Mr. Sammy Kirui, the Permanent Secretary gave the Council 5 days to conclude the matter otherwise the Ministry would take over the procurement. I was aware that there were complaints about the land by some member of the tender committee stating that the land was unsuitable for a cemetery. However, when I was asked to sign the transfer for the land to Nairobi City Council, I agreed.

On 18th September 2008 advertisement was done, so I don't know why the Permanent Secretary was writing on 30th



October 2008 giving 5 days for the Council to complete the transaction.

The Permanent secretary had said that only Government valuer would give the valuation.

I was told the land is in Mavoko. I didn't talk to the Mayor of Mavoko to inform him that Nairobi City Council was buying cemetery land in Mavoko.

I don't handle cash transactions and so I don't know whether stamp duty was paid.

The Permanent Secretary had given instructions for the purchase of the Cemetery land. If there is anything that was done improperly, then it was behind my back.

On September 2008 officers were called for a meeting to deliberate on the procurement of the Cemetery Land.

The Council bought 120 acres. These changes on the transfer document were signed for by the lawyer.

If what is in these papers is the correct position of the purchase of Cemetery land, then I was misinformed when I signed.

The Deputy Town Clerk signed but on approval by the clerk. The Chief executive of the Council is the Town Clerk and the buck stops with him. There is micro-management by the Local Government in respect of Nairobi City Council.

MARY NGETHE

This witness testified as follows:-

I am the Director of legal affairs in the City Council of Nairobi. In 2007 the tender of Cemetery land was done and a sale agreement dated 13th January 2006 was drawn. Before the purchase could be completed, we realized there was a



problem and the tender was cancelled. Ardhi developers Ltd and West End Butchery had a dispute in respect the land ownership.

In June 2008 we readvertised for land. The Permanent Secretary in the Local government called the officials from the City Council of Nairobi for a meeting on 16th June 2008 and Mr. Rotich advised us to go for a direct sale. We looked for land but were unable to get land in Nairobi. We identified several parcels of land and on 7-8-2008 we requested the government to do valuations.

One parcel was on Mombasa road but Kenya Railways warned us not to buy the land as it belonged to them. The Permanent Secretary again wrote to tell us to advertise. I was appointed as the Chair of the tender technical Committee. There were twelve bids. Seven of them responded but five did not. We made site visits on all the lands and the Committee settled on the land at Mavoko.

On 5-11-08 we wrote to the procurement Committee informing them of our decision.

The criteria agreed on earlier was that:-

- ❖ Land must be within Nairobi Metropolitan
- ❖ Easily accessible by public
- ❖ Soil must be preferably red and more than 6 feet deep

The land at Mavoko is not easily accessible and the soil is not red. The soil is only 4 feet deep. Tender Committee sat on 12-11-08 and officers in the planning department raised objections on 14-11-08. I did not object to the procurement because the Medical officer of health was present and confirmed the land was suitable for a cemetery. The Permanent Secretary of the Local Government had written to the Clerk on 30th October 2008 threatening that the Ministry would take over the process if we did not conclude it within 5 days. The letter is marked W18. The land was valued but I



later learnt that the letter of valuation was a forgery. I have nothing more to say in respect of the sale.

KARISA IHA

This witness testified as follows:

I am a deputy director in Nairobi City Council. I was involved in the purchase of the proposed Cemetery land. The Council wrote to the treasury through the Minister of Local Government for funds to buy Cemetery Land.

When the first cheque was forwarded it was in the name of Omotii Advocates who acts for Nairobi City Council. The advocate was instructed on 26th November 2008(The appointment letter is marked W19) but the cheque in his name was done on 30th June 2008(marked W20).I forwarded the first cheque of ksh.175,000,000 to Nairobi City Council on 22nd December 2008(letter marked W21) and the second for ksh.108,000,000 on 16th January 2009(My forwarding letter is marked W22)

I don't know why the cheque was done in June to the lawyer before he was instructed by Nairobi City Council to act in this particular transaction. The second cheque of Kshs.108,000,000 was forwarded to the same lawyer by the Director.

I have no proof that the land was suitable for a Cemetery but it was reported by the procurement Committee that the land was suitable. I was not a member of the procurement Committee but I believe the procurement process was properly done. I can't remember any other property that was purchased by the City Council of Nairobi in this manner.

N. W. OTIDO

This witness testified as follows:

I was a Deputy Town Clerk in Nairobi City Council but now I am retired. I joined the Council in September 2006 as



Deputy Town Clerk in charge of administration. By a letter dated 20th January 2007 I was appointed by the Town Clerk as the Chairman of the tender Committee. I was also appointed as the chief land registrar for Nairobi City Council. Some of my duties involved signing all land documents and I was also a bank signatory for the Council. There are four signatories, that is, the Town Clerk, his Deputy Clerk, the Treasurer and his Deputy.

I was the Chairman of the tender Committee at the time of purchase of Cemetery land. I was not aware of the letter addressed to the Clerk stating the land was unsuitable for the land. On 13th November 2008 I wrote to Naen Rech Limited informing the Company that it had won the tender and requesting for a performance bond. Letter is marked W23. The bond was not given and this is against government regulations.

When I discovered there were complaints about the soil structure from the technical team I did nothing. I saw the memos a week after the tender was awarded. The clerk never showed me the memos from the planning department. Even after seeing the memos I didn't take any action to stop the procurement. I had seen a letter from Mr. Sammy Kirui informing the Clerk the process had to be concluded because the first cheque was almost stale. This letter is marked W24

On 19th December 2008 I signed the agreement for sale. I will share the blame if there was something wrong but the mistake started with the legal department. I have nothing to add that can help the Committee.

E.N. OMOTII ADVOCATE

This witness testified as follows:-

I am a practicing lawyer. On 26th November 2008 my law firm was instructed by the City Council of Nairobi to represent it in an intended purchase of land. The instructions



were in writing and there attached was a notification of award of a tender. It was a public open tender. Henry Musyoki Kilonzi was the vendor and the land to be bought was 120 acres out of LR 14759. The Purchase price for one acre was 2,360,000. I had meetings with the head of the legal department Mary Ngethe. I prepared a sale agreement between the vendor and the Nairobi City Council. Total amount released to my firm on 18th December 2008 was ksh.283, 000,000. The first cheque for ksh.175, 000,000 was drawn on 30th June 2008 and the second cheque for ksh. 108,000,000 was drawn on 15th January 2009. The cheques were drawn by the Ministry of Local Government. My firm of advocates was instructed to act in this matter on 26th November 2008 but I don't know why the cheque was drawn in the name of my firm in June 2008 before the firm was appointed to act in the matter. I released the money to the other lawyers after we got the title documents.

ALPHONCE MUTINDA ADVOCATE

I am a partner in Alphonse Mutinda & Co. Advocates and a lawyer by profession. I request to have my lawyer Mr. Mutisya present.

EVIDENCE

This witness then gave the following evidence:-

Henry Kilonzi is my client. I handle his business. He informed me in August 2008 that he wanted to sell his property. He told me he was selling part of his 140 acres. He wanted to keep 10 acres for himself and he had sold 10 acres to a school. He wanted me to look for a buyer.

Towards end of August 2008 I was introduced to one Maina Chege by Cephass K. Mwaura who is a surveyor. Maina Chege wanted to buy the 120 acres. I called Kilonzi and Maina to



my office and they met and negotiated a price. Maina Chege is the Director of Naen Rech Company.

Kilonzi wanted to sell the land for Kshs. 800,000 per acre. Finally after negotiations we agreed at Kshs.110, 000,000 for 120 acres. Mr Maina Chege had his own advocates.

We wanted a deposit of 10% which is 11,000,000. We got a post dated cheque in two names.

In September 2008 he said he won a tender from the City Council of Nairobi to sell the land he wanted to buy from Henry Kilonzi.

The agreement was that Kilonzi would be paid after transfer to Nairobi City Council. The land had not been subdivided and there was need to have consent from Mavoko Municipal Council and a clearance certificate.

L.R NO. 14759 was the land being sold to the City Council of Nairobi.

The City Council of Nairobi lawyer, E.N. Omotii lawyer sent me a draft sale agreement. Mrs Mutua from lands did a valuation for the purpose of stamp duty.

The City Council of Nairobi had paid or issued a cheque for the stamp duty and so the title was issued to them.

Henry Kilonzi sold to the children's home 10 acres at 500,000 per acre.

MAINA CHEGE

This witness testified as follows:-

I am a business man and a director of Naen Rech Co. Ltd. This Company was incorporated in 1996. Share holders have changed. There were three directors, Maina Chege. John



George Kamau and Winnie Wanjiku. The two have since left. They were replaced by Einswick Van Sen from Israel.

The company was incorporated to do business and horticulture farming. On 18th September 2009, there was an advertisement in the newspaper asking for suitable land for a Cemetery by the City Council of Nairobi.

As a business man I wanted to tender. I had started negotiation with Henry Kilonzi for his land at Mavoko for I wanted to plant trees.

I bought the tender documents and since Kilonzi was selling the 120 acres at 110,000,000 I quoted 2,360,000 per acre. I engaged P.C. Onduso advocates to represent my interest in the transaction.

The other Director owns 15% in Naen Rech. By the time I tendered we had agreed that Henry Kilonzi was going to sell the land to me.

The lawyers I engaged have swindled me and have refused to release my money. I have therefore filed Milimani High court no. 181/2009/05 Naen Rech Ltd versus Onduso & Co. Advocates where I am claiming 42,050,000 from them. The case is yet to be finalized.

I have also filed Civil suit Case No.518/2009, Maina Chege versus Odero & Co. Advocates where I am claiming ksh.87,000,000. Stephen Kibuya advocate is acting for me.

About 9.2 Million was put in my account. A further 2 million was given to me. I expected 273 million out of the transaction but 133 million is still with the lawyers.

BISHOP DAVID M.THAGANA

This witness stated as follows:-

In January 2008 Merciful Redeemer Children's Home and Henry Kilonzi entered into an agreement whereby he agreed to sell ten acres on LR.No.14759 Machakos to the Home. The



purchase price was agreed at 400,000 per acre and so the ten acres cost 4,000,000.

On 14th January 2008 we paid Henry Kilonzi KSH.200, 000

On 18th January we paid him KSH. 1,000,000 vide cheque no.00743

On 27th March we paid him a further 1,200,000 vide cheque numbers 000059(ksh.200, 000) and 000060(ksh.1, 000,000)

We had intended to pay the balance on transfer of the property but Alphonse Mutinda advocate wrote to us to clear the balance to enable him transfer the land to us. We referred this letter to our lawyers, M/s Maina Wachira advocates who advised us to pay.

On 9th July 2008 we paid the balance of ksh.1, 600,000 vide cheque number 001564.

We have built a children's home on the land although we haven't yet received approval of the buildings from Mavoko Municipal Council.

From July 2008 we have been asking our lawyer for the title to our land but we haven't received the same to date.

BANK OF AFRICA

James Gichuki from the above bank stated as follows:-

The bank account was opened in February 2009 by three lawyers, namely Mutinda, Onduso & Osiemo Advocates. We know that the money was from another account in our bank (from Omotii Advocates) account. We have come to produce these clear copies of the transactions in this account. (The statements are handed over to the secretary of the Committee).



ENYA ANTI CORRUPTION COMMISSION

**Dr. J.P. MUTONYI, MBS- ACTING DIRECTOR KENYA ANTI
CORRUPTION COMMISSION**

This witness testified as follows:-

I am an acting director in the Kenya Anti-Corruption Commission. We have conducted investigations into the alleged procurement of Cemetery Land by Nairobi City Council.

From our investigations, we have established that Henry Kilonzi was approached by Maina Chege who was a Director of Naen Rech Ltd to sell the land in question to him. Naen Rech then purported to sell the land to Nairobi City Council even before the title passed to his Company. It is not legally possible to sell land that one does not own.

We have information showing that Maina Chege was used for furthering the whole fraud. This is best explained by Mr. Tabu Lwanga, the officer who has been gathering our evidence.

TABU LWANGA

The evidence by this witness was as hereunder:-

I have a chart here that illustrates the way the money from the Ministry of Local Government has been handled. It is marked W25.

That the Ministry of Local Government provided a total of Ksh. 290,694,000

That E.N.Omotti & Co.Advocates received Ksh.283, 000,000

That the Commissioner of Domestic Taxes received ksh.5, 664,000 for stamp duty

That E.N.Omotii's legal fees were ksh.2, 030,000.

