

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

THIRD ASSEMBLY

(SECOND SESSION)

NCCA/TJ/PL/2023(84)

18TH OCTOBER 2023

PAPER LAID

SUBJECT: REPORT OF COMMITTEE

Pursuant to Standing Order 196, I beg to lay the following Paper on the Table of this Assembly, today Wednesday 18th October 2023:

- THE REPORT OF THE SECTORAL COMMITTEE ON LANDS, PLANNING AND HOUSING ON PETITION BY RESIDENTS OF MATHARE 4A IN UTALII WAED ON RESETTLEMENT TO PUBLIC LAND LR. NO. 18170 IN NAIROBI CITY COUNTY.

(Chairperson, Sectoral Committee on Lands, Planning and Housing)

Copies to:

The Speaker

The Clerk

Hansard Editor

Hansard Reporters

The Press

*Paper laid by Hon. Xhina Palopaka
On 18th October 2023
Phyllis
18/10/2023*

REPORT OF THE SECTORAL COMMITTEE ON PLANNING AND HOUSING ON

o. 18170 IN NAIROBI CITY COUNTY.

Paper laid by Hon. *Thrin palapal*
On 18th October 2023
[Signature]
18/10/2023

OCTOBER 2023

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ANNEX I: Committee Minutes

ANNEX II: Copy of the Petition

1.0 PREFACE

1.1. Establishment and Mandate of the Committee

01. The Sectoral Committee on Planning and Housing is established pursuant to Standing Order 209, and its mandate amongst others, as outlined under Standing Order 209 (6) is to:-

- a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;*
- b) study the programme and policy objectives of departments and the effectiveness of the implementation;*
- c) study and review all county legislation referred to it;*
- d) study, assess and analyse the relative success of the departments as measured by the results obtained as compared with its stated objectives;*
- e) investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;*
- f) vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 185(Committee on Appointments); and*
- g) make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.*

02. The Committee exercises oversight role on the work and administration of the Built Environment and Urban Planning. In accordance with the Third Schedule of the Standing Orders, the Planning and Housing Sectoral Committee is mandated to cover subject areas relating to:-

- (i) County planning and development;
- (ii) Statistics, land survey and mapping;
- (iii) Boundaries and fencing; and
- (iv) Housing and outdoor advertisement.

1.2. Committee Membership

03.The Committee comprises the following Members:-

1. Hon. Alvin Palapala, MCA - Chairperson
2. Hon. Collins Ogenga, MCA - Vice Chairperson
3. Hon. Peter Imwatok, MCA
4. Hon. Anthony Kiragu, MCA
5. Hon. Paul Kados, MCA
6. Hon. Waithera Chege, MCA
7. Hon. Geoffrey Majiwa, MCA
8. Hon. Fuad Hussein, MCA
9. Hon. Hashim Kamau, MCA
10. Hon. Paul Ndungu, MCA
11. Hon. Nasra Nanda, MCA
12. Hon. Hannah Wanjiru Muriuki, MCA
13. Hon. Nyantika Ricardo, MCA
14. Hon. Lily Akoth Kidenda, MCA
15. Hon. Jane Wanjiru, MCA
16. Hon. Nicholas Juma, MCA
17. Hon. Peter Maina, MCA
18. Hon. Clement Kamaru, MCA
19. Hon. Francis Kimondo, MCA
20. Hon. Patrick Macharia, MCA
21. Hon. Tricer Jeptoo, MCA
22. Hon. Martin Wairobi, MCA

1.3. Presentation and Committal of the Petition

Hon. Speaker,

04. Pursuant to Standing Order No. 219, the Hon. Speaker on Wednesday 14th March, 2023, presented to the House a Petition on behalf of Mathare 4A residents regarding their resettlement to plot No. LR. 18170 in Nairobi County.

Hon. Speaker,

05. The Petitioners' prayer was based on a long standing pursuit of their resettlement to plot No. LR 18170 in Mihang'o ward, Embakasi constituency following their eviction from their land in Mathare in 2005 that resulted from the introduction of a joint venture initiative by the German and Kenyan government to start a slum upgrading project in Mathare 4A area.

06. Pursuant to Standing Order 221, the Petition was committed to the Sectoral Committee on Planning and Housing to inquire into the issues raised and report to the Assembly.

Hon. Speaker,

07. The Committee observed that the Petitioners had unsuccessfully pursued the matter since the year 2006 and therefore resolved to consider the Petition on its own merit by comparing the facts as presented by the Petitioners against the relevant provisions of the law such as the Bill of Rights contained in Chapter 4 of the Constitution and the management of public land specifically Article 62 which provides that public land shall vest in and be held by a County Government in trust for the people or residents in the county.

Hon. Speaker,

08. The Committee having reviewed the Petition, resolved to have a meeting with the Petitioners and the County Executive Committee Member for Built Environment & Urban Planning and other relevant officers from the sector including the Chief Officer for Lands. The Committee held meetings with the Petitioners on Wednesday 12th April, 2023, and Monday 7th August, 2023. It is important to note that several other scheduled meetings were postponed because some key sector officers were unavailable, which caused the consideration of this Petition to take longer than expected. This necessitated the Committee to seek leave from the Speaker for extension of the time stipulated in the Standing Orders for consideration of the Petition. It is also worth noting that the Committee received a complaint letter from Gulenywa Jonathan

advocates on July 5, 2023, during the course of its consideration of the Petition. In the letter, the advocate raised a complaint on behalf of another group known as the Ruai-Mathare 4A self-help group that the group Petitioning the Assembly was an imposter group and thus not a legitimate beneficiary of the Mathare 4A resettlement programme.

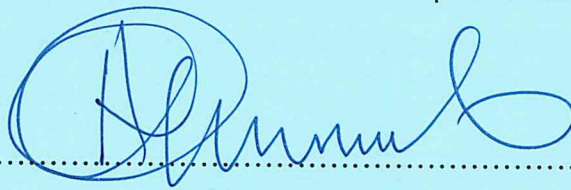
Hon. Speaker,

09. I wish to sincerely thank Members of the Committee for their hard work and dedication while inquiring into the matter. The Committee also wishes to sincerely thank the Offices of the Speaker, the Clerk of the County Assembly and the secretariat for their support.

10. It is my honor and pleasure on behalf of the Committee to present this Petition by Mathare 4A squatters on their resettlement to public land LR. No. 18170 in Nairobi City County.

Thank You.

SIGNED



Hon. Alvin Palapala, MCA

(CHAIRPERSON)

DATE.....

18th / 10 / 2023

2.0 INTRODUCTION

01. Pursuant to Standing Order No. 219, the Hon. Speaker on Wednesday 14th March, 2023 presented to the House a Petition on behalf of Mathare 4A residents regarding their resettlement to plot No. LR. 18170 in Nairobi County.

02. Pursuant to Standing Order 221, the Petition was committed to the Sectoral Committee on Planning and Housing to inquire into the issues raised and report to the Assembly.

03. In the Petition, the Petitioners averred that:-

AWARE THAT, Article 185 of the constitution vests the legislative authority and oversight of the County governments in the County Assembly;

THAT, Article 62 of the Constitution mandates the County Government to hold in trust public land on behalf of county residents;

THAT, the Kenya National Land Use Policy 2017 recognizes the need for social development that takes cognizance for provision of basic infrastructure and services;

THAT WHEREAS, Section 5(e) of The National Land Commission Act, 2012 requires the commission to initiate investigations into present or historical land injustices and recommend appropriate redress;

THAT WHEREAS, Section 116 of the County Governments Act, 2012 imposes an obligation on the County Government and its agencies to deliver services within its designated area of jurisdiction and Section 117 (1) (a) provides that the County Government shall give priority to basic needs of the public to ensure that all members of the public have access to basic services;

THAT WHEREAS, Mathare 4A Squatters were gifted L.R. No. 209/12010 by Karsan Murji. The said parcel of land was formerly a quarry in which their fathers used to work in under the aforementioned Karsan Murji who later on decommissioned the land and gifted it to them;

THAT WHEREAS, the defunct City Council of Nairobi attempted to evict them without offering alternative land, consequently, they filed a case, HHC No. 1702 of 1989 and

obtained orders restraining the defunct City Council of Nairobi from demolishing houses and requiring them to compensate and settle them;

THAT WHEREAS, in 2005 the Government of Kenya entered into a bilateral partnership with the German Government for slum upgrading and construction of Mathare 4A Primary School on plot No. L.R. 209/12010. The government agreed to relocate them to an alternative land availed by the defunct City Council of Nairobi at Ruai resettlement scheme and a grant of Ksh 500m (5 Million Euro) was given;

THAT WHEREAS, they entered into an out of court settlement with the defunct City Council of Nairobi. The defunct City Council of Nairobi assured them that they would offer them alternative land in Ruai. In 2006 the defunct City Council of Nairobi issued a Letter of Allotment to them for L.R. No. 12979/1. However, they did not occupy the said parcel;

THAT WHEREAS, in 2016 the Nairobi City County, Government wrote to the National Land Commission proposing to settle them on part of L.R. No. 11344. They have since established that L.R. No. 11344 formerly L.R. No. 13461 was subdivided by the defunct City Council of Nairobi into 2 parcels L. R. No. 18169 (844 ha.) occupied by the Kenya Defence Forces Embakasi Barracks and L.R. No. 18170 (405.1 ha.) belonging to the Nairobi City County Government and whose Deed Plan is in their custody; Deed plan No 172261 was issued for LR. No. 18170 on 23rd April, 1993 and released to Surveyor K. Mugenyu for the County Government;

THAT WHEREAS, from the above it is evident that the parcel of land meant to resettle them is L.R. No. 18170. They have established that there was a Court Consent between Nairobi City County Government and the Kenya Defence Forces (Embakasi Barracks) to withdraw ELC Suit No. 282 of 2012;

THAT WHEREAS, they confirm that efforts have been made to have the matter addressed by the relevant bodies, they failed to get a satisfactory response; and

THAT, all the matters in respect of which the Petition is raised is not pending before any court of law or constitutional body.

In view of the above, the Petitioners' pray that the Nairobi County Assembly intervenes and ensures that; -

- i.) The Nairobi City County Executive furnishes the National Land Commission with the Deed Plan for L.R. No. 18170 to facilitate their resettlement;

- ii.) They be protected from any further resettlement by the Nairobi City County Executive;
- iii.) The Nairobi City County Executive fulfills the Consent it entered into with the Kenya Defence Forces Embakasi Barracks in ELC Suit No. 282 of 2012 to enable their resettlement; and
- iv.) Parcel land L.R. No. 18170 is secured from potential land grabbers.

3.0 CONSIDERATION OF THE PETITION

04. The Committee held two meetings on Wednesday 12th April, 2023 and Monday 7th August, 2023 where submissions were received from both the Petitioners and the County Executive Committee Member for Built Environment & Urban Planning.

05. Based on the aforementioned complaint letter from Gulenywa Jonathan advocates dated 5th July, 2023 raising a complaint that the group petitioning the Assembly was an imposter group and thus not the bonafide beneficiary of the Mathare 4A resettlement program, the Committee met with the advocate and the complainants on Tuesday, September 19th, 2023 to hear their case. The said meeting was not concluded on this day, and a subsequent and final meeting was held on Tuesday, September 26th, 2023. The Committee's determination on the matter is highlighted in the recommendations section of this report.

3.1 Submissions from Mathare 4A residents (Petitioners)

The following were the submissions given by Mathare 4A Association Chairperson in the said meetings:-

- i.) Mathare 4A Squatters were gifted land L.R. No. 209/12010 by **Karsan Murji**. The said parcel of land was formerly a quarry in which their fathers used to work in under the aforementioned Karsan Murji who later on decommissioned it and gifted it to them. The defunct City Council of Nairobi attempted to evict them without offering alternative land. Consequently, they filed a case, HHC No. 1702 of 1989 and obtained orders restraining the defunct City Council of Nairobi from demolishing their houses and requiring the defunct City Council to compensate them;
- ii.) In 2005 the Government of Kenya entered into a bilateral partnership with the German Government for a slum upgrading and Mathare 4A Primary School pilot project on L.R. No. 209/12010. The government agreed to relocate the Mathare 4A squatters to

an alternative land availed by the defunct City Council of Nairobi at Ruai resettlement scheme and a grant of Ksh 500m (5 Million Euro) was given by the German Government;

- iii.) They entered into an out of court settlement with the defunct City Council of Nairobi. The defunct City Council committed to offer them alternative land in Ruai. In 2006, the defunct City Council issued a Letter of Allotment to them for L.R. No. 12979/1. However, they did not occupy the said parcel as there later emerged ownership technicalities on the said land;
- iv.) In 2016, the Nairobi City County Government wrote to the National Land Commission proposing to resettle them on part of L.R. No. 11344 in Embakasi. They established that L.R. No. 11344 formerly L.R. No. 13461 was subdivided by the defunct City Council of Nairobi into 2 parcels L. R. No. 181619 (844 ha) occupied by the Kenya Defence Forces Embakasi Barracks and LR. No. 18170 (405.1 ha) belonging to the Nairobi City County Government and whose Deed Plan is in their custody; Deed plan No 172261 was issued for LR. No. 18170 on 23rd April 1993; and
- v.) That the parcel of land meant to resettle them is LR. No. 18170. They have established that there was a Court Consent between Nairobi City County and the Kenya Defence Forces Embakasi Barracks to withdraw ELC Suit No. 282 of 2012 which should now pave way for their resettlement now that the consent reverted ownership of the land to the County Government.

The Petitioners tabled the following documents in support of their Petition:-

- i.) Regularization of Ruai-Mathare 4A resettlement of squatters letter Ref. No. CPD/005526 dated 15th November, 2006. The letter drawn by the then Town Clerk of the defunct City Council conveys a council resolution to resettle the squatters and further affirms that a Part Development Plan and survey work were already in process.
- ii.) Letter of Allotment for Resettlement of Squatters on Ruai scheme LR. No. 12979/1 Ref. No. CPD/002340 dated 6th December, 2006. The letter allocates 250 ha. of Ruai land. The land later developed an ownership dispute which derailed the resettlement process to date.
- iii.) Letter from the County Attorney to the Director of Survey Kenya Ref. No. LA/CS/AGO/2/10/21 dated 7th July 2021.

—The letter is a commitment from the County Government affirming that the resettlement of the squatters still stands.

- iv.) Court consent to withdraw ELC Suit No. 282 of 2012 drawn by Miller & Company Advocates to be filed at the Environment and Land Court dated 25th March, 2021. The consent to be filed is between Nairobi City County Government (Plaintiff) versus The Attorney General, Minister of State for Defence and Kenya Defence forces all as defendants.
- v.) A letter from the County Executive Committee Member for Urban Planning and Lands Ref. No. LS/07/328/RM/mk dated 27th July, 2016 addressed to the Chairman National Lands Commission stating the Mathare 4A case and two other squatter groups seeking facilitation of NLC in resettling them on LR. No. 11344 which is partly occupied by the Kenya Defensive Forces.
- vi.) A letter From the County Secretary addressed to the National Land Commission Ref No. LS/07/328/RM/mk dated 27th July, 2016 informing the Commission of the Court order of 2006 on resettling the Mathare squatters. In the said letter, the County Government is seeking to resettle the squatters on a portion of LR. No. 11344 which is occupied by Kenya Defence Forces.
- vii.) A letter REF;NLC/CHAIRMAN/VOL.VXII/243 dated 8th November, 2016, written by the then National Land Commission Chair to the County Executive Committee Member (CECM) for Urban Planning and Lands responding that the Commission acknowledges land LR. No. 11344 as an ideal place for resettlement of the squatters. The letter further requested the CECM to do a Part development Plan for the National Land Commission to implement the resettlement.
- viii.) A letter from the National Land Commission Chairman REF. No. CF 4298/10 dated 30th June, 2017 addressed to the then County Executive Committee Member responding to a request for issuance of allotment letters for settlement of the Petitioner's and two other groups. In the letter, the National Land Commission is advising that for the request to be met, the County Government has to meet the following conditions:-
 - a) Apply for an out-of-court settlement of the matter in court with the Kenya Defence Forces so that the land is availed for settlement;
 - b) Plan and survey the land before resettlement; and

- c) The County Government to provide names of the settlers for the three groups.
- ix.) A letter from the Ministry of Defence Ref. No. DHQ/INFRA/316/2/LANDS dated 16th March, 2022. In the letter, the Ministry is requesting to be issued with an allotment letter for 918.2 ha. of Embakasi land (Nairobi City County portion). It is prudent to note that the Military was given an allotment of 400 ha. dated 7th November, 1997 by the defunct City Council and was to pay a stand premium of Ksh. 40,000,000. To date, the military has not complied with the payment and other terms & conditions contained in the said letter; a matter that forced the County to seek legal redress.

3.2 Submissions from County Executive Committee Member Built Environment (CECM) & Urban Planning and Chief Officer Lands

In a meeting held on Monday 7th August 2023, the CECM Built Environment & Urban Planning and the Chief Officer for Lands gave the following submissions:-

- i.) Plot No. LR 11344 situated in Embakasi and is enclosed within the fenced boundaries of Embakasi Garisson. The land is part of land belonging to the Nairobi City County Government which it purchased from Kayole Estate Limited.
- ii.) Survey records indicate that part of LR. No. 11344 was amalgamated with Crown land represented by LR. No.'s 3980,41/5 and 22524 to become LR. No. 13461. The amalgamation was irregular since the three parcels belonged to different entities (amalgamation can only be done if subject lands belong to one entity/individual). LR. No. 13461 was then subdivided into two (2) portions in 1993 according to F/R 237/4 to give LR. No. 18170 and LR. No. 18169.
- iii.) LR. No. 18170 was leased to an entity by the name Offshore Trading Company Ltd. in the year 1993. The title for this parcel was based on irregular amalgamation and subdivision processes since no proper documentation was used to support amalgamation of Crown land and County land.
- iv.) The County had allocated 400 ha. to the Kenya Defence Forces (KDF) but they fenced off 918.2 ha. The KDF was to compensate the County for the land but that never happened.
- v.) The Petitioners were to be resettled in Ruai but that was not executed due to ownership challenges arising over the Ruai resettlement land.
- vi.) The County should engage the Intergovernmental Relations Technical Committee to ensure that it gets back the extra 518.2 Ha of County land on LR. No. 11344 that the

Kenya Defence Forces unlawfully fenced off. The land can be used to resettle the squatters.

vii.) There is a 25km road linking Kayole and Mihang'o Estates which was fenced off by the military. The 400 ha. that was allocated to the military (KDF) should be beaconed and their title deed processed.

4.0 COMMITTEE OBSERVATIONS

In the consideration of the Petition, the Committee made the following observations:-

- i.) The Nairobi City County Executive entered into a Consent with the Squatters on 23rd March, 2000, another one in ELC Suit No. 282 of 2012, an amended Order was also issued in ELC. case No. 365 of 2017 all in agreement of resettling the Mathare 4A squatters.
- ii.) That there was a case filed in respect of the Embakasi land occupied by the Military in the Court of Appeal at Nairobi Civil application No.84 of 2012 (February 4, 2022) between the Attorney General (Appellant) and Torino Enterprises Limited (Respondent) being an appeal from the judgment and decree of the High Court of Kenya at Nairobi (Gacheche, j.) dated 4th July, 2011 in High Court Petition no. 38 of 2011. The said judgement was as follows:-
 - *There is unassailable evidence that sometime in 1997 or thereabout Nairobi City County (NCC) had entered into an arrangement with the Government of Kenya whereby NCC would allocate part of its land measuring 400 hectares to Department of Defence at an agreed consideration of Kshs.40,000,000.00 but it would appear that the agreed sum was not paid, hence the filing of Milimani ELC. case No. 282 of 2012 by NCC against the appellant and Kenya Defence Forces (KDF) seeking rescission of the letter of allocation dated 7th November, 1997 and delivery of vacant possession of the land, or in the alternative, compensation in the sum of Kshs.61,500,000,000.00 being the market value as at May 2012.*
 - *The Commissioner of Lands did not have authority in law to allot the suit land and therefore no valid interest on the same could be conferred upon Renton*

and subsequently to the respondent herein. The process leading to the acquisition of title by the respondent was flawed and tainted with an illegality.

- iii.) Having not been satisfied with the judgement of the Court of Appeal, Torino Enterprises filed Petition No. 5 (E006) of 2022 in Supreme Court on 4th February 2022. The Supreme Court gave a judgement dismissing their Petition on land Embakasi L.R No. 11344. The following is an excerpt quote from the said judgement;-

“Consequently, we find that upon alienation to Kayole Estates Limited in 1964, the Suit Property was converted from un-alienated government land to private freehold land. There being no question as to the regularity and legality of the process by which the said land was alienated in favour of Kayole Estates Ltd, we find and hold that the same was effectively divested from the purview of the regulatory regime of the Government Lands Act (now repealed). The Commissioner of Lands could therefore not have had any authority, to allocate the Suit Property to any other person as he purported to have done. By the same token, there being no evidence on record to the contrary, we find that the defunct Nairobi City Council acquired valid title to the Suit Property from Kayole Estates Ltd through purchase. Where does our finding leave Renton Company Ltd? It is worthy restating that the said Company could only have acquired valid title from the Nairobi City Council, and not the Commissioner of Lands who had long been divested of authority to allocate the same.”

- iv.) The Supreme Court's decision ended the uncertainty on who owns Embakasi land L.R No. 11344. Nairobi City County holds a valid title to the land and has the authority to use or allocate it as it deems fit.

5.0 RECOMMENDATIONS

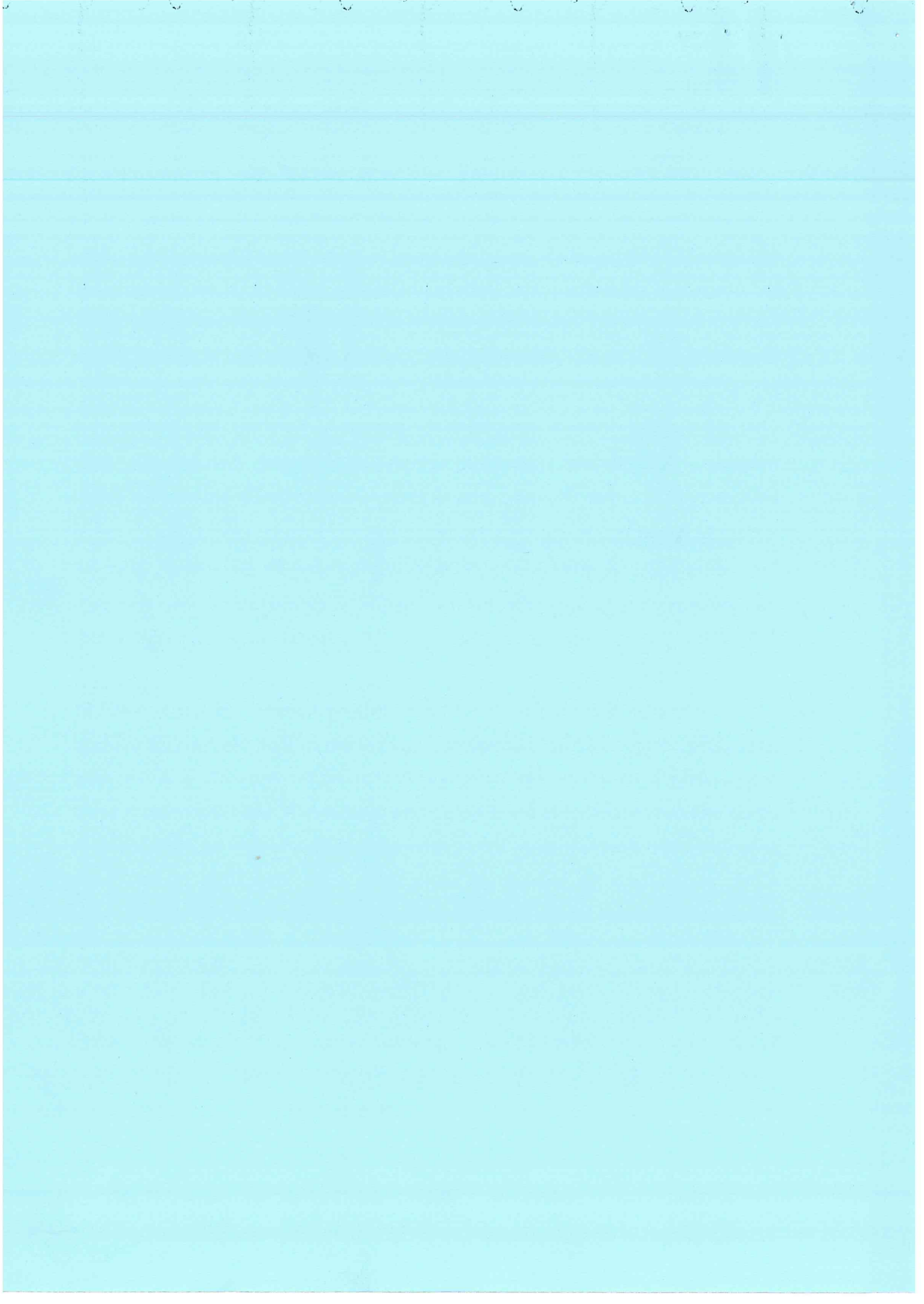
In view of the above findings, the Committee recommends that the County assembly resolves as follows;-

- i.) That in view of the submissions from the County Executive Committee Member on the irregular allocation of plot No. LR 18170 to offshore Trading Company Ltd., and taking into account the judgements issued both by the Court of Appeal in Nairobi Civil application No.84 of 2012 (February 4th, 2022) and the Torino Enterprises

Petition No. 5 (E006) of 2022 filed in Supreme Court on 4th February 2022 affirming that Embakasi L.R No. 11344 is County land, the illegal title(s) held by the private entities be cancelled for the land to revert to the County's possession and part of it be used to resettle the squatters.

- ii.) Noting that the military fenced off the entire 918 ha. County land without formal authority from the defunct County Council, the County Government should regularize the 400 Ha. of LR. No. 11344 issued to the military and survey the land for the issuance of a title deed .The Ministry of Defence should surrender the other 518 ha. back to the County Government and the 25m road linking Kayole and Mihang'o estates which they fenced off be surveyed and mapped (as per 1981 plan) to link these two areas.
- iii.) That the County Government begins the process of resettling the Mathare 4 A squatters. The County Executive Committee Member (CECM) for Built Environment & Urban Planning should prepare a part development Plan (PDP) for land LR. No. 11344 (part) as requested by the National Land Commission in their letter REF;NLC/CHAIRMAN/VOL.VXII/243 dated 8th November, 2016 for the Commission to facilitate the process. The CECM should table a progress report before the County Assembly within three (3) months from the date of this communication.
- iv.) On the matter of a complaint letter from Gulenywa Jonathan advocates dated 5th July, 2023 acting on behalf of another group known as Ruai-Mathare 4A self-help group raising a complaint that the group Petitioning the Assembly is an imposter group and not the bonafide beneficiary of the Mathare 4A resettlement program, it is resolved that identification of the resettlement beneficiaries will be done jointly in a fair and transparent manner in consultation with the public by the lands department, the local leaders and local Administration Offices.

END







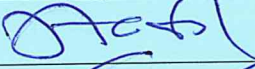
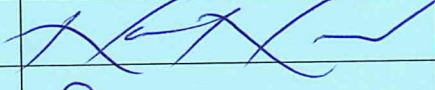
NAIROBI CITY COUNTY ASSEMBLY

COMMITTEE ON PLANNING AND HOUSING

VENUE: Room 5

PARTICULARS: AOPTON OF THE REPORT ON PETITION BY RESIDENTS OF MATHARE 4A IN UTALII WARD ON RESETTLEMENT TO PUBLIC LAND LR. No. 18170 IN NAIROBI CITY COUNTY

DATE (dd/mm/yy): 18/10/2023TIME: 11:00AM

S/NO	NAME	TIME IN	SIGN
1.	Alvin Olando		
2.	Hannah Wanjiru		H.W
3.	JANE WANJIRU		J.W
4.	Star Lely Kidenda		LAK
5.	NICHOLAS JUMA		N. Juma
6.	PETER MAINA MWANGI		PM
7.	PATRICK MACHARIA		P.M.
8.	Francis Kimondo		
9.	MARTIN WAIBORI		
10.	Geophrey Majiwa		
11.	Whithere Chege		WC
12.	FASHION KAMAU		
13.	NASRA NANDA		
14.	Colins Oetnga		C.O.O
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