

REPUBLIC OF KENYA

NYANDARUA COUNTY ASSEMBLY

1ST ASSEMBLY- 5TH SESSION

OFFICIAL REPORT

Wednesday 29th March, 2017

The Assembly met at the Assembly Chamber at 9.00 a.m.

[The Speaker (Hon. Ndegwa Wahome) in the Chair]

PRAYER

QUORUM CALL AT THE COMMENCEMENT OF THE SITTING

(The clerk-at-the-table confirms that there is no quorum)

Speaker: There being no quorum, I invoke the provisions of our Standing Orders 34(1) that the quorum bell be rung for an initial ten minutes, or until such a time within those ten minutes that quorum will have been achieved.

*(Quorum bell is rung for ten minutes but quorum is not achieved
as confirmed by the clerk-at-the-table)*

Hon. Members, quorum having not been recognized at the expiry of the initial ten minutes, I direct that, pursuant to Standing Order No. 34 (2), the quorum bell be rung for a further five minutes, or until such time within the five minutes that quorum will have been achieved.

*(Quorum bell is rung for four minutes and quorum is achieved
as confirmed by the clerk-at-the-table)*

Very well, quorum having been achieved, we can now proceed with the business of this sitting.

STATEMENTS

(Hon. Suleiman Kimani rises on a point of order (Order 7-Statements))

Speaker: What is it Member for Kanjuiri, Hon. Suleiman Kihika Kimani?

Suleiman Kimani: Thank you, Mr Speaker. I would like to know, from the Chairperson of the Committee on Lands, Housing and Physical Planning, how far the Committee has gone in responding to a statement I sought regarding the status of the cemetery in Kanjuiri and Tumaini centres. Thank you Mr Speaker.

Speaker: Very well. Hon. Members, I had indicated that I would make a comprehensive communication on how Members can seek redress should their issues not be responded to since we, currently, do not have such infrastructure. However, the issue raised by the Member for Kanjuiri is regular and since the Chairperson of the Committee on Lands is here, I don't know if he would like to respond, or he requires us to give him more time to bring us a comprehensive report. Yes, Chairperson of the Committee on Lands, Housing and Physical Planning, Hon. John Githinji Mwaniki.

Hon. Githinji Mwaniki: Thank you, Mr Speaker. I would request the House to give us more time to interrogate these issues which are among the very many reports we have pending. Thank you, Mr Speaker.

Speaker: Very well but, in order to address the concerns of the member for Kanjuiri and also the members of the public agitating for information regarding this issue, I think it would be prudent for the chair to give us a progress report on Tuesday 4th of April 2017 at 2.30 pm. Yes Member for Kipipiri and Deputy Leader of Majority, Hon. Michael Njoroge Kirumba.

Hon. Michael Kirumba: Thank you, Mr Speaker for those directions. I feel this is the right time for us to wrap up all the pending issues, particularly now that we are on the homestretch. As the Chairperson of the House Business Committee, Mr Speaker, I know you appreciate the need to generate business to transact until we break. If the secretariat could go back to the archives and extract all these pending statements and reports so that we do not have a skeletal order paper, I believe we will be moving in the right direction. Thank you Mr Speaker.

Speaker: That is a very timely intervention by the Member for Kipipiri and, fortunately, the clerk at the table is also the clerk to the House Business Committee which meets on Thursdays. We shall, at the committee level, give further directions on how those pending issues can be extracted and dealt with.
Next order.

MOTIONS

ALLEGED GRABBED LAND PARCEL IN MAGUMU WARD

Speaker: Yes, Chairperson of the Committee on Lands, Housing and Physical Planning and Member for Geta, Hon. John Githinji Mwaniki.

Hon. Githinji Mwaniki: Thank you Mr Speaker. I wish to move the following motion:

That this House does adopt the Report of the Committee on Lands, Housing and Physical Planning on Alleged Grabbed Land Parcel in Magumu Ward as a report of this House and the recommendations therein as resolutions of this House.

Mr Speaker, I will not go through the entire report but I will highlight the key issues. On page three, we have the acronyms, definition of terms and preface.

Mr Speaker, Sir, on Thursday the 27th day of April, 2016 at 2.30 pm, the member for Magumu Ward and Leader of the Minority Party, Hon. Peter Githinji Ngumba requested for a statement from the Chairperson of the Committee on Lands, Housing and Physical Planning on alleged irregular allocation of plot number NYANDARUA/S. KINANGOP/927 in Magumu.

The Committee took up the matter and set forth to address the concerns by formulating an action plan to guide its inquiry into the statement. On page six of the report, we have the acknowledgement:

Mr Speaker, Sir, the Committee is grateful to your Office, and that of the Clerk, for your support. Further, we wish to extend our gratitude to all the Hon. Members, especially the members of this Committee, for their immeasurable support while executing our mandate.

Mr Speaker Sir, allow me to also acknowledge the Committee's clerk for his commitment during the entire exercise which culminated to the compilation of this report.

Finally, Mr Speaker Sir, On behalf of the Members of my Committee, it is my esteemed duty and pleasure to present to this Honourable House, the Committee's Report on land issues in Magumu Ward.

Allow me to read the terms of reference

Mr. Speaker, Sir, this report was catalyzed by a statement requested by Hon. Peter Githinji Ngumba on 27th April, 2016 whose terms were as follows:

The fact of the matter is adjudication of the settlement scheme was completed immediately after and that the government did not allocate the plot in question to any particular individual since the area was in a steep, rocky area.

Further, stand guided Mr. Speaker, Sir, that as a result of the nature of the plot in issue, all the plot owners adjacent to the plot were allowed to utilize it. Further, the residents of Muchorui Village have developed the said plot being NYA/S. KINANGOP/927 for close to 50 years.

Concerned that the bona fide beneficiaries of the plot NYA/S. KINANGOP/927 have unrightfully been disinherited of their entitlement for reasons being:

1. The community and residents of Muchorui Village, Gitwe are in the dark as to the period in which the allocation was done;
2. The community and residents of Muchorui Village, Gitwe were not involved in the allocation process;
3. That the dispute purported to exist was not reported to the village elders as no record exist to show the same; and
4. That if indeed the allocation was to take place, the residents of Muchorui Village would have been given priority.

Mr Speaker, Sir, to bring the Members to speed, the land parcel number Nyandarua/S. Kinangop/927 has been under the management of the settlement fund trustee (SFT), the trustee mandated to handle all land that was classified under schemes during the colonial period. The trustee, in turn, disposes the land as private, to individuals who pay the requisite charge. The Settlement Fund Trustees (SFT) is the vehicle that the independent Kenyan government used to

facilitate the acquisition and subsequent distribution of lands was. SFT was a separate legal entity whose trustees were government ministers. It is important to note that the SFT exists to this day and the records of all their transactions from 1963 to date, including those allocations that were made in the former president Moi era, are available for perusal at the Ministry of Lands.

Through the 1960s and 1970s the SFT would, through the local dailies and village *barazas*, advertise and invite applications for allocation of land in recently created settlement schemes. These schemes were constituted from the farms that the SFT had acquired from the white farmers. The conscious process of designing these schemes involved several steps. First was the amalgamation of parcels and sub-division by use of aerial surveys into economically viable units, including the provision of access roads. This was followed by conversion of the land registration system from the complex Registration of Titles Act (RTA) to the simpler Registered Land Act (RLA), borrowed from Australia. Along with that, the government made loans available not only for the purchase of land, but also for the acquisition of livestock, farm inputs and other developments. These loans, which were part of a revolving fund, were administered by the SFT.

Nyandarua County which is a former white highland and classified as a highly agricultural productive area had many settlers who owned ranches and farms. After independence in 1963, many settlers the government of the day allowed the settlers to give back the land in a formal way where the government was to purchase the land from the settlers and give it back to the people. This led to the establishment of the Settlement Fund Trustee (SFT) that was and is mandated to handle government owned land. Therefore, anyone who follows the right process in acquiring land registered under SFT has a right to be allocated such land. This was an entity that was supposed to distribute land to those who applied and requested for land. Therefore, anyone who follows the right process in acquiring land registered under SFT has a right to be allocated such land.

Mr Speaker, let us look at chapter two on findings and observations. The Committee delved into an in-depth scrutiny of the matter at hand by requesting for documents from various land's offices. The committee also made an onsite visit to the land in question on 26th August, 2016, where it held a public hearing inviting the residents to make submissions concerning land parcel number Nyandarua/S. Kinangop/927. The residents selected one Mr Stephen Kairu Gatundu to present their grievances to the committee. The representative gave a brief history of how six families residing around the land in question enjoyed a peaceful co-existence for fifty years. The six families' details are as listed.

Mr Stephen Kairu Gatundu pointed out that the land in question has been held as public land, but since they had an obligation of protecting the environment, they had planted trees on the land. He indicated that there were no activities being carried out in the land in question for the sole reason that the land had a steep rocky terrain. However, the land was under protection on the good will of the community.

He further posited that in the year 2014 they were shocked when a group of people who claimed ownership of the land in question subdivided it into Eighty Two pieces of land.

Citing constitutional provisions touching on the natural resources which provides that, the residents ought to benefit from the local resources (Art. 69, COK). This, he indicated was not the case as the residents were not even involved in the allocation. This is where the locals were thinking that it was important to involve when the demarcation was being done.

He added that, in February, 2016 there arose boundaries disputes and they decided to write a letter to the Land Registrar on the same. However, by the time committee visited the area no response had been received.

Mr Stephen Kairu Gatundu argued that the issue was never subjected to a public participation as required by article 10 of the constitution. In conclusion, he requested the committee to ensure that ends of justice are met.

Mr Speaker, we also have the committee's observations and findings. On 17th August, 2016, the committee obtained official land searches for the land parcel number Nyandarua/S. Kinangop/927 which has since been sub-divided into new Numbers Nyandarua/S. Kinangop/5924-6005 and found the following:

- ✓ The nature of the title deed is absolute (freehold).
- ✓ The plot in question covers approximately 44.0 hectares (108.72 acres).
- ✓ The parcel is registered under Settlement Fund Trustee.
- ✓ The title deed was closed on 30th May, 2007 on sub-division
- ✓ The land has no encumbrances.

The land lies within the neighbourhood of the following land parcels:

Nyandarua/S. Kinangop/559,699,709,678,683,687,685,870 and on the lower side the land borders Kiambu and Nakuru Counties. This was as indicated in inset for Parcel Number Nyandarua/S. Kinangop/927. The map is as indicated in annexure 1 of the report.

Hon. Members, if you are able to peruse through the report, you can see the sub-division that has been done. On page 505, you will see this steep rocky area that has been subdivided into 82 plots. You can now clearly get the weight of this matter.

The committee, in a bid to obtain more information regarding the parcel of land in question, requested for relevant documents from a Settlement Officer based in Engineer Town by the name Mr Nyandika. From the documents, the committee deduced that:

- i. No land documents or information should be given to someone before the owner of the land parcel receives the document. Therefore, we could not access any information regarding four parcels of land namely Nyandarua/S. Kinangop/5942, 5946, 5973 and 5975 as the documents had not been discharged to the owners.
- ii. The only documents the committee accessed were copies of land parcel number Nyandarua/S. Kinangop/5965 that is, letters of transfer of land in settlement scheme and discharge of charge (see annexure 3) owned by one Mr Muturi Wainaina
- iii. From the documents obtained, the following was observed:-
 - a. The Settlement Fund Trustees transferred the land parcel number Nyandarua/S. Kinangop/5965 on 21st November, 2008.
 - b. The discharge of charge was done on 9th October, 2008 by the Settlement Fund Trustees.

From these documents regarding land parcel number Nyandarua/S. Kinangop/5965, the committee noted that the sub-division and allocation of 82 plots of the land in question were legally done as the application and allocation followed the right process.

Therefore the question that was raised by the Hon. Member was whether the land was grabbed. However, we realized that the land in question was legally allocated. Due process was followed. Further observations from the site visit included

(Power outage)

Speaker: Proceed member for Geta.

Hon. Githinji Mwaniki: Further observations from the site include;

1. The committee observed from the registry index map sheet 7134/3/12 for South Kinangop Settlement Scheme that indeed the land in question was on steep, rocky terrain.

Actually there is no activity that can take place in the area. Even walking is extremely difficult.

2. Some of the six families had planted some trees along the said land

The land in question was of no economic value to those it was allocated to. It cannot benefit them.

3. Almost all of the 82 plots in the land were inaccessible.

There are no roads. One cannot walk on that terrain. Grazing cannot take place either.

4. The persons who were allocated the said land parcels by SFT probably thought that the land was flat as shown on the inset

If you look at the map it seems as if this is a flat area. When they visited the area majority of them were shocked to find that it was on a steep and rocky area.

The committee having considered all the information, both oral and written and the documentary evidence and after making its observations as indicated in the previous chapter, it gives the following response to the statement requested by Hon. Peter Githinji Ngumba (MCA Magumu Ward).

The community and residents of Muchorui Village, Gitwe are in the dark as to the period within which the allocation was done.

The information obtained from lands' Offices in Nyahururu and Engineer Towns did not give the exact date of the allocations. However, from the letter of transfer annexed (3) to this report, the allocation was well before the year 2008.

The community and residents of Muchorui Village, Gitwe were not involved in the allocation process.

An in-depth scrutiny of the residents' submissions, documents obtained from land offices and the committee's observations revealed that the six families neighboring the said land had never applied for allocation of the land in question. Therefore, there was no need to involve them in the allocations as they, clearly, exhibited no interest.

That the dispute purported to exist was not reported to the village elders as no record exists to show the same.

The land in question was under SFT whose mandate is to allocate land to those who applied for it. Therefore, there was no dispute.

That if, indeed, the allocation was to take place, the residents of Muchorui Village would have been given priority.

The residents of Muchorui Village did not make any application for allocation of the said land and there was, therefore, no way could they have been given priority

Mr. Speaker, Sir; the committee having carried out all due diligence regarding the statement requested and the land in question, makes the following recommendations:

1. That, the land in question ought not to have been allocated to anyone.
2. That, in future, the SFT should not allocate any land that is of no economic value.

They made those people incur costs to get the documents so that they could be allocated land. They came to find out that the land that they were given had no economic value. There is no activity that could take place on that land.

3. That, in future, a person applying for land allocation should make an effort of visiting the ground to verify what he/she is applying for.

Before acquiring land it is prudent to make a site visit so that one can see the status of the land they are applying for. This was done in an office and those applying were not familiar with the parcel of land they were applying for.

4. That, the CEC member for Department of Lands, Housing and Physical Planning should hold a meeting to the local people to sensitize members of public regarding the ownership of the said land.

On this one Mr Speaker I would be prudent for the CECM Lands, Housing and Physical Planning would have a meeting with the public so that they can inform the community that the land was acquired legally and there was no reason for them to say that they were supposed to be the first beneficially. They should be told the status of that land so that that dispute will be solve.

Mr Speaker there is an omission of one of the recommendations and I am not sure whether to move an amendment now or after the report has been moved.

Speaker: I believe it would have been okay because it is only a motion that cannot be amended before it is moved, seconded and a question proposed. For a report or a bill, an amendment can be moved at the primary level. I have, however, looked at that amendment, though I had indicated the willingness to allow it to be done, but I have found that it does not rhyme with your findings and conclusion because the intended amendment was to ensure that the people who did the allocation... that amendment will defeat the purpose and objective of your report.

For me under paragraph one in your recommendation you would have considered that the land in question not to have been allocated to anyone and the relevant authority should consider to reverse the decision to allocate. The other one is that the land that has no economic value should be left as a public utility.

To include amendment on sanctions against the officers after saying that the due process of the law was followed and which is correct because none of the members in Muchorui had applied for the land. Those allocated the land, are Kenyans and they applied, SFT considered this and allocated them. That amendment would defeat the purposed of this report.

Hon. Githinji Mwaniki: In conclusion Mr. Speaker, Sir; land is a primary resource and a very important factor of production and often the only means of livelihood for many people in developing countries. This has led to increased demand for land and the SFT should be keen while allocating land by considering those that have economic value.

Mr Speaker, Sir; it is worthwhile to note that the land in question was under SFT and it is mandated to allocate any land parcel that belong to it. Therefore, this committee has nothing to influence any decision made by SFT.

The other documents such as the minutes that support this report are self-explanatory. I can say that the response to the statement that the member sought from this house was not in his favour but it is good that we have given clear information on this report.

I call upon Hon. Monica to second the report.

Speaker: Yes County Member from Nyakio Hon. Monica Wamuyu Kariuki.

Hon. Monica Wamuyu: Thank you Mr Speaker I rise to second the report by the Committee on Lands, Housing and Physical Planning. Mr Speaker we visited the site and we have written the findings. It is true that there is nothing that the committee can do about the allocation though we can say that the SFT did not do proper advertisement before application so that the local residents would have been aware.

The lands department should visit the area so that they can inform the locals about that land. I second the report

(Question proposed.)

Speaker: Yes, County Member from Karau Hon. Patricia Wanjugu Njoroje

Hon. Patricia Wanjugu: Thank you Mr Speaker. I support the report which is good to do as a member of the committee.

Mr Speaker, we visited the site which is a rocky place. It is too steep and therefore impossible to do any cultivation. I do not know why the people who were applying did so without visiting the site. We have seen land brokers who sell land that cannot be cultivated. It is good that the lands department creates awareness among the people because most of these people that have bought such lands are from town and young people. They should be encouraged to visit the site before making any transaction.

The chairperson has gone through the report well and I will not say more. I support the report

Speaker: The mover, the chairperson of the committee and the member for Geta Hon. Githinji Mwaniki

Hon. Githinji Mwaniki: Thank you Mr Speaker I thank all the members for their input in this. Lands department is sensitive and it requires seriousness. Getting information from the lands department cannot be done in a hurry. Lands is so sensitive that people shed blood over its issues. Thank you and I beg to move.

(Question put and agreed to)

Speaker: The motion is taken and I commend the committee for their report. I am happy that you are saying that you were guided by the facts on the ground and what is documented on the land without pleasing any party. That is how things should be and it is the only way a person can secure his or her credibility. I believe that now that Lands Department is devolved, the CECM can liaise with settlement trustees to see whether they can reverse these allocations. That land is not useful to anyone and I think it is better left a public utility land. I have seen that only one allocation has been made out of the 85 parcels. Timely intervention can save the whole issue.

As the committee has said the SFT should not just allocate land, it should allocate land where there it will be an economic growth trigger for both the nation and the individuals involved. That communication will be made to the office of the Governor and the CECM Lands Department will be requested to act accordingly.
Next order.

ADJOURNMENT

Speaker: Hon. Members the business on the order paper having been exhausted this House will now adjourn to today Wednesday 29th March 2017 at 2.30pm.

(The House rises at 9.55am.)