

# COUNTY ASSEMBLY OF NAKURU

## THE HANSARD

Wednesday 12<sup>th</sup> August, 2015

*Assembly Building*

*The House met at 2.55pm*

*[The Temporary Speaker (Hon. Eunice Muriithi) in the Chair]*

### PRAYERS

#### COMMUNICATION FROM THE CHAIR

##### PRACTICE FOR KICOSCA GAMES

**The Temporary Speaker** (Hon. Eunice Muriithi): Thank you Members, I can see we have visitors, I wish to welcome you and to give a reminder to all Members that the practice for the KICOSCA games is still going on so after this plenary session every Member should join his or her respective team for practice, thank you.

### PAPER

#### REPORT OF LEGAL AND JUSTICE COMMITTEE ON PETITION BY

##### MWARIKI FARM COMPANY LIMITED MEMBERS

**Hon. Stephen Muiruri:** Thank you Madam Temporary Speaker, I wish to lay Justice and Legal Affairs Committee Report on a Petition that was brought before our Committee by shareholders/members of Mwariki Farm Company Limited and submitted pursuant to Standing Order 205 and I wish to read the Report

Madam Temporary Speaker, the petition was first brought to the Assembly on 31st July 2014 by Hon. John Macharia, MCA Rhonda Ward. The petition was subsequently committed to the Justice and Legal Affairs Committee.

The mandate of the committee as per the Second Schedule of the Standing Order is to look into all matters related to Constitutional Affairs, administration of law and justice including elections, ethics, integrity, anti-corruption, human rights and public petitions.

The Justice and Legal Affairs Committee comprise the following Members:

1. MCA Stephen Kuria                      Chairman
2. MCA Peter Mureu                      Vice Chairman
3. MCA Samuel Waithuke
4. MCA Munjing'a Kariuki

**Disclaimer:** *The electronic version of the Assembly Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, County Assembly of Nakuru.*

5. MCA Ngugi Muigai
6. MCA John Gachiri
7. MCA Francis Njoroge
8. MCA Michael Macharia
9. MCA Virginia Gicanga
10. MCA Esther Mengere
11. MCA Ngware Ng'ang'a
12. MCA Michael Wang'ombe
13. MCA Stephen Ng'ethe
14. MCA Agnes Salimu
15. MCA Benjamin Irungu
16. MCA Rosemary Okemwa
17. MCA Leah Serem

### **SUBMISSIONS**

The Justice and Legal Affairs Committee received oral submissions and supporting documents from various witnesses who comprised the following:

1. Mr. Charles Kimani - Mwariki Farm Company Ltd
2. Mrs. Gladys Ndeda – Advocate of the High Court
3. Mr. Charles Birundu – Land Registrar

### **ACKNOWLEDGEMENT**

The foregoing is a summary of the committee's report on all matters relating to the Mwariki Petition.

This report is a culmination of tireless efforts by the members of The Justice and Legal Affairs Committee and enthusiastic submission by members of the public. We appreciate the commitment and the patience of members of the public during the period of the petition.

On behalf of The Justice and Legal Affairs Committee Members, I wish to extend our sincere gratitude for the invaluable support accorded to the committee by the office of the Speaker and Clerk to the County Assembly in ensuring that the committee's mandate is achieved. Further, I wish to assure the members that the observations and findings herein were unanimously agreed upon by all Members of the committee.

It is therefore my pleasant duty and privilege on behalf of the committee to present this Report to the House as required by the County Assembly of Nakuru Standing Order 205.

Facts Constituting the Petition

Madam Temporary Speaker,

The Government of Kenya at the time unlawfully and without consent of the shareholders of Mwariki Farm Company Ltd alienated parts of their land and was issuing the shareholders with certificate of lease instead of freehold title deeds. In view of the aforesaid, the petitioners are

**Disclaimer:** *The electronic version of the Assembly Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, County Assembly of Nakuru.*

urging the County Assembly to intervene and facilitate the reversal of the current status (issuance of lease certificates) to the desired ownership documents (freehold title deeds).

Article 40 of the Constitution guarantees the right of every individual to acquire and own land in Kenya, either individually or in association with others

The Land Act CAP 280 provides as follows:

5. Forms of tenure

(1) There shall be the following forms of land tenure:

- a) Freehold
- b) Leasehold

7. Methods of Adjudication of title to land. Title to land may be acquired through:

- a) Allocation
- b) Land adjudication process
- c) Compulsory acquisition
- d) Prescription
- e) Settlement programs
- f) Transmissions
- g) Transfers
- h) Long term leases exceeding twenty one years created out of private land
- i) Any other manner prescribed in an Act of parliament

**Freehold interest**

Black's Law Dictionary defines 'freehold interest' as an estate in land held in fee simple, fee tail or for term of life. The word 'fee' means an estate of inheritance. It is an estate, which on the death of the owner, can descend to the heirs and the estate may continue forever. A fee simple generally descends to the heir and even to collaterals, while a fee tail descends only to lineal descendants and was originally designed to keep land in the family. On the other hand, an estate for a term of life is not an interest of inheritance and cannot continue forever.

In Kenya, freehold interest is recognized under the Registered Land Act (Cap 300, Laws of Kenya). The title document is a title deed or land certificate and the concept of 'freehold' is referred to as absolute proprietorship. The Registration of Titles Act (Cap 281, Laws of Kenya) also recognizes the concept. The title documents is typically a certificate of title or grant and the proprietor is often stated as holding the estate in fee simple. The Government Lands Act (Cap 280, Laws of Kenya) also confers freehold interests, usually in fee simple, and the title document is generally a conveyance. These interests can descend to heirs and be transferred.

**Leasehold interest**

Unlike freehold interest, leasehold interest is granted for a fixed term. The terms can be 50 years, 99 years, 999 years or a period otherwise stated in the title document. Various types of leasehold interest exist. However, the common thread that runs through the terms is that a leasehold interest in land is an interest for exclusive possession and profit of land for a fixed period and usually in consideration of payment or rent. It is a contract for the grant of time in land. When purchasing such properties, it is important to consider the term of the lease and the various conditions under which a proprietor holds it.

On expiry of a leasehold term, the property reverts to the government. Proprietors of leasehold titles should ensure that they adhere to the conditions under which the land is held and apply for

**Disclaimer:** *The electronic version of the Assembly Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, County Assembly of Nakuru.*

renewal. The process of application for renewal should commence at least two to three years before the term expires.

The leasehold interest is recognized under the Registered Land Act (Cap 300, Laws of Kenya), wherein the title document is a certificate of lease. The Registration of Titles Act (Cap 281, Laws of Kenya) also recognizes leasehold interests, where title documents can be either a grant or certificate of title, with terms and annual rent indicated. The Government Lands Act (Cap 280, Laws of Kenya) also confers leasehold interests.

### **FINDINGS/OBSERVATIONS**

Madam Temporary Speaker

During our inquiry and investigation, the committee made the following pertinent observations. That:

1. The mother title was divided into 2; Mwariki and Kalenjin Enterprises.
2. If a prospective buyer wants to acquire a piece of land at Mwariki he/she can be issued with a sale agreement and a certificate or transfer title
3. It was alleged that Mwariki Farm Company had been dissolved in 2007 but upon making enquiries to the registrar of companies, it was discovered that the decision to dissolve the company had been challenged in the High court by some shareholders. The company was therefore reinstated in the register vide Gazette Notice No. 8703 of 4th September 2007. The list of notification of Directors that had been lodged with the Registrar of Companies before dissolution was deemed to be the list of Directors of the Company which had been restored back.
4. Petitioners who lived near the sewage area were compensated and were given 21 acres in title deed in Lanet and Elementaita.
5. Kalenjin enterprise owners had title deeds because they had land which measured more than 2 1/2 acres.
6. The shareholders were required to surrender all public utilities. Lease certificates and title deeds are awarded depending on acreage.
7. 174 members of Mwariki Farm Company Limited, had lease certificates, 128 members had sale agreements only (Block 27) and 41 members had allotment papers (sub-division scheme approvals)
8. Government cannot take citizen land; however, terms and reference apply when public utilities/commercial outlets or agricultural land is involved.

### **COMMITTEE RECOMMENDATIONS**

1. The leadership of Mwariki farm company to submit members' names who have property but have not been issued with lease certificate within the next one month.
2. The National Land Commission in conjunction with the Land Registrar to issue the aforementioned persons with allotment papers within the next three months.
3. The Land Registrar to issue freehold title deeds within the next 6 months to shareholders who have lease certificates since the mother title was freehold.
4. The National Land Commission to work hand in hand with the County Land Management Board in the matter.

The report was countersigned by all Committee Members. I therefore wish to lay this Report before the hon assembly of Nakuru. Thank you very much

*(The Report was laid on the table)*

**Disclaimer:** The electronic version of the Assembly Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, County Assembly of Nakuru.

**The Temporary Speaker** (hon Eunice Muriithi): Thank you very much hon Kuria, I wish to take Members to Standing Order 205 (2) section 3 where it says the Clerk shall within 15 days of the decision of the Committee of the Assembly, in writing, notify the petitioner of the decision of the Assembly on the Petition and the Clerk shall forward copies of responses received under Standing Order 205 to the petitioner or petitioners.

**The Temporary Speaker** (Hon. Eunice Muriithi): Thank you very much hon Members, having exhausted our work today, we stay adjourned until tomorrow at 2.30 pm

*The House rose at 3.15pm*