



Paper laid by
Hon. Duncan Mwangi Njuguna
on March 10, 2015

MURANG'A COUNTY ASSEMBLY

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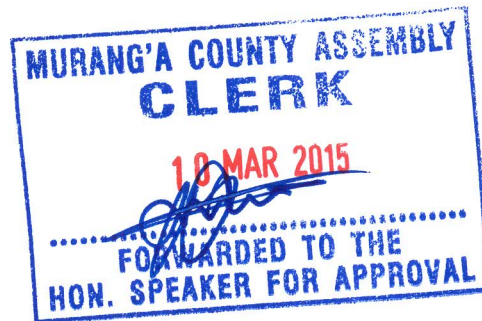
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March 9, 2015

The Hon. Speaker

Thro'

The Clerk
Murang'a County Assembly
P.O.Box 731



MURANG'A

RE: PAPER LAID

Hon. Speaker, I beg to lay the following paper on the table of the House:-

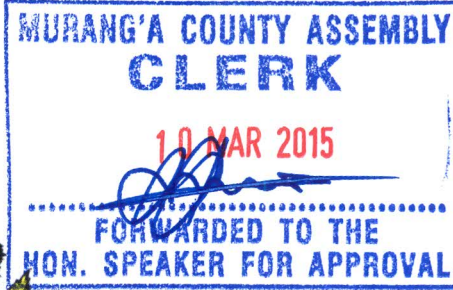
That the report of the Land, Housing, Physical Planning and Settlement Committee on disputed ownership of Rurii Secondary School Land parcel be laid on the table of the Assembly.

Thank You

Hon. Speaker

Hon. Duncan Mwangi Njuguna

Chairperson, Lands, Housing, Physical Planning and Settlement Committee



MURANG'A COUNTY ASSEMBLY

SECTORAL COMMITTEE ON LANDS, HOUSING PHYSICAL PLANNING AND SETTLEMENT A REPORT ON DISPUTED OWNERSHIP OF RURII SECONDARY SCHOOL LAND PARCEL

Clerk's Chambers
Murang'a County Assembly

March, 2015

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1.0 PREFACE

On behalf of the Lands, Housing and Physical Planning Committee, it is my pleasure and duty to present to the County Assembly, the Committees report on disputed ownership of Rurii Secondary School Land parcel.

1.1 COMMITTEE MEMBERSHIP

The Committee comprises of the following members:-

1. Hon. Duncan Mwangi Njuguna - Chairperson
2. Hon. Samson Kago Njoroge -Vice Chairperson
3. Hon. Francis Kamande Kamau - Member
4. Hon. David Gachuru Kabaka -Member
5. Hon. Charles Mwaniki Karina -Member
6. Hon. Catherine Wairimu Mugo -Member
7. Hon. Charity Wangui Rugu -Member
8. Hon. Esther Nyakio Munywoki -Member
9. Hon. Lucy Wangechi Njoroge -Member

1.2 COMMITTEE MANDATE

The Sectoral Committee on Lands, Housing, Physical Planning and Settlement is mandated to deal with all matters related to Land surveying and mapping, housing, boundaries and fencing.

1.3 ACKNOWLEDGEMENTS

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the County Assembly for the support extended to it in the execution of its mandate.

The Chairperson of the Committee takes this opportunity to thank all the members for their profound contribution through dedication of time and efforts towards the realization of the mandates of the Committee.

Thank you.

Signed.....

Hon. Duncan Mwangi Njuguna

(Chairperson)

Committee on Lands, Housing, Physical Planning and Settlement

Dated this  day of  2015

2.0 BACKGROUND

The Committee on Lands, Housing, Physical Planning and Settlement received a Petition from Bishop of ACK, Mt. Kenya Central Rt. Revered Isaac Ng'ang'a regarding disputed ownership of the School's Land parcel titled Loc.15/KIMATHI/1252. The menace according to him had rocked the school for a considerable period of time without any identifiable solution. This was despite the School seeking for solution from various institutions such as the defunct Murang'a County Council and Ministry of Local Government-Office of the Permanent Secretary.

It is with this regard that the Committee decided to visit the School so that they would deliberate with the school administration on the controversies surrounding ownership of Rurii Secondary School Land Parcel.

3.0 PROBLEM STATEMENT

The Bishop of ACK Diocese of Mt. Kenya Central being the sponsor of the School presented claims to the committee that an individual purported to own the same land parcel where the School was built. The parcel of land according to the Bishop was allocated by the defunct Murang'a County Council and in 1985, the ten(10 Acres on public land titled Loc.15/KIMATHI/789 reserved by the Council for School was approved for building Rurii Secondary School.

On July 13, 2011, the then Principal of Rurii Secondary School a Mr. Muturi, received a letter from Gachiengo Gitau & Co. advocates indicating that the School had unlawfully occupied a Land parcel titled Loc.15/KIMATHI/1252 owned by Ruth Wairimu Kereka. The letter further indicated that the Advocate would initiate necessary legal mechanism to have any structures on LR LOC.15/KIMATHI/1252 brought down.

The School administration decided to seek for solution from various institutions such as the National Land Commission in the year 2013, the Ministry of Local Government (Office of the Permanent Secretary), Office of the then Kiharu Member of Parliament Hon. B.C Muturi Mwangi, Ministry of Land, Housing and Urban Planning-Ardhi House in the year 2011, District Commissioner at Murang'a North in the year 2009.

There being no solution given by the aforementioned institutions to end the school land parcel ownership tussle, Rurii Secondary School administration decided to present their case to the Committee in pursuit of an amicable solution.

4.0 TERMS OF REFERENCE/OBJECTIVES OF THE REPORT

The Committee set out the following objectives;

- a) To understand why there was a case of double allocation of Rurii Secondary School Land parcel.
- b) To generate a report to be debated in the House with recommendations which would help in solve on the disputed ownership of Rurii Secondary School Land parcel.

5.0 METHODOLOGY

The Committee resolved to collect views and to gather evidence through inviting Ruth Wairimu Kereka, the purported owner of Rurii Secondary School land parcel.

The Committee also conducted a site visit to Rurii Secondary School so as to deliberate with the School's administration on the controversies surrounding ownership of the Land parcel.

All the documents regarding ownership of the Land parcel were obtained from Ruth Wairimu Kereka and Mr.Muturi, the Principal, Rurii Secondary School.

The Committee further requested for advice from the County Executive Member for Land, Housing and Physical Planning and Settlement on the next course of action.

6.0 OBSERVATIONS

The Committee made the following observations;

6.1 VISIT TO RURII SECONDARY SCHOOL LAND PARCEL

On a field visit to Rurii Secondary School, the Committee observed that there were permanent structures built on the Land parcel. During deliberations with the school administration, the principal informed the committee that the school was started in the year 2005 and was fully registered by the Ministry of Education.

6.2 SCRUTINY OF DOCUMENTS REGARDING OWNERSHIP OF THE LAND PARCEL

The Committee reviewed documents that were given to it by the Bishop ACK Diocese of Mt. Kenya and the Principal, Rurii Secondary School and found that;

1. There was certificate of official search issued to Ruth Wairimu Kereka on September 16, 2014 for 4.05 ha of Land parcel titled Loc.15/Kimathi/1252 that she claimed to own.
2. A Title deed was issued to her on October 31, 2003, which was done very fast.
3. There were restrictions issued by Litigation Counsel from Nyeri that there should be no dealings registered until the case was finalized by Chief Lands Registrar's office.
4. A letter written by Rurii Secondary School Principal to the Chairman, National Land Commission regarding eviction of the School by a private developer. The letter indicated that the Council mutated the Land parcel and granted 15 Acres to Bishop Perlo Boarding School without consultation with the Local Community. The Principal also outlined that the Secondary School admitted the first form one students in January 2005 and has permanent structures and is fully registered by the Ministry of Education and has an enrollment of 149 students.

The letter requested the Chairman of the National Land Commission to intervene and have the Title deed issued to a private developer revoked and awarded to Rurii Secondary School.

5. There were reply letters sent to the Principal, Rurii Secondary School by the National Land Commission assuring her that;
 - i. the Commission was in the process of addressing concerns regarding ownership of the Land Parcel
 - ii. A committee had already been constituted to handle the matter and that the Commission would get in touch with the School administration and the private developer so that both the parties would make presentations to the Commission in April 2014.
6. There was a letter from Murang'a County Council addressed to the Chairman, Rurii Secondary School regarding a site to build Rurii Secondary School. The contents of the letter were that the request for building of Rurii Secondary School had been approved upon consideration by the Council under Min 4/87(10)(A)(1) Social Services.
7. Another Letter was addressed to the Chairman, Rurii Secondary School referenced Loc.15/Kimathi/789-Proposed Land for Rurii Secondary School.

The Letter indicated that the Land parcel was reserved for construction of Rurii Secondary School and that it had acreage of 10.54 hectares of 26 Acres.

Around 1982, Mary Immaculate sisters applied for 15 Acres to build a boarding Primary School and a Dispensary. Their application was approved by the Council Vide Min 31/82 of EPHSS Committee meeting held on June 11, 1982

The Committee for Rurii Secondary School applied for 10 Acres to build the Secondary School and the application was approved by the Council under Min.4/87(10) of EPHSS Committee and unfortunately, the Committee never followed up the matter with the Council with the view of being shown the site.

Later, Mary Immaculate Sisters applied for title deed for the 15 Acres and a mutation was prepared which created parcel No. Loc./Kimathi/1207-6.07 ha (15 Acres) and Loc. 15/Kimathi/1208-4.47 ha(11 Acres).Thus parcel no.Loc 15/Kimathi/789 ceased to exist.

Due to indebtedness to National Bank of Kenya Ltd, The Council approved the sale of Ex-Samar Land Vide Min.2/95 of Finance Staff and General purposes Committee where Mrs. Ruth Wairimu Kereka amongst others bought 10 Acres of Land. Unfortunately after Survey, her Land parcel was unusable and she requested the Council to refund her money or give her an alternative Land. The Council vide its Min. no.4 of full Council approved the exchange and Ruth Wairimu Kereka was given Land Parcel no. Loc. 15/Kimathi/1208-10 Acres.

A mutation was prepared to separate 10 Acres from 11 Acres where parcel No. 1208 was subdivided and created parcel No. Loc. 15/Kimathi/1251-0.42 ha (1.0 Acre) and Loc.15/Kimathi/1252-4.05 ha(10 Acres).

Ruth Wairimu Kereka was allotted Parcel No. Loc. 15/Kimathi/1252 and title deed issued to her on October 2003. For the remaining 1 Acre, Loc. 15/Kimathi/1251, the Catholic Church applied to build a Church and a Pastoral Centre and its application was approved Vide Min. No.7/2000 (3)(iii) of EPHSS AND Min.EPHSS 10/2003(1A)(Vii).

The Council also indicated that it had a neighboring parcel of Land No.Loc.15/Kimathi/788 measuring 4.86 hectares(12 Acres) reserved for Rurii Primary School, the Council thus recommended that part of the Land be excised for Construction of the proposed Rurii Secondary School with prior arrangements of the management Committee of the Primary School.

8. A letter from Gachiengo Gitau and Co. advocates to the Principal and the Secretary to the Board of Governors of Rurii Secondary School. The advocate who represented Ruth Wairimu Kereka indicated that the School had unlawfully occupied the Land parcel meant for their Client.

The letter further indicated that there was need for the Principal to advise the Board of Governors on the need to relocate school structures before legal mechanisms were put in place to enforce the exercise.

The Advocates indicated that unless they heard from the School administration within 7 days, they would initiate necessary legal mechanisms to have the school demolished.

9. A letter from the Ministry of Local Government to the Secretary, Board of Governors.

The letter requested the school administration to heed Litigation Counsel's advice of obtaining Court order to protect the School proprietary interests in the said Land.

10. A Legal opinion from the State Law Office at Nyeri regarding ownership of the Land parcel title no. Loc.15/Kimathi/1252. The opinion indicated that any enforcement action by the Court can only be instituted within 12 years of the date of occupation by the trespasser, as required under Section 7 of the Limitation of Actions Act. The School shall thus have no right of action against the Catholic Church after the Lapse of such period. Similarly there shall be no right of action against Ruth Wairimu Kereka after 2015. It further stated that issuance of Legal Notice dated July 13, 2011 by Ruth Wairimu Kereka has the effect of re-starting the Limitation of actions in her favor and she does not have to issue another notice until 2023. It was therefore advisable for the School to immediately institute legal proceedings in the High Court to enhance its proprietary rights.

11. Intervention Letters from Rurii Secondary School to Lands Minister and the District Commissioner, Murang'a North, to revoke the Title deed irregularly given to Ms. Ruth Wairimu Kereka.

6.3 INVITATION OF RUTH WAIRIMU KEREKA

On October 30, 2014, the Committee invited Ruth Wairimu Kereka so that she would shed more light on ownership of Rurii Secondary School land parcel. In the Committee meeting she was queried on whether she bought the disputed Land Parcel from the County Council of Murang'a and she responded that the Council sold her the Land at ex-samar in Maragua.

Ms. Ruth Wairimu was asked why her Land parcel which she bought at ex-Samar in Maragua was exchanged with the disputed one where Rurii Secondary School was constructed and she responded that the Land at Maragua could not be productive in farming as it had rocks on it. She informed the participants that upon realizing that, she reported the matter to the County Council of Murang'a and she was promised an alternative Land.

Ms. Ruth Wairimu informed the Committee that she was allocated land parcel measuring 10 Acres in Rurii and that 1 Acre was given to the Church and that after viewing the Land Parcel, no structure had been put on it and it was after the school built the first class that she reported the matter to the County Council.

Ms. Ruth Wairimu Kereka was asked on any other details she knew about the Land Parcel and she responded that she was aware that the County Council of Murang'a had 25 Acres of the Land parcel whereby 15 Acres were for Bishop Perlo Academy and 10 Acres were reserved for the Council.

Ms. Ruth Wairimu argued that a Caveat Emptor was issued barring Rurii Secondary School from developing the disputed Land parcel. She went to a Lawyer and appealed for help towards barring Rurii Secondary School from developing the disputed Land Parcel and that she didn't have a copy of the Caveat Emptor.

6.4 INVITATION OF JACOB MUTHAMIA

The Committee invited Mr. Jacob Muthamia the Assistant Deputy County Secretary since he was the Clerk to County Council of Murang'a from April 2010 to March 2013 when crucial correspondences regarding Rurii Secondary School were exchanged among various parties.

Further on Mr. Muthamia indicated that he was aware of the disputed Land Parcel where Rurii Secondary School rested and he responded that there was only one complainant he had dealt with and he was the Principal of Rurii Secondary School.

Mr. Muthamia was asked on what he would propose to be the next course of action and he indicated that the County Government should compensate Ruth Wairimu Kereka for the loss of her money that she incurred in acquisition of the Land Parcel as public interests superseded the individual interests and thus there was no way that the school would be evicted from the land parcel.

6.5 INVITATION OF LITIGATION OFFICER FROM NYERI STATE LAW OFFICE

On November, 2014, the Committee invited Provincial Litigation Officer to a meeting scheduled on November 26, 2014 regarding ownership of the said Land parcel but the Officer failed to honor the invitation. However the Physical Planner Mr. Mukura who had been invited to discuss the same agenda gave his opinion regarding ownership of the land parcel. He indicated that there was no Part Development Plan prepared to alienate the Land parcel. He further informed the Committee that all the interested parties were not aware of the land transfer. The transfer according to him was done in the year 2000 when the Physical Planning Act was in place, but the process failed to adhere to Part Development Plan requirement and therefore not procedural. The Committee on December, 2014 invited any of the Litigation Officers from Nyeri State Law Office to a committee meeting which was scheduled to take place on January 13, 2015. The agenda was to discuss on disputed Rurii Secondary School Land parcel.

The Committee was involving Nyeri State Law office as it was the one that issued a legal opinion regarding ownership of the Land parcel. However the invitation was not honored.

7.0 FINDINGS

1. Murang'a County Council erred by sub dividing and allocating such land which was under the trusteeship for the community of Rurii. Further it alienated parcel No.Loc.15/Kimathi/1252 to a private developer in exchange for a parcel at Ex-Samar for agricultural use.
2. Issuance of free hold titles to the mutated Land parcels was irregular as process of alienation of public land is done publicly through preparation of Part Development Plan and advertised as per requirement of the Physical Planning Act Cap 286 of 1996.
3. The Committee upon perusal of the documents that pertained to the Land parcel realized that there were inconsistencies in the amount paid for the Title deed and the clearance fee as the amount on figures could not tally with the amount in Words. .

4. The Chairperson referred to the Letter which was written to the Chairman-Rurii Secondary School by the County Council of Murang'a which indicated that 25 Acres of the Land Parcel was meant for Rurii Secondary School, Mary Immaculate Sisters applied for 15 Acres to build a boarding Primary School and a dispensary and their application was approved by the Council. The Committee for Rurii Secondary School applied for 10 Acres to build the School and the application was approved by the Council but later, the same Land parcel meant for construction of the School was allocated to Ruth Wairimu Kereka.

5. The Committee reviewed all transactions done regarding the Land Parcel and cited negligence from the Officers who were involved as there were a lot of gaps in communication which were evident from the correspondences between County Council of Murang'a and the involved parties.

8.0 RECOMMENDATIONS

1. The disputed Rurii Secondary School land parcel Loc.15/Kimathi/12 should remain as a property of the School through adverse possession. Therefore the School will retain this land parcel. The National Land Commission should thus declare the title deed issued to Ruth Wairimu Kereka illegal as public interest overrides private interest.
2. Since Ruth Wairimu Kereka bought her land at ex-samar legally and she fully paid for it only to be shifted to Rurii where the land parcel was already reserved for School. The County Government should thus compensate her.
3. Ruth Wairimu Kereka should remit to the County Executive Member for Land, Housing and Physical Planning an allotment letter, minutes and plan of the area she was allotted by the then Murang'a County Council.
4. Land parcel No. Loc.15 Kimathi/1207 which belongs to Mary Immaculate Sisters and Loc.15 Kimathi/1251 belonging to the church should be alienated officially and Part Development Plan prepared.
5. Land parcel Loc.15/Kimathi/1252 should be officially alienated to Rurii Secondary School and Part Development Plan prepared and approved.

Committee Membership

- 1. Hon. Duncan Mwangi Njuguna
- 2. Hon. Samson Kago Njoroge
- 3. Hon. Charles Mwaniki Karina
- 4. Hon. Catherine Wairimu Mugo
- 5. Hon. Francis Kamande Kamau
- 6. Hon. David Gachuru Kabaka
- 7. Hon. Esther Nyakio Munywoki
- 8. Hon. Charity Wangui Rugu
- 9. Hon. Lucy Wangechi Njoroge

- Chairperson
- Vice Chairperson
- Member
- Member
- Member
- Member
- Member
- Member
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Signature

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