

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

Thursday, 15<sup>th</sup> November, 2018

*The House met at the Senate Chamber,  
Parliament Buildings, at 2.30 p.m.*

*[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]*

#### PRAYER

**Sen. Olekina:** Mr. Deputy Speaker, Sir, the time limit does not affect me or does it?

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Sen. Olekina!

*(Sen. Khaniri consulted loudly)*

Order, Sen. Khaniri! You are one of the longest serving Members of Parliament (MPs) in this country. You have done so well in terms of adhering to Standing Orders. You have just risen on a point of order just now on a matter of procedure. You should be the last person to communicate by way of shouting.

**Sen. Khaniri:** Mr. Deputy Speaker, Sir, I did not shout.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): I could see you advising Sen. Olekina from your seat. Just press the button and say what you want to say. It is simple and clear.

Sen. Olekina took the advice. However, the Chair knows that the limitation of time does not apply to him.

*(Laughter)*

Proceed to second, Sen. Olekina.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I rise to second the Motion that this House do adopt the report on the Sessional Committee on the County Public Accounts and Investment Committee (CPAIC) on the inquiry into the possible loss of funds through the acquisition of land for public use.

Mr. Deputy Speaker, Sir, I want to limit my remarks on three issues. From the onset, before I get into the substantive issues of this report, I would like to thank the Powers and Privileges Committee for having taken their time. This was a very emotive issue that brought a lot of questions in the integrity of this House.

Mr. Deputy Speaker, Sir, the reason we are called distinguished Senators is because the Senate is a House of reason that unites the entire Republic of Kenya. When we are here, we are tasked with one responsibility. The Constitution is clear that our role under Article 96 is to protect the interests of our counties and their governments.

Mr. Deputy Speaker, Sir, this issue of Ruaraka Land is something which has divided us. At one point, in this House, it was difficult to tell who is in opposition and who is in Government. However, today, I dare say that by the end of debate on this report, that division will once again be very clear.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! You cannot anticipate debate. You are out of order! Please, second the Motion.

*(Several Senators rose on points of order)*

The points of order are overruled.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, I stand guided.

Martin Luther King once said that in the end, we will remember not the words of our enemies, but the silence of our friends. The most important issue here is the issue of fiducial responsibility. The question which we were tasked as a Committee is to investigate whether public lost money. That is the task we were given and that is what we set out to do. As a Member of that Committee, I had anticipated that once we conclude our investigation, we would be able to bring our report to this House and give the Members an opportunity to be able to interrogate the report, so that when each Member stands here, they can refer to it.

Yesterday we were discussing about the issue of compulsory acquisition of land, while passing the new law. That is one of the issues that we focused and conversed on, in the process of acquiring the Ruaraka land. During the time of our inquiry, we invited and visited all the stakeholders in this matter. One of things we found was that the NLC, the PS and CS of the Ministry of Education, Science and Technology came in here and presented their own direction. So, what we are presenting here, is what the Committee observed. These recommendations are the facts as were presented before us. There was nothing personal, but the issues of fiducial responsibility.

Mr. Deputy Speaker, Sir, when we interviewed the PS, Dr. Belio Kipsang, he presented the documents on the process of acquiring that land for the two schools. However, we poked holes in his submissions. One of the things that was very clear he had set up a Committee headed by a gentleman called Mr. John Ololtuaal Lekakeny. That is where I want to begin my submissions in the issue of this transaction.

Mr. Deputy Speaker Sir, I thought the Ministry would have implemented the report by the taskforce for the following reasons. First, when you establish a taskforce, you are using public funds for them to go out and investigate whether that piece of land belongs to the public or it is a private land.

At that point, the taskforce found out the following:

“The Nairobi Regional Coordinator for Education, Mr. John Ololtuaal Lekakeny, filed a letter Ref No.CQAS/KAS/8/16 dated 3<sup>rd</sup> February 2017, which is annexed to this report, writing to the Principal Secretary, Ministry of Education, Dr. Belio Kipsang, forwarding a copy of the assessment report on quality assurance and standard of the Ruaraka High School.”

In one of the recommendations he made in the report was that the land on which the school was situated was a surrendered portion of land, for public utility. The claimant had, therefore, no basis for compensation.

Mr. Deputy Speaker, Sir, I would have expected my good friend, Dr. Belio Kipsang, because he is the Accounting Officer, to halt the process immediately because the taskforce had established the land in question was a public land. However, when we have a situation where as the Accounting Officer pressure is put from all corners, the next move Dr. Belio Kipsang did was to write the CS, then Dr. Fred Matiang'i and Treasury about the findings of the task force.

However, I do not understand what made the CS to ignore the report and the recommendations of the taskforce. Subsequently, according the documentation presented by Dr. Belio Kipsang when he appeared before us, the transaction proceeded.

Mr. Deputy Speaker, Sir, when we look at the current Land Act and the process of compulsory acquisition, there is a particular process that ought to be followed. I do not want to belabour on those annexures. However, they are in this report. Any Kenyan can come to Parliament and get a copy of this report. He will be able to see that there was a rush in the Ministry of Lands, particularly from the NLC, to ensure that this transaction took place.

The Ministry of Education did not have money to buy this land. So, they involved the national Treasury. I would have thought that before Treasury makes any move forward, the first question they would have asked themselves is the instruments of ownership. They would have carried out due diligence before the purchase was done. I am sure the distinguished Senators here from both sides of the aisle, are business people or have engaged in a transactions of buying property. Before you proceed and you pay money which you have worked so hard to earn, you ought to carry out r due diligence. One of the most important things that you must have, are the instruments of ownership. In this case, it is a title deed.

Mr. Deputy Speaker Sir, the Chairperson of the Committee submitted here that, the process of the subdivision of the land---

*(Loud consultations)*

Mr. Deputy Speaker, Sir, please, protect me from the Majority Leader.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Easy, Sen. Olekina.

**Sen. Olekina:** I was asking you to protect me from the Senate Majority Leader.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): What has the Majority Leader done?

**Sen. Olekina:** Mr. Deputy Speaker, he was disrupting me when I was speaking. I want to concentrate because I believe that Kenyans who pay me a salary ought to know what I do in this House. I would beg that the Senate Majority Leader listens because I have not pointed---

**The Senate Majority Leader** (Sen. Murkomen): On a point order, Mr. Deputy Speaker, Sir.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Order, Senator! What is it, Sen. Murkomen?

**The Senate Majority Leader** (Sen. Murkomen): Mr. Deputy Speaker, Sir, is it in order for Sen. Olekina to insinuate that when he sees me he loses concentration? I just

walked in and sat on my seat. Where will I go and I am supposed to be here? He can as well look elsewhere, he does not have to look at me.

*(Laughter)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Sen. Olekina, proceed.

**Sen. Olekina:** Thank you, Mr. Deputy Speaker, Sir. I can look at the distinguished Senator at any given time and I will not get confused. However, when he is talking to me and I am really trying to follow through, then it brings in other issues.

Mr. Deputy Speaker, Sir, during a process of compulsory land acquisition, the law provides various steps to be followed. For example, all stakeholders must be involved. During the submissions of the NLC to our Committee, our Committee observes that NLC did not follow the all steps in order to ensure that anyone who had a stake in this land could lay claim to it. That point was re-emphasized by the head teacher and the Board of Management of Ruaraka High School during our visit to the school.

When we visited the school, we were lucky to find one person who has been on the board for a very long time - it dates back to when I was a young boy when the school was started - and his memory was clear. He said that there was no way the land could be private because they have been there for long and they know that it is public land. He added that the law provides that various notices have to be published so that they can also lay a claim.

If you look at the annexures, documents and *Gazette* notices which were presented by the National Land Commission (NLC), you will realise that the NLC deliberately failed to carry out due diligence to ensure that if there was anyone with a claim on the property, they were given opportunity to lay their claim.

Regarding the issue of instrument of ownership, which my good friend, Dr. Belio Kipsang raised a question on, currently as we sit in this House, no one knows whether the interests of the taxpayers were taken care of. No one can tell whether the Kshs1.5 billion which was paid to the directors of Huelands Limited and Afrison Export and Import Limited has been protected.

During the presentation by the Governor of Nairobi City County, he clearly indicated that that piece of land was surrendered to the public. However, no one, not even the National Treasury before releasing the money or Parliament before coming up with the Supplementary Budget, ensured that before any payment was made, at least they had the title deed of that land. That is why it is important for distinguished Senators in this House today to divorce themselves entirely from any political interest, so that we prosecute this matter squarely based on facts.

Nothing would have stopped the directors of Huelands Limited and Afrison Export and Import Limited from going into any particular commercial bank knowing that--- One of the observations was that about 35 acres of land was sold to the Ministry of Interior and Coordination of National Government, where the General Service Unit (GSU) houses were built. It is also worth noting that the Government also bought some land which was reserved for roads.

I dare say that even as we speak right now, if it was not for the move by the current Cabinet Secretary for Lands, Hon. Farida Karoney who I thank so much for putting a caveat on that portion of land of 96 acres, maybe the owners of Afrison Export

and Import Limited and Huelands Limited would have gone to any commercial bank with the title deed and gotten a loan. The issues here are very sensitive because we are dealing with public money.

We recommended that Dr. Matiang'i, the former Cabinet Secretary for Education, should take personal responsibility because he had been informed by a task force that that piece of land was public land. However, he went ahead and confirmed the transaction.

We also met officers working for the Kenya Revenue Authority (KRA). In their submission, they clearly stated that the two companies were not registered with the KRA and as such they are not tax compliant. What exactly are we doing when we say we want to protect public money? On one hand, we are borrowing money left, right and centre but on the other hand, officers of the KRA are saying they cannot raise the money. In fact, before releasing the Kshs1.5 billion, the first thing I would have expected to happen was that hypothetically, if that land was private land, the taxman should have got his share. When the taxman comes before us and says that the two companies are not registered with the KRA, what exactly are we doing? What stops anyone out there from getting friends all over and committing public funds?

Mr. Deputy Speaker, Sir, Kenyans will judge us. I want to repeat the quote that I started with; that in the end, as Martin Luther King Jnr. said, we will remember not the words of our enemies but the silence of our friends. The friends we have right now are those kids in Ruaraka who have been living there. For many years, that community has believed that, that is their land.

*(Sen. Olekina's microphone went off)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Your time is up because you misused it doing unnecessary things. You have one more minute.

**Sen. Olekina:** Mr. Deputy Speaker, Sir, as I conclude, I would like to go straight to our recommendations, which I stand by. I believe that the only way we can get justice is for the Directorate of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) to move expeditiously to recover the Kshs1.5 billion and put it back into the public coffer. I strongly believe that the Chairperson of the NLC should take personal responsibility like we have recommended in the Report. I believe that the then Cabinet Secretary for Education, Dr. Fred Matiang'i, should also take personal responsibility on this matter because he ignored the report by the task force that was formed.

Mr. Deputy Speaker, Sir, I beg to second.