

COUNTY ASSEMBLY OF EMBU

③
Hon. Speaker
pls Approve for
Tabling in the
Assemby.

[Signature]
DCCA
06/12/2018



2ND ASSEMBLY: FIRST SESSION

REPORT OF THE COMMITTEE ON LANDS, PHYSICAL
PLANNING AND URBAN DEVELOPMENT ON THE STATUS
OF MAKAWANI VOCATIONAL TRAINING CENTRE LAND
AND RIAKANAU MARKET LAND

SUBMITTED FOR APPROVAL BY THE COUNTY ASSEMBLY

Office of the Clerk
County Assembly of Embu
P. O. Box 140-60100
EMBU

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DPLCS
Forwarded.
[Signature]
DPLCS
6/12/18

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CCA
For further directions
[Signature]
DPLCS
6/12/2018.

Tabled 6/12/18
[Signature]

DECEMBER, 2018



COUNTY ASSEMBLY OF EMBU

③
Hon. Speaker
Pls Approve for
Tabling in the
Assembly

04/12/2018
WCCA



④
Approved for Tabling

SCA
6/12/18

2ND ASSEMBLY: FIRST SESSION

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DLPCS
T.N.A.
[Signature]

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DECEMBER, 2018

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1. On Makawani Land:

- (a) Statement sought by Hon. Mwaluko Kising'u Harrison
- (b) 20th September, 2018, Ref. number CAE/LEG/10/VOL.XIV/28
- (c) Memorandum of agreement Martin Mbutu Murianguru and Gachoka Constituency Committee
- (d) Letter from Chairman CDF Mbeere South
- (e) Court order dated 25th October, 2011
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- (g) Certified minutes of Makawani Vocational Training Centre of 19th March, 2018
- (h) Letter from Chairman BOM Makawani Vocational Training Centre
- (i) Letter from Director VTC to County Commissioner
- (j) Letter from CECM Lands to County Assembly Clerk
- (k) Letter from Community leader Mr. Andrew M. Musakwa Mbithi
- (l) Letter from Embu Mwea residents/occupiers Mbeere South Sub-County
- (m) Partial consent order for Wachoro adjudication area dated 28th May, 2018

2. On Riakanau Land:

- (a) Statement sought by Hon. Elizabeth Kibai
- (b) 20th September, 2018, Ref number CAE/LEG/10/VOL.XIV/27
- (c) Memorandum of agreement between John Makau Musyimi and Gachoka Constituency Development Committee
- (d) Minutes of the County Council of Mbeere Works, Town Planning Markets and Housing committee held on 14th February, 2011
- (e) An extract of MIN. WTPMH9/2011 of the County Council of Mbeere, Works and Town Planning Markets and Housing Committee minutes of 14th February, 2011
- (f) Court order dated 25th October, 2011

LIST OF ACRONYMS AND ABBREVIATIONS

1. BOM - Board of Management
2. CECM - County Executive Committee Member
3. C.D.F. - Constituency Development Fund
4. C.O.K. - Constitution of Kenya, 2010
5. PFMA - Public Finance Management Act, 2012
6. P.D.P. - Part Development Plan
7. VTC - Vocational Training Centre

EXECUTIVE SUMMARY

This report arises from two statements sought in the County Assembly on the Makawani Vocational Training Centre land on 10th April, 2018 by Hon. Mwaluko Kising'u Harrison (***Annex 1A***) and another on the status of Riakanau market land on 8th August, 2018 by Hon. Elizabeth Kibai (***Annex 2A***).

The Committee on Lands requested the CECM Lands, Physical Planning and Urban Development for information on these two pieces of land vide letters dated 20th September, 2018, Reference number CAE/LEG/10/VOL.XIV/27 (***Annex 1B***) and 20th September, 2018, Reference number CAE/LEG/10/VOL.XIV/28 (***Annex 2B***).

The CECM Lands in a meeting of 3rd September, 2018 informed the members that the Makawani Land and Riakanau Land adjudication areas were in court. Discussing these matters would be sub-judice.

The ban on Wachoro adjudication area where Makawani VTC is located, had been lifted and the CECM Lands had requested the land registrar not to issue the title deeds for lands number Mbeere/Wachoro/1500 and Mbeere/Wachoro/1501.

From the aforementioned, the committee came up with this report for consideration and adoption by the County Assembly of Embu.

1.0 BACKGROUND

This report is made on behalf of the members of the Committee on Lands, Physical Planning and Urban Development in accordance with Standing Order Number 204(5). This report was prepared after the committee had several meetings with the CECM Lands, Physical Planning and Urban Development.

1.1 MANDATE OF THE COMMITTEE

The Committee on Lands, Physical Planning and Urban Development was formed pursuant to Standing Order Number 204(5) of the County Assembly of Embu Standing Orders. Its functions are as follows;

- (a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the department;*
- (b) *To study the program and policy objectives the department and the effectiveness of the implementation.*
- (c) *To study and review all County legislation referred to it*
- (d) *To study, assess and analyze the relative success of the department as measured by the results obtained as compared with their stated objectives*
- (e) *To investigate and inquire into all matters relating to the department as it may deem necessary, and as may be referred to it by the County Assembly*
- (f) *To vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those understanding Order 198 (committee on appointments); and*
- (g) *To make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.*

1.2 MEMBERSHIP OF THE COMMITTEE

The committee on Lands, Physical Planning and Urban Development was constituted by the House and comprises of the following members;

1.	Hon. John Gichovi Gatumu	-	Chairperson
2.	Hon. Robert Ileri Njiru	-	Vice Chairperson
3.	Hon. Paul Muchangi Njiru	-	Member
4.	Hon. John Ngari Mbaka	-	Member
5.	Hon. Jane Ann Muthoni Muriithi	-	Member
6.	Hon. Philip Kinyutu Nzangi	-	Member
7.	Hon. Judy Mbuya Njue	-	Member

1.3 PROBLEM STATEMENT

The Committee received two statements on different dates, the first one was received on 10th April, 2018 on the Makawani VTC and protection of public land in the County and the second statement was received on 8th August, 2018 requesting for the status of Riakanau market land.

1.4 OBJECTIVES

1. To establish the status of Makawani VTC land
2. To establish the status of Riakanau market land
3. To prepare a report with recommendations for tabling in the County Assembly.

1.5 METHODOLOGY

The Committee on Lands, Physical Planning and Urban Development applied the following methods to come up with this report:

1. Committee meetings
2. Meetings with the CECM Lands, Physical Planning and Urban Development
3. Perusing documents from different stakeholders

1.6 TOOLS OF REFERENCE

The following tools of reference were used for this report;

1. The Constitution of Kenya, 2010.
2. The County Government Act 2012 (Revised Edition)
3. The County Assembly of Embu Standing Orders, 2nd Edition
5. The Land Adjudication Act, 2010

1.7 ACKNOWLEDGEMENT

On behalf of members of the Committee on Lands, Physical Planning and Urban Development, I have the honor and pleasure to present the Committee's report.

The committee thanks the offices of the Speaker and the Clerk for the guidance offered throughout the process of producing this report. The committee also thanks the secretariat for the effort and assistance offered to them during preparation of this report.

SIGNED:.....DATE: 6/12/18

**HON. JOHN GICHOVI GATUMU,
CHAIRMAN**

LANDS, PHYSICAL PLANNING AND URBAN DEVELOPMENT

2.0 COMMITTEE DELIBERATIONS AND FINDINGS

The Committee, in the course of discharging its mandate invited the CECM Lands, Physical Planning and Urban Development on 13th November, 2018. The Committee needed to establish the persons with existing rights and claims over the Makawani VTC land and the Riakanau market land. This may be in the context of first registration of those rights, or it may be to resolve a doubt or dispute after first registration.

The Committee also needed to confirm the boundaries of the two pieces of land to establish the accuracy and value of the land, the risk and the cost of land. The committee also needed to understand the land dispute in the two lands and the situations that had caused them and ways to resolve them amicably.

The Committee needed to establish who had a right to receive a title deed as evidence of ownership on the real property in the two lands in dispute.

2.1 MAKAWANI VOCATIONAL TRAINING CENTRE LAND

The committee in its sitting of 13th November, 2018 received the following information on the Makawani VTC land from the CECM Lands, Physical Planning and Urban Development;

1. That, the parcels of land Mbeere/Wachoro/1500 measuring 4.1 Ha and Mbeere/Wachoro/1501 measuring 4.1 Ha are located in Wachoro adjudication section Mwea Ward, Mbeere South Sub County in Embu County.
2. That, the entire Wachoro adjudication section was declared on 12th January, 1980 and the adjudication register was published and completed on 2nd June, 1981.
3. That, the adjudication section was finalized on 15th September, 2011 under Section 26A(1) of the Land Adjudication Act Cap.284 and a letter of finality issued.

4. That, just like other adjudications in the area (Karaba, Makima, Riakanau), there existed a court order/injunction from Mbeere Community Petition 1 of 2014 claiming the entire land as their ancestral land, hence no transaction or titles could be issued on any parcel therein. *(Annex 1E)*
5. That, the Bona fide owners of parcel number Mbeere/Wachoro/1500 is Peter Bonface Ndwiga Njiru and the bona fide owner of parcel number Mbeere/Wachoro/1501 is Martin Mbutu as per the adjudication records *(Annex 1J)*.
6. That, Embu County Government does not own the parcels of land Mbeere/Wachoro/1500 and Mbeere/Wachoro/1501. The two parcels are private lands not public land within the meaning of Article 62 of the C.O.K.
7. That, there is a partial consent order dated 28th May, 2018 to vacate the court order/injunction on the Wachoro adjudication area. This has resulted in individuals being issued with their titles. *(Annex 1M)*

2.2 RIAKANAU MARKET LAND

The committee in its sitting of 13th November, 2018 received the following information and documents on the Riakanau Market land from the CECM Lands, Physical Planning and Urban Development;

1. That, Riakanau market is situated in Mwea Ward, Mbeere South sub County on Riakanau adjudication section parcel no. Mbeere/Riakanau/02 measuring 3.10Ha (which was reserved for Riakanau Trading Centre)
2. Riakanau adjudication section was declared on 12th January, 1980 and the adjudication register published complete on 4th June, 1981.
3. The adjudication section was finalized on 28th February, 2011 under section 26A(1) of the Land Adjudication Act Cap 284. Registry index maps are ready. A letter of finality was later issued. Riakanau adjudication section covers an area of 3028.19 Ha with 956 parcels. The adjudication register for Riakanau was forwarded to the Chief Land Registrar for preparation and issuance of title deeds, however a Court injunction has halted the process.

4. Riakanau market has neither been planned nor surveyed by the County Government hence there is no existing Part Development Plan(PDP).
5. The defunct Embu County Council had issued a number of allotment letters to some individuals.
6. That, the defunct County Council of Mbeere had proposed to swap the said Riakanau market parcel no. Mbeere/Riakanau/02 with parcel no. Mbeere/Riakanau/411 measuring approximately five acres, belonging to one Mr. John Makau Musyimi under MIN. WTPMH.9/2011 and to effect the transfer at the District Land Adjudication after the confirmation of ownership.
7. That the plot owners were to be compensated by Mr. John Makau Musyimi of which the said compensation was never done.
8. However, the transfer could not be effected because there exists to date a court order injunction any transactions in the entire adjudication section until the matter is heard and determined.
9. Therefore, Mr. John Makau Musyimi and the market both exist on parcel number Mbeere/Riakanau/02 and that there is neither the market nor public developments on parcel number Mbeere/Riakanau/411.

3.0 COMMITTEE DELIBERATIONS AND FINDINGS

The committee perused the documents that had been received and made the following findings;

3.1 MAKAWANI VOCATIONAL TRAINING CENTRE LAND

1. That, there was a memorandum of agreement between Martin Mbutu Murianguru and Gachoka Constituency Development Committee concerning 1501 made on 2nd September, 2008. **(ANNEX 1C)**
2. That, the Chairman CDF forwarded a letter confirming the ownership of land parcel number Mbeere/Wachoro/1501 received on 23rd June, 2014. **(ANNEX 1D)**
3. That, there was a petition dated 30th January, 2015 enjoining National Land Commission as the 7th respondent and the Embu County Government County Secretary as the 8th respondent. **(ANNEX 1F)**
4. That, the management of Makawani Vocational Training Centre forwarded minutes of a sitting held on 19th March, 2018 and the agenda of the day was the institutional land trespass. **(ANNEX 1G).**
5. That, the Chairman BOM Makawani Vocational Training Centre wrote to His Excellency the Governor launching a complaint on public institutions' land trespass dated 26th March, 2018**(ANNEX 1H).**
6. That, Director, Vocation Training Centres wrote a letter to the County Commissioner referencing the encroachment of Makawani Vocation Training Centre land dated 20th March, 2018 **(ANNEX 1I).**
7. That, a community leader wrote to the Clerk Embu County Assembly on 25th July, 2018 forwarding his submission on the Makawani Youth Poly Land and minutes dated 20th August, 2010 of the CDF Meeting. **(ANNEX 1K).**
8. That, the Embu Mwea Residents/Occupiers Mbeere South Sub-County wrote on the Embu Mwea Community land management committee as per community land Act. 2016 Section 15 (1) and (3) laws of Kenya. **(ANNEX L).**

3.2 RIAKANAU MARKET LAND

The committee in its sitting of 13th November, 2018 received the following information and documents on the Riakanau Market land from the CECM Lands, Physical Planning and Urban Development;

1. That, there was a memorandum of agreement between John Makau Musyimi and Gachoka Constituency Development Committee concerning plot number Wachoro/697 measuring 10 acres (*ANNEX 2C*).
2. That, there were minutes (*ANNEX 2D*) and a certified copy of minutes (*ANNEX 2E*) of the County Council of Mbeere, Works, Town Planning Markets and Housing Committee held on 14th February, 2011 which were forwarded on the application for exchange of plot at Riakanau Trading centre.
3. That, there exists a court order/injunction from Mbeere Community Petition 1 of 2014 claiming the entire land as their ancestral land, hence no transaction or titles could be issued on any parcel therein. (*ANNEX 2F*).

4.0 COMMITTEE OBSERVATIONS

The Committee having considered the activities and the contents of the documents submitted by the CECM Lands made the following observations

1. **THAT**, there is no County spatial plan to guide development as provided for in the County Government Act, 2012 Section (110).
2. **THAT**, there is no database for the County public land and there are no systems to ensure that there is controlled development within the County.
3. **THAT**, Mbeere/Wachoro/1500 and Mbeere/Wachoro/1501 parcels of land were purchased by Gachoka CDF for purposes of establishing Makawani VTC. Transfer and registration of the two pieces of land has not been done and there was eminent danger of the County losing the land to illegal encroachment if the County Government does not take immediate action.
4. **THAT**, the County Government does not have any evidence of registration of ownership of Makawani Vocational Training Centre land, that is, Mbeere/Wachoro/1500 and Mbeere/Wachoro/1501.
5. **THAT**, there is evidence of encroachment on the Makawani VTC land otherwise known as the Mbeere/Wachoro/1500 and Mbeere/Wachoro/1501.
6. **THAT**, notwithstanding the approved land swap between the defunct County Council of Mbeere and John Makau Musyimi of land parcels number Mbeere/Riakanau/02 with Mbeere/Riakanau/411, no conveyance, consents, transfers, easements and registration can be done on the Riakanau market land until the injunction for the entire adjudication section is lifted through a court order.

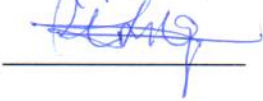
5.0 COMMITTEE RECOMMENDATIONS

The committee, made the following recommendations based on the deliberations, findings and observations;

1. **THAT**, the CECM in charge of Lands, Physical Planning and Urban Development should develop a GIS database system Spatial plan.
2. **THAT**, the CECM in charge of Lands, Physical Planning and Urban Development should ensure that there is a database for all the County public land and ensure that there is controlled development.
3. **THAT**, the CECM Lands, Physical Planning and Urban Development should seek orders from the court to stop issuance of the title deeds for lands Mbeere/Wachoro/1500 and Mbeere/Wachoro/1501 within seven days from the adoption of this report pending transfers and registration
4. **THAT**, the CECM Lands, Physical Planning and Urban Development should ensure that the Makawani vocational Training Centre Land is properly transferred to the institution and report to the Assembly within sixty days.
5. **THAT**, the CECM Lands, Physical Planning and Urban Development should take necessary legal measures to ensure that any individuals who have encroached on Mbeere/Wachoro/1500 and Mbeere/Wachoro/1501 vacate the premises within thirty days.
6. **THAT**, the CECM Lands, Physical Planning and Urban Development should commence surveying and development planning on Riakanau Market Land once the injunction for the entire adjudication section is lifted by the courts.
7. **THAT**, the CECM Lands, Physical Planning and Urban Development should provide a comprehensive report to the County Assembly within sixty days for recommendation 1, 2, 3, 4, 5, and 6.

6.0 CONCLUSION

The committee urges the County Assembly to adopt this report with the recommendations therein.

NAME	POSITION	SIGNATURE
1. Hon. Robert Ileri Njiru	Vice Chairperson	
2. Hon. Paul Muchangi Njiru	Member	
3. Hon. John Ngari Mbaka	Member	_____
4. Hon. Jane Ann Muthoni Muriithi	Member	
5. Hon. Philip Kinyutu Nzangi	Member	_____
6. Hon. Judy Mbuya Njue	Member	_____

SIGNED:  DATE: 6/12/18

HON. JOHN GICHOVI GATUMU,
CHAIRMAN

LANDS, PHYSICAL PLANNING AND URBAN DEVELOPMENT