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COUNTY GOVERNMENT OF MACHAKOS
COUNTY ASSEMBLY OF MACHAKOS



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**THIRD ASSEMBLY
(THIRD SESSION)**

COMMITTEE ON LANDS AND ENERGY

**REPORT OF THE COMMITTEE ON LANDS AND ENERGY ON A
PETITION BY MEMBERS OF THE SABAKI RESIDENTS ASSOCIATION**

NOVEMBER, 2024

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LIST OF ABBREVIATIONS AND ACRONYMS

SaRA	- Sabaki Residents Association
CECM	- County Executive Committee Member
PDP	- Part Development Plan

EXECUTIVE SUMMARY

Hon. Speaker, the Petition by members of Sabaki Residents Association (SaRA) was received in the Assembly on 18th June 2024 pursuant to Standing Order 199 (2) (b) on presentation of Petitions. The Petition after tabling in the House was committed to the Committee of Lands and Energy for interrogation and reporting pursuant to Standing Order 201.

The Committee conducted an inquiry by seeking information from the relevant offices, as well as meeting with the Petitioners and the office of the CECM, Lands, Energy, Housing, and Urban Development. Following an investigation, major findings were noted, including inadequate public participation by the CECM, Petitioners' lack of access to the prepared part development plan, acute demand for community center facilities in the Sabaki area, and encroached public utilities in the area, among other observations

Further, after considering the submissions and observations stated above, the Committee recommends that the CECM, Department of Lands, Energy, Housing, and Urban Development halt the process of developing a part development plan for the market on plot. PDP No. 26699/27 due to a lack of public participation before preparing the part development plan for markets to determine what the residents of Sabaki actually need. among other reasons.

Further to the above, the CECM, should consider the submissions of the residents of Sabaki as raised by the Petitioners and establish Community Centre related facilities on plot PDP No. 26699/27 because the residents are in acute need for the said services, the CECM, to work with Sabaki Residents Association to identify, consolidate, document, title, safeguard and protect all the other public utilities in the area, the CECM, to demonstrate strict adherence to the provisions of Article 10 of the Constitution, Section 40 and 49 of the Physical and Land use development Act, 2019 on matters of public participation in addition to the provisions of Article 35 on access to information when conducting any procedures related to land matters and submitting implementation report to the Assembly within sixty days among other recommendations.

1.0 INTRODUCTION

1.1. Preamble

1. The Petition by Sabaki Residents Associations was received in the Assembly on 18th June 2024 pursuant to Standing Order 199 (2) (b) on presentation of Petitions that provides that a Petition to the Assembly shall be submitted to the Clerk by a petitioner and reported to the Assembly by the Speaker. The Petition after tabling in the House was committed to the Committee on Lands and Energy for interrogation and reporting pursuant to Standing Order 201 (1) states that every petition presented or reported pursuant to this Part, shall stand committed to the relevant Sectoral Committee

1.2. Committee Mandate

- 2 The Committee on Lands and Energy is established pursuant to the Second Schedule of Standing Orders and is mandated to deal with all matters related to County physical planning and development; land survey and mapping; boundaries and fencing; electricity and gas reticulation and energy regulation.
3. The specific assignment of the Committee is specified under Standing Order 190 (5) which mandates the Committee to investigate, inquire into, and report on all matters relating to the mandate and the assigned departments, make reports and recommendations to the Assembly among other assignments in the stated standing order.

1.3. Committee Membership

4. The Committee on Lands and Energy was constituted by the House comprises of the following Hon. Members;
 1. Hon. Daniel Ndwiki - Chairperson
 2. Hon. Mathias Muasya - V/ Chairperson
 3. Hon. Brian Kisila - Member
 4. Hon. Johana Munyao
 5. Hon. Francis Ngunga
 6. Hon. Constance Mbula
 7. Hon. Hellen Ndeti

8. Hon. Anastacia Mutevu
9. Hon. Dominic Maitha
10. Hon. Vincent Mutie
11. Hon. Paul Wambua
12. Hon. Jeremiah Kaloi
13. Hon. Ruth Wanjiru

2.0. KEY LEGAL PROVISIONS RELATING TO PETITIONS AND PHYSICAL DEVELOPMENT PLANS

2.1. The Constitution of Kenya

5. Article 119 (1) states that every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.
6. The Fourth Schedule provides for Land surveying, mapping and boundaries, and fencing as a function of the County Government.
7. Article 61 (1), states that all land in Kenya belongs to the people of Kenya collectively as a nation, as communities, and as individuals
8. Article 174 (c) and (d) on the objects of the devolution of government are;

(c) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;

(d) to recognize the right of communities to manage their own affairs and to further their development;

2.2. County Governments Act, 2012.

9. Section 15 of the County Governments Act, 2015 on the right to petition County Assembly provides that a person has a right to petition a County assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.

2.3. The Physical and Land Use Planning Act, 2019

10. Section 40 of the Act states that:
 - a) Within thirty days of the preparation of a county physical and land use development plan, the County Planning Authority shall publish a notice in the *Gazette*, in at least two

newspapers of national circulation and through electronic media informing the public that the draft County Physical and Land use Development Plan is available at the places and times specified in the notice.

- b) The county executive committee member shall facilitate public participation.
- c) The county executive committee member shall consider the comments made about the draft county physical and land use development plan and may incorporate the comments in the plan.
- d) A person aggrieved by a decision of the County Planning Authority concerning the County Physical and Land use Development Plan or matters connected therewith, may within sixty days of receipt by him of notice of such decision, appeal to the County Physical and Land use Planning liaison committee in writing against the decision in such manner as may be prescribed.

3.0. THE PETITION

11. The Sabaki Residents Association (SaRA) is an association duly registered in Kenya composed of residents of Sabaki Estate within Mavoko Sub-County in Machakos County whose objective is the protection of the rights of the residents of Sabaki Estate. The Petitioners raised the following grievances:

- i. **THAT**, the Petitioners were shocked to come across a newspaper advertisement dated 3rd May, 2024 made by the County Executive Committee Member (CECM) for Lands, Housing Urban Development and Energy. Hon. Nathaniel Nganga purporting to have developed a Part Development Plan (PDP) for an undeclared public utility plot which we believe to be LR. 26699/27.
- ii. **THAT**, the plot in question is supported by a meeting called by the said CECM on Tuesday 7th May, 2024 at 7.30am. vide a notice sent via social media on 6th May, 2024 at night.
- iii. **THAT**, the residents of Sabaki Estate perceived the short notice as an ambush considering that the notice given was too short, was given during odd hours and appears to be a deliberate attempt to pass-off the meeting as the County executive meeting its obligations to undertake public participation in undertaking their obligations.
- iv. **THAT**, the proposed PDP is for a utility plot set aside for a Community Centre and not a market.

- v. **THAT**, further, we are convinced that, without consulting the residents, the CECM is purporting to alter and change the intended use of the said public utility plot.
- vi. **THAT**, any unlawful change of user of public utility plots will deny our children public schools, social amenities and facilities, health services, police and administrative services.
- vii. **THAT**, attach hereto all the supporting documents and, if need be, we hereby express our readiness to honour your invitation to shed more light on the issue.

12. The Petitioners pray to the Assembly that it:

- a. Deals with this Petition immediately considering the urgency of the matter in question and the likely loss of public land if no action is taken as a priority.
- b. Investigates the matter and stop the CECM from interfering with public utility land within Sabaki Estate without consulting the residents.
- c. Assists the residents of Sabaki Estate to preserve their public utility plots in having them used for their intended purposes.
- d. Assists SaRA in reclaiming any other plots that may have been illegally allocated, appropriated, occupied, developed, transferred or grabbed.
- e. Calls for the County executive to undertake comprehensive, meaningful and all-inclusive public participation in all matters relating to public Land:
- f. Impresses upon the County Executive exercise particularly the CECM for Land, Housing Urban Development and Energy to exercise executive power in accordance with the law by ensuring transparency, openness, accountability and proper use of public office in the administration of public land:
- g. Requires the County Executive to work with SaRA to identify, consolidate, document, title, safeguard and protect all public utility land within Sabaki Estate to the utilized for the intended purposes.
- h. Audits all developed plans within the county to ensure that they have been done legally and procedurally, they meet the people's needs are coherent and in line with progressive development plans and aspiration and take any remedial measures.
- i. Takes step to safeguard all public land within Machakos County.

4.0. PROCESSING OF THE PETITION BY THE COMMITTEE

13. During a committee meeting held in the month of July 2024, the Committee discussed the Petition and in order to exhaustively address the Petition resolved to undertake the following:

- i. Prepare a legal framework for processes involved when undertaking a part Physical Development Plan of an area
- ii. Undertake a site visit to discuss and hear grievances from the Petitioners
- iii. Invite the County Executive Committee Member (CECM) for the Department of Lands, Energy, Housing and Urban Development to address the issues raised by the Petitioners.
- iv. Prepare a report and table in the House for approval.

4.1. Committee Meeting with the Petitioners

14. On 3rd October 2024, the Committee held a meeting with Members of Sabaki Residents Association (SaRA) at Sabaki area, St. Marys Catholic Church. The meeting was well attended including other residents of the area and the following were the issues raised by the Petitioners to the Committee:

- i) **THAT**, the proposed PDP is for a utility plot No. 26699/27 which was set aside for a **Community Centre** and not a market contrary to the publication of the CECM.
- ii) **THAT**, the Petitioners are aware of a publication of Notice on Daily Nation dated 3rd May 2024 on proposed site for Market Plots in Sabaki, Athi river. However, the Notice did not specify PDP number of the plot targeted for the said development. Further, the Notice indicated that the Plan had been deposited in the Office of Director Physical Planning, Machakos County and that any person/s with an objection may within 60 days from the date of Notice forward the objection to the CECM, Department of Lands, Energy, Housing and Urban Development.
- iii) **THAT**, the CECM called for a meeting with residents of Sabaki area on Tuesday 7th May, 2024 at 7.30am. vide a notice sent via social media on 6th May, 2024 at night. Hence, the CECM only gave the Petitioners a Notice of only one (1) day. The meeting was therefore not attended to as confirmed by the Petitioners.
- iv) **THAT**, the CECM did not follow the right procedure of conducting public participation and the method he used suggested hidden motive in the undertaking of the process

- v) **THAT**, as opposed to the proposal by the CECM, the residents of Sabaki need the Plot 26699/27 to remain a community centre as indicated in the original plan. The area lacks nursery schools, playing grounds and dispensary and these are good development proposals which the Petitioners requested to be considered to be done on the said plot.
- vi) **THAT**, besides the Plot 26699/27 which is being petitioned, there are other public utilities in the same area that have been encroached and are in the danger of being lost to unsuspected individuals. The utilities are listed below;

Plot No (26699/XX)	Area(Ha).	Planned Purpose	Location	Current status
8	3.837	Special Purpose Plot	Near Parkview Court	Suspected to be Encroached
22	6.000	Secondary School	Mount Olive	Field area/ Active court Case
23	2.000	Primary and Nursery School	Heritage	Alleged to have a dispute between two parties
27	2.999	Community Center	Near Central Court	Encroached
29	2.000	Primary and Nursery School	St Marys catholic Chruch	Title transfer OK
31	0.490	Shopping Center	Opposite Sabakian	No structures, Title to be confirmed.
147	2.900	Primary School	WhiteStar	Suspected to be encroached on

148	0.369	Church	SDA Church.	Title transfer OK

vii) **THAT**, the Petitioners were unable to access the proposed PDP which as per the Notice by the CECM dated 3rd May 2024 was kept in the office of the Director Physical Planning, Machakos County.

viii) **THAT**, the proposal of converting the PDP from community centre to market stalls is a loophole to lose of public land and will also deny residents of Sabaki essential services that go with community centre as provided in the original plan.

1.2. Response by the CECM, Department of Lands, Energy, Housing and Urban Development

15. Through a letter Ref: GMC/LHUD&E/C.A/VOL.II(8) dated 4th October 2024 responded to the issues raised in the Petition as below;

- i) That pursuant to Sections 40 and 49 of the Physical and Land Use Planning Act, 2019 prepared a Notice of completion of PDP for Market Plots for Sabaki and invited members of the public to submit any objections within 60 days from the date of the publication.
- ii) That the office of the CECM, did not receive any objection from members of the public as at the expiry of the sixty (60) days' Notice given in the publication.

5.0. COMMITTEE OBSERVATIONS

1. **Notice of Completion published on 3rd May 2024.** This Notice published by the CECM, for part development plan for proposed Market Plots in Sabaki area did not capture the plot Number intended for the said development. This raises a question why the CECM chose to omit such a critical detail in the Notice but he just indicated proposed market plots in Sabaki.

2. The Committee after much inquiry confirmed that the plot targeted by the CECM is plot PDP. No. 26699/27, 2.999 Ha. by size which in the original plan is marked as Community Centre plot. This was confirmed during the short Notice meeting held by the CECM on 7th May 2024 at Sabaki, St. Marys Catholic church where very few target

groups attended the meeting owing to the short Notice given. The same was also confirmed by the Petitioners in their Petition to the Assembly and also from their submissions done during the meeting held on 3rd October 2024.

3. In reference to the Notice of completion from the CECM dated 3rd May 2024, on proposed market stalls in the said plot, it clearly indicates that the CECM did not conduct initial public participation to know what the plot was planned for and what infrastructure facilities the residents of Sabaki were in need of.
4. The residents of Sabaki are in acute need of community centre related facilities such as Social hall, playing grounds and ECDE as confirmed by the Petitioners and this is the consideration the CECM should have first made before proceeding to prepare a part development plan for market stalls on Plot 26699/27 reserved as community centre.
5. **Compliance with the Constitution and Sections 40 of the Physical and Land Use Development planning Act, 2019**

Article 10 of the Constitution recognizes public participation as one of the key principles of governance. Further, Section 40 of the of the Physical and Land Use Development planning Act, 2019 states that:

Within thirty days of the preparation of a County Physical and Land use Development Plan, the County Planning Authority shall publish a notice in the Gazette, in at least two newspapers of national circulation and through electronic media informing the public that the draft County Physical and Land use Development Plan is available at the places and times specified in the notice.

The County Executive Committee Member shall facilitate public participation.

The County Executive Committee Member shall consider the comments made about the draft County Physical and Land Use Development plan and may incorporate the comments in the plan.

A person aggrieved by a decision of the County Planning Authority concerning the County Physical and Land Use Development Plan or matters connected therewith, may within sixty days of receipt by him of notice of such decision, appeal to the County

Physical and Land Use Planning liaison committee in writing against the decision in such manner as may be prescribed.

The Supreme Court of Kenya has aptly stated that effective public participation should;

- a. Be meaningful and done in good faith;
- b. is not a formality;
- c. contain intentional inclusivity and diversity;
- d. contains the involvement of the ones mostly affected to have a bigger say;
- e. involves a mechanism which is effective in achieving sufficient public participation;
- f. contains sufficient notice

i).The CECM through the Social Media on 6th May 2024, invited the residents of Sabaki for a meeting for public participation on the proposed part development plan scheduled on 7th May 2024 at 7.30am. The Notice given was for only one (1) day and the hour of the meeting ie 7.30am was also not practical.

ii).The Committee noted that the said public participation by the CECM was not done in good faith but was just a formality, was not meaningful, not inclusive, did not involve the people affected by the proposed part development plan and did not have sufficient Notice. The action by the CECM was therefore in breach of Article 10 of the Constitution and Section 40 of the Physical and Land Use Development planning Act, 2019

6. Article 35 of the Constitution provides for access to information. Further, in the Publication Notice by the CECM dated, 3rd May 2024, the CECM stated that the part development plan was available for public scrutiny in the office of the Director, Physical Planning, Machakos County. The committee confirmed that members of Sabaki residents Association visited the office of the Director but were denied access to the proposed part development plan. This is in breach of Article 35 of the Constitution.

7. The committee noted from the meeting held with the Petitioners that, apart from plot PDP. No. 26699/27 which is being petitioned, the area has other seven (7) plots that are

planned as public utilities. They include plot PDP 26699/8, 26699/22, 26699/23, 26699/27, 26699/31, 26699/147, 26699/148 where most of them have been encroached and others have pending court cases.

6.0. COMMITTEE RECOMMENDATIONS

8. After considering submissions by the Petitioners, the CECM and the above observations the committee makes the following recommendations;

1.The CECM, Department of Lands, Energy, Housing and Urban Development should stop the process of developing part development plan for market on plot . **PDP No. 26699/27** on the following grounds;

- i. No initial public participation was done before preparing the part development plan for markets to determine what the residents of Sabaki are actually in need of
- ii. The plot **PDP No. 26699/27** which he confirmed during his meeting on 7th May 2024 as the targeted plot for market is marked as community centre in the original physical plan of that area.
- iii. The Notice of completion which the CECM published on 3rd May 2024 did not specify the plot Number he was targeting to prepare the part development plan hence raising a serious concern why he left such critical detail in the advertisement.
- iv. The meeting which the CECM held on 7th May 2024 in Sabaki was a one (1) day Notice meeting also held on odd hours at 7.30am. This Notice was not realistic and the target groups of Sabaki residents were unable to attend making the said public participation just a formality, non-inclusive, not meaningful, excluding target groups and without sufficient Notice.
- v. The residents of Sabaki were denied access to the part development plan which the CECM stated in the Notice of completion that it was available for access from the office of the Director, Physical Planning, Machakos County.

2.The CECM, Department of Lands, Energy, Housing and Urban Development should consider the submissions of the residents of Sabaki as raised by the Petitioners and establish Community Centre related facilities on plot **PDP No. 26699/27** since the residents are in acute need for the said services.

3.The CECM, Department of Lands, Energy, Housing and Urban Development should work with Sabaki Residents Association to identify, consolidate, document, title, safeguard and protect all the other public utilities in the area as raised by the Petitioners including plots PDP 26699/8, 26699/22, 26699/23, 26699/27, 26699/31, 26699/147, 26699/148 which currently most of them have been encroached and also issue Notices of vacation to the illegal settlers including revoking any illegal transfers done on any of the stated plots.

4.The CECM, Department of Lands, Energy, Housing and Urban Development should depict strict adherence to the provisions of Article 10 of the Constitution, Section 40 and 49 of the Physical and Land use development Act, 2019 and the guidelines of the Supreme Court on matters of public participation in addition to the provisions of Article 35 on access to information when conducting any procedures related to land matters.

5.Pursuant to Standing Order 181 on reports of House resolutions the CECM, Department of Lands, Energy, Housing and Urban Development should within sixty (60) of approval of this report submit to the Assembly the status of implementation of the recommendations of this report.

7.0. CONCLUSION AND ACKNOWLEDGEMENT

9. **Honorable Speaker**, matters related to land are very critical especially when the matter directly affects the public.It therefore means that any procedure undertaken in relation to land must follow the right legal procedures failure to which the procedure will be met with serious public concerns and legal challenges. The current spirit in the legal line places a lot of emphasis on public participation when undertaking any implementation procedure.

10. I wish to acknowledge the offices of the Speaker and that of the Clerk of the County Assembly for logistical and technical support accorded to the Honorable Members and the secretariat of the committee in undertaking this assignment. The committee is grateful to the Members of the Committee for the much devotion shown during the process of dispensing this Petition by the residents of Sabaki. The Committee further, thanks the office of the CECM, lands for his submissions and not forgetting the members of Sabaki residents Association for their submissions to the committee during the interrogation time.

11. **Honorable Speaker**, on behalf of the Committee of Lands and Energy, it's my pleasure to table before this Honorable House, the report on Petition by members of Sabaki Residents Association (SaRA) for discussion and adoption.

Thank you Hon. Speaker.



HON. DANIEL NDWIKI

CHAIRPERSON, LANDS AND ENERGY COMMITTEE

REPUBLIC OF KENYA

**COUNTY GOVERNMENT OF MACHAKOS**

THE PHYSICAL AND LAND USE PLANNING ACT

(No. 13 of 2019)

**NOTICE OF COMPLETION OF LOCAL PHYSICAL AND LAND USE
DEVELOPMENT PLAN - PART DEVELOPMENT PLAN**

Title of Development Plan

1. PROPOSED SITE FOR MARKET PLOTS - SABAKI, ATHI RIVER

Pursuant to the provisions of section 49(1) of the Physical and Land Use Planning Act, 2019, NOTICE is hereby given that the preparation of the above Plans were on the **03RD** day of **MAY 2024** completed.

A copy of the plan as prepared has been deposited for public inspection free of charge at **THE OFFICE OF THE COUNTY DIRECTOR OF PHYSICAL & LAND USE PLANNING.**

Any interested person who wishes to make any representation in connection with or objection to the above plan may within sixty days send the same to **THE OFFICE OF THE COUNTY EXECUTIVE COMMITTEE MEMBER - LANDS, HOUSING, URBAN DEVELOPMENT & ENERGY, P.O. BOX 1996-90100 MACHAKOS** and such representations or comments shall state the grounds upon which they are made.

Hon. Nathaniel Nganga

Dated this **3RD** day of **MAY 2024**

County Executive Committee Member

LANDS, HOUSING, URBAN DEVELOPMENT & ENERGY