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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION HELD ON FRIDAY, 20TH
JANUARY 2012 AT TONONOKA SOCIAL HALL, MOMBASA**

PRESENT

Ahmed Farah	-	The Presiding Chair, Kenya
Tecla Wanjala Namachanja	-	Acting Chair, Kenya
Tom Ojienda	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Emily Kimani	-	Leader of Evidence
Yasin	-	National Cohesion and Integration Commission.

(The Commission commenced at 9.50 a.m.)

The Presiding Chair (Commissioner Farah): Please, remain standing while we have the national anthem and the Commission's prayer.

(Opening Prayers)

(The National Anthem was sung)

Good morning! Welcome to this morning's hearings which is a continuation of yesterday's hearings. Our rules still stand, so, please switch off your mobile phones. I will switch mine now, so follow me by switching off your phone because they will interfere with the proceedings. We will listen to the remaining cases of Mombasa today and going parallel to this public hearing is the women forum which is happening somewhere else here in Mombasa Island. Our sister commissioners are presiding in that session. Leader of evidence, you may proceed but before that, I once again want to introduce the panel of commissioners because yesterday, some were not here. On my far left is Commissioner Tom Ojienda who was here yesterday and I think you know him. On my immediate left is our Acting Chair, Commissioner Tecla Namachanja Wanjala, and on my right is Commissioner Ambassador Berhanu Dinka. My name is Major General Retired Ahmed Farah, your chair yesterday and I am continuing as the presiding chair. I would like to take cognizance of Commissioner Yasin of the National Cohesion and Integration Commission.

Ms. Emily Kimani: Thank you very much, Presiding Chair. Before I invite the first speaker, I have been furnished with a memorandum by Mr. Eliatha Mate who wishes that the memorandum should form part of the Commission's records. I pray that the memorandum be admitted.

The Presiding Chair (Commissioner Farah): The memorandum is admitted as prayed.

Ms. Emily Kimani: Our first witness this morning is witness code 8 as per the course list.

(Ms. Rosemary Nyambura took the oath)

Ms. Emily Kimani: How are you this morning? Before I invite you to give your testimony please tell us your full names for the record.

Ms. Rosemary Nyambura Ndungu: My name is Rosemary Nyambura Ndungu.

Ms. Emily Kimani: You wish to make a general presentation about the situation of the IDPs of the 2007/2008 post-election violence in Coast Province. I now invite you to make your brief presentation given that we have been to other regions and we have the background of the issues that have faced the post-election victims from other parts of the country. Take us through the issues that you have faced and give us your recommendations.

Ms. Rosemary Nyambura Ndungu: May the peace of the Lord be with you. As a representative of the victims of the 2007/08 elections, there were injustices following the elections. Two parties; PNU and ODM, were fighting for leadership and the ODM followers targeted us, as PNU. Some symbols were put in our houses and our shops and we were ambushed and they stole everything. Our shops were burnt, women were raped and property was destroyed. I will tell you an incident that took place where I was living. I heard that about 500 people had attacked my home and they had attacked many other shops of belonging to the Kikuyu. Anybody who was a Kikuyu had their shop looted and after that, they burnt whatever was left and they said that they will finish us but God is good because we were able to run for safety to the Catholic Church in Likoni. When we got there, we got some protection for a while. In Kisauni, they ran to the Dog Section, in Chagamwe they camped in the church there. We were eventually displaced from the church and after a week, we were taken to the YMCA, Likoni. This was injustice of the highest order and somebody like me lost all the property that I had accumulated since I was young in one day. All this was because of political incitement.

We were sleeping on the concrete in the church with nothing to protect us. We were not even able to access water since we could not go out of the camp because of fear. They swore to come and bomb us in the center, so we lived in fear and hunger and our children did not go to school. Up to today, the Government has done nothing for us. When the Government did the profiling, we were only paid Kshs10, 000. A few people were given a further Kshs25, 000 and there is nothing else that we have managed to get from the Government apart from the food aid that we are getting. It got to a point where they said that we had to change our names if we wanted to continue getting help from the Government. This is a big injustice because the administration could not even recognize us and they were more interested in protecting their jobs. When the Waki Commission came, we were not allowed to present our views properly. Our people have not been recognized up to today and those who welcomed us are tired. We have not been able to

be independent and any time some of us try to start small businesses, the municipal council would come in and tell us that if we do not have a licence, we cannot continue with our businesses. If you had a small loan, you were asked to repay when you are in the camp and you are not doing any business. It has forced some of us, who are single mothers, to turn to prostitution to feed our children. It is an injustice because as the head of the house, there is nothing else you can do. There is no other job you can do because you are used to doing business. That business was the only way of fending for our families.

When you look at the Government of Kenya, it only focuses mainly on the Rift Valley. In the Rift Valley, they had farms and here, our farms are those businesses, and it is as if we do not exist. Every time they say that they are reconstructing yet our houses were burnt down and nobody has been given a house to live in. I will go back to those who helped us because we were also planning to revenge. We have CIPK which is a committee that brings the Muslims and the Christians together in the country. There is another Catholic organization that is led by Father Donald and Father Njagi who were able to convince us not to revenge. If these people had not come on board in good time, we would have gone to revenge and everything would have been worse.

My recommendations to the Commission are that the IDPs should be compensated. The Government should recognize that the Coast Province also has IDPs. The Government should cater for our children's education because they are not going to school. This is because if a child was supposed to go to secondary school, secondary schools are not free and as long as they are integrated, the father or the mother has not been able to be independent so they cannot pay the school fees. We also have humanitarian needs because sometimes we go for three or four days without food because we have no work and our businesses were looted. The victims should be given another chance for counseling because since then, you can talk to an IDP and he or she falls down. Why do they collapse? It is because they have not removed the anger that they have because they have not seen any plans in place to help them develop or get back to where they were.

I would like to ask the Government through the municipal council to give the IDPs time to rebuild their lives. We were paying taxes but now we are unable to pay these taxes. You cannot pay tax when you do not have food in your home. There are some IDPs who are disabled and some of them got disabilities during the violence. These people should be given a chance to get some form of livelihood because they are crippled and they are not able to run around as they used to before. There are also those who have been on medication since that time because they developed high blood pressure and other diseases that are not easy to treat. We would like the Government to cater for the medication of these people. We would like to be recognized and have houses reconstructed for us like other people so that we can go back to where we were before.

On the Miritini side, a house with ten people was attacked and only one person survived. The woman who survived got injured as she was trying to run away. We would like her to have some counseling because she was the only survivor when the house was burnt. All the other people died. On the Kisauni side, 333 people were injured. In Likoni, those

who were recorded were 262 though some ran away to Tanzania because there were a total of 415. In Changamwe, there were 250 people. So in total, we are looking at 1,033 people who have not been able to get their lives back. We have written to the Government through the Ministry and I will give this as evidence. We wrote to the Ministry of State for Special Programmes to help those who were not paid the Kshs10,000 get it and Kshs25,000 to be given to everybody to enable them start small businesses. We will give that as evidence and the Minister's response that she sympathizes with what we have gone through but nothing has been done.

Another letter written by the DC says that they will help us to access this money but this has not been implemented either. We wanted to demonstrate and the letter notifying the administration that we would hold a demonstration is here. I do not know whether I can read and tell you the offices that we addressed the letter to. There is also a letter that we wrote to various organizations to look into those who were most affected and see if they can get a boost to start up their businesses. No organization has helped us because we were told that there are no IDPs in Mombasa. That is a declaration by the Government and the evidence is here. I will pass on the supporting documents if I am allowed to do so. There is a book of those that were affected and I will give that to the Commission as evidence as well and the letter written by the priest of the church where we had camped. Within there, there is a letter written by the chief which I will give as evidence as well.

As a group that was affected, we formed an organization called Life Starts after being told to change our names. This group is concerned with restoration of peace because we were affected by lack of peace. So we know the importance of peace. We also try to look into families that cannot access food or clothing so any donation that is given is taken to the victims although we have not been able to get much aid.

With those few remarks, I am very grateful.

Ms. Emily Kimani: Thank you very much, Mama Nyambura, for your very articulate testimony. You have taken us through the issues that the IDPs underwent as a result of the 2007/08 post election violence. This includes rape, looting of properties, evictions and many others. You have also gone further in your testimony to give us the recommendations and even furnish us with various documents to also show the efforts that you made in seeking assistance from the Government.

Presiding Chair, I pray that the documents that this witness has adduced be admitted to form part of the Commission's record.

The Presiding Chair (Commissioner Farah): Admitted as prayed.

Ms. Emily Kimani: I have a few questions to ask you from your testimony. What is the estimated total number of all the IDPs in the coastal region?

Ms. Rosemary Nyambura: Those who are registered are about 1,033 but there are quite a number who ran to the neighbouring country of Tanzania and those who went upcountry. The actual number could be higher than that

Ms. Emily Kimani: Have these people been able to go back to their respective homes?

Ms. Rosemary Nyambura: They are integrated IDPs because most of them cannot pay house rent and most of them cannot restart their businesses. Remember that majority of us had business loans and we still have to pay these debts.

Ms. Emily Kimani: In your opinion, do you feel the Government has done enough to avert a similar scenario late this year or early next year when the general election will be held?

Ms. Rosemary Nyambura: The Government has not done anything because those who are in the camps are still living in the camps and those of us who are integrated are still welcome by our colleagues. There is nothing that has been put in place by the Government up to today. It is really annoying for somebody to be welcomed and you have a husband or a wife, so the human rights---

Ms. Emily Kimani: What are your thoughts on the ICC process? Do you feel that it will give some reprieve to the victims of the post-election violence of 2007/08?

Ms. Rosemary Nyambura: My opinion with regard to the ICC is that justice will be served and if they follow the people who were affected and compensate them, only then we will feel that justice will have been served. If it does not reach us, we will feel that the court is of no use to us because we are most interested in compensation and not for people to be jailed.

Ms. Emily Kimani: I want to thank you for your testimony and also for the effort that you have as a group put in place to bring about integration. I also want to thank the priests who you named that assisted you during the time of difficulty. I encourage you to keep on keeping on and may God bless you. I have no further question for this witness.

The Presiding Chair (Commissioner Farah): Thank you, Rosemary Nyambura Ndungu, for your eloquent presentation. I will now hand you over to the commissioners to ask for any clarifications or any questions.

Commissioner Ojienda: Thank you, Rosemary, for your testimony and for highlighting the experiences of the IDPs. Has your record captured all the IDPs in the Coast Province or in Mombasa?

Ms. Rosemary Nyambura: My information encompasses all the IDPs in the Coast Province.

Commissioner Ojienda: What is the total number?

Ms. Rosemary Nyambura: The actual number is 1,033 IDPs.

Commissioner Ojienda: Have you totaled the losses that each person got after the violence?

Ms. Rosemary Nyambura: I have managed to bring in what every family lost though we were a little confused while compiling the report because afterwards, some people remembered things they lost which they did not have in the first place. We would like to urge the Commission to look into what will be good enough for us and not just compensation but also the time.

Commissioner Ojienda: Have you included the victims of the 1997 and 2002 violence? There are people who testified here yesterday who were victims of the Likoni Violence.

Ms. Rosemary Nyambura: We did not include the 1997 and 2002 victims because they have their own representative so we only thought of the 2007 victims.

Commissioner Ojienda: One of the functions of this Commission is to deal with cases like yours and in the end; we will make firm recommendations on how compensation or reparation can be given to those who suffered because of the violence. I think there is need to have an accurate record of the victims because our recommendations would need to give an opportunity to every victim to record the kind of loss that they suffered during the violence or all the other violence that have occurred in this country.

Ms. Rosemary Nyambura: I think we can present the actual figure because all the victims and their representatives are here.

Commissioner Ojienda: Thank you very much for your testimony. It will help this Commission.

The Acting Chair (Commissioner Namachanja): Thank you so much, my sister Rosemary, for coming before this Commission. There are issues that I have read in your statement that have not been disclosed because of privacy and these are very painful issues. I also have a few questions just to help me understand the situation more. You say that about 500 youth came to attack some of your community members. Have you been able to establish any names of some of these youth so that you can share with us later?

Ms. Rosemary Nyambura: I would not be able to tell you who they were because at the time, we had closed our businesses and gone to vote but from those who were telling us, they said that many people were saying that No Raila, No peace!

The Acting Chair (Commissioner Namachanja): In your view, could the youth who came to attack be your neighbours?

Ms. Rosemary Nyambura: There is a possibility that they were our neighbours because nobody else would have known which shops belonged to Kikuyus. My shop was between a Somali and a Kamba and mine was the only one that looted. So it means that these were people who knew me well and they were probably my neighbours. They must have been able to identify my community and where we live, we use Swahili language.

The Acting Chair (Commissioner Namachanja): How would you describe the relationship in general between your community or the upcountry people and the locals?

Ms. Rosemary Nyambura: I would say that even today, we are still called upcountry people and when we go upcountry, we are called coastal people so we do not know exactly where we belong. We live like neighbours but whenever there are elections, they plan for you. At the moment, we live in harmony but we do not know what lies ahead for us especially because it happened in 1997 and 2007.

The Acting Chair (Commissioner Namachanja): Apart from voting for different parties, would you think of any other reason why we had the ethnic clashes or why we have been having ethnic clashes?

Ms. Rosemary Nyambura: Apart from politics, the only other reason why I was attacked was because I am a Kikuyu.

The Acting Chair (Commissioner Namachanja): Were there any other communities who were equally attacked apart from Kikuyus?

Ms. Rosemary Nyambura: When Kalonzo joined Kibaki, the Kambas followed us.

The Acting Chair (Commissioner Namachanja): You have said well that the 2007/08 were not just the clashes that this region has experienced. We had clashes in 1991/92, 2007 but not so much in 2002. If I remember well during the 1991/92 ethnic clashes, there were many attempts by the civil society and religious institutions to bring the people together and discuss the causes of conflicts and relationship issues. Since we had the 2007/08 post-election violence, have they made any efforts to bring together the communities that were in conflict with the aim of bringing about reconciliation?

Ms. Rosemary Nyambura: These efforts have been there especially by the CIPK under someone called Livondo. This has also been there under Father Dolan who is a representative of the Church in Bangladesh and Father Njagi who represents the Catholic Church in Likoni. They have enabled us to get counseling and they have explained that it is important for us to forgive each other as communities. But at the end of the day when you go home, you find the problem is still there. You did not come with anything and children are still calling on you and they want to go to school and you have no means.

The Acting Chair (Commissioner Namachanja): If you were to recommend to this Commission a measure or a strategy to ensure that you do not continue with the way we

have been, what would you recommend as a lasting solution to ethnic clashes especially those that come around election time?

Ms. Rosemary Nyambura: The first thing I would recommend is for those who were injured to be compensated so that they can continue with their businesses. Secondly, religious organizations should get together and educate citizens that human beings are one and that when they came from the Garden of Eden, they were one. Tribes were formed much later when they were trying to put up the tower of Babel but Kenya is more important than the individual tribes. I would like to ask religious organization and individuals to be encouraged by the Government to preach peace and restore peace in the Coast.

The Acting Chair (Commissioner Namachanja): Thank you so much. I have no further questions for you.

Commissioner Dinka: Thank you very much, Rosemary Nyambura, for your testimony. It is not easy for anyone to repeat this terrible experience that one has passed through in public. I can see the pain that you are going through, and I empathize greatly with you and your pain. I hope Kenya will never see this type of situation again. I have a few questions. You said that there were over 1,000 IDPs. Do you have the ethnic breakdown of those 1,000 IDPs?

Ms. Rosemary Nyambura: They are from many ethnic groups because when you start to chase a dog, even the cats will run away. We are nearly all tribes and some are in small numbers but all tribes are in that list that I have given.

Commissioner Dinka: You left and after passing through a number of IDP stations, churches, schools and so on, you ended up in Thika which is your rural home. Are you now back in the Coast to your previous location or are you living peacefully and doing your business without any threat?

Ms. Rosemary Nyambura: To be honest, where I was at that time, I was forced to move away because I was worried. It is not that our businesses are going on. You start a business and it fails after two months because of the inability to pay rent. I would not say that we have any meaningful business.

Commissioner Dinka: How many of the 1,000 IDPs have returned back?

Ms. Rosemary Nyambura: I can tell you that nearly all of them have come back. This is because if you go to a place you are not used to, you cannot survive there for very long. As they came back, they were welcomed by the others. It is not that they have been able to afford paying rent again. There is even a group that has been sleeping on the corridors of houses. It is a very unfortunate thing especially if you know you had your house or could pay your rent before.

Commissioner Dinka: Finally, I noticed in your statement and also in your oral presentation that you are not a very bitter person, which is very good. In fact, you suggested in your recommendations that reconciliations must begin between different communities. That is what I would encourage you to work for. Is there any reconciliation effort that is going on at the moment, whether by the church, community based organizations or anything?

Ms. Rosemary Nyambura: Yes, there are organizations such as the ICC where I got a chance as a leader in the Coast Province. We are continuing with trying to restore peace. We go there with Father Dolan who is from the Catholic Church and our group called Life Starters. We have not been able to receive any donors but we have been able to go to every small area in all these small locations and address congregations telling them to preserve Kenya. It is better to have peace because that is the only way we can have meaningful worship.

Commissioner Dinka: Thank you very much, I have no further questions. I want to really thank you for taking time to come out and really suffer again by re-telling your very sad story.

The Presiding Chair (Commissioner Farah): Rosemary Nyambura, thank you for your presentation. I empathize with your suffering and we have taken note of your grievances and recommendations.

I have no further questions. We will take it from there.

Leader of Evidence, can you stand down the witness and bring the next one?

Ms. Emily Kimani: Commissioners, our next set of witnesses are three. I have witness code 10 who is accompanied by one Najib Shamsam who has taken it upon himself to prepare a memorandum and witness code 11. All of them have one theme which is land and that is why they are sitting together.

The Presiding Chair (Commissioner Farah): Let us call them all in.

*(Mr. Hamisi Radhid, Mr. Mbwana Nzori and
Mr. Najib Mohammed Shamsam took the oath)*

Ms. Emily Kimani: On behalf of the TJRC, I welcome all of you for our session this morning and thank you in advance for your willingness to participate in this process. We have heard extensively about the issue of land which is very contentious in this coastal region. So, I, kindly, request you as I invite each of you to give your testimony that you do not repeat what the previous speaker has told us. You also had the benefit of sitting in during our hearings yesterday where the same was tackled. I wish to start with Mr. Hamisi Rashid.

How are you this morning?

Mr. Hamisi Rashid: I am fine.

Ms. Emily Kimani: You are here as a representative of the Mwandoni evictees and you had earlier on furnished us with a memorandum detailing the account of how you were evicted and various other issues. I wish to ask you a few questions so that we may be able to understand what transpired.

My first question is; when were these evictions carried out and where were you evicted from?

Mr. Hamisi Rashid: The evictions happened in 1978. This was in Mtongwe Mwandoni.

Ms. Emily Kimani: Who evicted these 500 families?

Mr. Hamisi Rashid: We were told that the military wanted to expand their area.

Ms. Emily Kimani: That evicted you?

Mr. Hamisi Rashid: Yes.

Ms. Emily Kimani: Do you have title documents to the land that you were evicted from?

Mr. Hamisi Rashid: The documents belong to the people who own the land. We had only constructed in the area.

Ms. Emily Kimani: Was any compensation given by the Government upon your eviction?

Mr. Hamisi Rashid: What was given was very little; about Kshs10, 000 per person which cannot rebuild a house.

Ms. Emily Kimani: Prior to the eviction exercise, was any notice issued by the Government?

Mr. Hamisi Rashid: To be honest the area Member of Parliament did not explain anything to us. We just found surveyors surveying and we were told we would be leaving.

Ms. Emily Kimani: How big was this land where these 500 families were evicted from?

Mr. Hamisi Rashid: It is a very large area but the Navy has not even used---

Ms. Emily Kimani: If you can give us the size, we can be glad.

Mr. Hamisi Rashid: I would not know how many acres it is but it is very large.

Ms. Emily Kimani: These families live there to date since 1978 when you were evicted from your land in Mwandoni?

Mr. Hamisi Rashid: The truth is, those who were able to look for alternative land were able to build elsewhere. However, those who rented houses have not been able to build to date.

Ms. Emily Kimani: What are your recommendations in light of what happened?

The Acting Chair (Commissioner. Namachanja): Through the Presiding Chair, Leader of Evidence, I think there is something amiss with the interpretation. You are not waiting for him to finish the sentence before you come in. Maybe if you can listen, it would be much better.

Ms. Emily Kimani: My last question was on the recommendations that this witness has in light of what happened.

Mr. Hamisi Rashid: My recommendations are that very many people had businesses like shops and others they lost all these and have not been able to---

In the same area we had our cemeteries and we also lost this. We therefore have nowhere to bury our people. We have to go somewhere else to request for burial places. We had two areas where Muslims used to be buried.

Ms. Emily Kimani: Thank you very much for your testimony. The next witness I wish to elicit comments from is Mbwana Nzori who is witness Code 10.

Before I invite you to make your presentation, if you do not mind tell us your full name for record purposes.

Mr. Mbwana Nzori: My full name is Mbwana Nzori.

Ms. Emily Kimani: You had earlier on recorded a statement with the Commission in your capacity as the secretary to the Kisauni Lands Lobby Group about some land issues. As highlighted earlier, we have heard extensively about this land issue from various witnesses. I invite you to make a brief presentation of your land issue and proceed to give us your recommendations.

Mr. Mbwana Nzori: As I have said, I will speak very briefly about injustices on land. First of all, I will talk about the title deed itself. As I read what was written, I get annoyed every day. I will read it in English as it is written. It says:-

“The deputy recorder of the title do hereby certify that Hamisi Bin Halfan has ordinance himself, his heirs and successor forever”.

Now this word, “forever” I take it to mean that, that person had been given that completely. I was given another title written in Arabic which is in force and is used at the moment. Some of the land registrars we have do not understand Arabic. The titles are there and I am wondering how this is being done.

The other thing I will talk about is, in 1922 there was another injustice which I may call fraud. They call it a claim period. When I hear my parents talk they say this claim was put at a time when those who did not have land would have claimed for land. These people were not educated and so how would they have managed to get this information in order to know people were registering to be allocated land? This fraud happened during the colonial time. The Arabs and those who had close association got the information and managed to have land allocated to them where we lived and knew belonged to us from previous generations. Those who were allocated the land were supposed to use it for agriculture however, these people were not interested in farming.

Land rates are paid every year but we are told to pay ground rent every month. This is not in the land laws. This land rent is taken by somebody who just pockets it. It is not revenue to the Government.

With regard to the issue of ground rent, very many people lose their residences. I gave a case study of Plot No.211 in Mshomoroni. There was one lady who was jailed for one month and the owner of the land was able to pay for her in Shimo La Tewa. It was a very unfortunate event. The media went there but nothing was done. Later Land Lobby wanted to count the number of people. The Government through the Ministry of Lands brought an inter-ministerial task force and people were counted. Until today no report has been made with regard to that. We thought it is a problem to us. We said we have to push until we see the task force report made public.

Now, with regard to solving these issues:-

- (i) Our houses should be recognized.
- (ii) Instead of the council giving us approved plan written “TP” which is temporary house, it should be written “PP” which is permanent house.
- (iii) The inter-ministerial Task force should make its report public.
- (iv) Payment of ground rates every month should stop.
- (v) The land owners should have it valued. We are ready to pay so that the Government can get revenue and we also benefit.
- (vi) We are also asking the TJRC to follow up this matter so that it does not go like the many commissions we have seen before.
- (vii) We are also thinking that God willing, the National Land Policy may be passed in Parliament because those in Parliament are the land owners.

Whenever we have issues of land, there is a problem. If this problem is not resolved at the coast, there will be bigger issues than what happened before. This is what happens when you hear groups like the Mombasa Republican Congress (MRC) coming up. It is because of such matters.

In brief, that is what I had.

Ms. Emily Kimani: Thank you for your testimony. Can I invite Mr. Najib Mohammed Shamsam who has prepared a very detailed memorandum?

Commissioners, I am referring to the memorandum that you have just been issued with. You have tackled to a large extent the legal provisions on land and also given us the recommendations and documents in support of what you have written about.

We invite you to make your brief presentation and give us your recommendations.

Mr. Najib Mohammed Shamsam: Thank you very much. As you said, my name is Najib Mohammed Shamsam. I just want to clarify two or three things.

One of them is the idea of a house without land. There is no house that has no land. These are colonial expressions and it is the colonialists who are against economic development. Every house has land because every house has foundation and documents.

The second thing is the issue of absentee landlords. It has been talked about in books. We think they are absentees in three ways; in documentation, very many people say that land belongs to them but they cannot prove it. When they go to the land registry and bring copies of title deeds, the names do not tally with theirs.

Second is the age factor, someone comes with a name that tallies with the title but when you look at the age of the title deed and the age of the person they are different. This is because at the coast names are recycled.

The other one is that the people never use their land. When we talk about absentee landlords we mean they are absent in those three categories.

We also have the issue of ground rent that has been talked about by my brother. I would like to explain it this way; it is not viable economically, whatever means you are going to use to calculate it. A house that pays ground rent of Kshs200 (which is illegal) on land with 50 houses, it will be Kshs15, 000 per month. There is the issue of payment and non-payment. The value of those houses is about Kshs3 million per house. That is about Kshs150 million, it is not legal and has no future.

The National Land Policy explains this; that there has to be the opportunity for this to be addressed.

Secondly, there is the issue of the houses. The Government gave direction in the Majengo area in 1989. The Government said that for the houses that were near the road people should pay Kshs30, 000 and those in the interior they should be Kshs15, 000. People struggled and paid that money but until today they are not recognized by the Government as the owners of the land. We do not know where the money went. We do not know where this injustice is leading to. People are just amazed at what is happening.

We also have bad laws. I would like to give two examples. One is the Mazrui Land Act. I would like to give you this copy so that you can look at it. We cannot have an act just for protecting one clan. Secondly, Act No.115, this is the Bamburi Standard Portland Cement Company Act which was made by the Bamburi Portland. It has been protecting the Kisauni people against any death that would happen whether as a result of being hit or whatever else. We cannot sue them in court. This is an Act that should be repealed. I would like to give this as evidence that Commissioners should take forward and make recommendations.

Three, I would like to give the National Land Policy itself as a book. We have a lot of confidence in the National Land Policy. We see many of the recommendations here are likely to bring about a lot of relief for us. The big problem that I have as an activist is with the Bills that have been made now and about to be discussed. I believe they will go to the Floor of Parliament. I have seen in the draft that the National Lands Commission Office would be removed and there would be an office of the Cabinet Secretary.

Therefore, we would like that this policy be implemented fully without anything being removed from it. I would like to give a copy of this National Lands Policy as one of my recommendations for the future.

In conclusion, we have tried to get the inventory of the Ministry which my brother has discussed but the Ministry has prevented us from getting it. That might be the biggest solution to the issues we have with the ten-mile coastal strip.

Ms. Emily Kimani: Thank you for that well founded and informative presentation.

Presiding Chair, the various witnesses have furnished me with various documentary evidence.

Mr, Najib has issued us with two Acts of Parliament and also the National Land Policy. Mr. Mbwana has also furnished us with various documents in support of his testimony. Last but not least, Mr. Rashid has furnished us with a memorandum and supporting documents which I pray that they be admitted to form part of the Commission record.

The Presiding Chair (Commissioner Farah): Admitted as prayed.

Ms. Emily Kimani: Thank you very much. I have no question for Mr. Rashid given that I guided him with questions.

My question to Mr. Mbwana; in your testimony you talked about *mkate* or goodwill, how much was this?

Mr. Mbwana Nzori: I have talked about the bread and in English you call it goodwill. In all those pieces of land before you build they ask you to give this goodwill which ranges from Kshs20, 000 to Kshs30, 000. The money is not receipted.

Ms. Emily Kimani: Do you pay monthly as ground rent?

Mr. Mbwana Nzori: My great great grandfather was paying Kshs2 but at the moment the houses at Kongowea pay about Kshs2, 500 per month.

Ms. Emily Kimani: Thank you very much for that answer.

My last question is; what efforts have you made to try and address the issues you have told us about?

Mr. Mbwana Nzori: Among the efforts we have put in place has been to sensitize the residents without looking at religion or tribe. All of us live there and we have one problem. At some point we said we were not going to pay ground rent. The objective for refusing to pay this was to find who the genuine owner was. Later we got the owners but most of the time we deal with agents.

Ms. Emily Kimani: I have no question for you Mr. Najib. Your testimony was very clear. The recommendations that all of you have given us will be taken on board.

I have no further questions for these witnesses.

The Presiding Chair (Commissioner Farah): Thank you very much.

Since your issues were based on land, in our Commission, the expert on land is Commissioner Ojienda. I am giving him the first opportunity to clarify any matters if necessary.

Commissioner Ojienda: Thank you very much. I want to thank the three witnesses for highlighting the land problem at the coast. Clearly, there are historical injustices. People have suffered because of the implications of the exclusive law on the ten-mile coastal strip and the enactment of the Land Titles Ordinance now the Land Title Act and what it has done. It has created absentee landlords and made native people squatters on their own land because they had no opportunity to own that land.

The third witness has mentioned very crucial issues. When I was looking at the documents he presented, I saw a notice from the Permanent Secretary, Ministry of Lands that was issued in 2008 on reversionary interest for all that land whose title was issued in 1909. I think that the effect of this notice is that those parcels of land whose 99 years lease lapsed and the title reverted back to the Government, they are therefore available for allotment.

One of the things the National Land Commission will do is to have a structure for dealing with historical injustices but also the second witness has said that there is need to know who owns that land and have a copy of the certificate of lease or certificate of title. For instance, I looked at the Certificate of Ownership issued under the Ordinance dated 4th February 1901. Although it says it was issued forever there is an avenue for challenging

this certificate. This is because these certificates are unjust. The owners may not even be there. You cannot issue title to a person in succession whether or not there are no successors or when those successors have no identity. I think there has been a bit of a lapse because no person occupying the land has sought to challenge these titles. You cannot own in perpetuity or forever without an action on the part of the beneficiary. As at law, a person registered as owning land cannot just pass in perpetuity without any action being taken. Those who are supposed to be heirs cannot be heirs until they are so declared by the law. So, I do not know how you pay rent to people who have no legal basis or connection that is created by law. There is something called the Law of Succession Act that applies to both the Muslims and Christians and other people.

So when these people died, there must have been someone who secured letters of administration and who had the capacity to deal with this land. Action must have been taken under the law to register that person as owning that land. I know all these things have never been done. But also, I think the Government ought to have done what it did in 2008 earlier to free land that is born of a culture, meaning land that is available to revert to the Government so that it can then be allotted to people who are settled there. I do not know how many people tried going to court on adverse possession. Because you did not know the owners, you stayed there and the only sad thing is that you kept paying rent. I want to assure you that this matter will be resolved with the enactment of the Land Bill and the Land Registration Bill. Once the Land Act is in place, the Land Title Ordinance will be repealed.

All those matters will be resolved with the enactment of the Land Bill and the Land Registration Bill. Once the Land Act is in place the Land Titles Ordinance will be repealed. Some of these provisions that recognized absentee landlords or owners will not be part of the law. The same applies to some provisions that you had referred to. I have seen Sections 23 and 24 of the Registration of Titles Act, Cap. 281 but the Land Bill has other provisions. Any land that was not properly obtained will be relooked at. I think some of these title deeds were irregularly obtained because they were not availed to the residents. They had no opportunity to apply for title deeds. The time given to apply for title deeds was short and there was no information to those who occupied the land. It is the land commission that will give that opportunity.

The problem at the Coast Province is big and the land within the ten mile coastal strip will be governed in the same manner as land anywhere else in this country so that exclusivity that is oppressive as in the Land Titles Ordinance Act is not there. It is regrettable and unfortunate. It must be in the first agenda of the National Land Commission to correct all these injustices.

The Presiding Chair (Commissioner Farah): Thank you very much, Commissioner Ojienda. I now give this opportunity to Commissioner Namachanja and Commissioner Dinka.

Commissioner Dinka: I would like to thank the three gentlemen; Hamisi Rashid, Mbwana Nzori and Najib Shamsan for coming to give us their testimonies and

particularly for giving us in very clear terms the problems and how they came about from the beginning until now. That makes our job easier. From what we have heard and seen throughout the Republic of Kenya the coastal region is most affected because of the size of the land and the people involved. The similarities throughout the country are overwhelming because land problem is a very serious problem in Kenya and something has to be done. It is true that one can go to court under the new dispensation and try to get his or her rights back but it is also the question of ability to go to court in terms of having access to the right information. One has to know which court and which lawyers to go to. The most critical element is the money needed in litigation because the court process takes a long time and costs a lot but one has to find means to do that. This is one way of resolving the problem. In addition to the legal channel, there is the policy or administrative channel. This is also extremely important. The Government has to look at this problem and see how many people are affected and how many have been impoverished because of the land tenure system. The Government should undertake some very important and perhaps very radical land reforms. There are all kinds of land reforms that have gone on throughout the world but Kenya has to come up with its own land reforms given the structures that exist and the need to settle people. Therefore my question to the three of you is; if we accept the thesis that land reform is important and should be carried out, what kind of land reforms do you think will satisfy the people of Kenya like the landless, the squatters and the people of coastal region in particular?

Mr. Mbwana Nzori: One of the things that we could do is have a change of leadership. The people in the land office have been there since independence and have been recycled. These people do exactly the same thing throughout.

Mr. Najib Shamsam: The inherited colonial laws are not in tandem with the current Constitution. Therefore, they should be repealed and if possible new sub-divisions should be done. All the documents that are there should be checked and if found not to be good they should be rectified. The people who work there should be vetted. Some people have taken loans using the land and now it is the companies who have taken possession. There is a place called Kong'ombe in Mwakirunge, there is a company which used the land title deed to borrow Kshs64 million and never paid. Now the bank has come in and sold the land to someone else. So, the people living there have to be evicted. Such things should be relooked at.

The Presiding Chair (Commissioner Farah): The testimonies that the three of you gave are very important particularly regarding the ten mile coastal strip. My question to you is; I have seen Prof. Kivutha Kibwana's letter of 2007 which he ordered that ground rent for land in the ten mile coastal strip should be stopped but people are still paying. How is it coordinated? After elections there will be a new county government. The ownership of politics, leadership and even making of laws will come to you. This will be an opportunity for you to tell your leaders to make the right laws so long as they are not in contradiction with the new Constitution. Although Prof. Kivutha Kibwana gave the letter, the land owners were not obeying because it is just a mere letter but not a Cabinet decision. It was not a parliamentary law either. These are kind of views that you have presented to us and we will make appropriate recommendations. You should not stop

there but continue with your campaign until the County of Mombasa can take a loan and pay the owner and distribute the land to the people. That is the way forward. That is what majimbo is all about. We thank you and we have no further questions.

Leader of Evidence, can you stand down the three witnesses and bring in the next witness? Is there anything that should be admitted as record?

Ms. Emily Kimani: We had already admitted the documents. Mr. Najib has however brought another document dated 23rd February, 2005 which I pray that it be admitted.

The Presiding Chair (Commissioner Farah): Admitted as prayed.

Ms. Emily Kimani: Next we have Mr. Hassan who raised some concerns yesterday and I request that he be given a few minutes to raise his concerns.

The Presiding Chair (Commissioner Farah): Go ahead, Leader of Evidence.

Commissioner Ojienda: Leader of Evidence did Hassan record a statement?

Ms. Emily Kimani: Yes, he did. He informed me that he recorded a statement later in the evening. However the same has not been confirmed.

(Mr. Hassan Said Rubea took the oath)

Ms. Emily Kimani: Mr. Rubea, you requested for a few minutes to make very brief presentation and now I invite you to do so.

Mr. Hassan Rubea: My name is Hassan Rubea and I am a qualified teacher from Kagumo Teachers Training College in 1977. After that I was posted to Kwale District for five years. After that I was transferred to Mombasa District and I taught there up to 1987 when something happened to me. There was a problem when Tanzanian preachers came to Tononoka grounds. I happened to be there. The police came and told people to disperse. People assembled and started demonstrating towards the Provincial Commissioners (PC's) office. I happened to be there while demonstrations were taking place and a person from the newspaper company took a picture of me. On 1st September, 1987 I appeared in the newspaper. The following week Hon. Shariff Nassir was beaten during Maulid. He was rescued near Makadara grounds. He was not there but the picture made him to start giving me problems. I was forced to say who the perpetrators were. I was told that I was the gang leader. I swore that I did not know anything but they kept on harassing me. I was at Sacred High School and I was given a letter claiming that I deserted duty. I was very surprised and I started panicking. I talked to the headmaster, Mr. Njoroge and he told me that, that was a matter for the Teachers Service Commission (TSC). There was an agent of TSC, Mr. Mwaura. I went to him and he told me that what was written in the letter was final. How can someone desert duty while he is at work or school? They insisted that I have to go to Nairobi. From that time up to this moment, I have encountered problems. I have been denied my right. What happened since then has

inflicted wounds in my life and in my heart. Up to today, I do not believe that these leaders are supposed to lead this country.

When we were under the colonialists they were kind and reasonable. Whenever you wanted to go to their office you had to ask for permission because of the discipline they had. From 1963 up to today, the leaders who are there are not good. I tried to reason with them and get my right but they wrote me another letter that I had to appear in person in Nairobi in 1989. I was taken thereby Said Hemed. When I reached in Nairobi, he ran away. I slept outside Hilton Hotel with the security guards.

The Presiding Chair (Commissioner Farah): Interruption from the Chair! Mr. Rubea, you are a very learned man and I respect you. I respect that you are a teacher who had been entrusted to teach our children. Today is Friday and because of the time fact, we request you to tell the Commission what your grievances are. If we go that way the story will be long and time will be wasted. The Commissioners want to know what you have suffered from and what your recommendations are.

Mr. Hassan Rubea: I want to get justice. I want someone to answer the case. I want to be with the Truth, Justice and Reconciliation Commission (TJRC) to inquire what I did. If I have not done anything wrong, then I need all the dues which I lost for all those years. If I did something wrong let them prove it and then I will accept. Up to now, I just control my emotions but things have not been good for me.

Commissioner Ojienda: Mr. Rubea, your point is that you were working at Sacred Heart Primary School as a teacher and you were terminated on the grounds that you had deserted duty and yet you were at work. Did you try to go to court at that time?

Mr. Hassan Rubea: People told me to go to court but I did not have money.

Commissioner Ojienda: Were you paid anything?

Mr. Hassan Rubea: I was not paid anything.

Commissioner Rubea: What have you been doing since that time?

Mr. Hassan Rubea: I am writing books and also carrying out tuition. I am one of the best mathematics teachers in Mombasa Town.

Commissioner Ojienda: Between 1989 and now, how many books have you completed?

Mr. Hassan Rubea: I have written three books but it is a long story. I have to print a few books and sell on my own like a hawker. I would have been a very useful mathematics teacher but they made me a zombie.

The Presiding Chair (Commissioner Farah): Do you have your letters of termination or any documentation?

Mr. Hassan Rubea: I have copies here.

The Presiding Chair (Commissioner Farah): Please hand over a copy to the Leader of Evidence.

Mr. Hassan Rubea: I was given a letter by the headmaster recommending that I am the best person with the pupils. After six months, it was said that I had deserted duty.

Commissioner Ojienda: How old are you now?

Mr. Hassan Rubea: I am 55 years old. I have lost time; I have lost the sweetness of this life. I have lost everything. I even do not know what to do. This is Kenya behaving like wildebeest.

Ms. Emily Kimani: Presiding Chair, I pray that the documents that this witness has furnished the Commission with be admitted to be part of the Commission's record.

The Presiding Chair (Commissioner Farah): All documents are admitted as part of the Commission's record.

Ms. Emily Kimani: Mr. Rubea, I have one question for you. Before you told us about your employment issue, you talked about some incident in 1987 where there was police brutality. What recommendations would you give to the yet to be constituted National Police Commission?

Mr. Hassan Rubea: Human beings are created differently from animals. We have the power to reason and we have the power to think, but if we behave like animals then we do not serve the purpose of being a human being.

Ms. Emily Kimani: What recommendations would you give to the yet to be constituted National Police Commission on police brutality?

Mr. Hassan Rubea: That they should behave like human beings. Just that! If we are human beings we will be very happy if they behaved that way. If we take the role of an animal then we will not live peacefully.

Ms. Emily Kimani: Thank you very much, Mr. Rubea. I am very sorry about what happened to you. I have no further questions for you.

The Presiding Chair (Commissioner Farah): Thank you very much, Mr. Rubea for your emotional presentation. We understand what you went through. We understand that you were a person who was very useful to the society, teaching our children mathematics which is one of the best subjects in scientific development, but all of a sudden, you were reduced to nothing. So, I ask my brother to ask for any clarification from you.

Commissioner Dinka: I have no question but I want to thank Mr. Rubea for coming to share his terrible experience with us. I would like to wish him and his family better days to come.

The Acting Chair (Commissioner Namachanja): I am glad that you insisted on being heard by this Commission because it is your last resort. I am sorry that we have not had time to hear you thoroughly because you have a lot to share from the bottom of your heart. We want to assure you that we will take your case seriously and if you have not recorded your statement, we want detailed information concerning this case so that we can also do our best. Having said that, I only have one question; was the date of the demonstration a working day?

Mr. Hassan Rubea: You can get the newspaper of 1st September, 1987. It explains everything.

The Acting Chair (Commissioner Namachanja): From your memory, was it a working day?

Mr. Hassan Rubea: No, it was not a working day.

The Acting Chair (Commissioner Namachanja): Did you have any political aspirations?

Mr. Hassan Rubea: I did not know anything about politics. After that I became a politician not for vying but because I now wanted to fight for the rights of people. I wanted to fight for the rights of those who had been discriminated against. I am a member of the Mombasa Republican Council now because I got frustrated to the point that we have to ask for separation. If that is going to be the remedy, then let it be.

The Acting Chair (Commissioner Namachanja): My brother, the bitterness that you have and what most Kenyans have is the reason why this Commission was set up. It was realized that there was a lot of bitterness among Kenyans. Some of the issues that you have shared and others that we have heard could not be shared in a court. Since you have come before us, we are pleading that you give us a chance to look at the issues that you have shared with us so that we find a solution. That is my appeal to you.

Mr. Hassan Rubea: I just want to assure you that I have tried many things. I even stopped the President with his motorcade. I shouted in front of the President so that he can hear what I have but it was in vain. When I heard about this Commission, I decided to come.

The Acting Chair (Commissioner Namachanja): We are still around and if you feel that you can meet some of us then we are ready to meet you.

The Presiding Chair (Commissioner Farah): Thank you very much, Mr. Rubea. There was a teacher in Garrissa like you. The Provincial Commissioner (PC) visited his classroom as he was teaching. He introduced the PC to the children that the famous PC

you have been hearing about is here and he is a short man. From there on, he was prosecuted and beaten to the extent that he is now a cripple on a wheel chair. We have taken his case up in the same manner that we are going to take your case up.

Leader of Evidence, you can stand the witness down and bring in the next witness.

Ms. Emily Kimani: Commissioners, our witness is Witness Code 9.

(Mr. James Karegi Kirathe took the oath)

The Presiding Chair (Commissioner Farah): Proceed, please.

Commissioner Ojienda: Leader of Evidence is that tab 009? It refers to violations by Standard Chartered Bank. We do not have the memorandum.

What kind of violations are we dealing with in terms of categorization?

Ms. Emily Kimani: The witness has two memoranda which he furnished us with: One has to do with the land issue where he thinks the perpetrator is a company. The other one is the one on Standard Chartered Bank where he claims he was defrauded.

Commissioner Ojienda: How much money?

Ms. Emily Kimani: He wants compensation of Kshs219 million.

The Presiding Chair (Commissioner Farah): What we need to do is to save time. Since he has given you the memoranda, he should just highlight the problem and give you recommendations.

Ms. Emily Kimani: I had informed the witness earlier and he was in agreement. So, he has a very brief summary. He has taken it upon himself to furnish us with these very detailed memoranda.

The Presiding Chair (Commissioner Farah): Proceed, please!

Ms. Emily Kimani: Mr. Kirathe, how are you this afternoon? Could you please tell us your full names and what you do for record purposes?

Mr. James Kirathe: My name is James Kirathe and currently I am not active due to ill health, as a result of what happened to me.

Ms. Emily Kimani: Earlier on you furnished us with very detailed memoranda with supporting documents. I now request you to quickly highlight the issue about Standard Chartered Bank and your recommendations which will be taken on board.

Mr. James Kirathe: First of all, I would like to take this opportunity to thank God and the Truth, Justice and Reconciliation Commission (TJRC). Indeed, the TJRC came as a solution to those that have been violated for many years.

Now, going to my matter, it was on 16th April, 1982, between 10.00 a.m. and 10.45 a.m. when the payment that was made to me by the City Council left the accounts department and went straight to the Kimathi Street branch of Standard Bank. In 45 minutes, even though the City Council cheque was for Kenya Commercial Bank, it was transacted and all the money amounting to Kshs1.8 million was taken under the Standard Chartered Bank Limited. Soon, that was revealed to me because some of the staff at Standard Bank struggled to contact me, especially the accountant. This was because according to him, it was never in his training or practice that somebody's account would be transacted against the mandate or consent of the account holder. That day was a Friday and I got the information at 3.00 p.m. In fact, the bank was closing at 12.00 p.m. and so, I went through the behind door. They reported that the manager was not there and so, I had to go back on Monday to confirm from the statement that actually, that is what had happened.

Commissioner Ojienda: Mr. Kirathe, the money that came into the account from City Council was for what payment?

Mr. James Kirathe: It was for a contract that I had with the City Council. The details in are my memorandum. I was awarded a contract to redecorate during the first OAU visit to the country. It was for all the Presidential routes and institution buildings.

Commissioner Ojienda: Fine! The Standard Chartered returned the money without telling you.

Mr. James Kirathe: In fact, the City Council disputed what I had done. After I went through the court process, on that day I was with the legal officer of the City Council waiting for that cheque. But, somehow, my partner with the bank colluded. That is what I had explained earlier.

Commissioner Ojienda: Now, you have gone to court over this matter.

Mr. James Kirathe: Yes. According to what I have stated there, I did not go to court for the case because the bank had already admitted after investigations. Immediately I wrote to the manager and he did not reverse the transactions that were done, I went to Central Police Station and wrote a statement. Inspector Njenga moved to the bank investigated and proved that my claim was genuine. He went to the head office of the bank. He was told that I should be asked to report that matter to the head office. I did that immediately and internal security investigation department of the bank moved in to carry out the investigation. It took me over three months going through weekly interrogations. Finally, he told me that I have got a genuine claim from the bank, but I told them to give me a letter to that effect. They told me that they could not give me a letter because they had first to report to the officers that had given the case to investigate. But they guaranteed

me that as soon as that was done, the bank would communicate to me. That is precisely what happened.

(The witness broke down)

The Acting Chair (Commissioner Namachanja): Sorry, Sir. We know that it is painful. Please, take your time.

Mr. James Kirathe: Before this issue happened, I was a customer with this bank for about ten years. We had a very good customer/bank relationship. When I went to report, I was attached to a director called Sam Mumbi. Indeed, he helped me very much. He guided me especially on the issues of legal implications, since it was a partnership account and it was my partner who colluded with the management of the bank to defraud me.

Ms. Emily Kimani: Mr. Kirathe, given your story, what is it you wish the Commission to recommend? What is it that you want done?

Mr. James Kirathe: Maybe, before I do that, I would like to say that this case has been investigated by all the Government investigation agencies. After the bank refused to honour their obligation to pay me and through political influence threatened the lawyer that I had at that particular time, I moved into the present office and was attached to the Deputy Permanent Secretary for *(inaudible)*. He sent me to the Attorney General. Very unfortunately, when I went there, I found that the late Justice Mathew Muli had just stopped going to court. As you can remember, after he was appointed, he continued going to court to clear his files. He told me: "If you had come here when I was going to court, I would have asked you when to come for your cheque. Since I do not know if the bank had not *(inaudible)* I have to order for an investigation of this case, because it was only done by the Central Police and the bank's internal security. " I was referred to Noah arap Too.

(The witness broke down)

I have given the provisional documents. The Criminal Investigations Department (CID) did investigate the case and, at the end of the investigation, Noah arap Too referred me to the Senior Director's lawyer of Hamilton Harrison and Mathew to tell me why they had not settled my claim.

(The witness broke down)

In brief, because of the time factor---

The Acting Chair (Commissioner Namachanja): No! We are here to listen to you. Give us all the facts concerning this case, please.

Mr. James Kirathe: When I went to Somen. They only told me how the bank could pay me. He expressed a very shocking and devastating sentiment. In my case, he was for negotiation but he feared whether I would be able to get a lawyer that will convince them to sit on a round table and negotiate. I told Mr. Somen that as a layman, I could understand what he was saying, because I believe that all lawyers went to the school.

The following morning, I was to report to the President's office for updates, hence to the Attorney General. At 6.00 a.m. whom did I find in the office of the Deputy Permanent Secretary? It was Somen. I was shocked. I was told to come back at 10.00 a.m. After that, I proceeded to update the Director of the CID. When I went there he told me that I had to quickly file a paper to court because the bank was using delaying tactics so that, eventually I would be time barred even to get the remedy. I did not have the money and asked him: "What do I do?"

He referred me to three lawyers who represented the bank during hon. Njonjo's constitutional case. I opted to go to Muthoga. He told me to tell them that I had been referred to them. If there was anything, they were to report back to him.

After one week, Mr. Muthoga called and said: "Come and collect your file. If you do not have Kshs10, 000, I do not even want to have a look at it again." I did not know what was happening until recently. I do not think you need elaboration. What did I do?

Commissioner Ojienda: Mr. Kirathe, I want to take you back just a bit. When money was released from the City Council to your account, was it withdrawn by your partner or was it returned back to the City Council as fraudulent payment?

Mr. James Kirathe: The account was transacted. All the money---

Commissioner Ojienda: But there is paper trail in the bank. You do not transact without details. Here there is a beneficiary who withdrew the money.

Mr. James Kirathe: The cheques are here in the affidavit I have given. The manager issued a cheque. I had two cheque books which were not completely used, but he issued another fresh cheque. That is another proof of the fraud.

Commissioner Ojienda: In whose name?

Mr. James Kirathe: In the account's name without my consent and in disregard of the mandate.

Commissioner Ojienda: But who was the beneficiary?

Mr. James Kirathe: The beneficiary of that money was my partner. Some money was withdrawn in cash and the other to Gimco Agencies.

Commissioner Ojienda: Did you follow your partner as you were following the bank?

Mr. James Kirathe: Yes. In fact, we had a discussion.

Commissioner Ojienda: Was he arrested?

Mr. James Kirathe: According to Inspector Njenga, when he investigated that case, he told me that my case was more civil than criminal and it would take some time. So, sure I do not know what happened because it was not only my partner but also bank officials who were involved.

Commissioner Ojienda: So, what were the instructions for signing? Was it two partners to sign?

Mr. James Kirathe: Yes.

Commissioner Ojienda: Was your signature forged?

Mr. James Kirathe: I would not say that. I think they only used his signature. That is why the accountant of the bank--- Since the accountant has to sign when a transaction is done, he actually had to look for me. He had refused but he was threatened by the manager.

Commissioner Ojienda: So, the manager colluded with your partner. Where is your partner now?

Mr. James Kirathe: He is in the reserve in a very devastating state. Unfortunately, I do not think that he actually benefited from that deal. If he did, since it was money that came on a platter, he misused it.

The Acting Chair (Commissioner Namachanja): Leader of Evidence, you can now guide the witness.

Mr. James Kirathe: Can I go to the last investigation, please? After that was done, I wrote the first complaint. I was explaining how I ended up in court. I did not go to court to case with the bank. I want this to be very clear because they have already admitted the liability issue. I was going to court to get the decree.

Guided by the head office bank, we had to go through the dissolution of the partnership because the executive director of the bank told me that he would not like that when they settle me down. My partner who was used in collusion to benefit--- So, we went to court for dissolution of the partnership which, in essence, the Judge now directed it to go to arbitration, which was intervened against by the people who had the money. Finally, I had to use the President's office to get the results. This is because from 1983 to 1986, I was reporting to the President's office and my lawyer and I were being threatened. The arbitrator was adamant to release the results. Nevertheless, he did with a minimal amount of around Kshs200, 000. The bank refused to pay me even that amount.

Ms. Emily Kimani: You have just told us that the bank refused to pay you the Kshs200,000 that was arrived at upon arbitration. What reasons did they advance?

Mr. James Kirathe: Because of the bank's influence and through their lawyers, political influence started coming in. I would like to mention that when my first lawyer was withdrawing, he told me that he was withdrawing because he was threatened even with deportation because he was a European. He told me that he owned a farm and other properties in Karen and he feared losing all that. He also feared for his life. He asked me if I had a more influential person than the ones who were threatening him. That is why I resorted to go to the President's office. This is because I could not imagine that there would be anybody who was more influential in the country than the President's office.

Ms. Emily Kimani: You said that the criminal issue would take long. Did you ever try to follow it up after?

Mr. James Kirathe: No! I did not follow that up.

Ms. Emily Kimani: Mr. Kirathe, given all that happened, what would justice be to you?

Mr. James Kirathe: Like I said earlier, the TJRC has come as a solution to violated victims. Through its constitutional mandate, I believe that I am going to be compensated.

Let me touch on the last investigation. In 2004, I went to the KACA. They looked at my documents and all that had happened and told me: "We are not going to book it because this is an investigated case. We want to review those investigations." So, they went to the CID headquarters and all other investigations that were done. When they encountered frustration from the bank, they advised me that they could not book that case, unless their director instructed them to do so. They advised me to write to the Chief Justice since my case squarely lay under his docket and mandate. I wrote to him and the letter is there. I copied it to the Director of KACA but, unfortunately, to date I have never gotten a reply.

Ms. Emily Kimani: Thank you very much, Mr. Kirathe. I empathize with you for what happened. You have furnished us with two memoranda. Do you wish that the same form part of the Commission records?

Mr. James Kirathe: Yes.

Ms. Emily Kimani: Presiding Chair, I pray that the two memoranda and supporting documents be admitted to form part of the Commission's records.

The Acting Chair (Commissioner Namachanja): They are so admitted.

Ms. Emily Kimani: I have no further questions for you. You have exhaustively taken us through what you underwent, which is a very unfortunate scenario. I pray that God may

give you grace to keep on keeping on. Thank you for taking time to be before us this afternoon.

Mr. James Kirathe: I am also thankful to the TJRC.

The Acting Chair (Commissioner Namachanja): Commissioner Dinka, do you have any questions to the witness? Commissioner Ojienda has been journeying with you in your testimony and so, he has asked most of the questions. I just have one question on how this fraud had impacted on your life and family.

Mr. James Kirathe: First, from that time to date, I have been in and out of hospital. Secondly, none of my children attained university education. Even the one I tried to take to St. Andrew's University in Bulawayo did not finish. My son died in 2010 through the same frustrations.

(The witness broke down)

I was a member of all the leading clubs in the country but, today, I am a member of none. I lost all friends. You can imagine what the members of my family that I was supporting have been going through for all those years.

Briefly, that is what I can say.

The Acting Chair (Commissioner Namachanja): The public present, it is one thing reading about corruption and another about fraud. I am happy that you have been present to observe and experience what it means.

Mr. James Kirathe: My wife is here with me, but I have done all in testifying what we have gone through.

The Acting Chair (Commissioner Namachanja): Maybe if she could just stand so that we recognize her.

(Mr. Kirathe's wife stood up in her place)

Pole mama and thank you for sticking around and being there for your husband. Mr. Kirathe, I do not have any questions for you. You have shared your story and we have just received your memorandum now. We shall go through it and analyze it. I request our lawyers seated there that if they have any issues that they would like to check with you, especially what will help them analyze this case further, to get in touch with you, at least, today.

Sorry for the emotions that you have exhibited. It is normal because these are issues that have affected you and will continue affecting you. The young man seated next to you is a counselor. Please, also see him if you need any further assistance concerning your wounded soul.

Thank you so much.

Leader of Evidence, please, step down the witness and call in the next one.

Ms. Emily Kimani: Presiding Chair, we do not have any other witnesses. But with me here is a memorandum from the Kenya Muslim Youth Alliance. It was furnished to us by their representative, Mr. Hamisi Mwanguzo, who I will request to stand. They wish that the same forms part of the Commission's records. I, therefore, pray that this memorandum be admitted.

The Acting Chair (Commissioner Namachanja): It is so admitted.

Ms. Emily Kimani: That is all we have from the Leader of Evidence desk for today.

The Acting Chair (Commissioner Namachanja): Thank you so much, Leader of Evidence and your team.

Fellow Kenyans, we have come to the end of our hearings today in Mombasa, but we continue with this journey for the rest of the coastal region that we have not been to. We are yet to conduct hearings in Kwale and Wundanyi. That is where we shall be headed next. Thank you so much for being there for the victims. This is the reason for the public hearings; that you be there and journey, empathize with them and affirm the pains that they have.

On behalf of the Commission, I would like to thank the witnesses that appeared before us today. They are Rosemary Nyambura, Hamisi Rashid, Nzori, Najib Mohamed Shamsan, Hassan Seid Rubea and James Kirathe. On behalf of the Commission, I would like to thank everybody who participated in facilitating this process of public hearings. Thank you so much and God bless you all.

(The Commission adjourned at 12.30 p.m.)