

9-12-2011

## Public Hearing Transcripts - Nairobi - RTJRC12.09 (NHIF Auditorium, Nairobi)

Truth, Justice, and Reconciliation Commission

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### Recommended Citation

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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION ON MONDAY, 12<sup>TH</sup>  
SEPTEMBER, 2011 AT THE NHIF AUDITORIUM, NAIROBI**

**PRESENT**

<b>Margaret Wambui Shava</b>	-	<b>The Presiding Chair, Kenya</b>
Berhanu Dinka	-	Commissioner, Ethiopia
Gertrude Chawatama	-	Commissioner, Zambia
Ahmed Sheikh Farah	-	Commissioner, Kenya
Tom Ojienda	-	Commissioner, Kenya
Tom Chavangi	-	Leader of Evidence

*(The Commission commenced at 3.35 p.m.)*

*(The Presiding Chair (Commissioner Shava) introduced herself  
and the other TJRC Commissioners)*

**The Presiding Chair** (Commissioner Shava): As we concluded the Nyanza hearings, the Commission provided the Government with an interim report and requested an extension of six months to enable us to complete our work. We are happy to confirm that the Commission has been granted the six months extension to achieve its mandate and it is proceeding with the rest of its hearing schedules to those parts of the country it has yet to reach. We thank the Government for the support and assure Kenyans that the TJRC will deliver on its mandate.

After this week's hearing in Nairobi, we proceed to the Rift Valley, Central and Coast regions before embarking on thematic and institutional hearings. The full revised schedule is out and it is also available on our website.

With those remarks, I now invite the Leader of Evidence to introduce our witness for today.

**Mr. Tom Chavangi:** Thank you very much, Hon. Commissioners and Madam Chair. For today, we were to have two witnesses before us. The first witness was Grace Kaindi, an Assistant Commissioner of Police. She was supposed to appear before this Commission at 9.00 a.m. However, she communicated to the Commission and Madam Chair, you will be in a position to elaborate on that. The second witness, who is the Commissioner of Lands, Mr. Zephania Mabea, was summoned to appear before this Commission at 2.00 p.m. today but so far we have not received any communication. I also leave it to the Presiding Chair to elaborate on that and give directions. Thank you very much.

**The Presiding Chair** (Commissioner Shava): Thank you, Leader of Evidence. From what you have told us, the Commission had two witnesses scheduled for today. The

Commissioners are indeed aware that the Assistant Commissioner of Police, Grace Kaindi, the first witness, had communicated. We received communication from her lawyer indicating some challenges and we agreed to reschedule this witness. So, please, ensure that fresh summonses are issued to the first witness.

**Mr. Tom Chavangi:** I am much obliged, Presiding Chair.

**The Presiding Chair** (Commissioner Shava): In the case of the second witness, the Commissioner for Lands, Mr. Mabea, we are not aware that any communication has been received from this witness. Can you confirm that this is the position?

**Mr. Tom Chavangi:** So far, the Commission has not received any communication from this witness. Today, I endeavored to call the office of this witness at about 3.00 p.m. and I spoke to the secretary and she said that this witness is in Mombasa. I reminded the secretary that summons was issued on 1<sup>st</sup> September, hence the need for the witness to have communicated to us before he left for Mombasa. I, therefore, left my name and my phone number with the secretary so that the witness could communicate with us to give us his position but so far, he has not communicated to give us his position. So, I leave it to the Chair also to give directions on that.

**The Presiding Chair** (Commissioner Shava): Thank you, Leader of Evidence. Can our technical team assist us by projecting the TJRC Act and in particular Section 7? The Truth, Justice and Reconciliation Commission Act is very clear. It has very clear provisions on the powers of this Commission. In particular, we would like to highlight Section 7. If we look at Section 7(1), you can see that we have all powers necessary for the execution of our mandate. Section 7(2) is more specific in terms of what those powers are. On Section 7(2)(g), you will note that the Commission has powers to summon any serving or retired public officer to appear in person. Leader of Evidence, can you confirm whether the Commissioner for Lands was summoned and also in terms of Section 7(2)(h), whether those summonses were actually received?

**Mr. Tom Chavangi:** Thank you, Chair. The Commissioner for Lands was served on 1<sup>st</sup> September and our process server did his return of service which was acknowledged by the secretary to the Commissioner and it was stamped at the back with the stamp of the Commissioner for Lands, Ministry of Lands. It was received at about 11.05 a.m., on 1<sup>st</sup> September. That is the confirmation that we have. So, the summons was issued as required by the law.

**The Presiding Chair** (Commissioner Shava): In that case, then I will draw our attention to Section 7(6) of the Act, which states clearly that:

“Any person who without lawful cause fails to appear before the Commission commits an offence. One is then liable to a fine of Kshs100, 000 or to imprisonment for a term not exceeding one year or both.”

Section 7(2)(i) states that “The Commission may request and receive police assistance as needed in the enforcement of its powers.” Section 7(7) provides that “The police shall, on request being made by the Commission, provide the Commission with such service and assistance as may be required by the Commission.”

The Commission, therefore, now directs that the Legal Department immediately requests the Commissioner of Police to cause a warrant of arrest to be issued against the second witness, that is, the Commissioner for Lands, Mr. Zephania Mabea and this witness should immediately be produced before the Commission without any further delay. Is that clear, Leader of Evidence?

**Mr. Tom Chavangi:** I am much obliged.

**The Presiding Chair** (Commissioner Shava): I think that the Commission has been judicious in the exercise of the robust powers it has been provided in terms of the TJRC Act but we feel that the time is now appropriate to take stern measures which should serve as a warning to any other witness who may be tempted to waste the time of the Commission and the time of Kenyans. Leader of Evidence, I hope that is clear. You can then tell us what is in store of us tomorrow. How many witnesses are scheduled for tomorrow and please tell us their names?

**Mr. Tom Chavangi:** Tomorrow, Presiding Chair, we have two witnesses. The first witness is the Permanent Secretary, Ministry of State for Provincial Administration and Internal Security, Mr. Francis Kimemia. I have communicated with his office and there are all intentions that he will appear before this Commission tomorrow at 9.00 a.m. I have just received a call from the Minister of State for Defence, Mr. Yusuf Haji. The secretary, called Irene, whom I communicated to earlier today, has confirmed that the minister will attend the hearings tomorrow at 2.00 p.m. So, those are the two witnesses that we have for tomorrow.

**The Presiding Chair** (Commissioner Shava): Thank you very much, Leader of Evidence and with that our proceedings for today are therefore, adjourned. We will convene tomorrow at 9.00 a.m. at this venue.

**Mr. Tom Chavangi:** Much obliged, Presiding Chair.

*(The Commission adjourned at 3.45 p.m.)*