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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON 15TH SEPTEMBER, 2011 AT
THE NHIF AUDITORIUM, NAIROBI**

PRESENT

Gertrude Chawatama	-	The Presiding Chair, Kenya
Margaret Wambui Shava	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Tom Ojienda	-	Commissioner, Kenya
Ahmed Farah	-	Commissioner, Kenya
Tom Chavangi	-	Leader of Evidence

(The Commission meeting commenced at 10.30 a.m.)

(Opening Prayers)

The Presiding Chair (Commissioner Chawatama): Please, be seated. On behalf of TJRC, I would like to welcome you to this session. I will start by introducing my fellow commissioners.

*[The Presiding Chair (Commissioner Chawatama)
introduced herself and other members of the Commission]*

We will start by setting our ground rules. As we were praying, there is a phone that rung. I will ask every person in this hall to switch off their phone. Second, witnesses will be called to give their testimonies. During the time of giving testimonies, we do not want any disturbance. Due respect should be given to witnesses even if you do not agree with some of the things they say. Please, keep your peace. We want to give them the respect due to them and listen to them quietly. We also want to know whether there is any lawyer present.

Mr. Philip Robi: My name is Philip Robi. I am appearing for the Town Clerk, Municipal Council of Kakamega.

The Presiding Chair (Commissioner Chawatama): What is the name of the Town Clerk?

Mr. Philip Rodi: Mr. Newton Mukabwe.

Mr. Patrick Otieno: My name is Patrick Otieno. I work for Otieno Oyoo and Company Advocates. In these proceedings, I am instructed to appear for one Chris Abir, a Director of Women's Fund, and a company operating within Siaya County.

The Presiding Chair (Commissioner Chawatama): Thank you, counsel. You are both welcome to today's proceedings. I would like to know whether you have any preliminary issues to raise.

Mr. Philip Rodi: I was going to seek for the adjournment of the hearings today. The clerk is not here for reason that he is indisposed. There are some documents that we were not able to secure which I need time to present to the Commission. I have made that indication to the Leader of Evidence. I need to prepare and get ready to proceed. So, the instructions I have as of now are insufficient and may not assist so much as I would want them to.

Mr. Tom Chavangi: Thank you, Presiding Chair. Indeed, I had a discussion with counsel Philip Rodi this morning. What he has stated before the commissioners is what he stated to me. However, I had some issues that I wanted to raise with him also with regard to this application. For the attention of the commissioners, the summonses to the Kakamega Municipal Council Clerk were received on 5th September, this year. The hearings are slated for today, 15th September. Counting Saturday and Sunday, those are ten days within which I think the counsel should have communicated to the Commission, especially with regard to the documents that he wants to present before this Commission. Our rules states - and it is also stated in the letter of invitation - that any document or information that they would like to share with the Commission should be released or surrendered within seven days. I believe that counsel had sufficient time. They also sent some documents by way of courier service on Tuesday this week using Easy Coach. I happened to receive the documents this morning. They were sent on Tuesday and received yesterday evening. I happened to have seen them today morning. I have not had time to go through the documents sent by counsel to Kakamega Municipal Council Clerk. Yesterday, we tried in vain to call the Kakamega Municipal Council but their numbers were not going through. That was also confirmed by the planning officer and the legal clerk who are present here. That number has always had a problem. They gave me alternate numbers of the legal clerks. These are cell phone numbers of the Town Clerk in case there is something we would like to have from the municipal council.

My last concern is about the Town Clerk, who is indisposed. However, the counsel has not produced any letter from the doctor to show proof that the Town Clerk is actually indisposed. So, that is my reaction to the request made by counsel. I leave it to the commissioners to make a decision on that.

The Presiding Chair (Commissioner Chawatama): Counsel, you have not told us in what way your client is indisposed. Why is he not here today? Where is he?

Mr. Philip Rodi: The Town Clerk, as I said, is indisposed, meaning that he is unwell. He could not travel to Nairobi to attend today's hearings.

The Presiding Chair (Commissioner Chawatama): Is there no letter from the doctor?

Mr. Philip Rodi: No. I was not given any letter to present today. I can secure a letter or any other document when given a chance.

The Presiding Chair (Commissioner Chawatama): Have you prepared a list of documents that you wish to bring so that we know whether or not they will be required today?

Mr. Philip Rodi: I have not prepared them. I was instructed three days ago. So, I am yet to get all the documents. That is the reason I was seeking for time.

The Presiding Chair (Commissioner Chawatama): What is the nature of documents that you have not given the counsel?

Mr. Injendi: Madam Presiding Chair, we have had problems in getting all documents together. We have carried only two files today. We needed more files but we could not trace them in the registry. That is why we instructed counsel to seek more time. I am sure that given time, we will present all the documents that the Commission needs to address this matter. To add on that, the Town Clerk is new at his station and he needs time to know what happened concerning this matter because he was not there at that time.

The Presiding Chair (Commissioner Chawatama): Were you there?

Mr. Injendi: I was not there at that time.

Commissioner Shava: My remarks will now go to counsel and the legal officer. We held hearings in Kakamega several months ago of which you are aware. The issues that arose there will not be new to you. In my view, you had all the time to prepare for a response. It was made clear that we would be having our sittings later-- even if the dates were not communicated-- to discuss those issues. I do not think you have a good reason why you are not prepared. The documentation that you are seeking is your own. Do I have a clear understanding of that? Is that what you are saying? Is it your own files that you are unable to find?

Mr. Injendi: Those are our files and we are very sorry about this. We promise that next time, we will have all the documents that are needed to assist the Commission.

Commissioner Shava: My second remark I wish to make is that even if the Town Clerk is new in office, it is the office which is being asked to appear before the Commission to respond to certain issues. So, this is not a personal office. So, whether the person holding the office is new or not, they should be in a position, with the assistance of officers such as yourself seated here, to answer the kind of questions we will put to you. The Chair will assist us to make a ruling.

Commissioner Farah: With the permission of the Presiding Chair, I want to add to what my fellow commissioner has said, that indisposed is a very big word. You, as lawyers, knew that as you travelled all the way from Kakamega to come and appear in Nairobi,

and yet your client is indisposed, it would have been fair to bring a document to show that. One can wake up early in the morning and find themselves with a cold. Can that be defined as indisposed or is he really a sick person who has been going to hospital and who cannot travel all the way to Nairobi? If someone cannot travel to Nairobi that means that he is admitted in hospital or he has some illness that can be proved. This is a very serious hearing. We are a truth-seeking Commission. We are on a very serious path. The time left for us is very short. We are also disturbed by the way our time is being wasted. I will leave the rest to the Presiding Chair.

The Presiding Chair (Commissioner Chawatama): Counsel, as you have heard, we are not a permanent Commission. Today will be out the last day to hear matters from Nyanza and Western provinces. On Sunday, we will move to the Rift Valley Province for 42 days. So, a month from now, we will be in another place where we have scheduled hearings. So, we do not have the luxury, unlike the courts, to adjourn matters to another day. So, when we sent notices to people to attend, we expect that those who receive them are serious enough not only to appear but also to ensure that they are ready. We run into the danger of taking into considerations the testimonies that are before us, excluding the testimony of the Town Clerk. So, we would have heard only one side of his testimony. We run the danger of taking into consideration what we heard when we were in Kakamega.

Mr. Injendi: Presiding Chair, we are quite sorry about this and we have taken the concerns of the Commission very seriously. As the counsel has asked the Commission, if you give us time, we will put everything before the Commission.

The Presiding Chair (Commissioner Chawatama): We will consider whether we can slot you in at a later date, failure to which we will proceed with the evidence that is before us.

Mr. Injendi: Thank you.

Mr. Patrick Otieno: Yes, Presiding Chair. He came to me as one of the directors. The other directors are out of the country at the moment. The summonses did not have particulars. It is alleged 'irregular or unlawful acquisition of land.' When we received it, we went to the documents and got the basic documents, which is basically a memorandum of understanding and a lease signed between the firm and the Commissioner of Lands on behalf of the two councils; that is, Bondo County Council and Siaya County Council.

It also alleged degradation of the environment and we managed to trace documents that show that, indeed, there are annual environment impact assessments which have been lodged every year without complaints from the concerned agency. This morning, I went to the Leader of Evidence's office and I requested him that as far as the summons was concerned, to me, it was not very clear. It did not have clear particulars and it has been very difficult for us to respond to the allegations. He gave me two documents; a document that is an outline of the allegations and a memorandum to the Commission but

I left his office. Between the time he gave me these documents and now, I have been able to do seven pages of the outline. I have not touched on the memorandum but it has been difficult for me to understand the outline because it has 42 documents that it refers to. None of them has been given to me and they are very critical. They talk of a survey report that says there has been an encroachment on privately owned land. It talks of a research finding that says that there has been pollution. Those have not been shown. Because of this, I feel that for this Commission to fulfill its mandate, we need time to look at these documents and give an answer to them. If that is allowed, I think it will be easier because he will come up with a report supported by other documents.

I wish to state that even as we speak today, the farm had a scheduled meeting with the communities around. There are structures on the ground by which they meet regularly. They had a meeting last week on Thursday where they agreed on the way forward and how to harmonize their relationship. There are structures established and one of the committees is headed by the District Commissioner. There are two communities involved here. The farm is on a riverbed or a swamp that separates two councils; Bondo County Council and the Siaya County Council and the two councils fall in two different districts as we have administrative boundaries today. They have two committees; on one side, there are the farmers headed by a technical committee. They had a meeting last week and were supposed to have a meeting today. Unfortunately, my client who is the director that I am with here today is unable to do that.

In our view, my client is very keen to let the truth be known. The only problem is that we have come here ill prepared because we did not get the full allegations facing us. I wish to point out that my client travelled yesterday, and while he was here, his offices in Siaya were served with the summons issued by Kisumu High Court in Civil Case No.141 of 2011 and the plaintiff in that suit is Imboyala Swamp Farmers Society against Bondo County Council, Siaya County Council and Dominion Farms Limited. I have not read the pleadings because they were served after Danson left my office at Yala.

I am bringing this out in that clear darkness and I was going to ask the Commission whether the two processes; the court litigation and our appearance here, may go hand in hand or depending on what the allegations are, whether one process may prejudice the other. I have talked about the technical meetings and the regular meetings with the communities. I was also going to ask the Commission to let me know whether proceeding with those processes is likely to either prejudice or embarrass the proceedings before this Commission.

Those are the several issues I wanted to raise, but noting the time constraints of the Commission, on our side, if we get 14 days, we should be able to put up a memorandum. I realize that the part I read, I think what I did is deficient because the allegations are very specific and it will require us to answer to them. I am constrained to plead with you to give me an adjournment. I will also once again go to the office of the Leader of Evidence to give me the documents that are missing from what he gave me this morning.

The Presiding Chair (Commissioner Chawatama): Leader of Evidence, could you address the issue of the request for the adjournment and on whether service was properly effected and at the right premises. Also, address the issue of the matter being before court, whether or not these proceedings will prejudice the matter before court or the other way round.

Mr. Tom Chavangi: Thank you very much, Presiding Chair. I do sympathize with counsel because from his application, we can clearly see that he is grappling in darkness on the issues before this Commission. I would like to state that the rules of service under the Civil Procedure Rules are very clear and in terms of our work as a Commission, we are not a court. So even our service is not bound by the rules of court *per se*. The fact that these summons were served at an outlet which eventually sent the summons to the Managing Director, Mr. Chris Abir, indicates that Mr. Abir indeed received the summons.

I would want to state very clearly before this Commission that we are not a court of law; we are a non-adversarial, non-retributive Commission; so the rules of engagement in terms of the law of evidence and other laws or statutes that pertain to issues of service do not apply strictly to this Commission. As per our service, I believe that they were actually properly served to the Managing Director of Dominion Farms, Mr. Chris Abir.

The particulars stated in the summons for us to attend to are particulars for irregular acquisition and degradation of the environment downstream. What Dominion Farms needed to do was just to respond to that but not to ask us for further particulars in terms of them wanting to understand what the Commission wants to get from them. That is supported by the fact that they are going to have meetings with farmers to harmonize their relationship. That clearly shows there is a dispute. Our letter of invitation is very clear and if I show it to the Commissioner, it is very clear. That is why we give them time to respond to the Commission within a given timeframe so that we can start the discussion for disclosure. That is why we give witnesses time to respond before the Commission.

In terms of this case that is before the Kisumu High Court, at the moment we do not know the stage at which it is. Have the pleadings just been filed and summons sent to counsel to enter appearance? If that is the case, then our work before this Commission will not be prejudicial to the work of counsel when he appears before court because whatever is going to be said before this Commission cannot be used by any other body outside. Whatever we are going to say, the counsel has immunity. He has immunity over the information that we are going to share with the counsel today or any other day and it cannot be taken and used against counsel in this Kisumu case.

In terms of documents missing, I think we had an opportunity to sit with counsel today in my office and I shared with him all the documents that we were given while we were in Kisumu. I do not have any other document to give counsel. However, if he feels that we can engage further in terms of discussing how he can appear before the Commission, then

he is welcome to come to my office so that we can discuss and harmonize in relation to the 42-day calendar that we have in the Rift Valley.

Thank you very much.

The Presiding Chair (Commissioner Chawatama): I agree with nearly everything that the Leader of Evidence has said. I have looked at the summons to attend and it is very specific. You were summoned to respond to information linking Dominion Farms to environmental degradation and illegal or irregular acquisition of land. It goes on to even explain what these allegations are.

Mr. Patrick Otieno: Chair, let me just clarify the issue of the summons. At paragraph 2, it reads:-

“Allegations in our records indicate that Dominion Farms have unlawfully acquired or encroached onto parcels of inhabitant’s land and have further engaged in activities that not only pollute but also degrade the environment.”

The farm has operated from 2003. The farm is supposed to operate on 3,700 hectares, that is phase one. That is a low area and it, therefore, means that the farm borders many other parcels of land. These summonses are not saying that we have encroached on every parcel that borders the farm. It is critical at least for fair representation before you give evidence to say that it is parcel number what. Whether it is the East Yimbo one that has been encroached on and the extent of encroachment so that one can go to the ground. These are technical issues and my clients would have to go to the ground and maybe commission a surveyor to say whether they have really encroached.

As it were, the farm operates on a trust land and there are activities going on that trust land. So when you read this summons, it tells you that you have acquired that parcel unlawfully. That is what we thought but when I read the document that summarizes the issue, it says that there was a surveyor commissioned by Action Aid and that surveyor is called Winam Consultants. It says that there is an encroachment and they gave three farms that have been encroached without particulars. The unfortunate bit I am facing now is that that is very clear. If they give examples of three farms and we know the numbers, it is very easy to answer to it. We just need a surveyor’s opinion. I am sorry to say that we could not answer to that summon based on the document I have received today.

On the question of my colleague having given me everything, this document is what he gave me. This document at page one has a footnote and it says that there was a BP award winning research compiled in 2004. That research is a basis of allegation. Is it not necessary for us to see what it says and conclude?

The Presiding Chair (Commissioner Chawatama): That is why counsel is being paid. The counsel should then look for this document that we have referred him to.

Mr. Patrick Otieno: There is no source. I got it this morning and it is not saying if it is published and who the author is. The way it is, it might be difficult just to do it today on my feet.

I also wanted to answer to what he said. In the question of service, we are not being technical. We are not saying that the service was improper. We have come here because we know the service was proper but we are saying that if you deposit it in Kisumu, it does not reach in time and it diminishes the time lines my client had to answer to. That was our complaint and the Leader of Evidence being part of this Commission and knowing it is time constrained should have at least directed the process server to do the right thing so that we save on time. When you drop it in Kisumu to a lady who is selling rice, that lady is not in a position to answer. What do you do? You are delaying the process. Our complaint is that we did not have sufficient time.

There was the other question raised about the fact that my clients are meeting that community. This is evidence that there is a dispute. Every time there is a commercial activity going on, those frictions are bound to be there. Not all such frictions must be subject of determination by this Commission. The way my clients see it is that they are capable. If you look at the understanding between them in the farm they have leased out, they are supposed - as part of their corporate social responsibility - to be able to prepare 150 acres for the community. They have done that in the past and realized it is less and they are now trying to increase it from 150 to 450 acres for the Siaya community and 470 acres for the Bondo community. The fact that they are meeting is not clear evidence that there is a dispute and the dispute must be acrimonious. They are just appreciating that they need to co-exist.

The Presiding Chair (Commissioner Chawatama): I will ask the commissioners if they have any contributions to make on your application.

Commissioner Farah: My only contribution to this is that it is really unfortunate that the proceedings of this Commission are not being taken seriously and that it is not being understood. Counsel, you know very well that the reason this Commission was set up was because the Judiciary could not deal with all human rights violations throughout the country from 1963 to 2008. Therefore, if there are piecemeal cases going on, it is only an added value to what the Commission is doing. This Commission is not retributive. It is a truth seeking Commission and if your clients really want the truth of their relationship with farmers downstream on spoiling the environment and encroaching onto other pieces of land, they should have briefed you properly on the extent to which your relationship is esteemed since the time their company was set up to date.

There are complainants in this matter and it is your duty to come and get all the documents and bring them to this Commission and tell the truth.

Commissioner Farah: We should not be here arguing about a few hours' delay between the Kisumu shop and the farms which are all in Nyanza. If you were in Mombasa and Kisumu, that would have been a different matter. If your head office were in Mombasa

and the place where the summons was deposited was Kisumu, then you would have grounds but a few hours' delay is not really cause for you to come forward this morning. Just give other arguments and tell us the timeframe by which you will be ready. That is all.

Commissioner Shava: Counsel, I think I will sort of allude to some of the things that have already been said by our Chair and by my colleague who has just spoken. The purpose of this Commission is to try and heal this country. There are problems in all parts of this country. It is not unusual, it happens in many countries but the kind of things that we saw in our last elections, we never want to see again. This forum is one for all Kenyans to speak to each other; those who feel aggrieved and those who feel that they want to tell their side of the story.

So, this is really an opportunity for your client to say what they think about the situation. I do not think you need to be afraid. The Leader of Evidence will then lead you by asking questions. You may know the answers to some of those questions and others you may not know and that opportunity will be afforded to you to supply documentation later. I just think it is really a shame to have an opportunity and then to let it go because then what will remain on the record is the allegations and the documentations supplied by those who are saying that this is what is going on in this Dominion Farm.

I agree with the Leader of Evidence that I do not think that the case which is filed in court at whatever stage prejudices these proceedings or *vice versa*. What you say here cannot directly be picked and used in a court of law. This is an opportunity for you to say your side of the story, so I would encourage you to take that opportunity. I would like to commend you and your client, despite your fears and the fact that you feel you had a very short time within which to respond, for taking the trouble to appear here today with some level of preparation even though you feel that it is not adequate.

The Presiding Chair (Commissioner Chawatama): I am looking at the summons to attend again and we were very specific in what is required of your client today, that is, to address the Commission on the details of how your farm acquired the said parcels of land and measures, if any, by your farm and details of your lease agreement. Some of the things that you have brought up are just further and better particulars but our summons to attend was also very specific. How did you acquire this land? That is the question that can be answered. Even counsel has given us so much information and it is you and not even your client who has more information than you have. If you also wanted to address us on other issues, then written submissions can be made. I thought that the summonses were very specific.

Mr. Patrick Otieno: Thank you, Presiding Chair. The summonses are very specific to that level and we could handle them at that level. When I see information given to me this morning, it says, granted you were given a lease by the councils but the lease you have been given was for 3,700 hectares, we are thinking you have gone overboard. That was not in the summons.

The Presiding Chair (Commissioner Chawatama): But to which you can say, here is the lease and the lease contains the acres that we have been given, so there is a very short answer right there.

Mr. Patrick Otieno: There is a very short answer but to that extent, I had come up with this. Unfortunately, I was not able to comply with the seven days because of the short notice. We have in this document the memorandum of understanding between the farm and the Government agency for development; that is, the Lake Basin Development Authority. We have a lease between the farm and Bondo County Council as well as Siaya County Council. The lease was signed on behalf of the two councils by no other than the Commissioner for Lands, this being a trust land. On the question of pollution, we have said that there is a technical committee chaired by an officer from NEMA, which is the local environmental management authority.

On degradation, we have said that there is a consultative committee that includes the Ministries of Local Government, Agriculture and Environment through NEMA and every time there have been pests, there is an agency of Government called Pest Control Agency. They do not do the work of controlling pests themselves because they bring the agency to do the work for them.

My client is telling me that he would want to say something if it is allowed. Maybe there are facts I am not bringing out well.

The Presiding Chair (Commissioner Chawatama): Who was the person who was summoned?

Mr. Chris Abir: Thank you, Presiding Chair. I would like to say that when I got the summons to come to the Commission, as you rightfully put it, a lot of times, most Kenyans do not understand what this is all about. As a company, we preferred to have a counsel to represent us. Nevertheless, having sat here and heard you talk, I feel free to say some things also as a Kenyan and as a person in charge of that farm. I have been a director of the farm for the last three and-a-half years. I am now shedding light on some things that have been happening that the counsel may understand also from our perspective if you are really seeking the truth in the country on what has been going on there.

When I went to the farm, I found that there were committees that had been put up from both communities that were meeting every month to talk to the community that lives around so that as the investor continues with his activities, there were certain things that were agreed in the MoU that we will leave a copy. I also want to bring to the attention of this Commission that even with the court case that we heard about yesterday, there have been ongoing consultative meetings at various levels.

First, I met with the committee that represents the immediate community that lives around the farm and that do their farming activities around the farm. Whenever they have

issues, we sit down and discuss them under the chairmanship of the District Commissioner. If he is absent, he sends his DO. We have another level of meetings---

The Presiding Chair (Commissioner Chawatama): I wish that you had been sworn in so that what we are actually hearing is your testimony because it is bordering on that. I think if counsel had a way of kicking you out right now, he would have. It is very difficult for us to continue to hear what you have to say because what you are giving now is testimony and you have already sought an adjournment. I think what we would do, because of your willingness to share your side of the story and as said by Commissioner Shava, the fact that you want to speak even now clearly shows that you have taken these proceedings seriously. Should we give you a date in future, you will make yourself available and the Commission will hear your side of the story.

We reluctantly grant you the adjournment that you seek and as we told the counsel before, we cannot give you a date because on Sunday, we will leave for Rift Valley for 42 days and thereafter, we have a schedule right through to February. We hope that we will be able to fit you in because it will be very unfortunate if we only heard one side on this matter. Land is an issue that is in the hearts of many Kenyans and of the statements we received, land tops. So we would like to deal with this matter and I hope that we will be able to afford you an opportunity. In addressing both sides, we would encourage you to just be ready so that at a very short notice, you may have to follow us whenever we will be. What is important is the documents as well.

Please make sure that the documents are with the Commission in the next two weeks at least and maybe keep in touch and just let us know at what stage you are at in as far as the documentation is concerned. When you are ready, you can inform us as well so that when we send the notice again, we do not waste more time.

Leader of Evidence, in view of the two applications and the decision of the Commission, I think there is one more issue. There was an issue of the return date for the arrest warrant that was issued. Do you have any information on that?

Mr. Tom Chavangi: It has been hinted to me that there is a gentleman, a senior officer from the Ministry of Lands, who is here. That was brought to my attention while I was in the office. I told the officer that he can come before the Commission and say what it is. However, I am going to make calls to the Commissioner of Police through the legal department to ensure that that warrant of arrest is enforced because that was a Commission's decision and we cannot use other means to pre-empt a warrant of arrest.

The Presiding Chair (Commissioner Chawatama): A warrant of arrest is unfortunately or fortunately very specific. It names a specific name so that no one else has any *locus standi* to make any representations before us other than the person for whom the warrant was issued. He is the one to make an explanation as to why he was not before this Commission on the appointed date. If the person you are referring to is here, all they can do is they can just report back that they have heard what the Commission has said and we

hope to hear from you concerning the Commissioner of Police and the action that has been taken.

Mr. Tom Chavangi: Much obliged, Presiding Chair and your fellow commissioners. I have two requests to make. One is to the Town Clerk of Kakamega Municipal Council and Dominion Farms, that they open their channels of communication. It has been very frustrating trying to get Kakamega Municipal Council on line. I started trying to get them since Monday but it has not been possible. However, today, I got two phone numbers for two of the senior officers but my fear is, once in a while, phones can be off. So I want them to open their channels of communication so much so for Dominion Farms also. They should also be open to their means of communication so that if we have to give them a short notice, then we serve it to Chris Abir or reserve it to the Town Clerk and they should be warm to our notice so that we can approach them at any given time.

Secondly, in the afternoon, we have Mr. Francis Lekoolool, the former PC, Western Province. I have spoken to him, he is in Nairobi and he has traveled from Maralal. He will be here at 2 p.m., to testify before this Commission.

Thank you very much.

The Presiding Chair (Commissioner Chawatama): I think the request by the Leader of Evidence is a genuine one and one which you must oblige in. I also think that both counsel should give the Leader of Evidence their numbers, both their land lines and their cell phone numbers and the Town Clerk's number.

We adjourn to two o'clock.

Mr. Tom Chavangi: Much obliged.

The Presiding Chair (Commissioner Chawatama): We would like to thank all of you who attended this morning's hearing. It is just as frustrating for the people who attend and that is what the commissioners feel when matters are adjourned but we felt that these were two matters in which an adjournment should be granted.

We thank you and we will see you this afternoon.

[The Commission adjourned at 11.10 a.m.]

[The Commission resumed]

The Presiding Chair (Commissioner Chawatama): We would like to welcome you to this afternoon's hearing.

Mr. Tom Chavangi: Thank you, Commissioners. This afternoon, we have Mr. Zablon Mabeya, the Commissioner for Lands and Mr. Francis Lekoolool. I think Mr. Mabeya wants to say something before we proceed.

The Presiding Chair (Commissioner Chawatama): You are welcome Commissioner. We patiently waited for you the day before yesterday. This was in response to your confirmation that you will be here for the hearings. You did not come and we gave instructions to the Commissioner of Police that an arrest warrant be effected. Do you wish to address us on this?

Mr. Zablon Mabeya: Thank you, Madam Commissioner. I want to inform the Commission that I received the information from the press. I have it here because this morning I was receiving documents from the Commissioner of Police at 12.00 noon. I also received documents from your office where the summonses were received in my office. These summonses were apparently received on the 2nd of September. I was out of the country, in Australia. They were not served in my office. They were served elsewhere. From the information I gathered, it is one of the messengers in my Deputy Commissioner's office and the summonses were not directed to my office.

In fact, as I reported from my trip to Australia nobody brought this to my attention that there were summonses. Ordinarily, if they were brought to my office when I am out, they would be received by the legal unit. Therefore, they were not taken there.

Therefore, on Sunday I accompanied my Minister to the Coast. As we went for this trip I was not aware that there were summonses that required me to appear before this Commission. I came in last evening from the Coast and I asked my officers this morning to come to the Commission offices to get a copy of the summonses. I was here at around noon to see your counsel. That is why I am here this afternoon to inform you that these summonses were not served upon me or in my own office and they were not brought to my attention.

The Presiding Chair (Commissioner Chawatama): Leader of Evidence, in your capacity as the Director, Legal Services, could you shed some light on the summonses and how they were served? Who served them and whether there was service that is acceptable.

Mr. Tom Chavangi: Madam Presiding Chairlady, the service was done by a gentleman called John Kweyu Angolo, who is a certified process server. According to paragraph 3 of his Affidavit of Serving, he did serve the summons on the Fourth Floor of Ardhi House and according to my further discussion with him the summonses were received by a secretary and stamped Commissioner for Lands. I have the original summonses which indicate the stamp served to the Commissioner for Lands. To us, that was an indication that the Commissioner for Lands had actually been served.

It was not until Monday when a gentleman by the name of Kilimo, an Assistant Commissioner for Lands called me to ask me about these summonses. I asked him where the Commissioner for Lands was. He said that the Commissioner was in Lamu on official duty. However, the fact that the Assistant Commissioner called me to ask me about the summonses means then they had notice or were aware of these summonses served upon the office of the Commissioner for Lands.

Whether the summonses were received by a messenger or not, that is an officer who belongs to that office. So that is neither here nor there. The Commissioner for Lands has now come before this Commission. Indeed, he was supposed to be brought under a warrant of arrest and it is only that the Commission is not a judicious commission that it has allowed him to speak before this Commission. Ordinarily, he is supposed to be under a warrant of arrest and that should be respected because that is provided for in Section 7 of the TJRC Act. This Section is very clear on the powers of this Commission. Those powers should be exercised. I am surprised that the Commissioner of Police can actually write a letter to the Commissioner of Lands informing him about the warrant of arrest yet the same Commissioner of Police cannot inform this Commission on the progress that he has made in his attempt to arrest the Commissioner for Lands.

The Commissioner for Lands was in my office today in the morning at about noon. He clearly stated that no one can arrest him. This Commission should be taken seriously. We are not a whitewash commission. We are not seated here for free or just enjoying taxpayers' money. People should take this Commission seriously. It is upon the Commissioners to decide whether the warrant is still in effect or not before we start engaging the Commissioner for Lands.

Thank you very much.

The Presiding Chair (Commissioner Chawatama): Commissioners, I do not know if anybody has some contribution to make.

Mr. Zablon Mabeya: Madam Presiding Chairlady, can I clarify something?

I think it was on Monday evening when I received an SMS because where I was in Faza Island, where there was no network. At around 8.00 p.m., I received an SMS that a warrant of arrest had been issued. I called the Assistant Commissioner, Mr. Kilimo. I am sure Mr. Kilimo called this Commission on Tuesday, not on Monday.

What is very important is that I want this to go on record; the stamp that is appearing here is not that of the office of the Commissioner. The stamp that is in my office is round and not the kind of stamp I am seeing here. I want this Commission to know that these summonses were not properly served. I would like the process server to be cross examined to tell us who he served. After looking at the stamp here and investigating, I was told during lunch hour that it was received by a messenger. This is a messenger who does not understand the importance of the summonses. As we are talking right now, I do not know where the original summonses are.

Incidentally, we were with my deputy at the Coast with the Minister. The Commission should take note of this. It is also very important to be fair to all of us. Nobody would refuse to come before you here to assist the Commission.

The office of the Commission is just next door here. If the process server was serious, my secretaries were there; they would have received and brought this to my attention. That is the fact of the matter.

Commissioner Dinka: Thank you for coming. I just want to ask you one question; where is your office located in the building?

Mr. Zablon Mabeya: My office is on the Fourth Floor. On the entire fourth floor, there are several offices in Wing A.

Commissioner Dinka: So you are a senior official on the fourth floor and the affidavit signed by the server here says he went to the fourth floor and gave it to a secretary. Now, when you look at this stamp, it may not be exactly your office stamp but what do you see here? It is an official stamp of that same Ministry or office. You are all in the same Ministry. You are a Commissioner on the fourth floor and everybody knows you. The person who signed for you is from the fourth floor. You know how you communicate among yourselves; parallel, horizontal or vertical is not the Commission's business. I do not think we should waste our time on that. It would be much better if a decision is made as to where the matter stands. Is the warrant of arrest still out or are we accepting the presence of the Commissioner now?

From what the Leader of Evidence said, that the witness said: "Nobody can arrest me", I think that spirit of impunity is what we want to disappear from Kenya. That is why this Commission and other Commissions have been established. I think we should do our job properly.

Thank you.

Commissioner Farah: Mr. Mabeya, I think I know you. As the Commissioner for Lands, I just wanted you to be aware that on the same day you were served with these summonses, the Minister for Defence was also served with the same. The Department of Defence (DoD) is a bit further than the Commissioner for Lands' office. Hon. Yusuf Haji had the respect to this Commission as the Minister. On the day he was appearing here, there was a Cabinet meeting. He had to take permission from His Excellency the President to come and attend the TJRC. So this is the weight to which we are telling you-- I see in the stamp, "Commissioner for Lands" I do not know whether it is "Deputy Commissioner for Lands or Commissioner for Lands". The other side is not showing but it is fourth floor and they are your officers. If you are away in Australia on the 1st of September, surely telephones are there, messages are there. They should have told you there are summonses here and there are 12 days to go. I do not know when you came back from Australia but normally when somebody is away he is in contact with his office.

The Deputy Commissioner for Lands is still your officer. We served the Minister for Defence; he was not in office at that time as you know he does not go to the office on a daily basis. However, his secretaries and messengers received the summonses and communicated with him. You know how busy a Minister is. He sought permission from

His Excellency the President to come and attend; indeed, he did. You say you saw it in the newspapers. So we are not taking it lightly because that is the kind of impunity we are trying to resolve through this Commission.

Let me tell you; your utterances to our lawyer that nobody can arrest you, first is false because under our Act you can be arrested. That was not kind, you should have been very humble and you should have told the Commissioners that you are sorry. We are not a judicial setting. We are a truth-seeking Commission.

Thank you. I hand over to Madam Presiding Chairlady.

The Presiding Chair (Commissioner Chawatama): This is the first time that this Commission has issued a bench warrant, meaning that we have tried as much as possible to exercise the powers that we have under the Act sparingly. This is because we have recognized the fact that this is a process that is necessary for this country and we want this process to run as smoothly as possible. We want Kenyans to come and appear before us. We want them to volunteer because what we have in mind is that each and every Kenyan is interested in this nation moving forward and living in peace. We want to address violations of the past and move ahead. Your office is a very important office to us; even in the Commission and we recognize that. This is because many of the cases or complaints we have received relate to land. As a Commission, we were looking forward to enjoying a good relationship with your office so that we can help each other and Kenyans because of the number of violations relating to land that are before us.

I will ask the Commissioners what they would want to see at this stage, whether or not based on the explanation you have given we can lift the bench warrant and map the way forward.

We will rise for a few minutes and then come back.

[The Commission temporarily adjourned at 2.55 p.m.]

[The Commission resumed at 3.05 p.m.]

The Presiding Chair (Commissioner Chawatama): The Commission has had an opportunity to consider the application that has been made by the Leader of Evidence and has also taken into consideration what you have had to say. This is the first time that this Commission has issued a bench warrant against anybody. This was necessary as we did not want to encourage impunity. We want all those who are requested to attend our hearings to do so voluntarily. However, if this is not done the Commission will not hesitate to exercise its powers under the Act to issue warrants of arrest. We have also noted that you have shown some levels of remorse by appearing before us this afternoon. However, the modality of your appearance this afternoon gives rise to some concern on the part of the Commission. This is an issue that will be taken up with the Commissioner of Police.

The Commission this time has decided to lift the warrant that it had issued and it is our desire that in future when you are called upon as the Commissioner for Lands to appear before this Commission that you will make yourself available and work with the Commission for the sake of your nation and the people of Kenya.

Thank you.

Leader of Evidence, you will do the needful and inform the Commissioner of Police.

You are released and we will get in touch with you once we have established a suitable date for you to appear before us.

Mr. Tom Chavangi: Madam Presiding Chairlady, our first witness today is Mr. Francis Lekoolool who is present with us here.

The Presiding Chair (Mr. Chawatama): Can the witness please, be sworn in.

You are welcome to the hearings. Sorry for the delay but it was necessary for us to deal with the Commissioner for Lands.

(Mr. Francis Lekoolool took the oath)

Thank you. What will happen is that the Leader of Evidence will lead you and thereafter, he will ask you some questions and then each of the Commissioners, if they have any questions or clarifications, will so be put to you.

Please, make yourself comfortable. If there is anything we should do for you or if you want a break, you will inform us.

Mr. Tom Chavangi: Mr. Francis Lekoolool, for the record kindly tell the Commissioners your name for the second time.

Mr. Francis Lekoolool: My names are Francis William Lekoolool.

Mr. Tom Chavangi: What do you do at the moment?

Mr. Francis Lekoolool: I am just a farmer at home.

Mr. Tom Chavangi: Where is home?

Mr. Francis Lekoolool: Maralal.

Mr. Tom Chavangi: Thank you very much, Mr. Lekoolool. You know the reason you have been called to this Commission. Can you kindly inform the Commission about what you know in regard to the reasons that have brought you here?

Mr. Francis Lekolool: I guess you are calling me because I served in Western Province as the Provincial Commissioner (PC). As the PC of course I was in charge of Bungoma District, which includes Mt. Elgon. When I was posted there I was given instructions that when I get there I go up that mountain to settle the Ndorobo who were staying in that forest. That means there was some land set aside from the forest by the Government to settle the Ndorobo. There are two groups there; the Soy, who are down and settled with their own farms, and the Ndorobo, who stay in the forest feeding on honey and wild fruits.

The Government was kind enough to set aside land to be allocated to the Ndorobo so that they could also enjoy the fruits of *Uhuru* by at least owning a piece of land, cultivate and produce food for themselves instead of relying on honey and wild fruits. That is exactly what was being done in that area. Those are the instructions I had and I followed them to the letter.

Mr. Tom Chavangi: Which years did you serve in Western Province?

Mr. Francis Lekolool: I served in Western Province in 1989; that is 22 years ago. I was there up to 1992/1993.

Mr. Tom Chavangi: When you say that your instructions were to settle the Ndorobo, you were to settle them where?

Mr. Francis Lekolool: There is a forest just below where they were living. This was joining the lower part that was already a settlement. They were joining them and giving a belt between the forest and those who were already settled who were the Soy. The Ndorobo is a small group that was living in the forest.

Mr. Tom Chavangi: Does that land have a name?

Mr. Francis Lekolool: Yes. It is called Chebyuk Settlement Scheme.

Mr. Tom Chavangi: The land is called Chebyuk Settlement Scheme?

Mr. Francis Lekolool: Yeah.

Mr. Tom Chavangi: According to our research there are three phases of Chebyuk; I, II and III, which one were you involved in?

Mr. Francis Lekolool: Only Phase I, the original one for the Ndorobo. I was not there for the other phases.

Mr. Tom Chavangi: What method did you use in settling these people?

Mr. Francis Lekolool: There was a committee set up even long before I went there. It went into that forest using the Ndorobo to write down the names of those who were to be

settled in Chebyuk Settlement Scheme Phase I. when I went there I went for meetings with the committee and asked for the list. We went through the list in big organized *barazas*. It was not secretly done; it was publicly done and names were called out and anybody who was not a Ndorobo of course was not entitled to be settled in that area. It was only the Ndorobo who were supposed to be there. Therefore, to identify them we were using their own people. Of course, a person like me coming from another area would not know who is a Ndorobo and who is a Soy. So we used their own people to identify the genuine Ndorobo. They did exactly that and came up with that list. We then organized them in a way that they balloted in a transparent way. That is how we settled them.

Mr. Tom Chavangi: When you say Chebyuk Phase I was the genuine phase, are you saying then that Phase II and III were not genuine?

Mr. Francis Lekoolool: I am not saying exactly that because I do not know what was done after I left. Maybe some other instructions were given out. You know as a head of a department or a head of section you are of course getting instructions here and there and being directed to do a, b, c, d which is fair to everybody. You carry it out as amicably agreed. If later on it was decided that Phase II and III were added, whoever was there during that time should answer that.

Mr. Tom Chavangi: In terms of Chebyuk Phase I, was this land degazetted before you were instructed to settle the Ndorobo?

Mr. Francis Lekoolool: Yes, it was degazetted. That was forest land and it had to be degazetted before people were settled.

Mr. Tom Chavangi: Our research shows that the Chebyuk Settlement Schemes I, II and III are actually the genesis of conflicts in the mountain to the extent that there was eventually a group called SLDF and several militia groups that emerged from having been discontented and not happy with the settlement of people in Chebyuk I, II and III. Can you say something about these militia groupings in the mountain?

Mr. Francis Lekoolool: The militia groupings were not there during my time. Maybe they came up later. We never had any problem anywhere. No lives were lost. Nothing was lost. I came to learn much later that there is such a thing going on. I saw it through the media, that there was a group organized like that. Otherwise, during my time it was all peaceful during Phase I. there was no dispute and we settled people and left them enjoying the fruits of Uhuru.

Mr. Tom Chavangi: Was it only the Ndorobo who were settled? Were there other communities like the Mosop who were settled in Chebyuk Phase I.

Mr. Francis Lekoolool: Not at all. We were only there to settle the Ndorobo. Maybe what caused that problem is that these other fellows came in later in Phase II and III. The instructions were to settle the Ndorobo.

Mr. Tom Chavangi: We also know through research that the decision to settle the Ndorobo in Chebyuk Phase I were instructions that were given from high above your office that time.

Mr. Francis Lekolool: Of course, yes.

Mr. Tom Chavangi: Which office was this that gave the instructions?

Mr. Francis Lekolool: That is the Office of the President. That is the highest office.

Mr. Tom Chavangi: When you say Office of the President---

Mr. Francis Lekolool: That is the President himself.

Mr. Tom Chavangi: It is the President himself?

Mr. Francis Lekolool: Of course. We were taking instructions from the President because he is the one who sympathized with those fellows staying in the bush. There was no land.

Mr. Tom Chavangi: What was the name of the President then?

Mr. Francis Lekolool: President Moi, of course.

Mr. Tom Chavangi: When you received the instructions to settle the Ndorobo in Chebyuk Phase I you must have convened a provincial meeting with your officers probably.

Mr. Francis Lekolool: Yes, we were holding meetings on top of that mountain; in Chebyuk area itself with the Ndorobo themselves.

Mr. Tom Chavangi: What I mean is; did you have an internal meeting at provincial level like Provincial Security Committee meeting or any other meeting before you moved into the mountain.

Mr. Francis Lekolool: Of course, they are there. The Provincial Security Committee meeting is automatically there. When we go for a meeting even on the mountain, all of us would be there. The provincial security team must be there; the Special Branch, the PCIO and the PPO are all supposed to be there accompanying the PC.

Mr. Tom Chavangi: Mr. Lekolool, I respect your age very much; is it possible for you to remember some of the names of your fellow provincial bosses like the PCIO, the PPO and many others?

Mr. Francis Lekolool: Not right now but they are there on record.

Mr. Tom Chavangi: Thank you very much, Mr. Lekolool.

Commissioners, I have no further questions for the witness.

The Presiding Chair (Commissioner Chawatama): Prof. Tom Ojienda, do you have any questions for this witness?

Commissioner Ojienda: Madam Presiding Chairlady, I just want to thank Mr. Lekolool, the former PC, for honoring the summons and coming to the Commission to shed more light on your role in the Chebyuk Scheme. You have clarified that you were involved in Phase I.

I just want to ask two questions to the witness; the first one would be just to confirm that there were two communities that settled in the area that was degazetted- the Mosop and Soy. You said that you were doing the vetting of the Ndorobo, what form did that vetting take to determine who the true Ndorobo were?

Mr. Francis Lekolool: We were using their own people. The Ndorobo themselves were the ones who were identifying who the Ndorobo were and also going through the list to check if there were other people other than the Ndorobo living in the forest.

Commissioner Ojienda: How many people did you intend to settle in the land that was degazetted? What size were the parcels that you were giving? Also just clarify whether you were settling families or heads.

Mr. Francis Lekolool: Of course we were settling heads of families; those were the *wazee* and widows.

Those were people destined to be settled on those pieces of land.

Commissioner Ojienda: Mr. Lekolool, the evidence that we have received from our hearings shows that the programme that you shepherded on resettlement later on haunted Chebyuk because you did not issue title deeds to the people you had settled. Why did you not follow up the process until the title deeds were issued to families that were resettled?

Mr. Francis Lekolool: To get title deeds takes a long time. So, I left before title deeds were out but people were already settled and their names had been taken by the settlement officers.

Commissioner Ojienda: Do you think that whatever you did or whatever you did not complete later led to conflict?

Mr. Francis Lekolool: When I was there, there were no conflicts or disagreements. I left when documentation had been done and people were already settled on the ground.

Commissioner Shava: Mr. Lekool, thank you for coming today. I also have two questions for you. For the sake of the record and clarity, there are many terms that are used to describe people who have traditionally lived in Mt. Elgon. There are the Ndorobo, Soy, Mosop and Sabaot. Could you tell us the relationship between those four names as you understand them?

Mr. Francis Lekool: The Ndorobo are there and are the ones who were living in the forest. The Soy are also there.

Commissioner Shava: The reason why the Ndorobo were being resettled is that the area where they had been living had been turned into a game reserve?

Mr. Francis Lekool: You are very right. The Government wanted them to have a game reserve to attract tourists. If they continued living in the forest they would have interfered with the wild animals. They also wanted to earn a living from that game reserve.

Commissioner Shava: Were there other people living in the forest or were they only the Ndorobo?

Mr. Francis Lekool: No. There were only the Ndorobo. The other people had been settled on big farms and were the ones supplying farm produce to the areas occupied by the Bukusu.

Commissioner Shava: When Chepkitale area was turned into a game reserve and a decision was taken to relocate the people living there further down the mountain, was that what Chebyuk Phase I was about?

Mr. Francis Lekool: The settlement had not been created at that time but there was that intention. We wanted to settle people to create room and see if it would be a viable project.

Commissioner Shava: You have outlined to us the thinking of the Government at that time. That means that Chebyuk Phase I was to be for the Ndorobo?

Mr. Francis Lekool: Yes.

Commissioner Shava: You said to us that you left your post and went to a different post before the title deeds were out but allocations had been done. Could you describe that process of allocation?

Mr. Francis Lekool: Documentation is done by balloting and then records are set up for settlement and issuing of title deeds. It takes a bit of time to identify plots for individual settlers. It took a long time because it is a forested place and it was not easy to access the place and identify beacons. That is why the title deeds delayed because we had to show everybody his plot but the process was on.

Commissioner Shava: You have said that the process took a long time. How long did it take before the process was complete?

Mr. Francis Lekolool: I do not know when they were given the title deeds because I left before they were ready.

Commissioner Shava: By the time you had left, had you spoken to the Ndorobo so that they could identify the people who should be given land? Did you complete that work before you left that station?

Mr. Francis Lekolool: We identified the land to be allocated. I went there in 1989, the work started around 1990 and I left in early 1993.

Commissioner Shava: We have heard that there were serious issues with allocations. Were there any cancellations of allocation while you were there?

Mr. Francis Lekolool: There were no disputes. I learnt of disputes later on when I was here. There were people who grabbed what had been allocated to others.

Commissioner Shava: You would say that by the time you left the purpose for which that settlement scheme had been created had been fulfilled and that the land had been allocated to the Ndorobo who had come from further up the mountain?

Mr. Francis Lekolool: Certainly, yes.

Commissioner Shava: What was the understanding of the other people who were not Ndorobo? When that settlement scheme was created, was there any civic education carried by the Government? What did the neighbours feel about the scheme?

Mr. Francis Lekolool: We talked to all of them, including the Soy. They attended our meetings and knew that the settlement scheme was for the Ndorobo. But when Kenyans see the Government allocating people land they also want a piece of the land. In Kenya everybody is greedy and wants land. If later on someone decided to include the Soy, I was not there.

Commissioner Shava: How did you deal with those Kenyans who were trying to jump on the bandwagon and claim some land which they knew they were not entitled to? Did you deal with any such incidences?

Mr. Francis Lekolool: No. There were no such incidences when I was there.

Commissioner Farah: Mr. Lekolool, there are two confusing things which I want you to clarify. One is about Chepkitale, where the Mosop or the Ndorobo were living but it was not arable land. When you arrived in 1989, Chebyuk Phase I was mooted and you settled families there. How many families did you settle?

Mr. Francis Lekolool: I do not know exactly how many but they were many.

Commissioner Farah: Were you aware that at that time, because of the nature of the Ndorobo, that is, being gatherers and honey-harvesting people, they were not interested in farming? Therefore, some Soy came from Trans-Nzoia and took over the land before the Ndorobo got their title deeds. The Soy came from Trans-Nzoia while others came from the lower Cheptais to occupy the land. They invited them but later on complained that their land had been taken away. Were you aware of those schemes?

Mr. Francis Lekolool: We did not deal with other people other than the Ndorobo.

Commissioner Farah: Could you confirm whether these people by culture invite people to take over land which they were allocated because they are not farmers but gatherers?

Mr. Francis Lekolool: They accepted the land and if there were any other transactions later on, then I am not aware.

Commissioner Farah: How do you describe the security situation in Mt. Elgon during your time?

Mr. Francis Lekolool: The security was perfect. There was no problem at all and those groupings were not there. We came to learn about them just recently.

Commissioner Farah: What about the Sabaot and the Bukusu?

Mr. Francis Lekolool: The Soy were claiming even Bungoma. We went all over the place but did not conduct any operation. We used to be there physically to talk to elders. In fact, the youths were the ones causing problems. We were only lucky that they had inter-married very much to the extent that there was no secret.

Commissioner Farah: What was the political relationship between Hon. (Wilberforce) Kisiero and Hon (Elijah) Mwangale at that time?

Mr. Francis Lekolool: I did not notice any difference. If they were doing things secretly I do not know. Those people have many secrets when it comes to soliciting for votes. You can incite people and disappear. So, you could not tell that the two people had disagreed or not. I served in that area and I never realized that there were differences because when they came for meetings, they did not show any sign of that.

Commissioner Farah: It is often said that Chebyuk Phase I was the foundation of the problems of Mt. Elgon and was doomed to fail from the beginning. Is that correct?

Mr. Francis Lekolool: Let me get it properly from you.

Commissioner Farah: Chebyuk Phase I project was under your control. You are the one who laid the foundation for the later conflicts because if you had done it properly the subsequent conflicts would not have happened. Is that true or not?

Mr. Francis Lekoolool: That is political. Those are scapegoats they are trying to create.

Commissioner Farah: So, you think problems started with Phase II or Phase III?

Mr. Francis Lekoolool: Definitely, because there was nothing during my time apart from other people claiming that Bungoma was their area. We heard those “choruses” but there was nothing.

Commissioner Farah: Who took over from you?

Mr. Francis Lekoolool: I do not know.

Commissioner Farah: When was Abdul Mwasera there?

Mr. Francis Lekoolool: He came much later.

Commissioner Farah: Thank you very much. I do not have any more questions.

Commissioner Dinka: Thank you very much, Mr. Lekoolool for your testimony. I have three questions for you. The first one is, when you and your committee started to move the Mosop to the mountain, was it voluntary or were they forced?

Mr. Francis Lekoolool: It was voluntary. They were the ones who even formed the committees and identified their own people. I could not tell the difference between the Soy and the Ndorobo. They were the ones who compiled the list and when we did the balloting, they identified their people.

Commissioner Dinka: When we had our hearing in Western Province and from our research, it showed that there were some accusations about no consultations between the committee which you headed and the local people like elders and chiefs.

Mr. Francis Lekoolool: We could not have invaded the area without the knowledge of the Ndorobo. That statement must have come from politicians who always try to incite people for the sake of getting votes. Otherwise, that was a clean job and if you went on top of that mountain, you will find children who have been born and named “Lekoolool”. Can you give a child the name of an enemy? He must have been friendly. So, Lekoolool was a very friendly man who settled them properly and they appreciated it and named their children after me.

Commissioner Dinka: Could you translate the word ‘*kura*’ for the sake of the international Commissioners?

Mr. Francis Lekoolool: Yes, sir. It means votes. When these people solicit for votes, they incite people to see which group is more than the other. So, the minority are normally oppressed. That is the way they wanted to come in and that is why they are barking all over. Why did they not come when I was there? They should have told me those things when I was there.

Commissioner Dinka: The gazettement of the forest area was done in 1974 and about 1,600 Soy families were settled but they did not have title deeds or ownership certificates but were living in peace until 1989, when the Mosop people went to petition President Moi raising anxieties about land being taken by non-Mosop people. That is how your committee came into being. So, what the committee did was to annul the position since 1974 and introduced a system of lottery, some kind of raffle called balloting. So, some of the previous owners remained with land while others became landless. Some people are now saying that what my colleague here suggested is that Chebyuk Phase I, where you applied this policy, became the basis of later conflicts. As civil servants, all of us have done things that we later regretted or had consequences. If you look back, do you think what you did at that time - the balloting system - did have some form of consequences and became a source of tension in the places?

Mr. Francis Lekoolool: Not at all.

Commissioner Dinka: You are talking about 1974, when people were being settled just like that. There were others who were already settled on the land set aside specifically for that group and had been demarcated but balloting was done later on. By definition, balloting is like a lottery. There are winners and losers.

Mr. Francis Lekoolool: Not at all. Everybody won. Whatever you pick is yours and there is no dispute about it.

Commissioner Dinka: So, it is not whether you are going to get land or not but it is actually the plot number?

Mr. Francis Lekoolool: If you pick the first one then you have plot number one and so on. So, there was no confusion anywhere.

Commissioner Dinka: What is your opinion of the role of the District Commissioner, Mr. Chombole?

Mr. Francis Lekoolool: I do not know. If he did anything then he did it after I had left. I cannot confirm or deny anything because I had already left. For that I think you better ask the provincial commissioner who took over from me because the mess came during his time.

Commissioner Dinka: Thank you very much. I do not have further questions.

The Presiding Chair (Commissioner Chawatama): Thank you very much for your testimony. I have a few questions. The first one is; I will repeat what you said. You said that the Government was kind enough to set aside land for the Ndorobo to enjoy the fruits of *Uhuru*. Do you think this was an act of kindness or is it the duty or an obligation of the Government to look after its people?

Mr. Francis Lekoolool: It is an obligation. The Government is supposed to settle everybody, especially those who are unlucky and living in the bush and own nothing. At least other people have a place they can call a farm.

The Presiding Chair (Commissioner Chawatama): So, do you agree that it was not an act of kindness and that it is an obligation of the Government?

Mr. Francis Lekoolool: It is the obligation of the Government but people have to appreciate. If a leader does that then he must be appreciated because there were many leaders who did not see that those people had problems.

The Presiding Chair (Commissioner Chawatama): When a decision was made to move the Ndorobo, were there other things that had been done on the land that they were moved to, like roads, schools, health facilities and so on? What was done on that land before they occupied it?

Mr. Francis Lekoolool: Those things went ahead simultaneously. The roads were already there because it was a forest and there were roads leading to the forest. Regarding schools, they depended on the already set-up schools. They also identified areas for schools.

The Presiding Chair (Commissioner Chawatama): Can you recall how far the nearest primary school and health centre were?

Mr. Francis Lekoolool: I cannot recall. I cannot remember that right now because it was a long time ago. It is now 22 years and I am now old.

The Presiding Chair (Commissioner Chawatama): You were a leader of those people and were you not concerned about children going to school or the sick being able to access health facilities?

Mr. Francis Lekoolool: They were already there. There were schools and dispensaries.

The Presiding Chair (Commissioner Chawatama): There was a question asked by one of my colleagues and you endeavored to define who the Ndorobo were and you said they are *wazee* and I understand the word *mzee* is an elderly man. You also talked about widows. Do you know of what became of women who did not marry from their tribe? For example, if a woman is a Ndorobo and marries a man from a different tribe and then lives in the forest, could a couple like that get land?

Mr. Francis Lekoolool: Of course, it was them to identify who was who. We were not following customary laws there. It was for them to say who was a Ndorobo and who was not.

The Presiding Chair (Commissioner Chawatama): The issue is whether you presided over discrimination against women who were Ndorobo but married to a man of a different tribe.

Mr. Francis Lekoolool: No.

The Presiding Chair (Commissioner Chawatama): Did you come across orphans getting pieces of land? Those were children born of Ndorobo parents but were orphans. Do you remember such an issue?

Mr. Francis Lekoolool: I do not know. It is them who were identifying those people. I did not know who was an orphan and who was not and who was married to who. We were entirely relying on the people they listed.

The Presiding Chair (Commissioner Chawatama): Looking back, do you think that is something that you should have taken an interest in?

Mr. Francis Lekoolool: Of course that was long ago and I cannot recall.

The Presiding Chair (Commissioner Chawatama): Can you recall what the Government did to help the people who were resettled to settle?

Mr. Francis Lekoolool: I do not remember anything other than giving them land. The land was very fertile and immediately they settled down, everything was growing. They also had access to honey and wild fruits they were used to. The forest was still intact so they could still get whatever they wanted from the forest.

The Presiding Chair (Commissioner Chawatama): There was a question asked and your response was that there was an intention by the Government of setting up a game reserve from the land that the Ndorobo had been moved to. Is that correct?

Mr. Francis Lekoolool: There was an intention. There is that escarpment overlooking Uganda. It was famous and a good scenery which would attract tourists and bring in money. It was supposed to benefit all those living near the mountain.

The Presiding Chair (Commissioner Chawatama): You have answered my question that the Government had intention that the people would benefit from money made from tourism. Do you know whether that actually happened?

Mr. Francis Lekoolool: It did not happen at that time. Maybe later it happened after I had left.

The Presiding Chair (Commissioner Chawatama): I have no more questions, I call upon the Leader of Evidence to take over.

Mr. Tom Chavangi: Thank you, Madam Chairlady. We do not have any more witnesses, Mr. Francis Lekoolool was our last witness.

The Presiding Chair (Commissioner Chawatama): Thank you very much Leader of Evidence. I have been co-chairing with Commissioner Shava and I will ask her to close the session.

Commissioner Shava: Thank you, Commissioner. We have come to the end of our initial hearing of adversely mentioned persons from Nyanza and Western regions. In total, we have listened to four of the 13 witnesses summoned. The Commission appreciates those who honoured their summonses as the testimony guides the Commission to award reparations and recommend prosecution or amnesty for violation of human rights which do not amount to gross violations. Those witnesses who could not attend or sought adjournments have given an undertaking to do so and the Commission reminds them that they must appear before it in person and not in proxy. The Truth, Justice and Reconciliation Commission is now embarking on its Rift Valley region hearings next week and we are urging Kenyans to participate in the public hearings. The TJRC has selected cases that are representative of the respective regions for the public hearings which provide a unique platform for contributors to tell the truth in the public eye, bringing to the front page of national attention the gross violations of human rights and historical injustices that Kenyans have long suffered.

We are aware and we know that healing is a process and not an event and that national healing is impossible unless there is healing at the individual and community levels. That which has come here through this public hearing will continue long after the Commission's mandate ends. The Commission will begin its Rift Valley hearings in Kericho from 19th September, 2011 to 21st September, 2011 at Kericho County Hall and the women hearings on 20th September at Kericho Teachers' Training College.

With that, today's proceedings are closed. The hearings of adversely mentioned persons from Nyanza and Western regions are closed. We will now commence public hearings in Rift Valley starting next week. Thank you for your patience.

(The Commission adjourned at 4.00 p.m.)