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Recommended Citation

Truth, Justice, and Reconciliation Commission, "Public Hearing Transcripts - Nairobi - RTJRC22.03 (NHIF Auditorium, Nairobi)" (2012). *I. Core TJRC Related Documents*. 46.
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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON THURSDAY, 22ND
MARCH, 2012, AT THE NHIF AUDITORIUM, NAIROBI**

PRESENT

Margaret Wambui Shava	-	The Presiding Chair, Kenya
Tecla Wanjala Namachanja	-	The Acting Chair, Kenya
Ahmed Farah	-	Commissioner
Berhanu Dinka	-	Commissioner
Gertrude Chawatama	-	Commissioner
Ronald Slye	-	Commissioner
Mr. Tom Chavangi	-	Leader of Evidence

(Opening Prayers)

The Presiding Chair (Commissioner Shava): Ladies and Gentlemen, welcome to our hearings this morning. I will commence by introducing the panel in front of you.

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

I would like to remind you about our hearing rules. While we allow still photographs, we ask that you do not use your flash while the witness is testifying in order not to distract him or her. We ask you all to take a moment to switch off your mobile phones now in order not to disturb the testimony of witnesses. We also ask that you respect the witness who is presenting by maintaining silence while the witness speaks. You may hear things that agree with your experience and you may hear things which you profoundly disagree, that is, things which do not reflect your own experience. In all instances, we ask that you maintain silence.

Thank you for patiently waiting for us to commence this morning session. I will now hand over to the Leader of Evidence to take us through on how to proceed.

Mr. Tom Chavangi: Thank you, Presiding Chair and fellow commissioners.

Today, we had four witnesses to be heard. We summoned Aenea Indakwa, the Town Clerk, Trans Nzoia, Elizabeth Kegode, Lieutenant-General Lazarus Sumbeiywo and Amb. Kiplagat. The three; Elizabeth Kegode, Lazarus Sumbeiywo and Aenea Indakwa---

Commissioner Chawatama: Leader of Evidence, can you deal with the witnesses one by one and not collectively? Explain Elizabeth Kegode's absence and what the Commission did.

Mr. Tom Chavangi: For Elizabeth Kegode, the summonses were issued on 14th March, 2012. Our court clerk or process server travelled to Kitale on 17th March, 2012. Therefore, we did not meet the requisite requirement in terms of informing the witness in seven days required period and giving her time to attend to this session. Therefore, we made a decision that Elizabeth Kegode appears on 29th of March, 2012. The same is also for Lieutenant-General Lazarus Sumbeiyo who also resides in Kitale. We did not get him on time. The summons was served through his wife in Kitale. We have pushed his hearings to 29th March, 2012. The same also happened to the Town Clerk, Trans Nzoia County. We did not get Mr. Aeneas Indakwa on time and so his hearings have been pushed to 29th March, 2012. However, for Amb. Bethwel Kiplagat, he was served on the same day. Therefore, we met the requisite statutory time of seven days. So, he received the summons within the law. He wrote a letter yesterday evening through his lawyers stating that he will not attend this session. Commissioners, I seek further directions from there.

The Presiding Chair (Commissioner Shava): Thank you, Leader of Evidence. Director of Communications and the Leader of Evidence, could you please, approach?

(The Leader of Evidence and the Director of Communications approached the Table)

Before we proceed, we would like to know, because today we wanted to hear about land issues in Kitale, in the settlement scheme, if there are any members of the public here who come from that area. If there are here, could they stand up?

Can we have translation?

(Members of the public stood up)

We thank you very much for coming here today. We recognize your presence. We know this matter is of great importance to you because it is a matter of your livelihoods and the future of your children. We would like to acknowledge your presence and thank you for coming to follow the proceedings today. Thank you. You may sit down.

(Members of the public sat down)

On behalf of the Commission, I will now read the following communication:

The Commission recognizes that its ultimate aim is to grow Kenyans towards the path of reconciliation and healing. Overwhelming number of Kenyans have expressed the view that this destination can only be achieved through truth and justice. It is in pursuit of the truth that Amb. Kiplagat like any other witness was to appear today before the Commission. The Commission is surprised and taken aback at the reasons advanced by Amb. Bethwel Kiplagat's lawyers for his non-appearance here today.

The issue of illegal or irregular allocation of land, contrary to what has been stated in the letter from Amb. Kiplagat's lawyers, has not been dealt with by any court case. The High Court case dealt only with the legality of the process followed in appointing commissioners. Even if it were the case that there was a court case dealing with that issue, we all know that truth commissions are not courts of law but rather they provide space for individuals to speak about their knowledge of historical injustices. In the Commission's judgement, Amb. Kiplagat has much knowledge of these issues, which knowledge would be of interest to the people of Kenya. We are dismayed that although Amb. Kiplagat has claimed widely in the media that he has returned to the Commission in a spirit of reconciliation and the desire to further the work of the Commission, he is instead addressing the Commission through his lawyers and refusing to co-operate with a critical national process of truth telling. Amb. Kiplagat, after 14-month absence returned in February to the Commission and was immediately allocated an office that he occupies up to date. We note that it is the Commission and not individual commissioners that summoned him to testify. The law is clear that the decision to summon witnesses lies with the Commission and not with any other person or institution and that any witness who does not comply is in breach of the law since the Commission's summonses are backed by force of law as laid out on Section 7 of the Act.

We note that Section 7(vi) provides that failure to comply with the summons issued by the Commission constitutes an offence before the law attracting a penalty or a fine of up to Kshs100, 000 or imprisonment for a term not exceeding one year or both. The Commission is both dismayed and saddened that Amb. Kiplagat would flatulently breach the law by failing to honour legal summons issued by the Truth, Justice and Reconciliation Commission (TJRC). The Commission is unwilling to squander any more valuable time and resources on theatrical tantrums meant to distract it from achieving its mandate. We are cognizant that there are Kenyans in this room who have travelled from far and wide in order to attend these proceedings. We very much regret to have to disappoint you that the proceedings would not go on today. It is not our wish. We have said that the other three witnesses are willing to appear on 29th March, 2012 and we shall so proceed. We very much hope that at that time, you will be able to attend.

We thank you all for your time and patience.

Leader of Evidence, please, give us guidance on how we will now proceed.

Mr. Tom Chavangi: Thank you. The fact the witnesses are not present, I request that the commissioners adjourn this session until tomorrow. Tomorrow, we have other witnesses who will be appearing before this Commission to also share information about certain issues that the Commission requested to know.

The Presiding Chair (Commissioner Shava): Thank you, Leader of Evidence. Your request is granted and these proceedings stand adjourned. We will reconvene tomorrow. Thank you.

(The Commission adjourned at 11.10 a.m.)