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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION ON THURSDAY 21ST JULY,
2011 AT ST. VINCENT CATHOLIC CENTRE, KISII**

PRESENT

Margaret Shava	-	The Presiding Chair, Kenya
Ronald Slye	-	Commissioner, USA
Tom Ojienda	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Gertrude Chawatama	-	Commissioner, Zambia

(The Commission commenced at 9.40 a.m.)

(Opening Prayers)

The Presiding Chair (Commissioner Shava): We can take our seats. Good morning and welcome again to today's hearings. This is the second and final day of our public hearings here in Kisii. Tomorrow we will be having women's hearings or meeting that we traditionally hold at every site that we have hearings, to allow women to ventilate their particular issues which they may not feel comfortable discussing in a forum such as this.

*(The Presiding Chair (Commissioner Shava) introduced herself
and other members of the Commission)*

I will start with some ground rules. I will ask that all of us who are carrying our mobile phones take this moment to switch them off entirely not just put them on silent mode to avoid disruption of our proceedings. Those who have cameras, I will ask that you do not take flash photography while the witness is speaking. To all of us, I ask that we respect the testimony of witnesses. You may hear things with which you agree and that reflect your own experience from a particular witness. You may also hear things with which you strongly disagree, but in all instances, we ask that you maintain silence and let the witness complete their testimony.

We have a session clerk who will swear in the witness, after which, the Leader of Evidence will lead the evidence through testimony by asking questions. Thereafter, the Commissioners may want to ask some questions to complete the testimony of that witness. We will now begin with our first witness for today.

Hearing Clerk, please swear in the witness.

Mr. Patrick Njue: Presiding Chair and Commissioners, the first witness is serialized 18, Kisii 20. The name is Christopher.

(Mr. Christopher Ooko Opiyo took the oath)

Mr. Patrick Njue: Good morning, Sir.

Mr. Christopher Ooko Opiyo: I am okay.

Mr. Patrick Njue: Kindly for record purposes, once again state your names, where you live and what you do for a living.

Mr. Christopher Ooko Opiyo: My name is Christopher Ooko Opiyo. I live in Migori. I do *Jua Kali* business.

Mr. Patrick Njue: Mr. Ooko, you are seated with us this morning following a statement which you recorded with this Commission on serious injuries that you sustained sometime in the year 2002. Do you confirm this to be the case?

Mr. Christopher Ooko Opiyo: Yes, that is true.

Mr. Patrick Njue: I will want you to begin your testimony in so far as you can remember the date and month of the event. Continue to narrate to us what happened to you on this very day.

Mr. Christopher Ooko Opiyo: It was on 9th September, 2002 that this happened to me. When I left my house in the morning to go to my place of business, I met some group of people who were going to the DC's place. I went to my house and continued to do my usual job. I live opposite the DC's place. I continued working and after I had one or two things, I realized that one of the things I needed was not available. There was so much noise and gunshots in town. It was approaching midday when I decided to go to town to get the things that I needed to continue with my work. I found some shops open but after a short while, when I reached the stage I saw people running all over and the police were standing on the opposite side. They were clubbing people and those people were throwing stones at them. There was a neighbour who was there. I told my neighbour: "This place is bad, let us go home and eat because it is lunchtime." We agreed to go and on our way I found another person and now we were three people walking together. The third person said that he wanted to pass by a butchery. We left him standing at the butchery and we continued walking. Just as we were approaching a junction called Fesoda Primary School, somebody told us: "Go back where you are coming from because the policemen are coming and they are going to beat you up." He turned and started running away. We also turned and started going back where we had come from. As we went back all shops were being closed and did not know where to get help. We used another route towards Karae Hospital. We kept running and could hear things falling behind us. My neighbour picked something and said: "These people are really spraying bullets in our direction. What I have picked looks like a bullet. Where are these policemen because we cannot see them?" We continued running and because I was very good at running, I left him behind. As I was passing the hospital, I felt something hit my

foot. At this point, my neighbour told me: “Lie down; these people have already shot your foot”. I continued half jumping and half running. I went and lay beside the hospital. When they hit me I turned and saw policemen standing in a farm. They were actually kneeling down. They were a mixture of APs and Kenya Police. I could see my foot was bleeding badly. I removed my shirt and tied my leg with it. The policemen who were shooting us were coming towards the place where I was lying. Some wanted to shoot me while others were taking records. They wrote down a few things and continued chasing other people. I fell asleep and then later some people came and woke me up and said: “So, it is you who was hurt? Is this not someone we know?” Some taxi people came and asked me whether I had money so that they could take me to hospital. Where I was shot was a little far away from the town. They told me that some police had come from Kehancha and others from Kuria and Kurongo, because the policemen in town had run out of bullets. There was also a doctor who put a bandage on my foot. He said that my foot had to be amputated and took me to the hospital in Ombo by taxi. I gave them the Kshs200 that I had.

I was taken to hospital and started receiving treatment. I felt a lot of pain because this had never happened to me before. My mother came to hospital and I was taken to the theatre. People thought that the police had killed me and had taken home that information. By good luck God helped me to get treatment and I got well. My leg was finally amputated because it was rotting and could not heal. After approximately two months my leg healed. I did not have money because the work that I do does not have good returns. There is nobody who could pay my bill and I stayed a little longer in hospital. I went to hospital in September and was discharged in February. When you have been discharged and not left hospital, you do not eat lunch; you are only served supper. Later on, I was just released to go home and look for the money to pay the bill. This is what happened to me. Why should the police fight someone who is innocent?

Mr. Patrick Njue: Thank you, Mr. Ooko, for your testimony. I empathize with your suffering, more so, that culminated to the loss of your leg. I will ask you a few questions to clarify your testimony, after which, our Commissioners may proceed to do the same.

What business were you engaged in, in 2002 and precisely when the incident was taking place?

Mr. Christopher Ooko Opiyo: I bake and supply doughnuts.

Mr. Patrick Njue: When you were going to fetch this commodity that you said was missing on that day, how was the situation then even before you met the group that was going to the DC?

Mr. Christopher Ooko Opiyo: That morning it was peaceful. Even the people I was meeting were just talking peacefully and going about their business, but they seemed to have been saying: “Today we must go to the DC’s place.”

Mr. Patrick Njue: Approximately how many were they in number? How were they moving; were they kind of demonstrating or was it a peaceful procession?

Mr. Christopher Ooko Opiyo: When I met them they were just walking peacefully. They were carrying twigs and leaves in their hands. I heard them say that the urban people were the ones who were quarrelling and fighting because they wanted to take the market people to another market. It was said that there was not a proper market that they were being taken to.

Mr. Patrick Njue: I am sorry. Approximately, how many in number were the people in the group? What do you think was the reason they were going to the DC?

Mr. Christopher Ooko Opiyo: They were many people.

Mr. Patrick Njue: You were explaining the reason they were going to the DC or what you overheard as the reason they were going to visit the DC.

Mr. Christopher Ooko Opiyo: When I met them, I did not know what they were going to do. Later on after I had been shot, that is when they were saying that it was the market people who were quarreling with the urban people.

Mr. Patrick Njue: Do you think that is the very reason there was fracas even in town?

Mr. Christopher Ooko Opiyo: Yes, that is what I got to know.

Mr. Patrick Njue: Again, you said that after you were hit by a bullet and you fell down, there are those officers who came over to you. Some were even hitting you with the butts of the guns. What were they saying to you as they stood there?

Mr. Christopher Ooko Opiyo: Many policemen came. Some were insulting me and others asking me: “Why are you disturbing us?” I told them that I was just going to the market to buy a few things and did not get them.

Mr. Patrick Njue: Mr. Ooko, you also said that you have with you some documents. Do you want to share them with this Commission?

Mr. Christopher Ooko Opiyo: Yes, I have documents from the hospital.

Mr. Patrick Njue: Maybe you could share them with us as you tell us one by one what they are.

Mr. Christopher Ooko Opiyo: I have a letter from the doctor from St. Joseph Mission Hospital in Migori. I also have a receipt from St. Joseph Mission Hospital of the bill that I paid and the balance that remained.

Mr. Patrick Njue: Do you want these documents formerly admitted to the records of this Commission?

Mr. Christopher Ooko Opiyo: Yes, if it is possible.

Mr. Patrick Njue: We will make photocopies out of them and hand back the originals to you. Presiding Chair, the said documents could be formally admitted as records of this Commission.

The Presiding Chair (Commissioner Shava): The documents are so admitted.

Mr. Patrick Njue: Mr. Ooko, have you subsequently tried to seek the intervention of any Government office or any other office with a view of pursuing compensation for the loss that you suffered?

Mr. Christopher Ooko Opiyo: I have not gone to any other office. There is not any assistance that I have received. When I was in hospital I inquired about lawyers and they said: "It is the police who shot you and so, we cannot defend you against them because they are the ones who give us the cases that we do. If we must take up your case, you must give us a lot of money." Since I did not have any money then, I did not seek their assistance.

Mr. Patrick Njue: You have also said that your leg was amputated and I see today you walk with the help of a walking stick. It would appear that you have since gotten an artificial leg.

Mr. Christopher Ooko Opiyo: Yes. I went to Jaipur and got an artificial leg. I can say that, that is one of the assistance I have had because someone referred me there. I went there and was really assisted. I am still doing the job that I used to do. Sometimes people help but other times the people I employ disappear with the few things that I have. So, I am forced to continue working on my own. I just work with one leg and distribute my goods. The pain is that my wife also left me because of this accident. She said that if I could not discharge myself from hospital it looked like I was not going to support her. She did not even tell me. She just left and up to date, she has not come back.

Mr. Patrick Njue: Have you moved on after your wife unfortunately left you? I know you have said that she left, but I seem to read from your statement that you have remarried.

Mr. Christopher Ooko Opiyo: Yes, I remarried. I had to really work hard to do so. This is because if you go to seduce a new girl, they tell you: "But you are disabled. How will you live with me? You mean even with disability you can still look for girls?" Many girls just rejected me because of my disability. It was very painful for me. Later on I got someone who I am now living with. She accepted to marry me because she had a baby. I have lived with her and have other children with her. Many women were saying: "Now that your foot has been cut off, you must be impotent. Who is going to live with an

impotent man?” There was one who came to my house and they told her: “Are you going to live with a fellow woman?” She also ran away on those grounds.

Mr. Patrick Njue: Allow me to say that you have since proved them wrong. Indeed, disability is not inability. You have found one and are blessed with a family and so, you have proved them wrong. As it stands now, do you have any present or, perhaps, future need for medical attention?

Mr. Christopher Ooko Opiyo: Yes, I still need assistance because the artificial foot that I was given is not a very good one since I did not pay anything. There are better ones which cost about Kshs50, 000.

Mr. Patrick Njue: Closely in relation to that, which is my last question, today as you sit with us, what are your expectations from this Commission?

Mr. Christopher Ooko Opiyo: I do not know because I did not plan to get to this situation. In my heart and head I had planned some things, but now I cannot do them because I do not have money. Can they pay for the blood that I shed? Can they return my foot?

Mr. Patrick Njue: Mr. Ooko, thank you for your testimony. Our Commissioners may now ask you questions.

The Presiding Chair (Commissioner Shava): Thank you, Mr. Ooko for your testimony. That is a very painful story. You were looking for your daily bread, like any other Kenyan when police descended on you and caused you to lose your leg. It gives you difficulty in earning your livelihood and has also shuttered your family. So, this is a very sad story. I will now ask my fellow Commissioners if they have any questions for you, starting on my left. Commissioner Dinka!

Commissioner Dinka: Thank you very much, Mr. Ooko, for your testimony. We have heard similar stories of people pursuing their daily lives and others going to the market or herding cattle and they are shot or killed and women being raped by other people, including those who are supposed to protect them from such incidents. The story that you have told us is very tragic. You lost your property and wife. But you have decided to go on and that is something that we would like to encourage; to live your life fully and try to do the best you can for yourself and the family. I just want to ask you one or two questions.

When you went to the market to buy things for your doughnut shop and there you saw hawkers demonstrating on the street, did you somehow join them or you were just moving to the market? Because you were describing people engaged in running battles with the police. So, were you somehow involved in the middle or were you demonstrating together with them? Or were you just proceeding to the market and suddenly you were hit?

Mr. Christopher Ooko Opiyo: I told you that, first of all, I left my house. I was just walking on my own when I met these people. They were shouting and marching towards the DC. I distributed my doughnuts as I rode on the bicycle going back to my house. When I went for more supplies I left my bicycle because whatever I was going to buy was just something I could carry with my hands. That is why I decided to walk.

Commissioner Dinka: Did you report this incident to the police, the chief, the DO or the DC or any Government authority at that time? While you were in hospital, did any one report this incident to any branch of the Government?

Mr. Christopher Ooko Opiyo: I did not report anywhere because, first of all, I had been admitted in hospital. My wife had already run away. I did not have money. I really had a lot of problems. I stayed in hospital for six months. So, I did not remember to go and report. Policemen came and took some information from me while I was in hospital, but I did not report anywhere. I officially went to hospital to say that my foot had been amputated and that the policemen were the ones who shot me. I was even afraid to go and report the matter to the police because it is the same police who had shot me. I feared that they would shoot me once again. So, I was very afraid. How was I supposed to report the incident to them and it was them who had shot me? They would have arrested me to conceal the truth about this incident. I was walking with one leg using support. So, I did not do anything.

Commissioner Dinka: When you see a policeman today what is your instinctive feeling towards them?

Mr. Christopher Ooko Opiyo: Whenever I meet policemen I just feel pain in my foot. I feel like I am stepping down using that foot and that it is bleeding. I feel pain inside my brain. So, I do not feel well when I meet them.

Commissioner Dinka: Did you have any children with your first wife who left you? How many children do you have now?

Mr. Christopher Ooko Opiyo: I had one child with the first wife. We have three children with my second wife.

Commissioner Dinka: You are caring for four children, your wife and yourself with this disability which you have proven that it is not inability as the Leader of Evidence has said. Please, continue with your work and you should also live your life and provide for your family. The Commission has heard you and I am sure the Commission's report and recommendations will record your suffering and pain and for others like you. Hopefully, that will create a situation whereby you will be assisted and your pain and suffering recognized by the entire country. Thank you very much, for your testimony.

Commissioner Slye: Thank you, Mr. Ooko for coming forward and giving us your testimony. I just have a couple of questions for you. Since your shooting and having

spent time in hospital, have you been able to learn how many other people were hurt during that time that you were hurt by the police?

Mr. Christopher Ooko Opiyo: Yes, there is somebody else who said that he was also shot in the hand. I am told that some people were shot dead.

Commissioner Slye: Do you know the names of any of those people?

Mr. Christopher Ooko Opiyo: Yes. One of the persons is called Toy Oyatoto; the one who was shot in the hand.

Commissioner Slye: Do you know the names of those who were killed?

Mr. Christopher Ooko Opiyo: I just heard a story that there was a person who carrying meat in a wheelbarrow. I was told that he was shot dead, but I did not see him because I really did not reach the place where the fighting was going on. So, I did not get to know who died. The person who was hurt came and visited me in the hospital and he told me that he also felt a sharp pain in his hand. He said he was a *fundi* and he was going to buy nails from a hardware shop and then he felt a bullet enter his hand.

Commissioner Slye: And he came to visit you in the hospital?

Mr. Christopher Ooko Opiyo: Yes, later on, he visited me in the hospital. He was discharged and came to visit me.

Commissioner Slye: So, you knew him before this? He was somebody known to you? Is that right?

Mr. Christopher Ooko Opiyo: We live in the same place. He was shot at a different location from where I was shot. He was shot near the bridge, but I was shot near the hospital. So, I know him. I still see him.

Commissioner Slye: You mentioned that the police came to visit you in the hospital. Do you remember what they said to you?

Mr. Christopher Ooko Opiyo: They just asked me: "Are you among the people who were shot?"

Commissioner Slye: What did you say to them when they asked you that question?

Mr. Christopher Ooko Opiyo: I answered them, "yes". I was one of the people who were shot. They asked me where I had been shot and I told them that I had been shot from somewhere up there. Then they wrote a report and they did not ask me any further questions.

Commissioner Slye: Did you ever hear from them again after that?

Mr. Christopher Ooko Opiyo: No, I heard nothing from them.

Commissioner Slye: Why do you think they came to ask you those questions?

Mr. Christopher Ooko Opiyo: I asked the doctor and he told me that they were taking records of the people who had been shot.

Commissioner Slye: Why do you think they wanted a record of those people who had been shot?

Mr. Christopher Ooko Opiyo: I did not know and I did not ask them. But I heard somebody say that when their bullets have been used, then they must account for them. So, they wanted to confirm whether it was their bullet that hit me or it was a different one from some other people.

Commissioner Slye: When you came to the hospital, was the bullet still in your foot?

Mr. Christopher Ooko Opiyo: When I went to the hospital, there was no bullet. I think it hit me and exited because it broke the lower bone. So, the bullet was not stuck in my foot. I asked the doctors and they said that they did not see any bullet.

Commissioner Slye: You mentioned that you spoke with some lawyers about representing you and they said that because it would be a case against the police, they would need a lot of money which you did not have. Do you remember any of those lawyers you spoke to?

Mr. Christopher Ooko Opiyo: No, I cannot remember them because we were told that there were people who they had sent and they were just gathering information for them.

Commissioner Slye: So, they had come to the hospital while you were there and were talking to a number of the people there, including you, is that right?

Mr. Christopher Ooko Opiyo: Could you come again? I did not get that question.

Commissioner Slye: The lawyers came to the hospital. You said they talked to many people, including you. Did they just talk to you?

Mr. Christopher Ooko Opiyo: The reason why we met them was because there were some vehicles which were involved in accidents. So, they were coming to see the people who had been involved in the accidents, so that they could take up their cases. So, they said, if they could take up cases for the accident people, then they could also represent us. They were not specifically coming to inquire about us.

Commissioner Slye: Lastly, you mentioned that you received an artificial foot. I understand it was from Jaipur. Did you travel to Jaipur to get the foot?

Mr. Christopher Ooko Opiyo: I went to Nairobi to have the artificial foot made. When it needs to be repaired, I go there so that I get a new one or it is repaired.

Commissioner Slye: So, you got the foot in Nairobi? Was there an individual or an organization that assisted you in going to Nairobi to get the artificial foot?

Mr. Christopher Ooko Opiyo: Someone explained to me and referred me to that place. They told me to first go to Kisii District Hospital. So, I got a referral from the Kisii District Hospital. Then they fitted the artificial foot. The money that I used was my whole responsibility. Even what I fed on during that time was all my own money.

Commissioner Slye: So, you paid for it all yourself? Nobody else helped you pay for the foot or for the fare to go to Nairobi together?

Mr. Christopher Ooko Opiyo: No, nobody assisted me.

Commissioner Slye: Do you remember where you went to get the foot in Nairobi? Was it to a hospital or a clinic?

Mr. Christopher Ooko Opiyo: The place is called Jaipur Rotary. It is also Social Services Support.

Commissioner Slye: Thank you very much. I want to join my fellow Commissioners to again thank you for appearing before us and sharing your story with us. I know that it is difficult to relieve events like this. We very much appreciate your willingness to do that.

Mr. Christopher Ooko Opiyo: Thank you. I have really tried to work hard and live a better life because sometimes business is low. Sometimes I just go hungry because I cannot work harder than that. Most of my work involves standing. I can stand for almost six hours and I really get a lot of hardship. Sometime my foot aches and I do not even sleep because the Jaipur foot is something that actually scratches the part where it is joined to your body. So, it really scratches your foot. Sometimes it scratches my knee until it bleeds but I just have to work standing up. If I work sitting down, I will not make enough money to support me and my family. So, it forces me to really work very hard.

Commissioner Ojienda: Thank you, Christopher, for your testimony. I sympathize that you did not go to court. You should have filed a law suit against the Attorney-General and the Town Council of Migori because you were shot by the police and clearly the town council was involved in quelling the riot. Unfortunately, the limitation of actions against the Attorney-General is one year. The law suit should have been filed by 2003. However, I think for now, you need to keep on doing your business and maybe it will still be possible to see what can be done in terms of a legal remedy if you knew the officers who shot you. Do you remember any of the officers who shot you?

Mr. Christopher Ooko Opiyo: I do not know them. The policemen would not even know who exactly shot me.

Commissioner Ojienda: I think there is still a legal remedy. Otherwise, I wish you well.

Mr. Christopher Ooko Opiyo: I do not know what route to follow up. It is you, people, who can advise me on which procedures to follow. It is you who know this. So, I wish you would advise me on this.

Commissioner Ojienda: We will do the best that we can within the mandate that we have.

The Presiding Chair (Commissioner Shava): Thank you very much, Mr. Ooko. I have only one question for you. Is the business that you are doing still the same business you were doing before? Are you still making doughnuts?

Mr. Christopher Ooko Opiyo: I am still doing the same business.

The Presiding Chair (Commissioner Shava): You are saying you are finding it difficult to make enough money to support yourself and your family and that the work is very tiring and that the prosthesis causes you some physical distress when you have to stand for long hours. Have you considered doing training for any other trade?

Mr. Christopher Ooko Opiyo: This work makes me suffer. I am just persevering. I have not gone for any other training because I have not thought of any other business. I can only be in a shop because I cannot walk much. I lack money because in order for one to look for money, sometimes when you want to open an account, so that you get a loan, it is not easy, especially for us, Luos, to get loans. I have tried almost in three places. You will not get a loan if you are a Luo. There are many requirements that you must meet before you can qualify for a loan. Many times, you find that you cannot meet those requirements. So, you use the little money that you have to sustain your business. When we were doing business then, we would sell each doughnut at Kshs 5 but because we were not using a lot of wheat flour and oil. They still want us to sell the same product at Kshs 5 and we have been hit by inflation just like any other Kenyan. Now I am not making any profit like I used to make before because it is now very difficult.

The Presiding Chair (Commissioner Shava): You applied for this loan and you were turned down three times. What did you want to do with that money?

Mr. Christopher Ooko Opiyo: I wanted to open up a shop. This is because in a shop, if you buy something at Kshs 5, you will get a profit on every item. So, if it is bread, you know the profit that you will get. But in this other business, you first have to start it and then market it. The prices of commodities are going up, but we cannot increase the price of the doughnuts. The price of sugar has gone up and there is an allowance that you are given so that, at least, you can get a profit from the buying and the selling price. If I increase the price of the things that I am selling, nobody will buy them.

The Presiding Chair (Commissioner Shava): Mr. Ooko, I want to join my fellow Commissioners in thanking you for coming here and talking to us today. We salute you for your courage and congratulate you that you have carried on living in these difficult circumstances and even raising a family. We will look into how this Commission within what it is empowered to do, can help to make your life a bit easier. Thank you for coming and speaking to us today.

Hearing Clerk, please, step down the witness and call in the next witness.

(Mr. Al Haj Ramadhan Hussein took the oath)

Mr. Patrick Njue: Good morning. For the record, please, state your name, where you live and what you do for a living.

Mr. Al Haj Ramadhan Hussein: My name is Al Haj Ramadhan Hussein. I am a Nubian. I stay here in Kisii. I am a retired civil servant. Right now, I am a teacher at the *Madrasa* classes at Nubia, teaching the people about Islam.

Mr. Patrick Njue: Could you confirm having recorded a statement with this Commission?

Mr. Al Haj Ramadhan Hussein: Yes, I do confirm I recorded a statement with this Commission.

Mr. Patrick Njue: You wrote a statement related to the plight of the Nubian Community that lives in Kisii?

Mr. Al Haj Ramadhan Hussein: Yes.

Mr. Patrick Njue: Allow me to make my observation that from where we have come from in terms of the hearings, we have been able to meet other members of the Nubian Community. Like any other community in Kenya, we appreciate that they are now spread out. Now that we are in Kisii, we have the opportunity of hearing about this community, but this time with a perspective of the on goings in Kisii which is why you are here. So, I will ask that if you are ready, you may begin your presentation.

Mr. Al Haj Ramadhan Hussein: I take this opportunity to thank the TJRC for giving us this opportunity to be able to say what we have undergone. We did not get an opportunity to consult with everyone, so that we are able to tell the violations that we face in life.

As you have said, you have gone around all over the country and you have met many people from the Nubian community. They have spoken to you about their issues affecting them and which might be similar to ours. So, I might not be able to repeat what they have already told you. I will try my level best to really concentrate on the issues that Nubians, especially those in Kisii, have encountered.

I have put the issues into three categories. The first category is the issue of Nubians versus the colonizers who brought our forefathers to these areas. The second category shall be the Nubians versus the Government of Kenya. The third category shall be Nubians versus the place where they stay around here. Let me begin with the history. I am now 43 years old, but there are those who are older than me who would have told you the history better. However, there was none who was willing to come and talk over these issues.

Those colonizers who came from Britain; the ones who brought our forefathers here, they used them well. Their goals were really achieved. But as they were leaving, they did not want to know what would befall the people they left behind. It would have been better if they had said:- “Because we brought you here and you have accomplished whatever we brought you to do here, we should take you back to where you came from.” But they just left them like that. They left the Nubians here in Kisii. They are in places like Nyabururu, Bochura, the surroundings of Jogoo. They were brought next to Kisii Primary School and that became their centre of residence. The fifth place is where we are staying. They were brought there in 1938. So, when they were moved from Kisii Primary School up to where we are, they were left there to cultivate the land, but they were not given any title deeds. They were just given letters of allotment for a plot measuring 100 by 50 feet. It was supposed to be a settlement area. Those are the areas they were supposed to cultivate. But they were not given title deeds for this land which they were cultivating.

In 1960s, the same Colonial Government told them that they will begin paying rates now to the municipal councils for the places where they have been given allotment letters. However, those Nubians staying in Nyabururu and Bochura do not pay rates. They just stay there as if those are their own pieces of land. Those of us who were left where we are right now pay rates to the council. They cultivated in that land up to 1975. They used to grow coffee and bananas. When the colonizers went back, they did not hand over this people to the incoming government. They just left them like that. So, the Government which took over did not also deal with the issues facing the Nubians as one of the communities in Kenya. This action caused bad blood between our forefathers and the inhabitants of those areas - the Kisiis.

These soldiers were following orders. When you follow orders, you do what you are told. So, they did whatever the colonizers wanted them to do because they were following orders. So, that brought bad blood between our forefathers and the locals. There was a saying in Kisii which says: “Go and play with the soldiers of the colonizers, but do not joke around with the Kisiis.” The soldiers were forced to really suppress the inhabitants. There is now a belief that where the Nubians stay is not a place to joke around. They are perceived to be people that you cannot intermingle with; you cannot mix with them in terms of development.

When these colonizers were leaving, the main aim was that these people would intermarry, interact with the locals so that the Nubians who are a minority will just become extinct and disappear like that. But they did not know that they had already

created bad blood between us and other communities. So, the other communities feared us. The Nubians were not really involved in development projects, especially those who were born later on. So, although they thought that intermarriage would be possible, it was a bit hard. When Kenya got her Independence, those Europeans went back home. Those who remained were banned from developing those parcels of land which their forefathers had not acquired title deeds. They were told that they could not do any farming on those parcels of land. Therefore, they could not develop them. This is the Government of the people who took the reins of power. These forefathers just left those pieces of land for cultivation and they remained with them where they settled. So, economically, in Kenya today, those who have really developed is because of agriculture. Those who have really developed in this area are people who were at the same level with the people who were cultivating those parcels of land during that time.

The population of the people who live in that 100 by 50 feet plot is very high. So, what will we do? That plot is very small and it cannot be sub-divided. Even the place where people can work, our forefathers were given a plot to construct a school, but that land was changed to be for Kisii Muslims

Because of bad blood, the leaders who were here said that many people will fear coming to this school because it has the name of those people that we should not mingle with. So, we were forced to change the name of the school so that those people would know that that school did not belong to the people they were being told they should not mix with. So, it was really hard to bring that togetherness and unity so that people could stay together.

Nevertheless, right now, things are changing slowly but truly, economically, our people are really backward. Even those who we went to school, if at all one does not get a job, they go back to farming and get some foodstuff and sell it in the markets. Some of us who are now remaining do not have pieces of land to cultivate. We do not have jobs to do. So, it becomes very hard. We just do casual work whereby you just get a few shillings which is just enough to buy food and pay rent. You cannot develop like this. There are those of us here who even though they have jobs, they get food from their farms. So, they can use their money to do some other development.

The notion that they had that we shall intermarry with the locals became a bit hard. If a young man wants to marry a Kisii lady, the first question they will ask is: "Do you have some piece of land because in this region people believe in agriculture?" They ask such questions because of what they will eat. The assimilation and inter-mixing becomes very hard. People live in that state of not understanding each other, because of bad blood between them. The other thing is that apart from the piece of land, you will find that some people feel that we do not have a right, or we are not inhabitants of this area; therefore, we should leave the place. So, even if we live with them, we do not have any rights.

Secondly, this is a market place. If you walk around the place, you will see the way the city is growing. But on our side, it is very hard for development to take place. We cannot

be compared to our colleagues because economically, we are really backward. When it comes to jobs, it is really hard to get them. You are seen as someone who is not an inhabitant of this area, and so you cannot get a job. I am trying to say that the Government messed up in one way. Since our forefathers came to this area, it is over 100 years. It was only recently, before the 2007 elections, that the Government came and announced that the Nubian Community had been accepted officially as one of the tribes of Kenya. The Nubians became the 43rd tribe of Kenya. However, the Government has not taken an initiative to really make it public. It was just a statement. We do not know if it was gazetted that the Nubian community is the 43rd tribe in Kenya.

Many politicians talk about the 42 tribes of Kenya, but it has not been announced officially that now we have the 43rd tribe, which is the Nubian Community. That has brought a lot of problems. Now, I ask myself: Why has it taken the Government over 100 years to realize that we have the Nubian community whose citizenship is not recognized by the Constitution? Even when we were growing up, any place we went to, we felt that we were second class citizens, and not full citizens of Kenya. We face a lot of problems because we are viewed as non-Kenyans. However, the place where we reside now is supposed to be--- As a minority community, we should get automatic nomination, so that we can get representation. That has not happened and we do not know where to get fairness. We should get it so that we are represented politically, and our issues can be taken forward and we get some help.

When you move around the Kisii region, you will realize that this Government has brought a lot of development in terms of infrastructure. But when we talk about that small place where we live, there are only three feeder roads. The tarmac road is outside. Our roads are not tarmacked. They are in a bad shape or state. People have a lot of problems. When they want to go to hospital, they find it very hard. If you are late, you get a motorbike but sometimes these motorbikes skid and you fall. When you ask the councillors why they do not use the LATF money to repair our roads, they tell us that the LATF money are not supposed to be used to repair roads. They tell us that funds to repair our roads come from the central Government. So, you realize we have a lot of problems economically.

Those who are lucky get plots measuring 100 by 50 feet. Behind there, you realize there is a small portion where you can have some pit latrines or where you can grow some vegetables. You find somebody coming to tell you that he has bought that plot and you do not know who gave him that piece of land, because it is yours. Maybe this person has a title deed but you fail to understand whether it is genuine. So, the situation that we are now facing is very pathetic. So, in terms of jobs, our people do not get jobs, because they are told that they are not supposed to get big jobs, but only some casual jobs. I request that the central Government to assist our people to also get those big jobs. For example, it has been announced officially that we are now citizens of this Republic and we do not have any other place to go to. If we are recognized now, what is the Government's initiative to assist people who do not have a place to go to?

The British Government should also reconsider what action it will take in relation to the people that they brought to Kenya and left them here. This is because if we go back to Sudan, we will not be recognized. There was a problem but we thank God that now we have been recognized. That recognition goes with responsibility and it must give us settlements, everybody should get a place to live in because we are so many. For example, I am a last born in a family of nine. We are too many to live on a plot of 100 by 50 feet. Where will we go? Everybody wants to marry and have children. So, how will the situation be? I think my presentation will end there.

Mr. Patrick Njue: Thank you, Mr. Ramadhan, for that wonderful presentation. As a fan of Kiswahili, I must say you have really been able to make your presentation in a very nice manner in Kiswahili Language. That explains why you are a teacher.

You have talked of marginalization of the Nubian Community in Kisii, unemployment and other issues. In terms of social amenities, health facilities and matters to do with access to water, what do you feel the rating is compared to the rest of Kisii?

Mr. Al Hajj Ramadhan Hussein: In that piece of land where our ancestors left us, there was a place where a dispensary was to be built so that we could get health services, but now that place has been grabbed. I just see some other constructions going on there. So, we are forced to come to Kisii Level 5 Hospital to get medical attention. A Level 5 hospital is very good, but there is nothing going on in that plot where the dispensary was to be built. The whole of Kisii Town has a serious problem of water. Indeed, for over 20 years, there has been a problem of water and people used to walk for one kilometer to get water. We thank God that now there is water, but still, there are some problems. You find that water goes missing at times and many people have decided to dig boreholes from which they can get water. We have also got some help from the European Union (EU). They came and dug one borehole which serves the whole community.

Mr. Patrick Njue: There is something else, Mr. Ramadhan, that did not come out clearly about the youth in your testimony. I read in your statement that there is concern that when they attain the age of 18 years, they have a problem with acquiring an identity cards. Is it so or has it changed?

Al Hajj Ramadhan Hussein: When I started my testimony, I said that some of the problems facing the Nubians are problems that face other people all over the nation. I am just going to concentrate on the issues that face the Nubians in Kisii. You are told to bring your grandfather's birth certificate, yet your father does not have one. They have begun the vetting process. They vet you properly, but the President announced that vetting was over. Now, people just go directly so long as the village elder certifies that you are a son of his area.

Mr. Patrick Njue: Again, on the issues affecting the community, have you been able to seek the intervention of any other office, be it Government or otherwise?

Al Hajj Ramadhan Hussein: We got some assistance from the EU in 2006; they really repaired our road. They put some culverts and dug shallow places. They applied murrum and they also renovated the social hall. They sunk a borehole and also renovated a school that was constructed in 1960. That is where our children go to school right now. That is the only help we have got from the EU. We succeeded after writing a proposal through one of our own, who is in Nairobi. The EU was helping the marginalized people like us.

Mr. Patrick Njue: So, what intervention have you sought from the Government?

Al Hajj Ramadhan Hussein: What kind of assistance are you talking of?

Mr. Patrick Njue: Like more land. Have you approached the DC to ask for idle land or something like that?

Al Hajj Ramadhan Hussein: It has been very difficult because any time we talk with the municipality they tell us that truly Kisii Town is overpopulated and there is no piece of land that we can be given. However, we have been reasoning, thus: You have given our forefathers' land to other people who have developed it, yet we do not have any other place to cultivate; so where can we go? They subdivided our cemetery land and gave it to the PEFA Church. That is where we used to bury our dead. We do not have a place where to bury our dead.

Mr. Patrick Njue: Lastly - forgive me because you may have answered this - in terms of integration with other communities, save for intermarriages, what are some of the recommendations that you think you have in mind that would best foster that integration?

Al Hajj Ramadhan Hussein: As I said, one Kisii adage says, "many people tell their children to play with the police officers, but not to joke around with Nubians". So, many Kisiis feared to intermingle with us, especially the girls, but now people study and live together; that is changing but there are still some conservatives. For example, when I was growing up, I met one old drunken man who told me that my father killed his grandmother. There are some things that our forefathers did that were wrong but we do not know of them; people take us to be bad because of that. So, they fear. I think integration must take place. There must be communication. There is a council of Nubian elders and I am the secretary and we are trying hard. We want to get those old men and show them that there is nothing like that; people should live together and we should also be taken as people from this area, since we do not have any other place to go to. If there are job opportunities, then we should also be accommodated for them, even if they are in the sub-location and location. We should also be considered for leadership positions and we should not be marginalized or be seen as foreigners. We take ourselves as the Kisiis; when I am asked where I come from and who I am, I say I am a Kisii because I come from Kisii.

Mr. Patrick Njue: Thank you very much for your presentation. Commissioners, you can now ask him questions.

The Presiding Chair (Commissioner Shava): Thank you very much, Al Hajj. I will start on my right with Commissioner Ojienda.

Commissioner Ojienda: Thank you, Al Hajj for your testimony. We had a detailed presentation on the problems facing the Nubian community. In Kisumu we had a previous presentation, and also in Nairobi, as to the issues you speak about. The issues you have talked about are known to us. I have no questions to ask you.

Commissioner Dinka: Al Hajj Hussein, thank you very much for your testimony and for coming and helping the Commission on the issues that are of concern to the Nubian community. We have had other discussions with Nubian community representatives in other places, and it seems to be the same thing. It varies from place to place. What is the Nubian community numerically in the country and in Kisii? I have not been able to establish that so far.

Al Hajj Ramadhan Hussein: Truly, knowing the population of the Nubian--- We have really not counted the Nubian community but in Kisii we are between 2, 000 to 3, 000 people. I cannot really estimate our number because people move from place to place in search of jobs. In every Nubian family, you will get around 100 people, including grandchildren.

Commissioner Dinka: Thank you very much. Would you give the total estimate? If you are 2, 000 in Kisii, would the Nubian community all over the country be 15, 000?

Al Hajj Ramadhan Hussein: It can be around that number. It can be estimated at that number.

Commissioner Dinka: Thank you very much. I hope your people will have democratic rights and whatever else the central Government gives to provinces or, hopefully, counties; you must have your fair share. That is the way the Commission and I look at it. I hope with the new dispensation in place, the new Constitution, and devolution of power and resources to the counties, your situation will be much better.

The Presiding Chair (Commissioner Shava): Al Hajj Ramadhan Hussein, thank you very much for coming here today. I have noted that you said that you are a young elder and the older elders did not want to come today. We thank you for not being reluctant. We thank you for coming and bringing up these issues. Although we have heard about them in other places, you have added valuable information to our understanding of the situation in which your community finds itself. We are privileged to have the Vice-Chair of the National Cohesion and Integration Commission, Mrs. Mary Onyango. I have noted that she is taking a key interest in our discussions. Thank you very much for coming. Session Clerk, swear in the next witness.

Mr. Patrick Njue: Commissioners, the next witness is Kisii No.3

(Mr. John Senema Sirimani took the oath)

Mr. Patrick Njue: Good morning, Sir.

Mr. John Senema Sirimani: I am very fine.

Mr. Njue Patrick: Do once again state your names, where you live and what you do for a living.

Mr. John Senema Sirimani : My names are John Senema Sirimani. I look after cattle in my home. I am disabled and I cannot do any other work.

Mr. Patrick Njue: It is due to injuries that you sustained that you are sitting with us this morning. You want to share your experience with us. Is that the case?

Mr. John Senema Sirimani: Yes, that is true.

Mr. Patrick Njue: You may begin your presentation.

Mr. John Senema Sirimani: Now, I present myself before this Commission. I was employed by Unga Limited. In 1980, I got hurt. Four sacks fell on me. We were two. The other one who was ahead of me died and his intestines came out. I was behind him. The sacks fell on my head and I hit my head on the floor; my chest got injured. When I was taken to hospital, the doctor told the company that I be put on a lower grade to be doing lighter duties. As I continued doing the lighter duties, I started feeling worse in the chest. I went back to hospital for the second time and the doctor now said that there was no work that I could do and that I be paid my benefits for life. He said that I should be paid Kshs17 million. He wrote a letter and he put it in an envelope and it was put in a file. When the company read the letter, they told me that I had reported them and again I wanted a lot of money. So, I was given an off to go home.

I reached home and felt unwell in my stomach; so I went to a Government hospital and was given off duty for five days. I have records showing that from Kenyatta National Hospital (KNH). Other documents got burnt in my house but I have photocopies showing that the house got burnt; I have other documents which people rescued from my house when it was burning. So, I came to Nairobi, and the company told me that they had sacked me. I told them that if they had sacked me they had to pay me my retirement benefits and my life policy before I went home. They threw me out. I have three children at home. I took action. I started reporting to the Ministry of Labour. I did not find much help. So, I went to the Provincial Labour Officer and still found no help. I went to the trade union body, COTU. I still did not find any assistance.

The last intervention I tried was that I wrote to President Kibaki. I was given a reply, and I have a copy of the letter which said that they would look into my issue the following month. It was written by Mr. John Githongo, but I did not get any assistance. I wrote another letter and asked them why they had lied to me. I got another reply from State House. It was written by a Mr. Chelule. They told me that I should not worry since they

were to look into my issue. I have got no assistance up to day. I then went to the Ministry of Justice, National Cohesion and Constitutional Affairs on the 20th Floor of Co-operative House. I reported and again they wrote a letter. The officer handling the case was Mrs. Kiuna. She came to the counter and ordered for a file to be brought. The file has been hidden to date because they do not want to pay me my benefits. Mrs. Kiuna got tired and she was transferred to another place. I have her telephone number and she says that I give you her number. I am telling the Government that this is my right and I am not begging for it from anybody. My children suffered and they did not get a proper education because my money was withheld. So, I am requesting the Government to help me get my benefits plus my life policy proceeds. When you see me, do not think you are seeing a human being. I cannot even climb a hill. If I go to a hilly side, I cannot walk. I feel very bad.

The other thing is that my chest caused me to have dizziness. Even if I want to greet you, I feel dizzy. So, these are the few things I want to tell you. Even if I say more, they will be of no use. I request this Commission to look into this matter so that I get my benefits and my life policy proceeds. That is all I have to say. The documents from KNH are here.

Mr. Patrick Njue: Mr. Senema, allow me to express my sympathies for the pain and suffering which you had, and which you continue to suffer. It is even evident in your testimony today. I will proceed to ask you a few questions just to clarify your testimony and the Commissioners will also do the same. My first question is: in which year were you employed by Unga Limited?

Mr. John Senema Sirimani: In 1975, 1st July.

Mr. Patrick Njue: When was the date of the accident?

Mr. John Senema Sirimani: I cannot remember the date exactly. I gave the documents to the company and they kept them in their records.

Mr. Patrick Njue: But perhaps you could remember the year; how many years had you worked for Unga Limited?

Mr. John Senema Sirimani: I worked for 17 years.

Mr. Patrick Njue: Again, just for the record and for those of us who may not know, is Unga Limited a private company?

The Presiding Chair (Commissioner Shava): I am sorry. For those who have just joined us, you must respect the rules. Flash photography is not permitted as witnesses present their testimonies, but it is permitted at other times. We ask you not to use flash photography. For those who have not switched of their phones, please do so. Carry on!

Mr. Patrick Njue: Mr. Senema, is Unga Limited a private company?

Mr. John Senema Sirimani: Yes.

Mr. Patrick Njue: I want to know how the state of your family during your employment with Unga Limited was, and how it is at the moment.

Mr. John Senema Sirimani: When I worked with Unga Limited, my children were in Heshima Primary School. They were three boys. I left four daughters with my wife and I went with three sons to Nairobi. The first one is called Nelson Sirimani Senema. The second one is David Mangondi Senema and the third is Geoffrey Mandela Senema. The girls were living with their mother. They stopped going to school in Heshima because I did not have money.

Mr. Patrick Njue: How old is the first born?

Mr. John Senema Sirimani: He is married with three children.

Mr. Patrick Njue: How about the last born?

Mr. John Senema Sirimani: He is also old enough, married with two children. He got twins recently.

Mr. Patrick Njue: You said that all your children are now fending for themselves.

Mr. John Senema Sirimani: Yes, they are all self-dependent and do not have good jobs. I do not have money to go for treatment. When I was involved in an accident, my wife almost refused me because I did not have money to feed her the way I used to do. She was not eating the way she was used to. But her parents and brothers told her: "If you leave that man, you will not step in our home." I also told her: "If you want to leave me, just leave me but leave my children behind. And if you go with them, I will go to the Children's Welfare Department to claim for them." So, she cooled down and now she is at home.

The problem with women is that if you marry them while you are working and you get sacked, they will not want you anymore.

Mr. Patrick Njue: That is a sad state of affairs. That is the social fabric that we hope those of us who are here today have something to learn out of it.

Mzee Sinema, you have also talked about various interventions that you have sought from office to office. I note from your statement you had earlier given, there are some documents which you gave to us. May be I will help you as I go through them so that you confirm to me if we have everything or there is anything that has been left out.

And, we wish to record you as you respond.

Mr. John Senema Sirimani: Yes, Sir.

Mr. Patrick Njue: The first document I have with me is a letter from Unga Limited which is titled, "Appeal against Dismissal". You had written to them appealing against the dismissal and what is worth noting from the said letter is that, upon appeal they revised the summary dismissal to termination of service.

I also have another document which is addressed to His Excellency Hon. Mwai Kibaki by yourself and the parting shot down there; you say that you need Kshs17, 000,000 from the said Unga limited.

I also have a letter here from the then Permanent Secretary (PS), Office of the President, Mr. John Githongo, acknowledging receipt of your complaint and the petition.

The Presiding Chair (Commissioner Shava): Leader of Evidence, for the purpose of the record, could you indicate the dates from those letters?

Mr. Patrick Njue: If I may come back again, from the first document, there is letter from Unga Limited advising on your appeal against dismissal; the letter was dated 23rd February, 1990. The letter you wrote to His Excellency the President is dated 7th of February, 2003.

Mr. John Senema Sirimani: Yes, Sir.

Mr. Patrick Njue: The letter from the Permanent Secretary, Office of the President, on receipt of your complaint or petition is dated 7th April, 2003.

Mr. John Senema Sirimani: Yes, Sir.

Mr. Patrick Njue: The other document is an acknowledgement again by somebody, a Mr. Chelule, addressed to the PS Ministry of Labour, highlighting your plight and the said letter is dated 26th August, 2005.

Mr. John Senema Sirimani: Yes, Sir.

Mr. Patrick Njue: There is also a letter from the Ministry of Justice, National Cohesion and Constitutional Affairs, written on behalf of the PS, again addressed to the Ministry of Labour and they highlight your plight, dated 28th July, 2008.

Mr. John Senema Sirimani: Yes, Sir.

Mr. Patrick Njue: There is another document from the Ministry of Labour, written on behalf of the District Labour officer, dated 2nd February, 1990, addressed to the Secretary General of the umbrella body in which companies like Unga Limited belong; again highlighting your plight.

Mr. John Senema Sirimani: Yes, Sir.

Mr. Patrick Njue: We also have a letter from Unga Limited, which is a memorandum, asking you to vacate the company house. There is also another letter from the office of the councillor, the then KANU councillor, Nakuru District organizing secretary, highlighting your plight to the Unga Limited Office, dated 13th January, 1990. Those are the documents that you had previously submitted.

Mr. John Senema Sirimani: Yes, Sir.

Mr. Patrick Njue: I do not know if you have any other. Of course you have given the contact number of Mrs. Ann, who you have said can be called upon to shed more light on your case. I wonder if you have any other document, besides these ones which we can make copies of for the purposes of this Commission.

Mr. John Senema Sirimani: No, the document that I have is an X-ray from Kenyatta Hospital, but the other documents got burnt in the house. But I have a photograph showing how my house was razed down and I will show it to you. I believe that is the evidence I have.

Mr. Patrick Njue: You also have the photograph that shows how the house was razed down and treatment documents from Kenyatta National Hospital, which we can make copies of because I know that they are originals; together with those which had been submitted earlier.

Mr. Senema, would you want all these documents admitted formally as the record of this Commission?

Mr. John Senema Sirimani: Yes, Sir.

Mr. Patrick Njue: The said documents are formally admitted as records of this Commission.

The Presiding Chair (Commissioner Shava): The documents are so admitted.

Mr. Patrick Njue: Looking at your case, Mr. Senema, I sympathize that despite the various interventions that you have sought, none has been forthcoming towards offering some sort of remedy. But of concern is that, I do not see any that comes from a lawyer. Did you think of approaching a lawyer who could be of help?

Mr. John Senema Sirimani: I did not go to a lawyer because I did not have the money. Lawyers are people who want money.

Mr. Patrick Njue: Looking at these documents, there is one that you have referred to as being a doctor's recommendation that you be paid Kshs17 million. You were not able to retain a copy of this?

Mr. John Senema Sirimani: The doctor wrote a letter and I took it to the company and I did not make any copy.

Mr. Patrick Njue: Thank you for your testimony. You have given your expectations and I do hope that from our final report, an appropriate recommendation will be given that will go a long way into wiping your tears and soothing the agony that you have suffered over the years. But I will urge that you remain bold and strong and hope for a better day every day.

Thank you, Mr. Senema. Our Commissioner may ask questions. Presiding Chair, please.

The Presiding Chair (Commissioner Shava): Thank you for your testimony, Mr. Senema Seremani. It is different from the kind of things that we have been hearing; what you are talking about also amounts to injustice. We thank you for coming to share the case with us today. Commissioners may now have some questions for you. I will start from my right - Commissioner Ojienda.

Commissioner Ojienda: Thank you Mr. Seremani for your testimony. You have clearly told us how you gave your life to Unga Limited in Nakuru and despite your determination in your employment, it appears that you have not been paid to date. When the letter dated 23rd February, 1990, was written to you, did you receive it with a breakdown of the sum of money that the company deemed due to you?

Mr. John Senema Sirimani: The doctor did not tell me the different categories, like retirement money. He just put it generally in total.

Commissioner Ojienda: It is not the doctor who does the assessment, it is your employer. I am asking you, whether you have ever received a breakdown of what is due to you from Unga Limited. Have they ever communicated to you and told you: "This is the much that you are supposed to be paid?"

Mr. John Senema Sirimani: No. They have never communicated such information to me.

Commissioner Ojienda: Have you written to your employer, besides writing to the President? I can see you have gone to Lasoi the KANU chairman, you have complained to Githongo and everyone else. Have you gone back to Unga Limited to ask for payment of your dues? This is because Unga Limited is there in Nakuru and you deserve to be paid. They are willing to pay given the letter they wrote to you on 23rd February, 1990.

Mr. John Senema Sirimani: I went there; the guards blocked me and I was just sent away.

Commissioner Ojienda: You should have gone to a lawyer. Clearly, there is no dispute. There is money that is due and payable to you. Do you know how the doctor worked out your dues - in brief, where did this Kshs17 million come from? I have never known, in

my long practice of law, and specifically employment law that I practice so dearly, no person would get dues in the tune of Kshs17 million if they have served for 17 years unless they were in the rank of a manager. Which makes me ask you a question; what was your salary when your service was terminated, so that we can work it backwards?

Mr. John Senema Sirimani: When I was employed - though I have left the records at home - my salary was Kshs1, 445.00.

Commissioner Ojienda: That was a salary of a loader. You were loading sacks in the company? Is that right?

Mr. John Senema Sirimani: Yes, Sir.

Commissioner Ojienda: That salary computed backwards under the Employment Act then applying, at 15 per cent, and whatever dues you had, that is your entitlement--- I think your case is a well deserved one. You need to be compensated but the amount needs to be worked out correctly. Certainly, it cannot be Kshs17 million.

Commissioner Chawatama: Thank you for your testimony. I would like you to clarify some issues to help me understand what happened to you and may be in the process, also help you understand. It is clear that you were employed by Unga Limited. According to the terminal letter written to you on 23rd February, 1990, they said that they were investigating you. Were you aware of any investigations on you?

Mr. John Senema: I did not know at all.

Commissioner Chawatama: They also said that those investigations pointed to the fact that you had committed a serious offence. Were you ever told by them that you had committed a serious offence?

Mr. John Senema: I did not know of any offence.

Commissioner Chawatama: Did they ever call for a hearing to establish that offence?

Mr. John Senema: No, they did not.

Commissioner Chawatama: When they dismissed you, what did you understand was the reason for such dismissal?

Mr. John Senema: I did not know why they sacked me. They did not tell me and they also did not write it in the letter.

Commissioner Chawatama: So, when you look back, what do you think was the reason for such dismissal?

Mr. John Senema: I cannot remember because I never did anything wrong; I cannot really understand exactly what the problem was.

Commissioner Chawatama: When they wrote you a letter saying that, now that you have appealed, they have reduced the summary dismissal to normal termination, did you appeal to the company?

Mr. John Senema: No, I did not make an appeal because when I received this letter, I started reporting to the Ministry of Labour and other agencies.

Commissioner Chawatama: From your testimony, it is very clear that you followed the correct procedure by going to the labour office and the Ministry of Labour. I think that is what anybody in your position would have done.

Going back to the doctor who brought up the amount of Kshs17 million. I do not know if this also obtains here in Kenya, but did you appear before the board who determined the extent of your injuries and then made a recommendation?

Mr. John Senema: When I went with the letter from the doctor, I just took it to the company in a sealed envelope. But the doctor had earlier told me that I was to be paid my life benefits plus the retirement package. So, I took the letter to them and they filed it. When I started following up, they hide the file until today.

Commissioner Chawatama: Were you satisfied that the doctor treated you well and that he knew the extent of your injury?

Mr. John Senema: Yes.

Commissioner Chawatama: Thank you. You have clarified and I have understood. I thank you for your testimony.

The Presiding Chair (Commissioner Shava): Mr. Seremani, we have no further questions for you. We would like to thank you for coming here today. We really empathize with your medical condition and with the situation in which you find yourself in after lending faithful service to one institution for seventeen years. This Commission will do what it can within its powers to assist you to come to a satisfactory conclusion so that you can carry on with your life.

Thank you for coming and giving your evidence today.

Hearing Clerk, please escort the witness to his seat and bring in the next witness.

(Mr. John Senema Seremani was stood down)

Mr. Patrick Njue: Commissioners, the next witness is Kisii 12, serial number 11.

(Mr. James Paul Mose took the oath)

Mr. Patrick Njue: Good afternoon?

Mr. James Paul Mose: I am fine.

Mr. Patrick Njue: Kindly, for record purposes, do once again state your full names, where you live and what you do for a living.

Mr. James Paul Mose: My name is James Paul Mose, I was living at Narok but at the moment, I live here in Kisii. At the moment, I do not have any specific job because previously, I was a farmer at Narok.

Mr. Patrick Njue: Mr. Mose, you are here on behalf of the Tombe Self-Help Group to present a memorandum on some injustices that you have suffered as a group. If you are ready, you may present your memorandum.

Mr. James Paul Mose: Tombe Umoja Self-Help Group is a group that was established here in Kisii. We thought it wise if we got finances and looked for land somewhere. That is when we went and bought land at Narok in 2003. We went and built houses there.

During the referendum, we were chased away from that place. When the situation calmed down, we went back to the farm. Also, during post-election violence, we were also affected in the same way and we were evacuated from the land. We came and settled in a camp here in Kisii. But before we came to Kisii, first, we went to Ololunga and then to Kisii. From Ololunga, we were brought to our home here in Kisii. Although there was security at Ololunga, it was not all that good. Therefore, we came to Kisii.

We went to settle in a camp and it was very difficult as everybody separated. If you want to call us, we will have to call the rest far places. People did not have specific land and others went to do casual labour in the neighbourhood to earn a living.

With regard to land in Narok, personally, I do go there. The land has been built, and even if they see me, they do not have any issues with me. They took iron sheets from our houses and used them to build their own houses. The remaining iron sheets are just there. They are not even shocked even if you went there. As I am speaking now, they are still there.

Mr. Patrick Njue: Is that all that you have to say?

Mr. James Paul Mose: I answered questions as asked, but I can continue. Here in Kisii, the group members cannot come together as we were scattered after being chased away from Narok. We have got a lot of problems. Our children are not going to school because we were depending on agriculture and the little money we could raise went into construction of structures for our shelter. We do not have any other means here in Kisii. There is hunger at the moment, and we have suffered enough.

We felt that it is good if the Government could help us so that we can get land somewhere because we were chased away twice from that place. That place where we were, the tribe did not also have any means. It was only that we were using our little money working as a group. We joined hands together and we saved for two years and we got that little money so that we cannot go back as those people who sold land to us do not want even to assist us come out of that problem. We suffered during the referendum and at the Post-election Violence (PEV). In short, that is the only issue unless you ask me another issue, then which I can remember.

Mr. Patrick Njue: Indeed, that is what I will proceed to do, Mr. Mose, by asking you a few questions, after which our Commissioners will also do the same with a view of clarifying your testimony.

You have very well said that you are here to represent Tombe Umoja Self-Help Group. What is the membership of Tombe Umoja Self-Help Group in terms of the numbers? How many are you in number and, perhaps, the families?

Mr. James Paul Mose: We were 46 members.

Mr. Patrick Njue: A total of 46 individuals?

Mr. James Paul Mose: I am not talking about the children whom each member had, but the specific members and their families were 46. Because this is an occasion that happened once, I cannot know exactly how many children each family had. Unless I go back to the record to know how many each member had but the members were 46.

Mr. Patrick Njue: What was the main objective of Tombe Self-Help Group; the reason why you came together?

Mr. James Paul Mose: At our homes here in Kisii, we were struggling to make ends meet because the plots were very small and we had children to support. We saw that it was good to venture out to places like Narok where there were very big plots that were being sold by the inhabitants of that place. Other people had already bought there and we also saw it good to put our money there. Although we did not have money, we could put hands together and be able to buy land. They were accepting payment through installments; for example, Kshs200, 000, Kshs300, 000, Kshs400, 000. Those who were selling land accepted payment on installment basis and, therefore, it was manageable. That is why we bought the land together.

Mr. Patrick Njue: Had you bought land elsewhere other than in Narok District?

Mr. James Paul Mose: No, it was just that one of Narok. Although there were two plots that were for two different people in Narok South.

Mr. Patrick Njue: Again, you said that the first time you were evicted was during the referendum. It is in public domain when the referendum was done, but for the record purposes, you can, perhaps, tell us what year this was.

Mr. James Paul Mose: It was in 2005.

Mr. Patrick Njue: There are some documents that you had previously submitted that may pre-empt some of the questions which may seem to have been left out. Please, could you tell us what these documents are, one by one?

Mr. James Paul Mose: Like which ones? Maybe you can mention them, so that I can answer you well.

Mr. Patrick Njue: What I have just given you is just a set of documents which are copies made from, I believe, originals which you had submitted. I want to formally admit them into the record of the Commission. That is why I am asking if you could go through them once again as you tell us what they are.

Mr. James Paul Mose: The first one is a memorandum.

Mr. Patrick Njue: The first one is a memorandum written by Tombe Umoja Self-Group to this Commission.

Mr. James Paul Mose: We wrote this memorandum detailing about how it was established and when it was registered and how it started here in Kisii. We started by contributing little by little so that we could buy plots.

In October, 2003, we went and purchased land from Mr. Michael Koilek Koikai. It was a plot of Mr. Simala Ololunga 179 and it was of 160 acres. At that time, each acre was costing Kshs25, 000. At that time, we gave him the first installment of Kshs400, 000.

Mr. Patrick Njue: That is the memorandum which you have told us about. Tell us about the next document.

Mr. James Paul Mose: This is a list of the members who bought that land. When we were evicted from that land and when we were going back there, it was signed and stamped by the DC from Rift Valley side, and when it was sent by the District Commissioner, Manga District. The other document is the sale agreement dated 22nd October, 2003.

The next document is a copy of the title deed of a different piece of land of Mrs. Mala Angalet, 784. She had not estimated the acres; she gave us a copy of her title deed and we bought 250 acres. The next one contains members of the two pieces of land as they are the same members of the Self-Help Group. This is just a record of the members of the group.

This is also the sale agreement dated 20th May, 2004, when we bought land from a person called Mr. Crimas Olewama and the agreement was signed before a lawyer called M/s Ochiengo Onduso and Advocates, Enkai Plaza, Room No.16, First Floor, Narok. The next document is the same agreement and the terms and conditions of sale.

The next document is an agreement which says that in June, 2004, we paid Kshs470, 000 and there is another payment on 15th January, 2005, of Kshs80, 000, to Mr. Crimas Olewama. That is what I have.

Mr. Patrick Njue: Would you want this document to accompany your testimony today?

Mr. James Paul Mose: If it is possible and if it has no problem, they are just photocopies. I have other copies.

Mr. Patrick Njue: Presiding Chair, I request if the said documents could be formally admitted on the records of this Commission.

The Presiding Chair (Commissioner Shava): The documents are so admitted!

Mr. Patrick Njue: Thank you. You also said that you were able to visit this land where you were evicted and that there are occupants. Are these people that you know?

Mr. James Paul Mose: I know a few of them by names.

Mr. Patrick Njue: Again, in your expectations from this Commission, you have asked if the Government can assist you in getting land somewhere else. I wonder if you have any other expectation aside from this. Even before the Government can you assist to get land elsewhere, have you tried to go back to this land that you owned? If not, what has stopped you from going there?

Mr. James Paul Mose: We have tried. I, as the Chairman, and at times, I go together with my committee members to see how the situation is like. When we arrived at that place, the people do not recognize us as the owners of the *shamba* because they have built and they are continuing to build. Yesterday, I was there and as I speak, there is a house that is under construction. When you see a person is not even fearing you and you are the owner of that place, he knows why he is developing your land and you cannot even associate yourself with that *shamba*. You cannot even say “let me go together with you to that *shamba* and then we see what we can do”. We complain now and then. We are just like his children. He could have assisted us and explained to us what is happening. But at the moment, the way things are, I do not think the members of the group can agree to go there because there are people who are hostile even now and then.

Mr. Patrick Njue: Thank you, Mr. Mose, for your presentation. Our Commissioners will proceed to ask you questions.

The Presiding Chair (Commissioner Shava): Thank you for your testimony, Mr. Mose. Yes, Commissioner Slye!

Commissioner Slye: Thank you, Mr. Mose, for your testimony. I just have one question or clarification. In the documentation provided to us, it indicates that you are here to speak about land issue but there were incidents of torture. Can you say more about that? Is that, in fact, the case?

Mr. James Paul Mose: For sure, we were tortured and disturbed. But for good luck, there is nobody who lost his life. But we really suffered and even up to now, we are suffering. We have suffered psychologically. More so, we have suffered psychologically because we do not know where our children will go. As I speak, the children are outside. Somebody cannot help you today and tomorrow. He cannot help you with food and school fees for your children. That is the suffering we have faced and we are undergoing. That is why we are saying if the Government can give us a piece of land, we can go on with our life, because we are used to cultivation, so that we can get food for our children.

Commissioner Slye: So if I understand correctly, by torture, you meant the suffering you and the community have suffered as a result of the loss of the land?

Mr. James Paul Mose: What I mean is that the suffering and the torture my group and I suffered because all of us went out of that place. We went there to help ourselves and our children. So I am talking about the Tombe Self-Help Group.

Commissioner Slye: Just finally to clarify, were you or any member of your community physically assaulted at all?

Mr. James Paul Mose: No. There is nobody who got injured physically but I am saying, and I am repeating, that we have been affected psychologically.

Commissioner Slye: Thank you, Mr. Mose, and I appreciate that. I want to express my sorrow to you and the community for having lost land that you seem to have paid good money for. Then as you have pointed out to us, and as we have heard in so many other places, when a family or a community loses land, there are many other consequences to that. That affects not only the most immediate things that women have with respect to possession of land, but psychological wellbeing, family unit and economic activities, etc. We hear you and appreciate your being here in representing your community and presenting those issues to this Commission. Thank you very much.

Commissioner Ojienda: Thank you, Mr. Mose, for your testimony. I want to hear and confirm a few things. You acquired the land in 2004?

Mr. James Paul Mose: Yes.

(Mr. Paul Mose wept)

Mr. Patrick Njue: Sorry, if I may cut you short, Commissioner. Let the witness compose himself.

The Presiding Chair (Commissioner Shava): You will give the witness as much time as he needs to compose himself. Please, Mr. Mose, take your time. We are here to listen to you in your own words and at your own pace. Please, take your time.

Mr. James Paul Mose: I am ready.

Commissioner Ojienda: Thank you, Mr. Mose. Once again, I was saying that you acquired the land from the two persons who sold it to you; Kauma and the second person in 2004 and 2003, as a group.

Mr. James Paul Mose: Yes.

Commissioner Ojienda: Did you complete the transfer process? At the registry, did you complete the transfer because I see a sale agreement but I do not see the transfer forms?

Mr. James Paul Mose: No, we did not finish the transfer.

Commissioner Ojienda: You did not get a title deed?

Mr. James Paul Mose: Yes.

Commissioner Ojienda: You only stayed there between 2004 and 2007. That is about four years?

Mr. James Paul Mose: Yes.

Commissioner Ojienda: How much money did you pay?

Mr. James Paul Mose: What was in the agreement was about Kshs1.2 million and that is the much we paid.

Commissioner Ojienda: Mr. Mose, your entitlement in law as a group is for a refund of the Kshs1.2 Million that you paid because you did not transfer the land. And that is why those who sold it to you are confidently constructing on that land. Your lawyers ought to have advised you that without transferring an interest in land, you only possess that land but you do not own it. So that all this contract, the transfers that you did, you should seek legal advice at this point and recover the sum of money that you paid. And I will then advice you, Mr. Mose, and your group should look for alternative land. We are here to offer sympathies but also to tell you the truth so that you get solutions that will help you. I have no further questions.

Commissioner Chawatama: Thank you for your testimony. I see that this issue has really affected you and a number of other persons that you represent. I believe that the

weight is heavy for you because you are the Chairman of this group that do hard work to get the money to buy the piece of land. Do you have any reasons as to why the transfer was not done? Were there maybe some things that stopped you and your group?

Mr. James Paul Mose: For sure, according to our agreement, we were supposed to pay additional money which we could have paid during the year when there was a referendum so that the title deed could be processed but for bad luck, the referendum came up and it spoiled everything. For the second piece of land, we were to finish paying the money in 2008. That is when the *shamba* could have been divided. It is a very big *shamba*. When the post-election violence started and they destroyed everything, we were not there. We were home at home. So it was very difficult to transact everything to make the transfers.

Commissioner Chawatama: Like most of the witnesses that we have heard from, there are so many events that have taken place in this nation that have disrupted the lives of people. I believe that it has also left people in such a helpless situation. This sense of helplessness has even stopped people from doing what they would have ordinarily done. Your testimony really saddens me. I have another question. Of the people who are now on that land, are some of them the people whom you paid money for that land?

Mr. James Paul Mose: No, there is none.

Commissioner Chawatama: So these are total strangers who were not even part of the transaction. Is that correct?

Mr. James Paul Mose: Yes, they are just strangers.

Commissioner Chawatama: Thank you very much. Laws are good and procedures are also good but I believe that what you have told us has given us a complete picture of what happened to you and to your members. Thank you so much.

The Presiding Chair (Commissioner Shava): Mr. Mose, I would like to associate myself with the empathy that my fellow Commissioners have expressed for your situation and that of your members from Tombe Self-Help Group. I think also that it is really a great pity when people have gone to so much trouble to be organized and to come together and agree and identify areas where they wish to develop their lives and then they are removed by force. While the Commission does not take any legal position on the situation which you were facing, I would like to note that we have seen an agreement for sale but we have not seen any title deed. But neither have we seen any document which expresses a change of view from the agreement that has been reached in the sale agreement. You have also said that the persons who sold you the land are not the ones occupying it.

So, basically, what we see here is a forceful take over. In your situation, we have a legal position to consider and we also have a pragmatic position to consider. You seem to be saying that having twice been evicted, you do not feel that is where you want to return. If that is the case, then can the Commission help you to make this process proceed elsewhere? So our recommendations will be in line with your wishes whether it is in

terms of facilitating on legal advice or whether it is facilitating settlement elsewhere, I just want to assure you that we will do what we can. This is a very sad story because it is a story we keep hearing. We keep hearing it everywhere we go around Kenya. As a Kenyan, I am now asking myself, if the constitution provides clearly that any Kenyan can live anywhere and there are other provisions that encourage diversity, then I ask myself: in a situation such as yours, is this the kind of Kenya that we are trying to build? I think it is not. I think that anybody should, as the constitution provides, be allowed to live wherever they choose to live as long as they take legal means to do so, which is what you and your group did. Once again, I am really empathized with the situation in which you find yourself. We will do all that is within the powers of this Commission to assist you.

Leader of Evidence!

Mr. Patrick Njue: Commissioners and the Presiding Chair, that was the line of witnesses we had for this day from the desk of the Leader of Evidence.

Thank you for your time and we thank the public as well. Thank you.

The Presiding Chair (Commissioner Shava): Thank you very much, Leader of Evidence. I will now hand over then to our Master of Ceremony.

(The Commission at adjourned at 12.40 p.m.)