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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND  
RECONCILIATION COMMISSION HELD ON TUESDAY, 26<sup>TH</sup>  
JULY, 2011 AT ST. MATHIAS MULUMBA PARISH, KEGONGA,  
KURIA**

**PRESENT**

<b>Tom Ojienda</b>	-	<b>The Presiding Chair, Kenya</b>
Tecla Wanjala Namachanja	-	The Acting Chair, Kenya
Ronald Slye	-	Commissioner, USA
Berhanu Dinka	-	Commissioner, Ethiopia
Emily Kimani	-	Leader of Evidence

*(The Commission commenced at 10.10 a.m.)*

*(The National Anthem was sung)*

*(Opening Prayers)*

**The Presiding Chair** (Commissioner Ojienda): Welcome to the hearings today. I want to start by reiterating the rules that guide the proceedings of this Commission. Witnesses will be called, sworn-in and examined. From the public, I expect respect for the witnesses. Please, remain in silence even if you do not agree with what they say.

Those who want to take photographs or pictures can do so, but please, do so without the flash during the proceedings. We will hear all witnesses because what we want to do is to give everyone an opportunity to tell their story for the purposes of this Commission. So, for all the witnesses, just remain silent until you are called upon to testify.

*(The Presiding Chair (Commissioner Ojienda) introduced the  
Commissioners and other members of his panel)*

Leader of Evidence, which cases are we starting with?

**Ms. Emily Kimani:** Thank you, the Presiding Chair. Our first witness this morning is File Divider No.10 as per your files.

**The Presiding Chair** (Commissioner Ojienda): Proceed!

*(Mr. James Muhochi Muhochi took the Oath)*

**Ms. Emily Kimani:** Mr. Muhochi, how are you this morning?

**Mr. James Muhochi Muhochi:** I am fine, your honour.

**Ms. Emily Kimani:** Before we proceed, you have recorded a statement with the Commission about an event that took place on 20<sup>th</sup> May, 2000, is that the position?

**Mr. James Muhochi Muhochi:** Yes, it is true.

**Ms. Emily Kimani:** So, on this day, on the 20<sup>th</sup> May, 2000, where were you and what happened?

**Mr. James Muhochi Muhochi:** On 20<sup>th</sup> May, 2000, I was in Masanguro Sub-location in Kuria West District. I went to meet the police who had been brought by the Assistant Chief of the area and had gone to my residence one kilometer away. They had searched my residence without an authorized search warrant from a court of law and they did not find me in my residence. They came to the market nearby and began pulling me before a crusade of 13 Churches. They began kicking me and then I got shot with one round of ammunition from a G3 Rifle fired by a police constable from Nyamutiro Police Post. When he shot me, I started bleeding seriously. The congregation of 13 churches started crying and lying down when the police began firing. Those were three police officers led by an OCPD.

They later on called for reinforcement and they got nine more police officers from Kehancha and then they became very hostile to the crowd. They handcuffed me and put me in a GK Land Rover 110. I was taken to Nyamutiro Police Post and, later on, to Kehancha Police Station. They had a disagreement on whether to take me to the hospital but they later on took me there and I was given first aid. I had my drugs, which I had been given by a certain lady in Nairobi South C. I did not get treated in the hospital; my wound was stitched at Masanguro Private Clinic. So, I was driven again back to the police station where I was put in the cell and two days later, I appeared before Migori Senior Principal Magistrate. I was accused of malicious charges. I was tortured and humiliated. Later on, I was sentenced to two years imprisonment and this was the kind of regime that never gave me any hearing.

The injury I received causes me a lot of pain up to this minute. Later on, I came from the court and I wrote to the Attorney-General (AG), the Independent Medico Legal Unit (IMLU) and the then Standing Committee on Human Rights, which is today the Kenya National Commission on Human Rights (KNCHR). The AG responded to the letter and directed me to see Nyanza and Western Senior State Counsel, who had already been compromised. He had been bribed. He chased me from that public office and I came back and completed my sentence of two years imprisonment. I lost my hope because I lived in a failed State.

The main purpose of me being shot at was that I had land that was my ancestral land. The parcel was Bukira Bwisabuko/1054. That was the land I was supposed to be given by my father. The other brothers who were born before me were given land and as the land was being given out, I could not get any land because this had been grabbed. So, the perpetrators grabbed all this land. The person who got this land is the husband of my Assistant Chief, whose brother-in-law, as well, has grabbed another parcel of land

registered Bukira Bwisabuko/771. This is also influenced by high ranking officials in authority. People with big influence in the Government made all this land to be grabbed because I could not be there to face them.

Today, I have no land because the land has been grabbed, including the ancestral land. I got this grievous harm because of these land grabbers. Through the Truth, Justice and Reconciliation Commission (TJRC), they should be able to account for this and let the truth come out and be known. What is done in this area is not done elsewhere in Kenya. I have lived under imminent threat, information of which I have given to the TJRC Commissioners. You should be able to encounter these people because I am not living in peace, and yet I have children whose education I have to cater for. I am not farming as I am landless. The Chief Land Registrar in Nairobi is very much aware that I have no land. The documents that are with the Commissioners and all the vital information is with you. So, please, come up soon and make the truth be known.

May God bless you all.

**Ms. Emily Kimani:** Thank you very much, Mr. Muhochi, for your very concise testimony before us today. Now, I wish to ask you a few questions so that we may be able to understand some of the issues that you raised in your testimony and also from the statement that you confirmed to us at the beginning that you recorded with us.

You have described to us the events of 20<sup>th</sup> May, 2000, in which you were attending a crusade.

**Mr. James Muhochi Muhochi:** Yes.

**Ms. Emily Kimani:** You have also confirmed that you mentioned names in the statement?

**Mr. James Muhochi Muhochi:** Yes.

**Ms. Emily Kimani:** In your testimony, you have told us that the officers who came to shoot you at the crusade had come from searching your house? Who informed you of this, given that you were in the crusade?

**Mr. James Muhochi Muhochi:** A clan elder in the area led the policemen with an Assistant Chief to where I was.

**Ms. Emily Kimani:** Did they give you reasons as to why they were looking for you?

**Mr. James Muhochi Muhochi:** The Assistant Chief had cheated the police that there was a land dispute to be sorted out. Even if there was a land dispute to be sorted out, I would have been notified by the area chief. Even according to the law, the Assistant Chief has got no authority to go to the land to solve problems; it is the job of a land

registrar, together with the surveyor and with the chief of the area. So, the Chief of the area was not aware that the Assistant Chief had a land dispute being sorted out.

**Ms. Emily Kimani:** Thank you very much for your answer. Now, you have also told us that you were shot.

**Mr. James Muhochi Muhochi:** Yes, I was shot with one round of ammunition.

**Ms. Emily Kimani:** Where did the police exactly shoot you?

**Mr. James Muhochi Muhochi:** The police shot me at short range and the bullet went through here---

*(Mr. Muhochi displayed the spot he was shot in the thigh)*

It came out through this side and it is still painful. I need to get urgent treatment because I am still having a problem excreting. Sometimes when I go to the latrine, I have no break. I can pass stool everywhere, even here right now! So, I need urgent attention. I had made arrangements to have urgent treatment in Texas, USA. So, that is why I want you to order for my treatment.

**Ms. Emily Kimani:** You have told us that after that shooting incident, you were taken to a police station and, subsequently, to a court where some charges were pressed against you.

**Mr. James Muhochi Muhochi:** Yes.

**Ms. Emily Kimani:** Would you, kindly, furnish us with the details of the case number and that charge which the court brought against you?

**Mr. James Muhochi Muhochi:** It was Criminal Case Senior Principal Magistrate 558 of 2000, and the malicious charges were that I had grabbed a lethal weapon from a constable, who shot me, and that I had assaulted a police officer, who shot me. This is the case and yet I had not fought with anybody to cause him to assault me.

**Ms. Emily Kimani:** You say that you were charged with being in possession of a weapon, which from your statement is a gun, but was any gun recovered from you?

**Mr. James Muhochi Muhochi:** No, the case that came up is that they alleged that they had recovered a Somali sword from me. To say the truth, the Somali sword was picked up from my residence, because these people were not doing things in accordance with the stipulated laws.

**Ms. Emily Kimani:** Do you have something that you want to add on that?

**Mr. James Muhochi Muhochi:** Yes. If these people were to do things in accordance with the stipulated laws, they should have taken me straight to the police station so that I could be charged and not to shoot me extra-judicially. What they did was illegal because they used the maximum amount of force to mishandle me.

**Ms. Emily Kimani:** At the time of arrest, did you by any chance resist the same? At the point when the police officers were arresting you, did you fight them off?

**Mr. James Muhochi Muhochi:** I did not fight anybody. There were 13 Church crusade members there and I did not fight with anybody.

**Ms. Emily Kimani:** In your testimony, when you were taken to court, to quote you, you said: "It was a regime that never gave me any hearing." Kindly shed some light on that?

**Mr. James Muhochi Muhochi:** Yes, the case was before a different Magistrate who handed over to a Mr. Odhiambo and Mr. Odhiambo demanded Kshs40, 000 from me. I am an executive director of human rights in this district and I am a "reportee" to the Kenya Anti-Corruption Commission (KACC) and I could not engage in corruption with him. We organized to have him trapped and he was arrested with another man with a huge amount of money and he was given a summary dismissal.

**Ms. Emily Kimani:** You have also brought to light a land issue where you have said that a lot of illegal dealings took place where some of your land was grabbed. Do you have ownership documents for all those land parcels?

**Mr. James Muhochi Muhochi:** The documents are with the Commission. As an absolute owner, I have already given a title deed for Bukira Bwisaboke/771. The other relevant vital documents are already with you.

**Ms. Emily Kimani:** From your testimony, you seem to be blaming what happened to you to public officers and also public offices.

**Mr. James Muhochi Muhochi:** On the public officers; these are the police and provincial administrative officers who were not doing things in accordance with the public demand.

**Ms. Emily Kimani:** What do you think should be done so that the public can be served better so that they do not go through what you went through?

**Mr. James Muhochi Muhochi:** Public civic education should be conducted to enlighten and make the people aware so that they can know the upheavals affecting the public officers. The people in all those offices are not transparent and accountable. When conducting civic education to the masses or to the public, the public officers should also be involved and be told to be very impartial when handling public affairs. Otherwise, their behaviour is questionable.

**Ms. Emily Kimani:** You have told us that all your land has been grabbed. Where are you and your family living currently?

**Mr. James Muhochi Muhochi:** I am living in town.

**Ms. Emily Kimani:** In your statement, you have mentioned two land parcels, Bukira/Bwisaboke 517 and Bukira/ Bwisaboka 771.

**Mr. James Muhochi Muhochi:** Yes, all those have been grabbed.

**Ms. Emily Kimani:** Thank you very much, Mr. Muhochi.

**Mr. James Muhochi Muhochi:** There are two other things I need to mention which I had recorded in my statements affecting the industrialized section of Kuria Constituency, where the Kenya Government has done zero work.

**Ms. Emily Kimani:** Mr. Muhochi---

**Mr. James Muhochi Muhochi:** We want the TJRC to make arrangements so that we can have industries for tobacco and maize because we have the raw materials. I had also recorded a statement touching on the Kenya Constitutional Review Commission, which got disbanded. When Dr. P.L.O. (Dr. Lumumba) served as a Secretary to the Commission, I was the chairman of 75 civic education providers in this district. We were paid Kshs225, 000 outstanding on account of Kshs5, 589,000 which is yet to be paid. That is the amount we are demanding! The civic educators are demanding the money from the Kenyan authorities.

Commissioners, Honorable Ambassador, thank you very much. I am very happy to have met you, Sir.

**The Presiding Chair** (Commissioner Ojienda): Thank you very much, Mr. Muhochi. You know, when I see the name Muhochi, I think about IMLU, because there is a Muhochi in IMLU. Thank you very much for your testimony. Commissioners may ask you questions.

Yes, Professor!

**Commissioner Slye:** Mr. Muhochi, I want to first thank you for coming forward and testifying before the Commission and raising a number of issue that are of interest to this Commission. I had a couple of questions to help me to better understand your testimony. You testified, I guess, after the police first arrested you and detained you, you said that you were tortured and humiliated and I wonder if you could elaborate a bit more on that. What, specifically, was done to you while you were in custody?

**Mr. James Muhochi Muhochi:** When I was in the police cells, I was not allowed access to my family. At that time, an order was made from Nairobi by a Mrs. Dr. Lynn Merete

Kituyi, the Executive Director of IMLU, who gave a letter to me when I was in the cell to be given a full medical examination at Ombo St. Joseph Hospital in Migori. I was medically examined with a full medical examination and a report was furnished to IMLU. An order was then made by the court for me to be given access to my family and get to talk to my lawyer. Thereon, I came again and the police had been ordered to produce the Occurrence Book (OB), which was not produced because they had made malicious entries into that OB that I had grabbed a GK rifle---

**The Presiding Chair** (Commissioner Ojienda): Just a minute, Mr. Muhochi. I wish you could just define; what were the acts of torture? How were you tortured?

**Mr. James Muhochi Muhochi:** I was put in the cells where they were pouring water on me. I was not allowed to eat. This was human torture. I stayed there for four days without eating.

**Commissioner Slye:** So, for the entire four days, no food was given to you?

**Mr. James Muhochi Muhochi:** Pardon?

**Commissioner Slye:** During the entire four days that you were in detention, no food was given to you?

**Mr. James Muhochi Muhochi:** Yes, no food was given.

**Commissioner Slye:** And was anything else done to you? Did anybody hit you or---?

**Mr. James Muhochi Muhochi:** The Senior Principal Magistrate made an order to the OCS to appear before the court to explain the case.

**Commissioner Slye:** While you were in detention?

**Mr. James Muhochi Muhochi:** While I was in detention. He was to explain why I should not be released because they were not allowing me to be released.

**Commissioner Slye:** While you were in detention, did any of the police officers physically assault you or not?

**Mr. James Muhochi Muhochi:** No, the police had mishandled me at the time of arrest and at the time I was in Kehancha Police Station. But when I was in Migori Police Station, I did not get any mishandling.

**Commissioner Slye:** So, in Kehancha Police Station, what happened?

**Mr. James Muhochi Muhochi:** Kehancha Police Station is where policemen behaved in a brutal manner.



**Commissioner Slye:** Can you give us more details of what they did to you?

**Mr. James Muhochi Muhochi:** The OCS never brought the OB and he was ordered by the court to issue a police P3 Form to me, which up to now was not issued.

**Commissioner Slye:** I understand those issues and I am trying to understand this. I thought you just said that when you were in the police station, you were physically mishandled. Is that correct?

**Mr. James Muhochi Muhochi:** Yes.

**Commissioner Slye:** So, could you just give us some more details on specifically what was done to you while you were in that police station?

**Mr. James Muhochi Muhochi:** At the police station in Migori or Kehancha?

**Commissioner Slye:** At Kehancha.

**Mr. James Muhochi Muhochi:** Kehancha is where I was not allowed to talk to anybody. I think this was very bad on my side because it was a psychological torture and I considered it to be a kind of humiliation.

**Commissioner Slye:** I think you mentioned that in Kehancha, you were not allowed access to your family, you were not given any food, cold water was poured on you and you were not allowed to talk to anybody. All those are mistreatments of people in detention. Is there anything else that was done to you during that period when you were detained?

**Mr. James Muhochi Muhochi:** Nothing again.

**Commissioner Slye:** Okay. Then, you mentioned that when you were in, I think, Migori, you were sent to a doctor to be examined. Is that right?

**Mr. James Muhochi Muhochi:** Yes.

**Commissioner Slye:** And then, do you have the report from that examination?

**Mr. James Muhochi Muhochi:** I have given all these documents to the Commission through this lady, the Executive Director, when she got the first original and then I got the photocopies to the Commission.

**Commissioner Slye:** By the Commission, you mean the TJRC?

**Mr. James Muhochi Muhochi:** Correct!

**Commissioner Slye:** Okay. So, you have given those documents to the CEO?

**Mr. James Muhochi Muhochi:** Yes.

**Commissioner Slye:** So, we can look at those. Do you remember what that medical examination found?

**Mr. James Muhochi Muhochi:** Well, it found that I was injured and it recommended that I be treated for grievous harm.

**Commissioner Slye:** And did they make any specific recommendations? Do you recall?

**Mr. James Muhochi Muhochi:** They recommended me to be treated but since I did not have money to be treated and, maybe, undergo surgical operation through the space where the round of ammunition passed, and this has caused me a lot of pain, I could not do anything to undergo the surgery.

**Commissioner Slye:** So, is it correct to say that since you were shot and since the injury, you have received no medical treatment at all?

**Mr. James Muhochi Muhochi:** That is very correct.

**Commissioner Slye:** And that is because you have not had the money to pay for a medical examination?

**Mr. James Muhochi Muhochi:** Correct.

**Commissioner Slye:** Do you know whether, while you were in Migori or Kehancha Prison, if you had had the money, you think you could have been allowed to go and see a doctor?

**Mr. James Muhochi Muhochi:** I would have been allowed because an order was made by the Principle Magistrate that I go and get treated, but the police refused.

**Commissioner Slye:** Okay. The police refused to let you go?

**Mr. James Muhochi Muhochi:** Yes.

**Commissioner Slye:** So---

**Mr. James Muhochi Muhochi:** They also refused to issue me with the P3 form.

**Commissioner Slye:** So, even if you had the money, the police were not going to let you leave?

**Mr. James Muhochi Muhochi:** No, they would not have allowed me.

**Commissioner Slye:** Did you request to see a doctor to be treated?

**Mr. James Muhochi Muhochi:** No, I did not approach anybody. I have been feeling pain since that time up to today.

**Commissioner Slye:** How do you know that the prison authorities would not have let you go if you did not request to go?

**Mr. James Muhochi Muhochi:** These men were not able to bring the policeman before the court because he was ordered by a court order---

**Commissioner Slye:** I think you have misunderstood my question. I am asking about the medical treatment.

**Mr. James Muhochi Muhochi:** Yeah.

**Commissioner Slye:** You had a medical examination that said that you were injured and that you should be treated?

**Mr. James Muhochi Muhochi:** Yeah.

**Commissioner Slye:** And then I am trying to find out whether the prison authorities or the police authorities would have allowed you to go to be treated or not. And if I have understood you correctly, you said that you never requested to go to get treatment because you did not have money to get treatment. Is that correct?

**Mr. James Muhochi Muhochi:** That is very correct.

**Commissioner Slye:** So, that means that you would not know if you had requested, whether they would have allowed you to go get treatment. Is that right?

**Mr. James Muhochi Muhochi:** Yes.

**Commissioner Slye:** Okay, thank you.

You have given the Commission the land records on these two pieces of land. In your interview, concerning the first piece of land which is not the one you purchased from Mr. Mugendi Joseph Muite, it is stated that you had a letter from the Chief Land Registrar of Kenya saying that you should be given the land because it was your ancestral right. Can you say a little bit more about that? What is the ancestral right that you had in respect of that land?

**Mr. James Muhochi Muhochi:** The parcel of land affecting the Chief Registrar is the one that shows clearly that I am landless. I got it through the tribunal. In fact, the tribunal is waiting for the decision of the TJRC so that I appear before them.

**Commissioner Slye:** What tribunal is that?

**Mr. James Muhochi Muhochi:** That will help me to put together these two pieces of land.

**Commissioner Slye:** You misunderstood my question. In your statement here you said that you are entitled to the land as your ancestral right. What do you mean “ancestral right” over that piece of land?

**Mr. James Muhochi Muhochi:** Both pieces of land made me to be tortured and get shot. The first one is on an ancestral land, but the second one - Bukira/Bwisaboka /771 is the one meant for petrol development, but it was developed---

**Commissioner Slye:** I am still not clear about what right you have over the land. I am trying to understand how you have a right to those parcels of land and particularly the first parcel of land. Can you explain to us what that ancestral right is? Is it a piece of land that your father owned?

**Mr. James Muhochi Muhochi:** Yes.

**Commissioner Slye:** Where did he get it from?

**Mr. James Muhochi Muhochi:** This piece of land was part of a farm that was 36 acres and it was divided amongst three sons. The first one got 18 acres, the second one 12 acres, and the third one got 6 acres. I am the fourth one. I am not on that piece of land and that is why the Chief Land Registrar is issuing that letter saying that I should be given a portion of that ancestral land which was grabbed, that is, Bukira/Bwisaboka/1054.

**Commissioner Slye:** How many brothers do you have?

**Mr. James Muhochi Muhochi:** I had three brothers. All of them have passed away. I am the last one and the only one living.

**Commissioner Slye:** Each of your brothers owned a piece of the land and they all passed away. What happened to the land when they passed away?

**Mr. James Muhochi Muhochi:** The total parcel of land is 36 acres, but I am out of that.

**Commissioner Slye:** When did your brothers pass away?

**Mr. James Muhochi Muhochi:** Many years back. We are talking about our first born, second born, third born and I am the last born.

**Commissioner Slye:** Can you remember when the last one died?

**Mr. James Muhochi Muhochi:** 1984.

**Commissioner Slye:** What happened to the land in 1984?

**Mr. James Muhochi Muhochi:** This is the parcel that he was cheated and rented to a land grabber. The land grabber brought a sales agreement and alleged that he was buying the land. In actual sense my brother was renting the land and not selling it. He was renting it at the rate of Kshs17,000. It was a four acre plot. Since he was not educated, he was cheated to sign a sale agreement form.

**Commissioner Slye:** We need to look at the documents, because I am very unclear about the legal standards about these parcels of land. What happened to you was clearly unjust in terms of what the police did.

In your statement you say that the police were acting on information by the Assistant Chief. How did you learn about this?

**Mr. James Muhochi Muhochi:** The police were escorting the Assistant Chief to settle a land dispute. Even the charges that were written against me were different from the land dispute. It was not included in the charge sheet at Migori Law Courts.

**Commissioner Slye:** Do you remember the name of the police officer that told you that they were acting on information given by the Assistant Chief?

**Mr. James Muhochi Muhochi:** No. I thought we are supposed to withhold the names. Do you need me to mention them?

**Commissioner Slye:** I am comfortable mentioning in public. If you are willing to give us---

**Mr. James Muhochi Muhochi:** What I did wrong is to go round to get all the phone numbers of the 13 policemen and their file numbers. If you want such information in confidence I can give you.

**Commissioner Slye:** That will be very helpful.

**Mr. James Muhochi Muhochi:** With regard to the Bukira Bwisaboke/771, I was the first absolute and registered owner. If anybody grabbed that land then he should have made an official search to ascertain the true position of the land. It was wrong for them to develop the land without my authority.

**Commissioner Slye:** Thank you, Mr. Muhochi. That is clearly an injustice. We will look at the documents that you have submitted to us. We will reach a decision about what we see with respect to the truth of that matter. I thank you for your testimony.

**The Acting Chair** (Commissioner Namachanja): In your testimony you said that your land was grabbed when you were working in the Kenya Army. When did you retire from the Kenya Army?

**Mr. James Muhochi Muhochi:** I officially retired in January, 1970.

**The Acting Chairlady** (Commissioner Namachanja): At the time the land was grabbed, nobody was living on it?

**Mr. James Muhochi Muhochi:** This land had been grabbed because of cheating. I was not aware of the public notice board otherwise I would have prevented the land transactions in the Lands Office.

**The Acting Chair** (Commissioner Namachanja): You told us how the land was divided among the three sons. As a fourth son, you were never given a share of this land? Why is that so?

**Mr. James Muhochi Muhochi:** The land that I was to be given is the one that got grabbed. This is because my second elder brother is the one who would have given me four acres.

**The Acting Chairlady** (Commissioner Namachanja): It was your brother to give you the land?

**Mr. James Muhochi Muhochi:** Yes, because my father was not there by then.

**The Acting Chair** (Commissioner Namachanja): I get you. Now concerning the shooting at the crusade, had you received any summons to attend a meeting where a land dispute was to be handled?

**Mr. James Muhochi Muhochi:** I was not given any letter. There was none.

**Commissioner Dinka:** Mr. Muhochi, I am a bit confused. So, I will ask you a few questions and please give me very simple and short answers. You said that you retired from the Army in 1970.

**Mr. James Muhochi Muhochi:** Yes.

**Commissioner Dinka:** And the land grabbing was in 2000. Where were you for the 30 years, that is, between 1970 and 2000?

**Mr. James Muhochi Muhochi:** I was living in town.

**Commissioner Dinka:** You were living in town?

**Mr. James Muhochi Muhochi:** Yes, I was living near town in a rental place.

**Commissioner Dinka:** Were you digging on the land that belonged to your ancestors?

**Mr. James Muhochi:** My brother was cheated and he was not able to transfer the piece of land. There was a struggle in the family.

**Commissioner Dinka:** So you were not involved in the land in question, that is, the land that the Chief allegedly grabbed?

**Mr. James Muhochi Muhochi:** When my brothers died they left behind their wives and they were not in agreement to apportion any piece of land.

**Commissioner Dinka:** So you did not have a piece of land there?

**Mr. James Muhochi Muhochi:** I did not have and I do not have now.

**Commissioner Dinka:** No, forget about now. I am talking about that time.

**Mr. James Muhochi Muhochi:** I did not.

**Commissioner Dinka:** So, when you say ancestral land and your three brothers had families, who assigned you the land that you are now claiming as having been grabbed by the Chief?

**Mr. James Muhochi Muhochi:** I went to the elders of my clan and they all agreed that I should be given a portion. In their decision they said that that was the land that was unnecessarily sold. It was not a natural sale.

**Commissioner Dinka:** So, they gave you the land that your brother legally, fraudulently, or honestly allegedly sold. To whom did he sell the land?

**Mr. James Muhochi Muhochi:** It was to an Assistant Chief.

**Commissioner Dinka:** So, the Assistant Chief has not grabbed it. He has a piece of paper which your brother signed.

**Mr. James Muhochi Muhochi:** Through cheating because of---

**Commissioner Dinka:** That is a different story.

**Mr. James Muhochi Muhochi:** That is grabbing.

**Commissioner Dinka:** That is for the court to decide. At that time, in 2000, you did not actually own that piece of land.

**Mr. James Muhochi Muhochi:** I did not.

**Commissioner Dinka:** The other land measuring 5.12 hectares that you purchased, did you have a title deed for it?

**Mr. James Muhochi Muhochi:** Yes, I gave photocopies and other relevant documents to the Commission.

**Commissioner Dinka:** I have not seen it. Were you working on that land before the person who came and took the 5.12 hectare which you purchased?

**Mr. James Muhochi Muhochi:** I had a house on that land and it was demolished after the grabbers penetrated into the land.

**Commissioner Dinka:** You built a house on it?

**Mr. James Muhochi Muhochi:** Yes, I built a house on it. That is known.

**Commissioner Dinka:** Did you take the person who grabbed the land to court? Why did they grab the land? Did they say they bought it?

**Mr. James Muhochi Muhochi:** I have not talked to him, but I consider it was grabbed. I do not want to talk to him because of his high influence in the Government.

**Commissioner Dinka:** Did you go to court?

**Mr. James Muhochi Muhochi:** I cannot go to court. I can be hanged.

**Commissioner Dinka:** Hanged! Why?

**Mr. James Muhochi Muhochi:** Because of the people commanding big influence in the Government.

**Commissioner Dinka:** What is the position of that person in Government?

**Mr. James Muhochi Muhochi:** He is a Member of Parliament.

**Commissioner Dinka:** I have no further questions. I am very sorry about the torture and suffering that you went through. We empathize with you. We will look at your case and do the appropriate thing.

**The Presiding Chair (Commissioner Ojienda):** Thank you for your testimony, Mr. Muhochi. We will study the documents you have submitted before us and come up with appropriate recommendations to help your cause.

Your testimony highlights issues of public interest, including irregular and illegal allotment of land and torture by police. It will be very helpful. Thank you very much.



Leader of Evidence, call the next witness.

**Ms. Emily Kimani:** With your kind permission, Presiding Chair, our next witness is an individual witness, File No.20.

**The Presiding Chair** (Commissioner Ojienda): File No.20 is together with other files. Please, continue with the next witness.

*(Ms. Gati Chacha Mwita took the oath)*

**Ms. Emily Kimani:** Please, tell us your full names once again for the record.

**Ms. Gati Chacha Mwita:** I am Gati Chacha Mwita.

**Ms. Emily Kimani:** Where do you live and what do you do?

**Ms. Gati Chacha Mwita:** I am a farmer.

**Ms. Emily Kimani:** You recorded a statement with us about some events in your life that happened on 17<sup>th</sup> December, 1990. Is that correct?

**Ms. Gati Chacha Mwita:** It is true.

**Ms. Emily Kimani:** What happened on this day?

**Ms. Gati Chacha Mwita:** Soldiers came to my house at 4.00 and took my husband. They tied him and beat him. They stepped on his back.

**Ms. Emily Kimani:** Were the soldiers familiar to you?

**Ms. Gati Chacha Mwita:** I knew one called Robi Nokwe from Gitunguruma and another one. They were three. There was a Somali, a Turkana---

**Ms. Emily Kimani:** What is the name of your husband?

**Ms. Gati Chacha Mwita:** He is called Chacha Mwita.

**Ms. Emily Kimani:** We have heard from other witnesses that at around this date, it was a time when there were massive evictions. Was that the mood at the time where you were living?

**Ms. Gati Chacha Mwita:** No. We had moved from there to our own plot where I am living up to this time.

**Ms. Emily Kimani:** These soldiers, when they came to apprehend your husband, the late Chacha Mwita, what reasons did they advance for the arrest?

**Ms. Gati Chacha Mwita:** I did not know why. They just came, tied him and started beating him up. He fell down on his back and they kept on stepping on him.

**Ms. Emily Kimani:** Which language were they using?

**Ms. Gati Chacha Mwita:** They were speaking Kiswahili.

**Ms. Emily Kimani:** Even with them using the Kiswahili language, you could not hear anything in passing as to why they were beating your husband up?

**Ms. Gati Chacha Mwita:** They were just beating him as he was crying and making noise. They did not advance any reason. They did not take anything. They just kept beating him up. The two were doing that while the Turkana officer was telling them to stop.

**Ms. Emily Kimani:** From your statement here, you seem to have been familiar to these law enforcers. Could you know whether your husband had interacted with them prior to this incident?

**Ms. Gati Chacha Mwita:** No, I did not know.

**Ms. Emily Kimani:** What happened when they took him away?

**Ms. Gati Chacha Mwita:** They beat him to the extent that he could not stand up, but they said he was pretending. So one of them tried to uplift him but he could not and so they left him.

**Ms. Emily Kimani:** You said that you went after them after everything was quiet. Could you confirm that when they took him away you remained in the house?

**Ms. Gati Chacha Mwita:** They were beating him outside the house.

**Ms. Emily Kimani:** You said that he was taken to hospital. How did you find out about this?

**Ms. Gati Chacha Mwita:** He cried and people came, including Magingo and Ng'aracha. They picked him and took him to hospital. He could not go by himself. In hospital he was operated because he was unable to do anything. He was operated at Pastor Machage's Hospital where he died.

**Ms. Emily Kimani:** Was a post mortem done?

**Ms. Gati Chacha Mwita:** Yes. An analysis was done. They did a post mortem in Homa Bay and that is how they found out the organs that were affected.

**Ms. Emily Kimani:** From what you were told, what was the cause of his death?

**Ms. Gati Chacha Mwita:** I was not able to understand what killed him because I was not told.

**Ms. Emily Kimani:** Did you take any action against the police officers who tortured your late husband?

**Ms. Gati Chacha Mwita:** The very day he was beaten and taken to hospital I went and reported to the police in Kehancha.

**Ms. Emily Kimani:** Was any action taken against the police officers?

**Ms. Gati Chacha Mwita:** No action was taken against them. His body was brought back and we buried him. That was it.

**Ms. Emily Kimani:** What do you feel the Government should do so that your family can feel the impact of justice?

**Ms. Gati Chacha Mwita:** I wanted to come and complain before you and state how my husband was murdered. Personally, I have no ability to do anything.

**Ms. Emily Kimani:** Do you have any recommendations about the police?

**Ms. Gati Chacha Mwita:** You are the ones in position to state what can be done. I do not really know what to tell you. I cannot give you suggestions on what to do.

**Ms. Emily Kimani:** I have with me a copy of the death certificate of your husband indicating the cause of death as cardio-pulmonary arrest. I also have a copy from the Registrar of Deaths which also indicates the same cause of death due to severe internal bleeding and a ruptured spleen. Could you confirm that this is what you have submitted to us as documentary evidence in support of your case?

**Ms. Gati Chacha Mwita:** Yes, those are the right documents. They indicate what had been done to him.

**Ms. Emily Kimani:** Presiding Chair, I present these documents to be part of the record.

Thank you, *Mama Mwita* for your testimony. May God give you strength each day. I have no further questions.

**The Acting Chair** (Commissioner Namachanja): At the time your husband was taken away and beaten, where were the children?

**Ms. Gati Chacha Mwita:** They were in the house. They were young then. They were crying and so was I.

**The Acting Chair** (Commissioner Namachanja): I appreciate the way the Leader of Evidence has guided us for you to narrate our story. I want you to narrate to us what happened on that fateful day, how the children reacted and how you reached your husband only to find him dead. I want you to narrate that in brief.

**Ms. Gati Chacha Mwita:** Nothing happened. We were just crying there until we were told that he had died at Pastor Machage's Hospital in Migori and his body was taken to the mortuary. Later, the body was brought and we all cried. He was buried and we forgot about it. We continue with life with our problems.

**The Acting Chair** (Commissioner Namachanja): When you and your children were crying, did any neighbour come to your rescue?

**Ms. Gati Chacha Mwita:** When the soldiers left that is when the neighbours came. People were afraid. Maginga Bogoge and Baracha Nyang'are are the ones who came while I was making noise and carried him to the house. We realized that he was in bad shape and they looked for a bicycle because the road was very bad where we were living. They used the bicycle all the way to Kegonga where they managed to get a vehicle.

**The Acting Chair** (Commissioner Namachanja): Since then, can you share with us how you are struggling to bring up your children?

**Ms. Gati Chacha Mwita:** I am really in a lot of trouble. I do not have school fees, money for clothing, school uniform and other needs that a man takes care of like when a house is old and needs to be redone.

**The Acting Chair** (Commissioner Namachanja): What do you do to get money? When the house is worn out, who assists you?

**Ms. Gati Chacha Mwita:** I have it rough. I struggle on my own.

**The Acting Chair** (Commissioner Namachanja): I am sorry.

**Commissioner Slye:** Thank you for your testimony and sharing with us a painful event in your history. When did you and your husband marry?

**Ms. Gati Chacha Mwita:** Those of us of the old times did not go to school. I never went to school.

**Commissioner Slye:** Do you remember when you married your husband?

**Ms. Gati Chacha Mwita:** I cannot lie to you that I remember the year. I do not remember that at all.

**Commissioner Slye:** How many children did you have with him?

**Ms. Gati Chacha Mwita:** Four kids.

**Commissioner Slye:** How old are they now?

**Ms. Gati Chacha Mwita:** I do not know their ages, but they are in school. The eldest is married and has a wife.

**Commissioner Slye:** The other three are in school?

**Ms. Gati Chacha Mwita:** They are my daughters. They have finished school. One got married. The other one has not gone for further training.

**Commissioner Slye:** What about your other two sons and daughters?

**Ms. Gati Chacha Mwita:** I have two younger kids in school. The others did not do well in school and I did not have the ability to take them to school. Two boys did not go to school.

**Commissioner Slye:** Are you now paying school fees for any of your children?

**Ms. Gati Chacha Mwita:** I pay. I ask for assistance from people and then I pay.

**Commissioner Slye:** How many are you currently paying for?

**Commissioner Slye:** You said that in order to pay their school fees, you ask for assistance from others. Is it from family members, neighbours or who helps you?

**Ms. Gati Chacha Mwita:** I ask from the Government, neighbours and also organize for fund-raising.

**Commissioner Slye:** When your husband was attacked, were there other people who were attacked?

**Ms. Gati Chacha Mwita:** No. They just came to our homestead and when they had killed him they went away.

**Commissioner Slye:** You said that they were three?

**Ms. Gati Chacha Mwita:** Yes, they were three. One is a Kuria from Gitungurumwa village.

**Commissioner Slye:** Then there was a Somali and a Turkana?

**Ms. Gati Chacha Mwita:** Yes, it is the Somali and the Kuria who were beating him but the Turkana was trying to stop them.

**Commissioner Slye:** The Kuria person is somebody you are able to identify. Had you and your husband met him before?

**Ms. Gati Chacha Mwita:** No. Where we used to stay is far from where he lives. We are not even neighbours.

**Commissioner Slye:** How did you learn his name?

**Ms. Gati Chacha Mwita:** He is somebody that I used to see around. We used to meet at the market.

**Commissioner Slye:** What do you know, what sort of reputation did he have? Was he considered a good or a bad police officer?

**Ms. Gati Chacha Mwita:** I do not know because that is the first time he came to our homestead.

**Commissioner Slye:** You have also said that three of them were speaking in Swahili?

**Ms. Gati Chacha Mwita:** Yes.

**Commissioner Slye:** Can you remember anything that they said?

**Ms. Gati Chacha Mwita:** They were just telling him to stand up and stop pretending to be tired. They were dragging him. When they realized that he could not stand, they left.

**Commissioner Slye:** You said that the Turkana was trying to stop them from beating your husband?

**Ms. Gati Chacha Mwita:** He was trying to stop them when he realized that he was hurt and crying. He pleaded with them to stop. He tried to lift him and when he was not able to stand up, they left.

**Commissioner Slye:** Did the Turkana police officer try to stop them from the beginning or was it after your husband was badly hurt?

**Ms. Gati Chacha Mwita:** He tried to stop them when he realized that he was really hurt.

**Commissioner Slye:** Can you remember how the Turkana officer looked like? Can you try to describe him?

**Ms. Gati Chacha Mwita:** It was very early in the morning at around 6.00 a.m. I was very worried, so I may not be able to remember clearly but I remember that he was dark.

**Commissioner Slye:** Have you seen any of those three police officers since the day that they beat your husband?

**Ms. Gati Chacha Mwita:** I only see one of them; the Kuria one.

**Commissioner Slye:** You still see him here in Kuria?

**Ms. Gati Chacha Mwita:** I see him occasionally at the market in Kegonga. I see him rarely. I think he works elsewhere.

**Commissioner Slye:** Do you think that he recognizes you?

**Ms. Gati Chacha Mwita:** I do not know whether he knows me but I know him.

**Commissioner Slye:** Has he ever said anything to you or have you ever said anything to him?

**Ms. Gati Chacha Mwita:** No. In fact, we do not communicate with his entire extended family.

**Commissioner Slye:** If you had an opportunity to speak to him today, is there anything you would like to say to him?

**Ms. Gati Chacha Mwita:** No. What do I tell him? I do not go to his home at all.

**Commissioner Slye:** I know that you have not spoken to him, but what I am asking is: suppose you get an opportunity to say something to him, for example, if he was sitting in the audience today, is there anything you would like to ask or tell him?

**Ms. Gati Chacha Mwita:** What can I tell him? He killed my husband. I would only ask him why he killed my husband.

**Commissioner Slye:** Thank you *mama* for your testimony. I want to thank you for having the courage to come here and share your story with this Commission and the public as a whole. I do not have further questions.

**The Presiding Chair (Commissioner Ojenda):** *Mama*, I want to thank you for speaking to us on the death of your husband, Mr. Chacha Mwita. Not everybody understands the pain of widows and children when a man dies. Your husband died in 1990 and it is now 20 years but the pain is still fresh. I hope that you find healing as you speak about the pain that you went through. I am happy that your children are now married and the young ones have finished school. From your testimony, the police who was responsible for your husband's death is someone that you see and you still want to know why they killed him.

We will look at the documents, do further investigation and get to the bottom of the matter. I thank you for your testimony.

**Ms. Emily Kimani:** Commissioners, our next witness is listed 19<sup>th</sup> on the list. There are several witnesses on the list. You could give direction on whether we swear them in all of them or one at a time.

**The Presiding Chair** (Commissioner Ojenda): Who are the other witnesses?

**Ms. Emily Kimani:** There is one who is listed as number seven in your file and there is also No.11.

**The Presiding Chair** (Commissioner Ojenda): Let them all be sworn in and we will start one by one.

*(Mr. Sarara Matongo, Matinde Werema and  
Chrispinus Were Gibagira took the oath)*

**The Presiding Chair** (Commissioner Ojenda): Just indicate the number of the file, then we can proceed.

**Ms. Emily Kimani:** The first witness is file divider No.19, No.11 and No.7. With your permission, I will be starting with Mr. Sarara, file divider No.19. *Mzee*, could you, please, tell us your full names for the record?

**Mr. Sarara Matongo Signore:** My name is Sarara Matongo Signore

**Ms. Emily Kimani:** You are before us today, having recorded a statement with us in which you indicated that you are a cattle rusting victim due to inter-clan conflicts. Is that correct?

**Mr. Sarara Matongo Signore:** That is true.

**Ms. Emily Kimani:** Kindly take us through your story.

**Mr. Sarara Matongo Signore:** One day, I was sleeping in my house and robbers came with guns and broke down the doors. I heard over 30 gunshots. One of the bullets got my wife and a child who was three months old. They took all the 17 cows. I have five wives and 49 children. Neighbours came to assist me and we followed them. Some neighbours took my wife and child to Homa Bay Hospital so that they could remove the bullets from their bodies. In the morning, as we were following the robbers, we met three police officers coming from where the footprints of the cattle were heading to. We continued to follow the footprints until the end. By then, I was the Assistant Chief of the area and so, I did my investigations. I organized several meetings. We realized that the General Service Unit (GSU) officers who had been brought were colluding with robbers to steal our cows.



We informed the District Commissioner (DC) and he said that he also had that information.

Those youth again came and stole from my neighbour. We followed them but they used another route. We found a young man who was injured. We informed the police officers and he was arrested and taken to Kehancha Police Station. Those police officers were laid off because we realized that they are the ones who were stealing from us. After investigations were done, the youths told me that their leaders were the ones giving them guns. We called the DC who later transferred them. I migrated from that area to Kenato. Kenato is a border point. I want to tell this Commission that the citizens of Kuria are really suffering because of police officers who give robbers their guns. They also bring disturbance in this area. When my cows were stolen, my children stopped going to school due to lack of school fees. I got some help from relatives and neighbors. So, a few of them managed to go to school. I lost a lot and I could not stay there. I stay near the border of Kenya and Tanzania, that is, Kimaru and Kegonga divisions.

The robbers kept on coming to steal my cows. One young man from Kimaru Division tried to stop them but they shot him dead. They took eight grade cows. I called the Officer Commanding Police Division (OCPD), Mr. Korir from Kehancha. When he arrived, he called the Officer Commanding Station (OCS) and the chief but they did not come. So, we were really amazed. The OCPD informed the DC that the chief did not come and he laid him off. We found four cows only. I went there the second day and found that one cow had been slaughtered.

When there was a conflict between Kimaru and Kegonga, they came and harvested 40 sacks of maize from our farms. We called the OCPD and he came with officers. There was exchange of fire and they managed to overcome them. They came back again and torched our houses. They stole from me everything including iron sheets from the houses. There is a lot of theft near there. That is why we decided to migrate. Even as we speak, all my children left. They went and bought land elsewhere. As we are speaking now, I have a lot of problems, and that is why I came here so that I can tell you my case, so that the Commission can help me. Right now, I am 81 years old. I only get Kshs2, 000 in terms of pension. My wives are not employed and do not have any income. Were it not for that problem, I would have educated my children.

The people from this region are really suffering because of police officers. It is the police officers who sell bullets to robbers. They give them bullets and buy them alcohol as they organize to go and steal cows. They came to torch my house because they thought that I was the one who had arranged for their capture. They removed the iron sheets from my house and I am very poor. When you come at my home, you will just find grass-thatched houses. My grandfather used to stay in Maasai but he was chased away. So, he moved to this place. When they steal cows, they pass through this route. This is the centre of war. The present DC should continue being here because he has brought peace. If it were not for him, I would have not cultivated my land. The DCs that were here before did not do anything. The good thing is that they were all transferred. The Kurias here have been

killed and their cattle taken away. I have a lot of problems in my home. I used to drink a lot of milk but now, it is not there.

I just want to urge this Commission to find a way of helping me because I have lost a lot. I have lost property worth Kshs500, 000 to Kshs1 million. So, I am just waiting to die. That is what I have to say for now.

**Ms. Emily Kimani:** Thank you, *Mzee* Sarara.

We shall now move to the next witness.

**Mr. Matinde Werema:** My name is Matinde Werema. I remember that on 21<sup>st</sup> March, 1993 at around 10.00 p.m., we were ambushed by robbers. They came into our home and took 26 head of cattle. In 1997, they came again and took away 16 head of cattle. When they first came, they tried to shoot me while I was in the house but I dodged the bullets. They overpowered me and I ran to the boma of the cattle. They slashed my left leg and only two tendons remained. I was taken to Ombo Hospital in Migori.

I stayed there for one year. I was not myself because I was just urinating in bed. When I wanted help, nothing forth came. I was taught how to use crutches. Even now I am not in a good condition. I am fed by neighbours. Those who stole from us went to Tanzania. They also chopped off the behinds of one police officer from Nyandiro. His name was Amini. They also killed those who were following the footprints. Right now, I am an adult with children whom I want to take to school but I do not have means. I have one child who is deaf and he is in Form Three. It is the neighbours who are helping me to educate him. My brother who used to assist me in paying fees was also attacked and his vehicle burnt. Right now, we have many problems. I do not know if he will go back to school when schools open.

**Ms. Emily Kimani:** Thank you very much for your testimony.

Our next witness is Chrispinus Kibagira.

Mr. Chrispinus, you recorded a statement with us where you indicated that you are victim of cattle rustling and you also lost your brother under similar circumstances. Is that true?

**Mr. Chrispinus Gibagira:** Yes. It was in October, 2003 when I was on my farm at around 10.00 a.m. I had also released my cattle for grazing. That is when I heard gunshots. There were about 20 youths who came and attacked me. I even knew some of them. I asked them what the problem was but they did not answer back. Instead they surrounded me and shot me with an arrow. At an appropriate time, I will show you the mark. They shot me through the back. They hit me on the head and I fell down. I cried and called for help. They then took away my 12 grade cows. The neighbours recovered two cows but the rest went. They then took me to Ombo Hospital in Migori. At around 6.00 p.m., they operated on me. They did a number of operations and I came to my senses the following day. Those who had assisted me did not want to tell me what had happened.

The third day, I fully regained consciousness and I was informed that my brother had been killed. I stayed in hospital for four months. They stole my cows during the day and some of the robbers are known. So, the neighbours reported them to the authorities who then arrested those youths and took them to Kilgoris. They arrested nine youths.

**Commissioner Ojienda:** Mr. Sarara Matongo Sigore, I empathize with you and the pain that you went through following the theft of your livestock and what this has cost your family. Mr. Matinde Werema, I empathize with you for the serious injuries you sustained when the rustlers attacked you.

Mr. Chrispinus, yours was even more painful because the injuries you sustained are very serious, and you have long-lasting medical needs. Clearly, I empathize with your situation. Gladly, yesterday, the memorandum that you intended to give us was presented with more details on the social and economic issues facing the Kuria people. We have taken that on board. We will consider and add on to the presentation that was made yesterday, on behalf of Hon. Machage, the MP for Kuria. He presented detailed issues on marginalisation of the community.

I want to ask my colleagues, if they have a few questions to ask you.

**The Acting Chair** (Commissioner Namachanja): I have no questions but just to join the Presiding Chair in saying sorry for what you went through.

**Commissioner Dinka:** I thank the three of you for taking time to come and share your very sad stories with us. I would like to express my empathy to all of you for your loss of property, and to Mr. Matinde for the physical injury that you suffered, and to Chrispinus for the wounds that have been inflicted on you and for the loss of your brother.

You told us of someone who sleeps in his house with his cattle and everything else intact and loses everything in a few minutes and becomes a pauper; his children suffer as a result of that. It is really sad. It is particularly so when those who are supposed to guard the security of the population are said to have been involved in this kind of thing; the tragedy is even greater.

I have just one or two questions. My question is to the three of you. Mr. Sarara mentioned that there was a policeman who was actually caught. He was also attacked but at the same time, he was part of the raiders. You also mentioned that the police at that time were selling bullets to the raiders, thus worsening the situation. Fortunately, after you discussed with the Provincial Administration, the PC removed or transferred the DC and the police station chief. Has that situation now stopped? Are the police involved in cattle rustling? Do they sell bullets? Are the police and the DC protecting the people, and not encouraging raiders? How is the situation now?

**Mr. Sarara Matongo Sigore:** Recently, it was still going on. I am one of the friends of the youth. The youth came and told me: "As the Assistant Chief, you are really working

hard but the Chief is sleeping on the job. You see, these bullets have been sold to us by the policemen. If police officers do not sell bullets to us, we will not use guns.”

We have informed the CID. It is only that they do not want to act. If bullets do not get into the hands of the youth, the community will not have access to these things.

**Commissioner Dinka:** Let me be very clear. My understanding is that the situation remains unchanged – it is going on even today. Am I correct?

**Mr. Sarara Matongo Sigore:** The current DC has worked really hard. He has tried to nab firearms from people. Some people have surrendered the firearms. Right now, the situation is not very bad, but if this DC is transferred, the original state of affairs will be back. The current DC is called Mutindika. He has really helped us. The previous one was liaising with the youth to cause havoc in this area. We complained and he was transferred. The current DC is doing a good job.

**Commissioner Dinka:** It is great to hear that not all DCs are bad. There are some very good ones, who serve the people and the country.

The Leader of Evidence asked one question earlier. What should the Government do to stop cattle rustling? From your memorandum, there are two types of cattle rustling. One type takes place when there is inter-clan conflict. One group takes the cattle of the other.

The second type is when raiders come in when there is no clan fighting or anything. Some raiders just come deliberately to take the cattle and drive them across the border. These are two different types of rustling. What should the Government do in the case of inter-clan conflicts? Secondly, what should the Government do in the case of raiders coming in, taking cattle and crossing the border? These are two issues, and you have to give me your views as to what you suggest the Government should do.

**Mr. Sarara Matongo Sigore:** Trans Mara is the centre-stage of war between the Kuria and the Maasai. So, there should be a very big police station here. When cattle are stolen from the other side, they pass through here. When they are stolen from the other end, they also pass through here. In 1904, people were moved from that area, and they moved towards this place. So, there is revenge between the Maasai and the Kuria people. Maybe, they can inter-marry and mix with the Kuria and the Luo. That way, they can live together, and there will be no more wars. It is because of what was happening at the borderline. Our people were made to migrate by force in 1904. So, there is revenge. Where they were taken, there was no Maasai. Even if you over-fly that place in an aircraft, you will see where these people migrated to. Nobody cultivates crops in that area. When the Kuria people graze their livestock, the Maasai go there and take them in broad daylight. That is what brings the wrangles.

A military camp should be located there, so that peace can prevail in this area. People are not living well. These people are different. When I was an Assistant Chief, I was very firm. There was no rustling that was happening. However, the current leaders allow

rustling to happen. When an old man like this one is injured, nobody is concerned. That is where the problem is. The current DC, Mr. Mutindika, is very firm. A lot of firearms have been recovered from people.

**Mr. Chrispinus Gibagira:** I would also like to add one or two things, which *Mzee* Sarara has left out. That is a place where cattle rustling has been going on. People steal and hide cattle there. The inhabitants of that place have been evicted. They were made to move away by the leaders who were in that area. I, being one of them, I presented documents to the Commission, which I believe you have in your files. One of the solutions is that the people who were evicted from that place should be returned to that place. For those who grabbed land, the law should take its course, so that they can serve as an example to others. It appears that the people who were living there were very weak. They are now IDPs. That place has now turned out to be an area where cattle rustling takes place.

In most cases, the cattle that are stolen are followed. When they are found, instead of the cattle rustlers being taken to court for prosecution, they are just left to go scot-free. We have evidence. You lose your 20 head of cattle and when you follow the trail, it leads to that place. If the cattle are brought back, they should serve as exhibit in a court of law. It should not be the case that the cattle are handed over to the owner and the persons involved are just left like that. That is something which has hindered efforts to solve that problem in this area. The TJRC should take that one into account.

In my case, people came, killed my brother and took away my property. They were arrested but subsequently released. You are left wondering where to go to next. So, I am asking this Commission, if possible, to ensure that the Government takes action against the people who injured me. I am ready to go to court with them.

**Commissioner Dinka:** Thank you very much. As you said, we have received your memorandum. A number of people talked to the Commission yesterday on the issue of eviction of people from the land. The Commission will examine the documents that were presented. Of course, in respect of the court cases, the law must take its course. People who have committed crimes like this one should not be let go scot free.

The suggestion by Mr. Sarara was for the Government to bring in more troops, and the one from Chrispinus was for the courts to be more efficient when these people are caught. That is fine. These are legal issues. What can be done at the community level between the elders of the Kuria community and elders of the Maasai community, as well as elders of the different clans, so that there is no inter-community fighting and inter-clan cattle rustling, and further ensure that there will be no more fighting and rustling between the Kuria and the Maasai people? What can be done by the elders from both sides? This question is for Mr. Sarara, because he is the oldest in the group.

**Mr. Sarara Matongo Sigore:** A long time ago, the Maasai and the Kuria people took an oath. Those who were selected to be leaders along the border were not being vetted properly. The chief just appoints somebody who is not an elder like me, or a youth who had proper education. He picks on somebody who has a lot of problems. If somebody like

me, who went through what I went through during that time, is appointed, those problems will not be there. It is the people who are appointed leaders when they are not properly vetted, who are the cause of this problem. We want peace to prevail. When devolution came in, we wanted to be in the same county with the Maasai. We did not want to go to Migori. The county should be in a central place, where all the tribes should mingle. The Maasai are very good people. It is only when you give them space and time that they become terrible. The security committee should be very firm. We are trying to bring back the unity that used to exist between these communities.

The elders need to hold regular meetings to bring unity amongst the people. We should have a very big centre along the borderline, so that security officers can be stationed here to make sure that we have security. Nobody will touch us once we have security personnel around. That is what I request – that we have a central place and bring all the tribes together. I am not really trying to force the Commission to do this. I am just pleading with you.

**Commissioner Dinka:** Thank you very much. I have no further questions.

**Commissioner Slye:** Thank you all for your testimonies. I have some questions for each of you. I would like you to just ask them in the order in which you testified, starting with Mr. Sarara.

First, I would want to get you clear. You were then both an Assistant Chief and a Chief. Is that right?

**Mr. Sarara Matongo Sigore:** That is true.

**Commissioner Slye:** Do you remember in which years you were an Assistant Chief and in which years you were a Chief?

**Mr. Sarara Matongo Sigore:** I was an Assistant Chief in 1966. I was promoted in 1982. That was when I became Chief. I retired in 1988.

**Commissioner Slye:** So, from 1966 to 1982, you were an Assistant Chief?

**Mr. Sarara Matongo Sigore:** Yes.

**Commissioner Slye:** So, from 1982 to 1988, you were a Chief?

**Mr. Sarara Matongo Sigore:** Yes.

**Commissioner Slye:** We have heard testimony about how money was raised to support the Government. We have been told about *harambees* and stamps. Could you tell us a little bit how that system worked?

**Mr. Sarara Matongo Sigore:** *Harambees* began with His Excellency the late *Mzee* Jomo Kenyatta. This was used to construct schools. The needy bright children would be assisted through *harambees* to go to school. This Government has now brought the issue of CDF only that it does not go the poor people who are intended to benefit. Instead, the CDF money goes to friends of those who sit in the Committee. The *harambee* spirit was very good because it used to help a lot. It was, however, banned by the current Government. In CDF, there is a lot of money, but it does not help the old men and women.

**Commissioner Slye:** We have also been told about stamps that were sold by chiefs. Is that something you are familiar with?

**Mr. Sarara Matongo Sigore:** The stamps were there.

**Commissioner Slye:** How often were they sold? Who used them and what was the money used for?

**Mr. Sarara Matongo Sigore:** The *KANU* stamps. During that time, we were given *KANU* stamps which we were to sell and bring the proceeds to the party. The *KANU* Party would then get strength to continue its affairs. There was no Assistant Chief who could squander that money.

**Commissioner Slye:** How often were you required to sell the stamps?

**Mr. Sarara Matongo Sigore:** We could sell the stamps in a period of one month or two months and then take the money to the *KANU*. You could not squander the money. Those who did that were arrested and taken to court. One had to be honest and faithful.

**Commissioner Slye:** Were you given stamps every week, every month or every year? How often were you given stamps to sell?

**Mr. Sarara Matongo Sigore:** We were given after every month. After selling, one was required to take the money to the District Officer.

**Commissioner Slye:** That is much clear. Was the purpose of the *harambee* the same the entire period you were a chief?

**Mr. Sarara Matongo Sigore:** When I became the Assistant Chief, there was no permanent primary school in my area. So, I wanted us to have a *harambee* in order to construct a permanent school. During my tenure, I managed to construct eight primary schools. We even constructed this DC's office. When I became Chief, I also constructed the office there. My work was to construct and improve on infrastructure using the *harambees*. I used to capture the boys who were not attending school and take them to school. For the farmers, I would take their cows and sell them and pay fees for their children. The ones that I took to school are now headmasters, teachers, and other professionals. I wanted development. Our tradition required us to pierce our ears, but I

wanted my people to go forward and I stopped that. Even right now, I have four children in university. Two of them are in high school.

**Commissioner Slye:** Thank you. It looks like you were very effective in developing your community through the *harambees*. Were the *harambees* done only by chiefs or other people could conduct them?

**Mr. Sarara Matongo Sigore:** They were conducted willingly. Say, a person from a church could organize one and invite us. There would be a guest of honour and people would contribute towards the development of that church. Councillors or MPs would be invited to be guests of honour. Nobody was being forced. It was done willingly.

**Commissioner Slye:** In terms of cattle rustling, I was a little bit confused about your testimony. What I understood is that you had 17 cows stolen and your wife and child were shot in 1981. A second incident is where people tried to steal cows from your neighbor and a police officer involved was wounded. You also said that ten years ago, 10 of your cows were stolen and the police slaughtered one of your cows. You also talked of your maize being stolen. Were those separate incidences?

**Mr. Sarara Matongo Sigore:** These incidences were quite different. When they came to harvest maize from my farm, they came with guns. We called the OCPD from Kehancha--

**Commissioner Slye:** I just wanted to make sure that those incidences I mentioned are the right ones. Did they happen four different times or did they happen at the same time?

**Mr. Sarara Matongo Sigore:** When the GSU came during the day to steal the cows, the citizens found a cow around my place and they thought I was the one stealing. It was during my time as the Assistant Chief of Kegonga. They came and destroyed everything in my place. When they came recently, they sold my animals. War erupted and one of my houses was torched. My neighbours came and helped the situation. So, I have had a lot of problems along the border there. I am just a man who perseveres. If it was somebody else, he would have gone to another nation.

**Commissioner Slye:** It is clear that you have suffered a lot. When your wife and child were shot, do you remember when that happened?

**Mr. Sarara Matongo Sigore:** The day they stole my 17 heads of cattle, they had guns. My wife thought they were going to the *shamba*. They took my three month-old baby and fired at her and even faeces came out of her when they shot her.

*(Mr. Sigore wept)*

**Commissioner Slye:** Thank you, Mr. Sigore, for coming over to share with us painful memories. So, the cattle were stolen in 1980. Is that so?



**Mr. Sarara Matongo Sigore:** That was way behind. I even wrote a statement and the Chief wrote a letter which I have given to the Leader of Evidence. It should be around 1981. These people were just beating me up during the day and my children were there. It is not only my cattle. Many other people were just quiet and yet their houses were torched. We have been sleeping in tents. We have a lot of problems here in Kuria.

**Commissioner Slye:** You took your wife and child to Homa Bay Hospital. Were they shot by one bullet or were they shot separately?

**Mr. Sarara Matongo Sigore:** My wife was holding the baby. The bullet went through the mother and the baby. The baby survived. The personnel at Homa Bay really helped us.

**Commissioner Slye:** Did your wife survive as well?

**Mr. Sarara Matongo Sigore:** Yes, she survived, but it really scared us. We have bad memories. We have funny diseases. I get shocked at times.

**Commissioner Slye:** Thank you. My next questions will go to Mr. Matinde. Now, Mr. Matinde, you mentioned someone called Amini who is one of the people who had stolen your cattle. Or was he the one who was following the cattle thieves?

**Mr. Matinde Werema:** He was a police officer from the Kenya Police. He was following the footsteps.

**Commissioner Slye:** So, he was trying to help you trace the animals?

**Mr. Matinde Werema:** Yes.

**Commissioner Slye:** Was he one of those who were killed in the event?

**Mr. Matinde Werema:** Yes.

**Commissioner Slye:** Do you remember the other three who were killed?

**Mr. Matinde Werema:** Yes.

**Commissioner Slye:** Can you give us their names?

**Mr. Matinde Werema:** Yes, they were: *Mzee* Nyakirang'ani, Wanene Wankugere, Gabriel Kirato and Msafiri Mariba.

**Commissioner Slye:** All of them were police officers.

**Mr. Matinde Werema:** The others were civilians. There was only one police officer, Mr. Amini, who was attacked. The others were citizens who were helping me to track the cattle.

The police officer was compensated, but we, civilians, were not. That is why we are really wondering what happened. There is no step the Government took.

**Commissioner Slye:** The police officers were compensated, but those of you whose cattle was stolen, have not been compensated. Is that right?

**Mr. Matinde Werema:** Yes, that is true.

**Commissioner Slye:** Has anybody from the Government told you about any efforts to investigate who stole your cattle?

**Mr. Matinde Werema:** Up to date, we do not know anything.

**Commissioner Slye:** Have you asked anyone?

**Mr. Matinde Werema:** I have not tried to ask anybody.

**Commissioner Slye:** You mentioned that you have a child in Form III who is deaf. Is that right?

**Mr. Matinde Werema:** Yes. He is at Kuja Secondary School.

**Commissioner Slye:** In your view, is he getting good education at that school?

**Mr. Matinde Werema:** Yes.

**Commissioner Slye:** You said that your brother has been assisting you to pay the child's school fees, but he no longer can because his vehicle was burnt?

**Mr. Matinde Werema:** Yes.

**Commissioner Slye:** Is that because he uses the vehicle to earn his money? Why does that affect his ability to help you?

**Mr. Matinde Werema:** It was a *matatu* and he was doing transport business with it. Whenever he got something small, he could give me some money. Now he is not able. He has three children and all of them are in secondary school. He is not able to educate them.

**Commissioner Slye:** How many children do you have?

**Mr. Matinde Werema:** I have six of them. Two are in secondary school.

**Commissioner Slye:** How will you pay for their school fees now that your brother is unable to assist you?

**Mr. Matinde Werema:** At the moment, I do not have any means. Maybe through you or other means, they can continue with their education.

**Commissioner Slye:** The purpose of this Commission is to find out the truth about historical injustices and to make findings and recommendations which will be issued when we finish our work. It is at that point that we may make recommendations with respect to the issues that you have raised as well as possible compensation for the cattle you lost and injuries sustained. Lastly, Mr. Chrispinus, did I understand you correctly that with effective policing and an effective judicial system, the problem of cattle rustling would be much less? Is that correct?

**Mr. Chrispinus Gibagira:** Yes.

**Commissioner Slye:** You gave us the names of individuals who were involved in the theft of your cattle.

**Mr. Chrispinus Gibagira:** Yes.

**Commissioner Slye:** You recommend that they be prosecuted?

**Mr. Chrispinus Gibagira:** Yes.

**Commissioner Slye:** You said that they were arrested and shortly released thereafter?

**Mr. Chrispinus Gibagira:** Yes.

**Commissioner Slye:** Did anybody explain to you why it happened so?

**Mr. Chrispinus Gibagira:** When I came from hospital and went to the police station, the criminal investigation officer told me that the family members of the suspects sold their animals and brought money to the OCPD. He was discharged, but one time, I met him in Nairobi in uniform.

**Commissioner Slye:** He was paid by the youth who had stolen the cattle?

**Mr. Chrispinus Gibagira:** Yes.

**Commissioner Slye:** How did you know that?

**Mr. Chrispinus Gibagira:** There is somebody who told me. He used to work there as a Special Branch Officer. I believe in what he told me.

**Commissioner Slye:** You say you met the OCPD in Nairobi?

**Mr. Chrispinus Gibagira:** I met him along the streets in Nairobi. I could not talk to him because he is now my enemy.

**Commissioner Slye:** What would you want done to him?

**Mr. Chrispinus Gibagira:** I recommend that the law should take its course in prosecuting him.

**Commissioner Slye:** You mentioned something about land in your statement. You said that there was a relationship between land issues and cattle rustling. Could you say a little bit about that?

**Mr. Chrispinus Gibagira:** What has initiated land issues here is corruption. If there is demarcation, the chief should announce and tell people to come and witness. In that area, nothing of the sort used to happen. I was born there in 1956. We were evicted after we were told that the land was not ours. We were wondering who the owner of the land is. Where was he all this time? So, this land has remained a forest. Schools closed down and yet they were doing well. For example, Magena Primary School was closed. It is now a nursery school.

**Commissioner Slye:** What is the relationship between land issues with cattle rustling or are they separate problems?

**Mr. Chrispinus Gibagira:** They are related. I even have evidence here where Mr. Sunkuli, a former MP participated in Parliament. That is very true. The people who used to stay there are now IDPs. Some of us do not understand what the Government is doing. We do not get any assistance. There are no health facilities. From here to Kegonga Hospital is very far. That has made poverty levels to go high in Trans Mara.

**Commissioner Slye:** Because of increased poverty, people are more likely to engage in stealing. Is that so?

**Mr. Chrispinus Gibagira:** Yes.

**Commissioner Slye:** *Mzee* Sarara, you mentioned your fear of naming any members of the GSU or the police. You said that one time you mentioned some of them and you were ambushed. When did this take place?

**Mr. Sarara Matongo Sigoli:** When I mentioned the names at one point, I was going home and two bullets were shot at me. There is also a time when they tried to shoot two arrows at me. I was told to write down names and give to the Commission. We are just waiting to die. I have some time to live.

**Commissioner Slye:** We take seriously the security of individuals who appear before us. We ask that you continue to be in touch with our staff and to let them know if you have any concern about your personal safety as a result of appearing before this Commission. Do you understand that?

**Mr. Sarara Matongo Sigore:** Yes.

**Commissioner Slye:** I was saying that if after you appear here, you feel that people are threatening you or if you are, in fact, threatened in any way to please immediately contact our staff. We will do everything within the law to make sure that you are protected and that the people who threatened you are held accountable for that. Do you understand?

**Mr. Sarara Matongo Sigore:** Yes, I have understood you. First, I told this Commission that those police officers who were colluding with the youth to steal our cows, I caught one of them and he was arrested. The others, including the chief, were discharged. The other one passed away. I have given their names to the Leader of Evidence here. Those ones are known. The chief went and got those cows. Instead of giving them back to me, he sold them. The Administration Police in the District Officer's office slaughtered them. I went and found meat. So, you see I do not have powers to snatch that meat from them. I have not been paid. This was a grade cow. They were eight of them. Even my son bought three and I bought five. We had eight cows, but now, I am very poor. I do not have cows at home. I live like a pauper. My children have disappeared. Some went and constructed their houses very far. They are scattered all over. They really fear that place. I am alone there. Even my wives abandoned me. They are scattered. Some are staying in the centres. So, I am just staying with one wife right now.

**Commissioner Slye:** Your testimony has really helped me and the Commission to get a much richer picture of the problems facing the community here in Kuria, but specifically with respect to cattle rustling. You have already stated that there are other problems. Mr. Crispinus has given us a memo and has spoken about issues with respect to land and other related issues. So, I would like to personally thank each of you for being willing to appear here and spend the time with us to help us to better understand the reality of historical and current injustices here. Thank you very much.

**The Presiding Chair (Commissioner Ojienda):** You have given us all the details and we now understand better. I want to thank all of you.

Leader of Evidence, call the next witness. If you had the two memos on cattle rustling and the conflict, that would probably, complement your evidence and help us understand better some of the policy issues of cattle rustling.

**Ms. Emily Kimani:** Unfortunately, we have not managed to have witnesses for the two memos; the one on cattle rustling and the one on the Luo/Kuria conflict.

**The Presiding Chair (Commissioner Ojienda):** Is there any witness present?

**Ms. Emily Kimani:** Yes, from tomorrow's list.

**The Presiding Chair** (Commissioner Ojienda): Let him come in.

*(Mr. Joseph Tunai Maroa took the oath)*

**Ms. Emily Kimani:** Please, tell us your full names for the record.

**Mr. Joseph Tunai Maroa:** My name is Joseph Tunai Maroa.

**Ms. Emily Kimani:** What do you do for a living and where do you reside?

**Mr. Joseph Tunai Maroa:** I used to be a private medical practitioner, but currently, I have become a peasant.

**Ms. Emily Kimani:** You are here before us today having recorded a statement in which you raised issues of corruption and also touching on administration of justice. Is that the position? Kindly take us through your testimony.

**Mr. Joseph Tunai Maroa:** I have divided my presentation into two: corruption and unlawful arrest. I will start with corruption in the Ministry of Health. In 1994, I was working in my private clinic at Kehancha Market. One Medical Officer of health called Dr. Solomon Jacob Obongo came to my clinic demanding a bribe of Kshs20, 000, so that he could allow me to continue operating in the clinic. I refused to give the money. He got annoyed and went to the police station. Some hours later, he came with two policemen and took my licence. The officers ordered me to close the clinic. Then we went to the police station where I was told by the OCS: "Your clinic has been closed by the MOH because you are disobedient." So, he advised me to go to another place and open up another clinic.

I moved to Kerege Market, opened up a new clinic. He came again with a team of policemen and arrested me. He took me to the police station and I was unlawfully charged with a Criminal Case No.1314 of 1995. I told the resident magistrate about my case and he set me free. Then I filed a case in Kisii High Court. The Judge ordered that I be allowed to operate. When I came back to my clinic in 1996, the same MOH came again, he arrested me again and took me to the police station. I was taken to court. I explained the same to the magistrate who set me free.

I was set free under Section 87(a) and I was warned not to operate any clinic any more. That is when I came and made a statement before this Commission, so that the Commission can assist me get compensation for all the years I have stayed at home. I hope the new Constitution will help us fight corruption.

The next issue is land corruption. This is with regard to Land Parcel No.335. I was to buy a piece of land from somebody called Mbugua. We travelled with him to Homa Bay Lands Office. We found a land registrar called Zablon Rangi Mwita. Zablon Mwita

demanded for the identity card of the owner of that land. When he learnt that the man was a Kikuyu, he demanded a bribe of Kshs10, 000. The landowner and I refused to give him that money. Then he sent us home to go and look for that money. When we came back to look into the issue of the same land, the file had disappeared. We came back every month to check until that landowner became very ill then I paid him money and sent him to Kenyatta National Hospital whereby he died. That file disappeared until 1995 when we found that the land had been transferred to the name of Martin Range. Martin Range went to register himself as Zablun Rangi Mwita. I tried to report this issue to the police station. The police officer opened a file, but he did not do anything. I filed a case with the Land Dispute Tribunal which ordered that I get the land. But up to now, I have not been helped. I am requesting this honorable Commission to assist me.

Now I will go to unlawful arrest and search without a warrant. I remember---

**The Presiding Chair** (Commissioner Ojienda): Excuse me, Mr. Tunai. From the statement you have recorded, you only seem to have recorded two issues. The land issue and the clinic but you can continue if the rest is related to the two. But we do not have the detailed statement of the third issue.

**Mr. Joseph Tunai Maroa:** I remember in 2005, Inspector Daniel Makau came to my home with a team of policemen. He came and arrested me with my wife and then he searched the whole home. He told me he was looking for witchcraft facilities. Then he told me to go to his office the next day. When I went there, he ordered me to keep peace and report to him every month until when I will be charged in court. I wrote to the Resident Magistrate, Kehancha, asking if a search warrant was issued. He told me that no warrant had been issued. Then I stopped reporting to him. I am now requesting the Hon. Commission to help me.

**The Presiding Chair** (Commissioner Ojienda): Mr. Tunai, this Commission proceeds on the basis of statements that are recorded. So, when you come before the Commission and talk about incidents in respect of which you have given statements, you do not just talk about everything. One of the cardinal rules that we have in this Commission is that we must notify those who are named, so that they have an opportunity as well to come before this Commission to answer to the issues that are raised. You have mentioned Mr. Makau. He has not been notified. Justice is only achieved when both parties are notified and when they have an opportunity to be heard. So, we will not allow you to mention people's names and to speak about issues in respect of which you have not recorded statements. So, we direct that you confine yourself to the two issues that you have talked about; the land and the issue of the clinic and not those two other issues because we will be doing an injustice to those people that you are naming because they are not aware that they are being named today.

Truth, justice and reconciliation is a process that involves both those who have been wronged and those who have wronged them because we are trying to build a society that can reconcile and live in peace. We also want to ensure that justice is available to all.

That is why we proceed with the truth. The truth often emerges when both parties are involved. That is why we ascertain every statement made.

So, when you make a statement, we undertake investigations to ascertain the veracity of those statements. It is upon that investigation that you appear before us as you are doing today. So, let us confine ourselves to those issues to ensure that this process retains its integrity. So, let us proceed with the two issues that you had spoken about.

Leader of Evidence.

**Ms. Emily Kimani:** Mr. Tunai, I wish to ask you some questions in light of your testimony and from what you recorded. The first incident that you described to us, just to quote what you said, corruption in the Ministry of Health, you have talked of a Dr. Solomon. Did you know him prior to him coming to you to get the alleged bribe of Kshs20, 000?

**Mr. Joseph Tunai Maroa:** Yes, I knew him.

**Ms. Emily Kimani:** What was the nature of your relationship?

**Mr. Joseph Tunai Maroa:** He had given me a recommendation to get a licence because he was the area Medical Officer of Health. Then he wanted me to bribe him with Kshs20, 000.

**Ms. Emily Kimani:** So, from what you are saying, would I be correct to say your relationship was purely on a professional level?

**Mr. Joseph Tunai Maroa:** I had known him from childhood because he is from Kuria.

**Ms. Emily Kimani:** Were there any correspondences from the Medical Inspection Board prior to your application?

**Mr. Joseph Tunai Maroa:** I have given all the documents.

**Ms. Emily Kimani:** From the records that we have, I am referring to the charge sheet, you were charged with selling expired medicine. Another count was operating under unsanitary conditions. Do you think that this was the reason why your licence was revoked permanently?

**Mr. Joseph Tunai Maroa:** I beg your pardon?

**Ms. Emily Kimani:** In your charge sheet which you have furnished us with, you were charged with selling expired medicine and also operating under unsanitary conditions. Do you feel that this was the reason why your licence was revoked?

**Mr. Joseph Tunai Maroa:** No, it was not that way. He wanted to be given money.



**Ms. Emily Kimani:** From the attachments that you gave your licence was to expire on December, 1994 and you were arrested in May, 1995. Had you renewed the licence?

**Mr. Joseph Tunai Maroa:** I had renewed my licence for 1994 and I have all the receipts.

**Ms. Emily Kimani:** Do you have copies of those receipts?

**Mr. Joseph Tunai Maroa:** Yes, I have got copies of those receipts.

**Ms. Emily Kimani:** Would you kindly avail them to the Commission?

**Mr. Joseph Tunai Maroa:** I will bring them.

**Ms. Emily Kimani:** You have also talked about the land issue. For confirmation for the record, was there any formal transfer of the land from Mr. Mbugua who is now deceased?

**Mr. Joseph Tunai Maroa:** There was no transfer because the file mysteriously disappeared.

**Ms. Emily Kimani:** You have also talked about an award that was given in your favour by the Land District Tribunal. Why have you not enforced the award?

**Mr. Joseph Tunai Maroa:** The said land owner refused to surrender the title deed.

**Ms. Emily Kimani:** Who specifically are you referring to when you say “the landowner”?

**Mr. Joseph Tunai Maroa:** He was Samuel Mbugua, a Kikuyu.

**Ms. Emily Kimani:** You have touched on corruption in light of various public institutions. What recommendations would you give so that these public institutions are there for the benefit of the public?

**Mr. Joseph Tunai Maroa:** I request the new Kenya Constitution to curb all corruption.

**Ms. Emily Kimani:** Maybe just to take you back a bit, the owner of the land as you have indicated in your statement, died in 1999. What took you so long from 1993 to 1999 to have this land transferred?

**Mr. Joseph Tunai Maroa:** The advocate who was dealing with that case unlawfully delayed the hearing of the case with an intention of stealing that land.

**Ms. Emily Kimani:** Before I hand over the witness to the Commissioners, the witness has furnished us with a copy of the charge sheet for police case No.241 and No.242 and

also a licence for 1994 and many other attachments thereto as to his qualification. I request that the same be admitted as part of the record.

**The Presiding Chair** (Commissioner Ojienda): They may be admitted.

**Ms. Emily Kimani:** Thank you. I have no further questions for the witness.

**The Presiding Chair** (Commissioner Ojienda): Thank you very much, Mr. Tunai for the testimony that you have offered this Commission and also for the documents that you have given the Commission. I want to ask you a few questions and I want to start with the second issue of the land. Was there a sale agreement between yourself and Mr. Mbugua?

**Mr. Joseph Tunai Maroa:** Yes, we had an agreement.

**The Presiding Chair** Is it part of the documents? Can you show that you gave us---

**Mr. Joseph Tunai Maroa:** I have got the original documents here.

**The Presiding Chair** (Commissioner Ojienda): How much did you pay the late Mr. Mbugua in the sale agreement?

**Mr. Joseph Tunai Maroa:** Kshs60, 000.

**The Presiding Chair** (Commissioner Ojienda): That was for what kind of parcel of land? How big was the land?

**Mr. Joseph Tunai Maroa:** It was 2.2 hectares.

**The Presiding Chair** (Commissioner Ojienda): The transfer was not signed?

**Mr. Joseph Tunai Maroa:** Pardon?

**The Presiding Chair** (Commissioner Ojienda): Did you sign a transfer between yourself and Mr. Mbugua?

**Mr. Joseph Tunai Maroa:** I signed the sale agreement.

**The Presiding Chair** (Commissioner Ojienda): No, I am talking about the document for the transfer of land.

**Mr. Joseph Tunai Maroa:** No, the file did not appear. There was no file.

**The Presiding Chair** (Commissioner Ojienda): Between the time of the agreement and the time Mbugua fell sick and was taken to Kenyatta National Hospital, how long was that?

**Mr. Joseph Tunai Maroa:** It was in 1993.

**The Presiding Chair** (Commissioner Ojienda): You did the agreement in 1993?

**Mr. Joseph Tunai Maroa:** Yes.

**The Presiding Chair** (Commissioner Ojienda): When did Mbugua go to Kenyatta National Hospital?

**Mr. Joseph Tunai Maroa:** Mbugua went to hospital in 1994.

**The Presiding Chair** (Commissioner Ojienda): So, that was a year. When did the file resurface?

**Mr. Joseph Tunai Maroa:** This file was found in 1995.

**The Presiding Chair** (Commissioner Ojienda): And you went to the tribunal and the tribunal ordered that the land be transferred to you? Is that right?

**Mr. Joseph Tunai Maroa:** The tribunal ordered that I be given the land. The defendant refused to surrender the title deed.

**The Presiding Chair** (Commissioner Ojienda): Who was your advocate?

**Mr. Joseph Tunai Maroa:** In cases taken to the land dispute tribunal, there are no advocates.

**The Presiding Chair** (Commissioner Ojienda): I am saying after the award is given by the tribunal the procedure is that you are supposed to go to an advocate, so that you apply for the award to be adopted in court. Did you do that? Has the award been adopted by the court?

**Mr. Joseph Tunai Maroa:** The judgment was referred to the Resident Magistrate court and he gave an order.

**The Presiding Chair** (Commissioner Ojienda): That is the procedure. Once that is done, you are required to apply to the High Court that the Registrar signed the transfer with or without the title deed. Have you taken that step?

**Mr. Joseph Tunai Maroa:** I did not have money to file the case in the High Court.

**The Presiding Chair** (Commissioner Ojienda): That is the procedure. If you had followed that then you would have had a final order from the High Court. I am just guiding you on the legal process because you talked about the legal process. You said the land was transferred by the Registrar to himself?

**Mr. Joseph Tunai Maroa:** First, the land was transferred to one name called Martin Range. This Martin Range is fictitious. He cannot be found.

**The Presiding Chair** (Commissioner Ojienda): Then after Martin Range?

**Mr. Joseph Tunai Maroa:** The first transferee from the first owner cannot be found. It is just a name used to steal that land.

**The Presiding Chair** (Commissioner Ojienda): And the second owner?

**Mr. Joseph Tunai Maroa:** The second one was the Land Registrar himself.

**The Presiding Chair** (Commissioner Ojienda): Have you done anything to challenge that transfer? Do you think you have any rights?

**Mr. Joseph Tunai Maroa:** I have complained to the police and a file was opened for investigation. Up to now, nothing has come up.

**The Presiding Chair** (Commissioner Ojienda): Mr. Tunai, I think the problem is that without the intervention of the court--- Your name was not transferred to the title deed. It would be prudent for the family of the late Samuel Mbugua to join you in your quest. Where is this family?

**Mr. Joseph Tunai Maroa:** Samuel Mbugua was living on that land without any family member. When he went to Nairobi, he went and died there.

**The Presiding Chair** (Commissioner Ojienda): He has no relatives?

**Mr. Joseph Tunai Maroa:** There was nobody who came to claim that land.

**The Presiding Chair** (Commissioner Ojienda): I think that is the missing link. Probably, that is why the police find it difficult to act because the person who is registered as owning that land has not come forward and no relatives have done so either.

**Mr. Joseph Tunai Maroa:** But the land had already been stolen and registered in the name of Zablon Rangi Mwita who was the Land Registrar.

**The Presiding Chair** (Commissioner Ojienda): I would advise you that you go to court and maybe just file a suit because that would, probably, open a legal avenue to challenge the ownership of the land. Otherwise, the surest way to a remedy is in getting the administrators of the estate of the late Samuel Mbugua to join you in this quest. This is because at the time that this land was transferred, you had not completed the process of transfer. You had a sale agreement, not a transfer document. As the law stands now, the legal interest that is protected by the law is the interest between yourself and Samuel Mbugua and not between yourself and Zablon Rangi. I think that is on the legal side.

To the first issue, I want to ask you two or three questions. How long had you practiced by the time your licence was cancelled?

**Mr. Joseph Tunai Maroa:** I had operated that clinic for one year.

**The Presiding Chair** (Commissioner Ojienda): What are your qualifications? I know you have given us the documents?

**Mr. Joseph Tunai Maroa:** I am a Registered Clinical Officer.

**The Presiding Chair** (Commissioner Ojienda): I believe that you are aware that you cannot practice medicine and sell medicine at the same time unless you are using the medicine for purposes of treatment?

**Mr. Joseph Tunai Maroa:** I had a licence.

**The Presiding Chair** (Commissioner Ojienda): What were you licensed to do?

**Mr. Joseph Tunai Maroa:** I had even renewed my licence for 1994.

**The Presiding Chair** (Commissioner Ojienda): You were licensed to do what?

**Mr. Joseph Tunai Maroa:** Treatment.

**The Presiding Chair** (Commissioner Ojienda): But you were not licensed to sell medicine?

**Mr. Joseph Tunai Maroa:** I was not selling drugs. I was operating a private clinic.

**The Presiding Chair** (Commissioner Ojienda): Then what I understand with the *nolle prosequi* because you have said that when you were initially charged you were discharged, you were discharged under Section 37(a) of the Criminal Procedure Code. What that means is that you were discharged, but you can be brought back to court any time if you commit that offence, or that file can be opened and you can be rearrested.

This charge does not say that you cannot apply for a licence to practice. Why have you not applied for a licence? Why can you not practise medicine since you were discharged?

**Mr. Joseph Tunai Maroa:** After all those cases, I had no money to open a new clinic.

**The Presiding Chair** (Commissioner Ojienda): I hope that you understand that under the law you were entitled to operate a clinic. Section 87(a) does not say, "do not operate a clinic". I hope that is clear.

**Mr. Joseph Tunai Maroa:** But they have always kept on threatening me that under Section 87(a) I cannot operate one and that they can arrest me and charge me again.

**The Presiding Chair** (Commissioner Ojienda): I am saying, Mr. Tunai, that you can only be arrested and charged if you commit an offence, if you keep on selling expired drugs, or if you keep on doing the things that were in the charge sheet, but not if you are practising your profession. Let me say here and now that every person has the right to eke out a living through his profession, and it is, indeed, a socio-economic right for you to practise as a clinical officer, but you ensure that you comply with the terms of that licence and not to engage in other illegal acts like selling expired medicine, or purporting to exercise powers that are not in that licence. I think your issue is very straightforward. You have no issue here except for the fact that you complain of a bribe demanded by one Doctor Solomon Jacob Obonyi. Where is Dr. Obonyi, the MOH whom you say wanted a bribe from you?

**Mr. Joseph Tunai Maroa:** He has been the Kuria MOH for all those years.

**The Presiding Chair** (Commissioner Ojienda): Have you had any issues or conflict with him?

**Mr. Joseph Tunai Maroa:** No.

**The Presiding Chair** (Commissioner Ojienda): Okay. Thank you very much for that testimony. I just want to advise you that you are free to apply for a licence and once you get it, I am sure you can open a clinic; you should not just sit back and say that you were charged and you can no longer practise. I will ask my colleagues to ask you questions.

**The Acting Chair** (Commissioner Namachanja): Mr. Tunai, when the police came to search your home for witchcraft tools, what were the reasons for doing that?

**Mr. Joseph Tunai Maroa:** They charged me falsely that I was operating a clinic without a licence, yet the MOH had taken my licence.

**The Acting Chair** (Commissioner Namachanja): I may not have heard you right. Did I hear you say that at one point the police came to search your house?

**Mr. Joseph Tunai Maroa:** An inspector came to my house. He arrested me. He handcuffed me and searched my house. He told me he was looking for witchcraft tools in my house.

**The Acting Chair** (Commissioner Namachanja): Was this related in any way to the charges over the practising licence?

**Mr. Joseph Tunai Maroa:** No.

**The Acting Chair** (Commissioner Namachanja): Thank you. I just wanted to understand that.

**Commissioner Dinka:** Mr. Tunai, thank you very much for your testimony. I have a few questions for you? What is the qualification required to become a clinical officer?

**Mr. Joseph Tunai Maroa:** You have to have a Second Division Certificate and above. Then you attend the Kenya Medical Training College (KMTC) for three years, and obtain a diploma in clinical medicine.

**Commissioner Dinka:** Does that type of qualification allow one to diagnose an illness, prescribe medicine *et cetera*, which normally requires a doctor to do?

**Mr. Joseph Tunai Maroa:** You have also to serve for several years before you can be licensed to practise privately.

**Commissioner Dinka:** My question is: With that kind of qualification, are you allowed to diagnose disease and prescribe medicine?

**Mr. Joseph Tunai Maroa:** Yes, because you are a qualified clinical officer.

**Commissioner Dinka:** No. We have to be very honest with each other. You are a clinical officer, and then you get a licence to operate as a clinical officer. Does that licence allow you to see patients, diagnose sicknesses and write prescriptions for medicine like a doctor?

**Mr. Joseph Tunai Maroa:** With the qualifications of a clinical officer and after serving for several years, you can make an application for a private licence.

**Commissioner Dinka:** A private licence to do what?

**Mr. Joseph Tunai Maroa:** To open your own clinic.

**Commissioner Dinka:** Yes, you open your own clinic. What kind of medical practice do you perform in that clinic, when you have that kind of qualification and licence? Do you administer only a prescription from a doctor and then you dispense medicine to a patient from a medical doctor, or do you play the role of a medical doctor and write prescriptions for patients?

**Mr. Joseph Tunai Maroa:** In the clinic, I do examine and prescribe medicines for patients.

**Commissioner Dinka:** Okay. You do prescribe?

**Mr. Joseph Tunai Maroa:** Yes.

**Commissioner Dinka:** Your type of licence allows that?

**Mr. Joseph Tunai Maroa:** Yes, with such a licence you are allowed to prescribe medicine.

**Commissioner Dinka:** Okay. That is what I wanted to know. I have not seen the charge upon which they told you to close the clinic. What did the charge say?

**Mr. Joseph Tunai Maroa:** The first charge was that I was operating a clinic without a licence, yet I had that particular licence, but I did not pay him the Kshs 20, 000.

**Commissioner Dinka:** And the second?

**Mr. Joseph Tunai Maroa:** The MOH came with his own drugs and “planted” them in my cupboard.

**Commissioner Dinka:** How did he get into your clinic to “plant” them?

**Mr. Joseph Tunai Maroa:** He came with many policemen when I was in the clinic, then he went to the cupboard and “planted” the drugs.

**Commissioner Dinka:** In front of the police?

**Mr. Joseph Tunai Maroa:** Yes.

**Commissioner Dinka:** Thank you very much.

**Commissioner Slye:** Thank you, Mr. Tunai, for your testimony and for bringing these issues before us. I have a few questions. The first one is, are you aware of any other incident like that, or people who have suffered situations like yours?

**Mr. Joseph Tunai Maroa:** Yes, the same MOH went round the district and arrested six of us on the same day.

**Commissioner Slye:** Why were the others arrested?

**Mr. Joseph Tunai Maroa:** It was his intention to collect money from private clinics. The same MOH was going round demanding money from all the clinics.

**Commissioner Slye:** How do you know that he demanded money from other private clinics?

**Mr. Joseph Tunai Maroa:** We were all taken to court and we asked each other why we were arrested. We found it was because of the same reason of not paying the money demanded.

**Commissioner Slye:** And were the clinics of the other five near yours or they were far away?



**Mr. Joseph Tunai Maroa:** They were different clinics in the same district.

**Commissioner Slye:** And are you able to remember the names of those other individuals?

**Mr. Joseph Tunai Maroa:** Yes, I can remember their names.

**Commissioner Slye:** Can you name them or write them down? Is that possible?

**Mr. Joseph Tunai Maroa:** I will write down the names.

**Commissioner Slye:** That was in 1993?

**Mr. Joseph Tunai Maroa:** 1994/1995.

**Commissioner Slye:** You had interactions with the MOH after that? Do you know if the other individuals had similar trouble with the MOH?

**Mr. Joseph Tunai Maroa:** No, they were acquitted by the court and continued operating their clinics.

**Commissioner Slye:** So, they did not have any problems after that?

**Mr. Joseph Tunai Maroa:** They had no problems.

**Commissioner Slye:** Do you know why they had no problems, yet you had problems?

**Mr. Joseph Tunai Maroa:** They went to him and reconciled but I did not.

**Commissioner Slye:** What do you mean by reconcile?

**Mr. Joseph Tunai Maroa:** I claimed the money I had wasted on cases and for staying in cells.

**Commissioner Slye:** I am not sure you understood my question. What did they do so that he no longer bothered them?

**Mr. Joseph Tunai Maroa:** The others were taken to court only once and I several times.

**Commissioner Slye:** What did they specifically do to reconcile?

**Mr. Joseph Tunai Maroa:** In my investigations, I found that they later on went and gave him the money he wanted, but I refused to give him the money.

**Commissioner Slye:** Thank you. On the second issue of land, the Presiding Chair is an expert on land matters in Kenya so, I expect to see an analysis of your situation. I understand that he told you that initially, the tribunal wrote a judgment in your favour. He says that when you have a lawyer he can perform many functions for you. Have you ever retained a lawyer for anything?

**Mr. Joseph Tunai Maroa:** Yes.

**Commissioner Slye:** Can you briefly tell us under what circumstances?

**Mr. Joseph Tunai Maroa:** I filed a case in Kisumu High Court against the Attorney-General and the MOH. I had a lawyer. The case took about six years. In 1981, the judgement was not given and my lawyer died. The file has not been found. The judgement has already been given and the file is not available.

**Commissioner Slye:** Was that the only time you retained the services of a lawyer?

**Mr. Joseph Tunai Maroa:** In the criminal case after the MOH arrested me I had a lawyer.

**Commissioner Slye:** Was it a lawyer you paid for, or who was provided for you?

**Mr. Joseph Tunai Maroa:** It was the same lawyer who died.

**Commissioner Slye:** And you paid him?

**Mr. Joseph Tunai Maroa:** Yes.

**Commissioner Slye:** So, why did you not hire a lawyer in the land issue?

**Mr. Joseph Tunai Maroa:** At that time, I did not have money to hire another lawyer, and I was asking if I could be helped.

**Commissioner Slye:** How much money was required for you to hire a lawyer?

**Mr. Joseph Tunai Maroa:** It ranged from Kshs 20,000 to Kshs 50,000.

**Commissioner Slye:** And there were no lawyers who could work for free, if you did not have money to pay them?

**Mr. Joseph Tunai Maroa:** No.

**Commissioner Slye:** I think your problem with respect to access to legal counsel is a problem our Commission will work on. What is the subject matter of those two issues you wanted to raise?

**Mr. Joseph Tunai Maroa:** After giving my evidence before this Commission, it is my prayer that I get paid for the losses I incurred after I closed down my clinic. I also claim for the damages I suffered for the search in my house without a warrant. After that, I had a butchery which was closed. In Kuria, witchcraft cannot affect anybody. So, I request the Commission to allow me to rescue my life.

**Commissioner Slye:** What were you convicted of? Was it witchcraft that stopped you from practising medicine?

**Mr. Joseph Tunai Maroa:** There are two things which have prevented me from practising medicine. One is lack of money and the MOH cannot recommend me to practise. This has made me not practise medicine up to today.

**Commissioner Slye:** What is the second one?

**Mr. Joseph Tunai Maroa:** The MOH prevented me from opening a clinic.

**Commissioner Slye:** Did I understand you correctly that it was witchcraft which stopped you from practising medicine?

**Mr. Joseph Tunai Maroa:** It has caused defamation of my character. So, my patients fear that I am a witchdoctor.

**Commissioner Slye:** Were you charged with witchcraft and prosecuted, or people just know you were accused of witchcraft?

**Mr. Joseph Tunai Maroa:** I do not know. Some thought they had a right to bring a case against me.

**Commissioner Slye:** I think I understand. I think people think that since they came to investigate you for witchcraft, they would not be comfortable coming to you for medical attention. Is that right?

**Mr. Joseph Tunai Maroa:** Yes.

**Commissioner Slye:** I wanted to go back to the earlier issues. There were three issues – bribery, witchcraft and land. What were the other two things you wanted to raise? Do not mention the names of any individuals.

**Mr. Joseph Tunai Maroa:** One is corruption. The second one is that people damaged my property and did not pay me compensation.

**Commissioner Slye:** Put those claims in a written form and submit them to the Commission, so that they can be part of our records and then we will work on them. Is that okay?

**Mr. Joseph Tunai Maroa:** Yes, I can bring them.

**Commissioner Slye:** Okay, thank you. We are interested in knowing the violations that people have suffered and we have certain procedures. Unfortunately, we cannot hear the other issues, and it is not because we do not attach a lot of importance to them. Thank you for appearing before the Commission and raising those issues. I have no further questions.

**The Presiding Chair (Commissioner Ojienda):** Thank you, Professor. I want to confirm that a lot of the issues we raise have aspects that require the services of a lawyer; an example is seeking compensation for damages. Thank you. All the documents are with us, and we will look at them further, and make appropriate recommendations.

I note that Mr. Motongori has submissions on land. Let us hear something different from him. Leader of Evidence, administer the oath.

*(Mr. Maitaria Gisiri Motongori took the oath)*

**Ms. Emily Kimani:** Thank you very much, *Mzee*. If you do not mind, repeat your full names for the record?

**Mr. Maitaria Gisiri Motongori:** My names are Maitaria Gisiri Motongori. I have come to the TJRC because I have some complaints and I want assistance.

**Ms. Emily Kimani:** You are seated before us having written a statement about a land issue. Kindly confirm that to us.

**Mr. Maitaria Gisiri Motongori:** I am coming before this Commission because my land was grabbed. My father, *Mzee* Gisiri Motongori bought land from Mr. Maranya Magaria in 1968. In 1969, Maranya sold the land to Maigunya who went to Tanzania.

Apart from that, I gave him 11 herds of cattle in 1969. So, I stayed in that piece of land and after some time, in 1975 we followed that person to Tanzania so that he could come back home to give us the title deed number. He told us to go back home then he would follow us. After two months, he did not show up so we approached the Assistant Chief, Mr. Muita Kibwagwa, and explained to him what had happened. We asked the chief to allow us to come with the person so that he could give us the title deed.

We continued waiting for him and when we realized he was not coming we reported back to the chief who directed the assistant chief to bring the person from Tanzania. The Assistant Chief promised to bring him back.

After some time, when the person was brought back, he said he did not sell the land to us. He said he had sold it to somebody else who had given him cattle. The Assistant Chief asked him who had taken the cows. He asked about the people who were there when he was being given the cows. He directed that those people be taken to the Chief's office so

that those cows could be given back. After that, the Chief said that the issue was very hard for him and that he could not solve it because it had gone very far.

After some time, the Assistant Chief and the other person accused me of trespassing and took me to court. I was charged for staying in somebody's land illegally. So, I was taken to court and fined Kshs 400 or else I would have been locked in jail. I was told to pay Kshs 400 and then appeal. After appealing, I won the case.

When the assistant chief saw that I had won the case, he came and arrested us with the person who sold us that piece of land. He took us to Maasailand and said that we were thieves. He wanted us to be killed there. The police officers who were told to do that said that they were not there to kill people, but to serve everybody; it was service to all. They further said that killing other people is not good. So, we went with these people and when we reached the game reserve, they became drunk. They were drinking a lot and then they asked each other: "Where are you taking these people; the Maasai have not got their cattle and what are you going there to do?" The Assistant Chief said: "Let us just go with them and torture them and send them away or we just leave them there so that the Maasai can find them there and then we report back that these people have disappeared."

When some police officers heard this, they were annoyed, they even fought among themselves. They asked: "How come you want to kill these people? These are not criminals because when we went to their places we did not find anything with them. Why do you want to kill them? Take them back to Kehenchu. If the Assistant Chief has a way of charging them, he can do that. If that is not the case, let us go back with them. They cannot go and hide at the Maasai's place." These people were drunk and they begun fighting among themselves.

We went to Ogweti and we found some very good police officers who really assisted us. They went and called one senior police officer; an OCS, and they told him: "Come and save your people." It was at around 7.00 p.m. They told him: "Come, we are going up to the *Manyatta* where these people will be killed." That senior police officer came as we were being put down. The Maasai took two crates of beer and when we went to another home, we found 20 litres of alcohol. These people were really drinking. When they came back, we were really beaten. If you look at my back, you will see a scar of the injuries I got then. One of us died in the process. So, the police officers came and asked: "What have these people you have brought to the riverside done?" They answered: "The Assistant Chief has given us these people to bring here." Then they asked: "When you searched their houses, did you find anything?" They said "no". Then they were asked: "Why are you really doing this to them?"

At around 1.00 a.m. we were left to go home. So, the senior police officers came with the Maasais and they really abused the other one and told him: "Take these hyenas back." So, we came back with one police officer and they brought us to the game reserve near Migori where we reached at 5.00 a.m. in the morning. That is how we got home. When he saw that, they now charged at me. They wanted compensation from me, but I told them I was the one who needed compensation from them.

I appealed in Kisii and the court decided that we should agree among ourselves to subdivide the piece of land because all of us were buyers. That person did not agree with that. He took me to court again, and I appealed in Kisumu and the case continued in Kisumu. The white man told us: "You go back, sit down and talk amongst yourselves and decide. If that is not the case, then subdivide this land among yourselves." The Assistant Chief was wrong to grab this piece of land and give it to his brother. But we did not agree. At that time, they came and took 22 herds of cattle from me to Bomani Police Station and asked the OCS to take action against me, but he refused. The person reported that I was a thief.

I went and brought the people who normally slaughter animals. They came and slaughtered an animal and then I took my animals from that police station. So, I came back home and after some time, they came with some police officers, the Assistant Chief and his brother. They arrested me with the police officers. After arresting me they took me to their home and they called their people and said: "Look at this small person here who is grabbing our land." They brought a goat which they slaughtered and ate while I was tied in a vehicle.

My children were very young then. I had no father or brother. So, they came and took everything from my family while my wife watched. They took everything and put it on the other side. I was having many things then; oranges, mangoes, millet, paw paws and other plants because I had done development on that land. Everything was done in acreage. I had granaries full of grains, maize and other cereals. There was millet and sorghum in the *shamba* ready for harvesting and that is when I had a lot of problems. So, I told myself: "I am dying but my God will take care of me."

After that, they came and took me in for nine months at Homa Bay. Then I appealed to the Office of the President and that office listened to my cries, then I was sent to the District Commissioner's office who gave me a letter. The District Commissioner said that the case should be listened to carefully because I had shown how it was handled and how it was being postponed.

When these people heard that I had received a letter from the Office of the President, they told our Member of Parliament that I had got a letter from the Office of the President and he should take me away because if he did not do that, they would not vote for him. So, Mtawala sent somebody that I give him the original letter so that he could verify it and see how he could help me. When I gave him the letter he told me to go. I just came back home and later when I went to his place he asked me what I had gone to do there. I told him that I had gone there to make a follow-up on the letter I had given him. Then he started shouting: "Thief, thief, thief" and people started coming towards where we were. He then told the people that I was a thief and I ran away. He told them that if they ever saw me they should kill me. Those words came from the Member of Parliament!

I told myself because God cares for the weak I should not give up. One day when I was at Migori I met the MP at a petrol station. He saw me while fueling his vehicle. He called me and by that time I was prepared for anything. He called me and asked me where I was

going and I told him I was going to get my letter and that I wanted to go and tell the President that he snatched the letter that he wrote to me. He then told me that it is the people who were fighting me. He told me not to go there; instead I join him to his place. Then we went and I spent a night at his place. The following morning, he told me: "Just go back home and on such and such date, come I will tell you where we will go." I did not give up, I went again and then he told me: "We are now going to Nairobi." We travelled to Nairobi and I spent at his bar, while he went to his house at Milimani, Nairobi. The following day he sent his driver to pick me up then we went and stayed at his home the whole day.

On Monday, we went to his office at Jogoo House and, while there, we talked and discussed and he told me that there is one guy called Chacha Matiko whom we were to meet and that he was in Nairobi. Then he told me that we could go to Parliament. He said: "Come down we go to Parliament." When I reached down he told me that when I go to Parliament and anyone asks me about that letter, I say that it got lost. So, when we reached the door, he told me that we go back. So, we went back to his office and we discussed and then he made a call to the DC, Homa Bay. He asked the DC where he took the letter sent to *Mzee* Subuleta which was sent from Nairobi. The DC denied having received such a letter. So, he told him: "I want to know what you have done concerning the letter." He told him: "I am coming!" Then he asked me, "can you remember the words that were contained in the Presidential letter that was written to you"? I told him everything as he wrote down. He wrote everything down and then it was typed and I told him to give me a copy of that letter, which he gave and it is still there. He told me to go to the District Commissioner, Homa Bay, and when I reached at the DC's office the security people prevented me from seeing the DC.

I told them that I wanted to see the DC because I had a message from "above". Why should I be denied access? Then they told me to stop and then I told them, "if you are not going to shoot me, just push me down until I die". Then they told me to go and see DO I and tell him that I was sent to see the DOI and not the DC. I said: "No! I was not sent to see the DOI but the DC. I need to see the DC!" Then I was allowed to see the secretary and when I went there, the secretary said: "There is one person here, I think he is a mad man who wants to see you." She told the DC that way. Then the DC said, "bring him". I was escorted to the DC and I took out the letter and gave it to him. The he asked: "Are you the one?" Then I said "Yes". He was a gentleman, and after having read the letter, he said that this thing is really right. So, he wrote another letter and said: "I will not send this letter, you are the person who will go with this letter to the District Officer." So, I went and gave the letter to the DO as instructed and the DO told me to call four witnesses and the other person to call four witness then we sit and solve this issue.

So, I went and called the chief, ex-chief Omari, who accepted to come. He was sent to court to bring the verdict of the Chamber application on how the matter was determined and then they told us that the case would be heard in a court of law because it came from the DO's office. So, when we reached at the court, Mr. Mainye decided to hire an advocate. When the case was to be heard I went there very early in the morning to the court clerk who told me that the case would be heard in Court No.2 and that I should wait

for the person whom we were doing the case against. I went to Court No. 2 and stayed there for a long time.

*(Power failure)*

Ex-chief Omari came and he was the Chairman and the DO was the secretary. We did the talks and everybody was given his part of the evidence so the brother to the Assistant Chief was asked: "Do you have evidence when you were doing transactions on that piece of land? Whose home was sitting on that piece of land?" Then he said it was Maranya, the ex-chief Omari, who sold me that piece of land. He was asked again: "Do you have some evidence about that?" He said "Yes" and he had brought somebody as a witness. When he was asked who had occupied the land when he bought it, he said it is the old man who developed the piece of land. Then he asked Mayore: "Why did you say that you bought that piece of land?" He said: "No, I did not buy that piece of land. The person who bought for me that piece of land was my brother."

The other witness was asked. "When Mayore was buying that piece of land, who was on that piece of land?" He said: "That old man." Then, "when the old man was buying that piece of land, it was just a bush with a lot of wild animals". Then he was asked why he was saying that he bought that piece of land when Maranya was there? When he was told that the assistant chief sold it to me, he told that person to disappear. So, we could not know where that witness disappeared to because that witness was telling lies and he was told to disappear from that place---

So, when the lady was asked again, she was told to go and say that they were staying at Sigegi. When she was asked about her husband, she said that he died and he was buried at Sigegi. So, they demanded to be taken where the husband was buried.

When she was asked how she got that, she was told: "You will have to compensate this person his animals and everything else. You really ambushed this person; he did not have any powers or any person. So, you became too unfair and pushed him hard. So, you are going to compensate the piece of land that he is sitting in."

It was then seen that person was not coming, I went and asked them: "Why are you telling me that it is done in number two and I have seen that person going and it is now three?" When I did further investigations, I was told that now the case was over and that it was done in the chambers. So, I said that I would want to start the case again. So, they took me to the clerks and they asked: "Why are you refusing or denying the person to proceed with the case?" They told me to go and that they would send some summons. So, when I left that place I took some time, as I was very weak. And because I did not have anything, I begun following the whole process again.

When I went I was told that the case was thrown out and that it is invalid and it is no longer there. So, the torture that I went through because of that person is the reason why I am crying to this Commission to assist me. I do not have a piece of land, my children are just doing casual jobs and they do not have something to eat. I have really suffered. They



did not continue with their education. They are 16 in number and none of them has been employed.

I believe that this Commission can help me because these people did bad things to me. They went and slaughtered my goat and then they began eating it celebrating while I was tied inside a vehicle. My father had given my brother some cows to marry another wife and also my step father, so this is an ancestral piece of land. So, these people were dictators and they are very bad people. They were dictators during the *Nyayo* era, or the *KANU* regime. If they could have gone to that piece of land, it would have been a different issue. That is my case.

**Ms. Emily Kimani:** I am very sorry about what happened to you. I wish to ask just but a few questions from your testimony and from the statement that you recorded with us. At the beginning of your testimony you said that it is your father who bought the land, yet your statement says that you are the one who bought the land. Maybe you could clarify for us that bit.

**Mr. Maitaria Gisiri Motongori:** My step father also sold that piece of land to me. So, we waited for this person to come and give us the title deed number. We followed him up to Tanzania so that he could come back. He came back and then we gave the matter to the Assistant Chief and then he decided to take it and sell it.

**Ms. Emily Kimani:** Where is this land situated and how big is it?

**Mr. Maitaria Gisiri Motongori:** The piece of land is in Bukira East and it is 18.5 hectares. The plot number is 212.

**Ms. Emily Kimani:** In your statement, you said that you paid herds of cattle for the land. How many herds of cattle did you give in exchange for that piece of land?

**Mr. Maitaria Gisiri Motongori:** I paid 11 herds of cattle.

**Ms. Emily Kimani:** Did you by any chance, the two parties, do something in writing as prove of the exchange and were there any witnesses to this?

**Mr. Maitaria Gisiri Motongori:** Yes, there were witnesses who witnessed when we were doing that. There are those who came and saw when the agreement was being made and they came to justify that I had really bought that piece of land. The other person had witnesses also.

**Ms. Emily Kimani:** In your very detailed testimony, you have also talked about some people taking 22 herds from you. Who are these people?

**Mr. Maitaria Gisiri Motongori:** This was the Assistant Chief with his brother. There are some people who came and took the cattle and sold them. Some remained and I do not know where they took them, because I did not follow up, as to me it was a very big

bother and I did not want to follow. So, I just said, “to hell with it”. I just left and said, “my enemies have taken it”.

**Ms. Emily Kimani:** Where do you live currently with your family?

**Mr. Maitaria Gisiri Motongori:** I am staying in town; in people’s houses in Kehencha.

**Ms. Emily Kimani:** In your testimony, you have talked about various court cases and letters in respect to various court cases, and in respect to the appeal to the office of the President. Do you have any of these documents here with you?

**Mr. Maitaria Gisiri Motongori:** I think the photocopies of all my documents were given to the statement taker, Mr. Waikene.

**Ms. Emily Kimani:** In your statement, and also from your testimony, you have talked of an appeal which you came to find out that it was ruled against you after being misled by a lawyer. Was this lawyer for the other party or for you?

**Mr. Maitaria Gisiri Motongori:** That lawyer who took that case was his lawyer. I did not have a lawyer. When I had a lawyer it is when I got a letter from the Office of the President.

**Ms. Emily Kimani:** After you were informed that the matter was ruled against you, did you maybe, by yourself or a member of your family get to see the judgment which was not in your favour?

**Mr. Maitaria Gisiri Motongori:** Yes, I did that when I saw that it was not right because they oppressed me. I did not have strength or aid. I did not have any help. When I got help was when the chief came to see how we were really complaining.

**Ms. Emily Kimani:** Have you, maybe currently or in the recent past, endeavoured to do a search on the property to verify the one who is registered?

**Mr. Maitaria Gisiri Motongori:** It is Muita Kibwabwa who was then an Assistant Chief.

**Ms. Emily Kimani:** So, you have done a search. Did you also furnish the copy of the search of the land?

**Mr. Maitaria Gisiri Motongori:** I have the copies with me.

**Ms. Emily Kimani:** Thank you very much, *Mzee* for your testimony. I have no further questions. I now wish to hand you over to the Commissioners for further clarification.

**The Presiding Chair (Commissioner Ojienda):** Thank you very much, *Mzee* Maitaria Gisiri Motongori. I want to observe that your interface with the law was as a result of the

transactions you entered into with Nyaikuba Motongori. I just want to ask a few clarifications before I ask my colleagues to ask further questions. My understanding is that you bought this land through the payment of 11 herds of cattle, in 1969, and the land then measured 18.5 hectares. Is that the correct position?

**Mr. Maitaria Gisiri Motongori:** Yes, it is true.

**The Presiding Chair** (Commissioner Ojienda): At that time, did you have any documents? Was there any exchange of documents that would show that you bought the land from Nyaikuba Motongori?

**Mr. Maitaria Gisiri Motongori:** The way he sold to me--- We come from the same clan and, therefore, I did not envisage any problem as we used to live the family way of assisting one another and, that is why we did not write anything. He just told us that he would just give us the number when the numbers would come but there were no numbers at that time.

**The Presiding Chair** (Commissioner Ojienda): Was there any written agreement or document showing there was any land transaction?

**Mr. Maitaria Gisiri Motongori:** We had written an agreement and the witnesses who were there saw what we were doing.

**The Presiding Chair** (Commissioner Ojienda): You wrote the sale agreement with the witnesses?

**Mr. Maitaria Gisiri Motongori:** Those letters are there but, when I was evicted some of them got lost. Because when we were being evicted, we were moving here and there.

**The Presiding Chair** (Commissioner Ojienda): From time immemorial, under the laws of this country, when there is a transaction of land there is a requirement that that transaction be done in writing, unless there is evidence of bad performance. I want to ask you whether you stayed on that parcel of land after the exchange of 11 herds of cattle.

**Mr. Maitaria Gisiri Motongori:** I was staying on that piece of land.

**The Presiding Chair** (Commissioner Ojienda): For how long had you stayed there before the land was taken away from you?

**Mr. Maitaria Gisiri Motongori:** It was from 1969 up to 1975, that is when this person came, the Assistant Chief and took that person---

**The Presiding Chair** (Commissioner Ojienda): And the land was sold to someone else. During the seven years, did you do anything to ascertain or affirm ownership of that land or the land was still unregistered?

**Mr. Maitaria Gisiri Motongori:** It appeared that when I went to that piece of land there was nothing there but just a forest. So, I developed that piece of land and anything I could do on it; cultivating food crops just like any other farmer. We followed this person to Tanzania so that he could come and then we transact before the Chief. We told the Chief to go and bring that person so that we could write that agreement. The Assistant Chief said that person had sold the piece of land to his brother.

**The Presiding Chair** (Commissioner Ojienda): *Mzee*, the fraud as you say, occurred from the very onset when the Assistant Chief made his brother to do an agreement with the owner of the land and that is how you lost the land. You were sued for trespass and it was because the brother of the Assistant Chief had already entered into the transaction with the owner of the land.

**Mr. Maitaria Gisiri Motongori:** The brother to the Assistant Chief was not there.

**The Presiding Chair** (Commissioner Ojienda): I want to make you to understand. I also want to understand the second; the civil case that was filed in court against you for trespass and that followed the attachment of some of your herds of cattle after the court entered a judgment. Do you have the court proceedings for the civil case, the one that entered judgment against you?

**Mr. Maitaria Gisiri Motongori:** When they came and ordered me in 1986, they came and took me away.

**The Presiding Chair** (Commissioner Ojienda): Did you have a chance to see the court proceedings of the civil case and the judgment?

**Mr. Maitaria Gisiri Motongori:** That is when it came from the Office of the President. It was brought down so that the piece of land would be mine.

**The Presiding Chair** (Commissioner Ojienda): I think we are talking about different things. I am saying the civil case that was filed in the High Court in Kisumu in which a judgment was entered against you and that led to the attachment of your cattle, four herds of cattle as you said, do you have the court proceedings?

**Mr. Maitaria Gisiri Motongori:** There is a copy.

**The Presiding Chair** (Commissioner Ojienda): Lastly, I just want to understand, if you said that when an appeal was filed, the lawyer for your opponent misled you and the case was decided in your absence, the appeal against the case for trespass, I just want to find out if you remember the name of the advocate.

**Mr. Maitaria Gisiri Motongori:** When this case was dismissed, towards the end, the judgment was that I get my piece of land.

**The Presiding Chair** (Commissioner Ojienda): Mainye was acting for your opponent?

**Mr. Maitaria Gisiri Motongori:** Yes, Sir. I did not have a lawyer. I was just appealing and people used to listen. I am now crying here and you people, will be able to listen as I could not be able to engage an advocate because they had taken all my property.

**The Presiding Chair** (Commissioner Ojienda): *Mzee*, just one point; when a person buys land, they acquire a right to that land if there is a written document. If the land is unregistered, you, of course, can assert or show your interest that you own that land by staying on that land. You had stayed on that land for seven years. However, you had not stayed on that land for the 12 years that would easily give you a right to adverse possession. But all the same, you had stayed there for seven years and there was perhaps evidence of part performance on your part, “part performance” meaning you had put yourself in a position where you occupy the land. The problem that emerges here is that another purchaser had purchased the land and secured a title deed. And through you, a fundamental point comes into question, because the law provides that a first registration cannot be defeated and not even courts can cancel that title deed, if it is a first registration that is acquired after adjudication and registration.

So, if at all the person who bought the land, the Assistant Chief’s brother, was the first registered owner, then I see the difficult position that the court found itself in and that you eventually found yourself in and that led to the award of damages for trespass against you and subsequent execution or attachment of your property. I think that law on first registration is very unfair. I, however, believe that if you had legal counsel, they would have tried to find avenues for your rights. I hope that when we look for the documents from the court, we will be able to make an appropriate recommendation in line with the issues that you raised with this Commission.

My colleagues have questions to ask you.

**The Acting Chair** (Commissioner Namachanja): *Mzee*, you have said that when you bought this piece of land, there were witnesses. Do we have some of these witnesses who are still surviving up to date?

**Mr. Maitaria Gisiri Motongori:** Yes, they are there.

**The Acting Chair** (Commissioner Namachanja): I do not know if their names are written there in that document. Please, just confirm that the names are there. When the DC decided that you go home and sort out the land issues, then you were all called and presented the witnesses, was the ruling written down and do we have a copy of that ruling?

**Mr. Maitaria Gisiri Motongori:** Yes.

**The Acting Chair** (Commissioner Namachanja): Thank you. I have no other questions.

**The Presiding Chair** (Commissioner Ojienda): Thank you very much, *Mzee*. Just as she has said, it is important that you have those witnesses. I am saying that because I believe that had you received assistance of legal counsel, maybe some of these things would have been settled. But I also believe that we will look at all the documents that you presented to us and we will come up with an appropriate finding that addresses this matter. We all feel for you. I know the emotive nature of land and I think that it is important that we understand this case in detail. Thank you.

Leader of Evidence, you can stand down the witness. We will take a brief adjournment of 30 minutes and then we come back.

**Ms. Emily Kimani:** Maybe before we take the break, that was the last witness who was available today.

**The Presiding Chair** (Commissioner Ojienda): We have a witness. We are supposed to discuss with another witness during the lunch break. So we will break for 30 minutes. Is the witness for the morning present and do we have the memorandum?

**Ms. Emily Kimani:** Yes, they are present.

**The Presiding Chair** (Commissioner Ojienda): Why do we not discuss during lunch time and come back? We can take a 40 minutes break and then we come back.

**Ms. Emily Kimani:** Okay.

**The Presiding Chair** (Commissioner Ojienda): Thank you.

*[The Commission adjourned for lunch break at 3.45 p.m.]*

*[The Commission resumed at 4.45 p.m.]*

**The Presiding Chair** (Commissioner Ojienda): Welcome back, everybody. As you are aware, the Truth, Justice and Reconciliation Commission (TJRC) has been in this region for the last two days. We will continue our work until the end of tomorrow. We will thereafter depart to continue with the hearings in other parts of the country.

I want to thank those who testified today. I want to thank Rael Gati Mwita, Joel Mwita and Chrispanus Bagira. I also want to thank Mr. Muochi, Mr. Matinde Werema, and Mr. Maitaria Motongori. I also want to thank Mr. Joseph Tunai Maroa. All those who testified before us and from their evidence, we are the much wiser as you have contributed to the final outcome of this Commission.

As you are aware, the Commission will make a report which the Government will be obliged to implement. Those who have spoken about various human rights violations, those who have recommended measures that will help this country make changes in its

check structures, have not spoken for themselves, they have spoken for the people of this country and help change the destiny of this country.

For the public, I want to urge you to continue living in peace and to condone with those from other communities and those from other clans because this country is bigger than all of us, but unity starts from the ground. We must learn to love each other and tolerate each other as clans first before we can go to the level of the district, other communities within the district and the region, the county and the country. And with the new dispensation, a lot of the issues that the people here experienced in terms of violations can no longer be committed against any citizen of this country.

I want to thank the Leader of Evidence, Ms. Emily Kimani, for today, and the other Leader of Evidence, Mr. Patrick Njue, for the sterling job that they have done. Mr. Njenga, the Hearing Clerk, always does well. And Solomon was the other Leader of Evidence who also assisted us.

I want to thank the Regional Co-ordinator, Mr. Babu Karani, for the excellent work and the other staff of the TJRC including the researchers and everyone else in this room. Without the collective effort, this would not have been possible. I thank you.

Leader of Evidence, in the absence of any other matter, I would urge that the Master of Ceremony closes this ceremony with a word of prayer. And to the public, please, this is our last day to have public hearings here.

Thank you.

*(Closing Prayer)*

*(The Commission adjourned at 5.00 p.m.)*