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**ORAL SUBMISSIONS MADE TO THE TRUTH, JUSTICE AND
RECONCILIATION COMMISSION HELD ON MONDAY, 4TH JULY,
2011 AT BUSIA COUNTY COUNCIL HALL**

PRESENT

Ahmed Farah	-	The Presiding Chair, Kenya
Margaret Shava	-	Commissioner, Kenya
Berhanu Dinka	-	Commissioner, Ethiopia
Patrick Njue Muriithi	-	Leader of Evidence

(The Commission commenced at 10.35 a.m.)

(Opening Prayers)

The Presiding Chair (Commissioner Farah): Please, be seated. Good morning. I welcome you all to today's hearings, which is a continuation of the western region's hearings. It is our second day of hearing here in Busia. This morning and, indeed, the whole of today, we will comprise a panel of three commissioners.

*(The Presiding Chair (Commissioner Farah) introduced himself
and the other TJRC Commissioners)*

Due to circumstances beyond our control, the following Commissioners could not be with us today but they will join us tomorrow: Thomas Ojienda - Kenyan Commissioner; Commissioner Gertrude Chawatama - one of the international Commissioners from Zambia and Commissioner Ronald Slye - one of the international Commissioners from the USA.

The following will be our processes and procedures. I just want to remind you that the Truth, Justice and Reconciliation Commission (TJRC) was established by an Act of Parliament under Section 3 (1) of the TJRC Act No.6 of 2008 with the objective of promoting peace, justice, national unity, healing, reconciliation and dignity among the people of Kenya.

The Commission, in following its objectives and functions, has collected 40,000 statements and 600 memoranda nationwide. The Commission is now conducting its hearings from selected window cases of the collected statements and memoranda. Not everybody will be heard, but those who will be heard will be examples of the many types of the human rights violation. The Commission, at the end of its functions, will make recommendations to the President, which will also be published in the newspapers. It will recommend prosecutions for those who will have been found responsible for human rights violations. There will also be recommendations for reparations and also any amnesty that have been applied for.

The Procedure we shall follow today in these hearings will be to swear witnesses, after which our lawyer or Leader of Evidence will lead the witnesses in their testimony. On completion of the evidence, the panel of Commissioners may pose questions to the witnesses to clarify any matter. There will be no cross-examination of the witnesses. All are requested to maintain absolute silence with respect to the witnesses while giving testimony. We must not say anything even if we do not agree with what the witnesses are saying. All of you are requested to switch off your mobile phones. Do not put it on silent mode but completely switch it off because if you do not do so, while it is on silent mode, it will ring and you will go out to answer it. That means you will interrupt the proceedings. Photographs may be taken during these proceedings, but no flash photography.

Are there any counsel present? If they are here, could they identify themselves and whom they represent? I can see there are no counsel present.

Leader of Evidence, do you have any preliminaries? If you do not have, please, bring the first witness and swear him in first before he takes the stand.

Mr. Patrick Njue: Commissioners, this is Witness No. Busia 10.

(Mr. Erick Oteba Omerika took the oath)

Good morning, Sir.

Mr. Eric Oteba Omerika: Good morning.

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

Mr. Eric Oteba Omerika: I am Erick Oteba Omerika. I live in Heriseb in Amagoro, Teso District. I was just a peasant farmer before I was accidently shot. Since then everything has become hard for me and I depend on my parents to feed me and do my domestic chores.

Mr. Patrick Njue: I welcome you to today's hearings. I am sorry for the loss and for the injuries that you sustained in 2007, for which you have now recorded a statement with this Commission and I am sure that is what you want to share with this Commission this morning. Do you confirm this to be the case?

Mr. Eric Oteba Omerika: Yes.

Mr. Patrick Njue: If you are ready, take us through the events of that very tragic day?

Mr. Eric Oteba Omerika: It was on 29th December, 2007 when I was invited by my cousin who had visitors during a traditional ceremony where he was marrying. I was at work that day and I informed him that I would visit him on Sunday. At that time we were

waiting for the announcement of who had won the presidential election of 2007. So, I just worked at my work place until Saturday evening and on Sunday morning, I woke up at around 1.00 p.m. and went home. When I arrived at Malaba, I went to my aunt at 6.00 p.m. I told my aunt that I would not spend the night at her home because I was supposed to go back to my work place. So, she told me not to travel back and I told her that there was nobody who could do my job on my behalf. My cousin then told me that if I was supposed to report back to work, then I could go back. That evening at about 6.30 p.m. we started the journey to Busia. When we arrived at Machakusi next or near Malaba, I met some people who were coming from Malaba who told us that wherever we were going, there was conflict because tyres were being burnt and gunshots were heard. They advised us to go back and then return the following day. I ignored them and we continued with the journey, with my brother also insisting that we should go. When we arrived at Malaba we saw tyres being burnt, but we did not know what was happening. Later, I heard gunshots everywhere and then somebody told me not to continue with the journey. He advised us to look for somewhere to spend the night and then proceed with the journey the following day. I went back to my aunt's home because of what he told me. When we went back to my aunt's home she asked me why we had returned and I told her that there was tension in Malaba. I further told her that things were being burnt, gunshots were all over and I did not know what was happening. We spent the night there and travelled at 8.00 a.m. When we reached Malaba we found that there was still tension; tyres were still burning but there were no gunshots. We went to the market where we saw some police officers shooting in the air. We stopped to see what was happening because I had never seen people fight. I stood there because some people told me to wait and see. They told me that may be the police officers would come and assist me cross to the other side. So, we just stood there near a tree which was next to the shops. When the police officers started coming from the lower side people told us to move away. We thought that the police officers were just maintaining security when we saw them come but all of a sudden, one officer took a position on the road and started shooting at us. He shot me and my bicycle fell down. I fell into a ditch because of the gunshots. When my brother found me I told him to bend because he can also be shot. By that time, he did not know that I had been shot. He started crying when he realized that I had been shot and took me to my aunt's home using my bicycle. At my aunt's home, well wishers came and took care of me because I was bleeding. I was experiencing a lot of pain and I could not do anything. They contributed some money and took me to Alupe Hospital, where I was admitted for two months. My hand was amputated and I experienced a lot of pain that morning.

Mr. Patrick Njue: Have you finished?

Mr. Eric Oteba Omerika: Yes.

Mr. Patrick Njue: I will ask questions to help clarify your testimony and then the Commissioners will do the same. But I will first start by empathizing with the loss of your right limb following that incident. What job were you doing before?

Mr. Eric Oteba Omerika: I was employed at a Motel/Bar in Amagoro as a cashier.

Mr. Patrick Njue: Following the shooting by the police officer that very day, you said that you were in the company of your brother or, was it your cousin? Were there other people or other young men as you approached those police officers?

Mr. Eric Oteba Omerika: By that time when we were travelling, I was only with my brother, who is the son to my uncle.

Mr. Patrick Njue: Were you with other young men as you approached the police officers?

Mr. Eric Oteba Omerika: We were many when we met the police officers. There were some people who were going to the market, but I never knew who they were.

Mr. Patrick Njue: Could you describe the situation then before the police officer started firing at you? Was there any provocation on either part?

Mr. Eric Oteba Omerika: Yes, maybe there was somebody shooting towards the police, but these people were just telling us:-

“Please, do not continue with the journey. Let us wait for these police officers; if they come towards us we can ask them if we can cross or not.”

That was because we believed that if we got their word, they would tell us whether it was peaceful where we were going. So, one of them just came to us and shot at us although we never expected him to shoot at us. Those guys who were there before us were just walking and there was nobody who was threatening the officers at that time.

Mr. Patrick Njue: Have you come to know the name of this police officer?

Mr. Eric Oteba Omerika: I saw him because I was amongst the people, but when I tried to look at him, I could not identify him. But my brother identified him.

Mr. Patrick Njue: Did he identify him as somebody he knows and, if so, by what name?

Mr. Eric Oteba Omerika: According to what he told me, he only said that he just knew him. He was a customer at the bar I worked in.

Mr. Patrick Njue: Have you known the name of this police officer or if you meet him, can you identify him?

Mr. Eric Oteba Omerika: Yes. The only name I used to know was Nyaga.

Mr. Patrick Njue: Which police station did he come from?

Mr. Eric Oteba Omerika: He was from Amagoro.

Mr. Patrick Njue: Had you seen him subsequent to the shooting?

Mr. Eric Oteba Omerika: When I came from hospital on 20th, when I went to Church the following Sunday, I found him by the road at the stage. When he saw me, he laughed and I was a bit shocked when I was told about him, because I did not know that it was him who shot me. He was transferred later on.

Mr. Patrick Njue: Where was he transferred to?

Mr. Eric Oteba Omerika: I do not know where he was transferred to because I have never seen him again in Amagoro.

Mr. Patrick Njue: You also said that you were in hospital for two months or thereabout. Do you have with you any medical notes or treatment notes following the hospitalization?

Mr. Eric Oteba Omerika: I have that book here.

Mr. Patrick Njue: Will you table that document or any other document in connection therewith to this Commission?

Mr. Eric Oteba Omerika: I have some documents that I can provide.

Mr. Patrick Njue: Tell us what they are as you pass them over. I note that they may be original documents, but you should not worry because we can run copies for our records and you can retain the originals.

Mr. Eric Oteba Omerika: I have a book which contains prescriptions given by a doctor. I do not know if there are any other documents which were written later because I was with my father. But, later, I was only given this book with some papers, which are here. It was written as a case summary.

Mr. Patrick Njue: Maybe you can tell us which hospital it was as you pass over the documents.

Mr. Eric Oteba Omerika: It is from Alupe Sub-district Hospital.

Mr. Patrick Njue: Do you have any other document?

Mr. Eric Oteba Omerika: I only have this book where the doctors entered their details.

Mr. Patrick Njue: At the same hospital?

Mr. Eric Oteba Omerika: Yes.

Mr. Patrick Njue: Is there any other document that you want to share with us?

Mr. Eric Oteba Omerika: About the hospital, it is only this one that I have. But this one is a letter that I got from the chief.

Mr. Patrick Njue: Is it regarding this incident?

Mr. Eric Oteba Omerika: Yes.

Mr. Patrick Njue: What does the letter say?

Mr. Eric Oteba Omerika: Can I read it out?

Mr. Patrick Njue: Do not read the whole of it, but just summarize the letter. What was the theme or the basis behind the letter?

Mr. Eric Oteba Omerika: The letter is about the injury I sustained.

Mr. Patrick Njue: Can you pass it over? Presiding Chair and Commissioners, the documents that the witness is referring to are treatment notes from Alupe Sub-district Hospital and a letter from the chief saying that he hails from his location and describing the loss that the witness suffered. Could the same documents be admitted as part of the records of this Commission so as to accompany the evidence of the witness?

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

Mr. Patrick Njue: Mr. Oteba, subsequent to this tragic loss or incident, have you made any follow up with any office for compensation purposes or for trying to seek justice against that officer, whom we now know?

Mr. Eric Oteba Omerika: Up to now, I have not been able to reach any hospital. When I came from hospital, I was directed to the chief's office. I was only told that there was a report which had been written at Malaba DO's office. I went there, recorded a statement and they later said that they would give a feedback but up to now, I have never received any feedback from the DO's office.

Mr. Patrick Njue: This is my second-last question. We are now looking forward to the 2012 general elections. I know that this incident happened around the last elections. What are your feelings about 2012 and the elections in particular?

Mr. Eric Oteba Omerika: According to how the situation is now, I believe that, maybe, we will have no skirmishes again because people have learnt a lesson from what happened in 2007. Those people who will be vying for parliamentary seats or any other seat should try and consider the Internally Displaced Persons (IDPs) because they have learnt a lesson. When such a situation arises, it really harms the ordinary citizens.

Mr. Patrick Njue: Indeed! My last question is; as you are now seated with us today, what are your expectations from this Commission?

Mr. Eric Oteba Omerika: I expect justice. I never imagined that one day I would sit in a hall like this and talk to gentlemen like you. I never knew that I would reach such a place.

Mr. Patrick Njue: Now that you have shared with us your testimony – this hard story – how much further are you willing to go in terms of telling this Commission your expectations from it?

Mr. Eric Oteba Omerika: I expect that the information that I have given here – considering that I lost my hand – maybe, you can make me feel like I am like other people who are there. This is because I am like a burden to my family. I do not see a future again, but because of the Commissioners who are before me, I have hope that the information that I have given you will make me have hope in my life.

Mr. Patrick Njue: Mr. Oteba, once again thank you for sharing your sad story with us. I empathize with the loss of your right limb and I wish you the best in your subsequent life.

Our Commissioners may now ask a question or two.

The Presiding Chair (Commissioner Farah): Thank you, Mr. Njue. Thank you very much, Eric, for your testimony. I empathize with your pain and suffering and I want to assure you that despite what you feel right now, you are very young; you have all the future ahead of you and do not ever believe that you have no hope.

I want to ask you a question: Have you ever tried, since the incident to go to some kind of rehabilitation or some kind of training for skills? You lost your right hand but you could still be trained in some skills. Have you tried to do that?

Mr. Eric Oteba Omerika: Since that day, I have never gone to any rehabilitation centre to be taught. I do not know where that is being done.

The Presiding Chair (Commissioner Farah): So, you have not received any kind of training?

Mr. Eric Oteba Omerika: I have not gone anywhere for training.

The Presiding Chair (Commissioner Farah): That is a very sad thing. Your life has completely changed. What do you expect or what do you think should be done for you now? What is your expectation?

Mr. Eric Oteba Omerika: I have very many expectations, but I cannot judge anybody; not even the person who shot me. I can only say that if justice can prevail, but because it has already happened, whatever can be done for me, I cannot gain back my hand. My expectation is that the Government should see that the hopes that I had in my life before--

- My parents had started depending on me but my hopes were dashed because I now depend on them. Before I fully depended on myself. So, the Government should assist me so that I can depend on myself again. Maybe, something can be done for the loss of my hand.

The Presiding Chair (Commissioner Farah): I salute your courage and your acceptance of the situation. From what I hear, even if you meet this Mr. Nyaga today, what the Government does in terms of justice is one thing. But in your case, would you be prepared to reconcile with him?

Mr. Eric Oteba Omerika: I can forgive him, but I do not know how he will take it because I believe that, maybe, he can have negative feelings having known that I know that he is the one who shot me. But to me, according to how I was told, I can forgive him because it has already happened. Even if I do something – like killing him – it cannot help me at all. But in my heart, I have forgiven him.

The Presiding Chair (Commissioner Farah): Well, this is very positive indication that there is hope that our work, in the final analysis, is reconciliation of the people of Kenya; communities, individuals and also at the national level. This shows that people are ready to reconcile. What I can assure you is that we will investigate further what happened to you, and not only to you, but to other people and appropriate recommendations will be made so that you can overcome the difficulties that you are now facing.

Thank you very much.

Mr. Eric Oteba Omerika: Thank you.

Commissioner Shava: Mr. Oteba, I would like to, first of all, salute your courage in managing to continue with your life. It is a very sad thing that happened to you and it is something that had also happened to other people at that time. As we heard last week, it was happening here. So, this is something that we are taking very seriously and as my fellow Commissioner has said, we will, indeed, work with you to see how your life can be improved in terms of justice and also in terms of medical and social rehabilitation so that you can continue with your life. You are a young man and your life is just beginning. So do not lose hope.

Mr. Eric Oteba Omerika: Thank you very much.

The Presiding Chair (Commissioner Farah): Mr. Oteba, I join my fellow Commissioners in empathizing with your condition. I notice from the letter from the chief that you were mistaken for a rioter. But even if you are a rioter, there is no permission for any police officer to fire live ammunition at you. In case you were part of the people who were demonstrating, then the police should watch you, so long as you do not do anything bad. But even if they fear something bad could happen, maybe they could use water cannons or tear gas, but not live bullets. That was very cruel, it was very bad and we will make the appropriate recommendations.

Thank you very much. Rest assured that this time, you have come to the right place and you will get justice.

Thank you.

Mr. Eric Oteba Omerika: Thank you.

(Mr. Oteba broke down in tears)

The Presiding Chair (Commissioner Farah): We empathize with you, so do not cry now. You have really been strong from the beginning of your testimony. We only appeal to you to be even stronger as the TJRC completes its report and comes to your rescue.

Thank you.

The Leader of Evidence, you can stand down the witness and bring in the next witness, please?

Mr. Patrick Njue: Commissioners, the next witness is the case profile which has been supplied to you by the Hearing Clerk.

Commissioners, can he take the Oath while seated?

The Presiding Chair (Commissioner Farah): Yes, let him be sworn in while seated.

(Mr. Desterio Asodyo Opoloi took the oath)

Mr. Patrick Njue: Please tell the Commission your name, where you live and what you do for a living.

Mr. Desterio Asodyo Opoloi: My names are Desterio Asodyo Opoloi. I live in Ojamii Village, Agolot Sub-location. I am a peasant farmer.

Mr. Patrick Njue: You recorded a statement with this Commission on what you termed as continued violation of your right to land. Is that the case?

Mr. Desterio Asodyo Opoloi: That is true.

Mr. Patrick Njue: Please take us through your predicament on this very land.

Mr. Desterio Asodyo Opoloi: I was born in 1947 at Ojamii Village in Agolot Sub-location. My father, Matiok Okadikorio, died and we buried him there. In 1957, my father had a case with a man by the name Emungasi Oteba, who was a brother to Ezekiel Omiri. My father won the case and he was given the land.

When the land adjudicators came to verify the owner of the land, they found that my father had been living there since he was born. Ezekiel Omiri is the one who went to the land arbitration board, but my father won the case and the people from that family killed my father. We found our father's body after two months on the Ugandan side of the border. We only buried the bones. Later in 1984, I took the case to the High Court in Kakamega and they returned the case to the elders. The then DO, Mr. Joseph Satia was in charge and the case was taken back to Kakamega High Court for arbitration. The case was conducted by Mr. M.L.G. Momanyi who was the DO in Amukura Division.

The people at the High Court said that I do not have any land in that area and Omiri's family kept on disturbing my family. I am on these crutches because I was beaten by those people and I broke my leg. They got an eviction order and my houses were demolished. For one and a half months I lived under a tree. I went back to the court. I was allowed to construct a house because I was born there and I have no other place I can call home but I cannot cultivate on the land. I have no way of earning my daily bread and I cannot take care of my children now because I am like a disabled person. Those people have traumatized me and my family and they have constructed houses on my land and even sold part of the land. One of those people is dead. The others are Issak Okula, Jackson Abdelu and another one who is threatening to kill me. That is the kind of life I am going through. I know not of any other place. I have buried my parents on that land. I buried my father there in 1978. I have also buried 17 people on that land. Where do I go? These people are really mistreating me.

Mr. Patrick Njue: Thank you for your testimony. I see a gentleman flanking you on your right. Who is he?

Mr. Desterio Asodyo Opoloi: This is my brother whom I live with. He goes through the same life I go through. He is Albert Ouma.

Mr. Patrick Njue: There are some documents you have presented before this Commission. What are the documents?

Mr. Desterio Asodyo Opoloi: I have letters concerning the land cases since they started up to now.

Mr. Patrick Njue: Commissioners, the memorandum that has just been presented contains the various cases concerning this land. Upon his indication he wants it admitted formerly as part of record of this Commission.

The Presiding Chair (Commissioner Farah): Granted! The memorandum should be admitted as evidence.

Mr. Patrick Njue: What are your expectations of this Commission?

Mr. Desterio Asodyo Opoloi: What I expect from this Commission is help. I can live with my brother because if I die my grandchildren will have nowhere to live. They will

be forced to live the way I have lived. I want my children to have a good place to live on; that is my land.

Mr. Patrick Njue: Indeed, and I hope you will be able to live long to reap some of the benefits of this Commission. Thank you for coming.

Commissioner Dinka: In the documents you have given us, do you have any that says that this land belongs to you?

Mr. Desterio Asodyo Opoloi: According to the information I have given you, there is an adjudication registry. In 1968, one would go personally to sign the adjudication register. The Registrar crossed the name of my father and wrote the name of Ezekiel. However, down there you can see the signature which I use up to date.

Commissioner Dinka: When this matter was referred by the High Court to the elders and they ruled the case in your favour, is there any documentation to show the judgment?

Mr. Desterio Asodyo Opoloi: Everything is in what you have received there.

Commissioner Shava: Thank you for coming. When your father got this land was he given any title deed or a certificate of allotment or anything like that?

Mr. Desterio Asodyo Opoloi: My dad never bought this land. He inherited the land from his father. It is the ancestral land that he inherited.

Commissioner Shava: This other family which claims that it owns the land, in their opinion how do they come to own this land?

Mr. Desterio Asodyo Opoloi: They went to the Land Registrar's office and then crossed my father's name and mine. They got the title deed and that is why they are saying the land belongs to them.

Commissioner Shava: I can see you have the documents here. We will go through them and make recommendations on your case.

Mr. Desterio Asodyo Opoloi: Can my brother say something? I am just requesting.

Mr. Patrick Njue: Presiding Chair, I seek your guidance.

The Presiding Chair (Commissioner Farah): Let him go ahead. Lead him through the evidence.

Mr. Patrick Njue: Mr. Ouma, you have heard what your brother has told this Commission. You are being given an opportunity to air whatever it is, perhaps, that he may have left out in his testimony. If you think he has said everything you may just say a word to "escort" his testimony.

Mr. Albert Ouma: I will add a few words. First and foremost, the land is in three pieces, that is, 4846, 151 and 150. Mr. Omiri has taken my land which is 69, 50 and 79. That is the case we have in court. I took five witnesses to court and when the judgment was made it was alleged that I never brought any witnesses and I was never given any defence. My advocate was mistreating me in court and I was not allowed to talk. After one month I was required to pay Kshs85,550 but I told him that I cannot pay any debt because I never wrote any statement with Abelo that I would pay him. However, he told me that I must pay the money.

Some soldiers came to my home, arrested me, threw me in a Land Rover and took me to the police but the OCS said that *shamba* cases are not handled by the police. They took me back to the Land Rover, tortured me the whole night and told me to move out of the land. They told me I was not giving their corporal a peace of mind and my children were too arrested. Michael has been imprisoned and I am out on a bond of Kshs5,000. I was accused of trespassing and yet I was on the land, which is my right. Some officers are hunting me, I am traumatized and I live under a tree because they demolished my house. When my wife cooks food, the corporal comes and steps on it. I am asking this Commission to assist us because you will leave us in problems when you go. If we go to the police station the police will arrest and beat us. I do not have freedom. I was shocked when I heard the national anthem being sung that we have freedom. I am asking this Commission to help us because we do not have anywhere to go.

When we go to the Lands Office we are told that there is a Special Lands Board which we should inform our case but when we go there they send us away. Where do we go now? If we go to court there is no justice; there is nowhere we can get justice. What do we do? When we take witnesses to court they are chased away.

Mr. Patrick Njue: Mr. Ouma, I share your pain. From the documents your brother has submitted, we will carry out further investigations so that the truth is known and your family gets the justice they deserve.

Commissioner Farah: I think you notice that we have a new Constitution now. It has not been fully implemented, but it is being implemented. We already have a new and independent Chief Justice and a new Supreme Court. The days of people taking the law into their hands are over. I know you have gone through hard times and the land you inherited is being taken away from you.

We will conduct further investigations following the documents you have given us before we make proper recommendations. Thank you very much and we empathize with you.

Mr. Patrick Njue: Commissioners, the next witness is Code No.9 on our list.

(Mr. Augustine Mulaa Makale took the oath)

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

Mr. Augustine Mulaa Makale: I am Augustine Mulaa Makale. I come from Butula District, Butunyi Village, Kingandole Sub-location and Marachi Central Location in the Busia County. I am a retired Education Officer and a peasant farmer at home.

Mr. Patrick Njue: You recorded a statement with us to do with land violation and/or lapse in the administration of justice. Is that the case?

Mr. Augustine Mulaa Makale: Yes. It is true.

Mr. Patrick Njue: You may start giving your testimony.

Mr. Augustine Mulaa Makale: I got a plot with a house in 1961 as per the application that I made to the Bungoma Tenant Purchase House Scheme. At that time, it had to go through the Elgon Nyanza African District Council and the DC's office. I was given a plot and they agreed with me. I deposited cash money with them and I signed an agreement to take a loan from the Central Lands Board which helped me in building the house and paying the deposit. That was a scheme for Government officers such as agricultural officers, teachers and education officers.

After I completed building my house, I was unable to move in because I was employed as a teacher and I was teaching in Butula Intermediate School. I never managed to stay in that house personally and I was given permission to rent out the house. We signed an agreement with the person to rent the house in November 1962 and he started living in the house in 1963. Before that, I had written power of attorney for the purpose of loan and issuance of lease which was needed by the Commission of Lands. They gave conditions of renting the house. My tenant, Ismael Got was to sign an agreement witnessed by the African District Council because by that time, the financial advisor was a white man. We did an agreement and my tenant would pay rent to me every month. He would pay me through the council and he would be given a receipt. After some time, the council would pay me and they took their commission. The Council acted as my agent.

In 1975, the Commission of Lands gave me a letter of allotment showing that the house was mine. I was working in various districts in the country but I retired in 1997 and I decided to go to my house. In 1989, I gave notice to the person in the house and he said I give him time to vacate the house. He later fell sick and was taken to Nairobi. He passed on before he moved out of the house. The wife, Mama Amina and the Son, Mohamed Shukri asked me to give them some time to move out. I agreed with them because they complied with the agreement.

After retirement, I got the rent directly. Since the old man had died, the son and mother requested that we do a fresh agreement and the son paid the rent although, he would delay.

Sometimes, he could delay to pay rent and he wanted me to pay it. It took me time to pay the municipal council rent. This is because I could not pay the rent on time and sometimes, the municipal council gave a public notice. He also wanted me to pay rent as this young man was delaying to pay rent in 2000 and it was in 2004 when the municipal council gave the notice. So, I went to my advocate who wrote a notice, so that in distress, they can auction his property to get some money to pay the municipal council rates.

But then, he went to court and said that he did not know me and stated that; “somebody by the name Augustine Mulaa has come from nowhere demanding the rent from me; so I do not know him.” This was because he got a notice of auctioning his property. So, he went to court in the year 2004 to ask for stay of execution, saying that he did not know me. The case started from there as civil suit number 172 of 2004. The case went on for a long time being postponed now and again, until 2006 when it was determined because I sent the documents which I have presented to you. I sent those documents through my advocate, then it was decided that he has to pay the rent in arrears from 2000 up to 2006, as we had agreed.

He was then given 45 days to pay the rent and vacate the house. He never did that; he stayed on until time expired and he had not remitted the amount he was supposed to. I went to my advocate to pursue the decree of the court which stated that, if he does not pay rent, he should be evicted from the house. So, we went to evict him but later, he went to the same court to file a stay of execution and he was granted. Then he continued living there until June, 2006, when he applied to the High Court wanting to be listened to, stating that he was not supposed to be evicted from the house.

So, the case was referred several times until 2008 when he was told that he should vacate the house and he had to pay the rent arrears. But the court ruled that if he wanted to appeal, he should get an okay letter from the lower court; which he sought and got a letter with a condition, that he should pay decreasing (?) sums which he was supposed to pay plus the money for the municipal. Therefore, he was supposed to remit all the money through the court so that he could continue with his appeal, but he never did that. So, the matter went on and up to now, he has never paid. But he had other ways through which he could be heard in the High Court. Then the case was dismissed and his application was also dismissed with costs and that of my advocate.

Therefore, he was supposed to pay what was due, including the expenses that we had incurred but he has never done it. He did another application to court in October, 2009; the case was also dismissed again. Then he had to wait and on 29th October, 2009, he went back to the lower court where he did an application and the case was heard in January, 2010. Again, it was dismissed with costs which he would have incurred. But he went again to the lower court for the second time, then the case was heard in the month of March, 2010, and the same court which dismissed the first case in January gave him a go ahead to continue with the case in March and I never understood why. First, he went to High Court and the case was dismissed and he went back to the lower court; I do not know how the lower court turned around to accept the case.

Secondly, after the magistrate having thrown out the case in the month of January, how could the same court agree that the case be continued with in March, after going to another magistrate or after the case being taken to another court which is a bit higher than the lower court? I realized that there was something unusual or fishy going on. I saw that it was one of the delaying tactics, so that I continue paying rent to the municipal council as they were still giving notices since 2004 to 2009. They gave about five public notices which I was taking to the court showing that the municipal council knows that this house belongs to me; that is why they were using my name and the arrears I was supposed to pay.

So, the municipal council through the Town Clerk has issued a letter stating that that house belongs to me and I used to pay yearly rent and as per their records. They know that the house belongs to me and it was registered under my name. First time, it was registered as Plot No.367 but because of town planning, it was changed to Plot No.309. So, Bungoma House on Plot No.309 is mine. Now, the letter was written by the Town Clerk and sent to the Court Registrar Bungoma. When they saw a letter of allotment and the notices on the newspaper plus the receipts that I used to pay with which I gave as evidence to the court; and the same court is going ahead to grant him an application so that he could pursue the case, is what I do not understand. Up to now, the case is still going on and we were supposed to hear the case on 8th April, 2011, but it was postponed until 8th July, 2011.

Therefore, the case is still going-on while I have really struggled a lot and continue paying the rent for twelve years and somebody just lives in that house without paying me rent; besides, he is also not paying the municipal land rates! That is why I am saying that it is not justice to me as he neither paid rent nor the land rates; not even once, since his father died.

I have been paying land rates since 1961 up to this year, 2011. That is the reason why I have come to the TJRC for help. Maybe, they can pursue this case on my behalf so that it can be concluded and give me my property as I have suffered a lot by incurring all the expenses. I have incurred legal fees by moving from one court to the other court - twenty times what he should pay me. The application is still going on and the same court is agreeing with the application, without regard how the case has been handled before. They just take the application and restart the case. It seems the case is just being rewound now and again. That is what I have to say in summary.

Mr. Patrick Njue: Thank you Mr. Mula for sharing with us your story. I am sad and allow me to say; I see this being a case of people who take your kindness for weakness that, after exercising your kindness to allow them to live on the said plot over the years, subsequently, it has turned acrimoniously that you now battle it out with them in court to get back what is yours. It is an abuse of the court process the way I see it. I can only hope that with the new Constitution and with the new individuals at the helm of the judiciary, then the much desired change, in terms of curbing abuse of the process of the court, would be cut so that justice is not just said to be done, but also seen to be done.

I have three questions for you before Commissioners can ask you questions. You have talk about documents that have passed through ever since the agony of your land begun; are they the documents that you have with you today?

Mr. Augustine Mulaa Makale: I have some copies here but I have given some to the TJRC earlier. I have others here, but I have not done copies on them; I can leave them because I have them here. Also, I have others which were written by this young man's late mother. They were written from Bungoma and they are part of the documents given out as exhibits.

Mr. Patrick Njue: How about those that you had not shared with us? Much as you have the originals, with your permission, we could have what you have and we will make copies and you will retain the originals.

Mr. Augustine Mulaa Makale: I agree. You can do that.

Mr. Patrick Njue: Could you, one by one, tell us what documents they are as you hand them over to us so that we can make copies.

(Mr. Mulaa) handed over documents to the Commission)

Mr. Augustine Mulaa Makale: Sorry for the delay. The first one is a letter from the DC Bungoma, which was written on 12th September, 1961. That is one of the document which states about the issuance of the house. Another one came from the African District Council, Elgon Nyanza, which was written on 5th November, 1962. It gives details on the house when the construction was almost getting finished and it has a map which shows where the plot was and where it is even now.

Another one which I had not given is the power of attorney which I signed with the Bungoma Municipal Council, which shows the approval of a loan which I got; that was on 24th November, 1962. Another one is the lease agreement; a contract between me and my tenant before; sorry it has been detached a bit. But it was signed between me and the father of the late, Ismail Got.

There is another photocopy - by the time Ahmed Shukri was paying my rent, sometimes I could go there, when he had the money. Sometimes, we were agreeing that he could pay me through the post office bank. So, this is a copy of a money order by which he paid me through Post office bank.

I never mentioned in my statement, that in 1997, Ahmed Shukri did some fishy activity together with people from the council. That was when he delayed to pay the rent; therefore, delaying payment of my rent to the council. They took me to court vide Civil Case No.168 of 1997. When the notice was sent to me, they gave it to my tenant who stayed with it without bringing it to me. When the case was called before court, I never attended because I was not aware. They then said that I had dishonored the court and that, I should be arrested and get charged. Later, I paid and made an appeal which they agreed

to. I incurred a lot of expenses because I had to pay court and council expenses. That is one fishy thing that he did to me. After that, when he was supposed to pay my advocate, Elisabeth Echunge, he went to his advocate who was called Ocharo Kibera, and said that they do not know me, they do not identify with me and I had no right to demand any rent from him.

There is a letter from Ocharo Kibera which was written in August, 2000. Also, we have a letter of payment, a receipt from Bungoma Municipal council. There is also another public notice which was given by the Municipal Council of Bungoma through the Town Clerk. That one appeared on the *Daily Nation* and the date shown on it. There is another one here of December, 2005, about the public notice for the same, which I mentioned before. Even his advocate knew this but he continued saying that the house belongs to Shukri, not me. I also have documents which I had given earlier - this one contradicts the other one, but all of them were written by the advocate of Ahmed Shukri. The one from Ocharo Kibera which says that they do not know me and that the house is not mine and that I should not go there.

The one I gave earlier to the TJRC is the one which was written to me on behalf of the council stating that; the house is mine and I have refused to pay the council. I do not know how much it was but I think it was almost Kshs80, 000, which I was to pay within 40 days failure to which they would come, arrest me and auction my property. But one advocate said that the house was not mine and sometimes, he could say the house belongs to me. So, those two letters are contradicting and they were presented before the court. That is why the judgment was in favour of me and even now they are still continuing with the case.

I have an application and, as I said earlier, after the case was taken to the High Court and the decision was made in my favour, he went ahead and made some application on 16th October, 2009. The letter is here together with the judgment from the High Court and the judge's ruling.

There is also a replying affidavit which came from me replying to the first letter when the court at long last decided that the House belongs to me. I have some documents which came from the council and others came from the auctioneer when they wanted money from me on behalf of the council. I have a letter here from Alfred Ocharo.

Those are the documents I have to present before you. But I wanted to photocopy them, but unfortunately, there was power blackout where I live.

Mr. Patrick Njue: We will make copies of what you have given us. It is my hope that even the other documents that you are saying you could not reach them on time; after you do so, you can always liaise with our offices for purposes of submitting them.

Presiding Chair, please, allow the documents so produced admitted.

The Presiding Chair (Commissioner Farah): Documents so admitted.

Mr. Patrick Njue: Thank you. Mr. Mulaa, the reason why we ask for such documents is because they form the basis of our further investigations upon which the Commission can make appropriate recommendations. You have also said that the matter was last in court in the Month of April this year. What was it coming up for and what is it coming up for July? You said you are expected to go back to court.

Mr. Augustine Mulaa Makale: At that time, the Judge was bereaved and he could not listen to the case. That is the reason why the case was postponed until the new date is taken as stated.

Mr. Patrick Njue: Again, reading from your statement, I note somewhere where you have said to our statement taker that you have made an application to the Municipal Council for extension of your lease. What have they said on that?

Mr. Augustine Mulaa Makale: First, they issued me with a letter to go to the Commissioner of Lands. I went to the Commissioner with some documents which were required and they returned back the documents. After preparing all those documents, they neither brought back nor replied me. Though they said that the plot is mine, the documents also show prove that the plot is mine. One of them said that, because I have a case in court, maybe, they have to wait for the verdict. I saw that this case was not one that the judges should handle because people were receiving money for the arrears of the rates--- The documents are showing the payment for the arrears as commissioned by the Commissioner of Lands and the Government. I do not see any other reason why the case was being delayed until it was given an extension of judgment.

Mr. Patrick Njue: I thank you for coming forth today and sharing your sad story with us. It is my hope that appropriate recommendations will be made by this Commission.

Presiding Chair, please, carry on.

The Presiding Chair (Commissioner Farah): Any questions from the Commissioners?

Commissioner Dinka: Thank you, Mr Augustine Mulaa, for the testimony. From what you have told us and from the written statement that you have recorded, my understanding is that the courts have ruled in your favour throughout. Whenever Mr. Shukri wanted to do something, the only thing that he could do was to retard the situation for a while, then the judgment went against him and he goes and tries something else. It is him and his lawyers who are trying to manipulate the legal system. Otherwise, although your case took a long time, it has always been in your favour and now, the final judgment seems to be four days away. Do you expect anything different in the judgment or it will still be the same confirmation of the past judgment?

Mr. Augustine Mulaa Makale: I cannot predict how the decision of the court will be. But I heard, after April case, that he tried to look for another advocate who will be asking to be given time to peruse all the documents so that he can come up with his own

mechanical defense. Therefore, I see that there are other ways of trying to postpone the case. That is why I am requesting the TJRC to come in for the case to be fast-tracked and get concluded. I believe there are some issues coming in between and all the evidence adduced before the court is the same and there is no any other evidence that can be presented before the court. So, I do not know whether the court will agree to repeat what they had decided earlier.

Commissioner Dinka: Yes. It is difficult to predict what the court would say, but in terms of postponement or giving the new lawyers more time to study the case - it looks like it has never been judgment against you. So, the trend seems to be clear. As far as the Commission is concerned, it might be wiser for you to pursue the legal route which you are now doing, while the Commission will continue to investigate the matter and put it in some form and file a report. I really do not have any further questions for you, because for me, it looks like a straight forward legal case.

Thank you.

Commissioner Shava: Thank you Mr. Mulaa for coming and describing your case in a manner that we can all understand what is going on. I have a few questions for you. First, I would just like to ask you to describe this house that you built. What does it look like and how large is the plot?

Mr. Augustine Mulaa Makale: The plot is just a normal town plot which is in Bungoma Municipal Council, in the Shudi Namachanja Estate.

Commissioner Shava: What is the value of the plot and the house that you built on it? How much do you estimate it to be worth now; the house and the plot together?

Mr. Augustine Mulaa Makale: I have never tried to evaluate it. By that time, the price was a bit lower, but this time the prices are very high. Even the rent rates that we used to pay to the council were a bit low. It was below Kshs100.00 but at this time, the rent is almost Kshs6,000. Since the beginning of the case, we were paying Kshs1,600 but now the value has gone up and it is coming to press me out. If he continues to stay in that house at the rent of Kshs6,000, maybe, he will have to pay Kshs1,500 and it will be me who will be losing. But as per the estimation of the value of the house and land, I cannot be able to value.

Commissioner Shava: Thank you. That answer is good enough. I have noted from your statement the long relationship you had with the late parents of the tenant; now Mohammed Shukri. I wonder, what kind of age is Mr. Mohammed Shukri and whether he has a job?

Mr. Augustine Mulaa Makale: He is just a business man. He was a long distance driver before, sometimes he could not be found easily; but at this time, he is just a business man in Bungoma town.

Commissioner Shava: Okay. I just wanted to get a better sense of the circumstances which you are facing. This matter is now before the court and it is what we will call *sub judice*. So, it is not our place to try and pre-empt the court because of course, courts are independent. We will be having thematic hearings and one of the things we are going to explore is the way in which the administration of justice in this country has been happening and carried out. This is a classic case of justice being delayed; therefore, in effect denied. You had a huge outlay of expenditure and you need your property now, at a time you are retired and because the court process is taking so long, therefore denying you the right to property. You have given us very important information and just as my fellow commissioners have said, I will just encourage you not to give up because the way the Government works, it takes a short time maybe, to undo something. But it will take a very long time if you gave up for you to go back to your property. Do not give up; but instead, take advantage of the new mood, the new climate in the judiciary. Do not be afraid to bring this matter to the attention of the Chief Justice. There is also the Ombudsman Office; bring the matter to the attention of the Ombudsman and the Law Society of Kenya. If you feel the advocate on the other side is dwelling on improper version, these are some of the channels that are available to you. But in the meantime, we will also do our best to assist you with this case because we need results and we need them quickly.

Thank you for coming and sharing with us your story.

The Presiding Chair (Commissioner Farah): Mr. Augustine Mulaa, I think my two Commissioners have said it all; I have nothing further to add. But we empathize with you and I share their sentiments.

The leader of evidence, turn down the Witness and bring in the next Witness please.

Mr. Augustine Mulaa Makale: Can I take those documents for photocopying and return them with copies for you?

Mr. Patrick Njue: As you wait outside or within the lobby, we will be able to give you back the originals.

Mr. Augustine Mulaa Makale: Asante sana.

((Mr. Augustine Mulaa Makale) was stood down)

Mr. Patrick Njue: Hon. Commissioners, the next Witness is presenting a memorandum on behalf of the Busia Township Community, the one which the Hearing Clerk has just supplied to us.

(Ms. Monica Mung'ala took the oath)

How are you mum?

Ms. Monica Mung'ala: I am fine.

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

Ms. Monica Mungala: My names are Monica Mung'ala. I reside in Busia Township at Amerikoi Village. I work at DOD, as the National Tax Payers Association officer. At the same time, I am a District leader for Women Development Organization.

Mr. Patrick Njue: Mama Mung'ala, I can see you are flanked by two individuals. If you do not mind, please, introduce them.

Ms. Monica Mungala: The persons I am here with are; one of my colleagues who is a vice-chair of Interim Committee Member of Busia Township Community.

Mr. Eric Makhoha: My names are Eric Makhoha and I am the Vice-Chairman of the Interim Committee Member Busia Township Community and at the same time, he is---

Mr. Elisha: I am in charge of Transport Association; that is the boda boda team, bicycles and Motor cycles.

Mr. Patrick Njue: Yes. Who is the next person?

Ms. Monica Mungala: The next person with us is representing the Muslim Community among us, the Busia residents.

Mr. Hasma Jamia Alsala: My names are Hasma Jamia Alsala; I am a member of Interim Committee and I am representing the Muslims.

Mr. Patrick Njue: I thank both of you for attending this session. Mama Mungala, there is a memorandum you have prepared on behalf of the Busia Township Community, which you would like to share with us? If you are ready, I will ask that you start doing your presentation.

(Inaudible)

Ms. Monica Mungala: The community in Busia lives in peace and we want it to last. Most of the time we communicate and we really like how this Commission was formed so that it can help the healing process after the post-election violence. We saw that it is good to put our county in order. So, we would like to be involved in anything that happens. We should also be able to talk to our people so that they can live in peace. I would also want to tell the Commission about the Interim Independent Boundaries Commission that came to Busia town. The area leaders from different communities led by the Ligurus where there is also a Somali, a Kikuyu and Bakhayo as representatives went to the Commission to give their views. There was a meeting held in Busia but we were not told about it. All we wanted to know was how to come together and work

together. During that meeting, we thought that the agenda was unfair to this community. We asked how we could come together so that justice can prevail. We have cases of land whereby our elders have undergone some problems. We also have cases of Internally Displaced Persons (IDP) and their representative was in that meeting. We came to know that the chairman of IDPs was leading one ethnic group within our community. That was not good.

Commissioner Shava: Sorry! Through the chair, I would like to say that the witness will testify in whatever language she wants and you will keep up with her.

Ms. Monica Mungala: Thank you. We came here to tell this Commission that we want peace amongst us. We live near an international border which is so dangerous. Sometimes it is not good when you stay with someone who is not happy. We do not want to look like the people of Migingo, Turkana or Somalia.

We requested through the coordinator that if it is possible, we be informed how those groups were formed. We were told that they were formed through the District Commissioner (DC). One of the statement takers by the name Mama Gloria told us that she could not work against the DC. She said that she was given one ethnic group and the other communities were not included. Although we disagreed, we asked ourselves how we could come together.

In Busia here, there are people who died through stray bullets. There are others who were tortured by the police. There is a young man who got lost and up to now we do not know where he is. The people who suffered were not invited in that meeting. In fact, the meeting ended prematurely when one of the participants fainted in the hall. We should come up with an interim committee to address those issues because we were left without proper information on how to get those people and give them our memorandum.

For the Truth, Justice and Reconciliation Commission (TJRC), we were given 14 days to hand in our memorandum. We decided to talk to the community members and seek ways of how to come together. We wrote a memorandum after hearing the views of people. We wanted to come up with one agenda to the TJRC because the other issues have been recorded. We decided to write that memorandum so that our problems may be heard. We discussed and wrote our problems openly. We did that with the intention of getting peace in our community. The memorandum says that we do not know who the IDPs are. The people who are said to be IDPs are living in their houses and are our neighbours. In fact, we do business with them and their children intermarry with ours. So, why are they IDPs? Why is the Commission saying that those people are victims of post-election violence? It would be good if their chairman and our interim officials come together and find a way of reconciling people in a very appropriate way.

We wrote a memorandum considering the security touching on an international border. Those people who call themselves victims cross to Uganda for business and you might find that they are also called victims of post-election violence where they were born. Why should they come up with those kinds of issues before the Commission? I want to

say that we do not have an IDP camp here. If it could be there, as a community, we could have donated what we have to help them so that we could come together as one.

We as the interim officials wrote in the memorandum that during the post-election violence people came to Busia and were denied justice in terms of security but we accommodated them. This came about because there was one ethnic group that was leading us. They brought a District Commissioner (DC), the District Criminal Investigation Officer (DCIO), Officer Commanding Police Department (OCPD) and the Officer Commanding Station (OCS). All these people were from one ethnic group. That is denying our people the opportunity to go to a police station and get the security they want. That was seen as corruption. When all the officers are from one ethnic group, we cannot get the truth. We came to understand that the Ministry of State for Special Programmes used to serve one ethnic group thus denying others their right to enjoy fruits of their own motherland. To date, they are not listed at all. We decided to agree with the returnees so that they give us their contacts so that in case of any information from the Commission they should also be accommodated. In that meeting, there were people with death certificates of the people who were killed by stray bullets.

There were those who were injured by the stray bullets. Some of those injured were students and they have already left for Nairobi to continue with their education. We got people who were tortured by the police officers and they were acquitted in the courts. They were not given room to talk to TJRC. There were people who were being tortured by police officers on patrol but they did not get justice. We told them about Article 35 of the Constitution of Kenya. They should go to the police station with the death certificates and other documents and get the OB number. Also those documents should be handed over to the TJRC. Up to now, they have been denied the OB number. Some of those women are with us here. They do not know how to demand for their rights because they have not gone to school. As a community we are asking this Commission to give them a chance to get justice.

After that we decided on ways of how we could reach this Commission. People decided to contribute money to enable us rush before the 14 days could lapse. We went to Nairobi on 24th May, 2011 and delivered our mail. We got three directors who welcomed us very well. We appreciate them so much. May God Bless them. We got Mr. Bob Greenstead, Elijah Letangule and Jacob Beigon. They were the directors of education, civil education and research respectively. We felt that we had landed into safe hands. We then handed over the memorandum on behalf of Busia community. We were 12 people in the delegation. They also gave us T-shirts.

They also told us that they appreciated our work. They told us that they will regazette the dates. We followed up the issue and found that they did so. They told us that they will file our memorandum in Kisumu. From there we knew that everything had landed in the right position. Since we did not want to do things under the table, we went to the Permanent Secretary, Special Programmes to deliver the memorandum. We also went to the Office of the Attorney-General and delivered another copy there. We also went to the area Member of Parliament, although he was not there but we delivered the memorandum.

Since time was running out we came back to Busia. There were IDPs who wanted to find out where we had reached with that issue. As a mother, I could not chase them away. I had to call committee members and we held a meeting. We also served the DC with a memorandum. He told us that he was not part of TJRC. We requested him humbly as the chairman of security in Busia to bring the Commissioners. We just wanted him to inform the Commissioners that they had been misled and those people should not proceed with that process. We went to the OCPD and told him the same. We felt so shameful that the rich people in Busia call themselves IDPs.

The people who are so poor do not have rights in Kenya because they are not given any information so they are denied their rights. We are also getting tired because we want the Commission to do its work because time is running out. In the Budget that the Deputy Prime Minister and Minister for Finance read, a lot of money was allocated to IDPs. That issue is raising some eyebrows. Will that money go to the right IDPs? Are people doing business through TJRC? Busia is a place where we say the truth because we live in a good relationship with the Ugandan counterparts. Our brothers and sisters live in Uganda and some of their families are in Kenya. We received all the ethnic groups without discrimination during the post-election violence. After receiving them, we took them in as brothers and sisters. So, why do they want to play a game behind community members? How will we feel? Somebody comes as a visitor, buys a plot; he becomes rich and starts interfering with the peace of other ethnic groups by trying to be smarter than them. We want the healing to take place.

We are telling this Commission that we have 12 death certificates and court orders. There is a child who got lost but he is in school right now. The person who is living with that child is with us in this hall. We have not written a statement because we have never received civic education as an interim office. We do not know how to deal with the TJRC. We do not want to go to the streets to demonstrate when you are here. We want justice to be done. If they will wind it up tomorrow, what about the people who are really poor and have not been given justice?

I request this Commission to allow us to deliver the documents that we collected from the people who came from Naivasha. Whenever they narrate what they went through, we cry. Personally, I am out to defend the poor in this community. We believe that if somebody stays in Kenya comfortably and then goes to Uganda as an IDP, that person might be dangerous tomorrow because we do not know what will happen in the next election. How safe are we as a community? I would like to ask this Commission to make the interim office official. I want the officials to stand up and raise their hands. If you know you helped us to come up with this memorandum, please, stand up.

(The officials stood up and raised their hands)

Thank you very much. Again, I would like to request if there is anybody whom I am holding a death certificate or he or she is living with a child who was abandoned, they should stand up because I want to give it to them openly in this hall. If you know I have your document I will give it to the Commission today. The statement takers are again

playing games on us. They go door to door at night inciting people against us. We requested them to bring the chairman of the IDPs before this sitting so that we can reconcile but nothing is happening. Where are we going with the Kenya of today? Before the Commission closes its envelope and gives its report to Parliament, where will we be as the County of Busia? We really want reconciliation to take place. What I have said is true and the chairman of the District Security Committee who is the DC, as the chairperson of the interim officials, I would like to say that we have no faith because he is interfering with the process. I would like to give my vice-chairperson a chance to speak.

The Presiding Chair (Commissioner Farah): Before you speak I would like to say that we have heard a lot from your chairperson so speak without repetition. Just add something new. Proceed.

Mr. Erick Makokha: Mr. Presiding Chair, Sir, as you have heard, my name is Mr. Erick Makokha and I am a resident of this place. I was born in Nambale Constituency, Mabale Division, Township. Much has been said by my chairperson but I will add something small and I will not repeat. Sincerely, I would like to request that as taxpayers in Kenya, we would like our money to be channelled to the right IDPs. We know that life in Kenya is becoming harder and harder. So, we sympathize with the coming generation. If right now we can face such life, how about our children? Life is becoming harder because our money is being paid to the wrong people. Let the Government pay the money to the right and genuine people.

As residents of Busia we know that when you go to take a loan and your name is Makokha you will be asked a lot of details like title deeds and several guarantors. So, the question is at my age where can I get a title deed and yet all the documents are still in my father's name? But the other ethnic communities are just being funded and those details are not being asked. You will find that the IDPs in Busia are driving and have big hotels. We have inter-married with them but how come that everything that comes from the government goes to them. What about the poor people? As Kenyans we should be treated equally. I am the chairman of the transport committee and we have several activities which are done here. Sometimes you will find that a *boda boda* person has been knocked down by a vehicle but when you hire a lawyer he is paid and does not remit money to the person who was injured. We have examples of those incidences here. We have even followed up these cases up to the level of the Kenya Anti-Corruption Commission (KACC). We are saying that the lawyers should not be above the law.

There is an example of the Manuar Advocates and the victims are here. There is a vehicle that knocked down a young man and the case went on for seven years. When we started to follow up the matter, we were told that the insurance had not paid. We went up to Nairobi to look at the file and we found that the insurance company compensated the boy. When we confronted the lawyer he accepted but paid less money. There is another case where a vehicle knocked down a mother and a child but up to now justice was not administered. There is another case from Marachi where a man lost a relative but the advocate has not responded. The court fined the culprit some money but he said he does

not have money. The man is operating a business in Busia. So, could the government look into the affairs of the small people because the ordinary citizens are suffering?

I do not have much to say but I ask this Commission to deliver justice to us.

Ms. Alisha: Mr. presiding Chair, Sir, I want to ask the TJRC to find time and go to the surveyor's office, you will find that the property that belongs to the government is not on the ground. Much of the land has already been grabbed. If they put a physical structure of our Busia County it will be different from what is there now.

Ms. Monica Mungala: We are worried. If we keep on accommodating people who are mourning, where will we get land for them? That is why we have come to say the truth, so that it can prevail. If somebody stays with us and he feels he is an IDP, we request this Commission to tell that person where he should belong; it is not good to say that you are an IDP when you are residing well.

Thank you.

Mr. Patrick Njue: Thank you once again, Mama Mungala, for that wonderful presentation. Indeed, you said that you came to our offices in Nairobi and you were received with what you term as "the right hand". We also consider you as the right hand; you can hold hands together with your team, whom you introduced and whom I salute, in ensuring that the community here is able to promote peace, justice, national unity, healing and even reconciliation amongst yourselves.

I will proceed to ask you a few questions, so that your testimony can come out clearly before the Commissioners proceed to do the same. You have referred to some documents which you wanted to share with us. Before you can do so, I have with me a copy of a memorandum, from which the Commissioners are also reading. I want you to confirm that this is copy of what you presented to our Nairobi office for purposes of making your official presentation. Do you confirm that this is a copy of the memorandum you presented to our Nairobi office?

Ms. Monica Mungala: Yes.

Mr. Patrick Njue: You have also referred to other documents, which you wanted to share with us. I will ask that as you hand them over, you tell us what they are.

Ms. Monica Mungala: Mr. Presiding Chair, Sir, with us here is a burial permit for Richard Wandera Egesa; it is attached to the death certificate. His brother is with us in this hall.

With us here is a burial permit for Joseph Weche Musinde, who was traumatised and died in the hands of his sister, leaving his children in the care of his sister in this town. She is with us in this hall.

With us here is a record of the court proceedings of one victim, who was tortured by the police during the post-election violence. He is personally in this hall right now. He is an adult. His names are Ouma Joseph.

We have a death certificate of a stray bullet victim, Zakayo, from Nambale. His wife is here. I can hand it over.

We also have a death certificate of Bernard Egesa, who was hit by a stray bullet during the post-election violence. The brother is here with us.

We have a burial permit of Peter Juma Okiya, who was at Naivasha. He came back with his brother but due to a lot of mental torture, he died. The wife went to their home because of poor maintenance. The brother who came along with him from Naivasha is here with us.

We also have a document of Geoffrey Barasa, who was also an IDP somewhere. Since they came back, they have been going to the chiefs and the DOs, as instructed where they were in Naivasha, but they were not accommodated. We have his document here.

We also have an IDP number belonging to Alfonse Simiyu. He has handed it over to us, and he can write a statement by himself, because we do not know much about---

We also have a document from Cosmas Anyango Oundo, attached to the IDP list from Naivasha. He has given it to us. He will explain to the Commission how the matter was, because he has just handed it over to us.

We also have documents from David Nyongesa Okiya, whose brother, as I said, died. He came from Naivasha and even witnessed some boys being eaten by dogs. He testified before us. We do not know what to do, but we listened to his story.

We have two ladies who were schooling in Nakuru. They came back and landed into somebody's hands, who is accommodating them. We only took some of their certificates and their mothers' death certificate. One of them is Adhiambo Judith. She can explain when writing the statement.

We also have Awori Linnet, who is the sister to the one I have given. They can explain themselves because we do not know what Nakuru was like.

We have one person with us, who is accommodating a lost child. We told him that we did want to see that child. We wanted him to produce the child before this Commission. The child is in school. We do not know the parents of the child. The parents were killed in Nakuru. The child trekked all the way and ended up in Busia; he was being chased away by everybody wherever he went. It seems the child is from a rich person, and he is a Kikuyu by birth. We have already given this child a name from our community to make him comfortable at school with others. The person who is with that child is with us in this hall. He is just a labourer; he just carries people's luggage. He is accommodating the

child, and has never gotten any aid from any organisation. Please, accord him the necessary help.

We have locked out the rest because time is money. Other women were still coming, but I said: “Oh, no! My brain is now full.” Just use anybody. Nobody is paying us. We are meeting the expenses from our pockets. Our kids have almost started going hungry because we are uplifting others”.

Those are the documents we have as of now.

Mr. Patrick Njue: Presiding Chair, the documents can be admitted as part of the record of this Commission.

The Presiding Chair (Commissioner Farah): Yes, those documents shall be admitted as evidence.

Mr. Patrick Njue: Thank you, Presiding Chair. Again, I am reading from the memorandum that you have just presented, Ms. Mungala. As you have said in your testimony- Note that you copied to other offices such as the District Commissioner, the Attorney-General, and others. I am wondering whether any response from those offices was forthcoming.

Ms. Monica Mungala: Yes; when we reached the TJRC offices in Nairobi, they accepted our cry. We rushed to the Ministry of State for Special Programmes offices, and went direct to the PS, because he is also a child of Nambale. He accepted that the people he was given were refugees, residing in Kampala; but they are not the ones we saw in the hall on that day. He told us that he would make a follow up. When we went to the Office of the Attorney-General, we also followed the same process, not because he comes from Busia like us, but because he serves the Republic of Kenya. We followed the process and gave him a copy. He told us that he appreciated our good work because it was time for healing, and that he would also follow on whatever would be happening.

When we went to the District Commissioner, he was not ready to accommodate us. He said that he was not part and parcel of TJRC. That was when we wondered: “He is the President of the District. How can he throw away his kids? Who is he going to lead?” Later on, he accepted us half-heartedly.

When we went to the OCPD, he accepted and accommodated us very well. He told us that he was saved, and that he was ready to come and say how he was handling the situation, because, as the OCPD, he had not deployed any security to any IDP in the larger Busia district. So, he knew nothing. It was as if he also did not know anything; he was like us.

We gave copies to the area councillors, so that we could come together. We also gave a copy to the office of our area MP, who might be having problems. We did not get him.

Up to now, we do not know where he is. We do not know if he is ready to back us. We have just left it like that.

That is all.

Mr. Patrick Njue: Ms. Mungala, again, you might have said this in your testimony but, just for clarity purposes, was the TJRC involved in the vetting of the IDPs living around this community?

Ms. Monica Mungala: Yes, through the Commission's statement taker, who told us, when we were meeting on the 16th that the names of the IDPs had been given to her by the DC. He said that that man was so senior to him that he could not do otherwise but receive the list. Under the Constitution today, we wonder whether anybody is above the law.

Mr. Erick Makokha: Mr. Presiding Chair, Sir, I would like to add to what Ms. Mungala has said. I agree that the IDPs were vetted. Those of us who were here during the post-election violence know that those people who were transported from Naivasha and Kitale were just dropped here and then the lorries left. So, we took the responsibility of taking these people to the police station, because that was the only place where these people could be assisted. There were people from almost ten different communities who came from outside the district. When we went there after three days, we found that those people were not in camps. We found only one group. So, we asked: "Where have the Luos, Tesos and Luhyas we brought here been taken to?" Nobody answered us. That was when we knew that there was something fishy going on with the DCIO and the security team in the police station.

I believe that there were people who were vetting them. There were some people at the gate who were trying to block some people from getting aid. There was an allegation that members from other communities could not be mixed with members of a certain community. So, the only IDPs who were retained there were from the Kikuyu community. So, the process that was used to register IDPs by the Government in this area at that time was unfair to IDPs from the local communities.

Thank you, Mr. Presiding Chair, Sir.

Mr. Patrick Njue: In response to that one, perhaps, I would just mention that the process of statement taking is still ongoing. Even as we are seated here today, we have our statement takers outside this hall, in a designated tent, where anyone who has information or statement they would wish to record to bring certain matters to the attention of the Commission can access the said tent. Together with what you have given us in your presentation today in the memorandum--- All of this can form a basis for further investigations, so that appropriate recommendations may be made to address the issues.

Again, on what my brother, Erick, raised about the errant advocate, who retained proceeds of court cases to the detriment of his client, I want to encourage you that you

report this advocate to the Advocates Complaints Commission and also notify the Law Society of Kenya. I am sure that some feedback will be forthcoming for these individuals.

Otherwise, I want to, again, thank you for coming forth with your memorandum. I am sure all that you have said has been taken note of, and will form the basis of our further investigations, especially on the IDP issue, which has been a key highlight in your presentation. So, thank you.

The Commissioners may now ask you questions to clarify your testimony.

Presiding Chair, your witnesses.

Commissioner Shava: Thank you very much, Ms. Monica Mungala and your team – Mr. Erick Makokha and Ms. Hafsa. Thank you very much for coming and raising these issues, which are clearly very important to you. They are very important for this country. The information you have is the kind of information that this Commission really wants to hear.

We just got your memorandum today. So, you will forgive me if I am asking questions which, perhaps, you think I should know. I have got this information now. So, I just need some clarification on your organisation. The way I understand your organisation – Busia Township Community – is that it is a group that is concerned with how citizens are living within Busia Township, and you take up certain issues such as corruption and what is happening in the transport industry and things like what is happening with IDPs. Is that what your organisation does?

Ms. Monica Mungala: Yes.

Commissioner Shava: How have you been interacting with the TJRC? Specifically, you talked about a meeting on the 16th. I did not understand that very well. Was it a meeting that was held by the TJRC in this region? Was it a meeting that was held by somebody else? Were you invited to that meeting? I did not quite understand that part of your testimony.

Ms. Monica Mungala: Commissioners, we also did not understand what the meeting was for.

Commissioner Shava: But you attended the meeting?

Ms. Monica Mungala: We attended the meeting. We joined it when it was half-way through.

Commissioner Shava: Why did you go to that meeting?

Ms. Monica Mungala: It was because I wanted the truth to be known.

Commissioner Shava: I know, from listening to you, that that is the kind of person you are, which is commendable. What I mean is how you heard about it and what your interest in going to it was. Was it a meeting of an NGO? Was it a meeting of the TJRC? Was it a meeting where Busia was being discussed? Was it a meeting where IDPs were being discussed? What made you want to attend that meeting?

Ms. Monica Mungala: My vice-chairperson was there, and he really wondered what type of a meeting was being held by the TJRC with members of one ethnic group. These days, if there is a meeting anywhere, people ask: “What meeting is that?” After they have known what the meeting is about, they evaluate the stakeholders.

Commissioner Shava: So, basically, Mr. Makokha was passing by. He saw that there was a meeting. He inquired and then he thought that your organisation should have some input into that meeting?

Ms. Monica Mungala: Maybe, he can answer that one.

Mr. Erick Makokha: Commissioners, I will speak briefly about the meeting on the 16th. I heard from my boys---

Commissioner Shava: Mr. Makokha, I do not want you to go into a lot of statements. I just want you to outline for us how you came to be in that meeting, what kind of meeting it was and what your concerns were then.

Mr. Erick Makokha: As the chairman of the transport organisation in Busia, I was somewhere with my team, in a meeting, and I received a letter which indicated that there would be a meeting at Country Hotel on the following day, and that I was supposed to attend that meeting alone. I raised the alarm with my colleagues in town. I called my chairman, my counterpart from the Muslim organisation and other stakeholders around, who are here now. When we reached the venue of the meeting, we found people seated.

There was the co-ordinator from the Western Region on civic education relating to the TJRC. When he started talking, we found out that it was a meeting of only members of one ethnic group, as the people who had been affected by the post-election violence. What I came to raise in that meeting was how come that only members of one group were present in this meeting. As chairman, I did a lot during the post-election violence. So, I asked myself “What about our people, who are also affected – the people who were transported to the police camps? Where are they? Who are they and where are they now? The people who are seated here drive their own cars. They own hotels in Busia”. So, that was what raised the question as to what was happening.

Commissioner Shava: So, you were invited to the meeting but you were invited on your own as an individual, and then when you went there, you thought that the representation of IDPs in that meeting was not balanced, and that was your concern?

Mr. Erick Makokha: It was not balanced.

Commissioner Shava: Thank you very much. Now I have understood you. There was something which Monica said. You said that you are interim officials, and you named an organisation, in relation to which I heard you mention the TJRC. What organisation was that?

Ms. Monica Mungala: When we entered the meeting venue, after the meeting had a lot of tension, the co-ordinator advised us that we created an interim office and wrote our memorandum, and gave it to the Commission. We were given 14 days to do so. When we were in the hall, we decided that all the wards should be represented. We told the people of Gurumba Ward to give us one person. We wanted Mjini Ward to give us one person. We wanted Amoron/Amerikwei in Teso to give us one person. We wanted the Muslim community to give us one person. We wanted the Bulanda people to give us one person; this was as per the wards. We decided not to deny any particular ward representation in the membership of the interim office, so that we could move together. That was how we came in.

Commissioner Shava: Thank you very much. I have now understood you. Maybe, at this point, it would be helpful if I speak a little bit about how the TJRC process works and what our mandate is.

Our mandate covers the period from the Independence of Kenya, which was December, 1963, until the official end of the post-election violence, which was 28th February, 2008. So, although our mandate does cover the post-election violence, it also covers a lot of other things. It covers land issues, economic crimes and many other things which no other truth commission in the world has covered. So, ours is a very broad mandate in terms of time and issues.

Your issues fall squarely within our mandate, but there are also a lot of other issues, including things like extra-judicial killings, how the security forces work, how the delivery of justice is in this country, and many other issues.

So, we are very happy to work with you on the particular issue of IDPs. We have very much noted your concerns. Perhaps we can tell you that we have heard similar concerns in other parts of the country, in terms of who genuine IDPs are and what the role of the Provincial Administration is in identifying IDPs and facilitating Government assistance to them. Has the Provincial Administration role been good or has it been bad? Are there areas where improvement can be made? The kind of information you are giving us is very important, and we take it very seriously.

In terms of our process, yes, we have four co-ordinators in the regions into which we have divided the country for purposes of our work. We also have Statement Takers. Although the statement taking period is officially over, even today, if somebody wants to give a statement, he can do so. People can make statements here. We have taken note of the documents that you have given us. We are saying that people who want to make statements should get in touch with our officials; although the statement taking period is

officially over, we recognise that as people come to know more about the process, they may wish to come forward and speak. This is a public process. It is for the Kenyan public. So, they should view it in that way. If they want to come and talk with the Commissioners at any point in time, they are very much welcome.

We thank you for bringing forward those names of people who, maybe, want to talk to us; those people who have taken in children and are not receiving assistance. We will note that information and take it where it should be taken.

The last thing I want to say is with regard to what Mr. Makokha was talking about, regarding misconduct by advocates. The Law Society of Kenya has a website, which is quite up to date. It is sometimes so difficult to access justice in this country. I heard you say that you had to sell cows in order to go to Nairobi only to discover that judgement had been rendered and payment made some years previously, and that you did not even know about it. I hope that you have access to the internet. You can reach the LSK through the internet. If you have a complaint against any advocate, that is a very effective way to complain. You will see on that website that there is a place where it shows advocates who have been struck off the Roll. That means they are not allowed to practice and they will not get practicing certificates. Those are advocates who are suspended from practice.

It is through these kinds of complaints that the LSK can get to know how some of its members are behaving. Maybe, they feel that they are very far away from Nairobi, or the centre, and that nobody knows what they are doing. This is a different age. So, I would encourage you to file your complaint with the LSK.

Thank you.

The Presiding Chair (Commissioner Farah): Monica and Erick, I thank you very much. When you arrived I received your memorandum, which I have not read properly. You must also have made it in a hurry, but you have, at least, explained all the mistakes verbatim. It is very clear now.

I have a few questions. You referred to two things. You referred to IDPs. We are aware of the IDPs who are in Uganda. As a matter of fact, some Commissioners from the TJRC flew to Kampala and travelled by road to the camp where the Kenyan IDPs are camped. We were accompanied by Government officials from two Ministries, namely, the Ministry of State for Special Programmes, and the Ministry of Ministry of State for Provincial Administration and Internal Security. We are also aware of the other IDPs all over the country.

You also referred to “returnees”. Monica, can you clarify who the IDP “returnees” in Busia are? According to you, who are IDPs and who are “returnees”?

Ms. Monica Mungala: Hon. Commissioners, I know that an IDP is someone who has no place to stay. So far, the people who are with us have places to stay. They have their

homes. They even rent out houses. They have taken the first phase of the money. They have been given some support from the Ministry of State for Special Programmes and, to date, they claim to be IDPs. They are still demanding to be paid. From whose tax?

In our memorandum, we have referred to some people as “returnees” because they were coming from the places they used to stay when they were not willing leave because they were chased away. When they came back here, some of them were accommodated by us. Some of them went back to their homes but justice has not been done to them because they have not been registered with the Ministry of State for Special Programmes. Their statements have not been taken. So, when they came they were “returnees”, and they still had that “wound” in them, but we received them. When they saw this other group, who were chased away from the other end, and whom we are also accommodating with true love, how will we, as community members, put them together? That is why we feel that there are “returnees” who have never been accommodated in any way.

The lives of those people who were tortured by the police officers and underwent court proceedings that acquitted them because they did not find any problem with them are in danger. This is because they will stay with police officers who are still on duty and they fear even charging them again. That is why we want the truth to be known.
Thank you.

The Presiding Chair (Commissioner Farah): Thank you, Monica. We as the TJRC visited the Permanent Secretary, Ministry of State for Special Programmes, whom you have described as one of your sons. We visited him, I think last year, because of the concerns of Internally Displaced Persons (IDPs). He received us very well and had tea in his office. We discussed a lot for almost four hours. He assured us that they are in the progress of identifying all IDPs; documenting and giving them compensation settlement and even land. So, I think there is need for us to go back there to see him again and tell him that there is a lot of cry from his hometown, which is Busia. Therefore, we have heard what you have said and taken cognizance of your complaints and problems. As my fellow commissioner explained to you, we will not take this matter lightly.

Please, we will finish here tomorrow and so, between now and tomorrow, continue going to that tent and assemble those members who have not written their statements. This will build your case as far as your presentation this morning is concerned. Are you satisfied with that? Right now, we are working very hard to finish in November. If the Government increases the time for TJRC, then we will be in the same footsteps and your matter will be taken even further with a lot of interest.

Thank you very much for your evidence, unless there is any other issue that you would like to add. I think we have finished with you today.

Ms. Monica Mungala: Commissioner, the case is not mine. I am just a tired driver who is handing it over to the right place. The people I am driving, if you will put a statement taker whom they do not have faith in and has been neglecting and playing behind them, then they will really sink. We need somebody who has humanity in him. I am not

praising myself but I do not have anybody who came across the post-election violence and was hurt. But I am sympathizing with those people who are along the roadside who have not gotten justice. Please, let them be given somebody they are comfortable with.

The Presiding Chair (Commissioner Farah): We will talk with the coordinator and the Leader of Evidence and they will put in place people who were not there before and will take new statements. We have taken note of that. Thank you very much..Please, stand down the witness and bring in the next witness.

(The witness was stood down)

Mr. Patrick Njue: Commissioners, our next witness is coded 7. He is the last public witness.

(Several members of the public left the hall)

The public is reminded that we are not done yet. Our session is going on. You do not have to go out.

(Ms. Gladys Lihondo Makungu took the oath)

Mr. Patrick Njue: How are you, mama?

Ms. Gladys Lihondo Makungu: I am okay.

Mr. Patrick Njue: Welcome. As we begin, once again, for the record purposes, please, state your full names, where you live and what you do for a living.

Ms. Gladys Lihondo Makungu: My name is Gladys Lihondo Makungu. I do farming for people. I stay at Sikulu.

Mr. Patrick Njue: You are seated with us this afternoon following a statement which you recorded with this Commission on what you termed as systematic violation towards your right to land and what you consider a lapse in the administration of justice. Is that the case?

Ms. Gladys Lihondo Makungu: That is the truth.

Mr. Patrick Njue: Please, if you are ready, tell us about this very case.

Ms. Gladys Lihondo Makungu: I bought land in 1986. I stayed in that land peacefully with my neighbours until somebody came and started grabbing it from me. He claims that I got that land from him. Then I started wondering how I can stay in a land with a title deed, yet somebody claims that I have snatched it from him. That person came and started attacking me. He demolished all my homes, cut down all the trees and surveyed the land afresh. He has grabbed all the land. He tells me that I am so poor and cannot

work with him. He demolished my house and took off. I went to the DC and told him that somebody had demolished all my homes and that all my trees had been felled. The DC told me to appeal. I appealed and then went to the person who wanted to grab my land and told him: Look, I have got a title deed for this land. Did I just pick it anywhere? The DC advised me to go and appeal. I went home and looked at the kind of damage that had been done to my property and home. I got a good Samaritan who gave me Kshs5,000 which I used to open a file. I went back the following day. I also got an extra Kshs5,000 and gave it to the person who was representing me. He told me that the case was quite difficult. I wondered what to do because I had a title deed. After a few days, the person came on a Saturday and took all my livestock. I had three cows. I was now living in a lot of fear. I went to look for the person who was to help me and he told me that he could not assist me with the case because it was a bit difficult.

I wondered what to do because the person kept on harassing me and threatening that they were going to arrest me. I was looking for a way to solve my problems, but that person really intimidated me. The fourth time this person came with policemen and arrested me. I spent three days in the cell without any charges placed against me. There was a policeman who told me: "Old lady, I do not see why this person is disturbing you. Why is this person harassing you like this?" I said: This person has kept me locked up for three days and stolen my cattle. I do not have any property to sell so that I can help myself. The person had told me that I was so poor and was just wasting time talking to him. I was totally disabled and staying with three grandchildren. I took off and started spending nights in the forest. The person told me: "I am now going to take you back to prison because you are now a problem to me. You are bringing problems on my land." I took off because I feared this man. My house had been demolished and I was now staying in the wilderness. He came with the chief and surveyed the land. They bought goats and chicken and celebrated that day. I am so poor and there is really nothing I can do. That is how the case was.

Mr. Patrick Njue: Mama Lihondo, I empathize with you for what you have gone through. The agony that you continue to suffer is evident, even as you narrate your testimony today.

Ms. Gladys Lihondo Makungu: I took photographs of the man as he was demolishing my houses and have them with me.

Mr. Patrick Njue: Mama, I will ask you a couple of questions to clarify your testimony before the commissioners can proceed to do the same. You have constantly referred to somebody. Do you have a name to this person?

Ms. Gladys Lihondo Makungu: I know that name. He is called Bernard Odawa Arina.

Mr. Patrick Njue: How have you come to know him?

Ms. Gladys Lihondo Makungu: He is not a neighbour. He just bought land from a neighbour. There is a neighbour I used to stay with very well whom he bought the land from.

Mr. Patrick Njue: I am sorry, this should have been my first question. I see somebody seated next to you. Would you want to introduce this person?

Ms. Gladys Lihondo Makungu: She is called Jane Kegoe. She is my neighbour.

Mr. Patrick Njue: Back to your testimony, again, you have said that you have title documents to your land. I have also seen you refer to photographs and other literature that you wanted to share with us. One by one, you could tell us what they are as you pass them over.

Ms. Gladys Lihondo Makungu: The photograph I am presenting shows the person destroying my property. The other picture is of the person who sold me the land. The third photo is of people witnessing the demolition. The fourth one is the man himself pulling down the house. This is the picture after the demolition. He had come and was now tilling the farm using oxen. Those are the only photographs that were taken during demolition. I still have other documents which I want to photocopy.

Mr. Patrick Njue: Kindly share with us what those documents are. As we take a look at them, we will make arrangements to have copies made, after which, we will give back the originals to you.

(Ms. Gladys submitted documents to the Commission)

You have submitted the application for search. You have also submitted receipts from an advocate for the professional fee that you paid. I can also see receipts detailing that, indeed, a case was filed.

Commissioners, the said documents can be admitted as part of the records of this Commission.

The Presiding Chair (Commissioner Farah): The documents will be admitted.

Mr. Patrick Njue: Mama, from the receipts that you have just given from the advocate, indeed, I see that a court case was filed. You have further given other documents also showing that, indeed, there existed another court case where you were the defendant and the plaintiff is one Bernard Arina Odawa. As a lawyer, I can read that the document is a decree ordering your eviction from the said land. I believe it is on the basis of this that then plaintiff, who is now Bernard Odawa, proceeded to evict you from the land. That was case No.145 of 2008. Again, you filed (as a plaintiff) a case against the said Bernard Odawa. On the basis of the last case where you were the plaintiff, what is the status of this case, because you never in your testimony talked about any of these two cases?

Could you kindly share with us the details of these two cases; one where you were the defendants and the other one where you were the plaintiff?

Ms. Gladys Lihondo Makungu: Mr. Bernard Odawa argued that I had got into his land. In my opinion, I had not invaded his land. I was staying where my late husband left me.

(Technical hitch)

Commissioner Shava: Just explain to the witness that we are having some technical problems.

Mr. Patrick Njue: Sorry, Mama. We are having a problem with our interpretation. Kindly hold as we rectify the problem at the interpretation booth.

Okay! Mama my question before that slight hitch was in the second case where you were the plaintiff and Mr. Bernard Odawa was a defendant. Is this case still ongoing? If it was determined, what was the outcome?

Ms. Gladys Lihondo Makungu: That case has never been determined. I used to go to court and every time I got there, I was told that they wanted to revisit the earlier court. My advocate is the one who used to threaten and tell me that if I went to court, I would be arrested.

Mr. Patrick Njue: Is she the one who drafted these papers for you?

Ms. Gladys Lihondo Makungu: That advocate never wrote those papers for me.

Mr. Patrick Njue: I can see they have been drawn and filed by you. My concern was whether he just did the papers for you, now that you paid her some money and there is a receipt for that.

Ms. Gladys Lihondo Makungu: That story was written in court.

Mr. Patrick Njue: The money that you gave her and she issued you with receipts. What was that for?

Ms. Gladys Lihondo Makungu: That money was meant to open a file; Kshs5,000 was to go towards opening the file and the other Kshs5,000 was the initial deposit. The total amount was Kshs10,000.

Mr. Patrick Njue: When I look at the receipt, it shows that there is a matter ongoing and there was a case file no.617 of 2008. Maybe the receipts can form the basis for further investigations, so that we may find out whether or not this case is ongoing and the outcome. Otherwise, I would have felt---

Ms. Gladys Lihondo Makungu: According to her, the case just ceased and nothing happened after that. The man eventually took the land and fenced everything. That is when I just gave up and did nothing after that.

Mr. Patrick Njue: I was saying that the documents you have given will form the basis for further investigations before you can conclusively find if at all there has been any professional negligence on the part of the advocate. If so, then there are appropriate offices which you can report such wayward advocates.

As it stands now, what is the present situation with your land and how you are living with your family?

Ms. Gladys Lihondo Makungu: I am living with a lot of problems. When the man demolished my home and houses, my son came and constructed a very small hut for me. That is where I am staying. He left me half an acre of the total land.

Mr. Patrick Njue: What was the size of the land before Bernard took part of it as you say?

Ms. Gladys Lihondo Makungu: It was one-and-a-half acres. I am only left with one acre.

Mr. Patrick Njue: Seated there today with us, what would you summarize as being your expectation from this Commission?

Ms. Gladys Lihondo Makungu: I want that man to give me back my land and compensate me for the property that he destroyed, my livestock and the trees that he felled.

Mr. Patrick Njue: Mama, how many children do you have?

Ms. Gladys Lihondo Makungu: I have eight children and all of them are unemployed.

Mr. Patrick Njue: Thank you once again for coming forth to share with us your testimony. Like I said, I note the agony and empathize with the suffering that you have had to go through. We hope that we can get to the bottom of it, as a Commission, to your satisfaction. Our Commissioners may ask you questions.

Commissioner Dinka: Mama Gladys, thank you very much for your testimony. In the statement you recorded, you said that the advocate took your money and then refused to take the matter to court. She said that it was complicated and did not want to handle the case. Did she finally handle the case or what happened to your money?

Ms. Gladys Lihondo Makungu: Whenever I used to go to her office, she used to tell me that my case was very difficult and that it was a big case.

Commissioner Dinka: Who took your case to court? Did you pay another advocate?

Ms. Gladys Lihondo Makungu: There is nobody who took my case to court. It is the same court that I am crying about.

Commissioner Dinka: According to the documents and evidence that you gave us, the court had made a decision on the matter. How was that done? Did you have a lawyer and if so, was it a different person?

Ms. Gladys Lihondo Makungu: When I went to court, the advocate told me that I would be arrested.

Interpreter: Commissioners, what I am getting is that the lady was sort of intimidated. Whenever she used to go to the advocate's office, she felt threatened.

Commissioner Dinka: How did the judge come to a conclusion, if she was so intimidated and did not go to court? She must have gone to court and there must have been some argument and a decision was made by the court. You have even a second case which was opened later against the same person. I just wanted to find out who helped you go to court. Which lawyer was it?

Ms. Gladys Lihondo Makungu: It was Betty Maloba.

Commissioner Dinka: Is it on the same land? So, you actually own part of the land right now?

Ms. Gladys Lihondo Makungu: That land is in two portions.

Commissioner Dinka: Do you own half of it now?

Ms. Gladys Lihondo Makungu: As of now, one portion is mine.

Commissioner Dinka: That was for clarification on my side. Thank you.

Mr. Patrick Njue: Commissioners, I beg your indulgence. I am informed that the witness sometimes gets lapses. So her neighbour is here to assist for clarification on some of these issues.

Ms. Jane Kagoye: My name is Jane Kagoye. During the time when this issue took place, I was sick and some people came to do some casual work at my home. I saw two Land Rovers. When I asked what was happening, they told me that the OCS was there and other people were also in that house, who had come to demolish the house of mama Gladys. Although I was sick, I called somebody who is a photographer. I told him that "I did not know what was happening, but Mama Gladys house is being demolished. Hurry up so that you can rush to the scene and, perhaps take photographs of what was happening. Maybe it will serve as evidence to Mama Gladys. I told Mama Gladys to rush to the DC

and inform him that her house is being demolished. She rushed to Busia, but she did not find the DC. She got the DO1 who told her that this issue should be handled by the DC. After three days, they came and took her livestock. I felt this was an injustice to this old woman. So, I tried to show concern and told her that such kinds of things occur to human beings. I got the courage and took Mama Gladys to her landlord and told him that the house had been demolished and the trees had been cut down. I told the DC that what had happened at our Esikuru area has really shocked the residents who are living there and we do not know where to start from and where to end because now the case was in court and the Mama Gladys was not called to testify. The DC told her that he could not help her and that she should just go and look for money so that she could engage a lawyer. I told the DC that this old lady had no money, but he told us that the only thing we can do is to look for money and engage a lawyer. I tried to plead with him and ask him if he could help us but he said: "Here, I cannot tell you anything. I have told you go and look for the lawyer." Then we went back home and we tried as much as we could. But if you want to get a lawyer, you have to go to court and pay the court so that you can know what has been prepared. We went to the court and when we paid the money the court will look for the judgment that was prepared that day. We took the case to our advocate. When we went to the advocate, we got a lady by the name of Betty Maloba who was there. We found that this lady is just a widow like this one. We felt that she was in a better position to help Gladys because she is a widow like her. So, we paid her Kshs5,000 so that we could start the case.

So, in that issue of the struggle although it was a bit faster, we were told to go to Bungoma and look for somebody who could help us. So, we went to Bungoma to look at the statement from the mother and said that we would appeal the case in Nairobi. From there, she went back with Betty. Now that we had paid money, Betty told us she will file the case so that it can be handled in the court. Betty said she was willing to handle the case. So, we took the case to her. I went with this lady because she is illiterate. They asked me to go out and leave this lady inside the house. So, they told this lady that she does not have land there and the land belongs to her husband. We were confused because we felt that Mama Gladys was being denied justice. Now there is another case that mama should go and sue the late husband. Betty called informing me to tell Mama Gladys that the case would be heard tomorrow. When I went there the next day, I found that there was no case. I used to save those messages which are in my phone. When I came to ask, he threatened Mama Gladys. There is a day mama Gladys was threatened by Bernard Odawa. I told her that they were looking for you, maybe they can jail you. She went to her sister in Kitale and stayed there for one month and then she came back. When she came back, she was threatened. Mr. Odawa told her that she should move from the land. I told them that the truth is that Mama Gladys' husband bought the land and when he died, he left the land to the widow. Now it is becoming hard for her to pursue the case. I think that these people should have come on the ground because I have tried to go to the Ministry of Lands to get the administration form of all the land around there. I found the number of her land is 1005 covering 3.92 acres. Today, her land bearing the same number has been reduced to two acres. Then 1004 is 3.92 acres which belongs to the landlord that sold the land to the old man. There was something fishy that happened in between because when I read the statement, I can understand. That is why the advocate was saying

that the case is too complicated for her to handle. I can only ask the Commission to visit the land to see and verify it. That is all I have to say. Thank you.

Commissioner Shava: When I look at these documents, I see two different title deeds. There is land which the man who has evicted you, Bernard Owino Odawa, says he has bought and it measures 3.5 hectares. It is called LR.No. Bukhayo Bugengi 1005. There is another title deed which you have, it is very faint, but it appears to be land measuring 0.55 hectares and it is Bukhayo Bugengi 1924. So, those are two different title deeds. I am not sure how they relate to each other. There is a map here where I can see the parcel of land which is being described as 1005. But I cannot see 1924, your parcel. So, I do not know how the two parcels are related. Was there a re-survey at any stage after you got your title deed? So, after you first got your title deed, the land was surveyed again?

Ms. Gladys Lihondo Makungu: My farm was surveyed once.

Commissioner Shava: Have you requested for the land to be surveyed again? When Mr. Arina then came and said that you were on his land, did you ever ask for a survey?

Ms. Gladys Lihondo Makungu: I have not requested for a survey.

Commissioner Shava: When Mr. Arina was surveying, did he call you and ask you to attend the survey?

Ms. Gladys Lihondo Makungu: When he was surveying the land, I thought he was just measuring his land. Unfortunately, he was surveying my land. When he came, I thought he was surveying his own land, but eventually I discovered he was surveying my land.

Commissioner Shava: Thank you very much. I do not have any more questions. *Pole sana* for going through so much hardship. In your statement, you said the place where you were living in rented property was not enough space for your husband, children and yourself and that it was your initiative to go and look for this land. You built houses there. Your husband has left you, but you are still there struggling for your family. You said that your children are all unemployed and then this is the kind of thing that happens to you. It is really very sad. It is very unfortunate, but I would urge you to take heart and to not give up. Do not give up fighting for your land. We will help in any way we can.

The Presiding Chair (Commissioner Farah): Thank you very much, Mama Gladys. My two fellow commissioners have already said it all. Your case is a very unfortunate one because it looks as if you were already having a title deed for your land and somebody else came and bought your neighbour's land. At the time he was trying to get the title deed, he brought in surveyors and also surveyed part of your land. These are the kinds of things that happen in corruption and they take advantage of poor people like you. This is not in our mandate, but because it concerns land we cannot even say anything right now until we send our people to the Lands Office to go and do thorough investigations, so that we know what the real situation is. If we come to realize that the situation is that part of your land has been robbed of you, then we will do our job which is to do justice. But

right now, I cannot say anything because the other person also claims that that land is his. So, this is a matter that needs further investigations. Thank you for coming forward. You have come to the right place. It is only that you have given us more work of investigation.

Leader of Evidence, I think you can stand her down.

(The witness was stepped down)

The Presiding Chair (Commissioner Farah): Leader of Evidence, you can find out what documents you can retain and what you can give to her. If she is comfortable with the pictures, you can retain them. So, discuss with her.

We have come to the end of this morning's hearings.

Mr. Patrick Njue: Commissioners, that is all from our desk in terms of the witnesses we had lined up.

The Presiding Chair (Commissioner Farah): We have come to the end of our hearings this morning. There will be no more hearings until tomorrow. Today, we had Eric Omerika, Desterio Opoloi, Augustine Mulaa, Ms. Monica Mulala, Gladys Lihondo and Mr. Eric Makokha who came together with Monica Mulala. Thank you very much for having listened to us. We come to the end of our hearings until tomorrow morning.

Mr. Patrick Njue: We can also go on record that we had a public women's hearing on the other end.

The Presiding Chair (Commissioner Farah): We also had the women's public hearing on the other side which has come to an end. Thank you.

(The Commission adjourned at 12.55 p.m.)