



NATIONAL LAND COMMISSION

RUARAKA SCHOOLS' LAND COMPENSATION – THE CORRECT POSITION

There has been conflicting and misleading reports appearing on various media platforms on the issue of payments made in respect of compulsory land acquisition for Drive-in Primary School and Ruaraka Secondary School. The National Land Commission (NLC) wishes to clarify and set the record straight on the matter and assure the general public that this process duly followed the law and was above board.

What actually happened?

- On 17th August 2016, Afrison Export Import Limited wrote to the Commission to complain about partial occupation of their private land (LR No. 7879/4) by Ruaraka High School and Drive in Primary School.
- On 13th September 2016, the Commission wrote to the Ministry of Education informing the Ministry of the complaint and inviting the Ministry to respond to the complaint.
- On 7th February 2017, the Principal Secretary, Ministry of Education wrote back to the Commission acknowledging that the schools are on private land and asked the Commission to acquire the land to secure public investment in the schools.
- On 16th February 2017, the Commission wrote back and clarified to the Principal Secretary Ministry of Education that in law, the compulsory land acquisition process should originate with the respective Cabinet Secretary (Section 107 of the Land Act).
- On 17th March 2017, the Cabinet Secretary, Ministry of Education formally requested the Commission to commence the process of compulsory acquisition of the said private land to enable the two schools acquire title deeds to the land they occupy.
- On 7th July 2017, the Attorney General wrote an advisory opinion to the Ministry of Education copied to the Commission. The advisory opinion confirmed the public interest of the schools; that the land on which the schools were on was private; there was need for compulsory acquisition of the private land that required the Commission to take possession of the land; and the owner to surrender title the Registrar.
- On 30th June 2017, the Commission published the intention to acquire *vide* Gazette Notice No. 6322. The intention was to acquire the private land which the two schools (Drive in Primary School and Ruaraka High School) occupy.
- On 16th January 2018, the Commission wrote to the Ministry of Education informing them on the valuation outcome.
- On 25th January 2018, the Commission gave an award of Kshs.3.2 billion to Afrison Import Export Limited and Huelands Limited and instructed part payment of Ksh. 1.5 billion.
- Afrison Import Export Limited and Huelands Limited acceded to the award by signing the acceptance dated 26th January 2018, and signed the deed of indemnity, indemnifying the Commission against all actions, proceedings, claims, demands, costs, damages and expenses as a result of the part payment of Kshs. 1.5 billion made.
- Subsequently, Afrison Import Export Limited instructed the Commission to pay the compensation money into an account belonging to Whispering Palms Estate Limited.
- Through searches conducted by the Commission from the Business Registration Service of the Attorney General's Office, the directorship of Whispering Palms Estate Limited, Afrison Export Import Limited and Huelands Limited were found to comprise of the same directors.
- On 14th May 2018, the Commission wrote to the Land Registrar requesting registration of restrictions in respect of the part of LR. No. 7879/4 acquired pending completion of remaining payments (Kshs. 1.7 billion) to allow vesting surveys to be undertaken.

Did the Commission pay for public or private land?

The Commission did not pay compensation for public land as it has been established authoritatively that the land in question has been and still is private land under a freehold grant as illustrated hereunder:

- The Nairobi High Court Civil Suit no. 617 of 2002 Afrison Export Import Limited & another v Continental Credit Finance Limited (in liquidation) & 2 others, held that Afrison Export Import Limited and Huelands Limited were the legal and registered owners of LR 7879/4
- The advisory opinion of the Attorney General to the Ministry of Education confirmed that the land on which the schools were on was private and the need to compulsorily acquire the private land to safeguard the public interests of the schools.
- Official searches done in the Land Registry the latest dated 19th January 2018 which confirmed the land as freehold, had no encumbrances and belonging to Afrison Export Import Limited and Huelands Limited.

- The Cabinet Secretary, Ministry of Lands and Physical Planning confirmed to the Parliamentary Lands Committee that the LR No. 7879/4 was private land.

Compensation payments done were thus for the acquisition of private land to safeguard the public interests in the two schools.

Was due diligence followed prior to compensation for the compulsory land acquisition?

The compulsory land acquisition process is initiated by a request from the Cabinet Secretary of the Ministry where the acquiring authority is domiciled, which was done in this acquisition.

The Commission conducted a number of searches at various times with the latest being done on 19th January 2018 confirming that the land is: *free hold; had no encumbrances and belongs to Afrison Export Import Limited and Huelands Limited.*

The Commission undertook a ground status inspection and survey to establish the actual ground situation on the land in question and a report was compiled. The report revealed that the LR No. 7879/4 exists, totaling 96 Acres, out of which Ruaraka High School occupies 6.788 Acres and Drive-in Primary School occupies 6.892 Acres with both schools occupying a total area of 13.68 Acres.

The Commission further obtained survey plans (maps) from the Director of Surveys and confirmed that no subdivision had been successfully undertaken and authenticated on the parcel up to today. Hence, there was ***no surrender of any portion*** of this land for public utility.

A check at the Department of Physical Planning (Ministry of Lands and Physical Planning) by the Commission confirmed the nonexistence of any plan in respect of the two schools.

Had the land already been allocated to the schools previously?

An allotment letter ref. no. 108096157 dated 28th June 1999 purportedly issued by office of the Commissioner of Lands done in favor of Ruaraka High School bore no reference to any plan.

An allocation of public land cannot subsist over and above an existing freehold title concurrently, which invalidates the allotment letter.

Were the valuation values used within market rates?

The Commission undertook valuation in 2017 using the comparables analysis principle and arrived at the value of Kshs. 206 million per acre.

In the High Court Civil Case Suit no. 617 of 2002 Afrison Export Import Limited & another v Continental Credit Finance Limited (in liquidation) & 2 others, the Honorable Court awarded Kshs. 209 million per acre in 2006.

Afrison Export Import Limited had engaged an independent valuer in 2016 who gave a valuation of Kshs. 436 million per acre.

The valuation by the Commission was thus the lowest and particularly putting into consideration the passage of time since the High Court award of 2006.

Does the Commission handle the compensation money exclusively at its own discretion?

The Constitution of Kenya, 2010 grants the Commission the role of a managing of public land on behalf of the National and County Governments. As a manager, the Commission's role is purely facilitative, supporting the compulsory acquisition of private land on behalf of the acquiring entities.

The acquiring entities budget for, and provide compensation funds, while the Commission manages the process of payments, including payment of the Project Affected Persons. Payments are done with the concurrence of the acquiring entities with due diligence having been followed.

Conclusion

The Commission operates within the rule of law and is committed to ensuring that the rights of all parties in a land matter are not prejudiced. In regard to the partial acquisition of LR 7879/4 in favor of Ruaraka High School and Drive in Primary School, the Commission acted within the law and is confident that justice has been served.

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