

Approved for tabling in the House.



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2/6/2022

REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – SIX SESSION 2022

DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK

REPORT ON THE PUBLIC PETITION REGARDING RESTORATION OF REVIVAL
OF KENYA CASHEW NUTS FACTORY

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2022

THE NATIONAL ASSEMBLY	
DATE: 02 JUN 2022	DAY: THURSDAY
TABLED BY:	HON SILAS TIREN (CHAIRPERSON)
CLERK AT THE TABLE:	INZOV MWALE

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ABBREVIATIONS / ACRONYMS

AFA	-	Agriculture and Food Authority
CDI	-	Commercial Development Investment
CEC	-	County Executive Committee Member
CEO	-	Chief Executive Officer
DCC	-	Deputy County Commissioner
GDP	-	Gross Domestic Product
GoK	-	Government of Kenya
H. E	-	His Excellency
ICDC	-	Industrial Commercial Development Cooperation
IDB	-	Industrial Development Bank
KCCU	-	Kilifi County Cooperative Union
KCL	-	Kenya Cashew nuts Limited
KDCU	-	Kilifi District Co-operative Union
KICOMI	-	Kisumu Cotton Mills
KPPL	-	Kenya Planters and Products Limited
MOALF	-	Ministry of Agriculture Livestock and Fisheries
NCPB	-	National Cereals and Produce Board
NOCD	-	Nuts and Oil Crops Directorate
ODPP	-	Office of Director of Public Prosecution
RIVATEX	-	Rift Valley Textiles

APPENDIX

1. ADOPTION LIST
 2. MINUTES
-

CHAIRPERSON'S FOREWORD

The Report of the Committee regarding restoration of revival of Kenya cashew nuts factory was presented before the House pursuant to Standing Order No. 225 (2) (a) by the Hon. Owen Yaa Baya MP, on behalf of farmers of Kilifi County.

The Committee was required to respond to the Petitioner by way of a report addressed to the Petitioner/Petitioners and laid on the Table of the National Assembly. In processing the Petition, the Committee invited various stakeholders to submit their views either orally or in written format. The Committee analyzed the submissions and prepared the report.

The Committee was grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during the consideration of the Petition. Finally, I wish to express my appreciation to the Honourable Members of the Committee and all the stakeholders who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Agriculture and Livestock and pursuant to provisions of Standing Order 227(2), it is my pleasant privilege and honour to present to this House the report of the Committee on its consideration of the Public Petition regarding restoration and revival of Kenya Cashew Nuts Factory.

The Hon. Silas Kipkoech Tiren, MP

Chairperson of the Departmental Committee on Agriculture and Livestock

PART 1

1.0 PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

1. The Departmental Committee on Agriculture and Livestock is one of the fifteen (15) Departmental Committees of the National Assembly established under *Standing Order 216* and mandated to: -
 - a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
 - b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
 - c) To study and review all the legislation referred to it;
 - d) To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - e) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
 - f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
 - g) To examine treaties, agreements and conventions;
 - h) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - i) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - j) To examine any questions raised by Members on a matter within its mandate.

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters of; Agriculture, Livestock, Irrigation, Fisheries development, production and Marketing.
3. In executing its mandate, the Committee oversees the following government Departments;
 - a) The State Department for Crop Development & Agricultural Research
 - b) The State Department for Livestock
 - c) The State Department for Fisheries, Aquaculture and the Blue Economy

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Agriculture and Livestock was reconstituted by the House in July, 2020 and comprises of the following Members:

Hon. Silas Kipkoech Tiren, MP- Chairperson
Moiben Constituency
Jubilee Party

Hon. Abdikhaim Osman, M.P – Vice - Chairperson
Fafi Constituency
Kanu Party

Hon. Maison Leshomo, M.P
Samburu County
KANU

Hon. Dr. Chrisantus Wamalwa, CBS, M.P
Kiminini Constituency
FORD Kenya Party

Hon. Cecily Mbarire, MGH, M.P
Nominated Member
Jubilee Party

Hon. Jude Njomo, M.P
Kiambu Constituency
Jubilee Party

Hon. Janet Jepkemboi Sitienei, M.P
Turbo Constituency
Independent

Hon. (Dr.) John Mutunga, M.P
Tigania West Constituency
Jubilee Party

Hon. Majimbo Kalasinga, MP
Kabuchai Constituency
Ford Kenya Party

Hon. Brighton Yegon, MP
Konoin Constituency
Jubilee Party

Hon. Katoo Ole Metito, MP
Kajiado South Constituency
Jubilee Party

Hon. Ferdinand Wanyonyi, M.P
Kwanza Constituency
FORD Kenya Party

Hon. Simba Arati, M.P
Dagoreti North Constituency
Orange Democratic Movement Party

Hon. Adan Haji Yusuf, M.P
Mandera West Constituency
EFPP Party

Hon. Gabriel Kago Mukuha, M.P
Githunguri Constituency
Jubilee Party

Hon. Julius Kibiwott Melly, M.P
Tinderet Constituency
Jubilee Party

Hon. Geoffrey Odanga, M.P
Matayos Constituency
Orange Democratic Movement Party

Hon. Joyce Kamene, MP
Machakos County
Wiper Democratic Movement Party

Hon. Martin Peters Owino, MP
Ndhiwa Constituency
Orange Democratic Movement

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Members of the Secretariat:

Mr. George Gazemba
Principal Clerk Assistant – Head of Secretariat

Mr. Nicodemus Maluki
Second Clerk Assistant

Ms. Clara Kimeli
Senior Legal Counsel

Mr. Wilson Angatangoria
Sergeant At Arms

Mr. Robert Ngetich
Fiscal Analyst II

Mr. Eugene Luteshi
Audio Officer

Mr. Ahmad Yakubu
Media Relations Officer

Mr. David Ngeno
Research Officer II

PART II

2.0 INTRODUCTION

6. The Constitution of Kenya 2010 under article 37 of provides that every person has the right to present petitions to public authorities while under article 119 (1) it gives provisions that every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation and (2) mandates Parliament to make procedure for the exercise of the said right.

2.1 Committal and Consideration of the Petition

7. Pursuant to Standing Order 227 (1), the petition was referred to the Departmental Committee on Agriculture and Livestock for consideration and preparation of a report within 60 days. The Committee considered the petition pursuant to the provisions of Standing Order 227 (1). In considering the petition, the Committee invited the petitioners, and received submissions from various state agencies.

2.2 Petition Regarding Restoration and Revival of Kenya Cashew Nuts Factory

8. The petitioners wished to draw the attention of the House to the following: -
 - a) **THAT**, the now defunct Kenya Cashew nuts factory located in Kilifi Town in Kilifi County was built in 1975 by the Kenya Cashewnuts Limited (KCL) with capacity to process 15,000 tonnes of cashew nuts per year;
 - b) **THAT**, the factory served farmers in the former Coast Province through their cooperative societies and the Kilifi District Cooperative Union (KDCU). The Government shareholding in 1982 through the National Cereals and Produce Board, the Industrial Commercial Development Corporation and the Industrial development Bank was 65% while the cooperative movement held the remaining 35% through KDCU;
 - c) **THAT**, the cashew nut factory was an important economic mainstay of the Coastal Districts (now Counties) and contributed immensely to the development of cashew nut sub sector in the country, and when the Government decided to divest from the factory, KDCU exercised its pre-emptive rights and purported to have acquired the Government's 65% shareholding in October 1993;
 - d) **THAT**, following the divestiture, the Kenya Planters and Products Limited (KPPL) and the Cashew Development Investment Limited, which were both private companies, mysteriously and fraudulently joined the factory as shareholders under unclear circumstances by obtaining 51% and 14% of Government shareholding respectively;
 - e) **THAT**, neither the Government nor the farmers received any payment from the fraudulent transfers and that the then KDCU officials colluded with various individuals to deprive the farmers the opportunity to purchase the 65% shareholding via their pre-emptive rights, which later led to KDCU being excluded from management of the factory despite holding 35% shareholding;
 - f) **THAT**, in 1996, KPPL claimed that it advanced a Kshs 2 Million loan to the KDCU allegedly for the purchase of the cashew nuts from farmers and they say the loan was not repaid hence this claim was used to obtain fraudulently all KDCU shares with cooperation from the then KDCU officials, and ultimately led to the flawed and irregular acquisition of the factory from the bonafide shareholders; however records show that KPPL did not advance the Kshs 2 Million to KDCU but to Kenya Cashewnuts Limited and they should not have taken over KDCU interests in the factory based on this allegation;

- v. Peter Kemei B
- vi. Paul David Oludare Aluko
- vii. Adeoulu Bajomo
- viii. Oludolapo Omotayo Ogundimu

24. The Factors that could have led to the collapse of the KCL are;
- a) The failure by the directors of KDCU to register shares that had been sold to KDCU by the government agencies (ICDC, NCPB and IDB) on time. As a result, the shares totalling to 65% of KCL were registered in the names of KPPL and CDI.
 - b) Management wrangles. KPPL and CDI did not accept the change of KDCU representation at the KCL board after farmers declared no confidence in Daniel Runya Ngamba and colleagues. Farmers elected other representatives as directors at KCL but this change was rejected by the new management of KCL through their lawyers and therefore locked out KDCU from the management of KCL; consequently, triggering a long court battle that wasted both resources and time. This caused instability and poor performance at KCL leading to its collapse in 2000.
 - c) The huge bank loan of Kes 95M from Barclays bank that could not be repaid within the schedule which ultimately caused KCL to be put under receivership and auction in 2002.
 - d) Non-payment of staff that could have led low productivity and poor performance of the company.
25. The revival of the plant and upgrading to a horticultural manufacturing factory is an idea that fits in well in the Big 4 agenda which will require a detailed feasibility study on the different options available to upgrade the factory to handle the different value chains proposed. An economic assessment of the venture will outline the overall financial implications on the efficiency and allocation of resources for the factory and the long-term sustainability of the project. The GOK will initiate discussions with Millennium Management Company with a view of purchasing the company. The GOK could purchase the shares and sell them back to farmers either individually or on co-operative basis. Having the union in the factory will entice the local farmers to support the factory, promote local industrialization and job creation.
26. KCL was sold as a going concern to the new owners, KPPL and CDI therefore inherited all the debts of KCL. This therefore puts KPPL and CDI as the parties responsible for the settlement of any outstanding debts and not the GOK.
27. Further recommendations deemed appropriate in the circumstances of the petition include;
28. Based on an in-depth study to establish the cashew production capacity in the region, a cashew-nut revitalization strategy to be developed.
29. The GOK to consider waiving any outstanding loan owned by the Kilifi District Cooperative Union (now Kilifi County Cooperative Union) to enable it either purchase the factory from the present owners or purchase its original share of 35% from the company.
30. The GOK to assist the farmers form strong organized marketing groups and organizations.
31. The farmers to revive dormant or semi active societies affiliated to Kilifi County Cooperative Union and urge them to produce and sell Cashew nuts to the factory.

2.2 Committee Inspection Visits

32. The Committee undertook inspection visits on Wednesday 28th July, 2021 in Kilifi County to engage the stakeholders of the Cashew nuts value chain with a view to getting responses regarding the defunct Kenya Cashew Nuts Limited. The meeting was attended by cashew nuts farmers, aggregators, Kilifi County Governor; Kilifi County Agriculture CEC, Dr. J. Sanzua, Kilifi County Assembly Committee on Agriculture, Officials of the KCCU, officials from the MOALF, Officials from AFA-NOCD, Kilifi County Director of Agriculture, other County Agriculture Officers, the DCC-Kilifi County and other members of the public.
33. The Committee noted as follows:
- a) KCL was incorporated in 1972 and started operations in 1975 with an objective of processing raw cashew nuts sourced from Kwale, Kilifi, Tana River and Lamu counties.
 - b) The factory had an installed processing capacity of 15,000 tonnes and employed 2000 permanent staff and 1000 casual workers. The factory was co-owned by KDCU; now KCCU and the GoK through NCPB, IDB and ICDC.
 - c) The Total Government stake was 65% shareholding while the farmers through KCCU had a shareholding of 35%. Farmers through KCCU sold to the factory raw cashew nuts worth KES 44 million annually.
 - d) Workers were paid KES 3.5 million every week which went directly into impacting on the economy of the region. This contributed immensely to the socioeconomic development of the region.
 - e) In 1993 the Breton Woods Institutions (IMF and World Bank) called upon partner governments of different nations including Kenya to liberalize economies through privatization for the achievement of desired economic development. This made the GoK to divest/discharge its shareholding and KCCU exercised its pre-emptive rights and acquired the GoK 65% shares in October, 1993.
 - f) The GoK shareholding was to be transferred to KCCU after the payment of Kshs. 78 million. However, KCCU failed to honour its part of the payment obligation and instead through its Directors Japheth Kavuku, Daniel Runya Ngamba and Samuel Gunga transferred the GoK 65% shareholding to KPPL and CDI which were both private companies.
 - g) The KPPL obtained 51% while CDI obtained 14% shareholding respectively. Consequently, this action by the said directors was seen as fraudulent by KCCU and the three were unanimously voted out and were hence to stop representing KCCU at the KCL board.
 - h) The KCCU voted in Benjamin Kubo – Chairman, Silas Mweri – Secretary and John Kombe – Member, to replace the ousted directors. However, KCL declined to implement the change of KCCU representation and maintained the positions of the former directors.

- i) The KCCU filed a court case, thus lost its representation at the KCL board pending court decision; nonetheless, the court did not stop the operations of KCL.
- j) The new owners of KCL who were KPPL and CDI proceeded to use the company and its assets as collateral for a Barclays Bank loan of Kshs. 45M in October 1994 and Kshs. 50M in April 1996.
- k) The loan went unserviced and KCL was put under receivership until May 2002 when an auction of the factory was advertised.
- l) The factory was bought by Millenium Management through its receiver managers on 5th May 2003 at a cost of KES 58 million against an unpaid loan of Kshs. 95 million. Thus, Millenium Management are the owners and operators of the factory to date.
- m) The KCCU lost its shareholding and access to the company and its assets.
- n) The Millenium Management went ahead to sell the Managing Director's beach house.
- o) Previous petitions on the same did not bear fruit and the factory continued to be property of Millenium Management Ltd.
- p) The Farmers were reported to be languishing in abject poverty after the collapse of the factory, with unpaid salary arrears and no market to sell their raw cashew nuts.

PART IV

COMMITTEE OBSERVATIONS

34. The Committee made the following observations from evidence adduced in the submissions and the inspection visit.
- a) There was failure by the directors of Kilifi District Cooperative Union (KDCU) to register shares that had been sold to it by the government agencies (ICDC, NCPB and IDB) on time. As a result, the shares totalling to 65% of Kenya Cashewnuts Limited (KCL) were registered in the names of Kenya Planters and Product Limited and Cashew Development Investment (CDI).
 - b) Management wrangles between KPPL and CDI did not accept the change of KDCU representation at the KCL board after farmers declared no confidence in Daniel Runya Ngamba and colleagues. Farmers elected other representatives as directors at KCL but this change was rejected by the new management of KCL through their lawyers and therefore locked out KDCU from the management of KCL; consequently, triggering a long court battle that wasted both resources and time. This caused instability and poor performance at KCL leading to its collapse in 2000.
 - c) The huge bank loan of Kshs. 95M from Barclays bank that could not be repaid within the schedule which ultimately caused KCL to be put under receivership and auction in 2002.
 - d) The Non-payment of staff could have led low productivity and poor performance of the company.
 - e) The previous interventions to address these matters through reports of the Public Investment Committee of the 9th parliament had not been successful as well as other petitions and presidential decrees.
 - f) The local Cashewnuts farmers were not given ample time to acquire the shares of the government of Kenya in the Kenya Cashewnuts factory Limited.
 - g) That the company closed with an unserviced loan. KCL received a loan of Ksh 45Million on 25th October 1994 and another loan of Ksh 50Million on 11th April 1996 totalling up to Ksh 95 million. However, on 5th May 2003 Millennium management limited bought the property from Barclays bank through its receiver managers at only Ksh 58 million.
 - h) The Public Investment Committee (PIC) recommended that the office of the Attorney General (AG) should intervene to ensure the ownership reverted to the public through: Prosecuting the former directors of KDCU amongst others and all legal action to reverse the ownership of KCL to KDCU.
 - i) The statement in the Petition that the then Attorney General Amos Wako was ordered by the President then to reverse the illegal transfer of shares and register the shares in the name of KDCU but he did not was indeed a recommendation of the PIC that was later adopted by the 9th Parliament.
 - j) Indeed, the recommendations by the 9th Parliament were made for the AG to implement the said reports. However, these were not implemented.

- k) The Committee noted that the matter is not pending in any court of law; to the best of its knowledge from submissions received

4. COMMITTEE RECOMMENDATIONS

35. Having examined the petition, the Committee Recommends as follows: -

- a) The restoration of KDCU (now Kilifi County Cooperative Union (KCCU) and revival of the Kenya Cashew Nuts Factory in Kilifi to the farmers with additional upgrade of turning into a horticultural manufacturing factory that can process cashew nuts, mangoes, coconut among other products as part of realization of Government's Big Four Agenda;
- b) Recommends that former workers be paid their dues as well as restoration of the factory ownership to the people of Kilifi.
- c) The Ministry of agriculture through the Agriculture and Food Authority AFA – Nuts and oils directorate ensure that the Cashewnuts subsector was revamped through the Cashewnuts and coconuts subsidy program.
- d) The Directorate of Criminal Investigations Commences investigations on the allegations of fraudulent transfer of the 65 percent of government shares and establishes those culpable for prosecution before the law.
- e) The National Police Service establishes the whereabouts of the Kenya Cashewnuts limited factory machinery.

SIGNED.......... DATE.....

HON. SILAS TIREN, MP

(CHAIRPERSON, DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK)

**MINUTES OF THE 42ND SITTING OF THE DEPARTMENTAL COMMITTEE
ON AGRICULTURE & LIVESTOCK HELD ON TUESDAY 17TH AUGUST, 2021
IN MEDIA CENTRE, PARLIAMENT BUILDINGS AT 11.00AM**

PRESENT

- | | |
|--|--------------------------|
| 1. Hon. Silas Kipkoech Tiren, MP. | Chairperson |
| 2. Hon. Catherine Waruguru, MP. | Vice- Chairperson |
| 3. Hon. Dr. Chrisantus Wamalwa, CBS, MP. | |
| 4. Hon. Simba Arati, MP. | |
| 5. Hon. Maison Leshoomo, MP. | |
| 6. Hon. Martin Peters Owino, MP. | |
| 7. Hon. Yegon Brighton Leonard, MP. | |
| 8. Hon. Majimbo Kalasinga, MP | |
| 9. Hon. Cecily Mbarire, MGH, MP. | |
| 10. Hon. Adan Haji Yussuf, MP. | |
| 11. Hon. Geoffrey Odanga, MP. | |
| 12. Hon. Julius Kibiwott Melly, MP. | |
| 13. Hon. Dr. John Kanyuithia Mutunga, MP | |
| 14. Hon. Gabriel Kago Mukuha, MP. | |

APOLOGIES

1. Hon. Jude Njomo, MP
2. Hon. Joyce Kamene, MP.
3. Hon. Janet Jepkemboi Sitienei, MP
4. Hon. Ferdinand Wanyonyi, MP.

IN ATTENDANCE

COMMITTEE SECRETARIAT

- | | | |
|----------------------------|---|------------------------|
| 1. Mr. Ahmad Kadhi | - | Senior Clerk Assistant |
| 2. Mr. Nicodemus K. Maluki | - | Second Clerk Assistant |
| 3. Mr. Robert Ng'etich | - | Fiscal Analyst |
| 4. Ms. Faith Makena | - | Sergeant Art – Arms |
| 5. Mr. Luteshi Eugene | - | Audio Officer |
| 6. Mr. Moses Musembi | - | Office Superintendent |

MIN.NO. DC/A&L/105/2021: PRELIMINARIES

The Chairperson called the meeting to order at twenty five minutes past eleven o'clock. The proceedings began with prayers followed by brief introductions.

MIN.NO. DC/A&L 106/2021: Petition Regarding Restoration and Revival of Kenya Cashew Nuts Factory

The Committee was briefed that;

INTRODUCTION

1. The Constitution of Kenya 2010 under article 37 of provides that every person has the right to present petitions to public authorities while under article 119 (1) it gives provisions that every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation and (2) mandates Parliament to make procedure for the exercise of the said right.
-

Committal and Consideration of the Petition

2. Pursuant to Standing Order 227 (1), the petition was referred to the Departmental Committee on Agriculture and Livestock for consideration and preparation of a report within 60 days. The Committee considered the petition pursuant to the provisions of Standing Order 227 (1). In considering the petition, the Committee invited the petitioners, and received submissions from various state agencies.

Petition Regarding Restoration and Revival of Kenya Cashew Nuts Factory

3. The petitioners wished to draw the attention of the House to the following: -
 - a) **THAT**, the now defunct Kenya Cashew nuts factory located in Kilifi Town in Kilifi County was built in 1975 by the Kenya Cashewnuts Limited (KCL) with capacity to process 15,000 tonnes of cashew nuts per year;
 - b) **THAT**, the factory served farmers in the former Coast Province through their cooperative societies and the Kilifi District Cooperative Union (KDCU). The Government shareholding in 1982 through the National Cereals and Produce Board, the Industrial Commercial Development Corporation and the Industrial development Bank was 65% while the cooperative movement held the remaining 35% through KDCU;
 - c) **THAT**, the cashew nut factory was an important economic mainstay of the Coastal Districts (now Counties) and contributed immensely to the development of cashew nut sub sector in the country, and when the Government decided to divest from the factory, KDCU exercised its pre-emptive rights and purported to have acquired the Government's 65% shareholding in October 1993;
 - d) **THAT**, following the divestiture, the Kenya Planters and Products Limited (KPPL) and the Cashew Development Investment Limited, which were both private companies, mysteriously and fraudulently joined the factory as shareholders under unclear circumstances by obtaining 51% and 14% of Government shareholding respectively;
 - e) **THAT**, neither the Government nor the farmers received any payment from the fraudulent transfers and that the then KDCU officials colluded with various individuals to deprive the farmers the opportunity to purchase the 65% shareholding via their pre-emptive rights, which later led to KDCU being excluded from management of the factory despite holding 35% shareholding;
 - f) **THAT**, in 1996 , KPPL claimed that it advanced a Kshs 2 Million loan to the KDCU allegedly for the purchase of the cashew nuts from farmers and they say the loan was not repaid hence this claim was used to obtain fraudulently all

KDCU shares with cooperation from the then KDCU officials, and ultimately led to the flawed and irregular acquisition of the factory from the bonafide shareholders; however records show that KPPL did not advance the Kshs 2 Million to KDCU but to Kenya Cashewnuts Limited and they should not have taken over KDCU interests in the factory based on this allegation;

- g) **THAT**, the cashew nuts factory finally closed down in 1997 and subsequently hit the Coastal economy hard, creating widespread joblessness, leaving cashew nuts farmers stranded thereby denying the country a valuable source of export and foreign exchange;
- h) **THAT**, the factory shut down with unserviced Barclay's loan of Kshs 95 million whose security was Kenya cashew Nut premises and which the bank sold off to Millennium Management Limited for Kshs 58 million despite a court injunction filed by KDCU;
- i) **THAT**, the auction was illegal as there was a court injunction that stopped the auction and still remains illegal up to now. In the process of the illegal sale KDCU lost its 35% shares as the new managers of the factory used illegal means to acquire the shares of the farmers;
- j) **THAT**, the purported current owners of the factory are illegal owners and the bonafide owners of the factory up to date are the KDCU and the Kenya Government; because a sale that emanates from an illegal action is not a sale;
- k) **THAT**, following the illegal acquisition, KDCU was unfortunately coerced by the new illegal owners to take over all the debts of over Kshs 110 Million of Kilifi Cashew Nuts Limited; debts which actually weighed heavy on KDCU and collapsed KDCU;
- l) **THAT**, the factory was ravaged and plundered by the new illegal owners and consequently all machines and equipment was transferred to Tanzania and Tiwi where the new illegal owners had interests and used the sale of machines to pay off their debts and laid off workers were left without compensation;
- m) **THAT**, while majority of factories that collapsed following flawed privatization such as Kenya Meat Commission, Rivatex, KICOMI and Mumias Sugar Company have already been revived by the Government, the Kenya Cashew Nuts Factory in Kilifi remains unattended;
- n) **THAT**, the farmers in Mid 90's sent a petition to the President of the Republic of Kenya who ordered and triggered the ODPP to pay a visit to the factory to investigate the matter and revert to the farmers, effort which was muzzled by the then office of the ODPP;
- o) **THAT**, the then Attorney General Amos Wako was ordered by the President then to reverse the illegal transfer of shares and register the shares in the name of KDCU but he did not;
- p) **THAT**, the 9th Parliament in 1999 made recommendations to revert the factory back to the farmers but the Attorney General did not act;
- q) **THAT**, in November 2019, other officers were sent to pursue that matter further but nothing has come forth;
- r) **THAT**, efforts to address this matter with relevant authorities have not borne much fruit;


- s) **AND THAT**, the matter in respect of which this Petition is made is not pending before any Court of Law or Constitutional body.

2.2.1 Prayers in the Petition

1. The petitioners pray that the National Assembly, through the Departmental Committee on Agriculture and Livestock;
 - a) Enquires into the collapse of the Kenya Cashew Nuts Factory with the objective of highlighting factors that led to its closure;
 - b) ~~Recommends the restoration to the farmers and KDCU (now Kilifi County Cooperative Union (KCCU) and revival of the Kenya Cashew Nuts Factory in Kilifi with additional upgrade of turning into a horticultural manufacturing factory that can process cashew nuts, mangoes, coconut among other products as part of realization of Government's Big Four Agenda;~~
 - c) Recommends that former workers be paid their dues as well as restoration of the factory ownership to the people of Kilifi; and
 - d) Makes any other recommendations it deems appropriate in the circumstances of the Petition

MIN.NO. DC/A&L/ 107 /2020: ADJOURNEMENT

The meeting thereafter was adjourned at thirty five minutes past twelve o'clock.

Signed.....

HON. SILAS KIPKOECH TIREN, MP (CHAIRPERSON)

Date.....

MINUTES OF THE 27TH SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE AND LIVESTOCK HELD ON FRIDAY 20TH MAY, 2022 AT 2.30PM IN PRIDEINN BEACH HOTEL, MOMBASA COUNTY

PRESENT

- | | |
|--|-------------------------|
| 1. Hon. Silas Kipkoech Tiren, MP. | <i>Chairperson</i> |
| 2. Hon. Abdikhaim Osman, MP | <i>Vice Chairperson</i> |
| 3. Hon. Geoffrey Odanga, MP | |
| 4. Hon. Dr. John Kanyuithia Mutunga, MP. | |
| 5. Hon. Janet Jepkemboi Sitienei, MP | |
| 6. Hon. Gabriel Kago Mukuha, MP. | |
| 7. Hon. Jude Njomo, MP. | |
| 8. Hon. Joyce Kamene, MP. | |
| 9. Hon. Majimbo Kalasinga, MP. | |
| 10. Hon. Adan Haji Yussuf, MP. | |
| 11. Hon. Yegon Brighton Leonard, MP. | |
| 12. Hon. Martin Peters Owino, MP. | |

APOLOGIES

1. Hon. Dr. Chrisantus Wamalwa, CBS. MP
2. Hon. Ferdinand Wanyonyi, MP
3. Hon. Julius Kibiwott Melly, MP
4. Hon. Ole Metito Katoo, MP
5. Hon. Maison Leshoomo, MP.
6. Hon. Cecily Mbarire, MGH, MP.
7. Hon. Simba Arati, MP

COMMITTEE SECRETARIAT

- | | | |
|----------------------------|---|-----------------------------|
| 1. Mr. George Gazemba | - | Principal Clerk Assistant I |
| 2. Mr. Nicodemus K. Maluki | - | Second Clerk Assistant |
| 3. Mr. Robert Ngetich | - | Fiscal Analyst |
| 4. Mr. David Ngeno | - | Research Officer |
| 5. Mr. Ahmad Yakubu | - | Media Relation Officer |
| 6. Mr. Luteshi Eugene | - | Audio Officer |
| 7. Mr. Moses Musembi | - | Office Assistant |

MIN NO. DDC/A&L/109/2022: PRELIMINARIES

The Chairperson called the meeting to order at thirty minutes past ten o'clock. The proceedings began with prayer followed by brief introductions.

MIN NO. DDC/A&L/010/2022: CONFIRMATION OF MINUTES

This agenda item was deferred to the next meeting.

MIN NO. DC/A&L/111/2022: CONSIDERATION AND ADOPTION OF THE REPORT ON PETITION REGARDING RESTORATION AND REVIVAL OF KENYA CASHEW NUTS FACTORY

Having considered the petition the Committee adopted its report with the following observations and recommendations:

COMMITTEE OBSERVATIONS

1. There was failure by the directors of Kilifi District Cooperative Union (KDCU) to register shares that had been sold to it by the government agencies (ICDC, NCPB and IDB) on time. As a result, the shares totalling to 65% of Kenya Cashewnuts Limited (KCL) were registered in the names of Kenya Planters and Product Limited and Cashew Development Investment (CDI).
2. Management wrangles between KPPL and CDI did not accept the change of KDCU representation at the KCL board after farmers declared no confidence in Daniel Runya Ngamba and colleagues. Farmers elected other representatives as directors at KCL but this change was rejected by the new management of KCL through their lawyers and therefore locked out KDCU from the management of KCL; consequently, triggering a long court battle that wasted both resources and time. This caused instability and poor performance at KCL leading to its collapse in 2000.
3. The huge bank loan of Kshs. 95M from Barclays bank that could not be repaid within the schedule which ultimately caused KCL to be put under receivership and auction in 2002.
4. The Non-payment of staff could have led low productivity and poor performance of the company.
5. The previous interventions to address these matters through reports of the Public Investment Committee of the 9th parliament had not been successful as well as other petitions and presidential decrees.
6. The local Cashewnuts farmers were not given ample time to acquire the shares of the government of Kenya in the Kenya Cashewnuts factory Limited.
7. That the company closed with an unserviced loan. KCL received a loan of Ksh 45Million on 25th October 1994 and another loan of Ksh 50Million on 11th April 1996 totalling up to Ksh 95 million. However, on 5th May 2003 Millennium management limited bought the property from Barclays bank through its receiver managers at only Ksh 58 million.
8. The Public Investment Committee (PIC) recommended that the office of the Attorney General (AG) should intervene to ensure the ownership reverted to the public through: Prosecuting the former directors of KDCU amongst others and all legal action to reverse the ownership of KCL to KDCU.
9. The statement in the Petition that the then Attorney General Amos Wako was ordered by the President then to reverse the illegal transfer of shares and register the shares in the name of

KDCU but he did not was indeed a recommendation of the PIC that was later adopted by the 9th Parliament.

10. Indeed, the recommendations by the 9th Parliament were made for the AG to implement the said reports. However, these were not implemented.
11. The Committee noted that the matter is not pending in any court of law; to the best of its knowledge from submissions received

COMMITTEE RECOMMENDATIONS

Having examined the petition, the Committee Recommends as follows: -

1. The restoration of KDCU (now Kilifi County Cooperative Union (KCCU) and revival of the Kenya Cashew Nuts Factory in Kilifi to the farmers with additional upgrade of turning into a horticultural manufacturing factory that can process cashew nuts, mangoes, coconut among other products as part of realization of Government's Big Four Agenda;
2. Recommends that former workers be paid their dues as well as restoration of the factory ownership to the people of Kilifi.
3. The Ministry of Agriculture, Livestock, Fisheries and Cooperatives through the Agriculture and Food Authority AFA – Nuts and oils Directorate ensure that the Cashewnuts subsector is revamped through the Cashewnuts and coconuts subsidy program.
4. The Directorate of Criminal Investigations Commences investigations on the allegations of fraudulent transfer of the 65 percent of government shares and establishes those culpable for prosecution before the law.
5. The National Police Service establishes the whereabouts of the Kenya Cashewnuts limited factory machinery.

MIN NO. DC/A&L/ 112/2022: ADJOURNMENT AND DATE OF NEXT MEETING

The Chairperson adjourned the meeting at forty five minutes past one o'clock.

Signed.....

HON. SILAS KIPKOECH TIREN, MP
(CHAIRPERSON)

Date.....

MEMBERS ATTENDANCE SCHEDULE

VENUE: COMMITTEE ROOM 7

AGENDA: 1. Adoption of Report on MIRAA FARMING & MARKETING
2. Adoption of Report on Revival of CASERINO FACTORY

COMMITTEE CLERK NUOBANA 2. mthwz GAAR

DIRECTOR.....



REPUBLIC OF KENYA
TWELFTH PARLIAMENT – (THIRD SESSION)
THE NATIONAL ASSEMBLY
PUBLIC PETITION

(No. 01 of 2020)

Approved.
BW
SNA
26/02/2020

**REGARDING RESTORATION AND REVIVAL
OF THE KENYA CASHEW NUTS FACTORY**

I, the **UNDERSIGNED**, on behalf of the farmers and the people of Kilifi County;

DRAW the attention of the House to the following: -

1. **THAT**, the now defunct Kenya Cashew Nuts factory located in Kilifi Town in Kilifi County was built in 1975 by the Kenya Cashew Nuts Limited (KCL) with capacity to process 15,000 tonnes of cashew nuts per year;
2. **THAT**, the factory served farmers in the former Coast Province through their cooperative societies and the Kilifi District Co-operative Union (KDCU). The Government shareholding in 1982 through the National Cereals and Produce Board, the Industrial Commercial Development Cooperation and the Industrial Development Bank was 65% while the co-operative movement held the remaining 35% through KDCU;
3. **THAT**, the cashew nut factory was an important economic mainstay of the Coastal Districts (now Counties) and contributed immensely to the development of the cashew nut sub sector in the country, and when the Government decided to divest from the factory, KDCU exercised its pre-emptive rights and purported to have acquired the Government's 65% shareholding in October 1993;
4. **THAT**, following the divestiture, the Kenya Planters and Products Limited (KPPL) and the Cashew Development Investment Limited, which were both private companies, mysteriously and fraudulently joined the factory as shareholders under unclear circumstances by obtaining 51% and 14% of the Government shareholding respectively;
5. **THAT**, neither the Government nor the farmers received any payment from the fraudulent transfers, and that the then KDCU officials colluded with various individuals to deprive farmers the opportunity to purchase the 65% shareholding via their pre-emptive rights, which later led to KDCU being excluded from management of the factory despite holding 35% shareholding;

PUBLIC PETITION

REGARDING RESTORATION AND REVIVAL OF THE KENYA CASHEW NUTS FACTORY

6. **THAT**, in 1996, KPPL claimed that it advanced a Kshs 2 million loan to the KDCU allegedly for the purchase of cashew nuts from farmers and they say that this loan was not repaid hence this claim was used to obtain fraudulently all KDCU shares with cooperation by the then KDCU officials, and ultimately led to the flawed and irregular acquisition of the factory from the bonafide shareholders; however records show that KPPL did not advance the 2 Million to KDCU but to Kenya Cashewnuts Limited (KCL) and they should not have taken over KDCU interests in the factory based on this allegation;
7. **THAT**, the cashew nut factory finally closed down in August 1997, and subsequently hit the Coastal economy hard, creating widespread joblessness, leaving cashew nut farmers stranded thereby denying the country a valuable source of export and foreign exchange;
8. **THAT**, the factory shut down with an unserviced Barclays Bank loan of Kshs 95 million whose security was the Kenya Cashew Nut premises, and which the Bank sold off to Millennium Management Limited for Ksh 58 million despite a court injunction filed by KDCU;
9. **THAT**, the Auction was illegal as there was a court injunction that stopped the auction, and still remains illegal up to now. In the process of the illegal sale KDCU lost its 35% shares as the new managers of the factory used illegal means to acquire the shares of the farmers;
10. **THAT**, the purported current owners of the factory are illegal owners and the bonafide owners of the factory up to date are the KDCU and the Kenya Government; because a sale that emanates from an illegal action is not a sale;
11. **THAT**, following the illegal acquisition, KDCU was unfortunately coerced by the new illegal owners to take over all the debts of over Kshs. 110 Millions of Kilifi Cashew Nuts Limited; debts which actually weighed heavy on KDCU and collapsed KDCU.
12. **THAT**, the factory was ravaged and plundered by the new illegal owners and consequently all machines and equipment were transferred to Tanzania and Tiwi where

PUBLIC PETITION

REGARDING RESTORATION AND REVIVAL OF THE KENYA CASHEW NUTS FACTORY

the new illegal owners had interests and used the sell of the machines to pay off their debts, and laid-off workers were left without compensation;

13. THAT, while majority of factories that collapsed following flawed privatization such as the Kenya Meat factory, Rivatex, KICOMI, and Mumias Sugar Company have already been revived by the Government, the Kenya Cashew Nuts Factory in Kilifi remains unattended;

14. THAT, the farmers in Mid 90's sent a petition to the President of the Republic of Kenya who ordered and triggered the ODPP to pay a visit to the factory to investigate the matter and revert to the farmers, effort which was muzzled by the then office of the ODPP;

15. THAT, the then Attorney General Amos Wako was ordered by the president then to reverse the illegal transfer of shares and registered the shares in the name of KDCU but he did not;

16. THAT, the 9th parliament in 1999 made recommendations to revert the factory back to the farmers but the Attorney general did not act;

17. THAT, in Nov 2019, other officers were sent to pursue the matter further but nothing has come forth;

18. THAT, efforts to address this matter with relevant authorities have not borne much fruit;

19. AND THAT, the matter in respect of which this Petition is made is not pending before any Court of Law or Constitutional body.

NOW THEREFORE, your humble petitioners pray that the National Assembly through the Departmental Committee on Agriculture and Livestock-

- a) Enquires into the collapse of the Kenya Cashew Nuts Factory with the objective of highlighting factors that led to its closure;
- b) Recommends the restoration to the farmers and KDCU (Now Kilifi County Cooperative Union KCCCU) and revival of the Kenya Cashew Nuts Factory in Kilifi with the additional upgrade of turning it into a horticultural manufacturing

PUBLIC PETITION

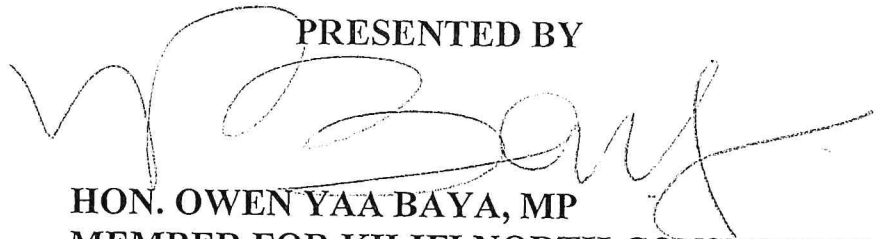
REGARDING RESTORATION AND REVIVAL OF THE KENYA CASHEW NUTS FACTORY

factory that can process cashew nuts, mangoes, coconut among other products as part of realization of the Government's Big Four Agenda ;

-
- c) ~~Recommends that the former workers be paid their dues as well as restoration of the~~
factory's ownership to the people of Kilifi, and
- d) Makes any other recommendations it deems appropriate in the circumstances of the
Petition.

And your **PETITIONERS** will ever pray.

PRESENTED BY



HON. OWEN YAA BAYA, MP
MEMBER FOR KILIFI NORTH CONSTITUENCY

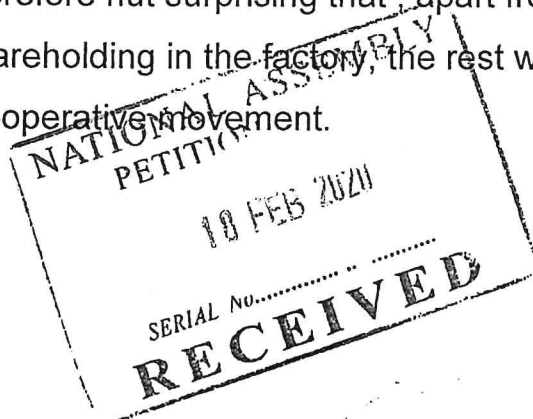
Date...25/02/2020

PUBLIC PETITION

REGARDING THE RESTORATION AND REVIVAL OF THE KILIFI KENYA CASHEW NUTS
FACTORY KILIFI

I, the undersigned, On behalf of the people of Kilifi draw the attention of the house to the following:

1. That the Defunct Kenya Cashew nuts factory is located in Kilifi Town Kilifi North Constituency in Kilifi County
2. That the factory was built in 1975 by the Kenya Cashew nuts Limited (KCL) with a capacity to process 15,000 tonnes of Cashew Nuts.
3. That It served the former coast Province (now Region) farmers through their cooperative societies and Kilifi District Co-operative union (KDCU)
4. That as at 1982, the factory shareholding by the Government was 65% while 35% was held by the co-operative movement
5. That the Government ownership was through the National cereals produce Board NCBP, The industrial Commercial Development Cooperation ICDC, and the industrial development bank IDB while that of the cooperative movement was through KDCU.
6. That in view of the importance the Cashew nut as an important economic mainstay in the Coast Districts (now counties) the factory played a strategic role in the development of the Cashew nut sub sector and the livelihoods of the people in the region it is therefore not surprising that, apart from the Government shareholding in the factory, the rest was by farmers through the co-operative movement.



7. That in 1992 the Government shares with a market value of Kshs. 142.40 per market share totaled too Kshs 78 Million, while the union shares were valued at Kshs42 Million.
8. That when the Government decided to divest from the factory , kilif District cooperative union KDCU exercised it Pre emptive rights and acquired the Government's 65%shares in an arrangement that was signed on 29th October 1993
9. That later on the Kenya Planters and products limited and the cashew development investment limited joined the factory as shareholders, under circumstances which were not clear.
10. That on 30th December 1996, KDCU was lent Kshs 2 Million allegedly for the purchase cashew nuts from farmers by Kenya Planters and products limited, for which some union officials signed blank share tranfer forms for all the union shares in Kilifi Cashew nuts limited
11. That although this loan is said not to have been repaid, the arrangement, no doubt, could not have been in good faith as it was fraudulent
12. That the transactions were secretly done without involving the cooperative movement shareholders and the Ministry of co-oporative development, except a few KDCU officials who were manipulated to facilitate a flawed acquisition of the factory from the bonafide shareholders.
13. That although 100% shares were legally sold to the union by the three parastatals they were never legally transferred to to the union..
14. That the shares were allocated as follows: 51% were allocated to Kenya Plantations and products limited and 14 percent

to cashew development investment limited which were private companies

15. That the Government of Kenya did not receive even a penny for its 65% shares from the fraudsters neither did the farmers.
16. That despite the fact that the KDCU held 35% shareholding in the factory the union we excluded from the management
17. That directors of the KDCU colluded with known individuals to deprive the farmers the opportunity to purchase the 65% shares pre emptive rights.
18. The cashewnut factory closed down in August, 1997, occasioning the laying off of the employees and denying cashewnut farmers their major source of income and foreign exchange for the country from processed cashew exports.
19. The Cashewnut factory closed down with a an unserviced Barclays bank loan of Kshs 95 Million, whose security was the Kenya cashewnut Premises
20. In February 2000, Barclays bank of Kenya appointed a receiver manager and advertised the the property for sale in order to recover its loan which together with interests, had allegedly accumulated to Kshs 200 Million.
21. KDCU filled an injunction in court against the sale until the ownership of Kenya Cashew nuts limited was determined.
22. That while the matter was still in court the bank entered private negotiations with millennium Management limited and sold the property for Kshs 58 million.
23. That it is clear the acquisition of the cashewnuts factory from KDCU was irregular, fraudulent and not with good intentions.

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24. That the factory was cannibalized by millennium management and all machines and equipment transferred elsewhere
25. That the laid off workers have not had their retirement benefits paid.
26. That this is a recent historical injustice matter on the people of the coast
27. That the factory collapsed alongside the poorly managed privatization scheme that saw the collapse of Kenya meat factory, Rivatex, KiCOMI, Mumias Sugar.
28. That majority of the factories named above have since been restored by government using public funds and are up and running providing employment to the local population.

Therefore your humble petitioner pray that the National Assembly, through the departmental committee on Agriculture, livestock and cooperatives development:-

- a) Investigates the theft of the Kilifi Cashew nuts factory be made to establish the theft and restore the ownership of the factory to the people of Kilifi
- b) Recommends the revival of the Cashewnut factory and turns it into a horticultural manufacturing factory that can process Mangoes, coconut among other products as part of the Big Four Agenda
- c) Recommends that the former workers be paid their dues.
- d) Makes any other recommendations that the committee may deem necessary for addressing the plight of the petitioner

And your Petitioner will ever pray,

Presented by.

Hon. Owen Yaa Baya, M.P

Member For Kilifi North Constituency.

Date
