

**THE COMMISSION ON ADMINISTRATIVE JUSTICE**  
**“Office of the Ombudsman”**



**Hata Mnyonge ana Haki**

**“Kilifi public outcry”**

**An investigations report on the alleged maladministration in the  
Ministry of Lands, Kilifi office**

**June, 2017**

Serial No. CAJ/42/2017

## Foreword

The Commission on Administrative Justice (CAJ) pursuant to its mandate as stipulated under Section 8 of CAJ Act, undertook investigations into alleged delay, unresponsiveness, discourtesy, unfairness and abuse of power in the Ministry of Land offices in Kilifi.

The investigations were undertaken based on numerous complaints received from members of public. This prompted the Commission to commence investigations into the allegations with a view to establish their veracity.

The Commission wrote to the Principal Secretary, Ministry of Lands and Physical Planning on the 24<sup>th</sup> January, 2017 to notify her of its decision to conduct the investigations. CAJ investigations team visited the Ministry of Land offices in Kilifi and in particular, Lands Registry, Survey, and Adjudication and Settlement Departments. The team interviewed public officers, some complainants and recovered documents relevant to the matter under investigations.

This report was informed by the analysis of information gathered and the examination of documents recovered in the process of the investigations.

The Commission has made recommendations to the Ministry of Lands and the Directorate of Criminal Investigations for implementation. It is expected that full implementation of the recommendations will impact positively on service delivery by the Ministry of Lands offices countrywide.

**Signed this..... day of June, 2017**

**DR. REGINA MWATHA, Ph.D, MBS**

**Ag. CHAIRPERSON**

**COMMISSION ON ADMINISTRATIVE JUSTICE**

## Table of Contents

<b>Foreword</b> .....	<b>iii</b>
<b>Acronyms</b> .....	<b>v</b>
<b>Executive Summary</b> .....	<b>vi</b>
<b>1.0 Introduction to the investigation</b> .....	<b>1</b>
1.1 Issues under investigation .....	1
1.2 Investigation Process .....	1
1.3 Legal Framework.....	2
<b>2.0 Analysis and Findings</b> .....	<b>7</b>
2.1 Overview of the Ministry of Lands, Kilifi County.....	7
2.2 Factors affecting service delivery .....	9
<b>3.0 Conclusions</b> .....	<b>19</b>
<b>4.0 Recommendations</b> .....	<b>21</b>



## Acronyms

CAJ	Commission on Administrative Justice
DDCI	Director, Directorate of Criminal Investigations
EACC	Ethics and Anti-Corruption Commission

## Executive Summary

The Commission on Administrative Justice (CAJ) received 16 complaints from members of the public alleging delay, unresponsiveness, discourtesy and abuse of power by officials in the Ministry of Lands office in Kilifi. The complaints centered on delay in boundary dispute resolution or boundary verification and processing and issuance of title deeds. These complaints prompted the Commission to conduct investigations with a view to establish the veracity of the allegations.

CAJ wrote to the Principal Secretary, Ministry of Land and Physical Planning on the 24<sup>th</sup> January, 2017 to notify her of its decision to conduct the investigations. The investigation team visited the offices of Ministry of Lands, Kilifi and in particular Lands Registry, Survey and Adjudication and Settlement departments. The team interviewed a number of officers and randomly selected complainants and recovered several documents relevant to the matter under investigation. The information gathered was analysed to inform the findings of the investigations.

The investigations established that the Ministry of lands in Kilifi County is composed of three departments, namely Lands Registry, Survey and Adjudication and Settlement Schemes. Kilifi Land Registry has three Land Registrars, two clerks and one support staff. Among the three Registrars only one handles all matters pertaining to boundary disputes. Of the two clerks, one is currently attached to the Land Control Board. The Survey department has a District Surveyor (in-charge), two Surveyors, Clerical Officer and one support staff. Adjudication and Settlement Scheme Department has Chief Land Adjudication and Settlement Officer, Land Adjudication and Settlement Officer, Senior Assistant Agricultural Officer, Seven (7) Land Adjudication and Settlement Officers, one support staff and one Accountant.

CAJ investigations established both systemic and human factors affect service delivery in the Ministry of lands in Kilifi County. The systemic factors identified as

affecting service delivery negatively included firstly, delay associated with the issuance and enforcement of summons and the resolutions of cases relating to land disputes and verifications. Secondly, poor and disorganized records management. Thirdly, inadequate space and shortage of resources, lack of electricity and water, inoperative post box and lack of communication infrastructure among many others.

In relation to human factors, CAJ noted the existence of cartels of brokers who work in cohort with the Ministry of Lands officers both in Kilifi as well as at the headquarters in Nairobi and this lead to abuse of power and corrupt practices. The second human factor was incompetence among lands officials where the three land registrars were unable to meet timelines, and consequently the huge backlogs and inordinate delay in resolution of boundary dispute and verifications. According to interviews with respondents, this was a ploy by the three registrars to solicit for bribes. The third factor was unresponsiveness and dereliction of duty by the officers.

The Commission therefore concluded that there is poor service delivery in the Ministry of Lands office in Kilifi occasioned by both human and systemic factors. As a result, a number of recommendations were arrived at to assist the Ministry of Lands deal with these issues in Kilifi Land offices.

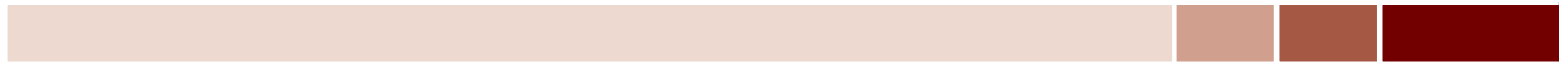
The recommendations are as follows:

- i. The Principal Secretary, Ministry of Lands and Physical Planning should issue a warning letter, take any other administrative action including transferring Mr. Felix Nyakundi, Land Registrar, Mr. Joseph Bao, Senior Assistant Land Registration Officer 1 and Ms. Daisy Mwaruka, Land Registrar to other stations. CAJ finds the three officers culpable of dereliction of duty by abrogating their duty in the issuance and enforcement of summons for hearing cases of land dispute and verifications and failing to meet timelines, consequently creating huge backlog and inordinate delay.

- ii. The Director, Directorate of Criminal Investigations should investigate Mr. Garama Chai and Mr. Amos Kithi for defrauding Mrs. Eunice Salama Chilamo and Mr. Nehemiah Samini Kambi a total of Ksh. 400,000 between 21<sup>st</sup> February, 2011 and 29<sup>th</sup> June, 2011 by falsely posing as land agents capable of processing title deeds.
- iii. The Principal Secretary, Ministry of Lands and Physical Planning should institute disciplinary procedure against Mr. Johnston Ballo, Senior Assistant Agricultural Officer, Ministry of Lands, Kilifi that may result in his removal from office for abuse of power. Mr. Ballo acted in contravention of Article 75 (1) of the Constitution of Kenya, 2010, Section 46 of Anti-Corruption and Economic Crimes Act 2003, Section 101 and 393 of the Penal Code, Section 8 (b) and (d) of CAJ Act and Sections 8, and 9(1) of the Public Officers Ethics Act, 2003 by aiding, abetting and conspiring with persons masquerading as agents of land matters who defrauded unsuspecting members of the public who approached him in a public office for advice on title deed acquisition. CAJ finds Mr. Ballo culpable of abuse of power. EACC should undertake further investigations on the official conduct of Mr. Ballo with a view to taking appropriate action.
- iv. The Principal Secretary, Ministry of Lands and Physical Planning should institute disciplinary procedure against Mr. George Gitau Mwaura, Land Adjudication and Settlement Assistant Kilifi, that may result in the removal from office for corruption and abuse of power by acting in contravention Article 75 (1) of the Constitution, Section 6 (1) of the Bribery Act 2016, Section 46 of Anti-Corruption and Economic Crimes Act 2003, Section 8 (b) and (d) of CAJ Act and Sections 8, and 9(1) Public Officers Ethics Act, 2003 by failing to declare and avoid conflict of interest between personal interest and public or official duties. CAJ finds Mr. Gitau culpable of corruption and abuse of power for having received unofficial payment of Ksh. 7500 from Ms. Kamene who sought services from his office. EACC should undertake further investigations on the official conduct of Mr. Gitau with a view to taking appropriate action.



- v. The Principal Secretary, Ministry of Lands and Physical Planning should institute disciplinary procedure against Mr. Michael Muriuki Kinyua, Surveyor Ministry of Lands, Kilifi, that may result in his removal from office for having solicited and received unofficial payment of Ksh. 10,000 from Mr. William Chengo who sought services from his office. By so doing, Mr. Kinyua contravened Article 75 (1) of the Constitution, Section 6(1) of the Bribery Act, 2016, Section 46 of the Anti-corruption and Economic Crimes Act, 2003, Section 101 of the Penal Code, Section 8 (b) and (d) of CAJ Act and Sections 8 and 9(1) of the Public Officer Ethics Act, by compromising public or official interest in favour of a personal interest and thereby demeaning the public office he holds. CAJ finds Mr. Kinyua culpable of bribery and abuse of power. EACC should undertake further investigations on the official conduct of Mr. Kinyua with a view to taking appropriate action.
- vi. The Principal Secretary, Ministry of Lands and Physical Planning should take immediate measures to improve the poor working conditions at Kilifi Lands Registry. The office lacks adequate space, poorly ventilated and not connected to electricity and water.
- vii. The Principal Secretary, Ministry of Lands and Physical Planning should stamp out the rampant practice of rogue persons purporting to be land agents working in cohort with public officials to fleece money from unsuspecting members of the public. The PS should issue a stern directive to public officers that representation by any agent on land matters is unacceptable and that the officers should deal directly with land owners and not through agents.
- viii. The Cabinet Secretary, Ministry of Lands should address the factors affecting service delivery highlighted in this report. The systemic issues are delay in the issuance and enforcement of summons for land dispute and verifications; poor records management and inadequate resources in terms of transport, equipment such as computers, office space, electricity,



and water. The human factors are cartels of brokers and abuse of power; incompetence; unresponsiveness and dereliction of duty.

The Commission notified the officers found culpable in order to accord them the opportunity to respond to the finding(s) and recommendation(s) of the investigation. CAJ received written responses to all the notifications but did not find them substantive enough to exonerate the officers from culpability.

## **1.0 Introduction to the investigation**

The Commission on Administrative Justice (CAJ) received 16 complaints from members of the public alleging delay, unresponsiveness, discourtesy and abuse of power by officials in the Ministry of Lands offices in Kilifi. The complaints centered on delay in boundary dispute resolution or boundary verification and processing and issuance of title deeds.

These complaints prompted the Commission to conduct investigations pursuant to its mandate provided for under section 8 of its constitutive Act to investigate complaints of abuse of power, unfair treatment, manifest injustice, unlawful, oppressive, unfair or unresponsive official conduct.

CAJ investigators examined each of the allegation in relation to the process and procedures used by land officials to provide services to members of the public with a view to come up with recommendation that will streamline the operations in the Ministry of Lands in Kilifi.

### **1.1 Issues under investigation**

1. Systemic issues affecting service delivery in the Ministry of Lands in Kilifi.
2. Human issues affecting service delivery in the Ministry of Lands in Kilifi.

### **1.2 Investigation Process**

#### **1.2.1 Notification**

The Commission notified the Principal Secretary, Ministry of Lands of the Commission decision to investigate the allegation of alleged delay, unresponsiveness, unfairness and abuse of power of vide a letter Ref: CAJ/IE/6/48/2017 dated 24<sup>th</sup> January, 2017.

#### **1.2.2 Documents Recovered**

- i. Application letters for boundary dispute resolution
- ii. Payment Receipts for boundary resolutions.
- iii. Summons for hearing of boundary disputes.
- iv. Payment agreement between complainants and land agents (brokers)

### 1.3 Legal Framework

The following legal documents provided a framework which guided the investigation.

#### **CAJ's mandate**

The Commission on Administrative Justice (Office of The Ombudsman) is a Constitutional Commission established under Article 59 (4) and Chapter Fifteen of the Constitution, and the Commission on Administrative Justice Act, 2011. CAJ) has a mandate, *inter-alia*, to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.

In addition to the CAJ's investigative powers under Article 252 (1) (a), Sections 26, 27, 28 and 29 of the CAJ Act gives the Commission powers to conduct investigations on its own initiative or on a complaint made by a member of the public, issue Summons and require that statements be given under oath, adjudicate on matters relating to Administrative Justice, obtain relevant information from any person or Governmental authorities and to compel production of such information. Under Section 31 of its Act.

CAJ has power not limited by other provisions to investigate an administrative action despite a provision in any written law to the effect that the action taken is final or cannot be appealed, challenged, reviewed, questioned or called in question. After undertaking its investigations, the Commission is required under Section 46 of its constitutive Act, to prepare a report to the State organ, public office or organization to which the investigation relates. The report shall include the findings of the investigation, action the Commission considers to be taken and reasons whereof and recommendations the Commission deems appropriate.

CAJ may upon an inquiry into a complaint, undertake such other action as it may deem fit against a concerned person or persons where the inquiry discloses a criminal offence as provided for under Section 41 of the CAJ Act. Section 8 (g) of the CAJ Act gives the Commission power to recommend compensation or other appropriate remedies against persons or bodies to which the Act applies. Section 46 (4) states; If there is failure or refusal to implement the recommendations of the Commission within the specified time, the Commission may prepare and submit to the National Assembly a report detailing the failure or refusal to implement its recommendations and the National Assembly shall take the appropriate action.

Section 52 (b) and (d) of the CAJ Act 2011, provides that a person who knowingly submits false or misleading information to a member of staff of the Commission commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding two years or both. Further, Article 59(2) (j) of the Constitution of Kenya, 2010 empowers the Commission to report on complaints investigated under paragraph (h) and (i) and take remedial actions.

## **Constitution of Kenya**

### **Chapter six—Leadership and Integrity**

**73.** (1) Authority assigned to a State officer—

(a) Is a public trust to be exercised in a manner that—

(I) is consistent with the purposes and objects of this Constitution;

(ii) Demonstrates respect for the people;

(iii) brings honour to the nation and dignity to the office;

and

(IV) promotes public confidence in the integrity of the office;

and

(b) Vests in the State officer the responsibility to serve the people, rather than the power to rule them.

(2) The guiding principles of leadership and integrity include—

- (a) Selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
- (b) Objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;
- (c) Selfless service based solely on the public interest, demonstrated by—
  - (i) Honesty in the execution of public duties; and
  - (ii) The declaration of any personal interest that may conflict with public duties;
- (d) Accountability to the public for decisions and actions; and
- (e) Discipline and commitment in service to the people.

**74.** Before assuming a State office, acting in a State office, or performing any functions of a State office, a person shall take and subscribe the oath or affirmation of office, in the manner and form prescribed by the Third Schedule or under an Act of Parliament.

**75.** (1) A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—

- (a) Any conflict between personal interests and public or official duties;
  - (b) Compromising any public or official interest in favour of a personal interest;
- or
- (c) Demeaning the office the officer holds.

(2) A person who contravenes clause (1), or Article 76, 77 or 78

(2)—

- (a) Shall be subject to the applicable disciplinary procedure for the relevant office; and

Oath of office of

State officers.

Conduct of State officers.

(b) May, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

(3) A person who has been dismissed or otherwise removed from office for a contravention of the provisions mentioned in clause (2) is disqualified from holding any other State office.

## **The Public Officer Ethics Act**

### Part III—General Code of Conduct and Ethics

**7.** This Part sets out a general Code of Conduct and Ethics for public officers.

**8.** A public officer shall, to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly.

**9.** (1) A public officer shall-

(a) Carry out his duties in a way that maintains public confidence in the integrity of his office;

(b) Treat the public and his fellow public officers with courtesy and respect;

(c) To the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organisation;

(d) If a member of a professional body, observe the ethical and professional requirements of that body;

**10.** (1) A public officer shall carry out his duties in accordance with the law.

(2) In carrying out his duties, a public officer shall not violate the rights and freedoms of any person under Part V of the Constitution.

**11.** (1) A public officer shall not use his office to improperly enrich himself or others.

(2) Without limiting the generality of subsection (1), a public officer shall not-

(a) Except as allowed under subsection (3) or (4), accept or request gifts or favours from a person who-

(i) has an interest that may be affected by the carrying out, or not carrying out, of the public officer's duties;

(ii) Carries on regulated activities with respect to which the public officer's organisation has a role; or

(iii) has a contractual or similar relationship with the public officer's organisation;

(b) Improperly use his office to acquire land or other property for himself or another person, whether or not the land or property is paid for; or

(c) For the personal benefit of himself or another, use or allow the use of information that is acquired in connection with the public officer's duties and that is not public.

(3) A public officer may accept a gift given to him in his official capacity but, unless the gift is a non-monetary gift that does not exceed the value prescribed by regulation, such a gift shall be deemed to be a gift to the public officer's organisation.

(4) Subsection (2) (a) does not prevent a public officer from accepting a gift from a relative or friend given on a special occasion recognized by custom.

(5) Subsection (2) (c) does not apply to the use of information for educational or literary purposes, research purposes or other similar purposes.

**12.** (1) A public officer shall use his best to efforts to avoid being in a position in which his personal interests conflict with his official duties.

(2) Without limiting the generality of subsection (1), a public officer shall not hold shares or have any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having that interest would result in the public officer's personal interests conflicting with his official duties.

(3) A public officer whose personal interest's conflict with his official duties shall-  
(a) declare the personal interests to his superior or other appropriate body and comply with any directions to avoid the conflict; and

(b) Refrain from participating in any deliberations with respect to the matter.

(4) Notwithstanding any directions to the contrary under subsection (3)(a), a public officer shall not award a contract, or influence the award of a contract, to-

(a) Himself;

(b) A spouse or relative;

(c) A business associate; or

(d) A corporation, partnership or other body in which the officer has an interest.

(5) The regulations may govern when the personal interests of a public officer conflict with his official duties for the purposes of this section.

(6) In this section, "personal interest" includes the interest of a spouse, relative or business associate.



## **2.0 Analysis and Findings**

In this section we present an analysis of the investigation findings.

### **2.1 Overview of the Ministry of Lands, Kilifi County**

The investigation established that the Ministry of Lands in Kilifi County is composed of three departments, namely Lands Registry, Survey, and Adjudication and Settlement Schemes.

#### **2.1.1 Lands Registry**

Kilifi Land Registry has three Land Registrars, namely Mr. Felix Nyakundi, Mr. Joseph Bao, and Ms. Daisy Mwaruka. The Registry also has two clerks and one support staff. However, of the two clerks, one is attached to the Lands Control Board.

Land Registry has the following functions:

1. To provide technical advice on land matters including land sub-division, charge, succession, transfer and caution.
2. Issuance of Title after completion of adjudication process.
3. Issuance of Title in settlement schemes.
4. Issuance of Title on sub-division
5. Assessment and valuation of stamp duty.
6. Stamping on of documents.
7. Registration of documents for transfers, charges, discharges, succession, leases, cautions and withdrawal of cautions.
8. Issuance of searches.
9. Resolution of boundary disputes.
10. Hearing of cautions.
11. Approval of sub-divisions.

### **2.1.2 Survey Department**

The Survey department has a District Surveyor (In-Charge), two Surveyors, Clerical Officer and one support staff.

The following are the functions of the Survey Department;

1. Supervising Adjudication and Settlement Schemes on survey matters.
2. Processing of survey works.
3. Assisting Lands Registry by giving technical advice on resolving land disputes.
4. Assessment and giving comment on development control working with Adjudication department.

### **2.1.3 Adjudication and Settlement Scheme Department**

Adjudication and Settlement Scheme Department has Chief Land Adjudication and Settlement Officer, Land Adjudication and Settlement Officer, Senior Assistant Agricultural Officer, Seven (7) Land Adjudication and Settlement Officers, one support staff and one Accountant.

The department of Adjudication and Settlement deals with land adjudication matters guided by cap 284 laws of Kenya and Land Adjudication Act. The adjudication process follows the following procedure;

1. Establishment of the section for adjudication.
2. Issuance of a notice for adjudication.
3. Setting up of local committee to commence the adjudication.
4. Fair demarcation of the land and a register with records and maps is developed.
5. The register is taken to the Chief Lands Registrar, Nairobi and the map is published by Survey of Kenya.
6. Certificate of finality is given by the Director, Survey of Kenya
7. Appeals are handled by the Cabinet Secretary, Ministry of Lands.
8. The Chief Lands Registrar verifies the register and redistribution to various locations is done.
9. People are informed to collect titles.
10. The process can take 2-3 years as per the Service Charter.

The department also undertakes settlement programs as per the Lands Act 2013 using the following procedure;

1. Develop a plan of how the settlement will done.
2. Carry out a survey for demarcation of the land.
3. Come up with a beneficiary list.
4. Draw a committee from locals to verify the beneficiary list.
5. The beneficiary list is sent to Nairobi for issuance of allotment letters.
6. The beneficiaries are requested to pay the stipulated fee.
7. Discharge of charge and transfer prepared in Nairobi is given to transferee to take to the Registrar for issuance of title.

## **2.2 Factors affecting service delivery**

The investigations established both systemic and human factors affecting service delivery in the Ministry of lands in Kilifi.

### **2.2.1 Systemic factors**

#### **2.2.1.1 Issuance and enforcement of summons**

The investigations established that there was delay in the resolution of cases relating to land disputes. The status of ten randomly selected files from Kilifi Lands Registry relating to boundary disputes and verifications were analysed as shown on the table below.

## Status of ten land disputes and verifications cases at the Land Registry in Kilifi

No.	Dispute	Date of Reporting	Total Payment	Action taken	Status	Delay period
1	Boundary dispute Plot No. 3	04/09/2014	Ksh. 8000	Summons issued on 16/06/2015 for hearing on 16/07/2015.	Pending hearing	Over 2 years
2	Boundary dispute Plot No. 2147	22/08/2014	Ksh. 12,000	Hearing date set on 10/09/2014	Pending hearing	2.5 years
3	Acreage variations Plot No. 906	28/04/2014	Ksh 8,000	No action	No action	2.9 years
4	Boundary dispute Plot No. 934	27/07/2015	Ksh 8,000	Summons issued on 10/11/2015 for hearing date on 19/11/2015	Pending hearing	1.8 years
5	Boundary dispute Plot No. 53	29/07/2015	Ksh 8,000	Summons issued on 03/05/2016 for hearing on 17/03/2016	Pending hearing	1.8 years
6	Access road, plot No. 83	12/11/2015	Ksh 15,000	Summons issued on 02/03/2016 for hearing on 22/03/2016	Pending hearing	1.4 years
7	Boundary verification Plot No. 212	03/08/2016	Ksh 9,400	No action	No action	6 months

8	Demarcation of plot No. 458	11/01/2016	Ksh 7,500	1 <sup>st</sup> Summon issued on 6/04/2016 for hearing on 21/04/2016  2 <sup>nd</sup> Summon issued on 20/05/2016 for hearing on 26/05/2016	Pending hearing	Over 1 year
9	Boundary identification Plot No. 281	28/09/2015	Ksh 3,000	Summons issued on 16/05/2016 for hearing on 14/06/2016 Hearing conducted on 08/11/2016	Pending resolution	1.5 years
10	Boundary verification Plot No. 179	07/06/2016	Ksh10, 750	1 <sup>st</sup> Summon issued on 15/08/16 for hearing on 01/09/2016  2 <sup>nd</sup> Summon issued on 17/10/2016 for hearing on 08/11/2016	Pending hearing	8 months

The table shows the delay period in processing boundary disputes and verifications range from 6 months to 2 years and 9 months. This is contrary to the Ministry of Lands' Service Delivery Charter displayed at Kilifi Lands offices, which stipulates boundary disputes and verifications should be resolved within a period of two months.

CAJ noted inordinate delay in all the ten (10) cases analysed. Cases No. 3 and No. 7 lodged on 28/04/2014 and 03/08/2016 respectively have not been processed despite the complainant having paid the statutory fees to the Ministry of Lands. Summons were issued for eight (8) of cases analysed, however hearing took place for only one case (No. 9). According to interviews with land officials,

hearing failed to take place in 7 of the cases analysed because either the Lands Registrar or the Area Chief was not available to attend the hearing.

CAJ noted that only one Registrar, Mr. Bao handles all matters relating to boundary disputes and verifications. As a result, the office of Mr. Bao was observed to be perpetually busy as opposed to that of the other two Registrars. When applications for boundary disputes are lodged at the Lands Registry, applicants are asked to make payment of the statutory fees. The matter is then left with the Registrar, Mr. Bao to issue summons and conduct hearings. All subsequent queries, follow ups and complaints relating to applications for boundary disputes or verification are channelled to Mr. Bao and none of the other two Registrars get involved in the process at any stage. When Mr. Bao is not in the office, clients are told to come back another day when he may be available to attend to them. According to many of the respondents interviewed, this operational arrangement is very frustrating given that most of them travel from long distance and incur travelling expenses.

In an interview with CAJ investigators, Mr. Bao, Lands Registrar, Kilifi, stated that he failed to attend hearings for boundary dispute and verifications due to other official engagements such as court matters. CAJ noted that when hearings fail to take place, the parties summoned for hearing are not informed in advance about the cancellation or postponement. In other words, there is no system in place to follow up on summons for hearing of boundary disputes and verifications. According to the respondents interviewed, there was a ploy by the three Registrars to use Mr. Bao who hails from the region to be the face of the Registry so that they can scheme to solicit for bribes. **(Annexures A1, A2 and A3)**

#### **2.2.1.2 Records management**

CAJ investigators observed that there is poor records management at the Ministry of Lands in Kilifi. There were no proper and secure storage of files in all the offices visited. According to interviews conducted, there is rampant cases of missing files and original documents, particularly at the Lands Registry. For instance, CAJ investigators were unable to conduct an audit trail on the status

of search applications at the lands Registry because records of search applications are not kept at all by the Registry staff. CAJ further noted that there was no file movement register for recording the transfer files at Kilifi lands Registry.

### **2.2.1.3 Capacity**

Kilifi Lands Registry lacks adequate space, electricity, water and is poorly ventilated. According to the staff interviewed at the Lands Registry, electricity and water were disconnected more than one year ago. Additionally, the office does not receive mails because the Post Office Box was closed for the last two years due to outstanding bill. All the Kilifi land offices visited by CAJ investigators lack computers and instead use manual system of operations. However, the Lands Registry has computers donated by USAID but are not in use due to lack of electricity. The other two departments do have computers at all. CAJ noted that the Ministry of Lands, Kilifi, is faced with severe constraint in terms of transport to undertake field operations and relies on the County Government for support. **(Annexures A4)**

## **2.2.2 Human factors**

### **2.2.2.1 Cartels of brokers and abuse of power**

CAJ investigations established that the Ministry of Lands office in Kilifi has been infiltrated by brokers operating as agents who defraud unsuspecting members of the public. These agents are known to public officials and sometimes work in cohort with them. According to complainants interviewed these cartel of brokers operates with public officials in the Ministry of Lands in Kilifi as well as headquarters in Nairobi and purport to process title deeds quicker from the Titling Centre in Nairobi and demand payment of huge sums of money from members of the public. **(Annexure A5)**

A case in point is that of a client namely Mr. Nehemiah Samini Kambi and his wife, Mrs. Euniece Salama Chilamo who were seeking for title deed for parcel of land Plot No. LR 22095 Deed Plan No. 226562 in Roka, Kilifi County. According to a document recovered by CAJ, Mr. Kambi and Mrs. Chilamo paid Mr. Garama

Chai and Mr. Amos Kithi (operating as land agents) Ksh 400,000 between 21<sup>st</sup> February, 2011 and 29<sup>th</sup> June, 2011 for processing of title deed for their parcel of land. All the parties (Mr. Nehemiah Samini Kambi and the two agents, Mr. Garama Chai and Mr. Amos Kithi) signed the document as a proof of payment. Mr. Balo used his position as a trusted public official to link the complainant with the brokers. **(Annexure A6)**

Mr. Kambi and Mrs. Chilamo indicated that a public official namely Mr. Johnston Ballo, Senior Assistant Agricultural Officer, Ministry of Lands, Kilifi introduced them to the agents as reliable persons who would assist them obtain their title deed. In a written statement, Mr. Johnston Ballo admitted that Mr. Garama and Mr. Kithi are known to him as agents of land matters. However, Mr. Balo denied having introduced the two agents to the couple and or being an accomplice of the exchange of money between them. **(Annexure A7)**

A second case is that of Ms. Beatrice K. Kamene who was seeking for boundary verification for her land. According to Ms. Kamene, a public official, Mr. George Gitau Mwaura, Land Adjudication Assistant, Ministry of Lands, Kilifi demanded for payment of Ksh. 7,500 for the service she was seeking for. Ms. Kamene indicated that she paid Mr. Gitau Ksh. 7500 via Mpesa and no receipt was issued. In a written statement, Mr. Gitau admitted having received Ksh 7,500 from Ms. Kamene. However, Mr. Gitau argued that Ms. Kamene requested for a map showing the boundaries of her land which he gave her under private and unofficial capacity and received the mutually agreed payment of Ksh 7,500. In this case, Mr. Gitau used his position as a duty bearer to solicit and receive payment of Ksh. 7500 for issuance of boundary verification map. **(Annexure A8 and A9)**

The third case is that of a client namely Mr. William Chengo Timothy who was seeking for boundary verification on his plot No. 933. Mr. Chengo stated that he visited the department of Survey, Kilifi and spoke to a public official, Mr. Michael Muriuki Kinyua, Surveyor, about boundary verification of his land. According to Mr. Chengo, Mr. Kinyua asked for payment of Ksh 20,000 to render the service



he was seeking for. Mr. Chengo further indicated that he paid Mr. Kinyua Ksh 10,000 in cash because he could not afford to pay him the full amount he had solicited for **(Annexure A10)**.

In an interview with CAJ investigators, Mr. Kinyua admitted having received Ksh. 10,000 cash from Mr. Chengo as statutory fees for survey work but did not issue him with a receipt. Further, Mr. Kinyua said that he paid the money back to Mr. Chengo via Mpesa when Mr. Chengo failed to show up for the survey work. In a written statement, Mr Kinyua denied having received any money from Mr. Chengo, contrary to his earlier assertion. However, Mr. Chengo's allegation was corroborated by the head of the Survey Department, Mr. David Njoroge Kiama who confirmed that he received an informal complaint from Mr. Chengo regarding an unauthorised payment of Ksh 10,000 to Mr. Kinyua and he advised Mr. Kinyua to refund the money immediately. Mr. Chengo later confirmed to Mr. Kiama having received the refund of Ksh. 10,000 from Mr. Kinyua via Mpesa. In so doing Mr. Kinyua used his official position to solicit and receive payment of Ksh. 10,000 without issuing an official receipt. **(Annexure A11 and A12)**

#### **2.2.2.2 Incompetence of Lands officials**

CAJ established that some of the officials of the Ministry of lands in Kilifi are incompetent in executing their duties. For instance, the delay in processing of applications for boundary disputes and verifications revealed by the investigations is a pointer to high level of incompetence by Lands officials to systematically follow the progress of applications and effectively resolve them as stipulated in the Service Charter of the Ministry of Lands.

The three Land Registrars at the Ministry of Lands in Kilifi, have failed to clear the backlog of applications and meet the standard timelines. Instead, they have abrogated their duty and left the matter to one Registrar, Mr. Bao to deal with all boundary disputes and verifications in Kilifi County which includes both Kilifi and Malindi towns. This has resulted in Mr. Bao being overwhelmed with work and overuse of discretion which may lead to corruption tendency.

According to many of the respondents interviewed, this arrangement among the three Registrars was deliberately put in place in order to solicit for bribes through Mr. Bao. CAJ could not establish the allegations of corruptions against the three Registrars, however, their action amounts to incompetence and dereliction of duty.

The investigations noted that Mr. George Gitau, Adjudication and Settlement Assistant does not hold the necessary qualification to deal with land adjudication matters. During an interview with CAJ investigators, Mr. Gitau's highest qualification is O-Level and he has not undertaken any professional training related to land adjudication. According to Land Adjudication Act CAP 284 Section 10 (1) on general powers of adjudication officer, the adjudication officer shall have jurisdiction in all claims made under this Act relating to interests in land in the adjudication area, with power to determine any question that needs to be determined in connection to such claims, and for that purpose he shall be legally competent to administer oaths and to issue summonses, notices or orders requiring the attendance of such persons or the production of such documents as he may consider necessary for the carrying out of the adjudication.

### **2.2.2.3 Unresponsiveness and dereliction of duty**

Most of the respondents interviewed have made frequent visits to the Ministry of Lands, Kilifi, to follow up on their applications for various services. However, they could not receive the services they were seeking for and no appropriate explanation was given in most cases. The respondents were of the view that there was deliberate attempt by lands officials to frustrate and delay the service they were seeking for in order to solicit for bribes. CAJ could not verify the veracity of these allegations of corruption. However, there is lack of consideration and unfair treatment considering the frequent visits respondents have made to follow up on applications and a times travelling for a long distance and incurring expenses. This points to unresponsiveness and dereliction of duty by public officials (**Annexure A13, A14 and A15**).

CAJ wrote to Mr. Felix Nyakundi vide a letter dated 24<sup>th</sup> May, 2017 to accord him an opportunity to respond to the findings and the proposed recommendations of the investigation. In a letter dated 30<sup>th</sup> May, 2017, Mr. Nakundi indicated that the reason for the inordinate delay in resolving boundary disputes and verifications was lack of motor vehicle and that the head office was informed about it. Whilst CAJ's investigation confirmed the lack of adequate resources in the Ministry of Lands, Kilifi, unanswered questions still remain why Mr. Nyakundi abrogated his duty as the Registrar in charge for failing to deal with land dispute cases and instead left it entirely to his colleague Mr. Bao. Therefore, Mr. Nyakundi's response was not substantive enough to exonerate him from culpability **(Annexures A16 and A17)**.

CAJ wrote to Mr. Joseph Bao vide a letter dated 24<sup>th</sup> May, 2017 to accord him an opportunity to respond to the findings and the proposed recommendations of the investigation. In a letter dated 30<sup>th</sup> May, 2017, Mr. Bao indicated that the reason for the delay in resolving boundary disputes and verifications was attending emergency court cases and lack of motor vehicle. Whilst CAJ's investigation confirmed the lack of adequate resources in the Ministry of Lands, Kilifi, unanswered questions still remain, firstly, why did Mr. Bao accept to be the face of the Registry by dealing with all dispute and verifications cases while the department has two other Registrars? Secondly, did Mr. Bao inform the Ministry's head office that he was the sole Registrar attending to land dispute cases and that this was causing huge backlog? Therefore, Mr. Bao's response not substantive enough to exonerate him from culpability **(Annexures A18 and A19)**.

CAJ wrote to Ms. Daisy Mwaruka vide a letter dated 24<sup>th</sup> May, 2017 to accord her an opportunity to respond to the findings and the proposed recommendations of the investigation. In a letter dated 30<sup>th</sup> May, 2017, Ms. Mwaruka indicated that the reason for the delay in resolving boundary disputes and verifications was lack of motor vehicle and Administration Police Officer's. Whilst CAJ's investigation confirmed the lack of adequate resources in the Ministry of Lands, Kilifi, unanswered questions still remain why Ms. Mwaruka abrogated her duty as Registrar in dealing with land dispute cases and left it

entirely to her colleague Mr. Bao?. Ms. Mwaruka ought to have been more proactive and seek for support from the County Government for transport and local Administration for security in order to attend hearings for dispute cases rather than abrogate her duty as Registrar. Therefore, Ms. Mwaruka's response was not substantive enough to exonerate her from culpability (**Annexures A20 and A21**).

CAJ wrote to Mr. Micheal Muriuki Kinyua vide a letter dated 24<sup>th</sup> May, 2017 to accord him an opportunity to respond to the findings and the proposed recommendations of the investigation. In a letter dated 30<sup>th</sup> May, 2017, Mr. Kinyua denied having received unofficial payment from Mr. William Chengo and termed it total fabrication from the latter. However, Mr. Chengo's allegation was corroborated by the head of the Survey Department, Mr. David Njoroge Kiama who confirmed in writing that he received an informal complaint from Mr. Chengo regarding an unauthorised payment of Ksh 10,000 to Mr. Kinyua and he advised Mr. Kinyua to refund the money immediately. Mr. Chengo later confirmed to Mr. Kiama having received the refund of Ksh. 10,000 from Mr. Kinyua via Mpesa. Therefore, Mr. Kinyua's response was not substantive enough to exonerate him from culpability (**Annexures A22 and A23**).

CAJ wrote to Mr. Johnston J. Ballo vide a letter dated 24<sup>th</sup> May, 2017 to accord him an opportunity to respond to the findings and the proposed recommendations of the investigation. In a letter dated 30<sup>th</sup> May, 2017, Mr. Ballo denied aiding, abetting and conspiring with persons masquerading as agents of land matters who defraud unsuspecting members of the public. However, in a previous written statement, Mr. Ballo admitted that Mr. Garama and Mr. Kithi are known to him as agents of land matters. It was these same agents, Mr. Garama Chai and Mr. Amos Kithi who defrauded Mr. Kambi and Mrs. Chilamo Ksh 400,000 between 21<sup>st</sup> February, 2011 and 29<sup>th</sup> June, 2011 for processing of title deed for their parcel of land. In a written statement, Mr. Kambi and Mrs. Chilamo stated that Mr. Ballo introduced the two agents to them as credible persons who will assist them obtain title deed. Therefore, Mr. Ballo's response was

not substantive enough to exonerate him from culpability (**Annexures A24 and A25**).

CAJ wrote to Mr. George Gitau Mwaura vide a letter dated 24<sup>th</sup> May, 2017 to accord him an opportunity to respond to the findings and the proposed recommendations of the investigation. In a letter dated 31<sup>st</sup> May, 2017, Mr. Gitau stated that he received payment of Ksh. 7500 from Ms. Beatrice Kamene for travelling, map drawing and printing under private and unofficial capacity. However, Mr. Gitau did not explain why he failed to declare and avoid conflict of interest between personal interest and public or official duties. Further, Ms. Beatrice Kamene confirmed in a written statement that she sought the services of Mr. Gitau as a public officer in the Ministry of Lands and he demanded payment of KSh 7,500 to render the service she was seeking. Therefore, Mr. Gitau's response was not substantive enough to exonerate him from culpability. (**Annexures A26 and A27**).

### **3.0 Conclusions**

- i. CAJ investigations established that there was poor service delivery in the Ministry of Land offices in Kilifi occasioned by both human and systemic factors.
- ii. CAJ investigations established dereliction of duty by staff in the Ministry of Land offices in Kilifi in relation to issuance and enforcement of summons for hearing of land dispute and boundary verifications.
- iii. CAJ investigations established that there was failure by lands officials to adhere to the timelines of the Service Charter of the Ministry of Land and Physical Planning.
- iv. CAJ investigations established that there was delay in the processing of boundary disputes and verifications in the Ministry of Land offices in Kilifi. The operational working structure adopted by the three Registrars at Kilifi had contributed immensely to delay given that only one Registrar was left to deal with boundary disputes and verifications while the other two have completely abrogated this duty. This arrangement may have been mutually agreed by the three Registrars despite the severe backlog of

unresolved boundary disputes and verifications. The Commission therefore, finds Mr. Felix Nyakundi, Land Registrar, Mr. Joseph Bao, Senior Assistant Land Registration Officer I and Ms Daisy Mwaruka, Land Registrar culpable of dereliction of duty for acting in contravention of Section 8 (b) and (d) of the CAJ Act.

- v. Mr. Johnston Ballo, Senior Assistant Agricultural Officer, Ministry of Lands, Kilifi contravened Article 75 (1) of the Constitution of Kenya, 2010, Section 46 of Anti-Corruption and Economic Crimes Act 2003, Section 101 and 393 of the Penal Code, Section 8 (b) and (d) of the CAJ Act and Sections 8, and 9(1) of the Public Officers Ethics Act, 2003 by aiding, abetting and conspiring with persons masquerading as agents of land matters who defraud unsuspecting members of the public who approached him in a public office for advice on title deed acquisition. CAJ finds Mr. Ballo culpable of abuse of power.
- vi. Mr. George Gitau Mwaura, Land Adjudication and Settlement Assistant contravened Article 75 (1) of the Constitution, Section 6 (1) of the Bribery Act 2016, Section 46 of Anti-Corruption and Economic Crimes Act 2003, Section 8 (b) and (d) of the CAJ Act and Sections 8, and 9(1) Public Officers Ethics Act, 2003 by failing to declare and avoid conflict of interest between personal interest and public or official duties. Mr. Gitau indicated in a written statement that he received money from Ms. Kamene for having served her under a private capacity. However, Ms. Kamene confirmed in a written statement that she sought the services of Mr. Gitau as a public officer in the Ministry of Lands, Kilifi and he demanded payment of KSh 7,500 to render the service she was seeking. CAJ finds Mr. Gitau culpable of corruption and abuse of power.
- vii. CAJ finds Mr. Michael Kinyua, Surveyor, Ministry of Lands, Kilifi culpable of bribery and abuse of power for having solicited and received unofficial payment of Ksh. 10,000 from Mr. William Chengo who sought services from his office. By so doing, Mr. Kinyua contravened Article 75 (1) of the Constitution, Section 6(1) of the Bribery Act, 2016, Section 46 of the Anti-corruption and Economic Crimes Act, 2003, Section 101 of the Penal Code, Section 8 (b) and (d) of the CAJ Act and Sections 8 and 9(1) of the

Public Officer Ethics Act, by compromising public or official interest in favour of a personal interest and thereby demeaning the public office he holds.

- viii. The Ministry of Lands, Kilifi has been infiltrated by cartels operating as agents who defraud unsuspecting members of the public huge sums of money. These agents are known to public officials in the Ministry of Lands, Kilifi and in some instances work in cohort with the agents.

#### **4.0 Recommendations**

- i. The Principal Secretary, Ministry of Lands and Physical Planning should issue a warning letter, transfer to other offices and take any other administrative action against Mr. Felix Nyakundi, Land Registrar, Mr. Joseph Bao, Senior Assistant Land Registration Officer 1 and Ms. Daisy Mwaruka for acting in contravention to the aforesaid provisions of the law.
- ii. The Director, Directorate of Criminal Investigations should investigate Mr. Garama Chai and Mr. Amos Kithi for defrauding Mrs. Eunice Salama Chilamo and Mr. Nehemiah Samini Kambi a total of Ksh. 400,000 between 21<sup>st</sup> February, 2011 and 29<sup>th</sup> June, 2011 by falsely posing as land agents capable of processing title deeds.
- iii. The Principal Secretary, Ministry of Lands and Physical Planning should institute disciplinary procedure against Mr. Johnston Ballo, Senior Assistant Agricultural Officer, Ministry of Lands, Kilifi, that may result in removal from office for abuse of power. Mr. Ballo acted in contravention of the aforesaid provisions of the law. EACC should undertake further investigations on the official conduct of Mr. Ballo with a view to taking appropriate action.
- iv. The Principal Secretary, Ministry of Lands and Physical Planning should institute disciplinary procedure against Mr. George Gitau Mwaura, Land Adjudication and Settlement Assistant Kilifi that may result in removal from office for corruption and abuse of power by acting in contravention of aforesaid provisions of the law. EACC should undertake further investigations on the official conduct of Mr. Gitau with a view to taking appropriate action.

- v. The Principal Secretary, Ministry of Lands and Physical Planning should institute disciplinary procedure against Mr. Michael Muriuki Kinyua, Surveyor, Ministry of Lands, Kilifi that may result in removal from office for corruption and abuse of power by acting in contravention of aforesaid provisions of the law. EACC should undertake further investigations on the official conduct of Mr. Kinyua with a view to taking appropriate action.
- vi. The Principal Secretary, Ministry of Lands and Physical Planning should take immediate measures to improve the poor working conditions at Kilifi Lands Registry. The office lacks adequate space, poorly ventilated and not connected to electricity and water.
- vii. The Principal Secretary, Ministry of Lands and Physical Planning should stamp out the rampant practice of rogue persons purporting to be land agents working in cohort with public official to fleece money from unsuspecting members of the public. The PS should issue a stern directive to public officers that representation by any agent on land matters is unacceptable and that the officers should deal directly with land owners and not through agents.
- viii. The Cabinet Secretary, Ministry of Lands should address the systemic and human factors affecting service delivery highlighted in this report. The systemic issues are delay in the issuance and enforcement of summons for land dispute and verifications; capacity building in terms of human and equipment such as computers, adequate office space, electricity, and water; and records management. The human factors are cartels of brokers and abuse of power; incompetence; unresponsiveness and dereliction of duty.