

MC/17/22/FM

12th May, 2022.

The Commissioner Land Registration,
Ministry of Lands, Housing and Urban Development
Plot 1 Parliamentary Avenue,
P.O. Box 7061,
KAMPALA.

Dear Sir,

**RE: RESPONSE TO NOTICE TO EFFECT CHANGES IN THE
REGISTER FOR LAND COMPRISED IN KYADONDO BLOCK
273 PLOTS FRV WAK 6104/25, PLOTS 23974, 23976, 23975,
23977 AND KYADONDO BLOCK 273 PLOTS 87, 99, 110 AND
OTHERS SITUATE AT KIGO**

We still act for **Kiham Enterprises (U) Ltd**, the registered proprietor of the above referenced freehold land titles.

Following our appearance at the public hearing of the above matter on the 6th day of May 2022, we were formally served with the complaint which included an undated survey report. We were then directed to file our response by the 13th May 2022, which we hereby do.

It is our considered view that the complaint raises three principle issues which we must address. The first one is a preliminary issue touching the competence of the complaint based on a survey report made by a surveyor who is conflicted as a public officer and a private employee of the complainant at the same time.

The three issues which we propose to guide this response are as follows;

- i. Whether the complaint as filed, which is based on a survey report made by a conflicted public officer is competent?
- ii. Whether the freehold titles comprised in Kyadondo Block 273 Plots FRV WAK 6104/25, Plots 23974, 23976, 23975, 23977 at Kigo registered in the names of Kiham Enterprises (U) Ltd overlap mailo land titles comprised in Kyadondo Block 273 Plot 87 and Plots 87,

99, 110, 165, 167, 169, 173, 175, 184, 191 and 193 in the names of the Complainant?

- iii. *Whether the above-mentioned freehold titles are liable to be cancelled?*

We submit that consideration of issue (ii) and (iii) should abide the determination of the competence of the complaint. This is because if Bashir Kizito Juma is found to be in conflict of interest, then he together with his documents should be disqualified from the proceedings

1.0 **OUR SURVEY REPORT**

- 1.1 Since our client is interested in a final resolution of the dispute involving its land, it takes the view that the survey report attached to the complaint is not adequate to support a proper dispute resolution process as it is both incompetent and inaccurate.
- 1.2 To that end, our client appointed a private surveyor, Mr. William Matovu to conduct another survey of the land in issue. He will produce a survey audit report on the 18th day of May 2022.

2.0 **THE PRELIMINARY ISSUE**

- 2.1 At the last public hearing of this matter, Mr. Bashir Kizito Juma (hereinafter referred to as **BKJ**) introduced himself as part of the complainant's team.
- 2.2 He stated that he is the Senior Staff Surveyor Wakiso Land Office. At the same time, he currently heads the survey department of Buganda Land Board (hereinafter referred to as "**BLB**") and he is also a holder of powers of attorney from the complainant.
- 2.3 The position of Senior Staff Surveyor Wakiso district is an office in the Uganda Public Service. On the other hand, the position of head survey department of **BLB** and his powers of attorney fall under a private office.
- 2.4 Our contention is that there is actual conflict of interest in the duties of **BKJ** acting both as a public officer and a private officer of the complainant. This type of conduct by **BKJ** is against the Code of Conduct and Ethics of Public Service issued under the **Public Standing Orders 2010**.

2.5 Section **4.6** (i) of the said Code provides that,

"In the execution of official government business, a public officer shall not put himself or herself in a position where his or her personal interest conflicts with his/her duties and responsibilities as a public officer-----."

2.6 Conflict of interest is a punishable crime in Uganda. It arises where a public officer holds a position with or gives services to a person or a private body which is in conflict with his official duties. **(See S.9 Anti Corruption Act No. 6/2009)**

2.7 The irony of this case is that the freehold titles in issue were granted by Wakiso District Land Board, the employer of **BKJ**. This means that he is both a witness for Wakiso District Land Board as well as the main witness and architect of the Complaint.

2.8 In other words **BKJ** is in a position to influence the matter before the tribunal for and against either party to the dispute. This is clearly in conflict with his official duties as a public officer and it is illegal conduct which renders the complaint illegal as well.

2.9 This tribunal can therefore not entertain this conflicted public officer to pursue a conflicted complaint which derogates all best practice in public law. In our considered view, entertaining this complaint as presently filed is to perpetuate an illegality and a constitutionally prohibited act.

2.10 We therefore pray that the tribunal be pleased to reject this complaint on the above ground.

2.11 Notwithstanding our aforesaid submission and without prejudice, we find it necessary to address the substantive issues raised in the complaint to clear the record.

3.0 **RESPONSE TO ISSUE NO. 2**

3.1 A proper understanding and resolution of this issue requires to trace the land history of Kyadondo Block 273 on which the complainant and our client's land are situate. Any investigation of an overlap of freehold on mailo land presently alleged, must take the necessary historical context into account.

Historical land tenure of Kyadondo Block 273

- 3.2 According to the cartridge map of the entire Block 273 (attached hereto as annexure "**KH₁**") land under this Block is under two land tenures. The first tenure is mailo land under Final Certificate No. 18454 (hereinafter referred to as F.C. 18454).
- 3.3 The total size of mailo land in F.C No. 18454 is 16.62 square miles/4,303.92 Hectares/10,634.99 Acres. Out of this, the late Kabaka Daudi Chwa owned 16.35 square miles/4236.34 Hectares/10,468 Acres.
- 3.4 The other 0.27 square miles/69.93 Hectares/172.8 Acres is owned by different private persons/entities as shown in the tabular summary of ownership distribution of the entire Block 273 which is attached hereto as annexure "**KH₂**".
- 3.5 The second tenure of land under Block 273 is public land which is described as "**total lake area**" on the cartridge map. The total area of this public land is 164.33 acres.
- 3.6 Under the old F.C system, land was identified by a parcel identification number (**herein abbreviated as P.I.N**). You will notice that the PIN on the cartridge map for the private mailo of the late Kabaka Daudi Chwa II is **26** whereas the PIN for the public land appears as **20**. These PIN numbers should not be confused with plot numbers as we understand them today.
- 3.7 It is clear from the above that the public land under P.I.N 20 has never been part of any private mailo land tenure. For that matter, our client's freehold titles which as we shall show were created out of public land do not arise from or overlap any mailo land.

Origin of the confusion and mix up of mailo and public land

- 3.8 Following the passing of the **Land Reform Decree No. 3 of 1975**, all land in Uganda reverted back to Government. This included land previously held as private mailo by the late Kabaka Daudi Chwa II which was taken over by the Uganda Land Commission.

- 3.9 The **Land Act Cap. 227** repealed the Land Reform Decree *ibid*. After the enactment of the **Traditional Rules (Restitution of Assets and Properties) Act 1993**, private mailo land which belonged to the late Kabaka Daudi Chwa II was supposed to be returned to his estate.
- 3.10 The talk about freehold titles overlapping mailo land must have begun after B.L.B applied on behalf of the Kabaka of Buganda to amend the Block boundary of Block 273. This was during the creation of a lease in favor of Serena Kigo Hotel vide Plot 23042. That explains why Serena Kigo Hotel holds land under 2 tenure systems i.e 37.30 acres on mailo land and 95.34 acres on former public land currently owned by our client.
- 3.11 The result of the above amendment was an irregular extension of the Kabaka's mailo land into public land (part of the total lake area) by 95.34 acres. **(A copy of the current cadastral map showing the overlap is also attached as annexure "KH₃")**
- 3.12 It is this extension of Kabaka's mailo land that ate into public land which as we shall show, was granted to our client as freehold.

Application for freehold titles by Kiham Enterprises (U) Ltd

- 3.13 The area where our client's freehold titles are situate is part and parcel of the **total lake area** and constitutes former public land vested in the Government pursuant to **Article 244 (1) (a)** of the **Constitution**. The Wakiso district Land Board has power to hold and allocate that land under the said land provision which was re-enacted in **S. 59(1) of the Land Act cap 277**.
- 3.14 This land is clearly delineated on the cadastral cartridge map attached as **annexure KH₁**.
- 3.15 Our client applied for and obtained freehold land titled as FRV.WAK 6104 Folio 25, Block 273 Plot 23720 measuring approximately 241.56 acres. The said title was issued over former public land by both Wakiso District Land Board under minute number WDLD/2019 and Wakiso Land M-Zone Office.
- 3.16 However the land size stipulated on our clients' freehold titles (241.56 Acres) does not tally with the actual ground size. This

anomaly was created by the irregular extension of the mailo land Block boundaries of land comprised in Kyadondo Block 273 Plots 87, 99, 110, 165, 167, 169, 173, 175, 184, 191 and 193 to cover over 95.34 acres of the total lake area.

- 3.17 It should be noted that the Serena Kigo lease was created earlier than our clients' freehold titles. So by the time our client applied for and obtained its titles, the land size on the ground had been distorted as already stated above.
- 3.18 We therefore maintain that our clients freehold land titles do not overlap the Kabakas mailo land. The survey report issued by BKJ indicating otherwise is erroneous and false.

4.0 Resolution of issue No. 3

- 4.1 Based on our submission herein, we contend that our clients freehold land titles are not liable to be cancelled because they were lawfully issued to it by Wakiso District Land Board and they do not overlap any mailo land.
- 4.2 On the Contrary, we pray that the complaint be dismissed for the reasons already stated above. In the event the complaint is not dismissed, we pray in the alternative that this tribunal institutes a joint survey to be conducted by the Commissioner Surveys and Mapping to juxtapose, harmonize and clarify the position of our clients' land on the ground in relation of that of the complainant.

Yours faithfully,



For.: MUWEMA & CO ADVOCATES

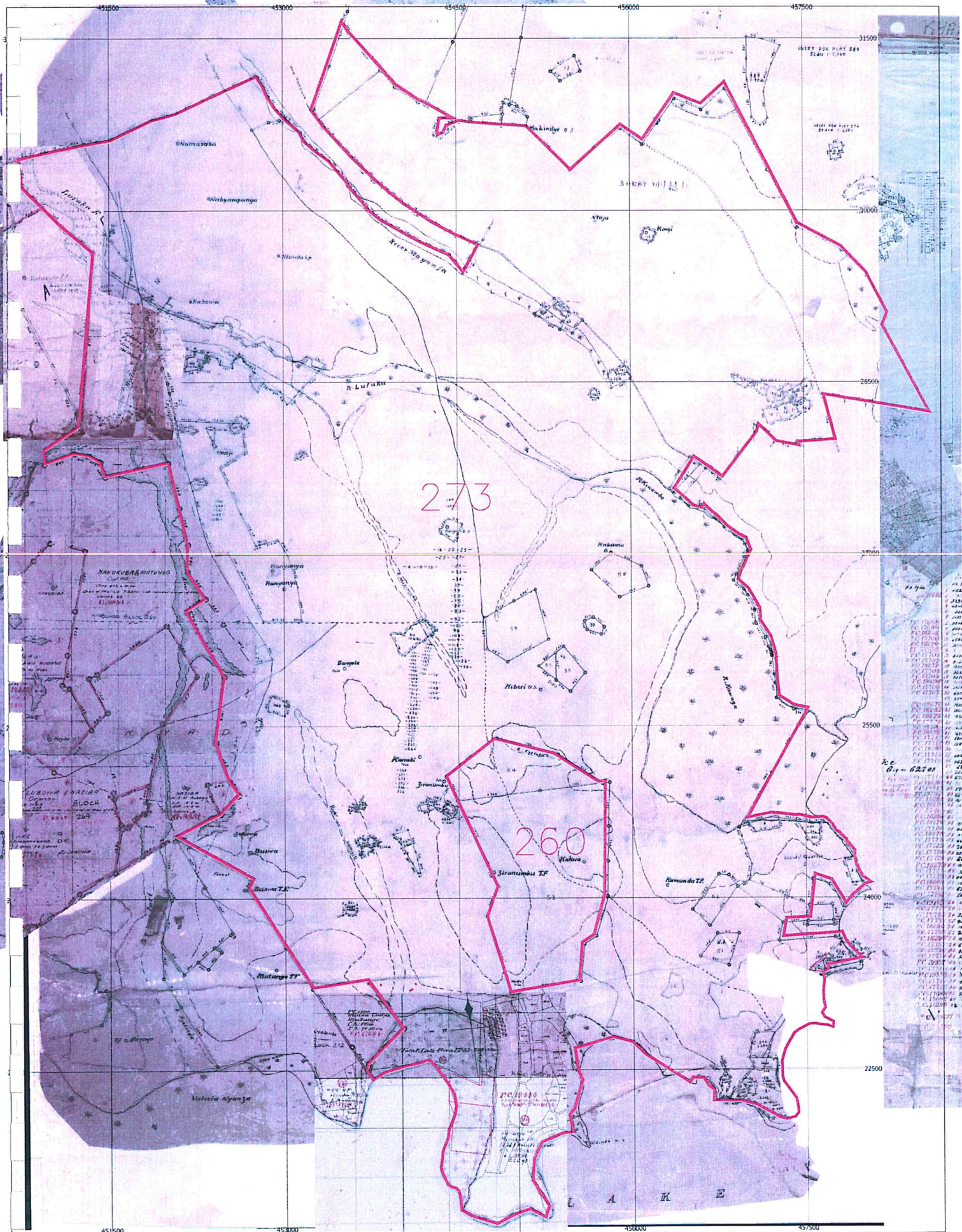
c.c.: K & K Advocates.

c.c.: S & L Advocates.

c.c.: Client.

KH1

CADASTRAL BOUNDARY OF KYADONDO BLOCK 273

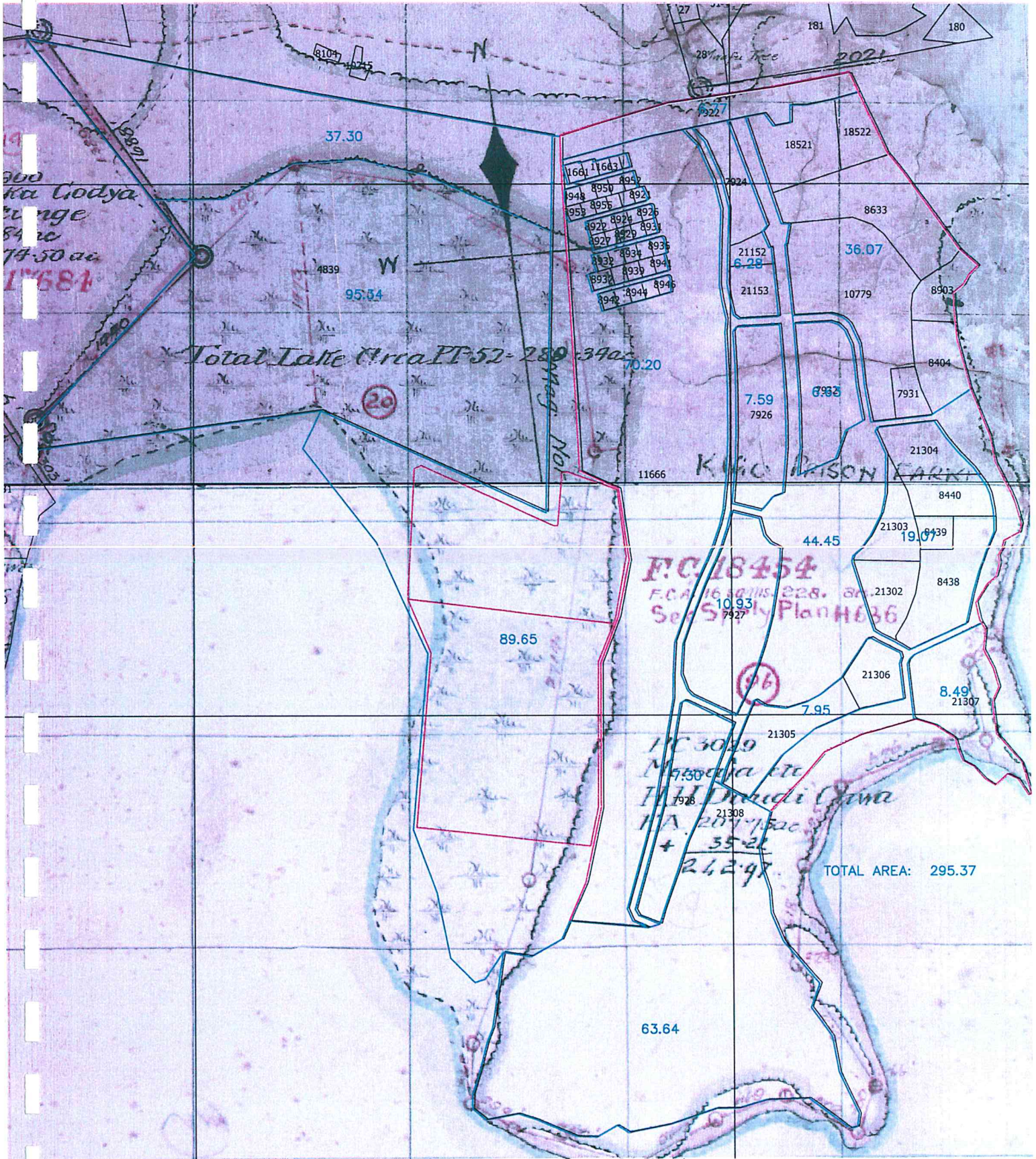


273

260

7

KH.



8

KH₂

SUMMARY OF FINDINGS

KYADONDO BLOCK 273
TOTAL ACREAGE

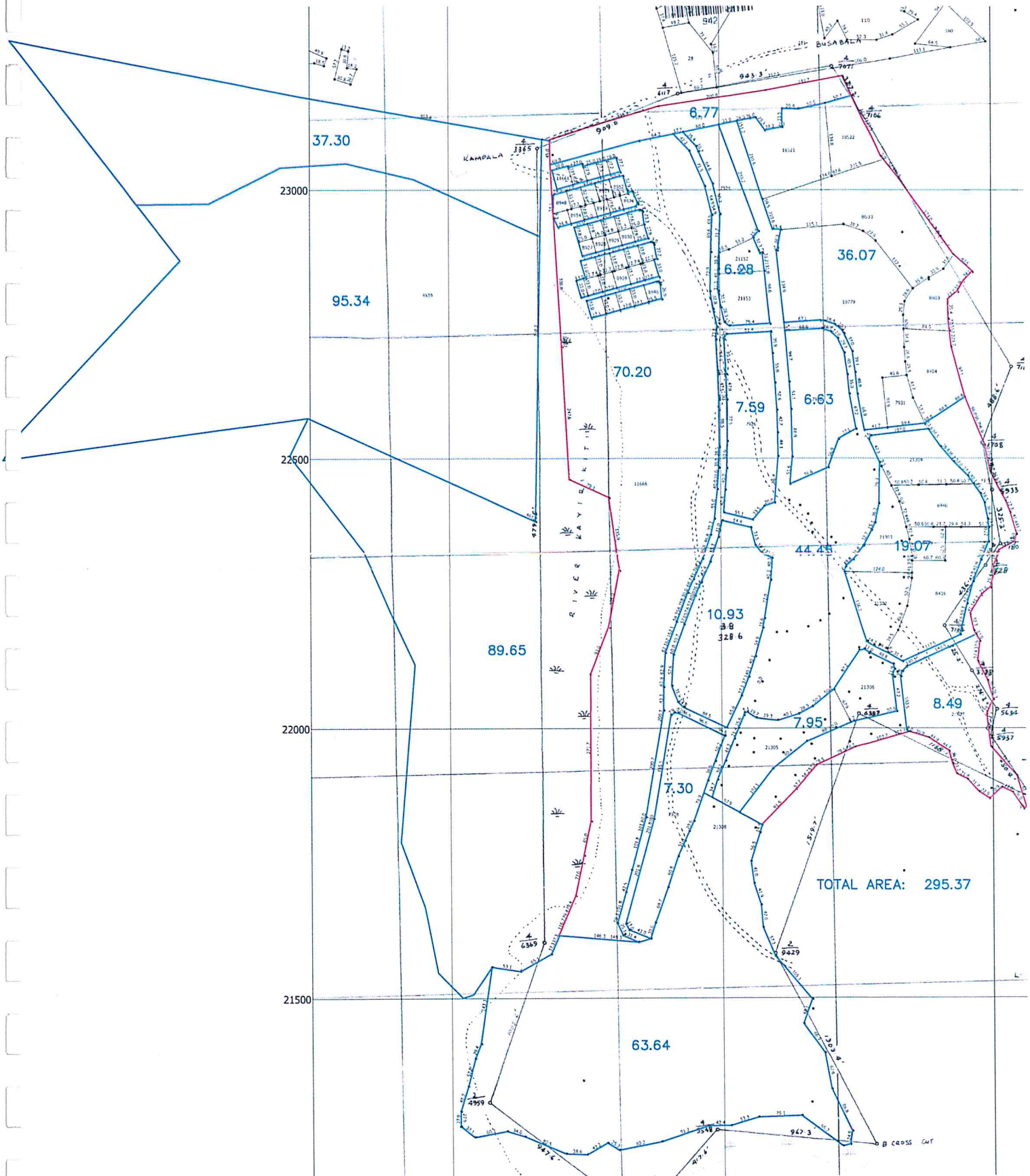
Square meters	Hectares	Acres
43705265.86	4370.527	10799.57

16.874 sqmls

OWNERSHIP DISTRIBUTION OF KYADONDO BLOCK 273

NO	OWNERSHIP	DESCRIPTION(PLOT/FC)	ACREAGE		
			Square meters	Hectares	Acres
1	KABAKA OF BUGANDA (MRV 269/25)	FC18454	42363415.621	4236.341562	10468.00
2	N.A.C(Native Anglican Church)	51(FC36348)	54786.014	5.479	13.54
3	W.F.M(White Fathers Mission)	52(G.21135)	78972.345	7.897	19.51
4	IBULAIMU S.	FC17690	13054.356	1.305	3.23
5	W.F.M	55(G.21135)	57285.369	5.729	14.16
6	N.A.C	57(G.21584)	13966.223	1.397	3.45
7	H.H. Sir D. CHWA	56(27404)	16724.011	1.672	4.13
8	N.A.C	58(SURRENDERED)	104658.117	10.466	25.86
9	N.A.C	G.21585	123607.73	12.361	30.54
10	GOMBOLOLA SITE	No Record	212738.495	21.274	52.57
11	TOTAL LAKE AREA(Public Land)	PT52	665044.506	66.504	164.33
	TOTAL		43704252.787	4370.425	10799.32

KH3



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