



Date: 9 July, 2015

Notice of Registration

Request No.:RQ2015/3

Country: Kenya

Project: The Nairobi River Rehabilitation and Restoration Program: Sewerage Improvement Project - Project No P-KE-EB0-003.

1. On June 11, 2015, the Compliance Review and Mediation Unit (CRMU) received a complaint relating to the above mentioned project.¹ The complaint was forwarded to CRMU through an inter-office memo by the Integrity and Anti-Corruption Department. The Request relating to the aforementioned project originated from Ms. Eva Wambui, representing her family, and was sent on 10 March 2015 to Mr. Joshua Ichang'I at the Athi Water Services Boards (AWSB) project implementation unit in Kenya. CRMU contacted Ms. Wambui who introduced Mr. Oscar Njuguna as the representative of their family.
2. On June 30, 2015, Mr. Njugua requested CRMU to register the complaint. He had provided, through several earlier emails sent to CRMU, further information about the nature of the family complaint. In December 2013 he claimed, the company in charge of building the sewerage line in Dagoretti area, Nanchang Sewerage Company came to their home and passed the sewage line through their compound. The contractor allegedly destroyed a lot of properties and damaged the Nairobi Water main lines. The complainant requested the project manager that AWSB fulfill its promise to pay compensation after completion of the work.
3. Despite their follow-up, including a formal reminder sent on 20 March 2015, the family claimed that the contractors and AWSB have been uncooperative on both issues of repairing the damage caused to their property or compensating them for the loss they have incurred. The project being almost completed, the principal requestor is worried about the contractor leaving the site without the work being completed.
4. CRMU received confirmation also from Mr. Njuguna that their two elderly neighbors, Mr. Julius Ephantus Mwangi and Mr. Thomas Kamau Macharia are joining him in his complaint. Both families are facing similar challenges with the contractor and AWSB. The mother of Mr. Thomas Kamau allegedly died during the demolition done at their premises. She was sickly, and they claim that the shock of seeing her hard earned property being destroyed may have contributed to her demise.

¹ However, the request was dated 24 February, 2014

5. There was no consideration that there was a sick and elderly person in the compound before they proceeded to carry out work on her land. She never gave her consent. These individuals said that AWSB has given them no consideration and they have submitted many documents for which they have had no reply. Their property was destroyed and animals also died in the process. None of these families have received any compensation of any kind even after pursuing AWSB for the last 2 years.

6. On the basis of my preliminary review of the project and the complaint, the Request fulfills the requirements for registration under the IRM Rules and Procedures and in deference to the demand of the complainants, I have therefore decided to register it.

7. Pursuant to paragraphs 21, 23 and 26 of the IRM Rules, the Request was registered in the IRM Register of Requests, on 9 July, 2015, under No. RQ2015/3. On the same day, the Notice of Registration of the Request was duly sent to the Requestors, the Boards of Directors, and the President of the Bank. The Register of Requests is accessible on the Bank website: www.afdb.org/irm.

Summary of the project

8. The Boards of Directors of the African Development Bank Group (AfDB) approved through tis ADF window a loan of UA 35.00 million to the Government of Kenya.

9. The project focuses on the sewerage infrastructure in Nairobi so that the wastewater being generated in the city is collected and directed to treatment facilities without being an environmental hazard. The project includes rehabilitation and expansion of treatment plants, old trunk lines and laying new ones in some areas with secondary and tertiary reticulation. Community sanitation has been included in the informal settlements and low income areas where trunk lines will be installed. The project has three main components, i.e. a) Waste Water Infrastructure – covering rehabilitation and expansion of the Sewerage System, b) Sanitation, Hygiene and Social Environmental Support, and c) Institutional Development Support (project appraisal report p.3).

10. The initial project duration was from October 2010-December 2014.

11. Section 3.2., page 9 of Appraisal Report summarizes the project environmental and social impacts. The project is classified as environment category 1 according to the Bank's Environmental and Social Assessment Procedures (ESAP). The nature and scope of the project is likely to cause potential environmental risks during the construction and operational phases of the trunk sewers and wastewater treatment facilities. Laying of trunk sewers and reticulation systems in some areas of the riparian zone of the Nairobi River currently occupied by informal settlements will entail compensation to be paid by the government in order to pave way for construction. 1774 household will be relocated which also triggers environment Category 1 according to the ESAP. Key issues, which have been addressed, requiring environmental and social management during construction and operation of the project include implementation of: (i) Environmental and Social Management Plan, and (ii) Resettlement Action Plan and compensation of project affected people, costs of which have been incorporated into the proposed project financing. An Environmental and Social Impact Assessment (ESIA) was carried out and validated by the Kenya National Environmental Management Agency (NEMA) and the Environmental License is being processed. The summary of the ESIA was published on June 2nd, 2010 in the Bank's website.

12. The negative impacts inherent to development of wastewater systems will likely occur during construction of the project and include: dust, noise, soil erosion, storage of hazardous materials, management of construction waste, and storage of chemicals. Negative impacts likely to occur during the operation stage of the project are related to sludge management and disposal. The ESMP describes mitigation measures which will offset the potential negative impacts and which include protecting areas susceptible to erosion using temporary and permanent drainage structures, tree planting program and sensitization programs on environmental protection. AWSB will ensure that environmental and social clauses are included in the bidding documents for the project.

13. The project is expected to generate positive social impacts that will significantly improve the current environmental situation in the Nairobi city through collection and treatment of wastewater which is currently discharged directly into the Nairobi River. The project will result in improved surface water quality in the Nairobi Rivers and its tributaries. By enhancing the efficiency in wastewater collection and treatment, the living conditions of people in the vicinity of the Kariobangi and Dandora Wastewater Treatment Plants, and the downstream communities will be improved through the reduction in exposure to, and reliance on, highly polluted river water. Overall, the proposed project is expected to have significant positive environmental impact due to improved coverage and efficiency of sewerage services in the city of Nairobi.

14. In accordance with paragraphs 24 and 36 of the IRM Rules, the Bank's Management must provide CRMU with written evidence that the Bank has, or intends to comply with the Bank's relevant policies and procedures for this project within twenty one (21) working days, which shall be by no later than **7 August, 2015**. Within five working days thereafter and on the basis of the explanation above and the provision of Paragraphs 22 and 23 of the IRM Rules and Procedures, I shall comply with the requestor's preference for handling the Request through problem solving and compliance review.

15. For any future correspondence about this complaint, the Requestors, the Bank's Management and any other interested parties shall refer to the request number RQ2014/3 posted on the IRM Register of Requests.

16. The Requestors have been notified that all communications in connection with the Request will be sent to the address stated in the Request until another address is indicated to the CRMU.



Sekou Toure
Director

Compliance Review and Mediation Unit

Sent to:

- (1) The Principal Requestor**
- (2) The President, African Development Bank Group**
- (3) The Boards of Directors, African Development Bank Group**

REQUEST

----- Original message -----

From: Simplified Technology Solutions <oscar@stskenya.com>

Date: 17/06/2015 22:25 (GMT+00:00)

To: "TOURE, SEKOU" <S.TOURE@AFDB.ORG>, 'EVA WAMBUI' <ecjwambui@gmail.com>

Cc: 'oscar@stskenya.com.', "ABUSHARAF, ADILA" <a.abusharaf@AFDB.ORG>

Subject: RE: Your complaint through Mr. Joshua Ichang'i

Dear Mr. Toure,

I thank you for your intervention in this matter. I had already given up and was preparing to seek the intervention of the courts before my sister Ms. Wambui forwarded your E-mail.

In introduction, I am the son to the affected person who is Mr. Lawrence Njuguna and I am the eldest in the family. I was away in Southern Sudan over the period this matter occurred and I returned to find things had gone terribly wrong. My Father had tried his best to handle the issue but was overwhelmed by the aggressive manner in which AWSB handled the issue. As the situation became desperate, my sister, Ms. Wambui stepped in to help and initiated the complaint with AWSB. When I returned to the country, I took over and continue to pursue the issue on behalf of the family. So you can proceed to file the complaint in my name on my fathers' behalf.

The situation is a very sad one, considering that this is happening to an old defenseless couple. It is disheartening that Africa has reached a point where its elderly citizens are being mistreated and disrespected. If only you could see what this couple has gone through and continues to go through, you would indeed ask yourself how we got to this.

This problem is unique. It covers two areas:

1. The first is encroachment into private land by AWSB. AWSB and its assigns routed the sewer line through the affected persons' property without undertaking due diligence to confirm that the route they were using fell on public wayleave or private property. It was done forcefully with little regard for procedure and without any respect for the elderly couple who they found there. Mr. Njuguna owns the land which he purchased in 1991. The boundaries of the land are marked with beacons which are underground. There is a perimeter wall around the compound and when the wall was built in 1992, the contractor made sure that the boundary beacons fell outside the wall he was constructing. However, AWSB, despite my Father pleading with them to get a Surveyor to confirm this, pushed the old man to accepting that the sewer line would pass through his property. We are still pursuing AWSB to come and determine the boundaries of the land to this day. We still cannot understand to this day why the Sewer Line had to go into Mr. Njuguna's property when there is more than sufficient wayleave outside his compound to lay the pipes. We find it strange that AWSB may end up being forced to

pay for the wayleave it has forcibly acquired while it could have easily avoided this by using the existing public wayleave which is more than sufficient to lay the sewer pipes. This is where we are now, a sewer line on private land, an incomplete manhole on it with raw sewage running through. This is now going to 2 years and counting.

2. Problem number 2 is the issue of compensation for the structures, trees, crops that were destroyed when the contractor laid the pipes. AWSB has shown almost no interest in handling this issue. The contractor came in without notice, demolished the perimeter wall on each side of the compound to allow the trenching and piping to be done. There were chicken sheds, goat and sheep sheds along the wall which were all demolished, there were two fully matured fruit trees that were cut down, my mothers' vegetable garden was also dug up. My parents struggled to move the chicken to the car garage to try to save them but most of them died as a eventually. The goats stayed outside but on one rainy night, one died. The piping then proceeded with a verbal promise that all the infrastructure would be re-instated and landscaping done. The work took almost one month. During that time, my parents were exposed to a security risk because their perimeter wall was down and anyone could walk in and take anything. They did. My parents lost most of the materials that had been left in a heap close the trench. When the piping work was completed and the manhole partially done, they left. The landscaping was not done, the structures were not re-instated. They returned after two or so months and their objective was to complete the manhole they had left incomplete. I had a telephone conversation with my father and told him not to allow the manhole to be completed until they had ironed out the issue of the structures and the landscaping. There were heaps of soil still left everywhere. This angered the contractor who told my Father that he would sooner see his grave than see the re-instatement of his structures nor the landscaping done. I told my father to hold his ground and not to allow them to complete the manhole until I returned. On my return, I have been pursuing AWSB on the issue without much success. I have now engaged a lawyer to help us put a value to the losses. The lawyer is to advise us on what should be compensated, calculate loss of income, the structures, the landscaping which we did ourselves and the mental stress old couple have been through. Once we have a figure, we will present it to AWSB. If we get no response, we will proceed to take the issue to court.

We have had several email communications with AWSB but they don't seem to be in any hurry to solve this problem. The worst part of this is that there are now illegal connections to an incomplete sewer system. The stench in my Fathers compound is unbearable because of the incomplete manhole. I am even unable to have a glass of water whenever I pay him a visit. Despite copying all the emails written so far to the environmental authorities, they also have not responded. We had opted to remain with the stench until AWSB addressed the problem. However, my mother is now getting sick because of the strong stench, I have to do something quickly. Since we have had no success with AWSB, I had planned to get a court order this week, seeking to remove the Sewer infrastructure from our compound. I am now looking at your offer to help.

It presents one difficulty of getting one other complainant on board. There is a neighbor about half a kilometer from us who I want to approach and see if he is willing to come on board. I am aware that he too has lodged a complaint of a similar nature with AWSB and I do not know how far his case has been handled. Mr. Joshua Ichangi had indicated in one of his emails that there were several complainants but we do not know who these others are. I will find out if the neighbor I mentioned if he has had any success with AWSB and if not, I will advise him to join us. If I find his problem has been resolved and he cannot come on board, please advise on whether there is anything else you can do to assist us.

This may come as a surprise to you but it has never been our intention to get compensation for the wayleave AWSB acquired forcefully. We want them to move the sewer infrastructure out of our compound and put it on the wayleave outside the wall. There is 2 meters of free space to put it. We wanted them to confirm for themselves that their contractor made a mistake and built the sewer line through private land. We also wanted them to determine how much they intend to compensate so that they use the same money to relocate the sewer line. The reason for this is that if we are compensated for the land, it will be a very complicated thing to execute. We would need to make numerous adjustments on our land to accommodate this. It would be easier and cheaper all way round if they put the pipes on the wayleave like they should have done in the first place.

My mother has a simple request. She asks you to get them to remove the sewer from her land. She says she will not go to court to ask AWSB to compensate her for the destroyed sheds, garden, chicken and goats that died. She says life is not about money but the blessings which God provides. Even if they never pay, she says God provided her once and he can provide again.

I will not add anything else to her words.

Regards,

Oscar Njuguna Tel +254720029971

From: Simplified Technology Solutions [mailto:oscar@stskenya.com]
Sent: Tuesday, June 30, 2015 11:09 PM
To: TOURE, SEKOU
Cc: ABUSHARAF, ADILA; kamroseinvestmentsltd@gmail.com; swwambugu@yahoo.com
Subject: RE: BOUNDARY BEACONS UNEARTHED

Dear Mr. Toure,

Please find attached the photographs. We took several and these can be availed to you whenever you need them.

AWSB did send anyone to verify as expected. They obviously do not need to see evidence of a mistake they have made.

We finally got two other complainants on board. What is interesting about these complainants is that they are all elderly people. The mother of complainant Thomas Kamau died during the demolition done at their premises. She was sickly and the shock of seeing her hard earned property being destroyed may have contributed to her demise. There was no consideration that there was a sick and elderly person in the compound before they proceeded to carry out work on her land. She never gave her consent.

We had lengthy discussions with them today and I was shocked at the mistreatment they have undergone. AWSB has given them no consideration and they have submitted many documents for which they have had no reply. Their property was destroyed and animals also died in the process. None have received any compensation of any kind even after pursuing AWSB for the last 2 years.

They have reached a dead end with AWSB and are more than willing to be registered as complainants. Please register the complaint for all three of us as follows:

1. Mr. Oscar Njuguna Mburu-Mobile Number 254720029971
2. Mr. Julius Ephantus Mwangi – Mobile Number 254722729546
3. Mr. Thomas Kamau Macharia – Mobile Number 254722632502

We are all of the opinion that the entire project needs to be investigated. I am told that this is just the tip of the iceberg.

Please register the complaint immediately so that a process can begin.

Thanks,

Oscar Njuguna