KISUMU COUNTY GOVERNMENT

THE COUNTY ASSEMBLY OF KISUMU 3RD ASSEMBLY	
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KISUMU COUNTY ASSEMBLY

THIRD ASSEMBLY – FOURTH SESSION

THE COMMITTEE ON LANDS, PHYSICAL PLANNING, HOUSING AND URBAN DEVELOPMENTS

REPORT ON THE PROPOSED DEBT-FOR-ASSET SWAP BETWEEN THE COUNTY GOVERNMENT OF KISUMU AND THE NATIONAL HOUSING CORPORATION

HON. RATIB BOITONE
CHAIRPERSON

Clerk's Chambers
Directorate of Legislative Procedural and Committee Services

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1.0 PREAMBLE

Mr. Speaker and Hon. Members

1. PURSUANT to Article 185(3) of the Constitution, 2010, Section 8 and 9 of the County Governments Act, 2012 read together with Standing Orders No 193 of the Kisumu County Assembly Standing Orders, the County Secretary submitted a letter **dated 23rd January, 2025 Ref. CGK/CS/ADM/13/VOL.1/37 to the Clerk of the County Assembly requesting this County Assembly to approve the transfer of Ondiek Estate LR NO. Kisumu Municipality/Block 9/29 & 9/115 to National Housing Corporation** (*see annex i*).

2. Consequently, the request for approval of the Debt Swap of Ondiek Estate was tabled before this Hon. House and committed to the Committee on Lands, Physical Planning, Housing and Urban Development in accordance with Standing Orders No. 193 and was directed to investigate, inquire into and report on:

    i. the constitutionality and legality of the debt swap, and

    ii. the propriety of the proposed Debt Swap Transaction between the County Government of Kisumu ("CGK") and the National Housing Corporation ("NHC").

3. The subject debt swap proposes the transfer of Ondiek Estate, comprising Land Reference Numbers Kisumu Municipality/Block 9/29 and Block 9/115, to the National Housing Corporation in full and final settlement of a historical housing debt allegedly inherited from the defunct Municipal Council of Kisumu. The amount in question is pegged at Kenya Shillings Nine Hundred Eighty Million, Four Hundred Thirty-Two Thousand, Three Hundred Fifty (Kshs. 980,432,350) pursuant to a negotiated settlement arising from a court decree and subsequent Memorandum of Understanding (MoU) dated 15th September, 2020.

4. The subject matter for consideration by the Committee during its deliberations are summarized as follows:

i. to examine the legal and regulatory framework underpinning the proposed transaction,
ii. assess the sufficiency and admissibility of the evidentiary documentation provided,
iii. determine compliance with applicable constitutional and statutory provisions, and
iv. evaluate the potential legal and fiduciary implications for the County Government of Kisumu.

Mandate and Composition of the Committee

5. The Sectoral Committee on Lands, Physical Planning, Housing and Urban Development is established under Kisumu County Assembly Standing Order No. 193 and is required to inquire into and report on;

> *All matters relating to County planning and development, including statistics, land survey and mapping, boundaries and fencing; ensuring that development and location of industries and industrialization policies are well planned and properly executed; and monitor the spread and enhanced use of ICT in the County Government operations to increase transparency and accountability.*

Committee Membership

6. The sectoral committee on Lands, Physical Planning, Housing and Urban Development is composed of the following members and Secretariat;

Committee Members

	Name		Position
1.	**Hon. Ratib Boiton**	**-**	**Chairperson**
2.	**Hon Tom Nyaoke**	**-**	**Vice Chairperson**
3.	Hon. Joachim Oketch	-	Member
4.	Hon Seth Kanga	-	Member
5.	Hon. Nereah Okombo	-	Member

6. Hon George Abaja - Member
7. Hon. Moses Ochele - Member
8. Hon. Zackaria Okoyo - Member
9. Hon. James Were - Member

Committee Secretariat

1. Mr. Harman Moses - Committee Clerk
2. Mr. Rodgers Wagude - Clerk assistant
3. Ms. Vallery Achieng - Hansard
4. Ms. Faith Judith - Sergeant-At-Arms

ACKNOWLEDGEMENT.

Mr. Speaker and Hon. Members,

The Committee expresses its sincere gratitude to all Hon. Members who diligently participated in the proceedings of this inquiry. Their dedication and contributions were instrumental in shaping the contents of this Report.

The Committee also acknowledges the invaluable support of the Office of the Speaker, the Clerk of the Assembly, the Directorate of Legislative Procedural and Committee Services, and the Committee Secretariat for logistical and administrative facilitation.

In accordance with Standing Order No. 182, it is now the solemn duty and privilege of this Committee to now present its Report for the consideration and adoption by this Honourable House.

HON. BOITONE RATIB
CHAIRPERSON; COMMITTEE ON LANDS, PHYSICAL PLANNING, HOUSING AND URBAN DEVELOPMENT

LEGAL BASIS FOR CONSIDERATION OF THE DEBT SWAP OF ONDIEK ESTATE.

Mr. Speaker and Honourable Members,

6. During the Committee's deliberations and investigations into the proposed debt swap between the County Government of Kisumu and the National Housing Corporation, the Committee was guided by applicable sources of law and legal precedent in order to assess the legality, constitutionality, and procedural propriety of the transaction. The laws cited herein provided the normative and procedural framework for evaluating the County's capacity to dispose of public land, undertake debt settlement arrangements, and ensure compliance with statutory obligations related to public finance, asset disposal, and citizen participation.

7. The legal basis for this inquiry is therefore as follows—

The Constitution of Kenya, 2010

8. The Constitution, as the supreme law of the Republic, provides overarching legal and policy principles that govern the conduct of public affairs and the management of public resources.

9. The following provisions are particularly relevant:

   a) **Article 10** on National Values and Principles of Governance mandates all public institutions to uphold the principles of transparency, accountability, participation of the people, and good governance in all decisions involving the use of public resources or assets.

   b) **Article 40** guarantees the right to property and applies not only to private citizens but also to public institutions such as County Governments. The disposal of such property must be

undertaken in accordance with law, and the rights of third parties—including tenants and leaseholders—must be respected and protected.

c) **Article 196(1)(b)** requires County Assemblies and County Governments to facilitate meaningful public participation and involvement in legislative and decision-making processes, including in the disposal of public assets.

d) **Article 201** outlines the principles of public finance. It requires that public finance be managed in a manner that is open, accountable, equitable, and that promotes responsible financial management. Specifically:

   i. Sub-Article (d) provides for **responsible financial management**, including safeguarding public assets and preventing waste or abuse.

   ii. Sub-Article (e) mandates that all expenditure must result in demonstrable **value for money**.

The Land Act, No. 6 of 2012

10. The Land Act gives effect to Article 68 of the Constitution and governs the administration and management of public land.

    a) **Section 107** provides that the disposal of public land by a County Government may only occur upon:

       a) Approval by the **County Assembly**;

       b) **Publication of the intention** to dispose the land in the Kenya Gazette and a newspaper of nationwide circulation;

       c) Demonstration of **public interest**, including proper valuation and fair consideration.

b) **Section 11** recognizes that County Governments are responsible for the management of public land, including land formerly held by defunct local authorities, as trustees on behalf of their residents.

The Land Registration Act, No. 3 of 2012

11. This statute establishes the legal framework for registration and transfer of interests in land.

a) **Section 24(a)** provides that ownership of land shall vest only in the person registered as proprietor in the land register. Therefore, the **absence of registration or title** is fatal to any claim of ownership or capacity to transfer such land.

b) **Section 26(1)** affirms that a certificate of title shall be taken by all courts as **conclusive evidence of proprietorship**, unless it is proven that it was obtained fraudulently or unlawfully.

The Public Finance Management Act, No. 18 of 2012

12. This Act regulates the prudent use and oversight of public resources and public debt.

a) **Section 104** imposes a duty on the County Government to manage its financial resources responsibly, including debts and public assets.

b) **Section 149** mandates the County Executive Committee Member for Finance to ensure that all public financial transactions comply with the law and deliver **value for money**.

c) **Sections 142–145** provide that all debt obligations must be properly recorded, reconciled, and settled within approved fiscal frameworks, and must not impair service delivery or the County's budgetary sustainability.

The Public Procurement and Asset Disposal Act, No. 33 of 2015

13. This law governs the disposal of public assets, including land.

a) Sections 91 and 92 permit the disposal of assets to public entities by direct negotiation, provided the process is transparent, well-documented, and based on a credible and independent valuation.

b) Section 104 permits alternative disposal methods where justified by public interest, provided that accountability and fairness are observed.

The Housing Act, Cap. 117

14. This statute regulates the operations of the National Housing Corporation and related housing schemes.

    a) **Sections 11 and 12** empower NHC to:

        i. Extend loans to local authorities or County Governments for housing development;

        ii. Take over, manage, or recover assets and housing units developed under such loans, especially in the event of default.

These provisions therefore form the basis for NHC's current interest in the Ondiek Estate and related estates, which were previously managed by the defunct Municipal Council of Kisumu.

The County Governments Act, No. 17 of 2012

15. Section 115 mandates County Governments to establish mechanisms to facilitate effective public participation, including documentation of input from stakeholders and communities prior to critical decisions involving public land or resources.

Judicial Precedent

16. The Committee also considered relevant case law that has established clear judicial principles governing public land disposal, financial accountability, and procedural compliance. These include:

    a) *British American Tobacco Kenya Ltd v CS for Health & Others [2019] eKLR*, where the Supreme Court underscored that public participation must be meaningful, measurable, and not merely a formalistic process.

    b) *Okiya Omtatah Okoiti v Communications Authority of Kenya & Others [2020] eKLR*, where the High Court ruled that any disposal of public assets without proper valuation and transparent process constitutes a breach of constitutional duty.

c) *Hunker Trading Co. Ltd v Elf Oil Kenya Ltd [2010] eKLR*, where the Court of Appeal affirmed that the so-called "Oxygen Principle" cannot be invoked to cure fundamental procedural and legal defects, such as lack of title or failure to comply with statutory requirements.

Mr. Speaker and Honourable Members,

17. These legal instruments and judicial decisions provided the foundation upon which the Committee assessed the proposed debt swap and the prayers sought. These laws guided the evaluation of whether the disposal of Ondiek Estate complies with legal norms, respects the public interest, and falls within the lawful powers of the County Government of Kisumu.

BACKGROUND INFORMATION ON THE MATTER OF DEBT SWAP OF ONDIEK ESTATE.

Mr. Speaker and Hon. Members

18. To fully comprehend the legal, financial, and procedural implications of the current proposal, the Committee first established a clear and undisputed factual timeline of the underlying obligation. This chronology traces the debt from its inception over half a century ago, through judicial intervention, to the present-day resolution before this Honorable House.

The Origin of the Obligation: The 1968 Loan Agreement

Mr. Speaker and Hon. Members

19. The financial relationship between the NHC and the defunct Kisumu Municipal Council originates from a loan agreement executed on 4th January 1968 [see Annex viii]. The key particulars of this Debt agreement were as follows:

    a) THAT the principal amount advanced by the NHC to the Municipal Council was 26,370 sterling pounds.

    b) THAT the purpose of the loan was expressly for the construction of 45 residential houses, which were designated as Makasembo Estate Phase III.

    c) THAT the agreement provided for an interest rate of 6.5% per annum on each loan installment, and further THAT it included a clause empowering the NHC to vary the interest rate at its sole discretion—an important contractual element that likely contributed significantly to the long-term escalation of the debt.

Accrual, Dispute, and Judicial Determination

20. Following the promulgation of the Constitution of Kenya in 2010, the assets and liabilities of defunct local authorities, including the Kisumu Municipal Council, were transferred to the

newly established county governments. Consequently, the CGK inherited the outstanding debt owed to the NHC.

21. Over the years, the loan defaulted, and the accrued principal and interest became a subject of significant dispute between the parties. This disagreement ultimately led to litigation. The matter was conclusively settled by the High Court of Kenya at Kisumu in Civil Case No. 26 of 2005. In a ruling delivered on 4th December 2019, the court made a definitive judicial finding on the quantum of the debt. It was declared that as of 31st March 2019, the amount owed by the successor entity (the CGK) to the NHC was Kshs. 1,028,103,460.90 [Annex vii, Annex ix]. This court-decreed sum represents an unassailable legal and financial baseline for all subsequent negotiations and settlement proposals. It is not a matter for debate but a legally established fact.

Post-Litigation Negotiations: The 2020 Memorandum of Understanding

22. In an effort to resolve the court-adjudicated debt, the CGK and the NHC entered into a Memorandum of Understanding (MoU) on 15th September 2020 [Annex ix]. This document represented the first formal, post-litigation attempt to structure a settlement. The key terms of the MoU were:

    i. **Negotiated Settlement Amount:** The parties agreed to a negotiated debt figure of Kshs. 980,432,350.

    ii. **Payment Conditions:** The CGK committed to making an initial payment of between 10% and 20% of the negotiated sum upon the NHC handing over Makasembo Estate. The full settlement of the Kshs. 980,432,350 was to be completed on or before 31st December 2020.

23. The legal status of this MoU is of paramount importance to the current deliberations. The agreement was conditional upon performance by a specific date. The CGK failed to meet the settlement deadline of 31st December 2020. In contract law, such a failure to perform constitutes a material breach, causing the agreement to lapse. Therefore, the terms of the 2020 MoU, including the negotiated debt figure of Kshs. 980,432,350, are no longer legally binding

on either the CGK or the NHC. It is a historical document reflecting a failed settlement attempt, not a current and enforceable agreement.

The Current Proposal: The 2024 Debt Swap Resolution

24. The failure to execute the 2020 MoU allowed the debt to continue accruing interest, leading to the current, more complex proposal. This new arrangement emerged from resolutions passed by the CGK Executive Committee on 30th July 2024, and a Special Full Board of the NHC on 1st October 2024 [Annex xi, Annex xiv]. This proposal fundamentally alters the settlement structure from a cash payment to a debt-for-asset swap.

25. The financial architecture of the current deal is detailed in the NHC Board resolution and differs significantly from the information presented to the Assembly by the County Executive. The following table provides a clear chronology of the debt figures and the components of the proposed swap, drawing directly from the provided documentation.

Metric	Amount (Kshs.)	Source Reference Document
1. Court Decreed Debt (as at 31 March 2019)	1,028,103,460.90	Annex vii
2. Lapsed MoU Negotiated Debt (2020)	980,432,350.00	Annex ix
3. Current Debt (as at 1 July 2024)	1,551,653,714.00	Annex xiv
4. Adopted Value of Ondiek Estate (Land only)	900,000,000.00	Annex xiv
5. **Proposed Debt Write-Off by NHC**	**651,653,714.00**	**Annex xiv**
6. **Net Settlement**	**900,000,000.00**	**Annex xiv**

26. A serious discrepancy exists between the terms of the deal as resolved by the NHC Board and the information communicated to the County Assembly by the County Secretary. In his letter of 23rd January 2025, the County Secretary informs the Assembly that the debt has been agreed at "Kshs. 980 million" [Annex i]. This figure is demonstrably incorrect

and misleading. The basis for this statement is the 2020 MoU, which, as established, has lapsed and is legally void. The NHC's own resolution, which forms the actual offer on the table, explicitly states the current debt is over Kshs. 1.55 billion [Annex xiv].

27. This is a substantive misrepresentation of the transaction's financial structure. By presenting an outdated and lower debt figure, the County Executive obscures the true magnitude of the County's liability, which has grown by over Kshs. 500 million since the 2019 court ruling. This prevents the Assembly from accurately assessing the scale of the proposed Kshs. 651 million debt write-off by the NHC and the true financial context of the swap. This lack of transparency undermines the principles of accountability and prudent financial management enshrined in the Public Finance Management Act, 2012, and compromises the Assembly's ability to conduct effective oversight.

Legal and Proprietary Analysis of the Subject Asset (Ondiek Estate)

Mr. Speaker and Hon. Members

28. The proposal before the Assembly is a debt-for-asset swap, a financial transaction designed to provide a definitive and mutually agreeable solution to the historical indebtedness. This section dissects the structure of the proposed transaction, examines the valuation of the asset in question, and confirms the measures taken to safeguard the rights of affected third parties.

2.1 Structure of the Transaction

29. The Committee has found that the procedural framework of the proposed deal is straightforward and conclusive and involves two principal actions:

    a) **Asset Transfer**

30. The County Government of Kisumu will transfer the full and unencumbered ownership of the properties collectively known as Ondiek Estate, which comprise Land Reference Numbers **Kisumu Municipality/Block 9/29** (0.2 Ha) and **Kisumu Municipality/Block 9/115** (4.99 Ha), to the National Housing Corporation.

b) **Debt Extinguishment**

31. In consideration for this transfer of property, the National Housing Corporation will accept the asset as a full and final settlement of the entire outstanding debt, which, as per the NHC Board Resolution of 1st October 2024, stands at **Kshs. 1,551,653,714**.

32. Upon the successful legal conclusion of this transaction, the County Government of Kisumu will be fully discharged of any and all past, present, and future liability to the NHC arising from the 1968 loan agreement and the subsequent judgment debt.

Valuation of Ondiek Estate

33. A central element in assessing the propriety of any asset swap is the valuation of the asset being relinquished. In this case, the Committee was presented with multiple valuation figures for Ondiek Estate, which required careful scrutiny as follows:

a) **Joint Valuation Report (Annex xii)**

34. A valuation was conducted jointly by experts from the County Government of Kisumu and the National Housing Corporation. This collaborative report assessed the total market value of the property at **Kshs. 1,097,014,800**. This figure was broken down as follows:

i. Value of Land: Kshs. 925,000,000

ii. Value of Improvements (Buildings): Kshs. 171,184,400

b) **Ministry of Lands Valuation (Annex xiii)**

35. A separate valuation was conducted by the Director of Land Valuation at the Ministry of Lands, Public Works, Housing and Urban Development, dated 16th May 2023. This valuation focused solely on the land component and arrived at a significantly lower figure,

placing the combined value of the two parcels of land at **Kshs. 454,750,000** (Kshs. 432,250,000 for Block 9/115 and Kshs. 22,500,000 for Block 9/29). This report also made a crucial observation regarding the state of the existing structures, noting that they were in a "poor state of structural condition and state of repair and maintenance and in need of evident significant repairs."

c) **Adopted Value for the Swap (Annex xiv)**

36. The decisive figure for the purpose of this transaction is the one formally adopted by the NHC Board in its resolution of 1st October 2024. The Board resolved to accept the value of Ondiek Estate at **Kshs. 900,000,000**. This value was explicitly defined as being for the land *excluding* improvements.

37. The decision by the NHC Board to adopt the Kshs. 900 million figure is a highly strategic and concessional move that signals the true nature of this transaction. A purely commercial creditor, faced with conflicting valuations, might insist on the highest possible figure or demand a third-party arbitration to maximize its recovery. Instead, the NHC, a state corporation with a public mandate, has chosen a value that is closely aligned with the land-only component of the joint valuation.

38. This approach is logical from a redevelopment perspective. The Ministry of Lands report confirms that the existing buildings are dilapidated. For a developer like the NHC, these structures may represent little to no economic value and could even be considered a liability, given the potential costs of demolition and site clearance. The real value lies in the prime urban land.

39. More significantly, by accepting an asset valued at Kshs. 900 million as full settlement for a debt of Kshs. 1.55 billion, the NHC is effectively engineering a massive debt write-off for the benefit of the County. This indicates that the primary objective of the transaction is not to achieve a perfect, shilling-for-shilling asset-for-debt parity. Rather, the goal is to achieve a final, clean, and pragmatic resolution to a problematic intergovernmental liability. This is likely guided by a broader public policy imperative to unburden the County

Government, resolve a long-standing issue, and unlock the land for future productive development that aligns with the NHC's housing mandate.

40. The following table provides a clear comparison of the valuation figures considered.

Table 2: Comparative Analysis of Ondiek Estate Valuations

Valuation Source	Date	Components Valued	Total Value (Kshs.)	Observation
Joint CGK-NHC Report (Annex xii)	Not Specified	Land and Improvements	1,097,014,800	Land: 925,000,000; Improvements: 171,184,400
Ministry of Lands (Annex xiii)	16th May 2023	Land Only	454,750,000	Noted poor state of buildings.
NHC Board Resolution (Annex xiv)	**1st October 2024**	**Land Only (Adopted Value)**	**900,000,000**	**This is the operative value for the debt swap.**

Safeguarding the Rights of Tenant Purchasers

41. A crucial consideration in the transfer of any public housing estate is the protection of the vested rights of residents who may have entered into purchase agreements. Vide letter dated 24th July, 2025, the Committee sought and received assurances that this matter has been handled with the necessary due diligence.

42. The joint valuation report (Annex xii) identified seven specific housing units that had been sold to individuals on Tenant Purchase Terms. These are units associated with parcel numbers 32, 33, 87, 88, 89, 90, and 114. Furthermore, pursuant to the letter dated 20th August, 2025 Ref. No. NHC.6.2.(78)DM; the NHC has provided a comprehensive list of records for 53 tenants who acquired their properties through the Tenant Purchase Scheme.

43. Most importantly, the National Housing Corporation has provided a formal, written commitment to the County Assembly, stating that it will not interfere with the ownership of the tenant purchasers of Ondiek Estate. The NHC has explicitly acknowledged that the debt swap *excludes* those houses already sold on tenant purchase terms. This commitment ensures that the transaction is not only financially sound but also socially responsible and legally robust, as it respects and protects the private property rights that have already been legally established within the estate. This proactive measure prevents future legal challenges and ensures a just outcome for these homeowners.

Fiscal and Economic Impact Assessment for the Debt Swap of Ondiek Estate

Mr. Speaker and Hon. Members

44. Beyond the questions of legality and constitutionality, the Committee was further tasked with assessing the propriety of the proposed debt swap. This involved a practical evaluation of the transaction's wisdom and its tangible impact on the financial health and strategic interests of the County Government of Kisumu. The analysis, supported by the submissions from the County Executive Committee (CEC) Member for Finance (Annex iii and vi), concludes that the swap is not merely a legally necessary action but a profoundly beneficial and strategically astute financial maneuver for the County.

The Case for Fiscal Prudence and Strategic Gain

45. The proposed transaction presents a unique opportunity to resolve a debilitating historical problem while simultaneously unlocking new potential for the County. It is a multifaceted solution that addresses a major liability and, in the same stroke, enhances the County's asset base and revenue-generating capacity.

Quantifiable Financial Benefits.

46. The Committee has found that the direct financial gains for the County are substantial, immediate, and easily quantifiable as follows:

Complete Debt Extinguishment

47. The primary and most significant benefit is the complete and permanent elimination of a legally validated debt that currently stands at **Kshs. 1,551,653,714**. This removes a massive liability from the County's books, instantly improving its financial statements and creditworthiness.

Significant Debt Write-off

48. This transaction is structured such that an asset valued at Kshs. 900,000,000 is used to clear a debt of Kshs. 1,551,653,714. This results in a direct debt write-off of **Kshs. 651,653,714** (i.e., Kshs.1,551,653,714−Kshs.900,000,000). And represents a direct financial gain for the County, a concession secured through negotiation that could never be achieved through a forced sale or court-ordered attachment.

Cessation of Perpetual Interest Accrual

49. The swap permanently halts the compounding interest that has caused the debt to balloon by over Kshs. 500 million in just five years. This stops the financial hemorrhage and prevents the liability from consuming an even greater share of the County's future resources.

Recovery of Income-Generating Assets

Mr. Speaker and Hon. Members

50. Perhaps the most compelling argument for the propriety of this swap is that it is not merely an asset-for-debt exchange; it is also a major asset recovery operation. A key consequence of the agreement is that upon the finalization of the swap, the NHC will release its control over three other major housing estates and revert their management to the County Government of Kisumu. These estates are:

i. **Arina Estate:** Comprising 525 residential units.
ii. **Mosque Estate:** Comprising 91 residential and commercial units.
iii. **Argwings Kodhek Estate:** Comprising 48 residential units.

51. This aspect of the transaction fundamentally transforms the County's balance sheet. It is an asset-lightening (Ondiek) and liability-eliminating action on one side, and a significant asset-gaining action on the other. The County is currently in a position where it is legally the owner of these estates, yet they are under the control of its creditor, the NHC, and generate no revenue for the County. In fact, the CEC Finance confirmed that due to this encumbrance, these estates were not even part of the assets formally handed over to the County Government during the transition in 2013.

52. The swap rectifies this anomalous situation. It uses one of these encumbered assets (Ondiek) to cancel the entire debt and, in doing so, formally repatriates the other three assets (Arina, Mosque, Kodhek) back to the County's full control and management. This move achieves several strategic objectives simultaneously: it cleanses the County's financial records of a toxic liability, it formalizes and strengthens the County's asset register by adding 664 housing units, and it hands the County direct control over a substantial portfolio of income-generating properties. This represents a strategic reset of the County's housing portfolio and its financial relationship with the NHC.

Enhancement of Own-Source Revenue

Mr. Speaker and Hon. Members

53. The recovery of the Arina, Mosque, and Argwings Kodhek estates provides a direct and sustainable boost to the County's Own-Source Revenue (OSR). The CEC Member for Finance has confirmed that the rents currently collected by the NHC from these estates are based on historical rates set by the defunct Municipal Council. The current cumulative monthly rental income from these 664 units is a mere Kshs. 875,244.

54. The CEC Finance has given a firm undertaking that should the debt swap be approved and the estates reverted to the County, the rents will be immediately revalued to reflect current market rates. These revised charges will be incorporated into the subsequent County Finance Bill. This action will unlock a significant new revenue stream for the County, increasing its fiscal space and reducing its reliance on equitable share transfers from the national government. This enhancement of OSR is a critical step towards achieving the objectives of devolution and financial self-sufficiency.

Addressing Potential Challenge

Mr. Speaker and Hon. Members

55. The Committee acknowledges the analysis of the CEC Finance, who identified a potential fiscal challenge associated with this transaction such as additional repair and maintenance costs of newly acquired estates. It is true that taking over the management of 664 housing units from Arina, Kodhek and Mosque, many of which may require renovation, will entail new recurrent expenditure for the County.

56. However, the Committee concurs entirely with the CEC's overall conclusion that there is an "overall economic gain" in the acquisition of these estates. The potential for enhanced revenue from market-rate rents far outweighs the projected maintenance costs. The new revenue stream will not only cover the necessary repairs and upkeep but will also provide a substantial surplus that can be channeled towards other development priorities for the people of Kisumu. The challenge of maintenance is a manageable operational issue, whereas the opportunity to clear a Kshs. 1.55 billion debt and gain a major revenue source is a strategic financial imperative.

57. To provide a consolidated overview of the compelling financial case for this transaction, the following table summarizes the fiscal impact for the County.

Table 3: Summary of Fiscal Impact for the County Government of Kisumu

Fiscal Impact Item	Description	Financial Value (Kshs.)	Status
LIABILITY ELIMINATED	Total outstanding debt to NHC fully settled.	1,551,653,714	**GAIN**
ASSET RELINQUISHED	Agreed value of Ondiek Estate (land only).	(900,000,000)	**COST**
DEBT WRITE-OFF	The difference between the debt and the asset value.	**651,653,714**	**NET GAIN**
ASSETS RECOVERED	664 housing units in Arina, Mosque, & Kodhek Estates.	Not Valued (Substantial)	**GAIN**
NEW REVENUE STREAM	Potential annual revenue from recovered estates after rent revision.	Substantial Increase from current Kshs. 10.5M/year	**GAIN**
COSTS AVOIDED	Future interest accrual and potential legal costs.	Significant & Ongoing	**GAIN**
NEW EXPENDITURE	Repair and maintenance for recovered estates.	To be budgeted	**COST**
OVERALL FISCAL OUTCOME			**HIGHLY POSITIVE**

Consideration of due diligence and Procedural Integrity.

Mr. Speaker and Hon. Members

58. For a transaction of this magnitude to be considered proper, it must not only be financially and legally sound, but it must also have followed a clear and transparent procedural path. The Committee has reviewed the documentation to ascertain that the necessary internal governance steps have been taken by both the County Government and the National Housing Corporation.

Executive Committee Approvals

59. The proposal for the debt swap has been duly processed and approved through the established channels of the County Executive Committee. The Committee received;
    i. A **Cabinet Memo dated 29th July 2024** (Annex II) confirms that the matter was presented to and approved by the County Cabinet. This memo explicitly approved the transfer of Ondiek Estate in its entirety to the NHC.
    ii. The minutes of the **County Executive Committee Meeting held on 30th July 2024** (Annex xi) show that the committee formally resolved to approve the swap of Ondiek Estate with the NHC.

Counterparty Approval

60. A binding agreement requires the formal consent of all parties. The Committee has confirmed that the National Housing Corporation has given its unequivocal approval to the transaction on the terms presented. The minutes of the **NHC's special full board meeting held on 1st October 2024** (Annex xiv) contain a clear resolution to :

    i. Accept the debt swap for Ondiek Estate.
    ii. Adopt the joint valuation of the land at Kshs. 900 million.
    iii. Accept the swap as a final settlement of the debt.
    iv. Formally write off the remaining balance of Kshs. 651,653,714.

61. This resolution provides the County Government and this Assembly with the certainty that the proposal is solid, actionable, and has the full legal and institutional commitment of the counterparty.

Public Participation

Mr. Speaker and Hon. Members

62. Public participation is a national value and a constitutional prerequisite for major public decisions. The Committee notes that a public participation meeting was held on 27th May 2025 at the Ondiek Field, bringing together representatives from the NHC, the CGK, and the residents of Ondiek Estate (Annex x).

63. The Committee, found that the provided minutes from this meeting are noted as being unapproved by either the secretary or the chairman. While this represents a minor procedural lapse in record-keeping, it does not invalidate the fact that the engagement took place. The core constitutional requirement is for participation to occur, and there is evidence of this. The formalization of the record is a subsequent administrative step. The Committee does not view this procedural gap as a fatal flaw that should derail a transaction of such immense public benefit.

64. However, to ensure the completeness and integrity of the public record, it is recommended that the Committee, through the Speaker's office, urges the County Executive to ensure that the minutes of the public participation meeting of 27th May 2025 are formally confirmed and adopted by the relevant parties at the earliest opportunity. This will complete the procedural file for this landmark transaction.

Management of Ancillary Issues

65. The Committee notes that the County Cabinet's approval memo (Annex II) also included a resolution to form a committee to investigate and collect debts owed by beneficiaries of the Migosi Site and Scheme Estates. The memo frames this as a measure "to recover the loss the County has incurred as a result of transfer of Ondiek Estate."

66. While the Committee commends the Executive's initiative to pursue all outstanding county revenues, it is important to clarify the context. As demonstrated conclusively in Section 4 of this report, the Ondiek Estate transaction does not represent a "loss" to the County; on the contrary, it represents a massive net financial gain. The effort to recover arrears from the Migosi scheme should be viewed as a separate and prudent financial management initiative aimed at bolstering the County's general revenue account, rather than a direct compensation for the Ondiek swap. The success of the Ondiek swap is not contingent on the Migosi debt recovery, but both actions are consistent with a broader strategy of strengthening the County's financial position.

CONCLUSION AND RECOMMENDATIONS

Mr. Speaker and Hon. Members

67. Having conducted an exhaustive inquiry based on the provided documentary evidence and a thorough analysis of the governing legal framework, the Committee on Lands, Physical Planning, Housing and Urban Development has arrived at conclusions that form the basis of its final recommendation to the Honourable House.

Committee Findings

68. The Committee finds as follows:

i. **THAT** the debt owed to the National Housing Corporation is a long-standing, legally validated, and rapidly growing liability. The High Court's judgment transformed it into an unavoidable legal obligation. The status quo, which allows interest to compound at an alarming rate, is financially unsustainable and poses a clear and present danger to

the fiscal health of the County. A decisive resolution by this Hon. House is not merely advisable; it is imperative.

ii. **THAT** the proposed debt-for-asset swap represents a financially astute and highly beneficial transaction for the County Government of Kisumu. It provides exceptional value for money by utilizing an asset valued at Kshs. 900 million to extinguish a liability of over Kshs. 1.55 billion, thereby securing a debt write-off of more than Kshs. 651 million for the benefit of the County's taxpayers.

iii. **THAT** the transaction is fully constitutional, falling squarely within the County Assembly's mandate under Article 185(4) (a) of the Constitution to approve plans for the management of county resources. It is also legal, complying with the principles of the County Governments Act, 2012, and the Public Finance Management Act, 2012, which champion prudent management of public assets and liabilities.

iv. **THAT** the transaction is unequivocally proper. It achieves multiple strategic objectives simultaneously: it extinguishes a major liability, it secures a significant financial concession from a creditor, it recovers direct control over 664 valuable income-generating housing units, it creates a new and sustainable stream of Own-Source Revenue, and it does so while meticulously protecting the vested property rights of existing tenant purchasers.

v. **THAT t**he proposal has followed the correct procedure, securing formal approvals from the County Executive Committee, and the Board of Directors of the National Housing Corporation. The requirement for public participation has been met, with a minor administrative lapse in record-keeping that can be easily rectified.

Recommendation

Mr. Speaker and Hon. Members

69. In light of the overwhelming evidence supporting the legality, constitutionality, and profound financial and strategic benefits of the proposed transaction, the Committee finds no grounds to withhold its approval. To the contrary, the Committee believes that approving this debt swap is a matter of urgent public interest and a demonstration of responsible fiscal stewardship.

70. Therefore, based on the exhaustive analysis and consideration contained within this report:

IT IS HEREBY RECOMMENDED that this Hon. House adopts this report **APPROVING** the transfer of the properties known as **LR NO. KISUMU MUNICIPALITY/BLOCK 9/29 & 9/115 (Ondiek Estate)** from the County Government of Kisumu to the National Housing Corporation as a full and final settlement of the outstanding historical debt owed to the Corporation.

HON. RATIB BOITONE
CHAIRPERSON, COMMITTEE ON LANDS PHYSICAL PLANNING, HOUSING AND URBAN DEVELOPMENT

APPROVAL SCHEDULE ON THE REPORT ON THE PROPOSED DEBT-FR-ASET SWAP BETWEEN THE COUNTY GOVERNMENT OF KISUMU AND THE NATIONAL HOUSING CORPORATION.

We the undersigned Members of the Committee on Lands, Physical Planning, Housing and Urban Development having deliberated on the findings and Recommendations of this Report append our signatures to affirm that the matters herein addressed are the true deliberations of the Committee.

NAME	POSITION	SIGN
Hon. Ratib Boiton	**Chairperson**	
Hon Tom Nyaoke	**Vice Chairperson**	
Hon. Joachim Oketch	Member	
Hon Seth Kanga	Member	
Hon. Nereah Okombo -	Member	
Hon George Abaja	Member	
Hon. Moses Ochele	Member	
Hon. Zackaria Okoyo	Member	
Hon. James Were	Member	