



1503 JUN

KENYA EMBASSY-TOKYO

CALL REPORT

DATE	1 st June, 2009
OFFICERS	Charge D'affaires a.i Third Secretary-Political
PERSONS MET	Ms. Kobayashi Protocol Officer, Ministry of Foreign Affairs (MOFA)
AGENDA	Drafting of Sale Agreement
RESULTS	<ul style="list-style-type: none">✧ C.D.A inquired whether MOFA was in a position to assist the Mission draft a sale agreement between the landlord Mr. Kuriyama and the Government of Kenya (GOK) towards the proposed purchase of the Mission's property✧ Ms. Kobayashi informed that MOFA is not charged with drafting of sales agreements between private entities and foreign governments✧ She informed that since the seller of the property is a private individual and not a government entity then MOFA is unable to assist the Mission draft a sale agreement✧ She clarified that MOFA can only intervene if GOK was dealing with the Government of Japan (GOJ) but since GOK was dealing with a private entity then MOFA is not obliged to intervene✧ C.D.A inquired further whether MOFA had a sample sale agreement which GOK could

	<p>use as a prototype to develop its own sale agreement which she could share</p> <ul style="list-style-type: none"> ✧ Ms. Kobayashi informed that the Ministry didn't have a sample sale agreement which it could share with the Mission ✧ She went to inform that if GOK was to purchase land from GOJ, then the Ministry of Finance which is the custodian of government property would draw the sale agreement and MOFA would act as a witness ✧ C.D.A shared a document from Mr. Kuriyama detailing his intention to sale the land and the terms agreed and asked whether such a document is a valid legal document in Japan ✧ Ms. Kobayashi informed that the document is okay but should be more detailed ✧ She advised that to be on the safe side and incase of any eventuality the Mission needs to hire a Judicial Scrivener Solicitor (shihoushoshi) who will do a search on the property and draw up the documents for the sale agreement
	<ul style="list-style-type: none"> ✧ She went further to advise that the GOK will need a witness to the sale agreement and ones again said that MOFA can't be a witness since the Mission was dealing with a private entity ✧ She suggested the contractor who constructed the Mission's premises would be good enough ✧ Ms. Kabayashi said for the case of GOJ buying land in foreign states it makes use of locally hired lawyers who draw documents according to the laws of the host state

	<ul style="list-style-type: none"> ✧ C.D.A informed that the Mission had not budgeted to hire a lawyer in the current financial year which comes to an end in June 30th ✧ He went further to inform there was pressure to conclude the purchase in this financial year that is why the Mission was finding it hard to hire a lawyer and thus seeking the help of MOFA ✧ Ms. Kobayashi asked the Mission to be cautious since it was taking a legal risk by not involving a legal adviser ✧ C.D.A informed that Mr. Kuriyama had indicated that the Mission could make use of his bank to draw up the sale agreement which could be adopted by both parties ✧ Ms. Kobayashi advised that though Mr. Kuriyama seems to be trustworthy it was vital to be cautious just in case of any eventuality that may occur and bearing in mind that the land is under mortgage ✧ C.D.A informed that the Legal Division of the Ministry of Foreign Affairs of Kenya (MFA) has a set sale agreement document which it makes use in the purchase of property
	<ul style="list-style-type: none"> ✧ He went further to inquire whether the MFA document could be adopted in Japan ✧ Ms. Kobayashi advised that GOK could draw the sale agreement from Nairobi if it is agreeable with Mr. Kuriyama but will need the services of a Japanese legal expert who will review the document to be in line with Japan regulations and also translate the document into Japanese ✧ If the document is agreeable between both

	<p>parties then the two can assent to it with a witness</p> <p>✧ For tax exemption, it was informed that the Mission will need to present a Japanese version of the sale agreement if the original will be in English</p>
RECOMMENDATION	<p>✧ Mission needs to hire a Judicial Scrivener Solicitor</p> <p>✧ Legal Division MFA Nairobi to draft a sale agreement</p> <p>✧ Sale agreement to be reviewed and translated to be in line with Japan regulations</p> <p>✧ Send document for concurrence to headquarters</p> <p>✧ If document is agreeable both parties to sign with the constructor as a witness of (Mr. Sato)</p>