

KNOW YOUR LAND RIGHTS

Produced by

Kituo Cha Sheria

(Legal Advice Centre)

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Foreword

The promulgation of the Kenyan Constitution 2010 brought into place concerns about the urgency for land reform. Land reforms hold the key to solving some of Kenya's greatest challenges such as landlessness, community cohesion, food security and sustainable development. Land reforms lie at the heart of the work of the National Land Commission (NLC) and Kituo cha Sheria and they are also at the heart of many Kenyan communities who live, work and rely on land.

Information contained in the book goes a long way in educating these communities about their land rights.

The mission of the NLC is to get Kenyans enjoying the benefits of land reform and better land governance, help Kenyans realise tenure security, so that everyone can reach their full potential in accessing, using and owning land. Kituo's mission is promote and protect land rights through legal aid, legal empowerment, legal education, advocating for the implementation of the land laws and strategic litigation.

Getrude Angote – Kituo cha Sheria and Dr. Fibian Lukalo - The National Land Commission.

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Acknowledgement

We have worked collaboratively on this project, pooling ideas and sharing the various aspects of work on land reform and justice. This book grew from several meetings and sharing the para-legal advocacy platform organised by Kituo-Cha Sheria and attended by the National Land Commissions' Directorate of Research and Advocacy staff as presenters and contributors. The conversations between Fibian Lukalo (NLC) and Aimee Ongeso (Kituo Cha Sheria) on the '*bundle of rights, gender and justice in Kenya* ' provided the background ideas into ways in which to engage Kenyans on 'knowing their land rights'. The land rights advocacy platforms offered by Kituo Cha Sheria in their community based Justice Centres from June 2014 to date, which identified the knowledge gap on land rights are present in the initial part focusing on the NLC's mandate. Other parts focusing on land adjudication, succession, FAQs were part of Kenyans request to be enlightened on land rights. We recommend this type of collaboration to others, and, indeed hope to repeat it with new work ahead.

We would like to thank the NLC team of Fibian Lukalo, Elijah Letangule and Frank Ongeti for their contribution and support without which this book would not have been written. From Kituo Cha Sheria Aimee Ongeso, Marcelino Thuku, Jodom Mwebi, Ashioya Biko, Faith Ochieng' and Tobias Mwadime.

Credit is due to the following people and organizations for their contributions to this book: USAID for sponsoring this publication and support to land rights.

Finally the efficient way in which the paralegal workshops, land advocacy forums and citizens requests for information were transformed into book parts would not have been possible without the contributors' commitment to their work on land rights, supported by the NLC and Kituo Cha Sheria's advice and helpful criticism from the two organizations.

Fibian Lukalo and Gertrude Angote

NLC and Kituo Cha Sheria

INTRODUCTION

The National Land Commission (NLC)

- The National Land Commission(NLC) of Kenya is an independent government Commission established under the Constitution to manage public land on behalf of the national and county governments and to bring about land reforms.
- The NLC is established under The National Land Commission Act, 2012
- In Kenya, land has been classified as **public, private** and **community** land. Land is defined as:
 - a. The surface of the earth and the subsurface rock;
 - b. Any body of water on or under the surface;
 - c. Marine waters in the territorial sea and the exclusive economic zone;
 - d. Natural resources completely contained on or under the surface; and
 - e. The air above the surface.
- The Constitution guarantees every Kenyan, ownership of property in any part of the country. Every person has the right, either individually or in association with others, to acquire and own property of any description in any part of Kenya.

Principles of land administration and management

- Equitable access to land
- Security of land rights
- Sustainable and productive management of land resources
- Transparent and cost effective administration of land

- Sound conservation and protection of ecologically sensitive areas
- Elimination of gender discrimination in law, customs and practices related to land and property in land
- Encouragement of communities to settle land disputes through recognized local community initiatives consistent with this constitution Traditional Dispute Resolution mechanisms(TDR)
- Participation, accountability and democratic decision making with the communities, the public and the Government
- Technical and financial sustainability
- Affording equal opportunity to members of all ethnic groups
- Non-discrimination and protection of the marginalized
- Democracy, inclusiveness and participation of the people; and



- Alternative Dispute Resolution (ADR) mechanisms in land dispute handling and management

Summary of the land matters to be dealt with at the National Land Commission

Allocation, Alienation of public land	Conversion of land from one category to another- leases	Compulsory land Acquisition
Manage unregistered Community land	County Land Management Boards: Plot Allocations Extension of lease/user Renewal of leases Change-of-user Subdivisions	Ensure registration of unregistered land
Land Adjudication and Settlement programs		Gender equity in access to the land resource
Natural resource management		Land Conversion register and cadastral
Development control, land use planning	Unlawful occupation of public land (illegal and/or irregular)	Inventory of land based natural resources
Easements, public rights of way	Settlement programs- refugees, minority communities	Review of Grants and Dispositions
Research on land matters (to help shape influence policy)	General adoption of procedural rules; regulations on land (criteria, general special)	Develop plans for land transition functions- NLC & MOLHS
Dispute resolution- Land conflict Historical land injustices task force		National Land Information Management System (NLIMS)

COUNTY LAND MANAGEMENT BOARDS (CLMBs)

Definition

These are basic devolved units of the National Land Commission that undertake important land management functions at the county level. Together with the board secretary, the CLMBs comprise a maximum of nine (9) members in each county.

Functions of the County Land Management Board

- (a) process applications for allocation of land, change and extension of user, subdivision of public land and renewal of leases
- (b) perform any other functions assigned by the NLC or by any other written law
- (c) With regards to ADR, CLMBs can recommend a land dispute to the village elders (chief) who can resolve and formally advise the boards. This is usually used in adjudication areas.

Applications to be handled by CLMBs

- a) Land Sub-Division: This is the process of dividing land into two or more parcels in order to obtain a higher density of use. This should be presented in form of a scheme plan and accompanied by a planning brief. The form and structure of a subdivision scheme may be as illustrated as in below:

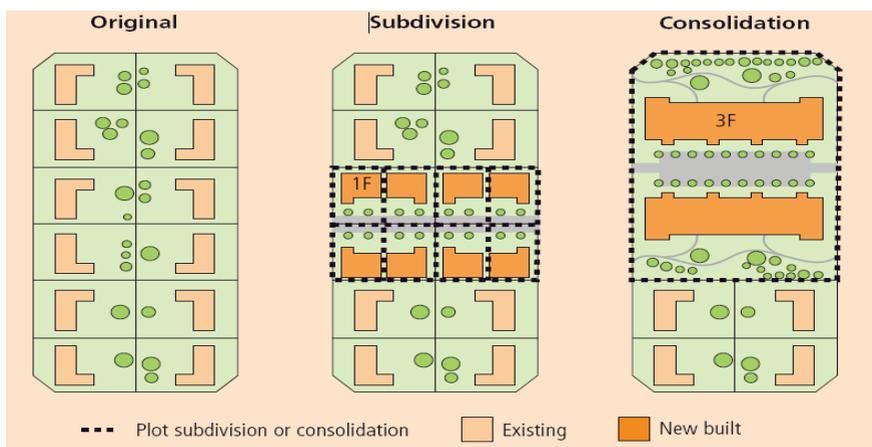


Figure 1:

Structure of Land Subdivision and Consolidation Source: UN HABITAT, 2013

- b) Change of User: conversion of use of land by 50% or more besides that which has been approved, zoned or designated for the area.
- c) Extension of User: adding to or expanding the already permitted development rights to allow further changes in the use of land. Prior approval is required for such developments to proceed. (Permitted development rights may be amended or extended). The extension of use may involve increment in density, extension of developed area of land, and development of excess building units, among others.
- d) Extension/Renewal of Lease: in Kenya leasehold interest is granted for a period ranging from 33 to 99 years after which the lease term expires. The property may revert back to the lessor if not extended. One may apply for extension or renewal provided he/she has complied with the terms of lease.
- e) Land Reclamation: planning, rebuilding and managing disturbed or damaged ecosystems on the one hand or getting new lands from coastal areas, rivers and lakes, swamps or wetlands. The purpose of reclamation is to make land available for agriculture, settlement, irrigation and other planned uses.

- f) Land Amalgamation: combining two or more adjacent parcels of land into one. Amalgamation is an important tool for planning and re-development of an area.
- g) Alienation of Public Land: planning, surveying and transfer of ownership of the land. Such transfer may be to public or private entities.
- h) Conversion of Land: where ownership of land may change from either public to private or vice versa. This may be by way of allocation or compulsory acquisition, reversion of leasehold interest, transfers or surrenders.

Conversion of land may be done on the following considerations:

- Public needs, or in the interest of defence, public safety, public order, public morality, and public health
 - Land use planning
 - Ecologically sensitive land that has been endangered or endemic species of flora and fauna, or critical habitats
 - Management of erosion, floods, earth slips or water logging
 - Protection of forest and wildlife reserves, mangroves and wetlands, buffer zones of such reserves or environmentally sensitive areas. Protection of watersheds, rivers catchments areas public water reservoirs, lakes, beaches, fish landing areas, riparian and territorial sea.
 - National, cultural and historical features of exceptional value
 - Investment land benefitting the people
 - Allocation of land on the basis of Vienna Convention of 1961 on Diplomatic relations
- i) Easements: This is a non-possessory interest in another's land that allows for the use of the land to a particular extent, requires the proprietor to use the land in a particular manner, and shall not include

a profit. For example one that allows the underground services (water, drainage, gas, electricity, telephone and cables, etc.) to pass beneath the land of one or more neighbouring properties.

- j) Restrictive Covenants: these are provisions meant for restriction on use of land so that the value and enjoyment of adjoining land is preserved. They limit what the owner of the land may do with the land in relation to the neighbourhood and may specify the exact user standards to be honoured. They are perpetual and run with the land. Restrictive covenants are typically used in land development to establish minimum sizes for dwelling units, setback lines, and aesthetic requirements that enhance the neighbourhood.
- k) Land Banking: acquiring land and property at strategic sites for future public use or the establishment of an inventory of surplus land by governmental institutions, county or municipal authorities for purposes of future development. The banking may be through acquisition, purchase, donation, and surrender, among others.

SUCCESSION

The Law of Succession:

- This is the law regulating the inheritance of property.
- The Law of Succession Act applies universally to all Kenyans. This is basically the substantive law dealing with matters succession in Kenya. It has to be quoted first before other laws that might equally be affecting matters succession.
- Immovable property in Kenya of a deceased person whatever the residence of that person at the time of his death will be regulated by the Kenyan Law of Succession
- Movable property of a deceased person shall be regulated by the law of the country of the residence of that person at the time of his death
- A person who immediately before his death was ordinarily resident in Kenya shall, in the absence of proof of residence elsewhere, be

presumed to have been staying in Kenya at the date of death.

Testate Succession

- Where the deceased leaves a written or oral will
- The deceased must have had the capacity to make the will at the time of making the will.
- Capacity means;
 - Sound mind – not of mental illness
 - Age of majority – 18 years and above
- The deceased must have had knowledge and approved the contents of the will i.e there should be no fraud, coercion or mistake when making the will.

A will

- Any person can write a will at any time as long as they are of sound mind, above 18 and not been coerced to do so.
- A person, may through his/her will appoint an executor. This is someone named in a will who has the legal responsibility to take care of a deceased person's remaining financial obligation e.g disposing property, paying bills, taxes, etc.
- Takes effect after death of the maker (testator/testatrix)
- It's a mere intention of the maker – can be amended but only by the maker during their lifetime.
- Can deal with property acquired after death of maker (ambulatory)

Advantages of Making a Will

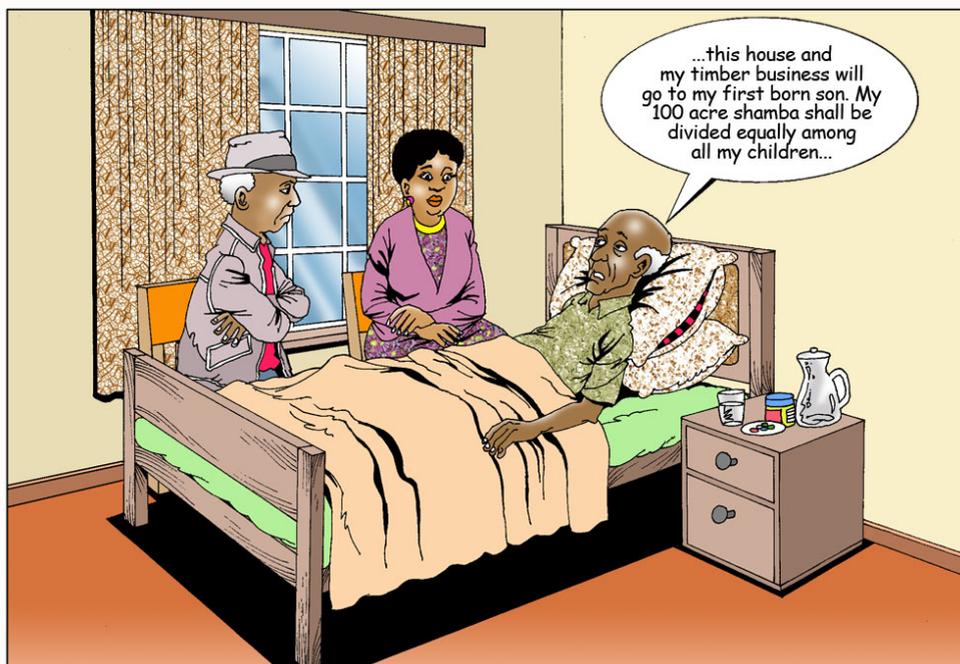
- The deceased can exercise control over property
- Avoiding courts from determining who is entitled to property

- Appointing property representatives of choice
- Avoiding disputes over property
- Persons outside family can have property
- The deceased can decide on how he/she can be disposed off

Invalid Wills

- When the maker of a will lacks knowledge and approval of a will, the will is as if it was not made at all. This is because of;
 - Fraud/forgery
 - Coercion
 - Mistake /duress/undue influence

Oral Will



- Is valid only if;
 - Made before 2 or more competent witnesses
 - The maker dies within 3 months of making it
- An oral will made by a member of the armed forces during a period of active service shall be valid if the maker of the will dies during the same period of active service even if he/she dies more than 3 months after making the will.
- If there is any conflict in evidence of witnesses as to what was said by the deceased in making an oral will, the oral will shall not be valid except if the contents can be proved by a competent independent witness

Written Will

- Must be signed by the maker
- If signed by somebody other than the maker, then this should be done in the maker's presence and under his/ her directions
- Must be witnessed by two or more witnesses. This two witnesses must not be beneficiaries in the will because otherwise there shall be need of an additional two witnesses.
- If the maker of a will refers to another document in his will, the document shall be considered as part of the will as long as it is verified that it is the exact same document the maker was referring to in his/her will.
- An executor shall not be disqualified as a witness to prove execution of the will or to prove the validity or invalidity of the will.
- If a dependant or dependants feel that the deceased's will does not provide adequately for their needs, they may make an application to the Court.
- The Court may order a specific share of the property be given to the dependent (s) or periodical payments or a lump sum payment.

- In making its decision the Court will consider:
 - the nature and amount of the deceased's property
 - any past, present or future income from any source of the dependant
 - the existing and future means and needs of the dependant
 - whether the deceased had given any property during his lifetime to the dependant(s)
 - the conduct of the dependant in relation to the deceased
 - the situation and circumstances of the deceased's other dependants and the beneficiaries under any will
 - the deceased's reasons for not making provision for the dependant.
- "dependant" means –
 - the wife or wives, or former wife or wives, and the children of the deceased whether or not maintained by the deceased before his death;
 - the deceased's parents, step-parents, grand-parents, grandchildren, step-children, children whom the deceased had taken into his family as his own,
 - brothers and sisters, and half-brothers and half-sisters, who were being maintained by the deceased before his death
 - Where the deceased is a woman, her husband if he was being maintained by her before her death.

Revocation, Alteration and Revival

- A will can be revoked, altered and revived only by the maker at the time when he is competent to dispose of his property.
- Revocation of a will happens when the maker takes some action to



indicate that he/she no longer wants the will to be binding.

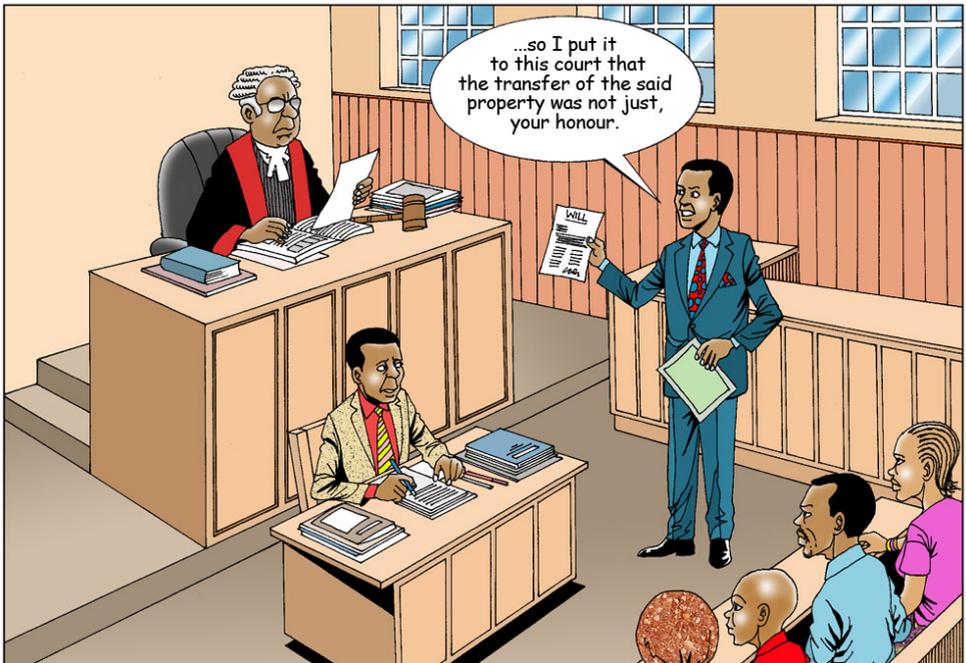
- For revocation to be effective, the intent of the maker, whether express or implied, must be clear, and an act of revocation consistent with this intent must take place.
- Persons who wish to revoke a will may:
 - Use a codicil, which is a document that changes, revokes or amends parts of will or the whole will
 - Make a new will that completely revokes an earlier will
 - May tear, cancel or burn the will
- A will can be revoked through divorce. If after writing a will, the maker separates, divorces from his/her spouse and enters into a separation agreement in which the 2 settle their property rights, any inheritance or powers made by the will to the former spouse will be revoked unless otherwise stated.

- No alteration made in a written will shall have any effect unless the alteration is signed and confirmed.
- Revival of will: A revoked or part of a revoked will can be revived by codicil or a new will. To revive by a codicil, the revoked will must be in existence that is, not destroyed. The codicil must show an intention to revive.

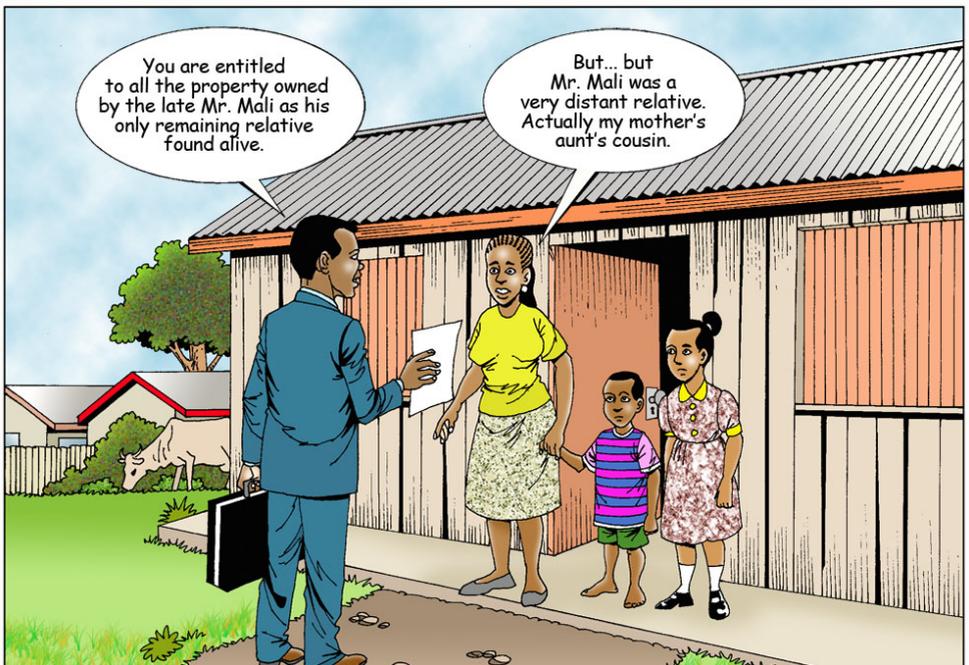
Intestate Succession

- When there is no will left by the deceased (intestate).
- Where the deceased has left one surviving spouse and a child or children, the surviving spouse shall be entitled to –
 - the personal and household effects of the deceased and
 - The intestate property but cannot sell this intestate property – as the spouse is holding it on behalf of the children. If the spouse remarries, he/she loses her entitlement to the intestate property.
- A surviving spouse has power to transfer the intestate property to the surviving child or children
- If a child feels that the surviving spouse has not exercised the power of transfer in a just manner, the child may apply to Court for his/her share of property. If under age, the child will be represented by an adult. The Court will consider :
 - the nature and amount of the deceased's property
 - any past, present or future income from any source of the applicant (child) and of the surviving spouse
 - the existing and future means and needs of the applicant (child) and the surviving spouse
 - whether the deceased had given some of his/her property to the applicant during his/her lifetime

- the conduct of the applicant in relation to the deceased and to the surviving spouse
 - the situation and circumstances of any other person who has any interest in the property of the deceased or as a beneficiary
 - the general circumstances of the case including the surviving spouse's reasons for withholding or exercising the power in the manner in which he or she did
- In case the surviving spouse dies or remarries the intestate property will be transferred to the remaining one child or equally divided among the surviving children
 - Where the deceased has left one surviving spouse but no child or children, the surviving spouse shall be entitled to :
 - the personal and household effects of the deceased



- Percentage in money of the intestate property. The value percentage will be determined by the Minister in charge
- The intestate property but cannot sell this intestate property. The surviving spouse loses right to this intestate property upon marriage.
- A surviving spouse may during the period he /she is holding the deceased's property on behalf of the children, sell the intestate property with the consent of all co- guardians and children above 18 years old or with the consent of the Court. In the case of immovable property, the spouse must get consent from the Court.
- Where the deceased has left a surviving child or children but no spouse, the intestate property will be transferred to the surviving child or be divided equally among the surviving children.
- Where the deceased has left no surviving spouse or children, the intestate property shall be transferred in this order of priority:



- father; or if dead
 - mother; or if dead
 - brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none
 - half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none
 - Distant relatives up to the sixth degree in equal shares
- If the deceased is not survived by any of the above the intestate property estate shall be taken up by the state
 - Where the deceased is polygamous:
 - His personal and household effects and the intestate property estate shall, first of all be divided among the houses according to the number of children in each house.
 - Any wife surviving the deceased will be considered as an additional child.
 - Where the deceased during his lifetime gave any property to a child, grandchild or household, the property shall be taken into account while determining the share of intestate property that will be given to the child, grandchild or house.

Protection of property

- Whenever police officer or administrative officer knows that any person has died, he shall, unless a report has already been made, report the death to the assistant chief of the sub-location or to the chief or administrative officer of the area where the deceased resided.
- If a request is made by a person with a legitimate interest in the property of the deceased or if no request is made with regards to the deceased's property within one month of the deceased's death, the person to whom the report was made will :

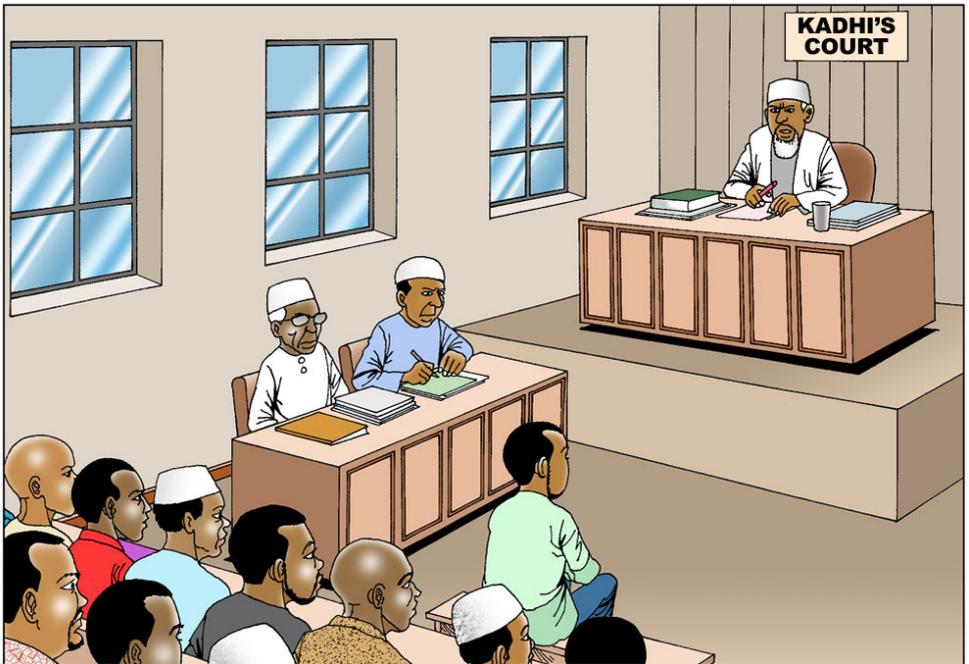


- go to the residence of the deceased and take all necessary steps for the protection of his free property found there
 - find out if the deceased has other free properties
 - find out all persons appearing to have any legitimate interest in succession to his/her property
- If the deceased resided in a town or city, or when the deceased dies outside Kenya wherever his property is situated, the person to whom a report of his death is made ,must first report the death to the Public Trustee who may, if he so wishes himself, take the action instead of that person.
 - If any person to whom a report is made finds that there is any free property of the deceased in another sub location or area, or that the person appearing to have the greatest legitimate interest in succession to the deceased's property resides in another other sub-location or

area, he shall report these findings to the assistant chief, chief or administrative officer of that other sub-location or area.

Approaching Court

- The High Court hears all matters to do with succession
- Where there is no High Court, the Chief Justice can appoint a Resident magistrate to hear cases not exceeding Kshs. 100,000
- The Resident Magistrate does not hear cases for revocation of a will
- Where both the High Court and a resident magistrate's court are available, the High Court will hear the matter dealing with succession



- Kadhi Courts hear succession cases of Muslims following Muslim Law

Grants

- These are orders given by Court on the management of property of the deceased.
- Types of grants:
 - Grant of letters of Administration Intestate; this applies where the deceased died without a will or the will is revoked
 - Grant of Letters of Administration.
- Where there is a will but no executor.
- Any beneficiary can apply and be made administrator
- Only up to a maximum of four beneficiaries can be made administrators by the Court.

Grant of probate

- Where there is a will, oral or written
- Named executor to apply for the grant unless he refuses- An executor can renounce his/her executorship orally or through writing before a court. The executor will consequently be disqualified for applying for this grant of probate.

Limited Grant :

This occurs in several instances e.g ;

- Where property of deceased is intended not to go to waste
- Where there is a pending case
- Where there is an emergency that has to be dispensed with e.g children's school fees etc.

- When a will has been lost or misplaced or has been destroyed by wrong or accident, and a copy of the will has been preserved, a limited grant is given until the original or a properly authenticated copy of it be produced.
- When a will is in the possession of a person residing out of Kenya who has refused or neglected to deliver the will, but a copy has been sent to the executor, limited grant is given until an authenticated copy of it be produced.
- Where the will of a deceased is not forthcoming, but there is reason to believe that there is a will in existence, limited grant is given until an authenticated copy of it is produced.

Application for Grant

- An application shall be signed by the applicant in the presence of a witness and shall include the following information:
 - the full names of the deceased
 - the date and place of his death
 - his last known place of residence
 - the relationship (if any) of the applicant to the deceased
 - whether or not the deceased left a valid will
 - the present addresses of any executors appointed by the valid will.
- In the case there is no will (intestate), the application should include the following information:
 - the names and addresses of all surviving spouses, children, parents, brothers and sisters of the deceased, and of the children of any child of the deceased's
 - a full inventory of all the assets and liabilities of the deceased
 - Applicable documents:

- Form P & A80 (Petition)
 - Form P & A5 (Affidavit)
 - Form P & A12 (Affidavit of means)
 - Form P & A11 (Affidavit of justification of proposed sureties)
 - Form P & A57 (Guarantee of personal sureties)
 - Death certificate
- If the deceased left a valid will : -
 - if it was written, the original will shall be annexed to the application
 - if the original written will is lost and cannot be produced, then either –
 - an authenticated copy of the will should be annexed
OR
 - the names and addresses of all persons who are able to prove the contents of the will shall be stated in the application
 - If the will was oral, the names and addresses of all the witnesses shall be stated in the application.

Applicable documents

- Form P & A 79(Petition)
- Form P & A 3 (Affidavit)
- Original will
- Two photocopies of the will
- Death certificate

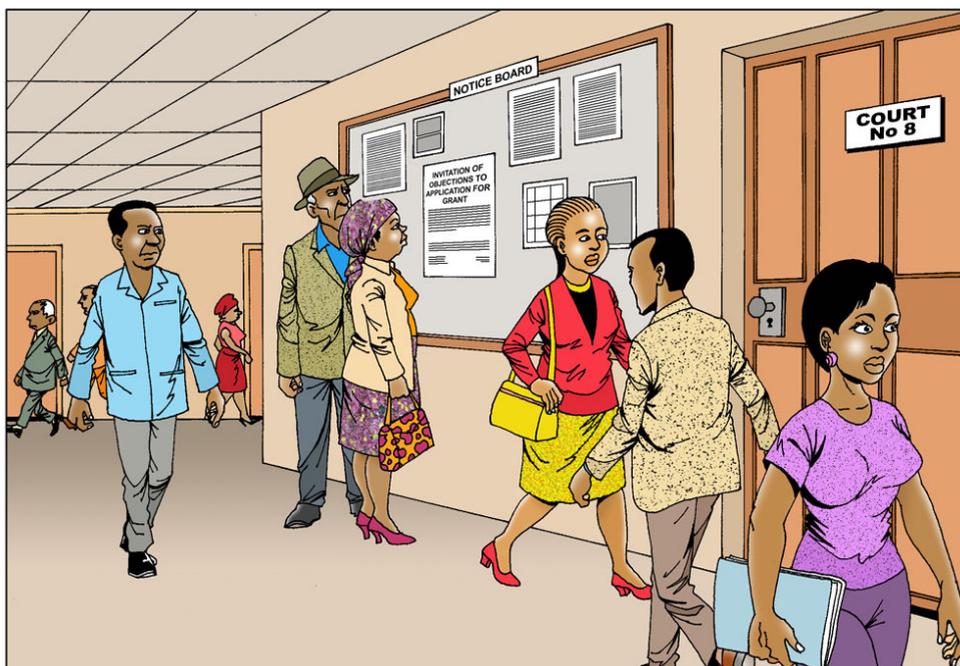
- If a codicil (this is a document that changes, revokes or amends parts of the will or the whole will) is discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.
- If different executors are appointed by the codicil, the probate of the will shall be revoked, and a new probate granted of the will and the codicil together.
- When a deceased has died intestate, the court shall decide whom to grant letters of administration and will consider the following, in the following order:
 - surviving spouse or spouses,
 - other beneficiaries entitled on intestacy,
 - the Public Trustee; and
 - creditors:
- Where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.
- If it is a limited grant:

Applicable documents

- Form P & A85 (Petition)
- Form P & A19 (Affidavit)
- Copy of death certificate

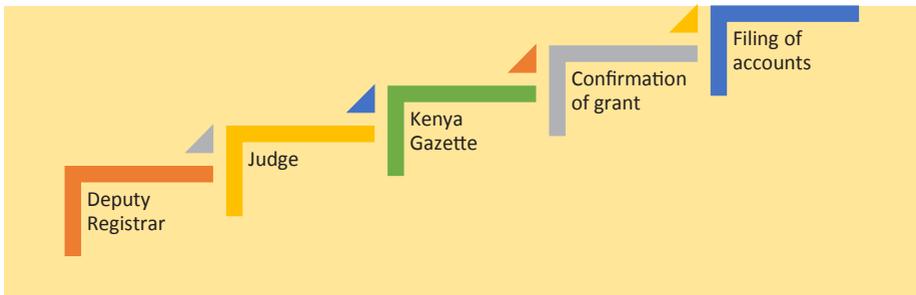
Procedure on Grants

- A notice will be put up visibly and noticeably in the court-house or in any other manner the court directs (Kenya Gazette) inviting objections to application for the grant within 30 days from the date of publication.

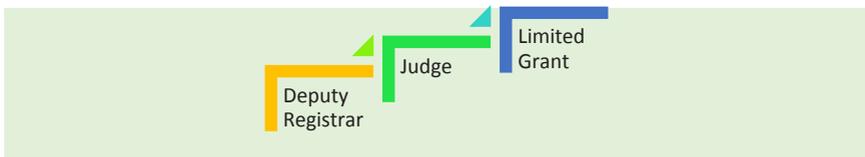


- In the event an objection is raised, the court will instruct the objector to file an answer to the application and a cross-application within a specified period.
- If the objector does not file an answer to the application and a cross-application within a specified period a grant may be made in accordance with the original application.
- Where an answer and a cross-application have been filed the court shall proceed to determine the dispute.
- Whether or not there is a dispute regarding the grant, a court may, before making a grant of representation –
 - examine any applicant on oath OR
 - call for further evidence as to:
 - the contents of the will

- the making of an oral will
 - the rights of dependants and of persons claiming interests on intestate property or
 - any other matter which appears to require further investigation before a grant is made OR
 - instruct any person appearing to have reason to object to the application to appear in Court
- In brief:
 - Procedure for grant of administration, probate and intestate:



- Procedure for limited grant :



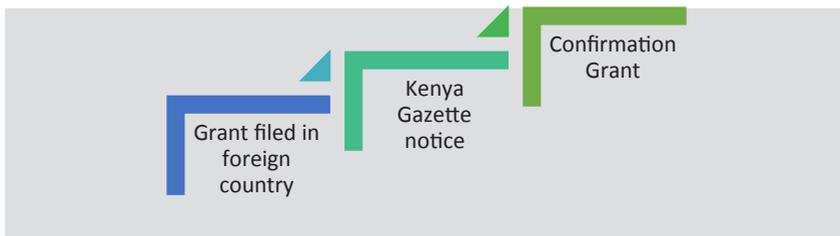
Resealing of Grants of Probate or Letters of Administration

- Where a foreigner dies abroad but has property in Kenya

Applicable documents

- Forms P & A81 or P & A82 (Petition)
- Form P & A7 (Affidavit)

- Certified copy of Grant issued by foreign country
- Procedure for foreigner with property in Kenya



Persons entitled to apply for a Grant:

- Those appointed by the deceased
- Those not mentally ill
- Those not bankrupt
- Any adults - priority is given in order of relationship - but begins with spouses
- Not more than four persons

Confirmation of Grants

- After 6 months if there is no objection
- No objections can be filed after confirmation

Revocation

- Application for revocation can be done after confirmation
- Application can be done by a party or by Court on its own motion.

SUCCESSION DOCUMENTS AND HOW THEY ARE REGISTERED AT THE LANDS OFFICE

Confirmation of Grant: Transmission on death of a sole proprietor or proprietor in common

- A sole proprietor is where by land is owned by one individual while proprietor in common means land is owned by two or more people and each owns a certain share of the whole parcel. The shares may be equal among the proprietors or vary with some holding larger shares than others.
- For one to transfer land owned by a sole proprietor or proprietor in common a Confirmation of Grant is required.
- The Land registrar on being provided with a copy of the Confirmation of Grant from the court will go ahead to register the person named in the Grant as the owner of the land.
- The fees paid to register the beneficiary named in the Confirmation of Grant is Kshs 500/=.
- In case the proprietors are more than one, the individual named in the grant will become the owner of the shares of the person he/she has inherited from.

Death Certificate: Transmission on death of joint proprietor

- Joint proprietor means the two individuals; both own all the shares of the parcel of land together, e.g land owned by spouses. In case one individual dies the surviving individual automatically inherits the whole parcel of land.
- In this case the surviving person will submit a death certificate to the Land Registrar and on payment of Kshs 500/= the Land Registrar will delete the name of the deceased person from the register thus giving the surviving partner rights to the whole parcel of land.

COMPULSORY ACQUISITION

Definition

- This is the acquisition of land by the government for a public purpose
- Public purpose (or public interest) is limited to matters of regulating rights and land use in:
 - the interest of defence
 - public safety
 - public order
 - public morality
 - public health
 - urban planning, or the development or utilization

Process of Compulsory Acquisition

A. PRE-INQUIRY

- Request: The NLC receives a request for acquisition from the acquiring body through the respective Cabinet Secretary or County Executive Member. The land should be acquired for public purposes or in public interest.
- Verification Meeting: Before gazettelement, the NLC will request for a verification meeting with the acquiring body (the body that wants the land). In this meeting, the NLC will require the acquiring body to provide a list of the affected parcels of land and the respective owners, title search details, cadastral maps of the affected areas, a Resettlement Action Plan (RAP) accompanied by a list of Persons Affected by Project (PAPs) so that their application can be put into consideration.

- Notice of intention to acquire land is published in the gazette after the Commissions certifies in writing that the land is required for public purposes or in public interest for a stated public purpose. Upon certification, the NLC shall publish notice of intent and shall deliver a copy of the notice to the registrar and to every person who appears to have an interest in the land.
- Ascertainment of suitability of land:Permission for entry of officers to carry out activities ascertaining whether the land is suitable for the intended purpose. All land to be compulsorily acquired shall be geo-referenced and authenticated by the authority responsible for survey both at the national and county government

B. INQUIRY

- Notice of inquiry:The NLC shall appoint date for INQUIRY at least thirty days after publishing the notice of intention to acquire, and at least 15 days before the actual date of the inquiry. A copy of the notice is served on every person who appears to have an interest on the land.



- **Receipt of claims:**By the date of the inquiry, any written claim to compensation is delivered to the NLC, not later than the date of inquiry. The inquiry determines who are the persons interested in the land, and receives claims from the said persons.
- **Hearing :**For purposes of an inquiry, the NLC shall have powers of the Court to summon and examine witnesses including persons with interest, to administer oaths and affirmations and to compel production and delivery of title documents to the NLC. This includes the public body for whose purpose the land is being acquired.

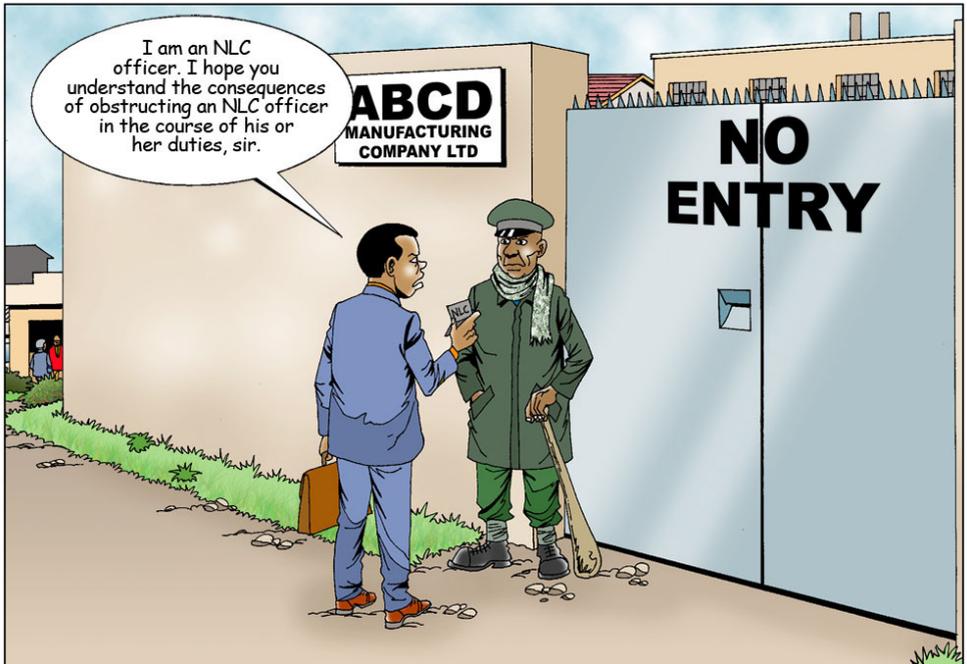
C. POST INQUIRY

- **Award of compensation:**upon conclusion of the inquiry, theNLCshall make a separate award of compensation for every person whom the NLC has determined to be interested in the land. The NLC shall then serve on each person a notice of the award and offer of compensation.
- **Land in place of Compensation:** The NLC may agree with the person who owned that land that instead of receiving an award, the person shall receive a grant of land instead, not exceeding in value the amount of compensation which the NLC considers would have been awarded. Upon the conclusion of such agreement that person shall be deemed to have received all the compensation entitled to him/her in respect of the interest in that land.
- **Payment of compensation:**upon acceptance of the award, the NLC shall promptly pay compensation to the interested persons. If the award is not accepted, or if there is a dispute about who is entitled to compensation, the amount of compensation is paid into a special compensation account held by the NLC.
- **Payment of interest :** if the amount of any compensation is not paid, the NLC shall on or before taking possession open an account into which the NLC shall pay interest on the amount awarded at the prevailing bank rates from the time of taking possession until the time of payment.

- Payment of additional land: If the acquired land is greater than the area of land in respect of which an award is made, compensation shall be paid for the excess area.

D. POSSESSION AND VESTING

- Formal taking of possession and vesting: after the amount of the first offer had been paid, the NLC shall then take possession of the land by serving a notice specifying the day of possession on every interested person. The title shall then vest in the national or county government as the case may be.
- Urgent taking of possession: In cases of where there is an urgent necessity for the acquisition of land, and it would be contrary to the public interest for the acquisition to be delayed by following the normal procedures, the NLC may take possession of uncultivated or pasture or arable land upon the expiration of 15 days from the date of publication of the notice of intention to acquire.
- Formal Possession and Vesting: Upon taking possession of land the NLC shall inform the registered owner of the land and the Registrar that possession of the land has been taken and that the land has vested in the national or county governments as the case may be.
- Surrender of Document: the NLC shall require the affected persons to deliver possession documents to the Registrar, who shall proceed to either cancel them if the whole land has been acquired, or register the resultant parcels and issue documents for them. The NLC shall instruct the acquiring body to acquire all the land if it is satisfied that the partial acquisition will render the remaining land inadequate for its intended use or disproportionately reduce the value of the remaining land.
- Cancellation of Acquisition: The NLC may at any time before possession is taken of any land acquired, revoke the acquisition and shall compensate damage incurred on persons with interest. Pre-emptive rights to re-acquire the interest shall be to original owners or their successors upon restitution of full amount so compensated.



- Environment and Land Court: any dispute of any matter provided for under the Act may be referred to the Land and Environment Court for determination. Under the repealed Cap 295, a Compensation Tribunal was provided for whose jurisdiction was to determine issues to do with valuation and compensation, while matters to do with disputes in law were referred to the Court. A proposal has been forwarded to create a tribunal as part of the amendments to the Land Act 2012.
- Rights of entry and consequences of Obstruction : An officer authorized by the NLC shall have rights of entry at all reasonable times. Obstructing the NLC or an officer in undertaking prescribed activities is an offence and liable on conviction for imprisonment not exceeding five years or fine not exceeding three million shillings or to both.
- Way leaves and Easements: applications shall be made in the prescribed form to the NLC by the state department or public body for the creation of a wayleave (a right of way over or under another's

ground or property). The NLC shall not begin the process of creating a wayleave until all prescribed information has been submitted to it. The applicant shall serve a notice on all persons occupying the affected land, the county government in whose jurisdiction the proposed wayleave is to be created and any person interested in the land. The NLC may also create a public right of way for the benefit of the public or community.

- Valuation for Compensation: valuation for compensation includes the following:
 - the market value of the land and improvements
 - damage sustained or likely to be sustained because of division or separation of land
 - damage sustained or likely to be sustained because of the acquisition damaging the other property
 - expenses incurred due to change of residence or business
 - expenses incurred due to decreased or loss of business
 - 15 % statutory disturbance allowance
 - Other expenses incurred as a result of the acquisition e.g. professional fees, etc

Kindly note that compensation is pegged on rules as provided by the Savings and transitional provisions in Section 162 of the Land Act 2012.

Guidelines: Required information and documents for compulsory acquisition

National Land Commission will require the following preliminary information and documents to be provided by an acquiring body upon request before the land acquisition or easement can be procured.

1. Prior approval from their respective Cabinet Secretary before the

NLC commences the acquisition process

2. Cadastral drawings showing how the infrastructure cuts out each land parcel, the parcel list table detailing land parcel numbers, total area of land parcels and acreage affected by the infrastructure for each parcel. These drawings shall be submitted to the NLC for scrutiny and records
3. A listing for parcel numbers indicating the plot reference number, registered owner and affected acreage column in acres .This should be submitted in both soft and hard copy
4. Official searches of affected land parcels. The NLC shall assist where necessary.
5. The Environmental Impact Assessment Report (EIA) and appropriate approvals/certification for the project.
6. The Relocation Action Plan (RAP) report.
7. Acknowledgement on availability of funds to allow prompt compensation as provided in the Constitution. The NLC will request the entities to remit compensation money into the Land Compensation Fund to be administered by the NLC.
8. All applicants will have to take the Land Acquisition and Committee sub-committee members on a site tour for general appreciation of the project in respective locations that will be affected. This will enable informed decision making.
9. A final survey for vesting of the acquired land to the National or County Government will have to be done by the acquiring authority. The NLC can assist in this exercise at costs borne by the acquiring body.

TITLE DEEDS

Definition

- A title deed is a document giving evidence of one's right to land.
- In Kenya there existed different types of title deeds as per the different types of land Acts that have been in existence from colonial times up to the post-independence era. Examples are as follows:
 - Indenture: a title under the Government Lands Act Cap 280 (repealed)
 - Grant: Government grant under Registration of Titles Act Cap 281 (repealed) and a county council grant under Trust Land Act Cap 288.
 - Certificate of title: grant issued as a result of subdivision without change of user.
 - Certificate of lease: title under the Registered Lands Act Cap 300 (repealed) for lease hold land.
 - Absolute title deed: title under the Registered Lands Act Cap 300 (repealed) for freehold land.
 - Sectional title: title for a unit within a building for example a flat or apartment.
 - The Land Registration Act, 2012 consolidates the above several titles into the "Certificate of Title" or Certificate of lease. A Certificate of title is issued for freehold land while a Certificate of lease is for leasehold land.
 - Leasehold is a form of land tenure where a lessee holds rights to land for a specific period of time and subject to conditions imposed on land rights by the lessor. Examples in Kenya include 33, 50, 66, 99 year government leases for urban plots. 999 year leases were all converted to 99 year leases with effect

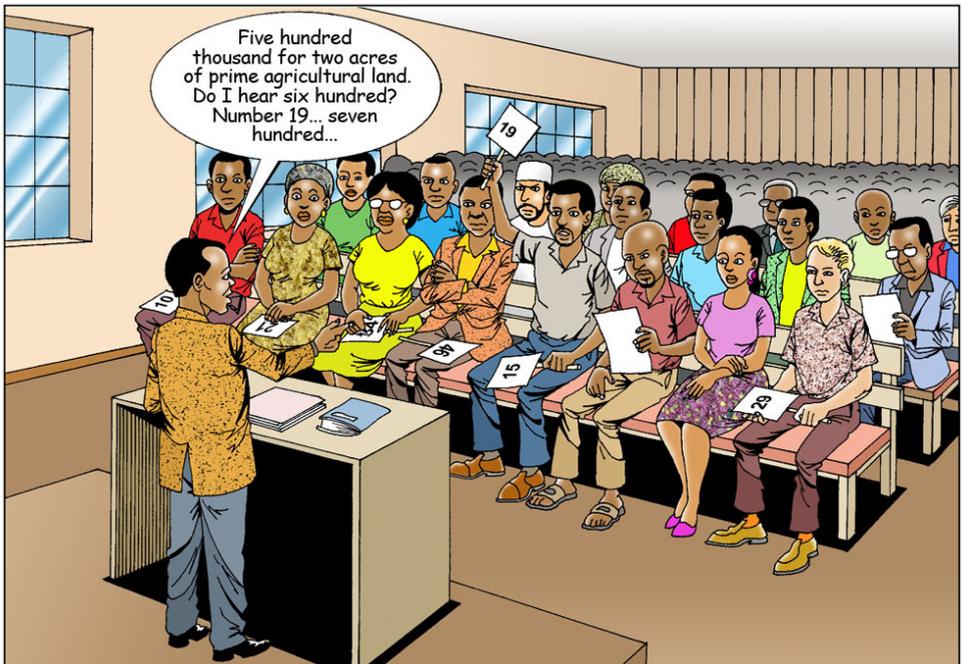
from 1st September, 2009 when the current constitution was promulgated.

- Freehold land ownership is a form of land tenure in which the land owner has the maximum rights to land without restrictions in terms of period of ownership and rights exercisable on the land.

Methods of acquiring title to land:

Allocation

- This is where public land is transferred by the government to individuals usually on lease hold basis for a specified period of time and subject to specific conditions.
- Ways through which land allocation can be carried out:
 - Public auction and allocating the land to the highest bidder. The highest bid in this case must conform to the prevailing

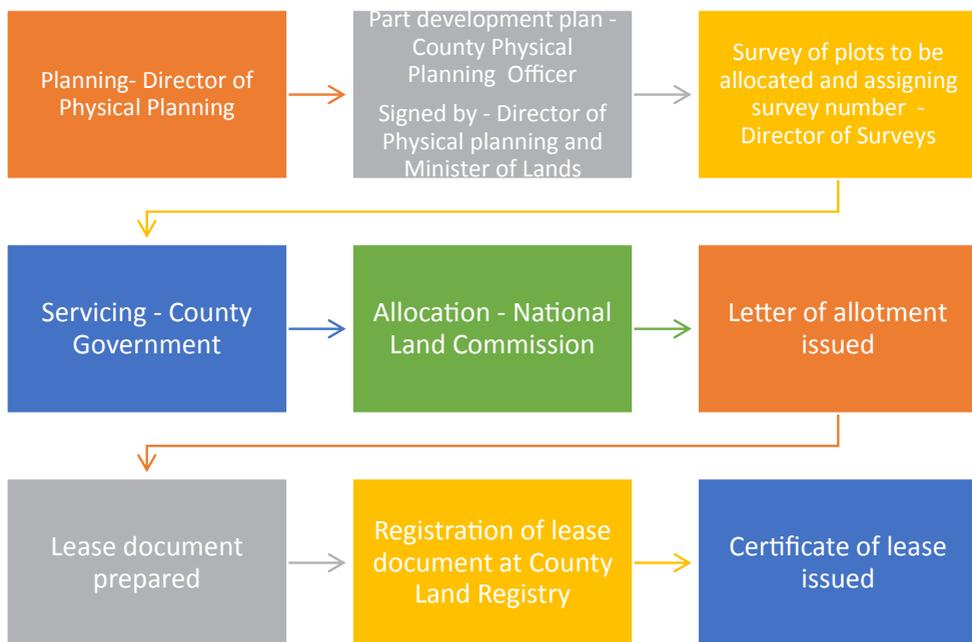


market value and cannot be less than the reserve price set at the beginning of the auction .

- Public tender : Government through the National Land Commission calls for tenders and among the submitted tenders the winning one is awarded the land
- Drawing of lots: Individuals interested in pieces of land are allocated through balloting. This is usually due to the fact that land is a limited resource and at any one time the people interested in being allocated are more than the available land.
- Request for proposals: in cases of specific desirable development projects. In this case the best proposal is awarded the land
- Exchange of land of equal value: An example can be an exchange of land between a government institution and an individual where the government takes up an individual's land that neighbours its institution and in exchange gives the individual another of its parcel in a different location. The land being exchanged must be of equal value.
- Allocation applications are sometimes confined to a targeted group of persons in order to improve their disadvantaged position. An example can be an allocation being confined to a group of identified squatters in which case if one is not on the list of identified squatters they cannot be allocated the land. This is to ensure that the identified group does not get undue competition from persons with more resources or who do not share in their circumstances.

Allocation process

- For public land to be allocated it must first be planned, surveyed and serviced.
- Planning is a function carried out by the office of the Director of Physical Planning to guide land use activities on space.
- A Part Development Plan showing the land to be allocated is usually



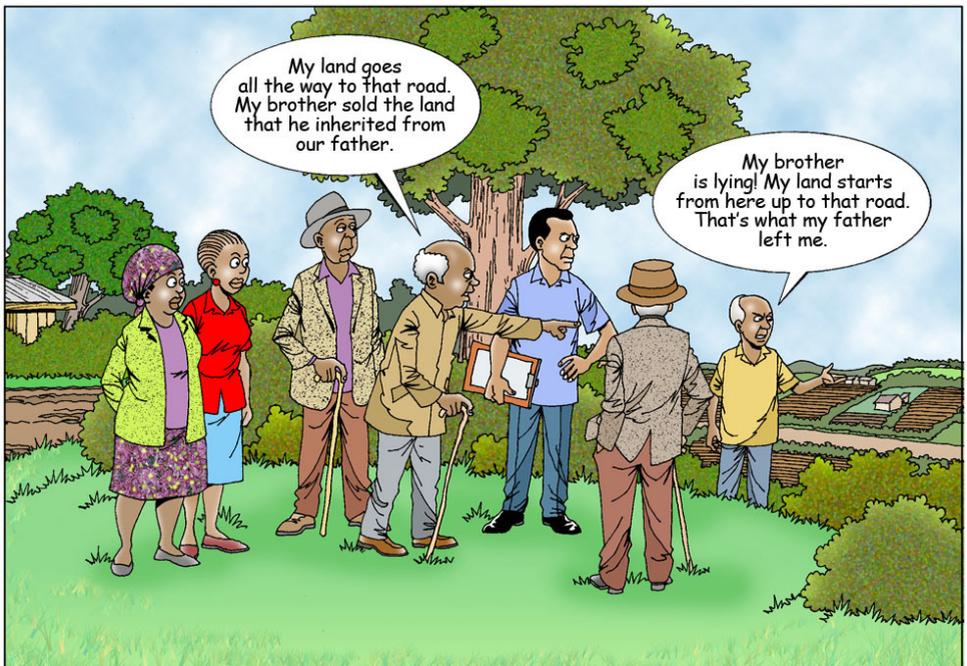
drawn by the County Physical Planning officer and signed by both the Director of Physical Planning and Minister in charge of land.

- The plots to be allocated are then surveyed by the Director of Surveys who assigns survey numbers.
- The plots to be allocated are then Serviced by the County Government.
- After survey, allocation is carried out by the National Land Commission using one of the above methods of allocation.
- On allocation one is issued with a letter of allotment.
- A letter of allotment is an agreement/contract between the lessor and lessee and therefore the lessee must meet the conditions set in the letter of allotment and special conditions for the contract to be binding.
- The letter of allotment contains the name of the lessee, acreage of the land, where it is located and the legal fees to be paid.

- There are also special conditions attached on the letter of allotment to guide the allottee on the usage of the land and his duties to the lessor.
- Violating the contract through non-payment of legal fees in the stipulated time, wrong usage of the land or non-payment of fees like land rent and rates will lead to a penalty and the land will revert to the government for allocation to another party.
- Since the land belongs to the government allottees of the land hold it on leasehold basis.
- In this case the government i.e. the National or County government are the lessor and the allottee is the lessee.
- After the letter of allotment is issued, a lease document is then prepared. The lease is finally registered in the County Land Registry and a Certificate of lease (title) issued to the lessee.
- Transfer of land before a title is issued and when the allottee only has a letter of allotment as evidence of ownership is not approved by the government. The allottee must first acquire a title before transferring the land to another entity.
- Transfer of un-developed allocated land is not allowed by the government. This is because allocation is not done for speculation purposes but for the allottee to develop the land.
- In case one is unable to develop the allocated land, then it should be surrendered to the government so that another allottee who is ready to develop it is identified.
- Finally a buyer to such land is advised to always carry out an official search to ascertain the authenticity of the title before entering into any agreement with the seller.
- To carry out a search, the land must have a title.

Land adjudication process

- Land adjudication refers to the process of determining and recording of rights and interests of individuals on registered community/ trust land to facilitate registration of title.
- The Constitution of Kenya acknowledges the existence of Community Land and provides that trust land and unregistered community land shall be held in trust by the county Governments on behalf of the Communities for which it is held.
- This means that the land vests in the County Government and the National Land Commission (NLC) must work together with the County Governments and the Communities in order to proceed with land adjudication process.
- The concerned Communities propose the adjudication sections (land owners point out their boundaries in front of their neighbours). The NLC spearheads the declaration of these new sections by requesting the County Executives (CECs) for the respective counties to table



the proposed sections before the respective county assemblies for approval. Thereafter, preparations for their declaration can begin.

- At the date of this publication, land adjudication has been completed in the following 11 Counties: Nyeri; Kirinyaga; Murang'a; Kiambu; Kericho; Bomet; Kakamega; Vihiga; Bungoma; Kisii and Nyamira. A further 24 Counties have ongoing land adjudication programmes: Kwale; Kilifi; Tana River; Taita Taveta; Marsabit; Meru; Tharaka Nithi; Embu; Kitui; Machakos; Makueni; West Pokot; Samburu; Elgeyo Marakwet; Nandi; Baringo; Narok; Kajiado; Busia; Siaya; Kisumu; Homa Bay and Migori. Five Counties Garissa, Isiolo, Mandera, Wajir and Turkana have not yet been gazetted as adjudication areas.
- The adjudication process is not applicable to the following eight Counties with no trust land or unregistered community land. These are Mombasa, Lamu, Nakuru, Nairobi, Nyandarua, Trans-Nzoia, Uasin-Gishu and Laikipia. In these eight Counties, transfer of land to 'mwananchi' is through settlement programmes and direct allocation of public land. In terms of settlement schemes 484 schemes have been established with 279,568 households settled across the country.
- Currently, there are 98 adjudication sections with an estimated 203,982 parcels under demarcation and survey across the country. This figure would be higher if not for 37 adjudication sections suspended due to ongoing court cases.

No.	County	Proposed adjudication sections
1	Meru	04
2	Tharaka-Nithi	06
3	Embu	01
4	Makueni	03
5	Kitui	62
6	Narok	03
7	Elgeyo- Marakwet	18
8	Kisumu	05
9	Siaya	03
10	Busia	03
11	Tana River	15
12	Taita Taveta	04
13	Kwale	15
14	Kilifi	18
15	West Pokot	08
16	Baringo	15
17	Marsabit	04
	TOTAL	187

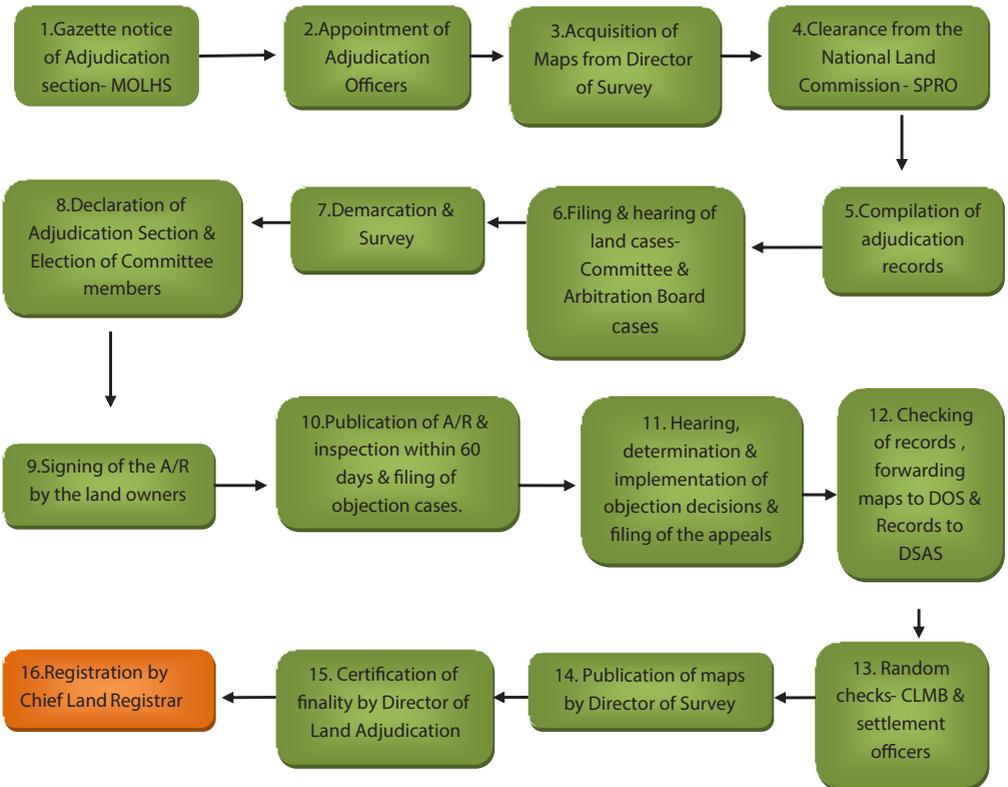
- About 187 new adjudication sections are proposed to be opened across the country as illustrated in the table above.
- In terms of the adjudication process the following is noted: All new sections should be declared as adjudication projects with clear timelines as follows:
 - i. 6 months for submission of claims and demarcation , which will include resolving all land adjudication committee cases and arbitration board cases;
 - ii. 2 months (60 days) for compilation of adjudication records and random checking;
 - iii. 2 months (60 days) for land owners to sign the records;
 - iv. 2 months (60 days) for inspection of the adjudication register;
 - v. 2 months (60 days) for printing of provisional maps and

final checking;

vi. 2 months (60 days) to submit NO OBJECTION , amend duplicate adjudication records and issue certificate of finality;

- In total an adjudication section should not take more than 16 months to be completed and certificate of finality issued for the NO OBJECTION REGISTER

Steps in the Land Adjudication Process



Abbreviations:

A/R- Adjudication Register; CLMB- County Land Management Board; DOS- Director of Survey

DSAS- Director, Survey Land Adjudication and Settlement; MOLHS- Ministry of Lands, Housing and Settlement;

SPRO- Senior Plans Records Officer

- Since adjudication is a joint venture by the National Land Commission and the County Government , it is imperative that the CECs lobby for funds to be set aside by the County Government to finance the adjudication process. The National Land Commission may not have sufficient resources to finance the entire adjudication process.
- The County Governments are required to provide land for the establishment of settlement schemes either through public land or the purchase of private land. In this regard, the CECs play a key role in the allocation of land for settlement schemes to the identified beneficiaries.

Prescription

- Also known as adverse possession and occurs when one gains title to land by occupying that piece of land without opposition for a period of 12 years.
- It involves a court process and the adverse possessor must prove that he/she actually occupied the land openly for the entire world to see, continuously without interruption for a period of 12 years.
- The thinking behind this concept is that since the owner of the land has failed to protect his/her land against the adverse possessor who has taken possession for 12 years, the adverse possessor is therefore recognised as the owner.

Settlement programs -

- This is when the government provides access to land for squatters, persons displaced by natural causes like floods, development projects, conservation or internal conflicts by use of the Land Settlement Fund administered by the National Land Commission. Formerly it was known as Settlement Fund Trustees (SFT).
- A beneficiary of land in a settlement scheme is given land on loan through a letter of offer.
- The land is therefore charged until when he/she offsets the loan in a given period of time.

- He/she is given conditions on development of the same and the land can be taken away in case the agreed conditions are not met.
- Land allocated through the settlement process should be transferred to another individual but should pass to the next of kin through succession or inheritance.

Transmissions

- This is when land ownership passes to another party where the owners power's over the land are restricted as in cases of death, bankruptcy and on liquidation of a company.
- In case of death- see chapter on Succession.
- In cases of bankruptcy a trustee becomes the registered owner.
- When a company goes under liquidation a liquidator shall be registered as the owner of the land.
- All the above three transmission methods occur through a court process and thus the owners are appointed by an order of a court.

Transfers

- This is the transfer of rights to land from one entity to another.
- When one possesses a title to land (the vendor) he/she transfers his rights by transferring the title to the buyer.
- A transfer is done after acquiring consent from the relevant land control board for land under agricultural use or government/county government for leasehold land.
- Stamp duty of 2% of the value of the land is payable to the government in townships and rural areas while a duty of 4% is charged on land in municipalities and cities.
- The transfer document with the original title, copies of ID, pin and passport photos of both the buyer and seller are then booked for registration in favour of the buyer.

FREQUENTLY ASKED QUESTIONS ON LAND

Question 1: What do we mean by land reforms? How will they impact on my ownership of land in Kenya?

- Land reform is a purposive change in the way in which land is held or owned, the methods of usage that are employed, or the relation of its usage to the rest of the economy.
- Land is, in most forms of society, the most important of natural resources required for the creation of wealth. As a direct result, control of the land brings economic power, which in turn, is often the basis of social and political power. The centrality of land in human life made it the main reason for the struggle for Kenya's independence from British colonial rule. Land has been, and will continue to be the backbone of Kenya's economy, where over 80% of its population derives its livelihood from agriculture. This resource has continued to play a significant role in the socio-economic and political development of the country. Therefore, its ownership, allocation, distribution and utilization are of great concern to most Kenyans.
- Reform is usually introduced by government initiative or in response to internal and external pressures, to resolve or prevent an economic, social, or political crisis. Thus reform may be considered a problem-solving mechanism. In this case land was seen to be critical component in the persistent land issues
- Kenya is in the midst of land reform that has far-reaching implications for securing the land rights of rural people and promoting political stability and economic development. The reform is based on a National Land Policy (NLP), adopted in 2009 after years of consultation. Past recommendations on land reform - from the Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land, popularly known as the 'Ndung'u' land report after the Commission's chairperson, were not implemented. The report found illegal allocation of public land in Kenya to be "one of the most pronounced manifestations of corruption".
- Among its recommendations, the report called for: all allocations

of public utility land to be nullified and the lands repossessed; the investigation and prosecution of public officials who facilitated or participated in the illegal allocation; and the recovery of all monies and proceeds acquired as a result of it.

- In 2013, the government formed a National Land Commission to act as the lead agency in land matters, working with the Ministry of Lands, Housing and Urban Development (MLHUD) and county-level institutions. These are one of a broad range of reforms introduced by a new constitution adopted in 2010.

Process of buying land in Kenya

**Question 2: I am a jobless graduate aged 35. I want to buy land using my savings to farm. What are the correct steps to follow?
Amos, Kitale**



a) Land Identification

- Prospective buyer identifies a piece of land that meets their criteria including size, location, soil type etc.
- Be clear on what you want, before starting the search.
- There are different kinds of properties; agricultural land, residential, controlled development, commercial etc.
- Do some basic due diligence about the property, especially by using a government surveyor to verify the land dimensions.
- Government surveyors are available at the Ministry of Land Housing and Urban Development, at the County Level

b) Search at the lands registry

- Carry out an official search at the County Registry.

- The search will state the ownership and status of the land.
- To do a search, ask the seller for a copy of the title deed.
- You will then be required to fill a search application form and attach on it single copies of the title deed, ID card and PIN certificate and pay Shs 500 at the Registry and get an official receipt. The search takes two to three days and will give you the following information
 - the registered owner of the property,
 - its size and any hindrances against the land such as court orders, caveats, cautions and loans taken against it
 - the title and search numbers
 - date the search was done
 - nature of title (freehold or lease)
 - approximate area in hectares,
 - name and address of proprietor and whether a title has been issued. A title with any unresolved issues of the above is not transferrable.
- The search results must be signed and sealed by the Registrar.
- If all is clear, then you may proceed to the next step which is writing a sale agreement

c) **Sale agreement**

- Buyer appoints a lawyer to represent him in the signing of the sale agreement.
- The sale agreement is prepared by the seller's lawyer and it indicates the terms of sale including the names of the buyer and seller, price of the land, mode of payment and documents to be supplied by the seller to facilitate registration of the transfer of land to the buyer

- At this point the buyer may be required to pay a 10% deposit (in form of cheque, banker's draft) with the balance payable within 90 days after signing of sale agreement
- After the parties have signed the sale agreement, the document must then be stamped to make it legally abiding. This stamp is two hundred shillings (Shs. 200) for the original and twenty shillings (Shs. 20) for the others

d) Transfer and procurement of completion documents

- The transfer document is usually prepared by the buyer's advocate and approved by the seller's lawyer.
- At this point the seller is supposed to procure the completion documents at his costs, including the: original title deed, 3 copies of transfer of land duly completed by the seller, ID Card of certificate of registration of the seller and PIN certificate, 3 passport sized photos of seller (if company, photos of two of its directors) land rent clearance certificate (for leasehold land) rates clearance certificates, and consent to transfer and valuation form duly completed by the seller.
- The document should also be signed by the buyer who is also required to produce copies of his ID card, PIN certificate and passport photos

e) Stamping the transfer

- The buyer is required to apply for the valuation of the land by the government valuer using valuation form duly completed by the seller.
- Lands office will use these documents to determine stamp duty payable.
- The stamp duty should be paid to the Commissioner of Domestic Taxes through National Bank, Kenya Commercial Bank or any other appointed bank

- Once payment is done, the buyer should lodge the documents at the lands office for stamping with duty. Thereafter the buyer should book the following documents for registration: title deed, land rent and rates clearance certificate, valuation report, consent to transfer, stamp duty declaration and pay-in-slip

f) Registration of the transfer

- This is the last process of the land purchase and it involves the registration of the transfer in favor of the buyer.

Question 3: What is a deed plan?

- This is a signed plan by the Director of Surveys showing the precise particulars of a surveyed piece of land.
- It shows the details as in the shape of the plot, the distances and bearings all-round the plot, scale of plotting, Deed plan number, land reference no., size of the plot in hectares, signature of the Director of Surveys, the date of authentication by the Director of Surveys and above all it shows if the plot is a New Grant or an extension of lease.
- This deed plan once prepared, is attached to a certificate defining the current owner and any endorsements by the relevant Registrar in the event the property has changed hands or there are hindrances relating to the plot.

Question 4: What is a mutation?

- The mutation form shows how a bigger land (mother) mutated into smaller pieces and the details of the proprietor (Names, ID, box number and signature).
- It further shows the date the surveying was done. It also details the

subdivision details (existing roads, LR numbers of the resultant plots, the exact measurements of the plots and their areas in hectares).

- Other signatures include the one of a licensed / district surveyor and the land registrar who prepared the resultant titles.
- This document is forwarded to Survey of Kenya for purposes of amending the RIM (Registry Index Map) which basically keeps track of all subdivisions in a specific area.

Question 5: What is a green card?

- A green card is a document that holds original records of all transactions relating to a piece of land/plot.
- This means when a new title is being issued, it must be preceded by opening a card for it. Any subsequent transactions relating to the plot/land are recorded there.
- Normally when a subdivision is done, a green card will be opened for each subplot.
- Maybe the seller had reached the stage where the card had already been opened but the title not yet issued. However, that is the last and the easiest process when subdividing land.
- The green card is found at the district land registry level.

Question 6: What do title deeds do for us? (Different people)

- Benefits to the individual
 - The title deed being a document of evidence for land ownership gives tenure security. Tenure security is the protection a land owner enjoys against arbitrary eviction without fair and prompt compensation.
 - It enhances incentive to invest in land/ real estate due to the

perceived security that it provides.

- It enhances availability of recourses for financial investments by increasing mortgage based loans
- Makes dealing in land easier, safer and in the long run cheaper thus improving accessibility to land.
- Leads to a decrease of land ownership and boundary disputes and their related costs.
- Benefits to the government
 - The information from titles on location, size and ownership can be used by the government in levying tax from the right persons and in justified amounts. The tax can be used in government development projects.
 - The information in title deeds can form a basis for an extensive land information system that will serve for various purposes like compulsory acquisition for government projects, investment companies seeking to buy/ lease land, mining leases etc
 - The maps used in preparation of the title deeds can be a basis for other necessary large scale maps to serve multiple uses like GIS maps, disaster prevention and management.

**Question 7: What should I get when I finalize payment of my Plot?
(For freehold Titles)**

- It is important for the client to receive the following
 - Three copies of a transfer(s) duly executed by the Vendor in respect of the Properties.
 - Land Control Board Consent(s) to transfer
 - A copy of the Vendor's Certificate of Incorporation

- A copy of the Vendor's PIN Certificate
- Three passport photos of the Vendor's directors
- The Original Title Deed Document(s) in respect of the Properties.
- Discharge of Charge (if the property has a loan)
- Copy of the deed plan (for leasehold land) and copy of the Mutation (freehold land)
- Original receipts for all payments done

Question 8: Can one conduct land search when the process of subdivision is going on?

- It is common practice that land search is closed during the process of subdivision. This is because of the frequent file movement in the registry.
- Mostly when clients are buying the land under subdivision at the concept level, one can only search the original title deed and not the sub-titles.
- It is common practice that client goes for a search and they do not find the green card for the sub-titles. This goes on until the whole process is complete and all the green cards are returned and filled on the folders.

Question 9: What is a CAVEAT? What is CAUTION? How does one place and remove a CAVEAT or CAUTION on land?

- The word Caveat means beware, and a caveat over a property is a way of telling anyone who wants to deal with the property to be aware of the fact that someone else's interest already has priority.
- A Caution is a notice to the effect that no action in relation to the

land may be taken without first informing the person who gave the notice

Notice and effect of Caution

- The registrar shall give notice in writing of a caution to the proprietor whose land, lease or charge is affected. So long as the caution remains registered, no activity which is inconsistent with it shall be registered, except with the consent of the cautioner or by order of the court.
- Withdrawal/removal of the caution
- A caution can be removed by the person lodging the same, or by order or the court, or by the Registrar, if such person fails to remove it after being served with a notice to do so by the Registrar.
- The registrar may, on the application of another person interested, serve notice on the cautioner warning him that his caution will be removed at the expiration of the time stated in the notice. If at the expiration of the time stated the cautioner has not objected, the registrar may remove the caution.
 - Second caution in respect to the same matter
 - The registrar may refuse to accept a further caution by the same person or anyone on his behalf in relation to the same matter as a previous caution.

Wrongful Caution

- Any person who lodges or maintains a caution wrongfully and without reason can be sued by any person who has sustained damages and will pay compensation to such a person.

Question 10: Who can lodge a CAVEAT or CAUTION on land?

- Any person who is claiming a contractual or other rights over the said piece of land
- Entry of a transaction, with respect to such land, may not then be made unless the cautioner has received notice.
- Lodging of a caveat or caution without reasonable cause can lead to a remedy in damages.

Question 11: What is unlawful eviction?

- Unlawful eviction means the permanent or temporary removal of persons from their home or land which they occupy against their will without the alternative of suitable forms of legal solutions

Question 12: Who can be evicted?

- Any person who takes control of land or structures without the express consent of the owner or without any right in law to take possession of such land or structure

Question 13: What are the procedures that should be followed prior to evictions in respect to public land?

- The National Land Commission is the one mandated with the task of conducting adequate consultations on the proposed evictions with the representative of the affected persons and families
- Consultation shall include holding of public hearings that may provide the affected persons an opportunity to;
 - Challenge the eviction decision
 - Present an alternative proposal

- Articulate their demands and development priorities
- Where an agreement cannot be reached on a proposed alternative among concerned parties, the National Land Commission may constitute a mediation committee comprising representatives of the National Land Commission and the affected families or communities with a view to finding an amicable solution

Question 14: What are the procedures that should be followed before evictions are carried out in respect to private land?

- If the owner is of the opinion that a person is in occupation of their land without consent, the owner may serve on that person a notice, of not less than three months before the date of the intended eviction.
- The notice shall be in writing and in a language that is generally understood by the person being evicted.
- In the case of a large group of persons, it should be published in at least two daily newspapers of nationwide circulation, and be displayed in not less than five strategic locations within the occupied land

Question 15: What next after a person is served with an eviction notice?

- A person may apply to court for relief against the notice. The court may, at its own discretion:
 - Confirm the notice and order the person to vacate
 - Cancel or make additions to the notice on such terms as it deems equitable and just
 - Suspend the operation of the notice for any period which the court shall determine

- Order for compensation

Question 16: My parcel of land has a 99 year government lease with effect from 1st January 1920 and therefore the term will expire in 4years' time. How do I go about to renew or extend the lease?

- A lease is an interest in land for a specific period of time and subject to payment of rent. Likewise there are also restrictions or conditions imposed by the lessor (land lord) to the lessee (tenant) on what he/she can do with the land. For example in the question above the person holding the 99 year lease is the lessee while the government is the lessor/land lord.
- In Kenya the government grants leases for land especially in urban areas so as to safeguard community interests and have direct control of the use and development of land.
- Examples of government lease terms are 33 year and 66 year leases for the former trust land areas – now Community Lands (native reserves in the colonial period). Such towns included Kapsabet, Kakamega, Mariakani, Embu and Kisii among others.
- In this case one could be given a 33 year term and on expiry of the same they would be added 66 years to make a total of 99 years. However this was on condition that they fulfilled the conditions in the lease in terms of developments and payment of statutory fees like annual rent and rates.
- The 99 year leases were granted on the former government land (crown land) and examples included towns like Nairobi, Mombasa, Eldoret, Kericho, Nyahururu and Nyeri among others. For such land the government grants a 50 year term on expiry of the 99 year term. However a 99 year extension can be granted if the lessee proves that they will completely re-develop the land by putting up a new approved structure on the land.
- The 999 year leases were granted by the former colonial government

for agricultural farms in government land areas (crown land). Such farms are found in Nairobi and Rift Valley in what was famously known as the White Highlands. The 999 year leases being held by the former colonial farmers were transferred to the Africans who bought or were allocated the farms.

- However, the National Land Policy recommends leases of not more than 99 years and consequently all such leases are converted by the government to 99 years with effect from 1st September 2010 after the promulgation of the constitution, 2010.

Question 17: What is lease extension?

- Lease extension is granted by the government through the National Land Commission (NLC) when the lessee applies for an extension of term before the existing term has expired.
- A good example is the question above where the lease term of 99 years with effect from 1st January, 1920 still has 4 years before it expires.
- In this case if the lessee applies for an extension they will be granted an additional 50 years but from the date of approval and not in 2019 when the lease will expire. The advantage for the lessee in this case is that extension is granted while the land still belongs to him/her

Question 18: What is lease renewal?

- Renewal of lease is granted by the government through the NLC when the lessee applies for an extension of term after the existing term has expired.
- For example in the above case if the lessee applies for an extension after 1st January 2019 at the time when his lease expires then he will be granted a renewal of lease through re-allocation whereby he will be issued with a letter of allotment granting him the land with conditions.

- In renewal of lease, since the lease term has expired the land reverts to the lessor who could be either the national or county government. The lessor consequently will re-allocate to the lessee if they meet all the conditions of the previous lease and the land is not required for a public purpose. The new term is given with effect from the date of expiry of the old term.

Question 19: What is the Process of renewal/ extension of term

- An application is first lodged at the relevant County Government office within which the land is located.
- This means that the County Land Management Boards (CLMB) of the NLC will play a vital role. Before the same is approved the application is considered by the sections dealing with public health, roads, rates, water and sewerage among others.
- The departments of Survey and Physical Planning in the National government are also consulted before the approval is granted by the County Land Management Boards, now operational in 44 Counties.
- The NLC then implements the approval by preparing a new lease for the lessee. The new lease will bear the new extended term and an enhanced annual rent after re-valuation by a government valuer.
- Approval fees for renewal/extension of lease is Kshs 5000/= paid by the lessee.
- In cases of extension of lease the lessee will surrender the existing title and on payment of the required legal fees a new lease/title will

be prepared in his/her favour.

- In cases of renewal of lease a letter of allotment is issued and on payment of the legal fees stipulated in the letter a new lease/title is prepared for the lessee.
- The new lease is then registered by the relevant Land Registry under the Ministry of Land, Housing and Urban Development.

CONCLUSION

- Being approached by land buyers, development agencies, and investors can be a daunting task if one does not know or understand their land rights. In practice, as examples in this book show, multiple rights can be held by several different persons or groups. This gave rise to the concept of “a bundle of rights”. Different rights to the same parcel of land, such as the right to sell the land, the right to use the land through a lease, or the right to travel across the land, may be pictured as “sticks in the bundle”. Each right may be held by a different party. The bundle of rights, for example, may be shared between the owner and a tenant to create a leasing arrangement allowing the tenant the right to use the land on specified terms and conditions. Tenancies may range from formal leaseholds of 99 years to informal seasonal agreements.
- At times it may be useful to simplify the representation of property rights by putting together all aspects to do with land rights and identifying various rights as is expounded in this book. The use rights: rights to use the land for grazing; control rights: rights to make decisions how the land should be used; and transfer rights: right to sell or mortgage the land, to convey the land to others through intra-community reallocations, to transmit the land to heirs through inheritance, and to reallocate use and control rights are explained in detail.
- Land rights continue to be a subject of debate and contestation in Kenya hence the need for targeting these concerns. It would

be interesting to understand the complexities of land rights by conducting research to provide empirical data on this subject. Further by focusing on various Land Acts /legislations and how these play out in different regions in Kenya would enrich the debate on land rights. These issues can form the subject of future projects.

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