



KNOW YOUR LAND RIGHTS

Produced by

Kituo Cha Sheria

(Legal Advice Centre)

With support from the NETHERLANDS EMBASSY

ISBN: 987-9966-083-34-0

© 2022 by Kituo Cha Sheria

All rights reserved. No part of this document may be reproduced or transmitted in any form and or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Organisation name here above.

Foreword

Land reforms are key in solving land disputes that have grappled Kenya both from pre to post colonial times. Communities have grappled with issues such as being squatters on individual or government land disenfranchisement due to unresolved family disputes, land encroachment, wrongful evictions from government which has led communities to become landless and therefore economically and socially disenfranchised.

This booklet will foster justice and enhance equity through knowledge to communities about their land rights that are guaranteed in various laws. The booklet has been a successful collaboration between the National Land Commission (NLC) and Kituo cha Sheria who are both passionate about access to justice and equity in matters land. These two organizations serve communities that live, work and rely on land as a source of income and social status. The synergy has been necessary and most of all successful.

The Mission of the NLC is to help Kenyans fully enjoy their rights when it comes to land, through sensitization on effective land use and management, provide alternative dispute resolution (ADR) mechanisms regarding land disputes, investigate historical land injustices and ensure Kenyans reach their full potential in accessing, using and owning land. The mission of Kituo cha Sheria is to promote and protect land rights through legal aid, legal empowerment, legal education, advocacy in the implementation of the land laws and through strategic litigation.

We hope this booklet shall be a source of Empowerment to the members of the public and communities that we serve.

Dr. Annette Mbogoh

Gershon Otachi

Kituo cha Sheria

The National Land Commission.

Table of Contents

FOREWORD	4
ACKNOWLEDGEMENT	6
INTRODUCTION	7
THE NATIONAL LAND COMMISSION	8
LAND USE PLANNING AND LAND MANAGEMENT PROCESSI	ES6
PlanningatPlotlevel	9
Development control processes	10
Development application process	12
DEVELOPMENT CONTROL PROCESS	10
COMPULSORY ACQUISITION	16
Process of Compulsory Acquisition	16
The Process of Land Acquisition of Community Land	22
COMMUNITY LAND ACT 2016	
Tenure system and classes of holding Community Land	26
Registration of Community Land Rights	27
Community Land registrar and Register	27
Customary Land Rights	27
Settlement of Disputes relating to Community Land	28
Compulsory Acquisition of Community Land	29
Conversion of Community Land	29
LAND OWNERSHIP DOCUMENTS	31
SUCCESSION	38
RESEARCH ON LAND AND NATURAL RESOURCES	52
HISTORICAL LAND INJUSTICES AND ROLE OF THE NLC	52
FREQUENTLY ASKED QUESTIONS ON LAND	55
CONCLUSION	67

Acknowledgement

We have collaboratively worked on this project on land reform in order to promote access to justice towards members of the public in relation to land matters. This booklet has grown from several meetings organized by Kituo cha Sheria and attended by staff of the National Land Commission (NLC) as presenters and contributors. The conversations and correspondences between Gershon Otachi and Annette Mbogoh provided the background of ideas into ways in which Kenyans would be engaged and sensitized on their land rights. Various knowledge gaps have been addressed in this booklet that will enable full realization of land rights among the poor and marginalized communities' fostering justice and equity. Both mandates of Kituo cha Sheria and the National Land Commission will be realized; information on land use, planning, urban development, substantive rights in regards to land through litigation and succession rights that have been briefly mentioned in the booklet.

We would like to thank the NLC team of Elijah Letangule, Caroline Khasoa, Jacinta Ruth Katee, Priscah Jepkoech Kaino, John Tengeye, Zeinab Juma, Asma Mohamed, Nancy Kosgey and Munira Ally for their contribution and support without which this booklet would not have been developed. From Kituo cha Sheria Valarie Ang'awa, John Mwariri, Janet Kavuravu, Tracy Wachira, Martha Ogutu, Nelius Njuguna, Diana Owiyo and Tobias Mwadime.

Credit is due to MISEREOR for the longstanding support to us through the years in the advancement of Access to Justice and in particular for their support to land rights in Kenya. We wish to thank them for sponsoring the publication of this booklet.

Finally, for members of the public for putting their trust in us to address their issues in regards to land and making requests for information towards their land rights. This book would also not have been possible without the contributor's dedication to their work on land rights, supported by the NLC and Kituo Cha Sheria's collaborative input.

INTRODUCTION

Property rights are crucial within any economy as it is a fundamental economic right to fight poverty. The SDG goals adopted in 2015 recognize an end to poverty. This can only be achieved through equality in social and economic rights which are tied to ownership and controlover land.

Land is defined as:

- The surface of the earth and the subsurface rock;
- Any body of water on or under the surface;
- Marine waters in the territorial sea and the exclusive economic zone;
- Natural resources completely contained on or under the surface; and
- 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.

The Constitution classifies land as:

- 1. Public land is any land that is not privately or communally owned and any land declared to be public land by an Act of Parliament. It is held by the National Land Commission in trust for the people of Kenya.
- 2. Private land is any registered land held by any person under freehold or leasehold or declared private by an Act of Parliament.
- Community land is land held by a group of Kenyan citizens who share a common ancestry, culture, mode of livelihood, socio-economic or any other common interest.

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

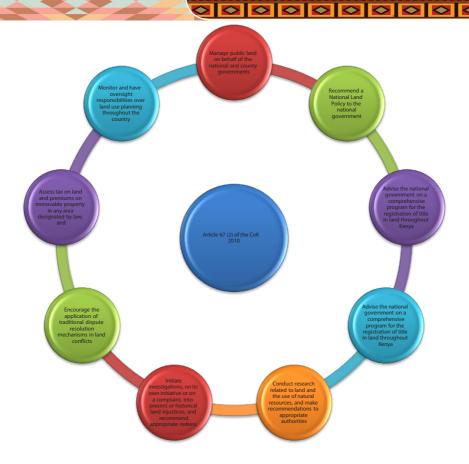
- Affording equal opportunity to members of all ethnic groups
- Non-discrimination and protection of the marginalized
- Democracy, inclusiveness and participation of the people; and
- Alternative Dispute Resolution (ADR) mechanisms in land dispute handling and management

THE NATIONAL LAND COMMISSION

The National Land Commission (NLC) is a constitutional Commission established under Article 67 (1) and Chapter 15 of the Constitution of Kenya 2010, to amongst other things, manage and administer public land on behalf of the national and county governments, initiate investigations into present or historical land injustices and recommend appropriate redress, and monitor and have oversight responsibilities over land use planning throughout the country. The Commission was operationalized by the National Land Commission Act of 2012.

Mandate and Functions of the Commission.

The Commission derives its mandate and functions from Article 67 (2) of the CoK 2010. Additionally, other functions of the Commission are prescribed in Article 67 (3) of the Constitution, Chapter 15 of the Constitution and relevant statutes, including 2 the National Land Commission Act (2012), Land Act (2012), Land Registration Act (2012) and Community Land Act (2016) among others



LAND USE PLANNING AND LAND MANAGEMENT PROCESSES

Land use planning is the process of assigning and organizing land uses to ensure orderly development. The land uses include residential, commercial, industrial, recreational, educational, agricultural, public purpose, public utilities, transportation and conservation.

Land use planning can be done in several levels at the plot level and the neighborhood level.

Planning at Plot level

At plot level land use planning is done through development control processes managed by relevant government agencies. Development control

is the process of implementing a land use development plan. Development Control helps in guiding day to day development activities.

1. Development control processes

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:

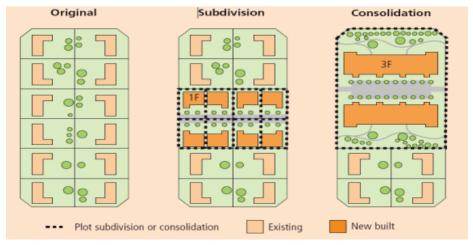


Figure 1:

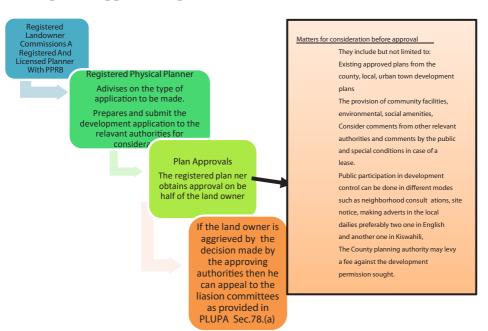
Structure of Land Subdivision and Consolidation Source: UN HABITAT, 2013

- 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 to the lessor if the lease period is not extended. One may apply for extension or renewal provided he/she has complied with the terms of lease.
- e) Land Reclamation: process of artificially improving and creating new land for different land use such as agriculture, settlement, irrigation and other planned use.
- f) Land Amalgamation: combining two or more adjacent parcels of land into one.
- g) Allocation of Public Land: Involves planning, surveying and transfer of ownership of the land by government. Such transfer may be to public or private entities.
- h) Conversion of Land: where one category of land is converted into another for example from community land to private land. This may be by way of allocation or compulsory acquisition, reversion of leasehold interest, transfers or surrenders.
- i) Building plans; These are drawings that are prepared by registered Architects and submitted to relevant government agencies for approval
- j) Advertisements are submitted by registered planners for approval .They include hoarding, banners etc.
- k) Easements: Is a right of way in someone else's land. 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.
- l) Restrictive Covenants: Actions that limit transactions on land. They include:
 - Caveat-Buyer be aware
 - Caution- Lodged by anyone with an interest on land
 - Restriction –done by way of a letter from chief or assistant chief
 - Court order/inhibitions
- m) Land banking: acquiring land and property at strategic sites for future public use. The banking may be through planning, acquisition,

- purchase, donation, and surrender, among others
- n) Environmental Impact Assessment- This is undertaken to measure the effect of a project/development on the environment. It is undertaken by the developer to NEMA and a NEMA license is issued.
- Other development control applications base transmission station, petrol stations, eco lodges, camp sites, power generation plants, factories.

Development application process



Planning at neighborhood level

Planning at neighborhood level is undertaken through different types of Development plans. Development plans are prepared from estate level, village ward, town, county and National level.

These types of plans are defined in the Physical and Land use Planning Act of 2019 Sec. 21 to 52, the County Government Act of 2012 sec. 107 and the Urban areas and Cities Act Sec. 36

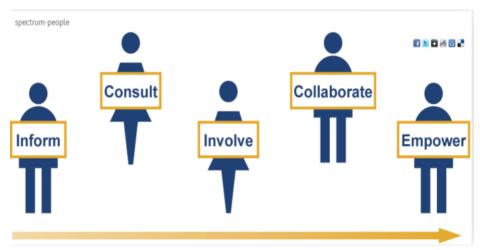
Planning at neighborhood level is undertaken in several phases key among them is inception, situational analysis, draft plan, Approval and Implementation.

These phases require public participation as a key process. This is a constitutional requirement in all planning processes.

Public participation in land use planning

Deliberative process by which citizens, non-state, and government actors are involved in policy making, implementation and influencing outcomes of a development planning process. Public participation in planning is a key and vital process during preparation, implementation, monitoring and review stages of the development plan.

Public participation facilitates the planning process to be fast and well understood by all parties concerned as seen in the below diagram.



For effective public participation the planning process can consider inclusivity of all those being affected by the plan to participate.

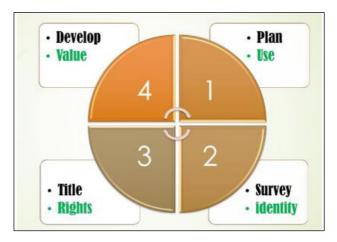


The modes of engagement can be through focused group discussions, Stakeholder forums (workshop), Public hearings, Consultative forums (Resource base, Catchment and Community levels), Letters, social media, Advertisements, press conference, Talk shows, newsletters, radio, mosques, churches, public baraza, displays and exhibitions, brochures, Public fora.

Public participation for development plans is undertaken in the Local daily newspapers and Kenya Gazette through the notice of intention to plan, notice of completion of the plans. The public is given a timeline to represent their views regarding the plan in written format to the undersigned authority on the notices.

Benefits of land use planning

- Planning enhances well livable, safe, and health neighborhoods 1.
- Helps in making decision for urban and rural development 2.
- 3. Planning helps to support land survey and titling, create basic order
- 4. It aids in managing and preventing disasters
- Planning is a social justice tool. It contributes to the protection and promotion of the fundamental rights and freedoms and the progressive realization of the socio-economic rights;
- Planning helps to conserve culture



- 7. It is a basis of public funds appropriation in the Counties
- 8. Enhances Food Security and Diversified Sources of Livelihoods
- 9. Provides a basis for engagement between county government and the citizenry, other stakeholders and interest groups.



COMPULSORY ACQUISITION

Definition

- This is the process where the National or County government to acquire private and community land compulsorily subject to compensation for public purpose or in the public interest. NLC is mandated to carry out this role.
- Public purpose (or public interest) is limited to matters of regulating rights and land use in:
 - the interest of defense
 - 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 Committee Member. The land should be acquired for public purpose or in public interest.
- Verification Meeting: Before gazettement, 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 georeferenced 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.

POST INQUIRY C.

- Award of compensation: upon conclusion of the inquiry, the NLC shall make a separate award of compensation for every person whom tthe 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.
- Payment can be done to occupant of good faith who is defined as individuals or families lawfully and managing land claiming ancestral interest or those occupying land traditionally pending adjudication. This does not include individuals occupying land without consent of the owner such as squatters.
- Section 113 of the Land Act, 2012 provide forms of payment of compensation to include:
 - allocation of alternative parcel of land of equivalent value and comparable geographical location and land use to the land compulsorily acquired;
 - monetary payment either in lump sum or in instalments spread over a period of not more than one year;
 - issuance of government bond; О
 - grant or transfer of development rights as may be prescribed;
 - equity shares in a government owned entity; or
 - any other lawful compensation
- 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,
- 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. Preemptive 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 Environment and Land 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.

- Criteria for assessing land value will be pegged on land value index that will prepared by Ministry of Lands and Physical Planning in consultation with county governments and approved by both national assembly and the senate.
- Valuation for Compensation: valuation for compensation includes the following:
 - o the market value of the land and improvements
 - damage sustained or likely to be sustained because of division or separation of land
 - o damage sustained or likely to be sustained because of the acquisition damaging the other property
 - o 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.

- 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
- A listing for parcel numbers indicating the plot reference number, 3. registered owner and affected acreage column in acres. This should be submitted in both soft and hard copy
- Official searches of affected land parcels. The NLC shall assist where necessary.
- The Environmental Impact Assessment Report (EIA) and 5. appropriate approvals/certification for the project.
- 6. The Relocation Action Plan (RAP) report.

- 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.

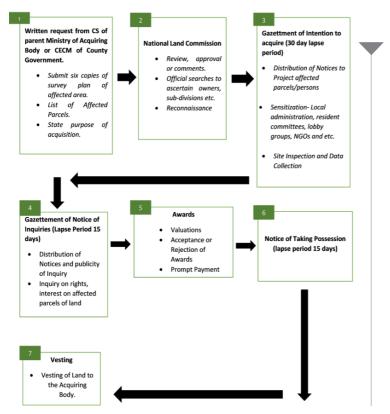
A final survey for vesting of the acquired land to the National or County Government will have to be done by the acquiring authority. The NLC can assist in this exercise at costs borne by the acquiring body.

Section 133 of the Land Act, 2012 establishes Land Acquisition Tribunal whose jurisdiction is to hear and determine appeals from the decision of the Commission in matters relating to the process of compulsory acquisition of land. All matters relating to compulsory acquisition of land or creation of wayleaves, easements and public right of way shall, in the first instance, be referred to the Tribunal. Those dissatisfied by decision of the tribunal can appeal the matter to Environment and Land Court.

The Process of Land Acquisition of Community Land

Section 21 of Community Land Act, 2016 provides states that conversion of community land to public land is subject to provision of Land Act, 2012 and the relevant laws. The process of compulsory

STATUTORY PROCEDURES AND PROCESSES OF COMPULSORY LAND ACQUISITION PROGRAMME



land acquisition is therefore like acquisition of private land save for the fact that when the land is registered in the name of the community any dealing requires approval of two thirds of the assembly established in the act. In cases where the community is unregistered, section 6 provides that the respective county government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land.

 Community land can also be converted to public trough transfer and surrender with approval of two thirds of the assembly.

COMMUNITY LAND ACT 2016

Community land in Kenya shall vest in the Community. In this respect, the term "Community" has been defined to mean a consciously distinct and organised group of users of community land who are citizens of Kenya and share any of the following attributes:

- Common ancestry
- Similar culture or unique mode of livelihood
- Socioeconomic or other similar common interest
- Geographical space,
- Ecological space
- Ethnicity

The constitution of a community is therefore not limited to ethnic lines as is the case with the current practice. The Act requires a community claiming an interest in or right over community land to be registered.

The Act aims at:

- Providing for a classification of land known as community land. The Constitution provides that community land shall vest in and be held by communities.
- Providing for the recognition, protection and registration of community land rights, the management and administration of community land and the role of county governments in relation to unregistered community land and related matters.

STEP 1: PREPARING THE COMMUNITIES FOR LAND REGISTRATION

- Define the community and draw a sketch map of community land.
- Consult the community and prepare the communities for land registration by creating awareness and establishing understanding key considerations in the registration process.
- 3. Establish any gaps in the community's understanding on community land and address them alongside other stakeholders including the government officials as may be needed.
- 4. Bring out any fears the community has on the process of land registration and develop coherent strategy to address them.

5. Resolve any outstanding issues with the acceptance of the community.

STEP 2: REGISTRATION OF COMMUNITY

- 1. Write to the County Community Land Registrar of intention to register a community (Form CLA 1 signed by at least 15 representatives of the community with their details).
- 2. The Community Land Registrar will then 'invite all members of the community with communal interest to a public meeting for the purpose of electing the members of the community land management' committee.
- 3. The notice [of the meeting] shall be published in at least one newspaper of nationwide circulation and announced in a radio station of nationwide coverage in both official and local language indicating the date, time, place and purpose of the meeting.
- 4. The registrar may, in addition, use other available means of communication including pinning notices at the headquarters of the respective county, sub-county, wards, location, and in strategic places where the community land is situated.
- 5. Upon issuing a notice, the Land Registrar, in consultation with the national and county government representatives for the area where land is located, shall convene and oversee the process of election of community land management committee members.
- 6. The Cabinet Secretary, in consultation with the relevant County Government, shall undertake training and induction for the newly elected community land management committee.
- 7. The community land management committee shall, on behalf of the community assembly, draft rules and regulations to govern the operations of the community assembly which shall be adopted by the community assembly
- 8. An application for registration of a community shall be made to the registrar in Form CLA 3, accompanied by:
 - a) Name of the community;
 - b) register of members of the community;
 - c) a certified true copy of the minutes of the meeting at which it was resolved to seek application for registration;

d) rules and regulations of the community;

- e) description of the interest in land being claimed by the community including a sketch map.
- 9. The registrar shall consider an application for registration and may issue a certificate of registration in the name of the community in Form CLA 4.

COMMUNITY LAND MANAGEMENT COMMITTEE

The Act establishes a Community Land Management Committee which shall be elected by a community assembly consisting of all adult members of the community. The functions of the Community Land Management Committee shall be to:

- have responsibility over the running of the day to day functions of the community;
- manage and administer registered community land on behalf of the respective community;
- coordinate the development of community land use plans in collaboration with the relevant authorities;
- promote the co-operation and participation among community members in dealing with matters pertaining to the respective registered community land; and
- prescribe rules and regulations, to be ratified by the community assembly, to govern the operations of the community.

TENURE SYSTEMS AND CLASSES OF HOLDING **COMMUNITY LAND**

Community land may be held under any of the following land tenure systems:

- Customary,
- Freehold
- Leasehold and:
- such other tenure system recognised under the Act or other written law

- Community land may be held as:
 - Communal land
 - Family
 - clan land
 - reserve land
 - in any other category of land recognised under the Act or any other written law.

REGISTRATION OF COMMUNITY LAND RIGHTS

The Act requires community land rights to be registered in accordance with its provisions and the provisions of the Land Registration Act, 2012.

In this respect, a Certificate of Title issued by the Community Land Registrar shall be evidence of ownership of the land. This Certificate of Title shall not be subject to challenge, except on grounds of fraud or misrepresentation to which the person is proved to be a party or where the certificate of title has been acquired illegally, or through a corrupt scheme.

The registration of a community as the proprietor of land shall vest in that community the absolute ownership of that land, while, the registration of a community as the proprietor of a lease shall vest in that community the leasehold interest described in the lease, together with and subject to all implied and express rights and privileges.

COMMUNITY LAND REGISTRAR AND REGISTER

The Chief Land Registrar is required to designate a qualified registrar to be the Community Land Registrar responsible for registration of community land.

The Act also requires the maintenance for each registration unit, a community land register in accordance with section 8 of the Land Registration Act, 2012.

CUSTOMARY LAND RIGHTS

The Act recognises customary land rights including the customary right of occupancy and provides for their adjudication and documentation. The Act also gives customary land rights equal footing in law as freehold and leasehold tenure. In this regard, the term "customary land rights" is defined to mean rights conferred by or derived from African customary law, customs or practices provided that such rights are not inconsistent with the Constitution or any written law.

Subject to the transition and saving provisions under the Act, any person who immediately before 21 September 2016 had a subsisting customary right to hold or occupy land shall upon commencement of this Act continue to hold such right

SETTLEMENT OF DISPUTES RELATING TO COMMUNITY LAND

- 1) Any disputes arising from community land may be resolved through alternative dispute resolution mechanisms as provided for in the Act.
- 2) Where the community is unable to resolve the dispute arising from community land recognition, adjudication and registration process within a registration unit, the complainant shall refer the dispute to the land adjudication officer in Form CLA ii who shall record the dispute in a register in Form CLA 12.
- 3) The Cabinet Secretary may appoint an ad hoc committee to hear and determine the disputes filed under paragraph (2) consisting of deputy county commissioner who shall be the chairperson of the committee; two (2) nominees from the county government where the community land is situated; the Government Surveyor; and land adjudication officer, who shall be the secretary.
- 4) The ad hoc committee shall appoint not more than four (4) representatives from the communities where the community land is situated.
- 5) The appointed representatives shall not be members of the community land management committee and the appointment will comply with the two thirds gender rule.
- 6) Where the community land under dispute traverses different registration units or Counties, the Cabinet Secretary may constitute a special ad hoc committee consisting of not more than nine persons.

COMPULSORY ACQUISITION

The Act limits the compulsory acquisition by the State of any interest in, or right over community land only in the instance where the compulsory acquisition is;

- in accordance with the law,
- for a public purpose,
- upon prompt payment of just compensation to the person or persons, in full or by negotiated settlement.

CONVERSION OF COMMUNITY LAND

Community land can be converted to either public land or private land and vice versa. The Act provides that at least two-thirds of the community members must approve any conversion of community land. This does not however limit the application of the Land Act, 2012 and any other law in respect of compulsory acquisition of land.

ROLE OF COUNTY GOVERNMENT IN RESPECT TO COMMUNTIY LAND

The main role of the County Government under the Act is to hold in trust on behalf of a community unregistered community land and any monies payable as compensation for compulsory acquisition of any such unregistered community land. Any such monies shall be deposited in a special interest earning account by the County Government and shall be released to the community upon registration of the community land.

A County Government is prohibited from selling, disposing, transferring, and converting for private purposes or in any other way disposing of any unregistered community land that it is holding in trust on behalf of a community.

EVICTIONS AND RESETTLEMENT LAWFUL EVICTIONS

- Eviction is the act of depriving a person of the possession of lands which he or she has held.
- Lawful eviction is the process of carrying out evictions according to

- the Land Act, 2012.
- Whenever a person is evicted it is important to identify if the land is private, public or community land.

Notice

- Issuing of notices is mandatory before lawful evictions are carried out.
- Without notices, evictions are deemed unlawful according to the law and the Courts.
- If the land is public land, then the National Land Commission is to issue notice.
- If the land is communally held, then the notice is to be issued by the County Executive Committee Member in charge of land matters.
- If the land is private land, then the person who issues the notice is the owner or the person in charge of the land.
- The law provides that notice should take 3 months and should be in writing.

Forms of the Notice

- For public or community land, notice should be published in the Kenya Gazette, a newspaper with nationwide circulation and to be announced on radio in a language that can be understood by those affected by the notice.
- For private land, notice is to be both in English and Kiswahili. If the notice affects a large group of people, 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. This notice should specify what is to be done on the removal of buildings and reaping of crops on the land.
- For private land, the law provides that an owner or a person in charge of the land is to serve the Deputy County Commissioner in charge of the area as well as the Officer Commanding Station of the police station of the area where eviction is to take place.

Remedies upon service of an eviction notice

Persons who have received a notice that they will be evicted can challenge

such a notice in the Environment and Land Court. The Court may:

- i. confirm the notice and order the person or people to vacate.
- ii. cancel, change or add to the notice to ensure it is just.
- iii. suspend the operation of the eviction notice for some period of time or make an order for compensation.

Guiding principles on lawful evictions

- There must be proper identification and authorization of those carrying out the eviction prior to the eviction;
- Where groups of people are involved in the eviction, government officials or their representatives are to be present during the eviction;
- Evictions should protect constitutional rights of life, dignity and security. This has been interpreted by Courts to mean that it should take place without the use un proportional force manner and during the day;
- Evictions should ensure the special protection of vulnerable persons such as women, children, the elderly and those with disabilities;
- Victims of evictions are not to be deprived of property on the spot;
- Property left involuntarily should be protected from destruction;
- The use of force during evictions should be proportional and only done out of necessity; and
- Those who are affected by evictions are to be given first priority to demolish and salvage their property.

Property left after evictions

- One has 7 days to claim property left after evictions. This includes buildings.
- If one fails to comply then the relevant officers of the National Land Commission, the County Officers in charge and the owners of public, community and private land respectively may have such property removed or disposed by public auction, any unclaimed property left behind after an eviction.

Settlement programs (Section 134 and 135of the Land Act, a) 2012)

- This is when the government provides access to land for squatters, persons displaced by natural causes like floods, development projects, establish refugee camps, 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).
- The Commission shall, on behalf of the national and county governments, implement settlement programmes to provide access to land for shelter and livelihood.
- The Commission is tasked to assist the National and County governments in the administration of settlement programmes.
- The Sub-County Selection Committee is to identify and verify the people to be resettled.
- Persons who qualify for resettlement but have been left out can claim to the Land Use Liason Committee* if the land is public.
- One can register a complaint to the Community Dispute Committee* or the County Settlement Committee* on resettlement if the land is community land.
- A person dissatisfied by a resettlement decision can seek redress from the Environment and Land Court.

LAND OWNERSHIP DOCUMENTS

This is a document that gives evidence of one's right to land.

There are different types of land ownership documents based on the various statutes that govern land. They have been in existence from colonial times up to the post-independence. They include:

- Indenture: issued under the Government Lands Act Cap 280 (repealed)
- 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 under Land Title Act cap 282(repealed) and Registration of Title Cap281 (repealed).
- Certificate of lease: title under the Registered Lands Act Cap 300 (repealed) for lease hold land.

- Title deed (absolute ownership/proprietorship, freehold or fee simple): 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.

These land ownership documents are still in use and valid until a gazette notice for regularization is issued by the Ministry of Land.

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 the CoK 2010.

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 subject to government regulation.

Methods of acquiring Rights to land:

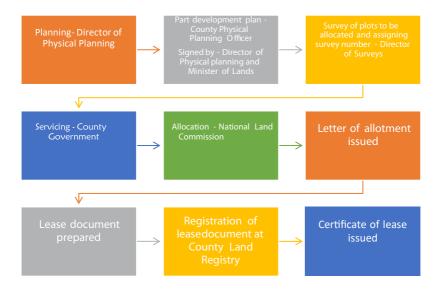
b) Allocation

- 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 that 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. The
- A Part Development Plan is prepared and signed by the Director General Physical and Land Use Planning to facilitate the allocation of the 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 allotees 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.

Requirements for land allocation

- Approved Part Development Plan
- Authenticated survey map/deed plan
- Ground status report
- Comments and/or Recommendations



c) Prescription/adverse possession

- 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 recognized as the owner.

d) 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.

e) 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.

f) **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

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 Should have a recollection of all his/her assets, beneficiaries and understand the nature and effect if the will.
- 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

A Will is a means by which an owner of property disposes of his assets in the event of his death.

- 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. Such a person is known as a Testator/testatrix
- A person, may through his/her Will appoint an executor. This is someone named in a Will who has the sole 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 of the will.
- 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)

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 in the presence of 2 of more competent witnesses who must observe the maker sign.

- 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. These two witnesses must not be beneficiaries in the Will.
- If the witnesses are beneficiaries, there shall be need for two additional 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.

Dependants

"dependant" means -

• the spouse, and the children of the deceased whether or not maintained



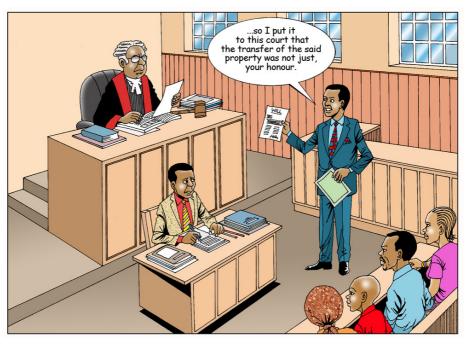
by the deceased before his death;

- 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.

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 propertyas 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

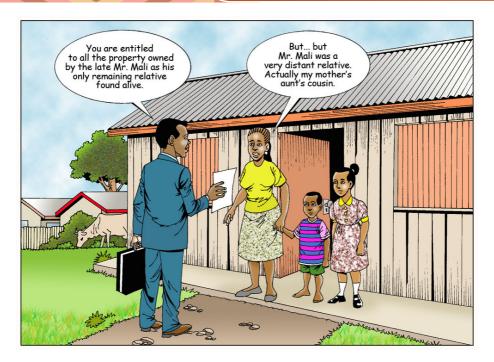
- surviving child or children
- If a child feels that the surviving spouse has not exercised the power of transfer in a just manner, the child may apply to Court for his/her share of property. If under age, the child will be represented by an adult. The Court will consider:
 - the nature and amount of 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

0000000

- 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



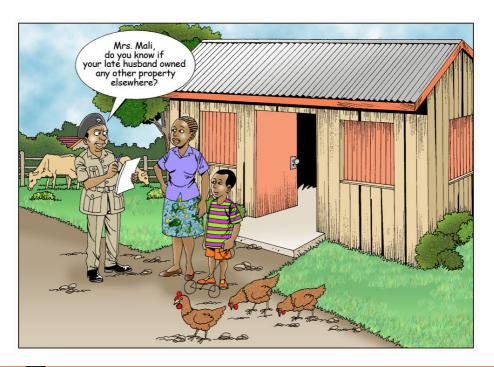
- Where the deceased is polygamous:
 - His personal and household effects and the intestate property estate shall, first of all be divided among the houses according to the number of children in each house.
 - Any wife surviving the deceased will be considered as an additional child.
- Where the deceased 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:

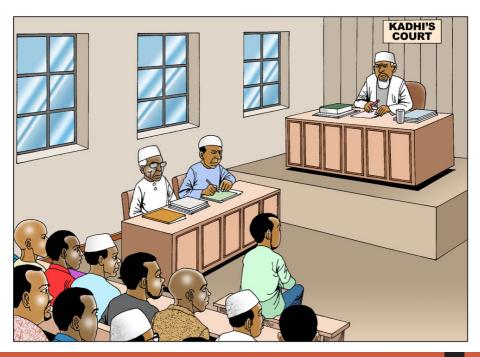
- go to the residence of the deceased and take all necessary steps for the protection of his free property found there
- find out if the deceased has other free properties
- find out all persons appearing to have any legitimate interest in succession to his/her property
- If the deceased resided in a 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 and the magistrate courts hear all matters to do with succession depending on the value of the subject matter.
- A Chief Magistrate can only hear matters that do not exceed Kshs.20,000,000
- A Senior Principal Magistrate can only hear matters that do not exceed Kshs.15,000,000
- A Principal Magistrate can only hear matters that do not exceed Kshs.10,000,000.00;
- A Senior Resident Magistrate can only hear matters that do not exceed Kshs.7,000,000.00; and
- A Resident Magistrate can only hear matters that do not exceed Kshs.5,000,000



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.

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

00000000000

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

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.

Succession the order in which or the conditions under which one person after another succeeds to a property in this case Land				
	Process	Office to engage	New form to use	
1	Acquire death certificate. If no will present, all children automatically become beneficiaries			
2	Consult the area chief to write a letter confirming the list and names of beneficiaries			
3.0	Potential successors carry out land official land search	County/district land registrars	LRA 84	
3.1	Results will be issued by a registrar using the form		LRA 85	
4	Obtain the Law of Succession Act form 80 from the court and fill it as affidavit confirming the case		Law of Succession Act form 80	
5	Present the affidavit form, chief's letter, search results and death certificate to court and petition the gazettement of the land for 90 days			
6	If no objections raised, the court issues a letter of administration			
7	Successors apply for confirmation of grants i.e. permission to transact in the land e.g. sell, subdivide, etc.		Law of succession regulations form P&A 54	
8	Apply for the transference of title deed name from deceased to successors		LRA 42	

RESEARCH ON LAND AND NATURAL RESOURCES

The Commission undertakes research on land and the use of natural resources, and make recommendations to appropriate authorities. The research findings are disseminated and posted on the Commission's website for public consumption. The commission undertakes research on its own motion, request and collaboration by partners.

Recent publications by the commission include:

- The effects of Land fragmentation on Land Use and Food Security
- National Research Policy Framework

- Compendium of Land Matters
- Securing Public lands in Marsabit County
- Increasing the Bundle of land Rights for schools in Nyeri County

ADR

Alternative Dispute Resolution is a way of solving a dispute out of court. It is composed of fields such as: mediation, arbitration, negotiation, reconciliation, fact finding and expert determination. This is provided for under Article 159(2) of the Constitution of Kenya 10 and the Commission implements this through its powers under section 6 of NLC Act 2012.

The ADR process in the Commission

- The commission receives written complaints/claims from the public, the claims are recorded and registered
- Issue of summons
- Site visits undertaken by the commission
- Determination by the ADR committee

The National Land Commission has embraced a form of ADR which it carries out in the review of grants and dispositions, to hear land-related cases and make a determination. Under this setup, ADR have been very effective and efficient mechanisms in managing land related disputes

Historical Land Injustices and The Role of National Land Commission

1.1 Background

Over the years, successive governments initiated several Land Schemes, enacted Land Acts (Trust and Adjudication) and Commissions of inquiries in a bid to address Land Injustice. In the 1950s struggles against British colonial rule left the citizens landless. Land schemes were established in 1962 to address landlessness. These injustices are dated way back to precolonial and post-colonial period and continue to escalate overtime. The injustices are known as historical injustices.

However, the historical land injustices still exists due to mal practices in allocation of land and failure by the successive governments to implement the recommendations of the Commissions of inquiries, Carter Commission Report(1932), Akiwumi (1999), Njonjo Land Commission/the Commission of Inquiry(2002), Ndung'u Land Commission(2003) Truth Justice and Reconciliation Commission (TJRC,2008). Additionally failure to implement the relevant laws that governed land matters (Trust Land Act (1968) and Land Adjudication Act (1968) at that time also exacerbated the land injustices.

As aforementioned Article 67 (2) of the Constitution, the Commission shall receive, admit and investigate all historical land injustice complaints and recommend appropriate redress. Similarly, National Land Commission Act gave the criteria on what qualifies to be historical Land injustice and several remedies to these claims.

The historical land injustices process in the commission

- 1. The commission receives written complaints/claims from the public, the claims are recorded and registered
- 2. Acknowledgment
- 3. Invite the claimants and the respondents for hearing
- 4. Site visits undertaken by the commission
- 5. Determination by the HLI committee

Year	Legislation	The criteria to qualify Historical Land Injustice	Recommendations
2012	National	Section 15 (1).	(9) The Commission after
	Land Act	(2) For the purposes of this section, a historical Land injustice means a grievance which-	investigating any case of historical land injustice referred to it, shall
		(a) Was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement;	recommend any of the following remedies-
		(b) resulted in displacement from their habitual place of residence;	(a) Restitution; (b) Compensation, if it is
		(c) Occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27thAugust, 2010 when the	impossible to restore the land; (c) Resettlement on an alternative land;
		Constitution of Kenya was promulgated;	(d) Rehabilitation through
		(d) Has not been sufficiently resolved and subsists up to the period specified under paragraph (c); and	provision of social infrastructure; (e) Affirmative action programmes
		(e) Meets the criteria set out under subsection 3 of this section	for marginalized groups and communities;
		(3) A historical land claim may only be admitted, registered and Processed by the Commission if it meets the following criteria-	(f) Creation of wayleaves and easements;
		(a) It is verifiable that the Act complained of resulted in displacement of the claimant or other form of historical land injustice;	(g) Order for revocation and reallocation of the Land; (h) Order for revocation of an
		(b) The claim has not or is not capable of being addressed through the ordinary court system on the basis that-	official declaration in respect of any public land and reallocation; (i) Sale and sharing of the proceeds
		(i) The claim contradicts a law that was in force at the time the injustice began; or	(j) Refund to bona fid, third party
		(ii) The claim is debarred under section 7 of the Limitation of Actions Act or any other law;	purchasers after valuation; or (k) Declaratory and preservation
		(c) The claimant was either a proprietor or occupant of the land upon which the claim is based;	orders including injunctions
		(d) No action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question; and	(10) upon determination of a historical land injustice claim by
		(e) It is brought within five years from the date of commencement of this Act.(4)	the Commission, deny authority mandated to act under the redress
		(4) A claim alleging historical land injustice shall be permissible if it was occasioned by-	recommended shall be required to do so within three years.
		(a) Colonial occupation;	(11)The provisions of this section
		(b) Independence struggle;	shall stand repealed within ten years.
		(c) Pre-independence treaty or agreement between a community and the government;	
		(d) development-induced displacement for which no adequate compensation or other form of] remedy was provided, including conversion of non-public land	The commission lost power within to recommend to Parliament
		Into public land;	appropriate legislation to provide for Investigation and adjudication
		(e) Inequitable land adjudication process or resettlement scheme;	of claims arising out of historical land Injustices, although it has
		(0 politically motivated or conflict-based eviction;	been given to receive, admit and
		(g) Corruption or other form of illegality;	investigate all historical land injustice complaints and
		(h) Natural disaster; or	recommend appropriate redress.
		(i) Other cause approved by the Commission.	
		$(5) When conducting investigations under subsection (1) Into historical land injustices the Commission \\ may-$	
		(a) Request from any person including any government department such particulars, documents and information regarding any investigation, as may be necessary; or	
		(b) By notice in writing, addressed and delivered by a staff of the Commission to any person, direct such person, in relation to any investigation, to appear before the Commission at such time and place as may be specified in the notice, and to produce such documents or objects in the possession, custody or under the control of such person and which are relevant to that investigation	
		(6) Where a complainant is unable to provide all the information Necessary for the adequate submission or investigation of a complaint, the Commission shall take reasonable steps to have this information made available.	
		(7) If at any stage during the course of an investigation, the Commission is of the opinion that the resources of the Commission may be more effectively utilized if all claims within a given area or township were to be investigated at the same time, the Commission shall cause to be published in the Gazette or in such other manner as the Commission may deem appropriate, a notice advising Potential complainants of the decision and inviting them to lodge claims within a period specified in such notice.	
		(8) A claim in respect of a matter contemplated in subsection (7) shall not be lodged after the expiry of the period specified in the said notice	
		<u> </u>	

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.
- Ardhi Sasa- is an online platform that allows citizens, stakeholders
 and other interested parties to interact with land information held
 and processes undertaken by the government. It allows making of
 application for various services and giving back the responses for the
 services applied.
- NLIMS is a national land information management system which is designed to enhance security of land records, improve accessibility and reduce the cost of land transactions. It is done under Ardhisasa
- GIM is the management of geoformation which is also done under platforms like ardhisasa
- 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 problemsolving 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 Commision'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 and Social Search

- Carry out an official search at the County Land Registry, the Central registry or Coast Registry depending on the registration on the body of the title.
- 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
- Social search- this involves going to the ground to gather information on the status of the land. Eg verify if the owner is alive, presence of squatters, what the neighbors say about the land.

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

Transfer and procurement of completion documents d)

- 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: What is a CR, IR, LR

- **C.R** This is Coast Registry Number. It is a title number assigned to a titles issued under the repealed RTA registered at the Mombasa Registry.
- **I.R.** This is Inland Registry Number. It is a title number assigned to titles under the repealed Registration of Titles Act registered at the Central Registry in Nairobi.
- **L.R** Refers to Land Reference Number which is a parcel number issued by the Director of survey before the land is registered.

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.

What is a white card?

- A white card is a land register for leasehold tenure under the Land Registration Act, 2012 containing all transactions relating to a piece of land/plot. It is white in color as the name suggests.
- It has all other features and is opened the same way as green card, except that it has details containing, the lessor, lessee, term of lease and the commencement period of the lease.

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: How can I verify an allotment letter?

0000000

Before 2010 all allotments were done under the Commissioner of lands. These were supported by PDPs, Minutes of town or council committees. Post 2010 the function went to the National Land commission. One has to refer to the approved plan and the registry Index map authenticated by the director of Survey. In case of any queries you can make an inquiry at the NLC

Question: I have an allotment letter and I have paid the fees indicated on the letter, what next?

- You have to sign the acceptance letter. Then Buy a bankers cheque in favour of the Principal Secretary.
- A file is opened at the Lands Records Office; the file is then taken to the Land administration Director at the Ministry who authorizes the receipt of payment.
- Then the file is taken to accounts office at the Ministry where you will be issued with two official receipts.
- The file is taken to the Records Office at the Ministry. A lands officer is assigned the file who will then prepare a letter known as an Indent to the Director of Surveys requesting for a signed and sealed RIM.
- The Lands officer will use this RIM and the allotment letter to prepare a lease document in triplicate. This lease document will then forwarded to the County Registrar.
- The owner will take the three copies and attach passport photo, attestation by the Advocate, copy of ID, KRA Pin Certificate.
- After this, you will need to send these documents together with the attachments to the Land registry.
- You will then be issued with a certificate of Lease.

Refer to s.12 of the Land Act, and Land allocation general regulations

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: 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.

Form LRA 68 (r. 80(3))

REPUBLIC OF KENYA
THE LAND REGISTRATION ACT
THE LAND REGISTRATION (GENERAL) REGULATIONS, 2017
NOTICE OF CAUTION

TITLE NUMBER:	
---------------	--

Date of Caution	
The Cautioner:	Give full name(s) and if
	corporate the registration
	number, if any
The Proprietor:	Give full name(s) and
	company s registration
	number, if any

Name:	Registrar's Stamp	/ No
Signature:		•••

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 for example, a purchaser for value
- 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.
- Order for compensation

Question 17: What is lease extension?

- Lease extension is prolonging the term of the lease before the leasehold expires. It is granted by the government through the Cabinet Secretary, Ministry of Lands and Physical planning upon application by the lessee or lessee's administrator. It has to follow all the Development Application procedures during its application.
- 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 the granting of new lease term after the previous lease term expires. Granted by the government through the National Land Commission when the lessee or the lessee's administrator applies.
- Renewal of lease is done through re-allocation whereby the lessee is issued with a letter of allotment granting them the land with conditions
- 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

Process of renewal

00000000

- The national land commission notifies the lessee 5 years before the lease expires and gives them preemptive rights provided that the land is not required by the County or National government for public purposes.
- An application is first lodged at the relevant County Executive Committee Member (CECM)-Lands within the County in which the land is located. The application is done by the lessee through a registered physical planner, who submits a planning brief, PPA1 which is an Application for Development.
- The CECM circulates the application to various offices within the County, including the County physical planner, County land administration officer and County Surveyor asking for their comments.
- Once the CECM receives no objection, will proceed and issue a PPA2 which is a planning permission.
- The lessee then forwards the application together with PPA2 to the National Land Commission County Coordinator in the county where the land is. The documents to be attached during the application includes duly completed form LA 22, the Survey Map and a Part Development Plan.
- The County coordinator conducts site inspection and prepares a ground report which they forward together with PPA2, the survey map and

- the National Land Commission for processing of a letter of allotment.
 The national land commission once satisfied with application requirement, issues the letter of allotment which is given to the lessee.
- The lessee then accepts the terms, pays the requisite fees indicated on the letter of allotment and forwards the same to the Director of Lands Administration in the ministry of Lands who then prepares the lease.
- The lease is then forwarded to the County Land Registry for registration and issuing of a certificate of lease.

Process of extension

- It is done before the lease term expires.
- It follows same procedure as renewal of lease only that the ground report is prepared by the County Land Administration Officer.
- The application together with duly filled form (LA 22) is then forwarded to the Cabinet Secretary, Ministry of Lands and Physical Planning.
- Valuation is then done
- A surrender letter is written to the lessee asking them to surrender the old certificate of lease and pay the approval fees and the rent indicated on the letter.
- Once the payment and surrender have been done, a lease document is prepared and forwarded to the County Registry for registration and subsequent issuance of the Certificate of lease

Question: How do I protect my land from Land grabbers?

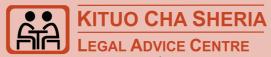
You are advised to fence, occupy and use as per the land use plan for the area.

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.

Kituo Cha Sheria (KITUO) is a Non-governmental organization founded in 1973. It supports the poor and marginalized access justice and realize their human rights through advocacy, networking, lobbying, legal aid, representation, litigation and research. Kituo has established Community Justice Centers in informal settlements which are run by trained paralegals and provide free legal advice to walk in clients.



we care for justice

Head Office: Nairobi

Ole Odume Rd, Off Argwings Kodhek Rd, P.O. Box 7483 - 00300, Nairobi, Kenya. Tel: 254-020-3874220, 387419, 3876290 Mobile: 0734874221, 0727773991 E-mail: info@kituochasheria.or.ke

Regional Office - Mombasa

Taratibu Street, Tudor **Next to White Rhino Hotel** P. O. Box 89065, Mombasa, Kenya. Tel.: 0700638379, 0731129739 E-mail: msa@kituochasheria.or.ke

Branch Office - Nairobi Forced Migration Program (FMP).

KCDF House, 4th Floor. Chai/Pamba Road, Pangani

Tel: 202451631, 0736867241, 0720806531

E-mail: fmp@kituochasheria.or.ke

