

Land acquisition in kenya



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How can land be acquired in Kenya Land acquisition in Kenya Land is an important aspect of the life of any society. It is essential for food production and security, supports important biological resources and processes, sustains the livelihoods of the majority of Kenyans and constitutes an important cultural heritage for many communities. Land should therefore be managed in a way that recognizes its many attributes. In legal perspective, it is very important to define certain words that may ordinarily be taken for granted such as land.

The land laws in Kenya define land as the soil and any structure that is permanently affixed to the soil. Going by this definition therefore, a permanent structure on the soil is part of the land on which it stands. The predominant system of land ownership in Kenya is fashioned on the Australian Torren model. This model was adopted at independence in order to secure the proprietary interests of white settlers who then owned most of Kenya's arable land. The registration and ownership of land was consolidated into Registered Land Act (RLA).

This piece of legislation gives the registered proprietor of land an absolute and indefeasible title by virtue of the issuance of the title deeds. Land in Kenya has been categorized into various categories to include: private land, public land, group ranches and trust land. Land acquisition by citizens as private property The land laws in Kenya are very clear on the process of land ownership by citizen to make it private land. The following are some of the ways in which land can be acquired by citizens, as provided by the constitution of Kenya: By way of sale:

A person owning a freehold or leasehold interest in a given piece of land may sell it to another person for a particular sum of money (compensation) and the person will acquire the said interest as their own and have it declared as private property. The sale of land in Kenya is a rigorous process that stipulates the following: At the point of sale, it is essential for the parties to the land to enter into a written sale agreement spelling out all the terms of the transaction including the purchase price and mode of payment. If the land being traded is agricultural land then the parties can now apply for consent from the respective land control board. This is done through filling a prescribed form that can be obtained from the lands office and submitted in triplicate. Once the consent has been made, given the parties will proceed to fulfilling the other parts of the sales agreement before the actual transfer of the land. This is also done by obtaining forms from the lands office and return them duly signed in the presence of an advocate. Registration of the new owner then follows and the subsequent issuance of a title deed. By way of Inheritance

Land can be acquired through inheritance if a person who owns a freehold or leasehold interest in a given piece of land dies having stated in his or her will that the said piece of land be taken by a person he names. Upon his/her death, the named person acquires the deceased interest in the said land. This is governed under the Law of Succession Act. By way of grant A citizen may acquire public land, thus declaring it private land, if the president or the commissioner of lands makes a grant of freehold or leasehold interest on public land to the individual.

This private citizen then becomes the rightful owner of such land upon registration. By way of Auction If a person has mortgaged his/her interest in land to a bank or financial institution in return for a loan and fails to repay the loan, the bank may sale the land to any member of the public through auction. The person who buys this interest in land then becomes the rightful owner of the land thus making it private property. By way of gift Land may also be given to an individual as a gift.

This form of land acquisition is recognized by law. This happens when the owner of an interest land freely gives away this interest to another person then this person becomes the new owner of the land. It is however important to note that land acquisition will not be considered complete in Kenya unless such acquired land is duly registered to the new owner. One must therefore get registered and be issued with a title deed to prove that they are the rightful owners of the land. Compulsory Acquisition (Eminent Domain)

The eminent domain is the inherent power of the state to seize a citizen's private property, expropriate property or seize a citizen's rights in property with due monetary compensation, but without the owner's consent.

Compulsory acquisition of land arises when the state or government decides to take over a property without private negotiations, thus the term “compulsorily” consent of the owner but with a just compensation. The acquisition is done under statutory legislation and the act of acquiring aims at general benefit of the community as a whole.

It thus interferes with the owner's property rights. In Kenya, the power to compulsorily acquire land in the public interest is embodied in sections 75,

117 and 118 of the new constitution as well as other legislation including the Land Acquisition Act Cap 295. The most common uses of property taken by eminent domain are for public utilities, highways and roads. Case Study Illustrating how Compulsory Purchase and Land Acquisition is Applied in Kenya The Thika Super Highway was previously a four lane (two each way) highway linking Thika, an industrial town to Nairobi.

Because of increase in population and the resultant economic activities in Thika and its hinterland, it was decided to expand the road to six lanes each way to make it a super highway. There was a long delay from the time this decision was made to its implementation and this led to encroachments on the road reserves, conversions to private/personal use. However, there was massive demolition of the properties that were erected on the road reserves so as to pave way for the construction of the super highway which is almost complete. Acquisition of Trust Land.

The Land Control Act (Cap 302) makes provision for the establishment of land control areas. Each such area is managed by a land control board. Land control boards govern the sale, transfer, lease, mortgage, exchange, partition and other disposal of or dealing with any agricultural land situated within a land control area. Any land which is not registered under any Act of Parliament is vested on local authorities as Trust Land. Case Law illustrating setting apart of Trust Land Although almost all Kenyan communities have land assigned to them and the Trust Land Act, the Ogiek have not been allocated any.

The Ogiek lost their land through declaration of their ancestral land as forest reserves. In these trust lands, a person may acquire leasehold interest for a specific number of years. The Constitution also provides for a modified form of acquisition of land in the case of trust land, which is referred to as “setting apart” and may be activated by the president or local authorities. The rules governing the setting apart of trust land and the payment of compensation to affected residents are contained in the Trust Land Act.

REFERENCES: [http://: www. wikipedia. com](http://www.wikipedia.com)