

# Some Suggestions Towards an Efficient Land Market in Kenya

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## SUMMARY

**Key words:** Land market, land policy, land reforms, professional ethics

Researchers and governments the world over know that efficient land markets facilitate access to land. The land market in Kenya has the normal characteristics experienced by property markets in other parts of the world. The Kenya National Land Policy, however, identifies several reasons why the development of a vibrant market is difficult. These include inadequate information, political interference, bureaucratic inefficiencies, corruption, speculation, insecure and unclear land tenure arrangements and the absence of innovative market mechanisms.

The implementation of the recommendations of the National Land Policy and The Constitution of Kenya, 2010 should bring about the beginning of a reformed land market. The good will of the politicians and good professional ethics of those within the land profession would also make a great impact, because it is often said good laws and bad professionals will not improve the situation. Suggestions towards an efficient land market include a decentralization of land registries to improve the registration process, regulation of land markets to ensure efficiency and also the development of new land markets among others.

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## **1. INTRODUCTION**

Land markets in many developing countries are said to be still very ‘thin’ and often lack a minimum standard sales to provide for valuation. The centrality of land in the politics of most countries is obvious and conflicts have been seen in Kenya, Zimbabwe and South Africa. There is therefore a need to identify the problems and the solutions to these problems. To be able to have an efficient land market the current land reforms in the Constitution of Kenya and the National land Policy (GOK, 2009) must be adhered to.

### **1.1 The Meaning of Land in Kenya**

According to Makokha (2009) the meaning of land to the people of Kenya is closely related to land as an economic resource. Land and related matters including land use, development and control are sensitive with deep, social, economic and political implications. Makokha (2009) identifies several perspectives, from land Kenyans get food, school fees and medical funds as well as clothing and shelter. For peasants, toiling from dawn to dusk land is a source of food and income. For pastoralists, land feeds their livestock. The hunters and gatherers spent time in the forests gathering roots and hunting small game to meet their daily needs. For the fishermen guaranteed access to lakes, rivers and oceans puts dinner on the table. While those working on pavements and offices have the same economic goals of providing for themselves and their families. There is also a need to have land for burial purposes. For many of these people, an efficient and effective land market will mean their different needs will be met.

## **2. IMPEDIMENTS TO AN EFFICIENT AND EFFECTIVE MARKET AND SUGGESTIONS**

### **2.1 Inadequate Information**

One of the most common problems in the land allocation process, in Kenya, is the lack of information. There have been several cases of double allocation, where land is allocated to two or more people. Once allocation is done, proper records are not kept. Information on how much land is available for sale is often not readily available and buyers rely on estate agents for information. Poor information management systems have also led to buyers paying for land that does not exist. Another inefficiency, is the indeterminate length it takes to complete a transaction and the number of stages a transaction has to go through. Sometimes it is because the buyers or sellers do not know what documents are needed in the various stages of the transaction.

The absence of a good land information system makes it difficult to allocate land across the different uses, that is residential, commercial and industrial, leading to a poor mix and unbalanced proportions (Makokha, 2009).

## **2.2 Legislation**

Land transfers are still subject to numerous restrictive laws. Today in Kenya, there exists at least 75 pieces of legislation, some of which are incompatible. This has resulted in a complex land management and administration system, which has further complicated the land market (GOK, 2009). The various statutes cause conflict and confusion and make it expensive to transact. These factors contribute to the inefficiencies of the land market and makes land inaccessible and more expensive to many people.

The land management and administration system envisaged in the Kenyan context must be one that is able to support a land market. The political interference and bureaucratic inefficiencies will be removed by the implementation of the Constitution of Kenya 2010.

## **2.3 Bureaucratic inefficiencies and corruption and political interference**

In spite of the meticulous and complex administrative and legal machinery of the intricacies of the land markets in many developing countries are such that corruption plays an important role that cannot be ignored. For example, there is the need to tip or otherwise oblige those processing your documents. Public plot allocation have often been to persons loyal to those in authority, leading to forced evictions of those who do not conform.

The formal institutions dealing with land in Kenya date back to the colonial period. The office of the Commissioner of Lands has for a long time the unlimited powers of allocation and administration of land. The institutions dealing with land in Kenya, have been identified by the National Land Policy (GOK, 2009) as highly centralized, complex and exceedingly bureaucratic. As a result, it is prone to corruption and has not been able to provide efficient services. The short comings in the land delivery system as stated (Mwangi, 2009) include: Complexity in the processes, which breeds uncertainty, increases costs and encourages fraud; bureaucratic approval processes for land development applications, leading to indeterminable completion time and costs. This encourages growth of informal markets with major losses of revenue to the government; manual information systems, often characterized by loss of documents, which in some cases requires monetary incentive to retrieve them; slow processes of land registration which exclude majority of the people from assessing credit; lack of accountability by departments to the general public.

The problems in Kenya are also reflected in the land administration processes in many developing countries. Farvaque and McAuslan (1991) cite the example of Peru where it takes up to 43 months and 207 steps to acquire a title, while in Cameroon the registration process can take two to seven years. In Kenya, the number of processes are 28, but the number of days or months were not determined (Mwangi, 2008).

## **2.4 Speculative land**

Land held in the present in anticipation of receiving higher prices in the future is speculative land. Most urban areas are filled with such parcels. These are the cow pastures near or even next to new developments. This is also evident in many urban areas in Kenya.

## **2.5 Insecure and unclear land tenure arrangements**

Insecure land tenure in Kenya, has been manifested and illustrated by several happenings in the country. These include the reluctance to develop land, land clashes, forceful acquisition of private property by other citizens (the squatter problem) and family feuds leading to death over land subdivisions and use. Kowuor (2009), further states that insecure tenure contributes to social exclusion, instability and conflict in many countries.

## **2.6 The absence of innovative market mechanisms**

It was established during the formulation of the National Land Policy for Kenya, that there is a high percentage of people who would like to have access to land and not necessarily to own. Currently there is no clear procedure that allows for this type of ownership. There were however different tenure tactics discovered by Saad and Swazuri (2007). This covers a wide range, including “plot borrowing”, perpetual leases, ownership of buildings or permanent crops independently of the land, and traditional way leaves. The study recommended that there be a more sympathetic understanding of traditional land holding systems and markets; and it was essential that unconventional and innovative tenure types be taken into account when designing policy instruments aimed at eradicating poverty and achieving equity.

## **3. SUGGESTIONS TOWARDS AN EFFICIENT LAND MARKET**

The implementation of the recommendations of the National Land Policy and the Constitution of Kenya 2010, should bring about the beginning of a reformed land market. Wallace (2009) states that for a country to achieve a land market, its policy makers must obtain public commitment to the institution of property in land. This involves creating rights and interests that stabilize land distribution and generate capital. While land rights can exist without a market, markets cannot exist without land rights.

In Kenya, land is now classified under public, private and community land. This kind of arrangement already must set the country thinking whether the model suggested by Wallace (2009) on land market development will work or not. How much land is public, private and community (or trustland). Table 1 below shows the ownership categories of land in Kenya. Land that is not registered is clearly land that will be difficult to trade with at the market place. What value do you give it, considering it has no title or legal interest. The unconventional and innovative tenure types, especially at the coast have allowed land to be traded at the market place. This will continue to happen so long as the bigger percentage of land in Kenya, remains unregistered.

Table 1. Land Ownership Categories in Kenya

A. Ownership Categories	Area in square Km	%
Public Land	76,953	12.99
Trust Land	396,323	66.84
Private Land	108,403	18.28
B. Land Registration Status	Source	Area in square km
Registered land	Private	108,403
Unalienated land	Public	33,241
Unregistered land	Trust land	380,484
Parks and Reserves	Public	59,569

Source: National Atlas of Kenya (2004)

According to Wallace (2009), designers of an administration systems that support land markets must understand how these markets work and how an administrative framework might manage essential trading processes. From a land administration perspective, management of land processes is complicated and cannot be based solely on the assumption that land markets are fundamentally about land as a commodity.

This is because land related commodities have two aspects, the popular aspect that is visible and tangible and the second aspect which is abstract but less a reality (Wallace, 2009). The primary commodity here is the land right and the supporting aspects of transferability, knowability, title and tenure. These should be able to deliver comprehensive and predictable access to opportunities to derive wealth out of land related interests and manage these opportunities according to sustainable development objectives. For the Kenyan case how will it work. Even as we consider the unconventional and the innovative ways of dealing with the land at the market place, it is acceptable that several things need to be done in the long run.

According to the National Land Policy for Kenya (2009) suggestions towards an efficient land market include: Firstly that there will be decentralization of land registries to improve the registration process. This will also involve a land registration system which ensures that land ownership can easily be identified and transferred and that property taxes can be assessed and collected. If the Constitution and the National Land Policy are implemented to the letter, responsibilities of transactions will be devolved to the County governments and the District Land Boards and the Community Land Boards. This gives an element of decentralization, that is essential.

For Land markets to be efficient there must be a legal framework that ensures land can easily be bought and sold. Currently, there are at least 75 pieces of legislation dealing with different aspects of land. The National Land Policy (2009) suggested that the government shall enact a Land Act to govern all categories of land. This should make it easy for all to register their land, under one Act of Parliament, making conveyancing easier.

In an efficient market there will be land taxation measures to promote efficiency and equity in land use. Currently there are taxes that must be paid whenever land is transferred, in Kenya. These include rates, ground rent and stamp duty. The seller must have a rates clearance certificate, while payments of stamp duty must be done for the transaction to be finalized. The public sector must therefore revamp all the departments that deal with these taxes. Issues of shortage of staff in the professions of valuation, lack of vehicles or fuel to go and inspect these properties must be addressed. Property taxes should also be easy to assess and collect. In some cases people have opted not to subdivide land they have inherited because of the high costs of transferring land. Meaning the title remains in the father's name, despite the fact that there are four or five brothers or sisters who are named as heirs to the land. Conflicts of who really owns the land come later when developments have been put up or when one of the sons wants to mortgage the property and their father is long gone.

Governments must provide an efficient land registration system to facilitate a working land market. A land registration system which ensures that land ownership can easily be identified and transferred, this system must have the following characteristics. The registration system adopted should be cheap to operate – cost of registering land and surveying land should be as low as possible because the high cost discourages people.

We cannot deny that we are in the technology age and therefore there should be a registration system which is simple to understand. With the advent of county administration one should also be able to register his property anywhere. Minimizing the costs of travel and time and the over all cost of the transaction. Technology means a more efficient land information system. This should allow for the availability of accurate information that is easily accessible, thus allowing for a more efficient land market.

The National Land Commission that was created by the new Constitution for Kenya and should review and prepare relevant policies. Along with the above a need for capacity building in all land sectors is necessary. It has been seen that weak institutional capacity is an impediment to good governance and can seriously endanger the effective implementation of national land policies and consequently of anti-corruption strategies.

The land sector has repeatedly been accused of corruption. There is therefore a need for ethics training for professionals in the land sector to familiarise them with the moral and professional standards of behaviour expected of them, and to encourage the development of a culture of integrity within the organisation. Ethics training can refer primarily to agency-specific codes of conduct, but also aim more broadly at raising awareness of anti-corruption strategies and mechanisms.

There also a need of innovative market mechanisms as found out by Saad and Swazuri (2007). There is “plot borrowing”, perpetual leases, ownership of buildings or permanent crops independently of the land, and traditional way leaves. According to Yahya and Swazuri (2007) therefore there is need to have a more sympathetic understanding of traditional land holding systems and markets, this because of at 68% of land in Kenya is unregistered. Meaning that, markets must exist without land rights, unlike what Wallace (2009) has stated.

Sale of land in Kenya, will continue happening in the informal markets, so long as the land remains unregistered and costs of registrations remain high.

#### **4. CONCLUSION**

The National Land Policy for Kenya, foresaw that an efficient land market is essential if land reforms in Kenya were going to be successful. This paper has identified the main problem areas and has suggested ways to an efficient land market. All tenure systems must be protected, even as we recognize that 68% of land in Kenya is unregistered. Despite this lack of registration the land market continues to operate in these areas. Meaning an element of innovative market mechanisms must be set up, while registration of these areas is speeded up.

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