

EXAMINATION ON THE LAWS GOVERNING COMPULSORY LAND ACQUISITION IN RELATION TO PROPERTY RIGHTS IN TANZANIA

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ABSTRACT

This study is centered on examining the laws regulating compulsory land acquisition and right to property in Tanzania. The main focus is on the philosophical anomaly of compulsory land acquisition and to examine whether the laws are in line with the philosophy behind it. The notion of compulsory land acquisition particularly required the government to acquire private land for the benefit of the whole community. In Tanzania all land is public land wherever that right of occupancy was granted or deemed to have been granted or under customary tenure include the use of land from time to time.

President is the one who have an absolute title of all land as a trustee towards the citizens. laws and practices are totally different. In practice the government acquired private land to fulfil its development projects for public purpose while the laws strictly provide that all land in Tanzania is public land. Strictly speaking there is no private land in Tanzania. Thus the study analyses the ways forward on compulsory land acquisition in relation to property rights in Tanzania.

INTRODUCTION

Compulsory land acquisition comprises expropriation of private rights by the government for the benefits of the people within the society, however the government is required pay compensation. It is a common practice in most states including Tanzania which render to benefit the general public.ⁱ Thus acquisition including construction of roads, school and hospital. Particularly compulsory acquisition emanated from the doctrine of eminent domain which gives power the state to acquire land at any time when such land is required for the exchange of the payment of compensation.

Although the government own that power must need to respect the public interest as well as the private interest.ⁱⁱ The state enacted laws which must be followed to ensure that the acquisition is undertaken for the purpose concerned and the private interest of the people is protected because compulsory acquisition is only for private land and implies the loss of right in property by state action. Compulsory acquisition is important but contradicting with the property rights.

PROPERTY

Formerly property was the relationship between the thing and subject. In legal standpoint property is system of legal relationships between individuals in respect of things. Therefore, Property is the relationship and not a thing.ⁱⁱⁱ It is a relationship that ascends when people attain proprietary rights above the thing which differs from right to right. In this position property include the interest which can be attained in outside things. The things themselves are not in exact logic, but they establish its groundwork, physical and the notion of property springs out of the interest and control which conferring to law may be acquired in them.

Property constitutes legal relations between persons overriding the use of things. Property is a crucial component in any system of rules which is concerned with the governance of human activity. It is problematic to predict a society which does not identifies notion of property, this idea is used in the community in order to express certain relationships between individuals and the environment in which they live.^{iv}

Article 24 of the Constitution of Tanzania 1977 provides for the protection of the property and thereby prohibits any arbitrary deprivation of the property. Right to property is therefore not absolute.^vAs the state can take the individual of his right to property, provided it is not done arbitrarily. This property also protected in accordance with law. In relation to the Land Act 1999 section 4(3) provides that occupying land under the right of occupancy lawful regardless of whether it was granted estimated to be property.

RIGHT TO PROPERTY

The genesis of right to private property is associated with the breakup of primitive communalism and the development and change in property relations under the slave owning society. It meant that man was able to produce more than his basic needs and thus enable to accumulate what he could call his property.^{vi} Right to property first was recognized under the Universal Declaration of Human Rights 1948 which allows ownership of property to an individual personally or including group of people but prohibits arbitrary deprivation of the same.^{vii} This means that the state can deprive the individual of his right to property, provided it is not done arbitrarily.

Property rights basically are the interest of the person to own or hold land. It can be through land tenure system in terms of its recognition on the right of occupancy. The right which provided to an individual also involves legal duty on another such as when a person owns land has the right to use it free from the interference of others. For that matter since land is important resource upon which all other economic activities eminent from, the strong land right is important. In the history of Tanzania for the first time Property rights was eventually incorporated into the Constitution of the United Republic of Tanzania, 1977.

According to Article 24 gives assurance for any individual to own land and deprivation of such land-imposed duty for the government including payment of compensation. This right is proceeded by a proviso to the effect that this right is subjected to the laws of the country. Therefore, the right is not absolute. Restriction of the right is not easy as it requires striking a balance between the protection private property entitlements and promotion of the overriding public interest.

PUBLIC PROPERTIES

Public properties such as land are owned by the government rather than private individuals and belong to the public at large. For example, according to Section 4(1) of the Land Act, land in Tanzania is considered public and assigned to the President, creating a trust and beneficiary relationship. The Land Act divides public land into three types including reserved land, village land, and general land. The goal of this classification is to make land management easier.^{viii} The Land Act governs general and reserved land, while the Village Land Act governs village land.

PRIVATE PROPERTIES

Private property are the things belongs or owned by a person or group and kept for their exclusive use for example land. Private property is usually used by its owner for his or the own good but it is subject to the regulations by the state. The state cannot trespass into private property of a citizen and claim ownership. The government protection of private property interest has a particular background such as John Locke labour theory on private property and personhood theory.

John Locke Labour Theory

John Locke labour theory often argued on the ownership of individual through application of labour can justifiably acquire private right. Property in a particular thing is better described as the just reward for the pain incurred in mixing one's labour with the thing.^{ix} The theory relies on the idea that before the properties were belongs in the community but people used their effort in the property through amalgamation. However, the theory brought development on the properties by considering the property to be carried individually when any person uses his or her effort to clear land.

Personhood Theory

Personhood theory considered the private property contribute to freedom and recognition of good governance. Unavailability of private property render the people to be dependent on their government. Particularly the necessity of private property makes people to attend their own

affairs without interfering the right of the other people. Therefore, realization of the private property by the government indicates the respect of human liberty and dignity.^x

THE BASIS OF COMPULSORY LAND ACQUISITION

This is power of the government to obtain private land and transfer it for the public benefit. The philosophical anomaly of the concept of compulsory land acquisition required only private land to be taken. The acquisition process should be done in relation to the respective standing laws but those laws should be in the parameters of the philosophy behind it. Absence of practices on private land it means that the existence of compulsory acquisition is ineffective on matter of law and practice. When the practice allows private land to be applicable in this sense the acquisition in matter of fact, matter of law and matter of practice are effective.

GROUNDS FOR COMPULSORY ACQUISITION

Basically the compulsory acquisition has its grounds such as public interest and public purpose

Public Interest

Public interest is an act of the government to benefit the general public. President have power to obtain land hold by the individual for the fulfilment of its plans for the benefit of the whole community.^{xi} The rationale behind is that the President is the head of the state and the one who administer and control land over the whole people as the requirement of the law. Thus, satisfaction of any land for any work by the President can be done for public purpose or public interest.

Public Purpose

Public purpose means the community is involved in the developments undertaken by the government and identified the works from which the society can be benefited or going to benefited in a proper manner recognized and protected by the law. Such as commercial development, improvement of sanitary, industrial development and agricultural development.^{xii}

LAWS GOVERNING COMPULSORY ACQUISITION AND PROPERTY RIGHTS IN TANZANIA

Tanzania has its own specific domestic laws particularly based on recognition, protection and promotion of property right towards compulsory land acquisition. For the implementation of compulsory land acquisition and protection of property rights those laws including the Constitution of the United Republic of Tanzania 1977, Cap 2 (R.E 2002), the Land Acquisition Act 1967, Cap 118 (R.E 2019) and the Land Act 1999, Cap 113(R.E 2019).

THE CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA 1977, CAP 2 (R.E 2002)

The Constitution of Tanzania is a supreme law of land which provides for the right to own property. The constitution being mother law of the land all laws shall be in accordance to it, any law of the land which contradicts the constitution is void. It is the law that all legislation including land laws shall not be contrary to the constitution. Therefore, the constitution provides for the fundamental rights including right to property. The right to own property are thereby created by the constitution but rather it is evidence of their recognition under the law and the intention that they should be enforced in the court of law. The constitution is therefore in essence to the law of the land.

The Bill of Rights was incorporated into the Constitution of the United Republic of Tanzania in 1984 providing for the basic rights and duties of every Tanzanian citizen including the right to property hence the right to property came to be protected.^{xiii}The right to own land appear in different forms including the right to the land itself, the right to compensation for the person's labour in the improvement of land and the right to participate in decisions affecting one's land. The Bill of Rights was incorporated at the time when Tanzania had ratified international instruments of human rights. Therefore, some people going to court to seek protection of their land by invoking the provision of law.

The government is established to protect property therefore it has no other end but the preservation of property. The Constitution is relevant by Article 9(c) and (i) on the preservation and harness of natural resources for development of the people and the common good and

Article 27(1)(2) referring to the duty of the people to protect the natural resources and safeguard the property of the state authority and its people respectively.

Article 24(1) of the Constitution of the United Republic of Tanzania 1977 protects the right to property which inter alia, provides that, every person is entitled to own property, and has a right to the protection of his property held in accordance with the law.^{xiv} The right to own property applies to every one subject to affordability, availability and arrangement. When a person own property automatically he or she entitled to its protection. However, the protection applies only to legally owned property.^{xv} The protection is the tool of oppression particularly where ownership is proved only by title deed but protection of property will not cover illegally acquired property.^{xvi}

Article 24 (2) of the Constitution provides for the right of fair and adequate compensation for a person whose property has been acquired for public interest. Ownership of land in this case is a right recognized by the Constitution and no person can confiscate land from another person unless under due process of the law which is reasonable.

THE LAND ACQUISITION ACT 1967, CAP 118 (R.E 2019)

This law provides powers of the President to acquire land for public purpose. Section 3 insist on the recognition of the President to secure land in any tenure at any time for the benefit of the people within the state. This is necessary power which render the government to fulfil its development projects. It is the main reason behind compulsory acquisition of land.

Section 4(1) of the Act provides for the list constitute public purpose not limited to the improvement of sanitary, industrial, agricultural and commercial developments. Section 4(2) provide that if the president realized that corporation needs any land for the aim of construction any work for public interest or public purpose he may allow such land to be taken through the approval signified by the National Assembly and published in the gazette such land is required for public purpose. President can take land from anybody only with the fulfilment of requirement such as giving notice and compensation for unexhausted improvements.

THE LAND ACT 1999, CAP 113 (R.E 2019)

It is the supreme law in land matters any provisions of any other written law applicable to land that conflict with any of its provisions or are inconsistent with any of them shall cease to apply to any land or matter related to land in Tanzania Mainland to the extent of such conflict or inconsistency.^{xvii}

Land System in Tanzania

All land in Tanzania is declared to be public land vested to the president as a trustee for entire land on behalf of the citizens.^{xviii} The president has a superior title or absolute title of all land in Tanzania. Any person who holds land in Tanzania acquires leasehold called the right of occupancy. Grants are made to occupants for the periods ranging from 33, 66 to 99 years in system of land tenure.

When a term expires, it is possible for it to be renewed however, this is not a right that is automatically granted rather the holder of the right of occupancy must apply for renewal with the relevant land before the right of occupancy expires. Once this has been done, a new certificate of occupancy may be issued on the new terms and conditions that the Commissioner may decide upon before that right of occupancy is offered.^{xix}

Right of Occupancy

The right of occupation is the fundamental tenure in Tanzania. A claim to use and occupy land is described in Section 2 of the Land Act as including the title of Tanzanian nationals of African heritage who do so in accordance with customary law. In Tanzania, there are distinct types of right of occupancy including granted right of occupancy, customary right of occupancy and deemed right of occupancy. Land tenure proof ownership in these forms is through use and occupation, which grants the occupiers usufructuary rights. Any person legitimately occupying land under a right of occupation is to be regarded as property, regardless of whether such right of occupancy was given, presumed to have been granted, or under a customary tenure.^{xx}

Granted Right of Occupancy

The specific system governed under Section 29 of the Land Act, which specifies that the Commissioner for Lands can award rights of occupation to someone who has applied for them,

is known as the normally granted right of occupancy. President must be named on the certificate of occupancy. The certificate of occupancy is valid and executable if it is signed and sealed by the Commissioner, as well as signed and sealed by the President. Furthermore, the occupier must sign the certificate of occupancy.

Customary Right of Occupancy

This is the traditional way of occupancy and use land. Section 2 of the Land Act similar to section 2 of the village Land Act define the term Customary right of occupancy (CRO) means the right to occupancy created by means of issuing certificate of customary right of occupancy. The rights allocated by the Village Council under section 27 of the Act. Land acquired Through Customary right include inheritance, clearing of virgin forest, gift or purchase of land held under customary tenure. Village Council is custodian of village land and not deemed right of occupancy. A right of occupation granted to a non-village organization or group of non-villagers may be revoked by the President of the United Republic of Tanzania.^{xxi}

Deemed Right of Occupancy

Most Tanzanians of African heritage are granted the right to occupy and utilize land under customary law.^{xxii} The considered right can be gained under customary law by inheritance, the cutting of virgin forest, a gift or the purchase of property and is less formal than the right granted by Village Council.

Revocation for the Rights of Occupancy

The Land Act provides for the revocation of right of occupancy by the President on the two grounds. First, revocation on the ground of compulsory land acquisition subject to the prompt payment of full compensation for public purpose.^{xxiii} Second, revocation particularly upon the breach of conditions for the right of occupancy without remedies for the holders.^{xxiv}

THE NATIONAL LAND POLICY OF 1995

In the years just before 1995 various changes had taken place in different sectors of economy. These changes were a great motivation for the eventual Land Policy of 1995. Particularly those changes associated with enlarged population of people which render the highest need and

struggle in land exclusively in urban areas. There was increasing urbanization which required land to be delivered in settlement, industrial development as well as commercial development. There was an increase expectation that depositors desired to obtain huge parts of land for the matters of investment therefore improved awareness of the people on the value of land. Uncertainty in land rights called for the need to protect individual land rights, during the same period court decisions affirming the status of customary land right against the granted land rights were in resonance.^{xxv} All these reasons created crucial role of having Land Policy in the country that could address the seeming shortfalls.

The Land Policy in Tanzania permitted the President to administer and control all public land as a representative of all citizens. It provides supervision of land and rules which regulating land rights use also allowed people to reside in land by way of occupation, sustainable use of land, encourages productive, people to be involved in decision making on matters correlated to land. ^{xxvi} It provided for continuation of statutory and customary right of occupancy, title to land continued to be created for use and occupation.

The intention or purposes of Land Policy was to endorse and safeguard land system, ensuring appropriate use of property(land) by protecting the environment, to encourage suitable delivery and admission of land to all people to make sure standing land rights are acknowledged, elucidated and fortified in law. Setting of ceiling on land to control grabbing has not been left out to protect the land. It further aims to ensure land is productively used by whoever occupies it.

In addition, the policy is geared to improve effectiveness of land system within the country and singled out the areas which need special attention such as the institution which dealing with land administration and settlement. It elaborates reports on matters of land system, constitutional category of land, remedies and dispute resolution. However, not all the commission's recommendations were accepted such as land being constitutional category as it is yet to be enacted into the law but most of them formed part of the Land Acts.

The policy paved ways especially for the establishment of other laws such as the Land Act,1999 and the Village Land Act, 1999. Land policy plays vital part in land acquisition by allowing people who are productive or own title of land to secure land. For that matter since land is important resources upon which all other economic activities eminent from, the strong land

right is important. It is obvious from this policy that the notion of public land was retained for purpose by the government. Land policy generally is important because it helps in solving land dispute

LEGAL CHALLENGES FOR THE LAWS GOVERNING COMPULSORY LAND ACQUISITION AND PROPERTY RIGHTS IN TANZANIA

There is no Private Land in Tanzania as a Matter of Law

Prior to the enactment of the Land Act 1999 the law recognized people to practice on private land in Tanzania. Section 2 of the Law of Limitation Act of 1971 defines public land as any land not held or deemed by the provisions of the government leaseholds to be held under the right of occupancy or under customary law. This means that land occupied under a right of occupancy is not public land, regardless of whether it is a customary right of occupancy, a deemed right of occupancy or a granted right of occupancy. At the time, public land was defined as land with no right of occupancy. As a result, Tanzanian law at the time recognized the existence of private and public land.

After the enactment of the Land Act 1999 changed the position in land whereby all land in Tanzania remain to be public land and restrict the land occupied under right of occupancy not to be public land either customary right of occupancy, deemed right of occupancy or granted right of occupancy.^{xxvii} Public land means all the land of Tanzania.^{xxviii} Any person is legally own land under the right of occupancy whatever that right of occupancy was granted estimated to be property and comprise the use of land from time to time.^{xxix}

Before 1999 in Tanzania compulsory land acquisition under the Land Acquisition Act was within the philosophy behind compulsory acquisition of land because there was the land which was really private. Therefore, as a matter of law, matter of fact and matter of practice at that time compulsory land acquisition was genuine. After 1999 when the Land Act was enacted the practice in private land was eradicated. As a matter of law there is no land which is private. The Land Act after being enacted become the supremacy in matter of land and change the location in land. Section 181 of the Act provides that any law which is inconsistency with the

Land Act ceased to be applicable in matter of land in Mainland Tanzania. The law does not stand in the philosophical anomaly of compulsory land acquisition which required the private property to be taken for the public purpose or public interest. Therefore, the law is not effective.

The Constitution Does Not Guarantee Land to be a Constitutional Category

The Constitution basically it does not provide direct for the protection of property rights on the basis that the land is not categorized as the separate property. However, the provision of Article 24 includes the right to own land and the protection of such for every individual and the interpretation of various cases provides for the ownership of private property protected by the law.

The government when acquired land for the individual, payment of the compensation is the requirement which is illustrated in the Constitution. Though the government is required to fulfill such requirement the notion of the compulsory acquisition is required only private land to be confiscated. Nonexistence of separate category of land solidify the acquisition to be done complete outside of the philosophy within compulsory land acquisition. Therefore, the Constitution is not effective for the protection of private property.

The Constitution of Tanzanian is still in adequate in land rights by making comparison with other countries such as the Constitution of Kenya and Uganda. These laws protect direct the individual property rights and also provide for the separate category of the land. Further, compulsory acquisition of land is conducted within the philosophy behind it.

The Constitution of the Republic of Kenya, 2010 under Article 40 provides for all people to own property individually or in group and the deprivation of the land renders the victim to be paid the compensation. Article 61 stipulate that clearly and tightly the categorization of land including communal land, private land and public land. For that matter public land under Article 62(1) is not limited to the land legally owned by the government as lessee under a private lease, all land contained national park, minerals or government reserves does not own by any individual whether personally or specific in group of people. Private land articulated under Article 64 which involve land registered and detained by any individual under freehold tenure, lease hood tenure and any land affirmed private land. Communal land stipulated under

section 63 involve land placed to the group of people and registered legally under the names such group.

The Constitution of the Republic Uganda 1995 under Article 26 provide for the protection of land rights direct whereby the provision of the law allows an individual independently to own land or in group. The deprivation of land by the state to the land owners exposed for the payment of compensation as required by the law. Thus, the government of Kenya and Uganda provides full ownership of property right and the acquisition of Land is done within the philosophy behind it. This position of the laws is totally different compare in Tanzania land system basically on ownership.

Constitution of Tanzania is still some steps behind when it comes to the constitutional recognition and protection. During the precolonial, colonial and post-colonial periods either before or after incorporation of bill of rights in the Constitution of the United Republic of Tanzania, 1977 land has certainly not acquired the necessary status of being a constitutional category.

i. The Period of Precolonial

During pre-colonial era land law and practice point out that one could not speak of a right to land as a private property. The language of human rights of the individuals was complete unfamiliar. Land tenure was decently communal being in the right place to a community an individual member could access it for use only. It was a period when land was a sacrilege because there was no buying and selling land.

ii. The Period of Colonial

The right to own land in colonial period was very limited, the reasons of such limitation was that the colonial administration was made land confiscation on the top agenda of the colonial process. The rights of the indigenous persons who occupied lands under their respective customs and innate law prior to the colonial imposition was completely omitted. Land titles intentionally were determined by the status of superiority granted titles and inferiority customary or deemed titles by colonial government. Those who owned granted right of occupancy they could talk of the right to land and other people have only the right to use land only. This means that there was unequal status of the titles.

iii. Post-Colonial Period

Based on the period of incorporation of a bill of rights in the Constitution of the United Republic of Tanzania, 1977 necessary changes have been taken in the land law. Land matters are considered in the context of human rights. The law provides for the basic rights and duties of citizens in Tanzania including the right to property especially land under Article 24(1) of the Constitution which delivers mandate for the people to hold land and security. The government is responsible to adhere proper procedure when such right is taken for the benefit of the society including payment of compensation. The effect of this provision is that land always is not categorized as the separate land.

The Right to Property in Tanzania is not Absolute

right property in Tanzania is not absolute due to lack of full control individuals has right to use land, dispose the land, excluded others from interfering of the land but the power of over all the land is governed by the government under the administration of the President. The government is guided by the law to administer land under the welfare of the all people in Tanzania. In Tanzania problem relating to legal regime over land drawn back under the colonial period. The current legal framework was conceived and has remained the same way subject to few changes. The government of Tanzania retains control and monopoly over the land.

The interest is limited in time and certain conditions. Ownership of all lands placed in the government to the greater point that the government obligatory is unexhausted improvement on land on the ground of acquisition and not the innocent of the land.

This is possible due to the philosophy which has been developed over time that a land *per se* is never owned by the occupier. What occupier own are the improvements over that land. This philosophy was well articulated by the former President Julius Nyerere on land explained that when a person uses his or her energy and talent to clear a piece of land for use, it is clear that such person trying to transform basic gift from God to satisfy a human need. However, that land is not belong to that person but the efforts made by him which enable to claim for ownership. In the position of the case of *Attorney General v Lohay Akonay and Josephy Lohay*^{xxx} It shows clearly no individual or group of people can hold land absolutely in the state rather than the government itself. Court measured compensation by unexhausted improvement through labour and effort while vacant land had no value.

Absence of absolute property right is the main problem in relation to the matter of compulsory acquisition in Tanzania. The philosophy behind compulsory acquisition requires the compulsory acquisition to be only in private land. Laws and practices in Tanzania towards compulsory acquisition is totally different. In practice the government acquired private property to fulfil its responsibilities for the development of projects while the laws strictly provide that all land in Tanzania is public land and not private land. Strictly speaking there is no private land in Tanzania.

There is no Clear and Tightly Legal Definition for Public Purpose or Public Interest Under the Laws, Neither the Constitution nor the Land Laws

The terms public purpose and public interest are not clearly and tightly defined in the relevant laws, those terms are only defined in the cases despite the fact that are very crucial and should be maintained. However, it is not strong in the laws and the cases as to whether public purpose or public interest are to be used interchangeably or independently. Section 3 and 4(2) gives authority for the President to acquire land at any tenure when land is required for any work at any time for public purpose or public interest but without exactly meaning of public interest as well as public purpose. Section 4(1) of the similar Act provides for the list of the undertakings which constitute public purpose but it does not provide the definition of public purpose, those list is not limited to industrial, agricultural and commercial developments.

In the case the Constitution of the United Republic of Tanzania 1977, Cap 2 (R.E 2002), the Land Acquisition Act 1967, Cap 118 (R.E 2019) and the Land Act 1999, Cap 113(R.E 2019).

^{xxxvi} the court as the primer facie judge determine whether interest is served by particular acquisition with regard to the procedural and substantive laws. In the event find that the acquisition was not made for the public interest or public purpose. Among other thing court interpreted and define public purpose or public interest involve the community who are beneficiary for the government undertaking project. When their legal rights affected it means the interest of the community is not considered.

In the case of *Agro Industries Ltd v. Attorney General* ^{xxxvii} the court stated that, public interest or public purpose concentrated on guarantee the community to be benefited for the works conducted by the government contrary to the individuals benefit within the state. It is not

appropriate for the community to be profited indirectly while the individual directly benefit under the shadow of the government projects.

CONCLUSION

Despite the fact that Tanzania has its own specific domestic laws particularly based on recognition, protection and promotion of property rights and compulsory land acquisition. Further, sort out presented procedures to be carried out those laws are not effective. Compulsory land acquisition is approved out of the philosophy behind it because there is no private land in Tanzania. Compulsory land acquisition is required private land to be taken for the public purpose.

After the enactment of the Land Act 1999 this law become the supremacy in matter of land. Section 181 of the Act provides that any law which is inconsistency with the Land Act ceased to be applicable in matter of land in Mainland Tanzania. Changed the position in land, all land in Tanzania become to be public land and restrict the land occupied under right of occupancy not to be public land. The law does not stand in the philosophical anomaly of compulsory land acquisition. Therefore, the law is not effective. Absence private land is the problem which conflicting compulsory land acquisition in Tanzania.

RECOMMENDATIONS

The Land Act to be Amended to Include the Practice of Private Land

The Land Act as the supreme law in land matters in Tanzania should be amended to allow the practice of private land in order the acquisition of land to be taken properly as far as required by the philosophical anomaly of compulsory land acquisition, which obliges the private land to be taken for public purpose. As a matter of law and matter of practice compulsory land acquisition could be genuine. This position will render the law to be strong, accurate and cover the loophole in law to ensure effectiveness of the law

Land to be a Constitutional Category

It is important in Tanzania to have a separate chapter on land including basic provisions specified in the Constitution for the categorization of land including private land. Compulsory acquisition in Tanzania can be effective only when it will base on the philosophy behind it which requires acquisition of land to be rooted in line with the private property. Thus, the government of Tanzania through legislature is supposed to amend the Constitution for the purpose of including chapter on land which provides for the categorization of land for the better efficient use of land in the different groups within the community. Making land to be constitutional category will make it imperative that people are consulted whenever changes to the land tenure systems are contemplate.

In number of other countries where land is considered central and sensitive it is made a constitutional category. For instance, Kenya and Uganda make available chapters on land in their Constitutions which indicates categories of land with full and direct ownership of property rights. The acquisition of the Land is done within the philosophy behind it.

The unique features about the Constitution of the Republic of Uganda and the Republic of Kenya first, is that both they recognized and protect the right of every person to own property either individually or group with other people and restrict the acquisition of land without payment of compensation which is prompt, fair and adequate. Second, necessary feature borne by the two Constitution is that they give unlimited rights to every person who has interest in the property to access courts for legal assistance. The third important feature of the two Constitution maintain to have an independent chapter on land basically defines land tenure systems of the respective countries.

Laws Governing Compulsory Land Acquisition in Tanzania Should be Clearly and Tightly Define the Term Public Purpose and Public Interest

The term public purpose and public interest for the sake of land acquisition should be carefully and tightly defined in the relevant laws, those terms are only defined in the cases despite the fact that are very crucial and should be maintained. However, it is not strong in the laws and the cases as to whether public purpose or public interest are to be used interchangeably or independently. If there are used interchangeably, it is necessary to be included an exhaustive list of the activities that are to be deemed public purpose which follow within the scope of the

law and what does not. Exhaustive list will help to curb instances where the government action will be applied for individual's interest.

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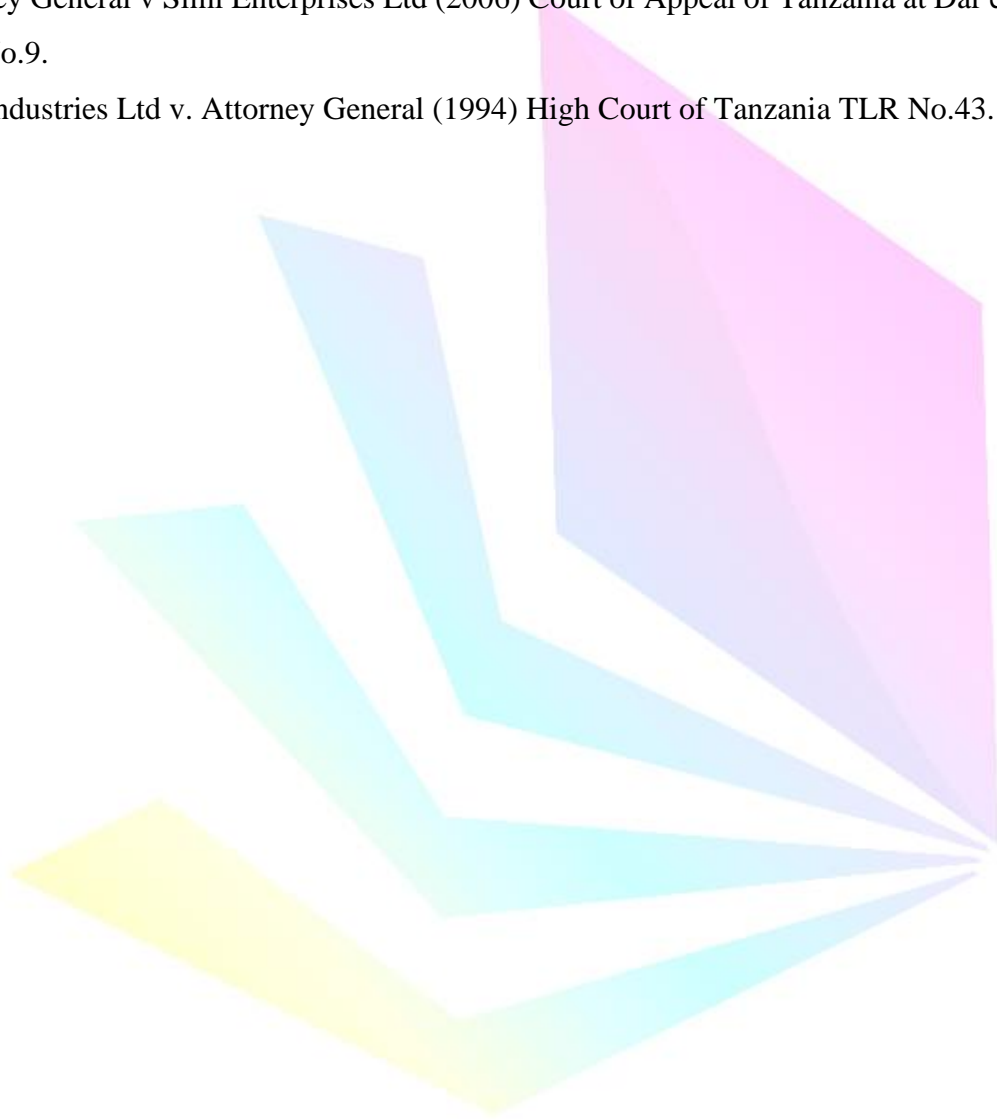
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ENDNOTES

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- ⁱⁱ RWEASIRA, A. (2012), Land as a Human Right; A history of Land Law and Practice in Tanzania, Dar es Salaam Mkuki na Nyota Publishers Ltd p 10-14.
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- ^x ANDREI, M. (2005). *The right to private property and entitlement to one's Income. Canadians Journal law and jurisprudence*. Vol.XVIII.No.1. Oxford University Press p 70-74.
- ^{xi} Section 4(2) of the Land Acquisition Act 1967, Cap 118 (R.E 2019).
- ^{xii} Section 4(1) of the Land Acquisition Act 1967, Cap 118 (R.E 2019).
- ^{xiii} The Constitution has been amended 14 times, the 1984 amendment is the 5th amendment intended to incorporate the Bill of rights in the Constitution and ensure that the basic fundamental rights are protected and promoted. Part three of the Constitution incorporated the Bill of Rights. However, the Bill of Rights became enforceable in 1988.
- ^{xiv} SIRIMA, A. (2016), *Social and economic impact of Ruaha National Park Expansion* Open Journal of Social Sciences Vol. 4, No 1, p. 4.
- ^{xv} Pejovich, S (1990), *The Economic of Property Rights, Towards a theory of Comparative System* London p168.
- ^{xvi} Gaston, K. (2011), *The Constitutional of compulsory acquisitions and compensation practice in Tanzania*, St. Augustine University Law Journal Vol.1 No.2 p 117.
- ^{xvii} Section 181 of the Land Act 1999 Cap 11, (R.E 2019).
- ^{xviii} Section 4(1) of the Land Act 1999 Cap 113, (R. E 2019).
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- ^{xx} Section 4(2) of the Land Act 1999, Cap 113 (R.E 2019).
- ^{xxi} Section 46 and 47 of the Land Act 1999, Cap 113 (R.E 2019).
- ^{xxii} Section 2 of the Land Act 1999, Cap 113 (R.E 2019).
- ^{xxiii} Section 22(1) (k) of the Land Act 1999, Cap 113 (R.E 2019).
- ^{xxiv} Section 45(1) of the Land Act 1999, Cap 113 (R.E 2019).
- ^{xxv} *Attorney General v Lohay Akonaay and Joseph Lohay* (1995) TLR p 80.
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- ^{xxvii} Section 4(1) of the Land Act 1999, Cap 113 (R.E 2019).
- ^{xxviii} Section 2 of the Land Act 1999, Cap 113 (R.E 2019).
- ^{xxix} Section 4(3) of the Land Act 1999, Cap 113 (R.E 2019).
- ^{xxx} (1995) TLR 80.
- ^{xxxi} (2009) TLR CA p 30.
- ^{xxxii} (1994) TLR p 43.