THE ECONOMIC EFFICIENCY TRADE-OFF IN COMPULSORY LAND ACQUISITION: EXPERIENCE FROM TANZANIAN LEGAL REGIME

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ABSTRACT

Compulsory Land Acquisition (CLA) is an aspect of land proprietary rights allocation and; it is all about government land re-acquisition against person(s) occupying it. It is a legal move that cannot be resorted to, unless public interest so compels. It is a legal phenomenon therefore, that can only be done in compliance with prescribed legal requirements and procedures. Payment of compensation is one of legal requirement that should be considered when effecting CLA; and When these two requirements i.e. existence of public interest and payment of compensation are met, the process surrounding it (CLA) needs also be done by following legally prescribed procedures as laid down in the relevant laws. These legal compliances however are held within the orthodox paradigm other than Law and Economics perspectives. In a new legal paradigm, legal analysis and articulation take into account economic efficiency surrounding each aspect under such analysing. The modern legal paradigm as held in law and economics has its different way of assessing and analysing various legal aspects. Its departure from the orthodox paradigm is its inclusion of economic precepts within legal discussion and articulation, a consideration of economic efficiency in a particular. CLA in this modern thinking is assessed in way judging it to be or not of economic efficiency. There are three precepts applied in law and economics to establish economic efficiency surrounding CLA as an aspect of proprietary rights allocation in this modern paradigm. These three precepts are the property most value. Interactive bargaining between the parties to proprietary rights allocation; and the desirable end results of proprietary rights allocation.

This paper work therefore brings CLA; that has been analysed mostly within the orthodox legal paradigm with most of its conclusions that, it is not just and fair in its both theoretical and practical part of it; into a light of law and economics as a need to establish whether it reflects economic efficiency which is the cardinal point of consideration within that particular modern approach. In the end, the paper recommends the current status of CLA in Law and Economics paradigm and what measures to take in order that CLA remains reflective of law and economics the importantly growing legal paradigm today.

INTRODUCTION

Over years now, Law and Economics, the modern legal paradigm that views and assesses effectiveness of laws in the economic efficiency perspective has covered the legal aspects of the universe. It is a misfortune however that, while this new legal paradigm has been growing so rapidly in every part of the world since its introduction in academic discourse of law ,the same legal perspective has not been given a satisfactory consideration yet among Tanzanian legal scholars .The new legal discipline therefore has not captured academic discussions and analysis in the country despite its universality within the legal world as it has been stated above. The importance attached to this introduction, compels a need to start analysing various legal aspects in this light as one of transformation initiatives of moving from the orthodox legal discussion, assessment and critiques towards both legal and economic friendly approach as the modern universal legal paradigm. Law and Economics has been widely growing and acceptable since its introduction in a legal academic discourse in 1960's through various academic innovations and contributions made by legal scholars. These innovations surrounding this new legal discipline include economic efficiency in the area surrounding proprietary rights allocation; Criminal law; law of contract; family law; constitutional law and property law, if a few were to be mentioned.

CLA falling under aegis of property law as stated above therefore is subjected to this new legal paradigm. CLA on that ground therefore is examined in three important determinants of economic efficiency as far as Law and Economics paradigm is concerned. Whether or not CLA is of economic efficiency , will depend on its qualification to these three tests. These tests are the Property most value principle, place of bargaining between the parties to the transaction

and subsequently, the desirable ending results of CLA. In the end, these economic precepts are the important determinants of economic efficiency attached to this important aspect of law. To establish a desirable conclusion in that particular trend, laws relating to CLA in Tanzania, the Land Acquisition Act[i] and the Land Act[ii] particularly, are the major subjects to this discussion and analysis in this new legal paradigm.

THE CONCEPT OF COMPULSORY LAND ACQUISITION (CLA)

The Land Acquisition Act[iii] does not give a comprehensive meaning of CLA and the same arrangement is neither defined by the Land Act[iv]. It is defined by legal scholars as, the power of the government to reacquire land ownership against the land owner for the benefit of society. This power is often necessary for social - economic development and protection of the natural environment.[v]

Prof. Kennedy defines Compulsory Land Acquisition((CLA) generally as, the inherent power of a state to reassert its dominion over any portion of soil of the state on the account of public exigency and for public good[vi].

From the definition above, CLA would be generalised as the process via which the government acquires land against a person occupying it where public use of it so arises. It is an aspect of property law that is justified by several legal and philosophical reasons including the *doctrine of eminent domain*[vii]*;Land occupancy and tenure*[viii] *and the Nyerere Doctrine of National Property*[ix].

Something important that should be noted on the concept of CLA is that, in some other academic discourses it has been named as the Compulsory Land Resumption (CLR) differing from CLA on the argument that; as the government has a radical title in land, when it takes it against any other person it doesn't acquire rather resumes its owners hind in a land that has had been placed under that other person's occupancy. This concept is very common in countries where individuals do not have exclusive ownership in land and the People's Republic of China is exemplified to that exemplification surrounding CLR[x].Whether what exists in the land ownership regime of Tanzania is CLA or CLR is not a topic under this piece of academic work whose concern is the economic efficiency of CLA or CLR depending on the correct approach on either of the two in the country; and whether CLA or CLR, the underlying

principle is that, land will not be acquired by the government against person(s) occupying it, unless other wise through compliance to the legal requirements surrounding it and governing legal procedures that are provided under relevant laws. The legal requirement through which land will compulsorily be acquired by the government in that particular arrangement as held in the legal orthodox paradigm, is the existence of public interest or convenience for land to be so acquired and from there the acquisition process must follow the prescribed acquisition procedures especially issuance of notice to land occupiers for that particular purpose and payment of compensation to the deserving land occupiers. These acquisition procedures and legal requirement surrounding CLA, have their reasons including an alert to person(s) against whom the process is to be effected in order to have them physically and psychologically prepared for it. Payment of compensation is made so that the owners of interests in the acquired land are compensated for the loss they might have incurred from the process which is very interruptive in nature as it was stated by Lord **Scott LJ** ,in the case of *Horn v Sunderland Corporation*[xi] that ;

> "A dispossessed person is entitled to compensation and to be put as far as money can do it in the same position as if **his** land had not been taken from him. In other words he gains the right to loss imposed on him in the public interest but on the other hand no greater." (with an emphasize)[xii]

Both CLA and CLR, must be done only where land has public need and necessity arises in that respect. This means that, these two aspects of eminent domain cannot be valid and effective unless and until public interest so compels. Over years, there have been problems surrounding what determines the so-called public interest. Statutorily, public interest on which the President is allowed to acquire land against any person is captured under s.4(1) of the Land Acquisition Act[xiii],which lists various circumstances in which the President may compulsorily acquires land for public good and use. This includes where, land is necessarily needed for construction of various social economic infrastructures in their use and benefits. The President under this public use and convenience may take any piece of land against any person provided legal related procedures are observed and adhered to, including issuance of notice before embarking on the process as established in the same Act.[xiv]

Issuance of notice which is a compulsory administrative requirement, plays two administrative functions as observed by Dr Tenga and his colleague, in their academic analysis.[xv]The first function is alarming a land occupier on the President's intention to acquire land. The main purpose in this limb seems to be a communication of the intention to acquire land by the government and this is done by the Minister responsible for land matters on that behalf in the country. Issuance of notice aims at avoiding taking land occupiers *ad-infinitum* (at surprise) by this important process for socio-economic development of the country. The second importance of notice is to ask the land occupier to vacate the same land in acquisition in order to pave a way for utilization of the acquired land subject to the purpose upon which it has been acquired. All of these procedures again must be accompanied with payment of compensation to person(s) against whom land is acquired in the same arrangement of this context.

THE CONCEPT OF COMPENSATION

The concept of compensation owes a justification to be discussed in this academic work. This is because of its legal place in CLA and CLR, legal aspects of eminent domain principle. It is a legal device that cuts across government acquisition of land against individuals in the context of this academic discussion. Compensation is defined as something awarded for loss, suffering or injury[xvi].Compensation may take any form provided it aims at awarding a victim of a particular loss in a legally defined and allowed circumstances.

There are two different compensatory approaches relating to CLA or CLR and these are the market price compensatory approach and the owner's value compensatory approach.[xvii]

In market price compensatory approach as applied in this context, the government is treated like any other bonafide purchaser purchasing a property on market competitive force and therefore expected to pay the real market price of the property so acquired .In the second approach of compensation , (the owner's value approach), an emphasis is on the payment of property market value plus any other costs relating to the process such as disturbance and transportation costs; and this is very common in the United Kingdom and other common law states.[xviii]

Something important to note in connection with both the CLA and CLR is that, their related land compensation approaches are prone to the land holding system prevailing in each individual state. In states where land ownership is designed to hold more public use than private functions, land rights are assigned and subsequently protected subject to this particular land occupancy and tenure. In circumstances where land rights have been assigned in this way, individual land rights will be subjected to the public use and benefits in land. The People's Republic of China is exemplified into that context and contents .[xix] Amount of land compensation surrounding CLR in China is exclusively placed under the state authorities to decide by taking into account various considerations including nature of land under CLR and purpose upon which the same CLR is made .[xx]

THE LEGAL FOUNDATION OF CLA IN TANZANIA

The United Republic of Tanzania recognizes land as the property whose primary ownership is placed under the Public in general.[xxi]The Constitution recognizes a magnitude of land rights in the country under both public and private spheres of ownership. Although individuals are allowed to have possessory right in land, the entire and principal ownership of the land is placed under the public domain, and the former will only have ownership of estates in land that are granted subject to various conditions including the government right and mandate to acquire it subject to the governing legal procedures.

To make sure that land ownership in Tanzania does not curtail public land ownership through individual possession of land ,all individual rights, including constitutional rights to own property under Article 24 of the Constitution, must be enjoyed prone to the public welfare and needs.[xxii]The same constitutional sprit is held under Article 9(i) and (j) of the same constitution which directs the use of natural resources to which land falls, in a manner that is beneficial to all Tanzanians and avoiding concentration of its incidental wealth in hands of a few.

The Land Act takes this constitutional position on land rights and subsequently declares all land in Tanzania to be public regardless of whether any particular piece of it is or not occupied. [xxiii]This could also mean that, on the first instance, land is publicly owned and it is

from this legal trend that, a person will always own interests in land subject to the conditions that limit private province of land rights to the public access and use. It is on that particular legal foundation of land rights ownership that, the President may acquire any interest in land against individuals where it becomes necessary for public interest.[xxiv]The process of acquiring land against any person is, among other things, restricted to the fundamental requirement of public interest. The interpretation of what constitutes public interest is coined under section 4(1) of the Land Acquisition Act[xxv] and from which the practical definition was given in the case of *Sisi Enterprises* Case[xxvi] where the Court of Appeal of Tanzania(CAT) observed that,

> '...a matter of Public; is that in which a class of community members have a pecuniary interest or some interest by which their legal rights or liabilities are affected.'

The phrase above, can be expanded to mean that, public interest as held in CLA is all about public beneficial purpose upon which acquisition of land is made by the government. It should be the purpose benefiting the public of the land use or benefit .CLA therefore, would be legally justified if it meets various legal requirements and procedures including the public land use or benefits of it. The good example of public land use or benefit may be inferred from circumstances where land is acquired by the government for the purpose of building various socio-economic infrastructures and developments such as roads, hospitals, pipelines for the purposes of water ,gas or oil supply and many other related pubic projects. Public interest or convenience is justified by two Latin legal maxims , *Salus populi Est Suprema Lex* and *Necessita Public Major Est Quam* which means that ,the welfare of the public is the paramount law and that, public necessity is greater than Private necessity, consecutively.

CLA to that end is justified by the land mode of ownership holding public supremacy in land use and benefit as stated before. The same mode of landownership from which CLA is justified has been existing in the country even before colonialism as it is observed by Abdon Rwegasira that;

> "To us Africans land was always recognized as belonging to community in whole**.** Each individual within our society had right to use of land, because otherwise he could not earn living and one cannot have right to life without also having the right to some

> means of maintaining life. But the Africans right to it was simply the right to use it; he had no other right to it, nor did it occur to him to try and claim one"[xxvii].

To this stage therefore something important that stands as a point of reflection is that, landownership in the United Republic of Tanzania has been built on land history of the country of course in line with various philosophical contemplations on proprietary rights allocation in Tanzania including the National Property Doctrine which was laid down by Mwalimu Julius Kambarage Nyerere ,the former first President of the country. The Mwalimu doctrine, treats land as the free gift that man got from the almighty God. According to this doctrine therefore, a man has no exclusive ownership in land except his labour invested to clear it. He is in that philosophical contemplation entitled to a compensation for the efforts, labour and skills used and invested in shaping land when the same is acquired against him. These historical and philosophical stands on land ownership is reflected in the land laws of the country including laws governing CLA , the Constitution of the United Republic of Tanzania, the Land Act and the Land Acquisition Act, as discussed above. The same philosophical enunciation is also extended to other sectoral laws allowing CLA in various socio-economic aspects including the Mining Act[xxviii],the Roads Traffic Act[xxix] and the Urban Planning Act[xxx].These sectoral laws take the same legal routes that have been communicated when it comes to land acquisition and compensation in different socio-economic areas which they are made and subsequently meant to regulate.

ECONOMIC EFFICIENCY SURROUNDING CLA

Economic efficiency is the most used concept and ideal in Law and Economics or economic analysis of law as it is sometimes so called. It is the modern legal approach coming with the aim of analyzing law in economic perspective. It is an academic approach embodying economic precepts in legal analysis and articulation. Different legal aspects such as torts, contract, family, property and criminal law are viewed in a way accommodating economic principles surrounding them under this new legal paradigm[xxxi] A demarcation line between law and economics as different disciplines is their general view on human behaviour, the same concerned area in the two. A lawyer is concerned with the past human behaviour that

is why he deals with cases basing on previously established facts describing each individual case in his legal attempt to bring a solution thereof; this is not a case to the economist, whose concern is the future human behaviour and to whom the pasts are not more than any sunk cost.[xxxii] Despite this difference between these two closely related disciplines, a link between them is their regulatory role on human behaviour. Law and economics as different disciplines therefore, are united by their common focus on regulation of human behaviour.

To have a more accurate regulation of human behaviour, becomes important to capture both approaches provided by a lawyer and economist and make them combined together. This combination has been made possible through Law and Economics as an independent subject. Through Law and Economics as an independent discipline, the *ex-ante* (the future) human behaviour is examined by the economic principles while the *ex-post* (the past) human behaviour is regulated by the legal precepts held in the same discipline of Law and Economics. Combination of economic principles and legal precepts therefore would mean a regulation of human behaviour in both ex-*ante* and ex- *post* approaches which are held within a particular legal discipline.

CLA as an aspect of proprietary rights allocation is also subjected to this modern legal approach. This area has been exposed to important academic innovation brought by Law and Economics . Development of Law and Economics has been made at a back of legal scholars some few decades back and Ronald Coase and his *Coase theorem* [xxxiii]may be cited as the best example to those development initiatives so referred. The *Coase theorem* was developed from a regulation of three radio stations whose frequencies interfered each other. According to this theory, a solution to radio frequencies was not about legal determination of a radio station owner whose ownership right to radio station frequency was the best of two others. The redress to this inefficient radio frequencies according to him was that, the radio station owner that valued his radio business the most , would be expected to do anything to have inefficient radio frequencies resolved .The important thing that was exogenously to be applied was encouraging and facilitating the three radio owners to interact and bargain on how to get a rid of their business problem and this initiative was captured in the theory that; "When transaction costs are zero, an efficient use of resources results from private bargaining regardless of the initial assignment of property rights."

The Coase theory is most relevant to the assignment of proprietary rights the aspect to which CLA belongs. The contemplation of this economic principle needs not only end in the legislations but also be extended even to the courts' interpretation of laws as was once observed in the following statements;

> "Courts in their functions declaring, clarifying and extending legal principle must take seriously the economic consequences of what they are doing"[xxxiv]

CLA In the end as stated before, will have adverse effects to persons against whom it has been made and positive effects to the members of public at whose interest it was made. This is what would have invited the traditional lawyers (orthodox legal paradigm) claiming for a full, adequate and prompt compensation to the individuals against whom it was made. This would still justify the same previous contention that, for a traditional lawyer, CLA should be surrounded by three legal requirements that; it must be effected where public interest so compels that it must be made subject to the procedures laid down for that particular purpose and that the victims of the process should be paid with full, adequate and prompt compensation. Under the Law and Economics paradigm however the basic precepts surrounding CLA are the property value precept; bargaining or cooperation precept and ultimately the desirable ending results precept as they are presented below.

THE PROPERTY MOST VALUE PRINCIPLE

Economic efficiency surrounding allocation of property rights to which CLA relates, requires that, property ownership should go to a person valuing it more moving at the same time from a person valuing it less.[xxxv]This is because the property owner will always retain ownership in his property unless and until convinced by another person to depart with such property ownership . Convincing as used in this context means, paying a price above the value of property as held by its owner . A person who pays the owner of property with the price beyond its value in that respect, is considered to value it more than the owner does . The difference between the value of property held by the owner in his property and the price paid by that other person is called a property surplus value. The property therefore will

only move from one person to another where its related transaction is capable of creating a surplus value within it.

As stated before, effectiveness of any legal aspect in the Law and Economics paradigm will be determined by the economic efficiency accruing from it. Property most value in this discourse is one of the three precepts surrounding assessment of Economic efficiency resulting from CLA. In order that CLA becomes of economic efficiency, it must among other things be established that , the prospective land use under acquisition is of more significant value than the current use of the same land before acquisition is made . Assessment of land value for this purpose may be made by taking into account the two important considerations . The first is determining whether the value of improvement(s) expected to be made on land is more substantial than the currently land attached improvements. The second point of determination is whether the prospective land use accommodates more beneficiaries in terms of its use and coverage than the current number of beneficiaries at the time before CLA is made.

Now the fact that CLA is only effective when made for public interest, is the requirement making no doubt that, the process is of economic efficiency by accommodating the public benefits in the acquired land which goes with multiplication of the land beneficiaries for that particular purpose. CLA in this first aspect of economic efficiency therefore, is reflective of Law and Economics by holding the property most value precept.

THE INTERACTIVE BARGAINING IN CLA

As it was stated before , Coase theorem ,the important theory surrounding allocation of property rights, emphasizes on interaction of the parties to transaction in order to create the property surplus value. The reason for such interaction would be a need to make sure that parties bargain a fate of their transaction. The role of law in transactions surrounding allocation of property rights in this perspective therefore, should be lubricating bargaining between the parties in each particular transaction. This should be the same approach surrounding CLA as an aspect of proprietary rights allocation. Procedures governing CLA in Tanzania are established under sections 6, 7 and 8 of The Land Acquisition Act[xxxvi] which requires clearly that, a notice to preliminary investigation;[xxxvii] a notice of intention to take

possession[xxxviii];a notice of intention to yield and take possession[xxxix] must be issued by the land acquiring authority to the person(s) against whom acquisition is made via this important process. These requirements function importantly as attempt to facilitate communication between the government land acquiring authority and the person(s) against whom such land reacquisition is to be done. The intended results from communication between land acquiring authority and the person(s) against whom land is so acquired is a facilitation of bargaining between the land acquiring authority and individuals against whom land is so acquired. Interaction between the parties to CLA is also realized under section 5(2) of the Land Acquisition Act.[xl] which is to the effect that, in case of any dispute on amount of compensation paid to repair a damage made during preliminary investigation prior to CLA , the complainant may refer it to the Regional Commissioner of the area in which acquisition is so made, for a determination. This legal position functions as a mechanism welcoming in bargaining between the land acquiring authority and persons against whom land is acquired on any dispute surrounding the particular stated compensation.

Despite the interactive platform existing in those identified areas of CLA above, still there is no sufficient room for negotiation between the parties to CLA in many other areas surrounding acquisition process. For example the amount of compensation is determined by the valuers whose base of valuation are the market price ; opportunity costs; exhausted and unexhausted improvements as pre-realized in relevant laws. The compensation paid under that orthodox legal approach may not be as appropriate as the amount that would have been agreed between the parties to CLA in a due process of negotiation and subsequent bargaining. Another challenge cutting across interactive bargaining between the parties to CLA is insufficient period assigned to CLA process. This is because the President can acquire land against any person in a period of forty two (42) days and sometimes in a lesser period when a need so compels.[xli] This period seems to be too short to hold sufficient and effective interactive bargain between the parties to CLA, the process which may commonly be associated with lodging complaints and concerns against the process; which also is surrounded by formal consultations between individuals against whom land is acquired and the land acquiring authorities. This being the case, limitation in time allocated for CLA may affect negotiation and bargaining initiatives between the government land acquiring authority and person (s) against whom such acquisition is implemented. Lack of sufficient platform for bargaining between the government land acquiring authorities and individuals against whom

CLA is effected has been resulting into implementing CLA in the orthodox legal parameters that are surrounded by strict reliance to the laws and the end results in most cases has not been economically efficient.

The position seems to be different from land reacquisition made under the Land Act, in circumstances compelling a revocation of a grant of occupancy under the legally substantiated circumstances. Where revocation is to be made under this law, there is an ample opportunity to carry out negotiation between the government occupancy revoking authority and individuals against whom revocation is to be made, before effecting revocation process. When the Minister considers that certain area falls under the conditions compelling revocation of occupancy, he is thereafter legally bound to give a notice to the person(s) against whom such revocation is to be effected.[xlii] The same persons against whom the intention to revoke grants of occupancy has been communicated are given sufficient time to assess the revocation decision by the government and give their response on that government intent. Where objection has been made against the Minister's intention to revoke grants of occupancy in those circumstances ,he is required to prepare a report and handle it to the President.[xliii] Upon determination of the report by the President, he will weigh whether to change or proceed with the revocation intention that was declared before by the Minister. The President 's decision to postpone or proceed with revocation will be made pursuant to a consideration of various factors including opinions and reactions made by the land owners against whom revocation notice has had been served before. [xliv]

All of these arrangements have been given sufficient time framework capable of accommodating bargaining between the government and individuals against whom revocation is made. For example in circumstances surrounding revocation of grants of occupancy under the same Act, a sixty (60) days notice may be granted to the land occupier(s) on the government intention to revoke a particular grant of occupancy. [xlv]This communicative device, carries a big number of benefits within itself, including socio-economic and psychological preparation of land occupiers against whom circumstances have compelled to move and vacate their land. This is evidenced by section 7 of the Land Act, which identifies the steps to be taken in declaring hazardous land in a way accommodating interactive bargaining between government and individuals against whom revocation is to be made . The position seems to be inclusive and not a single sided decision which is held within the Land Acquisition

Act .In terms of interactive bargain the Land Act therefore ,is of economic efficiency the different case in the Land Acquisition Act.

THE DESIRABLE END RESULTS OF CLA

There are two contradictory compensation schemes surrounding CLA in the country. These are the compensation scheme held under the Land Act and the second is that held under the Land Acquisition Act. Something important on these schemes is that every scheme has its different compensatory calculation base and approach. The complication surrounding the validity of these schemes is worsened by the supremacy of each legislation holding different compensation schemes. The Land Act declares itself of being supreme for all matters relating to land management in the country[xlvi]something which would communicate an idea that any law that is repugnant to it will be considered null and void to the extent of its repugnancy to it. The Land Acquisition Act also declares itself to be the supreme law for all matters relating to compulsory land acquistion in the country.[xlvii]There is a legal confusion now on the scheme which overrides the other on that particular contradiction as both of the two are held under different pieces of legislations that are supreme in the relevant areas of their application. This is a confusion held under the orthodox legal perspective surrounding compensation emanating from CLA. The subsequent results of contradictions between the two statutes is that In the Law and Economics perspective the two legislations have different economic approaches surrounding economic efficiency of compensation which these are **Pareto**[xlviii] and **Kaldor Hicks** [xlix]Economic Efficiency Doctrines.

Allowing compensation for a bare or vacant land and exhausted improvements made thereon under the auspice of the opportunity cost approach of compensation , the Land Act, seems to be Pareto efficiency related scheme of compensation. This is because these compensatory attributes under the Act would be construed in the economic perspective as an approach of exercising an acquisition of land for the public convenience without making **worse off**, individual (s) against whom land acquisition is made. The compensation scheme held under the Land Act establishes a need to replace person(s) against whom CLA is made in the original position had acquisition not been made. Adoption of Pareto efficiency doctrine in the Land Act, places necessary but impracticable burden of compensation. The state will strictly pay

compensation in accordance with legal requirements stipulated in relevant laws even at the cost of affecting the implementation of the project upon which CLA was made. Implementation of Pareto efficiency in the developing states like Tanzania is not an easy thing to accommodate and subsequently this has been resulting into government failures to effectively use land over which it has a paramount title for the purpose of implementing different socio-economic projects.

Adoption of Pareto efficiency in implementation of CLA might have been one of the factors for slow urbanization process and average constructions of various social economic projects in the country . Another effect close to this arrangement is unnecessary complaints and reluctance by the landowners against CLA because of the government failure to pay compensation that is relatively huge from that particular trend of compensation. There have been delays and massive failures to implement government projects that are designed to serve the public because of this most expensive compensatory scheme. The good example to these delays may be related to the delays in implementing the good government plan to expand the Mwalimu Nyerere International Airport. The plan which was delayed because of the government's failure to get compensation fund to the surrounding communities the tragedy which became called the Kipawa Dispute[1].

The Land Acquisition Act on the other hand seems to reflect and hold the Kaldor-Hicks doctrine of resources allocation. This doctrine is accommodative of practical realities on compensation surrounding CLA in development states which are always struggling to establish socio-economic infrastructures which are the important devices to stimulate and facilitate socio-economic development among their citizens. This is because the general economic approach adopted by this piece of legislation is that, the primacy of land acquisition in the country is the public interest and convenience .The purpose upon which land acquisition is effected is beneficial to all members of public including person(s) against whom such acquisition is made. The compensatory scheme under this law therefore doesn't restrict the replacement of the CLA victims exactly in their original place before the process is made. It is from this line of consideration that, compensation paid under this scheme is more limited to public land use and ownership than that held under the Land Act.

The limitation of compensation is placed on various basis of compensation which are that, a bare land is not subject to compensation and in the case of improved land , compensation is limited to unexhausted improvements .The same compensatory scheme surrounding CLA as held under the Land Acquisition Act is prone to the market value that has been provided for under section 14 of the Act. The conclusion that may be established from the Land Acquisition Compensatory scheme therefore is that, under the CLA public may be made better off at the same time compensating persons against whom land is acquired although not to the extent of replacing them in exact position they had been before.

Compensation paid under the CLA in Tanzania therefore holds both *Pareto* and *Kaldor-Hicks* economic efficiency doctrines. The Land Acquisition Act on that analysis is a more appropriate and relevant law in the context of this segment of economic efficiency as held in Law and Economics paradigm. This is because .*Kaldor-Hicks* doctrine is reflective of socio-economic atmosphere of developing countries where resources and government initiatives are always placed on building socio-economic infrastructures for stimulating and facilitating individual development and general public welfare on the first place. This kind of approach has helped much in building strong state economies in some other jurisdictions having leasehold land ownership ,the same land ownership prevailing in the country and the People's Republic of China stands as the best example on this. For example while the country (China) had only 640 cities in 1995, four years later i.e. by 1999 , a number of cities increased to 967 cities. The same China in 1949 had only 79 cities but until 1981(42 years only) a number of cities had increased to 233 cities.[li] It is also revealed that while by 2009 urbanization had reached around 46% the same growth was expected to reach 52% and 65% by 2015 and 2030 respectively.[lii] The CLA in China therefore has been stimulating and facilitating socio-economic development by using the simplified mode of land acquisition by the government that is allowed by the nature of landownership prevailing in the country and from which *Kaldor-Hicks* economic approach of compensation has been applied for that particular important economic development..

CONCLUSION

The general conclusion that is made at this closing paragraph of the paper is that, CLA as an important economic aspect in building socio-economic infrastructures in Tanzania is not of

economic efficiency. A Failure to accommodate economic efficiency relevant to the philosophical approach and foundation of land ownership in the country has jeopardized the intended national goals for land use. Accommodation of Pareto efficiency doctrine in payment of compensation that emanates from CLA as discussed above is an illustration of the challenges impeding effective use of land by the government for public convenience including but not limited to a slow urbanization process and building of socio-economic infrastructures if compared to other states having the same lease hold system that prevails in the country.

The problem has been worsened by a failure to accommodate interactive bargain during land acquisition between the government land acquisition authority and the individuals against whom land is so acquired is another big problem surrounding CLA in the country. In some few occasion where land acquisition has been made subject to interactive bargain land has had been acquired cheaply including citizenry voluntariness to offer their pieces of lands free of charge for that purpose . The latter portrays the influence of interactive bargain as an aspect of economic efficiency surrounding allocation of proprietary rights the economic area to which CLA relates. The adoption of economic efficiency in areas surrounding proprietary rights allocation would serve much in having legal movements and initiatives that are economic friendly in the country. It is a high time to have in mind economic efficiency consideration when determining legal rights and liabilities accruing from different legal aspects including CLA .

ENDNOTES

[i] No 47 of 1967
[ii] No 4 of 1999
[iii].No 47 of 1967
[iv] No 4 of 1999
[v] Nelson Chan, *Land Compensation in China; Problems and Answers,* International Real Estate Review(2003) Vol.6 No 1,1
[vi]Gaston Kennedy The *Constitutionality of Compulsory Land Acquisition and Compensation Practice in Tanzania: The 2009/10 Kipawa Land Eviction and Road Sector Compensation Dispute as Prototype,* Saint Augustine University Law Journal (2011) Vol.1.No2 December, 120.
[vii] This is a philosophical contemplation that communicates the power of a state to acquire any property against any person owning it under the public interest. Its best application was once stated in the case of *Kohl v United States,91 US 367*(*1875*) where it was observed to mean that, the government has power to seize any private property via the eminent domain…subject to the payment of compensation.
[viii] Land is considered to be a property of its unique features in terms of its use and ownership. It is from this nature of land that most of states have been framing land regulatory initiatives in a way avoiding individual exclusive land ownership. Even in cases where the latter has been so assigned , under the principle of eminent domain the government will still have power to compulsorily purchase land held and owned under private sphere of ownership
[ix] This is the most influential philosophy within the trend of land ownership in Tanzania and it views land as the gift man got free from God therefore that, there can't be a claim for exclusive land ownership by a person except for intellect, efforts and energy invested by him in clearing and tilling a particular piece of land .
[x]Xueying Zhang et al, *Compensation for Compulsory Land Acquisition in China,* https://escholarship.org/uc/item/qzo/50x0wh(2011), 5.(accessed in March 2019)
[xi] (1941)1ALL ER 480
[xii] Xueying Zhang op.cit..
[xiii] No 47 of 1967
[xiv]The Land Acquisition Act, *Op cit* Section.6 and 7

[xv] Tenga et al,*Theoretical Foundation of Land Law in Tanzania*,Law Africa (2014),173

[xvi] Concise Oxford Dictionary (2001) Oxford University Press ,10th Edition
[xvii] Nelson Chan, *Land Acquisition Compensation in China, International Real Estate Review*,(2003)Vol.6 No 1,136-152
[xviii] Nelson Chan, *op.cit*
[xix] The People's Republic of China is the best example of the states whose landholding system expressly limits individual land ownership to the public land use and benefits.From both, the Constitution and the Administrative Law Act of China, which are the relevant laws in respect of land ownership and management; there are two categories of land in China basing on land ownership in the country and these are; the state owned land (urban land) and the collectively owned land (rural land).Both of these two are subject to zheingde (The government power to reassert its exclussive use over any land under occupancy).There is no exclussive individual ownership in land and a person is only allowed to have usefractuary land right from the state authorities or administrative land authorities by way of leas normally counting from 40-70 years.Practically this is a leasehold system of land wonership ,as same as that applies in the United Republic of Tanzania.
[xx]Xueying Zhang et al, *Compensation for Compulsory Land Acquisition in China,* https://escholarship.org/uc/item/qzo/50x0wh(2011), 5.(accessed in March 2019)
[xxi] Section 4(1) of the Land Act[CAP 113R.E2019
[xxii] The Constitution of the United Republic of Tanzania,1977 Article 30(1)
[xxiii] The Land Act Act ,*Op.cit.* section 4(1) reads to the effect that,all land in Tanzaia continue to be public and remain vested in the President as the trustee of all Tanzanians.The concept or idea of continuing to be public is a historical inference drawn from the fact that, previously land was also regarded and recognised to be owned by the superior authorities of the colonial political administration in the country.Under the Germany Emperial Decree,the same land was recognised as unowned (unless where private ownership of land would be proved to exist) and was regarded as the crown land a the ownership of which was placed in the colonial government authority as stated under section 1 of the Decree.This would therefore testify that all land whose private

ownership could not be proved during the Germany colonial administartion in the country was considered unowned on the first place,and the same was to be regarded as the crown land. In 1923,during the the British colonial administration in Tanganyika,all land whether occupied or not was decleared to be public .Its ownership was vested to the Governor.This is perhaps, the strong reason as to why land is said to have remained public as the continuation of historical legal position surrounding land ownership in independent Tanganyika by then and her subsequent Tanzania as well.The second idea is that of trusteeship which comes to mean that, the President will always have mandate over land on behalf and for interest of all Tanzanians.There is a political point here unfolding political position of the President in land ownership on behalf of Tanzanians and it entails that ,as long as the President is the sole authority elected by all Tanzanians as the head of state,commander in chief and head of the government, there is a sense of political legitimacy on that reason enabling him or her in his capacity to hold and decide some matters of public interest in the country on their behalf,probably more than any one lse would do.

[xxiv] The Land Acquisition Act[CAP 118 R.E 2019

[xxv] *Loc.cit*

[xxvi]Attorney General v Sisi Enterprises Ltd[2006]TLR 9 .This is the most illustrative case on the limitation of individual land rights to public land access and use. In this case, the respondent who lawfully owned a piece of land, had had negotiated and agreed to conclude a contracted to transfer his interest in land to the US Embassy in a consideration of USD 3,000,000/=(Three million only) .Sometimes later before the deal had materialized, the President issued a notice to acquire the respondent's land under the legal power that he has , the decission which frustrated the intended deal.The President intent was effected via the G.N Number 469 of 1999,JULY.The respondent's land acquistion by the government was associated with payment of about USD 415,422 /=as a compensation to him for that particular interruptive process.The respondent was not satsified with both the President's decission to acquire his land and its subsequent compensation in its amount. He therefore nocked the doors of court for vindication of justice agains the process and its related compensation. At a trial stage, the High court ruled in his favour on the ground that ,the so called compulsory land acquistion had been vitiated by the procedural improprieties surrounding it and therefore he was awarded with the compensation of $3,000,000 , the same amount that had been intended to be the contractual price had his deal with US Embassy not been frustrated by that particular CLA , plus the market interest rate as provided for, under the Land Act.When the government appealed against this decission the Court of Appeal upheld the High court's decission with an exception to compensation figure which was reduced from $ 3,000,000 to $ 668,597/= basing on government land valuation report; the amount that had no both, the Land Acquistion Act and the Land Act legal base of compensation.

[xxvii] ABDON Rwegasira, Land *as a Human Right,* Mkuki Na Nyota, Dar es Salaam (2012).

[xxviii] [CAP 123 R.E 2019]

[xxix] [CAP 168 RE 2019]

[xxx] [CAP 355 RE 2019]

[xxxi] Robbert Cooter, *op.cit*, p.74.

[xxxii] Robbert Cooter, *op.cit*, pp.3-4.

[xxxiii] This is the theory that came to surprise the world ,where Ronald Coase, using economic efficiency theory ruled out the business problem among the three owners of three different radio stations to resolve interference of their radio stations. Instead of the orthodox legal determination that would have had a more focus on who held the best title in the radio frequencies and subsequently award him a legal protection against the two others .But with this new legal approach the radio owners could interact and negotiate on how to resolve the problem.In a due process of their negotiation, a person who valued the radio business the most, would be able to pay the other two radio owners to vacate their radio businesses from the freequency of his radio station . His innovation in Law and Economics written in his *Social Coast* Article earned him with the World Noble Prize in 1991.

[xxxiv] Hon. Justice, Kirby, in 1998 as he has been quoted by Cooter, op. cit.

[xxxv] Robbert, Cooter,op.cit, 78.

[xxxvi] *Op. cit.*

[xxxvii] The Land Acquisition Act,*op.cit* section 5(1).

[xxxviii] The Land Acquisition Act, *op.cit*, section 6.

[xxxix]The Land Acquisition Act, *op.cit*, section 7(2).

[xl] *Op.cit.*

[xli] The Land Acquisition Act, *Op.cit*, section 7(1).

[xlii] The Land Act *Op,cit*,section 5

[xliii] The Land Act, *Op.cit*, section7 (3) (d).

[xliv] The Land Act, *Op.cit*, section 5.

[xlv] The Land Act, *Op.cit*, section 7 (3).
[xlvi] The Land Act, *Op.cit*, section 181
[xlvii] Section 32 .*Op.cit*
[xlviii] This is the economic doctrine relating to allocation of resources or proprietary rights. It is the doctrine which holds a view that in allocation of resources, efficiency comes where at least one side to allocation is made better off while no any other person has been made worse off. In a legal context surrounding CLA, the doctrine would view and hold the possibility of effecting CLA without affecting any other person including a person against whom land is so acquired. The emphasize on a payment of compensation as a need of replacing the former land owner in the position he had been before CLA is directly connected to this doctrine.
[xlix]This is another economic doctrine surrounding economic efficiency and which is contrary to the doctrine above in a sense that, it suggests compensation to a person who might have been affected in a due process of allocating resources, although not necessarily by placing him in the same position he had been before the allocation is made.
[l] This came as the descriptive picture when it comes to the challenges surrounding payment of compensation surrounding CLA in Tanzaia with a strict reliance on full,fair and prompt compensation as a legal requirement which is a Pareto efficiency based approach of compensation.Having planned to modernize the by then Dar-es-salaam Airport and the currently known Mwl.Nyerere International Airport,the government was required to pay the compensation amount of 16.5million Tanzanian shillings in 1982 to the surrounding landowners.The project couldn't be commenced untill that fund was so secured and paid to about 560 deserving land owners (Prof.Gastorn Kennedy *loc.cit*),the project therefore was to be made subject to the availability of this sum of money.It was untill 1987 that the government revived of its intention to start implementing the same project but the relactunce to move had already been communicated by some of the residents for different socio-economic reasons including the fact that, compensation of 16.5 million was no longer of the relevant tume as it had been overriden by different socio-economic changes in that particular regard .Therefore that a fresh valuation was innevitable and it was conducted ten years later (in 1997) where the compensation amount had jumped to twenty one billion eight hundred fifty seven million seven hundred eighty one thousand Tanzanian shillings (21,857,781,000/= and because of its delays this valuation was administratively done in a hurry without following proper legal procedures including publication of Government Notice as required by law.The residents continued staying in the area untill compensation would have been paid.The government failed to pay compensation to these innocent persons and at their surprise,the land officials accompanied by the police officers,painted their houses with Xs the signals of demolishing their houses.This remained the stuation untill 2000 where the area was decleared to be the Development Planning Area and was subsequently reallocated to the Dar es salaam International Airport Authority in that respect.It was untill 2009 (27 years later) that,the initiatives to pay the land owners to vacate their places was made while compensation amount had already bubbled from 21,857,781,000/= to 43,977,856,000/= Tanzanian shillings .Despite this increase in compensation amount ,still the residents were reluctant to vacate the place on two important ground.The first ground was that,since the Land Act, the new legislation had been in place since 2001 they were therefore supposed to be paid under this compensation scheme having the new compenasation approach on vacant land and exhausted improvement under the umbrela of opportunity cost compensations bases and therefore th secondly that,the compensation amount in that respect was not adequate.
[li] Nelson Chan, *Op.cit*.
[lii] Xueying Zhang, *Op.cit*, 4.