

INVESTMENT AND LAND DISPUTE WITH LOCAL COMMUNITIES IN TANZANIA, ANALYSIS OF LAW AND PRACTICE

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ABSTRACT

Land is the natural vital asset owned by person or persons. Although land plays a major role in social and economic development, its management remains doubtful in Tanzania. Land has become strength of the Tanzania Investment Center in advertising and promoting investment in the country. For this reason, the land laws of 2019 (Land Act No. 4 and the Village Land Act No. 5) reflect the disposition of land for investment purposes especially acquisition of land by foreign investors. Laws governing access to land remains subject to criticism as land disputes between investors who allocated land and the surrounding local communities keeps on increasing across the country. This dissertation comprises five chapters whereby Chapter one provides for the background to the problem, statement of the research problem, objective of the study, literature review and research methodology. Chapter two covers the historical background of land tenure system in Tanzania. Chapter three provides for acquisition of land for investment purposes in Tanzania; legal framework. Chapter four provides for the extent to which land laws regulate acquisition of land for investment purposes in Tanzania. The fifth chapter provides for the General conclusions and recommendations. The researcher used qualitative method in conducting the study. The sample technique employed in carrying out the study was purposive and the researcher administered questionnaires and interview to sample individuals. The study aimed to critically study and evaluate the whole process involving the acquisition of land for investment purposes and to investigate the factors contributing to land disputes between investors and surrounding local communities.

INTRODUCTION

Land is the most vital asset of all assets that a human being can have, thus it should be administered with due process a failure of which will result in social as well as economic turpitude.ⁱ The value of land in terms of economic growth and development of any given country is enormous. Land is a backbone of economy and it has occupied a predominant place in all walks of human life, thereby multiplying the value of holding land in social life. Land therefore can be owned by individuals or by a community or an institution for various economic purposes. Tanzania like many other countries in the world have been promoting its land to attract investors since an investment creates a number of opportunities including an employment, tax contribution, technology importation and many other advantages. An investor would need a suitable land and an attractive land policy so as to use her huge amount of money for investment.ⁱⁱ The problem arises where the investor who had an interest over the land belonging to the local communities, An indigenous may refuse to leave their lands either by adequate compensation or through selling their local lands and Sometimes investors may follow a proper procedures and acquire land either in the form of derivative right or granted right of occupancy however the local communities may also claim to be the lawful owners of the said land, the researcher shall.

HISTORY OF LAND TENURE IN TANZANIA

Before colonial regime land tenure system was under customary administration and access to land was through clan which based on socio-economic use of the land. Customary land tenure is characterized by its largely unwritten nature, is based on local practices and norms, and is flexible, negotiable and location specific. Land tenure system in Tanzania before colonization varies from one tribe and another and administration of land differs from one tribe and the other mainly because of customs of a particular tribe and land use of a given community. Laws were not codified at that time; there were no statutory land administration. Land was just used to support livelihood of communities and not for economic purposes. It was accessed for peasant agriculture which was aimed at ensuring food security or for livestock husbandry for pastoralist communities and also land for hunters.

During colonial era by the Germans between 1885-1916 and British era between 1918-1961 indigenous occupants had no ownership rights over land. This notion created a gap which is still making the laws governing land to allow the abuse of the right to own land. The existing land tenure structure and legal regime governing land in Mainland Tanzania find their genesis in the colonial political economy.ⁱⁱⁱ

However, changes are inevitable and now Tanzania has been forced to codify laws that regulate land, there are internal factors and external factors. Internal factors mainly contributed by the intrusion of colonial masters; in case of Tanzania the Germans colonial masters and the British masters who highly contributed to the need of land reforms. External factors that contributed to land reform in Tanzania which led to the enactment of legal statutes are: globalization is the key factor as it forced economic liberalization and Tanzania has nothing to do but to adopt the system. The need for new area of investment and the flow of capital from outside the country by investors necessitated the enactment of land laws and other financial statutes to meet the demand of economic liberalization.^{iv}

Tanzania in late 1980's enacted a number of laws that regulated the change of economy which was in transformation to privatization of the major means of production; this was mainly to harmonize globalization which necessitated economic liberalization. Tanzania introduced The National Land Policy of 1995. This was a detailed policy conducted by the government which aimed to end the land problems in the country and with the hope that land to be beneficial to all and avoid land disputes. The overall aim of the National Land Policy was to promote and ensure a secure land tenure system, to encourage the optimal use of land resources and to facilitate broad based social and economic development without upsetting or endangering the ecological balance of the environment. This National Land Reform Commission Report resulted in the enactment of two important statutes that are; the Land Act of 1999 and the Village Land Act of 1999 respectively.

According to the Land Act, Land is divided into three categories; General land, Village land and Reserved land, categories which were inherited from the colonial administration. The category of land in Tanzania as established by statutes contains discrepancies which contribute to land disputes. Within these categories there were conflicting interests, these interests were made by laws governing the tenure of each category and this also contributed much to land

disputes. No substantive measures that were taken by the government to arrest the situation, the land policy of the country does not show to solve these problems especially the categorization of land.

THE PROBLEM OF LAND TENURE IN TANZANIA

Land disputes between investors and the surrounding local communities over the land allocated and occupied for investment purposes in Tanzania are keeping growing. Land disputes in Tanzania is largely experienced from land acquired for investment purposes, especially on large scale land transfer which affect life of local community as they are forced to vacate the land. Nevertheless, despite the presence of legal instruments, land dispute is growing rapidly to show that something is supposed to be done to arrest the situation.

The Laws Governing Land Tenure System in Tanzania

- Customary Land Tenure System

Customary land tenure is a community-based system where land administration and occupation were governed by customs and practices enforced by elders, clan leaders, and sometimes kings, who perform civic and spiritual obligations.²⁹ Because land is owned at the clan and village levels, the customary tenure system benefits from the absence of bureaucracy, allowing individuals to inherit their ancestral land from their family and use it for their own needs. Before the Land Ordinance, Tanzanian land was distributed based on land use and availability, with no general, village, or reserved land. During this time, land was a common property belonging to the entire community, clan, or tribe, with equal access and usage.^v After colonial intrusion, land management changed, with freehold land introduced. Land was primarily used for domestic purposes, with some reserved for traditional activities like cultivation, pastoralist or hunting, and sacred practices. Before colonial intrusion, land was not considered a source of capital or measurable in terms of money.

The colonial masters were unsatisfied with the mainland Tanzanian land tenure system, which restricted foreigner's access to land and had no legal foundation. Customary land had benefits such as no legal taxes or rent, making it easy for village members to inherit the land and

preventing disputes. The existing land tenure system, which comprises both general and village land, stems from colonial masters' attempts to undermine the system for access to land and legal protection. In mainland Tanzania, the existing land tenure system and legal framework were established in colonial political economy.^{vi}

The colonialists believed that the African indigenous peoples lacked a legal system for land governance, so they introduced freehold land. The customary land tenure system did not require title and registration, as land was not considered a capital asset. Land titling and registration were not used for mortgage purposes, bank loans, or monetary exchange of land. Before colonization, land commercialization was not a priority, and the community managed to resolve land disputes using their native methods, as pressure on land was low.

Economic liberalization hampered customary land administration due to legal pluralism, which classifies land based on varying interests. This makes land vulnerable as laws governing land make it easy to access for various state-backed reasons, while also providing legal sanctions that differentiate the value of customary land from other land, making land susceptible to pressure and weakening. So far, all land in Tanzania continues to be public land, with the President acting as trustee for and on behalf of all Tanzanians.^{vii} The British administration's land legal regime was essentially premised on providing the state full rein to govern and alienate indigenous lands without regard for legal commitments.^{viii}

As elaborated, under customary right of occupancy, land was occupied under customary laws while a person or a villager was occupying it, but after he stopped using it, it became community land, not held by an individual. Communities may demonstrate ownership by occupying and using property, but land that was not used continually was considered owner less.³⁴ the main legal distinction between customary and inherited tenure is the acquisition method. Customary land tenure requires no formal procedures and can be obtained through community meetings or inheritance, but statutory tenure can only be obtained formally and has a defined expiration date. Customary tenure is still practiced in most rural parts of Tanzania, despite efforts to formalize customary land through land use plans. The prevailing wind, which encourages both domestic and foreign investment, necessitates a re-examination of customary tenure legal administration in order to minimize land disputes.

STATUTORY LAND TENURE IN TANZANIA

Land laws provide legal protection for both customary and statutory tenure, with case law aiming to establish no superior tenure over the other. In the case of *Mwalimu Omari & Ahmed Baguo v Omari A Bilal*³⁷; the court ruled that a deemed right of occupancy is equivalent to a granted right under the Land Ordinance, so non takes precedence over the other. Registered land offers economic benefits compared to non-registered land, distinguishing it from statutory and customary tenure. Financial institutions are more likely to accept registered land titles for financial assistance, demonstrating the importance of legal protection in land ownership.

The colonial rulers established this system to fit their interests, which were none other than to acquire raw materials from Africa. This was to favour investments, but not in a way that was acceptable to locals, and thus the concept of land alienation or possibly land grabbing was adopted. Land made available for lease through statutory right of occupancy; the state leases land for various lengths under the trusteeship of the president. The common lease tenure in Tanzania is 33 and 99 years, a remnant of the colonial masters. Once land is granted, the grant can be classed based on the duration of the grant, such as long-term right of occupancy for 99 years, short-term right of occupancy for 5 to 99 years, and annual right of occupancy.^{ix} Statutory land tenure imposes legal responsibilities on the occupier, failing to which may result in the revocation of the given title; among these obligations are tax obligations and adherence to land use and other municipal rules that govern the land.

In comparison to traditional tenure, statutory land tenure favors investors since its value is frequently certain and it attracts modern economic liberalization. The certainty of the value stems from the fact that the land must be surveyed and documented in order to attract title and registration. Official searches are feasible for statutory land tenure, making it more viable than customary land tenure because a person may see if the land has any legal encumbrances. The economic liberalization and prioritization emphasis pushed by the IMF/World Bank agenda on markets and prioritization has increasingly exposed the range lands to a slew of foreign factors.^x And not under granted right of occupancy has a higher value compared to customary land.

While land laws provide equal legal protection for both granted and customary rights, legal technicality does not guarantee equal protection. Revocation of granted land requires legal

procedures until the president revokes it, while customary land lacks due cause. The government uses statutes to ensure all lands are public land under the president's trusteeship. Revocation of titles requires good cause and a gradual process, as per the Act. This highlights the importance of good cause and a sequence of procedures in land revocation.^{xi} Land conflicts can emerge as a result of a lack of transparency in customary land tenure procedures, which often results to inadequate fair compensation for public property acquisitions. The proper procedure, which includes the revocation of land titles, offers tenure security for those who have been given the right of occupancy. This procedure is especially difficult for rural residents, who were frequently affected by uncertainty and misunderstanding. Due to legal pluralism, the global economy compels economic cooperation between locals and nations, making land a vital property with legal issues. As a result, extensive research, analysis, and debate on the less transparent village land transfer procedure, involuntary resettlement, and compensation systems for land purchase for investment are urgently needed.

During and after colonialism, because of the land categories established by land laws, it was not possible to register and issue statutory tenure to all land in the country; there is no uniformity in land ownership in the country. The majority of land in Tanzania is still handled under customary tenure since providing formal right of occupation involves costs that neither the government nor individuals can afford. Land in Tanzania is currently in high demand due to a variety of factors, including investment factors, urban expansion, and a desire for land among pastoralists and farmers. Land on a large scale is currently in demand by investors, and the government is allocating to investors, which occasionally creates opportunities for land grabbing. The colonial authorities entirely ignored the rights of the local people who occupied their traditional territories previous to colonial intervention under their separate native laws and practices.⁴³ Because the legislation is not strict on due procedure for land transfer, the government routinely transfers village land under customary tenure to general land for investment or public interest.

Because of the colonial administration aspects, which were created for the few's advantage and intended land to be private property, the Land Act and Village Land Act have failed to address the country's land challenges. Except for procedural issues in village land management and conflict resolution methods, these laws do not add new characteristics to the land tenure system.^{xii}

CATEGORIES OF LAND IN TANZANIA

Tanzania's land is separated into three categories: general land, reserved land, and village land. The Ministry of Lands, Housing, and Urban Settlement is in charge of these categories. Investment in these areas entails access, title, registration, and land utilization, all of which have legal ramifications.

General Land

General land is land that is not village land or reserved land. It is normally administered by the Land Act and is managed directly by the Commissioners for Lands. General land may include village large property that is empty or underutilized.^{xiii} In Tanzania, general land accounts for only a minor portion of the remaining land categories because it only covers the cities. This is because, as previously discussed, the registration of land and titling was caused by colonists, and it was only a small portion of land that they managed to alienate the indigenous. General land, which is estimated to constitute 2% of the total land area, is primarily used for urban purposes and supports around 20% of the people.^{xiv} This category of land plays an important role in investment since in order to acquire the Certificate of Incentives from TIC, one must convert to general land, and the transferred land and managed by the Commissioner for Lands.

It follows that in order for an individual or a firm to benefit from TIC, he must first move land from other categories of land to general land. Because of the increasing demand for land for investment purposes, the process of moving land from other categories to general land creates problems because there is no due process backed by law guiding the procedure. Land disputes regarding land accessed for land purposes arise as a result of legal pluralism, which weakens other land tenures and recognizes general land that is simply granted the right of possession. Tanzania is a country made up of numerous tribes, and each tribe has its own manner of utilizing land based on geographical location and the nature of activities, so land cannot be used uniformly. The Land Act's concept of general land is open to abuse of some tribal land, the concept of underutilized land is easily invoked and subsequently offered to others under granted right of occupancy.^{xv}

Reserved Land

This land category^{xvi} is designated for specific purposes based on its characteristics, and it can be declared by the president or the commissioner for lands. Reserved Land is land designated

by sectoral legislation as national parks, game reserves, forest reserves, marine reserves, and so on, and accounts for approximately 30-40% of Tanzania's total land area.^{xvii} The management of reserve land is the responsibility of the competent authority where the land designated as reserved land is located. These lands include land designated or set aside under the provisions of the Forest Act, National Parks Act, Ngorongoro Act, Wildlife Conservation Act, The Marine Parks & Reserves Act, Town and country planning Ordinance, High way ordinance, Public Recreation and Grounds Ordinance, Land Acquisition Act, Land Parcel within Natural Drainage System, Land reserve for public utilities, declared to be hazardous land.^{xviii} This kind of land should not be overlooked because it contains prospective investment land. Reserved land is frequently used for tourism, the forestry industry, hunting, and game activities. Reserved land is usually part of village land because it is developed within village land and the regulations that apply interact with VLA. Reserved land, such as wildlife protection or Ngorongoro Conservation Area, requires licensing and permits for investors. The Ministry for Natural Resources and Tourism manages these, making allocation easy.

Tanzania's abundant natural resources attract foreign investors, but legal challenges arise due to the expansion of reserved land boundaries, with villages such like those living around Tarangire National Park complaining about encroachment by government authorities. The Policy has become a thorn in the side of rural people, notably pastoralists, because it advocates for dispossessions and the expansion of protected area constraints at the expense of pastoralists (e.g., Mkomazi game reserve and NCA).^{xix} For the purposes of subsection (1), the term "public interest" includes investments of national importance. Now that investment, particularly Foreign Direct Investment (FDI), is considered as a panacea for our economy, pastoralists are concerned that applicable wildlife management rules will be interpreted in favour of exploiting their lands for investment.^{xx}

Land regulations can be abused, for example, by evicting local communities that possess land before it is officially reserved. Once declared reserved, the authority oversees investment activity and awards derivative occupation rights via TIC. The Nyamuma eviction case is linked to a 1994 Serengeti District Council resolution that extended the border of the Ikorogo Game Reserve. This instance underlines the need for stronger land laws and control.^{xxi} The Nyamuma instance demonstrates how the government can increase the borders of these restricted lands unjustly. For a brighter future of investment in Tanzania, the process of classifying a portion

of village land as reserved land must be thorough and transparent. It is simple to accommodate investors in reserved land because investors will obtain land via TIC in partnership with the body in charge of the land. Reserved land accounts for 28% of all land in Tanzania.^{xxii}

Village Land

Village land, excluding general and reserved land, is a sizable chunk of Tanzania's land, supporting the majority of the country's rural people. Over 70% of Tanzanians live in rural areas, and more than 80% make a living through farming and livestock raising.^{xxiii} Prior to colonialism, the only land type was village land, which was historically held and controlled by the VLA and village assembly. The tribe where the village was located determined who had access to the property. The British government devised a land-law structure that allowed the state to manage and alienate indigenous territory without legal repercussions. Currently, land rules allow the government to transfer village land without the need for due process to ensure that land ownership rights are not exploited. The president's radical title is used to retain authority over land, enabling for the conversion of village land to general land. This implies that the government is using village land as a "land bank" for its activities, implying that the government is recommending this method of managing land ownership.

The government has been promoting land as a factor to attract international investors, claiming that Tanzania has an abundance of land suited for investment, none of which is village land. The increased demand for land for agribusiness and tourism has resulted in a vast proportion of land being allotted to investors. However, much of the property designated as appropriate for investment in various parts of the country is village land and is used or inhabited in various ways by local people.^{xxiv} This entails that investment in Tanzania requires access to village land, making due process mandatory for better present and future investment.

RECOMMENDATIONS

Amendment of Land Laws

The Land Act shall be amended so as to remove the provisions that make it superior to Village Land Act. The definition of general land is subject to change and the provision of 181 of the Land Act. The legal pluralism shall not be entertained and therefore repealed of those

provisions; the land administration shall not be from various authorities (statutory bodies) as this will allow inconsistency in land management. The parliament shall remove powers vested to various leaders of government authorities as it causes double stand.

Effective Participation

Despite having Laws on investments and Land in Tanzania still the problem remains to be the same, the institutions such as TIC and Land offices which are operating under the president's office are vested with too much powers of controlling the process of providing lease /derivative right to investors without involving the local communities which are supposed to be involved in the whole process, since they are the victim of this process, when all the parties that is, the investors, the government institutions(TIC , Land offices) and the local communities are directly involved in the entire process it may help to reduce conflicts and save so much efforts used when the dispute arose.

Adequate Compensation

Although the constitution of the United Republic of Tanzania has provided for compensation to be full fair and prompt, it is not as adequate as it is seen in practical, the value of land taken with the investors is not equal to the amount paid, from there is where the disputes starts, the study shows that most of the foreign investors who came to invest especially in mining sector, they take too much from local communities and receive huge profit out of it comparing to the amount they provide to local owners, there is no reasonable balance of what is taken and that which is left to locals. However the government in implementing that law there has to be a governing body ensuring that, the amount intended and the value of the property taken for investment as per the office of the Chief Government Valuer is due and satisfactory to the local owner.

Land Shall Receive Strong Protection from the Constitution

It is also recommended that there shall be a chapter in the URT Constitution that guides land management in the country just like the proposal made by the Presidential Commission of inquiry into land matters. The role of land to the community and to the economy of the country is of paramount importance and it is not proper to leave the management of land fully to the executive without proper participation of the people.

CONCLUSIONS

Tanzania's land laws have a colonial style of land management and administration, with few improvements. The Village Land Act allows village land registration and recognizes customary and certificate occupancy rights. Land demand is high due to economic activities requiring land for implementation. However, legal loopholes need to be filled to prevent misuse of land generally. Land laws generally support investment in Tanzania, but there are impurities that hinder fair utilization for investors and indigenous people. Significant changes can be made to land development, but impurities still hinder the fair utilization of land for both investors and indigenous people.

ENDNOTES

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