
SUMMARISED VERSION OF KEY LAND ACQUISITION PROCEDURES IN KENYA



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Vision:

We envision a society that gives the vulnerable a voice, dignity and justice

Mission:

We advocate for transformational change, good governance, social justice and peaceful coexistence

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FOREWARD

Haki Yetu is a human rights organization based in Mombasa County with offices in Kilifi and Kwale Counties. It was founded in 2008 to give a voice and representation to vulnerable persons and communities. The organization, registered as a Charitable Trust (2020), uses a rights-based approach to address social injustices in the areas of Land and Housing; Gender and Law; Governance and Accountability as well as Cohesion and Transformation. The organization's interventions are guided by a 5-year strategic plan. The current plan runs from 2017-2022.

This booklet aims at simplifying land acquisition procedures for awareness creation purposes for local coastal communities. Land at the Coast of Kenya remains an emotively sensitive subject, that has cost many a life. Land disputes emanating from succession woes, botched sales, historical injustices and outright grabbing are common, mostly facilitated by a lack of understanding of basic land laws and land acquisition procedures. While this publication does not promise a comprehensive coverage of the topic, the basics of land acquisition procedures are sufficiently addressed.

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INTRODUCTION

Kenya adopted a new constitution in 2010. The constitution among other things anchored the National Land Policy, giving the policy legal basis for its implementation. The Constitution classified land as either, public, community or private land, and established the National Land Commission to manage public land on behalf of the National and County Governments.

10 years after the adoption of the Constitution, land remains a thorny issue at the Coast. Historical land injustice cases remain unresolved, with 70% of the local population lacking title documents to their land. Land disputes are common, and have often led to the loss of life particularly among the elderly.

A lack of information on how to acquire and register land has contributed to a rise in land conflicts as locals are often taken advantage of, during land transactions. Grassroots and village elders, who are often charged with resolving some of these disputes are inadequately equipped to address emerging land concerns. This booklet hopes to simply and equip grassroot leadership and communities at large with basic information on land acquisition and ownership procedures.

LAND ACQUISITION AND OWNERSHIP

Article 40 of the Constitution of Kenya guarantees every Kenyan the right to own property in any part of Kenya. The law recognizes several processes of legal acquiring and owning land in Kenya. This publication seeks to simplify the following procedures:

- i. Succession
- ii. Settlement schemes
- iii. Adjudication schemes
- iv. Communal ownership
- v. Transfer
- vi. Compulsory acquisition
- vii. Adverse Possession

1. SUCCESSION

This is the act of receiving property passed down from a deceased person, to whom one is a beneficiary. The Law of Succession Act (Cap 160) provides for mechanism by which property devolves from the deceased owner to the people who are left behind.

It can be testate or intestate.

Testate: There is a will therefore upon obtaining death certificate, one may approach the court for a court order to execute the will.

Intestate: There is no will therefore the process goes through court. It involves the following processes:

Succession Process:

Obtain a death certificate to prove death of a land owner. It can be obtained from the office of the registrar of births and deaths where one produces a burial certificate together with the deceased's identity card and a letter from the chief which clarifies the facts of the deceased's estate, spouses, liabilities, and heirs.

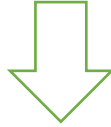


Present the chief's letter to court alongside, searches and death certificate to the court and file an official petition to the court to be appointed as an administrator of the deceased's estate. It can be attested by a lawyer or a magistrate.



Swear an affidavit which confirms the facts of the case, the estate and the heirs as contained in the chief's letter with witnesses before a judge.

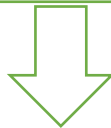
The guarantors fill a form which acts as guarantee that the petitioner fulfils his mandate as promised in the petition papers. They may also be required to swear an affidavit before the judge to support the petition.



Publishing of gazette notice which informs the public about the petition and gives those with interest a chance to raise an objection within 30 days. Grant of letters of administration if no objection is raised.



Swearing of affidavit by petitioner requesting for confirmation of grant. It is imperative that the spouses and heirs agree on how the estate is to be divided to prevent disputes from arising.



Parties appear before the judge to confirm they are in agreement with how the property will be divided by the administrator. Once they confirm, court issues certificate of confirmation of grant which shows what each beneficiary will get from the estate. In case of any changes, it should be taken back to court for endorsement.



Thereafter property is transferred to the administrator. This gives him power to administer and distribute the deceased estate in accordance with the agreement

NB

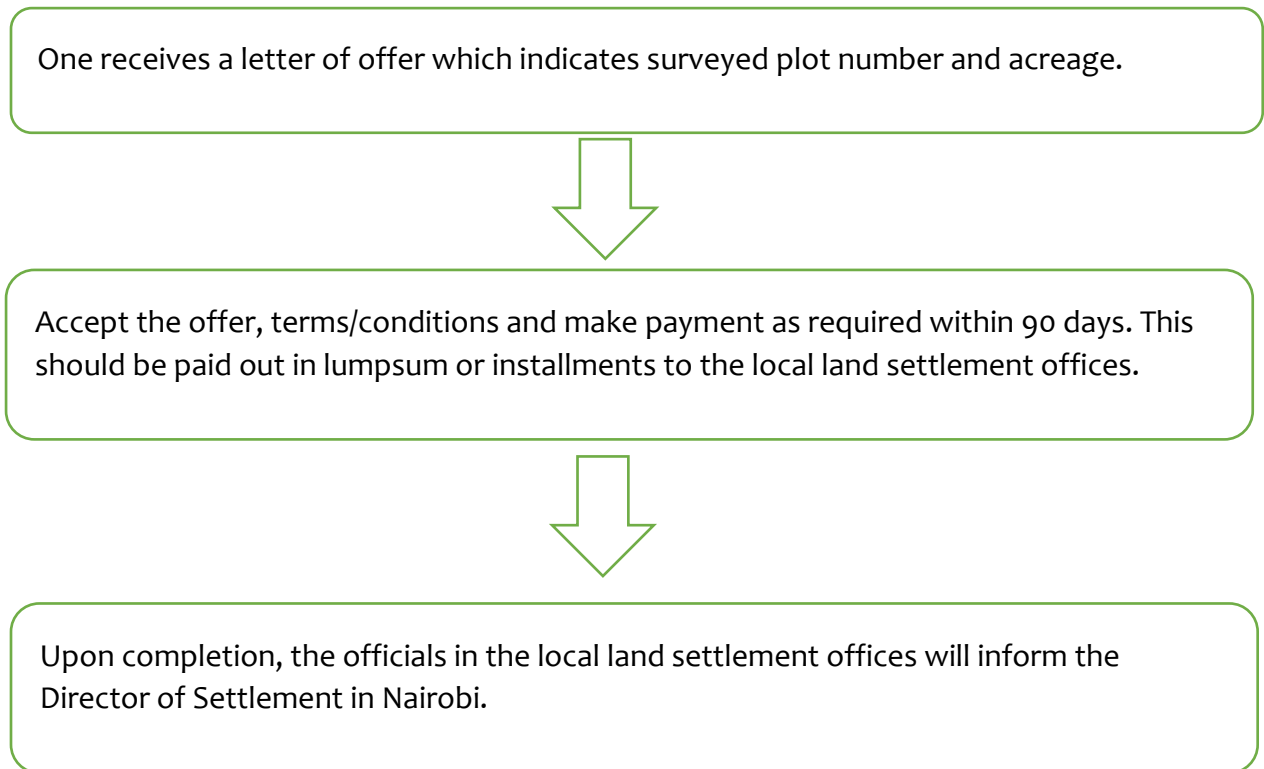
Where a title has never been issued, succession procedure may use a search certificate or letter of allotment or any document indicating proprietary rights of the deceased. These documents should be appropriately certified and/or sealed by the issuing authority for the court to accept them.

2. SETTLEMENT SCHEMES

This is land provided by the government to persons such as squatters, persons displaced by disasters, conflict and development projects. Settlement schemes are established and administered by the NLC under article 134 of the Land Act No. 6 of 2012.

- Identification and verification of beneficiaries is conducted by a Sub-county settlement committee comprising of: sub-county administrator, representatives of County Government, NLC, National Government, Youth, PWDs and Women
- Land in settlement schemes shall be allocated to households in accordance with national values and principles of governance provided in Article 10 and the principles of land policy provided in Article 60(1) of the Constitution.

Allocation and registration



After verification the Director of Settlement issues a discharge of charge and a transfer of land document which transfers the land from settlement fund trustees to the owner.



Thereafter the Director prepares a letter which forwards this document to the District Land Registrar for registration.



Land owner takes the letter and discharge of charge to the relevant district land registrar. The owner will pay stamp duty, registration fees and title fees to the registrar who will issue a title deed to him/her

NB

Settlement land is allocated on condition that the land shall not be transferred except through the process of succession.

Failure of payment of stipulated amount could lead to repossession of land which can thereafter be offered to someone else.

3. LAND ADJUDICATION

This is when rights and interests to land are determined and recorded in areas of community land. Land owners point out their boundaries which are then demarcated, surveyed and recorded. The process of land adjudication involves the following:

Land owners in the presence of the Land Adjudication Officer identify their boundaries.

The identified boundaries are demarcated by Adjudication Officers using enlarged aerial photographs or by ground methods or by both.



Ascertainment (and arbitration) of rights and interests in land through Land Adjudication Committees.



Preparation of the Registry Index Map by the Director of Surveys showing the land parcels and their approximate areas.



Preparation of a Land Adjudication Register containing adjudication section, parcel number, name of the owner, size of land and the map sheet number.



Director of Land Adjudication signs the certificate of finality after the land adjudication officer has addressed the objections raised and the Minister of lands has determined the appeals. The Chief Land Registrar effects registration and issues title deeds.

4. COMMUNAL OWNERSHIP

The Community Land Act outlines procedures for recognition, protection and registration of community land rights in Kenya. Registration of community land in Kenya entails the following steps:

Any community, that intends to have its community land recognized shall notify the Community Land Registrar (CLR) of their intention through their executive committee members (chairman, secretary and treasurer).



This should be done by filling and submitting Form CLA 1- Application for recognition of claim on community land.

The registrar shall within 7 days convene a meeting with the community assembly to agree on the proposed name for the community land eg Kipevu Community Land. Upon reaching a consensus by a two thirds majority of the community assembly on the name, an agreement shall be submitted to the Registrar.



The area Assistant County Commissioner shall preside over all meetings while the Adjudication Officer shall be secretary to all meetings.

Thereafter the registrar shall issue the community with a Certificate of Recognition.



To apply for registration, the community through their executive committee shall fill and submit to the registrar Form CLA 3-Application for Registration of a Community. This should be accompanied by a comprehensive register of all community members including wives, children and anyone who might have bought land within the area.



All disputes emerging during the process can be addressed by the elders/committee. Appeals can be made to the adjudication officer, CS land and eventually court.

Thereafter, the CLR shall issue a 60 days public notice of intention to survey, demarcate and register community land detailing the following: The name of the community, Details of the land to be adjudicated. Invite all interested persons interests or any other claim on their claims



Survey shall exclude all parcels already in use for public purposes and adjudicated private land during preparation of cadastral map for registration purposes.

Upon conclusion of the survey process, the adjudication team shall prepare and submit a report to the CS Lands recommending on whether a title should be issued to the community or not.



Issuance of a certificate of registration by the CLR. Upon registration of community land, absolute ownership shall vest in the community giving it an indefeasible title with the certificate of ownership being the conclusive proof of ownership. The CLMC through community assembly may therefore enter into investment and development partnerships.

NB

- *Any decision of a registered community to dispose or convert the community land shall be binding if it is supported by at least two thirds of the registered adult members present in a meeting.*

- *Women, men, youth, minority, persons with disabilities and marginalized groups have the right to equal treatment in all dealings in community land.*
- *Every man or woman married to a member of the community shall gain automatic membership of the community and such membership shall subsist until the spouses legally divorce and the woman remarries or the woman remarries after the death of a spouse.*

5. TRANSFER (PURCHASE)

This involves buying land from a buyer through the payment of money or any consideration. The process varies depending on the agreement between the buyer and seller. Below are best practices in purchasing land:

Buyer gets a copy of title from the owner to conduct an official search at the District Lands Office. A search reveals the following: Land Registration number, registered owner, size of the land, map sheet number, tenure details, encumbrances e.g caveat, caution, charge.

Conduct a search at the County Government Offices to confirm rates and outstanding rates payable. Also confirm whether it is residential, agricultural, industrial etc. Note that if it is an agricultural land then a Consent Certificate from the County Land Control Board must be obtained to allow the purchase.

Get a Survey Map to ascertain that the said property is located on the ground as the said map. In cases where there is a sub-division on a parent plot and the same is not amended on the survey map, then a Mutation Form is acquired to ascertain the subdivisions.

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Visit the subject property and do a general survey of the area to establish whether there are any rights of passage through the land as these are not normally recorded in the title document or map. Discuss with the neighbours, village elders, chief and relatives to understand the subject property better. If the registered owner of the land is deceased, ensure that the personal representatives have Grant of Probate (Where there is a Will) or Letter of Administration (Where there is none),

Upon agreeing on price, the seller and buyer should enter an agreement before a lawyer, chief or any other trusted friend.

If it is agricultural land, the seller should apply to the Land Control Board for consent to sell which will require the consent of the family to the transaction. Upon granting consent the seller should receive 10% of the price from the buyer to show commitment.

The buyer and seller should fill a transfer form of transfer on which they attach the following: passport photos, the land transfer, the consent, title and spouse consent should be presented to the Land Registrar.

The Land Registrar presents documents to the valuer for valuation for stamp duty purposes. Upon payment of stamp duty, registration fees and title fees, the land registrar will issue title to the buyer.

NB

Where a portion of land is being sold it involves subdivision and survey. The seller should seek consent from the Land Control Board twice: first to get consent to sub-divide, and second to obtain consent to transfer the part of the land after survey has been approved and new numbers given.

6. COMPULSORY ACQUISITION OF LAND

This is the acquisition of land by government for public utility. Note that if it just a portion of land being acquired, the government or the acquiring authority shall survey the land, prepare cadastral map and plan before compensation. These costs shall be catered by the acquiring authority. Thereafter, the registrar shall register the acquired parcel in favour of the acquiring authority and register the remaining parcel in the name of the proprietor.

Upon receipt of an application for compulsory acquisition by the acquiring body, the Commission shall publish at least a thirty days' notice of intention to acquire the land in at least two daily newspapers with nationwide circulation, one local newspaper and affix notices at the County, Sub County and ward offices. The notice shall also be served to the registrar and persons affected.

In partnership with the affected community, the commission shall inspect the affected area to ascertain the location, acreage to be acquired, land use, developments, and the impact of acquisition

The commission shall issue a notice of inquiry to every person whose interest appears in the register and claims to have an interest in the land. This should be done at least 15 days before the inquiry. Thereafter the Commission shall conduct an inquiry to hear and determine issues of propriety and claims for compensation by persons interested in the land.

Valuation of claims and interests which shall be determined and assessed at the inquiry to determine the just and full compensation payable to persons with interests.

Preparation of award and offer for compensation which shall include the size and value of the land, and amount payable. This shall be served to the determined beneficiaries who will be expected to communicate whether they accept or reject the offer. Where the award is accepted, bona fide persons shall submit their bank details and identification documents if offer is rejected, they shall refer the matter to court.

Upon payment of compensation, the land owner shall deliver the original title to the commission within 15 days from the date of payment of compensation. The commission shall prepare surrender documents to be signed by the proprietor and forwarded to the Registrar who shall register the acquired parcel in favour of the acquiring authority.

7. ADVERSE POSSESSION

Adverse possession is the occupation of private land against the owners wish. Where such possession continues without an interruption through eviction for a period of over 12 years, then the occupier becomes legally entitled to the land by the operation of the doctrine of adverse possession. This form of ownership is however only granted through filing of a

petition in the high court by the adverse occupier. For the petition to succeed the adverse occupier must satisfy the court that his occupation has been:

- i) Continuous and uninterrupted for twelve years or more;
- ii) Occupation and use was not permitted by the owner.
- iii) Actual and open for the whole world to see
- iv) Peaceful

The adverse possession processes rests on the assumption that the true owner has either accepted the occupation of his land or has given up ownership to the occupier and that he is no longer interested in the land.

CONCLUSION

Land acquisition and registration in Kenya is complex and requires keen and strict adherence to set procedures. The processes outlined above provide just but guidance on land registration, and should not be taken as conclusive. The reader should be further guided by appropriate provisions of law and regulations. It is our hope this booklet will be helpful to the local communities thirsting for knowledge and securing tenure of their land.

References

The Community Land Act 2016

The Land Act 2012

The Land Registration Act 2012

The Land Laws (Amendment) Act 2016

The Land Adjudication Act

The Land Regulations 2017