

Counties must plan and protect their land

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If Kenyans hadn't taken interest in County land administration, it's time they did. In August, Kajiado County declared a six-month moratorium in all land transaction. Many land transactions, some running into multi-millions, were put on hold. Kiambu County has also slapped a fiat to stop land transactions such as change of user, extension of lease, approval of development based on share certificates and subdivisions into minute plots. Professionals and investors have complained. They hadn't seen this coming. Other Counties may come up with caveats to land transactions within their jurisdictions too.

Kiambu and Kajiado Counties have a right to regulate planning

While professionals such as surveyors, valuers, planners and lawyers may have legitimate concerns with the decisions by Kajiado and Kiambu, they'll also need to acknowledge that the rapid developments in parts of these Counties, largely driven by Nairobi's expansion, need attention. The uncontrolled developments, change of user and land subdivisions have totally undermined land use planning. The main road corridors in these Counties now look like commercial zones and the growth of urban centers within the two Counties has ran out of control as people develop anything anywhere without regard to planning. This needs to be managed. The constitution gave Counties the functions and powers over 'planning and development'. Land survey and mapping are County functions too. Much as land registration remains a function of the national government, these key functions provide Counties with an entry point to issues relating to land subdivision, change and extension of user and development applications which are integral elements in planning. The Counties are therefore not out of order.

There is need to liaise with Professional bodies

There may though be some conflict between their declarations and some of the sectoral laws in planning, survey and land development control which have not yet been aligned to the constitution. But reading these against the transitional provisions of the constitution which provide that the constitution prevails over existing laws in the event of conflict, one would find it difficult to damn the Counties in the circumstances. Counties will however need to appreciate the importance of liaising with professional associations like the Institution of Surveyors of Kenya, the Kenya Institute of Planners and the Law Society of Kenya before implementing such fundamental decisions. In addition, they should liaise with the Kenya Private Sector Alliance or the local Chamber of Commerce and Industry branches. These key voices will help County leadership to better understand the impact of policy decisions to land transactions and business. They would provide helpful advise on how best to implement such policy intentions. Ultimately, one hopes that in making the decisions, the Counties acted in the best interests of their residents.

Turkana County must protect communal land rights

This takes me to Turkana County, now home to big reserves of oil and sub-surface water. Unfortunately, this oil and water lies below customary land held collectively by the pastoral communities of Turkana. If the two resources have to be exploited, then the affected communal land must be compulsorily acquired and converted to public as provided for in the constitution. Due compensation should be made to the affected communities though. This isn't easy given that individual community members don't possess share certificates for the proportionate land rights that they wish to claim out of the affected land. The location, size and value of such land isn't documented either. Moreover, because of their pastoral lifestyle, owners of such land may wander away to distant places seasonally, leaving a window of absence which could see them excluded from discussions over such land. Our land valuation laws too are also largely modeled around registered land. Valuation of unregistered land therefore poses special challenges to practicing valuers and one has to be careful not to understate the true value of unregistered communal land. If the resources were in a County where land rights are fully adjudicated and registered such as Kiambu or Kakamega, it'd be easy to identify which land parcels are affected, their owners and value, making acquisition and compensation much easier.

Unlike in Kiambu and Kajiado, Turkana leaders have a different but much more urgent and compelling challenge. They must sit with professionals who can help them think through this matter and make decisions to effectively protect the land rights of their people. Their resource rich County makes them the envy of many. They mustn't demonise or close out investors and

the national government but must negotiate sustainable agreements to ensure that Turkana people, the county government, the national government and investors will benefit equitably from the exploitation of these vital resources.

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