

BUSINESS SUFFERS AS COURT CASES DELAY APPOINTMENT OF LAND COMMISSIONERS

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August 2012, in conformity with the requirements of article 7 of the First Schedule of the National Land Commission Act 2012. The President should have, in accordance with Article 8 of the same schedule, appointed the Commissioners within seven days of receipt of the names. So we ought to have had the Commissioners formally appointed by 28th August 2012.

COURT CASES DELAY APPOINTMENT OF LAND COMMISSION: BUSINESS SUFFERS

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However, there are two court cases regarding the process of selecting the commissioners. One would want to believe that it is these cases that have stood in the way of the appointing authority. Unless the judiciary acts with speed to address the issues raised in the two cases to unlock the appointment process, Kenyans will have to contend with protracted delay in concluding the process of appointment with the attendant consequences such as:

1. Delayed Transactions in Public Land: It will be remembered that early this year, in an attempt to pre-empt irregularities in dealings in public land, the Cabinet froze transactions in public land such as new allocations, extension of lease or change of user among others until the land commission is in place. Therefore the continued delay in the appointment of the commissioners will prolong this moratorium, grossly hurting all pending transactions on public land.

2. Abuse of powers during transition vacuum: The vacuum there has been since the constitution established a national land commission is likely to be adversely exploited by unscrupulous officers in local authorities and the Ministry of Lands who fear that that the commission will strip them of powers to allocate land once in office. Such officers can easily push allocations irregularly, process necessary titles by backdating all the documentation and colluding with duly authorized officers to endorse. It is likely that public land will have been processed this way between the time the new constitution was promulgated to the time the commission effectively assumes office. Perhaps only a very diligent forensic audit on the matter will reveal the real extent to which this may have occurred.

3. Effect to other reform aspects: The land commission is meant to work with the Ministry of Lands and stakeholders to develop procedures, rules and regulations to guide land allocations, land management and land transactions as required under the National Land Commission Act 2012, the Land Act 2012 and the Land Registration Act 2012. The delay in the assumption of office will delay the development of all these instruments. Moreover, the process of reviewing previously allocated public land and developing legislation to help identify and resolve historical injustices, which is vested in the land commission, will also suffer subsequent delay. These are very critical processes to the country.

Land Reforms complement other sectoral reforms : Land reforms are also fundamental to the economic and social empowerment of Kenyans. They complement other sectoral reforms. It's hence futile to move reforms in the electoral, judicial and governance sectors while the process of putting in place a key institution like the national land commission remains in limbo.

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