

GOVERNMENT SHOULD EXPEDITE APPROVALS FOR DEVELOPMENT APPLICATIONS

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In a previous discussion, I discussed the “invisible bumps” associated with property purchase. In the detail, I highlighted how some rogue urban land dealers embark on the sale of sub-plots from subdivision schemes for quick money without minding to seek approval from the relevant Local Authorities and the Commissioner of Lands as required by statute. But not all land owners, estate agents and developers fall in this category. Many go to great efforts to seek such approvals. However, such well meaning developers have usually met with considerable, at times insurmountable bureaucracy, institutional inefficiency and rent seeking. In situations like these, their applications for subdivision approval have gone unapproved for inordinately long, forcing some to commence sales of sub-plots to mitigate initial costs.

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Other land owning groups like SACCOS and Company & Cooperative Societies have come under pressure from their members until they allow occupation and development of plots in subdivision schemes without approval. Such plots will remain without titles until such schemes obtain approval. And this situation may persist for years. For some, it has been so for decades.

This has had the effect of defeating the very essence of planning and regulating development by the State. The results are easy to appreciate in the dysfunctional development of the peri-urban areas in many urban centers. This matter needs policy discussion.

The last time I checked, many parts of Zimmerman estate did not have titles. I suspect due to lack of subdivision approvals. Thome Estate on Thika Road, home to the famous “Nyama Choma” enclave Roasters Inn, took long before development commenced. Because of lack of approvals hence titles. I reliably learnt that it took high level State intervention and compromises for approval to be accorded, little wonder some roads there remain undone to date. A number of subdivision schemes in the sprawling Embakasi have no approvals. The same applies to many subdivisions off Kangundo and Thika Roads. In sum, Nairobi City Council, Mavoko, Ruiru and Thika Municipal Councils have lots of plots which are fully surveyed and developed but have no titles because the land owners and developers haven’t been able to obtain titles.

This presents a big dilemma to the State. Much as such plots have been informally transferred and developed, because they are unregistered and do not reflect on formal plans, they are “invisible” to planners. They are “invisible” to our tax authorities. Effective peri-urban planning and revenue generation from such properties are therefore undermined. Planners and tax authorities continue to rely on the original registered parcels of land when the situation long changed. Infrastructure provision suffers too. Plans sought by roads, power and water provision agencies only reflect the old parcels. Attempts to provide such services can only therefore be based on interim agreements which assume that formal transfer of land rights to the service consumer will ultimately be delivered. And sadly, all such land owners cannot fully enjoy the benefits of collateral from financial institutions owing to lack of formal ownership documents. I suspect that this situation dogs many other urban centers besides the above, essentially putting many peri-urban “land owners” outside the formal economy.

What are some of the reasons that approvals may remain elusive to owners and developers in controlled jurisdictions for long? It is first important to know that this process has two main gate keepers. The primary gate keeper is the relevant local authority. The secondary gate keeper is the office of the Commissioner of Lands. Most service seekers will attest to fundamental frustrations due to the bureaucracy in Local Authority and Lands offices when in pursuit of approvals. The first limitation is therefore sheer institutional inefficiency. The second major limitation has been compliance with the associated development conditions. Among others, these usually include payment of approval fees, construction of internal roads to adoptive standards, provision of water and power to sub-plots and provision of public utility plots within the schemes.

Some developers will recount endless tales of their problems with Local Authorities in attempts to meet these conditions. At times, especially just before or after civic elections, Local Authorities do not accord priority to scheduled planning meetings. For this reason, it is not unusual for applications to remain unattended for half a year or longer in some jurisdictions. There was a time Nairobi's took so long that there were complaints all around town. Other Local Authorities levy inordinately high approval fees per sub-plot, rendering some schemes unprofitable. Given that such institutions stand to gain from enhanced land rates after such sub-divisions, this is self-defeating. This matter requires policy guidance since the primary purpose of seeking such approvals was meant to be regulation of planning standards and not revenue generation by Local Authorities. A token fee is however envisaged to mitigate administrative costs. This fee has held back some of the big subdivision schemes from obtaining approvals.

The requirement to develop roads and provide services has also held back many developers. And this is a requirement that has seen many Local Authority enforcement officers make quick cash from informal rent as they compromise with developers to "cut corners". This has defeated the very purpose of the condition since some schemes, including in up market estates like Karen, Ridgeways and New Muthaiga in Nairobi, have obtained approval before such services are fully provided. Yet, this is another condition that has held back many sub-division approvals.

The condition to surrender some public utility plots has also delayed some of the schemes after owners realized that the same have ended up with officers or civic leaders in Local Authorities which is irregular and unconstitutional. To frustrate intentions of such unscrupulous operatives, some developers have refused to compromise but suffered the consequence of withheld approval.

But then for how long can the State afford to do with "facts-on-the-ground" totally inconsistent with formal plans and registration documents which undermine planning and revenue collection? For how long can Local Authorities burry their heads in the sand on this hard reality without frustrating their own planning efforts? And for how long can we afford to deny deserving citizens ownership documents for use in development and collateral for omissions they know nothing about? I think it's high time that each Local Authority audited its situation in this regard and embarked on some "Marshall Plan" suitable to its circumstances to help confront and resolve this problem. In doing so, a thin line will have to be drawn between protecting planning standards and compromising on some of the conditions as has happened where there have been high level interventions in the past.

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