

LAND COMMISSION MUST BE SEEN TO RESPECT SECURITY OF LAND TENURE!

Posted on Jul 19, Posted by [Mwathane](#) Category [Land Governance](#)

From its public notices and media statements within the five months it has been in office, Kenya's land commission risks being seen to have focused attention on repossession of land and and foreign owned land leases.

Commission should consider the delays occasioned by cabinet moratorium

Following recent public notices by the commission and utterances by some leaders, Basil Criticos' parcel of land at the Coast experienced an invasion by persons keen to be allocated parts of it on the understanding that the lease had expired and the land was hence available for allocation. The Commission needs to tread with care on these issues because, first of all, there had been a moratorium on the renewal of land leases placed by the cabinet in January 2012. Therefore, all land owners who had applied for renewal of leases over the moratorium period watched as time rolled without clarity on what would happen if their leases expired. One would therefore expect that in the interest of justice, all such leases should have been expressly renewed by the land commission on assumption of office provided that the previous lease holders met the basic conditions of lease.

Lease holders enjoy pre-emptive rights to allocation

Secondly, Section 13 of the Land Act provides that where any land reverts back to the national or county government after expiry of the leasehold tenure the land commission shall offer to the immediate past holder of the leasehold interest pre-emptive rights to allocation of the land provided that such lessee is a Kenya citizen and that the land is not required by the national or county government.

If one reads this provision while also keeping their eyes on the need for the continuity of economic production for the national and county governments in mind, they would appreciate

that unless in extraordinary circumstances, expiring leases need to be renewed for Kenyans who have used their land to contribute to economic development of this nation through, among others, the development of commercial buildings, agricultural production, livestock production or tourism.

Security and predictability of land tenure are necessary if land is to be put into good economic use. Many leases in Nairobi City have either expired or are about to. Most such leasehold plots hold major commercial or residential developments and are in the hands of Kenyan citizens. It is important that the commission projects the spirit of section 13 of the Land Act and allows all such Kenyans, irrespective of their ethnicity, place of origin, race or colour, to enjoy their pre-emptive rights to allocation of the properties they have spent fortunes to develop. This is the whole essence of section 40 of the constitution which protects legitimate rights to property.

But the country must bear in mind the need to settle squatters, displaced persons and the vulnerable in informal settlements for social and political stability. I suggest that the land for this purpose be obtained from negotiated purchases of land between government and individual owners or on land which reverts to county or national governments without any heirs or requests for renewal of leases. This would be healthy for our land and real-estate market.

We need to set aside land for local and foreign investments

In dealing with foreigners, the land commission must be seen to encourage and not undermine legitimate and well meant foreign investments. Each case should therefore be treated on its own merit. In any case, many of the foreigners holding land rights in Kenya are second, third or fourth generations holders who know little about the circumstances in which the initial land grants were made. In determining how to address leases to non-citizens, the commission should be guided by key concerns such as:

1. Is the land lease/grant economically beneficial to the country or county in terms of employment opportunities, skills transfer and the development of social and physical infrastructure?
2. Does it injure the land rights of any individual Kenyan or community.....does it cause any major displacement of persons or communities and if so, will there be sufficient and prompt

compensation?

3. Will the use to which the land will be put degrade/pollute the land/environment, and if so, are there sufficient reclamation/mitigation measures?

4. Is the term of lease long enough for the intended investment to recoup inputs and make reasonable profits for the investor without tying the land for an unreasonably long period?

If answers to these basic questions are positive, there is little reason to deny any foreign investor a land lease in any county in Kenya. Each of Kenya's 47 counties badly needs investments to drive/grow their respective economies. We must therefore remain very open ended in considering any proposals for leases of land provided that teams of experts review any investment proposals to ensure that any individual or community affected by land leased by foreigners, county and country along with the investor all enjoy a win-win outcome.

Indeed, going forward, one priority for the land commission should be to develop land banks from which local and international investors can lease land for their preferred investments.

Tags: