

What the land lease renewal guidelines mean to land owners

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In Kenya those with registered private land hold either freehold or leasehold interests. A freehold interest in land is held for an unlimited period and is the kind of interest held by Kenyans in most rural areas. They are easily managed and inherited. On the other hand, a leasehold interest on land is held for a defined period after which the land reverts to the person who granted the lease. In Kenya, most leasehold interests are found in urban areas. But many leases were granted by the colonial government to promote Kenya's agriculture and for religious purposes in various Counties. Many of these have since been passed on to local people and companies. Leasehold interests require careful management to ensure adherence to the conditions attached. If for instance one needs a bank loan when the remaining term is short, banks will require that the term be extended. If the term is close to expiry, a renewal is required if the holder is still interested. If renewal isn't granted, complex issues over developments on the land arise.

Leases in Kenya have been routinely issued for 33, 66, 99, 999 and 9,999 years. All leases of terms greater than 99 years held by non-citizens were however automatically converted to 99 years on the promulgation of the constitution in 2010. It's easy to appreciate that as of today, many leases issued soon after Kenya became a Protectorate in 1895 may have expired or are about to. Unfortunately, the government never laid down a structured framework to guide the extension and renewal of leases. Extension and renewal would be left to administrative precedents, Cabinet or Ministerial circulars or the sheer whim of desk officers. This vacuum was compounded by the fact that many leaseholders in Kenya are unfamiliar with the conditions attached to their leases. Others, particularly the senior generation which received urban leaseholds early, innocently treated them like freeholds and never bothered about expiry dates.

The lack of a clear framework to guide lease renewals, failure by some leaseholders to closely

watch expiry dates, high land values and institutional inefficiency ended up driving gross irregularities. And since there was no clarity in the law, it was easy for expiring leases to be allocated to other people while original holders continued to hold onto their old documents. This explains situations where some leaseholders would be surprised to find people landing on their properties waving new leasehold documents and ordering them out. But the 2012 Land Act provided clarity to this matter and allowed leaseholders who are Kenya citizens to enjoy pre-emptive rights if they were still keen to retain the lease provided that the County or National governments didn't require the land for any public purpose.

But for the provision to be effected, statutory regulations to operate it were needed. These regulations haven't been developed since the law came into effect in 2012. A Task Force has been working on such regulations since early this year. Therefore, in the absence of the regulations, shrewd operatives continued to prey on expiring leases and some Kenyans found themselves faced with evictions they couldn't comprehend, leading to a national outcry after a few forced evictions were conducted by such operatives particularly in Nairobi. In trying to protect leaseholders, the Cabinet placed a moratorium on the processing of leases in December last year. This measure unfortunately placed barriers in the processing of all kinds of leases, even those from subdivisions, dealing a negative blow to the real estate industry and economy.

The recently issued Ministerial guidelines therefore help to open up the processing of leases. They oblige government to issue notices of expiry to lessees, they clarify the application process, factors to be considered and timelines for renewal. The role of both levels of government, the Land Commission and stakeholders are elaborated. Leaseholders and investors should take advantage. It'd be expected that the guidelines gazetted by Prof Jacob Kaimenyi last week will be further improved once reports by the Task Force on Regulations and the one on Extension and Renewal of Leases are tabled.

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