

Why the State should deal with Cartels preying on private land rights

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Parklands demolition and tenure security

I learnt about the Parklands property demolition through the Nation Media Group website while away in a continental discussion on matters land. Tenure of land always occupies center stage in such discussions. The right to own, lease and use land peacefully keeps civilizations going. The need for recognition, documentation and protection of land tenure rights is fundamental. Without recognition, we end up with multiple claimants and disputes; without documentation, one has no evidence of what they own and without protection, the rights can be defeated fraudulently or forcefully.

States that fail to protect land tenure rights risk facing social and economic instability that can, in extreme circumstances, foster political instability and threaten governments. So what happened in Parklands should attract top policy and political attention and systematic institutional redress.

On receipt of the Parklands news, I shared with a friend and told him, “This is now recurrent in our country. If it remains unaddressed, it’ll kill our property industry. But I hope that the high level publicity this case has attracted will compel action”.

Cartel preys on land rights with impunity

But let’s debunk some myth that I’ve heard from some. The cartel involved has no ethnic, race or colour boundaries. It only avoids those in power with the capacity to fight back. Everyone else is game. It operates like a club. And it has operated for quite a while, taking people’s property with sheer impunity. It has established strategic contacts in all the areas critical to their operations. In Nairobi for instance, it’ll have contacts in the Nairobi County government, Survey of Kenya, the Land administration offices in Ardhi house, the Land Registry and the security agencies.

It targets land registered in the names of deceased persons, vacant land or houses whose owners are away and hardly ever visit and land for which leases have expired or about to. And like I've written earlier, in rural counties, some 'clubs' target vacant freehold land around urban areas, impersonate the real owners and create parallel freehold titles after gazetting the 'legitimate' title deeds 'lost'. They then get new title deeds, sell off and resume their real identities, leaving the real owners dispossessed. But let's get back to Nairobi.

The clubs have an entire chain. There are people whose job is to scout for properties of deceased persons. There are others who scout for vacant land/houses and search for official land reference numbers. With the numbers, one is able to remove and destroy the legitimate documents and switch with fraudulent ones. Legitimate owners only get to know when transacting, find developments on their land or are threatened with evictions. Those in Nairobi City County and the Lands administration offices assist with information on expired or about-to-expire leases and facilitate allotment letters for new allottees. Surveyors in private sector, in liaison with officials in Survey of Kenya, generate deed plans to support new leases. The land registry is usually the last bastion. New documents are presented and swiftly registered. In extreme cases, the 'clubs' forge all the documents, duplicate ownership and hope to navigate around any consequences.

In all cases, the security agencies come in handy when victims go to report. Action is either not taken or delayed to allow new owners to sell or develop. The many near similar court cases in recent years, which never seem to end, is enough anecdotal evidence of the damage the cartels have visited upon innocent Kenyans.

Cartels contravene Land Act and should be stopped

Yet the Land Act is so clear that every leaseholder, and by implication their beneficiaries, enjoys pre-emptive rights to renew their leases on expiry. This is the legal position. The cartels and unscrupulous insiders are subverting the law. It should be time for action. Prof Kaimenyi and the security chiefs can do a "Matiang'i" on this matter.

Members of these clubs are well known. With goodwill and determination, all of them would be easily identified, taken through due process and where culpable, made to account. Affected properties should be reverted to their owners or beneficiaries. To enhance process

transparency in the renewal of leases, the Ministry could consider working through committee decisions and incorporating representatives of the private sector lobby group, lawyers and surveyors professional associations as observers.

Meanwhile, those who have benefitted from these irregularly acquired properties must know that they've assumed the unenviable status of fugitives in their own country. They, and their families, will be forever watching their backs. Buyers beware!

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