

Why we must gallantly protect property rights

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2017 Demolitions

In 2017, I chaired a task force under the then Ministry of Lands and Physical Planning. The task force was established to investigate the processing of extension and renewal of leases since year 2010. The precursor to the establishment of this task force by the then Minister Prof Jacob Kaimenyi was ominous.

Demolition squads waving parallel lease documents had raided properties in Nairobi, forced out occupants and swiftly demolished pricey developments. Parklands, the City Center and River Road were particularly targeted. This ruthless and traumatising trend was worrying. Often, the parallel lease documents used turned out fraudulent, either irregularly prepared following the death of a lessee, or the expiry of an original lease, even in instances where applications for renewal pended in Lands offices. These aren't legitimate methods for accessing property rights.

During public hearings and review of pertinent procedures, the task force noted that bureaucratic institutional processes and fraud driven by collusion between external and internal agents, along with a poor public understanding of the management of lease instruments, greatly contributed to the circumstances prevailing at the time. The extension and renewal of land leases need not occasion pain and loss.

Renewal and extension of lease processes

Process integrity, transparency, clarity, short and strict timelines and effective public sensitization would be most helpful. And even as government moves to digitize records and automate processes as measures towards perfecting processes, efforts must be made to ensure that requests for extension or renewal of leases aren't unreasonably delayed or denied. Unless in circumstances where public interest compels, the current law allows the immediate past holder of the leasehold interest the pre-emptive rights to allocation of the land. Ways must

also be found to stop fraudsters from using fake ownership documents to evict legitimate beneficiaries from properties of deceased persons before conclusion of succession proceedings

In other instances, we've had auctioneers pounce on unsuspecting occupants of buildings and forcefully throw them out, destroying valuable property in the process. Granted, in some of the cases, such court orders may be merited, following breach of contractual obligations where such properties had been offered as collateral. However, it behoves auctioneers and lenders to note that such property seizure methods are in breach of our current law, which requires adequate notification to the affected. Furthermore, this law requires that the affected persons be given the first priority to demolish and/or salvage their property.

Legal protection to property rights

Our constitution protects rights to property unless where unlawfully acquired. This is the policy position too, which is mainstreamed in our current land laws. Property rights, and their enjoyment, must therefore remain predictable and secure. Like other basic rights, they must be safeguarded. This is the primary responsibility of the state, the judicial and enforcement organs. A recently reported demolition incidence in Nairobi evokes memories of 2017. We must gallantly guard against a resumption of the pre-2017 practices where process irregularities were rampant, and demolition squads run amok. Such environment undermines investments in property, and the businesses thereon.

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