

You need to know and protect your land rights even at local level!

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Over the holiday season, I'd to spend some time advising on some simple disputes. In the process, I appreciated that many, including state officers, political leaders and land owners at the rural level, haven't fully understood their roles, rights and obligations under our current dispensation. This adversely exposes private land rights while leaving state and political leaders vulnerable to arguable lawsuits. Some experiences help to underscore.

Need to assert ownership rights

While we operated the old constitution, I was called in to help some land owner reclaim parts of his land that had been 'declared' public land and converted to a road of access by an area Councilor. As it turned out, the councilor was 'feared' in the locality. It therefore took effort to convince the land owner that he held discretion to assert his rights and reject such intrusion.

There were two issues involved. First, one access road was quite narrow and needed to be widened. Two, a group of residents needed a shorter road to a nearby highway since the existing one was rather long. So the affected residents had appealed to the area Councilor for help. In response, the Councilor brought in a grader early one morning, widened the subject road and introduced a new and shorter road to the highway. In so doing, he left some people quite happy and others, who'd lost land, hurting.

Whereas public roads of access are fundamentally important, registered land owners, then and now, retain full rights to their land. Only land use can be regulated. Therefore, institutions like power and water companies can only negotiate rights of way with affected land owners. Similarly, roads authorities at county and national level can only expand or introduce new roads within private land after negotiating with and compensating the affected. Despite his good intentions, the Councilor was wrong and could be sued for trespass, disturbance and loss of use. Some Chiefs could be guilty of similar transgressions.

One can voluntarily donate for public use

But there's a flipside. Land owners also hold the discretion to donate parts of their land for public use. We've seen some do this for churches, schools and even roads. For instance nothing stops a land owner moved by the plight of neighbours accessing highways via long meandering access roads from benevolently allowing the introduction of a shorter alternative access road through his land. Furthermore, land owners suffering the constraint of a narrow road through which standard vehicles cannot effectively navigate to access their residences could agree to donate parts of their land for road widening. These are perfectly legitimate voluntary actions. But they should be followed by subsequent amendments of the relevant registry maps and the land register by duly authorized offices.

So local leaders need to acquaint themselves with the rights of private land owners under the constitution and land laws and, when approached for help as above, navigate around this carefully. They could use their influence to for instance request the local administrator to call for public meetings to sensitise and appeal to affected land owners for voluntary donations. Else, seek their indulgence for token compensation or swaps with any available public land. If owners insist on market compensation, then the respective public processes and agencies would be called in. But with well-placed appeals, most land owners would make concessions to help.

Cadastral map and land register should be amended following changes of boundaries and size

And while on this subject, it's opportune to mention an incident in Kiambu where I witnessed a land owner attempt to sell parts of a public road to an innocent buyer along the Wangige-Kikuyu road. How? Because when land acquisition, compensation and road construction were concluded the registry maps and the land register in Kiambu weren't amended to reflect the new status. So here was a land owner with his five acre parcel intact as per plan and register even after getting compensated for two acres! So he had proceeded to knowingly sell parts of the road reserve to a buyer!

This is of course avoidable if the respective public offices liaised well with the offices of the Director of Survey who is the custodian of land registry maps and those of the Chief Land Registrar who is the custodian of the land register in Kenya. Action to amend maps and the register, along with ensuring that the extent of road reserves is well marked, would follow and forestall such fraudulent sales. So it behooves KURA, KeRRA and KenHA to ensure that all

roads and the new bypasses are quickly charted on registry maps and noted on the affected titles

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