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LAND OWNERSHIP IN TANZANIA:

Does the historical background of the Right of Occupancy in Tanzania affect the current land system?

The historical background of land tenure, or ownership, in Tanzania can literally be divided into three eras, namely the pre-colonial, colonial and postcolonial eras. During all periods, land has been managed administratively and through various forms of legal tenure systems. Below is a brief history of our country's land tenure systems. It's our hope that this short article will be useful to you

Pre- Colonial Era

The right-of-occupancy in Tanzania dates back to the pre-colonial era. Native Tanzanians owned land communally during this period. Right-of-occupancy was established by traditions and customs in each respective family, clan or tribe, through local leadership. At this time, land was managed or governed and held in trust through chiefs, headmen and tribal elders who had administrative power over land for the community. These powers were eventually limited by the newly introduced German Land Tenure Systems, and later the British, even though the customary tenure continued to exist throughout the colonial era. An instrument was required by which to properly regulate and govern property ownership or the right-of-occupancy, so customary laws were gathered from over 120 tribes of Tanganyika. This body of laws was used in the administration of land.

Colonial Era

German System 1884 - 1916

During this period, land was no longer owned communally by local people, but was considered sovereign land under the German Empire. Chiefs and native communities that could prove their claim to ownership of the land were granted legal ownership if they had documentation, or they were actively cultivating the land. The remaining land that was occupied or not occupied, was all vested under the German administration through an established land registry system which was used to issue titles of ownership to land.

Through their administration, the German regime passed two laws used to govern land in Tanganyika. These two laws were the Imperial Decree of 1895, and The Land Registration Ordinance of 1903. Through the above established laws, one could prove

ownership of land through an instrument such as a deed, or through cultivation activity. Proof of ownership for cultivated land did not require any document. Uncultivated land that was not otherwise documented, fell under the provisions of the Imperial Decree and was declared sovereign German land.

The land Registration Ordinance of 1903 permitted four categories of conveyances or ownership of land. These categories included freehold through purchase or public auction, government grant leasehold, un-owned land as may be determined by the Land Commissioner appointed by the Governor and, lastly, the customary tenure at that time.

British System 1917 - 1961

Under the British system, a proclamation was passed in 1920 which facilitated the transfer of land held under the German government to the British in the form of leasehold and freehold. This appropriated land was known as "enemy property" and carried all the previous German terms and conditions contained in the form of leases tenure. The British administration imposed control through the proclamation of the Tanganyika Order in Council of 1920, under the Foreign Jurisdiction Act of 1890. This introduced wide scale reception of English laws and marked the beginning of common law system under the land administration.

Three years later, the British administration, under the reception of laws enacted for the first time and the Land Tenure Ordinance of 1923, declared all occupied land in Tanganyika as public land. Even unoccupied land was declared public land under the provisions of this law. Importantly, for the first time in the Tanganyika territory, the right-of-occupancy was introduced and defined as the right to occupy land.

This law did not receive any amendment until 1928 when the Permanent Mandate Commission of the League of Nations recommended that native people should be recognized with rights to land occupancy. The British administration implemented this recommendation, redefining the right of occupancy to include the Native Customary Right of Occupancy.

Post Independence to Present

There was no "invention of a will" after independence in terms of the land tenure system. Rather, there was a substitution of wording within the provisions of the land laws and policies that were used during the British administration system. Names for the administrators of land and the tenure framework were substituted to better fit the current post independence regime. For instance, in the Land Tenure Ordinance of 1923, the word "Governor" was substituted by the word "President". Keeping the ordinance as it was under the British administration enabled the post independence government

to acquire land from individuals. The Land Acquisition Act, 1967, Cap, 118, was subsequently enacted to facilitate acquisition by the government and to expedite other provisions regarding land for public interest.

The Land Tenure Transformation

Tanzania's government converted the previous land tenure into a system of government leases. This tenure transformed land from freehold into government leases of up to 99 years through Freehold Titles (Conversion) and Government Leases Act, No 24. Cap 523 effective from 1964.

After independence, another piece of legislation was introduced through enactment to enhance registration of lands. This law is known as the Land Registration Ordinance Cap 334, and it replaces the former registration system. The disposition of interest in land required consent of the commissioner for lands and consequently the government leases were converted into the right-of-occupancy, effective from 1st April, 1970, through the Government Leasehold (Conversion to Right of Occupancy) Legislation of 1969. This change can be named as the major historical land tenure reform in land history that imposed government leases and brought valuable land under government control in Tanzania.

Some reforms and security of land tenure to the holders of the right of occupancy have been achieved in the land tenure system since 1969, and it will be valuable to discuss these further in a forthcoming article. Major reforms of the 1990s impacted Tanzania's land sector via its policies and laws, and are vital to understand. These major reforms were a result of the efforts of the Land Commission, formed by the President to look into all land matters in Tanzania to ensure, among other things, effective land use, involvement, accessibility and sense of ownership for all. It is against this reform that the land tenure transformation brought about two pieces of legislation that regulate rights and interests regarding urban and village land. These two pieces of legislation are called the Land Act No.4 of 1999 and the Village Land Act, No.5 of 1999 respectively, and they form the main land laws applicable to Tanzania land to date.

It can generally be said that the land tenure system in Tanzania has gone through numerous reforms in its history thus far. Tanzania land laws are many and have undergone plentiful amendments, somewhat inconsistently. The legal framework is extremely complex, meaning that conformity and compliance in transactions call for a deep understanding of historical background and our current legal regime. Completing a land transaction requires an understanding of the entire structure of land laws, and all respective regulations in order to arrive at meaningful landed asset protection. Whether the transaction is for investment or other purposes, this thorough understanding is certainly necessary.

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