

Are land Owners secured in Tanzania

The security of land tenure for holders of right of occupancy in Tanzania under the Land Policy 1995 and the Land Act of 1999 is assured. Tanzania Land Policy came into existence in the 1990's to ensure a secure land tenure system, and to promote the optimal use of land resources and social economic development. The specific objectives of the policy are discussed in a previous article and include the promotion of equal distribution and access to land by all without limitation, while absorbing customary rights and setting up a land administration and adjudication system. This policy, along with the Land Commission, brought about the existence of Tanzania's land Acts, that is the Land Act No. 4 and the Village Land Act No. 5 of 1999 that are in use today.

These Acts place land into three categories which are the village land, General land and Reserved land. All land in Tanzania is public land vested in the president as a trustee on behalf of all citizens. This law vests powers in the president to transfer land from one category to another through established legal procedures which include a not less than 60 days notice specifying boundaries, location, reasons and purpose for the transference of land, as well as a notification to the stakeholders. Compensation is made to any holder of the right of occupancy for the respective land which is being transferred to another category.

The Land Policy of Tanzania provides for a dual system of tenure in terms of its recognition of both customary and statutory rights for land. These are described in the Land Act as *Customary Rights* and *Granted Rights* of occupancy.

There are those rights that existed prior to the date of acquisition, revocation or any interference of the existing interest in land, included in the current land tenure system. These pre-existing rights are protected by law. Those that pre-existed and those that are part of the *customary right* will continue to exist and be protected as such. Those that

existed by statutory creation will continue to exist and be afforded equal legal protection.

The Land Act requires that no right of occupancy holder should be relocated or moved to the extent of ruining the purpose for which the Customary Right of Occupancy was granted. Where relocation becomes mandatory, legal procedures shall be complied with, including the customary right of occupancy holders being granted opportunities to harvest their development, Right to Notice, full compensation for loss of interest in land and all exhaustive improvements. Whether the right held by the land owner is customary or the granted right of occupancy, both hold equal legal status and neither is inferior to the other.

According to the Land Act, right to access land is a right for all citizens and non citizens, except that procedures for acquisitions or allocation are different. There are complex legal and administrative procedures for land management and development in Tanzania, and these must be complied with for land occupancy.

The coming into force of the Land Act brought a new genre of rights, now called the Derivative Right, which can be granted to a citizen or non citizen wanting to occupy land, the later for investment purpose. The act mentions the right to occupy land as either a granted right of occupancy or a derivative right of the same. The right to occupy land is granted to citizens with terms and conditions, but without restrictions. A right to occupy land is to be granted to a non citizen in form of a Derivative of the Granted Right of occupancy, and is qualified. Tanzania's legal framework for foreign ownership of land in Tanzania shall be discussed in a forthcoming article.

The right of occupancy is granted for a specific tenure and term period which could be for 99 years, 66 years or 33 years. Each term can be renewed upon expiry. The right for renewal is not an automatic right. Rather, it is subject to the occupier complying with all the terms and conditions of the right of occupancy in a satisfactory manner including payment of land rent, property tax, protection of land boundaries, adjacent reserved lands, and water sources.

Along with its land tenure system, the Land Act set in place a robust institutional framework for land administration in Tanzania which gives the president full custodian duties on land. It vests upper administrative powers to the minister of land, who administers land rights and management issues through the commissioner.

Under the Act, the commissioner is the administrative professional officer who advises the government on all land matters. The commissioner and the minister for lands are both presidential appointees. The functions of the minister's office under this law are to formulate land policy and ensure execution of the ministry functions in all matters relating to land, as well as the appointment of the National Land Advisory Council. This council has the duty to review policies made by the minister and advise the ministry on land administration matters.

The administration functionally flows down to the local government authorities, who are concerned with issuance of offer of the right of occupancy. They include Districts Councils, and Village Councils situated within their areas of land jurisdiction. These local government authorities are also responsible for the accountability of the officers as they execute their functions in accordance with the law.

As discussed above, the right to occupy land seems to be granted for a specific term provided within the Land Act, with the right to renewal upon fulfillment of all the terms and conditions provided in the Certificate of Occupancy (CT). This renewal for another 33, 66 or 99 years is not an automatic right, but subject to the holder of the right of occupancy applying for renewal with the relevant land authorities before the same expires. After the application for renewal is made the new certificate of occupancy may be granted on the new terms and conditions which the Commissioner may determine before that Right of Occupancy is offered.

The holder of the right of occupancy who desires to renew the right to occupy land should be familiar with various matters that need to be considered as he or she proceeds. Among these are issues of surrender, land use plan, the term and conditions, resurvey etc. This process ought to be undertaken by a land professional who understands the renewal process for the right of occupancy in Tanzania under the Land Act, 1999, and all its relevant regulations.

Generally speaking, the right of tenure constitutes a legal frame work that protects the right of land holders under the *Land Act of 1999* with relevant regulations and policies. It is of interest to also note that, in the process of administration and management of the earlier stated complex procedures for land management and development, the administrative arm of the government will sometimes intervene in matters of interest for land to land holders in congruence with the existing land laws that need to be complied with for land occupancy in Tanzania.

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