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## Strategies to modernize the land registration system in Kenya

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**STRATEGIES TO MODERNIZE THE LAND REGISTRATION  
SYSTEM IN KENYA**

## Colophon

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university of  
 groningen

**STRATEGIES TO MODERNIZE THE LAND REGISTRATION  
 SYSTEM IN KENYA**

**PhD thesis**

to obtain the degree of PhD at the  
 University of Groningen  
 on the authority of the  
 Rector Magnificus Prof. E. Sterken  
 and in accordance with  
 the decision by the College of Deans.

This thesis will be defended in public on  
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## **Dedication**

**To my daughters Adora Ndutta and Macy Muthoni**

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*Asante.*



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## List of Acronyms

BVRs	Biometrics Voter Registration Kitties
CLR	Chief Land Registrar
CR	Coast Registry
DFID	Department for International Development (UK)
DOS	Director of Surveys
DPP	Director of Physical Planning
FAO	United Nations Food and agricultural Organization
FIG	International Federation of Surveyors
GLA	Government Lands Act
GoK	Government of Kenya
ICT	Information and Communication technology
IEBC	Independent Electoral & Boundaries Commission
IO	Investigations Officer
IR	Inland Registry
ITPA	Indian Transfer of Property Act
KCB	Kenya Commercial Bank
KRA	Kenya Revenue Authority
LA	Land Act
LIMS	Land Information Management System
LO	Land Officer
LR	Land Reference
LRA	Land Registration Act
LTA	Land Titles Act
NLC	National Land Commission
NLIMS	National Land Information Management System
PDF	Portable document format
PDP	Part development plan
PEV	Post Elections Violence
RDA	Registration of Documents Act
RIM	Registry Index Map
RLA	Registered Land Act
RTA	Registration of Titles Act

SFT	Settlement Fund Trustee
SOLA	Solutions for Open Land Administration (software)
SPA	Sectional Properties Act
SPRO	Senior Plans Records Officer
STDM	Social Tenure Domain Model
TCC	Tax Clearance Certificate
UN	United Nations
UN-HABITAT	United Nations Human Settlement Programme
XML	Extensible Markup Language

## **ABSTRACT**

The land registration system in Kenya was established in 1897 to support land registration for white settlers who had come into the country during the 19<sup>th</sup> Century. In the last one hundred years that the system has been in existence it has remained relatively the same; registry records are kept in paper format and the majority of operations are carried out on manual basis. This lack of a modern registration system has contributed to problems in land administration in the country.

The Government has expressed the need to modernize the land registration system in order to facilitate better land administration, support the development of an integrated land information management system, and a national spatial data infrastructure. However, one persistent denominator to these efforts has been the lack of strategies for such modernization.

This study, therefore, sets out to contribute to the solution of this problem through the following objectives: evaluation of the current land registration system in Kenya, identification and analysis of its strengths and weaknesses, development of strategies for the modernization of the system in Kenya, and development of a concept for a modern land registration system.

The methods adopted in carrying out the study include administration of questionnaires to selected stakeholders, personal interviews, and review of existing literature on land registration locally and internationally. These stakeholders include: private and public sector land professionals, lawyers, valuers, members of public and general users of land registry information.

The expected out-puts from the research are: a presentation of the administrative structure of the system and its operations and processes, a summary of the strengths and weaknesses of the system, proposed modernization strategies, and a proposed concept and a roadmap for the development of a modern land registration model.

**Key words:** Land registration, land registry, land information system, land title, modernization, automation, digitalization and re-engineering.

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background

Land registration is defined as “*the process of recording legally recognized interests in land*” [Zevebergen 2002: 27]. These interests include, but are not limited to: ownership, access, inheritance, occupation and use. The information that is considered as vital to any land registration system includes the title number, land reference number, the size, land use, location, and ownership. A good land registration system should, therefore, contain and safeguard these components, and regularly update the same with a high degree of accuracy and reliability [Zevenbergen 2002: 44]. Broadly, the main aim of a land registry is to support simple trading in land while land information systems should facilitate access to land information [Williamson 2005: 1].

The UN Land Administration Guidelines [UN 1996: 15] have enumerated benefits of land registration to include, among other things: support for land and property taxation discussed in detail in chapter 2 para 2.7. Apart from benefits that accrue from land registration, Zevenbergen [2002: 42] observed that a good land registration system should also satisfy operational principles and features that have been discussed later in this thesis at para 2.6 of chapter 2.

In modern societies, where property and land ownership are already highly individualized, land registration system should be able to fulfill the above principles, and support efficient conveyancing and the new human-land relationships. These would in turn minimize land conflicts and disputes amongst individuals and communities. The procedures and processes largely known as conveyancing should therefore keep pace and move with the times and the dynamism of a people’s culture [Williamson 2005: 1].

### 1.2 Statement of the Problem

Land registration in Kenya was introduced in 1897 by the British colonialists through the East African Order in Council. This was followed by enactment of various laws

the first being the 1902's Registration of Documents Act. In 1908 another law was enacted to administer Kenya's ten-mile coastal strip. This was the Land Titles Act closely followed by the Crown Lands Ordinance amendment in 1915, but it had been enforced in 1901. 1920 saw the enactment of yet another land registration law, the Registration of Titles Act. In 1963, at independence, the Registered Land Act was enacted. This was followed by the Sectional Properties Act of 1987. These laws governed land registration in Kenya until 2012.

These laws operate concurrently though some of them were initially enacted to improve the earlier laws. Conversion was not mandatory and that explains the multiplicity of land registration laws. All these laws operate upon a manual paper records base and they are applied in different regions due to their historical origins, though the Registered Land Act (RLA) is applied countrywide. This scenario has made land registration in Kenya quite complicated. In the year 2012, the Government passed into law the Land Registration Act (LRA) in order to harmonize, consolidate, and rationalize land registration laws.

Though there is the 2012 law now, the earlier laws continue to operate in transition. It is important to note that LRA does not set timelines for its full implementation.

Kenya, like many countries around the globe, therefore still lacks a modern land registration system. This situation has contributed to major problems in land administration and general economic development [MoL 2009: para 156]. These problems include the facts that the system is highly centralized in Nairobi, the operations are manual, and thus cumbersome, and there is multiplicity and duplication of titles to land. The operative legal regimes are outdated and do not anticipate computer generation or processing of titles. The registration systems are also very complex, even to senior lawyers and conveyancers. They are non-uniform, and also apply very different and confusing title and deed formats as well as conveyancing processes and instruments.

Kenya also lacks standard data models and standards, and suffers from inappropriate processes for data collection, data checking, data storage, data maintenance, data sharing, and data archiving.

This leaves room for register manipulation, double allocations, double registration and missing registers. Land registration has turned out to be an expensive exercise for the people of Kenya and an impediment to the achievement of the objectives of Kenya's Vision 2030 and the Millennium Development Goals (now Sustainable Development Goals) [MoL 2008: 8]. Consequently, investor confidence is eroded and economic development stagnates. The citizenry and many who are without title to land are not able to exploit the full potent of their property. Land holders/owners are in most situations unable to utilize land as collateral owing to non-registration and/or complexity in registration of the already registered land. This is not only a costly affair for the citizens but to the nation at large.

While developed countries (Such as Netherlands, Germany, Sweden, Canada, and United States of America (USA)) have in the recent times moved to modern land registration systems which are computer based, web compliant, and purely digital, the developing countries, especially in Africa, are still stuck in the conventional and traditional systems [Tuladhar 2003: 2], [Wayumba 2013: 4]. The contemporary land registration systems are highly centralized, highly accurate and provide highly accessible records, but are only available in the most developed nations. Efforts to mimic this in the developing world have not necessarily yielded the expected results [Zevenbergen et al 2013: 1]. There are, however, a number of countries in Africa that have embarked on strategies to modernize their land registration systems in accordance with internationally recognized benchmarks such as Rwanda and South Africa.

The Government of Kenya, through the Ministry of Lands, (Strategic Plan 2008 – 2013) has been interested in modernizing the land registry, but over the years this intention has not been met. Indeed many governments have the willingness, but there are no clear models or guidelines to follow [Williamson and Grant 2002: 2]. To achieve this, the Government ought to have a thorough understanding of the current land registration system in-order to support a re-thinking and a re-design of the systems in line with modern land registration standards. This study, therefore, intends to contribute to the designing and development of a modernized land registration system through by proposing appropriate strategies.

The problem statement can therefore be summarized as, “currently there are no sufficient and/or suitable strategies for modernizing the land registration system in Kenya.”

### **1.3 Research Objectives**

Arising from the statement to the problem above, the objectives of the study can be stated as follows:

#### **1.3.1 Main – Objective**

To contribute to the designing of a strategy for modern land registration system for Kenya.

#### **1.3.2 Specific – Objectives**

1. To evaluate the current land registration systems in Kenya.
2. To identify the strengths and weaknesses of the land registration system.
3. To propose modernization strategies for land registration system in Kenya.

### **1.4 Research Questions**

Pursuant to these issues the following research questions need answers:

1. What is the current status of the land registration system in Kenya?
2. What are the strengths and weaknesses of the registration system in Kenya?
3. What are the appropriate strategies and technologies that can be deployed to modernize land registration system in Kenya?

### **1.5 Methodology**

In order to carry out a comprehensive study this research will make use of the following methods of data collection: desktop research, direct interviews, administration of questionnaires, field studies conducted locally, regionally, and internationally, and internet research on refereed journals and other materials. The research will apply these methods variously. Desktop research will be applied in almost every step of the project; this enables the research to come up with definitions

and what comprises land registration from an academic point of view and strategies for modernization.

Direct interviews and observation of the land registration processes at selected land registries: will allow the study to come up with the **current status** of land registration in Kenya. Further, these will aid the researcher to summarize the processes of land registration vide diagrams to depict steps in conveyancing. Direct interviews and administration of questionnaires will contribute to the development and the refinement of the study's problem statement. Thereby, providing information to critique the systems of land registration and eventually come up with its achievements **and challenges**.

Internet research on refereed journals and other materials will enable the study to further develop a proper analysis of the strengths and weaknesses of the operative land registration systems. Field study regionally and internationally, will aid in further analysis of the current system; while touring developed countries will assist the researcher put together what it is to have a modernized land registration system. Eventually, and most importantly, this will enable the study to make proposals of **modernization strategies**.

## **1.6 Towards a Theoretical Framework - Modernization Theory**

This study has its foundations on the theory of modernization. Modernization is a type of change that is both transformational in its impact and progressive in its effects. It is extensive in scope and a multifaceted process which not only touches at one time or one place, but does so in a manner such that transformation of one institutional sphere tends to produce complementary transformations in others [Dean 1973: 202]. Modernization can also be said to be a transition or a series of transitions from primitive subsistence economies to technology intensive and industrialized economies, from subject to participant political cultures, from extended to nuclear kinships, from religious to secular ideologies, and from closed ascriptive status systems to open systems [Dean 1973: 204].



According to Edward Shils, a modern State is democratic and equalitarian. This State is sovereign, applies scientific methods, and it is economically advanced. Modern States are thus welfare States and they emphasize welfare for all especially those of the lower classes. Modernity, therefore, entails the dethronement of the rich and the traditionally privileged from their positions of pre-eminent influence. It includes technological advancement, universal public education, science and scientific research and knowledge, land reform, progressive income taxation, and universal suffrage [Gilman 2003: 1].

Shils believed that economic advancement is based on modern technology; further, that modern means being western without following the west or rather the western model detached from its geographical origins and locus. Accordingly, the overall purpose of development is to achieve modernity world-over. Development is thus an essential element for modernization theory and theorists. They have defined development by the progress made in technology, military and bureaucratic institutions, and political and social structures [Gilman 2003: 3]. Modernity depicts a situation where government ceases to be a manifestation of powers beyond the reach of the ordinary man by offering itself as a platform for participation, consent, transparency, questioning, and full accountability [Dean 1973: 208].

Modernization theory sprung up from the efforts of 1950s American social scientists' efforts to promote change in other regions aimed at making these other regions more like America and less like Ethiopia, China or Russia. This is because, according to them, the United States was the universal model of true modernity. These scientists also believed that the United States had a duty to promote and replicate this model world-over [Gilman 2003: 4]. Modernization theory presents an explicit blueprint created by Americans for reshaping foreign societies as well as creating a set of directives on how to give effect to these changes in the dissilient world. In the process, Americanism was equated to modernization and thus respectable. Modernization was also viewed as the solution to the threats of instability and communism in the third world [Dean 1973: 208].

Indeed some modernization theorists felt that they were doing the World a favor by allowing and helping them to be more like 'them' - Americans. Modernization aimed

at creating a secular society where gender and race were less important. Instead focusing on, a privately run full employment economy of well paid workers all owning a house and a car with a formal democracy worked out by technically trained public servants [Gilman 2003: 16].

Modernization theories are thus fundamentally theories of transforming States [Dean 1973: 202]. The modernization theorists believed that given proper technical guidance, financial help, political education (and goodwill), and proper institutional structures the poor countries would catch up with the rich countries. Indeed modernization theory provides a hopeful idiom [Gilman 2003: 6].

Modernization theorists created a clear distinction between what is modern as opposed to traditional. A modern society they said is cosmopolitan, mobile, controls the environment, secular, welcomes change, and it is characterized by a complex division of labour. Shils and Talcott Parsons perceived modernization as a syndrome that welcomes technological advancement, urbanization, rising income, increased literacy, inclusive governance, respect for civil liberties, and amplification of mass media. Max Weber said that modernization is a comprehensive and cohesive process which he summed up as 'rationalization' (of a society) [Gilman 2003: 5]. Traditional societies on the other hand are inward looking, inert, passive towards nature, superstitious, fearful of change, and economically simple.

Modernization theorists, as opposed to the linear economic development theorists, believe that modernity was not just about economic production and development. Rather, it is also about society and polity, cultural norms, history, and nature all being subject of technical transformations.

Modernization theorists felt that they had the responsibility of training the 'mandarins of the future'. In 1960 Clark Kerr said "*We speak to the intellectuals, the managers, the government officials and the labour leaders who today or tomorrow will run their countries, now in the midst of great transformation.*" [Gilman 2003: 8]. Traditional societies to them had to be reorganized to make the individuals subjects of modernity while also increasing economic output and maintaining political order.

Though the modernization theorists varied in their points and areas of emphasis they all seemed to share the main thread that modernization would bring forth American-style health, wealth, and democracy. The theorists came in three flavors: first the techno-cosmopolitan, second the revolutionary, and third authoritarian. The first believed that modernization should be built on the basis of traditions, while the second proposed a radical rupture upon traditions, and the third believed that this radical change should come forth through State force [Gilman 2003: 9].

This study aligns itself to the sentiments put forth by the techno-cosmopolitan theorists because they argue that tradition is not all bad while stating that traditions that impede development in any sphere of life should be dropped. Further, the development of the modernization strategy is heavily reliant on techno-cosmopolitan theory. All the land records that have been in place for the last one hundred years (in Kenya) will be very crucial in coming up with a modern land database. Any attempt to discard all land information so far documented (which collection applied traditional methods) will cause chaos in the land sector.

The revolutionists would not be very useful to this study because they call for total uprooting of all that is traditional and a new beginning without any reference to the past. Nonetheless, to the extent that all modernization theorists believe in a better life with higher standards of living, this study associates itself to them to that extent. The fact that authoritarian theorists believe in the ruthless application of unrestrained State force to achieve modernity makes it unsuitable for this research.

Of importance to this study are also the contemporary theorists who pay special homage to the rise of new media, technologies such as mobile telephony, and the World Wide Web as important tools in modern day life. They also recognize English as the lingua franca along with the use of Internet as vital tools of modernity [ITC 2010: 2]. The modern day modernization theory emphasizes how new technologies and systems lead to the ideal global village where ideas and culture mores are easily, cheaply, and quickly spread all over the world: cultivating the idea of a universal culture [Chaudhary 2013: 2].

Other effects of modernization are that technology has revolutionized the speed and accuracy of production of goods and services at extremely cheap prices. Other inventions in communication allow people to contact each other instantly and cheaply anywhere in the world [Chaudhary 2013: 4].

## **1.7 Justification and Relevance**

This study is justifiable from two fronts. The first one being from the Government's perspective that it shall create and provide a strategy to implement the Land Registration Act No.3 of 2012 in as far as modernizing of the land registration system is concerned. This is a booster to the Government in fulfilling its Constitutional mandate under article 35. It will also provide a faster highway to achieve Kenya's Vision 2030 and the Sustainable Development Goals [UN 2015]. An efficient land information system is an important tool for management of cities around the world [UN 1996: para 3.6]. Once this information is stored in digital format, it is safer and secure than manual records. In fact it cannot be destroyed physically and different products will become available and deliverable from a single data source [Kaufmann & Steudler 1998: 21].

The second justification is in relation to the customers of the lands registry across the nation and indeed around the globe. Once the recommendations of this study are implemented, the user of the land information system in Kenya will find a solution to the challenges shown under the problem statement. People across the globe can have access to the land data quickly and anywhere at just the click of a phone button or computer key.

The time and money spent travelling and queuing at the lands office waiting to access information or carry out a registration transaction can be channeled to other routes of building the economy. Customers will not have to travel to the lands offices for searches, transactions, and collection of title documents anymore. The services will be fully decentralized and as close to the user as on the Internet.

Further, a modernized land registration system (which brings with it data interoperability) will facilitate a seamless land market and trading system within

regions and world-over. The fact that the information generated will cultivate confidence and trust amongst States, collaterals can be transferred transacted inter-States. This is likely to open up new markets, offshore negotiations, and enhance land data accessibility and sharing in the whole world. Indeed, Kenya's economy will greatly improve with e-conveyancing as a major pillar.

## **1.8 Scientific Significance**

This research provides a full analysis and an in-depth understanding of the operative systems of land registration in Kenya. In fact, it presents one of the major comprehensive studies of the land registration systems in Kenya. This will be useful in designing a modern land registration system. The study also highlights the strengths and weaknesses of the same. There is no doubt that the research will greatly contribute and provide information for other scholars in the legal field, especially for land registration and conveyancing studies in development of new concepts and theories as far as modernization is concerned.

The study intends to close the information gap especially in the African and developing States' land information systems. This research has relied on the recommendations of various United Nations Center for Human Settlement (UN-Habitat) publications and the experiences that have been documented by scholars in the area of contemporary land registration.

## **1.9 Scope of the Study**

This Research has its mainstay on land registration systems. While it is true that land information is available in many formats and places this research limits itself to study the land information systems at the Ministry of Lands (in Kenya). More so the lands office has various departments all of which have quite a chunk of land information. These departments include administration, surveys, physical planning, land adjudication, settlement, and lands department. It is the lands department that this research will focus on. This department is further sub-divided into three (3) divisions: land administration, land valuation, and land registration. The division that is significant to this study is that of land registration.

This study concentrates on land registration systems' history, the legal infrastructure that govern the same, institutional infrastructure, and the processes that one has to follow so as to successfully register land and transactions thereto.

## **1.10 Definition of Terms**

### **Automation**

Automation is any continuous integrated operation of a production system that uses electronic computers or related equipment to regulate and coordinate the quantity and quality of what is produced [Grolier Inc. 1984]. Thereby, reducing human intervention to a minimum [Dictionary.com].

### **Cadastre**

*“Cadastre is a parcel based, and an up to date land information system containing a record of interests in land (e.g. rights, restrictions and responsibilities). It usually includes a geometric description of land parcels linked to other records describing the nature of the interests, the ownership or control of those interests, and often the value of the parcel and its improvements. It may be established for fiscal purposes, (e.g. valuation and equitable taxation), legal purposes (conveyancing), and enables sustainable development and environmental protection”* [FIG 1995: 2].

### **Conveyancing**

*“This is the process through which rights in land are transferred from one owner to another. These rights may be in full ownership or a mortgage, charge or lease”* [UN 1996: 107].

### **Deed**

A deed is a legal instrument which on its face makes clear an act intended to be executed. This legal instrument must be signed, sealed, and delivered in the presence of a witness or witnesses and it usually involves transfer of property [Bone 2001], [Chambers 2006].

## **Digitalization**

Digitalization is the use of digital technologies to change a business model and provide a new revenue and value producing opportunities [Gartner dictionary].

## **E-conveyancing**

This is the process of conveyancing that is fully embedded on a digital platform. It is both computer based and web based. It can also be used to describe the process of dealing with land, whereby, all or part of the dispositions occurs online [Bean et al 2016: 418].

## **Land**

*“Land is defined as an area of the surface of the earth together with the water, soil, rocks, minerals and hydrocarbons beneath or upon it and the air above it. It embraces all things which are related to a fixed area or point of the surface of the earth, including the areas covered by water, including the sea”* [Kaufmann and Steudler 1998: 13].

## **Land administration**

*“This refers to the process of determining, recording and disseminating information about the ownership, value and use of land when implementing land management policies”* [UN 1996: 108].

## **Land information system**

*“This is a system for acquiring, processing, storing and distributing information about land”* [UN 1996: 108].

## **Land registry**

This refers to the official organization that houses and stores the land register. It is also in most jurisdictions the place where the registration process is carried out.

## **Land registration**

*“This is a process of official recording of rights in land through deeds or as title on properties. It means that there is an official record (land register) of rights on land or*

*of deeds concerning changes in the legal situation of defined units of land. It gives answers to the questions who and how” [UN 1996: 107].*

### **Land register**

*“This is an official record of rights on land or of deeds concerning changes in the legal situation of defined units of land. Or, a public register used to record the existence of deeds or title documents” [UN 1996: 107].*

### **Land Title**

*“The evidence of a person’s right to land” [UN 1996: 109].* Title also signifies a right to property and is considered with reference either to the manner in which that right was acquired or as to its capacity of being effectively transferred [Bone 2001]. Title could also mean valid title or cause for transferring the real property or even selling. It could also be the paper or document that proves ownership of land (hard or soft).

### **Modern**

A system or something, which operates using the latest technology, designs and materials to achieve its targeted output.

### **Modernization**

A multifaceted transformational process involving changes in all areas of human thought and activity from a pre-modern or traditional to a modern society [Dean C. T. 1973: 201], [Chaudhary A. 2013: 1]. Modernization is also a type of change which is both transformational in its impact and progressive in its effects. It is extensive in scope and is a multifaceted process which not only touches at one time or one place, but does so in a manner such that transformation of one institutional sphere tends to produce complementary transformations in others [Dean C.T. 1973: 202]

### **Reengineering**

*“The fundamental rethinking and radical redesign of business processes to achieve dramatic improvements in critical contemporary measures of performance, such as cost, quality, service and speed” [Tuladhar 2003: 3].*



## **Strategy**

A careful plan of action including methods designed to bring about or achieve a certain desired long-term goal or overall aim.

## **1.11 Organization of the Thesis (Work-Plan)**

### **Chapter 1 - Introduction**

This chapter is the introduction to the research. It introduces the problem statement and outlines the expected outcome as well as presenting the research objectives. The author presented this chapter (which is largely the proposal) to the law school and was allowed to proceed on with the main research. This chapter also highlights the theoretical foundations of the study.

### **Chapter 2 – Literature Review**

In this chapter the research has delved into the main topic of land registration and reviewed international land registration systems. The view was to reveal gaps in the knowledge pertaining to modernization of land registration systems, which lead to the conceptual modeling.

### **Chapter 3 – Evaluation of the Land Registration (Systems) in Kenya**

This chapter details in depth a description of Kenya's land registration system, statutes, and processes that are currently in operation.

### **Chapter 4 – A Critique of Land Registration System in Kenya**

In chapter four, the author reveals a SWOT (strengths, weaknesses, opportunities and threats) analysis of the land registration system in Kenya and the processes discussed in chapter three.

### **Chapter 5 – Case Studies**

Chapter five of this study is comprised of both regional and international land registration case studies as well as other organizations in Kenya. The research gauges the level of automation and modernization of various institutes in Kenya, including private as well as public bodies, with a view to comparing how Kenya is doing in digitalization of records and absorption of new technologies in other areas of its

economy. Consequently, this chapter presents a platform against which to propose a modernization strategy.

### **Chapter 6 – Key Areas for Reform and a Proposed Roadmap**

In this chapter the study has reviewed international tools and guidelines on how to modernize land recordation processes. It then proposes a roadmap or concept for modernizing land registration processes in Kenya and which other countries could adopt.

### **Chapter 7 – Conclusion**

This is the final chapter of the study. It has revealed the findings of the whole thesis, bringing forth summaries, conclusions, proposals, and recommendations for a modern land registration system.

# CHAPTER TWO

## LAND REGISTRATION

### 2.1 Introduction

In this chapter an attempt has been made to make a synopsis of relevant literature on the topic of land registration. It details what land registration entails while relying on renowned writers' materials on the topic and brings onboard the history, enhancements, classifications, and even reveals internationally accepted standards of modern and future land registration systems. This chapter also gives an overview of land registration in three countries that have aligned their systems to the recent global trends. As rightly noted by Dobhal & Regan [2016:5], conveyancing and land registration remain a complex branch of law and it thus calls for a careful and cautious analysis.

Professor John Rood wrote that the path of searcher for a safe title to land is beset with traps, sirens, harpies, and temptations. The searcher must go back to a good root of title varying in different States from 40 to 60 years or more. One must plough through the Joneses, Smiths and Johnsons, as well as the deeds, mortgages, judgments, taxes, and liens without ever being sure that he is not missing something fatal to his title [Dukeminier 1993: 762].

Land registration is a valuable administrative tool towards land reform and the fact that it is vital to human existence, its recording is of enormous importance to all Governments [Simpson 1976: 3]. Land records are required for numerous reasons, but two of them stand out from the rest. First, that a private vendee needs to get publicity upon his/her acquisition of land (thus security of tenure) and second the need for the State to know all land units available for taxation, services, planning, dues and other fees for collections [Larsson 2000: 19], and environmental protection.

Early forms of land registration are evident in the bible, for instance at Jeremiah 32:9. Others are to be found in ancient Egypt, China, India, and in European history [Dowson & Shepherd 1964: 3& 24]. In the traditional communities, land transfers took place in the presence of the chiefs, community elders, and eyewitnesses

composed of most, if not all, village members. Modern times have seen significant developments in this sector where States maintain an official register detailing land ownerships and transfers. Internationally, researchers have formulated guidelines pertaining to land registration including principles as well as features of a good system for land registration.

## 2.2 Definitions

Like many subjects in law, coming up with standard definitions of the terms used in the field of land registration remains a challenge and this study has thus limited itself to the definitions as enumerated in chapter one. By way of introduction, however, land registration is the process of recording legally recognized interests and rights in land through deeds or title to properties. The land registry is the place, institution, or authority that carries out this process. The term registration is the active process and the people or the personnel mandated to carry it out are referred to as land registrars.

It means that there is an official record of rights on land or of deeds concerning changes in the legal situation of the defined units in land. This is the product of the process of registration and it is referred to as the land register [Lemmen 2012: 6]. Another product of registration is the land title, certificate of land, or the land ownership deeds. The land register is also referred to as the Grundbuch (land book) in the Middle European jurisdictions [Zevenbergen2002: 52]. Other terms closely linked to land registration are cadaster and land administration, which this study has defined in chapter I. This study views registration, as a part of land administration and it is indeed one of the steps in the Conveyancing process. Zevenbergen observes that when describing land administration in comparable way the smallest subset would be the land register, followed by cadastre and then the land administration being on the outside.

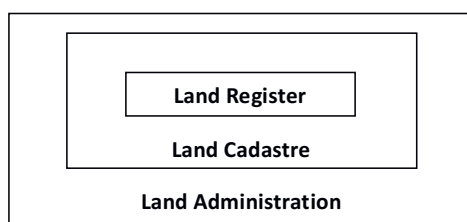


Diagram 2.1 Illustration of the relationship amongst land register, cadastre and land administration

### 2.3 Early Forms of Land Records

Early evidence of land documenting indicates that land was recorded for purposes of taxation. This is from the ancient Egypt's royal registry, dating as far back as about 3000 BC [Larsson 2000: 20]. These records were traced along the agricultural settlement of the Tigris, Euphrates, and the Nile. Taxation was based on the principle that all land belonged to the ruler (kings/pharaohs) and those who cultivated the land had to pay taxes in rent as revenue for their ruler-ships. The Romans did the same under the ruler-ship of Emperor Diocletianus at the end of the 3<sup>rd</sup> Century AD by ordering survey and land recording of all their territories.

Stuedler further explains that a form of taxation in China based on crop yields, which in turn relied on land survey and recording, existed in China around 700 AD. In South India around 1000 AD, Raja the Great ordered a revenue survey after founding the Chola Empire for purposes of tax collection [Larsson 2000: 20]. In the 11<sup>th</sup> Century, William the Conqueror had to establish his rule's protection against the marauding Danish armies and he did this by collecting taxes from the countryside [Stuedler 2004: 8]. He thus commissioned the Domesday book (which was a land record) covering the whole of England, showing names of land owners acreage, tenures, pasture, forested land, tenants, and livestock. This imported to England the maxim "*Nulle terre sans seigneur*" translated to 'no land without lord', and thus the expression *tenants of the crown* [Mburu 2011: 27]. These records were not supported by maps.

In 1540 AD, King Gustav of Sweden ordered land recording of all taxable lands to include the owner's names and their tax strength, but without maps initially [Larsson 2000: 20]. According to Stuedler, the Theresian cadastre of Austro-Hungarian Empire was established by Empress Maria Theresia in 1748 for taxation of all the lands in the Empire. This evolved to the Grundbuch System popular in Central European States. Later on in 1804 in France under Napoleon the *Code Civil* was introduced and it brought with it a new cadastre which was more comprehensive than the earlier records [Li 2016: 22]. The components of the Napoleon Cadastre included the parcel number, acreage, land use, land value, and owner which were all based on maps [Stuedler 2004: 9].

While the French maintained the deed registration alongside a cadastre system the Germans took it a step further, converting deeds to title registration creating the Grundbuch (register of land title). This registered ownership of title rather than registration of transaction deeds. The Grundbuch introduced the folio principle where each folio in the Grundbuch contains all information corresponding to ownership of that parcel [Stuedler 2004: 10].

In the years 1858 – 74, Australia and New Zealand adopted the new land title registration system developed by Sir Robert Torrens. This system was based on registered title to land whose cadastral maps and plans were prepared by licensed surveyors with these maps becoming an integral part of the title document. The Torrens system was considered the best system at the time; thus, it was introduced into many British and some French colonies in the late 19<sup>th</sup> and early 20<sup>th</sup> century [Stuedler 2004: 11]. Among these colonies where Torrens registration system was introduced was Kenya.

## **2.4 Evolution of Land Registration**

The historical development of land registration can be seen as parallel to the development of a more open land market within a country. Because many societies have gone through evolutions of their land markets in similar phases and designs (though in different historical periods) many countries can identify with what is described in this portion of the study.

When someone owns an item, it is easily seen from observing the relationship between that person (subject) and the object. One who has rights over an object has possession, right of use, and also the right of disposal. This is quite easy with movable goods; however, with land which is immovable the relationship and transfer process can be sophisticated. This is especially true when considering that possessing an immovable object calls upon the owner to move and not the object moving like with movable goods. Transfer of land which is controlled by land registration can be written or unwritten, registered or un-registered.

Land registration underwent several stages before developing into what it is today. Some of these steps are enumerated in the following paragraphs.

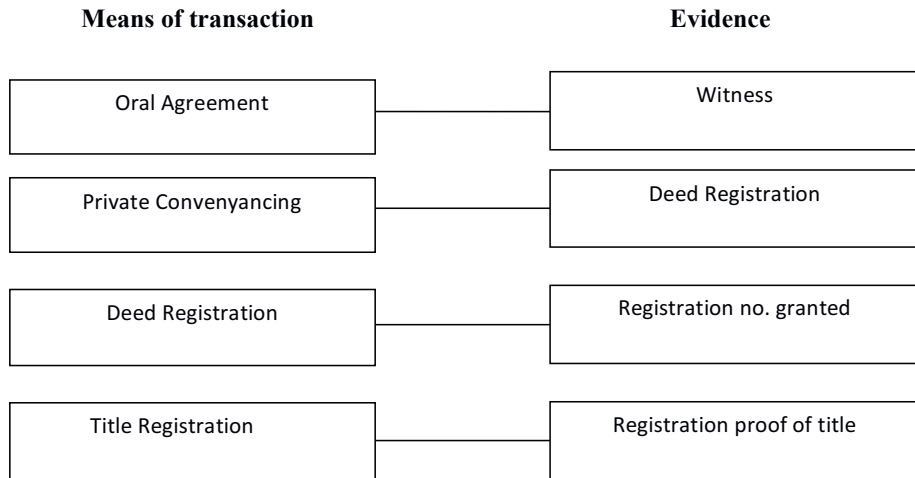


Diagram 2.2 – Evolution of land registration [source, Zevenbergen 2002: 32]

### 2.4.1 Symbolic Transfer

In a paperless and close-knit society transactions are based on oral agreements. Symbolic acts were, thereafter, performed to complete the transfer witnessed by the local community members. For instance in Ghana, an item from the immovable property would be handed over from the seller to the buyer to symbolize the transfer. It is known as ‘*cutting of Guaha*’ where the seller gives or breaks a leaf, twig, or blade of grass. This publicity alone was, in the ancient times, seen as sufficient guarantee and evidence of transfer [Simpson 1976: 13].

In the Netherlands, the seller used to throw a twig or a blade of grass from the land to the purchaser. This would work where the society is close-knit, the transfers remain minimal, and where the symbolic acts are performed in the presence of witnesses. It gets problematic where the community grows larger, less coherent, and memories start to fade; thus trustworthiness can no longer be sustained [Simpson 1976: 13].

### **2.4.2 Introduction of Writing**

When communities began to use paper the elite started to prefer written evidence to that of witness testimony to land transfers. Parties would go before a judge or specialized writer, known as a notary, who would declare that there was a new owner [Zevenbergen 2002: 32].

### **2.4.3 Private Conveyancing**

Later when written conveyancing became a norm, people started drafting more comprehensive deeds which would be handed over to the new owner/buyer after the sale. After several transfers, the eventual owner could have a stack of documents and usually, before the next transfer could be made, these documents would have to be checked by a legal profession to ascertain authenticity. The seller would prove ownership by possession of the previous transfers.

This had its fair share of shortcomings, including that a fraudulent seller would fake loss of deed and sell to more than one person. At sub-division it also became an issue because only one deed existed. Property description was also lacking [Dowson & Shepherd 1964: 11]. Another disadvantage of this system is that it is not conclusive and there is always the danger that some facts about the property in question may not be discovered. This is because private conveyancing is not public instead it is meant to be a secret amongst the parties transacting [Simpson 1976: 14]. England relied on private conveyancing until mid-19<sup>th</sup> century.

### **2.4.4 Introduction of Registries**

It was later agreed that instead of leaving the documents in the hands of owner of the land their storage could be entrusted in the hands of an independent third party. This would limit the chances of loss and falsification. Throughout the many phases of development and in different parts of the world this independent authority has been either notaries, judges, courts, lawyers, tax authorities, or specialized lands offices or land registries made up professional land registrars or a combination of other authorities.



## **2.4.5 Enhancements**

Land registration was enhanced by requiring all the transfers of land to be:

- (a) Compulsorily written,
- (b) Compulsorily registered,
- (c) Introduction of unique parcel identifiers (numbers), and
- (d) Using cadastre and deed registers to create title registration. Files and volumes would then be used to register land based on either parcel (thus parcel files) or owner.

Different jurisdictions, this study has found, are in different phases of this evolution with others past these stages into more modernized land registers. Later on, in chapter four, this study unequivocally shows how Kenya is today applying all the phases of land transfers stages beginning with the oral conveyancing.

## **2.5 Classification of Land Registration**

Land registration can be classified depending on the functions or the design and its historical origins. This research will review classes including title and deed, and race and notice

### **2.5.1 Title vs. Deed Land Registration**

It has been observed that currently, there are only two forms of land registration internationally. These are the deed registration or the title registration [Onalo 1986: 8]. Registration of deeds is a system whereby a register of documents is maintained relating to the documents of transfer (deeds) of rights in land. Registration of title, however, is a system where a register of ownership of land is maintained based upon the parcel rather than the owner or the deeds of transfer [Zevenbergen 2002: 49].

### **2.5.2 Title Registration Systems**

Under this form of registration, the land registry registers the right and the rightful claimant, and thus, creating legal rights and consequence. With this registration, the title or right is created [Kolkman, Verstappen & Vonck 2011: 39]. In this system, one can immediately see who the owner of the property is because the register reflects the correct position on the ground thus fulfilling the mirror principle. The register is at all

times the final authority and the State accepts responsibility for the validity of the transactions registered thereunder [Simpson 1976: 16]. There is no need for historical investigations beyond the register (curtain principle) and whatever is registered is guaranteed by the State. This implies that if a third party incurs loss out of reliance on the register he/she will be compensated by the State; thus the insurance or guarantee principle<sup>1</sup>. Simple procedures with simple forms are put to use and dealing in land becomes as quick and certain as dealing in goods.

Simpson argues that the registration of title thus dispenses with the need for a skilled conveyancer, at least in theory. He says this because the objective of title registration is to save persons dealing in land from the trouble and expense of going behind the register and investigating the lengthy history of the property concerned. A title land register offers finality and removes the ever present possibility of fraud by duplication or even suppression of deeds.

Zevenbergen explains that an inspection of the land register will at all times show the legal situation on the land. Registration, he asserts, acts as warranty of title in favour of the registered owner and bars all adverse claims [Zevenbergen 2002: 48]. When a registrar enters the name of a new owner in the register, the previous owner is automatically dispossessed. The title in this case is indefeasible; to achieve such high and unquestionable validity of title the registrar must be an active one. This in effect means that the register can only be altered after a thorough check and confirmation that the transaction indeed took place. This calls for innovations in the art of title registration.

Another important aspect of title registration is that it is parcel (or land) based, and thus in this case some writers have argued that it is the land that is registered as opposed to the deed system, that registers deeds. There is emphasis on parcel identification which has to be unambiguously described in a plan that forms part of the title documentation. Title registration systems, Simpson notes, are however subject to overriding interests in land. Title registration systems can further be classified into three categories; English, German-Swiss and the Torrens.

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<sup>1</sup> Systems that offer guarantee of title are referred as positive while a land registration system that does not is negative.

### **a) The English Group**

In addition to the features described above, this system uses existing large topographical maps combined with general boundaries. Theoretically, conveyancing here can be done by parties without assistance from attorneys/legal experts because they just need to fill in the prescribed forms (conveyancing instruments) that are relatively simple. Practically however, legal experts come in handy due to financial complications related to mortgaging, taxation, and other land control and regulatory rules; thus only few people do their conveyancing without legal experts [Zevenbergen 2002: 51].

### **b) The German-Swiss Group**

Countries that apply this system transferred to it due to good cadastral surveys and a well-functioning deeds registry. The register is known as the *Grundbuch* (in Germany) and the conveyancing instruments (deeds) are done largely by notaries. There are high chances of rejection where lawyers are not involved even if just as professional experts. The *Grundbuch* is kept in court by specialized land book judges – *Grundbuchrichter* – but in practice kept by support staff. The maps are kept by survey departments after a survey is carried out by licensed surveyors. The greatest difference from the other forms of title registration is that the State does not offer complete guarantee. The registered owner is only protected by public faith and counter claims can be lodged within stipulated periods if one begs to have a better right and can indeed prove the same [Zevenbergen 2002: 52].

### **c) The Torrens**

Sir Robert Torrens, influenced by the Germanic registration system, invented this system. Torrens is a title registration system and is indeed considered as best practice [Stuedler 2004: 19]. It makes use of isolated and specific survey maps (rather than large topographical maps) [Zevenbergen 2002: 53], which licensed surveyors deposit at the State survey office. Practically then it is much easier for any title to bear its own cadastre map. Because of its simplicity, when it was first applied it had the effect of ousting lawyers from conveyancing which later paved the way for brokers whilst lawyers are still required [Simpson 1976: 70].

The main feature of the Torrens system is that the land parcel in question is identified on a map attached to the certificate of title. The certificate of title gives the details of ownership as well as description of the land, with appropriate references to the easements, encumbrances, and conditions to be fulfilled by the titleholder. Land registered under Torrens system is surveyed as opposed to the English title system that applies general boundaries. Another feature of the Torrens system is that all entries from the time of first registration are preserved in folio volumes. The English system, however, is concerned only with the current ownership and property boundaries such that the register is an index system [Larsson 2000: 47].

This system was first applied to all land alienated by the Crown in Australia. Upon first registration, two grants were issued for each piece of land, an original and a duplicate. The original is retained in the registry while the grantee is given the duplicate. The grant describes the land vide a diagram which appears on both grants. It also describes the grantee, his/her occupation, the area and location, the price paid, and a list of the special conditions [Larsson 2000: 44]. When the original grantee transfers the land the name of the new owner is endorsed on both grants without the need to create new title [Vyas et al 1994: 571]. All transfers must officially be applied for, examined, and registered at the office of titles.

### **2.5.3 Disadvantages of Title Registration**

Though the English system of title registration uses simple instruments of conveyancing the reality is that title registration is complex. It involves elaborate processes that require skilled professionals such as notaries, lawyers, licensed surveyors, and even qualified registrars. Registrars are required to carry out rigorous checks before effecting any change in the register, which makes registration longer and time consuming. This system also demands high initial capital to establish it while operationally, States incur costs because of the insurance principle [Zevenbergen 2002: 54].

### **2.5.4 Deed Registration System**

Under the deeds system it is the deed itself that is registered. A deed is a record of a particular transaction and serves as evidence of that specific agreement. It is not itself

proof of the legal right [Kolkman, Verstappen & Vonck 2011: 40] for the transacting parties to enter into and consummate the agreement. Consequently, it does not prove validity of a transaction [Simpson 1976: 15]. This is, however, strictly in theory and as was in the past because practically and presently deeds systems give rise to legal responsibility upon the parties.

Registration of deeds was initially optional and used rather sporadically. The deeds would be (though not mandatorily) deposited with the court or a notary public, which institutions merely functioned as agents. They were not obliged to investigate the correctness of the documents [Larsson 2000: 22].

There was no uniform identification of parcels and registration was arranged according to deposit dates as opposed to the land units. These aspects of early forms of deed registration made it difficult to search or even construe security of tenure. In fact, in the absence of any competing interests, deed registration did not confer any advantage in so far as the actual vesting of the property is concerned. This is because registration may, in some jurisdictions, take precedence over the unregistered deeds or may be admitted in a court of law as evidence of title [Simpson 1976: 15]. Unregistered deeds or transactions can thus be safely ignored and the court is able to resolve matters based on the fact of registration.

To enhance the system there was the requirement for an unambiguous description and identification of the subjects' unit of land and compulsory registration. A copy of any deed that affects the ownership and possession of the land must be registered at the registry office and a file opened for each parcel where copies of all the documents are filed. Each document was required to have been drawn and checked by a notary or an authorized lawyer and its validity ascertained. This sometimes required checking the register against all persons who may have enjoyed rights of ownership in a particular parcel during the preceding forty years [Dowson and Sheppard 1964: 10].

As a result, by searching the register for the most recent documents of transfer (or recent transactions) any prospective purchaser would feel confident that the vendor has the right to sell. Inspection of the register would show how the vendor obtained the property and the conditions under which it was acquired. This search in the

register however does not provide any proof that the previous transactions on the property were legitimate. It, therefore, becomes necessary that previous transactions on the property should be inspected. This involves a long series of inspections which may span many years until the purchaser is confident that there is a clear chain of good title from the original root [Kolkman, Verstappen & Vonck 2011: 40].

A major setback of deed registration system is that it leads to the storage of vast quantities of ancient documents, creating what has been referred to as a “Mausoleum of parchment.” Not only is this costly, but the retrieval of data can be difficult and cumbersome, depending on the volumes of documents stored [Wayumba 2013: 135]. With digital systems it is now possible to store and retrieve rapidly large amounts of data, although conversion of old documents into digital form is potentially expensive. The costs are, however, much less than what was incurred in the past. By applying modern technology, such as scanning and microfilming of documents, and by adopting appropriate administrative infrastructure deeds registration can now offer an efficient and reliable land registration system.

In some deeds registration systems the management of the records is extremely efficient and, as a result, there is great confidence in the system (e.g., the Netherlands). While such registries do not guarantee title, they provide the most important evidence of ownership that can be assumed to be correct unless proved otherwise in the courts [Zevenbergen 2002: 58]. In many countries around the world, the deeds registration systems are not in this category and documents are in poor physical state, difficult to retrieve, and even more difficult to link with a chain of titles that can trace a pattern of ownership over the past years [Wayumba 2013: 27].

### **2.5.5 Weaknesses of Deed Registration System**

Deeds merely prove transactions took place without guaranteeing the intended change did really occur. Under the deed system, it is not mandatory to register all changes of ownership in land, and thus the register may not reflect correctly and accurately all interests in land. Further, unless improved, a pure deed system does not clearly describe the land and the deeds may not be chronologically stored or easily accessible [Dowson & Shepherd 1964: 16].

However, deed registration can be very quick since (in the registry) only a very short check is required before registration is effected [Zevenbergen 2002: 56].

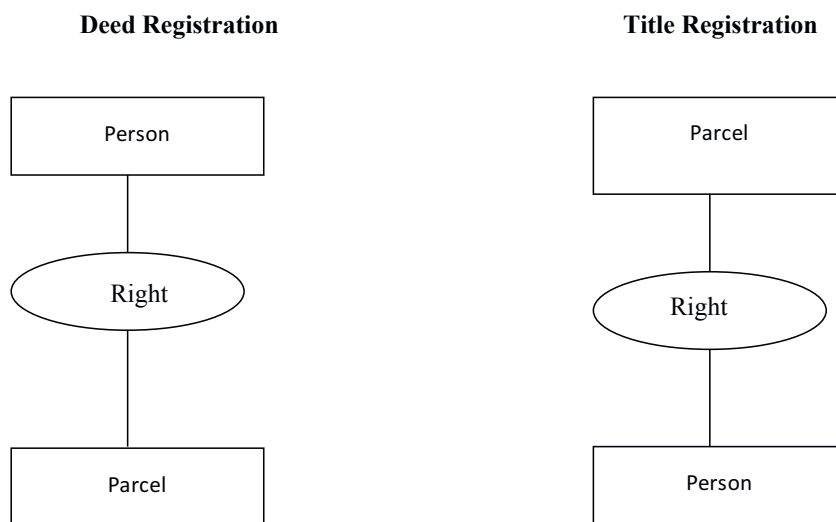


Diagram 2.3 An Illustration of the difference between title and deed systems (Source: Jaap Zevenbergen 2002)

### 2.5.6 Comparing Title and Deed Registration of Land

To think that title and deed systems of land registration are separate and distinct is misleading. These two systems are rather composed of variables and alternatives, the combination of which form a continuum [Simpson 1976: 19]. This continuum is then what we eventually construe as title or deed. The major variables in the continuum are: the extent to which the State affirms the existence of ownership, the amount of investigation applied (or needed to be applied) by a potential vendee to construe ownership, the nature and amount of records required in order to ascertain ownership, the finality with which the land register is interpreted, and the extent to which the register is either parcel or persons based.

The first requirement of title registration is that the land register be based on parcels rather than the persons who own them. This is not always the case because many deed systems have been improved by making them parcel-based. Another element of title register is the finality with which it comes. It does not require investigations (at least in theory) because it is always complete and up to date (subject however to overriding

interests). On the other hand where registers remains deed, no matter how complete and conclusive they are, they require investigation and interpretation. Ownership must be deduced from the relevant deeds because the register is merely evidence of a transaction, but not of a title [Simpson 1976: 19].

Consequently, the deeds must be kept for the title (ownership) rests in them when read together. Under title registration it is the particular entry in the registry which passes title; thus finality and completeness. Title is by registration instead of through a deed. Ownership depends on what the register shows and not on extraneous instruments. In theory, therefore, the instruments are not required. Practically, however, few, if any, title registries have taken advantage of this component which allows destruction of the conveyancing instruments. This is because should a dispute arise these documents may have to be relied on. Thus, it is evident that the aspect of trace back which is theoretically a reserve of deed registration is also applicable to the title registration of land.

Hogg, quoted by Simpson, indicated that the distinction between title and deed registration is by no means a clear-cut exercise. The two shade off into each other and any dividing line between them shows close resemblance on either side of the line. *A seriously defective law may be made to operate successfully by skilled administrators, while a juridically perfect law may fail in incompetent hands* [Simpson 1976: 23].

### **2.5.7 Race versus Notice**

In order to ensure registration of conveyancing instruments there needs to be an incentive to record them. With deed registration system it is the fact that recorded deeds may get priority over unregistered ones. This is helpful in cases of double sales. Under race statutes this priority depends on the order of registration. The winner of the 'race' to register their deed gains priority over any other person notwithstanding their knowledge of other prior unregistered transfer of the same property [Zevenbergen2002: 64]. Thus, one relies on the register despite the risk that it could promote land fraud.



Notice statutes were as a result introduced such that an innocent purchaser did not have to race to register. If they had no prior notice of any competing interests they were safe to rely on the register. To prevent over-reliance on the lack of notice, and thus not register the transfer at all, some States in America introduced the ‘race-notice statutes’. Others, like in Ghana, introduced a time limit between the date of signing the deed and application to register at 15 days, after the expiry a registered but conflicting deed could be prioritized.

Zevenbergen, however, suggests a solution would be found where one is allowed to register the notice for a few weeks through registration of a caveat. If the caveator registers a deed within the stipulated time he remains safe. After the stipulated weeks another person can have priority notwithstanding the notice on the register. Thus, creating a balance in the race versus notice classes of land registration.

### **2.5.8 Abstract vs. Causal System**

In a causal system of land registration the acquisition of the right of ownership depends on the **validity of the cause** of the transfer. For example A, the owner of land, sells his land to B, the purchaser. They go to the notary who prepares the notarial deed of transfer (or agreement). The deed is the act that passes and transfers the property [Kolkman, Verstappen & Vonck 2011: 38]. The real rights are transferred *vide consensus* of the parties with the consensus and intention being contained in an obligatory agreement [Schutte 2012: 121]. The conclusion of a valid and enforceable obligatory agreement is all that is required to transfer a property.

In the **abstract** system the obligatory agreement sets out a set of rights and obligations to be fulfilled by the parties. This agreement just obliges the parties to do particular things, but does not transfer the real rights. Upon the fulfillment of a set of the obligations set therein there is, consequently, a second agreement known as the real agreement [Schuttes 2012: 124]. This second document contains the parties’ intentions and mutual agreement where the transferor transfers and the transferee receives the real rights. There is also the concept of delivery where the transferor delivers and the transferee receives these rights [Hutton 2009: 10]. It is upon this real agreement that the rights are transferred.

It seems that, unlike in the causal system, there is the insurance of title under the abstract system in favour of the buyer. The abstract system is thus more of a title system while the causal system leans closer to the deeds system of land registration.

## **2.6 Components of Good Land Registration**

### **2.6.1 Principles of Land Registration**

The success of title registration depends on the extent to which the following three principles are applied [Bean et al 2016: 19]:

Mirror principle,  
Curtain principle, and  
The insurance principle

#### **a. Mirror Principle**

Under this principle, it is implied that the land register reflects directly, accurately, and beyond all arguments all the interests on land. The register mirrors the interests on land and one need not look any further for proof of title than at the register itself [Simpson 1976: 22]. This assertion is however subject to exceptions such as rights of an adverse possessor and overriding interests in land.

#### **b. Curtain Principle**

This principle means that the land register is the sole and only source of information to title. Thus it draws a curtain blocking all other sources or information in relation to the title. Any interested party in land (for instance a buyer) does not need to go beyond this curtain; nor do a historical review as would be applicable under the trace back principle of registration of deeds.

#### **c. Insurance Principle**

Proponents of this principle and institutes where it applies assert a degree of State responsibility to compensate losses incurred due to land registry error. This is in situations where the register fails to effectively mirror the interests in land; and, an innocent third party incurs loss from relying on the registers' wrong information. This principle provides financial security and indemnity to the owners or anyone else suffers loss which is traceable to an error in the register [Bray 2010: 52].

Generally, however, the following four other principles of land registration are also recognized for both title and deeds registration [Zevenbergen 2002: 42]:

**a. The Booking Principle**

This principle implies that for a change to take effect legally upon an immovable property it must be booked and registered in the land register.

**b. The Consent Principle**

Under this principle, it is agreed that the entitled person, booked as such in the land register, must give his or her consent for a change to be effected in the register. If, for instance, a charge has to be registered against a title the registered owner must agree and consent that his or her land title be used as security for the repayment of the loan.

**c. The Principle of Publicity**

Publicity principle implies that the land register is open for public inspection and that members of the public hold the published facts to be the truth about the land units referenced. According to Nilofer [2012: 15] the UNECE guidelines on land administration recognize the importance of public access to land registers because this inspires confidence in the land market, but must be balanced against the privacy of individuals.

**d. The Principle of Specialty**

With this principle it is implied that the concerned parties and the unit of land must be described unambiguously in the land register.

All these principles can be adequately and effectively applied by all governments only if they are carefully provided for and entrenched in the relevant pieces of legislation [Zevenbergen 2002: 43].

**2.6.2 Features of Land Registration**

Closely linked to the principles described above is a set of land registration features that have been discussed by various scholars. These features include, but are not limited to:

Clarity	security	accessibility
Correctness	simplicity	completeness of record
Legal security	accuracy	expeditious/timeliness
Understandability	cheapness	suitability to circumstances
Fairness		

These features when applied correctly give rise to the super-feature of trustworthiness [Zevenbergen 2002: 45]. There is no hierarchy or prevalence amongst the different features. All are important because if one is not applied then the rest may not operate as they should. In any case, most of these features are tied to one another and this explains why the discussion that follows hereunder ties one to another, for instance with accuracy and correctness. This study places a higher premium on the features of correctness, accuracy, simplicity, and legal security.

**a. Simplicity and Clarity**

This is paramount for the effective operation of a land registration system and acceptance by the people it is intended to serve. The processes should be clear, simple to understand, and to use, without unnecessary complexities. Lengthy, difficult or complex forms, regulations, and procedures may discourage the use of the system. Simple forms must be used and the procedure, language, and regulations should be in plain and straightforward language [Stuedler 2004: 77].

**b. Accuracy and Correctness**

A correct and accurate register is a reliable tool for a thriving land market and for the system to be effective. An inaccurate register, argues Simpson, is far worse than a useless one. The land register should reflect up-to-date and complete details on property.

**c. Expeditious and Timeliness**

When there are complaints about delay in land registration the system runs into disrepute. The system should provide up-to-date information in a timely fashion. Timeliness is also recognized by the World Bank as an important criterion for successful administration of land rights [Nilofer 2012: 129].

**d. Fairness**

Land registration should not only be fair but should be seen as being fair. It should be separated from the political processes and include attributes such as: equitable access to the system by all, decentralized offices, and simple and cost effective procedures [Dobhal & Regan 2016: 7].

**e. Accessibility**

Land registration system should be appropriately and fully decentralized and capable of providing efficient and effective service to all users at a reasonable fee.

**f. Cost and Cheapness**

Because cost is relative, it should be assessed comparatively [Stuedler 2004: 78] so as to achieve a low cost system operated without unfairly burdening the user. The initial cost of titling and installation of an updated system can be quite costly; the costs incurred including those of initial survey and adjudication should not be borne by the initial users [Zevenbergen 2002: 44]. National governments could use their financial muscle to put in place a system without expecting immediate profits.

**g. Suitability to Circumstances**

What determines suitability is what is feasible with a particular community, availability of funds, manpower, and expertise therein [Stuedler 2004: 78]. This also adheres to the ‘fit for purpose’ concept which argues that systems ought to be designed in a way that meets a peoples’ needs vis a vis their relationship to land as opposed to being guided by rigid regulations imposed by external rules and principles [FIG 2014: 64]. Fit for purpose is also guided by three ingredients comprising cost, timeliness, and quality.

**h. Record Completeness**

The land register should be complete in two ways. Firstly, that all parcels must be included in the general register without leaving some out. Secondly, that the details of each and every parcel should also be complete. In essence, the land register should be actual, factual, and up-to-date. Completeness of the register,

however, raises the question of overriding interests that are not all revealed by the record [Simpson 1976: 18].

**i. Legal Security**

Security in a land registration system imparts secure land rights and land tenure to holders of title. These rights must be beyond challenge; [Stuedler 2004: 77] but however, subject to certain exceptions. The system should also be physically secure with duplicate records storage, for back up, and controls in place to keep unauthorized persons from changing or damaging the data.

**j. Stability**

Zevenbergen states that measures should be put in place to ascertain that land registration information is maintained for a long time. This information must be up-to-date whereas the techniques applied, educational and professional competences should be appropriate to particular jurisdictions.

These features are the prudent expectations of a well-functioning land registry.

## **2.7 Benefits of Land Registration**

Land registration should not be an end in itself; rather it should be a tool to reach a goal or goals. These goals are what both Dowson and Shepherd refer to as benefits of land registration. Land has different meanings to society and individuals. These meanings include

- Economic assets as a factor of production,
- Social security as means of living and a source of income,
- Habitat through provision of shelter, housing or homes,
- Power base for political establishments,
- It is the base to lay down transport and telecommunication links, and
- Social cultural/religious value.

Land is the major source of livelihood to most, if not all, the inhabitants of the earth and its centrality to human existence cannot be underrated [NLC 2012: 10]. It is the source and main foundation of man's basic needs, including food, shelter, and

clothing, and has been referred to as a basic human right [Rwegasira 2012: xix]. Therefore the government, the communities, and the individual citizens would be referred to as the beneficiaries of well-maintained, clear and proper land records in equal measure.

### **2.7.1 Secures Land Tenure/Ownership**

According to Wayumba [2013: 54], the main function of a land registration system is to provide security of tenure which in turn allows efficient transfer of rights in land. Secure land tenure depicts the function of the system to assure and protect the registered parcels or units of land in favour of the owners [Ruoff & Roper 1979: 8]. This flows from the insurance principle. In an ideal situation, the registered owner is protected by law from all other claims and any loss incurred, and would be compensated by the Government to place the owner to a position devoid of any such loss. This implies guarantee of title [Nilofer 2012: 15].

In fact, land rights are enforced through registration, dispute settlement, and compensation [Nguyen 2014: 17]. Nguyen further observes that issuance of land certificates to farmers is a first step and an indication that land rights are respected and enforced by the State. A weak or corrupt land tenure system can condemn a people to a life of misery, hunger, poverty, and even civil wars [FAO 2012: v]. States are encouraged to enhance modern land tenure security, and if land rights are taken from rightful owners there ought to be prompt and just compensation [FAO 2012: Art. 3A (4)] & [GoK 2010: Art 40].

### **2.7.2 Facilitates a Thriving Land Market and Conveyancing**

A clear land tenure (facilitated by an accurate and up-to-date land register) creates an efficient environment to exploit the wealth in the land [Dobhal & Regan 2016: 4]. Documentary evidence of land ownership facilitates transfer of property in land and more so when the polity has trust in the land registration system. Nguyen [2014: 12] also makes similar remarks. A well-functioning land registration system facilitates quicker and cheap transfer of land [UN 1990: 9]. A trusted land register will not only make the need for searches unnecessary, but also makes it possible for conveyancing to adopt simpler forms; thus eliminating the high cost for legal drafting [Larsson

2000: 69]. World Bank Doing Business report of 2014 ranked countries higher that have an efficient property registration system [FIG 2014: 24]

### **2.7.3 Facilitates Access to Mortgages and Loans**

Most financial institutions insist on a plan and good title before giving loans or mortgages [Larsson 2000: 60]. The loan or mortgage is then registered against the title, and it is the practice for this title, together with the credit documents, to be deposited with the bank as security during the credit period. Land that is not registered is also not titled, and thus may not be used as security to guarantee any financial accommodation. Nguyen [2014: 24] observed that secure land tenure which could be achieved through titling enhances access to formal credit channels in Thailand. This creates wealth by facilitating injection of funds through the secured loans [Charlebois 1999: 1].

### **2.7.4 Helps in Dispute Resolution and Reduces Litigation Pertaining Land Ownership**

Flowing from the mirror principle under the registration of title the documentary evidence held by the land registry is an essential tool in resolving property disputes [Dowson & Shepherd 1964: 72] The Principle of publicity [Wayumba 2013: 39] declares that the land register being a public register is available for scrutiny by all. Anyone can thus peruse the same and if there are doubts as to the ownership it can be resolved where the mirror principle is at work. This helps economic development and reduces expenses that could have gone to waste through litigation [UN 1990: 9]

### **2.7.5 Awakens Dormant Capital**

A secure land tenure which is a by-product of registration of rights in land stimulates individual investment in land. People and institutions especially put up shelter, factories, cash crops, commercial and multi-dwelling units, amongst others when their rights are '*paperised*' [de Soto 2000]. The potential that was insecure before registration is now secure and even banks can offer financial accommodation, thereby, awakening the dormant capital. This in effect stimulates general economic growth of an individual, State, and region making land a tradable commodity [Nilofer C.2012: 13].



In fact, tenure security through land titling leads to enhanced land related investment as well as land productivity. Security of tenure gives investment incentives to land owners due to the certainty of enjoying their investments' returns without any competing claims [Nguyen 2014: 24].

### **2.7.6 Creates Land Information Records**

The by-products of land registration are two-fold: first, is the land register and the second, is the land ownership deed or title. The land register is created and owned by the State while the ownership deeds and titles are kept by the registered owners. The land register is an important database for any government. This is because it enables governments to establish how much land is public or private, who owns it, the value, and how much land is registered. This is also important for other statistical functions of government, including security. Many other government departments also benefit from a well maintained land information system [UN 1990: 10] These would include the agriculture sector, social security, tax authorities, general elections administrators, and those involved in carrying out population census [Larsson 2000: 67].

### **2.7.7 Facilitates Taxation**

The earliest forms of land records were established to facilitate taxation [Larsson 2000: 66]. A well-functioning land registry has information including acreage, land use, location and other components that assist the government to value the land for taxation. Essentially, because land is a key factor of production [NLC 2013: 8] in business, all profits are subject to tax worldwide. A list of registered owners will thus easily assist to contact them for remittance of their taxes depending on governments' parameters for taxation. Land registries thus assist governments to value, assess, and collect taxes. Collection of taxes leads to more revenue for the State, thereby, enhancing local development [Larsson 2000: 66], improved standards of living, and poverty reduction [Nguyen 2014: 32].

UNECE land administration guidelines state *“Good land records improve efficiency and effectiveness in collecting land and property taxes by identifying land owners and providing better information on the performance of the land market”* [UNECE 1996: 16].

### **2.7.8 Land Control for Sustainable Development**

Land control measures are administered through bureaucratic processes which essentially enable the State to control land use, development, ownership, and transfers [UN- Habitat 2012–B: 3]. Sometimes this will require training in agricultural best practices, sustainable use of the wetlands, and the riparian areas. Other modes of development control measures include approval of building plans as well as ways to enhance afforestation to curb desertification. However, very stringent land control rules will stifle land market and so the application of the same has to be weighed against the economic good.

### **2.7.9 Facilitates City, Urban and General Physical and Land Use Planning**

Land registration is a key ingredient for proper physical planning. The main goal of urban development is to clearly demarcate space for provision of both private and public amenities and to deliver a sustainable physical plan [UN 1990: 10]. This adequately provides suitable locations for housing, streets, service lines, and other facilities all geared towards curbing urban sprawl and explosion. Without land registration irregular buildings are difficult to control [Larsson 2000: 65].

Physical planning also cures (to some extent) informal settlements, squatter problems, and development of slums. Generally, physical plans provide for suitable development with the needs of the society fitting particular communities. States should, and are encouraged to, plan their cities, urban areas, and settlements in order to achieve adequate housing, right to an adequate standard of living, universal access to safe and affordable drinking water, green and quality public spaces, equal, equitable and decent work opportunities for all, disaster and risk management amenities, quality health facilities, safe neighbourhoods, and inclusive and transformative economic growth [UN 2016: Art. 13]

It will thus provide for playgrounds, community hall(s), hospital(s), public and private schools, slaughter houses, residential and dwelling houses, commercial shops and office spaces, forests and wildlife reserves, and plantations. *Civilized living in market economies is not simply due to greater prosperity but to the order that formalized*

*property rights bring* [de Soto 1993 quoted in FIG 2014: 60].

### **2.7.10 Protects State Lands**

As much as land registration guarantees title and ownership to individual owners it also guarantees title to State owned land. The State is in a position to have a data base of public lands of different categories. Some of these could be in names of State corporations, parastatals, schools or authorities charged with holding un-alienated government lands.

### **2.7.11 Facilitates Economic Development**

The sum total of the above benefits is accelerated economic development. Transparent land registration systems pave way for prosperity. In the Western countries for instance, it would be unthinkable to imagine a State without property rights as a basic driver for development and economic prosperity [FIG 2014: 62]. Secure land tenure attracts investments and more so following World Bank's reports and rankings on ease of doing business.

In summary then there can broadly be categorized into two:

(a) Benefits to the individual:

- Security of tenure,
- Guarantee of ownership (title),
- Facilitates access to mortgages/loans,
- Land becomes a tradable commodity,
- Easy conveyancing and a fast land market, and
- Awakens dormant capital in land.

(b) Benefits to the Government:

- Facilitates taxation,
- Creates a land record (land data),
- Facilitates physical/city/urban and general planning,
- Facilitates land control,
- Protects State lands,
- Facilitates environmental conservation, and
- Improves economic growth.

And all the above are benefits of land registration to the society at large.

## **2.8 A Review of Selected Land Registration Systems Internationally**

At a later stage this research has carried out case studies in various countries and institutes that have or are in the process of modernizing their processes. At this point however, this study pays special attention to some land registration systems which have applied modernity to a good extent. To begin with, the study looks at the English system due to the fact that Kenya was colonized by Britain and thus our history is majorly informed by the British system. The Netherlands is second inline due to the steps the Dutch Kadaster has made towards modernizing its land registration processes. Finally at this stage is Rwanda; a developing neighbouring and sister State which Kenya could learn from.

### **2.8.1 Land Registration in England and Wales**

Traditionally under the English law the only way to transfer freehold land was by delivery of seisin. This denoted the transfer of land in public by the vendor to the purchaser. Seisin involved handing over a piece of turf in the presence of witnesses symbolizing and completing the act of transfer [Mayer and Pemberton 2000: 4]. King William I compiled the earliest land record in England in 1086 AD whose record was known as the Domesday book. The Domesday Book was a record of information collected for levying of taxes and was remarkable for its time, but did not have a map. The Domesday book was unique and was never renewed or maintained.

Under the English legal system only the Monarch could own land, and a private person could only be a tenant. This was in line with the rule *nulle terre sans seigneur* (*No land without lord*) as imposed in the Kingdom by William the Conqueror [Dowson and Sheppard 1956: 5]. This is, however, subject to changes in the current laws and administrative actions. Traces of this rule are likely to continue for the next generations especially considering that there is still no absolute proprietorship. There are only freehold estates with the largest estate of land holding in England being *feesimple*.

First attempts at a land registry were in selected counties in the 17<sup>th</sup> century and did so vide establishment of deed systems. This was quite costly and tedious as quoted from

the words of William Leach in 1651 “*there hath been many courts, and divers offices.... to search in; and very many records, books and remembrances, or rolls to turn over, view or read for every of the four terms of the year; and in some of such courts such ... encumbrances have been intermixed with others in such manner, as they have been very difficult to be found....*” [Mayer and Pemberton 2000: 4].

In 1854, the Merchant Shipping Act was enacted for registration of titles for ship and that gave rise to more agitation for title to land registration. A title land registration was, thereafter, introduced in England and Wales in 1862 following the enactment of the Land Registry Act which established “*Her/His Majesty’s Land Registry*” (HMLR). This law was not very successful owing to the fact that land registration was voluntary and it applied expensive, too accurate boundary demarcation and title examination exercise. It was remedied in 1875 wide introduction of general boundaries and compulsory registration upon sale of land in 1899 [Manthorpe 2004: 19].

The Land Registration Act (LRA) of 1925 laid the basis of the present day land registry of England and Wales. It introduced the office of the chief land registrar (CLR) and the concept of title registration with guarantee of title better referred to as the insurance principle. This legislation was according to Manthorpe fundamentally reviewed in 2002 by the LRA 2002 which facilitates conveyancing in the computer era. This is provided for under part 8 of the Act, sections 91 – 95. The strong public demand for electronic conveyancing contributed to the swift passage of this legislation in Parliament on February the 26<sup>th</sup> 2002 and its coming into force on October the 13<sup>th</sup> of the same year [Wu 2012: 77].

All sales and other changes of ownership of land in England and Wales are registered compulsorily under this law. The professed and fundamental objective of the Act of 2002 is to render the register a 'complete and accurate reflection of the state of the title to land at any given time, so that it is possible to investigate title online, with the absolute minimum of additional enquiries and inspections [Vozarikova 2010: 27].

The structure of the land registry in England and Wales is anchored upon the LRA of 2002, and it became a trading fund in 1993 regulated by the Government Trading

Funds Act of 1973 converting it to a business-like organization without diminishing its statutory role. The land registry is also a self-financing agency and delivers services to the public and public agency of the Ministry for Constitutional affairs. This Act allows the Government to set up trading funds to provide certain services which are provided by the Crown, but which have a commercial element. Thus the land registry must finance all its operating costs through its revenue.

The land registry has its headquarters in London with 24 regional offices spread throughout England and Wales in the year 2004 [Manthorpe 2004: 22]. It comprises the registration of title department which deals with the land registry's main business, and the land charges and agricultural credits departments. Since 1 April 2008, the land registry operates through 21 offices and 2 sub-offices. The chief land registrar is the head of the department, full accounting officer, and chief executive of the executive agency [Vozarikova 2010: 65]. Currently there is a debate to privatize land registration services in England and have the office of the chief land registrar only dealing with matters of policy [BIS 2014: 7].

From the time of its inception up until 1974 Her Majesty's Land Registry procedures were wholly manual. Interestingly, modernization began by telephone searches in 1974. Those seeking to establish property status could do it on the phone. Efforts began in earnest in 1986 and currently all the twenty million plus land titles are computerized and available online [Manthorpe 2004: 24]. The direct online searches and tele-searches have revolutionarily transformed access to land information.

The main objectives of HMLR are to maintain and develop a stable and effective land registration system throughout England and Wales by: creating free movement of interests in land, to offer guarantee of title on registered property, to provide ready access to this information, and guaranteed land information enabling confident dealings in land. Owing to the guarantee aspect anyone who suffers loss due to land registration is subject to being indemnified even if such loss did not arise out of mistake by the land registry. This is because the CLR acts as the title insurer. The law then allows the registry to recover costs from the guilty parties [Manthorpe 2004: 21]. These (indemnity) payments take into account the extent to which the beneficiary contributed to their loss and/or their carelessness.

The strength of the system is the principle of insurance backed by indemnity anchored in law, and this provides confidence upon which the property market depends. The land registry has established an indemnity fund from which these payments are made. The services offered by the registry can broadly be categorized into two: firstly the registration of transactions touching on land and secondly, searches and information enquiries. In 2009 about 69.4% of all land in England and Wales was titled totaling to over twenty two million parcels. To register the remaining land, progressive digitalization and modernization may hold the answer among other strategies [Vozarikova 2010: 53]. Currently there are 24.1 million registered parcels in England and Wales covering about 86% of the land [Bean et al 2016: 59<sup>n</sup>].

Important aspects of the LRA 2002, in addition to the electronic conveyancing, include empowering the land registrar to set up a “Land Registry Network” which in essence is an electronic communication network for registration or execution of electronic property transactions. This network could go beyond the legal aspect of the transaction and cover the whole transaction from the time when a property is put on sale. In other words, the network could not only provide information to the interested parties and the registrar, but also be used to prepare, communicate, and register the title by the parties and the registrar [Wu 2012: 78].

The Act also authorized the registry to provide training and education in relation to the use of its network. The law envisaged the future adoption of supplementary rules for the communication of electronic documents, signatures to the registry, and the electronic storage of such property documents. The Acts developed a concept called “*Do-It-Yourself Conveyancing*.” This meant that after the land registry network went into effect the registrar could assist persons wishing to use the network to conduct electronic conveyancing transactions on their own.

The statute also made it possible for the land registry to develop an “integrated e-conveyancing and payments system” that enabled the simultaneous execution of all payments upon completion of an electronic conveyancing transaction. These include such government charges as stamp duty, land tax, and land registration fees. The registry could, if necessary, be partnered with a private company to form a collaborative venture [Wu 2012: 80].

## 2.8.2 Land Registration in the Netherlands

The Netherlands is a country located in Western Europe bordering the North Sea between Belgium and Germany. It is located at the delta of three major European rivers (Rhine, Maas, Schelde). The area of its landmass is 33.883 km<sup>2</sup> and that of water 7.643 km<sup>2</sup> [Wakker, Molen & Lemmen 2000: 1].

Recording of deeds dealing with land as well as a cadastre for property tax were introduced in the Netherlands during the French annexation in the early 19th century. Particularly, it was in 1810 that the introduction of a fiscal cadastre came to existence after the mentioned annexation of the Kingdom of the Netherlands by France [Kolkman, Verstappen & Vonck 2011: 8]. The cadaster gradually became a key public register and more so in 1838 when a new Civil Code was enforced. It ordered the inclusion of the cadastral land parcel number in notarial deeds of transfer and deeds of mortgage. Thus, the fiscal cadastre also became a juridical or legal cadastre, a situation which is still of benefit to date [Wakker, Molen & Lemmen 2000: 2].

The Dutch legal system seems most similar to that of the French. In the Netherlands the land registers with copies of deeds are merged with the cadastre within the organization known as the (Dutch) Kadaster. Parcel numbers and personal details of the titleholders in the land registers are registered in '*Basisregistratie Kadaster*' (translating to Cadastre maps and registration) that serves as search entries for the land register [Vos 2010: 1].

The Cadastre Organization Act provides for the regulation of the Cadastre and the Land Registry Agency, which is since 1994 an independent public body reporting to the Minister in charge of lands (currently Minister of Infrastructure and Environment) [Torhonen et al 2015: 1]. Unlike many other countries, the land registration and the cadastre are combined in one organization something which is advantageous to the system user [Wakker, Molen & Lemmen 2000: 2].

The Kadaster is established as a legal public entity managed by an executive board and governed by a supervisory board (of 3 – 5 members) reporting to the Minister in charge. The Minister appoints the supervisory board and the executive board and



approves a 5-year long-range policy plan, annual accounts, and cadastre tariffs prepared by the executive board and proposed for approval by the supervisory board. The Minister also receives advice from users' council which comprises of 20 stakeholders from the following groups: notaries, real estate intermediaries, several ministries' appointees, provinces, municipalities, earth moving companies, water board and property administrators, and owners [Torhonen et al 2015: 1].

The Kadaster sells land registration information, and other services at a fee which is based on the cost of production. It is, however, a non-profit and performs several budget-funded functions, such as topographic mapping and investments to e-government [Torhonen et al 2015: 2].

The Kadaster deals with the registration of land. Its competences are summed up in article 3 Cadastre Law and include

- a) Keeping of the public registers of registered goods,
- b) Keeping and maintaining the land registration,
- c) The production, keeping and maintaining of the cadastral maps and the underlying documentation,
- d) Giving out of the information the Agency has acquired during the execution of its competences [Kolkman, Verstappen & Vonck 2011: 49].

The Kadaster is a non-political institution, separated from the central government. The Kadaster only has to carry out its tasks on land registration, mapping, and providing information from the land registry to the Government and the people [Kolkman, Verstappen & Vonck 2011: 49].

Vos [2010: 1] explains that in the Netherlands' deed system the transfer deed or conveyances are recorded in land registers under unique document identification. Because the land registers are public everyone can access them through consultation and see who has what rights. By using the unique document identification the deed of conveyance can be found quite easily. In most cases only the most recent or current deed is investigated. This is because a third person in good faith may trust the validity of the last agreement. In fact, the validity of the last agreement is examined by a civil law notary who prepares a new deed of conveyance.

The registrar checks the deed for registration requirements but does not guarantee title, as in countries with a title system (in practice however, the protection offered by the Civil Code for third persons acting in good faith). The investigation and collaboration between the registrar and notary is in fact more or less the same as in a title system and this explains why lawsuits on ownerships are very rare.

In addition to the maintenance of the land register, the registrar is also responsible for the registration of *assumed* entitled persons. Originally the cadastre registration was only for documenting taxpayers, but through the years the cadastre registration expanded and acquired a meaning which goes further than just that of a tax payer. In fact a deed of transfer is recorded if it is made by the title-holder as listed in the registry. If the transfer request is made by someone else than the title-holder the notary has to state the reason why this other person is making the transfer. In most such cases the titleholder is deceased and it will be the administrators of the estate who makes subsequent requests.

Drafting of the deed is done by notaries whose role extends to other matters such as to investigate the identities and rights of the parties, and any claimed acquisition and restrictions by public law, such as the obligation to clean contaminated soil. He or she should set down the results of these investigations in the deed together with prescribed texts. The notary fulfills a clearinghouse function when the transfer of money is involved. The buyer and mortgage bank deposit their money in the account of the notary. Once the notary is certain that the registrar has received his deed of transfer, and that the registrar did not receive (or register) any other documents on a previous occasion in relation to that same property he transfers the purchase price to the vendor.

Next to the collaboration between registrars and notaries, the registrar has been assigned a supervisory role in respect to the notaries. He verifies whether the notary has included the prescribed declarations as required by law and checks if all formal requirements are met. If this is not included, the registrar will not accept the deed or stipulates that the notary has to rectify his deed. Generally though, the registrars and the notaries do respect each other's responsibilities.

### 2.8.3 Introduction to Digital Land Registration

The digitalization of the Dutch land registration was introduced in different phases. The first step was the introduction of a computerized system for the cadastre registration in the 1980s. This automated registration forms and the land register could be consulted on-line by professional users. For non-professional users, consulting the system was also possible but with fewer search options.

All new deeds were recorded in the land register instantly and included in the cadastre registration as soon as possible, so that the deeds were traceable for everyone to see. A total of 382,000 deeds of transfer and 332,000 mortgage deeds and deeds of cancellation of mortgage rights were recorded in 2009. In contrast to the years before the financial crisis, the average number of deeds was much higher. Indeed, an average of 480.000 deeds of transfer and a total of 700.000 mortgage deeds and deeds of cancellation of mortgage rights were recorded each year between 2004 and 2008 [Vos 2010: 3]. The year 2015 saw a total of 403,200 mortgage deeds and 340,300 deeds of transfers registered [DK staff 403]<sup>3</sup>.

Next to the examination of a specific object or subject there are other possibilities. On demand, the history of an object or a subject is electronically available, a very pleasing possibility in case of fraud investigations by law enforcement agencies. The computerized system can also display all mortgage rights per mortgage bank. This system is extremely convenient in cases of the bankruptcy and merger of mortgage banks.

Vos [2010] sequentially enumerates the steps that followed and the second step was the computerization of the land register in 1999. From that year forward, all paper documents were scanned upon receipt. That way, the deeds could easily be processed via computer by Kadaster employees. The paper documents received before 1999 had previously been transferred to microfilm. On request, these deeds were transferred from microfilm to a digital format using reader scanners. Recently all paper documents have been scanned and are digitally stored, so the scanning on demand is no longer relevant. This means that the notary who requests for a deed can examine

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<sup>3</sup> This kind of reference refers to the resource persons met during the case studies - see chapter 5

the electronic documents within seconds.

Step three was the electronic recording that started in 2005. The aim of electronic recording was to simplify work procedures and to accelerate legal matters. Electronic documents do not require any scanning and notaries no longer needed to obtain documents from the service desk of the Kadaster office, nor did they need to send documents by post or courier.

The underlying principle was that the same degree of legal certainty, as in cases of paper recordings, existed. This means that electronic copies and extracts must be delivered together with a qualified electronic signature and that this electronic signature has the same evidential value as a handwritten signature. Furthermore the text in the deeds must be as comprehensive as the paper deeds. To promote electronic delivery of applications to the Kadaster application fee on manual deeds was raised by 20% [Vos 2010:5].

At present 98 % of all documents are recorded electronically. Operational standards have improved considerably and registration is completed more quickly than before. This is also due to the fact that Dutch Kadaster started to use a workflow management system to distribute work, enabling deeds to be directed to whichever regional branch has the most available personnel. Furthermore, there are no longer any regional registers. The result of this improvement is that one can easily find out what rights a specific person has in the whole of the Netherlands instead of doing the same research in each regional register.

The advantages of the system at the Dutch Kadaster are improved productivity from both the registry as well as the civil notaries. It has also improved the legal certainty of the land ownership and status of land in the Netherlands notwithstanding that theirs is a deed registration system. It is thus beneficial to all users especially the registrar and the notary. Indeed the notary can pull data from the system directly and may not have to retype content of their conveyances. In turn, this reduces their workload, and hopefully research time, and clerical errors. This would then mean that the citizen might benefit from reduced legal fees [Vos 2010: 7].

## 2.8.4 Land Registration in Rwanda

Rwanda is a small land-locked country in the greater East African region with a population of approximately 10.5 million (NISR, 2012). It has one of the highest population densities in Africa, averaging 416 persons per square kilometre covering 26,338 square kilometres in total. Rwanda has a large and steadily growing population, with 2.8% population growth recorded in 2013. About 90% of the population works on land from which they earn their livelihood. Rwanda has a hilly terrain coupled with dense population it faces problems related to scarcity of land, increasing fragmentation, and environmental management [Muvura 2014: 9].

By the late 1990s, the Government of Rwanda (GoR) recognized land as a critical issue in the country's long-term development. The GoR's Vision 2020 envisioned in the year 2000 and the 2002's Poverty Reduction Strategy Paper (PRSP) listed land as a priority. The Constitution of Rwanda passed in 2003 states '*every person has the right to private property*' at article 29. The National Land Policy and the Law Governing Land in Rwanda (LGLR) were consequently adopted in 2004 and 2013 respectively. The LGLR outlined new procedures for land tenure, titling, registering, administering land, and land titles [Gillingham and Buckle 2014: 1].

The implementation of these laws and GoR's policies pertaining to land saw the implementation of 'Land Tenure Regularization Support Program' (LTRSP), which ran from February 2007 - August 2012 comprising two primary objectives. Firstly, to ensure that all rightful landholders in Rwanda acquired legally valid land title documents so as to minimize disputes in land. This required surveying all land parcels in Rwanda and providing land titles to all rightful claimants nationwide. Approximately 10 million parcels were registered through a low-cost, community-based land tenure regularization (LTR) process over five years [Gillingham and Buckle 2014: 3].

Secondly, closely linked to the titling process, was the establishment of a strong land administration system through proper recruitment of staff, training, and equipping the 30 district lands offices. The GoR put into use innovative communication strategies to ensure that the public was made aware of the new program, which proved

effective. The methods were used to appropriately target and communicate to different audiences in different areas; this included GoR, land administration staff, district offices, and urban and rural populations. The youth, vulnerable groups, women, orphans, and widows were also put into consideration.

Traditional and contemporary methods of mass media (television, press, internet and radio), posters, flyers, and booklets were used, but in order to reach the most marginalized groups greater innovation was needed. Here the program recorded songs, performed plays, and dances to illustrate the LTR process. The program also established a 'helpline' to assist with any queries that claimants might have had. Based on this experience a poster of 'frequently asked questions' (FAQs) was produced in the Kinyarwanda language, it was to be displayed at every cell office [Gillingham and Buckle 2014: 5].

This blend of traditional and innovative communication proved very effective in disseminating information. By 2012 the vast majority of people in Rwanda had a good awareness of LTR and knew about the process from a range of different sources. The provision of equality of land rights in the 2004 National Land Policy and 2013 LGLR amongst daughters and sons meant several things. Equality was, henceforth, applied in inheritance of property belonging to parents and there was protection of women's property rights under legally registered marriages subject to the provisions of family law. Both women and men were thereafter required to provide consent in all cases of sale, mortgage or exchange of matrimonial property by any of the partners.

Gender disaggregated LTR figures from 2012 showed that 81% of land in Rwanda was owned jointly by men and women, 11% owned by women, and only 6% by men [Gillingham and Buckle 2014: 6]. Various reviews and studies of gender in the LTR process in Rwanda have generally attributed the registration of women's land rights to the positive steps taken under the LTRSP to implement gender equality policy objectives.

Further improvements in terms of systems, is that Rwanda is currently developing land information infrastructures, including a national geodetic network and the

national geo-database. Though there are national institutions at the Central Government level in charge of the overall land management there are decentralized land management institutions at the districts' level. This is in line with the spirit of National Land Policy [Muvara 2014: 10]. Muvara briefly describes the institutional arrangement of land management of Rwanda as hereunder:

**The Ministry of Natural Resources** is tasked with the primary role of preparing land management laws, policy, and ensures their monitoring and evaluation. In terms of day-to-day land management, the Ministry gives policy guidelines to decentralized entities (Districts and the City of Kigali) through Rwanda Natural Resources Authority or the Office of the Registrar of Land Titles. The Ministry has the mandate for resource mobilization and to ensure the linkage between land management with other natural resources especially the protection of environment.

**Rwanda Land Management & Use Authority (RLMUA)** was established in 2017 and through its department of lands and mapping; RLMUA is the key institution in charge of implementation of the land policy. It is vested with the mandate to carry out land registration, keep the land register, national land use planning, surveying and mapping hence the general management of all lands in Rwanda.

**The Office of the Registrar of Land Titles** is an office created within RLMUA (previously Rwanda Natural Resources authority (RNRA)) and established by a Presidential Order in 2006. It has the responsibility for issuance of land titles (leaseholds or freeholds) and to process all transactions related to land. It is headed by the registrar who is supported by five deputy zonal registrars covering each of the four provinces of Rwanda and Kigali City. This is the office that issues instructions to the district land offices and coordinates all work related to land registration and maintenance of the land register.

**District Land Bureaus (DLB)** offices are found at the district level with responsibilities of land use planning and land administration. Their responsibilities and functioning were established vide a Ministerial Order in the year 2006. They are the holders of public authority in matters related to land and perform tasks related to

the approvals of cadastral plan, receive, and process transactions related to land and convey them to the office of registrar of land titles for approval.

The **One Stop Center (OSC)** is a new concept of putting service related units at the district level and the city of Kigali together in order to improve the quality of service delivery in local governments. These centers combine the land bureau, housing bureau, infrastructure bureau, and environment bureau for better and timely delivery of services related to housing, land management, infrastructure, and environment.

The **Mediators (Abunzi)** are an important institution in Rwanda's land administration even though they are not a land management body per se. They play a key role in the resolution of land conflicts especially those involving boundary disputes and intra-family conflicts.

By way of conclusion, land registration in Rwanda is compulsory for every person who claims to own, have an interest in, right to use, or occupy any piece of land. Every individual should be personally responsible for ensuring that his or her rights are protected. For example, if a man and woman are legally married and own land together both the husband and wife should take individual care to ensure that they are both registered against the land.

Where vulnerable members of the community are concerned: poor, widowed, orphaned, elderly, illiterate, etc., other community members should assist in ensuring that their rights to land are also registered and protected.

## **2.9 The Future of Land Registration**

Land registration in the future will be carried out through modern technology. It will be more transparent and adhering to sustainable management of land as a limited resource. Indeed all States are encouraged to create and promote the use of open, user-friendly, and participatory data platforms that make use of up to date technological and social tools in their day-to-day activities. This is a call to employ e-governance in the management of geospatial information [UN 2016: Art. 21].



### **2.9.1 Cadastre 2014**

Cadastre 2014 was a study undertaken between 1994 and 1998 by FIG Commission7 which published its findings in 1998. The mission was to develop vision statements for improving land administration for 20 years of the future beginning in the year 1994 [Stuedler 2004: 36]. Its mission is still quite relevant (though it came to an end in 2014) because most of its recommendations have not been fully implemented, and thus its relevance to this study [FIG 2014: 54], [Kuria et al 2016: 3]. Most emerging economies (Kenya included) continue to use manual approaches in land administration while Cadastre 2014 discussions have moved towards modeling and computerization.

Another reason why Cadastre 2014 guidelines are relevant is that land registration is a part of land administration. Even if that was not the case Cadastre, changes in land registration are inevitable because cadastre feeds into land registration and land registration relies on data that is collected and analyzed at the cadastre level. According to Stuedler, Cadastre 2014 can be summed up into six statements as hereunder;

- (a) The cadastre of the future will show the complete legal situation on land including public rights and responsibilities,
- (b) Separation between maps and registers will be abolished,
- (c) Cadastral mapping will be dead,
- (d) Paper and pencil cadastre will have gone digital and technology will be a prerequisite for efficient and adequate services,
- (e) Cadastre 2014 will be highly practiced, with public and private sectors highly working together, and
- (f) Cadastre 2014 will be cost recovering.

### **2.9.2 E-Governance**

Land registration in Africa and globally is increasingly being informed by e-governance, a concept that is being embraced all over the world. E-governance is the use of information and communication technologies to facilitate the processes of government and public administration [Stuedler 2004: 32]. Stuedler further explains that among other things it includes automation of government systems, online

delivery of services with reduction of costs, increased efficiency fostering new levels of democracy, and citizen participation in governance. E-governance grows through the following four stages:

Stage one is where government departments post information about themselves and what they offer to the citizenry. This is a “one way” communication.

Stage two allows a two way communication and the customers can query the government and also send their information to the government online.

Stage three is quite advanced and there is actual processing of applications, licensing, and even paying for services online. At this stage there is a real challenge to the traditional working practices with use of sophisticated software that guides applicants through the processes.

At stage four there is a portal that integrates the complete range of government services. A single log-on password allows users to get in touch with any part of government. Government is no longer compartmentalized allowing all departments and users to rely on system’s interoperability [Stuedler 2004: 33].

### **2.9.3 Cadastre 2034**

Cadastre 2034 is the successor to Cadastre 2014 after its expiry in the year 2014. It is a document with visions and principles meant to guide land administration with a focus on cadastre for the next 20 years starting from the year 2014. The recommendations are just that; and, they are not meant to be binding on any government or organization, but they are rather persuasive.

A nexus to land registration and cadastre is to be found in its statement that “*stable and reliable property rights system are sustained through the cadastral system which comprises several mechanisms to ensure that all land and real property can be easily uniquely and accurately identified in a common reference system.*”

## 2.9.4 The Following are The Goals and Objectives of Cadastre 2034

- (a) Goal No. 1 is to create a cadastre that is fundamental to land ownership and managed sustainably. The objective here is to retain the integral effectiveness and efficiency through presentation of the information resource for future generations. This is to be achieved through full automation and paperless processes devoid of duplication [ICSM 2013: 14].
- (b) Goal No. 2 is to provide a cadastre that is multipurpose, accessible, easily visualized, and readily understood and used [ICSM 2014: 16].
- (c) Goal No. 3 is a cadastre that is broad and integrated with legal and social interests on land. All *de facto* and *de jure* rights and interests in land to be disclosed so as to enable people make wise decisions. This will lead to increased consumer confidence and trust upon land registration [ICSM 2013: 18].
- (d) Goal No. 4 is provision of and presentation of cadastre that is 3D, dynamic, and survey accurate (mathematically coordinated boundaries). This can be achieved through modernizing the digital representation to incorporate survey, accuracy, time series, and height data to capture the complexity of our environment [ICSM 2014: 20].

This will involve development of tools and legislative frameworks to manage transfer and register 3D and 4D property data. Cadastre 2034 realizes that in the last 20 years, the world has witnessed significant growth in the number of tunnels, underground parking, shopping malls, aboveground rail and road networks, multi-storey apartments, and roof top gardens. All these have one thing in common which is that their ownership is difficult to register in a 2D (land registration and) cadaster. There is therefore the need to develop both 3D and 4D land administration/registration systems [ICSM 2015: 17].

- (e) Goal No. 5 is to have a federated cadastre based on common standard whose objective will be to operate in the national interests and equip society with

broader land and real property models to deal with local cross-jurisdictional and global challenges [ICSM 2014: 22].

### 2.9.5 Other Trends that call for reengineered land registration

According to Steudler [2004: 84] there are aspects of life in the modern world that generally affect administration of land. These include: holistic approach to land issues, inclusions of all rights restrictions and responsibilities, good governance and civic participation, e-governance, data integration and data interoperability, importance of spatial data component, and sustainable development.

The following table is a summary of what may be considered best practice in land registration and this study will gauge the land registration system in Kenya against the aspects enumerated.

Expected Elements		Remarks
1	Principles	<ul style="list-style-type: none"> <li>• Mirror</li> <li>• Curtain</li> <li>• Assurance</li> <li>• Booking</li> <li>• Publicity</li> <li>• Specialty</li> <li>• Consent</li> </ul> <p>These elements mostly apply to title registration systems but most writers view them as best practice.</p>
2	Features	<ul style="list-style-type: none"> <li>• Clarity</li> <li>• Security</li> <li>• Accessibility</li> <li>• Correctness</li> <li>• Simplicity</li> </ul> <p>These features are hailed by most writers as ideal for any system of land registration. They are all equally important</p>

		<ul style="list-style-type: none"> <li>• Completeness of record</li> <li>• Legal security</li> <li>• Accuracy</li> <li>• Expeditious</li> <li>• Understandability</li> <li>• Cheapness</li> <li>• Suitability to circumstances</li> <li>• Fairness</li> </ul>	
3	Statutes	<ul style="list-style-type: none"> <li>• Applicable</li> <li>• Suitability to circumstances</li> <li>• Understandable</li> <li>• Adaptable</li> <li>• Flexible</li> </ul>	Kenya has for a long time been governed by very many land Statutes and apparently this did not work well. There is currently a new law.
4	Institutions	<ul style="list-style-type: none"> <li>• Anchored in law</li> <li>• Transparent operations</li> <li>• Established appeal mechanism</li> <li>• Customer oriented</li> <li>• Embraces e-governance &amp; modern IT</li> </ul>	
5	Personnel	<ul style="list-style-type: none"> <li>• Knowledgeable</li> <li>• Skilled</li> </ul>	

		<ul style="list-style-type: none"> <li>• Professionalized</li> <li>• Ethical (of integrity)</li> <li>• Experienced</li> <li>• People friendly</li> </ul>	
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Table 2.1: Summary of the Expected Elements of a Modern Land Registration System (own analysis)

## 2.10 Benefits of a Modernized/Automated Land Registration Services

Louwman and Vos [2012: 24] writing from their experiences enumerated the benefits of automation in land information services. To begin with, they assert that **processing of documents is relatively simple** which **improves both productivity and legal certainty**. Regional registers are abolished and in its place is established a single, more trusted, national land register. The benefits being that there is a lesser need for office space and, certainly, **no need to build many regional offices**. The Government inevitably saves money which then can be used for other purposes.

Automation leads to **clean data sets** [UN 2005: 94] and, therefore, improvement in the legal certainty, which is also beneficial to the notaries and potential land buyers. Notaries, real estate brokers, bailiffs, and other professional **users can pull data** from the Kadaster website automatically. There is no need to retype the data when creating new ownership deeds. Eventually there are a few or no clerical errors on the deeds, thereby cutting costs at the notary offices and the **legal fees payable**. The system also results in a decrease in the research work the notaries and other professionals may need to put in because their computers are basically the lands information front office.

There are advantages to citizens because if the notary spends less time on a file, he or she can give a reduction in legal fee since applications are by way of electronic transmissions. The purchase price or mortgage funds are transferred faster and this results in **general economic simulation**. There is a forty percent (40%) reduction on legal fees when the deed is sent electronically [Louwman & Vos 2012: 24].

An automated land registration system **offers the public all information** concerning land. It is very easy to consult the information in the land register. The system is able to handle huge volumes of land transactions and fast. Within one day after signing the notarial deed of transfer, or shortly thereafter, the purchaser becomes owner and the seller gets their money. **Disputes concerning** land transactions emanating are relatively few. The system is **safe and trustworthy** thanks to the quality of the work put in by both the notaries and the Kadaster. The information is also **available for numerous public services** including national statistics, environmental management, planning policy, and taxation. Thus, the country benefits variously from a well-functioning land registry [Kolkman, Verstappen & Vonck 2011: 9].

Where land data is kept manually, there are administrative restrictions in terms of time and some degree of public restriction of access to the offices. Digitalized data processing creates **improved access** to data by providing more convenient times and means through which to examine the registers. This provides a variety of ways to view and download the information, including the provision of 24-hour services all year round [UN 2005: 95].

The use of a digitalized system for land information: forces and **creates standardization** in the collection and processing of land information, speeds up the processes of first registration, **decreases the cost and space required for storing** land records, reduces unnecessary duplication, simplifies the preparation of copies of registers, improves access to land-related data, improves data distribution, reduces the time and cost involved in transferring property rights and in processing mortgages, **facilitates the monitoring and analysis of market and rental values** of land and property, and provides **built-in mechanisms for quality control** [UN 2005: 91].

*The use of IT as a catalyst and enabler of organizational process – “has effectively reinvented itself from an inflexible, slow, labour intensive service to an efficient, speedy and **customer centric one**” and has built confidence in the concept of e-conveyancing amongst stakeholders [ELRA 2011: 51]. ‘The key organizational benefits achieved include increased efficiencies, productivity gains and **reputational benefits for the entire organization**’ [ELRA 2011: 49].*

Most importantly the computerization (digitalization) of land administration data and procedures has brought about changes in processes and legislation. For example, the transfer of land rights by electronic means, the acceptance of electronic signatures attached to legal documents, and legal protection of data [UN 2005: 92].

Computerization (digitalization) also enables restrictions or negative land rights, which ordinarily may not appear on title documents, to be seen or included in the electronic register. Some countries have now included public right restrictions and responsibilities within the land administration system, in addition to the ownership and other private rights [UN 2005: 51]. It also facilitates the **monitoring of land sales** throughout a region over a particular period of time to **detect land speculation** or to identify social or economic changes that are reflected in the land market trends [UN 2005: 48].

Creation of data on land is no guarantee to better tenure in informal settlements, urban sprawl, slums, or gender discrimination in land tenure, inheritance, and property rights. It could, however, be a first step in analyzing the issues and actions required to remedy such situations [UN HABITAT 2012: 14].

Automation also brings with it increased use of the World Wide Web and mobile technology, including email and social media to ease the handling of land information. These technologies have enabled **improved transaction processing** and quick service delivery and made it possible to develop and use file and document tracking techniques. They have facilitated rapid access to information. [UN HABITAT 2013: 79]

Improved flow of land information has enabled information to be communicated more easily, allowing stakeholders to rapidly and **transparently** undertake land related business. Both central (national) and regional information can be accessed at the local level provided the necessary infrastructure is in place and training provided to officials and end users. Where this is the case, local offices at the village or suburb level can extract information easily when required [UN HABITAT 2013: 79].

Automation also enhances efficiency, transparency, and **reduces corruption**



opportunities. Where the processes and procedures are digitalized and a **file tracking** system is developed the **tracing of a registration of transaction** in the registry is open to scrutiny. The administrative officers dealing with a particular case may not hold onto files. Instead, the tracking system records what cases are currently being investigated and when there is a substantial delay, warning messages are sent through the system. Members of staff at the registry cannot engage in corrupt behaviors, such as expecting payment from a customer in order to expedite a case, as the digital system regularizes the management process [UN HABITAT 2013: 79].

Information technology also **increases public engagement and public confidence** in the systems. It improves engagement with clientele as people are more likely to offer information about themselves, including the documents that governments may require to improve land data bases [UN HABITAT 2013: 79].

Computerization (digitalization) has also forced managers to re-examine their procedures and **drop the routine non-value adding** activities. A further advantage is that it **permits better monitoring** of the organization's performance [UN 1990: 52].

The e-database is not **prone to physical destruction, such as** fires, earthquakes, or theft. Even where servers are destroyed the data is safely and securely stored in various undisclosed sites and in virtual (non-physical) formats, if there are backup systems in place.

According to the United Nations 'Guidelines For the Improvement of Land Registration and Land Information Systems in Developing Countries', the main objectives of computerization (digitalization) have been to:

- (a) Reduce duplication in the storage of information,
- (b) Reduce the need for notification routines,
- (c) Improve the collection of ground rent,
- (d) Cater for the expected increase in registration of titles and mortgages,
- (e) Replace registers that were physically damaged and required to be re-written,
- (f) Facilitate the compilation of information and reports that were impossible or very cumbersome to produce using manual systems [UN 1990: 26].

## 2.11 Disadvantages of Automation

Many professionals believe that technology is the answer to institutional challenges. Technology does not on itself improve institutional arrangements, procedures, system deficiencies, and lack of knowledge by staff. In fact, if technology is introduced without the necessary supporting measures, it **may breed new challenges** [UN 1990: 52].

The process of conversion of data into computer-readable form is **expensive** and a **time-consuming** task. It accounts for up to three quarters of all the costs required to migrate services to the automated platforms. The quality of the data may also be unreliable or obsolete and their conversion into digital form does not necessarily bring improvements. The introduction of digital system is, however, more than just a technology issue because it introduces changes in the skills and responsibilities, which **may require complete reorganization** [UN 2005: 92]. This **could result in staff resisting** change, if not well prepared for it.

Certain legal, organizational, and financial limitations may inhibit digitalization or there may be technical impediments, for instance the lack of a high-speed digital network. These may necessitate the development of the system in phases in order to achieve the defined objectives [UN 2005: 93]. Although access to large quantities of data could allow different forms of data evaluation or analysis, land administration authorities normally restrict the amount of data that can be downloaded at any one time for reasons of **privacy and copyright** [UN 2005: 95].

The electronic systems are also prone to abuse and **attack by Internet hackers** and other e-crimes perpetrators. The bright side is that protection software can be installed to protect the system from these threats. There are built-in mechanisms to detect any attempts to alter the information and action is taken to rectify any unauthorized changes.

The benefits of automating the land information system and its services greatly outweigh the potential drawbacks. That is why this research moves forth to propose a conceptual framework for modernizing land registration systems.

## **2.12 Conceptual Framework**

The author takes cognizance of the existence of challenges in land registration system in Kenya. The main focus of this study therefore is to bridge the gap from the current system into a modern land registration system. The research visualizes a traditional system in place with the inadequacies of manual records, missing files, double registration, conflicts in ownership of land, political manipulation, inadequate funding, expensive and lengthy land registration processes as well as human resource inadequacies.

In order to get out of this perceived disorder, the research reckons application of a couple of key inputs. These include amendments to the law, application of modern information technologies, adequate funding, meaningful stakeholder involvement, and political support. This research hopes to eliminate that gap and create a bridge between the current complex manual land registration systems in Kenya into a simple 'modern' land registration system. This study demonstrates that with such a system in place land transactions, that today take months to register, can take just a few days, if not hours, to complete.

Key advantages of modernization include the standardization of the land information systems, the processes involved, prevention of unnecessary duplication, and provision of inbuilt mechanisms for quality control can only be achieved through a proper interpretation and implementation of the Land Registration Act No. 3 of 2012 (Laws of Kenya). A comprehensive enforcement of this law may call for enactment of further enabling statutes or supplementary legislation and adequate budgeting so as to acquire the necessary information technology infrastructure, both software and hardware.

This research has highlighted the gaps and made proposals (at a later stage in the research), to fill in the gaps in a manner that will eventually see Kenya's land registration system effectively modernized. These gaps include legal infrastructural gap, the technological gap, organizational gap, and financial as well as human resources gaps. Indeed the effective implementation of a working cadastre (including the land registry) is a complex operation involving the creation of a functional system

and relationships amongst several institutions [Larsson 2000: 132].

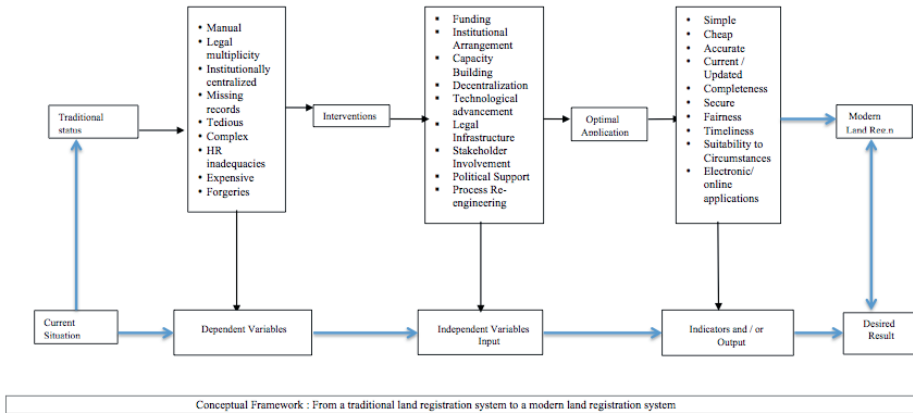


Diagram 2.4: Conceptual Framework

## 2.13 Conclusion

This chapter has detailed in depth the concept of land registration. It has defined land registration from its historical origins, developments, classifications, benefits, and further brought out the advantages of a modernized land registration system. It has clearly stated that land registration is a major pillar for economic development in many economies of the world and highlighted a number of countries that have made efforts to modernize their systems.

The study has in addition highlighted the features of a good land registration system. Cadastre 2014 and Cadastre 2034 have come out as important guidelines on the provision of recommendations for what is to be expected of contemporary and future land administration systems in general. The author finally reveals the study's conceptual framework and how the research conceptualizes the problem in a bid to create a roadmap to counter the challenges of a traditional land registration system.

## **CHAPTER THREE**

### **REVIEW OF THE LAND REGISTRATION SYSTEMS IN KENYA**

#### **3.1 Introduction**

In this chapter the author intends to create a clear and concise picture of the operative land registration systems in Kenya. This chapter will be three-dimensional in order to have a critical review of the system in the next chapter of the study. These will include a historical angle, legal and administrative elements, and finally enumerate the stages or steps and processes a conveyance goes through so as to be registered.

#### **3.2 Pre-colonial Historical Background**

In Kenya's pre-colonial period, land was owned communally by the various societies and no individual could claim private ownership [Onalo 1986: 34]. Land was considered very sacred and individual claim to land was unheard of [TI Kenya 2015: 2]. Like with rivers and other water bodies today, everyone who belonged to a certain community had rights of access to the community land. Depending on the agrarian activities of the community, one could either graze cattle anywhere or get a portion to till and collect fruits therefrom.

Land largely remained a community asset never subdivided amongst individual members or appropriated. The rights to till or work the farms were temporal and sustained so long as one occupied through cultivation, grazing, or for residential purposes. Onalo states that the nomadic communities moved from place to place season to season in search of water, pasture, and favourable climate.

There existed no standardized or systemic method of ascertaining people's or communities' interests in land. This would occasionally give rise to inter and intra communal battles over supremacy of rights in land. The stronger communities, clans, or societies occupied the better areas after the war.

#### **3.3 Protectorate and Colonial Eras**

Towards the end of the 19<sup>th</sup> century, the British were facing major political and economic challenges from other European powers. Stimulated by the industrial

revolution of the 18<sup>th</sup> century, Britain was the main supplier of manufactured goods and investment capital to several European countries [Okoth-Ogendo, 1991: 8]. However, soon these countries also developed their economic capacities and began to supply the same goods to the same markets. British entrepreneurs reacted by adjusting the nature and direction of their trade and capital flow towards newer and less vulnerable markets such as India, Australia, New Zealand, and East Africa among others.

Queen Victoria, in September 1888, granted a charter to the Bombay-based Imperial British East African Company (IBEACo) to operate and administer the East African Territory from the coast.

The main objectives of the IBEACo were to:(i) undertake the administration of East Africa's ten-mile coastal strip, (ii) acquire territory from the native chiefs in the British sphere of influence by treaty, purchase, or any other means, (iii) establish civil and judicial administration in the districts under the company's rule, (iv) levy taxes, customs, grant licenses, construct roads and public works, coin money, exercise all the rights pertaining to sovereignty over acquired districts, and undertake trading operations [Caukwell 1977 quoted at Wayumba 2014 Unp]. Within one year the company had concluded 21 treaties with native chiefs in East Africa's hinterland.

Apart from negotiating treaties with the local chiefs the company made some land grants and in 1894 published a set of land regulations (The East African Land Regulations 1894). This provided for county lots of renewable leases for a term not exceeding 21 years [Okoth-Ogendo 1991: 13]. Under this arrangement, grazing leases (of 20,000 acres each), agricultural leases (of 2000 acres), and homestead leases (each of 100 acres) were granted to the would-be settlers. The company however, soon became bankrupt due to lack of physical infrastructure and public administration system.

During the time of the IBEACo's activities in East Africa, and the declaration of the protectorate status through the early 1900s, there was no clear formal land registration in Kenya. The administration apparently depended on the provisions of the Indian Transfer of Property Act (ITPA) of 1882 to transact land business in the new

protectorate [Okoth-Ogendo 1991: 43]. This began with the 1897 East African Order in Council which imported the Indian Transfer of Property Act (ITPA). Since then, the ITPA has been the main source of substantive law on land matters in Kenya until the enactment of the Land Registration Act (LRA) and the Land Act, both enacted in 2012, which repealed it.

The colonial masters gradually instilled new ways of relating to land; initially adopting the tactics that Africans had in place, and used force to displace them. They pushed the indigenous Kenyans into African native reserves while reserving the more fertile and vast lands (known as the white highlands) for the white settlers. This creation of the white-highlands is what this study refers to as the ignition to the land registration in Kenya as we know it today. The settlers insisted to their authorities back in Britain to come up with a clear system of ascertaining their land rights in the colony [Okoth-Ogendo 1991:44].

1902 witnessed the enactment of the Registration of Documents Ordinance (now the Registration of Documents Act (RDA)). Subsequently, the Land Titles Act (LTA) was enacted in 1908 which was used to administer the ten-mile coastal strip in Kenya. This Act was repealed by the LRA number 3 of 2012.

In 1915 the Government Lands Act (GLA) was reenacted and, among the important aspects, allowed the colonial administration to declare almost all the land in Kenya “Crown Land” [Mburu 2011: 3]. It was, thus, only out of the magnanimity of the British Monarch that the King allocated land to whomever he wanted. This happened through the Protectorate’s Governor. The radical title, however, remained with the Monarch. All Kenyans were, in that regard, “tenants of the Crown” or tenants at will [Okoth-Ogendo 1991: 16], [Odote C., Kameri-Mbote 2016: 12].

In fact, through this law the colonial Government took most of the fertile highlands; thereby, further displacing thousands of indigenous Kenyans. 1920 saw the enactment of Registration of Titles Act (RTA) which is a title registration system to tighten the white settlers’ grip on their newly found and acquired land.

### **3.4 Post Colonial Era**

Kenya gained its independence from Britain in 1963 and in the same year the Registered Land Act (RLA) was enacted. This was the first land registration system that had the indigenous Kenyans in its spirit. Indeed it provided for very simple prescribed conveyancing instruments and procedures which were also cheap and decentralized or devolved to the local administration levels. The Sectional Properties Act (SPA) of 1987 was later enacted to facilitate registration of sectional units within a block of say offices, flats, apartments, and other units within a building.

These are the land registration systems that have mapped Kenya's history. On the one hand, it is communal from the pre-colonial times and on the other hand, the formal systems imported right from our colonial masters. Almost all these systems were coming as an improvement of the system that preceded each, however, conversion and reissuance of titles was not made mandatory. Thus, the existence of all the statutes regulating registration of land in Kenya operated simultaneously. It is significant to this study to note that all the systems relied on manual registers, which were paper based, and the enabling statutes did not envision or support digitalization.

Ojienda [2010: 267] observes that the Njonjo commission report (2002) recognized and recommended the need for new legislation concerning land and conveyancing. The report of the commission of inquiry into the illegal/irregular allocations of land of 2004, chaired by Paul Nderitu Ndung'u, prepared a list of illegally and irregularly allocated land. The Ndung'u report's list was quite detailed; including the then status of each property's owner, location, the public officers involved in the illegal allocation, and recommended creation of a Land Titles Tribunal. The commission held that there was no existence of an absolute title and if land was illegally acquired its title was invalid under the law [Ojienda 2010: 270]. This tribunal's mandate (which is yet to be constituted) was to oversee rectification or revocation of the titles of the lands listed in the 2004 report.

### **3.5 Current Status of Kenya's Land Registration**

In the year 2009, the Government adopted Sessional paper number 3 – The National Land Policy and in August 2010, the people of Kenya passed the Constitution of



Kenya 2010. Article 35 provides that “*every citizen has the right of access to information held by the State.....*” This is at chapter 4, of the Constitution which prescribes the Bill of Rights. In chapter 5, which is the chapter on Land and Environment, Article 68 of the Constitution provides that “*Parliament shall revise, consolidate and rationalize existing land laws.*”

Consequently, in May of the year 2012, three land statutes were enacted after much deliberation. These include the National Land Commission Act No. 5, The Land Act No. 6, and the Land Registration Act (LRA) No. 3. Key to this research is the LRA which is the primary statute that gives a road map and a single system for land registration. Among other things, this Act has consolidated land registration laws. It repealed all the prior land registration statutes with an exception to the RDA and the SPA, due to their peculiar characteristics described later in this chapter.

It is expected that after LRA’s full implementation Kenya will have one uniform title document and a single land registration system. Very significant to this study is section 9 which provides that “*the Registrar shall maintain the register and any document required to be kept under this Act in a secure, accessible and reliable format including ... Electronic files and an integrated land resource register.*”

The Statute (at section 10) further stipulates that “*subject to the Constitution and any other law regarding (the) freedom of and access to information, the Registrar shall make information in the register accessible to the public by electronic means or any other means as the Chief Land Registrar may reasonably prescribe*”. This is a momentous provision in land law and in the sector of land registration in Kenya because, for the first time in the history of Kenya, an Act of Parliament prescribes that the land register is to be electronic. These two provisions of LRA provide the long awaited solution to the multitude of problems facing land registration. The aim and long term goal of these provisions is to change Kenya’s land registration system from a paper based to a digital based titles system.

The LRA, however, may face the similar fate that all other land regulations and statutes preceding it have encountered. They took many years before full implementation was realized. It is likely to take many years of implementation, due to

the challenges that it faces. The biggest challenge is the conversion of titles from the current five regimes to the LRA. The Cabinet Secretary in charge of lands has the task of developing a uniform land title document. An ill implementation of the LRA may leave out all the gains that are stipulated therein, especially those that focus on provision of an electronic land register. There is also the need to enact an electronic signatures' statute and other enabling laws.

Currently, under the LRA's transitional clauses sections 104 – 110, the registration of land in Kenya continues to be guided by all the statutes enumerated since independence, in addition to the LRA.

### **3.5.1 Legal Framework**

Statutes in operation dealing directly with land registration include:

- Registration of Documents Act (RDA) Cap. 285 of 1901,
- Sectional Properties Act (SPA) No. 21 of 1987, and
- Land Registration Act (LRA) No. 3 of 2012.

Statutes repealed, but applied under the LRA's transitional clauses:

- Indian Transfer of Property Act (ITPA) of 1882,
- Land Titles Act (LTA) of 1908, and
- Government Lands Act (GLA) of 1915,
- Registration of Titles Act (RTA) of 1920, and
- Registered Land Act (RLA) of 1963.

### **3.5.2 Institutional Framework**

Land registration almost everywhere in the world is the function of the government through some agency or established land registries. Cadastre or land registration can be organized in very different ways (in different parts of the world), but still operate efficiently [Larsson 2000: 133]. Larsson cautions that when introducing reforms in the land sector organizations should not be altered radically because that may create friction amongst the various institutions. This, he observes, may make it difficult for the much needed cooperation amongst agencies (government or otherwise) dealing in land matters. Kenya, for instance, introduced a new adjudication department in conjunction with land registration for customary land.

An example is when Sweden decided to automate the land registration processes it established a joint system with revenue registers, population registers, etc., the task was not assigned to any existing authority. A new organization was established – the Central Register for Real Estate Data. The old agencies continued with their routine work while the new establishment provided the supervision of the conversion of manual registers to databases and the development of systems [Larsson 2000: 133].

The current structure that governs land registration in Kenya is as follows:

- a) The Ministry of Lands,
- b) Land Registration Section and the Land registration head-office at Nairobi,
- c) County and sub-county land registries, and
- d) National Titling Centre.

Institutions involved closely, though indirectly, are:

- a) The Environment and Land Court,
- b) The National Land Commission, and
- c) The County Governments.

The departments in the Ministry of Lands are physical planning, adjudication and settlement, survey, lands, and administration. The land registry is a subset/division under the lands department. The ICT is also a subset, but in the department of administration. All these are closely linked to the land registry because they collect

and process data which is used in the processes of land registration and titling. The National Titling Center is a recent establishment, created by the cabinet secretary in charge of lands. This is an initiative of the Government to speed up the processing and issuance of the land adjudication titles which have been pending since the 1970s. It is expected, that this center will inject approximately 3,000,000 land titles in the economy by the end of the year 2017 [MoL 2013: 10].

### **3.5.3 Staffing at the Lands registries**

- a) The Cabinet Secretary in charge of lands,
- b) The Chief Land Registrar,
- c) Deputy Chief Land Registrar,

- d) Land registrars, and
- e) Assistant land registrars and clerks.

The Land Registration Act [section 12] requires that the chief land registrar be employed by the public service commission; being qualified as an Advocate of the High Court of Kenya with at least ten years of experience. Currently, most registrars are advocates with only a few holding other degrees. Out of a total of about 150 land registrars countrywide, about one hundred hold at least a degree in law.

### **3.6 Specific Land Registration Statutes**

Land registration in Kenya is conducted through two main systems: the deeds registration and title registration systems. The deed registration system was the earliest form of registration introduced by the colonial government towards the end of the 19<sup>th</sup> Century. The system was applied through the Crown Lands Ordinance of 1902 before the Government Lands Act repealed it in 1915. Other deed systems are the Registration of Documents Act (RDA) Cap 285 of 1901 and the Land Titles Act Cap 282 of 1908.

Later, other systems including title registration and a mixture of both (title and deed systems) were enacted. These included the Government Lands Act Cap 280 of 1915, the Registration of Titles Act (RTA) Cap 281 of 1920, and the Registered Land Act (RLA) Cap 300 of 1963. More recently in 1987, the Sectional Properties Act No. 21 was enacted to provide means of registering sectional properties such as flats, offices, and other units within a building. The land registration statutes are detailed hereunder:

#### **3.6.1 Indian Transfer of Property Act (Repealed)**

Before the invasion of the British settlers in East Africa, the local inhabitants held land under customary tenure. After the 1895 declaration of Kenya/East Africa as a British protectorate, what followed was a consequential introduction of the British laws to govern the protectorate. This began with the 1897 East Africa Order in Council (EAOIC) which, among other statutes/ordinances, imported the ITPA. This Act in particular was the source of substantive law to land matters. It enabled the white settlers to start, what this study refers to as, the official and formal land grabbing through the then governors of the protectorate.

This law is also the basis of formal land laws in Kenya. It is upon it that the Britons entered into and negotiated the land treaties with the Maasai and other African peoples in 1904 and 1911. Initially most protectorate governors' activities were concentrated at the coastal regions owing to various reasons such as: the resistances that the interior peoples posed to the white settlers, diseases, lack of a well-established transport and communication infrastructure among other challenges.

However, with time, the white settler was able to penetrate further into the East Africa region, including Kenya. This law became the land law substantive statute applicable in the whole of Kenya. This Act of Parliament was at independence adopted and continued to be applicable in Kenya and informs Kenya's substantive land law to date. However, it was formally repealed by the Land Registration Act number 3 of 2012 though it continues to be felt, albeit quite minimally, under transitional clauses.

The institutions and offices recognized by this law included the colonial governor (and the I.B.E.A.Co), later the President of the Republic of Kenya and the Commissioner of Lands. Other offices under the Commissioner of Lands were also recognized under the Act. Since the ITPA was adopted as a substantive law, there would be little or no conveyancing steps that one can derive from the same. However as mentioned earlier, it continues, to an extent, to inform Kenya's substantive land laws. As such, procedures have been dealt with under the following regimes of land registration, discussed hereunder. This has followed a chronological and historical order.

### **3.6.2 Registration of Documents Act – Cap 285 (RDA)**

This statute was enacted in 1902 as the Registration of Documents Ordinance and the first law dealing directly with land registration. This law continues to provide the simplest regime of land registration in Kenya. It makes use of deed registration system and does not restrict itself to registration of land documents only. Owing to its simplicity few, if any, documents conferring ownership of land have been issued. However, deeds to land transactions and others have continually been registered and issued under the same.

The unique and cheap nature of the RDA has made it survive the recent wave of enactment of new land laws. It has not been repealed and remains in force because it deal with land deeds and other matters. Offices recognized under the RDA as its key implementers include, but not limited to: the registrar of documents and the principal registrar of documents. RDA initially had four offices [Wayumba 2013: 27] due to the colonial administrative structure in Malindi, Mombasa, Nairobi and Naivasha. However, today only two of the four offices remain: Nairobi and Mombasa.

Registration of documents under the RDA can either be mandatory under section 4 or optional under section 5. Examples of these documents include wills, bonds, building plans, sketch maps, leases, agreements of various nature and subjects, deed polls, trust deeds, power of attorney, and any other document that an applicant may lodge for registration under section 5 of the Act. Section 53 of the LTA stipulates that documents registrable there-under cannot be subject to registration under the RDA.

Two records were established under the RDA system; the “A” register, which was compulsory and the “B” register, which was voluntary. The compulsory register recorded all the transactions in land and immovable property while the voluntary register was used as a public record of any deeds or other instruments which might be accidentally lost. Practically however, there are various registers under the RDA with the main one being the documents register/volume commonly referred to as the D1. Others are the wills’ register and the power of attorneys’ register. The Principal Registrar of Documents administers this Act.

The study will review the registration process of a sale agreement, so as to demonstrate conveyancing under the RDA. Other documents registered under the RDA are also discussed immediately thereafter.

### **3.6.3 Registration of an Agreement for Sale under RDA**

For the sake of this study the reader may assume that this agreement is for the sale of land. However, it could indeed be registration of any agreement including an agreement for sale of any item, for instance the sale of a car. The process starts with the drafting of the agreement document. This can be done by the parties or by their

attorneys or lawyers. This agreement could be handwritten or printed. The fundamental thing is that the document should be signed by the parties involved.

There are no strict rules that the document must be signed by all parties; it depends on the drafters of the document or the parties themselves. The document may or may not be witnessed by a third party. As a matter of procedure most RDA documents are made and executed before advocates. Under the statute itself these strict rules are not mandatory. It suffices to say that a layman, church elder, friend, or local chief can be the witness in such a document.

What follows is assessment and payment of stamp duty at a nominal rate. Assessment is done at the Ministry of Lands offices or at *huduma*<sup>4</sup> centers. Since RDA has two registries countrywide, this can only be at the headquarters in Nairobi or in Mombasa. Payment is then done online through *itax*<sup>5</sup> on Kenya Revenue Authority’s website. The applicant then presents the receipt and the agreement for franking.

The parties do not have to register the agreement, so long as duty is paid and document franked it may be relied on later and, in case of disputes, courts of law can admit it as evidence.

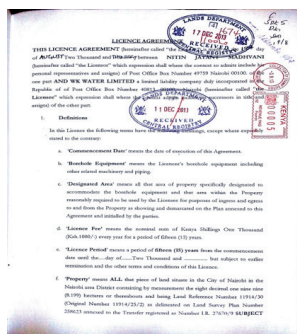


Diagram 3.1: Sample agreement, assessed, stamped/franked (the red stamping) and booked for registration (the deep purple oval stamp) as Day book number 1674 of December 2013 presented at 1100 hours.

<sup>4</sup> *Huduma* centers are a network of public offices which bring many public services under one roof to enhance access and delivery of government services. This is the Kenya Government’s concept of one stop shop.

<sup>5</sup> *Itax* is a web enabled applications system developed by KRA to provide fully integrated and automated solutions for administration of domestic taxes [ICPAK 2015].

Where one chooses to apply for registration of documents the fee is currently Kshs.500/=. The application for registration forms are available at the customer care desk at the lands offices. This form is filled in quadruplicate and presented for lodging together with the agreement. The registry assigns the application a day-book number and returns one copy to the applicant as a way of acknowledging receipt of the application.

The Ministry of Lands service charter stipulates that registration of documents should take a maximum of seven (7) days. In reality it takes around 2 to 3 weeks for registration of documents under the RDA.

After the application for registration and issuance of the daybook number the applicant is advised to check for the registered agreement after approximately 15 working days. One is always advised to carry the original application form bearing the booking number so as to trace the status of their application. It is likely that if one revisits the office before the 2 weeks are over, the application will still be in the process of registration. Those who decide to check the status of their application after a month, or thereafter, are likely to get the agreement ready for collection.

The reader would then be interested to know what happens at the registry between application and dispatch: immediately after lodging the agreement for registration, before accepting the same for registration, the assistant registrar checks for compliance to preliminary requirements, like stamp duty receipt. However under the RDA there is little that must be considered. After ascertainment that it is ready for lodging the assistant registrar stamps the documents with the official registry stamp and allocates it a booking number. The registry superintendent then marks the agreement into the 'A' Book (applications control register) and assigns it to an investigation officer (IO)<sup>6</sup>.

Since this is under the deed registration system, the investigation officer confirms that the prerequisites are adhered to including: payment of stamp duty (and penalties if any), registration fee, and that the relevant signatures are affixed. The investigation

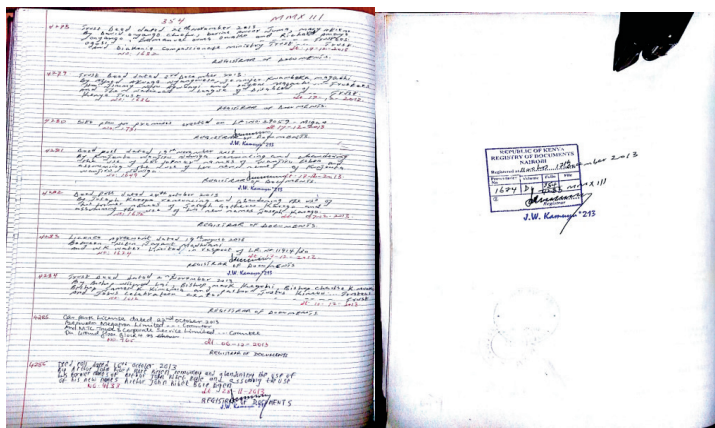
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<sup>6</sup> An IO is an assistant registrar who peruses the document first instance and prepares it for registration.



officer must also confirm that the agreement is in conformity with the law, does not purport to perpetuate an illegality, that it is not blasphemous, and that it is not made in order to perpetrate any deed against the rules of natural justice and or morality. Investigation (inspection) under the RDA is quite quick and is easier than it sounds.

If the investigation officer decides to proceed on with registration, he or she makes an entry on the three or whatever number of copies of the agreement that are duly franked. The investigating officer then makes a corresponding entry in the RDA register/volume known as the D1, where a small narrative of the agreement is made. The entry on the document is made by stamping the last page of the agreement with the registrar of document’s stamp and filled in with the relevant details.



Diagrams 3.2 and 3.3: showing entries on the D1 (several short narratives) and stamp on the sample agreement respectively. The signature and stamping by the Registrar of Documents connotes registration.

The investigation officer could also find that the application is not in conformity with the requirements and proceed to reject it. This is done by writing short notes on the top of the application form. The application is then marked to the registrar on duty. The registrar may agree with the recommendations of the investigation officer and proceed to counter-sign the rejection or complete the process of registration. The agreement (if registered) is then photocopied and kept at the D1 designated file as the office copy. Then, the registry superintendent updates the ‘A’ book as registered or

rejected and as dispatched against the particular day-book number, indicating the dispatch date.

This Photostat and the narrative contained in the D1 volume form the public register, which is available for inspection, at any time, by members of the public after payment of a prescribed fee (currently carrying out searches has been declared free by the Government beginning April 2017. Before then it was Kenya Shillings 520 (approximately UD \$ 5)). The original documents are placed at a designated counter or out tray waiting for the applicants to claim. Some documents can take years before the applicants show up for collection while others check on them every day after applying for registration.

When the applicant shows up at the dispatch counter with the relevant or corresponding application for registration form, the original documents are released to them, upon signing for collection. If documents are released on rejection the applicant can re-apply after rectifying the mistake pointed out. Only the registration fee has to be paid again if the applicant just rectifies their mistakes. However, if the applicant decides to make a fresh document all together, then the stamp duty will have to be paid again.

<b>Step</b>	<b>Comments</b>
Meeting of parties	For preliminary issues
Agree on pertinent issues	Achieves meeting of the minds
Make necessary enquiries	Clears any doubts
Draw the agreement	Can be drawn by parties or lawyer.
Sign and have signatures attested to	Any person can witness e.g. advocate.
Present document for assessment of stamp duty at lands office	Nominal assessment at Ksh 200/- and ksh 20/- per counterpart.
Pay duty at designated bank account	Bank charges differ from bank to bank.
Present document for franking	Done two days after payment of duty. This is also doable at Huduma Centers instantly, without the two days wait.
Lodge document for registration	Registration fee is Ksh 500/-.
Issuance of a day book number	This is the application's tracking number.
Auditing	Done by an internal auditor.
Investigations	Carried out by assistant registrar.
Making entries	Carried out by assistant registrar.

Registration	Done by the registrar of documents.
Photocopying	The copy is the registry copy.
Dispatch	The applicant collects all original documents they presented.

**Table 3.1:** summary of steps to follow when making and registering an agreement under the RDA

### **3.7 Land Titles Act – Cap. 282 (Repealed)**

By the year 1908, the East African protectorate administration and the white settlers needed to have in place a land registration regime that concreted their land rights. The enactment of this Act on the 30<sup>th</sup> November 1908 was to further cure the uncertainties that surrounded the land question at the coastal region of the country [Onalo P. 1986: 173]. Precisely, it was because the sultan of Zanzibar owned the ten-mile coastal strip but subject to the rights of the inhabitants. These rights had to be adjudicated and this paved way for creation of the office of recorder of titles, qualified land surveyor, and a land registration court (sections 4, 10, & 6 respectively).

Onalo states that this ascertainment and issuance of titles vide the LTA took place at different times along the Kenyan coast. Particularly, this happened in Malindi in 1908, Tana River district in 1913, Sultanate of Witu in 1915, and Lamu Archipelago in 1913. It then followed that before any title (or land deed) under the LTA was issued a delicate act of adjudication had to strictly be adhered to and that the land registration court has to make a ruling. LTA is, therefore, a land registration and a quasi-land adjudication statute. Once the land claims were fully carried out, surveying and demarcation were then carried out to create a survey plan. At section 17 of LTA all unclaimed lands were to be declared government land after a period of time.

This is because the land adjudication process can only take place for a limited period of time while land transactions under the LTA proceeded. According to Wayumba 2013, the office of the recorder of titles and the land registration court were abolished in 1984 through administrative actions as the Act itself still retained them. They were replaced by the office of the registrar of coast land titles and the Commissioner of Lands as under the Government Lands Act (which will be addressed in the next section of this chapter).

The process of registering a document under the LTA is similar to that of GLA documents at the Nairobi Registry. Thus, this will be discussed at GLA's conveyancing steps. Under section 20 of the LTA, the certificates issued here include the certificate of ownership, certificate of mortgage, or certificate of interest. These are the documents that were issued during the years of adjudication by the recorder of titles. Conveyancing documents in practice, just like with GLA, include the indentures of conveyances, mortgages, assignments, and re-conveyances. The effect of a certificate of title under the LTA section 21 was such that it vested in the holder all rights, "*coconut trees, houses and buildings as at the date of the certificate (.....) unless the contrary is noted in the memorandum.*"

Section 27(4) of the Act stipulates that "*there shall be attached to every certificate of ownership, plan of the land (...) and the plan shall be signed by the recorder of titles and the Director of Survey.*" This is a component of the Torrens system. LTA also provided for accurate survey through issuance of survey plans perfected at the GLA with the introduction of deed plans. Currently, the LTA also applies the use of deed plans.

The processes and documents under the LTA are similar to those under the GLA. This is largely because of the historical component that marks the life and operations of the two statutes. Initially, the LTA, as earlier observed, had its own uniqueness compared to the other Acts, but after the introduction and amendment of the GLA in 1915 the land administrators and the GLA provided for conversion of LTA titles to GLA.

However, this provision for conversion was not mandatory even with the consequent Statutes including: the RTA and RLA in 1920 and 1963 respectively. The later operationalization of the LTA borrows from the GLA of 1915. The registrar of the LTA titles is referred to as the registrar of coast land titles and the head of the section; thus, the Principal Registrar of Coast Land Titles is technically same as the principal registrar of titles under the RTA. LTA has only one registry at the Mombasa lands office and its subject lands also fall within the coastal region, precisely the 10-mile coastal strip.

The model of registration is such that each parcel of land adjudicated and titled is allocated a deed file known as an LT file and corresponding folio in (page) the LT volumes (Section 29). They also bear the land reference (LR) number which is the number on the ground. The LT volumes currently are totaled at 42/43, according to the registrar of the coast lands registry at Mombasa. Most of the old titles and especially the volumes are in a state of disrepair owing to ordinary wear and tear, due to time worsened by the humidity and acidity at the coast. LTA is currently applied in transition, having been repealed by the LRA of 2012.

### **3.8 Government Lands Act – Cap. 280 (Repealed)**

By 1915, it had become clear to the Colonial government that the Crown Lands Ordinance, with its six pages of simple provisions, was inadequate to maintain a firm control on land matters as the protectorate developed [Wayumba 2013: 28]. The Government Lands Act repealed the Crown Lands Ordinance of 1901 and allowed the Commissioner of Lands (the Governor) to issue 99-year term leases for urban plots and 999-year term leases for the agricultural land, in addition to freehold grants. Under the Act, registration of grants and transactions was compulsory and unregistered documents or deeds had no validity in Law.

This study observes that GLA in Nairobi and Kenya's hinterland is essentially what the LTA is for Mombasa and the 10-mile coastal strip. While that is true about their operationalization practically and currently, a closer examination of the two law's provisions and history reveals a totally different scenario. GLA was enacted in 1902 as the Crown Lands Ordinance before undergoing some major amendments in 1915. By this time, all land in Kenya was declared crown land. This meant that where GLA was operationalized no landowner could enjoy absolute proprietorship.

The Ordinance gave wide powers to the governor of the protectorate over land allocation, management, and land use control. Much of the powers were, however, concentrated on alienation of government or public lands. This made it possible for the protectorate administrators to have a firm grounding and to perpetuate their *direct rule* style in their soon to be colony. These powers of the Crown were exercised by the governor for and on behalf of the Crown.

GLA also introduced scientific, accurate, and mathematically coordinated boundaries with survey plans, deed plans, and beacons on the ground. This Act was applied with a keen focus on the areas that the white settlers owned land while the African natives were concentrated in native reserve camps, thereby, creating clearly demarcated localities known as the white highlands and native reserves. There are remnants of these notions even today.

At independence in 1963, the powers of the Crown were all transferred to the President of the Republic of Kenya. Under section 3, the President can exercise his powers under the Act directly or delegated through the Commissioner of Lands.

The GLA, due to that history, has only one registry in Nairobi. Any land in the Kenya registered under the GLA had and still has its records in Nairobi; unless it happens to fall within the coastal region. This made it automatically fall under the LTA regime. The offices recognized by the GLA include the President, the Ministry in charge of Lands, the Director of Surveys, the Commissioner of Lands, and the Registrar of Government lands. Needless to say, a registrar under the GLA is known as the Registrar of Government Lands while the head of the section is the Principal Registrar of Government Lands.

Conveyancing documents under GLA include indentures of conveyances, reconveyances, mortgages, assignments, and even assents. Parcels registered under the GLA are each assigned a separate folio in the GLA register or volume and a corresponding GLA deed file. Under the Act, two registers were opened: One of the registers is for the properties within Nairobi and its environs (Volumes N) while the other register was for land in the European settlements in the White Highlands (Volumes H) which were in other counties.

More often than not, a deed plan is always attached to the initial indenture of conveyance and this deed and the plan is what could be termed as the title documents to land. The last indenture constituting transfer of land is what the owner must hold as proof of ownership.

The GLA register comprises of two components, firstly the GLA volume where each folio is assigned a parcel of land; here, a short narrative is entered after every transaction touching the land. Secondly, is the GLA deed file in which Photostat copies of all indentures of transactions are kept. These components are always in the safe custody of the principal registrar of Government lands at the Government Lands Registry at Ardhi House in Nairobi. It is important to note that Government land under the GLA does not form government land in the strict sense because much of the same is allocated to citizens. It is only the statute under which they fall that makes them be called Government land owing to the history of Crown Lands Act.

A search under GLA, just like with the LTA, comprises of an approved form by the principal registrar of Government lands. In this form all the vital details are extracted from the volume and filled therein. The registrar then appends his or her signature and the document is sealed with the registry's common seal. Initially, until about the year 2008, the search used to be certification of the relevant folio but it became clearer that the applicants could sometimes not be able to fathom the complicated folio details. Further, the constant lifting of volumes in order to place them on the photocopiers contributed greatly to the destruction of the registers, which were already in a terrible state due to age and use. Each property under GLA thus has several numbers including the LR, GLA file, volume (H or N), and folio numbers. Now repealed, GLA is currently applied under the transition clauses of the LRA of 2012.

### **3.8.1 Registering Mortgage under GLA**

To demonstrate the conveyancing steps under the GLA, the author has chosen the mortgage as a sample transaction. The mortgage is referred to as a charge under other statutes. The process begins with the mortgagor (the land owner) and the mortgagee (the lender) making an agreement. The mortgagor is traditionally the borrower, but in selected transactions we have them as different parties, in which case all the three parties must be party to the mortgage document.

Due diligence demands that the mortgagee must carry out certain tasks: a certified search at the Government lands registry and also engage a valuer to ascertain the status of the property on the ground. The mortgagor's lawyer is then meant to draw up

the agreement and the lender's lawyer should draw the mortgage document. Either document should, thereafter, be sent to the party who did not draw it (the other party) for their approval of terms and endorsement. Once a compromise is reached the mortgage is signed by the parties and their signatures attested to by their respective lawyers or advocates.

The mortgagor or their advocate should secure the completion documents after clearing all the user charges including consent to charge, land rent, land rates, and service charges (where applicable). The mortgagee should then present the document for assessment and payment of stamp duty and registration fee on mortgage. Stamp duty on mortgages (same as with charges) is currently 0.1 percent of the mortgage amount while registration fee is Kshs.500/-. In reality though, all these moneys including the legal fees payable by the mortgagee (bank) are borne by the borrower (mortgagor). To reduce the costs most borrowers are forced to use the banks' lawyers as their own. The mortgagees are always fast to furnish the mortgagor with a list of law firms in their panel as though to justify the reason why the borrower should bear all costs.

The mortgagee's advocate does the presentation and booking of documents for mortgage registration. The documents that should be presented for registration include:

- a) The mortgage document,
- b) The last conveyance (indicating the last owner/mortgagor),
- c) Relevant completion documents, and
- d) The stamp duty receipt and bank slip.

The applicant is issued with a daybook number (applications control/trace number), which is what one uses to check the status of an application. The Ministry of Lands service charter, as earlier indicated, stipulates 7 days for registration of documents. In reality though, it takes an average of about three weeks. This is due to the fact that the same registrars who deal with RDA applications also deal with the GLA and RTA documents at Nairobi and all GLA deeds are registered only in one registry. Furthermore, the GLA documents and registers are quite cumbersome to handle while



some are completely worn out owing to either old age, poor handling or both. There also has to be a thorough investigation before registration is effected.

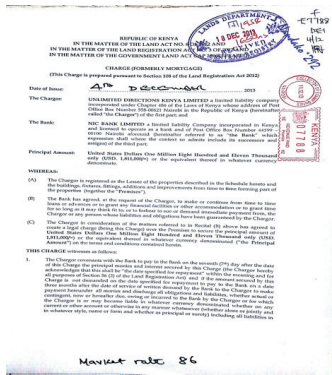
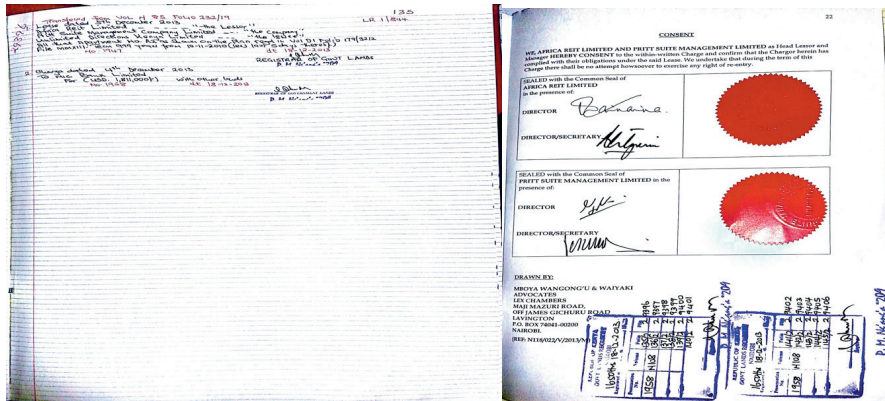


Diagram 3.4: Sample Mortgage (Page 1) assessed, franked and booked for registration.

In case the investigation officer recommends registration he or she will proceed to make an entry on the document and a short narrative on the corresponding folio in the corresponding GLA volume whereupon the registrar will stamp and sign. If the registrar of Government lands agrees with the recommendations of the investigation officer, he or she will sign against the same, effectively registering the mortgage or rejecting it. The successful registrations from the registrar's desk find their way to the photocopier, within the registry. The original mortgage document is photocopied and kept (the copy) in the deed file to form a part of the register. Here the original application is detached from the deed file which is kept back in the strong-room and the registered mortgage is placed at the dispatch counter awaiting collection by the applicant.



Diagrams 3.5 and 3.6: showing entries on the GLA folio (short narrative) and GLA stamp on the sample mortgage respectively. The signature and stamping by the Registrar of Government Lands connotes registration.

The applicant must bring with them the original booking form that they were issued at the time of application. They should also produce an identification document and sign against the counter dispatch register. Only then will the successfully registered mortgage be released. The rejected applications may be re-booked for registration after complying with the requirements.

Land Owner approaches lending institution for mortgage.
Agreement is reached and drawn between the bank and landowner to lend money.
Bank carries out search at the lands registry and valuation of property on site.
Mortgage document drawn signed by parties and attested to by respective lawyers.
Landowner and/or their agents/lawyers secure completion documents.
The mortgagor hands over their last conveyance and completion documents to the bank.
Assessment of mortgage for stamp duty, payment and franking.
Bank (mortgagee) and/or their lawyers book the documents for registration.
Issuance of a day book number.
Auditing by registry's auditor.
Retrieval of GLA files and marching the application to the file.
Investigations, entails perusing the file and the GLA volumes against the application.
Making entries on the mortgage and on the GLA folio.
Registration, which entails signing by the registrar.
Photocopying the original mortgage document which copy will be placed in the GLA file.
Dispatch of all the original application documents less the completion documents.

Table 3.2: Summary of steps to follow when lending money and registering a mortgage under the GLA

### 3.9 Registration of Titles Act – Cap 281 (Repealed)

With the promulgation of the GLA, in 1915, the white Settlers started to insist on title registration rather than deed registration [Okoth-Ogendo 1991: 44]. Thus, the

introduction of the RTA system in Kenya in 1920 was seen as an achievement of the need to change from deeds registration to registration of titles, which had been going on since 1897. The RTA was, therefore, enacted principally to provide for a title registration system as opposed to the deeds registration under the RDA, the LTA and the GLA.

The Act was modelled upon the Torrens system of Australia and partly on the English Common Law as spelt out in the Land Registry Act of 1862 [Onalo 1986: 174].

It was enacted in 1920 with the sole purpose of furthering the acquisition of land by the white settlers [Onalo 1986: 3]. This statute was initially only applied in the townships where the colonial administration operated not to the communally owned African settlements. This Act was more advanced than both GLA and LTA in that, apart from providing for scientific and accurate survey, it also provided for the guarantee of title. Under it, the Government provides guarantee of title and indemnity against fraud, error of omission and commission, and negligence for the first time. It is for this reason, the holders of land documents under the previous registration regimes were given the option to convert.

Only a few people took this option because either they were not advised of the advantages of the sanctity of title or that there were no incentives offered for conversion. In fact, the process of conversion is far more complex, expensive, and time-consuming. Thus, RTA continued to operate hand in hand with its preceding land registration regimes. After all, the offer for conversion was not mandatory. RTA has two registries, one in Nairobi and another at the Coast registry in Mombasa.

Parcel identification under the RTA, just like with GLA and LTA, is the land reference number (Commonly the LR number). This is the number on the ground. At the registry, however, each property (parcel) is accorded a deed file number known as either the IR (Inland Registry number for Nairobi registry) or the CR (the Coast Registry number for coastal registry files). Each registry deals with the properties within their jurisdictions, such that a property at the coastal region is only registrable at the Mombasa titles registry while hinterland parcels are registered at Nairobi titles

registry. RTA recognizes and provides for freehold and leasehold estates in land just like the LTA and GLA.

The land register under the RTA then comprises of these deed files in which the photostat copies of titles are kept. Whenever an allocation is successful, the registered owner is issued with a grant of title (or a certificate of title in case of sub-divisions). The original of this title is kept by the owner while in the deed file is a photostat copy of the title as provided for under section 25 of the Act. Subsequent transactions are, thereafter, endorsed on both titles wherein a short narrative is entered and signed by the registrar. An interesting feature of this deed file copy is that the initial grant is photostat but upon which original entries are made in the registrar's ink. This could make it a little hard for fraudsters to imitate.

When land is subdivided under this Act new titles (certificates of title) are prepared for each parcel in the subdivision; once all the subdivisions have been registered, the original title is cancelled and kept in the registry. The Principal Registrar of Titles based in Nairobi administers this Act.

A registrar under the RTA is referred to as a registrar of titles and the head of the section is the principal registrar of titles. Documents of title, as seen earlier, are the Grant and certificate of title (against which a deed plan is often annexed) while conveyancing instruments comprises transfer, partition, charge, assent, discharge, and even death certificates or certificates of change of name. Offices and institutions recognized by the RTA are similar to those recognized under the GLA. A search under RTA comprises of a certified true copy of the registry's deed file title (section 79). This should at all times be a mirror to the original title held by the registered owner with just a few exceptional cases. Having been repealed in the year 2012, RTA is operating under LRA's transitional clauses.

### **3.9.1 Registration of a Transfer under the RTA**

The transfer of land is a good transaction to demonstrate conveyancing under the RTA. The important ingredients would be a buyer willing to purchase and a vendor willing to sell. To bring their minds together the buyer must source for and see the

parcel he or she intends to buy. Thereafter, the buyer should see the seller and the title documents or a copy in the least. This is then followed by preliminary negotiations where after the seller, his or her agents should carry out a search at the land registry. This would be in Mombasa for titles whose numbers are CR based, and in Nairobi for titles bearing an IR number. This is the due diligence requirement as demanded of both the buyer and their advocate.

Furthermore, it is important to get copies of the title documents from the seller and their identity documentation. The owner's identity card is then compared to the search results which then show whether the purporting owner is indeed the registered owner. In this era (of serious land fraud), it is increasingly incumbent upon the buyer to also demand that their advocate do carry out an identity search from the registrar of person's office. This is because some unscrupulous fraudsters not only manufacture fake land documents, but may also fake personal identification documents.

Another important aspect, which just like the search of the register of persons is not mandatory (only in cases of high risk), one could perform is the purchasing the area list or a survey plan from the director of surveys office just to be sure that survey was properly done and that the alleged parcel is in the cadastre. Another interesting, but real aspect of due diligence, is that the buyer must exercise patience and be able to see how the unit of land copes in various weather seasons. Some places get dry and dusty in January but by the month of March they turn into swamps. In high risk areas the buyer could also demand that the vendor swears that the land is not subject of any legal tussle in court or elsewhere, that there is no dispute over ownership notwithstanding positive search results, and that the land is not part of a public utility.

The search should also be able to reveal any outstanding loans, liens, caveats, matrimonial claims, and annual rent payable. It is only after ascertaining a clean bill of status should the parties proceed to the next stage, that of concrete negotiations and drawing of the agreement. The agreement should be drawn by the vendor's lawyer and fees should be borne by the vendor. Upon all parties and their lawyers making relevant amendments and agreeing therein on a final agreement, the parties then sign it, which is attested to by their respective lawyers. It is also common to have one

lawyer acting for both parties, however, some people question if there would arise a conflict of interests.

Upon the signing of the agreement some commitment fee is payable in accordance with the stipulations of the agreement; usually 10% though some buyers dangerously pay a huge percentage of the purchase price, even up to 100%. The agreement basically lays down the rules of carrying out the transfer from start to the end. It describes the parties, the parcel subject of the agreement, the purchase price, mode of payment amongst other things.

It is important for either party to demand anything they feel is pertinent to the transfer, be incorporated in the agreement in order to avoid an emergence of conflicts. No assumptions should be made. Each party then keeps a copy of the agreement and makes steps or acts as per the same. The agreement also stipulates the completion period and which fees is payable when and by which party. Either party may opt to register the agreement under the RDA though there is no strict requirement for that. It is important to note that the agreement is not registrable against the title. The seller then moves in quickly to secure the completion documents (just as stipulated under GLA, this time, consent to transfer (not to charge) from the relevant office). Other utility bills to be cleared include water and electricity.

The buyer's lawyer in the meantime drafts the transfer and sends it over to the vendor's lawyer for comments and approval. The legal fee on transfer is then payable by the buyer. The transfer, upon approval by both parties and the legal counsel, is signed and the respective lawyers attest to their client's signature, marks, or thump imprints. It is common practice nowadays that parties to the transfer do include passport size photos (colored) as well as PIN and ID numbers besides their signatures (in fact the LRA has made these to be statutory requirements under section 44 (5)).

The vendor's lawyer then forwards all completion documents plus the transfer and the original title to the purchaser's lawyer usually upon an undertaking or as per the agreement. When all documents including the signed transfer are in the safe custody of the purchaser and their advocates, it is likely that the vendor feels vulnerable. This is usually cured by agreement provisions that an undertaking to pay must be issued by

the buyer's lawyer to the vendor's lawyer. Further provisions could be that the balance of the purchase price be deposited with the vendor's lawyer, upon their undertaking not to release a penny until a successful registration of the transfer.

After having cushioned both parties at this critical stage the buyer, personally or through their lawyer, then moves to the Ministry of Lands office to carry out valuation for transfer, assessment, and payment of stamp duty. More often than not, the government valuers must visit the unit of land in question in order to ascertain the market value so as to come up with the right amount of tax payable as stamp duty (this usually takes a number of days if not weeks). The assessment is done currently at 4% (of the value of land) for properties within municipalities and cities and 2% for properties within the rural areas. The document (original transfer) is then assessed as indicated earlier and the amount is, thereafter, payable to the KRA's (Kenya Revenue Authority) bank account.

The original transfer and the counterparts (usually two) are stamped or franked the original with the full amount, while counterparts are franked at Kshs.20/-. Application for registration follows with the forms available at the registries. This is filled in quadruplicate and the registration fee is Kshs.500/- (shillings five hundred). What is handed in at the time of application include the original title, transfer in triplicate duly signed and franked, stamp duty receipt and bank slip, valuation form, and relevant completion documents. The applicant is then issued with one of the booking forms bearing the A-book number.

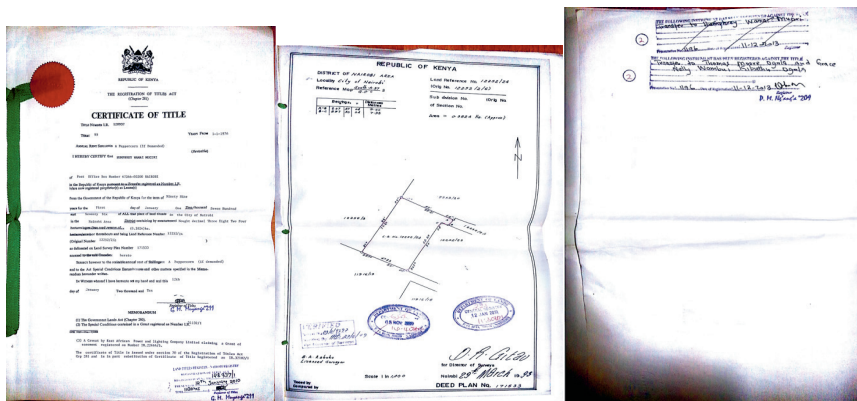
What follows thereafter is the marking of the counter's register, auditing, matching documents and the corresponding deed file, marking the 'A' book by the registry superintendent, distributing documents to the investigation officers, and investigation just like under GLA. If the corresponding deed file is missing, the document is marked 'p' (in the 'A' book) for pending and the officer in charge of strong room keeps the application until the day the deed file is found.

If after some considerable passage of time (no time limit indicated by law) the file is not available the applicant is advised to apply and register a deed of indemnity in favour of the Government (which indemnity must be signed by the registered owner

or vendor); so as to open a temporary cover or a provisional deed file. Investigation by the investigating officer and registration by the registrar must be at a higher level especially due to the sanctity of title guaranteed under the RTA (insurance principle). If a fraudulent title is registered the Government is called upon to indemnify for all losses incurred. For this reason, it takes more time and caution to approve registration, such that at times parties are summoned to appear before the registrar.

Such high degree of care by the registry is, however, always applied under all regimes of land registration currently. Rejected applications take similar steps as under the GLA while successful transfers are then endorsed (section 35) on both the applicants' original title and the registry's copy of title with a short narrative indicating transfer to the purchaser. The transfer documents (usually one original and two counterparts) are also stamped as registered.

A copy is then made from the original transfer document before placing them on the registry superintendent's desk for sealing with the official lands registry common seal (This aspect is not under the GLA i.e. the sealing.) All the transfers, the original title, and the registry copy are sealed. The photocopy is then placed in the deed file as part of the deed file or land register. The completion documents are also kept in the deed file. What is kept with the dispatch counter is the original title (now endorsed with the name of the buyer as owner), all the transfers lodged, the stamp duty receipt, and the application form.



Diagrams 3.7, 3.8 and 3.9: showing pages of an RTA certificate of title, deed plan and a transfer entry on the title (short narrative). The signature and stamping by the Registrar of Titles connotes registration. The land thus belongs to the person indicated on the transfer entry at page 2.



The applicant will also sign against a documents' collection register, kept at the dispatch counter, when they show up for collection.

Under section 65 (1) (h) the applicant may apply for registration of transfer and ask the registrar to dispense with production of any of the required documents. Usually, the registrar can only dispense with the production of the original title. However, after lodging an application under this section the registrar must publish such intention in the Kenya gazette that a transfer has been lodged in respect of the property giving the public 14 days to raise objections. If no objection is raised the transfer will be registered notwithstanding the non-production of the original title by the applicant. After the lapse of the 14 days, after the notice in the Kenya Gazette, the registrar proceeds with investigations, making entries, registration, copying, sealing, filling, and dispatch.

<b>BEFORE APPLICATION TO THE REGISTRY</b>				
<b>STEP</b>	<b>REQUIREMENT</b>	<b>ACTOR</b>	<b>TIME</b>	<b>RATIONALE</b>
1. See the land	Available land Want of land	Purchaser		Ascertain status of land
2. See the owner		Purchaser		Ascertain ownership
3. See the Title	Title to land	Purchaser		Ascertain physical land to ownership
4. Negotiate preliminarily	Willingness of parties	Buyer & Seller		Show interest
5. Get copy of title and owner's ID	Title and ID of Seller	Seller		Helps to start documenting
6. Search	Copy of title, ID & PIN	Buyer/Agent		Shows authenticity of title
7. Agreement after comprehensive negotiation	Meeting of the minds of parties	Buyer/seller	60, 90 or 120 days	Lays a clear roadmap to the whole transaction
8. Pay commitment fee	10% of the purchase price	Buyer		Shows Commitment
9. Secure	Payment of rates	Seller		Ensures land

completion documents	and rent			is free from encumbrances
10. Draw the transfer	Complete consensus	Buyer & seller		Formalizes transaction
11. Execute transfer	Complete consensus	Buyer & seller		Binds the parties
12. Valuation for stamp duty	Requisition for valuation form	Buyer/Agent	21 days	Forms the basis for taxation
13. Endorsement for stamp duty	Valuation report	Collector of Stamp Duty	one day	Ascertains the true value of the land
14. Payment of duty	Itax account	Buyer		It is a form of taxation
15. Stamping Transfer or franking	Duty payment Receipt & Banking Slip	Collector of stamp duty		Makes it a legal document
16. Application for registration	Application for registration form Application fee Kshs.500/= ,Original title completion document and transfer	Buyer/Agent	On spot	Documents are lodged with the Registry
<b>IN THE REGISTRY</b>				
1. Allocation of Day Book No.	“	Asst. Registrar	On the spot	Gets an application Control Number
2. Auditing	“	Auditor	Day 2 after booking	Ensures all government dues are paid
3. Retrieving files	“	Asst. registrar		To get the register
4. Marching of documents	“	Ass. Registrar		Marches the application to the land register
5. Allocation of document to IO	“	RS	Day 3 after booking	Gets one to work on the document
6. Investigation	Knowledge of land required	Ass. Registrar	Day 3,4,5 after booking	Ascertain authenticity and

				correctness of the application
7. Making entries	Documents & the land register	Ass Reg.		Prepares document and the land register for registration
8. Registration	Amended register	Registrar		Alters the registrar/Buyer is registered as the owner
9. Copying	Registered document	Subordinate staff	Day 6	Makes a copy for the deed file (a part of the register)
10. Sealing	“	RS registrar	Day 7	Binds the Government
11. Filling back	Register & the copy of the document	Record officers	Day 7	Returns back the file/register to the strong room
12. Dispatch	Original documents	“	Day 8*	Places the original registered document on the dispatch counter for collection by the buyer/lawyer
<b>AFTER REGISTRATION</b>				
13. Making final payment of balance of purchase price	Original and registered document & Search`	Buyer/Lawyer	As per sale agreement	Completes the transaction
14. Title handed to the buyer	“		“	“

**Table 3.3:** Steps to follow when buying land, make and register a transfer under the RTA

\* = It takes eight (8) days for successful registration in an ideal situation.

### **3.10 Registered Land Act – Cap. 300 (Repealed)**

Since the establishment of the colonial rule in Kenya, in the late 19<sup>th</sup> century till the mid-20<sup>th</sup> century indigenous Kenyans continued to own their land communally.

Kenyans in the native concentration camps during the colonial period, it felt like slavery in their own land. The colonial administration had introduced the *kipande system* (identity cards system) and a tax regime where one had to work on the white man's (grabbed) farm in order to earn a living. This did not auger well with the native peoples who by now were waging guerilla tactics in the name of *Mau Mau* and *Maji Maji*<sup>7</sup> rebellion and also organized African political parties.

Kenyans continued to agitate for their freedom, political independence, ownership of land, and political control of their own affairs. They felt that the white man had owned their lands through the back door in the name of the law. This left the poor helpless indigenous Kenyans concentrated in the poor, squeezed, and infertile native reserves while the whites occupied the expansive and fertile highlands - the *White highlands*. As the pressure built on, the colonial administration set up various commissions one in the early 1930's (Carter Commission) and the other in 1954 (The Swynnerton Young Committee) to look into the complaints by the indigenous Kenyans. The commissions' findings recommended that the indigenous Kenyans needed to have title to land, so as to get an incentive to work and reduce the pressure on the settlers to leave Kenya.

This was granted though the Land Registration Act in 1960 which was the precursor of the RLA of 1963. This was the first land law that was enacted to serve the indigenous Kenyans. This explains why most titled land under the RLA is in the rural areas and the remote villages that were previously the native reserves. In recognition of the need of a simpler, quicker and cheaper system for land registration, for the indigenous Kenyans, the independent administration, in its wisdom, established registration centers (land registries) across the nation in many (but not all) district headquarters at independence. The number of districts was 47 by the time of independence. The intention was to create at least one registry per district which was started with a few districts and continues to establish more registries to date.

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<sup>7</sup> Mau Mau and Maji Maji were uprisings against the colonial government in Kenya in central and coastal regions respectively. Their main agenda was to recover the land taken forcefully from the indigenous Kenyans. The applied guerilla tactics in their rebellion.

Today some of these districts, now turned into counties, have two or more RLA registries. However, about six (6) [Ministry of Lands 2014] counties have no land registries to date. The total number of the registries under the RLA is currently 52 with plans underway to establish more in line with devolution of services and demand. Unlike the other land laws, RLA is both a substantive land law as well as a procedural law. It was enacted to provide a complete code of land registration system throughout Kenya. The Act applies in areas where land has been surveyed under the general boundaries (as in adjudicated areas), areas where land have been fixed under Section 22 of the Act, or areas which are being converted from the RTA to RLA and under the Sectional Properties Act No. 21 of 1987.

The RLA provides for the establishment of district land registry offices that maintain a registry map, parcel files, presentation book, and a separate register for the powers of attorney. As indicated here above, the system has been decentralized to most of the administrative districts *in tandem* with the requirements of the general boundary surveys and the policy of providing cheap and accessible registration to the majority of Kenyans.

RLA employs the use of simple and prescribed forms (section 108) for almost all land transactions with option for amendments, but which must be approved by the chief land registrar. This was to make life easier for Kenyans and after all, it was independence. This is as opposed to the previous land registration regimes that apply complex drafting rules and formats which must be authored by advocates. Even witnessing and certification under the RLA was not strict and could have been done by the local area chief or the local elders and not necessarily by an advocate (section 110). The buyers and sellers in the villages are people who, after all, know each other and family lands are known to area residents; i.e. a neighbor sells a portion of land to another almost everyone will know about it. Thus, meeting the *public principle* in this simple.

However, due to passage of time, an increase of the population and urbanization it has, as a matter of procedure, become necessary to use lawyers in drafting and attesting to signatures of the parties. This makes the once easy conveyancing under the RLA just as complex as with other registration regimes. RLA provides for

absolute proprietorship besides leasehold estates in land and guarantee of title. It employs a title registration system, though simpler in nature in that it does not require accurate and mathematically coordinated surveys.

Unlike the Torrens system of land titling, it makes use of general boundaries like footpaths, trees, hedges, stones, pillars, walls, and rivers (section 23). This was necessary due to the huge need (of accurate surveys) that would have arisen had the Government required accurate survey for all Kenya's rural areas. Needless to say, there were few professional surveyors both within the Government and in private practice.

Initially the titles to absolute proprietorship were known as '*certificates of land*' now known as title deeds. The leasehold titles are, however, '*certificate of lease*' as was the initial case. Conveyancing instruments which are in prescribed forms include transfer of land, transfer of lease, partition, lease, charge, discharge, change of name, and power of attorney just to mention some. The parcel numbering system, which is similar to the filling number, include the name of the locality (for instance Nairobi), the block number (for instance block III), and a parcel number (for instance 1502). Thus, a sample title number would be ***Nairobi/block 111/1502***. This is both the number on the ground and the registry number. In place of deed plans, RLA makes use of RIMs (registry index maps) to identify parcels of land.

At the registry, the register is comprised of Kalamazoo binders comprising of green and white cards. Green cards denoting absolute proprietorship while white cards are accorded to leasehold properties (first schedule to the Act). Each parcel then has a corresponding parcel file in the registry's strong room.

Every time a transaction takes place, it is chronologically entered in the green or white card while the original document is filed in the parcel file. Every time there is a new owner, the earlier title is destroyed and a new one is issued in favor of the new owner. The issue of endorsement, as happens with the RTA, does not happen on the certificate of lease or title deed only on the green or white card. If one wants to carry out a search under the RLA, details are extracted from the green or white card and written on a prescribed form which is then signed and sealed by the registrar. The

registrar under RLA is known as the land registrar and the head is the Chief Land Registrar (section 7). Each registry is headed by a land registrar assisted by assistant land registrars. RLA is currently operational under the transitional clauses of the LRA.

### 3.10.1 Registration of Discharge of Charge under the RLA

To register a transaction under the RLA, this research will highlight registration of a discharge. It starts with the registered owner or borrower final payment of their financial accommodation to the bank or chargee and all interests thereon. The bank or the borrower then advises their lawyer to draw up the discharge (in this case a prescribed format). The document is then assessed for stamp duty, paid for, franked, and booked for registration under the same style and design as under the RTA. Issuance of day book number (in this case, presentation number), marking of the presentation book, investigations, making of entries, and registration or rejection are also similar to the RTA.



Diagrams 3.10 and 3.11: showing the pages of an RLA certificate of lease.

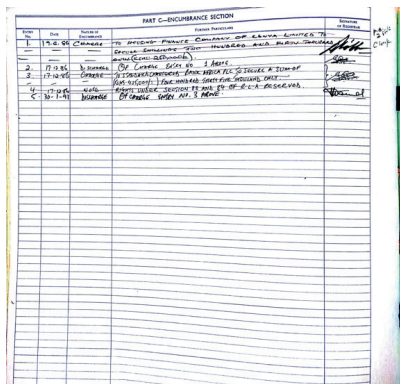
A careful look at the certificate of lease (Diagrams 3.10 and 3.11) will reveal the name of the locality, the block number as well as the parcel number. It shows other details and attributes of the property, for instance the acreage, name of owner, and

encumbrances. Thus the three segments of an RLA title include property, ownership, and encumbrances.

The point of departure from RTA is that there is no photocopying here, in place of the copy. The registrar keeps in the parcel file the original discharge (or whichever other document) instrument and dispatches to the owner the counterparts, if any, making a new title in the name of the owner, shredding the older document. In the case of a discharge, however, the title is held by the bank; therefore, the registrar gives it back to the owner after endorsing the discharge on the same.

Land owner pays off the loan.
Discharge document is drawn and signed by parties and attested to by respective lawyers.
The bank/chargee hands over the title and discharge to the land owner/chargor.
Assessment of discharge for stamp duty, payment at designated bank account and franking.
The chargor and/or their lawyers book the documents for registration.
Issuance of a presentation number.
Audit of the application to ascertain all fees are paid.
Retrieval of Parcel files and marching the application to the file.
Investigations, entails perusing the file and the green/white card against the application.
Making entries on the discharge and on the green/white card (May involve typing a new title).
Registration, which entails signing by the registrar.
Sealing the registered documents or basically all the documents signed by the registrar.
Filing back, entails filing the original discharge in the parcel file and completion documents.
Dispatch of all the other original documents - most important, the title.

Table 3.4: Summary of steps to make and register a discharge under the RLA



Diagrams 3.12 and 3.13: showing an RLA discharge document and a white card upon which several entries have been made and signed



### **3.11 Sectional Properties Act No. 21 of 1987 (SPA)**

This law came up as a result of the need to register titles in favor of sub-units in a building, block of flats, or offices. This law enables someone to create land above the air and is in line with the definition of land under section 260 of the Constitution of Kenya 2010. This Act is procedural law, or what is purely a land registration procedure law, for units of flats and offices in a block or building. It finds its substantive law in the RLA and suffices to say that every RLA registry is also a sectional properties registry.

The procedure in conveyancing is the same as under the RLA except that it is only used to register sectional properties and transactions affecting the same. It is important to mention that the crucial completion document required on subsequent transactions is the consent from the management company, apart from rates clearance certificate. Where RLA makes use of RIM the SPA applies sectional plans, which is basically the building indicating the various units and their descriptions. This describes the boundaries, shows the approximate area of the floor of the unit, and delineates the external surface boundaries of the building vis a vis the units.

This Act operates in such a way that the land where the property lies essentially should be titled under the RLA. After the building is erected, the units are numbered serially or as per the directions of the director of surveys. The sectional plan is registered and then each unit is titled under the Sectional Properties Act and issued a certificate of lease or a title deed. More often than not, the building is owned by a management company (because under the Act declaration and registration of a sectional plan a body known as corporation comes into being) and whenever an individual acquires a unit he or she is issued with the unit's title and automatically becomes a shareholder of the management company. This corporation need not be registered under the Companies Act according to the SPA.

There are rules for the use of common areas such as: pathways, gardens, security, and even the perimeter walls. The Act provides that the common areas be held by owners as tenants in common in proportion to the shares held. Over and above the title, one is also issued with a set of rules and regulations that govern occupation of the property.

If need be, members pay a service fee as prescribed which takes care of land rent, land rates, security charges, security lights, gardening, and general management.

This title to the unit can be used as any other title to access charges and can also be sold to other parties. Whenever the owner wants to transact he or she must get consent from the board of the management. The consent may be withheld if one has not fully paid the service charges or any other fee. Furthermore, completion documents must be produced at the time of any dealing for the unit as well as for the building.

### **3.12 General Requirements for Registration under LTA, GLA, RTA & RLA**

Transactions in land are varied and enumeration of the same can never be said to be conclusive. This is because anything that a holder of an interest in land may want to do may be reduced into a registrable transaction. Transactions registered under the four Statutes above are usually written similarly. They only differ in terminology and slightly in the drafting of the documents.

The difference is mainly because of the nature of the particular statute, but they all represent the same transactions: such that a transfer under RTA is similar to that under RLA or even under GLA in the effect of registration. However, it does take different names and formatting because of the particular Act. RDA registers different documents as discussed here-above and which may not be registered under the other four statutes. There are essential documents, requirements, and information that are necessary before or during any transaction in land. These may include:

#### Requirements

- a) Copies of identity cards and PIN certificates of the parties,
- b) Title documents,
- c) Relevant completion documents,
- d) Official searches from relevant authorities,
- e) Agreement to transact between parties,
- f) The transacting instruments i.e. transfer, conveyances, charges, lease or probate papers,

- g) Utility bills (rent, rates, electricity, water, telephone),
- h) Receipts for any official fees required for instance rent and stamp duty, and
- i) Need undertaking letter from lawyer

**Information**

- j) Full names and addresses of parties,
- k) Particulars of the property in detail including location and encumbrances,
- l) Tenure (leasehold or freehold),
- m) The use of the property,
- n) Acreage of the property and developments or erections if any,
- o) Charges, mortgages or any other lien and outstanding balances,
- p) Purchase price (if it is on sale) and mode of payment,
- q) Transaction's completion date,
- r) Approximate timelines in the registry,
- s) Lawyers acting for either party,
- t) Possibility of future penalties and taxes,
- u) Stamp duties and other government fees and taxes payable,
- v) Possibility of income,
- w) Legal fees, survey fees, valuation fees, physical planning rules,
- x) Need to carry out an official search from lands office, and
- y) Need for completion documents,

Major transactions under LTA, GLA, RTA, and RLA are discussed in particular sections above and are in summary in the table below (table 3.5):

<b>Transaction Regime</b>	<b>Transfer</b>	<b>Charge</b>	<b>Discharge</b>	<b>Comment</b>
<b>LTA</b>	Conveyance or Assignment	Mortgage	Re-Assignment or Re-conveyance	To prove ownership, one has to trace-back.
<b>GLA</b>	Conveyance or Assignment	Mortgage	Re-Assignment or Re-conveyance	Ownership is endorsed on the volume
<b>RTA</b>	Transfer	Charge	Discharge	Ownership endorsed on title.
<b>RLA</b>	Transfer	Charge	Discharge	Ownership endorsed on

				green/white card.
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Table 3.5: Transactions in Land naming/terminology under different Acts of Parliament

### 3.13 Allocation of Land (Grants in Land)

Allocation of land is the contemporary correct phrase. It connotes alienation of public land and conversion of the same from the category of public to that of private lands. Thus, the Government allocates an individual land and ideally this should be in accordance with the law. Grant of land is also a terminology widely accepted, documented, and used in the title documents to describe the same. It came up due to the fact that all land belonged to the British Monarch at some point in time during our colonial history, and any allocation to an individual was seen to flow from the grace, generosity, and magnanimity of the King. During the colonial period, *Grant in land* was the politically correct phraseology.

According to Mburu 2011, allocation of land is that process through which the Government issues land out from its land bank to its citizenry. It happens in three ways: first, vide advertisements for private use such as settlement, residence, and other individual uses, second, through direct applications to the lands commission by private corporations for special use, and third, through reservations for use by Government or public corporations, for instance Kenya Railways. Setting apart would be the same, but in this case the allocating authority is the local authority and the subject land is known as trust land under the Trust Land Act. Freehold is the greatest interest that can be allocated and the holder gets an absolute proprietorship or an estate in *feesimple*.

The Government can also allocate leaseholds up to a maximum of 999 years, for agricultural plots, and 99 years, for urban plots. Isolated cases see the local authorities issue 33-year term leases, which are usually extended by an additional 66-year term to make 99 years in total.

Under GLA at section 4 of the subsidiary legislation it is provided that “*the Commissioner of Lands\* shall not sell to any purchaser more than 1000 acres of the*

*crown land (read Government Land) in one lot without the approval of the Secretary of State (read Minister) but nothing herein shall invalidate any sale.”*

Section 9 of the GLA provided that “[*the*] *Commissioner of Lands\** may cause any portion of a township which is not required for public purposes to be divided into plots suitable for the erection of buildings for business or residential purposes and such plots may from time to time be disposed off in the prescribed manner” Section 10 further provided that leases of town plots may be granted for any term not exceeding 100 years.

Section 14 provides that “*subject to any general or special directions of the President, the Commissioner\* may cause land available for alienation for agricultural purposes to be surveyed and divided into farms*”. Section 27 (2) (a) leases shall be for a term of 999 years.

\* Now replaced by the National Land Commission.

### **3.13.1 Process of Allocation**

The process of allocation is started by the director of physical planning preparing a development, or a part development plan (pdp) showing the use for the property in question such as: residential, educational, recreational, hospital, or commercial use.

The decision to prepare the physical development plan is communicated to the relevant authorities for considerations, comments, and approval [MoL 1991: 4.1.1]. The notice is also published to the public through the chiefs’ offices, district officers’ office, and the local authority. Among the authorities that the plan is circulated to include the provincial administration, director of surveys, director of water development, director of medical services, and director of education among others.

Once approved, the Cabinet Secretary signs the plan and it becomes an official document. The National Lands Commission then causes the particular portion to be valued for purposes: stand premium, land rent,<sup>8</sup> and stamp duty in readiness for

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<sup>8</sup> Stand premium and land rent are basically the purchase price at government rate split into an initial

allocation. Members of the public are then invited through the Kenya Gazette and alerted on the local dailies that they can make applications for the allocation of that piece of land. Successful applicants are notified vide issuance of allotment letters. The letter contains the allottee's name, the plot, locality, and other conditions including: land rent, stamp duty, and stand premium.

The letter of allotment is an offer by the government to the allottee. Acceptance by the allottee is given through an acceptance letter and payment of the required fee, completing the contract. The director of surveys is then called upon to carry out the survey where-after there is issuance of deed plan (in case title is to be issued under RTA) or a registry index map (if the land falls on an area that is governed by the RLA) [MoL 1991: para 4.3]. On receipt of either document, the Commission proceeds to prepare a grant of title and indicates special conditions which stipulate various matters, including the land use and the percentage of the land which can be occupied for such use.

The grant also indicates the name of the allottee, the land reference or title number, the term, land rent (if applicable), and stand premium to be paid. It also shows the acreage and locality. It is, thereafter, issued to the registered owner after execution by the chief land registrar and other officers.

The granting document takes various formats under the various titles. Under the LTA and GLA, it used to be either the certificate of ownership or conveyance (for freehold grants) or an assignment or certificate of lease (for leasehold grants). The last of these were issued during the colonial times. This document is then registered and it becomes officially recognized under the law, which confers ownership to the grantor. To create a register under the GLA, the registered owner is issued with the original while a photostat copy of the same is kept in a deed file. This is known as GLA file and GLA file number is accorded to every parcel. The land is also accorded a folio in the most current GLA or LTA volume and all transactions pertaining to that property are recorded therein with copies of any subsequent transactions kept in the GLA and

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deposit (stand premium) and equal installments (annual rent) paid every year.

LTA file. Thus, the folio and the deed file are the land register(s) under the GLA and LTA.

Under the RTA, the granting document is referred to as a new grant or simply a grant and upon registration; it also gets converted into a title. Similarly, the original grant is released to the owner and a photostat copy of the grant is made and placed in a deed file (section 21). This file is opened for every new title and accorded an I.R (inland registry) number or a C.R (coast registry) number. Every subsequent transaction is recorded in the original title as well as in the file copy. A photostat copy of the transacting instrument is kept in the deed file. Thus, the register is simply what is kept in the deed file.

Under the RLA, the granting takes the format of either a transfer for absolute proprietorship properties or a lease, in case of leasehold properties. Upon registration, the registrar issues a new document known as title deed (previously certificate of land for absolute titles) or a certificate of lease for leasehold properties. The registrar then opens a green card (for absolute properties) or a white card (for leasehold properties) and places it on the kalamazoo binder with a parcel file being opened, where all documents are placed. The land register under the RLA is the green or white card and the parcel file. After any subsequent transfer the earlier certificate is cancelled and a new one is issued.

Though no granting has been done under the 2012 land statutes it is stipulated in the Act to follow the RLA style of granting. LRA also stipulates stringent rules to be followed during the process of land allocation at Articles, 8 to 14 of the Land Act. Another way of granting is through adjudication and settlement schemes, but this should be seen as a way of titling land for the communities who have owned land through occupation rather than granting. The Government simply issues transfers which are registered and title deeds are given. Where the settlement is completed through loan facility by the settlements scheme fund a charge is registered against the title. Once the loan is fully paid up the allottee is issued with a discharge form from the settlement fund trustee (SFT); which, is then registered under the RLA and title deed issued free of the SFT charge.

The process of creating a title document on allocation in Kenya is summarized below in tables 3.6 – 3.8. The process involves the following persons described in diagram 3.14. These persons collect or provide information that enables the registrar of titles to create a title to land. The information they provide is what constitutes the ingredients to the title making process.

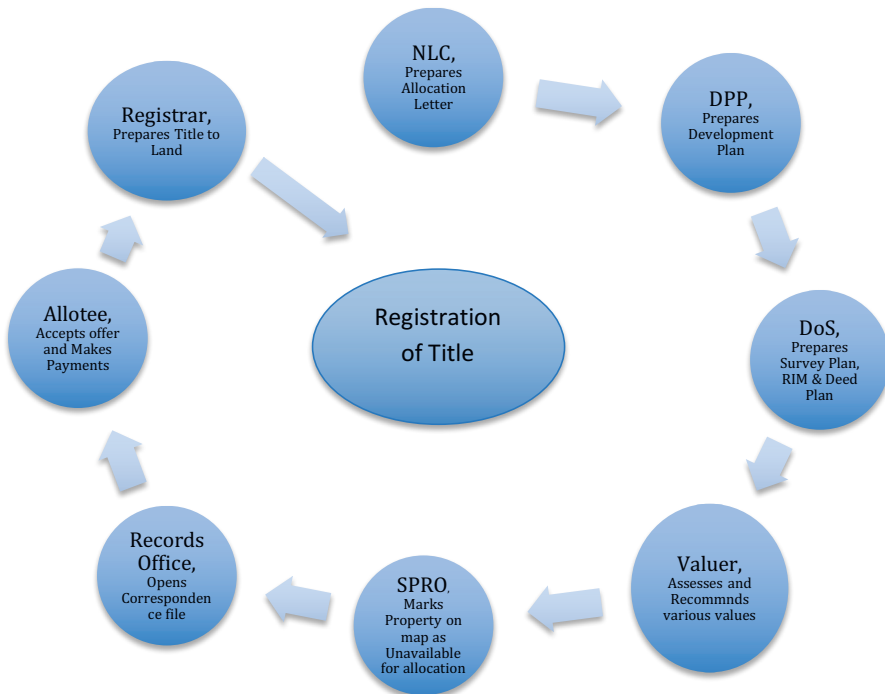


Diagram 3.14: Persons responsible for Preparation of Title & Their Contribution Thereto (Source – Field Work)



**Function: Creation of a New Grant Upon Land Allocation**

**Actors:** Cabinet Secretary for Lands, National Lands Commission (NLC), County Governments, Director of Surveys, Director of Physical Planning, and Chief Land Registrar

1. Various clients apply to the National Lands Commission (NLC) or to the Lands Secretary or County Government through the NLC for land allocation.
2. The NLC requests the Director of Physical Planning to prepare a PDP.
3. Director of Survey or Licensed Surveyor prepares a preliminary topo-cadastral plan for preparation of the PDP.
4. Director of Physical Planning prepares a PDP based on the preliminary topo-cadastral survey and forwards the same to the Cabinet Secretary for Lands with a recommendation for approval.
5. The Cabinet Secretary approves the PDP by endorsing (signing the PDP) and returns to the DPP. In the County Governments the Director of Town Planning signs the PDP.
6. The Director of Physical Planning forwards the signed PDP to the Commission who cause a correspondence file to be opened in respect of the property.
7. The Commission uses the signed PDP to allocate land by issuance of the Letter of Allotment under the Land Act, of 2012. Letter of Allotment is issued to the allottee with all the necessary conditions.
8. The Allottee writes the acceptance letter and pays the allocation fee as stipulated in the letter of allotment.
9. Government surveyor or a licensed surveyor uses the Letter of Allotment as authority to carry out a survey and sets out the parcel on the ground. Subsequently, the survey is submitted to the Director of Surveys for checking and authentication.
10. Director of Surveys checks and authenticates (or rejects) the survey. If authenticated, he requests the Licensed Surveyor to pay the checking fees and for preparation of deed plans or amendment of registry index maps (RIMs).
11. Director of Surveys signs and seals the deed plans or the RIMs and forwards the same to the National Lands Commission. In the case of the Nairobi County the County Secretary signs a lease document that is sent to the registrar of titles for stamping (on payment of the stamp duty) and registration. For other counties, preparation of leases and transfers is done by the National Government through the office of the Chief Land Registrar and the NLC.
12. The Chief Land Registrar signs the grant (which is lease for leasehold grants or transfer for absolute grants) and forwards to the registrar at the county registry to register and issue the certificate of title or certificate of lease to the allottee after payment of the requisite fees. The allottee signs the grant (lease or transfer) before it is registered.

Table 3.6: The Land Allocation Process and Issuance New Grant (Source - Wayumba 2013: 62 (with amendments))

<b>Function</b>	<b>Process of Creation of a new lease upon allocation of land</b>
<b>Actors</b>	Director of Surveys, National Lands Commission, Senior Commissioner of Lands, Deputy Commissioner of Lands, Assistant Commissioner of Lands, Chief Land Registrar (CLR), Records Officer, Auditors, Senior Lands Officer, Land Officer, Land Registrar.
	<ol style="list-style-type: none"> <li>1. Director of Surveys delivers deed plans (DPs) or RIMs to the NLC Records office where LR or Parcel numbers are entered in the computer / register.</li> <li>2. Correspondence file is retrieved from the archives and the deed plans or RIMs are filed.</li> <li>3. File with documents taken to senior plans records officer (SPRO) and the new LR or Parcel Numbers is entered in index cards and noted at the front of the correspondence file and on the Letter of Allotment.</li> <li>4. File is passed to the relevant lands administration officer to give instructions to land registrar for preparation of grant (transfer or lease).</li> <li>5. The Registrar gives instructions to the typing pool to prepare the grant.</li> <li>6. The grant is typed and file is taken back to the land registrar with the grant for verification, if correctly typed, the same is sent back to the land officer, who checks it and completes stipulated forwarding forms. (If not correctly typed, the registrar further advises the typists accordingly).</li> <li>7. The title is then forwarded to the CLR for execution through various officers such as: the senior lands officer, the assistant commissioner of lands and the senior assistant commissioner of lands.</li> <li>8. The land registrar attests to the signature of the Chief land Registrar by signing the document and assesses the documents for stamp duty payable.</li> <li>9. Once the stamp duty has been paid, the file is taken to the accounts department for writing of stamp duty certificate and confirmation that all the necessary fees have been paid including rent if any. A land rent card or account is opened for each plot on the land rent data-base.</li> <li>10. The title document is then taken to the stamp duty section for franking/stamping.</li> <li>11. The file is then taken to the auditors (internal) to confirm that all payments have been made.</li> <li>12. The file is then passed over to the land administration officer to write a letter forwarding the documents to the district / county land registries.</li> <li>13. Grant is then forwarded to the county land registrar through the CLR authorizing registration.</li> <li>14. The allottees are also advised through the letter above (which they are copied) to collect the leases or transfers from the district / county registries for their execution and attestation before their lawyer and return to the registry for registration.</li> <li>15. Grant is returned after execution by allottee to the registrar who registers it and issues the title to land.</li> </ol>

Table 3.7: The Conveyancing Process After Land Allocation (Wayumba 2013: 91 (with amendments))

**Function Registration of a new grant under RTA**

**Actors:** Allottee, Registrar of Titles, District Land Registrar, Chief Land Registrar, Records Officer, and Registrar of Titles.

- 1) After signature by the allottee, the registrar conveyancing books the grant (lease) for registration.
- 2) At the central registry, the application is given day book number where the time and date are entered on the document.
- 3) The file (correspondence) containing the grant is taken through auditing, and marked to an investigation officer to assess whether it is registrable. This includes, checking if all the fees have been paid and whether the document is signed and properly attested.
- 4) If there are no errors the registration officer proceeds to initiate the registration process. In case there are errors, the registration officer rejects and returns the new grant to registrar conveyancing for correction and return.
- 5) The investigating officer, who is also a registrar, instructs typing of certificate of title and verifies it for correctness. The certificate is, thereafter, stitched; thereby, attaching the deed plan to the certificate of title.
- 6) The certificate of title (where deed plan is attached) is forwarded to the Director of Surveys for authentication of the deed plan.
- 7) On return, the Inland Registry (IR) number is issued per certificate of title. This is the registry filing number.
- 8) An entry is made on the certificate of title and signed (registered) by the registrar on duty.
- 9) A photostat copy of the title is prepared and the two (original and copy) are sealed.
- 10) The registered original title is then released to the registered owner as a legal document, while the copy is filed in the deed file as document number 1 together with the granting lease and kept in the strong room.

Table 3.8: The Process of Title Registration Under RTA (now repealed)

### **3.14 Land Administration Transactions**

Land Administration Transactions are transactions that, prior to the Constitution of Kenya 2010 and the 2012 land laws, fell in the docket of the Commissioner of Lands.

These functions now lie with the land commission. Though these transactions start at the land administration level they end up at the land registry, where the final product issued is the title. These transactions include, but are not limited to:

- a) Land Allocation,
- b) Change of use,
- c) Extension of use,
- d) Extension of lease,
- e) Renewal of lease,
- f) Subdivision, mutation or partition, and
- g) Amalgamation or consolidation.

Land allocation is already described above at paragraph 3.13. Change of use, on the other hand, connotes a complete change from what the land was previously used for. An example would be an application for change of use from religious purposes to a hotel and restaurant. It could also be a change from educational to multi-dwelling units or residential purposes. Extension of use, however, refers to an application for an additional use. For instance, change from shops and offices (Commercial) to shops, offices, and flats (Commercial cum residential).

Extension of lease, on the other hand, is where the initial lease or term from the government has a number of years remaining to the date of expiry. Sometimes, an application for bank loan or a requirement by development partners, the years remaining may not be adequate for a transaction. The registered owner thus, asks the government for additional term over and above the existing un-expired term. Renewal of lease is when the initial term has expired and the registered owner approaches the government to be allocated the land once more.

Sub-division (mutation under the RLA), entails dividing the land into smaller portions and issuing separate titles for each portion (section 70 of RTA, section 25 of RLA, and sections 22 and 42 of LRA). Partition connotes a sub division where two or more parties who co-own land sub-divide it to sever their rights as tenants in common, so that each can get a separate title for their respective portions.

Amalgamation and consolidation is the joining of two or more adjoining parcels to form one parcel of land, which is to be titled as one as opposed to many. It is the opposite of subdivision. Amalgamation can only be carried out on adjoining pieces of land which must be owned by the same person or persons. These pieces, so joined, should also bear the same term.

In all the above transactions, the initial application is made to the local government (now county governments) for their approval. The counties, through their physical planning departments, process the application and, if successful, issue the applicant with a PPA-2 form signaling approval. The applicant armed with this approval makes another application vide a letter to the NLC (previously done to the Commissioner of Lands). The NLC is expected to circulate the intention of the applicant to various departments and at the same time asking for their comments on approval or objection.

These departments include the Director of Physical Planning, Director of Surveys, District/County Lands Officer and the National Environmental Management Authority (NEMA). If these departments return a no objection comment to the NLC, then the necessary preparations are made to enable issuance of title with the amendments. These preparations would include a re-calculation of ground rates, land rent, and acreage through a ground report. Once all the relevant information has been gathered the NLC forwards the relevant information to the chief land registrar, which includes the deed plans or the amended RIM (whichever is appropriate) to create a title after payment of the requisite fee by the applicant. In all the above transactions, the effect is the creation of a new title.

However, under the RTA change of use, extensions of use, and extension of leases are at times endorsed on the old title instead of creating a new title. Duty in all these cases is paid at nominal value, while a registration fee is payable at Kshs 500.00. Other fees include the conveyancing fee, the relevant rates and rent, and, if any, departmental fees. The process is quite lengthy and involves numerous technical and legal phases.

### **3.15 Land Registration Act No.3 of 2012**

Section 68 of the Constitution of Kenya 2010 provides that “*Parliament shall revise, consolidate and rationalize all existing land laws*”. It is on the basis of this that LRA was enacted to provide harmony, especially in the sector of land registration. The Kenya National Land Policy (Sessional Paper No. 3 of 2009) had also proposed such measures. The LRA provides that all land in Kenya will be registered and titled under one registration system. This provision, as opposed to other provisions for conversion, is mandatory.

This law provides for mandatory conversion of all titles from the earlier regimes to the LRA. Indeed, this Act repeals all the statutes discussed above with an exception of the RDA and the SPA. The law came into force on the 5<sup>th</sup> day of May, 2012 and, amongst many others, it recognizes the following offices the chief land registrar, the cabinet secretary in charge of lands, the National Land Commission, and the director of surveys. It is important to note that the office of the commissioner of lands is no longer operational under the LRA. In that void is the National Land Commission. Key provisions that will streamline land registration include but not limited to the following:

- a) Decentralization of land registration services at section 6, this Act provides “*The land registration units shall be established at county level and such other levels to ensure reasonable access to land administration and registration services.*”
- b) Electronic lands register at section 9 – “*The Registrar shall maintain the register and any other document ...in a secure, accessible and reliable format including ...electronic files*”
- c) Avail land register electronically to the public at section 10, LRA states: “*Subject to the Constitution and any other law regarding freedom and access to information, the Registrar shall make the information in the register accessible to the public by electronic means and any other means*”

- d) List of overriding interests at section 28 which among other rights include *rights over matrimonial properties (now removed/repealed), trusts including customary trusts, leases and agreements for leases not exceeding two years, periodic tenancies and rights of compulsory acquisition.*

LRA also provides for deliberate registration of public (Government) lands in addition to community and private lands at section 3. This provision is vital as it will enable the Government to have an inventory of all public lands; thereby, protecting State lands from illegal and irregular alienation. LRA's transitional clauses run from sections 104 to 108.

Under section 110, the cabinet secretary in charge of lands is tasked with the responsibility of coming up with rules and regulations to operationalize the Act. The section does not give deadlines for implementation, but stipulates that the land registers under the repealed regimes shall continue to operate as the land registers with any alterations, adaptations, qualifications and exceptions found necessary. Currently, there is a task force in place working on the necessary rules and regulations to implement the LRA. Until such a time that the LRA is fully implemented land registration continues to be carried out under the RDA, LTA, GLA, RTA, RLA and the SPA.

### 3.16 Summary Table

Statute	Year	Register Numbers	Registrar's Title/Name	Number of Registries	Instruments used	Ownership Document
RDA	1901	D1 & Folio No.	Registrar of Documents	2	Deeds drawn by parties or lawyers	Deeds
LTA	1908	LT volume, Folio, File & LR No.	Registrar of Coast Titles	1	Deeds drafted by lawyers	Deeds
GLA	1902/15	GLA volume, Folio, File & LR No.	Registrar of Gov.t Lands	1	Deeds drafted by lawyers	Deeds
RTA	1920	IR or CR No. & LR No.	Registrar of Titles	2	Deeds drafted by lawyers	Grants & Certificate of Title
RLA	1963	Name of	Land	52	Prescribed	Certificate

		area, Block & Parcel No.	Registrar		formats	of Title or Certificate of Lease
LRA	2012	Name of area, Block & Parcel No.	Land Registrar	N/A	Prescribed formats	Certificate of Title or Certificate of Lease

Table 3.9: Registration Regimes Summary

### 3.17 Conclusion

This chapter has discussed the land registration laws that are applicable in Kenya. It is important to indicate that the laws and the different systems are due to: Kenya's colonial history, the fact that after every enactment of a new law never made it compulsory to convert the existing title documents into the subsequent new regimes, and the previous laws were never repealed. Thus, all the laws have continued to operate concurrently.

The Land Registration Act No. 3 of 2012 is the most recent. However, before its full implementation, the land registration system in Kenya will continue to be governed by all the laws discussed above. These old laws will continue to operate until the cabinet secretary in charge of lands comes up with the rules and regulations to implement the new law. After its implementation, both the RDA and SPA will continue to be in force since they were not repealed by the LRA.

The vast of Kenya's land remain unregistered either because the State machinery has not gotten to it yet or it falls under a category that did not require registration under earlier laws. This is, for instance, majority of communal and grazing lands held under nomadic pastoralism. However, under the LRA, all lands in Kenya including community and public lands are registrable. In fact, the chief land registrar is mandated to keep a community lands register alongside the private lands register.



## CHAPTER FOUR

### CRITIQUE OF THE CURRENT LAND REGISTRATION SYSTEM IN KENYA

#### 4.1 Introduction

This chapter presents a critique of the land registration systems as outlined in Chapter Three above. It presents the reader with a clear and concise analysis of why the systems are the way they are and also indicates how land registration has contributed to the development strategy in Kenya as a whole. This chapter eventually comes up with a SWOT matrix. The research question this chapter answers is “What are the strengths and weaknesses of the current land registration system?” The research methods applied here include direct interviews, questionnaires, review of journals, reports as well as observations by the researcher.

The critique from this chapter enables and facilitates the study to move to the next step of finding the strategies for modernization. This analysis is specific to Kenya’s land registration systems and it is based on a number of assumptions or conclusions. Firstly, that it is hard to imagine a suitable and the best system to serve the whole world or even a region [Shibeshi 2014: 3] and secondly, that problems related to land are of a localized nature. This study’s focus and concentration on Kenya’s land registration system is vital due to the realization that no other country’s land registration system can completely map Kenya’s current scenario.

Thus, this is a study specific to Kenya’s situation that can unlock the issues facing land and land registration. Shibeshi rightly observes that the reason for the numerous failures in many developing States’ land administration systems is the fact that the systems were all imported and attempted to wholly introduce new systems from the north to the south [Shibeshi 2014: 10]. To set the background for the critique, it would be prudent to look at how the Ministry of Lands and its stakeholders have analyzed its services through its various publications, including the National Land Policy and its strategic plans.

## **4.2 National Land Policy & MOL's Strategic Plans**

The National land policy (NLP) (sessional paper No. 3 of 2009) recognizes that the Ministry of Lands (MoL) is charged with the responsibility of land sector policy formulation and one of its core principles is that of access to land information. It recognizes that land registration is faced with numerous challenges including laws which protect rights to property even where such properties are illegitimately acquired, for instance the protection of first registration titles under the RLA. The NLP further confirms that past and present political regimes, aided by the laws, have perpetuated massive disinheritance of communities and individuals of their land. This then, the policy asserts led to inequitable access to land, particularly in regard to women, children, minority groups, and persons with disability.

To curb this menace, the NLP proposes various measures including digitalization, to ensure authenticity of land records and security of title. It also proposes various strategies geared towards reducing the bureaucracies and bottlenecks that mar land administration processes.

The sessional paper, as well as the MoL's strategic plan [MoL 2008: 20], concur that Kenya's land information is currently held in paper form and manually managed something that leads to inefficiencies and slowed transactions in dealings touching on land. The NLP highlights several land related issues that deserve special attention. They include historical injustices, pastoral land issues, coastal region land issues, land rights of the minority and marginalized, land rights of women, land rights in informal settlements, and land rights of children. It affirms that the sources of these grievances are land adjudication processes, land registration laws, and the process therein.

Ministry of Land's Strategic Plan 2008-2012 indicates that land is governed by numerous and, sometimes, conflicting and outdated laws. It further reveals that land data is currently held by different agencies and in different formats and standards all of which make land information difficult to access. It also highlights the opportunities that Ministry of Lands can capitalize on in order to deliver on its promise to the people of Kenya. These include political good-will, increased demand for land services, ongoing public sector reforms, availability of modern technology, e-

government, enhanced spatial information sharing, and collaboration in the East African region.

### **4.3 Why so Many Land Laws?**

As it has been indicated in the preceding chapter to this study, Kenya enjoys or suffers from the existence of multiple land registration laws all operating concurrently. In the year 2012 Parliament enacted the Land Registration Act (LRA), which provides for consolidation of all land registration laws into one. This Act provides that documents of ownership of land be harmonized into a uniform title to land, consequently, calling for conversion. Prior to this law and even currently (before LRA is implemented) there are different land registration systems with each prescribing unique documents of land ownership, conveyancing instruments, and processes.

Every time the Government enacted a new land registration law its intention was to improve the laws that preceded it and provide for the conversion of titles. This requirement for conversion, however, was never made mandatory and as a result people continued holding titles under different laws.

Furthermore, the process of conversion from one law to another is complex, tedious, lengthy, and expensive with no incentives offered for conversion. These registration regimes are complex, even to very senior lawyers and conveyancers. They also lack uniformity, and they apply different and confusing title and deed formats, and conveyancing instruments. LRA requires mandatorily that all titles be converted into one titling regime. However, it does not offer guidelines pertaining to timelines for this conversion. Section 108 reads:

*“Until the Cabinet Secretary makes the regulations contemplated under Article 110, any rules, or other administrative acts made, given, issued or undertaken before the commencement of this Act under any of the Acts of Parliament repealed by this Act or any other law, shall continue in force and shall be construed with alterations, adaptations, qualifications and exceptions necessary to bring them into conformity with this Act.”*

The danger of this lack of a timeline is the precedent, for instance that of RTA which was passed in 1920. It was meant to convert (though at the instance of the registered owner) all GLA and LTA titles but up to date this has not happened. LRA has also not been implemented as it requires formulation of rules and regulations, which have not been passed by Parliament.

#### **4.4 The Achievements of Land Registration in Kenya**

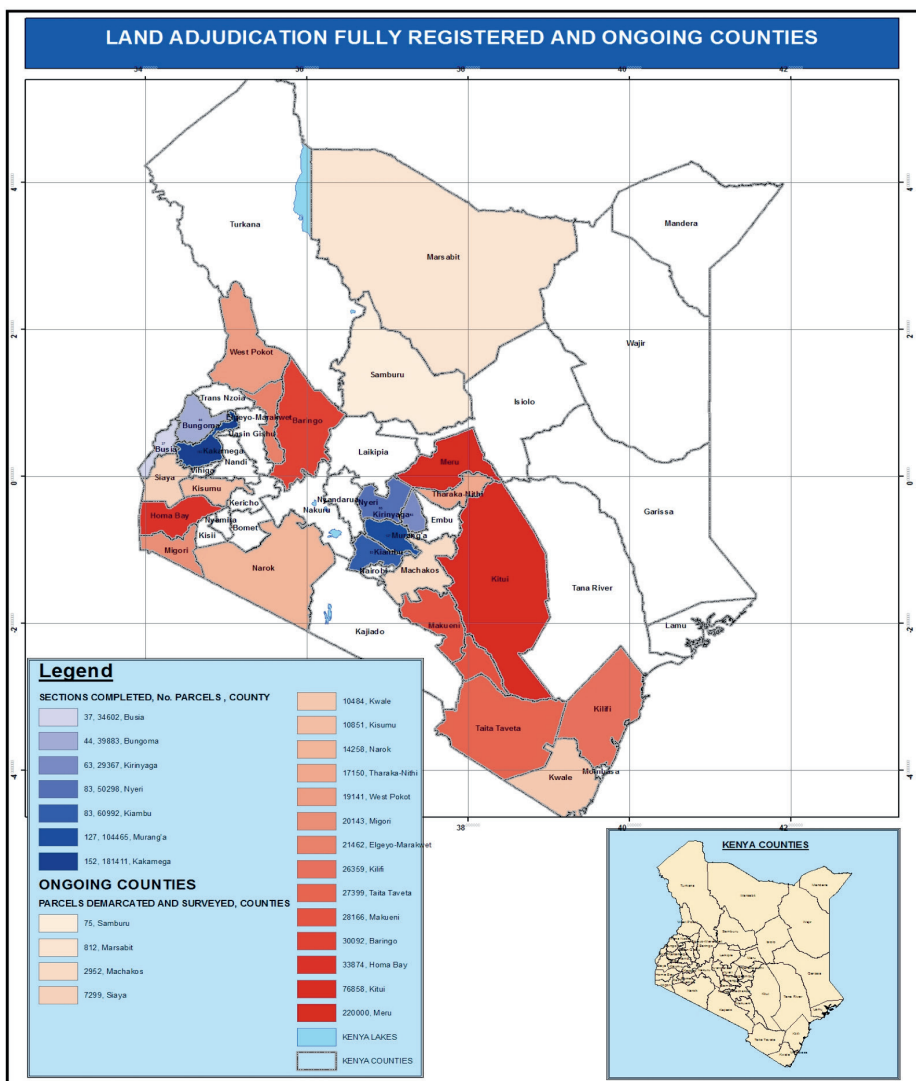
The land registry in Kenya has made a mark in history and in the achievement of Kenya’s development agenda. The contributions of the land registration since its inception in Kenya is as follows,

<b>Benefits of Land Registration in Kenya</b>
(a) Facilitates Issuance of titles/documents of land ownership
(b) Fortifies Security of tenure
(c) Decentralized land registration – offers services close to the citizen
(d) Facilitates Reduction of litigation
(e) Facilitates mortgaging
(f) Catalyzes a vibrant land market
(g) Facilitates land taxation
(h) Facilitates and enhances physical planning
(i) Catalyzes the general economic growth

Table 4. 1: Summary of the Achievements of Land Registration in Kenya

##### **4.4.1 Issuance of Titles/Documents of Land Ownership**

Since the introduction of land registration in Kenya by the colonial administration, the Ministry of Lands has issued over five million, six hundred (5,600,000) land ownership documents [MoL 2013: 18]. While this is an achievement it took more than a century to complete, therefore, it is clear that land registry should have done much better. The Government of Kenya has, in this regard, promised to issue an extra three million (3,000,000) titles by the end of year 2017.



Map 4.1 - Showing areas of land in Kenya fully registered by county (Source: Wanyonyi et al 2017: 12)

	TITLES ISSUED	REGIONS
LTA	20,000	COASTAL
GLA	35,000	NAIROBI, RIFT VALLEY & CENTRAL
RTA - NAIROBI	190,000	MOST PARTS EXCEPT COAST
RTA - MOMBASA	50,000	COASTAL
RLA – COUNTY OFFICES	5,600,000	COUNTRY WIDE
RLA – TITLING CENTRE	2,500,000	COUNTRY WIDE

Table 4.2: summary of an approximation of the total number of titles issued under the various laws of land registration by mid - 2017

#### 4.4.2 Security of Tenure

Wherever land is registered and titled it implies that the holders of the land ownership documents enjoy security of tenure and exclusive possessory rights over the lands whose title they hold. They are assured of their ownership and are at ease when dealing with registered parcels of land. Registration clearly indicates the tenure and the mode of land holding. This could be absolute, freehold, leasehold, or a tenancy in joint or in common. It also indicates the dimensions on the ground, acreage, the user, and, sometimes, the value. Registration of land improves the value of the land due to this security of tenure [Onalo 1986: 176].

#### 4.4.3 Decentralized Land Registration (Institutional Framework)

Though not under all the regimes, decentralization of services is a key achievement of land registration systems in Kenya. This has previously happened through the RLA under which the concluded adjudications and settlement programs have seen quite a number of titles issued. Unlike other legislation, RLA intended to establish at least one land registry in each district (now counties). Currently, there are about 52 registries under the RLA spread in all the county headquarters save for six counties. Going forth, this will also be experienced through the LRA under section 6. It will be considerably better as all lands registered under the other regimes will be converted and registered under the LRA, which will see all land registration being effected in the home county land registries.

Land registration services are taken as close to the citizen as possible; this is in line with devolution policies, translating to access to justice and good governance. Land

registration is, thus, cheaper and quicker under the RLA (repealed) than with other statutes whose services are centralized in Nairobi or Mombasa. Decentralization, consequently, facilitates more dealings in land and registration of inheritances in land since the public is able to easily access those service.

#### **4.4.4 Reduction of Litigation**

Under the registration regimes, a certificate of title or the search signed and sealed by a land registrar is taken as conclusive evidence by all courts of law on matters and facts registered therein. Title to land is taken as prima facie evidence of ownership of land and other matters indicated in the title [Onalo 1986: 177]. This means that a person with documents of land ownership is easily adjudged the landowner in absence of evidence to the contrary. This aspect of land titles greatly reduces unnecessary litigation in matters of land ownership.

#### **4.4.5 Facilitates Mortgaging**

Registration of land and issuance of title has facilitated mortgages and charges on land. This is because where lenders offer financial accommodation on the strength of security over a property (land) preconditions are that the land must be registered and titled [Larsson 2000: 13]. If Kenya did not have land registration systems all the loans secured by land titles would not have been issued. It is an achievement whose credit goes to the land registry amongst other stakeholders. There are 24,458 residential mortgages taken against registered land [Central Bank of Kenya 2015: 18].

#### **4.4.6 Vibrant Land Market**

Land buyers and other dealers in land are comfortable when buying or entering into land agreements whose subject parcels are registered and titled. Persons who want to lease properties for farming, industries, businesses, or even residential purposes require registration of leases. Whether done against the title or under the RDA, it is registration that promotes the same. Thus, registration of transactions in land has put land onto the market, leading to land becoming a commodity to trade in.

Because land cannot be carried around like other movable commodities, registrable instruments of land transactions enable this to happen. Land is carried around in

conveyancing instruments and transacted upon this way. It is only after registration that these transactions are conclusively and safely concluded. Land registration has over the years facilitated land markets all over the world, including in Kenya.

#### **4.4.7 Facilitates Land Taxation**

Every time a transaction happens in land, there is some form of taxation that accrues to the Government, county, or central authority. This is usually in terms of stamp duties, land rents and rates, or other conveyancing fees payable to the Government. Some of these taxes in land accrue on land not necessarily when registering a transaction but simply because it is titled. Land registration facilitates taxation, because without title the Government may not have a basis to tax land.

Currently, collections of stamp duties in Kenya are over One Billion Kenya Shillings (Ksh. 1,000,000,000/-) (approximately US \$ 10 Million) per month [Registrar 229]. This form of Government revenue could not be realized had the land units not been registered.

#### **4.4.8 Physical Planning**

Where land has been registered, the local authority is in a position to have a record of parcels of land within its jurisdiction that are titled. Every time the landowner proposes a development on land it becomes easier to control any developments, erections, or other improvements through permits. The title also indicates the use of any particular land and this helps both the owner as well as the enabling agents to trace and control the developments.

#### **4.4.9 Facilitates Economic Growth**

All the above achievements are through land registration and can be summed up as a spur of economic development. Overall, it can be said that registration of land in Kenya has been a catalyst to the general growth of the country. Without it, Kenya's growth would be different. If land registration is strengthened, it would translate to even more growth. It, therefore, means that Kenya's land registration system should be improved in order to realize the full potential in economic growth.



## 4.5 Comparative Analysis

The study also undertook field research amongst the users of the land registration services through questionnaire and the results are now analyzed. This particular part of the study applied a non-doctrinal methodology. It involved face to face interviews as well as handing over of the questionnaires to the interviewees to go through and fill them at their own time and pace. Target interviewees included firstly the registry staff and secondly the customers of the land registry. These included land owners, conveyancing lawyers and clerks, survey officers as well as land brokers. These interviews were carried out in the months of March and December 2016.

On a scale of 1 – 5, where 1= strongly agree and 5 = strongly disagree, the following is a summary of a comparative analysis of Kenya’s land registration system vis a vis an ideal modern land registration system. The ideal system may not be an existing one, but rather what most writers have agreed on as the qualities of a good land registration system. The analysis is based firstly on the land registry’s own assessment and also the users’ assessment. The questionnaire statement that was put forth read:

*“The land registry and the registration processes in Kenya are or they apply the following aspects in their day to day business. Kindly comment on the scale of 1 -5 where 1= strongly agree, 2 = agree, 3 = average, 4 = disagree and 5 = strongly disagree.*

		Registry’s own Assessment	Customers’ Assessment
Principles	Mirror	3	3
	Curtain	2	3
	Assurance	3	3
	Booking	3	3
	Publicity	4	3
	Specialty	3	3
	Consent	2	3

Features	Clarity	3	2
	Security	3	3
	Accessible	3	3
	Correctness	3	3
	Simplicity	3	4
	Completeness of Record	3	3
	Legal Security	3	3
	Accuracy	2	3
	Expeditious	3	3
	Understandable	3	3
	Cheapness	2	3
	Suitability to Circumstances	2	3
	Fairness	2	3
Statutes	Applicable	2	2
	Suitability to circumstances	2	2
	Understandable	3	2
	Adaptable	3	2
	Flexible	3	3
Institutionally	Anchored in law	2	2
	Transparent	2	3
	Has appeal mechanism	2	3
	Customer oriented	2	3
	Embraces e-governance & modern IT	3	4
Personnel	Knowledgeable	2	2
	Skilled	2	2

	Professionalized	2	3
	Ethical (of integrity)	3	4
	Experienced	2	2
	People friendly	2	4

How many days does it take to carry out the following transactions?

Table 4.3 - Tally of the registry's own and its customers' assessments and based on best practice (Source – field work)

Transaction	Registry Assessment	Customers' Assessment
Searches	3	5
Transfer	19	80
Charge	12	48
Discharge	17	30
Probate and administration	9	96
Subdivision	58	187
Caveat/Caution	7	22
Renewal/extension of lease	55	138
Amalgamation	36	218
New-grant	38	292
Agreements	4	14
Power of Attorney	7	14

Kindly give suggestions on how to improve the land registration regime in Kenya based on your experience.

.....

*a) Digitalize the lands registry and the processes*

.....

*b) Take staff through people and public relations training*

.....

## 4.5.1 Comparison of Global Best Practice and the Situation in Kenya

The following table is a summary of the elements and features of global best practice in the realm of land registration. It further offers a comparison to the situation in Kenya and suggests what can be done to bring Kenya's land registration closest to global best practices.

International Standard	Global Best Practice	Situation in Kenya	What Needs to be Done
Principles	<ul style="list-style-type: none"> <li>Mirror Principle; The title accurately describes the land and its ownership</li> </ul>	<ul style="list-style-type: none"> <li>RTA, GLA and LTA titles satisfy this principle, the other statutes do not, thus not all land is accurately surveyed</li> </ul>	<ul style="list-style-type: none"> <li>Automate all processes that contribute to issuance of title and aim to register up to 100% of the land from the current 30%.</li> <li>Develop property online search engines available to all members of the public</li> <li>The online search engines should include modern geospatial database systems, as applied in the Dutch Kadaster*</li> <li>Develop and allow online applications and processing of transactions in land.</li> <li>Properly and fully implement the LRA so as to fully satisfy mirror principle.</li> </ul> <p>*The Case Study at the Dutch Kadaster</p>
	<ul style="list-style-type: none"> <li>Curtain Principle; Searches from the registry are fully trusted, should capture all rights, responsibilities and restrictions.</li> </ul>	<ul style="list-style-type: none"> <li>More than just carrying searches is required by a potential land buyer.</li> </ul>	
	<ul style="list-style-type: none"> <li>Assurance Principle; Title to land is guaranteed by the State</li> </ul>	<ul style="list-style-type: none"> <li>Title is guaranteed by the State</li> </ul>	
	<ul style="list-style-type: none"> <li>Booking Principle; Changes in land are always registered.</li> </ul>	<ul style="list-style-type: none"> <li>Only about 30% of land is registered, thus not all changes in land are registered</li> </ul>	
	<ul style="list-style-type: none"> <li>Publicity Principle; Land register is open for public inspection.</li> </ul>	<ul style="list-style-type: none"> <li>Register is open to the public at a fee. However one has to visit the physical office. Not available online.</li> </ul>	
	<ul style="list-style-type: none"> <li>Specialty Principle; Land Register describes the owner and the land unambiguously.</li> </ul>	<ul style="list-style-type: none"> <li>Owner and land well described if land is registered</li> </ul>	
	<ul style="list-style-type: none"> <li>Consent Principle; the registered owner must consent before changes are effected on the title/land register.</li> </ul>	<ul style="list-style-type: none"> <li>Some transactions are registered without consent i.e. court orders, restrictions.</li> </ul>	

Features	<ul style="list-style-type: none"> <li>• Clarity - clear and simple procedures of practice should be in place.</li> </ul>	<ul style="list-style-type: none"> <li>• Complicated because there are many laws governing land registration. Most have however been repealed but registration is still happening under the old regimes during transition.</li> </ul>	<ul style="list-style-type: none"> <li>• Drop the outdated routine procedures that do not add value to title registration, decentralize and automate all services. The new laws should also be implemented so as to avoid complexity.</li> </ul>
	<ul style="list-style-type: none"> <li>• Security of tenure - title is respected by all and ownership is unquestionable.</li> <li>• Accessible - This implies that land information is readily available to the owner, potential buyer, banks or any other interested party.</li> <li>• Correctness - this is full and accurate description of all attributes of the land.</li> <li>• Simplicity</li> <li>• Completeness of Record</li> <li>• Legal Security</li> <li>• Accuracy</li> <li>• Expeditious</li> </ul>	<ul style="list-style-type: none"> <li>• Not always secure due to double registration / allocation, register manipulation, politics and ethnic influences on land ownership.</li> <li>• At times files are missing &amp; services are centralized in Nairobi or county headquarters.</li> <li>• Mostly correct, but falls short in instances of fraud.</li> <li>• Complex rules</li> <li>• Not always (only 30% is registered), the complicated rules of practice and bureaucracy do not assist in having a timely registration.</li> <li>• Legally secure, in case anyone steps on another's right to property, the court system can be relied on to rectify the infringement.</li> <li>• The land register is quite accurate for the already registered titles. However delays in registration compromises register accuracy.</li> <li>• Tedious due to routine processes</li> </ul>	<ul style="list-style-type: none"> <li>• Hasten the enactment of the Community Land Bill.</li> </ul>

	<ul style="list-style-type: none"> <li>• Understandable</li> <li>• Cheapness/Cost, registration should be affordable so as to encourage prompt registration of land both for the Government and the land owner.</li> <li>• Suitability to Circumstances implies that the rules applied are in consonance with a peoples' way of life and that it is not an unnecessary affair.</li> <li>• Fairness - This is applied in terms of decentralized access, simple and cost effective processes.</li> </ul>	<p>and centrality. Transactions take too long to register.</p> <ul style="list-style-type: none"> <li>• Not always</li> <li>• Sometimes the cost is high especially where one has to travel far and keep on going back due red-tape.</li> <li>• Land registration as a concept is quite relevant but the way of doing it for instance amongst the nomadic communities in Kenya is not relevant.</li> <li>• Applied in terms of the laid down rules but where decentralization is still on-going, then one has to either travel far or do without registration.</li> </ul>	
Statutes	<ul style="list-style-type: none"> <li>• Applicable</li> <li>• Suitability to circumstances</li> <li>• Understandable</li> <li>• Adaptable</li> <li>• Flexible</li> </ul>	<ul style="list-style-type: none"> <li>• To a big extent due to the recent passing of land legislation.</li> <li>• Laws do not fully embrace technology</li> <li>• Yes</li> <li>• Yes</li> <li>• Yes, indeed the Land Registration Act of 2012 is in the process of being implemented and other laws are applicable in the transition period</li> </ul>	<ul style="list-style-type: none"> <li>• Amend relevant sections of the law; formulate rules and regulations necessary to enforce the Acts of Parliament of 2012.</li> </ul>
Institutions	<ul style="list-style-type: none"> <li>• Anchored in law</li> </ul>	<ul style="list-style-type: none"> <li>• Yes</li> </ul>	<ul style="list-style-type: none"> <li>• Enhance transparency, establish customer relations office and automate institutions and build linkages</li> </ul>

	<ul style="list-style-type: none"> <li>• Transparent operations</li> <li>• Established appeal mechanism</li> <li>• Customer oriented</li> <li>• Embraces e-governance &amp; modern IT</li> <li>• Inter and intra –linkages and data integration.</li> </ul>	<ul style="list-style-type: none"> <li>• To some extent, but due to the manual operations, more can still be done.</li> <li>• Though not adequate, there exists an appeal mechanism in the office of the Chief land Registrar and the Environment and Land Court which is at the level of the high court.</li> <li>• To a small extent, the customer relations desks are not well equipped with personnel or even technology.</li> <li>• Not yet, Kenya is in the early stages of e-governance. Currently, one registry (out of a total of 56) is being used as a pilot for land data capture and issuance of online searches.</li> <li>• The various institutions dealing in land are not linked. They lack standardization in their data modeling and are not in a position to adequately share information.</li> </ul>	<p>through standardized data operating platforms.</p>
Land policy principles	<ul style="list-style-type: none"> <li>• A National Land Policy which takes into account: aspects of the various land related activities such as land management, reforms, registration, administration and recognition of the growing complexities in rights, restrictions and</li> </ul>	<ul style="list-style-type: none"> <li>• Kenya has a fairly up to date National land policy of 2009.</li> </ul>	<ul style="list-style-type: none"> <li>• Kenya needs to implement the National Land Policy through the enactment of various legislations or at least amend the existing laws. Fine tune the policy to be in tune with the</li> </ul>

	responsibilities in relation to land.		Constitution.
Inclusion of all rights, responsibilities and restrictions	<ul style="list-style-type: none"> <li>Increasing pressure on land, is leading public authorities to impose more restrictions and responsibilities on land. Land owners and other parties need to know about all factors affecting land</li> </ul>	<ul style="list-style-type: none"> <li>The registration system in Kenya is comprehensive and documents almost all factors affecting land and the market, except indigenous land rights and the informal tenure systems are not recognized. Matrimonial rights and trusts including customary trust are also recognized under the Act though not always indicated on title.</li> </ul>	<ul style="list-style-type: none"> <li>The title document needs to be formatted in a way to reflect all rights, responsibilities and restrictions or in the least be indicated in a separate easily accessible document.</li> </ul>
Financial aspects	<ul style="list-style-type: none"> <li>A good land administration institution is self-financing, self-sustaining and the costs of processing applications are not a burden to the customer.</li> </ul>	<ul style="list-style-type: none"> <li>The government provides most of the funds to run the system. In case the Ministry needs to establish a system, it must justify itself to the Treasury.</li> </ul>	<ul style="list-style-type: none"> <li>The system should be developed in such a way that it is self-sustaining and allow PPPs.</li> </ul>
Technology	<ul style="list-style-type: none"> <li>All services are customer oriented and customer friendly all of which are based on vibrant application of modern technology and easily accessible on the World Wide Web.</li> </ul>	<ul style="list-style-type: none"> <li>Introduction of modern ICT is slow, applied in isolated sectors and inadequate. Minimal digitization has been initiated under the e-government policy.</li> </ul>	<ul style="list-style-type: none"> <li>The registry and all other landed institutions should come together and invite other stakeholders and drive the automation of all land data.</li> </ul>
Sustainable Development	<ul style="list-style-type: none"> <li>The land registration should be put in place not only for the legal and fiscal purposes, but also for the sake of managing land as a scarce resource towards sustainable development.</li> </ul>	<ul style="list-style-type: none"> <li>The Kenyan system is the traditional fiscal and legal cadastre set up mainly for tax collection and has not fully embraced sustainable development principles.</li> </ul>	<ul style="list-style-type: none"> <li>The land registries should endeavor to have a record of all lands within their jurisdictions registered so as to enhance sustainable management.</li> </ul>
Personnel	<ul style="list-style-type: none"> <li>Knowledgeable</li> <li>Skilled</li> <li>Professionalized</li> <li>Ethical (of integrity)</li> <li>Experienced</li> <li>People friendly</li> </ul>	<ul style="list-style-type: none"> <li>Highly</li> <li>To an extent</li> <li>Highly</li> <li>To an extent</li> <li>Vast experience</li> <li>To an extent because there is lack of customer oriented</li> </ul>	<ul style="list-style-type: none"> <li>There is need for continuous training, coaching and improved mentorship programs. Apply appropriate methods of hiring</li> </ul>



	<ul style="list-style-type: none"> <li>• Optimal staffing levels</li> <li>• Highly motivated</li> </ul>	<p>training.</p> <ul style="list-style-type: none"> <li>• The land registry is highly under-staffed.</li> <li>• The staff members sometimes operate under very strenuous conditions in terms of salary, office space, lack of facilities and stationery.</li> </ul>	<p>and deployment of staff. The officers should also be well facilitated and motivated.</p>
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Table 4.4: Comparison of Global Best Practice and The Situation in Kenya

## 4.6 Critique of Each Land Registration System

Under this subtopic, each system is taken, analyzed, and weighed against the global best practice. Needless to say, both weaknesses and strengths are exposed.

### 4.6.1 Indian Transfer of Property Act

This is probably the oldest land law that was applied to the East African protectorate, having been enforced in the year 1897. This law has, over the years, provided an anchor on which the pure land registration statutes find substantive law [Onalo 1986: 175]. It is still applicable today, though it has been repealed by the LRA No. 3 of 2012. It suffices to say that there are no titles issued directly pursuant to the ITPA, but indirectly all titles find their footing from it, save for the ones issued under the RLA and the SPA.

In that regard, ITPA has been in operation for more than a century with all conveyancers making reference to it directly or indirectly for matters of substantive law. It is intimated that under the same some documents or deeds of land ownership could have been made, processed, and held as prove of ownership. This is especially true of the 21-year term [Okoth Ogendero 1991: 13 & 43] leases issued to the white settlers before any other laws came into force. Whether these took the format of allocation letters or crude land deeds is not clear because no land register under ITPA was kept. This could also have been the statute under which railway lands were acquired to lay the line before the dawn of the 20<sup>th</sup> century. In fact, much of land

owned by the Kenya Railways is not registered under any law, currently however, there is the push to register and protect all State-owned lands.

Familiar application of the ITPA stems from its sections 69 and 100 both which provide for chargees' statutory power of sale. These two provisions were necessary in any mortgage or charge documents under the LTA, GLA and RTA before the enactment of LRA of 2012. This study dares to suggest that ITPA is alien, old, and may not be applicable to Kenya's present-day land question and more so to land registration. After its repeal, the current source of substantive land law is the Land Act No. 6 of 2012. Finally it is important to note that though many writers include the ITPA as one of Kenya's land registration laws, it was indeed not one but, a substantive law which aided the registration laws.

#### **4.6.2 Registration of Documents Act**

Registration of Documents Act is a deed system of land registration. It registers the occurrence of a transaction between parties as opposed to a legal consequence of that registration. The fact that it does not focus purely on land makes it subject to use by many people, including those not transacting in land. On the other hand, being a deed registration system, investigations are simple, and thus it does not take a lot of time to register documents. It is, in that regard, not time consuming. Taxes under RDA are assessed at nominal value, making it even cheaper.

Drafting of documents registrable under RDA is not expected to be strict and even a hand written document is registrable sometimes without attestation. Apart from documents that require mandatory registration, it is not a requirement that documents be drafted by lawyers. It, therefore, implies that legal fee payable to the lawyer is not incurred. This has remained a simple and cheap form of registration so far.

The other side of the coin is that there are only two RDA registries in the republic, one in Nairobi and the other one in Mombasa at the Coast Lands Registry [Ojienda 2010: 21]. This is of serious concern pertaining to accessibility and cost implication. We can therefore infer that this system is dually centralized; if someone in a particular corner of the country (far from both Nairobi and Mombasa) has a transaction

registrable under the RDA they may incur high travelling costs. This may in turn discourage registration of important transactions touching on land.

RDA, like all other systems in Kenya, runs on a manual platform and this requires physical preparation and presentation of documents to the registry. This makes it expensive in terms of time and money consumption. Subsequent searching and perusal of the RDA register is rendered cumbersome and tedious by the manual nature of registration. The fact that stamp duty though nominal has to be assessed at the lands office and then paid at designated banks makes the process complex and tedious. This may deter applicants from applying for registration of transactions.

#### STRENGTHS

#### WEAKNESSES

<ul style="list-style-type: none"> <li>• Offers a simple registration system.</li> <li>• Registration does not need to be land related.</li> <li>• Reduces conflicts in agreements/contracts.</li> <li>• Offers a prima facie evidence of an agreement or any other deed.</li> <li>• Enhances revenue collection for Government.</li> <li>• Allows registration of any type of document.</li> <li>• Does not insist on strict legal drafting guidelines.</li> <li>• Stamp duty payable is nominal.</li> </ul>	<ul style="list-style-type: none"> <li>• Imported from England with minimal amendments.</li> <li>• It is quite old and outdated</li> <li>• Applicable only in 2 selected registries (centrality).</li> <li>• Does not allow/anticipate electronic registration.</li> <li>• Paper records torn/worn out or missing.</li> <li>• No credible backup.</li> <li>• The simplicity may create room for fraud.</li> </ul>
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Table 4.5: Summary of the Strengths and Weaknesses as analyzed under the RDA (Source – Own analysis)

### 4.6.3 Land Titles Act

The greatest achievement under the LTA was the registration of rights in land for the white settlers and the Sultanate of Zanzibar along Kenya’s ten-mile coastal strip. It followed that after independence, many titles in favour of indigenous people have

been processed under the same. The fact that the Arabs and the Britons were issued with ownership documents to land which belonged to African families continues to breed problems to date. This is because the ownership through the LTA documents was granted in total contempt of the Africans occupational rights and without a comprehensive adjudication process being adhered to. The LTA was openly biased against indigenous Africans rights to land and the land court interpreted it to mean that no African individually or communally had title to land [Ojienda 2010: 22].

Consequently, a settler could have a title to land but the occupants are other people who owned the land customarily. There are thus perpetual disputes in land along the ten mile coastal strip due to what has commonly been referred to as the “*absentee land lord*”. Common cases are Waitiki case [Evanson Kamau Waitiki Vs KPLC (2016) eKLR], Basir Criticos [Basir Criticos vs AG and 8 others (2012) eKLR], and the Mazrui Family [Mazrui Land Trust vs AG (2012) eKLR] land tussles against the indigenous peoples. According to the National Land Policy, at para. 3.6.4, this led to the coast region having the single largest concentration of landless indigenous people living as squatters. Recent problems include Lamu Port and Southern Sudan Ethiopia Transport (Lapsset) corridor and its compulsory acquisition’s compensation complications. This has stalled the launching of the corridor owing to land ownership questions in Lamu and registration of land titles thereto in the years between 2011 to 2013 which the President directed be revoked. Further, the NLP indicates that the issuance of freehold and leasehold tenure titles on the beaches hampers public access, movement, and security.

The manual records do not make the situation any better. The first LT volume and LT files having been opened in the early 1900s have continued to wear and tear due to time and handling. The humidity and other climatic conditions at the coast have considerably worsened this situation because the volumes can easily tear. This presents a situation of missing or torn land registers [LSK 2012: 96]. This makes it easy for fraudsters to perpetuate their interests in land they do not own and even to manipulate the register.

The fact that LTA has two components of the register is a positive element. This is because if the folio in the volume is torn, then one can make use of the deed file to

reconstruct the register and vice versa. This creates a backup, but there are many instances where both the folio and the file are missing leaving a gap in the land register [registrar 210]. This further creates room for double titling where the commissioner of lands (or the NLC) in absence of any ownership evidence in the registry may, without any ill intention, allocate the land to a different person.

The aspect of *trace back* comes in handy especially where there is a case of double titling, fraud, or register manipulation. This is because the owner of land under LTA is meant to be in possession of all conveyances touching on the land. In a situation where more than one person claim ownership, the one in possession of many conveyances and who can trace his/her ownership to a good root can easily be identified as the genuine owner.

This research has concluded that LTA has components of both title and deed registration applied at various points. This is so because the *trace back* phenomenon applied here is a key principle in deed registration systems. The *Grundbuch* or land registration in volumes where each unit of land is accorded a folio in the register [Onalo 1986: 181], invented by the Germans is an aspect of title registration. As seen earlier, LTA certificates have, as an important part of their composition, a map clearly indicating the land's abuttals, bearing, and position on the ground. Both LTA and GLA require fixed boundaries before land can be registered. This is an aspect of the Torrens registration system. Section 21 of the LTA stipulates:

*“Save as in this Act otherwise expressly provided, every certificate of title duly authenticated under the hand and seal of the Recorder of Titles shall be conclusive evidence against all persons (including the Government) of the several matters therein contained and a certificate of ownership shall be conclusive proof that the person to whom the certificate is granted is the owner of coconut trees, houses and buildings on the land...unless there is noted thereon in a manner hereinafter provided a memorandum to the contrary effect.”*

This is an indication of guarantee of title, though limited to some extent, which is another important aspect of title registration. This study has, therefore, reached a conclusion that LTA is either an improved deed system or applies aspects of both title and deed land registration systems, but it is more of title registration than it is a deed system. The system under LTA, as opposed to registering selected transactions in

land, registers the land and thereafter who owns it. When one carries out a search at the registry it is expected to serve as conclusive evidence of the factual and situation on the ground, thus, the mirror principle.

LTA has one registry located at Mombasa. Even though it is meant to register land parcels within the ten-mile coastal strip this presents an accessibility challenge. Travelling costs are inevitably incurred. This is a disincentive to register each and every transaction affecting LTA titles. Thus, the register may not present a true reflection of the situation on the ground. Furthermore, conveyancing documents are in form of indentures and deeds which can only be constructed by lawyers and attested to by advocates. This presents another cost which can deter registration of transactions in land.

Other transactions under LTA for instance subdivision, conversion, change of user, extensions, and renewal of lease require the intervention of the Nairobi office as well as other professionals (lawyers, valuers, licensed surveyors, and physical planners). These transactions are lengthy, time consuming, expensive, and quite complex [LSK 2012: 74]. Landowners may prefer to use their land without the necessary approvals or simply keep the land dormant. One may, for instance, want to use as security a part of their land and get some money from a moneylender for development. The process of subdivision and change of use may turn out to be more expensive than the facility they would get. They would rather leave the land un-divided and un-utilized than incur the additional costs.

This complexity of land registration makes landowners shy away from approaching the land registry. Due to this nature of land registration a new group of people emerge around conveyancing known as *land registration brokers or agents*, who complicate the situation even further. These brokers make some people believe that unless they intervene then land registration cannot be effected [LSK 2012: 11]. In fact, they convince the unsuspecting members of the public that they are the only ones who have access to the registrars.

However, registration of land secures tenure and there is guarantee of title under the LTA. [See *Waitiki*]. Approximately 20,000 LT deed files have been opened and this

means that 20,000 titles have been issued under the LTA [registrar 210]. This definitely comes with all the benefits of land registration. Though not many, there are a number of owners who have managed to secure loans under the LTA.

#### **4.6.4 Government Lands Act**

The GLA and LTA are modeled along similar lines. Though the GLA may not map the LTA in the statutory provisions, administratively and practically they are quite similar. Due to this, this research has concluded that the '*GLA is to Nairobi what LTA is to Mombasa and the coast region.*' In other words, the observations made under LTA easily map the situation and observations that this study makes here. This is so because, as seen in chapter 3, these two statutes' model of registration is practically the same.

Historically, the GLA was the statute that concreted the Crown's grip of land in Kenya and through it all lands were declared Crown land. Kenyans were, in 1915, effectively turned into *tenants of the crown* [Okoth Ogendero 1991: 16] [also quoted in Mburu 2011: 3]. The colonial administration acquired land and displaced Kenyans on the strength of GLA. This law was used to dehumanize, displace, and concentrate Kenyans into native reserves. Upon the exit of the colonial masters, an elite class of Africans perpetuated the illicit accumulation of lands; leaving a majority of Kenyans with little arable lands to share amongst themselves [Odote & Kameri-Mbote 2016: 12].

Technically, however, the GLA has several elements that are interesting to analyze. The trace back component of title investigation gives it the impression of a deed registration system. On the same token, deed plans attached to the deeds import the feeling of a Torrens system. One could argue that this is a deed registration system improved by the incorporation of a map. This study would rather treat the Act as a mixture of the two systems. Just as with the German title registration system, the registered owner under the GLA enjoys some form of limited guarantee of title (not necessarily compensation by the Government ).

On the positive side, GLA, this study observed has over 35,000 parcels of land registered under it. Majority of these lands are situated in Nairobi (registered in Volumes N) and in what was formerly the white highlands (registered in Volumes H), which spreads across the central region of Kenya as well as the Rift Valley [registrar 220]. This has enabled the landowners to enjoy benefits of land registration, including security of tenure amongst other benefits.

The GLA's volumes backup the deed files. Therefore, when a file is missing one can rely on the volume to gather the land details; the vice versa is also true. The GLA volumes are basically a land register and this enables the Government to plan, impose taxation in terms of land rates and land rent, and facilitates many borrowers to secure mortgages, both on long-term and short-term basis. The GLA also facilitates land transfers based on willing buyer, willing vendor agreements, and this has enabled many heirs and descendants secure their inheritances in land.

The cons of land registration under the GLA are large. The major issue is that there is only one registry [Wayumba 2013: 28], and thus accessibility and travelling costs present a challenge to the average citizen. Conveyancing instruments are quite complex as they take the format and language of deeds and indentures as done in the early days of Kenya's colonization. One cannot draw or execute these documents without advocates, thereby incurring legal fee and other ancillary expenses.

Just as with the LTA, the GLA records are all manual and this presents another set of challenges. The first GLA volume and files, having been opened in the early 1900s, have continued to wear and tear due to time and handling. Retrieval becomes tedious and with accumulation of dust the wear and tear is worsened. This presents a situation of missing or torn land register [LSK 2012: 78]. Transactions take unnecessarily long to register and sometimes cannot be registered at all if both the folio and the file are missing. This makes it easy for fraudsters to perpetuate their interests in land they do not own through manipulation of the register and double titling.

A search under the GLA or LTA can be complex because the applicant is required to know the volume and folio numbers together with land reference numbers. This study has observed that most people do not know of the existence of such numbers and that together these are actually the land registration numbers. They just present the land



reference (LR) number which is not, by itself, adequate since it is not the registry number.

Moreover, the fact that the last document of conveyance is what the registered owner should hold as title sometimes makes it hard for the owners (who have held land under other regimes) to feel that their land is adequately titled. They will demand to be issued with a certificate or title as under other regimes, say RTA or RLA. This research further observed that some lending institutions and banks have sometimes also found the *GLA titles* inadequate as security for loans extended to landowners [Registrar 220].

Land registration under the GLA can be complex and confusing, but with a seasoned advocate or conveyancer, it is quite easy. To majority of Kenyans, however, it is tedious, expensive, and difficult. This is a clear disincentive to transact and more so to even think of registering transactions thereafter. Parties may carry out transactions based on agreements and keep them without going through this rigorous process of registration. What this implies is that the register may not mirror the factual situation on the ground.

#### STRENGTHS

- Offers a registration system for land transactions.
- The registry creates a land register.
- Offers an available history of land parcels.
- Facilitates revenue collection.
- Uses deed plans/accurate and mathematically coordinated boundaries.
- Deed files offer back-up to the volumes.
- Offers a prima facie evidence of land ownership and other rights.

#### WEAKNESSES

- Imported from England with minimal amendments.
- Old and outdated.
- Each is applicable only in one registry (centrality).
- Do not allow/anticipate electronic land registration.
- Paper records torn/wear out.
- Sometimes no credible backup.
- Volumes and deed files require a lot of storage space.
- Folios/pages are easily torn and wear out due to age, poor records management, climatic conditions (humidity and acidity in the air thus slow fires) or malicious manipulation.
- Employs complex document formats and conveyancing procedures.

- Offers guarantee of title.

- Lawyers must be involved in drafting all deeds of conveyances.
- The owner of land must (or in the least should) possess the previous conveyances.
- Do not offer complete guarantee of title.
- Deeds do not indicate land use.
- Deed plans do not indicate developments or other attributes on land.
- Offer only procedural aspects of land registration.
- The deeds held by the owner do not readily offer the history of the land.
- Previous conveyances could be left in the hands of unscrupulous vendors.

Table 4.6: Summary of the Strengths and Weaknesses as analyzed under the GLA and LTA (both now repealed) (Source – own analysis)

#### 4.6.5 Registration of Titles Act

Like its preceding land registration statutes, the RTA was enacted to perpetuate the white settlers' interests in land in Kenya. It facilitated the displacement of the indigenous Africans so as to enable few settlers to acquire massive acreage of land in total disregard of communal land ownership tenure. Okoth-Ogendo [1991: 10] observes that the white colonial masters alleged that the communal occupation of land amongst indigenous Kenyans was so crude it could not amount to any form of ownership in land.

The RTA was initially applied to places occupied by the whites and their companies. Many Government institutions' lands were surveyed and allocated under this statute, especially Kenya Railways, though not all were eventually titled. Currently however, many units of land have been registered and titled under the RTA. After the colonial masters left, the Act continued to be applied and, almost a hundred years since its inception, approximately 240,000 titles have been issue. This includes about 190,000 titles in the Nairobi RTA registry and 50,000 issued by the Mombasa RTA registry.<sup>9</sup>

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<sup>9</sup> Data collected from Ministry of Lands IR and CR registers in March 2015.

This has come with all advantages of registration, including the guarantee of title. Land titles registered under RTA cannot be defeated as provided for under Section 23 which states *“the certificate of title issued by the registrar ... shall be taken by all courts as conclusive evidence that the person named therein ...is the absolute and indefeasible owner thereof, subject to encumbrances ... and the title of that proprietor shall not be subject to challenge, except on the ground of fraud or misrepresentation to which he is proved to be a party.”*

An RTA title is easy to operate and construe because it bears the history of the unit with endorsements of all transaction touching upon it in chronological order, all in the title document. Banks are quite comfortable operating with this document but only after authenticity has been fortified. As a part of the title is a deed plan included, indicating the boundaries on the ground. Beacons are also placed on the land and they play an important role in reducing boundary disputes. Under the RTA there is a clear and concise land register which indicates the physical location, acreage, encumbrances, and sometimes comes with special conditions if the title is a grant.

The challenges with an RTA titling system largely could be that it is manual [LSK 2012: 78]. The fact that the title register comprises of the deed file in which both the title and the conveyancing instruments are kept is a simplistic way to backup it up. If the deed file is missing, then the affected property is at risk of either being subject of genuine double allocation or fraudulent register manipulation.

Complexity in conveyancing is also a challenge because the law requires that conveyancing instruments be drawn by and executed before advocates. This Act has two registries located in Nairobi and Mombasa. All these imply practical challenges of effecting registration of transactions because of the costs likely to be incurred: travelling, legal fees, stamp duties, rates, rent, and time expended. It is also clear that RTA is a title registration system of land which is also positive since it offers guarantee of title. The certificate of title or grant of title are in themselves conclusive evidence of ownership which does not require an interested buyer to trace back the title to a good root.

In as much as this is the case theoretically, in practice the study concludes that due diligence demands that any buyer, their agent, or their lawyer under any system or Act must do all they can before the decision to commit into a purchase agreement is reached. The fact that RTA guarantees title is not good reason enough to get into a contract that may later breed legal tussle with either an unscrupulous vendor or the Government for compensation.

#### **STRENGTHS**

#### **WEAKNESSES**

<ul style="list-style-type: none"> <li>• Offers a title registration system for land transactions.</li> <li>• Enables the registry to create a land register.</li> <li>• It offers a readily available history of land parcels.</li> <li>• Facilitates revenue collection.</li> <li>• Uses deed plans/accurate and mathematically coordinated boundaries.</li> <li>• Offers a prima facie evidence of land ownership and other rights.</li> <li>• Both the registry and the owner bear the title which shows the history of land.</li> <li>• Title documents incorporate special conditions which clearly stipulate land use.</li> <li>• Reduces disputes over proprietary rights in land.</li> <li>• Guarantees title.</li> <li>• When one transfers land, they must hand over the title for endorsement. This reduces the risk of more than one title being in circulation in relation to one parcel of land.</li> </ul>	<ul style="list-style-type: none"> <li>• Imported from England with minimal amendments.</li> <li>• It is quite old and outdated.</li> <li>• It has two registries in the whole country (centrality).</li> <li>• Does not allow/anticipate electronic land registration.</li> <li>• Paper records torn/wear out.</li> <li>• No credible backup.</li> <li>• Manual titles are easily torn and wear out due to age, poor records management, climatic conditions or malicious manipulation.</li> <li>• Employs complex document formats and conveyancing procedures.</li> <li>• Lawyers must be involved in drafting all deeds of/and conveyances.</li> <li>• Deed plans do not indicate developments or other attributes on land.</li> <li>• The Act offers only procedural aspects of land registration.</li> </ul>
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Table 4.7: Summary of the Strengths and Weaknesses as analyzed under the RTA (repealed) (Source – own analysis)

### **4.6.6 Registered Land Act**

This statute came into being as a result of the recommendations of the East African Royal Commission’s report (Swynnerton Report) of 1955. The report recommended that African indigenous people needed title to land as a catalyst to spur both individual and general economic development [Okoth-Ogendo 1991: 71, 76]. The

RLA was enacted in 1963 after Kenya gained independence from its colonial masters; its main aim was to title Africans' land in accordance with Swynnerton's Report recommendations.

To be able to reach as many indigenous people as possible, the Government established registries all over the country. The intention was to have one land registry per county and it also made use of simple prescribed formats for conveyancing instruments. This was meant to make easy, cheap, and straight forward the dealings in land for and amongst Africans. After all, they did not have access to lawyers and complicated conveyancing would lead the largely communal Africans to disregard need for registration. Instead of making use of fixed boundaries and deed plans, which are complicated, the RLA adopted the simpler, easier, and cheaper registry index maps (RIM) with general boundaries [Wayumba 2013: 30].

The RLA removed the '*tenants of the crown*' notion by issuing absolute proprietorship titles instead of freehold titles. The radical title was effectively taken from the crown or the State (in theory) and seems to vest in the registered owner through sections 27 to 29. Though the State retains police powers, this is the first land registration law that allowed issuance of absolute titles. It would appear that this is because these were the trust lands formerly owned communally and the Government had little interest in the same, or that the independence Governance wanted Kenyans to feel that they owned their lands free from any colonial ties or elitist ideology.

Currently, the RLA has over 50 registries spread across the nation though six (6) counties (Marsabit, Wajir, Tana River, Turkana, Mandera and Samburu) still do not have land registries [MoL 2013]. That notwithstanding, this system is the most decentralized and its services are reachable by many more people than under any other statute or system. It has encouraged dealings in land even down in the remotest parts of Kenya. Though not all lands in Kenya are titled, 5,600,000 (five million six hundred thousand) titles have been registered and issued under this Act [MoL 2013: 18]. This is the biggest number of titles issued under any law. Many landowners have used their titles to secure loans and other financial accommodations and have had them registered all over the country.

The fact that it makes use of simple prescribed formats and initially did not require advocates to draft them makes its application simple, cheap, quick, and within reach in terms of time, money, and distance. The RLA offers guarantee of title and every time a transaction is registered it is entered in the green or white card, and the original conveyances are kept in the parcel file. This creates backup for the entries in the cards.

The fact that registration is wholly manual means that it is easy to manipulate the land register. Where both the file and the card are missing the registry has no other source of information. This is especially so because information sharing amongst the Ministry of Lands departments is poor. The registrar can only then rely on the goodwill of the registered owner to present their certificate of title or title deed to enable reconstruction of the register. This is a loophole that can be exploited to the detriment of either the Government or the landowner.

Another challenge is on issuance of new titles after every transaction instead of endorsing dealings on the grant as happens under the RTA. This can be used fraudulently because an unscrupulous party may decide to retain their prior title instead of surrendering it; this creates multiple titles in circulation and could be used to defraud unsuspecting purchasers. The use of general boundaries, though cheap to apply, gives rise to boundary disputes. If say the river moves from its course or the particular tree or stone is removed, the parties can no longer ascertain their boundaries. The county registrars and the surveyors are constantly being called upon to resolve such matters.

In fact, all registries have pending boundary disputes waiting resolution by the land registrar. This is expensive to the owners as well as the registry because it is time consuming and, more often than not, neighbors caution each other's titles until a resolution is made. This deters transactions and dealings in land.

## STRENGTHS

## WEAKNESSES

<ul style="list-style-type: none"><li>• Offers a title registration system for land transactions.</li><li>• Enables the registry to create a land register.</li><li>• It offers a history of land parcels.</li><li>• Facilitates revenue collection.</li><li>• Parcel files offer back-up to the green and white cards.</li><li>• Offers a prima facie evidence of land ownership and other rights.</li> <li>• Has 52 registries country-wide.</li> <li>• Has simple conveyancing prescribed formats and in theory may not need lawyers to draft or witness.</li> <li>• Offers guarantee of title.</li> <li>• Offers both procedural and substantive land laws.</li> <li>• Makes use of general boundaries.</li></ul>	<ul style="list-style-type: none"><li>• Imported from England with only minor changes.</li> <li>• It is quite old and outdated</li> <li>• Does not allow/anticipate electronic land registration.</li> <li>• Paper records torn/worn out.</li> <li>• Available backup can also be tampered with.</li> <li>• Certificates of lease do not indicate land use or developments on land.</li> <li>• Makes use of loose/general boundaries.</li> <li>• Kalamazoo binders and parcel files need a lot of space for storage.</li> <li>• It is easy to manipulate the green and white cards or even pluck them out and replace the data.</li> <li>• Lawyers and advocates are required to draft documents as a matter of practice.</li> <li>• The title held by the owner does not indicate the history of parcels.</li> <li>• Previous certificates could be left in the hands of unscrupulous vendors who may re-sell or use the title.</li></ul>
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Table 4.8: Summary of the Strengths and Weaknesses as analyzed under the RLA (repealed) (Source – own analysis)

### 4.6.7 Sectional Properties Act

The Sectional Properties Act is anchored in the RLA, and thus all the practical challenges affecting the RLA touch upon the SPA in a similar manner as with its achievements. The SPA however, has not been fully applied in Kenya. Firstly, because not many people have put up flats in the counties as they do in the major cities. SPA is more applicable to Nairobi and its environs as opposed to rural areas. Secondly, it has not been applied in the cities where massive buildings have been put up simply because of its perceived complexity.

Before registration under the SPA, there needs to be a lengthy process of conversion process from the other statutes to the RLA; the process is quite tedious and at times expensive. Most developers have, therefore, relied on improvised sectional registers

where long-term leases are registered in respect to each unit, under whatever other Act, rather than going through the process of conversion and registering a sectional plan. Registration of the units under the other laws as long-term leases is quicker and more familiar to conveyancers. That being the case, only a few titles have been issued under the SPA [registrar 223].

#### STRENGTHS

#### WEAKNESSES

<ul style="list-style-type: none"> <li>• Offers a title registration for units in blocks or buildings.</li> <li>• Enables the registry to create a land register.</li> <li>• It offers a history of land parcels.</li> <li>• Facilitates revenue collection.</li> <li>• Parcel files offer back-up to the green and white cards.</li> <li>• Offers a prima facie evidence of land ownership and other rights.</li> <li>• Has 52 registries country-wide.</li> <li>• Has simple conveyancing prescribed formats and legally may not need lawyers to draft or witness.</li> <li>• Offers guarantees of title.</li> </ul>	<ul style="list-style-type: none"> <li>• Does not allow/anticipate electronic land registration.</li> <li>• Paper records tear and wear out.</li> <li>• No credible backup.</li> <li>• Certificates of lease do not indicate land use or developments on land.</li> <li>• Kalamazoo binders and parcel files need a lot of space for storage.</li> <li>• It is easy to manipulate the green and white cards or even pluck them out and replace the data.</li> <li>• Lawyers and advocates are required to draft documents as a matter of practice rules.</li> <li>• The title held by the owner does not indicate the history of parcels.</li> <li>• Previous certificates could be left in the hands of unscrupulous vendors who may re-sell or use the title.</li> <li>• Not so much applied practically.</li> </ul>
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Table 4.9: Summary of the Strengths and Weaknesses as analyzed under the SPA (Source – own analysis)

### 4.6.8 Land Registration Act

The Land Registration Act number 3 of 2012 has not yet been implemented. That being the case, it would be an uphill task to try and enumerate its achievements or challenges. This study has, however, made an attempt at gauging its provisions. Firstly, the LRA has more advanced provisions and its intent is to provide a uniform land registration law. This means that eventually there will only be one format of title, prescribed conveyancing instruments, and one route to land registration.



This envisages a single land register notwithstanding the constitutional provision for private, public and community lands. There may not necessarily be a creation of three different registers, but rather, the title itself will identify the property as private, public or community. In any case, this is the current practice. This study envisions one land registration regime, but which registers different types of land as identified in the constitution. This is likely to reduce the complexity with which land registration has been associated with, but which achievement will be made clearer with the passing of the rules and regulations by Parliament.

Secondly is the fact that all lands will, under the LRA, be registered at their local county headquarters which is a good step towards decentralization of services. Another major provision is the introduction of an electronic land register which will further decentralize and ease conveyancing and land registration.

However, the fact that LRA does not prescribe timelines within which this is to be implemented or carry out title conversions, is a major drawback upon its enactment. Political goodwill though, can turn this into an advantage and call upon all titleholders to present them for conversion. The conversion process will call upon concerted efforts and development of systemic strategies beginning with a comprehensive composition of rules and regulations to implement the LRA. These rules (after adoption by Parliament) will determine the steps to follow and what will become of the titles held under the previous regimes.

It is likely that there will be an all-inclusive or country wide survey or re-survey, for the already surveyed properties. This will make it possible for the director of surveys to develop a uniform system and a unique parcel identifier because currently each of the different land registration systems has its own property identifying numbers. Other strategies would include a well-choreographed communiqué to the public, specifically the registered landowners, to surrender their titles or land ownership documents in exchange for new titles under the LRA. These are however suggestions by this study but which cannot be achieved unless the rules and regulations are in place. Parliament is yet to pass the same.

Conversions and transfer of files from the headquarters to the relevant county and sub-county land registries would be the next likely step. All these are ideas and hypothetical scenarios because the real catalyst to the enforcement of the LRA is yet to be introduced to Parliament. Unfortunately for now, there is little of the LRA to write about and it remains a ‘wait and see’ moment.

**STRENGTHS**

**WEAKNESSES**

<ul style="list-style-type: none"> <li>• Offers a title registration system for land transactions.</li> <li>• Enables registry create a land register.</li> <li>• It will offer an available history of land parcels.</li> <li>• It will facilitate revenue collection.</li> <li>• Seeks to use accurate and mathematically coordinated boundaries.</li> <li>• Offers a prima facie evidence of land ownership and other rights to land.</li> <li>• Guarantees title to land.</li> <li>• Practice rules are yet to be released – thus there is a possibility of doing the right regulations.</li> <li>• It anticipates complete decentralization of services to all counties and as close to the citizenry as practicable.</li> <li>• Provides for an electronic land register.</li> <li>• Provides for a uniform land registration and titling system throughout the country.</li> <li>• Made by Kenyans for Kenya after various consultative fora.</li> </ul>	<ul style="list-style-type: none"> <li>• The new system remains unimplemented.</li> <li>• The Act provides for transition that has no time limits.</li> <li>• May need supplemental Statutes – for instance an electronic signatures Act and Amendment of the ICT Act.</li> </ul>
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Table 4.10: Summary of the Strengths and Weaknesses as analyzed under the LRA

**4.7 Analysis of All the Systems**

After considering the individual statutes, this part of the research will attempt to put together all the systems and bring out the net effect that they have had, both severally

and jointly, on land registration in Kenya. The following is, therefore, the combined outcome of all land registration laws.

## **4.8 The Strengths**

### **4.8.1 Security Features on Title**

When the operative regimes of land registration were being operationalized, there was little concern pertaining to forgeries, fake deeds, titles, or even land fraud. Land ownership documents were made simply on any paper that was available then. In any case, lack of technology may not have enabled the Government to design sophisticated and secure title in terms of what we know today as security features. However, the simple way in which documents were authored is enough to constitute security features [registrar 221].

Simple elements like the signatures of the registrars, the types of pens that were used, the paper upon which deeds were made, the hand-writings of the assistant registrars or entry clerks, the imprint of the common seal, title numbers applicable those days, the way of making entries, and the ancillary records that were kept are all important components to the verification of a document's authenticity. Registrars who work at the land registry can easily use these simple features and allow them to have some form of title security features.

The newer title documents authored by the recent Governments have been made on paper that is not commonly available, but tricksters have their methods for acquiring them. Nonetheless, there are security features that an experienced registrar can use to determine a document's legitimacy. Thus, security features in the land register can be used in a way that can sieve illegitimate claims to land. All the above systems have, over the years, developed this important aspect of land registration more by default as opposed to by design.

### **4.8.2 Experienced Personnel**

The land registries in Kenya retain professionals who are: skilled, [MoL 2008: 19] qualified, and highly experienced members of staff whose institutional memory cannot be ignored. This experience is gained through years of working as registrars or

assistants and through on the job training and passing of knowledge from one generation of registrars to another. It is through this that the notion of security features above described is sustained.

Like any other institution, the change of guard in the land registries is always carefully considered through a well-managed transition process. This is vital considering that all processes at the land registries are manual. A new registrar can easily transfer land based on a forged title. This has happened where registrars are replaced without proper planning and left the registry at legal crossroads. This experience is a vital asset that the ministry in charge of lands should manage, to the advantage of land registration. Zevenbergen [2002: 4] has argued that conveyancing law is one of the most complex branches of law. It should not be taken lightly that the personnel managing such an important institution should be without the requisite expertise, skills, professionalism, and experience.

### **4.8.3 ICT Component**

Kenya, through the Ministry of Information and Technology, has established the ICT Authority that has seconded its personnel to all Government departments. This is in line with e-governance trends that are mapping the world today. To date the Ministry of Lands has a division in the department of administration whose mandate is to anchor all processes in the Ministry onto an electronic platform. Among other things, this will cure are the departments' operations in silos and poor sharing of information. The existing infrastructure includes local area network (LAN), wide area network (WAN), and equipped offices [MoL 2008 – 2012: 23].

The ICT component at the Ministry should be cascaded down to all the land registries so as to automate all land transactions. ICT must be embraced and be allowed in land registration to the greatest extent possible. Several data capture and electronic data management systems (EDMS) have been introduced and are currently being tested on their suitability to manage land data [ICT officer 103]. Several land registries are currently being prepared for digitalization.

#### **4.8.4 Simple Prescribed Formats under RLA**

The simple prescribed design of conveyancing instruments is a real asset that can be exploited and used even in the implementation of the LRA. This is because it will make it easier and cheaper to process land registration. Lawyers will not be needed to draft complex conveyances, and thus legal fee may be significantly reduced. The advocates will just be called upon to attest to the parties' execution of documents and to offer advice where need be.

#### **4.8.5 Land Data Source**

The land registries are arguably the wealthiest institutions in terms of land information in the country. All citizens rely on the land registry to access land related information. This data must, therefore, be protected and treated with the utmost care. The chief land registrar has the moral responsibility to ensure that this data is not only well managed but that it is not placed in the hands of the wrong persons. County land registrars should be patriots and measures ought to be put in place to allow access to land data but with layers of permissions and restrictions [ICT officer 103].

The Government relies on this data for its own plans and all lending institutions look up to the land registries to provide them with accurate and updated land information.

#### **4.8.6 Reform Oriented Leadership**

Though the Ministry of Lands is not without controversies, this study observes that starting with the Presidency to the cabinet secretary, there is a strong reform agenda within the leadership of the ministry. This can be attributed to the latest land registries re-organization strategy spearheaded by the cabinet secretary who seems to enjoy the full backing from the Presidency. This is an ongoing exercise that began at the headquarters in April 2014 and it is intended to cover all the 55 land registries across the country. The latest land grabbing issues, highlighted in the media, have also seen the cabinet secretary name and shame the alleged grabbers. Furthermore, the anti-corruption campaigns have been spearheaded by none other than the head of State [TI Kenya 2015: 22].

#### **4.8.7 Decentralized Services to the County Level**

Though decentralized services are only enjoyed under the RLA, it is, nonetheless, a huge advantage since it is a starting point. Once the LRA is fully implemented it will ride on the structures that have been established under the RLA. Putting in mind that the LRA has repealed all the centralized systems, this study concludes that it is only a matter of time before all land registration services are decentralized to the county and sub-county levels.

### **4.9 The Weaknesses**

#### **4.9.1 Many Statutes**

As earlier pointed out, land registration in Kenya is controlled by several statutes and it is not out of the ordinary to see a small locality which is titled under four or more regimes. What this does is that it brings about uncertainty in security of tenure because a person may not understand why different parcels have ownership documents which are totally different. The conveyancing procedures also differ from one Act to another. Sometimes, even banks refuse to offer loans based on documents under some statutes where their in-house lawyers have been used to a particular design of title documents.

These uncoordinated and incoherent land laws (though most of these statutes are now repealed) and policies [MoL 2008: 20] add to the complexity in conveyancing. It is also not far fetched to find a parcel of land registered and titled under two different statutes to two different persons. This could happen accidentally, with no ill intent or fraudulently where a person wants to defraud an unsuspecting member of the public.

#### **4.9.2 Complexity in Conveyancing**

As demonstrated in chapter three, under the land registration steps through the various regimes it is clearly shown that conveyancing in Kenya is a lengthy process. It involves complex technical steps that only well versed persons can traverse, comprising *bureaucratic red tape and non-value adding work processes* [MoL 2008: 20]. Sometimes it seems like punishing citizens because there is no one-stop-shop and the documents involved must either be drafted or signed by advocates at some point in time [Land owner 343].

Complicating matters further is that some monies are paid at the bank, at the Ministry of Lands, at the Survey of Kenya's office, or at the respective county government offices or a combination therein. Some processes also need to be undertaken by a professional, such as a lawyer, surveyor, physical planner or a valuer [Land owner 344]. The fact that different land registration regimes apply different titling and conveyancing procedures adds to the confusion and complexity.

### **4.9.3 Manual Records**

The land registration systems in Kenya are all applied manually because they are old and made use of unpolished registration systems in accordance with the available technology in the early 20<sup>th</sup> century. The laws that back these registration systems only allow manual applications, processing, and registration of property [MoL 2008: 22]. This in and of itself leads to more complexity making the processes tedious and prevents the use of modern technological advancement, including online transactions. Thus, it implies that applicants must physically appear at the lands offices to make their applications.

Another problem of manual titling is the fact that someone can take advantage of there being no adequate backup mechanisms within the registration systems and present themselves as the land owner. This could lead to fraud as happened in the case of *Yaa Simba v The Land Registrar and others* E.L.C. 145 [2013] at Malindi. The Plaintiff filed a Complaint dated 16<sup>th</sup> August 2013 in court. In the Complaint, the Plaintiff averred that he was the sole registered owner of the parcel of land number Gede/Mijimboni/424, and that the title deed to the suit property got lost after a gang of people attacked him upon pronouncing that he was a wizard. After the incident, he conducted an official search and discovered that the suit property had been fraudulently transferred to the 1<sup>st</sup> Defendant.

The Plaintiff had sought in his complaint an order of rectification of the register by canceling the name of the 1<sup>st</sup> Defendant and reinstating his name in the register as the proprietor of Gede/Mijimboni/424 (the suit property). The court held that the Plaintiff's testimony and exhibits were uncontroverted. There was no evidence on record to show that the 1<sup>st</sup> Defendant had indeed purchased the suit property from the

Plaintiff. In the circumstances, the court found that the Plaintiff had proved on a balance of probability that the suit property was fraudulently transferred to the 1<sup>st</sup> Defendant.

#### **4.9.4 Double Registration/Allocations**

Due to the manual handling of data and processes it would imply there is no quick and easy system of retrieval of information. It happens that the office can inadvertently register a property twice because there is no quick reference point to check an earlier registration. There are, therefore, cases of double titling, double allocations, and sometimes irregular allocations [TI Kenya 2015: 22]. It has meant that instead of going through the registry - one file after another – sometimes a property is registered more than once, especially where the registry number is different from the land reference or the number on the ground [LSK 2012: 29, 90]. This leads to conflicts in land ownership and increased litigation.

In the case of *Republic v Commissioner of Lands & Another* HC - MA, JR No. 9 [2012], at Nairobi, the ownership of LR No. 209/12168 (Grant No. IR 130520) located at Likoni Lane, Kileleshwa within Nairobi was in contention. It was originally owned by the Government and on the 21<sup>st</sup> May 1996 an application dated 2<sup>nd</sup> January 1996 by Mr Kiswii and the applicant or complainant for allocation of the suit property was approved. A Grant was issued for the plot which was registered in the name of the applicant or complainant and one Margaret Kawembe Kimwolo, the widow of Mr Kiswii, as tenants in common in equal shares which the applicant was not made aware of. Later by a letter, dated 14<sup>th</sup> March 2011, the applicant accepted the letter of allotment, paid the Stand Premium, and outstanding Land Rent for 16 years. The applicant avers that ultimately the plot allocated to him became LR No. 209/12168 (Grant No. IR 130520).

The applicant states that he, thereafter, discovered that the Grant issued to him was cancelled through an internal memo dated 19<sup>th</sup> August 2011 from the chief land registrar to the commissioner of lands that stated in part:



*“In the process of registration, it was discovered that another grant was issued to Masai Villas Limited and registered as I.R. 63626/1 of 27<sup>th</sup> October 1994...”*

The court held that the internal memorandum was internal communication from one officer to another expressing an opinion and it cannot, therefore, be termed as a decision capable of being quashed. It found and held that the orders of judicial review sought in this matter would not be *efficacious* to resolve the issues surrounding title to the suit property.

The case of *Ransa Company Limited v Commissioner of Lands & others* Malindi H.C.C.C No. 10 [2005], demonstrates double allocation vide different land registration systems. The plaintiff was the registered lessee from government for a term of 99 years of the parcel of land measuring 3.784 hectares or thereabouts known as portion Number 671. Watamu (the suit property), with the dimensions abutments and boundaries delineated on the deed plan number 168706, was annexed to the grant No. CR 23596/1 in favor of the Plaintiff under the RTA.

The plaintiff averred that in the pretext of exercising the powers conferred upon the Settlement Fund Trustees by the Agriculture Act (now repealed), the commissioner of lands, the chief land registrar, the land registrar Kilifi district, and the land registrar Mombasa wrongfully and unlawfully excised a portion of the suit property and issued a title thereto described as Kilifi/Jimba 439 measuring 1.21 in favor of one of the defendants under the RLA. The plaintiff asserts that this new parcel is non-existent and that the excision was void *ab initio*.

*The court observed, “The Plaintiff’s evidence in this regard therefore stands unchallenged. The other title, very possibly only existed in the imagination of its unknown authors be they officials in the lands office or otherwise. In my considered view, the title to plot no. Kilifi/Jimba 439 is no more than a piece of paper. I believe the source of the mischief was clearly identified to be the erroneous creation of an adjudication scheme (Kilifi/Jimba) and issuance of RLA titles over alienated Government land by various government agencies, in collusion with complicitous members of the public.”*

The court held that “*plot Kilifi/Jimba 439 was purportedly created from what was formerly Government land already alienated to the Plaintiff vide an RTA lease and therefore legally unavailable for adjudication and that the purported exercise was irregular and could not withstand the sanction of Section 23 (1) RTA...and finally that this court finds that with respect to the land parcel in question, only the Plaintiff’s title is valid and indefeasible.*”

#### **4.9.5 Need for a Lot of Storage Space**

With increasing registration of land, a need for title to land, and increased transactions, more files need to be opened. Because the system is manual it requires more storage space, office space, and record managers to attend to the increasing volume of paperwork. There are also a huge number of uncollected titles and documents thereto [LSK 2012: 47]. The fact that land title documents are valid almost forever, notwithstanding their age, adds to this problem. A title and a registry file that were opened, say in 1921, and filed under RTA or any other statute are as valid as a title that is issued and filed today.

This aspect of title importance, no-matter its age, compounds the storage problem because title documents in Kenya do not expire even on expiry of a lease. Indeed the expired titles are also not thrown away because they are a vital part of the history to the land title. This has placed more expenses to the ministry in charge of lands because new offices have had to be constructed in order to accommodate the growing list of parcel files and related records.

#### **4.9.6 Torn Records**

Manual handling of title registration has seen, especially the earliest registers opened before or at the dawn of the 20<sup>th</sup> century, quite prone to wear and tear due to old age, poor handling techniques, and in some cases, especially at the coast, harsh climatic conditions. Humidity, acidity, and dust in the air accelerate deterioration of the paper-based land register [LSK 2012: 96]. With no data backup the land registry is left at a very vulnerable position in terms of data accuracy, completeness, reliability, and authenticity.

#### **4.9.7 Missing Land Records**

Cases of missing files in land registries are rampant [LSK 2012: 76]. If records are completely torn, lost, or misplaced, this will lead to missing portions of the land register. It means that transactions will either not be completed or will take unnecessarily long time to complete. This is because the registry will take time to first try and locate the missing files and, if one is lucky, it will be found. In other cases, the register has to be reconstructed, which requires advertisement with the Government Printer (in the official gazette) and a statutory 60 days waiting period. In case the register is reconstructed in favor of a different person other than the genuine landowner it leads to conflicts, litigation, delayed registration, and fears to transact since the land register is not authentic.

#### **4.9.8 Manipulable Records**

When a manual record that does not have a backup is misplaced or removed from its position then transacting is difficult. One cannot carry out a search to ascertain the status or do any other thing related to the title. Sometimes the files may just disappear from the shelves for quite a long while. At other times it is either the whole or part of the file or an important component of the title which goes missing. An intent to register, say prohibitory court order, caveat, transfer, or any subsequent dealing, would then be without the accurate status of the register.

The import of this is incompleteness, inaccuracy, lack of authenticity, and an unreliable land register. This may subsequently lead to illegal entries in the register and, where the Government guarantees title, it would incur financial losses. Conflicts, litigation, and delayed transactions are inevitable in such cases.

*In the case of Republic v Registrar of Titles & others* [2012] the suit property LR No. 209/359/16 belonging to the Uganda Airlines Corporation had its register altered and purportedly sold by it in the year 2001. The Ambassador deponed that he had received information with disbelief that the Ugandan Airlines Corporation (under receivership) had sold the suit property (fraudulently) to a company known as Waymax Company Ltd. The Criminal Investigations Department at Kilimani Police Station stated that the conveyance dated 24<sup>th</sup> January 2001 between the Ugandan Airlines Corporation and

Waymax Company Limited was purportedly fraudulent and hence no good title passed to the Applicant - MFI Office Solutions Limited.

The Principal Registrar of Titles hence cancelled and expunged the entries from the register of Government lands relating to and belonging to the *ex-parte* applicant, and thus this application. MFI Office's counsel submitted that his client had good title after conducting searches twice and had followed all due procedure. Counsel further stated that the applicant paid the relevant stamp duty and all other fees which the land registry received and eventually processed the conveyance. Counsel also submitted that the registrar of titles has no powers to unilaterally and on his own volition revoke a conveyance or expunge entries relating to land registered under the GLA.

The court held that the registrar of titles erred in revoking and expunging the entries in the register. It quashed the registrar's decision and restored the property to the applicant, however, pending and subject to the determination of a civil case (for validity of title) whose outcome would determine the ownership of the suit property.

#### **4.9.9 Centralized Services**

As earlier indicated, most regimes have only one or two registries country-wide. It is only the RLA and the (intended) LRA whose registries are spread across the country with 52 registries, most of which are situate at the county headquarters. Whether at Nairobi or at the counties, the fact that one has to travel all the way implies centrality and worse so if one must travel to Nairobi. This means that there is often congestion of people and applications at the registries. Some transactions are only carried out in Nairobi, for instance change of use, renewal, or extension of leases and issuance of new grants [LSK 2012: 96].

The travelling costs and queuing involved is a disincentive to deal in land. Sometimes one has to travel a whole day and a transaction will take weeks to complete, and thus accommodation becomes an added cost together with time wasted. If by chance the file is missing then one has to keep on making trips either to Nairobi or to the county headquarters from time to time. Here is one such experience as narrated by a serving registrar of titles in Nairobi [Registrar 223].

On one cold morning in the year 2010, I met an old man angry and exhausted. He had come all the way from the township of Molo (about 300km North of the capital) following his title document. Old as he was, he narrated his story to me and shed tears. On entering the office he had shivered and removed his cap. I insisted that the office being a public one, he had a right to wear his cap as I was his servant and not a lord nor a governor over him. When the man gained some trust in me, he was able to narrate to me his agony. He had stayed over at his daughter's (quite un-African) at her Nairobi home for the preceding one week and every time he came to the office during the week, he was either spoken to impolitely or misguided into another office. He was pleading if I could kindly assist him. For the preceding fifteen years, the man said, his father, his three brothers and himself had in vain tried to process the issuance of title documents after sub-division of their family land. He explained how over the years his family members (father and three brothers) had died leaving only him to process the titles. It is at this time he shed tears for that he would as well die leaving his family without certainty of title.

#### **4.9.10 Lengthy Procedures**

Due to the many processes indicated at the process of conveyancing, it is true that the current regimes over and above being tedious, complex, and confusing they are lengthy, with some taking several months or even years to complete. If a file is missing and has to go through reconstruction it takes even more time. This discourages willing buyers or business enterprises from investing in land and eventually deters the country's economic development. In fact, delay is much more than just economic growth as narrated hereunder.

At a consultative meeting with the Ministry of Lands and its stakeholders (held at the Hilton Nairobi in the year 2012), a member of the Law Society Kenya (LSK) narrated how one of his lady clients lost her life while waiting for a credit facility to be processed upon registration of a transfer of a piece of land she had purchased without success. The lady was to receive treatment from India but it was never to be as she died before the transfer could be registered four weeks after it was lodged with the registry at Ardhi House, Nairobi.

#### **4.9.11 Expensive**

If a process is lengthy, complex, needs intervention of professionals like lawyers, surveyors, physical planners, land economists, and others, not to mention brokers, the costs in terms of monies are quite high. This is in addition to Government fees payable in terms of application fees, licenses, stamp duty, land rent and rates (where applicable), and other ancillary expenses. What this does is to deter the small and medium enterprises from venturing in land related investments as well as private

landowners from effecting registration of their lands. Mortgaging is slowed and usage of land as a market commodity almost drags to a stop. Net effect is slowed economic growth.

#### **4.9.12 Government Lands Not Titled**

Under the operative land registration laws, Government lands were rarely titled or registered. It was left to the specific institutions to follow up and this has left most of them unregistered. There appeared to be no clear procedures for registering public lands and to whom such lands would be registered [MoL 2009: 16]. As such, most public and State lands are not protected and have been prone to individual allocations amongst other dubious deals. The Government has, thus, lost some of its prime lands to land grabbing. This challenge is also found in many countries due to the fact that State-owned lands are not well managed and neither are they recorded [Fig 2014: 8]

Under the 2012 land statutes, Government lands are specifically protected and are to be managed by the National Land Commission for and on behalf of both the National as well as County Governments. This is in line with article 67 of the Constitution.

#### **4.9.13 Community Lands Not Titled**

The vast of Kenya's land is what is referred to as community land, owned and occupied by the indigenous people communally. These lands are, however, under adjudication or settlement processes while others are community grazing lands or community ranches owned by the community at large or under the local governance. The registration of these lands in the past have been marred by heightened political interests as well as community wrangles that have left much of it unregistered [Odote C., Kameri-Mbote 2016: 8]. In fact only about one third of Kenya's land is registered [MoL 2013].

The Community Land Act of 2016 has devised ways and means of protecting these vast lands that belong to the majority of Kenya's poor people once it is implemented.

#### **4.9.14 Poorly Maintained and Managed County Land Registries**

Most land registries across the country established around the 1960s, 70s and 80s have not been accorded enough support by the central Government. Majority are housed in old dilapidated buildings while others are in rented premises. Due to age, neglect, poor staffing, demotivated staff, and poor work ethics [MoL 2008: 20] there has been a general trend of poorly maintained land data in dirty and insecure offices. Poor monitoring and evaluation also contributes to weak linkages between the field offices and the headquarters. Inadequate staffing and career stagnation of majority staff members contribute to low working morale [LSK 2012: 99].

#### **4.9.15 Poor Sharing of Information**

Due to the fact that all data is manual with a small degree of automation (currently ongoing) sharing of information between the departments in the Ministry of Lands is very poor [MoL 2008: 24]. The county offices are not in touch with the head office and vice versa unless the information is shared via letters, visits, or tele-conversations. This means that the Ministry does not operate as one unit, but rather individual departments do so in silos, which results in disconnects and application of different standards and rules.

### **4.10 The Opportunities**

#### **4.10.1 Thriving Land Market**

During the last couple of years the world has woken up to the reality of the huge dormant capital that land has been. Investments in land have increased and so have property prices. There is an increased demand for land services [MoL 2008: 20]. This is a chance for Kenya Government to encourage investments in land because doing so will improve the living standards of Kenyans in many ways. This will include better and affordable housing, more commercial hubs being set up, and creation of massive residential, industrial, and ICT towns. All these will increase Government revenues in terms of various taxes.

This is an opportunity that the lands registry can tap into in order to revamp and improve its strategy in doing business in line with the modern technological growth.

#### **4.10.2 ICT Platform**

The availability of modern technology [MoL 2008: 20], growth of ICT in the region and globally is a huge advantage that the Ministry of Lands can rely on. Many service providers are willing to partner with the Government or simply offer IT solutions to the land registration puzzle. Many businesses in Kenya and worldwide have benefited from innovations in technology including *M-pesa*<sup>10</sup> and other applications. M-pesa, for instance, can be used to pay for various fees connected to land registration.

#### **4.10.3 E-Governance**

Kenya has not been left behind as a country in matters pertaining to technology. It has embraced the global idea of, what has been termed as e-governance. To that end, the ministry of information and communications has set up the ICT Authority which is a Government establishment to help all the Government departments develop their own online portals. The e-governance initiative and the emerging technologies are an opportunity [MoL 2008: 20] that Kenya's land sector and registration, in particular, could take advantage of.

#### **4.10.4 Political Goodwill**

Due to the recent 2007/8-post election violence which was largely seen to have been fueled by the land question and the present-day Government's promise [MoL 2013: 22] to automate all Government services, the land registry has received massive support from the head of State. The State is keen to have a fully digitalized land sector, and has offered full support towards this goal. The Ministry of Lands has little choice but to embrace this rare backing that has not been seen in previous Government regimes.

#### **4.10.5 Public Sector Reforms**

The ongoing public sector reforms in almost all Government departments are quite evident. There is now the performance contracting which starts with the head of State cascading to all cabinet secretaries down to the junior-most civil servant [MoL 2008: 20].

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<sup>10</sup> *M-pesa* is a mobile phone money transmission platform invented and owned by Kenya's largest mobile telephone services company 'Safaricom'.



#### **4.10.6 International Land Administration Guidelines**

The national and international community has come up with land administration guidelines, which include land registration as a component. These are to be found in Cadastre 2014, Cadastre 2034, Bogor Declaration, Bathurst Declaration, Habitat III, Voluntary guidelines, UN Habitat, and UNECE publications amongst others. These guidelines, amongst other things, offer best practice rules in regard to land registration. Other bodies that would be useful include the World-Bank, CINDER, and FIG which offer periodicals, conferences, and seminars geared towards better management of land as a resource. The land registry can ride on the goodwill of these organizations to improve its working.

#### **4.10.7 Partnership with Stakeholders**

There are new and emerging trends of partnerships between government and stakeholders, including civil society [MoL 2008: 20]. This has meant that over and above criticism (constructive or otherwise), the civil society groups have come out to partner with the Government to improve the lives of Kenyans. This has happened in various other sectors and also at the Ministry of Lands. For instance the USAID has assisted the Kilifi and Nakuru lands offices to set up a LAN and even constructed office space to accommodate more files [LSK 2012: 100], [MoL (Land Registries Re-organization Report) 2014: Unpublished].

### **4.11 The Threats**

#### **4.11.1 Lost Titles and Missing Files**

Lost titles in the hands of the owners and the missing files (portions of the land register) remain a threat because a malicious landowner may ride on the loss, as earlier indicated, and apply to the registry for another title while indeed retaining the old title. The provisional certificate of title is not the problem, but rather the lack of a backup; and the fact that the registry relies on the information provided by the applicant of the provisional title. Sometimes, the new title may not have all the components or entries as the purported lost title. This may create an incomplete or a bad title in circulation and may be used to defraud anybody, including the Government and banks.

#### **4.11.2 Harsh Climatic Condition (Dryness, Acidity, Dust and Humidity)**

Because of the dilapidated status of the buildings that house some of Kenya's land registries the files are not very well safeguarded. Climatic conditions directly affect the status of records and more so because they are exposed adversely. At the coast especially, the LT volumes are so worn out that getting any information requires a very delicate act of reconstruction and data safeguarding. The harsh climate is a challenge that continues to erode the records compounded by the fact that they are paper-based.

#### **4.11.3 Fraudsters**

Persons who pose as genuine landowners while indeed they are not are a real threat to the accuracy and correctness of the land data. This is because, as discussed earlier, they can interfere with the land register and are able to cause a change that might deregister a genuine landowner while inserting their names as owners. This has happened previously through reconstruction of purported lost titles or missing files. It has resulted in court battles over the genuineness of those titles.

Other times the fraudsters fake and forge signatures of genuine landowners purporting to transact and end up swindling unsuspecting buyers of huge amounts of money [LSK 2012: 85]. The real owner gets to know that he is defrauded only after someone goes to the property to take possession. In the case of *Elijah Makeri v Stephen Njuguna & Another E.L.C.* at Eldoret 609 [2012] the plaintiff filed a suit seeking to have the title issued to the 1<sup>st</sup> defendant cancelled and for suit property to revert back to him - the plaintiff being the previous owner of the suit land. The suit land was fraudulently transferred by 2<sup>nd</sup> defendant who alleged to have a power of attorney from the plaintiff. The power of attorney's signature was forged and the transfer documents of suit land were not executed by the plaintiff, the same being forgeries.

The court, in agreement with the plaintiff, held that indeed the photograph in the transfer instrument purporting to be the photograph of the plaintiff was not his image. It was the image of another person. The said instrument being a forged instrument

could not convey the property to the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant who appears to have engineered the whole transaction had also been charged with a criminal offence.

#### **4.11.4 Brokers**

There is a group of people who hang around the area and precincts of land registration in Kenya. This is mainly because conveyancing is a very complex branch of law, and because of the complexity of the land registration systems in Kenya. This has attracted informal players or brokers in conveyancing [TI Kenya 2015: 22]. Brokers have purportedly come out strongly as the only experts who can unlock this complexity. The end result is that land registration becomes more expensive and sometimes the brokers can disappear with the documents altogether. It gets complicated because one would have nowhere to turn to in order to recover their documents and applications because brokers have no permanent base. They pose as registry staff to the poor, unsuspecting, and confused applicants, consequently, complicating registration of land.

In the case of *Bargoi Ngiria v The Republic of Kenya* HC, CA No. 338 [2004] at Nakuru, even the police officers could not escape the con-game. The appellant was charged with several offences under the Penal code, including three counts of forgery of land titles contrary to Section 350(1) of the Penal Code. The particulars of the said charges were that between the 16<sup>th</sup> and the 23<sup>rd</sup> of August 2002, the appellant forged the land titles in respect of parcels numbers Nakuru/Nessuit/1516, Nakuru/Nessuit/124 and Nakuru/Nessuit/127 and falsely presented them to Corporal Francis Tarus, his boss Phillip Kibor Mulei (both being law enforcement or police officers), Ruth Jerotich Murei, and Lorna Metto respectively purporting them to be genuine and valid land title deeds.

The appellant was further charged with four counts of obtaining money by false pretenses contrary to Section 313 of the Penal Code. The appellant pleaded not guilty to the charges. After a full trial, the appellant was found guilty as charged on all seven counts. He was sentenced to serve two years imprisonment on each of the seven counts. He appealed and his sentence was reduced to nine (9) months imprisonment

on each of the three counts that he was convicted of. The said sentences were ordered to run concurrently.

#### **4.11.5 Political Manipulation**

Another practical threat to land registration and its modernization is the political class [MoL 2008: 20]. This is not only a problem isolated to Kenya. It is true that laws are made by the political class most of who are wealthy landowners having acquired land either genuinely or in a primitive design. Indeed Kenya's proposed Land Law (Amendment Bill) of 2005 (meant to deal with irregularly acquired land) expired before it was presented to Parliament [Ojienda 2010: 276]. The political class can decide to create laws that are geared towards keeping them at the helm of property ownership as well as those laws that protect their interests in property ownership. Any laws or modernization efforts that are likely to unearth any landowners' wrong doing may financially and politically be fizzled out.

On the other hand, landowners are able to manipulate the lawmakers. In case they get whim of any likely changes or modernization that would adversely affect their interests in matters of land and land registration, the wealthier landowners quickly summon the legislators and demand that the law be schemed in a way that favor them. This may end up hurting the modernization efforts at the land registries. It has in the past been the norm that at the nearing of an electioneering period, the political class hastily issues titles to win political support leading to uncoordinated titling and double registration [LSK 2012: 96]. This leaves the registrar at a very vulnerable position.

#### **4.11.6 Insecurity of Records and Offices**

Some offices that house the land register and other land records in Kenya are generally in a deplorable and hopeless state. Sometimes the officers do not have enough space owing to perpetual neglect, lack of supervision, and support by the head-office. This is a real threat to land registration. Many land registries do not have a proper physical records office that is equipped to withstand calamities like fire, earthquakes, floods, or even acts of goons and thuggery.

Though many offices are within the precincts of Government compounds, it is a common occurrence that even Government lands are subjected to land grabbing and only concerted efforts will save the situation. The offices are physically insecure [MoL 2008: 20]. Members of the public easily access the land registry staff as well as records. This is detrimental to the safety and the integrity of the land register considering it is paper-based [LSK 2012: 91].

#### **4.11.7 Inadequate Budgetary Allocations**

The land registry, like many other Government departments, suffers inadequate budgetary allocations and this can only lead to unmet goals and targets [MoL 2008: 20]. The Ministry for instance required approximately Kenya Shillings 8,000,000,000/- for digitalization of its records against an allocation of Kenya Shillings 600,000,000/- for the same purpose for the year ending July 2013 [MoL 2013: 22]

#### **4.11.8 Poor Public Perception**

The members of public in Kenya generally have a preset mind towards the Ministry of Lands and the registry in particular. The Ministry of Lands usually ranks 2 - 4 in the index of most corrupt institutions in Kenya [Akech-Migai 2014: 113]. This could be real or perceived and it may ruin the genuine efforts towards improving the service delivery to the citizenry. The average size of bribe at the lands sector in Kenya Shillings however fell from 8,949 in the year 2013 to 7,219 in 2014 [TI Kenya 2015: 22]. The success of land registration relies on not only the staff's sincere efforts, but also much on the goodwill of its customers who happen to be members of the public. In case the public has a skewed opinion on the capabilities of the department it may have an uphill task towards performing its role in national development.

**STRENGTHS**

- ⇒ Security Features on Title
- ⇒ Experienced Staff/Personnel
- ⇒ ICT department within MoL
- ⇒ Simple Prescribed Formats Under RLA
- ⇒ Has created Land Data Source
- ⇒ Reform oriented leadership
- ⇒ Decentralized under the RLA & LRA

**OPPORTUNITIES**

- ⇒ Thriving Land Market
- ⇒ ICT innovations

**WEAKNESSES**

- ⇒ Old and outdated statutes
- ⇒ Laws do not allow/anticipate electronic land registration.
- ⇒ Paper-based / manual records, wear and tear easily
- ⇒ No credible backup
- ⇒ Many conflicting statutes/Legal Infrastructure
- ⇒ Complexity in conveyancing
- ⇒ Double registration/titling/allocations
- ⇒ Needs a lot of storage space
- ⇒ Torn records
- ⇒ Missing land records
- ⇒ Manipulable records
- ⇒ Centralized services
- ⇒ Lengthy procedures/bureaucratic red tape
- ⇒ Expensive
- ⇒ Government lands not titled
- ⇒ Community lands not titled
- ⇒ Poorly maintained and managed county land registries
- ⇒ Poor linkages between departments/sharing of data
- ⇒ Inadequate human capital/resources
- ⇒ Poor work ethics
- ⇒ Poor monitoring and evaluation

**THREATS**

- ⇒ Lost Titles
- ⇒ Harsh Climatic Condition, (Dryness, acidity, Dust

⇒ E-Governance	and Humidity)
⇒ Political Goodwill	⇒ Fraudsters
⇒ Ongoing public sector reforms	⇒ Brokers
⇒ New partnerships with civil society and other stakeholders	⇒ Political Manipulation
⇒ International Land Administration Guidelines	⇒ Insecure offices and records
⇒ Strong economic hub in the region	⇒ Inadequate budgetary allocations
	⇒ Corruption
	⇒ Poor public perception
	⇒ Conflicting legislation

Table 4.11: SWOT matrix of the registration systems in Kenya (source – own analysis)

## 4.12 Strategies

As a result of the various reports that have been put out and audits from the land registries in Kenya, a number of strategies to correct and better land registration have been put forth. The registry has also on its part made proposals on the way forward. This study has come across these reform proposals:

### Legal

- a) Consolidate land laws and create uniform and consistence in conveyancing [LSK 2012: 116].
- b) Allow the use of standard and simple prescribed formats in all transactions as happens under the RLA.
- c) Fast track the revision and harmonization of the relevant laws [LSK 2012: 122].

### Capacity Development

- a) Introduce continuous training on various issues for the registry staff [LSK 2012: 124].
- b) Sack inefficient staff and hire afresh [LSK 2012: 116].
- c) Employ competent staff and remunerate them well [LSK 2012: 116].
- d) Motivate staff.

### Organizational

- a) Employ an independent professional body to take stock of all files, titles and correspondences and put in place a modern filing system [LSK 2012: 116].
- b) Ensure that the registry staff honor the timelines set out in the Ministry of Lands' Service Charter and incur penalties where this is breached.
- c) Draw up a sincere service charter [LSK 2012: 116].
- d) Introduce a complaints and reporting mechanism where members of the public can report their grievances especially concerning bribes [LSK 2012: 116].
- e) Decentralize the land registry services [LSK 2012: 116].
- f) Introduce regular internal and external audits.
- g) Rehabilitate and modernize the county land registries [MoL 2008: 28].
- h) Establish a research and development department [MoL 2008 – 2012].
- i) Promote positive organizational culture and work ethics [MoL 2008: 28].

### Technological

- e) Computerize, digitalize and automate the land register and operations [LSK 2012: 123].
- f) Create a modern land information management system.

### Re-engineering

- g) Identify questionable/doubtful titles and forgeries and treat them as suspect for further investigations.
- h) Develop a new generation title document with security features.
- i) Stop queue jumping and process applications as per their application numbers.
- j) Review the tools, processes and procedures for effective and efficient services to the citizen [MoL 2008: 29].

## **4.13 Conclusion**

The critical analysis of the land registration systems in Kenya has been able to bring out both challenges as well as achievements of the system. The strengths of these systems are that registration has enabled land to be availed in the market as a commodity to trade in. This has resulted in economic growth and land as capital has been utilized, albeit in a limited manner. Land registration has also facilitated the



enhancement of security of tenure, government taxation, and has reduced unnecessary litigation over dealings in land.

Challenges have been enumerated as well; they include complexity in conveyancing and concentration of power and services at the headquarters all which have left many units of land unregistered. It was interesting to note that land registration aided land grabbers and left many indigenous people landless. This happened especially during the colonial period where the white settlers used the land titling as a tool to displace the indigenous peoples.

The British colonialists said that the Africans' way of holding land could not be reduced to ownership and they could be displaced at will. The fact that land registration is manual goes a long way in complicating the already bad situation. Depending on how one looks at it, the current systems have something to offer for modernization and many aspects to be dropped, so as to bring forth a modern land registration system.

## **CHAPTER FIVE**

### **CASE STUDIES**

#### **5.1 Introduction**

This chapter discusses the application of land registration's global best practices as discussed in chapter two. This is done by the description of case studies which are not necessarily in the land recordation business. The main theme that guided the choice of places to carry out the field research was mainly the modernization strategies adopted therein. These included land registries in three countries: Fulton County in Georgia USA, the Dutch Kadaster in the Netherlands, and the land registry in Rwanda.

The researcher also visited Kenya's land registries and other sectors whose journey to modernization and digitalization are vital to this study. They include the Independent Electoral and Boundaries Commission (IEBC), Kenya Revenue Authority (KRA), Kenya Commercial Bank (KCB), and Safaricom Kenya Limited.

#### **5.2 Background and Choice of Case Studies**

The main aim of this study is to show that land registration systems are modernized in developed countries (for example the Netherlands), and that where this is not yet so the governments are putting in efforts towards the same (Rwanda and Fulton County in Georgia, USA). Furthermore, the study wanted to illustrate that other institutions in Kenya have adopted strategies to automate and modernize their processes. The illustrations by case studies will enable the study to conclude that modernization in the land registry in Kenya, and in other countries, is indeed within reach.

#### **5.3 Case Studies Approach and Selection**

The case studies were carried out through face-to-face interviews in the different countries and organizations mentioned. The researcher prepared a questionnaire and an introductory letter that was sent to the interviewees prior to the meetings. The questionnaire and the letter are attached to this thesis as Appendix 5.

The visits took place on diverse dates between May 2015 and December 2016, each

lasting about a day. They took the design of focused group discussions, with round table discussions with host institutions' staff. The researcher was also shown around the institutions in order to appreciate the already developed workflows or the ones in transition. A list of the contacted persons in each organization is attached as Appendix 6. References to information acquired via specific resource persons is given by a coded system, e.g. DK 402, meaning the 2<sup>nd</sup> interviewee of case study four at Dutch Kadaster.

## 5.4 Structure for Description of Case Studies

The descriptions of the single case studies follow roughly the structure as portrayed in the table below;

History of the organization
Processes before modernization
Steps taken during modernization/Re-engineering
The processes/workflows after modernization
Evaluation of the modernized system

Table 5.1: Structure of the case study descriptions.

This structure is however partially maintained with per case different focuses due to the fact that the different case studies are in different stages of development and formation of their land registration systems. For instance, the institutional infrastructure in the Netherlands is much more advanced and has more limbs to it than is in other States.

## 5.5 Land Registration at The Fulton County - Office of the Superior Court Clerk – Atlanta, Georgia, USA

<b>Population:</b> 996,318 (Estimates 2014),
<b>Largest City:</b> Atlanta,
<b>Area:</b> 1,383 sq. km,
<b>Founded:</b> December 20, 1853,
<b>Cadastre:</b> 0.4 million land parcels
<b>GDP per capita:</b> US\$ 30,000,
<b>Population Density:</b> 675/km <sup>2</sup>

Table 5.2: Summary of the description of Fulton County's attributes

Land registration in the United States of America is under the court system administered at the county level, which is the administrative level under the State level. The land records are under the general care of the superior court clerk in every county; who in most cases, delegates the land recordation mandate to the deputy clerk in charge of land records.

### **5.5.1 Administrative Infrastructure**

Land registration and land records are housed at the superior court clerk's office in the judiciary. The office of the superior court clerk is in charge of three major divisions including:

- (a) Civil registry,
- (b) Criminal matters registry, and
- (c) Lands records registry.

Of concern to this research is the land records office headed by a Deputy Clerk. This division has approximately 60 staff members out of a total of 215 staffers under the office of the superior court clerk. The administration promotes in-house training and capacity building through, what the Clerk's office popularly refers to as, the *Trainer Schedule*.

This office serves one of the 159 counties in the State of Georgia (USA). Fulton County serves approximately 400,000 registered property owners, which are searchable by the registered person's name. The system of registration is a deeds system, and the registered owners keep custody of the registered deeds as proof of entitlement to land. The lands division does not employ surveyors; rather, surveyors are privately hired by the property owners or State agencies when their services are required.

### **5.5.2 History of the Superior Court Clerk's Lands Records Division**

The lands records office at Fulton County headquarters' office was established in 1854 and holds records for as far back as the 1850s. The office is not fully automated or digitalized and runs on a semi-automated system, but plans are underway to have a completely automated service base. Documents dating from 1980 to date are available

online while those registered before can only be verified through the physical office in Atlanta.

The land records division of the clerk's office offers various registration services including:

- Registration of trade names,
- Maintenance of tax registers (related to property),
- Registration of Limited Partnerships,
- Maintenance of military discharges book,
- Issuance of property and land searches, and
- Registration of land transactions.

### **5.5.3 How to Process Applications**

#### **i. Searches**

Searches are done online at a cost of US\$ 5 per log-in. This means that after the login into the system ([www.fultocountyga.gov](http://www.fultocountyga.gov)) one can carry out as many searches as possible, after payment of the above mentioned fee. This is, however, only possible for land transactions registered from 1980 to date; for earlier registrations one can peruse the registry volumes which are open and free of charge to the public from 9.00 am to 5.00 pm. If one needs a copy of the register a small fee of US\$ 0.50 is incurred per page while Certified searches are also available at a cost of US\$ 2.50.

The office of the Superior court clerk is open to the public with searches being mostly carried out by *title runners*, who are employees of attorneys engaged in land transactions. This is partly because, as mentioned earlier, conveyancing is a complex branch of law and deed registration requires in-depth scrutiny. Most lawyers will require 50 years of history before advising their clients to commit to a land deal. This explains why title runners come in handy as experts in the field of conveyancing. Searches are done per the registered owners' names and not deed or lot numbers.

#### **ii. Land Transactions**

The applications and deeds for land transactions are prepared by attorneys for and on behalf of their clients and sent to the clerk's office. This is done manually vide

registered mail or physically handed in at the lands records mailing office in Atlanta. The processing is shown hereunder:

1	Mailing of the documents and a cheque or cash for official fee and land tax payment to the lands records office.
2	Receiving of the documents and sorting at the records mailing office.
3	Marking/assigning applications to various officers by the system and the manager on duty. Applications may be rejected if incomplete
4	Preparing documents for processing which entails an initial verification, stapling or un-stapling and straightening papers for next steps.
5	Scanning
6	Indexing the scanned applications and aligning to the property register.
7	Verification that the application is in order for processing (in-depth investigation).
8	Transmission (online) to the State property agency for its approval or comments.
9	Feedback from the State agency is received within seconds of transmission denoting registration (or rejection).
10	Registration of successful applications and making an entry in the register.
11	Collection or mailing the registered deeds to the applicants.

Table 5.3: Summary of processing land transactions at Fulton County Land Records office

The processing takes approximately 14 days, but with complete automation this period is expected to come down considerably. The bulk of the transactions are property transfers, succession applications, mortgages as well as searches. The office processes approximately 30,000 applications per month as indicated in the system, besides searches. Besides processing transactions, the land records management system used at Fulton County offices can offer other ancillary support registers, for instance a compilation of staff work schedules.

## 5.6 Dutch Kadaster – Arnhem Office in The Netherlands

Netherlands is one of the most progressive countries in Europe in land registration. It borders Germany to the East, Belgium to the South and the North Sea to the West and North. Arnhem is one of the 6 land registration offices.

### 5.6.1 History and Institutional Infrastructure

<b>Population:</b> 17 million (Estimates 2017),
<b>Largest City:</b> Amsterdam,
<b>Area:</b> 41,543 sq. km,
<b>Founded:</b> Kingdom formed in 1815,
<b>Cadastre:</b> 9.5 million land parcels (estimates 2015),
<b>GDP per capita:</b> US\$ 49,094/-
<b>Population Density:</b> 409/km <sup>2</sup>

Table 5.4: Summary of description of The Netherlands

Dutch Kadaster was established in 1832 building on work that had begun during the French annexation under Napoleon in 1810. The physical appearance of the office is very organized, clean, peaceful, and quiet. There are no customer queues and rarely do applicants visit Kadaster's physical offices. All land registration processes are 99% electronic with only very few notaries making manual applications. Everything in the land registry has an electronic platform of operation and this creates a one-stop shop for both property and geographical information [DK staff 402]. The whole of Netherlands is physically planned and registered with approximately 9.5 million parcels registered.

Since 1994 the Kadaster has been able to apply lower fees (tariffs) on land registration and affiliate services owing to the full adoption of information and communication technologies in its operations. Another contributor to lower tariffs is the fact that on the adoption of ICT the Kadaster has been able to work with fewer members of staff; currently totaling one thousand seven hundred and five (1705), and thus reducing operational costs. Out of this number, about 400 of them are members of the IT department. The total number of offices has reduced from about 33 in the 1970s to only 6 and so has the number of registrars [DK Staff 402].

There are various components and approaches to attaining a digitalized land registry. The strategy could be to begin simple and easy with the available resources and build on it over time. For instance, make use of large scale digital aerial photographs as is currently the pilot projects in Namibia. After taking large-scale aerial photographs sketches are drawn from it and the residents are involved in earmarking and drafting the boundaries. These maps are simple and do not necessarily have to involve professional surveyors at the initial stage [DK staff 403].

Members of the public are able to identify their parcels on the aerial photographs, which are marked, and dots can be used to mark buildings. This sketch can be marked as the zero draft which can be put on the computer for populating with more attributes. An initial record can be created here-from with unique numbers and names of the owners. Through, this record, residents can be issued with certificates of general boundaries. Public participation is very crucial at this stage because it makes the people own the process and the record so created [DK staff 407 and 405].

Alternatively, where the land register is already in existence it is inevitably the duty of the State to digitalize or automate the existing data. This can be done by scanning, indexing, verification, and creation of computer-based or online land register. The indexing can be based on the name of the registered owner, date of documents, and the unique number of the parcel of land. This allows perusal or search of the register on any of the available information. Because there are many challenges that are experienced during the automation of the processes, the Dutch Kadaster devised ways of handling them.

A prevalent fear was the loss of jobs by members of staff and the lack of interest that followed those fears. As a policy, the Kadaster does not just lay off its staff, especially if the need to have reduced numbers is because of automation. It came up with well thought out plans on how to help the staff members move on with their lives and careers beyond the Kadaster. The staff members (who were likely to be laid-off) were given options to work with other private or public institutions, start up personal businesses, or further their education, on an agreed plan of action.



### 5.6.2 Searches

All property searches in the Netherlands are available on the web. One will need any of property attributes so as to get a search. This could be the land reference number, name of the registered owner, or even the deed number. Access to the register is open for everyone to confirm property status. In fact it matters less whether someone is a property owner, mortgagee, creditor, lawyer, or any member of the public. On payment of the requisite fee one can access the Dutch Kadaster website. It can even be used to check how many properties are registered in the name of someone of interest to the public, for instant a musician, aspiring politician, and so forth [Kolkman, Verstappen & Vonck 2011: 51].

Other details could be the cadastral parcel number, postal address, or name of the legal entity (register owner). There are several types of searches from the Dutch Kadaster web. First, is on registration, which details the property and ownership details, second, are the mortgage details searches, and third, the deeds or documents perusal search. Each search is payable for online at a cost of three and a half Euro.

The details that one is able to view online include property number, the name and postal address of the registered owner, the factual use, value or the purchase price, and shares of ownership. Plans are underway to merge both the registration and mortgage details, such that upon searching one is able to get all details of ownership and any charges or mortgages on the property in one search. Parties are able to receive a certified search at an extra fee.

One can also get more comprehensive searches relating to a particular locality; for instance a village over a period of say 15 years. One can also get a more comprehensive report on a single property at a fee of twenty-six euro currently. This search has photographs of the property, the history, cable and pipeline details on power, gas, telecom, water, sewer lines, and a report of about twenty pages giving all necessary information that a potential buyer and their notary may require.

The research observed that searches from the Dutch Kadaster's website are quite reliable. Although the books dictate that when dealing with deeds registration there is the need for trace back it is not applied often in the Netherlands. The buyers as well as

the notaries trust the land register. Indeed, there are plans to convert the system into a title system by converting the search certificate into titles (with minor amendments). If the law allows the system could also be converted into a positive land registration system [DK Staff 405].

### **5.6.3 Processing of Transfers by Notaries.**

Notaries make all documents in relation to property transactions and carry out all due diligence (which can take a couple of weeks), collecting as much information as required from the various authorities. These include the Kadaster, the municipalities, water boards, the tax authority, the energy regulators, power providers, registrar of persons, and the banks [Notary 301]. All payments are made online and so are most of the due diligence checks. They also carry out the attestation of the parties' signatures before making the required deeds. The notary then drafts the deeds according to the specifications given under the law, and sends a digital copy of the same to the Kadaster.

The Dutch Notary cannot therefore be compared with the notary public in the common law countries. *He is not the kind of functionary who merely takes oaths and checks the identity of the person who has put his signature at the end of a document. He is a civil law notary* [Kolkman, Verstappen & Vonck 2011: 47].

Tax on transfers is 6% for nonresidential properties and 2% for residential properties. The application to the Kadaster does not have any completion documents, clearances, or receipts. It is the notary's responsibility to make sure all Government regulations pertaining to the property transaction are adhered to, and thus the cooperation, trust, and respect between the registrar and the notaries is paramount. It is important to note that the applications to the Kadaster do not bear parties' signatures.

The notarial office holds the funds in trust as a stakeholder and controls the effecting of payment. Payments pass through the hands of the notary, who holds it in escrow. The relevant notary requests for the deposit of the transaction funds either from the lending institution or the paying party. This money is deposited in the notary's office before signing the deed of transfer until the deed has been properly registered. After

the registry has confirmed that no conflicting registration, objection or claim has been raised between the time of signing the deed and the time of its registration, the money is transferred to the vendor [Kolkman, Verstappen & Vonck 2011: 48].

#### **5.6.4 Processing of Transfers at the Kadaster.**

Dutch Kadaster receives approximately, 5000 – 6000 documents' applications per day countrywide. The online platform receives documents in either pdf (about 69% applications by the notaries use it), xml (used by about 30% of applications), or hard copy (manual or paper based) (about 0.5% of applications). The applications' processing system is quite comprehensive; especially where it requires human intervention, it keeps on interrogating the data entry clerk.

If applicant's documents are formatted in pdf, the processing requires a human hand at the Kadaster. This takes approximately 5 days. If on the other hand the document is made on the xml platform, the sending and the processing at the Kadaster is wholly automated and rarely requires human intervention. It is processed in minutes and the longest it can take is an hour [Notary 301], [DK Staff 405]. If there are mistakes found registration may take a while waiting the notary's correction. Upon successful registration, the notary will receive a confirmation of the registration vide return of the digital copy of the deed while the parties (buyer and seller) receive a notification of the change in the cadastral registration.

Xml processing and application makes use of standardized texts called stylesheets which capture the essential details and are verifiable by the system. The use of these standard formats is not mandatory, and thus the notaries still make use of the pdf deeds which enhances editorial freedom on their end [Vos 2010: 10]. In any case, some complicated legal land situations may not allow one to proceed on the basis of the standardized stylesheets. New stylesheets can, however, be developed as and when new scenarios are encountered, and probably with time more xml and stylesheet-based applications will overtake the number of pdf deeds [Louwman & Vos 2012: 29].

If contradictory and conflicting deeds are registered in the public records the law dictates that the first registered deed takes precedence. This is why the exact moment of registration is decisive. If concurring deeds are registered at the same moment, for instance because they arrived by post at the same time, the order of ranking is determined by the day on which the deeds are executed. If they are executed on the same day then the moments the deeds are executed will determine the ranking. That is why the notary must register the hour and the minute on which the deed of transfer is signed by the parties and the notary.

Thus, the risk for the purchaser as well as for the seller is minimized to a very acceptable degree. When notaries act in good faith, as expected of them by law, and other enabling regulations, insurance companies will pay for damages that may be incurred for which the notary could be held liable. Notaries are in fact among the best insured professionals in the Netherlands. [Kolkman Verstappen & Vonck 2011: 56].

There is no queue jumping and the applications may be shared online by senior staff amongst all available staff. There is no stamping, signing, or seal at the Kadaster, it is just a matter of processing. The online processing and searches, however, can be said to have a digital signature which is engrained in the system.

### **5.6.5 Interview With ICT Official**

The current Dutch Kadaster is the result of an establishment that began in 1832 (almost 200 years ago) and 40 years of automation. The process of automation, though an ongoing one, started in earnest in the 1970s by saving images on microfilms. Computerization began in 1980s with the scanning of about 35 million deeds. The process was finalized with creation of reliable search engines, but which requires constant upgrading to conform to the current ICT trends.

It is important to work as a team and in cooperation with ICT for results that will bear fruit. ICT, as a department, should assess the needs of the registry and create solutions as required by the technical arms involved in land registration. This has to be done with caution, care, respect, and loyalty.

So far as data security is concerned, the Dutch Kadaster at times hires hackers to try and penetrate their systems [DK staff 409]. This way the Kadaster is able to monitor its vulnerability and keep its data and processes safe. About 0.5% of the scanned data is missing or has redundant images (e.g someone’s hand image or has some irrelevancy on the pages). The rest of the data is intact.

### 5.6.6 Interview With Museum Official

The Kadaster, having been established in 1832, has most, if not all, manual deeds quite intact and they are retrievable by name of the registered owner and date of registration. They are all microfilmed and scanned. Even manual records are not tattered. In the mid-20<sup>th</sup> century during World War II a few registers were however destroyed by fire in two registries. The public notaries were called upon to reconstruct the same and so the land register is as complete as it can be [DK staff 410].

### 5.6.7 Customer Contact Center

Because the Kadaster offices operate mostly on the online platform there is a well-established customer contact center. This serves as a communications center where there is constant communication with the customer handling complaints or matters that need clarification. The center is a fully fledged establishment with linkage to the user of the Kadaster services through telephone and email. If a matter requires further consultations before a final answer is given the customer is guaranteed to be called back.

The center solves easy and fast problems and it is populated by personnel well versed on matters of public and customer relations. There are screens in this office indicating the incoming calls, the engaged lines, and the waiting customers online. The center opens at 9am and closes at 5pm on working days.

## 5.7 Land Registration in Rwanda

<b>Population:</b> 15 million (Estimates 2015),
<b>Largest City:</b> Kigali,
<b>Area:</b> 24,660 sq. km,
<b>Founded:</b> Republic status, July 1 1962
<b>Cadastre:</b> 10 million land parcels (estimates 2015),
<b>GDP per capita:</b> US\$ 1,592/-
<b>Population Density:</b> 470.6/km <sup>2</sup>

Table 5.5: Summary of description of Rwanda

Rwanda is a small country in East Africa bordering Uganda to the North, Tanzania to the East, Burundi to the South, and the Democratic Republic of Congo to the West. It gained its independence in 1962 from France, her colonial master.

### **5.7.1 Institutional Infrastructure**

Land registration in Rwanda is carried out in the Ministry of Natural Resources under the agency of Rwanda Land Management and Use Authority of 2017 (RLMUA) previously Rwanda Natural Resources Agency (RNRA). Under this agency is the office of registrar of land titles headed by chief land registrar and it was created in the 2006. The registrar is deputized by five zonal deputies each heading a registry. Together there are 6 land registrars in Rwanda. The registries are in the four provinces (North, South, East and West) and the City of Kigali. There are 30 districts with notaries in each, but registrars are at the province level only. Public notaries are further cascaded down to the sector level.

The structuring of the ministry is as follows: minister, principal secretary, director general, directors (chief registrar falls here), deputy directors, and officer of public service. The Prime Minister's order dictates all the professionals required in a ministry and its departments as well as agencies. Ministries make the policy while the agencies carry out or execute the policy guidelines.

Land titles' applications for instance transfers are made at the sector level and have to be processed upwards to the province level because they have to be signed and stamped by the deputy registrars at the province.

Before the year 2006, the office of the registrar of land titles did not exist and neither were there land titles. All land belonged to the State, but permission to use was available through certificates of use but not ownership. Land registration began in earnest in the year 2007 and was completed in the year 2012 covering the whole country. The process was systematic in that it was carried out in a strategic design from one region to another.

The registry considers application of the following methods to have contributed to the success of the country-wide land registration: stakeholder involvement, involving the general public and land owners, use of para-surveyors, use of general boundaries, and use of aerial large-scale photographs. The process was as a result fast and cheap. The adjudication processes greatly relied on the cooperation between the land owners or occupants and the para-surveyors. After the aerial photos were captured the area residents would be shown the maps upon which they would mark their hedges, boundaries, houses, and other developments. They would then develop some form of initial maps and records which would be fed into a computer and later on further details added.

The general boundaries are now systemically being converted into fixed boundaries as and when the landholders apply for transactions. Land is registered in the names of both the husband and wife as a legal requirement. If someone is married they are registered with their spouses. The laws of inheritance and succession in Rwanda give equal rights of inheritance to both male and female heirs and dependents. The secret to the fact that this law is adhered to is simply through campaigns and educating the general public that both men and women have equal rights in and to land [RNRA staff 532].

Other than issuance of titles, the land registries also administer land in terms of resolutions on a small scale. The courts settles the majority of disputes. Indeed during the period of 2007 – 2012, when major adjudication took place, disputed lands were registered but the ownership slot was filled with a 0 (zero) until such a time that the court made its determination. About 1% of the lands registered are in dispute, but are continually being dealt with by the courts.

Rwandese people get 99 year term leases for agricultural plots, 20 year leases for residential purposes, and 30 year term leases for commercial purposes. Freehold titles are issued after the lessees develop their lands as per the master plan.

### **5.7.2 Searches**

Upon carrying a search at the registries one gets most details or all attributes pertaining to the land including number, registered owner, designated land use and acreage. Searches are centralized via mobile telephony service by dialing \*651# and follow the instructions thereof. There is no need for further searches or getting certified copies unless required for court purposes. All land searches are available on this application and it is free of charge, save for the network charges. Therefore, searches are fast and free. Statistics show that over 70% of Rwandese over the age of 18 years have mobile phones [RNRA staff 532]. Someone can also walk into the registry and make a request to peruse files, but only in cases of disputed ownership instances.

### **5.7.3 Processing of Transfers**

When dealing with transactions in land, say transfers, the legal notaries draft all the papers required and direct the applicant to make the relevant payments. Transactions are processed all the way up to the registry level and signed electronically by deputy registrars; however, stamping is done manually. A notary who is a government employee deals with matters of land at the sector level with supervision of a deputy registrar.

When the notary makes the transfer and prepares all other documents, he creates an application file and gives it a number. This number can be used to follow and track one's application online through the 'lands query notification system'. Transactions previously took about thirty (30) days to complete, but with increased efficiency it is currently taking seven (7) days and one (1) day processing for investors.

Mortgages in Rwanda are not registered at the registry but rather with the Rwanda Development Board. This board has access to the registry information online so as to enable them to view land parcels' details.

### **5.7.4 Automation**

Upon creation of the land register in the year 2007 digitalization was also started. Manual books were used to enter indices. Initially registration was done both



manually and electronically until 2012 when it was completely digitalized. Each of the approximately 10 million parcels of land has a manual file connected to it. The lands registry applies the Torrens system of title registration and once a new owner is registered the old owner's name is deleted from the register.

### **5.7.5 Challenges During Automation**

A major challenge during automation was funding. The DFID took up and solved this issue with finality. The systems were strategically put together to avoid hacking and thus there were no system interruptions except for a few instances of power outages.

### **5.7.6 Fees on Land Transactions**

Any fees on land transactions are determined by a Presidential order. Currently the transfer fee is 20,000 Rwandese Franc (about Ksh 2,500 or US\$ 25), 5,000 for a new title and 2,000 for a notary certification. Thus, a one off cheque is paid to the Rwanda Revenue Authority account for Rw Fr. 27,000/-. Accompanying documents during a transaction are the title, transfer document, and parties identity cards, all deposited at the notary's office. Land rent is payable annually to the government depending on the land's use, size, and location. Before approving a transaction the notaries make sure that all dues are paid to the relevant authorities.

The registry does not handle matters of taxation, rent, fees, or mortgages. These are dealt with by other agencies, but the notary has the duty to ensure that all fees are paid. Inheritances are determined by courts and pass through the notaries to the registry as transfers. Once caveats or restrictions are registered parties are to initialize resolution in court or out court and should not be registered in perpetuity. There are about one hundred transfers done per week per province,

### **5.7.7 Customer Care**

Land registry customers are served at the sector level by the public land notary. They are also free to go up the ladder all the way to the ministry headquarters office in Kigali. There is also a call center, a registry twitter handle @RwandaResources, and the Ministry's website [www.minrena.gov.rw](http://www.minrena.gov.rw). Rwanda also introduced a mobile

search service which is accessed by dialing \*651# (in March 2016) and this has greatly reduced the queues at the lands offices.

### **5.7.8 Way Forward**

There are some suggestions that would make even better the office of registrar of land titles in Rwanda. These would include making the system more interactive so as to reach more people and get more feedback, create an online and electronic applications' platform for both searches and transfers, and enhance decentralization of land registration services down to the village level. The current administrative structure in Rwanda is as follows: national, province, districts, sectors, cells and the villages levels. As earlier mentioned, the lands notaries are up to the sector level while the registrars are at the province level. The registrars could move down one step to the district level while the notaries could also step down further to the cells or even village level.

## **5.8 Kenya Commercial Bank (KCB)**

KCB is one of Kenya's largest commercial banks and is partly owned by the Government.

### **5.8.1 History of KCB**

This bank was established in the year 1896 as a colonial masters' financial institution as a branch of The National Bank of India in Zanzibar. It extended its services to Nairobi in 1904 later becoming the National and Grindlays Bank in 1957. In 1970, the Government of Kenya acquired majority shareholding and effectively changed its name to Kenya Commercial Bank. Today the Government has only a 15% stake in the shareholding. KCB establishment has evolved to be a holding company with various subsidiaries. There is the KCB Group Holdings Limited with subsidiaries as KCB Kenya, KCB Tanzania, KCB Uganda, KCB Rwanda, KCB Sudan and KCB Burundi.

It operates under a CEO and a company secretary amongst other various heads of departments. KCB carries out its operations as guided mainly by the Banking Act (cap 488), Central bank of Kenya Act (cap 491), and the Companies Act (2015). The bank currently employs approximately seven thousand eight hundred (7800) staff members.

It offers services that are mainly banking in nature including financial, advisory, insurance, investments and lending. The client base for KCB has hit the five million mark ranging from individual, corporations, Government institutions, foreign investors, and non-governmental bodies as well as religious bodies.

### **5.8.2 Automation at KCB**

The process of computerization, digitalization, and modernization of service delivery at the Kenya Commercial Bank has been an ongoing and a progressive process over the years. The system in place is known as T24 and it cost about two billion Kenya Shillings to install, and there are plans for its upgrade expected to cost approximately three billion Kenya Shillings. It is a multi-faceted system that is able to integrate all the banking services offered, interlink bank branches to each other, and to the its headquarters. The system has an inbuilt security system which enables it to trace all transactions and to keep an audit trail of all staff members' *footprints or signatures* [KCB staff 701].

The staff members are able to log in with their level of credentials (different level permissions) and can tell how far an application is processed from another branch saving their clients the travel costs. The Bank's customers can also carry out a limited number of transactions online, for instance getting their monthly or quarterly statements, loan calculator, money transfers requests, query an entry via email, and make use of their visa-automated teller machine (ATM) cards not only locally but internationally. This card may not use the smart technology of say identification vide biometrics, but it can be used as money for various purposes. These include shopping, fueling, dinning, air-ticket payment, and much more.

KCB has also embraced mobile banking at various levels. This enables customers to withdraw money from their bank accounts onto their mobile phone accounts, for instance mpesa, or transfer money to another bank account. Mobile banking also makes it possible for one to bank cash from the phone handset without the necessity of going to the bank physically. Services at KCB can be said to be quite automated, maybe even fully automated but as seen earlier; the process is progressive and

continues to answer to its clientele's needs as it keeps up with the current and emerging technological advancements.

### **5.8.3 Challenges**

During the process of digitalization at the KCB the change drivers then experienced some challenges, key among them resistance to change. The staff who were used to a particular way of doing things were not ready to adopt new technology. They especially feared that modernization would render most of them redundant and they would refuse to train the fresh (IT compliant) graduates or employees lest they take their places. There was also the problem of time constraints, unavailability of resources, failing network, and unreliable power supply.

The management was able to cure these problems through vigorous training, assuring staff of their positions, and involving them in change management. Other resolves were through outsourcing of services especially technical assistance, Internet service provision, and power backups.

### **5.8.4 Advantages Post Automation**

Post automation KCB experienced quite a number of advantages: service provision was faster and secure, income escape routes were minimized, collection of data was faster, and information was more correct. With time the system has become more cost effective notwithstanding that the cost of the initial installation was quite high. More space was freed since there is no need to file manual records, though there is minor use of manual data. The overall effect is improved service delivery, a satisfied client, and general economic growth.

### **5.8.5 New and Emerging Challenges**

This did not mean that automation cured all the challenges, indeed it led to mutation of some problems into new ones. They included cybercrimes, genuine errors in the system, power interruptions, hacking (both internally and externally), and presentation of fake documents, for example identity documents. The bank lost funds through ATMs' PIN taps, staff passwords' copies, and client impersonation [KCB staff 701].

The holders of ATM cards have also been held and forced to give their secret code or to withdraw funds at gun-point and hand the cash over to the thugs.

### **5.8.6 Dealing With New Challenges**

New ways to cope have been devised with the recent introduction of more technologically advanced ATM cards and disabling of the USB ports in the office computers. Other cures have been found in development and adoption of a software that detects and reports any attempts of copying staff passwords. The ATM software has also been improved, bank insurance introduced, adoption of an offline processing system, installation of power backups, partnering with various internet providers, and close partnership with the anti-banking fraud unit.

Other ways to deal with the new challenges included use of surveillance cameras (in the office and at ATM points), hiring security guards, having an internal IT section, and employing IT oriented staff in all sectors of the bank's departments. Ongoing training has also been vital in keeping up with the growth and advancement of technology and Internet capabilities.

The KCB client is a happy one as it gets served faster, has minimal chances of funds loss, and can receive banking services in almost all parts of the globe. One does not need to carry paper around with security features because the security of the services is in the system and not in the documents held, including the ATM card.

## **5.9 Kenya Revenue Authority (KRA) – Nairobi**

Kenya Revenue Authority is Kenya's tax administrative agency. It was initially a department in the Ministry of Finance. Today it is a semi-autonomous body and its CEO reports to the Cabinet Secretary in charge of finance.

### **5.9.1 History and Institutional Establishment of KRA**

Kenya Revenue Authority (KRA) is established under the KRA Act of 1995 (cap 469) and began its operations on July the 1<sup>st</sup> of the same year. This authority is responsible for the collection and administration of all matters pertaining to tax in the Republic of Kenya. It operates under a Board of Directors whose chairperson is an appointee of

the President. Its CEO is the Commissioner General and whom the cabinet secretary in charge of finance appoints. Before its establishment, various taxes were administered by the treasury until tax modernization program was adopted in 1986. The initial taxes in Kenya administered by the colonial government were majorly two: the 'hut tax' (charged on every hut) and the 'poll tax' (charged on every male adult) which were collected on regular intervals determined by the government at the time.

Today there are various forms of taxes including pay as you earn, income tax, excise tax, stamp duties, custom duties, and value added tax amongst others. There are established offices in various regions, the number keeps on growing as per need. KRA is established all the way to the sub-county level and there are plans to establish county headquarter stations in all 47 counties. KRA is the tax administration body in Kenya and whose services can be broken down into various sectors and thus the departments. The main departments are Customs Services, Domestic Services (split into Medium & Small Taxpayers (MST) and Large Taxpayers Office (LTO)), Investigations and Enforcement, and The Technical Support & Corporate Support Services.

### **5.9.2 Automation**

Digitalization and modernization at KRA has been an ongoing process since its establishment. Real automation however, began in earnest in the year 2003 with the introduction of integrated tax management system (ITMS), under a software known as the *simba system*. This has seen major developments over the years culminating in today's *itax*.

### **5.9.3 Challenges**

Major challenges during the early attempts of automation included resistance by both staff and customers and especially the clearing and forwarding companies and agents. There was confusion and a sense of being lost due to the fact that the institution was moving into a new and unknown area. The ownership of the software and data issues also arose. Limited funding and network failures were the other problems. To solve these emerging issues the office relied on sensitizing and constantly consulting with all stakeholders, key among them being their customers and the staff members. An

agreement between the system developer and KRA was also reached resolving the software ownership squabbles.

#### **5.9.4 New and Emerging problems**

Currently, almost everything is done online though some processes still run on a manual platform. Even where online processing is fully adopted updating is still ongoing. A challenge that presented itself after going online and is still persistent is online hacking. In the year 2005 to 2006 when the *simba* system failed, a lot of goods and vehicles were passed at the port without proper clearance and payment of requisite duty. Clogging of the systems is also a major challenge due to the high number of users on the system.

This is being fixed through the ongoing decentralization of services and delivery. For instance renewal of driving licenses is now available at various banks while the PIN (personal income number) can be applied for online and at cyber cafes. Other challenges are as pertains to the logbooks, which though secured in the system, and the motor vehicle owner is issued with a token; the tricksters have been able to perfectly fake and forge all necessary signatures for these tokens. This has seen peoples' vehicles stolen, sold, or used as collaterals to secure bank loans. The way to cure this though not adopted as of yet, could be the use of biometrics for all transactions and barcodes [KRA staff 801].

#### **5.9.5 Advantages Post Automation**

Automation and decentralization have seen the influx of customers at the KRA offices distributed to various other offices, faster delivery of services, and more revenue collections. The year ending June 2015 saw the highest revenue collections in the history of Kenya totaling One Trillion Kenya Shillings. There is also more customer interaction through the various online platforms as well as the relationship manager concept (RMC). Under this concept, every customer has a manager attached to them for all their tax administration matters and this leads to a more informed and satisfied customer.

Tax clearance certificate (TCC) is another new concept that has seen more adherence by the citizenry to the current taxation regimes and is indeed one way of certifying one as a good and obedient citizen. Most Government and private sector employers demand a TCC prior to an employment interview or even procurement for goods and services. One can also be issued with a tax certificate without having cleared their tax dues. This is done on an agreement that the customer will have to pay the dues on a certain agreed formula. This concept is largely because KRA does not want to hamper business and so it does its best to promote the wellbeing in promoting its customers' entrepreneurship capabilities. In any case, the more income the citizens accumulate the more taxes they are likely to remit to KRA. Though TCC can also be forged it will be a thing of the past when all Government departments in Kenya are: interlinked on the Internet web or on achieving higher levels of e-governance.

## **5.10 The Independent Electoral and Boundaries Commission of Kenya (IEBC)**

IEBC is Kenya's authority responsible for conducting all elections including the country's general elections that declare the country's political leaders. It is an independent constitutional commission and its commissioners enjoy tenure of office for a non-renewable term of 6 years.

### **5.10.1 History and Establishment of IEBC**

The IEBC began as a Government department but which remained largely irrelevant until the 1980s when its services became significant to Kenya. It had properly been established by the Constitution of Kenya 1969 at sections 38 (4) and 42 as the Electoral Commission of Kenya (ECK). It later became the Interim Independent Electoral Commission (IIEC) in 2009 before its disbandment in 2011 leading to formation of IEBC. It is the main Government elections body in Kenya with 17 regional offices and branches in all the 290 constituencies. The commission is headed by a chairperson who leads a team of eight other commissioners, as provided for the Constitution of Kenya 2010. The technical team is led by the chief executive officer who has two deputies: one deputy is in charge of the operations while the other heads the support system.



IEBC currently has a total of about 900 permanent employees who work fulltime, while during the elections this number drastically changes as per the need. This is mostly in terms of temporal staff (casuals). During the general elections however, the number of staff is as high as 200,000, so as to be able to man elections in all the 33,000 polling stations. IEBC is anchored and legally para-metered by the Constitution of Kenya 2010, the IEBC Act of 2011, the Elections Act of 2011, the Political Parties Act as well as its rules and regulations stipulated in these and other various enabling statutes.

The main functions of IEBC include conducting elections (general and mini), boundary delimitations, voter registration, voter education, overseeing nominations for political parties and other bodies on request, and participating in formulation of electoral laws. IEBC works closely with the political parties, the public, candidates to political positions, and other stakeholders. These stakeholders may include donors and partners, especially in matters concerning modernizing its operations.

### **5.10.2 Modernization Efforts**

The Kriegler report that was generated by the South African retired judge-led commission after the 2007/8 post elections violence (PEV) details a list of issues that led to the PEV. His report proposed very spirited attempts to improve operations at the IEBC. Some of the issues included dead people voting, delayed announcements of election results, double or multiple registration of voters, doctored election results, and manipulable voters' registers. After the report there was adoption of a number of recommendations it had proposed.

The adopted proposals included use of modern technologies geared towards the three key functions of the commission. These are voter identification, preparation of an accurate voter register, and relaying of elections results in a fast and reliable design. The need to achieve these was the genesis of automation of the functions at the IEBC. It began in the year 2011 slightly over a year to the general elections expected in 2012 but which were finally held in March 2013. Challenges then included time constrains, low budgetary allocations, procurement complexities, political pressure, inadequate

training, and an untested system since the kitties were procured so close to the elections date.

Though delayed, the IEBC was able to purchase the biometrics voter registration kitties popularly known as the BVRs which were stationed, though not necessary used, in all the over thirty thousand polling stations. These were to assist in carrying out the three key functions of IEBC referred here-above. Prior to this development the polling, counting, and tallying were all done at different stations requiring the transportation of ballot boxes from one station to another. This meant that ballot papers and boxes were likely to be tampered with during transportation. Upon acquiring the BVRs, polling was done at the same place as the counting and the relaying of the results was meant to be immediate after the counting via mobile phones' short messaging texts (sms). Tallying would then take place at the central or national tallying center.

### **5.10.3 Looking into the Future**

Though with some difficulties, the 2013 general elections were slightly better than in 2007 and there were no cases of political violence thereafter. Apart from the minimal use of technology, many other efforts were put in place to make sure that post elections chaos would not occur. Currently, automation at the IEBC is only partly completed, but ongoing, as the voting and counting are manually done. Automation is only used to register voters, uniquely identify the voter, and relaying of the results to the national tallying center. The team at IEBC still looks forward to better use of technology and growth in the area of voting.

There is a system in Korea that would enable one to vote from anywhere in the world provided they are registered voters and have internet access [IEBC staff 901]. However, such a system has not been applied by any Government for general elections apart from some mini or private bodies' elections in some parts of the USA. Today IEBC makes use of different software and systems for its various functions including a nominations system, GIS, electoral voter identifier (Evid), and results transmission system (RTS). It is common practice that institutions use several and different types of systems, especially during their formative stages. More often than

not, these systems are stand-alone and rarely communicate to each other. However, after years of development these stand-alone subsystems are eventually merged and become a single wholesome system [IEBC staff 901].

The level of online communication with the clientele at the IEBC may be said to be vibrant. Already established is the *web and digital media* department whose main aim is to manage the clients' online communication platform. Currently they are on twitter, Facebook, and the IEBC website. Queries are sent and responded to at [info@iebc.com](mailto:info@iebc.com). IEBC makes use of *digital certificates* which is a component in the system used to secure a communication channel. This certificate is, however, not a signature but more or less like an online or web audit trail.

## **5.11 Safaricom Company Limited**

Safaricom is Kenya's largest mobile communications company and arguably the most innovative in Africa. It was the first in the world to launch mobile money transfers and mobile banking.

### **5.11.1 History and Institutional Infrastructure**

Safaricom started operations in 1993 as a mobile telephony section in the department of Kenya Posts and Telecommunications Corporation. It was based on an analogue network which was upgraded to GSM in 1996 after which Safaricom was incorporated in April 1997 as a private limited company. It became a public company with limited liability on the 16<sup>th</sup> day of May 2002. In the year 2008, the Government gave up its majority shareholding by offering 25% (out of its initial 60%) shares for sale to the public; thereby, losing the position as a majority shareholder.

The Board of Governors at the apex of its administrative structure oversees its operations. Below the board is the CEO, the directorates, business units, departments, and finally sections. Shareholders include the government and members of the public. Services offered by Safaricom include communications, voice services (Prepaid and postpaid), short messaging services, Internet, mpesa Services, international roaming services, data and financial services or facilities, and value added services, for instance *bonga points*. Safaricom's legal regulatory framework includes the

Information and Communications Act (cap 411A), The Companies Act, and The Competition Act No. 12 of 2010 amongst others. Due to its money transfer services Safaricom is also governed by the National Payment Systems Act of 2011 and the Kenya National Payments Regulations of 2014.

### **5.11.2 Improving Service Delivery**

Automation at this company began at its inception; it goes without saying that a telecommunications and mobile-telephony business by nature is all about modernity and ICT. It is, however, an ongoing process which keeps on re-innovating and re-engineering the processes. This company keeps on offering newer and better products to its clientele. The interviewee points out that having a computer around is not automation. Automation is all about processes, software, and the systems; it is an open-ended phenomenon and it cannot be exhausted. Any establishment cannot be said to be fully automated. The company, as earlier noted, began its operations based on an analogue platform but which was raised to GSM in the year 1996. In 2007, Safaricom was licensed to operate 3G network services and currently also licensed to offer 4G network services.

### **5.11.3 Challenges**

Some of the challenges that face Safaricom include the fact that people are at times slow to change. This is largely because of the fear of the unknown. Other challenges are costs, not able to meet timelines, and integration to other systems. Sometimes there are security threats which could be physical or systems' based. System failures include cross-talk (two people being allocated same resources online simultaneously), Internet failure, M-pesa misdirection, and M-pesa con tricksters or messages.

These are solved variously, for instance by frequent training, bugler proving, and production of identity documents for security checks before one is allowed access into the buildings. Other ways to curb the challenges are systems upgrade, sensitizing the public as well as staff and frequent and aggressive advertising on both print and social media to deal with an array of problems. The system also has many checks and balances as well as inbuilt authenticating and authorization mechanisms with no

human intervention. They are designed in such a way that they keep an audit trail and footprints of all operators of data.

#### **5.11.4 Looking Ahead**

There are numerous advantages of automation. For instance, all other departmental and sections' processes are all online or web-based. These include the payroll, internal communications, payments, services, and communications to the customer. This implies that there are many systems that are integrated and may be referred to as one, saving both time and money. Client communication platforms include email, calls, tweets, and physical visits to the offices.

### **5.12 Conclusion**

This chapter has enabled the study to come up with various lessons from various quarters. First and foremost, is that digitalizing the lands records is a crucial step in realizing any country's development agenda. Second, is that stakeholder involvement is inevitable as it brings onboard all players in the land sector and helps the land registry play its lead role. Some registries, for instance the Dutch Kadaster, are semi-autonomous detached from politicians and political control allowing them to focus on their mandate; they do not have to play to the tune of the political elite.

What also came out clearly is that the process of modernizing and automating the lands records registry is a lengthy process that demands utmost care and step by step verification of the data involved. It involves several parties all of whom should respect each other's roles and opinions. Conflicts may arise amongst various departments, and some members of staff may not be willing to support the process to completion. Indeed some departments may not be comfortable releasing and sharing data with other departments. Availability of funds and choosing the right technology are other challenges.

How these challenges are handled is what determines the success of establishing a sustainable LIS. It is important to involve all stakeholders and train or tactfully buy them into accepting to cooperate in the process. Training staff members especially on change management and enhancing transparency in the process is important.

Inevitably some employees may lose their employment, but there are ways of letting them go in a humane and dignified style. This involves, for instance in the Netherlands, helping staff further their education, offering good retirement or resignation packages which enables them to venture in business, or helping them gain employment elsewhere.

Where funds are concerned, it was well noted that governments should finance the project as far as possible including donor sourcing. If funds are not adequately available it is advisable to modernize the registries in phases. In case of conflicts amongst members of staff or amongst departments change management training is a good solution, including cultivating a culture of mutual respect. It is also good to note, and be open about the fact, that the number of ICT personnel should increase exponentially or at least future employees would be those who possess computer knowledge.

Key amongst other lessons learnt is the fact that automation and technology are important components of modernizing governance and service delivery. Indeed this chapter has indicated that automation as a means of improving service delivery has been and is being adopted by various sectors of the global economy. It has come out clearly that land registration has also been modernized through automation, amongst other ways, for instance in the Dutch Kadaster, and that other economies are in the process of upgrading their land records as well, via automation of their processes.

The research finally brought out the fact that other sectors of Kenya's economy have adopted, and others are adopting automation as a key ingredient to their growth. The lands registry in Kenya and elsewhere should therefore adopt automation as a part of the recipe to simplifying, modernizing, and improving their services.

# CHAPTER SIX

## KEY AREAS FOR REFORM AND A PROPOSED ROADMAP

### 6.1 Introduction

Having examined what an ideal land registration system entails (at chapter two above) and after analyzing Kenya's system, the intention of this chapter is to develop a roadmap that will build a bridge between the situation in Kenya (complex land registration) and what is considered global best practice (simplicity). This research intends to develop steps to improve Kenya's land registration strengths and reduce or completely eliminate its weaknesses. This chapter also presents a concept for modernization of the land registration systems.

A modern land registration system has (or should strive to have) the features discussed in chapter 2 at 2.6. These features include, but are not limited to: clarity, security, accessibility, correctness, simplicity, completeness of record, legal security, accuracy, timeliness, understandability, cheapness, suitability to circumstances, and fairness. **The sum total of these features is what this study has called 'modern'.**

To achieve modern land registration, various countries across the world have gone through different phases of upgrading. It is worth to note that the route taken by one nation may not suit another owing to the feature of suitability to circumstances. This is due to the fact that different nations are at different stages of improving their land registries [UN - FIG 1996: Art. 5.1], but more importantly they hold different cultures and systems of governance.

### 6.2 Important Considerations For Modernizing Land Registration

This portion of the study presents fine details of key considerations that have been suggested variously in an attempt to modernize land registration. Several publications have laid down what is expected of a good and modern land registration system. To this end, various documents have adopted different terminologies all geared towards transiting a land registry from complexity to simplicity. This study attempts to analyze broadly six key thematic areas that are crucial to consider in establishing or improving, simplifying and modernizing a LIS.

The United Nations Human Settlements Programme (UN HABITAT) conducted research which suggests that to establish and successfully run a land information system key components that must be in place are: a combination of technology, data, people, management, and funding. That study asserts that these components should be accorded balanced significance and developed to the same level. Initially there was great emphasis on technology (hardware and software) but this has gradually been replaced by a focus on data [UN HABITAT 2012: 13].

The main thread of this study at this point is to transit land registries from complexity in their routine processes to simplicity, and thus modern. In analyzing these key thematic areas, the writer queries how and to what extent they bring about simplicity in land registration; paying particular attention to their application or non-application in Kenya's system. These key areas include:

- a) Funding or Financial Infrastructure,
- b) Institutional Infrastructure,
- c) Legal Infrastructure,
- d) Technological Infrastructure,
- e) Stakeholder Involvement, Public Participation and Political players, and
- f) Process Re-engineering.

These considerations also came out in the case studies at chapter five. States have been called upon to establish up-to-date policies, legal and organizational structures with relevant human, physical, and financial capacities in order to deliver proper land administration services. Land administration and registration services can be provided appropriately by application of suitable technologies that enhance accessibility [FAO 2012: Art. 6.4].

To attain sustainable development, environmental protection, and better living standards for all land administrators should create and maintain: appropriate databases, appropriate legal frameworks, access to information, and facilitate exchange of information. It is also important to improve land registry systems and streamline the procedures in land transactions, and establish appropriate land tenure so as to provide security of tenure for all, especially the indigenous peoples, women, and the poor [UN - FIG 1996: Art 3.2].



### **6.3 Funding or Financial Infrastructure**

The funding of land registration as a project determines significantly, the design of the system, costs and fees structures for various registration services and the general institutional structure of land registration. Finances are therefore an important consideration to be carefully put into thought as modernization is carried forth [Stuedler 2004: 82].

The initial costs of putting up a computerized and a digitalized land information system and the costs of running the system should not be underestimated. Cost-benefit comparison studies should be carried out before embarking on computerization and digitalization. Multiple uses of the data, for instance for tax purposes and planning development control, often lead to increased benefits. Technology could be used to achieve an optimum benefit through interdisciplinary employment and the solution of a wide range of problems [UN 2005: 94].

Technology involves purchase of hardware, software, networks, support technology UPS, air-conditioning, and back-up storage facilities. Care should be exercised to avoid over investment in these because in the end many software functionalities and equipment are not used, due to for example lack of skilled staff or lack of data [UN HABITAT 2012-A: 30].

Good land administration (and registration) can be achieved incrementally through the use of relatively simple, inexpensive, and user-driven systems that deliver what is most needed for sustainable development [Williamson, & Grant 2002: 9]. This is especially true considering that establishing, testing, running, maintenance, and use of a land information systems require colossal funding for staff, consultancies, equipment, and other supplies.

The funding should preferably be secured to run beyond the life span of a (donor-sponsored) project. The system can generate income by charging for services, products provided or derived therefrom; however, inadequate funding may negatively impact the development and scope of the system. Depending on the project managers a land information system project can be scaled to fit the level of funding, or it might

be better to postpone the development till such a time when adequate funds avails [UN HABITAT 2012-A: 30].

Investment in land information should be justified and recoverable through improved services or the sale of products (database, maps) [UN HABITAT 2012-A: 38]. However, in principle information should be available at no cost [UN HABITAT 2013: 78]. Governments may want to consider adding the costing of land information system projects to the national budget. If there is no benefit of establishing such a system due to corrupted data, inadequate manpower, or weak internal organizational structure amongst other factors, then only minor investment or no investment at all should be made. The development, use, and maintenance of a land information system should be a continuous process; therefore, secured funding will contribute to its continuity [UN HABITAT 2012-A: 38].

### **6.3.1 Donor Funding**

To be able to establish relevant and long-lasting LIS projects donor funded projects should only function as catalysts. Experiences and technologies from the donor States should only be transferred and embedded in the local context if they fall within the local political, legal, and institutional capabilities [UN HABITAT 2012-A: 24].

### **6.3.2 Application in Kenya**

The Ministry of Lands has made partnerships with international organizations as well as other registries across the globe. These were in the past largely based on international donor funding but which has of late not been of so much help especially owing to the ad-hoc nature of donor funds. Every time a new partner came into the picture there were new rules, new beginnings, and all earlier efforts were trashed. The Government is seemingly taking the lead in the modernization efforts and currently the funding is from the exchequer.

## **6.4 Institutional Infrastructure & Human Resource Management**

Different States have different systems of land registration and have different authorities managing these systems such as: the judicial system, the tax authorities, private or semi-governmental arms, or a government department or ministry. It is also

true that land matters in different States are managed at different levels of governance owing to devolution, decentralization, or lack of the same [Stuedler 2004: 82].

To achieve sustainable resource management for the future, and to accommodate the needs of the population explosion, there is need to avail simple and effective cadastral structures [UN-FIG 1996: Art 4.2]. These structures will vary according to circumstances and population profiles of different States [UN-FIG 1996: Art 4.3]. Bathurst Declaration encourages investment in the necessary land administration infrastructure and in the dissemination of land information required to achieve these reforms [Williamson & Grant 2002: 9]. Security of tenure and access to land can indeed be enhanced through policy, institutional reforms, and other appropriate tools with a keen focus on gender, the indigenous, the poor, and other disadvantaged groups [Williamson & Grant 2002: 9].

The features of a well-functioning system that ought to be considered during the process of modernization are numerous. They may come along with concepts of national lands information management systems (NLIMs), vision for the future, adequate protection of land rights, and the transferability of these rights. These can be further broken down into efficiency, simplicity, cost factors, transparency, security, and expediency amongst others [Stuedler 2004: 83].

#### **6.4.1 Organizational Reform**

The organizational structure of land administration can do with the establishment of two advisory boards: one to coordinate land policy, the Land Management Advisory Board, and the other to deal with land information management, thus the Land Information Advisory Board. The Land Information Advisory Board would also develop policies on land information, safeguarding and sharing it as a corporate and a national resource. It would be directly answerable to the Cabinet [UN 1990: 41].

Because many disciplines claim to possess expertise in land management the Land Management Advisory Board could be established to formulate land management policies. It is meant to incorporate all experts in the land sector and resolve the land question. This board would also be in charge of coordination of all issues and

disciplines touching on land so as to formulate sustainable policies in land administration [UN 1990: 42]. In Kenya, the National Land Commission has been established for this purpose and has almost the same mandate as described.

#### **6.4.2 Integrated Information Policies**

Individual departments within the ministry or government should not be allowed to have their own objectives and priorities that may be at variance with the concept of information as a corporate resource. Governments should be encouraged to have integrated policies for the release and marketing of information. That way, all sectors of governance will have a common standing as per creation, use, and sharing information [UN 1990: 57].

#### **6.4.3 Intra and Inter-Institutional Linkages**

Land information system should be structured in such a way that both intra and inter-institutional bonds are built and strengthened over time. The system should be established in a design that it can be used beyond the particular project phase and into a wider national and even international space [UN HABITAT 2012-A: 28]. This increases the use of the system and benefits and it is easier to reap profits from either sharing or selling the information.

The interactions between the various authorities mandated by law to run land registration and their clientele, lawyers, surveyors, physical planners, the business community, and the landowners are critical. The land institutions may need a re-thinking and a re-arrangement to achieve a modernized land registration system. For effective service delivery to the public one stop shopping is essential and this calls for the unification of data standards to ease exchange of information and interoperability [Tuladhar 2003: 3], [FIG 2014: 21].

Consequently, there is a strong need to integrate and rationalize the system; especially the land titles registry and the cadastral office, providing links or information exchanges with other land administration and management authorities (such as valuation and planning) or in the least create compatible standards [UN-Fig 1996: Art 6.7], [FIG 2014: 20] and interoperability. All those involved in land administration

should be encouraged to recognize the relationships and inter-dependence of different aspects of land and property. There is need for functional cooperation and coordination amongst: surveying and mapping, the cadastre, valuation, physical planning, land reform, land consolidation, and land registration institutions [Williamson & Grant 2002: 9].

Other organizational matters may include privatization, commercialization, corporatization, decentralization, quality control, accountability, transparency, funding, training and education, research, and international cooperation [UN-FIG1996: Art 8.4].

#### **6.4.4 Capacity Building**

Institutional options are inclusive of human resource management. Capacity' is defined as *'the ability of individuals, organizations and societies to perform functions, solve problems, and set and achieve goals* [UN HABITAT 2013: 159]. UNDP defines capacity development as *'the sustainable creation, utilization, and retention of that capacity, in order to reduce poverty, enhance self reliance and improve people's lives'*.

In relation to land administration, therefore, organizational capacity development refers to that process through which a department or ministry creates, strengthens, and maintains the necessary systems to undertake its work effectively and transparently [UN HABITAT 2013: 159]. The sustenance of a well-educated and trained personnel to run the system is fundamental to the running of a modern land registration or administration system.

Capacity building as a component of reform is considered better than an over-haul or employment of new staff reform agenda. This is because of the institutional memory that is required. However, there are always casualties that are incurred and some staff members may fall out on the way of reform [Stuedler 2004: 83].

A land institution should employ people with the right mix of qualifications to operate its information system. These qualifications range from survey, law, physical

planning, land economics, Internet technology, ICT support, database design expertise, administration and support, modeling, web-design, cartography, and remote sensing amongst others. The number of staff members, their salaries, and training opportunities are important for the motivation and dedication of the staff to their employment [UN HABITAT 2012-A: 30]. This facilitates near perfect deployment of staff within the organization.

*Senior staff must also be strongly motivated and adequately rewarded so that they are able to get their juniors similarly motivated and willing to introduce the changes in attitude and procedures that are needed* [UN 1990: 29].

The management should have managerial and other skills to connect the institution with other spatial data sets developed and used elsewhere. *This is crucial for a LIS to move beyond the isolated project phase to a wider corporate LIS, and even towards a local or national spatial data infrastructure* [UN HABITAT 2012: 13]. Land information systems are not only a geo-database but are a combination of technology, data, people, and institutional management capacities [UN HABITAT 2012-A: 28].

Kenya like many other countries struggles with the issue of capacity building and though the registry may be manned by skilled and professional staff, the numbers are still below what would be termed as adequate to serve the citizenry. As we move into the future, the level of staff with relevant skills, especially in IT, is not adequate and requires re-evaluation and, thereafter, proper hiring and deployment.

#### **6.4.5 Training of Staff**

Training staff on new and emerging land information systems, change management, public relations, public finance management, and so forth can be done within the institution. This is usually done through hiring of consultants and sometimes sending staff on short courses to institutions of learning. One innovative way of reducing costs is wide establishment of regional and sub-regional centers to run short courses. An example is Regional Center For Mapping Resources For Development in Nairobi, Kenya. While people who work in the land administration offices have a school that is open to send its staff for training, there is much more benefit in sharing experiences

and learning from sister organizations on how to handle land information systems.

These centers could have a dual role in promotion of education, training, and to provide advice and consultancies on matters of land management [UN 1990: 44]. Another example is KISM (Kenya Institute of Survey & Mapping) which works as a department within the Ministry of Lands, whose main objective is to train staff members. However, it requires an upgrade to deal with wider training needs as opposed to survey related needs only.

The Ministry of Lands should also come up with personal development programs for each member of staff, part of which should be the requirement to attend training courses. Passing a list amongst members of staff and requesting them to indicate what courses they would love to undertake will demonstrate organizational concern for each individual and improve staff morale. It will also ensure that the system is dynamic and change receptive.

Training is, therefore, an important aspect in land registration and the needs are vast. Stakeholder engagement would help identify training needs; for instance the staff themselves at a personal level would be glad to put forth what they think are their training needs. This has occasionally been done at the Ministry of Lands in Kenya and staff needs have been met depending on availability of funds. Another way of identifying training needs is involving the registry customers. Most of them have complained of rigidity and rudeness from lands office staff. To this end, this study suggests that everyone in the lands department requires customer relations training. This is because being a service ministry almost every member of staff comes into contact with the customers and training will come in handy.

#### **6.4.6 Ethics and Integrity**

Land institutions should inculcate ethics and integrity. *Ethics are the standards that guide our conduct and help us when we face decisions that involve moral choices, while integrity refers to 'honesty' or 'trustworthiness' in the discharge of official duties, serving as an antithesis to 'corruption' or 'the abuse of office'*

*Institutions must make clear how they want and expect staff to interact with clients and stakeholders. This relationship is often referred to as a professionals 'duty of care' and responsibility to clients. Employees should not, for example, exploit their relationship for their personal advantage to the detriment of their clients (or the company)* [UN HABITAT 2013: 123]. Mission and vision statements for instance can be important tools to guide employees in discharging their duties and responsibilities.

Professional associations that register and regulate persons involved in land administration or land registration should publish and ensure adherence to high levels of ethical behavior amongst their members, be they in private practice or in public service. These professionals and especially those in public service should be insulated against interference and undue influence from powerful individuals or cartels in the performance of their duties [FAO 2012: Art. 6.9].

#### **6.4.7 Decentralization**

Another tool for reforming land organizational structure and enhancing accessibility is to decentralize the system of land administration and management. Where it is properly designed and executed decentralization improves accountability and enhances service delivery [UN HABITAT 2013: 158]. It is especially useful in developing nations, and more so where automation of land administration services is still a goal to be netted. Where computerization and automation of services are already completed there would be little or no need to decentralize, especially in terms of the physical offices.

#### **6.4.8 Application in Kenya**

Kenya's Ministry of Lands mission and vision statements are:

Mission Statement: *To facilitate improvement of livelihood of Kenyans through efficient administration, equitable access, secure tenure and sustainable management of the land resource.*

Vision Statement: *Excellence in land management for sustainable development of Kenya.*

Posters clearly communicating to both client and employees/staff are also vital in this



area. Kenya's Ministry of Lands office at Nairobi has a poster as shown hereunder.



Diagram 6.1: [UN HABITAT 2013: 128] Corruption free zone - Photo © UN-Habitat/ Solomon Haile

Land information institutions should also be kept free from direct and indirect political interventions, for example the appointment of its staff or manipulation of land information [UN HABITAT 2012-A: 30].

Various statutes in Kenya cover most matters raised here-above. The Constitution dedicates chapter six to integrity while privacy and copyright are covered under chapter four on fundamental freedoms and human rights. Whilst corruption has been on the increase in most spheres of life [Akech Migai 2014: 113] this study proposes three things (in order of priority starting with the most effective) to cure it, and all of which are well within reach. First is automation of processes and services, second, change of organizational culture and attitude towards public service, and third, appropriate employment of staff who are adequately remunerated. Another solution that would help deal with the menace is continuous and appropriate training.

Decentralization of services is ongoing and efforts are being made to establish at least one land registry per county. Currently only six out of the forty-seven counties are

without a registry. In any case, some counties have more than one registry in line with the provisions of section 6 of the Land Registration Act No. 3 of 2012.

## **6.5 Legal Infrastructure**

*A clear and unambiguous legal framework must be put in place to provide a platform for the public to expect that services are delivered as per the (legal) mandate.* [UN HABITAT 2013: 144]. The legal aspects in land registration and titling are crucial in confirming the legal status and legal ownership of land units. The processes that lead to these confirmations also should be anchored in the relevant laws, be they: statutes, subsidiary legislation, rules of custom, or practice as well as government policies.

Law then protects the rights of ownership once confirmed. The law further determines the various land tenures, formal or otherwise, and land holding methods applied and accepted in different jurisdictions. These include indigenous and informal land tenures putting in mind urban sprawl, industrialization, rural to urban and urban to rural migrations, slum upgrading programs, nomadic cultures, and developing appropriate responses to the different situations [Steudler 2004: 83]. Legal options may include rules and regulations that guide land transaction processes, compulsory acquisition, form of title, digital signatures, adverse possession laws, subdivisions, change of use, and others [UN-FIG 1996: Art 8.3].

The Bathurst Declaration proposes the provision of effective equal legal security of tenure and access to property for all men and women, including indigenous peoples, those living in poverty and other disadvantaged groups, promoting the land administration reforms essential for the sustainable development and facilitating and giving full and equal access to all persons in land-related economic opportunities, such as credit and natural resources [Williamson & Grant 2002: 8].

The Bathurst Declaration recommends that the laws and regulations necessary for creating property rights, responsibilities, and the processes thereof must be responsive to local requirements and conditions. They should be capable of evolving over time to deal with different needs and priorities. The institutions responsible must be open and transparent. Every effort should be put in place to encourage full participation of the

local communities when making the land policies and reforms [Williamson & Grant 2002: 6].

Charlebois [1999] consequently, cautions that the land registration reform should be anchored in legislation. Charlebois accordingly suggests that during reforms the State guarantee to title can be suspended during transition from manual to digitalized titling system. This gives room for the chief registrar to verify and ascertain that the titles being uploaded online are authentic and can be relied on for prosperity. He then proposes private company insurance policies for title as opposed to State insurance.

Cadastre should include all lands within a State or jurisdiction in a unified system with each parcel of land capable of being uniquely identified [UN-FIG 1996: Art 4.6]. Indeed all public lands should be brought into the realm of registration so as to cover the whole jurisdiction. Another important consideration as recognized by Bogor Declaration is the need to clearly identify the restrictions, responsibilities to any parcel of land, simplify the information, and access thereof, especially to the owners and users. This is crucial for both formal and informal land tenures as well as both urban and rural lands [UN-FIG 1996: Art 6.3].

Legal standards that are put in place so as to have a successful and reliable land information system may include;

- (a) Standardization, including the redesign of forms to make the document-handling process more streamlined,
- (b) Safeguarding of paper records before digitalization begins,
- (c) Improvements in the storage and retrieval of records and documents,
- (d) The use of microfilm for document storage and retrieval,
- (e) More realistic, cost-effective, and flexible standards of surveys and cadastral mapping,
- (f) Compulsory registration to achieve economies of scale, and
- (g) Automation and the use of computer technologies to store, retrieve, and in some cases check documents [UN 1990: 61].

Land information should be treated as a corporate and a national resource, which must be managed in the interest of all. Rules and guidelines on the ownership and access to

information, are needed, not forgetting pricing of the products, cost sharing, cost recovery, and legal liability for the data [UN 1990: 56].

### **6.5.1 Protecting Personal Information and Privacy**

Information legislation framework should ensure that access to information is fair and that the use of the individual information is known and explained before or at the time of collection. Legal parameters should be in place to control and monitor the use of key personal information without injuring the individual's right to privacy. The public is therefore encouraged to provide personal data but they need assurance that its use is limited, or in the least be informed how it will be used and kept [UN-HABITAT 2013: 77].

### **6.5.2 Copyright Laws in Land Information**

Land information systems need copyright protection. This allows the land institutions to protect its investment and the information created as intellectual property with allowed or considered use and restrictions [UN-HABITAT 2013: 78]. This protection of data stems from the fact that whenever stakeholders are asked to share data, their first reaction is protection and defense due to the fear of losing control of their data [FIG 2014: 19]. Copyrighting, therefore, is a crucial element to foster functional cooperation amongst various institutions.

### **6.5.3 Application in Kenya**

Land registration in Kenya has, for the last a hundred years, been structured under various legal regimes as discussed in chapter three. This has caused a lot of complexities in conveyancing, and despite the high number of statutes governing the system only about a third of Kenya's land is registered. This percentage, however, remains an estimate because there has not been a measured study in either the land registry or the survey office to mathematically confirm the numbers. Because of the manual nature of the land records no one can say with certainty the number of hectares or acres of the land registered across the country.

In the year 2012 Land Registration Act (LRA) was passed effectively unifying land registration systems in Kenya and effectively repealing other land registration laws.

This law is going through the phase of making rules and regulations which will effectively implement it. The registry is still operating under the old laws that were repealed in 2012, and thus the LRA has not been enforced. Other laws that need to be amended include the ICT Act, so as to allow electronic signatures and electronic processing of the land transactions' applications and particularly article 83B. Techniques are also changing and developing at a tremendous pace and sometimes legislation cannot keep up [Louwman & Vos 2012: 3]. This implies that a change in technologies may call for amendment of the law.

LRA stipulates standardization of all titling processes and forms or instruments and adoption of a unified title document countrywide, which is yet to be realized. This unification is a symbol of simplicity in land registration though it remains unimplemented. Information storage in a number of registries has been improved through construction of strong rooms. The majority of land registries, however, are yet to be attended to.

Matters pertaining to land tenure typology in Kenya have been ignored when it comes to land registration. Land registration for a long time concentrated on urban and individual tenure, with informal settlements, rural, pastoralists' community, and public lands ownerships having been forgotten. Currently however, there are several bills in Parliament aiming to regulate registration of lands in these various categories and the Community Land Act of 2016 is in place. This study is of the view that all types of land tenure should be brought under the purview of land registration. A country should as far as possible adopt a common system of land registration throughout its jurisdiction so as to bring about simplicity.

The law in Kenya does not provide for compulsory registration of lands. This study recommends that indeed the chief land registrar be instructed under the law to ensure registration of all lands in Kenya within a stipulated period of time. This requires that the Ministry of Lands be allocated adequate resources to carry out this activity.

The Land Registration Act of the year 2012 enumerates overriding interests to include trusts, including customary trusts. This study proposes inclusion of all rights, restrictions, and responsibilities in the title document as well as the overriding

interests. This could be done in the titles' special conditions segment. As far as the recommendation for a unified titling system and adoption of a unique parcel identifier are concerned, the registry has made progress to the extent of having a law in place that stipulates the same. However, this law has not been implemented.

The system in Kenya is, thus, not simple nor is it as effective as it should be, and indeed it does not pay particular attention to the poor, the women, nor the indigenous peoples. The 2009 National Land Policy documents these aspects that are yet to be implemented. In fact, there is no land law in Kenya that clearly and emphatically provides for gender equality in matters of land registration. The Law of Succession Act does, however, allow both genders to equally inherit all assets of a deceased person. There is still a huge challenge in enforcing this provision especially where families adhere to strong patriarch traditions.

## **6.6 Technological Infrastructure**

Computer technology should be adopted in the development of land information systems [UN-FIG 1996: Art 2.3]. However, Different governments are at different stages in the development of information and communication technologies (ICT). The application of ICT in land registration may differ from one region to another. The customers' needs determine to a great extent the design and methodology of land registration. Key players in the land sector should also be consulted, even as the current global wave of e-governance plays a major role under this topic [Steudler 2004: 82]. One important reason for digitalization is that it brings about cleanliness and hygiene in the information system. Biometric procedures could be incorporated to reinforce the system's security, such as identification through fingerprints or the iris scan [UN 2005: 93].

Bathurst Declaration reiterated that information technology will play an increasingly important role both in constructing the infrastructure and in providing effective access to cadastre information to the citizen. Policies must be formulated to ensure that the processes for formalizing and transferring property rights are simple and efficient [Williamson & Grant 2002: 5]. This will enhance security of tenure and access to credit. The workshop also recognized that whilst governments are willing to reform

their land administration systems, there are no clear directions or models to adopt [Williamson & Grant 2002: 2].

Under the technical options, Bogor Declaration recognized that matters computerization may begin with emphasis on indices and then move to textual data before moving to graphical data conversion. Comprehensive pilot projects are a necessity before a countrywide program is rolled out. The end or eventual product is a metadata, digital, and web-based titles leading to improved efficiency. Adoption of technology could thus be phased and it may start with large-scale photomaps for planning and adjudication [UN-FIG 1996: Art 8.5]. This is because creation of title register must be preceded by a comprehensive parcels' map, because the map gives the title its unique identifier [Charlebois 1999: 4]. The registrar must also have visualized the final product they are looking for before the whole process of modernization and automation starts [Stuedler 2004: 83].

Technology should allow the flow of information relating to land and property amongst different government agencies, between these agencies, and to the public. Whilst access to data, its collection, custody, and updating should be facilitated at a local level, the overall land information infrastructure should be recognized as belonging to a national uniform service. This, promotes the sharing of land information within and amongst nations [Williamson & Grant 2002: 9].

National governments should be encouraged to ensure there is sustained education and training in land administration and availed to even the lowest local level through the use of modern information technology. Furthermore, national and local government bodies should document and manage their own land and property assets [Williamson & Grant 2002: 10].

### **6.6.1 Need For Digitalization**

According to the United Nations 'Guidelines For the Improvement of Land Registration and Land Information Systems in Developing Countries', the main objectives of computerization have been to:

- (a) Reduce duplication in the storage of information,
- (b) Reduce the need for notification routines,
- (c) Improve the collection of ground rent,
- (d) Cater for the expected increase in registration of titles and mortgages,
- (e) Replace registers that were physically damaged and required to be re-written, and
- (f) Facilitate the compilation of information and reports that were impossible or very cumbersome to produce using manual systems. [UN - Habitat 1990: 26]

### **6.6.2 Application in Kenya**

Kenya has gone through various attempts to computerize and digitalize the land registry. In the 1980s, some registry records were microfilmed but that exercise was not carried forth [Registrar 229]. Since then efforts have been geared towards digitalization with various developments and donor partners. There is currently a digitalization project which is fully government funded and is in its pilot phase. It is hoped that the pilot will be successful and will eventually be rolled countrywide and not fizzle out like other initiatives there-before.

Safeguarding the paper records and at times reconstruction of the torn records has also been undertaken. The coming into operation of the National Titling Center in Nairobi has seen an increase in the issuance of land titles, especially those that have been pending adjudication and survey processes' completion. This has enabled the production of approximately two million titles in the last two years: 2014 to 2016, and is expected to see the issuance of a total of three million titles by the year 2017 [Registrar 216].

### **6.6.3 E-Governance**

As expounded earlier in this thesis (chapter 2 para 2.9.2), e-governance is a concept being embraced all over the world. It denotes the use of information and communication technologies to facilitate the processes of government and public administration.

To initiate automation various methodologies may be employed to explore and implement computer systems. Due to the rate at which technology changes it is



common to use external consultants to advise on the acquisition and installation of the most relevant and cost effective technologies; often there is insufficient in-house expertise when implementing such a system. It becomes imperative that once a decision is reached implementation should follow without delay [UN 2005: 95].

Given the pace of change of technology data models should be system-independent. This will help to protect the huge investment in the acquisition of geo-data and electronic equipment by avoiding system specific limitations of individual products. However, investment in hardware and software will have to be renewed every three to five years. The acquisition of hardware and software is expensive, but the amount is relatively small in comparison to the investment in data. It should not be necessary to reacquire or restructure data every time that hardware or software is replaced [UN 2005: 95].

Another dicey issue is the fact that data in land administration system is dynamic. It requires constant changing and updating. The system must thus be built with enabling capabilities which are interactive. Land-related data should be collected at the local level, while data management and distribution can be centralized [UN 2005: 95].

Some countries have already converted all their land registration services into a fully digitalized system, enabling the electronic retrieval of information so that banks, lawyers, notaries and members of the public can access property information electronically. This development largely involves the computerization of manual routines. *To obtain the greatest benefit, the role of registrars, notaries, solicitors and agents who participate in the transfer of land rights may change and the processes of land transfer may need to be modified to take advantage of the new technologies* [UN 2005: 26]. Land information should, however, be availed online after a thorough verification exercise is carried out by both the land registry and the stakeholders, for instance the landowners.

#### **6.6.4 Mobile Phone Devices & Block-chain Bitcoin Technology**

The establishment and running of a trustworthy and reliable land registration system remains a challenge to most, if not all, countries. The case is worse for developing

countries. True immutability and auditability remains a mirage. Epigraph is a software that records data using fatcom, an open source decentralized ledger that is secured by Bitcoin block-chain [Dobhal & Regan 2016: 3]. Fatcom's immutable ledger allows Epigraph to write property data which once written cannot be erased. Epigraph then delivers this immutable data via a mobile friendly software; thereby, eliminating the costs of accessing the physical land registry.

Such technology is a breath of fresh air in land registration considering that property rights have been the target of corrupt actors. Epigraph brings with it transparency, thereby, blocking corruption which thrives in the darkness. This software is easy to use, even with minimum technological knowledge, and if adopted would greatly lower land registry administrative costs. Bitcoin on the other hand is an electronic payments system which allows willing parties to transact directly, without the need of a witnessing third party to guarantee the value of the payment. Bitcoin's transactions form a sequential ledger known as block-chain which avails a global database where anyone can publish but whose history no one can modify.

Thus, the block-chain is a public ledger of all bitcoin transactions whose blocks are constantly growing and ledger is available in a chronological order. It has complete information as it pertains to the parties, their addresses, and balances. Recording land information in an unchangeable location but where anyone can make reference to it in the future makes block-chain an immutable source for record keeping [Dobhal & Regan 2016: 7]. However, the fact that anyone can write into this system is what this study finds a challenge. If there are no restrictions as to who writes what information presents a challenge. Indeed this can create chaos in the land sector, but hopefully some levels or layers of permissions can be created within the system.

Bitcoin simply represents electronic payment transfers and handles only a small amount of data. Other protocols and software are then used to scale up the use, so as to allow more data while riding on Bitcoin's immutability. All critical data is recorded on a decentralized system therefore protecting it from malfunction or manipulation. The way it functions also makes it nearly impossible to hack [Dobhal & Regan 2016: 9]. The fact that there is an estimated 80% global proliferation of mobile phones as well as broadband Internet makes the adoption of this mobile friendly technology a

likely eventuality in land registration.

Other ancillary advantages include the dispensation of the need for physical storage because this is likely to adopt cloud storage and data backup. There is also no need for huge capital for establishing the traditional LIS. This may redefine land titling, data storage, backup, security, auditability, transparency, and the speed of retrieval of information. Technology is indeed a game changer [Dobhal & Regan 2016: 3].

### **6.6.5 Emerging Tools in Social Media**

There are newer and easier ways of interacting on the web. This has created other electronic and media tools that are becoming important in terms of enabling citizens' access to information. These include 'Facebook', 'WhatsApp', 'Twitter', 'YouTube', and others, all accessed on the World Wide Web (www). They are fast becoming mechanisms through which people, especially the young, gain information. In some countries these tools are used effectively to promote campaigns and by people to discuss and mobilize support for social movements, including land matters [UN HABITAT 2013: 93]. These platforms eventually push governments to adopt e-governance measures.

### **6.6.6 Application in Kenya**

Kenya has had one platform on social media known as [kenyalandregistry.com](http://kenyalandregistry.com) [UN HABITAT 2013: 94]. This page is however no longer active but when it was, it served as here-below:

*This website was not only useful to property owners for publicizing their ownership of land, but prospective property buyers could also use it for free to find out if there were other people (e.g. creditors, dispossessed family members, squatters) who had placed a claim on a particular property as well as the contact details of the persons claiming to be the owners. KenyaLandRegistry.com ("KLR") is and was NOT a government service. This was a free, private sector initiative that sought to reduce fraud in the property market. KLR has the following aims:*

*1) To protect land owners by helping publicize land ownership to deter fraudsters*

*from selling land using falsified documents (e.g. Fake titles, fake id cards). Any unsuspecting buyer trying to buy land can quickly find the right contact details here and get in touch with the owner directly.*

*2) To protect land buyers. Before buying land you can check on KLR and get the contact details of the person claiming to be the owner. KLR acts as an additional due diligence step to help you get the contact details of the people claiming to be the owners of the land. KLR cannot replace an official land title search at the Ministry of Lands. KLR is however useful in the event that a fake titles or a fake id is being used, and other events in which an official search at the Ministry of Lands might not help.*

*3) Helps people with title documents to the same land contact each other, meet and resolve the problem. Many people in Kenya have title documents to the same property and only learn about it much later. By searching KLR using your land reference number, you can get the contact details of other people who, unknowingly or otherwise, have the same title documents as you [UN HABITAT 2013: 94].*

Kenyan's are among the few countries around the world that have a record of high usage of social media and technological innovations to move their economy [Johnson 2013: 5]. In fact this study dares to suggest that the Government of Kenya completely lags behind its citizens' urge for use of technology. Most services are now offered online or on mobile telephony platforms. These include banking services, M-pesa, sale of many merchandise, education and research services, google maps and much more. It is amazing that very few, if any, Government services are offered online.

More than 92% of Kenyan's who own mobile phones use them to browse the Internet, while Kenya has been named as one of the most dynamic countries due to its ICT diffusion and uptake. Kenya is also seen as Africa's fastest growing Internet market [Johnson 2013: 5]. Indeed, Kenyan's are showing their Government the way by setting up [Kenyalandregistry.com](http://Kenyalandregistry.com). This is an indication of how the citizens are yearning for online services from their Government. Though this is not an official site, nonetheless it helps sort out a few matters all be it informally. This research hopes to bridge this gap and link the citizenry to government online in matters of land registration.

As explained above, the use of block-chain technology comes with a lot of advantages including saving costs. This is because use of technology requires only a few physical offices requiring less storage space. The fact that block-chain technology is a mobile telephony service it would reach more than 80% of the population much higher than the 30% of the population who have title to land. Kenya does not have any land related service offered on mobile telephony services. Due to the shortcomings of the blockchain technology above mentioned, this study would not advocate for its immediate application in Kenya. Sometime in the year 2010 there was an attempt to offer land rent bill queries on mobile phones, which never went beyond the testing phase.

### **6.6.7 Automation and Decentralization**

Digitalization and computerization in most cases leads to higher levels of centralization because documents are lodged to the same system as opposed to different systems per location. Care should, therefore, be taken to ensure that all customers of the land registry are accorded appropriate services online, via mail, or telephone. *This enables the citizen to retain local access to information, for example even those using Internet services* [UN 2005: 65].

The fact that digitalization brings about centrality may not present a real challenge since information and services would be available online. It is this study's view that the more that automation takes root the less the number of physical offices will be required. This is indeed the case in the Netherlands. Centrality would also bring with it uniformity in doing business and the satellite offices would always have the support of the head office and guidance on matters that would require their intervention. Currently, there are difficulties of communication between the headquarters and the county offices in Kenya. Different registrars, therefore, may end up applying different rules especially when they are not able to access the headquarters for guidance.

*While technology is increasingly available and powerful, and has more software functionalities, it is very important to keep land information systems simple with a view to adding value to existing initiatives* [UN HABITAT 2012-A: iv]. This implies that in as much as technology offers a wide array of solutions it is best to start simple,

so as to enable a practical transition from the current system. This also allows governments and their partners to raise funds over a staggered program because the initial establishment of LIS is expensive. The adoption of e-governance as a key public sector concept as discussed in chapter 2 section 2.9.2 may also require a staggered adoption of technology over a period of time.

## **6.7 Politics, Public Participation, and Stakeholder Engagement**

Bathurst Declaration argues that the rise in the incidents of violent disputes over property rights can be reduced through good land tenure institutions that are founded on quality land information data. Good land information underpins good governance. Where conflict arises, there should be existence of inexpensive land dispute resolution mechanisms in place that are readily accessible to all parties concerned [Williamson & Grant 2002: 9].

### **6.7.1 Politics**

Good governance and a good cadastral system go hand in hand. Politics determine the type of governance adopted by various States across the globe. In addition, politics give direction to the types of laws enacted in a given State. Civilization is also to a great extent based on how much people in a society know and protect proprietary rights over land [Stuedler 2004: 82]. It has also been said that law and property were born or invented together [Vyas et al 1994: 449]. Indeed, civil and political eruptions and post-election violence in Kenya have variously been linked to land ownership and distribution amongst various communities [Landowner 232], [Odote & Kameri-Mbote 2016: 15].

The linkage between the governments, private, and the educational sectors is also important in establishing and maintaining appropriate cadastre structures [UN-FIG 1996: Art 11.5].

### **6.7.2 Public Engagement**

The citizens should be involved in the development and consensus building so as to make land management projects people driven. Other stakeholders such as local authorities, other tiers of government, and industry and private investors can be

involved ([UN HABITAT 2012-A: 26]. Cadastre 2014 envisages close working relations between the public and the private sector. The private sector will fund most projects and greatly determine how land administration is structured, and with the public sector largely maintaining control or carrying out the supervisory role.

In order to capture all lands under registration, and initiate land reforms, it would be essential to involve land owners, occupants, surveyors, conveyancers, and the local authorities; otherwise, the land register may be incomplete and a source of conflicts [Stuedler 2004: 91]. Governments should ensure active, free, effective, and informed participation of all stakeholders and take into consideration the existing power imbalances amongst various parties [FAO 2012: Art. 3B (6)]. Public engagement also involves clear definition of policies, laws, programs and procedures applicable in land registration. These ought to be publicized in all media, languages, and formats that would assist in reaching all parties [FAO 2012: Art. 3B (8)].

### **6.7.3 Application in Kenya**

In Kenya, for instance, most conveyancing instruments are drafted by private lawyers and surveying is largely carried out by private surveyors. This cooperation between the public and private sectors enables the land institutions to focus their attention on its customers' needs as indicated by doing business reports [FIG 2014: 27].

Partnerships with local and international institutions in matters pertaining to research and training are ongoing, but on a smaller scale. During the years 2013-2014, when the Ministry of Lands was re-organizing its registries, university students were requested to assist the registry staff in filing and re-ordering the filing system. The students were also handy in creating computerized land record inventories. This is no longer ongoing, however, it was made clear that the universities in the various neighborhoods were willing to co-operate with the lands registry in more than just filing. In order to achieve the greatest results, more needs to be done with institutions of higher learning as well as partnering with all local stakeholders and institutions that make or use the land information.

## **6.8 Process Re-engineering**

The processes of land transfers and mutations (subdivisions and consolidations) amongst other transactions ought to be undertaken in an efficient, secure, affordable, and timely manner so as to support an efficient and effective land market [UN-FIG 1996: Art 1.7]. States should simplify land administrative procedures so as not to discourage market participation by the poor and the marginalized [FAO 2012: Art. 11.3]. There should also be free flow of information, publicity, and transparency of land values while adhering to the rights of individual privacy [FAO 2012: Art. 11.4].

Reforms in cadastral systems should target the key processes and procedures in land adjudication, transfer, and sub-divisions [UN-FIG 1996: Art 6.9]. This is because the success of any land information management systems is not dependent on legal or technical sophistication, but rather on whether the system adequately protects the land rights and permits those rights to be traded in efficiently, simply, quickly, securely, and at a low cost [UN-FIG 1996: Art 6.10]. Bathurst Declaration encourages nations to reengineer their land administration systems by incorporating land information infrastructure [Tuladhar 2003: 2]. This in the long run facilitates data accessibility, security, and quality that would go a long way in solving disputes around property.

In order to initiate reforms, challenging bottlenecks, inefficiencies, and duplications should be identified. The business processes should be documented and understood. Then the re-engineering follows to improve service delivery. This requires changes in legislation, institutional, and administrative structures as well as in technologies applied [UN-FIG 1996: Art 7.2].

During the reengineering of the existing systems we need to ask basic questions about organizations and how they operate [Tuladhar 2003: 3]. For instance: why do we do what we do and why do we do it the way we do? Interestingly, Tuladhar observes that the answers to these questions often lie beneath rules and assumptions which are obsolete, erroneous, and inappropriate to prevailing circumstances. Thus, the change or redesign has to be radical and dramatic. It must get to the root of things. Not doing incremental changes or superficial touches. The old ways must completely be uprooted as Tuladhar advocates.



The processes must be redesigned to suit and serve the current needs of land administration. Reengineering should focus on the processes (the collection of routine activities through which input results into some valuable output) and automate the routine acts so as to achieve simplicity and affordability of services [Tuladhar 2003: 4]. During process reengineering several steps or activities may be combined into one and more officers should be allowed into the decision makers rank (or rather to be decision makers). This greatly reduces the waiting time in situations where only few senior officers have to make these decisions. After all, checks and controls are imbued in the LIS; therefore, human controls and checks can be kept at the lowest level.

Another key aspect in reengineering will involve the elimination of non-value adding activities. Tuladhar asserts that work should be done where it makes more sense. Decentralization can be done to the lowest level possible where customers are close to the office or services offered. In many developing States, customers have to travel to the capital city for cadastre and land registration services. Because of the costs and time involved, citizens do not see any sense in registering their land [Tuladhar 2003: 5]. Steps of procedure should be performed in their natural order so as to avoid mistrust and build transparency. External contact should also be minimized so as to avoid delays occasioned by the need for data reconciliation thereafter.

The customer then needs a single contact officer who behaves as though they are responsible for the entire (complex) process. This is in a way providing a one stop shop. It reduces instances of citizens spending hours walking from one office or door to another to solve one matter. Indeed this explains why many land registrations customers would rather deal with brokers who will take care of the entire process than go round all the land administration offices.

### **6.8.1 Application in Kenya**

Brokers have become very popular in Kenya's land registration system due to lack of a one-stop-shop. The fact that landowners have to travel to Nairobi or other cities around the country makes land registration expensive and complicated. Indeed, many citizens who may not know their way around, or who may not have accommodation

in the city, would rather stay away until such a time when a land registry is opened close to home.

Touching on other matters to do with reengineering this study agrees with Tuladhar, especially on the fact that there are routine processes that need a complete turnaround. There are quite a number of steps in conveyancing and land registration which are done routinely but which may not make a lot of sense today. For instance, the fact that complete survey with beacons and mathematically coordinated boundaries must be in place before parties are allowed to transact.

This study, however, feels that due to the delicate nature of the land data, the huge volumes, and the current complexities within the system, it is good to introduce changes incrementally and systematically; so that with time every bit of information falls in the right place. Attempts to wholly uproot the old, including the transacting instruments and members of staff, may breed chaos as has happened in a few instances. For instance the recent issuance of titles without green cards. In an attempt to do away and uproot the old, the registry issued titles but was left without a land register. The green and white cards are the basis of land register under the RLA [Registrar 225].

The re-engineering efforts are ongoing in Kenya and the land registry has formed various committees to look into different aspects of reforming all its operations. One such committee is the digitalization implementation and the (land registration fees) digital payments committee. The ease of doing business audit, which is an initiative of the World Bank, has also worked with the Ministry of Lands on various modernization aspects. Kenya was ranked 108 and 92 out of a 189 countries that were ranked in the years 2015 and 2016 respectively [World Bank 2015& 2016, EODB report]. This was an improvement from the previous ranking of 129 in the year 2014.

## **6.9 Establishing a Land Information System**

Developing land information systems for the 21<sup>st</sup> century has to accommodate a vast array of legal, technical, administrative, and institutional options ranging from the very simple to the all sophisticated. The system should have flexibility that will

enable the recordation of a continuum of land tenure arrangements. This includes private and individual land rights, communal, traditional as well as customary rights in land [UN-FIG 1996: Art 4.5], [UN-Habitat 2016: viii].

Other influences on land registration developments include: sustainable development, good governance and civic participation, e-governance, data integration and data inter-operability, and inclusion of all rights, responsibilities, and restrictions [Stuedler 2004: 84-86].

Different countries will have different needs for cadastre because they are at different stages of their development. For instance, the developing States are more concerned with economic growth which makes them place emphasis on protection of rights in land and reduction of boundary and other disputes in land [UN-FIG 1996: Art 5.2].

Due to these differences, the meeting at Bogor also recognized that countries will have different capacities to develop their land information systems. While a low cost manual system recording only private rights in land may be appropriate in one jurisdiction; a sophisticated and relatively costly fully computerized system recording a wide range of owner and user rights may be the most appropriate elsewhere [UN-FIG 1996: Art 5.3]. A fit for purpose approach is thus recommended where a country's solutions are guided by its circumstances and not necessarily the latest technology or seeking to be perfect. Rather, the initial solution can be improved with time [UN-Habitat 2016: 91].

### **6.9.1 Five Steps of Setting up LIS as Proposed by The UN-Habitat**

According to the United Nations Human Settlement Programme, there are several steps involved in the development of an effective and sustainable land information system to support land management. To begin with, several questions should be put to consideration as here below:

- a) What is the level of land governance?
- b) What is the status of institutional and human capacity?
- c) What is the cost-benefit outlook?

- d) Where to start?
- e) What will be the scope of the project?
- f) How to think big (information is a process) and start small (information as a project)? This suggests implementation in phases starting with a pilot project and put in place defined timelines.
- g) How to address all essential components of a land information system (technology, data, staff, management and funding) at the same time and at the same level?
- h) How to involve stakeholders and beneficiaries?
- i) How to strengthen the position of marginalized groups (low-income, women, ethnic minorities, slum dwellers)?
- j) How to include and combine top-down (land policy, legislation, institutional capacity) and bottom-up activities (land management projects such as settlement regularization, spatial planning, settlement upgrading, increasing tenure security, raising property tax)? [UN HABITAT 2012-A: 34].

### **Step 1: Determine the Level of Land Governance**

Where the level of land governance is weak it is likely that land institutions are poorly developed and the patience and capability of local counterparts (and donors) is too limited to implement a major institutional reform program. In such a situation, small projects are recommended to address urgent needs, for instance installation of a file tracking system.

If the level of land governance is moderate and the internal organization of land institutions are in place (staff and data) projects can be initiated to increase data quality, initiate data exchange between institutions, and support the national level with the development of land policies.

Under conditions of good land governance, specialized land institutions are likely to be already developed, and therefore, an ambitious and systematic coverage of land registration can be started. This can be stretched all the way to development of a multifaceted and comprehensive land database [UN HABITAT 2012-A: 35].

## Step 2: Adopt Project or Long-Term Process Approach

The projects approach is where a simple stand-alone plan is developed to respond to specific needs. Duplication of and incompatible land information is inevitable in these circumstances. It is not uncommon for many datasets to digitalize the same documents several times before data duplication can be avoided effectively. A process approach on the other hand is feasible with well-established land institutions and a supportive government. The processes, however, will also need to be divided into tangible outputs; thus, the process is an integration of different projects operating at the project and policy level [UN HABITAT 2012-A: 36].

## Step 3: Genuine Involvement of Stakeholders, Pro-Poor Orientation and Gender Sensitivity

Successful development of a land information system requires that it be an all-inclusive exercise and, more importantly, that it can support the claims of the marginalized persons and groups. An effective way would be to establish various fora where the stakeholders can air their views and forward their input. The local elders and religious leaders who are accepted by the communities would play an important role as well as notaries, lawyers, surveyors, land-owners, members of the civil society, the youth, media, and the business community. Where key stakeholders are left out in the collection of materials and data used to develop a land information system it cannot be considered to have evolved through a neutral (and natural) process [UN HABITAT 2012-A: 37].

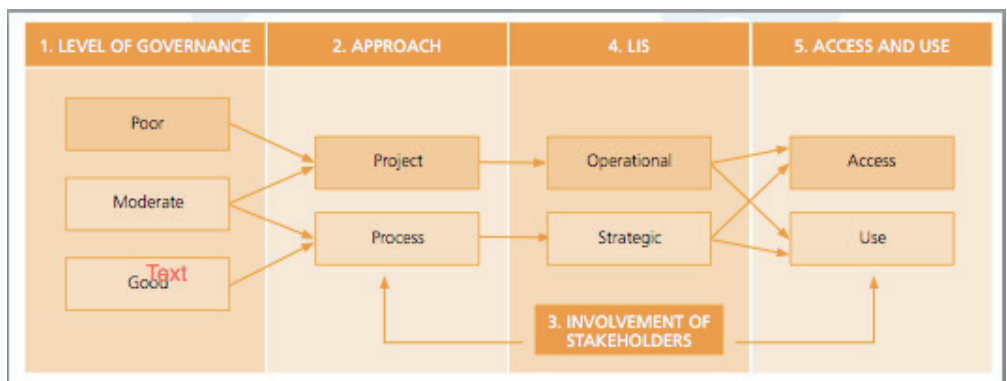


Diagram 6.2: Steps of establishing a LIS [UN HABITAT 2012-A: 37]

#### **Step 4: Balancing Essential Components of Land Information Systems**

This step ensures that creation of data and data models the right mix of quantity, quality, and structure of datasets is in place. The main message is “keep it simple and avoid use of unrealistically high standards [UN HABITAT 2012-A: 37].

#### **Management with vision and wisdom**

Management consists of the inter-institutional arrangements, the legal framework, political support, institutional stability, and working culture. It is closely related to the wider concept of governance which unfortunately tags along the politicians whose life span is short. It is unfortunate because politicians appoint the day-to-day managers into these institutions and may inevitably leave office together. Thus, political instability is expanded to institutional instability. To cure this problem a step-by-step process consisting of small projects might be a more viable approach [UN HABITAT 2012-A: 38].

#### **Step 5: Enable Wide Access and Use of Land Information**

Development of the system is not complete if the information so created is not accessible or, worse, if not used. It is essential that the client of the land institutions be informed where to find what type of information (coordination platforms) to stimulate access. The use of land information can be surprisingly different from what developers of land information had in mind when developing it. If it is available in a user-friendly format it can surprisingly and pleasantly stimulate additional and new applications [UN HABITAT 2012-A: 38].

Do's and Don'ts of development and use of land information for urban land management in post-conflict and developing countries					
	1. Land Governance	2. Project/process approach	3. Stakeholders	4. LIS elements	5. Access and use of land information
Do's	Analyse the level of (land) governance	Accept that a stand-alone project approach is in certain situations the only viable option	Promote the meaningful engagement of all stakeholders	Balanced improvement of data, people, technology and management	Accept that many analytical functions of a GIS are not used
	Analyse the legal framework and policies regarding land information	Focus on short-term results (quick wins) and develop a long-term vision and incremental implementation approach	Emphasize the inclusion and empowerment of woman and vulnerable groups through LIS	Convince managers of land institutions and politicians of LIS benefits	Use land information to benefit women and the poor
	Connect top-down with bottom-up activities	Accept outside technical and funding support on a temporal basis	Include stakeholders in participation and decision making on land information	Assess staff capacity and motivation; develop phased capacity building	Avoid the collection of land information which will not be used or will only partially be used
	Coordinate between different public and other land information developers	Think big, but start small; keep it simple; assess how small interventions fit into a larger picture	Promote the effective sharing and exchange of land information within and between land institutions	Learning by doing and on-the-job support	Promote the access to land information through publications and informing community leaders
Don'ts	Assume that (bad/weak) governance are not affecting LIS projects	Design and try to implement an integrated land information approach when conditions are not ready	Develop inter-institutional development of LIS if land institutions are weak	Make over-investment in hard and software	Assume that GIS analysis can support spatial planning without clear need and capacity
	Underestimate the time it takes to improve land governance	Overestimate the management capability, technical capacity and stability of land institutions.	Led international stakeholders become too dominant and leading the development of LIS	Collect data without clear and agreed use of the Land Information	Underestimate the sensitivity of land information and the need for transparency and access to land data

Table 6.3: The dos and don'ts of developing a LIS [UN HABITAT 2012-A: 40]

To catalyze the use of the land information system, the management may consider the use of large-scale public information campaigns. This would involve the use of a vast range of media platforms including the radio printed posters at the land registry or local government offices [UN Habitat 2013: 89]. Town Hall meetings (*baraza vijijini*) may, therefore, be an instrument for two-way communications between stakeholders and those proposing a change. Such meetings help promote transparency, and also offer opportunities for government officials (bureaucrats) to work with and tap into the knowledge of the citizenry [UN Habitat 2013: 91].

Public education is also crucial in helping the general public learn about the information (policies, laws, planning rules and regulations) in relation to land. It also helps local communities to better understand their role and obligations as well as those of the public officials involved in land administration [UN Habitat 2013: 106].

The lead institution should play a steward's role in educating and disseminating information to the public and not allow this role to be taken over by others, for example the civil society bodies. The media has often played an active role though this sometimes can be detrimental if done incorrectly [UN Habitat 2013: 109].

There ought to be partnership in information dissemination where the media can undertake a number of roles including partnering with the government to prepare and execute public education campaigns on general or specific issues. This may even include process for filing complaints about misconduct or mistreatment of people by public officials in the land sector. The media can also disseminate information of changes in the law that the general public may not be conversant with but needs to know [UN Habitat 2013: 109]. Printed materials such as posters, billboards, leaflets, or brochures can be used widely to reach local communities and other stakeholders in general.

### **6.9.2 The Computer (Digital) Based 'One-stop-service'**

Upon creation of a land information system, it is likely that users can get all information and services required via computer without much reference to the physical offices of the institutions dealing with land. This creates a front office where the customer of the land registry, upon connecting to the Internet, can access instant land registration services. This would considerably reduce delays and enhance transparency in land registration [UN-HABITAT 2013: 84]. Such a system is also of immense help and use to the civil servants, ordinary citizens, potential land buyers, bankers, and even the government sector organizations seeking land information [UN-HABITAT 2013: 85].

Freedom of information or the right to know as discussed by UN-Habitat is a fundamental human right (also provided for in the Constitution of Kenya). The United



Nations Program documents state that ideally the freedom of information includes the right to receive information held by public authorities as well as the obligation of such entities to make information available. It stipulates that information is a powerful tool which enables all citizens to be actively involved in the development process as it informs them about their rights, responsibilities, and the laws and procedures that affect them. Lack of information can be an obstruction to participation and make systems vulnerable to corruption [UN-HABITAT 2013: 76]. Indeed as observed from Rwanda's case study, land information should and is availed readily and freely.

### **6.9.3 Application in Kenya**

This study confirms that in Kenya there is willingness on the Government's part and a great urge and push on the part of the public to have in place a well-functioning LIS. In this era of e-commerce no sector in the governance system wants to be left behind in modernizing and automating its systems. The land governance sector in Kenya is indeed very dynamic [Kameri-Mbote 2016: 109]. The level of governance can be said to be good if not moderate to good. This is evident in the recent upgrading of Kenya as a middle-income nation by the World Bank standards.

Accordingly in-line with the UN-HABITAT's guidelines in formulation of a LIS a systems approach would be the right thing for Kenya to apply. This study, however, proposes that due to lack of adequate funding the right approach would be the projects'. Indeed this is already ongoing with various sub-departments in the Ministry of Lands having identified areas that require their intervention in matters of modernization. This approach is also best due to the fact that the various sub-departments have their own house-keeping matters to deal with first. These include cleaning up the records, removing unwanted clutter, sorting out disputes of either land ownership or boundary placements, and re-construction of missing records. This is also in line with the concept of thinking big but realistically starting small.

Stakeholder involvement is well on course but more still needs to be done. The Ministry has identified the important as well as the general stakeholders and their participation is well balanced. Public participation is a key ingredient in enabling and facilitating access to information especially on any progress made in improving

Kenya's land management. Indeed the Ministry has a public communications sub-department, which is already in place. It may not be fully equipped but it is stepping up to fulfill its mandate. The public is, however, still not well informed on matters of land registration: firstly, owing to the complexity of the processes, and secondly, due to the fact that the public communications docket has not been fully equipped.

Challenges surrounding data standardization and data interoperability have also been raised; however, with proper coordination and cooperation spearheaded by the Ministry as well as the NLC they are well handled. The one stop shopping in land registration is yet to be achieved.

The key considerations above discussed need an optimal application so as to come up with a modern and applicable land registration system. The fact that they are not well balanced and applied in Kenya explains the complexities in land registration. The situation is by way of summary as described in chapter 4 at table 4.3. Kenya has realized the need to reform its land registration structures, processes, and adopt quicker, simpler, and friendlier approach.

However, the strategies adopted by various political regimes come and die a natural death with most of them depending on the ministry's political head. When ministers (Cabinet Secretaries) are moved from one docket to another there is no seamless flow of the reform agenda from one personality or political outfit to another. There is always a new start every time a new government or minister takes over. It is this study's opinion that a firm policy in terms of modernization and reforms be put in place, which should be followed at all times.

The technocrats at the Ministry of Lands and the registry staff who are mostly permanent and carry the institutional memory should be allowed to steer the efforts of modernization devoid of any political machinations.

Efficiency and speedy registrations have yet to be achieved. This is majorly because of the manual state of the land records and the fact that the applicants have to secure clearances and consents from other authorities that are not linked to the land registry. This in effect compounds affordability and security of data. To cure these the study,

as well as the Bogor Declaration, recommends digitalization and standardization of data so as to allow data interoperability. The uptake of information and communication technologies has been slow over the last couple of years owing to various factors. Key among them: lack of adequate funding, lack of appropriate legal infrastructure, lack of political goodwill, or lack of an up to date reform policy.

This study agrees with the recommendation of the Bogor Declaration that adoption of aerial images on large scale would be a better place to begin. This study also agrees with the declaration that adoption of technology may have to be phased into several projects, which would eventually culminate into a wholesome LIS. Kenya may have by default adopted this phasing out approach with most departments having their own initiatives to modernize (through digitalization) their processes. Key to these sectional efforts should be a well-coordinated approach ,which will enable the separate departments to carry out their projects with a view to merging into one portal. Data standardization and data interoperability are thus crucial components to consider in such coordination.

## **6.10 Interpreting Land Registration Act (2012) Towards Modernized Land Registration**

This portion of the study seeks to interpret Kenya’s land registration law in a way that best suits modernization and in particular the automation of its services.

Information may require legal attention majorly for two reasons. Firstly it is to provide a legal and political framework that formally enshrines land information rights and responsibilities into law, and thus provides the foundation for policy development. Secondly, to provide the necessary legal attention to enact those laws through practical rules and regulations that can deal with issues such as copyright and other intellectual property rights, liability, privacy, data protection, access, and commercialization of the information [UN-HABITAT 2013: 77].

The Constitution of Kenya stipulates that ‘Every person has the freedom to seek, receive and impart information or ideas’ [Art. 33 (1) (a)]. It goes further to add that ‘Every citizen has the right of access to information held by the State, and information

held by another person and required for the exercise or protection of any right or fundamental freedom’ [Art. 35 (1) (a) and (b)]. Since the same Constitution declares the right to acquire and own property is a fundamental human right; it is clear that land information is public information. Indeed, the land register is a public register which should be available for perusal by members of the public without any undue restriction.

Section 10 of the LRA provides for the access of the land information. It states; *“Subject to the Constitution and any other law regarding freedom and access to information, the Registrar shall make the information in the register accessible to the public by electronic means and any other means.....”*

Decentralization of land registration services is provided for at section 6 (6) of the Land Registration Act, which provides, *“The land registration units shall be established at county level and such other levels to ensure reasonable access to land administration and registration services.”* The import of these provisions is that access to the land register and land registration services are taken as near as possible to the people. This is either through electronic means or by physical establishment of land registration offices.

*A well-managed and monitored decentralization (often in tandem with a well thought through capacity development program), can help ensure that the system of administration is diffused to the lowest level and land transactions can be carried out at those levels without involving officers at the center or the headquarters [UN-HABITAT 2013: 159].* If land registries are a long way from the parcels they record landowners will not visit the offices. Transfers and other transactions may continue but without notification to the registrar. This has happened in Kenya on several occasions. Decentralization should, therefore, allow the overall registration processes to proceed more quickly and assist the system to respond more effectively to local community needs.

Section 9 of the LRA provides for provision of an electronic land register, it states – *“The Registrar shall maintain the register and any other document .....in a secure, accessible and reliable format including .....electronic files.....”* In fact there is an

increasing ability especially in the developed world to view cadastre records online and cadastre e-services becoming common. E-signatures are also being used in registration of properties [FIG 2014: 26].

It is, however, crucial to note the content of the Information and Communications Act Cap 411A of the Laws of Kenya. Article 83B (1) provides '*This part shall not apply to any rule or law requiring writing or signatures in documents of title (to land).*' This is in reference to electronic transactions. This law categorically exempts property transactions from electronic applications and processing. This is to say that land transactions cannot be processed online and further that land titles cannot be signed electronically.

Sub-section 2 of the same, further stipulates that '*The Minister may by order modify the provisions of sub-section (1) by adding or removing any class of transactions or matters*'. This implies that the cabinet secretary in charge of information and technology docket has the mandate to amend the provision. This study proposes an amendment to Article 83B (1) of Cap 411 by deleting the words 'documents of title'.

The Land Registration Act of 2012 also needs some amendments, so as to bring it up to par with the current technologies. This study makes the following proposals to amend various sections of the LRA by inserting the following clauses:

Introduction of sections 9A, 9B, 9C, 45A and 110 (3) and an amendment of section 15 (2) follows:

9A – The National Government will promote as far as legally and practically possible and shall ensure the use of the most current and appropriate digital and other technologies to avail the delivery of land information and land registration services to its citizens/customers in-order to facilitate effective and efficient applications, processing and collection of land transactions applications paying special attention to timeliness, quality, cost and access to land registration services.

The Chief Land Registrar is hereby authorized to issue the necessary practice note from time to time so as to continually give effect the provisions of this section.

9B The National Government in conjunction with county governments and the National Land Commission shall within five (5) years of the enactment of this section (or amendments) establish electronic and online platforms for the payments and instant issuance of relevant clearance certificates in regard to stamp duties and capital gains tax on transfer of land, land rent, and land rates.

9C The Government shall within Five (5) years of the enactment of this section create an online valuation roll for all registered properties within the republic so as to facilitate immediate and timely assessment and payments of all fees and taxes on land that are determined by land values.

45A - To curb fraud and forgeries in land registration, the Chief Land Registrar in conjunction with the National Registration Bureau is hereby authorized to promote the use of biometrics to ascertain the identity of applicants and parties to land transactions where necessary.

The National Assembly shall make the necessary rules and regulations to bring to life this provision.

110 (3) Provided the making of such rules, regulations or the prescribing of any matters required under this Act shall be within five (5) years of the commencement of this sub-section.

110 (4) That all the titles and deeds of land ownership held under any of the previous and or repealed land registration laws are hereby adopted as certificates of title to land under this Act.

15 (2) To be amended by inserting the words “within five (5) years of this amendment” between the words ‘surveyed’ and ‘to’.

## **6.11 Concept For Modernizing Land Registration Systems**

This research now presents step by step the process that an organization or government may need to adopt in order to modernize its land registration processes.

The concept is largely skewed towards the ideology of automation. Key considerations to be put in focus are as in the table below.

<b>Technology</b>	<b>New technology emerges every day and the concept of e-Governance and e-commerce rely on this growth. Almost every aspect of life today is making use of the growth in the ICT sector. It has variously been advised that ‘if you don’t change, change will change you’. The landed institutions may not have a wide range of choices but to embrace computerization. When assessing the technology choices, however, the focus should be on establishing a fit for purpose system that meets today’s needs but which can be incrementally improved over time [FIG 2014: 64]</b>
<b>Law</b>	Law guides various elements in land registration that may need to be amended or changed during automation. These include the rules as per steps followed in transactions, fees payable, stamps endorsed on land registration instruments, institutional structuring, and even powers of the registrar.
<b>Finances</b>	Automation requires a great deal of financing at every step and many projects have failed due to lack of funds. The need for low cost systems has become pervasive over the last several decades [FIG 2014: 5].
<b>Institutional and capacity development</b>	New departments or sections may need to be created within the landed institution or within the government. For instance the ICT Authority in Kenya and the ICT department in the Ministry of Lands. Others would include the land information advisory board (as an oversight body) and a customer contact center (within the ministry) fully fledged and equipped with a call section and modern technology. Training of staff on how to handle change and to work in the new environment is also crucial. Automation could also mean laying off some staff or employing more staff.

<b>Stakeholder and public engagement</b>	If the stakeholders and the general public are left out during the re-engineering and digitalization processes, it is likely that the created system may not be welcomed and or used. The land information system will be uploaded but the citizen may insist to continue using the familiar old processes.
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Table 6.1: Key Considerations for Setting up a LIS

Digitalization of land records and creation of a land information system should ideally be a joint venture or engagement of all players in the land sector. Both the land registry and survey departments should give their data and input into the system; else it will be a piece-meal exercise. It should involve other stakeholders and custodians of official land records so as to come up with a comprehensive and complete land register with maps, textual titles and deeds, land values, survey bearings and boundaries, land use conditions, land owners’ data, plot or parcel sizes, photos, encumbrances, rights, responsibilities, and restrictions amongst other attributes to land.

Following is a proposed roadmap towards successful digitalization and automation of land information systems. The steps herein are widely drawn from the case studies in chapter five. Others are as a result of the researcher’s experiences at the Ministry of Lands in Nairobi, and, particularly, his roles in various PITs (project implementation teams) all geared towards digitalization of the land registries across Kenya as well as from the global best practice tools described in this chapter.

<b>Task</b>	<b>Justification</b>
Study the project prospects and ask various questions;	At this stage, the author of the proposal requires to answer a couple of questions before engaging in further activities. These would include – What is the project’s vision? What is the level of land governance? Is it necessary to create a LIS?



Would digitalization bring along any advantages?  
 What is the status and number of the records?  
 Who would be the key players in the project?  
 Who are the stakeholders?  
 What is the number of staff?  
 What is the staff's level of ICT literacy?  
 What would be the training needs?  
 How and where to benchmark?  
 How much money is required?  
 Who will fund the project?  
 Will automation involve phased projects or will it be a wholesome integrated system installation?  
 Will staff have to be rendered redundant or will more staff be required?  
 What does the law say?  
 What challenges are likely to emerge?  
 How will these challenges be handled?  
 What is the expectation of the citizen?  
 Answers to these and other relevant questions assist the project carrier or convener to clearly see the vision and come up with a needs assessment catalogue.

2) Establish a team,

Assists the convener to share their vision, gain momentum and join hands with other like-minded persons to carry the vision home through a well thought out mission.

3) Create a project charter,

The charter helps in crystallizing ideas into a readable document to help in convincing senior managers to understand and own the idea.

4) Engage senior managers and seek their blessings,

The leaders in the particular department handling land matters need to see the usefulness of the establishment of a land information system, which will ease their day-to-day activities.

5) Engage political arm of Government and seek blessings, (may propose changes in law)	The political heads need to be engaged and clearly lead through how this project could feature and positively so in their achievements. They would at that point or later consider any legislative agenda towards digitalization of land titles and automation of transactions thereto. This in a way is a consent seeking exercise and which enables the handlers of the land information to ask for resources from either the Government's consolidated fund or donor funds.
6) Mobilize resources,	Money is required at every step in automation of any sector. Indeed the initial costs are quite high and without Government's support many projects at the land sector may fail. It is needed to hold training and education, stakeholder meetings, research into the project's viability, purchase of equipment and services, consultancies, benchmarking, employment and redeployment of staff as well as purchase of software and maintenance.
7) Initiate institutional reforms,	The existing organizational structure should at this point be evaluated. There could be need to create new departments or sections at both the national level and the local level.
8) Appoint a steering committee, change champions, technical committees as well as project implementation committee,	This enables the project to have hands-on ownership and <i>cheerleaders</i> from within the institution. It in a way makes the champions own and sell the idea to their colleagues in the lands department. At this stage it would be prudent to establish an ICT department or section and employ new staff with ICT skills. Alternatively, the department can be strengthened if it existed.
9) Engage stakeholders,	Engaging stakeholders is a part of public participation, which is a constitutional responsibility under several constitutions around the globe. It helps the general public as well to own the project and cultivates transparency. It, therefore, creates trust in the institution and boosts confidence of the project bearers.
10) Engage all members of staff and re-orient them accordingly,	This task assists the project gain momentum by inclusion of all members of staff. It also helps in reducing any chances of sabotage attempts by staff. It

	also deals with options available in case the institution may need to lay off staff.
11) Engage service and equipment providers and sign contracts,	The service providers will at this stage advise on the best available technology in the market and maintenance requirements. This is especially important considering that technology is changing at a very fast rate. Contracts to be signed include consultancies, provision of equipment, software purchase, intra and internet services as well as training services amongst others. Consider copyright at this point.
12) Benchmarking,	This helps the vision leaders to interact with global best practice which can be done locally, overseas or read in books. It shows that there are other better systems or simply that what is in place can be made to function better.
13) Identify a pilot project, (For piloting the exercise),	This helps to start on small scale to help test and run the system before full installation. It helps to instill faith and confidence in all stakeholders including members of staff who may not be in agreement or even politicians who may initially be skeptical.
14) Initiate courses for staff members (both change management and for new processes),	This helps the members of staff to feel a part of the project and to further own it. It also enhances personal growth and instills professionalism and new skills in the members of staff. Ethics and integrity seminars are also important to organize for staff and stakeholders.
15) Safeguard the paper records and remove unnecessary clutter,	This involves appraisal of the paper records separating the useful and the non-value clutter. It also reveals the torn records and aids in reconstruction. Very important at this stage is the appraisal process because it makes use of the well-versed members of staff to detect forgeries, questionable, and improper titles which must not be allowed into the system. At this point, some countries including Kenya have used microfilming technique.
16) Develop a process re-engineering plan (possibly with staff and stakeholders),	This stage helps the vision bearer to see the end in sight and basically to transit from current processes to the already automated process. Different work-flows are also developed at this stage.

17) Install and configure the ICT infrastructure (WAN and LAN),	This sets the stage and space required for the real and physical exercise of automation project. Members of staff are given desktop machines, scanners, printers and local area network is installed. At this stage, personal emails are created for staff members and various other platforms of interaction are put in place. This is the point at which it is determined whether the installed system is only for official use and whether the public and other institutions can make applications on the web, or whether it is going to be fully interactive and open ended.
18) Digitalize paper records,	Digitalizing entails scanning of paper records, indexing for easy storage and retrieval as well as re-filing and archiving. Archiving is both manual and digital.
19) Data capture, data entry and data verification,	At this stage, the essential details are lifted from the already scanned and indexed images and entered onto an interactive and intelligent page which the registrar can amend, alter, and modify as per transactions. Verification also helps to ensure that the right details and maps are captured and carefully placed together so as to create a perfect land register.
20) Develop and/or acquire the LIS and upload it onto the LAN,	This gets the land information system up and running but only on the local area network. It is for testing environment and official use only.
21) Staff training on the new system,	Staff members are continually trained on how to interact with the system.
22) Test run the LIS	Members of staff together with the service provider test the system to make sure it is working well. This may take a couple of weeks if not months until such a time the system works as earlier envisioned or better.
23) Upload the LIS onto the web – WAN,	Only after the system is in place is working without hick-ups (or in the least with minimal hick-ups) should it be uploaded onto the world wide web and the wide area network to be accessed by members of the public.
24) Communicate to members of the public and registry customers that may have to use the	Public campaigns are important to both educate and inform the public of the advantages of the system. This is also a way of inviting the public to test the

pilot phased service,	system's viability.
25) Apply the system on the pilot scheme (may involve members of the public to use the system),	It is advisable to think big and start small. If the system was to be applied country-wide without a trial version it may come to a halt or put land transactions into disarray. Indeed it is recommended that even after the project is rolled out, manual applications and processing be phased out gradually. Customers should never be turned away for not making use of the new technology. It would imply that the media and communications department have failed in their campaigns to sell the new system or that it is not adding any value.
26) Evaluate pros and cons and learn from the pilot phase,	At this point the project implementation team is able to evaluate achievements against the set target or vision and see if indeed the mission is well executed.
27) Make necessary adjustments,	Rectifications are made to better the outcome of the pilot so as to realize even better results in the end.
28) Get adequate funding and the right mix of staff,	This is to help automate at the larger scale.
29) Roll out the program country-wide, and systematically	All the steps may have to be repeated in all the other places (the whole nation), but definitely with much ease because of the lessons learnt during the pilot project. The roll out should be gradual starting with parts of the country where needs are highest. The office at the headquarters maintains control and guides the nationwide installation of the system.
30) Communicate and educate the nation on the new system,	If the system were installed and not used then it would be a waste. However, with strategic planning and communication throughout the project phases it is expected that lawyers, land owners, prospective land buyers, other government agencies, and the whole nation would be more than eager to interact with the system and make use of it. Print and electronic media, radio, social media, and town hall meetings should all be employed to conquer this essential step.
31) Continue to monitor and evaluate the successes and failures of the system throughout,	This will enable the institution to adequately attend to the concerns raised by its customers, staff, and other stakeholders. Hacking drills can also be conducted

<p>32) Continuous training, maintenance and improvement of the system.</p>	<p>like in the Netherlands where the institution (Dutch Kadaster) hires hackers to try and access the system or alter the data and give feedback on the vulnerability of the system.</p> <p>This keeps the system running, otherwise it will together with its handlers become outdated and irrelevant. The system continues to grow in line with new and emerging technologies while responding to the ever-growing and changing customer needs.</p>
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Table 6.2: Concept for Developing a LIS

### 6.12 Progress Made in Kenya

As experiences tell from other countries, (full) automation of the land sector services is a progressive and a continuous exercise. It may not be possible to create an integrated information system within a year or two. It requires massive capital, strategic planning, and gradual change from a manual based system to a digitalized system. Indeed it may take more than a year to install an electronic applications system for all transactions countrywide, but it can be done through phased projects with necessary piloting which would eventually be merged into an integrated system.

Like many other countries, Kenya has gone through various stand-alone projects in a bid to modernize land registration [Wayumba 2013: 3]. Notable examples being the recent establishment of the National Titling Center, the cleanup of the registries exercise across various counties, microfilming in the 1980s, and the creation of a customer care and complaints desks. Other efforts include scanning of the paper records, frequent training of staff at the Ministry of Lands and the registry in particular, creation of a file tracking system, and most recently there are efforts in place to automate Nairobi registry as a pilot project.

There is, so far, data captured and data entry which allow the registrar to create an online land register. It has also been uploaded on the Government’s e-Citizen platform that is the Government’s portal offering online services. Data capture and uploading for the Nairobi registry is approximately at 90 percent with verifications of the information ongoing. The system also allows the registrar to process applications

on the computer, though applications are still manual. The greatest achievement of this system is that for the verified data the citizens can apply for and get searches online without the need to visit the office.

There are a few challenges, however, in that although the law now allows the registrar to avail land information to the citizen electronically, the rules are yet to be made on how to format the online search. Many banks and lawyers currently do not treat this search as authentic since the previous rules for carrying out searches require the registrar's signature and seal. The Information and Communications Act also surprisingly exempts documents of land title from its application in terms of electronic applications and electronic signatures. Due to this, the uptake of this search is still very minimal (about 5 searches per week) with many landowners and potential land buyers preferring to apply for and get searches manually. The online search is slightly more expensive as compared to the manual search and this could also be a contributor for the lower uptake [registrar 226] and [www.ecitizen.go.ke].

The other drawback is the fact that this automation has focused on the final product in the creation of the title. That is the registration aspect and does not encompass survey, planning, and other land administration processes. Being a first ever in Kenya, it is nonetheless a huge achievement despite it being only one of the over fifty registries countrywide. The other departments are, however, also automating from their end, and hopefully all the projects will merge into one system with time. Challenges experienced during the process of coming up with this online register include completely missing records, black paper documents, tattered documents, illegible entries due to wear and tear, fake titles, electricity supply interruptions, network and Internet failures, and skepticism [MoL Staff 221].

This study dares to conclude that these experiences and challenges facing automation of the land information in Kenya are normal and can easily be dealt with as per the concept proposed. The fact that this is at the pilot phase it can be expected that more challenges will arise; however, the benefit will be that going forward (into other counties) these issues will have been identified and resolved.

A fully automated system in any sector of life would be hard to visualize or imagine. We cannot tell what new and emerging technologies will be able to achieve. What is clear though is that processes will continue to become easier, faster, cheaper, friendlier, and closer. This must be expected in the land information sector. Automation cannot be exhausted and it is growing daily we can only tell how the current technology will change land transactions. We can also comfortably tell that going into the future it will get even better and simpler, and this will result into more social, political, and economic growth.

When all land information is uploaded in the system (which could take a couple of years) the systems' capabilities could only be limited by the availability of technology. Indeed, the LIS is able to give a wide range of products which rise incrementally as the system is built over time. The pilot project in Kenya has so far been able to achieve the following:

- a) Online instant searches,
- b) Online payment for searches, and
- c) Semi-computer based processing of land transactions at the registry.

Conducting of searches is faster, but document processing has not been made quicker probably because it is done partly manually and partly on the computer. Going forth and with availability of the enabling technology, funding, institutional infrastructure, and legal amendments the system may be able to do the following as well:

- a) Offer trusted and reliable online land searches,
- b) Offer more comprehensive and various types of property searches, including all property attributes and aerial views of the properties. Many jurisdictions have adopted satellite-based imaging techniques thus becoming spatially enabled societies [FIG 2014: 51].
- c) More sharing of land information with other institutions,
- d) Create an online applications control register,
- e) Enable a transactions' tracking system online,
- f) Distribute applications to staff online (intra-net),
- g) Offer an online customer query platform,



- h) Allow more cooperation with the lawyers and allow them extra access to the land information which will enable them to use styled sheets for transactions (this removes the need for scanning the manual deeds or conveyances),
- i) Enable online applications for most if not all land transactions,
- j) Enable online and electronic and instant processing of transactions devoid of human intervention,
- k) Enable payments of all land transactions' fees online,
- l) Do away with the need for a physical land title document, and
- m) Offer all other ancillary services for instance, payroll, leave applications, procurement services amongst others online.

When this day comes, there will be no need for more physical and county office constructions and there may be a reduction in the number of land registries across the country. The Netherlands had about 30 offices in the 1980s which are now reduced to only six (6) [DK staff 402]. Further, these offices are branches of the central office since all registration is fully centralized in the Dutch Kadaster database. The number of staff will also be considerably reduced, but this is not a likely eventuality in Kenya considering that the registry is highly understaffed with some counties having only two members of staff.

The transactions' processes and steps should reduce from what is current and captured in chapter 3 to as proposed hereunder. Time, costs, and due diligence activities put in before transactions are completed should also be reduced. Eventually, land registration will be very easy and cheap as opposed to the current tedious, costly, complex, unclear, and opaque procedures applied today. The following two diagrams present the contrast between the current system's steps and a futuristic modernized system's steps of land registration.

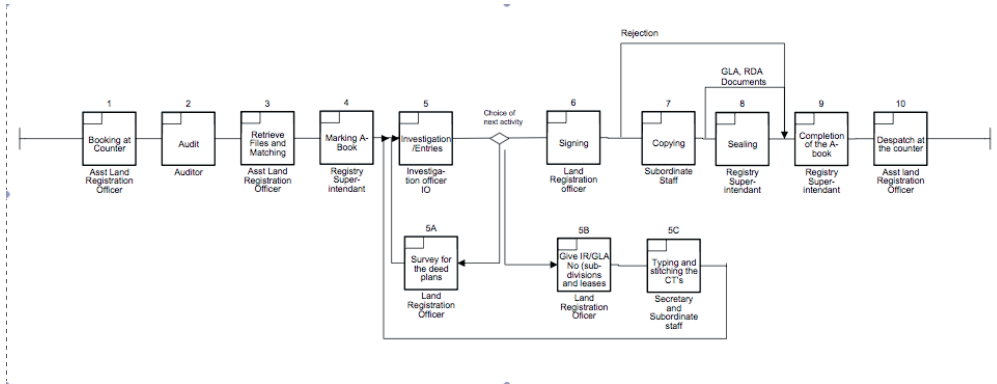


Diagram 6.4: Depicting current processes of document registration at Nairobi central registry [MoL and Lantmateriet 2012: 14]. This can take weeks if not months to complete.

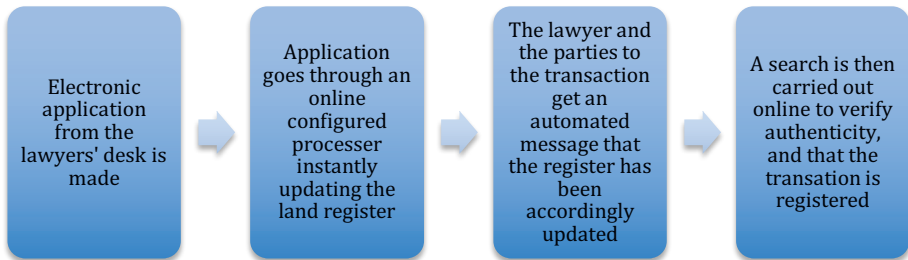


Diagram 6.5: Depicts steps of processing of a land transaction within a 'future fully automated' [Source – own analysis]. This could take just hours if not minutes

### 6.13 Conclusion

This chapter has brought out the fact that land information systems are not only a geodatabase but are a combination of technology, data, finances, law, people, and institutional management capacities [UN HABITAT 2012-A: 28]. The interplay and combination of these elements is what determines how effective and sustainable a LIS would be. Technology can be said to be the newest entrant amongst these elements but a good balancing and application of all is crucial. The inclusion of local governments, political players, and other relevant stakeholders including the minorities and the marginalized leads to transparency and generation of high-quality data [UN 2016: Art. 104]

We are in an era of accelerated technological advancement, distinguished not only by new innovations, but by their application, delivery, and scale. By 2034 computers will be characterized by speech and possibly thought driven devices with natural language interfaces hard to distinguish from human-to-human interactions. Big data sets containing information about land and property will increasingly be collected by sensors in machine readable form and shared directly with data readers and other technologies without requiring human intervention. Our tools will become smaller, faster, and more powerful, and the cadastre will develop into an integrated knowledge-base that can be leveraged creatively [ICSM 2013: 4].

This chapter has further examined how the elements have been applied in Kenya and made proposals of how to improve their application, and eventually made an attempt to create a concept that can be applied in modernizing any land registration system. This being a thesis in law the research has made several proposals to Kenya's law touching on land registration and specifically on the area of digitalization of the land registers and land registration processes.

# CHAPTER SEVEN

## CONCLUSION

### 7.1 Introduction

This study set out to evaluate the current land registration system in Kenya. It also focused on identifying and analyzing the techniques and strategies appropriate for the future needs of Kenya's land registration, with a view to recommending modernization strategies. The main concern of the study was that despite the availability of modern ICT and modern land registration tools, Kenya's system is based on a manual recordation platform. The situation is made worse by multiple systems in terms of legislation and other typology. The Government of Kenya is currently keen on the promotion of ease of doing business (EODB) and data interoperability as well as e-governance. It is, therefore, expected that the Government will find useful the results of this study.

The results of this study are of great value globally considering that estimates suggest that only about 30 to 50 of the world's 200 countries maintain a complete and up to date land registration systems. It, therefore, means that four billion out of the six billion land tenure globally are outside the formal land governance. The status of these lands in the unrecorded state is obscure to the governments and the relevant institutions [FIG 2014: 56].

### 7.2 Conclusions

Land registration is an important component for growth and development of any nation. The study found out that for any third world country to grow and convert itself to a developed country it must embrace the global best practice in regard to land registration. The following are the conclusions as per the research questions:

#### 7.2.1 Research Question 1

##### **What is the current status of the land registration system in Kenya?**

Kenya's land registration is currently undergoing transition. It has previously been carried out under various Acts of Parliament now repealed but still applicable due to

non-conversion of the existing titles into the Land Registration Act of 2012. About five to six million titles have been issued since the introduction of land registration (under various statutes) totaling to slightly over 30% of all land in Kenya. Land registration is done manually and currently there are efforts to digitalize with the pilot phase being carried out at the Nairobi registry.

### **7.2.2 Research Question 2**

#### **What are the strengths and weaknesses of these registration systems?**

This study also concluded that land registration has benefits among them is the unlocking and activating the dormant capital in land. This is because land registration puts land forth as a market commodity and enables people to trade easily in land. Other benefits include asserting security of tenure, facilitating resolution in ownership disputes, securing State lands, and facilitate collection of taxes amongst other benefits. Strengths of the system include a well-established system with experienced staff, decentralized services under the RLA and a reform oriented leadership especially at the political level. This has created a vibrant land market which is indeed one of the best in Africa. It has also facilitated and attracted heavy investment in land.

Kenya has, however, only been able to realize land registration benefits to a certain small extent. This is due to the various challenges that mar the system. The challenges include lack of digitalization, double or multiple land registration, and the fact that the land register is manual and can easily be manipulated to the detriment of genuine landowners.

Thus, the study concluded the following to constitute weaknesses: deficient land registration laws in that they do not fully embrace modern computer technologies, poor funding, lack of adequate human resources, lack of a clear institutional and organizational framework, centrality of services in Nairobi or at the county headquarters, and complexity of land registration processes. This has lead the land registry to the current ineffectiveness towards quick service delivery. There is poor data access and transfer giving rise to frequent complaints about the disappearance of land records at the Ministry of Lands.

### **7.2.3 Research Question 3**

#### **What are the appropriate strategies (and technologies) that can be deployed to modernize the land registration system in Kenya?**

The study concluded that, where the land registration system in Kenya falls short, there are international guidelines and best practice tools that can be applied to better what is already existing. These include various UN guidelines on land administration, Bogor Declaration, Bathurst declaration, Fit for Purpose ideologies, Cadastre 2014 and Cadastre 2034, FAO Voluntary Guidelines of 2012 and Habitat III's New Urban Agenda of 2016. Indeed, these global best practice tools can be domesticated under the Land Registration Act No. 3 of 2012 which is currently being amended for full enforcement. This should be viewed and used as a perfect opportunity to design the Act in a fashion that fully embraces all aspects of modernization.

The global best practice rules were also found to have been successfully tried and tested in The Dutch Kadaster. Other land registries that are currently improving their systems per the research are the Fulton County in Atlanta Georgia, USA, England and Wales, and Rwanda. These tools thus provided the study with the strategies and technologies to modernize the land registration system in Kenya and it is upon the same that the study was able to develop a concept for modernization.

The appropriate strategies for modernizing a land registration system and in agreement with modernization theorists include careful and well thought out and balanced financial infrastructure, legal infrastructure, institutional infrastructure and human resource management, technological infrastructure, stakeholder involvement, and political support which should all be geared towards the re-engineering of the processes.

### **7.3 Areas for Further Research**

From this study, the following issues have been identified as fertile topics for future research:

- (a) Development of a land registration digital prototype – ICT formulae

This research identified the problems and proposed the strategies one of which is automation. Automation entails development of computer configurations and the

development of standardized texts or formats to help land transaction applicants use various computer forms (stylesheets as in the Dutch Kadaster) so as to make instant applications online. These formats would have to take different stylesheet for every land transaction. Research domiciled in an ICT faculty would be most suitable to formulate these standardized texts.

(b) Development of techniques to register 100% of the land in Kenya

Since the inception of formal land registration in Kenya, only about 30% of the land is registered. As is the case with land registration, the other processes that lead to issuance of title in Kenya are painfully slow, bureaucratic, complicated, and too expensive. This has left many landowners with no desire to acquire title. These other processes include physical planning, surveys, adjudication and settlement, valuation, and allocation. Simple, cost effective, and customer friendly strategies to hasten land administration and registration of all lands in Kenya should be formulated and adopted.

(c) Registration of 3D and 4D properties

Property development worldwide is moving towards the realm of construction of 3D and 4D properties. Little or no registration information is available on how to go about registering and titling especially the 4D properties. It is thus imperative for there to be further research on this subject.

(d) Online payments of rent, rates, stamp duty, and registration that are seamless and doing away with unnecessary consents and clearances that delay registration of transactions in land. While the law does not allow the registrar to register land transactions without the necessary completion documents, some of these are indeed outdated and passed by time. Indeed automation of these payments and inter-linkages with the registry may allow the registrar to dispense with production of some, if not all, of them.

(e) Automation, interconnectivity, interoperability, and creation of seamless flow and exchange of data amongst all land service providers including surveys, physical planning, adjudication, valuation, tax collector, registrar of persons, the customers, and county governments. The inter-linkages will enable systems to speak to each

other while inter-operability will facilitate the Ministry and the lands sector to operate as one strong and stable entity as opposed to different departments operating independently. This is an important step towards full e-governance.

(f) Domestication of the provisions of the current and emerging global best practice tools in the realm of land registration vide legislation based on the *feature* of suitability to circumstances.

## **7.4 Recommendations**

Based on the analysis of the research findings, this study gives the following recommendations:

### **7.4.1 Short Term Recommendations**

a) Formulate Rules and Regulations

Land registration rules and regulations currently being formulated could be designed to suit the current needs. In the short run the chief land registrar could issue “practice notes” on various matters. The rules and regulations that are subsidiary legislation or the practice notes set standards across the nation and registrars apply same standards as guided by the head office.

b) Introduce Scanning at the booking/applications desk

This sets ground for digitalization and automation of all services. It operates as a safeguard for paper records and establishes a paper trail in transactions.

c) Introduce express transactions desk – *Registration Chap Chap*<sup>11</sup>

This is especially for simple and urgent applications. Simple for instance RDA applications, such as wills, plans, trust deeds, power of attorneys, etc. This may attract extra charges over and above what is processed normally. Introduction of such a service would enable a land transaction applied for and have it finalized within minutes just as happens with banking services.

d) Introduce instant searches desk

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<sup>11</sup> Chap Chap is a swahili slang for instant



Searches should be done instantly; this is because a positive land search enables a transaction in land to move forth. Where this is the case, there is faster processing of sales, mortgages, leases, and inheritances which eventually injects more revenue in the economy.

e) Hire more registrars, clerks, secretaries, drivers and subordinate staff

This goes hand in hand with continuous training, appropriate deployment, instilment of leadership skills, and appropriate emoluments. This will facilitate the registry to deliver services in a timely, professional and friendly manner.

f) Decentralize land registration services (including RDA) to all counties

When services are provided closer to the citizenry more transactions will be registered, resulting into more growth and development.

g) Clean up and re-organize the registries

Cleaning the registries brightens their outlook in the eyes of the public, secures the records, and this translates to quicker retrieval of files and quick service delivery. Cleaning up includes painting the offices, repairing of broken walls, roofs etc. it also includes re-arrangement of files, new filing racks, replacement of old file covers, creation of a computer-based or just a manual inventory of files, improvement of lighting and ventilation of the strong-rooms, and maintenance of offices at large. This goes a long way in improving the working conditions of the registry staff, and thus it is a morale booster.

h) Avail necessary office equipment

The office equipment facilitates smooth running of any office enabling quicker delivery of services. The equipment include computers, paper, writing materials, photocopier machines, relevant books of law, policy papers, library services, and provision of snacks and tea or coffee.

i) Develop a file tracking system

Development of a file tracking system in the short term will lay strategy for a comprehensive automation program. In the meantime it assists the land registry in retrieving files quicker and serves their customers faster.

j) Introduce an online applications tracking system

An online applications tracking system will help inform the members of the public or the applicants how far their transactions have been processed, and thus reduce unnecessary visits to the registry. Applicants will only visit the registry to make an application and to collect the registered documents and titles.

k) Enhance continuous training and ensure staff members are well remunerated

Training enhances the competencies and confidence of the members of staff resulting in better service to the customers and thus a happy clientele. This would considerably reduce dissatisfaction amongst the members of the public and complaints would also reduce. A happy personnel is likely to yield a happy clientele.

## **7.4.2 Long Term Recommendations**

a) Develop a digital archive for all land records

This will target to digitalize all land records country wide for registered and unregistered lands. The records referred to herein are multi-disciplinary and should include development plans, survey plans, various values, titles, property images, development trends, and other related files.

b) Change the Law

Land registration laws need some amendments in a way that they become pro-modernization as expounded in chapter 6 at para 6.10.

c) Convert and/or adopt all land titles

The current land titles in Kenya are all under the repealed statutes. There is need for conversion, adoption, and/or re-issuance of titles under the Land registration Act of 2012. This will bring about uniformity and tone down the confusion that surrounds land titling. This could also mean amending the transition clauses of the Land Registration Act to enable adoption of all titles issued under the repealed statutes without the necessity of conversion. This reduces expenses that could be incurred in the conversions as well as time.

d) Establish a Land Information Advisory Board

This board will consolidate all efforts geared towards creation, maintenance, protection and improvement of land data. It will also bring harmony amongst all institutions involved in the activities of creation of land data.

e) Develop an online land searches engine

The online land search will be a huge success to the land sector due to the convenience it brings about. The long queues at the land registries, mostly by members of the public wanting to access land information, will be greatly reduced. Interested parties will carry out searches at their convenience on computers provided they have Internet connectivity.

f) Develop an instant electronic land transactions applications and processing platform

This will be a huge advantage in the country's economy due to increased trading in land brought about by more access to land registration services in a quick and easy manner. The instant processor is done vide development of computer and web-based standardized xml (extensible markup language) texts which capture essential details of every transaction and verifiable by the system without human intervention.

g) Establish an integrated land information system

The integrated land information system is the ultimate goal for all parties involved in creation, storage and the distribution of land information. Its establishment comes with more ease in the land market and attracts both local and international investment in land. This results in creation of employment, increased trade in land related businesses, and improved living standards. The integration should ensure that data is shared across the institutions, (maybe even across nations) for the benefit of all members of the society [FIG 2014: 19]

h) Carry out continuous training for staff

Continuous training for staff and education for the public ensures that the registry is at par with the current trends in terms of information technology, customer satisfaction and improvements of the system.

i) Do away with the need for paper based title

When the system is fully developed and both the Government and the customers have full confidence in it, it will no longer be fashionable to print the title document. In any case, if all transactions will be online this should also include the title itself. One could just print property information as a token. Any costs for a title with security features will not be incurred any more. In fact, such funds will be used to tighten the security of the automated title.

j) Introduce use of biometrics

Use of biometrics in land transactions will improve security of transactions in that no two people have identical biometrics. Indeed a day may come when all one needs to do in case of property transfer is to go into a bank, land registry, or even the local authority, and fill in the requisite forms and imprint their biometrics or do iris scans as a way of signing off the sale.

k) Introduce 'virtual title'

The title to land will automatically be virtual or cybernetic. The trustworthiness and reliability of the system is what will crystalize into this concept. Title to land will no longer be manual or paper based, it will be construed from a combination of facts derived from the land data all stored in the land information system. This research concludes that the online search will be more trusted than any piece of paper or any information given verbally.

On full and strategic implementation of the long-term recommendations land registration will be easy, cheap, automated, and fully online. The registry staff will do with almost to nil visitations by their customers since everything will be done online. The land owners, prospective buyers, bankers, lawyers, land sector stakeholders, and other institutions will be able to easily retrieve all land information at the touch of a computer key. All lands are likely to be registered, there will be more transactions in land, more fees and revenue to the Government, and there will be in place a comprehensive, reliable, and sustainable land register.

### **7.4.3 Radical Changes**

#### a) Privatize land registration services

This could be done through the establishment of 'Kenya Land Registration Services Authority' (KLARESA). This step, however, is not advisable to be established in Kenya for various reasons. This is partly because this study aligns itself to the technocosmopolitan modernization theorists who do not ascribe to wholesome or revolutionist style of change. Daniel Steudler also advises against radical and deep sweeping changes in land administration in general.

### **7.5 Final Conclusion**

A modern land registration system is a part of integrated land information system which in-turn is a sub-system of the wider national or e-government portal. Data interoperability is, therefore, a key consideration [FIG 2014: 19] throughout the modernization strategy so as to yield a seamless flow and exchange of data in the global context. The future title to land will not be the piece of paper that the landowner carries home; rather, it shall be the data and the trustworthiness of the system from which the data emanates.

Updating and modernizing land registration services in Kenya and beyond is indeed doable. Kenya has a vibrant and innovative youth who are able and willing to provide ICT solutions. There are also many other systems around the world upon which to benchmark and various global research institutions to partner with. All that is required is political goodwill, and the advantages it will come with are enormously various.

## Summary

This study's main objective was to evaluate the land registration system in Kenya and propose strategies for its modernization. The rationale of carrying out the study is that since 1895 when the system in Kenya was established, it has remained more or less the same; managed on a manual platform. With the expanding user requirements the manual operating system has become cumbersome and fraught with delays in processing transactions relating to land.

Additional problems in the current land registration system in Kenya are: storage of paper records is increasingly becoming expensive, slow retrieval and replacement time, paper records also frequently disappear thus lack of access leading to inadequate up-dating, poor cross referencing, and poor record maintenance. This poor state of affairs informed the carrying out of this study in order to develop strategies for improving the current situation. Tuladhar [2003: 4] recommends reengineering and computerization as main solutions to the above challenges.

Further, the Kenya Vision 2030 and its First Medium Term Plan [MoL: 2011] identified that the main flagship projects to improve the cadastral system in Kenya lies in modernization of land registries and development of a National Land Information Management System (NLIMS). In the process of fulfilling this mandate, several approaches were adopted which included a user needs assessment on various stake holders in order to assess their feelings on the structure, its operations, and what recommendations they would give towards improving the performance of the system. Several techniques in an attempt to update the system have also been put forth without much success.

Results obtained from the analysis in this study can be summarized into two main categories: first, strengths and opportunities and second, weaknesses and threats. The main strengths are: the land registration system has promoted a vibrant property market in Kenya over the years. Others include the massive land adjudication program, which was initiated in the country in 1954, has enabled millions of indigenous Kenyans to acquire title deeds. The adjudication, however, stalled in the 1970s but the current political willingness has re-awakened it. Indeed, the national

titling program that was launched in the year 2014 has injected an extra two million titles into the land market and which has a direct correlation to the adjudication began in the 1950s.

The main opportunities are, among others, availability of technologies upon which modernization can be based. The study also found out that other countries have upgraded their land registration systems and this provides a reference point for countries willing to benchmark. Kenya has in the recent past passed several land legislation that can be used as a basis to steer the much needed reforms. Currently the land registry has also received unmatched political goodwill which can be harnessed for the betterment of the land registration system.

The main weakness of the system is that it is manual or paper based. Other weaknesses of the system were found to be as follows: the administrative structure is too bureaucratic, complex, highly centralized, and the land registration processes are slow and duplicative. It was also observed that there is a very low land registration coverage for the country (currently standing at about 30%, but steadily going up due to the finalization of the adjudication schemes through the National Titling Programme), lack of quick adoption of modern technologies, need for storage space, missing land records, and personnel related challenges.

Threats to the land registration system in Kenya include political influence, poor public perception, many land tussles especially amongst family members owing to conflicting inheritance ideological differences, and fraudsters in the land market.

In terms of modeling a land registration system, it was observed that full automation of the application processes and adoption of style-sheets in land registration processes will be important. Pdf and xml applications applied in Dutch Kadaster were found to be applicable in the long term. This was observed as a major breakthrough for the research in that it has not been possible to make an online application to process land transactions in Kenya. Indeed it is only recently in the year 2015 that it has been possible to apply for online searches. This is, however, limited to the pilot project for digitalization of the land registries in Kenya.

The uptake of this application is still very low with only zero to three searches per day being done on the system. This could be attributed to lack of faith in the online searches by the lawyers, banks, prospective land buyers, lack of proper advertisement, and the fact that the law requires that searches must be signed and sealed by the duty registrar.

In a nutshell, chapter one outlined the research and laid down the researcher's strategy and methodology. Chapter two delved in the concept of land registration. It described the origin, history, benefits and the essential components of land registration. Chapter three described in detail the current system of land registration in Kenya. Chapter four analyzed and critiqued that system finally revealing its SWOT matrix. This chapter also put Kenya on the scale vis a vis the global best practice and proposed strategies that can be adopted in order to move Kenya's land registration system into a globally competitive system.

Chapter five documented the case studies which involved country visits focusing on modernized land registries, which can be viewed as benchmarks to Kenya's modernization efforts. These were also carried out in various institutions in Kenya that have or are in the process of modernizing their processes. Chapter six took the study to the next level by converting the international guidelines on land registration and global best practice thereof to modeling a concept for the creation and improvement of a modern land registration system.

This study anchored itself on modernization theory, which states that modern States are States undergoing transformation in order to better the lives of the citizens. Modernization being a development theory relies heavily on the adoption of technology to make life and industrial processes easier. To this end, this study aims to aid in transforming traditional land registration processes and issuance of titles to modern digital titling processes that will eventually see States adopt *virtual titling* techniques.



## SAMENVATTING

Het doel van deze studie is het landregistratiesysteem in Kenya te evalueren en strategieën voor modernisering van dit systeem voor te stellen. Deze taken zijn nodig omdat het Kenyaanse systeem nauwelijks is aangepast sinds het werd geïntroduceerd in 1895 en het systeem nog niet is gedigitaliseerd. Het handmatige systeem levert problemen op door de toegenomen gebruiksdruk en fraudegevoeligheid welke tot vertragingen leiden in het verwerken van landtransacties. Bijkomende problemen met het huidige systeem zijn: de opslag van de papieren documenten wordt steeds kostbaarder, opvragen en aanpassen van documenten zijn tijdrovend, documenten zijn soms niet te vinden, het onderling verwijzen van documenten is moeilijk en de archieven worden niet goed bijgehouden. Gezien deze problemen richt deze studie zich ook op het doen van verbeteringsvoorstellen. Tuladhar [2003: 4] beveelt herontwikkeling en digitalisering aan om bovenstaande problemen op te lossen.

Ook de beleidsdocumenten *Kenya Vision 2030* en *First Medium Term Plan* [MoL: 2011] stelden dat een programma voor verbetering van het kadastral systeem in Kenya moet bestaan uit een modernisering en de ontwikkeling van een *National Land Information Management System* (NLIMS). Hiervoor worden verschillende benaderingen voorgesteld, zoals een behoefteonderzoek onder potentiële gebruikers betreffende de structuur en wijze van werken van het kadaster. De verschillende pogingen om het systeem te moderniseren hebben tot nu toe nog weinig vooruitgang gebracht.

De resultaten van de analyse in de voorliggende studie betreffen de sterke en zwakke punten van het systeem. De belangrijkste sterke punten van het landregistratiesysteem zijn het feit dat het systeem een dynamische markt in landrechten heeft gefaciliteerd en dat het programma van registratie van bestaand landeigendom, dat in 1954 is geïntroduceerd, miljoenen Kenianen aan zekere landrechten geholpen heeft. Sinds de jaren '70 stagneert dit programma, maar er is belangstelling om het opnieuw op te starten. Het nationale programma om landrechten kadastraal vast te leggen dat in 2014 is gestart, en in lijn is met het programma van 1954, heeft twee miljoen landtitels aan de markt voor land toegevoegd. Modernisering van de technologie maakt nu belangrijke verbeteringen in het systeem mogelijk. De voorliggende studie toont dat andere landen die hun kadastrale systeem hebben verbeterd goede resultaten hebben

geboekt en een voorbeeld kunnen zijn. In het recente verleden heeft Kenya wetgeving gerealiseerd die verbetering van het system mogelijk maakt. Op het moment is ook de politieke wil aanwezig om het kadastrale system te verbeteren.

De belangrijkste tekortkoming van het bestaande system is dat het handmatig is en niet gedigitaliseerd; daarnaast is het bureaucratisch, complex, sterk gecentraliseerd, langzaam en met veel duplicaties. De mate waarin land in Kenya is geregistreerd is ook beperkt: slechts 30%, maar toenemend door de landregistratieprogramma's. Het gebruik van modern technologie is beperkt, evenals archiefruimte, beschikbaarheid van documenten en opleidingsniveau van de staf. Daarnaast wordt het system bedreigd door politiek beïnvloeding, een slecht imago onder het publiek, fraude en conflicten resulterend uit conflicterende culturele systemen van vererving die in Kenya bestaan.

Bij het ontwikkelen van een landregistratiesysteem zullen volledige automatisering van het aanvraagprocesss en de invoer van standard formulieren belangrijke stappen zijn. Het gebruik van Pdf en xml aanvragen zoals in het Nederlandse kadastersysteem kan bruikbaar zijn. De mogelijkheid van online aanvragen en zoekopdrachten wordt pas sinds 2015 in een proefprogramma in Kenya uitgetest. Het gebruik van deze opties is nog niet groot, met slechts 0 tot 3 zoekopdrachten per dag. Dit kan veroorzaakt worden door gebrek aan vertrouwen onder juristen, bankpersoneel en potentiële kopers van land, evenals door gebrek aan bekendheid van het system en het wettelijke vereiste dat documenten getekend en verzegeld zijn door een de relevante official.

Hoofdstuk 1 van dit onderzoek bespreekt de onderzoeksstrategie en methodologie. Hoofdstuk 2 bespreekt landregistratie in het algemeen: geschiedenis, functies en essentiële elementen er van. Hoofdstuk 3 bespreekt in detail het system in Kenya. Hoofdstuk 4 analyseert en evalueert dit system, resulterend in een SWOT analyse; dit hoofdstuk vergelijkt Kenya ook met *best practices* wereldwijd en ontwikkelt een strategie waardoor het Kenyaanse system zich aan een wereldwijde standard zal kunnen meten. Hoofdstuk 5 documenteert relevante case studies van reeds gemoderniseerde systemen waarop Kenya zich kan oriënteren, case studies in verschillende instituties in Kenya die reeds een moderniseringsproces hebben

ondergaan. Hoofdstuk 6 completeert de studie door het vertalen van de verschillende international richtlijnen en *best practices* in een model voor de ontwikkeling van een modern landregistratiesysteem in Kenya.

De voorliggende studie baseert zich op de moderniseringstheorie, welke stelt dat modern staten staten zijn die zich zodanig transformeren dat zij de levensomstandigheden van hun burgers verbeteren. De moderniseringstheorie gaat er van uit dat technologie de sleutel is tot vooruitgang in levensstandaard en industrialisatie. Deze studie beoogt bij te dragen aan de transformatie van het landregistratiesysteem in Kenya tot een modern gedigitaliseerd system dat ook zgn 'virtual titling' technieken gebruikt.

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## SCHEDULE OF ITEMS

### Schedule 1 - Research Introduction Letter



REPUBLIC OF KENYA

MINISTRY OF LAND, HOUSING AND URBAN DEVELOPMENT

Directorate of Land

Telegrams "Land", Nairobi  
Telephone: Nairobi 02718050  
When replying please quote  
P.O. Box 30089  
NAIROBI

DEPARTMENT OF LAND  
1<sup>st</sup> NGONG AVENUE  
OFF NGONG ROAD

**REF: TBA**

**Date:** 30<sup>th</sup> May, 2016

**THE MINISTER,  
MINISTRY OF NATURAL RESOURCES,  
OF RWANDA – KIGALI.**

Dear Sir/Madam,

**RE: PETER N. MBURU – Ph.D CASE STUDY RWANDA LAND REGISTRY**

Good-day to you, I am a registrar of titles working at the Ministry of Lands in Nairobi Kenya. I am also an advocate of the High Court of Kenya currently engaged in a Ph.D research registered at the University of Groningen in The Netherlands. My study is titled "*Development of a modern land registration system for Kenya*"

Due to the strides and steps taken by your country and Ministry in this area of my research, my professors have asked me to enlist the Rwanda land registry as a key research case study. The purpose of my letter is to kindly request which I hereby do your kind permission to visit one of your land registries and familiarize myself with the workings therein.

Attached is a sample questionnaire of issues I may require information about. I intend to visit your land registry with your kind permission for one day (couple of hours) in the coming week. I appreciate your help and I am eagerly looking forward to learning from Rwanda land registry.

Peter Mburu  
**PRINCIPAL LAND REGISTRATION OFFICER**

## Schedule 2 - Questionnaire 1.

Name of respondent (optional).....  
 Address/Town.....  
 Town interview is carried out.....  
 Name of the land registry.....  
 How often do you visit the registry.....

*“The land registry and the registration processes in Kenya are or they apply the following aspects in their day to day business. Kindly comment on the scale of 1 -5 where 1= strongly agree, 2 = agree, 3 = average, 4 = disagree and 5 = strongly disagree.”*

### Expected Elements – Land Registration

### Remarks/Rank

- |              |  |
|--------------|--|
| 1 Principles | <ul style="list-style-type: none"> <li>• Mirror (accurately describes the land and its ownership)</li> <li>• Curtain (Searches from the registry are fully trusted)</li> <li>• Assurance (the State guarantees title)</li> <li>• Booking (changes in land are always registered)</li> <li>• Publicity (open for public inspection)</li> <li>• Specialty (describes the owner and the land unambiguously)</li> <li>• Consent (the registered owner must consent before changes are effected on the title/ land register)</li> </ul> |
| 2 Features   | <ul style="list-style-type: none"> <li>• Clarity</li> <li>• Security</li> <li>• Accessible</li> <li>• Correctness</li> <li>• Simplicity</li> <li>• Completeness of Record</li> <li>• Legal Security</li> </ul>   |

- Accuracy
  - Expeditious
  - Understandable
  - Cheapness
  - Suitability to Circumstances
  - Fairness
- 3 Statutes
- Applicable
  - Suitability to circumstances
  - Understandable
  - Adaptable
  - Flexible
- 4 Institutionally
- Anchored in law
  - Transparent operations
  - Established appeal mechanism
  - Customer oriented
  - Embraces e-governance & modern IT
- 5 Personnel
- Knowledgeable
  - Skilled
  - Professionalized
  - Ethical (of integrity)
  - Experienced
  - People friendly
- Any other comment

### **Schedule 3 - Questionnaire For Automation**

1. What is the brief history of your organization?
2. Kindly give a brief description of the administrative/institutional structure? (eg no. of staff)
3. Kindly also give a brief description of the legal structuring of your institution?
4. What services do you offer?
5. Who are your customers and how many are they?
6. When and how was automation introduced in your organization?
7. Were there any challenges during the process of automation?
8. How were these challenges resolved?
9. What is the difference between automated and manual processes?
10. Are your processes fully automated?
11. What challenges do you face as you process your applications online (hacking/fraud)?
12. How are these challenges countered?
13. What are the advantages of automation?
14. Does your organization maintain any manual registers/records?
15. Kindly give a brief description of your processes (step after another)?
16. How do you enhance security of your processes as well as of products?
17. Is there any official Government seal or stamp to denote authenticity?
18. What is the online level of interaction between your organization and your clientele?
19. Do you make use of electronic or digital signatures?
20. What steps do you think the Ministry of Lands can take to modernize its operations?
21. Any other comment .....

## Schedule 4

### Organization and the number of interviewees

<b>Nature of Organization</b>	<b>Name of Organization</b>	<b>Pseudonym</b>	<b>Number of Interviewees</b>
<b>Government Institutions</b>	Kenya lands registry	Registrar 2--	15
	Kenya Revenue Authority	KRA Staff 8--	2
	Fulton County, USA	None	4
	Dutch Kadaster, Netherlands	DK Staff 4--	4
	Rwanda Lands Ministry	None	1
<b>Private institutions</b>	Kenya Commercial Bank	KCB staff 7--	1
	Independent Electoral & Boundaries Commission	IEBC staff 9--	1
	Safaricom Limited	Safaricom staff	1
<b>Individuals</b>	Lawyers	Notary 3--	10
	Conveyancing clerks	None	25
	Property owners	None	5
	Surveyors	None	5



## List of Diagrams and Tables

### Diagrams

- Diagram 2.1: Illustrating the relationship amongst land register, cadastre and land administration
- Diagram 2.2: Evolution of land registration
- Diagram 2.3: An Illustration of the difference between title and deed systems
- Diagram 2.4: Conceptual Framework
- Diagram 3.1: Sample agreement, assessed, stamped/franked and booked for registration
- Diagrams 3.2 and 3.3: showing entries on the D1 and stamp on the sample agreement respectively.
- Diagram 3.4: Sample Mortgage (Page 1) assessed, franked and booked for registration.
- Diagrams 3.5 and 3.6: Entries on the GLA folio and GLA stamp on the sample mortgage respectively.
- Diagrams 3.7, 3.8 and 3.9: RTA certificate of title, deed plan and a transfer entry on the title.
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- Diagram 3.14: Persons responsible for preparation of title.
- Diagram 6.1: Corruption free zone - Photo © UN-Habitat/ Solomon Haile
- Diagram 6.2: Steps of establishing a LIS.
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### Tables

- Table 2.1: Summary of the Expected Elements of a Modern Land Registration System
- Table 3.1: Summary of steps to follow when making and registering an agreement under the RDA
- Table 3.3: Steps to follow when buying land, make and register a transfer under the RTA
- Table 3.3: Steps to follow when buying land, make and register a transfer under the RTA
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- Table 3.5: Transactions in Land naming/terminology under different Acts of Parliament
- Table 3.6: The Land Allocation Process and Issuance New Grant (Source – Wayumba 2013: 62 (with amendments)
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- Table 5.1: Structure of the case study descriptions.
- Table 5.2: Summary of the description of Fulton County’s attributes
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- Table 6.1: Key Considerations for Setting up a LIS
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## **Maps**

- Map 4.1: Map 2 - Showing areas of land in Kenya fully registered by county [Wanyonyi et al 2017: 12]

## List of Cases

*Yaa Simba v The Land Registrar and others* E.L.C. 145 [2013] at Malindi

*Republic v Commissioner of Lands & Another* HC - MA, JR No. 9 [2012] at Nairobi

*Ransa Company Limited v Commissioner of Lands & others* Malindi H.C.C.C No. 10 [2005],

*Republic V Registrar of Titles & others* [2012] Nairobi

*Elijah Makeri v Stephen Njuguna & Another E.L.C.* at Eldoret 609 [2012]

*Bargoi Ngiria v The Republic of Kenya* HC, CA No. 338 [2004] at Nakuru,

## **Table of Statutes**

CONSTITUTION	Constitutional of Kenya, 2010
GLA	Government Lands Act
ICA	Information & Communications Act
ITPA	Indian Transfer of Property Act
LA	Land Act
LRA	Land Registration Act
LTA	Land Titles Act
RDA	Registration of Documents Act
RLA	Registered Land Act
RTA	Registration of Titles Act
SPA	Sectional Properties Act

## **Curriculum Vitae**

Peter Mburu was born in Ngecha, Mahinga village, Limuru constituency in Kiambu County in central Kenya. He obtained his high school education certificate at Thika High School before proceeding to the University of Nairobi where he graduated with a Bachelor of Laws Degree [LL.B] in the year 2004. The subject of his thesis was “*Civil and Criminal Sanctions for Deliberate Transmission of HIV*”.

In April 2006 he joined the Ministry of Lands in Kenya as a Registrar of Titles where he has held several positions and continues so to do to date. He has been involved in the various attempts to re-design and in the development of and re-engineering core applications at the Lands Registry.

In the year 2010 he applied for and was admitted to the LL.M program of the University of Nairobi graduating the following year with a Masters degree in Law and his main research was titled “*Regulating the procedure for acquiring land as a tool for monitoring land use to attain sustainable development*”. In the year 2013 he applied and was admitted to the University of Groningen in March 2014 as an International External Ph.D research student at the faculty of law.