Approaches to Land Ownership in Kenya
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Introduction

Article 40 of the Constitution of Kenya proffers upon every person the right to own land in Kenya. It further situates in Article 47 that the administration of land should be efficient, expeditious, reasonable and procedurally fair. This forms a basis on which entitlement to land is bestowed on individuals. Rights and obligations regarding ownership thus oscillate around the use, restriction, sell, transfer, sublet, bequeathing, donation, development, and improvement and access services. These provisions further protect the rights of women, spouses and children. The Matrimonial property act situates that the rights and obligations of spouses to matrimonial property are equal. Further the Land Registration Act provides that a minor may be entered into a contract under a guardian but may not be allowed to transact.

Types of Land Tenure in Kenya

- **Freehold Tenure** - Absolute right to own, use and dispose land in perpetuity subject to the regulatory authority of the national and county government(s) and other persons rights.
- **Leasehold Tenure** - Land granted by a proprietor to another for a specific period of time subject to particular rules and regulations and subject to payment of land rent.
- **Private Land** - Land owned by private individuals either in terms of lease or freehold tenure.
- **Public Land** - Land vested in the National and County Government.
- **Community Land** - Land owned and registered under the law. It is land that is possessed by communities. Principal title is therefore to be vested in communities at registration (CON Art. 63 (1), CLA, s. 4). The title may be held as a customary, freehold, leasehold or other legal entitlement.
Approaches to Ownership of Land in Kenya

Allocation

The National Land Commission, on behalf of the County or National Government, allocate public land. The approaches include:

a. Public auction to the highest bidder subject to prevailing market value.
b. Application confined to targeted group of persons who may be disadvantaged.
c. Public notice of tenders as may be prescribed by the National Land Commission.
d. Public drawing of lots as may be prescribed.
e. Public request of proposals as maybe prescribed.
f. Public exchanges of equal value as may be prescribed.

The Process of Acquiring Certificate of Title After Allocation of Public Land

Step 1: Preparation of plan creating plots by the director of physical planning in the Ministry of Lands and Physical Planning.
Step 2: Surveying of the land by private surveyor or director of surveys and subsequently numbering of the created plots.

Step 3: Preparation of the development guidelines for the area by the Director Physical Planning, the National Land Commission, the County Government and other relevant authorities.

Step 4: Advertisement of the plots for allocation by the National Land Commission or where there are special allottees, vetting takes place.

Step 5: Qualified allottees issued with allotment letters.
**Step 6:** Lease documents prepared by the National Land Commission.

**Step 7:** The prepared lease documents forwarded to the area land registrar for issuance of certificate of leases to the allottees.
Acquisition of Land through Settlement Schemes

National Land Commission is mandated to implement settlement programs on behalf of the National and County Governments. Settlement includes but not limited to access to land for:

a. Squatters
b. Persons displaced by natural causes.
c. Development projects.
d. Conservation
e. Internal conflicts
f. Or any other causes which may lead to movement or displacement.

Identification of beneficiaries of settlement schemes is to be carried out and verified by sub county selection committee comprising of:

a. Sub-county administrator who shall be the chairperson.
b. A representative of the county government, approved by the county assembly.
c. A representative of the Commission.
d. A national government representative.
e. A representative of persons with special needs.
f. A women’s representative nominated by a local women’s organization prescribed by the county government.
g. A youth representative prescribed by the county government.

Land acquired through settlement scheme is not to be transferred except through process of succession.

2 Land Act No 6 of 2012 Section 134
3 Land Act No 6 of 2012 Section 134 (7)
Establishment of Land Settlement Fund

The Land Settlement Fund is administered by the National Land Commission. The Fund receives resources from:

b. Funds provided by donors for purposes of the Fund.
c. Gifts, grants, donations or endowments as may be given to the commission for purpose of the Fund.
d. Monies which are derived from payments made by beneficiaries of settlement schemes.

The Fund is to be applied for provision of access to land to:

a. Provision of access to land to-

1. Squatters.
2. Displaced persons.
3. Development projects.
5. Or any other causes that may lead to movement and displacement of persons.

b. Purchase of private land for settlement programs.
c. Establishments and management of refugee camps.
d. Provision of shelter and livelihood to persons in need of settlement programs.
e. Research documentation and dissemination of information on settlement programmes.
Acquisition of Certificate of Title to Settlement Schemes

In acquisition of certificate of title to settlement schemes, the following are the steps to be followed:

**Step 1:** Upon reception of letter of offer from the National Land Commission, acceptance of the offer and the attendant terms and conditions and payment should be done within 90 days.

**Step 2:** The letter of allotment should contain the plot number and the acreage.

**Step 3:** Payment can be made one off or in installments to the land settlement offices.

**Step 4:** Upon clearance of the payments, the local settlement office should inform the Director of Settlements.

**Step 5:** The director of settlement shall then issue a discharge and seek to transfer the land documents to the owner from the settlement fund trustees.

**Step 6:** The beneficiary or allotee is then obliged to take these relevant documents to the district registrar.

**Step 7:** The owner shall then pay stamp duty, registration fees and title fees to the registrar who will then issue title deed to him/her.
Acquisition of Land through Purchase

**Step 1:** Seek a copy from the owner of the land and conduct an official search at the Sub-County or County Lands Officer. The details to pay attention to include:
- Registration number
- Size
- Map sheet number
- The details of the owner vis-a-vis the National Identity Card details.
- Tenure as to whether it is leasehold or freehold.
- Whether the land has been used as a security for a credit facility like bank loan.
- Cautions or caveats restricting the sale of the land.
- Lease period to determine the remaining lease term.

**Step 2:** Review as to whether the land is under dispute which has not been resolved through the Kenya Law Report or as to whether the land has been quoted on the Commission of Inquiry on the Illegal and Irregularly Allocated Land through the Ndungu Land Report.

**Step 3:** if within the urban areas, conduct search at the County Governments offices to establish whether there are any outstanding rates and obtain a Rate Clearance Certificate from the Rates Department.

**Step 4:** Obtain survey map from the County Survey Office to establish whether the property is reflected as detailed in the map. The survey map is referred to as the Registry Index Map. Whether there has been sub-division, mutation forms should be obtained to corroborate the subdivisions. If not certain, the services of a private surveyor should be sought to retrace the beacons.
**Step 5:** In case the owner of the property is deceased, establish whether there is a will and obtain “Grant of Probate”. In cases where there is none then seek Letter of Administration.

**Step 6:** In cases where the land is not to be sub-divided during the sale, attention should be paid to the following due diligence processes:

- A written agreement should be entered into before a lawyer, trusted friend or area local chief.
- The person selling should make an application to sell to the Land Control Board for consent. The documents accompanying the application includes:
  - Search certificate.
  - Copy of the title deed.
  - Consent of the family giving green light to the transaction.
- The Board may object to the sale if:
  - There is objection from family members to the sale.
  - The seller or vendor fails to demonstrate that there is more land left for use.

N/B: Where land is not being sold as a whole, consent of the Land Control Board should be sought to subdivide.

**Step 7:** Once consent has been received from the Board, the vendor/seller should fill a transfer form and attach passport photos.

**Step 8:** Presentation of the consent, title and spousal consent to the registrar who shall then convey the documents to the land valuer for valuation for purposes of stamp duty.

**Step 9:** Upon clearance of the stamp duty, registration fees, the registrar shall issue title to the buyer.
Acquisition of Land through Succession

Step 1: Accession of Death Certificate: - This is acquired from the registrar of births and deaths. The burial certificate should be submitted jointly with the deceased national identity card.

Step 2: Were a valid will exists: - the successors should petition the court to granted the probate to execute the will. Probate basically translates the will to a court order to be executed.

Intestate Procedure

If there is no will, intestate procedure kicks in. The procedure is as follows:

i. Letter from the local chief is required.
ii. The letter should detail the deceased estate, spouses and heirs.
iii. The letter may mention people owed money and liabilities.
iv. The letter should be addressed to the court.
v. The applicant to intestate is the allowed to file a formal request to be appointed the administrator of the deceased estate. This is normally verified by a magistrate or an advocate.
vi. The petitioner is expected to file an affidavit to confirm facts of the claim.
vii. The petitioner is required to appear before the magistrate or judge to confirm the contents of the petition and the claims.

viii. The Guarantee by Personal Sureties form is then filed by the petitioner to ensure that the mandate of the application is fulfilled as in the papers.

ix. The court shall then prepare notification for gazettement after receipt of dully signed and attested petition papers.

x. Where there is no objection, letters of administration shall be issued to the petitioner.

xi. Sworn affidavit shall then be required requesting confirmation of the grant detailing how the estate should be shared among the heirs and if at all there are liabilities, how this should be handled.

xii. Summons to appear before a judge by the parties’ i.e. spouse or spouses and heirs to confirm the agreement with the manner in which the estate is to be administered.

xiii. If and when there is an agreement in the manner of distribution, then certificate of confirmation is issued by the courts and is to be followed to the letter.
Conclusion

Through the above steps the buyer will have the necessary confidence to proceed with the transaction due diligent will be achieved. It is always better to take caution rather than rush into a transaction and later suffer losses. While the above steps may seem to be petty to many people, in matters of land, it pays to be petty.