

RUAHA CATHOLIC UNIVERSITY (RUCU)



FACULTY OF LAW

RESEARCH

**ANALYSIS OF THE LEGAL AND PRACTICAL CHALLENGES FACING
CUSTOMARY LAND OWNERS DURING URBANIZATION; CASE STUDY OF
KITWIRU MUNICIPAL- IRINGA.**

**Research submitted to the Faculty of Law in partial fulfillment of the
requirements for the Award of the Degree of Bachelor of Laws (LL. B) of
Ruaha Catholic University**

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July, 2023.

CERTIFICATION

The undersigned certifies that he has read and hereby recommends for acceptance by Ruaha Catholic University (RUCU) compulsory research titled “Analysis the legal and practical challenges facing customary land owners during urbanization; Case study of Kitwiru ward Iringa municipal” in partial fulfillment of the requirements for the award of the degree of Bachelor of Laws at Ruaha Catholic University.

Signature

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DECLARATION

I, Kimata Baraka J, declare that this is my own original research report work and that it has not been submitted to any other university for a similar for an award of any degree, in this university or any other university.

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DEDICATION

I dedicate this work to God Almighty my creator, the light of my passage ways, my source of inspiration, wisdom knowledge and understanding. He has been the source of my strength throughout this work and on His wings only I have travelled. He remains the same “Yesterday, Today and Forever”. I also dedicate work to my wife Stella who has encouraged me all the way and whose encouragement has made me sure to finish what I have started. And, also to my son and daughters, family members and all my friend who in one way or other have been giving me moral and economic material supports that has enabled the me to accomplish this work with minimum complications.

ABSTRACT

This study aims at analyzing the legal and practical challenges facing customary land owners during urbanization on land acquired for public interest in relation to adequate compensation. To examine whether provisions of the law is concerning adequacy compensation on land in Tanzania without giving a room for any irrational, inhuman and unfair compensation, the study determines delays of payment of compensation and procedures used in estimation of compensation when land acquired for urbanization, spastically in Iringa Municipal at Kitwiru ward as a case study representing other areas in Tanzania. It examines and discusses the meaning of the terms example land, customary land, adequate compensation, land Acquisition, prompt payment and also discusses historical background, inadequate compensation on land, and the statement of the problem, the legal frame work of the compensation on land, discussion and analysis of findings made through the question made to the respondents asking in examining whether compensation on land is proportionate compared to current situation and whether the compensation on land acquired is adequacy. It also analyzes a range of factors which contributes to the increase of the disputes arises between institutions and government basing on land compensation where land acquired for in urban areas, in Iringa and problems facing people whose land acquired by the government during urbanization. Lastly, the conclusion, recommendations giving solutions basing this work for further improvements.

LIST OF INSTRUMENTS

International Statutes

The African charter on Human and Peoples Rights of 1981

The American Charter on Human Rights of 1969 entered to force in 1979

The constitution of South Africa

The document extra from the International Valuation Standards (IVS) to be read in conjunction with the complete text of IVS Sixth Edition, 2003 at p.95.

The European Convention of Human Rights and Fundamental Freedom, 1950

Universal declaration of human rights of 1948

Municipal Laws

The Civil Procedure Code [Cap 33 R.E 2019]

The Constitution of the United Republic of Tanzania of 1977, [Cap 2 R.E, 2002]

The Land Acquisition Act [CAP 118 R.E 2018]

The Land Act Cap 113 [R.E 2019]

The Land Act, [Cap113 R.E 2002]

The Roads Act No 13 of 2007

The Town and planning Act, [Cap 355 R.E 2019]

The Urban Planning Act, 2007

The valuation and valuers Act, 2016

The Village Land Act [Cap114 R.E 2019]

LIST OF CASES

Attorney General v. Sisi Enterprises Ltd, Civil Appeal Case No. 40 of 2004

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TLR 80

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(KIHOCOSO) Land Appeal No. 19 of 2017

Kihonda Pista Makaroni industries Limited v B.R Shindika Stela Secondary

school (2021) TLR 197

Methuselah Paul Nyagwaswa v. Christopher Mbote Nyirabu. [1985] TLR 103

Metthuselah Paul Nyagwaswa vs Christopher Mbote Nyirabu [1986]

103 (TZCA)

National Agricultural and Food Corporation vs Mulbadaw Village Council and

Others [1985] TZCA

Ntiahela Boneka v. Kijiji cha Ujamaa Mtala [1988] T.L.R 156

LIST OF ABBREVIATIONS

A. G.	Attorney General
CCM	Chama Cha Mapinduzi
CURT	The Constitution of the United Republic of Tanzania 1977
Ibid	Ibidem – (at the same place.)
M ²	Per square meter
N.L.P	National Land Policy
Pg	Page.
Ses	Section
Tshs	Tanzanian shillings

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CHAPTER ONE

1.0 General Introduction

Not only in Tanzania but in all over the world, that compensation on land becomes a problem and common phenomenon during urbanization and land acquisition by government for public interest in relation to adequate compensation. The main reason is that, land remains the same while its dependents increase daily on the earth surface. This corresponding ratio on land as basic resources for livelihoods and its users continuously results into disagreements on the rate of the compensation between people whose land is acquired by the government and values in evaluation of land. Basing on said ground, this research is prepared to explore adequacy of law relating to this problem.

1.1 Background to the Problem

In Tanzania the principles governing ownership of land are eventually incorporated in the Land Act¹ and the Village Land Act² as cornerstone of the land administration in the country adopted from the Fundamental principles of National Land Policy.³ They include; the right for women to access land, land utilization, proclamation of sensitive areas, the right of people to dispose of land by ways of; sale, mortgage, revocation of land by a due process, the right of people to acquire land, the right of people to get proper and prompt compensation when their land is subject to allocation.

¹ Cap 113 (R.E 2019).

² CAP 114 (R.E 2019).

³ The National Land Policy (2016).

Section 3 (1)(b) of the Land Act,⁴ provides for Pre-existing rights over land, including long-standing occupation or use of land to be recognized and secured by law whether granted right of occupancy and deemed right of occupancy conflicts still exist between the two, however the granted right of occupancy has always been preferred rather than deemed right of occupancy, this principle therefore, indicates that any person dealing with a right of occupancy regardless of its nature must bear in mind that is inferior even where customary right of occupancy will be uprooted in favor of the granted right of occupancy yet an adequate compensation must be paid.⁵ It is however doubtful if the granted right of occupancy can be revoked in favor of the customary right of occupancy.⁶ In the current land law equality of granted right of occupancy and customary right of occupancy have been considered in both Land Act⁷ and The Village land Act.⁸

In the case of *Methuselah Paul Nyangwaswa Vs Christopher Mbote Nyirabu*,⁹ the Court discussed on the right of occupancy granted over the land held in customary law whether distinguishes the title held under customary law during the area declared planed area and whether the holder of the land under customary law is automatically rendered a squatter. The court held in favor of the claimant since the two titles were equal if they are obtained by the required procedures under the proper authority.

⁴ Ibid, sec 3 note 1.

⁵ W.R. Tenga & S. Mramba, *Manual on Land Law and Conveyancing in Tanzania*, Tumaini University, Dar es Salaam, 2008, 50.

⁶ D. Datius, *Customary and Granted Land Right of Occupancy*, Available at SSRN 3603236, 2020.

⁷ Supra note 1 Sec 4(3).

⁸ Idem Sec 18(1).

⁹ [1985] T.L.R 103.

Under Section 4 (1)(2) of the Land Act, all land in Tanzania is recognized as Public Land, vested in the President as trustee on behalf of all citizens, under section 32 (1) of the Act, individuals do not own land rather they possess interests in land for particular term of years. The President has been conferred with radical title over the land for administrative trust to ensure that it is properly managed and developed for the welfare of the citizens. However, this does not do away with the fact that constitutionally, the president has absolute power to deal with various matters in the country¹⁰ powers any compulsory acquisition for public interest or purpose for instance must follow the due process of law.¹¹

It is a principle in land law under section (4)-(8) of the Land Acquisition Act¹² that, in case Land is acquired by the government for public interest, payment of compensation is mandatory, and during this process the government is obliged to pay them compensation in customary law or granted right of occupancy, during process of acquiring such payment shall be proportional to the development made in a particular land.¹³ Section 3(1)(g) of the Land Act provides that, the payment of compensation when land rights are interfered is to be paid full, fair and prompt. Any compulsory acquisition of land for public interests must follow the due process of law. Thus, if these

¹⁰ Article 7 of the Constitution of the United Republic of Tanzania 1977 (as amended time to time), (here in after the Constitution).

¹¹ M.G. Eliseus, *Local politics of land acquisitions for foreign and domestic investments in Tanzania*, In the Palgrave Handbook of Agricultural and Rural Development in Africa, Palgrave Macmillan press, Cham, 2020, 457-459.

¹² The Land Acquisition Act Cap 118, 1967.

¹³ [www.files.ethz.ch>isn](http://www.files.ethz.ch/isn). (Accessed on 22 May 2022).

powers are wrongly exercised by the executive may lead to encroachment of individuals' land rights.

In the case of *NAFCO v Mulbadaw Village and others*,¹⁴ the Court decided in favor of the respondent whose right of occupancy was recognized long-standing occupation and customarily owned. However, in Tanzania what is behind the spirit of the provision of the law is not well digested in reality. For instance, Article 24(1) and (2) of the Constitution provide for right to own property and mandatory compensation of fair and adequate compensation the land owners in case the land is acquired for public interest. The problem of fair and adequate compensation is historical and remains up to now. In the case of *Kihonda Pista Makaroni Industries Limited B.R Shindika Stela Secondary School*¹⁵ the court of Appeal in deciding on whether the compensation to the bland owner was fair and adequate proportionate to the current market value had this to say; *"I have no reason to disbelieve the valuation report as to it was made by the government valuer and approved by the chief valuer ...it was unfair, illegal and oppressive to deprive him such land without prior consultation and pay of fair and adequate compensation"*. Also in the case of *Judith Yoas ana another v. Kibaha Housing Cooperation Society Limited (KIHOCOSO)*.¹⁶ It was held inter alia that, *"...to grab one's land and give it to the other without justifiable cause, the same amount not only to discrimination but, also to oppression and degradation and humiliation which was among the characteristics of colonialism"* Despite the

¹⁴ [1987] T.L.R 88.

¹⁵ (2021) TLR 197.

¹⁶ Land appeal No.19 of 2017.

fact that the land owners are not given adequate and fair compensation when their land acquired for public interest steel those unfair and inadequate compensation are not paid in time hence makes the problem very high. For example, the residents of Kitwiru area who were affected by expansion of the main road (TRANS-AFRICAN HIGHWAY) claimed about the delay of compensation.¹⁷

1.2 Statement of the Problem

There are disagreements on rate of the compensation to the customary land owners whose ancestral land form part of urbanization or when the same land is required by the Government for its exclusive use, people are inadequately compensated compared to the real market value of the specific land. The amount paid to the land victims of urbanization or acquisition of land by the government cannot afford to re - acquire land proportional to the one they had over the locality so declared as urban area. Article 24 (1) the constitution provides principally that, every citizen has the right to own property.

The law requires that, a person whose Right of Occupancy or customary use of Land is taken or otherwise, would be paid adequate and prompt compensation. Both the Land Act, and Village Land Act provide that in case of any acquisition the compensation should be “...Full, fair and prompt compensation”, under the Land Acquisition Act¹⁸ “...based on the market value”, under the Road Act¹⁹ “in accordance of Land Acquisition Act,

¹⁷ Information obtained on 05 May 2023 from Rev. Ndunguru 0684592056

¹⁸ Supra, note 4, 12(3)

¹⁹ The Roads Act, No. 13 of 2007

The Land Act, and the Village Land Act and any other written law”, and finally The Export processing zone Act²⁰ is that “... pay the owner of such property just and prompt compensation.

Despite of these laws being in line with the Constitution, but they are far behind the spirit of the provision of the constitution and realities in urban areas whereby there is no clear definition of “fair and adequate compensation” proportion to the market value, location and size of the land taken. Section 78 of the Land Act provides for the factors to be considered when the land interests are transferred from one person to another (Example lease), in order to determine the amount of rent to be payable under lease.²¹ If we have such considerations in land that latter goes back to the land holder why can't we have more safeguard than that for people whose lands are taken completely? Why do those very useful words in compensation are not defined? Don't we see that the act of the law being silent on those core terms “fair and adequate compensation may denote that the compensation may be made in full and promptly but not proportional to the value of the land of the victims?

For instance, the act of law being silent on compensation proportion to the market value, size and location of the land, may give a room for land valuers to use their discretion in setting rates of compensating people affected and pay less amount of money compared to the reality as it results families are

²⁰ Sec 29(2) of the Export Processing Zone Act No. 11 of 2009.

²¹ Sec 78(3) of Cap 113.

left with insufficient or sometimes with no land both in urban and in rural areas as well.

Delay in payment of compensation and moneys paid to them lead to depreciation in price to the extent that the victims never get land proportional to their prior status or remain in their places after urbanization, as the result the victims are likely to be forced to vacate out from their origin lands.

Thus, the researcher analyzes the legal and practical challenges on compensation to customary land owners during urbanization on the subject matter. The researcher also examines the issues; whether compensation made before and after urbanization to customary land holders during the process reflects the realities and whether or not the compensation payable is proportional to market value, size of the land and its location. Therefore, determines the problem and suggests the way forward.

1.3 Literature Review

Hereinafter is the critical evaluation to other literatures to show how they have tried to discuss on the matters relating land rights, during Urbanization in respect of the assessment and land compensation in connection to the customary lands specifically in relation to the study.

Mramba states that,²² in “Land Rights And The Law In Tanzania” argues that “compensation and market value for land have continued to be different since there is no freedom of transaction in compulsory acquisition, there is no market as such for the compulsorily acquired property and that just compensation cannot be the same as market value” he says that in

²² Supra not 5 Pg. 22.

compulsory acquisition, the transaction is not based on willingness from the seller in a free exchange, the market value cannot be said to have been attained because sellers have been compelled to sell against their will²³. The author adds that, under the land acquisition Act, vacant land is not to be considered in assessing compensation as this situation has already changed in the current land Act. However, the author did not discuss the question of “how adequate is adequate” and whether the payment made is enough to afford the land victims to get into access over the urbanized land. This is why the researcher wants to investigate in this area and come up with suggest the way forward.

Mtatifikolo states that,²⁴ historically urbanization was a creation of colonizers German and British. Under colonialism urbanization was controlled as linked to political economy. He observes that, after independence there was relaxation on migration. Rural-urban migration and Dar es Salaam have sported “crisis” area in terms of high rate of growth and serious imbalances between its economy and population.²⁵ The author did not focus on discussion about the indigenous Rights and whether their rights had to be considered during Urbanization in the said policies. Also, the argument that the population should be distributed between regions and between rural and urban is irrelevant to applicable in Tanzania where the freedom of movement is constitutional right. The study now wants examine reasons why land victims

²³ G. Calabresi, *et al*; *Property rules, liability rules, and inalienability: one view of the cathedral*, In *Economics and Liability for Environmental Problems*, 2018, 5-44.

²⁴ Mtatifikolo, Fidelis P. *The dynamics of the urbanization forces in Tanzania and related policy and research issues*, *Tanzan. J. Popul. Stud. Dev* 4, 1997, 67-83.

²⁵ Kolstad, Julie Riise. *How to make rural jobs more attractive to health workers*. Findings from a discrete choice experiment in Tanzania. *Health economics* (2011), 196.

lose their land after urbanization and say what should be done rescue the situation.

Tenda & Mramba also states that,²⁶ during urbanization and liberalization era, land was characterized by granting or disposition of a right of occupancy in town centers and surveyed areas, and that the process under section 3 of the Town and Country Planning Act²⁷ squatters and slums areas were by the expanding town boundaries by declaring such areas to be planning areas and Land can be acquired under section 34 of the Land Acquisition Act. There were massive dispositions on the assumption that once an area is declared to be a planning area customary rights were forthwith extinguished. Allocations have sometimes been preceded by surveys and at times the allocated land did not appear in the plans. New plots not appearing in the plans were created and the existing plots subdivided. Pressure from authorities caused allocation in open spaces, recreational grounds, school compounds, cemeteries', ecologically fragile areas that is beaches and natural drainage areas. There was also serious double allocation as one could be given the letter of offer and another the certificate of occupancy²⁸. However, they discussed nothing about urbanization framework. Hence the researcher tends to research for this study.

²⁶ Dr.W R Tenda & Mr Sist J Mrambain the book *Manual on Land Law and Conveyancing in Tanzania*.

²⁷ [Cap 355 R.E 2019].

²⁸ L. Massoi & A. S. Norman, Dynamics of land for urban housing in Tanzania, *Journal of Public Administration and Policy Research* 2, no. 5, 2010, 74-87.

Shaaban states that,²⁹ the high population and urbanization growth rates in Tanzania are because of poor economic performance, weak institutional arrangements and inappropriate policies. That among other things that contribute to the existing situation is the majority of urban who live in informal or unplanned settlements³⁰. According to the author it has shown that 70 per cent of the people in big cities live in informal settlements without the basic infrastructure and social services³¹. And, that besides the situation, people experience nearly all forms of urban poverty as manifested in terms of insufficient incomes, vulnerability, powerlessness and voiceless. The author says despite such situation but there are no good policies in place today by the government to rescue the situation for better land use in urbanization. Though the author spoke nothing about the legal framework during urbanization. In this study the researcher will discuss on it.

Wannacott states that,³² the combined effect of the doctrine of tenure and estate in possession is that, there is no absolute ownership of land. The author did not discuss about urbanization and compensation on customary land titles and their protection during urbanization. In this regard the researcher is about to come up with report that will create awareness to the public.

²⁹ S. Sheuya, *et al*, Sakijege, Flooding, flood risks and coping strategies in urban informal residential areas: The case of Keko Machungwa, Dar es Salaam, Tanzania, *Jamba: Journal of Disaster Risk Studies* 4, no. 1, 2012, 1-10.

³⁰ A. Alfred, *Population growth, structure and momentum in Tanzania*, Tanzania printing service, (2014), 120.

³¹ N. Dina, *et al*, informal settlements to sustainable communities, *Alexandria engineering journal* 57, 4, 2018, 2367-2376.

³² M. Wannacott, *possession of land, private property keeps out*, Cambridge University Press, 2019, 40-60.

1.4 Hypotheses

It appears that, the law relating to compensation on acquisition of land does not meet the requirement of Article 24(1)(2) of the Constitution of the united Republic of Tanzania, 1977 (as amended from time to time).

1.4.1 Objectives and Significance of the Research

This research was guided by the assumptions that, the law relating to compensation does not provide full, fair and adequate compensation to customary landholders proportional to market value.

- i. Whether compensation is legally provided as the requirement of the law or is upon the discretion of valuers during assessment and evaluation of the land.
- ii. Whether the people affected by urbanization process can afford to re-acquire land in planned land or they are forced to vacate the area due to higher value compared to the less amounts received as compensation.

1.5 Significance of the study

The search raises awareness to law makers and provide opportunities to the judiciary and parliament to review, amend or repeal the laws if they do not reflect the reality in the society and come up with laws that provide equal opportunity on land ownership regardless the kind of the land titles and to the general public as well as avoids conflicts in the society. The research may be used by the legal professionals' detailed dig in other land laws whether they reflect the reality of the current and future generation so as to ensure the payment of compensation made to customary landholders during urbanization are proportional to the marker value of urbanized land. Finally,

this research helps the other researcher to find more areas in deferent laws which do not reflect the common goal of the society.

1.6 Research Methodology

1.6.1 Research Design

Research design is a plan on how the study was carried out. This is analytical research; the researcher made a critical analysis of the laws governing compensation during urbanization process. And also, collected data in deferent sources including skilled personnel. For this reason, the non-doctrinal research methodology was the best technique to be applied. This design was preferred because provided a researcher with wide room to use data collected in field area of the study.

1.6.2 Sampling and Sample Size

In this research the researcher used non- probability sampling, purposive sampling where he only focused to the facts of the law that are associated with the challenges facing compensation to customary landowners during urbanization process. The researcher used purposive and non-probability sampling because was suitable for him to make a critical analysis on compensation laws in Tanzania. The research used 30 sample size of the people of the following groups; 16 land victims, 4 persons from ward tribunal, 2 members from Iringa District land tribunal, 2 land officers Iringa Municipal council, 2 Advocates from trustworthy law firms in Iringa, 2 member persons from Hight court-Iringa Registry and 2 members at Iringa Regional Land offices the source of information which was obtained through well-established order, where it assisted the researcher to be able to evaluate the

foundation of the problem by making a critical analysis in evaluation of unaffordable compensation during urbanization.

1.7 Research Methods

1.7.1 Analysis of the law

The researcher in this study used the method of examining the legal instruments and case laws so as to point out the challenges facing customary landholders during urbanization process. This also was done by analyzing land laws particularly urbanization laws, in a view of examining how such laws guarantee compensation to customary landholders proportion to land acquired to them during urbanization process in Tanzania.

1.7.2 Documentary review

In documentary review researcher obtained views from different authors and intellectuals about the problem at hand through reviewing of documents relevant to the study. Different sources were perused and consulted such as, the land policy, journal articles, conference papers, books, cases, research papers and various published and unpublished materials relating to the study. The internet source was also utilized to access online information in relation to the study.

1.7.3 Interview method.

This method of data collection involves presentation of questions, documentary and orally. The researcher interviewed land victims, legal practitioners, and Land officers, both face to face and telephone conversations for interview sessions respectively. He uses both structured and unstructured questions during the interview as it was more reliable method to gather response and control the respondents' information during the interviews.

1.7.4 Questionnaire survey method.

Questionnaires were distributed and administered to 20 selected respondents basing on their respective groups for them to reply. The researcher used this method because it simplified the process of data collection.

1.7.5 Research Analysis

The researcher used both qualitative method of data interpretation. In qualitative a researcher made a comprehensive interpretation of the legal instruments and documentations like books, journals and articles to reveal the challenges facing customary landholders during urbanization process.

1.8 Scope and Limitation of the Research

1.8.1 Scope of the Research

The Researcher focused on making a critical analysis of the laws relating to compensation on challenges facing customary landholders during urbanization process in Tanzania from post-colonial government to date, specifically at Kitwiro ward in Iringa municipal. The aim of the research was to know whether the general public is aware of the laws regulating rights of customary landowners during Urbanization process and whether the laws satisfy the land victims of such land. The aim of choosing Iringa Municipal council was because it is among urbanized area within Iringa Region, where also legal firms, lawyers, and most of courts and tribunals are found easy for the researcher to collect data from different people of different status and knowledge on Urbanization laws.

1.8.2 Limitation of Research

The researcher faced some general limitations in several areas to including materials, time, finances, and cooperation from the respondents, in which the researcher put whatever efforts to overcome such situations to accomplish the research goals.

CHAPTER TWO

CONCEPTUAL AND LEGAL FRAMEWORK ON THE LAW RELATING TO COMPENSATION TO CUSTOMARY LAND OWNERS IN URBAN AREAS

2.0 Introduction

Chapter two of this research presents the conceptual and legal framework on the law relating compensation to customary land owners during urbanization in Tanzania specifically in Iringa Municipality after Independence to current situation. Generally, before independence and the period before the amendment of land laws of 1999, there was not payment of compensation on plain land acquired for public interest. Currently despite that the new Land Act Section 3(g)(i) to(v) of the Land Act ³³ considers to compensate the person whose Land has been acquired reaching to full, fair, and prompt compensation.³⁴ and that, assessment of compensation for land acquired that should be based on the market value of the real property, disturbance allowance, transport allowance, loss of profits or accommodation and cost of acquiring of getting the subject land.³⁵ Again article 24(2) the Constitution, preserves the right to own property and deprivation of it without fair and adequate compensation.

³³ Cap 113 R.E. 2019

³⁴ Idem, Section 3

³⁵ Ibid

2.1 Conceptual Framework on the Law Relating to Compensation to Customary Land Owners in Urban Areas

2.1.1 Definition of Key Concepts

Land

Section 2 of the land Act provides that,

“Term “Land” includes the surface of the earth and the earth below the surface and all substances other than minerals and petroleum forming part of or below the surface, things naturally growing on the land, buildings and other structures permanently affixed to land.” Public purpose means "an action by or at the direction of a government for the benefit of the Community as a whole.³⁶"

Customary land

Customary land refers to the land owned by indigenous communities and administered in accordance with their customs, as opposed to statutory tenure usually introduced during the colonial periods.³⁷

Land acquisition

Land Acquisition means to obtain some land by purchase it, through inheritance, gift and adverse possession.³⁸ Also it means the acquisition of land for public purpose by a government agency from individual landowners, as authorized by the law, after paying a government-fixed compensation to cover losses incurred by landowners from surrendering their land to the concerned government agency. Land acquisition involves the compulsory

³⁶ Black’s Law Dictionary, 5th as cited in the case of Attorney General v. Sisi Enterprises LTD [2004], Civil Appeal Case No. 40 at page 6

³⁷ <https://www.land-links.org> (Accessed on May 2023)

³⁸ <http://www.lands.go.tz> (Accessed on May 2023)

taking of land, often against the will of the landowners. The law in Tanzania requires the state to pay compensation adequately; however, adequate compensation is not explicitly defined by law.

Urbanization

This refers to the process in which the population shift from rural areas to cities, often motivated by economic factors, whereby the physical growth of the urban areas may lead to expansion of areas to accommodate the increasing population. This can involve the migration of groups of people from rural areas to urban areas.

Compensation

The term compensation has been defined under the Black's Law Dictionary³⁹ to mean Indemnification; payment of damages; making amends; that which is necessary to restore an injured party to his former position. Also, in the case of *Attorney General v. Sisi Enterprises LTD*⁴⁰ that, it is an act which a court orders to be done, or money which a court orders to be paid, by a person whose acts or omissions have caused loss or injury to another, that the person affected may receive equal value for his loss, or be made whole in respect of his injury.

Adequate compensation

Adequate compensation means a fair payment by the government for the property it has acquired under eminent domain. The amount paid as adequate compensation is ordinarily the property's fair market value. An adequate

³⁹ Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.

⁴⁰ Civil Appeal Case No. 40 of 2004, 6.

compensation is given to ensure that the owner is not worse off after the taking.

Right to fair and adequate compensation

This is the right provided by under Art 24 (2) the constitution and payable by in respect of land laws made to reflect the spirit under the provisions of the constitution.

Prompt Payment of Compensation

Prompt Payment of Compensation” means payment of compensation within six months after the subject land has been acquired or revoked as per the Valuation and Valuers (General) Regulations.⁴¹

Land compensation principles

Market value, according to the international valuation standards (IVS),⁴² the concept market value is defined to mean the estimated amount to which an asset should exchange on the date of valuation between buyer and willing seller after proper marketing where in the parties had each acted knowledgeably, and willingly without compulsory.

Disturbance allowance, this is an amount to be calculated by multiplying value of the interest in land by the average percentage rate of interest offered by the Central Bank on fixed deposits for twelve months at the time of loss of interest in land, pursuant to Reg 15 of the Valuation and Valuers (General) Regulations.⁴³

⁴¹ The land (forms} Regulations G.N 78, 2001 Regulation 13(2).

⁴² The document extra from the International Valuation Standards (IVS) to be read in conjunction with the complete text of IVS Sixth Edition, 2003, 95.

⁴³ G.N 12 OF 2018.

Accommodation, this is the amount calculated for the market rent for the building which is shall be assessed and multiplied by thirty-six months in order to arrive at accommodation allowance payable a provided under sec 14 of the Valuation and Valuers (General) Regulations.⁴⁴

2.2 Legal Framework on Compensation to Customary Land Owners in Urban Areas

2.2.1 International Instrument

The Universal Declaration of Human Rights, 1948

Under international instrument⁴⁵ it is provided that every person has a right to own property as an individual or association with others which must be protected and that it unlawful for this right to be deprived. Land as a property capable of being owned including other attachments therein, it requires just and fair compensation to the owner in case of any deprivation of it.

2.2.2 Regional Instruments

The African charter

The African charter ⁴⁶ provides for freely disposition of their wealth and natural resources of all people, the right which shall be in the exclusive interest of the people. It also states that, in case of any infringement of such right the disposed people shall be entitled to the lawful recovery of their property an adequate compensation.

⁴⁴ Ibid.

⁴⁵ Article 17(1) of the Universal Declaration of Human Rights, 1948.

⁴⁶ Article 21 of the African charter on Human and Peoples Rights of 1981.

The European convention

The European convention provides,⁴⁷ for right to own property and compensation towards any infringement of such right. *“Everyone has right to private and his family, his home and his correspondence.”* Every natural and legal person is entitled to peaceful enjoyment of his possessions. It also States that *“Every Natural and legal person is entitled to the peaceful enjoyment of his possessions”*.⁴⁸ No one shall be deprived of his possession except in the public interest and subject to the conditions provided by the law and by the general principles of the international law.

The American Charter on human rights

The American Charter on human rights,⁴⁹ provides for the rights to use and enjoyment of property and derogation to this right leading to deprivation of property can only be for public utility and social interest, and such derogation to be followed upon payment and just compensation according to the forms established by the law. Article 21 of the Charter, states that in case of any infringement of such right the disposed people shall be entitled to lawful recovery of their property and adequate compensation, any deprivation or the placement of owners. However, the above discussed instruments of American and European instrument do not include Tanzania as a part to them.

⁴⁷ Article 8 of The European Convention of Human Rights and Fundamental Freedom, 1950.

⁴⁸ Idem Article 1 of the first Protocol.

⁴⁹ The American Charter on Human Rights of 1969 entered to force in 1979.

2.2.3 National Instruments

The constitution the United of Tanzania

The idea that compensation should be paid only to the unexhausted improvement made on the land was challenged as violation to Article 24(1) of the Constitution of the United Republic of Tanzania 1977 (as amended time to time) (here in after “the Constitution”). Under Article 24(1) the Constitution Compensation is payable for deprivation of the property. This provision is very clear on the right of property ownership and entitlement of a fair and adequate compensation over the deprivation of such rights by any person. In the case of *Lohay Akonay v Joseph Lohay*⁵⁰, the court held that fair compensation is not confined to unexhausted improvement only rather even there are no unexhausted improvement but some efforts have been made put into the land by the occupier, that occupier becomes entitled to compensation

About the compensation to people owning land in Customary tenure during urbanization under Tanzania laws, it was respectively subject to unexhausted improvement over the land⁵¹ basing on ground that in Tanzania people do not own land but rather use right over it and that occupants were compensated for investment or works on the land and the not the land itself. In the case *Ntiahela Boneka v. Kijiji cha Ujamaa Mtala*.⁵² The court when answering the question to whether the appellant was entitled to compensation. It was held that, the person is entitled to compensation for

⁵⁰ 1995 TLR 80.

⁵¹ Regulation 4 of the Land Tenure (Established Villages) Act Cap 267.

⁵² [1988] T.L.R 156.

improvement affected on the land provided that at the time carrying out such improvement had apparent jurisdiction for doing so.

The situation after Independence to 1999

After independence the Land Tenure Ordinance (1923) and its colonial spirit was retained. All lands in Tanzania continued to be public land. Contrary to the reasons of the governor, The President became the custodian of all land on behalf of the citizens of Tanzania. The concept of land ownership which was disrupted during the colonial era continued to be unknown. Although it might have been retained for technical reasons but it enabled the government to acquire land freely without bowing down to individuals. In 1963, The Land (settlement of Disputes) Act 1963 was passed in order to achieve an equitable solution outside the limits of law and practice of colonial administration. This Act was passed in order to make provisions for settlement of dispute between dispossessed Africans and settlers who benefited from farmers deprivation of land. More laws were enacted and enable easily the state to alienate land. Among them is the Land Acquisition Act, in which the Government could through President acquire land compulsorily. The procedure is provided under section 4 (2) included consulting the National Assembly.⁵³ As the political climate began to improve in the country in 1980s, it become more and more to the party and its government that some of the victim of villagization program of 1970's might go to court to claim back their land now in hand of

⁵³ C. M, Peter, *"Human Right in Tanzania, Selected cases and Materials"*, 1997, 214.

other Ujamaa Village registered villages, several by-laws were enacted targeting specific areas where alienation of land had been serious.

The Regulation of Land Tenure (Established Villages) Act

The Act was enacted to bring to an end any claims relating to land acquired during operation Vijiji. The Act under reg. 3(1)⁵⁴ provided that all rights to use and occupy land under customary law held by villagers before operation vijiji were extinguished. No compensation was to be paid as a result of operation vijiji this was provided under section 4 of the Act.⁵⁵ Suits could only be brought in special tribunals established. Any aggrieved person could appeal to the Appeals Tribunal and if he is not satisfied, he could appeal to the Minister whose decision was final and conclusive as provided for under section 9.⁵⁶ The land tenure and use were to be administered from the top. Participation of peasants and pastoralists in the use, planning, administration and management of land was virtually none existing⁵⁷.

The Land Act, 2019

Section 4(3) of the Land Act⁵⁸ (here in after the Land Act) provides that the land occupied lawfully by any person and occupation of any kind shall be deemed as a property, thus being a property, it gives right for an occupier to claim for full and fair compensation in case of the same is deprived.

⁵⁴ the Regulation of Land Tenure (Established Villages) Act 22/199.

⁵⁵ Idem.

⁵⁶ Idem.

⁵⁷ Shivji I; *Not Yet Democracy: Reforming Land Tenure in Tanzania*. 1998, 6.

⁵⁸ Cap 113 [R.E 2019]

Both Section 3(g) of the Land Act, and section 3(h) of the Village Land Act⁵⁹ provide that, if the rights in land occupied by any person by longstanding occupation or customary use of land is violated or otherwise interfere to their detriment by the state, the occupier is entitled fair and prompt compensation. Section 14 of the Land Acquisition Act.⁶⁰ provides assessment procedures in the subjected land.

The Land Acquisition Act

The Land Acquisition Act under section 11 to 18 gives the manner for assessment and calculation of amount of compensation to be paid in order to appropriately meet the required requirement of the Act. It provides that the assessment should be in line with the ⁶¹principles specified in the Act. The victims do not know the basis criteria used to compute the amount in compensation. Then there is no doubt that the whole compensation process is not clear, fair and unsatisfactory.

The Urban Planning Act, 2007

The Urban planning Act, is the current legal framework which comes out with the issue of value of land for purposes of compensation should be calculated in accordance with the provisions of the Land Act. This is according to section 63(1) of the Act. Read together with section 65(1) of the same Act, in which *inter alia* supply factors to be taken into consideration in assessing compensation. The following are them; (a) there shall be taken into account

⁵⁹ Cap 114 [R.E 2019].

⁶⁰ Cap 118 [R.E 2019].

⁶¹ Act No. 8 of 2007.

any enhancement of the value of such land, or any other land under the same ownership, whether in the same planning area or not, by reason of any provision contained in any scheme or any work executed in accordance with a scheme; and (b) where the use of a building or land is prohibited because such use does not conform with the scheme applicable, such non-conforming use shall - (i) in the case of land, be deemed to have a life of twenty-five years from the material date; and (ii) in the case of a building, be deemed to have a life assessed according to the nature and condition of its structure, but in any case not exceeding twenty-five years from the material date.

Roads Act, 2007

Section 16 of the Roads Act,⁶² provides that where becomes necessary for the road authority to acquire land owned by any person for the purpose of this act, compensation to such person shall be in accordance with the land acquisition Act, Land Act, and Village Land Act (*supra*). It is argued that adequate compensation may be achieved through giving of sufficient monetary reward or replacement of land. However, the questions may be raised as how much amount compensated is sufficient? How proportionate is that amount payable? What monetary quantum is proportionate to constitute legal mandate of fair and adequate compensation? What should be the satisfactory measure of compensation? What makes compensation fair and adequate? What adequate is itself adequate? And what should be the test and the definition of Fair and adequate compensation in our legal instrument. The questions above may give an answer that there are challenges on how to

⁶² No.13 of 2007

ascertain fair and adequate compensation to the people whose ownership of customary land is deprived during urbanization.

If the land laws aimed to compensate the victims fair and adequate compensation, then how fair is fair and how adequate is adequate remain to be an open question of law. For instance, the payment of compensation by the Government for Kitwiro Block J Town Planning project in 2012, to the people owned land under customary tenure was Tsh. 112/m², and was sold for Ths 4,081 /m² after planing. Equivalent to Ths. 600,000 per acre. Rate paid during acquisition and Tsh 20,000,000 per acre selling price after planning.

This means that after planning an area each acre gave 4 plots of 1000/m² each and each plot was sold for Ths. 5,000,000. Now for the victim who was compensation of Tsh 600,000 per acre was required to add Ths 3,600,000 on top of the amount received during compensation or should lose another area of 29,000/m² in order to re-acquire at least one plot in a planned area. Now can we use this process and this rate as the criteria for testing fairness of compensation to be paid to the customary land owners affected by the urbanization process. If not, why can't we say this procedure plans to evict people from their origin areas?

In the case of *Mtumwa Shahame, Baya Kondo & 111 others v the principal secretary, ministry of works and AG* (unreported).⁶³ In this case all procedures for compensation were followed and the said full, fair and

⁶³ Land case No 31 HC 2004

adequate compensation was paid but the victims failed to re-establish new settlement hence they claimed before the court of law.

Issues framed

- a) What constitute fair compensation?
- b) What is the standard measure of fair compensation?
- c) Whether there was any fair and adequate compensation to the plaintiffs

The court held that,

“In some cases, reallocation of land before acquisition there must be fair compensation but before the acquisition, there must be monitoring of all rights whether do the victims can attain the living and remain with the same standard as they were.”

However, the law is not rigid for the little mining. What compensation? Is just a fair compensation. But, considering that the business is a buyer willing business that all officers and valuers are on the side of the government, it is obvious that they might be biased in service and favor the government. In the *Case of Kihondo Pista Makaroni Industries Limited v. B.R t/a Stella Secondary School*⁶⁴ the judge said,

“In law, both deemed right of occupancy and granted rights of occupancy are protected. See section 4(3) & (6) of the Land Act, Cap. 113 R. E 2019. The two classifications and tenure of land cannot however co-exist...But that is a technical aspect of the

⁶⁴ HC 2005 (decision of 2021).

law. Substantially, the law provides that granted right of occupancy cannot extinguish the deemed right of occupancy unless a fair and adequate compensation is made to the occupant under the deemed right of occupancy for the developments exhausted when after the survey and urban planning the plot or plots born out is or are not granted to the existing occupant by whatever reasons. If the compensation is not made/given, the granted right of occupancy to whoever would be invalidated and declared illegal.”

Concerning the matter at hand he proceeded that,

“No good Reason to disbelieve that the valuation report made by the government valuer the compensation was not fair, illegal and the oppression to deprive the defendant his ownership of land.”

The government value in the compensation to people affected by urbanization is very low compared to the current market value when land is disposed by indigenous to individuals whose price is about Tsh 5,000/m² far from Tsh 500/m² at the same area. This means that government price is outdated and unfair to the indigenous people of Tanzania.

In most cases, the victims are not involved in matters affecting their interest in land, such as land assessment and evaluation for compensation payable to the loss of their land contrary to Section 3(1) of the Village Land

Act,⁶⁵ one of the fundamental principles of the national land policy which requires the participation of all citizens in decision-making on land matters.

Regulation 6. Of the land (compensation claims) Regulations.⁶⁶ Gives the right for the occupiers to be involved during the assessment, however the situation is really different in most cases.

Judicial Decisions

Basing on the right of acquisition of land there after the court started to grant rights to individuals through judicial decisions. In the case of *Methuselah Paul Nyagwaswa v Christopher Mbote Nyirabu*⁶⁷ In this case the appellant had purchased a surveyed piece of land held under customary law under the approval of the CCM chairman and ward secretary. The piece included the land under dispute. Subsequently the respondent obtained a right of occupancy over the disputed land. The Court of Appeal held *inter alia* that, a holder of a right of occupancy under native law and custom does not automatically become a squatter when an area is declared a planning area.

In the case of *Attorney General v. Lohay Akonaay and Joseph Lohay*,⁶⁸ it was held *inter alia* that, "Customary or deemed rights in land, though by their nature are nothing but rights to occupy and use the land, are nevertheless real property protected by the provisions of Article 24 of the Constitution of the United Republic of Tanzania and their deprivation of a customary or deemed right of occupancy without fair compensation is prohibited by the

⁶⁵ Cap 114

⁶⁶ Government Notice No.79

⁶⁷ (1985) TLR 103.

⁶⁸ (1995) T.L.R 80

Constitution; Fair compensation is not confined to unexhausted improvements; where there are no unexhausted improvements but some effort has been put into the land by the occupier, that occupier becomes entitled to protection under Article 24(2) of the Constitution and fair compensation is payable for deprivation of property and land.” In addition to that the Court quoted an Article by Nyerere in his book 'Freedom and Unity', published by Oxford University Press, 1966 that compensation should not base on unexhausted improvements alone it should also encapsulate instances where the victim has wasted his labor in working the land.

2.2.4 Laws of another Country.

The Constitution South African

Article 25 of The Constitution South African provides that,⁶⁹ no one may be place of property accepted in terms of general principles and no law may permit arbitrary deprivation of property. Property maybe only. Expropriated only in terms of law of general application for the purpose or in the public interest in the subject to compensation, the amount of which at the time and manner of payment of which have been agreed by those affected or decided or approved by a court in addition. The constitution provides that, the amount of compensation, and the time and manner of compensation must be just, equitable reflecting and adequate balance between the public interest and there. Interesting of those affected having regard to all relevant circumstances, including the current use of property, history of acquisition and use of the property and the market value of the property.

⁶⁹ The Constitution of the Republic of South Africa, 1996.

The word subjected to compensation. The amount of which and time at the Manor. Of payment of which have either been agreed to by those who affected or decided. Or approved by the court shows that in South Africa, people affected by acquisition. Involved in the whole process.

2.2.5 Institutional Framework

The above term means the organs that are responsible for dealing with compensation for loss of right in land.⁷⁰ During the colonial period the German government compensated indigenous land through their commission called the Land Commission. During the British period the Mandate imposed an obligation on the administering power to safeguard the interest and laws of the inhabitants of the country. The system of the indirect rule was introduced in local administration of justice. After independence, the effect of indirect rule on the land tenure has been to prevent changes taking place uniformly in the traditional sector of land tenure and land use. The integration of court system in post-independence has been an important agent of effecting changes in a unified manner.

The Court

The Presidential Commission of 1999 recommended system of specialized the current hierarchical court system on land dispute settlement mechanism which resulted have Land Courts within the judiciary and with participation of the people in them. This was because the normal court system was loaded with disputes and giving more time to other disputes than that arising from Land.

⁷⁰ R.W James, *Land Tenure and Policy in Tanzania*, East African Literature Bureau, Dar es Salaam, 1971, 15.

Section 167 of the Land Act⁷¹ names the courts to deal with land matters in Tanzania.

The Board

This refers to the Board of Trustees of the Fund, established under section 173 of the Land Act. It is composed by members as provided under section 3 of the Land (Management of the Land Compensation Fund) Regulation, 2004. The function of the Board is to verify compensation schedule and claims submitted by Commissioner for Lands or authorized officer, to cause payment to be made out of the Fund as a result of the implementation of any of the provision of the Land Act by the Government or any public or local authority, interferes with persons right or interest in respect of any occupation of land.

The Urban and District Authorities

These are headed by Commissioners for Lands in every Urban and district Authorities. Section 9 and 10 provide the appointment and function of the commissioner to be assisted by the land Allocation Committee on the exercise of his powers. The Commissioner supervises local government authorities and their associations to ensure that they are kept informed about the administration of land within their jurisdiction. The Act allows delegation of their powers, how compensation on land should be made and the mode of land acquisition for public interest. However, however the law laws relating to compensation are not clear and causes challenges among the victims and

⁷¹ Cap 113 R.E 2019

the government, hence the increase of problems in the society, then researcher make a research and come with findings as will be stated under chapter four.

2.3 Conclusion

The duty to Recognition, promotion, preservation and protection of people's rights and their interests are vested under state machineries in each state. The Government of Tanzania also should clearly explain in its legal framework how this duty is fulfilled. Alternatively, where laws cannot protect the peoples' rights, they should be amended or enact new law to ensure people justice. However, in most cases governments underachieve its duty and cause mistrust resulting to endless injustice.

CHAPTER THREE

PRESENTATION, DISCUSSION AND ANALYSIS OF THE FINDINGS ON THE LAW GOVERNING COMPENSATION TO CUSTOMARY LAND OWNERS IN URBAN AREAS

3.0 INTRODUCTION

This chapter presents analysis findings of the research. It is in this part of the research where all data and information gathered from field are analyzed. The researcher proves or disapproves hypothesis in which findings were guided. Thus, this chapter seeks to take an overview of the effectiveness of compensation on customary land acquired for during urbanization in relation to adequate compensation on the particular area research. It is a cardinal principle of law that every person is entitled to own property and to the protection of the same in accordance with law. Where the property is to be taken or expropriated, he has to be compensated. The amount of compensation has to be proportionate to the property and must also be paid promptly. It is on this background that any deprivation of private property without prompt and fair compensation should be considered injustice and contrary to the legal system. Article 24 of the Constitution (*Supra*) is clear to the same justification that every person is entitled to own property and has a right to the protection of his property in accordance with law. Any deprivation of such property which does not abide to the law is unlawful. Even before the incorporation of the Bill of rights in the Constitution there were several cases in which the court ruled in favor of compensation.⁷² “that a person who is allowed to enter and cultivate land belonging to another is

⁷² Lukas Kaasha vs. Mfumwa Shaban, James & Fimbo (1971), Shabani Mmasi vs Hassan Mcharo (1971)

entitled to be reasonably compensated for the development he effected thereof”

3.1. The Analysis Whether Compensation is Legally Provided as the Requirements of the Law or is Upon the Discretion Valuers.

3.1.1 Finding Based on Interview

The researcher examines in detail on the clarification of whether provision of the law concerning adequate compensation on land in Tanzania is explicitly stated without giving a room of any irrational, inhuman, and unfair compensation. There are various arguments that were raised by respondents who responded on this issue. Ninety five percent (95%) of the respondents from the general public drawn from the area of the research namely; Kibwabwa A, Cagrielo, Nyamhanga E, Kibwabwa B, kiTwiru Block J, Iringa Municipal land office, and Iringa Regional office, said that most of the disputes between the government and the customary land owners whose land have been acquired during urbanization arise from unproportionate compensation.

On the other hand, respondents said that the law is not clear on the procedures to be followed for land acquisition and what to be compensated, thus rise challenges on how to ascertain fair and adequate compensation to the people whose ownership of customary land is deprived during urbanization. For example, the one who is entitled to be compensated does not know both the procedures for compensation and what should be compensated. Most of the respondents said that they were given information that their land was to be acquired for public interest and therefore they were supposed to vacate their land upon the land acquisition procedures have been

fully accomplished. But the very bad thing respondents were not given detailed information on what are the legal procedures for land acquisition.

3.1.2 The Analysis Basing on Law Relating to Compensation

The researcher interviewed one chairman of The Land and Housing Tribunal at Iringa⁷³. On his view he said that the law is clear on some aspects and not clear on other aspects. For example, the law gives all the procedures to be followed in all transactions from planning to compensation on land that has been acquired for public interest. These procedures are well stipulated in the Land Act, Land acquisition Act,⁷⁴ and Urban Planning Act. Section 6 of Land acquisition Act provides that, affected people must be issued noticed in personal and publication must be made in gazette and in any other relevant public media in case when their land is acquired for public interests. Section 8 (1) of the same Act provides that notice shall be served personally or left with the occupier of such land. The notice of intention to acquire land to be published in gazette as soon as may be practicable after the same has been served. He further said that, he doesn't know how the evaluation is conducted but he had no doubt on the government officers who conduct evaluation. However, he agreed that there are a lot of complaints on the performance of the government valuers. He said that the source of those complaints might be ignorance of the people, lacunae of the law, inadequate compensation or the bad performance of the valuers and government in general. He also added that, most of the cases lodged in his tribunal are

⁷³ An interview made with chairman of the Land and Housing Tribunal at Iringa on matters concerning adequate compensation on land, on 05 May 2023. Contact 0769 999 703

⁷⁴ Cap 118

between urbanization victims and the people acquired land through land authorities during urbanization.

3.1.3 The Analysis Basing on Ignorance of the People

Most of Tanzanians are ignorant of law even their basic rights. For that reason, people should be educated on the advantages that will accrue from their land that has been acquired for public interests. Also, the law should state clearly what adequate compensation mean, without giving a room to any inhuman, irrational and unfair alteration. For example, in TASAF III Resettlement Policy Framework Draft of 2011,⁷⁵ State that compensation referred to by “The new Land Act law” shall include (1) Market value of the real property which will have been arrived at by any of the following;

i) Market value basis, this is reached after taking the present market value of the subject property. ii) Direct comparison, the subject property compared with another property with similar entities. iii) Valuation technique, earning approach or Cost approach. iv) The accommodation allowance shall be the market rent of the affected building ninth multiplied by 36 months this means that accommodation allowance shall be rent per month multiplied by 36 months, v) Loss of profit allowance shall be annual net profit multiplied by 3 years, this is payable only to the people carrying out business and there should be records. vi) Disturbance allowance shall be real property meaning that real property includes buildings. In compensation people with only bare land are not paid while in real situation will be disturbed, therefore he/she has to be compensated as to other people occupying real property. vii) Transport

⁷⁵ TASAF III Resettlement Policy Framework Draft of 2011 p. 14

allowance shall be 12 tons multiplied by actual cost per ton as per a kilometer multiplied by 20 kilometers. Still the question of adequate compensation is not answered yet. When basing on the provision of the law especially on this aspect of transport allowance the law provide categorically that a person shall be paid only 20 kilometers from the place, he/she has to vacate but in real sense the victims may go more than the kilometers provided by law.

According to the view of tribunal chairman, adequate compensation should provide all rights to those whose land has been acquired to dispute and bargain on rates that are to be paid based on the actual market value of the land in question. He said that adequate compensation may be achieved through giving of sufficient monetary reward or replacement of land. However, the questions may be raised as how much amount compensated is sufficient? How proportionate is that amount payable? What monetary quantum is proportionate to constitute legal mandate of fair and adequate compensation? What should be the satisfactory measure of compensation? What makes compensation fair and adequate? What adequate is itself adequate? And what should be the test and the definition of Fair and adequate compensation in our legal system. Relying in questions above that they may give an answer that there are challenges on how to ascertain fair and adequate compensation to the people whose ownership of customary land is deprived during urbanization.

If the land laws aimed to compensate the victims fair and adequate compensation, then how fair is fair and how adequate is adequate remain to

be an open question of law. Commenting on the bad performance of the government officers, state attorney said that there are some government officers who use valuation opportunity to deprive persons of their rights. On the view of tribunal chairman, the adequate compensation should provide all rights to victims.

3.2 The analysis whether people affected by urbanization process can afford to re-acquire land in planned area

3.2.1 Finding Basing on the Questionnaire

The researcher supplied about 30 questionnaires but only 22 questionnaires were answered. 85 percent of the answered questionnaires responded as to be explained hereunder: -

3.2.2 Respondents from street (Mtaa) Kitwiru Block J located at Kitwiru ward.

The Iringa Municipal local government authority acquired this area for town planning in 2013. Most of the respondents from this area were not aware of any law relating to compensation on the acquired land for the public interests. They also said that they were informed of the intention of the Iringa Municipal authority to acquire their land for public interest through the public meeting that was convened by the district commissioner and the Municipal land officer in year 2013. Through this meeting, they were stopped to carry any development on their land. In this meeting they were also given the rate of compensation for their land to be compensated at rate of Tshs 122m². Ranging to Tshs 600,000m² and they were told that these rates were not subjected to any discussion. The actual evaluation was carried out in the year 2014; two years later after the landowners were stopped to carry out any

development on their plots.⁷⁶ More details found from Mr Nazareno Mangw'ata who is a chairman of Kitwiru A sreet committee.⁷⁷ He added that he is a victim among more than 250 victims of the said project, from all people compensated there is no one of them re-acquired land in the project area due to less amount compensated and the had to vacate living their origin land for new comers.

3.2.3 How Evaluation was made

The valuers came and asked every person who has a plot to list his/her name so establish the list of all people to be evaluated. In making evaluation each Acre of land was rated Tshs 600,000 and crop was counted and assigned percentage of compensation. The percentage assigned to each crop ranged from 0 to100, all crops that aged one year and below were assigned 0 percentage of compensation for reason that all were planted after the stop order for any development was issued. During evaluation only every trunk was counted as one tree irrespective the number of trees on it. One respondent complained bitterly saying she had 5 trunks of Bamboo trees each having more than twenty-five trees, each could be sold at rate of 25,000/= Tanzanian shillings but to the contrary she was compensated only 50,000/= for all the trunks.

3.2.4 How questions asked to the Landowners were answered

All the landowners were not given an opportunity to ask any question on how the proper evaluation should be carried out. At all the times when landowners asked any question were ordered to refer to the Land Acquisition

⁷⁶ Information was Received on September 2014

⁷⁷ Contact 0755240512

Act. Most of the time, the landowners were threatened to be taken to the court of law for attempting to interfere with the evaluation exercise. It was a trick of government to call the people who are challenging about the procedures of land acquisition to the authoritative offices and when they come back they can speak no more, this situation discouraged the victims and could not ask more questions.

3.2.5 Delays in Compensation Evaluation and Compensation Procedure

The Residents of Kitwiru ward which at Kibwabwa A street are victims of the expansion of the High way From Cap-Town to Cairo (TRANS-AFRICAN HIGH WAY), when they were interviewed by the researcher, they claimed that they were restricted to develop their houses since the evaluation was made by The Tanzania National Roads Agency (TANROADS) in 2016, and until (04/10/2023) the date when the research was conducting this research the landowners were not yet compensated, they added that, most of the buildings in the area are in pathetic condition but they can never be repaired because no one is allowed to develop any land which has been declared to be road reserve.⁷⁸

3.2.6 Education to Affected People

About 95% of respondents point out the ignorance of the landowners on the laws governing the compensation on land acquired by the government for public interest. They suggested that landowners should be educated prior to evaluation and compensation for land acquired by the government for public interest. They added that most of them they think that the government has no

⁷⁸ Information obtained on 04 May 2023. Rev Ndunguru is among victims 0684 592 056.

aim when it comes to the matter of acquisition of land specifically land owned under customary tenure.

Generally, from the research findings and their analysis; the compensation on land acquired for public interest is not in line with market values; for example, at Kitwiro the unsurveyed land acquired by Iringa Municipal council was compensated at rate of Tshs. 112m². The same was sold to an individual at rate of Tshs. 4,081M² soon after the land was surveyed. It is logical that the value of unsurveyed land is less than the surveyed one; however, this difference of 3500% is questionable in any measure. The simple meaning here is that thirty-five square meters of land acquired from landowners is equivalent to one square meter of surveyed land. This proves that all the time when the land is acquired by the government, the basic human rights of the landowners are violated. For example, in this research it has been observed that in some other properties were not considered during assessment by valuers

3.3 Conclusion

Inadequate compensation proportion to market value violates land laws in Tanzania. The law of compensation should be amended from time to time to fit in to the existing situation. The law should also state explicitly what should be considered as the adequate compensation, how it should be measured. For example, the law should state clearly that “adequate compensation” during acquisition by the government should be $\frac{1}{4}$ (one quarter) of the value of the surveyed land. Meaning that if the government get four plots in one acre of the surveyed land, then the landowner should be

assured to be compensate the amount of money or the land with equivalent value as compensation. Inadequate compensation divests the rights of the landowners and their beneficiaries which may cause, the increase of homeless families, drag victims out of urban, increase of drugs abusers, massive crimes, massive street children, high population of uneducated people, extreme poverty, increase of youths that can be easily radicalized, low rate of production and ultimately underdevelopment at the national level. In conducting research, the researcher intended to apply three methods of data collection namely, questionnaire, observation and interview. However, questionnaire and interview were successfully used on high percentage to collect the data.

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1 Introduction

In this research the researcher analyzed legal and practical challenges facing customary land owners in urban areas, he examined the compensation of land acquired for public interest in relation to adequate compensation. The researcher discussed how the evaluation and compensation are conducted in practice and what the law provides. The researcher also established that the disputes between the government and the citizen whose land is acquired by the government are the results of inadequate compensation.

4.2 Conclusion

Inadequate compensation proportion to market value violates land laws in Tanzania. The law of compensation should be amended from time to time to fit in to the existing situation. The law should also state explicitly what should be considered as the adequate compensation, how it should be measured. For example, the law should state clearly that “adequate compensation” during acquisition by the government should be $\frac{1}{4}$ (one quarter) of the value of the surveyed land. Meaning that if the government get four plots in one acre of the surveyed land, then the landowner should be assured to be compensate the amount of money or the land with equivalent value as compensation. Inadequate compensation divests the rights of the landowners and their beneficiaries which may cause, the increase of homeless families, drag victims out of urban, increase of drugs abusers, massive crimes, massive street children, high population of uneducated people, extreme

poverty, increase of youths that can be easily radicalized, low rate of production and ultimately underdevelopment at the national level. In conducting research, the researcher intended to apply three methods of data collection namely, questionnaire, observation and interview. However, questionnaire and interview were successfully used on high percentage to collect the data.

4.3 Recommendations

i) The law provides that compensation shall be fair and adequate. However, these two terms are not clearly defined by any of the laws. This can be problem because the government valuers can discretionary choose devalue the rates of compensation of the land victims, since the acquisition of land is a force willing buyer and not willing seller agreement that may result to the victims fail to re- acquire land proportion to what they own the before. Therefore, it should be a legal requirement of law to have clear definition to the keywords on compensation set out by the law and avoid such ambiguity that gives room for less compensation to the victims.

ii) there should be clear and specific way of assessment of the land value, The law says in regulation 4 and 5⁷⁹ that every assessment of the value of land and unexhausted improvement shall be repaired by qualified valuer and that the market value of any lad and unexhausted improvement be arrived at by *using of comparative* method evidence it by actual recent sale of similar properties. Now suppose that, the value of that property was not fair and also the sale of such similar property was not fair. Will we still use the

⁷⁹ Government notice No. 78,2001

same method for ascertaining the market value of land? If the answer becomes yes, will we say such compensation is just, fair, full and adequate as the legal requirement? If the answer is no, what would be the alternative? However, there is argument that the approach should be value by willing buyer, willing seller. That is the amount payable by the willing buyer to willing seller.

iii) There should be legal requirement to provide people with mechanism that can help them. The law left the community affected by the urbanization helpless from knowing the process of determining fair, prompt, just, and adequate. Compensation. For instance, the law can require the government to provide affected people with access to land lawyers. Private value valuers and the other relevant professionals to help them understanding the process of land acquisition for their betterment. On the other hand, People may be allowed to hire private valuers and advocates, with the lower supported by the acquiring authority. For the purpose of ensuring justice of the victims.

iv) There should be legal distinction between acquisition of land for public purpose and acquisition of land for private persons. There is no legal distinction between the two, save that the investors are private seekers different from the government. The constitution of South Africa is clearly directing that “the use to which the property is being put, to be taken in to account not for the purpose of location the market value but rather in combination with the market value. Unfortunately, our laws consider all are equal. Let us ask ourselves that, can we compare the acquisition by the

government for public that construct school, health centers, roads and markets for public gain, and such land acquired by private sector profit gain? How far can we say compensation laws are relevant? And if yes what are the grounds?

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