TITLE: EMERGING ISSUES ON COMPULSORY LAND ACQUISITION IN KENYA - LAND GOVERNANCE OR POLITICS?

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Abstract
Land is the most important natural resource in Kenya. It is highly emotive and valued as its importance hinges greatly on socio-economic as well as political considerations.

As a developing country. Kenya requires fast space quality infrastructure development. Over the last decade, the Government of Kenya has substantially increased its focus towards infrastructure development in order to achieve economic growth and transformation. These developments require land which are in private hands, hence forcing the government to undertake compulsory land acquisition for the intended "public purpose". In Kenya legal instruments namely Kenya Constitution 2010 and Land Act of 2012 exist for the purposes of expropriation of land.

However, compulsory land acquisition has always been a delicate issue and is increasingly becoming more complex today despite the establishment of the National Land Commission which has got express and constitutional mandate to undertake compulsory land acquisitions on behalf of government agencies. The paper is based on review of secondary data and project analysis of three major infrastructural projects in Kenya. The analysis reveals that the Kenyan populace continue to be intrigued by the emerging issues on compulsory land acquisition including disagreements over amounts due for compensation, inappropriate compensation of land owners, over valuation of the affected property, political interference and numerous litigations that ultimately result into delayed implementation of infrastructure development. This raises the question - Are the emerging issues on compulsory land acquisition in Kenya hinge on land governance framework or politics?

Focusing on selected development projects in Kenya, this paper traces the origin of land acquisition practice , highlights the current emerging issues on compulsory land acquisition and possible impact of the process on the implementation of infrastructure projects.

Keywords: *Compulsory, land, acquisition, governance, Kenya*

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1. Introduction

Compulsory land acquisition is built into almost every nation's law as the power of the government to acquire/purchase the property of private owner with or without his/her consent for a public purpose (social good/public use). According to FAO (2008), Compulsory Acquisition is the power of government to acquire private rights in land without the willing consent of its owner or occupant for the benefit of the society.

Different terms are used for the right and action of compulsory acquisition in various jurisdictions. For instance,

In the USA and Philippines - the right in known as "Eminent Domain"
In India, Malasyia and Singapore - it is known as "Land Acquisition"
In the United Kingdom, New Zealand and Republic of Ireland - the rights and action are known as "Compulsory Purchase"
In Austria -it is referred to as "Resumption or Compulsory Acquisition"
In South Africa, Mexico, Italy, France, Poland and Canada it is known as "Expropriation"

In Kenya, it is referred to as "Compulsory Acquisition". In other states/countries, it is simply referred to as "land taking".

According to West Encyclopedia of America Law (n.d.) the concept of eminent domain is not new. It has existed since biblical times, when King Ahab of Samaria offered Naboth compensation for Naboth's vineyard (1 Kings Chapter 21, Verse 1-3). In ancient Rome, the Roman Government could seize property for public projects, provided they compensate the owners. In 1789, France officially recognized a property owner's right to compensation for taken property, in the French Declaration of the Rights of

Man and of the Citizen, which reads, "Property being an inviolable and sacred right no one can be deprived of it, unless the public necessity plainly demands it, and upon condition of a just and previous indemnity."

According to Wikipedia (n.d) English sovereigns enjoyed similar powers, such that by the time of the American Revolution the power of the British Government to take private property for public uses was well established. The first case of eminent domain in English law is called the "Dobbie Process" or the "King's Prerogative in Saltpeter Case". The English king needed saltpeter for munitions and took a saltpeter mine from a private individual. The private party sued the king and the court established the right of the sovereign to take "private property for public use" without liability for trespass but requiring payment of compensation for the taken saltpeter.

2. Problem Statement

Land is the most important natural resource in Kenya. It is highly valued and seen as a measure of success of an individual. Land enables one to have security mainly in terms of access to credit. It can be utilized for both economic and subsistence purposes. The importance of land ownership hinges greatly on socio-economic as well as political considerations.

The real estate and property development sector across East and Central Africa has been on an upward trend. The growth has also been driven by construction and infrastructure development projects in the emerging economies such as Rwanda, Burundi and South Sudan. The property sector and infrastructural development as a phenomena requires spatial dimension that can only be fulfilled by expropriation of land. Expropriation of land in this context refers to the taking away of private land and landed property for public purpose by the Government with or without the owner's consent subject to laws of eminent domain which however stipulates prompt and adequate compensation among other things. In Kenya, expropriation refers to ‘setting apart’ for unregistered Trust Land and ‘compulsory acquisition’ for all registered private land.

As the developing economies in Kenya, Tanzania Rwanda and Uganda attain levels of maturity, there have been rapid infrastructure development to facilitate regional trade and investment. Access to land to undertake infrastructure development has become the focal point in the realization of the capital projects across the region. With more construction projects being implemented, real estate professionals are playing a vital role in assisting companies and governments make informed development decisions.

Kenya as a developing country therefore requires fast space quality infrastructure development. Over the last decade, the Government of Kenya has substantially increased its focus towards infrastructure development for economic growth and transformation. These development projects including the Standard Gauge Railway (SGR), LAPSSET and Konza Techno City required land which are in private hands, hence forcing the government to acquire for "Public Purpose". Although in Kenya, the power to compulsorily acquire interests in land is vested on National Land Commission as established under Article 67 of the Kenya Constitution 2010, the practice has encountered serious challenges.

3. Objectives of the study

The general objective of this study was to determine the effect of compulsory land acquisition in Kenya on infrastructural development.

Specifically the study sought:-

a) To trace the origin of compulsory land acquisition practice.
b) To highlight the current emerging issues concerning compulsory land acquisition.
c) To analyse the possible impact of compulsory land acquisition process on the implementation of infrastructural development projects.

4. Research Methodology

The study basically relied on secondary sources of data and project analysis of three major infrastructural projects in Kenya to achieve the study objectives. The review of related literature focused on the origin of compulsory land acquisition and the documented emerging issues on compulsory land acquisition process in Kenya. The three main infrastructural development projects analysed to determine how land acquisition process impacted on their implementation are the Standard Gauge Railway (SGR), The Lamu Port Southern Sudan - Ethiopia Transport (LAPSSET) and the Konza Technology City Project (Konza Techno City).

5. Land Acquisition in Kenya

According to Sorrenson (1968), in Kenya, acquisition of land for development purposes began with the onset of colonial administration. The first major development project for the colonial administration was the construction of the Kenya - Uganda Railway from the shores of the Indian Ocean to the shores of Lake Victoria. In this instance, the purpose was not directly for urban development, but for a transportation network, which eventually led to the springing up of major urban centres across Kenya. In 1896 Hardinge, the "Commissioner of the East Africa Protectorate" established a Commission to value for compensation of about 400 acres of land on Mombasa Island and the adjoining Kilindini foreshore required by the Railway Authority. However, the Commission was resisted by European and Indian settlers, who had bought land from the local Arabs arguing that Hardinge had no legal authority to expropriate the land. In response to this, Hardinge borrowed the "Indian Land Acquisition Act" of 1894, which provided for the acquisition of land from British subjects for public works to apply to the protectorate (Sorrenson, 1968). The law which heavily borrowed from English law was immediately used to acquire land for railway purposes in Mombasa town. This marked the beginning and origin of land acquisition law as applied in Kenya today. The Indian Land Acquisition Act was later replaced by the Land Acquisition Act of 1968 (Cap 295) laws of Kenya, which has since been repealed and replaced with Part viii of the Land Act, 2012.

At independence in 1963, the constitution section 208 converted all the land in the former African reserves into trust lands vested in the county councils to be held in trust for their occupation. The way the trustees are to administer the land is set out in the Trust Land Act, Chapter 288 of the laws of Kenya.

In Kenya today the right of expropriation is entrenched in the new Constitution under the bill of rights (Chapter 4) Section 40 and the process is guided by several Acts of Parliament.

The principal Act being, The Land Act 2012 part viii (previously the Land Acquisition Act, now repealed) which empowers the Government to acquire land for public body where the acquisition is necessary for public interest. The Land Act 2012 defines Compulsory Acquisition as the power of the state to deprive or acquire any title or any other interest in land for a public purpose subject to prompt and just payment of compensation. The County Government under Section 107(1) of the new law has also been empowered to acquire land like the National Government. The Trust Land Act Cap 288 Section 13 (1) empowered local authority to expropriate land for local needs, which may include urban development and Section 7 (1) of the same Act empowers the Government to expropriate trust land for public needs.

In Kenya, the Land Act, 2012 provides an itemized list of land uses that fall under the jurisdiction of "public purposes" for compulsory acquisition. They include

i. Transportation: roads, canals, highways, railways, bridges, airports

ii. Public buildings: schools, hospitals, libraries, factories, public housing

iii. Public utilities: water, sewerage, electricity, irrigation and drainage, dams, reservoirs, communication

iv. Public parks: sports facilities, play grounds

5.1 Procedure for Land Acquisition in Kenya

In Kenya, the procedure for land acquisition is outlined in the Land Act of 2012 Part Viii. The procedure is as tabulated in the Table 1 below.

Table 1: Procedure for land acquisition as per the Land Act, 2012

Process	Land Act, 2012 Part Viii
Authority to acquire/Power of entry to inspect land	Under Section 107(1) of the Land Act, the National or County Government on being satisfied that it may be necessary to acquire land, submits the request through the respective Cabinet Secretary or the Executive Committee Member in writing to the National Land Commission. The Commission prescribes criteria and guidelines which it uses to approve or reject the request to acquire the land.
Notice	Under Section 5, the Commission upon approval of the request publishes a notice in Kenya Gazette or County Gazette for interested persons. In addition to the gazette notices, Section 131(1e) states that the Commission

	may advertise in two newspapers with national circulation. All land to be acquired are then geo-referenced and authenticated by the surveying office
Payment for damage entry for inspection	Under section 108, the Commission shall promptly pay in full, just compensation for any damage resulting from the entry.
Inquiry for Compensation	At least thirty days after publishing the notice of intention to acquire land, the Commission shall appoint a date for an inquiry to hear issues of propriety and claims for compensation by persons interested in the land
Award of compensation	Upon the conclusion of the inquiry, the Commission shall prepare a written award, in which the Commission shall make a separate award of compensation for every person whom the Commission has established to have an interest in the land.
Compensation amount to be paid	Any compensation amount held is supposed to be deposited in a special account held by the Commission as per Section 115(2) and attracts interest at the prevailing bank rates as per Section 117
Dispute resolution	Under Section 128 all compensation disputes are to be referred to the Land and Environmental Court.
Taking possession	Section 120(12) states that only after the award has been made and the amount of first offer has been paid can the Commission take possession.

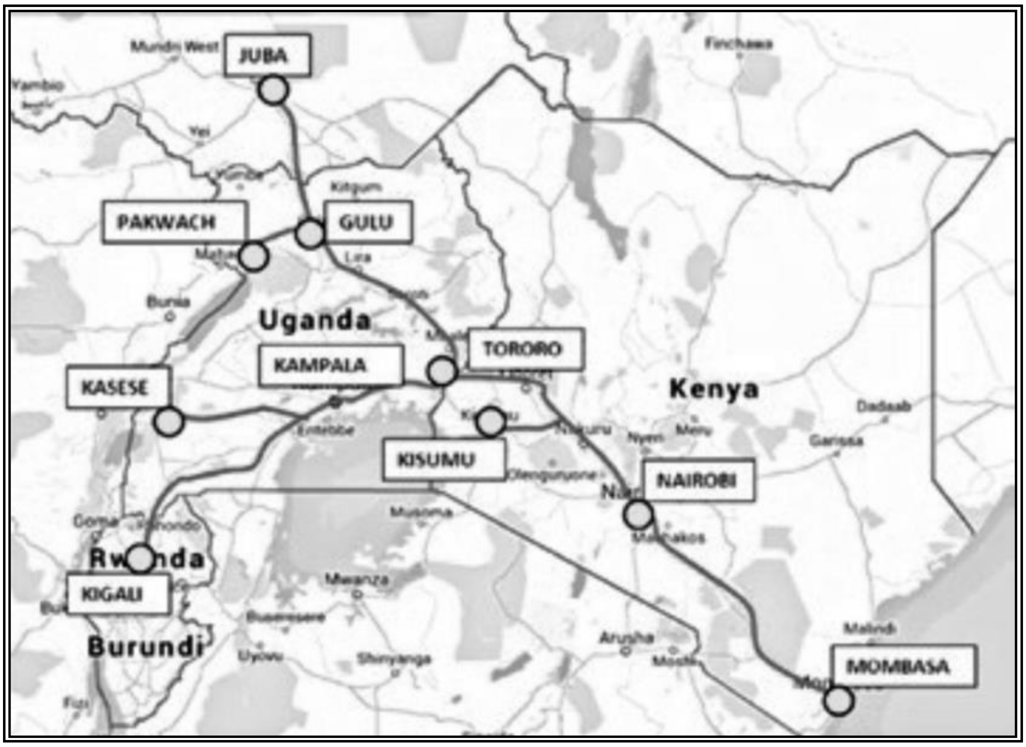
Source: Land Act of 2012

6. The Case Studies

This study examined emerging issues on compulsory land acquisition in three (3) projects as they relate to compulsory acquisition in Kenya. The issues are considered either as problems of land governance or in political dimension. The projects are the SGR, LAPSSET and Konza Techno City.

6.1 Standard Gauge Railway Line

The Standard Gauge Railway (SGR) was conceived as a flagship project under the Kenya Vision 2030 development agenda. The SGR is critical to the growth of Kenya and regional economies. On 1st October, 2009, the governments of Kenya and Uganda signed a MoU for construction of the SGR from Mombasa to Kampala. On 28th August, 2013 Kenya, Uganda and Rwanda governments signed a Tripartite Agreement committing to fast track the development of the railway to their respective capital cities. South Sudan has since come on board as an interested stakeholder in the project.



Map of the Standard Gauge Railway Master Plan
Source: *www.krc.co.ke downloaded on 29th November, 2014*

Regional economic interests have therefore worked in favour of the project. In this regard, the SGR line will snake its way from the port of Mombasa to Kigali through Kampala with a branch line to Juba. In Kenya it is planned that there will be a branch line to Kisumu from Naivasha. As a necessary transport mode, the project is therefore a key component of the Northern Corridor. Kenya is vigorously pursuing the development of the first phase of the SGR from Mombasa to Nairobi, which has since been completed and started operating in June 2017. The project is being constructed by a

Chinese company (China Road and Bridge Corporation). The first phase of the project is estimated to cost Kshs 327 billion, which was financed by the Exim Bank of China at 90 percent, while the Kenyan government contributed 10 percent.

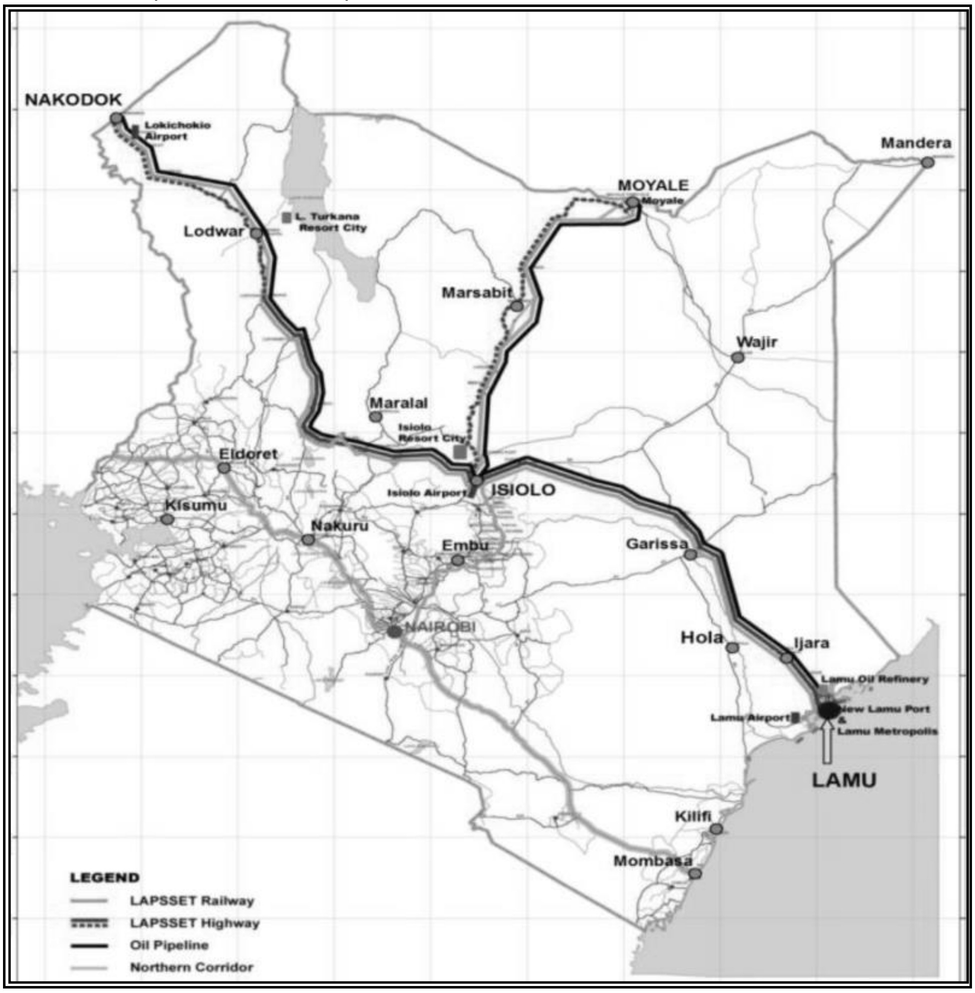
The implementation of the project has faced numerous challenges. On 13th March 2014, the National Land Commission was summoned to appear before the Parliamentary Investment Committee to shed light on various issues were being raised, namely;

- Why did the National Land Commission publish a notice to acquire land without Kenya Railways having deposited compensation funds (Money) with the National Land Commission?
- Why did Kenya Railways only start with 56km, and these parcels are not in Mombasa which is the starting point?
- Why are some affected parcels not in the list provided in the notice?
- Why the contractor has been visiting the corridor without the resident's consent.
- Why County Governments of Mombasa, Kwale, Taita Taveta and Makueni do not seem to have been updated on the progress of land acquisition despite the concern being forwarded to the Kenya Railways Corporation.

On 23rd October 2014, the High Court stopped the construction of the SGR in Kibwezi area of Makueni County because residents were not compensated for land acquired by the government for the project. The lawyer for the residents told the court that residents were not properly compensated for land compulsorily acquired by the government for the project and that they were not given notice before the takeover, as required by the law. The lawyer further argued that the affected residents will suffer economically as the land will be fenced off with a perimeter wall and thus inhibit their movement and that of their livestock to grazing fields (Daily Nation, 23rd October 2014). The temporary stoppage by the court caused delay in the completion of the project as planned and programmed.

6.2 Lapsset

The Lamu Port Southern Sudan-Ethiopia Transport (LAPSSET) Corridor project, also known as the Lamu corridor is a transportation and infrastructure project in Kenya that, when complete, will be the country's second transport corridor. Kenya's other transport corridor is the Mombasa port and Mombasa–Uganda transport corridor that passes through Nairobi and much of the Northern Rift. The cost of the LAPSSET project is put at KSh. 2.5 trillion ($29.24 billion).



Map indicating the LAPSSET Corridor route
So**urce:** www.lapsset.go.ke

The project comprises the following components:

- A port at Manda Bay, Lamu
- Standard Gauge Railway line to Juba and Addis Ababa, the South Sudanese and Ethiopian capital
- Road network (approximately 1,000 Km to Ethiopia)
- Oil pipelines from Lamu to Southern Sudan and Ethiopia
- Oil refinery at Bargoni
- Three airports (Lamu, Isiolo and Lokichogio)
- Three resort cities (Lamu, Isiolo and Lake Turkana shores)

- High voltage electricity supply

The LAPSSET Corridor Project covers over half of the country with a planned investment resource equivalent to half of Kenya's GDP for the core investment alone. Conservative feasibility statistics show that the project is expected to inject between 2% to 3% of GDP into the economy.

While the LAPSSET project promises to open Kenya's coastal, eastern and northern regions, allowing access to vast resources and creating opportunities for jobs, the costs outweigh the benefits for some residents along the corridor. Thousands of people are due for eviction from their lands to pave way for the railway and oil pipeline networks, and since only those with title deeds will be eligible to receive government compensation, the project has reignited underlying conflicts over land ownership.

Despite the government sourcing for funds to compensate at current market rates those displaced by Lamu port construction work, it has been noted that the communal ownership of land is complicating the compensation process as individual land ownership documents are lacking. Failure to recognize individual and community land rights is a historical problem along the Kenyan coast. Most of coastal Kenya is Trust land. The lucrative beach fronts have been allotted to powerful individuals in government at the expense of the local communities. The community is therefore afraid that the same will befall them on the LAPSSET Project.

6.3 Konza Techno City

The idea and interest for an African Silicon Savannah in Kenya was first inspired by trends in Business Processing Outsourcing and Information Technology Enabled Services (BPO/ITES), which showed global offshore BPO/ITES revenue estimated at US$ 110 billion in 2010 and a projected three fold growth to reach US$ 300 billion by 2015.

Currently, there are over 2.8 million people employed in this sub-sector worldwide. However, statistics show that Africa only attracts about 1 % of the total revenues accruing from this growing industry. Only a few African countries have made effort to develop this industry; South Africa, Egypt, Morocco, Ghana and Mauritius have each launched national programs to grow BPO/ITES.

It became clear that Kenya stood a good chance to attract a sizeable chunk of the expected growth in the off shoring BPO/ITES trade revenues if the Government took lead in the development of this industry.

In 2009, The Konza Technology City project was initiated with the acquisition of a 5,000 acre piece of land at Malili Ranch, 60km South East of Nairobi along Mombasa-Nairobi A09 Trunk road. The acquisition process was clouded with assertions that the land prices were exaggerated thereby affecting the overall cost of the project.

Photo showing an artistic impression of Konza Techno City
Source: www.konza.go.ke

The following key sectors were identified as possible drivers of growth for the Techno City:

1. Business Process Outsourcing (BPO)
2. Software Development
3. Data Centers
4. Disaster Recovery Centers
5. Call Centers and
6. Light assembly manufacturing industries

There has been a dispute between Makueni and Machakos counties over the location of Konza Technopolis, with each saying it falls on their side. This has forced the Senate to initiate the process of forming an independent commission to handle matters relating to county boundaries so as to enable smooth implementation of the project. While the Independent Electoral and Boundaries Commission deals with constituency and ward boundaries, the law is unclear on the counties.

7. Emerging issues on compulsory land acquisition

Land acquisition in Kenya has always been a delicate issue and is increasingly becoming complex today in the context of rapid growth and changes in land use. The current state of economic development continues to create a voracious appetite for space to meet the demand for industrial, infrastructure building, urban expansion and resource extraction.

The process of compulsory acquisition in Kenya has therefore been characterized by illegalities and irregularities, informality, political influence/interference and involvement of many actors some with conflicting interests. Cases of illegalities and irregularities in compulsory acquisition have led to increased court cases by persons/parties aggrieved. This brings into focus whether the emerging issues in compulsory land acquisition in Kenya are as a result of land governance problem or politics surrounding land ownership. It is worth noting that there exists land governance framework that should guide all land transactions in Kenya.

7.1 Disagreements over Compensation Amounts

A notable emerging issue in compulsory land acquisition in Kenya is to do with determination of the amount payable based on the market trend. This have got the potential of delaying the conclusion of land expropriation process. Table 2 shows the amounts awarded for compulsory acquisition against the market value of the land parcels before and after compulsory acquisition.

S/N	Region of compulsory acquisition	Plot size	Market value of the plot before compulsory acquisition	Market value of the plot awarded for compulsory acquisition	Market value of the plot after compulsory acquisition
1	Rongai (Kandisi area)	0.1 an acre	Kshs. 1.5m-Kshs. 2.0m	Kshs. 2.3m	Kshs. 2.5m-Kshs. 3.0m
2	Rongai (Kona Baridi area)	0.1 an acre	Kshs. 1.5m-Kshs. 2.0m	Kshs. 2.3m	Kshs. 2.5m-Kshs. 3.0m
3	Mombasa Southern Bypass	1 acre	Kshs. 4.0m	Kshs. 13.0m	Kshs. 4.0m-Kshs. 6.0m
4	Kipevu New Highway Container Terminal Link	1 acre	Kshs. 4.0m	Kshs. 13.0m	Kshs. 4.0m-Kshs. 6.0m
5	Thiba Dam	1 acre	Kshs. 0.4m –Kshs. 0.6m	Kshs. 0.75m	Kshs. 1.2m-2.0m
6	Waiyaki Way (Sigona area)	0.1 an acre	Kshs. 6.0m –Kshs. 8.0m	Kshs. 6.0m	Kshs. 10.0m-15.0m

Source: NLC Records

7.2 Inappropriate Compensation of Land Owners

Another emerging issue on compulsory land acquisition is the consideration of illegal land owners. This is a serious political problem notwithstanding the existence of laid down land governance framework.

For instance, on 31st July, 2014 while responding to the growing pressure, President Uhuru Kenyatta announced that the government will revoke ownership of nearly 500,000 acres of land acquired in Lamu between 2011 and 2012 through "dubious and corrupt means". The president linked the insecurity witnessed in Lamu to land issues connected to LAPSSET. The president therefore tasked Criminal Investigation Department and the Kenya Police Service to conduct thorough investigations to identify legitimate owners of the grabbed land, but reassured citizens who acquired land lawfully that they would not be affected by the order. On August 3rd, 2014, a ten-member CID team was appointed to investigate the illegal purchases of land under the leadership of Mr Muhoro, Director of CID. This led to more confusion because the constitution has tasked the National Land Commission with acquisition and investigation into land matters.

Before the President tasked the CID and the police with investigating land issues in Lamu, the National Land Commission announced that it was moving its experts into Lamu to investigate land issues as stipulated by the constitution, setting parallel investigating teams. This was now clear case of the interplay of politics in land acquisition.

On 8th September 2014, the Cabinet Secretary in charge of Lands, Housing and Urban Development nullified the list of 146 families earmarked for compensation on grounds of corruption. On 27th November 2014, the 146 beneficiaries got an injunction from the High Court stopping the development of any LAPSSET project until their compensation is determined. The impact of this is that the timely completion of the project will be affected.

In the case of SGR, it was reported in the Daily Nation of Thursday August 1st 2019 that some Three Hundred and Thirty (330) Individuals and Firms have not claimed their compensation awards totaling to Kshs. 1.14 Billion. This raises questions as to whether the affected individuals were real owners of the acquired land. It is suspected that some of those who have not claimed their compensations are absentee landlords.

7.3 Political Interference

Political interference may take various forms and at times may defeat the whole process, especially where rich or politically influential land owners are involved.

7.4 Financial Constraints

Land required for infrastructure development that stretches hundreds of kilometers has to be paid for by the beneficiaries who more often than not are the respective national and county governments. It happens that these institutions are plagued by mismanagement and financial problems to the extent that they always face problems in getting money to pay for compensation of land to be expropriated in their favour.

The implications of this is that many development projects would delay due to un-availability of money. In many cases, donors would not provide funds for purchase of land which they regard as a local resource and which should be contributed by the beneficiary of their funding. Donors prefer to finance only the technical aspects of projects.

7.5 Over Valuation of the affected Property

Compulsory Land Acquisition has witnessed overvaluation of affected land parcels. For instance, one of the affected eleven properties by the construction of the Standard Gauge Railway phase 2A from Nairobi to Naivasha was valued at over Kshs. 244 Million but upon revaluation by the Multi Agency Team the figure was reduced to Kshs. 18 Million, a drop of over 1,200% (Daily Nation, Thursday August 1st 2019). This brings to focus the integrity of the valuers from the National Land Commission who participated in the original valuation exercise.

7.6 Litigation

Litigation is also a major problem, especially when it causes delays in the process of land expropriation. Along the SGR line, the litigations interfered with the smooth implementation of the project. In other projects, for example, the 146 LAPSSET land owners whose compensation had been stopped by the Minister in charge of Lands, Housing and Urban Development obtained an injunction from the High Court stopping any development until their compensation issues are completed.

7.7 Legal Issues

Land ownership in Kenya is designated as freehold and leasehold. The tenurial arrangements have to be adequately addressed if infrastructure development projects are to be implemented as conceived. A civil law system grants outright ownership of land, provided that the rights of enjoyment and disposal are not contrary to the laws and regulations introduced in the interest of the wider community or neighbours. For every right, privilege or power by one person, there is duty or liability of another. The Kenya Constitution 2010 has brought in Citizen rights and stakeholder participation in decision making process. This is particularly significant when dealing with land rights under communal ownership.

In the case of the Standard Gauge Railway, legal issues concerning rights and disputes to land has delayed payment to the affected families. Out of the Kshs. 4.53 Billion yet to be paid out, Kshs. 737 Million is being held because of disputes, Kshs. 135.88 Million is yet to be settled following feuds involving 136 families while nine matters totaling Kshs. 66.75 Million are stuck in succession process (Daily Nation of Thursday August 1st 2019).

8. Impact of Land Acquisition on Infrastructure Development

Expropriation forcefully converts land use from existing use to the gazetted use depending on the purpose for which land is being acquired. Conversion mainly is from private use to public use that may have a distributive effect as it increases amount of state lands at the expense of private lands. There is also interference with tenurial and ownership arrangements.

The process of land expropriation for infrastructure development has faced many problems. The problems have resulted in delayed implementation of projects, putting into focus the efficiency by which the system has functioned in availing land for infrastructural development.

As has been mentioned in the case of LAPSSET, an intended acquisition was delayed due to compensation issues, thus slowing down the implementation of the project. This unexpected delay will ultimately affect the envisaged project completion time.

The combined effect of disagreements over compensation amounts, delayed compensation of land owners, political interference, financial constraints on acquiring agencies, and litigations by aggrieved parties will ultimately influence the project completion time and thus result into increased project costs. The delays if not judiciously addressed impacts negatively on the overall goal of the infrastructure development and overall economy of the country.

For instance, in the phase 2 of the SGR, covering the sketch from Nairobi to Naivasha, the construction work in some sections had to stop for almost one (1) year between June 2018 and June 2019 due to litigations over compensation payments. The Directorate of Public Prosecutions and Directorate of Criminal Investigation stopped payments for compensation until verification of the rightful land owners and correct compensation amounts are determined. This will ultimately result into delayed completion time as originally envisaged.

9. Conclusion and Recommendation

Expropriation as a forceful form of land-use succession is another way of achieving the highest and best use (HBU) of the land. This would however not happen if the society were to rely on market mechanisms as is always rationalized by economic and social factors. By putting the land to its highest and best use, expropriation enhances the capital value of land. For example, the acquisition of land for LAPSSET, Standard Gauge Railway and Konza Technopolis will in addition to putting land to best use, also provide job opportunities to the catchment area. This will assist the government to address the problem of unemployment that is currently facing the country.

Land acquisition is one of the most controversial and politically sensitive instruments of state power anywhere in the world. Depending on how it is used, it can clear the way for rapid economic transitions, technological progress and inclusive growth, or it can trample on property rights, the economic interests of poor and vulnerable groups, and fundamental principles of justice. The current review of land laws, including acquisition of land, is long overdue in addressing inadequacies of the colonial Land Acquisition Act, which has for a long time been exploited by commercial interests, corrupt politicians and the state to promote widespread land grabbing. Before initiation of a project, it is imperative that land expropriation be given due consideration as it will determine the success or otherwise of any proposed infrastructure development. In addition, such big construction projects take a long time between inception and commencement of the actual construction because financing negotiations and decisions take too long to make

Reference

- Daily Nation, Newspapers
- FAO (2008), Compulsory Acquisition of Land and Compensation, Rome: s.n
- K'Akumu, O.A. (1996): The Impacts of Land Acquisition. Problems on Project Implementation. University of Nairobi: MA Thesis
- Kenya Government (2012), Land Act, 2012, Government Printers, Nairobi
- Onalo, P.L (1986), Land Law and Conveyance in Kenya, Heinemann, Nairobi, Kenya
- Sorrenson, M, 1968: Origin of European Settlement in Kenya, Nairobi: Oxford University Press.

- Syagga, P.M. and Olima, W.H.A. (1995): The Impact of Compulsory Land Acquisition on Displaced Households: The Case of the Third Nairobi Water Supply Project, Kenya. In: Habitat International, Vol. 20, No.1, pp. 61-75
- West Encyclopedia of American Law (n.d): Eminent Domain, www.aswer.com/topiceminent domain